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## **SOUTH AFRICA**

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### **Executive Summary**

*The country's tobacco control success stands in sharp contrast to many other middle- and low-income countries where the tobacco epidemic is still growing. Large reductions in tobacco use have occurred in South Africa because of a combination of government commitment to comprehensive legislation and enforcement (four major pieces of legislation since 1992), and effective civil-society-driven public health activism and community support. Moreover, research played an essential role by supporting both policy development and advocacy efforts. However, prevalence rates remain high (about 23% of adults are daily smokers; and non-cigarette tobacco use, particularly in lower socioeconomic groups, is a continuing concern), the tobacco industry is powerful, and the tobacco control community reports having to counter both public and government sentiment that tobacco control has „b en done’. By the tobacco control community’s own admission, for every victory, the industry has tried to claw back part of the gain – they believe not only that there is more work to be done, but that it will require continued vigorous effort.*

*Most recently, the tobacco control community won a significant victory in ensuring that the 2010 FIFA World Cup of soccer would have smoke-free spectator venues. Currently, tobacco control advocates are examining the efficacy of existing tobacco taxation policies. While South Africa previously had excellent tobacco-oriented tax policies that directly decreased the affordability of cigarettes, recent falls in inflation and economic growth have made these policies less effective. Advocates are seeking to present new information to the Ministry of Finance to have these laws revised, and to make decreasing affordability the centerpiece of the changes. The tobacco control community has also been working to provide the Ministry of Health with sample regulations and materials for forthcoming graphic warning labels on tobacco packaging.*

## South Africa<sup>1</sup>

2009 Population (World & Africa Ranking):	49, 052,489 (25, 4)
Geographical Size (Ranking):	1,219, 090 sq km (32)
2008 GDP by Purchasing Power Parity (Rank):	491 Billion US Dollars (26)
GDP Real Growth Rate 2006-08	4.5%
2008 GDP per Capita (Ranking):	\$10,100 US Dollars (105)
Main Industries:	Mining (world's largest producer of platinum, gold, and chromium), Automobile Assembly, Metalworking, Machinery, Textiles, Iron, Steel, Chemicals, Fertilizer, Foodstuffs, Commercial Ship Repair
Languages:	IsiZulu (23.8%), IsiXhosa (17.6%), Afrikaans (13.3%), Sepedi (9.4%), English (8.2%), Setswana (8.2%), Sesotho (7.9%), Xitsonga (4.4%), Other (7.2%), (2001 Census)
2007 Tobacco Production in Volume:	20,000 tons, 2007
Tobacco Exports:	Tobacco products, 17822 tons at \$3,083 per ton, # 17 export; Cigarettes: 9852 tons at \$7179 per ton, # 12 export, 2007
Tobacco imports:	Tobacco unmanufactured, 30,499 tons at \$2,667 per ton, # 13 import, 2007

### Description of Political System

Type:	South Africa is a mixed Republic.
Executive:	Jacob Zuma is the current president and head of state. The president is appointed by the National Assembly every 5 years. Kgalema Motlanthe is the executive deputy president.
Cabinet:	Appointed by the president
Legislature:	Bicameral legislature. The National Assembly has 400 seats that are elected based on proportional representation. The National Council of Provinces (former senate) has 10 members that are elected by each of the 9 provincial legislatures with special powers to protect regional interests. The legislature is dominated by the African National Congress party (roughly 65.9% of popular vote in the last election); the opposition Democratic Alliance received 16.7% of the popular vote.

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<sup>1</sup> CIA World Factbook <https://www.cia.gov/index.html>; tobacco statistics are from FAOSTAT.

## Prevalence

Summary: *While smoking prevalence levels have dropped sharply in the last two decades, advocates note that rates seem to have bottomed out in the late 2000s at about 23% for adults. Furthermore, non-cigarette use is high in certain demographic groups and will need more attention. Second-hand tobacco smoke is of particular concern in homes, particularly for children (there are bans on smoking in most public places).*

Between the early 1990s and the mid-2000s, according to some surveys, adult daily cigarette smoking prevalence rates demonstrated a steady downward trend. According to South Africa Advertising and Research Foundation surveys, adult (15+ years) daily smoking rates fell by a fifth, decreasing from 32.6% in 1993 to 23.4% in 2008. The major tobacco control non-governmental organization, the National Council Against Smoking (NCAS), believes that rates have since bottomed out, partly as a result of inflationary trends overwhelming earlier tobacco taxation strategies (more discussion below). A South Africa Demographic and Health Survey from 2003 roughly corroborates the later findings with male daily smoking rates reported to be 35.1% and 10.2% for females.

Consumption (i.e. sales) patterns support the decreasing trend in the prevalence findings. In 2005, cigarette sales fell for the fourteenth consecutive year in South Africa. Annual cigarette consumption fell from 1.8 billion packs in 1993 to 1.2 billion packs in 2005 – a 33% decrease. Consumption fell despite an increase in population size, so the per capita decline in consumption was even larger – it fell by about 50% in the same time period.

Importantly to tobacco control, however, the positive overall trend masks the fact that smoking rates remain alarmingly high in certain demographic groups. Characteristics such as age, gender (reported above), ‘race’, culture and socioeconomic status are all likely to have impacts on smoking prevalence rates.

