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## “A preferred consultant and partner to the Royal Government, NGOs, and the community”: British American Tobacco’s access to policymakers in Cambodia

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### Abstract

British American Tobacco Cambodia (BATC) has dominated the country’s tobacco market since its launch in 1996. Aggressive marketing in a weak regulatory environment and strategies to influence tobacco control policy have contributed to an emerging tobacco-related public health crisis. Analysis of internal tobacco industry documents, issues of BATC’s in-house newsletter, civil society reports and media demonstrate that BATC officials have successfully sought to align the company with Cambodia’s increasingly controversial political and business leadership that is centred around the Cambodian People’s Party with the aim of gaining access to policy makers and influencing the policy process. Connections to the political elite have resulted in official recognition of the company’s ostensible contribution to Cambodia’s economic and social development and, more significantly, provided BATC with opportunities to petition policy makers and to dilute tobacco control regulation. Corporate promotion of its contribution to Cambodia’s economic and social development is at odds with its determined efforts to thwart public health regulation and Cambodia’s compliance with the Framework Convention on Tobacco Control.

### Keywords

British American Tobacco Cambodia; global health policy; tobacco control; Framework Convention on Tobacco Control; tobacco industry influence on policy

### Introduction

Cambodia represents a particularly stark example of how the global burden of tobacco related mortality has shifted from the traditional markets of North America and western Europe to low and middle-income countries (LMICs). Smoking prevalence amongst

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Cambodian men is 48% (Singh et al., 2009), and an estimated 10,000 annual tobacco-related deaths account for 17% of all mortality amongst adult males (World Health Organization [WHO], 2014), contributing substantially to the country's growing non-communicable disease burden (Dans Ng, Varghese, Shyong, Firestone & Bonita R, 2011).

Three tobacco companies that entered the Cambodian market shortly after the 1991 Paris Peace Accord had created a degree of political stability in the country following 20 years of war and civil conflict, currently account for some 87% of cigarette sales. The Vinton Group, a joint venture between the trading company Cambodian Asean International Company, and the China Tobacco Guangdong Industrial Company Ltd founded in 1993, has a 28% market share. (Southeast Asian Tobacco Control Alliance [SEATCA], 2014). The cigarette distributor Huotraco Ltd, also established in 1993, holds a 19% market share. Its stop selling products include the Imperial Tobacco Group's brands Fine and Davidoff, reflecting Imperial's identification of the country as a key growth market (SEATCA, 2014; Imperial Tobacco, 2015).

British American Tobacco Cambodia (BATC) has dominated the country's tobacco market since its launch in 1996 and currently commands a 40% share of cigarette sales (SEATCA 2014). Previous analysis of the company (MacKenzie, Collin, Sopharo&Sopheap, 2004) demonstrated that aggressive brand marketing in a weak regulatory environment, and strategies aimed at influencing policy and regulation have contributed to an emerging tobacco-related health crisis. Key findings from that study included British American Tobacco (BAT) calculations that as Cambodia emerged from civil war into comparative political stability in the early 1990s, market dominance could be achieved cheaply and would be facilitated by a post-civil war administration desperate for foreign capital. It also found that BATC's claims of significant contributions to Cambodia's economic and social reconstruction were challenged by evidence of corporate strategies to wrest extremely favourable financial terms from a near dysfunctional administration desperate for investment, and to take advantage of an almost complete absence of tobacco control legislation (MacKenzie, Collin, Sopharo&Sopheap, 2004). Finally, the analysis highlighted the strategically important role of Cambodia in illicit trade and the company's own involvement in contraband activity. This contributed to the growing literature on tobacco industry complicity in cigarette smuggling in the region (Collin, LeGresley, MacKenzie, Lawrence & Lee, 2004; Lee et al., 2008; Lee & Collin, 2006; Lee, Gilmore, & Collin, 2004; MacKenzie, Lee & LeGresley, 2015) that has demonstrated that smuggling was not only profitable for BAT, but that it allowed the company to establish a presence in closed markets; assert policy influence, and to circumvent and undermine tobacco control measures.

This paper builds on the previous study of BATC by focusing on the company's efforts to establish and maintain close working relationships with Cambodia's powerful political and business elite, with the aim of protecting its commercial and strategic interests by and participating in policy formulation. The analysis asserts that influence stems from corporate capacity to accumulate and exercise the interaction of structural and agency power, and that the two interact in a dynamic relationship (Holden and Lee 2009; Farnsworth and Holden 2006). Structural power derives from state reliance on corporate investment, production, employment and taxation, while *agency power* comprises direct efforts to influence policy

through political engagement, institutional participation and corporate provision of essential goods and services.

