

Prepared in partnership with the McCabe Centre for Law & Cancer, the WHO FCTC Knowledge Hub on Legal Challenges

Litigation as a tobacco industry 'scare tactic'



The tobacco industry often threatens litigation to impede new tobacco control measures. They do so as part of a strategy to:

- intimidate governments into not acting
 - delay or weaken the implementation of laws
 - shape public debate
 - tie up resources that could be used elsewhere
 - dissuade other governments from adopting similar measures
- Courts have consistently rejected these legal challenges and reaffirmed countries' right to regulate for public health.

These WHO FCTC parties, and many others, have successfully defended their tobacco control laws from legal challenges²:

[Australia](#)

[Brazil](#)

[Canada](#)

[European Union](#)

[France](#)

[Kenya](#)

[Norway](#)

[Panama](#)

[South Africa](#)

[Sri Lanka](#)

[Thailand](#)

[Uganda](#)

[United Kingdom](#)

[Uruguay](#)

Further information is available from the Knowledge Hub on Legal Challenges at <https://untobaccocontrol.org/kh/legal-challenges/>, and from the www.tobaccocontrolaws.org database maintained by the Campaign for Tobacco Free Kids.

Common tobacco industry arguments



The tobacco industry may argue one or more of the following:

• Procedure

E.g. arguments about participation in the legislative process, arguing that the body making the law does not have the power to do so, or arguing that a required step in the process (such as a regulatory impact assessment) was not completed

• Constitutional or statutory legal rights

E.g. arguments about constitutional protections for property, commercial speech, or the freedom to run a business

• Trade and/or investment law

E.g. arguing that tobacco control laws will violate World Trade Organization law, a bilateral investment treaty, or a regional trade agreement

Tobacco industry arguments come largely from a common playbook, and similar arguments will be made across different countries and jurisdictions. Analysis of tobacco industry internal documents has found that the arguments made in these cases often contradict internal legal advice received by tobacco companies.¹

What should countries do in response to legal challenges, or threats of legal challenges?



- Be sceptical of tobacco industry legal arguments – recognise that threats are part of a strategy to intimidate and delay implementation
- Coordinate early across government departments to ensure broad support for tobacco control measures and capacity to respond to a potential legal challenge
- Ensure that tobacco control measures are designed to be as robust as possible to legal challenge – have documentation of the evidence and recommendations measures are based on, ensure that the laws are comprehensive and non-discriminatory, and follow necessary procedural steps
- Make use of the normative and technical support provided through the WHO FCTC and its governing bodies, Secretariat, and partners

How have these challenges been resolved in other countries?



Courts have consistently rejected tobacco industry legal challenges to tobacco control measures, and reaffirmed that countries have the space to implement non-discriminatory measures to protect and promote public health.

What support is available to countries?



Technical assistance to parties is available from both the Convention Secretariat and WHO.

* The McCabe Centre for Law & Cancer, the designated WHO FCTC Knowledge Hub on Legal Challenges, provides support to parties facing legal challenges, primarily through capacity-building for government lawyers. Requests for support should be coordinated through the Convention Secretariat at ftcsecretariat@who.int

* The International Legal Consortium of the Campaign for Tobacco Free Kids provides resources to parties, including the database www.tobacco-controlaws.org and funding for parties facing legal challenges under international trade and investment law

Notes:

1. Eric Crosbie and Stanton A Glantz, 'Tobacco industry argues domestic trademark laws and international treaties preclude cigarette health warning labels, despite consistent legal advice that the argument is invalid' (2014) 23(3) Tobacco Control e7-e7.
2. See Suzanne Y Zhou, Jonathan D Liberman and Eviita Ricafort, 'The Impact of the WHO Framework Convention on Tobacco Control in Defending Legal Challenges to Tobacco Control Measures' (2019) 28(Suppl 2) Tobacco Control s113 for a list of legal challenges.