In 1999, nationally representative data on tobacco use among adolescents in secondary school (grades 8 to 10) became available for the first time when South Africa participated in the Global Youth Tobacco Survey (GYTS). The survey was repeated in 2002. Among the key findings are statistically significant declines (at  $p < 0.05$ ) in cigarette smoking between the two surveys. The number of students who had never smoked a cigarette increased by 20% (from 53.3% in 1999 to 62.4% in 2002) and the number of frequent smokers (smoked on 20 or more days in the past month) declined from 10.1% to 5.8% between 1999 and 2002. It is noteworthy that in 2001 the government banned tobacco advertising, and the surveys provide data from before and after the ban. Although the declines in cigarette smoking cannot be definitively attributed to the ban, it is encouraging that the trend was in the expected direction.

Despite the fact that the law prohibits the sale of tobacco to minors or its free distribution, 66% of the students in the GYTS reported that they bought cigarettes in a store. Furthermore, 22% of students in the same survey claimed that they were offered free cigarettes by a tobacco industry representative.

Surveys show that large numbers of children are exposed to tobacco smoke pollution (TSP) in South Africa. A 1990 study of 5-year-old children in the Johannesburg/ Soweto metropole found that 64% of the children were exposed to secondhand tobacco smoke in the home. Coloured children were most frequently exposed, with 42% living in homes with two or more smokers. In Cape Town, 80% of 6-11 year old school children were exposed to pollution from tobacco smoke. Using urinary cotinine concentrations to estimate exposure, the most important source of smoke pollution was maternal smoking, followed by smoking by the male parent and other household smokers.

In terms of income, survey data demonstrate that poorer smokers are more likely to quit than more affluent smokers. Between 1993 and 2000, there was an annual decrease in smoking of approximately -0.89% in households earning less than R1400 a month, while smoking increased annually by approximately 0.33% in those earning more than R7000 a month.

In terms of race, smoking prevalence is highest in the Coloured population (see Table 1). However, the White community smokes the most heavily (i.e. the highest actual consumption per smoker). In 1998, White smokers reported consuming an average of 18 cigarettes per day; the corresponding figure was 11 for Asians, 9 for Coloureds and 7 for Africans. Women, on average, smoked about 2 cigarettes a day fewer than men. Income and race correlate highly and account partly, but not entirely, for these differences.<sup>2</sup>

**Table 1: Daily adult smoking prevalence rates by 'Race' and Gender, 2008.**

	% Male	% Female	% All
African	34.9	3.6	19.3
Asian	46.6	10.4	28.1
Coloured	48.3	39.0	43.5
White	37.8	28.4	32.9
Total	36.7	10.3	23.4

Tobacco products other than regular manufactured cigarettes continue to be popular in South Africa. Although manufactured cigarettes dominate, hand-rolled cigarettes account for about 21% of the market, and such use is particularly common amongst African and Coloured men. Similarly, while the overall rate of smokeless tobacco use in SA is relatively low at about 6%, black women are twice as likely to use snuff (12.6%) than to smoke cigarettes (5.3%). Of particular concern, the nicotine delivery from the commercial brands of snuff sold in South Africa is higher than from comparable brands in the USA. A typical commercial snuff user may be receiving nicotine concentrations

<sup>2</sup>Racial classifications are still used by researchers in South Africa because they provide a measure of inequity.

equivalent to smoking 20 cigarettes a day. Homemade snuff (tobacco leaf ground with ash) seems to deliver lower levels of nicotine than commercial brands. Pipe tobacco consumption declined by approximately 4% in volume terms during 2007. Pipe tobacco is used both in the traditional manner and as roll-your-own.

## **Tobacco Control Policies**

Summary: *There have been four major pieces of legislation in the last 16 years, and corresponding regulation-making by particularly the Ministry of Health (and also Finance, in terms of taxation) to put the laws into practice. Because several ministries deal with potentially competing issues (discussed below), they demand well-executed and reliable scientific evidence before supporting tobacco control policies. Tobacco control advocates have been supplying this evidence on a regular basis for more than 20 years.*

### Overall context

The contemporary historical context (post-1980) of tobacco control has been addressed well in the academic literature (e.g. Asare 2009; Malan and Leaver 2003; Van Walbeek 2004) and will therefore not be re-visited extensively here. In very brief, however, after the collapse of apartheid in the early 1990s, the new African National Congress (ANC)-led government has been consistently supportive of many tobacco control policies. In particular, the first Health Minister in the Mandela administration, Dr Nkosazana Dlamini Zuma, followed by the late Health Minister in the Mbeki administration, Dr. Manto Tshabalala-Msimang were both very active and vociferous supporters of tobacco control domestically and internationally. Dr Zuma was instrumental in passing enabling legislation that banned tobacco advertising and smoking in indoor public places in 1999. Dr Tshabalala-Msimang was an important actor in moving the regulations for smoke-free policies and the advertising ban, and for negotiating the FCTC. Moreover, working in this relatively positive political climate, a professionalized tobacco control advocacy community has worked to develop and enforce progressive tobacco control policies.

With major political changes in 2009 including a new President, changed ANC leadership, a new cabinet, and many new legislators, there is some uncertainty as to the future status of tobacco control policies. That being said, there appears at least to be consistent support of tobacco control in South Africa from a number of key cabinet posts and major bureaucratic actors. Though the actual post-holders in almost all ministries have changed recently, the actual policy positions of the ministries do not appear to have fluctuated markedly. President Jacob Zuma has expressed explicit support for tobacco control though he has not initiated any policy directly. Accordingly, since the new Zuma administration took office, the advocacy community, led by the National Council Against Smoking (NCAS), is actively determining the positions of new ministers and deputy ministers in relevant departments. It is also continually mapping out the position of all legislators at the national level. With major positive changes to tobacco policy in 1993, 1999, 2007 and 2008, there is a clear track record of successfully affecting policy.

