The urgent need for a new nicotine framework

Response to Health Canada Discussion Paper "The second legislative review of the Tobacco and Vaping Products Act."

October 2023.

Our key recommendations:

A. Health Canada should seize this opportunity to modernize its tobacco/nicotine strategy

- The Canadian federal approach to the tobacco industry reflects a 20th century focus on reducing consumer demand for cigarettes, particularly among young people. The objectives of the federal tobacco law (which were mapped onto vaping products in 2018) have not been revisited in 35 years.[1]
- Although Health Canada has adopted the goal of reducing tobacco use to "under 5% prevalence by 2035",[2] this objective is not legislated, and is not supported by an accountability framework for government or industry.
- Although Health Canada adopted "harm reduction" language in 2018, no formal strategy (and no legislative basis) has accompanied this change. There is no federal legislative or programmatic objective with respect to vaping or other forms of nicotine use by individuals over 18 years of age.[3]
- In recent years the tobacco industry has re-invented its marketing strategies and is expanding its range of nicotine products (e.g., heat-not-burn, nicotine pouches, hybrid products) and other psycho-active products (e.g. CBD, functional food and beverages).There is currently no federal programmatic or legislative response to these market developments.[4] [5]
- **The Legislative Review is an opportunity for Health Canada to present its analysis of developments in the nicotine market, to articulate a public health objective with respect to this market, and to make recommendations for the modernized legislative foundation that would support these objectives.**

1 The tobacco-related objectives of the Tobacco and Vaping Products Act are the same as those of the Tobacco Products Control Act, introduced to Parliament in 1987

2 Health Canada. Canada's Tobacco Strategy. https://www.canada.ca/en/health-canada/services/publications/healthy-living/canada-tobacco-strategy.html

3 Health Canada's objectives for vaping by Canadian students (grades 7 to 12) is "at most 10%". Treasury Board Infobase.

4 Physicians for a Smoke-Free Canada. BAT reboots and rebrands for "a better tomorrow". May 18, 2020.

5 Ling, P et al. Moving targets: how the rapidly changing tobacco and nicotine landscape creates advertising and promotion policy challenges.. Tobacco Control 2022.

Physicians for a Smoke-Free Canada

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B Health Canada should transparently report the challenges it has faced in implementing the TVPA including those which result from the absence of a whole-of-government framework for nicotine.

- Over the past fiveyears, Health Canada has faced a number of challenges in administering the TVPA, including 6 originally identified by its internal evaluators, which were: [6]
    1. The absence of workplans which "set out a clear path, including interim targets in the short- and medium-term, for reaching the long-term goal of less than 5% tobacco use by 2035 and for addressing the issue of youth vaping."
    2. Technology systems that are "outdated" or "non-existent", and which prevent the collection and analysis of needed information.
    3. Robbing-Peter-to-Pay Paul, and shifting financial and human resources from tobacco to vaping-related activities, risking losing ground on tobacco-related issues
    4. Time-intensive regulatory processes.
    5. Public communications which are not informed by updated scientific assessments, and which make questionable therapeutic claims for un-licensed products
    6. Inconsistent performance measurement and limited systematic knowledge exchange.
- These are in addition to the long-standing systemic barriers noted by ourselves and others, including the absence of efficient enforcement systems (e.g. administrative monetary penalties) and a reluctance to prosecute offenders, the absence of a mechanism for a rapid regulatory response (e.g. interim orders)[7] and the loss of surveillance tools during key periods. [8]
- The TVPA is administered in isolation of other programs and regulatory systems which influence tobacco use.

The Legislative Review is an opportunity for Health Canada to be transparent with the challenges it has faced in using the TVPA to reduce smoking.

C In modernizing its approach to reducing disease, Health Canada should go beyond the 20th century demand-side approach and impose controls on suppliers aimed at phasing-out tobacco use and nicotine addiction.

- A variety of "end game" and other regulatory innovations have been proposed to modernize tobacco control strategies, among which some have been chosen for implementation.
- Tobacco companies in Canada are currently operating under the protection of federal insolvency law, and are negotiating their future operations with provincial governments. This provides a unique opportunity to establish a forward path for this industry that is aimed at eliminating tobacco use and nicotine addiction.

The Legislative Review is an opportunity for Health Canada to propose more ambitious, innovative supply-side regulations.

6 This is detailed in the department's Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21.

7 Delays in developing key regulations (delayed regulations that were indicated during the Parliamentary review of S-5 include reporting regulations for vaping companies and criteria for release of industry reports on tobacco manufacture).

8 The department's decision to terminate the Canadian Tobacco Alcohol and Drug Survey in 2017 resulted in no measure of vaping product use between 2017 and 2020. Departmental delays in re-assigning responsibility for the Canadian Student Tobacco Alcohol and Drug Survey which resulted in a missed cycle (2021) of the survey.

Responses to Discussion Paper Questions

1. What are the factors that lead to tobacco use?

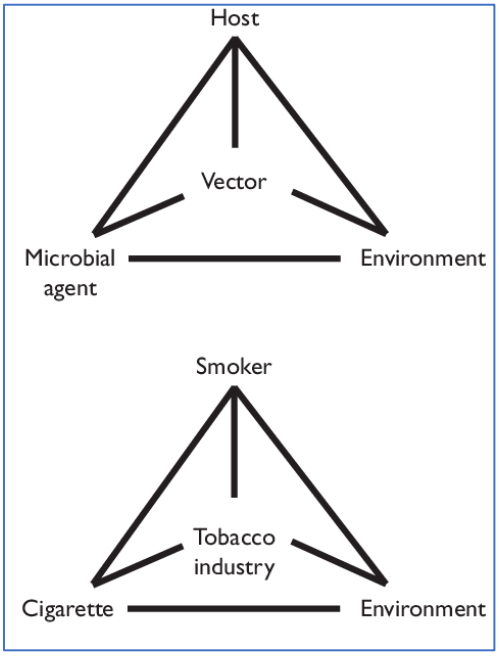
Tobacco industry behaviour is the fundamental factor driving new and continued tobacco use, although it may be observed in or enhanced by a wide range of environmental or individual factors[9].

The tendency of public health analysis to focus on the linkage between individual characteristics has contributed to an unbalanced evidence base to inform tobacco control and regulatory measures.[10]

Applying an epidemiological lens to the tobacco epidemic however allows us to identify the tobacco industry as the vector of smoking – analogous, for example, to the mosquito's role in spreading malaria.