Cambodian politics would appear to have been particularly accommodating to BATC efforts to influence tobacco control policy. Un (2011) describes the country's neo-patrimonial political system in terms of a dichotomy between an ostensibly legal and accountable system the government publicly promotes, and the reality of "informal, un-codified and un-policed policies which are more prominent, serving as the basis on which power is built, perpetuated and legitimized". Within the informal realm of governance, the blurring of the public - private divide has been described as resulting in a state apparatus that promotes administration directed towards particularistic interests and personal serves to direct resources to the dominant elite, and has been "likened to a conveyer belt for channelling wealth upwards to the ruling class" (Cock, 2010). Reluctant to pursue productive economic activities, which could potentially give rise to autonomous commercial actors, the ruling elite has been depicted as having favoured tightly defined entrepreneurial pursuits with foreign business partners aimed at generating new wealth for its own benefit. (Cock, 2010).

The evidence presented below documents BATC's ability to forge links to Cambodia's political and financial elite, which has generated opportunities to petition policy makers and dilute tobacco control regulation. This raises specific concerns about Cambodia's commitment to fulfilling its responsibilities as a ratifying party to the WHO's Framework Convention on Tobacco Control (FCTC). The first treaty negotiated under the auspices of the WHO, the FCTC places legally-binding requirements on ratifying countries to enact measures covering a range of tobacco supply and demand provisions (WHO, 2015). Particularly relevant in this context is the FCTC's requirement under Article 5.3 that parties should protect tobacco control policy formulation and enforcement from the vested interests of the tobacco industry (WHO, 2015). This is perhaps the most radical and significant provision within the treaty, but concerns have been raised that limited implementation means that the potential of 5.3 has been to date, largely unrealised (Malone & Bialous, 2014).

This paper highlights the importance to global health policy of increased of understanding of the conduct of transnational corporations in low income contexts, particularly in the context of discourse around corporations and human rights, and the prominence afforded to the private sector contributions to sustainable development (United Nations, 2015).

## Methods

This study is based on analysis of internal tobacco industry documents made publicly accessible through litigation, and available via the Legacy Tobacco Documents Library. It follows well-established practices and norms of tobacco document research; the provenance, mechanics and limitations of using tobacco industry documents are described elsewhere (Carter, 2005). The Legacy collection was searched between September-December 2013, and again in March-April 2014 using the standard snowball research technique (Anderson, McCandless, Klausner, Taketa & Yerger) in which initial searches returned more specific terms. Documents related to Cambodia analysed for this study range from the mid, to the late 1990s. Analysis followed a hermeneutic model adapted from Forster (1994) that

incorporated triangulation with BATC's in-house newsletter *Excellence* (three issues dated between April 2007 and June 2008 were provided to author RM); marketing reports; media (using FACTIVA); websites of Cambodian government agencies and business organisations; and reports by non-governmental organisations.

The analytical framework employed was explicitly focused on understanding corporate conduct and strategies, rather than government behaviour, which would require qualitative interviews that are beyond the aims of our analysis. We did, however, extensively analyse reports by the Cambodian Ministry of Health, the Framework Convention Alliance (FCA) and the Southeast Asian Tobacco Control Alliance (SEATCA), and these were particularly valuable in assessing Cambodia's implementation of the FCTC to date and factors that have influenced that process.

## RESULTS

### Context: political and economic power

Cambodia has been governed by the "same, fixed elite" since Vietnam forced the Khmer Rouge from power in early 1979 (Cock, 2010). The ruling Cambodian People's Party (CPP) emerged from the political turmoil of the late twentieth-century to become the dominant political actor in what has been a near one-party system marked by nepotism, corruption and frequent violence (Gainsborough, 2012).

The CPP's radical economic liberalisation programme of extensive deregulation and sweeping privatisation was aimed at attracting direct foreign investment, but also generated substantial income that enabled the party to construct an extensive patronage network (Hughes, 2007) that underpins a national economic elite tightly aligned to the government. This inner-circle of what has been described as "Cambodian crony capitalism" (Kheang, 2012) is comprised of CPP loyalists centred around Prime Minister Hun Sen who have benefitted from government sell-offs and accumulated vast holdings in natural resources, property development and other sectors (Hughes, 2007).