### Taxation

There is ample evidence to support the view that the price of cigarettes is the main short-term determinant of rates of tobacco consumption. As price increases, consumption falls and vice versa. Since 1994 the government has adopted a progressive tobacco excise tax policy explicitly for health reasons (as opposed to other countries that have taxes on tobacco products mainly for revenue reasons). Between 1994 and 2005 real (inflation-adjusted) excise tax rates increased by about 270%, real prices by 150%, and consumption fell by a third (see related graph in the taxation policy section at the end of this chapter).

Despite the benefits, since 2005, the government has appeared to be more reluctant to tax tobacco further. Recent increases in the price of cigarettes were more a result of manufacturers driving up prices to increase profits than of the state driving up taxation rates.

The NCAS and its ATSA team partners have elected *to re-visit taxation in order to obtain not only a new increase, but a better system that accounts for inflation and increases in income more effectively*. The objective of this renewed policy initiative is to make cigarettes less affordable by lobbying for excise tax increases above the rate of inflation, and above the rate of growth in GDP. The NCAS argues that the first step is *“information”*; accordingly, the NCAS-led team has hired an economist to develop a package of evidence-based tax research that will be taken to the highest ministerial levels. It is important to be able to identify with good economics the optimal tax rate from a health perspective and its revenue implications.

Using this information, the ATSA team has identified that it is important to make the effort to engage the pertinent political actors. In the case of taxation, the Ministry of Finance is a pivotal institution, with key actors at multiple levels.<sup>3</sup> The team argues that in addition to the Minister and Deputy Minister, it is also vital to make direct contact with the Ministry’s Director(s)-General (or DG – the highest ranking bureaucrat in South African ministries), the Deputy Directors-General (DDG), and others who have jurisdiction in this area. Since it is generally the DGs and the DDGs and their staffs who do much of the implementation and enforcement, it makes a great deal of sense to present the evidence-based tax research first to these actors, who will then – hopefully – take it up the chain of command. Often, it is easier to make contact with the bureaucrats than with the ministers.

That being said, the team recognizes the importance of *“triangulating”* by making direct contact, where possible, with the higher or highest levels of the ministry. As suggested above, the actual Minister of Finance and the Deputy Minister will be key players in executing such a tax increase. There are both a new minister and deputy minister in the Zuma administration, and the NCAS recognizes the importance of making a strong case to these high-level officials.

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<sup>3</sup> The Minister’s actual boss, President (and leader of the ANC) Jacob Zuma, is supportive – he has actually called on all ANC officials to stop smoking – but he is not the key figure here as the Finance Ministry will make the decision.

Not trivially, within the Ministry, the support of specific key departments is crucial to any tax increase. In particular, the South African Revenue Services (SARS), including both the Excise Taxes and Customs departments, is a pivotal institution for any taxation issue. The Customs director is particularly important because s/he plays a major role in enforcement and smuggling.

Incidentally, tobacco control advocates are aware that the tobacco industry has lobbied Finance Ministry officials in the past with its own set of “evidence-based” facts. In particular, the industry has obfuscated the benefits of increased taxation to both health and fiscal stability by claiming that increased taxation leads to an increase in the illicit trade of tobacco products. There is a multitude of international evidence that the tobacco industry has been involved in this illicit trade in many countries. In South Africa specifically, the chief executive officer of Mastermind Tobacco settled a suit for R57 million in June, 2009, in which the company was charged with 25 counts of fraud specific to the non-payment of excise duties, 25 counts of exporting goods illegally from the customs and excise warehouse and six counts of fraud related to non-payments of the value-added tax.<sup>4</sup> After attempting to pass off local cigarettes as exports, which are exempt from certain types of taxation, the company agreed to pay the penalties in exchange for not being convicted by a criminal court for a violation of the VAT Act, the Customs and Excise Act or fraud.

Other department/ministries could also play secondary, but still important, roles. First, the Department of Trade and Industry (DTI) has a potential competing interest because of the possible implications for trade. Establishing the new Minister’s views – ideally through a direct meeting – is important because his/her support could be very helpful, while a strong objection could be a major obstacle. Providing the evidence-based research to the minister that a tax increase will actually have positive, not negative, economic consequences for the country in the long run is a crucial piece of the argument that must be presented to him.

Second, again because of competing interests, the Minister of Agriculture is an important voice in cabinet. Because of agricultural tobacco production, in the past, the Tobacco Action Group<sup>5</sup> has engaged the agriculture minister in order ensure that he did not oppose tobacco control legislation. With any new minister, it will be important to meet them and present a set of evidence-based research to reassure them that taxation will not affect their constituencies. Incidentally, on a related note, the ATSA team believes that at some point in the near future, an analysis of tobacco farming in South Africa needs to be executed because tobacco production in the country has declined dramatically since 1988 and it could represent a case study on crop diversification.

Lastly, the Ministry of Health is generally supportive of tobacco tax initiatives, and can act as a strong proponent of a proposed tax policy change with other ministries. It is

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<sup>4</sup> Jika T. June 8, 2009. “Tobacco Company has to pay R57M.” *Daily Dispatch*.

<sup>5</sup> A coalition between the Cancer Association of SA, the Heart and Stroke Foundation of SA and the NCAS.

therefore very important to get the support of the MOH by presenting them with an evidence-based set of arguments about the health merits of a tax increase and corresponding new and improved policy so that they will convince their cabinet colleagues that this is a worthwhile policy initiative. Again, with new a new minister and DG in 2009/10, it is important to make a persuasive case.