The policy decision which allows the tobacco industry to function as a vector is the set of legislative decisions which allow tobacco products to be supplied as consumer goods by profit-seeking companies in a liberalized market.

The decision to permit the commercial supply of tobacco results in suppliers being incentivized to promote tobacco use. In response to these incentives, suppliers create inducements for individuals to initiate tobacco use or to defer efforts to end their dependence. While tobacco use existed (and would likely continue to exist) in a system where the supply was not commercialized, levels of use were (and would likely be) at much lower levels.



The Epidemiologic Triangle and The Tobacco Epidemic (from Jonathan Samet)

In the context of this legislative review, the Canadian government can address the consequences of this earlier policy choice.

Recommendations:

1. **Health Canada should commission a review of the incentive structures within tobacco supply and develop options for aligning the economic and other incentives of suppliers with public health objectives.**
2. **Health Canada should recognize that while Canada's tobacco industry is currently insolvent, there is a unique history opportunity to modify the structure and operations of the tobacco market. It should engage with provincial governments to implement measures which reduce systematic incentives to maintain tobacco sales.**

9 See, for example, National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta (GA): Centers for Disease Control and Prevention (US); 2012. Available from: https://www.ncbi.nlm.nih.gov/books/NBK99237/

10 Garcia-Cazarin ML, Mandal RJ, Grana R, et al Host–agent–vector–environment measures for electronic cigarette research used in NIH grants Tobacco Control 2020;29:s43-s49.

2. Are there new measures or adjustments to current measures that the Government of Canada could consider to better support smoking cessation efforts?

Canada can address systemic policy and regulatory barriers which impede successful quitting by smokers. Two of the most power policy supports for smoking cessation are tobacco prices and smoke-free legislation.[11]

There are many policy and program levers under the control of Health Canada which would support higher cessation. These include using regulation or legislation to curb the use of price segmentation, cross-subsidization, localized pricing or other price-related marketing strategies which tobacco companies use to increase tobacco use.[12] The grants and contribution component of Canada's Tobacco Strategy could be used to support policy and legal changes aimed at creating smoke-free workplaces for occupational groups in which smoking continues to be the norm (trades, transportation, service industry, etc.).

Price-controls will support smoking cessation

Tobacco taxes are globally acknowledged as one of the most powerful tools for governments to reduce tobacco use. Higher cigarette taxes and prices encourage smokers to quit, help those who do quit to not relapse, discourage young people from starting and reduce the number of cigarettes that are smoked.

The setting of tobacco prices is a key tool for industry as well. Higher cigarette prices provide increased profits per unit sold. Lower cigarette prices generate sales and customers, and can blunt the impact of cigarette tax increases. In all cases, lower cigarette taxes help companies increase sales and profits.

Tobacco companies have modified their marketing practices to keep some brands inexpensive and to ensure that cigarettes remain affordable. Unlike previous decades, when all cigarettes were sold at the same price, since the early 2000s cigarette brands are marketed in increasingly disperse price ranges. They have restructured their operations to allow them to use price as their key marketing tool. Imperial Tobacco shifted production to Mexico to reduce costs.

Both Imperial Tobacco and Rothmans, Benson and Hedges eliminated wholesale and distribution "middlemen" to increase their influence over retailers and retail pricing. Price ceilings have been imposed for cheaper brands, while profit-taking has been shifted to the more expensive brands. Such cross-subsidies remain a form of promotion protected by law.

Governments in Canada have been slow to respond to this new marketing strategy. They have not yet put in place measures to monitor this practice, to evaluate its impact on public health, or to counter the use of price-based promotions to induce young people and others to smoke.

There are several measures that provincial and federal governments can implement to curb price-promotions for tobacco. These include both tax-based measures (such as excise taxes, license fees, surtaxes and other levies) and non tax-based approaches, such as price controls and additional marketing restrictions.

11 Apollonio DE, Dutra LM, Glantz SA. Associations between smoking trajectories, smoke-free laws and cigarette taxes in a longitudinal sample of youth and young adults. PLoS One. 2021 Feb 11;16(2):e0246321. doi: 10.1371/journal.pone.0246321. PMID: 33571218; PMCID: PMC7877665.

12 Physicians for a Smoke-Free Canada, Coalition Québécoise pour le controle du tabac. Canada's Cheap Cigarettes. Why they are a problem. What can be done about them. https://www.smoke-free.ca/pdf_1/2017/CanadasCheapCigarettes-June2017.pdf

Smoke-free regulations and policies will support smoking cessation

Smoking rates are much higher in Canada among those who work in blue collar (construction, transportation) and pink collar (service industry) trades. This reflects both that individuals who work in these fields are 70% and 50% more likely to start smoking, and that if they do smoke they are half as likely to quit.[13] Canadians who work in indoor workplaces are not permitted to smoke at work. Such laws are not in place for those, such as workers in the construction trades, who work in outdoor settings.

Recommendations:

3. **Health Canada should support the adoption of smoke-free workplaces for all Canadian workers, including those who work outdoors.**
4. **Health Canada should impose controls on tobacco pricing and establish a unitary-price system for cigarettes within each province.**
5. **Health Canada and Finance Canada should work with the provinces to ensure high and uniform tobacco tax levels across Canada**
6. **The government of Canada should negotiate with Indigenous communities on a nation-to-nation basis and develop tobacco tax treaties with these governments to ensure that health objectives are not undermined by the sale of unregulated tobacco products.**
7. **Health Canada should provide funding to support community-level policy change.**

3. ARE THERE ANY INTERNATIONAL APPROACHES THAT HAVE PROVEN TO BE SUCCESSFUL IN CESSATION EFFORTS THAT THE GOVERNMENT OF CANADA SHOULD BE STUDYING AND ADOPTING?

We are not aware of any international approaches to population-level smoking cessation that rely on service delivery which have been more successful than similar programs implemented in Canada, such as quit-lines, free access to stop-smoking medication and counselling, etc.

In published comparisons of rates of successful quitting, Canada has scored well – for example, placing second to Colombia in a recent rating of 17 countries.[14]

Nonetheless, there are proven population-level smoking cessation approaches that rely on administrative and policy actions by governments which are not fully in place in Canada.