A 2007 report issued by the US Embassy in Phnom Penh described how the prime minister had cultivated mutually beneficial relationships with the country's most prominent business leader who contribute to the party and fund charities and public works aimed at attracting foreign investment "for which the CPP can claim credit"; in exchange, contributors could expect the "credibility and legitimacy of the having the Prime Minister's support" (Bahree, 2014). Resulting "symbiotic relationships", the report continues, "illustrate the networks of business tycoons, political figures, and government officials that have formed in Cambodia, which reinforce the culture of impunity and limit progress on reforms such as Hun Sen's self-declared 'war on corruption'" (Bahree, 2014). The Cambodian state has, according to one observer, "created its own relatively stable elite, which in turn supports its creator" (Cock, 2010).

In recent years this network has been strengthened by the election to the Senate of a number of business leaders who are CPP loyalists, and by arranged marriages within the highest levels of the party (Lintner, 2007), and reinforced by the appointment of many high ranking

military officers by Hun Sen, CPP control of the national Constitutional Council, as well as by a court courts system “known to take sides” with the powerful and wealthy, especially those affiliated with the government (Peou, 2011). These disparate political and business actors constitute a ruling class that is linked by an administrative structure that is “controlled by the Prime Minister, (and) legitimised by a minimal level of state service provision that is almost entirely externally financed (Cock, 2010).

The CPP has been accused of vote-buying and involvement in seemingly illegal political financing arrangements (Global Integrity, 2009; Lewis & Naren, 2013) and overseeing a widespread culture of dubious practice within the civil service and judiciary (US Department of State, 2011; World Economic Forum, 2012; Transparency International, 2011). Further, there is substantial evidence of human rights violations (Doherty, 2010; Cambodian League, 2008; Phnom Penh Capital Hall, 2012) that includes an “epidemic” of forced evictions of the urban poor, and confiscation of farmers’ holdings to make way for development and logging that benefit wealthy developers linked to the government (Human Rights Watch, 2010).

Criticism of the regime, however, is difficult and dangerous. The media is compromised by self-censorship (Global Integrity, 2009) and the government is increasingly hostile to its critics (Gainsborough, 2012). Human Rights Watch has accused the CPP of “harassment, threats, violence, and arbitrary arrest, to suppress political rivals, opposition journalists, land rights activists, and trade unionists” (Human Rights Watch, 2010) as well as dispersal of peaceful protests by workers and farmers, and intimidation of opposition political parties (Human Rights Watch, 2012). Other sources report that non-government organisations have been suspended or received warnings as the result of their efforts on behalf of communities affected by land disputes and evictions (Kheang, 2012). While the political opposition made significant inroads into CPP dominance in the 2013 national election, there is little indication that the government is likely to fundamentally alter how it exercises power (Human Rights Watch, 2014).

The political and social situation in Cambodia is reflected in the country’s ranking in global governance indicators. The country was ranked joint 164th with Guinea, Yemen and Kyrgyzstan of 183 countries listed on Transparency International’s (2011) corruption index. The World Bank’s (2013) Governance Indicators assessment of six key areas demonstrates that the country’s rankings for political stability and regulatory quality have improved over the past decade, but that it remains in the lowest percentile for accountability, government effectiveness, rule of law, and control of corruption.

### **BATC ties to the business and political elite**

BATC had sought close contacts with government officials as negotiations for a joint venture progressed in the early 1990s (MacKenzie, Collin, Sopharo&Sopheap, 2004). This followed regional strategy outlined in a 1995 ‘Indo-China’ plan which noted that:

handling government officials both at provincial and national levels on a variety of topics needs to be addressed through lobbying and meetings. It is imperative that anti-tobacco marketing restrictions are pre-empted by a balanced counter view

presented at the highest levels in government and the media (British American Tobacco [BAT], 1995).

The 1997–1999 Cambodia Company Plan adapted the regional directive to the local situation, recognising the need to “further build up on our relationship with the Government so as to protect our commercial freedom and ensure a level playing field on excise and related commercial issues” (BAT Cambodia, 1996). This was to be achieved by highlighting the company’s contribution to national economic growth so that “government, community and business partners in Phnom Penh will react positively to firms which bring value to emerging Cambodia” (BAT Cambodia, 1996). Efforts to highlight its contribution to national reconstruction during its August 1996 inaugural dinner were reportedly noticed by “government functionaries” who has attended, including Hun Sen (BAT Cambodia, 1996; BAT, 1996).

Specific targets identified in a 1997 BATC Corporate And Regulatory Affairs (CORA) plan included “key government Ministries, particularly Finance, Industry, Health, Commerce, labour, and the CDC” [Council for the Development of Cambodia, a government agency managing foreign aid projects], who would be informed of “the importance of the industry and particularly of BAT Cambodia in the country's development” (BAT Cambodia 1997). The CORA plan also noted that it was “imperative that whilst still in the early stages of BAT Cambodia's existence in this emerging economy it maximises its present position in the country to position itself correctly for future long term success” (BAT Cambodia 1997).