### Warning Labels

Though the new amendments from 2008 empowers the health minister to promulgate regulations for the implementation of graphic warning labels, as of early 2010, the health ministry had not yet decided definitively on the content of the new messages. For health warnings to be effective it is important to ensure that the content and format of the warnings are appropriate for the target audience. The NCAS is pre-testing a range of messages to assess the comprehension, acceptability and potential effectiveness of health warnings. The aim is to identify warnings that are easily understood, informative, believable, relevant and most likely to lead to quitting. The NCAS believes that if the Ministry were presented with appropriate professional materials as examples from which to work that it would move on the initiative relatively quickly.

The Ministry of Health is obviously the central political institution in this initiative. The Minister of Health has the final approval of relevant health regulations so must be engaged positively in the process.

Importantly, it is the Director of Health Promotion who has responsibility for tobacco control and who takes relevant proposed regulations up the ministry's chain of command to the DG and/or ministerial level. Meeting with the Director and his/her staff to discuss potentially helpful activities related to packaging and labeling is vital.

The role of the Ministry's Legal Department is crucial because it drafts both legislation and regulations. The recent legislative changes do not provide for the exact wording of the regulation for the labeling restrictions. The Ministry has many pressures, so proposals based on model legislative and regulatory texts from other countries that highlight key components of the regulations within the South African context need to be developed and provided for their review.

There will be private interests actively opposed to the implementation of warning labels. Undoubtedly, the tobacco industry will strongly oppose the initiative, attempt to delay and dilute it, will appeal to the Department of Trade and Industry on the grounds of economic loss, and argue for its intellectual property rights. Accordingly, the NCAS must have effective counter arguments for advocacy purposes, and will monitor and lobby relevant players as necessary.

There is a strong, free media in South Africa that is open to discussing tobacco control in an unbiased, thoughtful manner, and the ATSA team has been accessing the media in order to reach the public. For example, they will hold a media press conference before the new regulations are published for public comment, write media releases for wider dissemination, meet with journalists personally, and do media interviews.



The initiative is being spearheaded by the NCAS. They also expect, when necessary, to call on their allies from the Tobacco Action Group (TAG) – an umbrella organization that is comprised of organizations that share goals of improved tobacco control. Members of TAG include the Cancer Association of South Africa (CANSA) and the Heart and Stroke Foundation, South Africa (HSFSA), and they can be called upon for support, particularly to lobby, to disseminate information to the public and/or to rally their members and volunteers. The team expects that consumer rights groups, particularly the National Consumer Forum, will be similarly supportive, and is seeking to bring them – and other organizations – under the TAG umbrella.

### A Smoke-free 2010 FIFA World Cup

While South Korea (with the help of the World Health Organization) hosted a smoke-free FIFA World Cup in 2002, the event was not smoke-free in Germany in 2006. The ATSA team believes, however, that it is eminently possible to have a smoke-free World Cup in South Africa in 2010, and that this is a critical juncture in time if this initiative is to come to fruition. With the World Cup being one of the largest sporting events in the world, this is an unparalleled opportunity to showcase tobacco control policies both broadly and specific to South Africa. Furthermore, the residual positive effects for smoke-free public places in South Africa, particularly at sporting events and sporting venues, are very promising.

Importantly, the national cabinet under former President Thabo Mbeki passed a resolution in support of this goal on the recommendation of the then-health minister, Dr. Tshabala-Msimang. In early 2010, with two recent changes in presidential leadership and a change to Jacob Zuma leading the ruling African National Congress and several major cabinet shuffles, the status of this resolution was not entirely clear. Therefore, this is clearly a critical moment in terms of holding the government to the original resolution.

The NCAS has been actively fact-finding in terms of key stakeholders' positions, educating key members, and lobbying supportive members to be torch-bearers, and less supportive members to change their positions. They want to be sure that the new cabinet sticks to the initial decision. Arguably, in this initiative, both the Health and the Sport and Recreation ministries are potentially important actors at the ministerial level – their overt support would help the cause greatly.

In 2009, the NCAS sent a proposal for a smoke-free World Cup directly to the Chief Medical Officer of FIFA, with an official copy also sent to the Director of Health Promotion from the MOH. The MOH has officially reiterated the cabinet decision regarding the smoke-free World Cup 2010. The Local Organizing Committee and FIFA have agreed that world cup venues will comply with the country's domestic tobacco laws and that all spectator viewing areas at the stadiums will be smoke-free.

With the Cup's major economic, social and reputational ramifications for South Africa, there are several other key organizations that are potentially important. First, the South

African Football Association (SAFA) is a main component of the Cup's organization, which includes the facilities owners/managers and venue supervisors. It is hoped that SAFA will agree to no smoking messages and logos on tickets, programs, etc. for the Cup. The ATSA team has also been developing a ready-made strategy for management of stadia for the purpose of implementing the policy, which included a training program for particularly stadia security, adequate signage including on the large electronic boards, and prepared public address announcements. Some stadia have begun to adopt and enforce such codes voluntarily to varying degrees, and with considerable encouragement and support from the NCAS.

Engaging the media to publicize the initiative is an important component. Accordingly, the ATSA has been planning the development of smoke-free advertisements for radio and TV. Similarly, the team was seeking to meet with major airlines and the Airports Company of South Africa so that they could announce the initiative as flights arrived for the Cup. They also hoped that the Airports Company would agree to billboards in the luggage area of airports.