- California's well-funded comprehensive tobacco control program aimed at denormalizing tobacco use achieved higher rates of early cessation than did those in other states.[15] Notably, the government of Canada rejected the denormalization strategy adopted by the Steering Committee of

13 Closing the Gap. Physicians for a Smoke-Free Canada. Presentation to the National Conference. September 2020. https://www.smoke-free.ca/SUAP/2020/callard-equity.pptx

14 Chow CK, Corsi DJ, Gilmore AB, Kruger A, Igumbor E, Chifamba J, Yang W, Wei L, Iqbal R, Mony P, Gupta R, Vijayakumar K, Mohan V, Kumar R, Rahman O, Yusoff K, Ismail N, Zatonska K, Altuntas Y, Rosengren A, Bahonar A, Yusufali A, Dagenais G, Lear S, Diaz R, Avezum A, Lopez-Jaramillo P, Lanas F, Rangarajan S, Teo K, McKee M, Yusuf S. Tobacco control environment: cross-sectional survey of policy implementation, social unacceptability, knowledge of tobacco health harms and relationship to quit ratio in 17 low-income, middle-income and high-income countries. BMJ Open. 2017 Mar 31;7(3):e013817. doi: 10.1136/bmjopen-2016-013817. PMID: 28363924; PMCID: PMC5387960.

15 Pierce JP, Shi Y, McMenamin SB, Benmarhnia T, Trinidad DR, Strong DR, White MM, Kealey S, Hendrickson EM, Stone MD, Villaseñor A, Kwong S, Zhang X, Messer K. Trends in Lung Cancer and Cigarette Smoking: California Compared to the Rest of the United States. Cancer Prev Res (Phila). 2019 Jan;12(1):3-12. doi: 10.1158/1940-6207.CAPR-18-0341. Epub 2018 Oct 10. PMID: 30305281; PMCID: PMC7389269.

the National Strategy to Reduce Tobacco Use in 1999,[16] and soon afterwards effectively dismantled the Steering Committee.

From the past 6 waves of the Canadian Community Health Survey, each year an estimated 400,000 Canadians identify as smokers who have quit in the past 12 months – but the number of former smokers in Canada grows by only 60,000. Some of this discrepancy may result from population change (e.g. deaths), but much can be attributed by the high rate at which former smokers relapse.[17]

Recommendations:

8. **The government of Canada should recognize that achieving higher rates of smoking cessation will involve innovation and should be prepared to adopt measures beyond those "proven to be successful" in other countries.**
9. **In approaching smoking cessation, the government of Canada should focus not only on encouraging smokers to quit, but also in providing environmental (such as mass media) and policy (including price and tax) supports to sustain quitting.**
10. **Health Canada should not include population-level strategies to switch smokers to alternative forms of nicotine in its cessation strategy.**
11. **Health Canada should abandon its current requirement that "harm reduction" and projects "incorporate vaping as a cessation tool" from its criteria to receive funding under the SUAP program.[18]**

4. ARE THERE LEGISLATIVE MEASURES THAT COULD BE CONSIDERED TO ADDRESS THE PUBLIC HEALTH PROBLEM POSED BY TOBACCO USE IN GROUPS DISPROPORTIONATELY AFFECTED BY TOBACCO? IF SO, HOW COULD THE LEGISLATION BETTER ADDRESS THESE DISPARITIES?

There is very little guidance on the equity impact of policy measures. Systematic reviews of such studies are dated and the research base does not allow for comparison of relative impact.

Nonetheless, it seems well established that price increases have a positive effect on equity outcomes with respect to tobacco use and that FCTC-consistent measures do not exacerbate equity outcomes.[19]

One of the major inequity concerns for tobacco is the high use among Indigenous Canadians, many of whom live in communities where FCTC measures are not in place.

By working strengthening measures to address price (e.g. standardized pricing under the TVPA) and by working with federal and provincial partners to improve tax systems and to ensure smoke-free outdoor workplaces (e.g. construction sites), Health Canada can contribute to legislative measures that reduce disparities.

16 Steering Committee of the National Strategy to Reduce Tobacco Use in Canada. New Directions for Tobacco Control in Canada. 1999 https://publications.gc.ca/collections/Collection/H39-505-1999E.pdf

17 Physicians for a Smoke-Free Canada. The New Year and quitting smoking: what the data tell us. https://smoke-free-canada.blogspot.com/2022/12/new-year-and-quitting-smoking-what-data.html

18 Health Canada's Substance Use and Addictions Program. Health Canada Call for Proposals 2023.

19 Brown T, Platt S, Amos A. Equity impact of population-level interventions and policies to reduce smoking in adults: a systematic review. Drug Alcohol Depend. 2014 May 1;138:7-16. doi: 10.1016/j.drugalcdep.2014.03.001. Epub 2014 Mar 13. PMID: 24674707.

Our review of smoking-related disparities act of reducing disparities based CCHS data is displayed below.[20] Some of the highest levels of disparity in smoking are linked with substance use and mental health disorders. Legislative reforms under the mandate of Health Canada can be engaged to improve mental health, reducing dependency on alcohol and cannabis. Legislative reforms under the mandate of the federal government can be engaged to address income disparities.

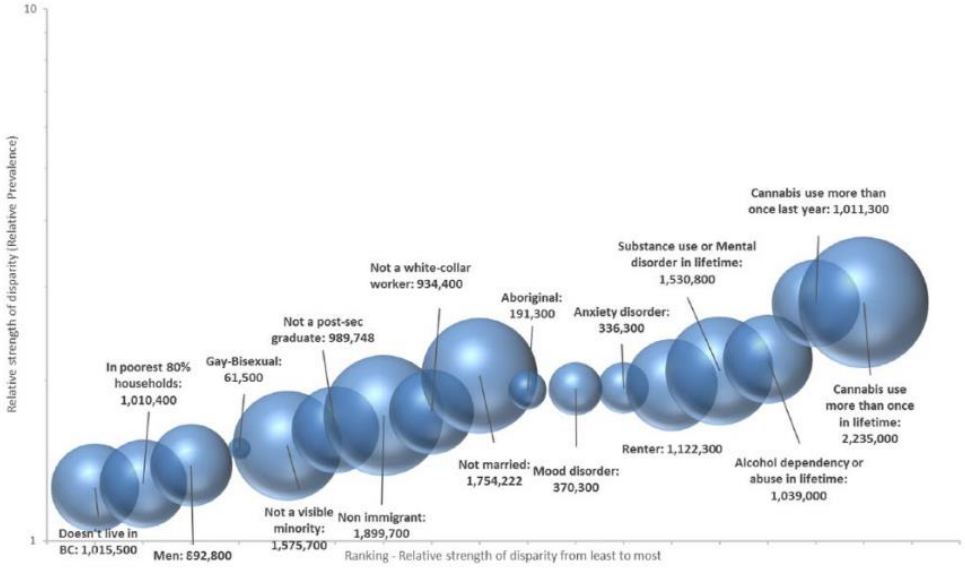


Figure 2. Strength and potential impact of smoking disparities, from 2013 to 2014.
BC, British Columbia.
Smoking disparities were ranked from the lowest to highest. The size of bubble and number refer to potential impact on the number of smokers by eliminating the disparity.