Among BATC’s greatest concerns were “policies on tobacco, role of regulation, environmental tobacco smoke and reasons for retaining freedoms to advertise”, the last described as “a key theme for adult smokers in new markets where consumers are interested in new brands and qualities of cigarettes” (BAT Cambodia, 1996). Freedom of choice for smokers could best be accomplished if BATC were the “recognised Company within the industry prepared to discuss these issues”, and could place itself “in a position to put across our argument and to be in a position to do so as the Company willing to debate these issues” (BAT Cambodia 1997).

The twin objectives of gaining recognition for corporate contribution to national development while simultaneously advancing company objectives were neatly summarised as “bringing news of the local achievements forward to best advantage for BAT Cambodia” (BAT Cambodia 1997). Responsibility for the presentation of “an integrated, motivated and ethical BAT organization” (BAT Cambodia, 1996) fell to BATC’s CORA division and its key functions were described in BATC’s 1998-200 “Marketing Narrative”:

1. Continue to promote the positive image of BAT Cambodia, and British American Tobacco
2. Monitor the regulatory environment maintaining free market conditions allowing the Company to sell its products competitively
3. Add value by supporting optimum trading conditions, especially in relation to excise and tariffs, and maintain consumers freedoms to smoke
4. Crisis management concerning key areas for the period:

- security issues
- trading issues
- operational changes
- political developments (BAT Cambodia 1997).

The violent coup by Hun Sen's faction within the CCP that removed the political opposition from the governing coalition in 1997 (Cock, 2010; Adams 1997) and its aftermath were the greatest security and political concerns for BATC. Threats to commercial operations were predicted to arise as the World Health Organization and other international agencies paid closer attention to the country's smoking rates and unregulated advertising environment (BAT Cambodia 1997).

Local media played an important role in CORA plans to disseminate information and to deal with "any crisis management in an orderly coherent fashion" (BAT Cambodia, 1996). Establishing that the company was open to discussion with the media, not only as a representative of the tobacco industry but for the broader local business community, would provide a platform from which "to speak more openly, and with authority, as further smoking and health issues present themselves in Cambodia" (BAT Cambodia 1997). One such example cited in the 1997–1999 Company Plan was use of television and other media to build support for a State Express 555-sponsored smoking lounge at Phnom Penh Airport by emphasising "why appropriate indoor air ventilation is the key to courtesy for smokers and non-smokers." (BAT Cambodia, 1996). CORA also identified the BATC's 800 employees as "an important audience for communication purposes" and predicted that the development of *Excellence*, the company newsletter, in 1997 would act not only as "as an educational tool and information provider" for staff, but as an external link "within government, the media, our business partners and distributors" (BAT Cambodia 1997).

**Links to government via local business leaders**—Available documents indicate that BATC's most important conduit to the Cambodian business and political elite has been Oknha Kong Triv. Previously an honorary title infrequently conferred by the King, *Oknha* was resurrected by the CPP government in 1994, and made it available in return for a party donation of \$100,000 and a commitment to direct some of their wealth toward the greater good. Cambodia's business leaders have taken on the title and critics charge that the system has resulted in *Oknhas* receiving valuable government contracts, and making high-profile land and forest grabs (Odom & Henderson, 2014).

Kong Triv's Cambodia Tobacco Company was the local partner in the BATC joint venture in which was received a 29% share (Prideaux & Smith, 1995) and has served as chairman since the company's 1996 launch (International Business Chamber Cambodia [IBCC] 2014). In a 2006 *Cambodian Review* article he argued that the government and the public wanted the tobacco industry to be run by accountable and responsible companies like BATC "rather than face an alternative where legitimate operators are marginalized and the production [and] distribution of tobacco products is allowed to fall into the hands of illicit traders and organized crimes [sic]" (Cambodian Review, 2006). This public portrayal contrasts with

internal BAT documents that attribute a key role to Kong Triv in cigarette smuggling into Cambodia and Vietnam in the early 1990s (MacKenzie, Collin, Sopharo& Sopheap, 2004).