In addition to the engagement of its TAG partners, including CANSA, particularly for their lobbying capacity and membership, the team has plans to 'internationalize' the initiative. First, it would like to get some big name player endorsements. Second, it would like to obtain and utilize the active support of the World Health Organization, noting that the WHO played a large role in ensuring that the World Cup in Korea was smoke-free.

The team expects resistance from several major areas. Of course, it anticipates that the tobacco industry will actively lobby against any such initiative as well as members of the hospitality association.

In a related legislative development, through 2009 and early 2010, there has been a pending piece of legislation before parliament entitled, "Safety at Sport and Recreational Events," which address multiple components of safety at sporting events. It now has a significant smoke-free section. In 2009, the NCAS addressed Parliament's Portfolio Committee on Sport and Recreation about a smoke-free component and members of the committee were supportive of the idea.

### **Tobacco Industry**

Summary: *Tobacco manufacturers are a genuine economic and political force in South Africa (tobacco leaf growing is not). The industry had strong political connections with the apartheid government and still enjoys the support of some government officials. Perhaps most worrying and frustrating to advocates, the industry is continually finding new and creative ways to circumvent legislation. Fortunately, the advocacy community led by the NCAS monitors them closely and seeks to respond to their actions swiftly and firmly using both evidence-based research and publicity through the media.*

The industry has been characterized by the ATSA team as powerful and cunning in South Africa. It is comprised of both tobacco growers and manufacturers. However, tobacco growing is in serious decline (see Table 2) with the number of farmers, area planted and crop size all falling over the past two decades. In fact, the country has moved from being a net exporter of tobacco to a net importer, with substantial amounts of tobacco leaf imported duty-free from Zimbabwe and Malawi.

**Table 2: Tobacco farming in South Africa – 2000 versus 2007**

	2000	2007
Farmers	615	150
Workers	31 000	12 000
Hectares planted	15 599	3 700
Total crop (m kg)	29	10

Tobacco manufacturing, in contrast, remains quite robust economically. Cigarettes, pipe tobacco and snuff are all manufactured in the country. About 35 billion sticks of cigarettes were manufactured in 2007, while 23 billion were consumed domestically. British American Tobacco is the largest cigarette manufacturer with 90% of the market, while Japan Tobacco International/ Gallaher have 5.3% and Philip Morris International has 1.8% of the cigarette market. Swedish Match (recently purchased by Philip Morris) dominates the pipe and snuff markets and was the second largest tobacco manufacturer in the country.

In 2003, 3000 people were employed in manufacturing and 23,600 (including seasonal workers) in farming, while R6 billion was paid in value-added (VAT) and excise taxes resulting from the sale of tobacco products. To put these taxes into proper perspective, however, in 1993, the Medical Research Council estimated that tobacco use cost the SA economy R3 billion in medical costs of treatment and in lost productivity to business, which was twice as much as the industry paid in taxes that year. Furthermore, the industry does not actually pay these taxes, but instead collects them for the government, and the actual cost of the taxes is borne by the consumer.

The tobacco industry has claimed that it supports reasonable and ~~enforceable~~ tobacco control legislation and claims it wants to work with government. Its position is that a balance should be found between health objectives and the economic and social contributions that the industry makes in South Africa. These industry ~~contributions~~ appear to include anything that impinges on their profits and their ability to market to any consumer.

To win support, the industry spends about R30m annually on various corporate social responsibility (CSR) projects including HIV/AIDS awareness, black economic empowerment, crime prevention and bursaries for tertiary education. The industry is permitted by law to make donations as long as it is not for the purpose of advertising. The NCAS has expressed grave objection to the vague wording of this component of the legislation, but parliament has not been sympathetic to their concern.

One of the most recent activities concerning the industry in South Africa was Philip Morris International Inc.'s agreement to buy Swedish Match AB's South African operations for R1.75 billion, or roughly USD\$222 million. This announcement comes after a previous agreement in February, 2009, when Philip Morris announced a 50-50 joint venture with Swedish Match to make and sell smokeless products like snus. Philip Morris estimated that Swedish Match South Africa's pipe tobacco and snuff products represent about 31 percent of total tobacco consumption in South Africa, which makes the purchase a strategic gain for the company in South Africa. The country has proven to be an important international market dominated traditionally by BAT. As cigarette consumption declines and if smokeless tobacco products become more popular, this would put Philip Morris in a particularly favorable market position.<sup>6</sup>

The ATSA team notes a perception amongst sections of the public that the government pays too much attention to tobacco. In particular, there is a perception that the industry cultivates the support of politicians. The industry also portrays itself as a responsible corporate citizen – characterized by the tobacco control community as attempts to “buy” communities through corporate social responsibility (CSR) programmes – claiming that it is a part of the solution and not part of the problem.

### **Inventory of Existing Laws and Regulations**

Since 1993 South Africa has made significant visible progress in tobacco control and the country's laws comply with most of the best recommendations of the FCTC. Tobacco (excluding snuff and snus) tax increases have been won, progressive legislation has been enacted, while smoking prevalence and the numbers of cigarettes smoked have declined. The country also played a leading role in the negotiations of the WHO Framework Convention on Tobacco Control (FCTC). On the other hand, tobacco smuggling has increased, the tobacco industry remains influential, mass media educational campaigns are non-existent, and law enforcement poses challenges. The ATSA team believes not only that there is still work to be done, but that tobacco control requires persistent monitoring of and rapid reactions to efforts by the industry and its allies.