Recommendations:

12. **In its report to parliament, Health Canada should acknowledge that health inequalities with smoking are linked with other health, social and economic inequalities and propose comprehensive measures to address these.**
13. **Health Canada should develop a non-siloed approach to health protection and promotion and propose ways to better integrate its legislative stewardship of health issues such as tobacco, nutrition, other substance use, primary preventive health care, etc.**

20 Chaiton M, Callard C. Mind the Gap: Disparities in Cigarette Smoking in Canada. Tob Use Insights. 2019 Mar 27;12:1179173X19839058. doi: 10.1177/1179173X19839058. PMID: 30944522; PMCID: PMC6437323.

5. ARE THE PROHIBITIONS WITHIN THE TVPA AND REQUIREMENTS IN ITS REGULATIONS SUFFICIENT TO PROTECT YOUNG PERSONS AND OTHERS FROM INDUCEMENTS TO USE TOBACCO PRODUCTS AND THE CONSEQUENT DEPENDENCE ON THEM? IF NOT, WHAT MORE COULD BE DONE?

Tobacco manufacturers engage a full range of marketing activities to induce young people to experiment with and become addicted customers: product, packaging, place, price, promotion, and people.

The TVPA restricts their ability to use many of these marketing tactics, but does not address others. For example, advertising for tobacco products and personal endorsements are prohibited on videos disseminated within Canada, but not those which arrive through cross-border media. Flavourings are restricted by federal law in some, but not all, tobacco products.

Canada's restrictions on tobacco promotions fall short of the global standards set by the FCTC Article 13 Guidelines[21] or the MPOWER review. Over the past 15 years, the WHO's assessment of Canada's advertising bans has not advanced beyond the "moderate grade".[22] Canadian children deserve complete policy protection.

MPOWER progress since 2007, Canada

		2007	2008	2010	2012	2014	2016	2018	2020	2022
M	Monitoring									
P	Smoke-free environments									
O	Cessation support									
W	Health warnings on packs								*	*
E	Advertising bans									
R	Raise taxes	65%	67%	67%	64%	70%	66%	64.3%	61.7%	63.3%
W-MM	Mass media campaigns									
	Adult prevalence	15%	14%	14%	13%	12%	11%	10%	9%	9%

MPOWER Score colour key

☐ No data ■ No measure or weak measure ■ Minimal measure ■ Moderate measure ■ Complete policies * plain packaging

Figure 1: Data from MPOWER reports 2007 to 2022

Health Canada continues to claim that there are constitutional principles which prohibit a comprehensive ban on tobacco advertising, promotion and sponsorship. This claim relies on the opinion of the government, and not on current court guidance (the 1995 Supreme Court decision striking down a "total" ban on advertising was built on an evidence base that is now long-outdated).

The TVPA continues to permit a number of promotions which undermine other protections from inducements which reach young people and others. Examples of structural problems within the current legislation include:

- Specific permission for the promotion of prices
- Absence of controls on promotional pricing (cheaper brands and cheaper outlets)
- Absence of federal restrictions on retail-level promotions (although these were once proposed).
- Specific permission for promotions directed at retailers
- Absence of restrictions on non-branded promotions (such as generic product placement in movies, video games, influencers, etc.).

21 WHO Framework Convention on Tobacco Control. Guidelines for implementation of Article 13.
22 WHO report on the global tobacco epidemic, 2023: protect people from tobacco smoke. 2023

The TVPA addresses the "product" component of the marketing mix by banning flavourings, but does not address other design elements which make cigarettes more attractive to youth and more likely to addict youth. For example, there are no restrictions on the use of filters or ventilation (which make learning to smoke easier) and no requirements to reduce the addictiveness by lowering nicotine levels in cigarettes. Recommendations to address these weaknesses are made elsewhere in our response.

There is evidence associating the use of non-combustible nicotine with the uptake of cigarette use.[23] Notwithstanding the views of those who dispute this evidence, from a policy perspective it is prudent to assume that the risk of gateway effect is sizeable. For that reason, protecting young people from cigarette use means also protecting them from the use of vaping products and other forms of nicotine.

Recommendations:

14. **Health Canada should review and update the promotional restrictions with a view to fully implementing FCTC Guidelines, including prohibitions on imported and exported promotions. The position that these measures are impeded by Canada's constitutional principles should be reviewed by lawyers independent of government.**
15. **The government of Canada should expand promotional restrictions in the TVPA to include restrictions on pricing promotions (for example by requiring standardized pricing of all brands and sub brands and at all locations within a tax jurisdiction).**
16. **The government of Canada should adopt the measures to further protect young people from inducements to use vaping products which we recommended during the last legislative review.[24]**
17. **Manufacturers should be forbidden from offering promotional payments, incentives or other rewards to retailers or wholesalers.**

6. Are there additional sources of information that could be collected to improve monitoring the tobacco market in Canada? If so, what are they?

Canada's tobacco reporting regulations have not been meaningfully updated for 20 years. At the time they were adopted, they were the boldest and most aggressive reporting requirements for industry, but this is no longer the case. For example, the U.S. Food and Drug Administration imposes tailored reporting requirements on authorized tobacco products, including some currently for sale in Canada. [25]

Nor has the federal government approach to collecting information been modernized to take advantage of technological improvements. In the modern era of "big data", the data collection system and monitoring largely relies on the filling out of forms by individuals for whom there are no incentives to be accurate or consistent in their reports.