The description of BATC's launch as having been "duly supported by employees and government and without undue operational impediments from the Chairman" (BAT Cambodia, 1996) suggests that Kong Triv's corporate duties and input into BATC have been limited. His real value to the company derives from his connections to the inner-circle around the CPP, which BAT employees had noted in early assessments into the feasibility studies of investment opportunities (MacKenzie, Collin, Sopharo&Sopheap, 2004). The economic significance of such links is suggested by Kong Triv having been granted development title to one of the country's 21 national special economic zones (Business in Asia, 2012), government contracts to upgrade or construct airports, railways, and roads and part ownership of Phnom Penh Airport (Global Witness, 2007). Other significant economic interests include urban development projects and forestry companies that have attracted strong criticism for forced expulsions of families from disputed land (Asian Forum for Human Rights, 2006), and for logging activity in rural Cambodia by the Wuzhishan company in which he is a partner (Amnesty International, 2008; World Rainforest Movement. 2005).

The other significant local business figure associated with BATC is Kok An. BAT representatives had held exploratory talks with him regarding a joint venture in the early 1990s, before settling on Kong Triv, and regarded him as an "emerging 'strong man'" in local business and political circles (da Costa, 1994). Kok An owns ANCO Brothers, the local subsidiary of Singapura United Trading Limited, the Singapore-based distributor that were central to BAT's complicity in smuggling operations in Southeast Asia in the 1980s and 1990s (Collin, LeGresley, MacKenzie, Lawrence & Lee, 2004). His business interests have expanded considerably from distribution and shipping, thanks in part to government contracts to build casinos, supply electrical power and water, and launch the ANCO Specialized Bank (Global Witness, 2007). His ties to the CPP are further indicated by his reported contribution to the compensation paid to Thailand for damage to its Phnom Penh embassy during 2003 riots and his advisory role to the prime minister. He also sits on the board of the Cambodian Red Cross which is run by Hun Sen's wife (Global Witness, 2007, 2007). Finally, his links to the government, like those of Kong Triv, were strengthened when both men were elected as CPP candidates in Cambodia's first senate elections in 2006, along with four other leading tycoons (Global Witness, 2007; Cambodia information Center, 2014).

**Formal business networks**—BATC's affiliation with the International Business Chamber Cambodia (IBCC) is significant given that the organisation's principal objective is to represent "the collective interests of the Membership in relations with the Royal Government, in particular through the Government Private Sector Forum, Private Sector Working Groups, Consultative Group meetings, and other similar fora" (IBCC, 2014a). The IBCC is a member association of the Cambodian Federation of Employers and Business Associations (CAMFEBA, 2014) and BATC is an Ordinary Member, which belongs to a government-industry focus group. The company is also a member of the Cambodia Chamber of Commerce (CCC) which promotes improvements to the business environment by



attracting foreign investment, maintaining relationships with other domestic business groups and by acting as a “negotiating partner with the Royal Government” on commercial, industrial, investment issues (Cambodia Chamber of Commerce, 2014). The CCC is a private sector representative on the Customs-Private Sector Partnership Mechanism that was created by the government in 2010 to promote private sector participation in compliance with regulation, and ensure the effectiveness of trade facilitation (Cambodia Customs & Excise, 2014). Both BATC chairman Kong Triv, and Kok An have served as CCC vice-presidents (Kimsong, 2002).

Importantly, IBC, CAMFEBA and ICC memberships all confer access to the Cambodian Government Private Sector Forum (G-PSF). Created by the government in 1999, the forum provides the private sector with direct access to cabinet ministers, opportunity to raise grievances with the government related to commercial operations, and to provide feedback on draft policies, laws and regulations (Sisombat, 2009). It further “improves the business environment, builds trust, and encourages private investment through a demand driven process with the private sector identifying issues and recommending solutions”, fostering a strong relationship between the government and private sector (CAMFEBA, 2014).

The stature of the G-PSF is suggested by Hun Sen’s appointment of twelve ministers and approximately one hundred high ranking officials to deal with private sector concerns and its decisions are reportedly “considered as the decisions of the Council of Ministers” by the prime minister (Odom & Henderson, 2014). Bi-annual meetings of the prime minister, cabinet and the business community provide considerable profile, but much of the real work is done at monthly meetings of working groups that are sector-specific, banking, tourism e.g., or focused on broader issues including law, tax and good governance; export processing and trade facilitation; and industrial relations. Two organisations that BATC belongs to play key roles in the G-PSF system. The Chamber of Commerce is responsible for coordination of working groups (Sisombat, 2009), while IBC is a leading member of Working Group D (Law, Tax and Governance) which is co-chaired by the Deputy Prime Minister and Minister of Economy and Finance (IBCC, 2014b). All ten of the private sector working groups included at least one of the *oknha* business magnates with CPP links (Odom & Henderson, 2014).