The Tobacco Products Control Act was passed by the national government in 1993 as Act No. 83 of 1993, published in the Government Gazette in 1994. Regulations requiring health warnings on tobacco products were enacted in 1995. Parliament passed an Amendment Act in 1999 (No. 12), and in 2000, various regulations as per the Act were published including tar and nicotine disclosure requirements, point-of-sale advertising restrictions and controlling smoking in enclosed public places. These regulations came into force on January 1, 2001. Parliament passed a second Amendment Act in 2007 (No. 23), and a fourth Amendment Act (No. 63) in 2008. These two amendments of the original Act came into effect on August 21, 2009 as per publication in the Government Gazette.

The original 1993 Act empowered the Minister of Health to prescribe health warnings on

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<sup>6</sup> Associated Press. July 2<sup>nd</sup>, 2009.

advertisements and on tobacco packs. It allowed for the regulation of smoking in public places and also contained a prohibition on the sale of tobacco products to people under the age of 16, in addition to some restrictions on vending machines. It introduced a requirement that the tar and nicotine yields of cigarettes be printed on the pack. The first Act led to the publication of the first set of regulations on December 2, 1994. These regulations contained details about the warnings on tobacco advertisements and on packages and also prescribed testing methods for determining tar and nicotine yields.

The second Tobacco Act, passed by parliament in April 1999, is more extensive and introduced a ban on all tobacco advertising and sponsorships. It restricts smoking in enclosed public places, with certain exemptions. It restricts "point-of-sale" advertising to price and availability only, though the tobacco industry openly violated this by advertising brands. The amendment, for the first time, gives the Minister of Health the power to prescribe maximum yields of tar and other constituents. It bans free distribution and rewards, and places further restrictions on the use of vending machines. The Tobacco Products Control Amendment Act, No. 12 of 1999 was published in the Gazette on October 1, 2000, and came into effect on January 1, 2001.

Four Government Notices under the Act were published in September 2000. The first Notice deals with the maximum permissible yields of tar and nicotine and other constituents in tobacco products. The tar yield of cigarettes must not be greater than 15 mg per cigarette and the nicotine yield not greater than 1.5 mg by December 1, 2001. These maximum levels must then be lowered to a tar yield of 12 mg per cigarette and a nicotine yield of 1.2 mg nicotine per cigarette by June 1, 2006.

The second Notice is an extensive piece of legislation regulating smoking in public places. A public place is defined as any indoor or enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance. The notice then goes on to address the types of public places where smoking is permitted and the conditions under which smoking is permitted. In principle, a person in charge of a public place may designate a portion of the public place as a "smoking area" provided that the designated area does not exceed 25% of the total floor area, is separated by a solid partition and an entrance door, and has a ventilation system that directly exhausts air to the outside. The notice also places special obligations on employers to protect their employees.

The third Notice deals with point-of-sale advertising of tobacco products, the signs may not exceed one square meter and must be placed within one meter of the point of sale. The fourth Notice deals with certain exemptions and the phasing out of existing sponsorship obligations or contractual obligations in respect of advertising. All sponsorships taking place in terms of contracts that were in place of April 23, 1999 were allowed to continue up to April 23, 2001.

The Amendment Act No. 23 was passed by parliament in September 2007. It was assented to by the President in February 2008, published in the Government Gazette in February of 2009, and had a proclamation of commencement of August 21, 2009. The

Act provides anew for the control over the smoking of tobacco products; makes provision for standards in respect to the manufacturing and export of tobacco products; extends the Minister's power to make regulations and increase penalties. Provisions stipulated by the Act include:

- (1) No person may smoke any tobacco product in—
  - (i) a public place;
  - (ii) any area within a prescribed distance from a window of, ventilation inlet of, doorway to or entrance into a public place;
  - (iii) any motor vehicle when a child under the age of 12 years is present in that vehicle;
  - (iv) in any prescribed outdoor public place where persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard.
- (2) No person shall manufacture a tobacco product unless it complies with such standards as may be prescribed. The standards that a tobacco product must comply with, include—
  - (i) the amounts of substances that may be contained in the product or its emissions;
  - (ii) substances that may or may not be added to the product;
  - (iii) the ignition propensity of cigarettes; and
  - (iv) product design and composition;
- (3) A manufacturer of a tobacco product must submit to the Minister and to the public, information in respect of—
  - (i) research conducted into a tobacco product by a manufacturer or by a person who conducted research paid for in whole or in part by a tobacco manufacturer;
  - (ii) the quantity of a tobacco product manufactured;
  - (iii) marketing expenditure; and
  - (iv) information on product composition, ingredients, hazardous properties and emissions.
- (4) The penalty for restaurants, pubs, bars and workplaces that allow smoking is increased from R200 to R50 000 (maximum). The fine for an individual who smokes in a public place will be a maximum of R500.

A third Amendment Act (Bill B24-2008) gives the government authority to regulate the promotion, packaging and the retailing of cigarettes. It came into force on August 21, 2009. Activities regulated in the Bill include:

- Direct or indirect advertising of a tobacco product, and the practice of paying film and television producers to show tobacco products on screen (so-called product placement) are prohibited;
- Warning messages, with pictures showing the consequences of tobacco use, must appear on tobacco packages;
- “Charitable” donations can be made by tobacco companies provided it is not used for purposes of advertising;
- “False” or “misleading” health claims on tobacco packages are barred. The use of labels like “light”, “mild” or “low-tar” which falsely imply that such cigarettes are less harmful than regular cigarettes will be banned;
- The free distribution of cigarettes and the use of coupons and gifts to promote

- tobacco sales and use is prohibited;
- Self-service displays of tobacco products at retail are banned;
- The display of tobacco products at wholesale and retail is regulated;
- The sale of tobacco by and to those less than 18 years is banned.
- Mail order and Internet sales are forbidden.
- Vending machines may only be located in places to which those under 18 years do not have access.