In addition to the problems of collecting data, Health Canada faces challenges in making good use of the data it collects or of providing access to this information to researchers, other levels of government or citizens.[26]

23 See, for example, Baenziger ON, Ford L, Yazidjoglou A, Joshy G, Banks E. E-cigarette use and combustible tobacco cigarette smoking uptake among non-smokers, including relapse in former smokers: umbrella review, systematic review and meta-analysis. BMJ Open. 2021 Mar 30;11(3):e045603.

24 Physicians for a Smoke-Free Canada. An obligation and an opportunity: Health Canada's 3-year report on the Tobacco and Vaping Products Act. April 2022.

25 See for example, requirements for IQOS heat sticks:
FDA. Order Letter. https://www.fda.gov/media/164821/download?attachment

26 See Letter from Physicians for a Smoke-Free Canada to the Assistant Deputy Minister, August 2023.

Moreover, Health Canada receives reports after products are on the market, denying it the opportunity to review information, consider the implications and prepare for the market introduction. This is increasingly important as the tobacco and nicotine market becomes more heterogenous. The recent moves by BAT[27] and PMI[28] that they will start selling tobacco-free heated nicotine sticks illustrates the vulnerability to public health of companies being able to launch new products without any prior form of pre-authorization, pre-notification or product review.

With respect to business intelligence or market monitoring, Health Canada should modernize its collection approach, using new rules, new tools and better coordination with other levels of government and monitoring systems.

With respect to the monitoring of health behaviours, Health Canada should develop new indicators which are more relevant to the current circumstances than is the "Current smoking prevalence" indicator which is based entirely on cigarette smoking. The new indicators should be used to assess a) any form of nicotine use, b) types of nicotine use and c) intensity of nicotine use

Recommendations

18. **Health Canada should demand extensive reports for all nicotine products at least 6 months before they are introduced to the market in Canada.**
19. **Health Canada should aim to ensure that the health system has timely access to information on the tobacco and nicotine market in Canada, including all factors relevant to health behaviours.**
20. **Health Canada should adopt as an operational guideline that monitoring information is pro-actively disclosed and disallow the claim that concerns of suppliers about commercial confidence surpass the public interest in this information being available.**
21. **Health Canada should maintain and expand its monitoring scope to include all components of the marketing mix: product (ingredients, manufacturing process, design, cost, etc.), place (distribution system and retail outlets, etc. price (wholesale, retail), promotion (all promotional activities and expenditures, including corporate image or political activity), and people (communications with suppliers, training, etc.).**
22. **Health Canada should require manufacturers to provide (and regularly update) an electronic database of sales orders. The fields that should be included in the data base are: Postal Code of delivery; Item sold, Quantity sold, price sold, etc.**
23. **Health Canada should work with the provinces to require or incentivize tobacco suppliers to provide reports similar to those currently require for cannabis authorized distributors and retailers.[29]**
    - **Legislative change should be sought if necessary**
    - **The technology used by the Cannabis Directorate should be adopted, if expedient.**
24. **In acquiring private data from market monitors (AC Neilsen, Numeris, etc.), Health Canada should negotiate licensing terms which permit the use of the data by third parties, including provincial and municipal governments, university-based researchers and charitable health organizations.**
25. **Health Canada should develop new indicators for nicotine use which allow for the monitoring of the number of nicotine users, the intensity of nicotine use and the sources of nicotine.**

27 Tobacco Reporter. BAT Uses Rooibos Tea in Heat Sticks. .October 2023
28 Tobacco Reporter. PMI Launches Tobacco-Free Heat Stick. October 2023
29 See Health Canada. Cannabis tracking system resource. https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/tracking-system.html

7. ARE MEASURES IN THE TVPA SUFFICIENT TO PREVENT YOUTH FROM ACCESSING TOBACCO PRODUCTS? IF NOT, WHAT MORE COULD BE DONE TO RESTRICT YOUTH ACCESS TO THESE PRODUCTS?

Problems with the current legislation include:

- The federal definition of "young person" sets the minimum age for sale at 18, a very low bar for protecting youth.
- Absence of restrictions on where cigarettes can be sold (including e-commerce)
- Absence of penalties on manufacturers for youth smoking

While minimum age laws are not a silver bullet to protect youth, they are an important part of the comprehensive set of social and legal norms which communicate the risks of smoking (and other forms of nicotine use) for young people. Raising the minimum age to 21 (as several other jurisdictions, including one Canadian province, have done) would strengthen the measures in place.[30] We do not recommend making it an offence for young people to possess or use tobacco or nicotine products (the responsibility should be on the supplier, not the victims of their marketing).

Other countries (New Zealand, England) are experimenting with raising the minimum legal age to create a tobacco-free generation. Because the anticipated benefits of this phased-in approach will not be seen for many years, this policy change should not be considered to be sufficient to address continuing tobacco and nicotine use among the young. Nonetheless, Health Canada should review this option, but only in the context of use of all recreational nicotine products. To restrict the proposal to the use of combustible tobacco (Tobacco Free Generation vs. Generation free from Nicotine Addiction) is a poor policy option, as it legitimizes the continued efforts of tobacco companies to addict customers to harmful products.

Recommendations

26. The government of Canada should work with the provinces to develop a strategy to reduce the number of retail outlets and to confine the sale of cigarettes to adult only specialty stores.
27. The government of Canada should work with the provinces to ban e-sales of tobacco (and vaping) products.
28. The government of Canada should impose heavy fines (or other strict liability systems) on tobacco manufacturers whose products are used by youth.
29. The government of Canada should raise the minimum legal age for tobacco sales to 21.

30 Physicians for a Smoke-Free Canada. Tobacco 21 laws and their impact on youth smoking and vaping. March 2021

8. To what extent have tobacco product appearance, packaging and labelling requirements been sufficient to increase public awareness about the health hazards of these products? If not sufficient, what more could be done?

Health Canada's regulations for cigarette package are the strongest in the world. Health Canada's continued innovations in packaging, health information and warning systems for cigarettes are a model for governments in other countries (and a model for other nicotine or health harming products in Canada).

The recent accomplishment of revisions to the packaging system (and warnings on cigarettes) should facilitate Health Canada redirecting resources to addressing other areas where regulatory innovation is needed, such as:

- Advancing restrictions on product appearance, packaging and labelling requirements for other nicotine products
- Advancing restrictions on the design of tobacco and other nicotine products.