### Direct overtures to government

**Corporate social responsibility initiatives**—BATC’s 1997 “[a]ccelerated image building exercise” (BAT Cambodia, 1996) utilised corporate social responsibility (CSR) initiatives to raise its profile amongst government officials. Kun Lim, head of BATC CORA, claimed in 2011 that the company had “actively undertaken and embedded CSR objectives into every stage of our vertically integrated operation from crop to consumer” (Cambodia. Ministry of Finance, 2011), demonstrating the significance attributed to CSR activities. Key initiatives outlined by Lim included a leaf extension programme that contracted some 800 families to grow tobacco in Kampong Cham province that was reportedly run on ‘best practice’ in the areas of pest management, irrigation systems, child labour, and environmental health and safety policies (Cambodia. Ministry of Finance, 2011).

BATC has also supported the government's reforestation policy by creating four large scale nurseries, two of which are named for Hun Sen. Such activities were, according to Kun Lim, appreciated and highly valued by the Royal Government, NGO's and the community in which it operates" (Cambodia. Ministry of Finance, 2011). Naming facilities for the prime minister also confers considerable protection, since unfavourable comment could also be construed as applying to Hun Sen. According to a 2011 report, the dangers inherent in criticising the regime serve to suppress public criticism of BATC's broader relationships with the government (Framework Convention Alliance [FCA], 2012).

More recent CSR initiatives reported in BATC's *Excellence* newsletters have included collaboration with Cambodian Customs to address cigarette smuggling and counterfeiting, reflecting broader international efforts by the tobacco industry to portray itself as part of the solution to cigarette smuggling (Joossens & Gilmore 2014; (Chen, McGhee, Townsend, Lam, & Hedley, 2014); work experience programmes; and hosting workshops on agricultural techniques, child labour and gender equality.

The August 2007 edition reported that a meeting at its Kampong Cham facility enabled delegates from the government's Commission of Public Health, and Social Work & Women's Affairs to "experience all aspects of the tobacco industry" and provided an opportunity for company representatives to highlight the value of tobacco production to the economy (BAT Cambodia, 2007). Kun Lim's presentation on "key areas that urgently need to be regulated" for Cambodia to meet its minimum requirements as a ratifying party of the FCTC identified bans on media advertising, written health warnings covering 30% of cigarette packs, minimum pricing and purchasing age, and designated non-smoking areas in all public buildings, and stressed the importance of industry participation in dialogue. Delegates were reportedly of the opinion that "any law should be developed in consultation with the affected industry and be working within the context of Cambodia in order to enhance economic growth (BAT Cambodia, 2007)."

**"A preferred consultant and partner to the government"**—In 2005 and 2006 BATC was presented with Gold Medal awards by Hun Sen in recognition, according to BATC's chairman, for its contributions as a "role model as a good corporate citizen in Cambodia" (Interview Kong Triv, 2006), and the Sowatara medal for its outstanding contribution to the agricultural sector and the economy. In accepting a third Gold Medal in 2008, Dale Mclean, BAT's Asia-Pacific marketing director, noted that as a "corporate citizen of Cambodia, we consider it our responsibility to assist in the development of this country and the people" and expressed "deep gratitude" to Hun Sen for "his vision, wisdom and leadership" (BAT Cambodia, 2008). While the award was in recognition of BATC's contribution to creating the Hun Sen Forestation Nursery in Phnom Tamao, a report in the June 2008 *Excellence* acknowledged that the company's financial investment in the project was relatively minor, and noted that the "real investment comes from sharing our technical expertise, our cooperation with the Royal Government and NGOs and our commitment to the community" (BAT Cambodia, 2008).

Tariffs and taxation have been areas of ongoing concern for BATC (MacKenzie, Collin, Sopharo&Sopheap, 2004), as for any tobacco company. In response to concerns that the

Cambodian excise system “may change in the near future to a more structured format”, a 1995 regional company plan had recommended that “[c]ontact with senior Finance, Excise and Customs officials is required to ensure that draconian measures are not taken, dialogue should begin at an early stage” (BAT, 1995). A subsequent BATC plan reported that attempts by competitors to influence taxation, excise or duty levels were to be “monitored and countered through our existing contacts within the various ministries involved with the JV agreement,” (BAT Cambodia, 1996) suggesting that significant connections to relevant ministries had been established.