In terms of challenges, advocates have complained about a lack of a formal government-sponsored system and database for logging complaints to municipalities and for monitoring prosecutions. In the meanwhile, civil society is bearing the cost of such monitoring, which may be less sustainable in the longer term. For example, when the NCAS identifies a violator, they begin by writing a letter of cease and desist to the owner of the business. So for example, if a fast-food restaurant is permitting smoking, they will receive an official letter from the NCAS. If there is no response, the NCAS writes another letter, and where possible sends a copy to the overarching organization (in the case of franchisees, the franchisor) and the real estate lessor, informing them that a criminal docket will be opened. If there is no response or a lack of compliance, the NCAS then opens an official criminal complaint.

Advocates are also concerned about a gap in the education of health workers on cessation, and the lack of dedicated government resources toward public awareness, prevention, and cessation programmes. In the case of professional health education, support from the government (including the bodies that regulate curriculum) and professional associations would be helpful. In terms of awareness, in the past, efforts have mostly come as a result of law promulgation. For example, in 2001, the government published broad sheet in major newspapers about the new tobacco control regulations. But getting tobacco to stay on the agenda afterward has been a larger challenge, and it has not been government that is paying for these efforts. Finally, while there is a government-supported quit line for smokers, cessation efforts also need to be devolved to local health clinics for which there will need to be proper training of staff. For this type of effort, there will need to be support from the national health ministry, and the provincial and city health departments that will do most of the implementation.

### **Advertising, Promotion and Sponsorship**

Summary: *South Africa has very progressive policies on advertising, promotion and sponsorship, and successive amendments to the 1993 legislation have sought to close common loopholes exploited by the industry (e.g. coupons for promotions, use of misleading claims such as “mild,” etc.). There is a near complete ban on advertising, and the aspects that were especially exploited by the industry (e.g. point-of-sale) are being mostly regulated. Promotion and sponsorship is also almost completely banned with only a few remaining issues such as only limited restrictions on charitable contributions and other corporate social responsibility (CSR) strategies on the part of the industry.*

Even with a complete ban on advertising and promotion, the industry has been seeking cunning ways to circumvent the law. First, there has been considerable use of point-of-sale advertising to promote products. It has not been unusual to enter a supermarket in South Africa and see a wall of tobacco branding that is being defended by the industry as “point of sale” only, when in reality, it is a thinly-veiled marketing technique. The regulations will need to be revised to add clarity to the law and to remove any loopholes.

The industry has also been very aggressive about what it considers one-on-one communication with its customers, and has taken the issue to the judicial system. Examples of viral marketing techniques include the use of “smoking parties” for its customers where the industry defends its actions by claiming that it is communication between it and consenting adult consumers of its products. Again, the law clearly prohibits direct campaigns to consumers, but the tobacco industry wishes to overturn this component of the legislation, and is currently challenging it on legal grounds.

### **Packaging and Labeling**

*Summary: Packaging and labeling requirements are also very advanced in South Africa with major size, color and text warning requirements (FCTC-compliant). The existing packaging and labeling requirements are text-based and the ATSA team is seeking to give the Ministry of Health appropriate information to help move to regulating graphic labels within the intended spirit of the new legislation from 2008.*

Please see the discussion above for more detail about packaging and labeling.

### **Smoke-free Policies**

*Summary: Beginning in 1993, legislation has mandated many aspects of smoke-free places. While there has been major progress in this area, there are some outstanding issues that the tobacco control community would like to address in the short to medium term including designated smoking areas and poor interpretations of “partially-enclosed spaces.”*

South Africa has steadily moved to even more progressive policies, including, for example, no smoking in cars with children, or in outdoor places where people congregate. However, tobacco control advocates have noted some remaining issues. Advocates are seeking to eliminate designated smoking areas indoors, which are currently permitted by law. Designated smoking areas do not effectively protect workers and the public from passive smoking. There are pending new regulations which may address this issue.

Ultimately, in ideal circumstances, there would be no smoking indoors, in any partially-enclosed area, and in defined outdoor areas. Tobacco control advocates will continue to