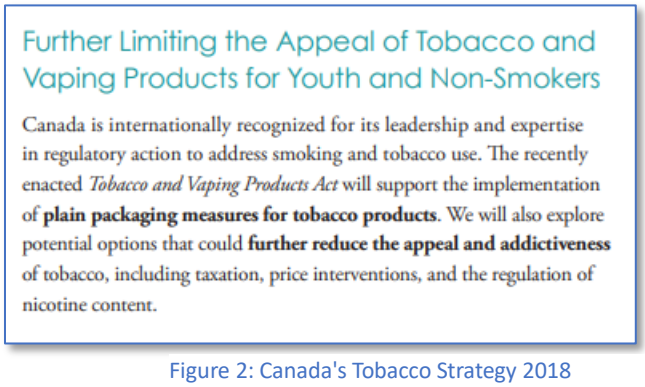
Elsewhere in this report we recommend that Health Canada prohibit ventilation in cigarettes, ban the use of filters (including cosmetic non-plastic filters) and reduce the nicotine levels in tobacco products.

Recommendations

30. **The government of Canada ensure that work is maintained in the development of the next round of health warnings, and that these be expanded to include diseases such as breast cancer.**
31. **Legislation should be amended to facilitate warnings about the harmful effects of smoking, including economic and environmental harm.**

9. Are the current product standards and prohibitions on promotion sufficient to prevent the public from being deceived or misled about the health hazards of tobacco products? If not sufficient, what more could be done?

Despite moving forward on issues such as reduced ignition potential cigarettes, Canada has moved too cautiously on the question of product standards related to attractiveness or addictiveness. Neither has Health Canada completed the ban on flavourings in combustible or oral tobacco, nor has it fulfilled the pledge in the 2018 Canada's Tobacco Strategy to address the addictiveness of cigarettes through the regulation of nicotine content.[31]



Further Limiting the Appeal of Tobacco and Vaping Products for Youth and Non-Smokers

Canada is internationally recognized for its leadership and expertise in regulatory action to address smoking and tobacco use. The recently enacted *Tobacco and Vaping Products Act* will support the implementation of **plain packaging measures for tobacco products**. We will also explore potential options that could **further reduce the appeal and addictiveness** of tobacco, including taxation, price interventions, and the regulation of nicotine content.

Figure 2: Canada's Tobacco Strategy 2018

The recommendations of the WHO TOB Reg group go largely ignored.[32]

Our engagement with key informants in the Canadian tobacco control community suggests that there is widespread, if not unanimous, support for the development of regulations to control tobacco waste and

31 Health Canada. Canada's Tobacco Strategy. 2018
32 Reports are available on the website of the World Health Organization.

improve health outcomes by banning cigarette filters,[33] and to reduce the addictiveness of tobacco by developing a nicotine standard.[34] Research suggests that it is possible to reduce the nicotine content of combusted tobacco to sub-addictive levels and that doing so would be effective at reducing the products' addictiveness, would facilitate smokers' quitting and could prevent the onset of addiction by young people who experiment with smoking.[35] Cigarette filters make it easier for never-smokers to take up smoking and which reduce intentions to quit smoking among those who do.[36]

Recommendations

32. **The government of Canada should ban the use of filters in cigarettes (and the sale of filter-kits for unfiltered cigarettes)**
33. **The government of Canada should reduce levels of nicotine in tobacco products to sub-addictive levels**

10. Could compliance and enforcement be further strengthened to address current and future issues regarding tobacco control? If so, how?

Health Canada's compliance and enforcement system for tobacco is overly opaque and the consequences for non-compliance seem out of balance with the harmfulness of the product in question.

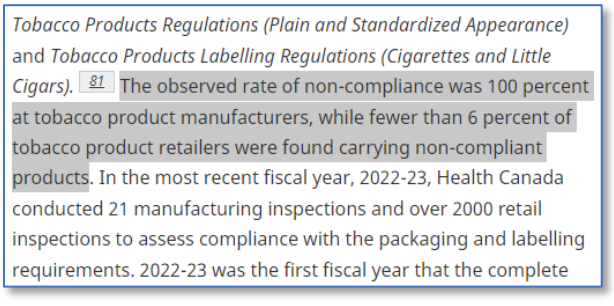

Tobacco Products Regulations (Plain and Standardized Appearance) and *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars).* [81] The observed rate of non-compliance was 100 percent at tobacco product manufacturers, while fewer than 6 percent of tobacco product retailers were found carrying non-compliant products. In the most recent fiscal year, 2022-23, Health Canada conducted 21 manufacturing inspections and over 2000 retail inspections to assess compliance with the packaging and labelling requirements. 2022-23 was the first fiscal year that the complete

Figure 3: From the Discussion Paper. "The Second Legislative Review of the Tobacco and Vaping Products Act"

The department's reports on compliance activities are infrequent. On these few occasions, information is generally given in the form of summary results from formal inspections, and not from other sources (public complaints, staff observations). No information is given about compliance issues observed by the department (for example with respect to reporting regulations). The consultation document for this legislative review is one of the few examples of these reports (another is the evaluation report conducted by Health Canada and the Public Health Agency[37]).The practice of providing annual reports on compliance and enforcement for tobacco control seems to have ended in 2016-2017,[38] and the level of detail provided for non-compliance with vaping suppliers[39] is not extended to tobacco suppliers. The results of compliance activities by Health Canada under the Consumer Products Safety Act (including removal of product from market) are not integrated into these reports.[40]

33 Physicians for a Smoke-Free Canada. Perspectives on Managing Tobacco Waste. Report on a discussion among Canadian tobacco control experts. Summer 2022.
34 Physicians for a Smoke-Free Canada. Perspectives on Developing a Nicotine Standard for Tobacco Products in Canada. Summer 2021.
35 Donny EC, White CM. A review of the evidence on cigarettes with reduced addictiveness potential. Int J Drug Policy. 2022 Jan;99:103436. doi: 10.1016/j.drugpo.2021.103436. Epub 2021 Sep 15. PMID: 34535366; PMCID: PMC8785120.
36 Novotny TE, Hamzai L. Cellulose acetate cigarette filter is hazardous to human health. Tob Control. 2023 Apr 18:tc-2023-057925. doi: 10.1136/tc-2023-057925. Epub ahead of print. PMID: 37072169.
37 Office of Audit and Evaluation Health Canada and the Public Health Agency of Canada. Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21
38 Health Canada. Annual Report on Compliance and Enforcement Activities (Tobacco Control)
39 Health Canada. Vaping Compliance and Enforcement reports.
40 For example the recall of cigarettes non-compliant with ignition propensity regulations. Health Canada recalls and safety alerts.