In April 2007 BATC general manager Arend Ng informed employees that the company had submitted its position on excise negotiations to the government (BAT Cambodia, 2007a). By August he was able to report that amendments to the excise tax calculation process had been the result of “consultation and partnership” between BATC, beer and soft drinks industries, and the tax department” (BAT Cambodia, 2007). The process represented a “win-win solution” according to Ng and was “a shining example of what can be achieved when industry and Government work together” (BAT Cambodia, 2007). The company looked forward, he added, “to continuing this culture of partnership to achieve further mutual benefits in the future” (BAT Cambodia, 2007). BATC also benefitted from a Customs Department decision to allocate the company 1000 tonnes of duty free tobacco leaf exports to Vietnam in 2007 and 500 tonnes in 2008 “by virtue of its excellent corporate reputation as a hard working partner of both the Royal Government and the community for the socio-economic development of Cambodia” (BAT Cambodia, 2008).

There is also evidence that BATC contributed to other regulatory policy. At the company’s 10th anniversary celebrations in 2006, attended by officials from government ministries, tax and excise departments, and business leaders, Arend Ng used his speech to warn that while BATC was a “leading international company and a model investor in the Kingdom of Cambodia” it was essential that the “industry is adequately and sensibly regulated and that these regulations are suitably enforced” to ensure its profitability (BAT Cambodia, 2007a). The process of installing such purportedly ‘sensible regulation’ involved BATC input. Ng reported to BATC employees that the company “had intensified our stakeholder engagement programmes on a number of key issues surrounding the tobacco industry” and had submitted position papers on the FCTC to key government departments and agencies (BAT Cambodia, 2007a). The company’s focus and efforts in 2007 were, he added, to ensure that submissions relating to the FCTC “are adopted to create a level playing field within the industry which legitimate players can sustain (BAT Cambodia, 2007a).

The company’s case for ‘reasonable regulation’ was restated in 2009 by CORA head Kun Lim who outlined the need for “‘sensible and practical’ laws that mitigate the damage tobacco does to public health, while ensuring that customers could make an informed choice” (Kouth, 2009). In an apparent indication that his proposal had gained traction with CPP officials, Lim stated in an April 2010 *Phnom Penh Post* report that the “government had consulted with companies that would be affected by a [advertising] ban”, and praised officials for their ‘commitment to listen’ and to ensure that ‘no unnecessary burdens are placed on businesses’” (Channyda & Lewis, 2010).

BATC's contributions to the consultation process reportedly included aggressive lobbying of members of the working group appointed by ministry of health to draft recommendations on curtailing advertising and promotion, and to mount an advertising blitz before the partial ban came into effect (FCA, 2011). The ban on media advertising, on billboards and at live events was described as broadly sensible, practical and in step with the BATC's own policies by Kun Lim, who also noted that "the government had consulted with companies that would be affected by a ban, and praised officials for their 'commitment to listen' and to ensure that 'no unnecessary burdens are placed on businesses'" (Channyda & Lewis, 2010).

## Discussion

### Inputs into policymaking

Predictions by BATC officials in 1996 that government revenues generated by tobacco industry operations would delay meaningful tobacco control measures appear to have been accurate. Anticipation of domestic and international pressure for more effective tobacco control measures has led to a series of initiatives to forestall regulation and that has included voluntary withdrawal of some forms advertising, and offers to include printed health warnings on cigarette packs (MacKenzie, Collin, Sopharo&Sopheap, 2004; Leakhana, 2010; Chakrya, 2009). More broadly, the company has worked to build strong working relationships with Cambodia's key political actors, gain access to policy makers, and to participate in policy formulation. The success of these efforts to is suggested by the April 2007 *Excellence* newsletter which describes the company as having "successfully established and promoted British American Tobacco Cambodia as a preferred consultant and partner to the Royal Government, NGOs, and the community in the area of Corporate Social Responsibility, regulatory and excise matters"(BAT Cambodia, 2007a).

If, as claimed by BATC officials, the company has had considerable levels of input into regulation of advertising, taxation, and the progress of the FCTC, this would explain to a significant degree why Cambodia's tobacco control regulation is amongst the weakest in the region (SEATCA, 2012). Smoke-free areas are confined to healthcare and education facilities and places of worship while requirements for written health warnings on cigarette packs adopted in 2010 fall short of FCTC recommendations. The Ministry of Health's January 2010 announcement of legislation requiring only printed health warnings on cigarette packs, having previously stated it would mandate FCTC-compliant graphic warnings in 2008, is a seemingly explicit example of the impact of tobacco industry input into policy discourse. Fifteen tobacco companies were reportedly invited to participate in talks with the Inter-Ministerial Council for Education and Reduction of Tobacco Use on implementation of the health warning in 2011 (FCA, 2012).