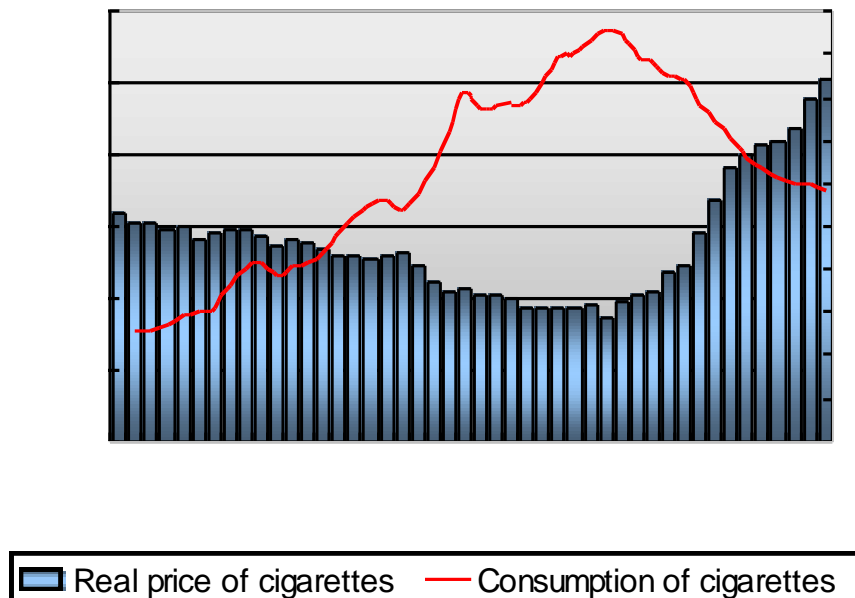
work toward this goal. This shift to total smoke-free is increasingly the norm across the world, and advocates aim for South Africa to move firmly in this direction.

## Taxation

Summary: *South Africa has been successfully using tobacco taxation as a deterrent to tobacco use for over a decade. However, because of inflation, economic growth and pricing tactics on the part of the industry, the tax strategy has lost some of its effectiveness. The ATSA team is seeking to re-introduce newly reconsidered taxation strategy to the Ministry of Finance and other key players – but accounting better for inflation, cost of living and pricing – as a tool for tobacco control.*

Between 1992 and 2008, the real (inflation-adjusted) price of cigarettes increased by 157%, real government revenues increased by 225% and cigarette consumption declined by 35%. Furthermore, many smokers have supported tax increases as it provides them with an added incentive to quit. The relationship between price and consumption is shown in Figure 1.

**Figure 1: Cigarette Price and Consumption in South Africa, 1992-2001**



Poorer smokers – who are traditionally less responsive to health education – are more likely to quit when prices increase. Between 1990 and 1995, spending by poorer households on cigarettes has decreased, while spending by the richest households has increased fractionally.

Despite the benefits, successive governments have been slow to tax tobacco more aggressively. Recent steep increases in the price of cigarettes were more a result of manufacturers driving up prices than of the state driving up taxation. Between 1990 and 2000, increases in taxes only accounted for 50% of the increase in real price; the other

half of the change in price was due to industry-imposed increases in price. The industry has been profiteering and its strategy seems to be to increase its profit margins at the cost of sales volumes.

This finding suggests that there is still much room for a stronger tobacco taxation policy in South Africa that will enhance government revenue and affect consumption. The NCAS has called on the government to take a close look at the pricing policies and profit margins of the manufacturer's and has asked for excise tax policy to be revisited. The industry continues to maintain that taxation will exacerbate smuggling, but there is no empirical evidence to support this assertion.

### **Tobacco Control Community**

- 1) Cancer Association of South Africa (CANSA) – is the main cancer NGO in South Africa. It has many aspects to its overall mandate, and tobacco control is explicitly one of them. It lends its lobbying support, and the support of its network of volunteers and members, to the tobacco control community (particularly the NCAS – see below). It also participates in the Tobacco Action Group, and helps to inform the direction of tobacco control in the country.
- 2) Heart and Stroke Foundation – South Africa (HSFSA) – is the principal heart and stroke organization in South Africa, and is linked in closely with regional and international heart and stroke organizations. It, too, has many aspects to its overall mandate, but is also very committed to tobacco control. Again, similar to CANSA, it has a very strong working relationship with the broader tobacco control community and frequently lends its lobbying and organizational support.
- 3) Medical Research Council – over the years, this organization has provided a great deal of evidence-based research about tobacco control to policy makers and the advocacy community. Currently, Prof. Priscilla Reddy is the Director of the Health Promotion Research and Development, and continues as she has for many years to be active in both generating evidence to support tobacco control and in advocacy itself.
- 4) National Council Against Smoking (NCAS) – engages in major tobacco control policy initiatives, and has led the ATSA team's efforts. It has been heavily involved in tobacco control nationally and internationally for over two decades. Its roles, among others, include lobbying, education, maintaining a quit-line, other cessation programs, and legal efforts. The organization also executes trainings for Environmental Health Practitioners on legislation and enforcement, and has been opening criminal dockets in order to get prosecutions for contraventions of the Act. Dr. Yussuf Saloojee is the Executive Director and has been working in the field for over three decades. He is also active in the field internationally. Peter Ucko is the Director and is a key player in the ongoing task of keeping the tobacco control community up-to-date on changes in legislation, and then seeking

to affect those possible outcomes, for example, by speaking at government hearings and providing press interviews and reports.

- 5) Tobacco Action Group (TAG) – is the umbrella organization of NGOs and other organizations participating in the tobacco control community (including the NCAS, CANSA and HSFA).
- 6) University of Cape Town – has helped to generate evidence-based research for policy makers and advocates. For example, Prof. Corné Van Walbeek, an economist in the Department of Economics, has played a very important role in providing academic evidence for taxation measures in tobacco control. Prof. Van Walbeek has also traveled widely in Africa to assist with other countries' taxation efforts. Evan Blecher, a graduate economist from UCT, is now on staff at the American Cancer Society in Atlanta, USA, and has been very active both in examining tobacco taxation, and working with countries seeking such policy changes.
- 7) University of Pretoria – has helped to generate evidence-based research for policy makers and advocates. For example, Dr. Lekan Ayo-Yusuf, a professor in the School of Dentistry, plays key role in the study of and fight against smokeless tobacco, among other important tobacco control efforts.