As a result, Canadians and Parliamentarians have very little insight into the challenges the department experiences with respect to operationalizing this legislation. For example, the discussion paper triggering this consultation identifies that 100% of the tobacco manufacturers were found to be non-compliant with regulations, but gave no information about the specifics of the non-compliance. The reports also illustrate the lack of meaningful consequences. Although the law provides for significant fines, the department appears to have never sought a court judgment against a tobacco or vaping manufacturer since 2018. (The opacity of the process makes it difficult to establish this as a firm fact).

Health Canada currently does not proactive disclose information about complaints filed by the public or by provincial governments. The results of (or existence of) any investigations based on these complaints is not shared with complainants.[41]

A few other governments have recognized the value of citizen engagement in monitoring and enforcing adherence to tobacco control laws. In France, for example, qualified non-governmental organizations have the authority to prosecute offences.[42] This principle is also found in some laws in Canada: for example the Quebec Consumer Protection Act.[43]

Recommendations

34. **Health Canada should provide parliamentarians and the public with an explanation of the challenges it has experienced in achieving 100% compliance with health legislation and should recommend legislative or administrative changes to address these challenges.**
35. **Methods to ensure greater transparency about compliance activities should be put in place.**
36. **Consideration should be given to authorizing qualified civil society organizations to take enforcement action.**

11. What are the opportunities and challenges you anticipate with requiring tobacco manufacturers to pay for the cost of federal public health investments in tobacco control?

Implementing the polluter pay principle to require tobacco companies to finance tobacco control initiatives is good public policy and has been adopted in many forms in many other countries. Regulatory charges imposed on manufacturers have the potential to ensure that the costs of tobacco control are internalized into the price of cigarettes. Examples of this are found in at least two other OECD countries – the United States and France. [44]

We perceive at least two challenges in implementing a cost-recovery fee in Canada.

The first is the slow pace of work towards implementing a cost recovery system. (The measure was included in the mandate letter of December 2021,[45] and risks being incomplete at the end of the parliamentary mandate in the fall of 2025). This proposal does not need further consultations or other time-consuming processes. It should be put before parliament as part of the Budget Bill in 2024.

41 For example complaints about misleading advertising in February 2022 and about other promotional infractions in May 2019.
42 France. Code de la Santé Publique. Article 3515-7..
43 Quebec Consumer Protection Act. S. 316.
44 Physicians for a Smoke-Free Canada. Briefing Note. Regulatory charges on tobacco suppliers
45 Prime Ministers Office. Minister of Mental Health and Addictions and Associate Minister of Health Letter. December 16, 2021

The second is the risk that Health Canada will only recover the direct costs incurred by the department, and will not include the costs to the regulatory system of tobacco control, such as grants to other levels of government and contributions to eligible health-promoting agencies.

Recommendations

37. **A cost recovery fee of at least $130 million should be included in the 2024 Budget Bill and collected within the 2024-2025 fiscal year. Consideration should be given to a revolving fund or other mechanism to ensure accountability for collection and allocation of revenues.**
38. **These funds should be used to offset the burden of implementing comprehensive tobacco control measures, including cessation support, regulation making by provincial, federal and municipal governments, mass media, civil society engagement, research, market monitoring, enforcement, etc.)**
39. **The cost recovery fee should be extended to nicotine manufacturers.**

12. Could the Government of Canada improve the implementation of FCTC Article 5.3? If so, how?

YES. Absolutely. The government of Canada could improve the implementation of Article 5.3 of the Framework Convention on Tobacco Control.

The Canadian government has not published advice to policy makers (members of parliament, provincial governments, crown agencies) to inform them of this treaty obligation or the actions they should take to ensure it is respected in Canada. There is no transparency about how Article 5.3 is being addressed by policy makers, no visible efforts on the part of government to raise awareness of tobacco industry interference.

Tobacco companies continue to meet with Members of Parliament, including the former Minister of Addictions (before her appointment), as they do with provincial officials and legislators. The offices of these individuals currently do not have any guidance from Health Canada/Canada's FCTC focal point to inform their decisions on whether to meet with industry representatives.

In its reports to the treaty secretariat (the most recently available at time of writing dates from 2020)[46] Canada reports that with the exception of requesting those making regulatory submissions to government, it generally takes the same approach to tobacco companies that it does to other regulated substances. The report includes a claim that Health Canada has "taken steps to inform other federal government departments of the commitment" but does not provide details on that information.

Our organizations and others have long since provided a review of key concerns related to poor implementation of Article 5.3 and provided recommendations to Health Canada on how to address these.[47] Since then new problems – like the Medicago debacle,[48] and misleading advertising campaigns by major companies – have underscored the risks of failing to implement this article in Canada.

Recommendations

46 Health Canada. 2020 Report to WHO FCTC. https://untobaccocontrol.org/impldb/wp-content/uploads/Canada_2020_WHOFCTCreport.pdf

47 Canadian Cancer Society, Canadian Council for Tobacco Control, HealthBridge, Heart and Stroke Foundation, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada, Action on Smoking and Health, Coalition Québécoise pour le contrôle du tabac, Ontario Campaign for Action on Tobacco. Canada' s Implementation of Article 5.3 of the Framework Convention on Tobacco Control. A Civil Society Shadow Report. September 2016

48 Hagen, L and Dorado, D. Goodbye, PMI. Philip Morris removed from Canadian COVID-19 vaccine collaboration. BMJ Blogs. January 2023.

40. **Health Canada should commission an independent review of its implementation of Article 5.3 and the other elements of the treaty related to tobacco industry interference.**[49]
41. **Health Canada should implement the recommendations made to it in 2016 by Canadian civil society groups.**

13. What are the key commercial tobacco-related priorities from a First Nations, Inuit or Métis perspective? Could the TVPA be strengthened to support these priorities? If so, how?

We do not offer a First Nations, Inuit or Métis perspective.

14. From a First Nations, Inuit or Métis perspective, what are your main concerns related to the regulation of tobacco in Canada?