The country's low taxation rates, only Lao PDR has lower levels within ASEAN, and official reluctance to institute meaningful increases are an important reason that cigarettes remain broadly affordable to one of the region's poorest populations (Southeast Asia Initiative on Tobacco Tax, 2012). BAT brands *ARA*, the most popular domestic cigarette brand cost USD 0.31, identified as the cheapest in ASEAN; the leading international cigarette *555* sold for USD 1.19 per pack, the second lowest such brand after Marlboro in the Philippines.

A National Tobacco Control Law passed April 2015 prohibits smoking in workplaces and on public transport, bans all tobacco advertising, and increase tax rates, concluding a process that began in 2003. The protracted development of the policy has been ascribed to the country's labyrinthine legislative system, and a series of revisions and amendments based on objections from various parties including the Council of Ministers, the Ministry of Economy and Finance and the Ministry of Commerce (Phak, 2010), but the twelve year delay since discussion commenced has not been adequately explained. How effectively the new laws are enforced will be the key factor in their effectiveness (Suy, 2015)

### **FCTC compliance and Article 5.3**

Cambodia ratified the FCTC in 2005, but persistent concerns regarding the government's commitment to the treaty remain. The Cambodian Ministry of Health's 2011 implementation report revealed that the country had not complied with many of the Convention's key Articles including requirements to reduce demand via tax and other policies (Art. 6); to regulate tobacco product contents and emissions (Art. 9), and related disclosures (Art. 10); for a comprehensive advertising ban (Art 13); to combat smuggling (Art. 15); and to end sales to minors (Art. 16). Partial compliance was reported with requirements related to prohibiting smoking in public spaces (Art. 8); packaging (Art. 11); and education and training (Art.12,14) (WHO, 2011). On FCTC articles related to cultivation and environmental health, the report notes that environmental protection measures described in Article 18 had not been pursued and, somewhat curiously, that requirements to promote economically viable and sustainable alternatives for tobacco farmers and workers (Art. 17) were not applicable (WHO, 2011).

The Ministry of Health report (2011) also made it clear that there had been no attempt by the government to fulfil the requirements of Article 5.3 that parties protect their "health policies from commercial and other vested interests of the tobacco industry in accordance with national law" (WHO, 2005). In its FCTC implementation report, the FCA (2012) noted that not only was there no policy in place "to prevent relationships between tobacco industry and government institutions or government officials or politicians", the issue had not been the subject of serious debate. As a result, close relations had grown up between the industry and the political elite, that were both widely acknowledged and beyond public criticism. Given the current situation in Cambodia, this is perhaps the most significant and most challenging of the country's FCTC obligations, yet compliance with 5.3 is not listed as a priority in the ministry of health's report (WHO, 2011). BAT's successful use of CSR as corporate political activity aimed at accessing policy elites, which echoes strategies employed elsewhere (Fooks et al, 2011), and its engagement in policymaking around smuggling, FCTC implementation, advertising restrictions and smoke-free places suggest that the company's pursuit of connections to policymakers, and an active consultative role in the policy process has been successful. Reshaping the culture and context of policymaking in Cambodia constitutes a major challenge for tobacco control, and as the FCA's shadow report (2012) notes, the Guidelines for Implementation of Article 5.3 represent the only legal tool available to deal with tobacco industry interference.

## Working with controversial regimes

Finally, BATC's links to Cambodia's controversial political and business leadership raises questions regarding responsibilities that corporations have in terms of their operations in countries with contentious human rights records. The CPP government's record has deteriorated to the point that the Asia Director of Human Rights Watch has suggested that it:

appears to be following the Burmese model by imprisoning peaceful critics of his increasingly authoritarian government. The arrest of human rights activists, as well as recent show trials of opposition politicians, is a throwback to the days when Hun Sen ran a one-party state (Human Rights Watch, 2006).

Reference to Burma recalls the public and, later, official censure of BAT's joint venture operation with the country's military regime that eventually led the company to sell its stake and quit the country in 2003. More broadly, concerns regarding BATC links to Cambodia's ruling elite exist against a backdrop of BAT willingness to cooperate with widely-condemned regimes in Uzbekistan (Gilmore, McKee & Collin, 2007) and until recently, in North Korea (Kollewe, 2007).

Much of the recent literature on corporate responsibility regarding human rights specifically related to the tobacco industry has focused on relatively nuanced questions of whether its commercial activities and trade agreements that facilitate TTC operations, or exposure to second hand smoke may infringe human rights (Fox & Katz, 2005). BAT's perceptibly close relationship with the Cambodian government raises less equivocal questions regarding corporate operations in countries where national governments engage in large-scale human rights violations. At the very least, it adds another challenge to BATC's ostensible commitment to "assist in the development of this country and the people" (BAT Cambodia, 2007).

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