We do not offer a First Nations, Inuit or Métis perspective.

15. What elements do you consider essential to reducing commercial tobacco use in First Nations, Inuit or Métis communities?

Although we cannot offer a First Nations, Inuit or Métis perspective, we would advise that the long standing inequities with tobacco use are connected to other long-standing inequities and injustices and poor treatment towards Indigenous communities by the Government of Canada. We have previously recommended that the government of Canada issue invitations for nation-to-nation dialogues about tobacco use and work towards the adoption of the FCTC by Indigenous communities as part of self-governance.[50]

16. Is there anything else that you would like to add as it relates to any of the topics covered in this discussion paper?

Additional recommendations are included at the front of this submission.

17. Do you believe the TVPA works as intended and if not, what would you improve?

Even if it worked as intended, the federal *Tobacco and Vaping Products Act* does not work as it should.

The purpose of the Act is extremely narrow - focused only at removing inducements to initiate tobacco use, to restrict access to young people, and to ensure the public receives factual information about the risks of tobacco and vaping products. The purpose does not include actually preventing youth uptake, does not include facilitating or achieving cessation, does not include reducing addiction to nicotine among adults.

The Canadian federal approach to the tobacco industry reflects a 20th century focus on reducing consumer demand for cigarettes, particularly among young people. The objectives of the federal tobacco law (which were mapped onto vaping products in 2018) have not been revisited in 35 years.[51]

49 A list of these has been made available by the University of Bath: FCTC Regulations on the Need to Protect Public Health Policies from Tobacco Industry Interferences

50 Physicians for a Smoke-Free Canada. Towards effective tobacco control in First Nations and Inuit communities. March 2007

51 The tobacco-related objectives of the Tobacco and Vaping Products Act are the same as those of the Tobacco Products Control Act, introduced to Parliament in 1987

Although Health Canada has adopted the goal of reducing tobacco use to "under 5% prevalence by 2035",[52] this objective is not legislated, and is not supported by an accountability framework for government or industry.

In recent years the tobacco industry has re-invented its marketing strategies and is expanding its range of nicotine products (e.g., heat-not-burn, nicotine pouches, hybrid products) and other psycho-active products (e.g. CBD, functional food and beverages).There is currently no federal programmatic or legislative response to these market developments.[53] [54]

The Finnish *Tobacco Act* provides an example of a more powerful foundation that allows for a more flexible and responsive regulatory management of the tobacco market: "*The objective of this Act is to end the use of tobacco products and other nicotine-containing products that are toxic to humans and cause addiction*." [55]

Recommendations

42. We recommend Health Canada propose a new legislative framework to manage all nicotine and related products.
43. The objective of this framework should be the end of nicotine addiction.
44. The legislative framework should provide the government with tools to phase out the commercial sale of tobacco and non-therapeutic nicotine.

18. What key issues remain, that if successfully addressed, would result in a further strengthening of the TVPA?

Missing from this review is a discussion of the relationship of tobacco use to other areas of federal oversight and other federal laws. Federal legislation applied to the tobacco market which weaken tobacco control include:

- Federal *Business Corporations Act* which does not exempt tobacco companies from the obligation to maximize profits (although some other industries are excluded from this obligation). This requirement results in tobacco companies working to overcome public health restrictions.[56]
- Federal *Income Tax Act* which permits multinational tobacco companies to reduce their payments to the Canadian government by making inter-corporate financial agreements.[57] This erodes the resource capacity of governments to respond. The same law allows tobacco companies to declare the money they spend on encouraging people to use their products and

52 Health Canada. Canada's Tobacco Strategy. https://www.canada.ca/en/health-canada/services/publications/healthy-living/canada-tobacco-strategy.html
53 Physicians for a Smoke-Free Canada. BAT reboots and rebrands for "a better tomorrow". May 18, 2020.
54 Ling, P et al. Moving targets: how the rapidly changing tobacco and nicotine landscape creates advertising and promotion policy challenges.. Tobacco Control 2022.
55 Finland. Tobacco Act. (549/2016; amendments up to 1374/2016 included) https://www.finlex.fi/en/laki/kaannokset/2016/en20160549_20161374.pdf
56 See a discussion of this at Callard et al. Curing the Addiction to Profits. A Supply-side approach to phasing out tobacco. CCPA., 2005.
57 See a discussion of one example at: Physicians for a Smoke-Free Canada. A footnote from the federal Tax Court. August 2015.

discouraging policy makers from implementing measures to reduce tobacco use as legitimate business expenses.

- Federal *Competition Act* which permits tobacco companies to use discriminatory pricing and to localize the pricing of their products. [58]
- The *Non-Smokers' Health Act* does not address smoking in outdoor workplaces.

As discussed earlier, although the marketing activities of tobacco and nicotine companies are constrained by regulation, their fundamental business practices and economic reward system is geared towards encouraging the use of harmful products. Removing the economic and regulatory incentives which drive suppliers to act in health-harming ways and replacing them with incentives aligned towards public health goals could allow Canada to set more powerful objectives for tobacco use and to achieve those objectives. Such a realignment is more feasible in the context of the insolvency situation in which the companies are now situated.

Recommendations

45. **Health Canada should encourage a whole-of-government review of federal measures impacting the behaviour of tobacco companies with the goal of establishing more coherent health promoting policies across departments.**
46. **Specifically, the government of Canada should modify the *Business Corporations Act* and the *Competition Act* to exclude tobacco companies from provisions which create incentives to sell tobacco (e.g. duty to shareholders, discriminatory pricing provisions).**

19. DO YOU HAVE SUGGESTIONS FOR WHAT COULD BE INCLUDED IN FUTURE LEGISLATIVE REVIEWS OF THE TVPA?

We do not believe that the scope of the biennial reviews should be limited to a subset of the provisions of the law. The statutory mandate of the reviews commands the minister to undertake *"a review of **the** provisions and operation of this Act"* (emphasis added), and does not authorize the minister to ignore sections of the act in any review. For this reason, we suggest that the only option for the next review is a comprehensive review of the legislation.

Recommendations

47. **Health Canada should respect its statutory obligations and provide Parliament with a comprehensive review of the operations of the TVPA every two years.**

58 See discussion at Physicians for a Smoke-Free Canada. Another new y ear, another round of tobacco manufacturers' price increases. 2020.