



**TOBACCO ADVERTISING,
PROMOTION AND SPONSORSHIP ACROSS
SOUTH AND SOUTH EAST ASIA -
*CHALLENGES AND OPPORTUNITIES***

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CMS communication



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Contents

	Page No.
List of Tables and Figures	4
List of Boxes	5
List of Abbreviations	6
Acknowledgements	7
Executive Summary	9
 Chapter 1: Background of the Study	
1.1 Context	11
1.2 Objectives	11
1.3 Geographical Scope of the Project	12
1.4 Methodology	12
1.5 Sources of Information	12
1.6 Critical Indicators	13
1.7 Scope of the Study	13
1.8 Limitations of the study	13
 Chapter 2: Analysis and Results	
2.1 Status and Scope of Domestic Taps Policies	14
2.1.1 Legislation on TAPS	14
2.1.2 Regulated Forms of Domestic TAPS & Platforms	16
2.1.3 Unregulated Forms of Domestic TAPS & Platforms	18
2.1.4 Responsible Entities	20
2.1.5 Penalties	21
2.1.6 FCTC Compliance of Domestic TAPS Policies	22
2.2 Implementation and Enforcement Mechanisms	22
2.2.1 Implementation and Enforcement of TAPS	22
2.2.2 Existing Monitoring Mechanisms	24
2.2.3 Mechanisms for Reporting TAPS Violations	25
2.2.4 Resource Allocations for Implementation	26
2.2.5 Reported Forms of Current TAPS	26
2.2.6 Compliance Scores	30
2.3 Cross Border TAPS	31
2.3.1 Existing Cross Border TAPS Regulations	31
2.3.2 Reported Cross Border TAPS	32
2.3.3 FCTC Compliance of Cross Border TAPS Policies	35
2.4 Challenges and Opportunitis in Regulating Taps Across South & South East Asia	36
2.4.1 Challenges to Regulating TAPS	36
2.4.2 Opportunities for Regulating TAPS	37
 Chapter 3: Summary and Next Steps	
3.1 Summary of Key Findings	39
3.2 Next Steps	39
Select References	41
Glossary	42
Annexures	
Annexure-1: FCTC Article 13 Compliance Deadline	46
Annexure-2: List of Study Informants	47
Annexure 3: Photo Credits	48

List of Tables and Figures

Table 1: Status of Legislation on Domestic TAPS	14
Table 2: Responsible Entities for Implementation of TAPS Regulation	20
Table 3: FCTC Compliance Categories	22
Table 4: FCTC Compliance of Domestic TAPS Policies	22
Table 5: Violation Reporting Mechanisms	25
Table 6: Compliance Grades	30
Table 7: Compliance Scores	30
Figure 1: Delhi Consultation	13
Figure 2: POS Display in Thailand - Before Ban and After Ban	15
Figure 3: Bidi Advertising, Dhaka, Bangladesh	16
Figure 4: Brand Stretching on Mumbai's Government Transport System, India	17
Figure 5: Product Display Behind Cashier's Desk at Male Retail Store, Maldives	17
Figure 6: Promotional News: John Player's Ad in Sri Lankan News Report	18
Figure 7: Taking Kids for a Ride: Tobacco Promotion on Go Kart, Thailand	18
Figure 8: Marlboro POS Notice, Bangladesh	18
Figure 9: Stretching POS Restrictions, Goa, India	19
Figure 10: Mobile Advertising on Bikes in Jakarta, Indonesia	19
Figure 11: Product Display at Malls, Male, Maldives	19
Figure 12: Over Sized Ad in Pakistan Daily	19
Figure 13: Stretching POS Price Communication, Sri Lanka	19
Figure 14: Thai Tobacco Monopoly Sponsors Environmental Camps for School Children	20
Figure 15: Fines for First Time Tobacco Advertising Offence (in US Dollars)	21
Figure 16: Resource Allocation on Tobacco Control	26
Figure 17: Tobacco Promotion on Key Chain & Wallet Bangladesh	27
Figure 18: Tobacco Promotion on Kites, India	27
Figure 19: Youth Targeted Bill Board, Jakarta, Indonesia	28
Figure 20: Sponsorship of Youth Jazz Festival, Jakarta, Indonesia	28
Figure 21: Product Information Posters Retail Stores, Maldives	28
Figure 22: Tobacco Labels on Hospitality Wares, Myanmar	29
Figure 23: Tobacco Billboards in Thamel, Nepal	29
Figure 24: CSR Promotions in Sri Lankan Newspaper	29
Figure 25: Thai Tobacco Monopoly sponsored Children's Play Ground	30
Figure 26: Malaysian Marlboro Motor Racing Ad in Jakarta, Indonesia	33
Figure 27: Tobacco Promotion in Sri Lankan Airline Magazine	33
Figure 28: Promotion on Airport Trolleys, Yangon Airport, Myanmar	34
Figure 29: B & H Promotion at Government Duty Free Shop at Delhi airport, India	34
Figure 30: Banned Power Walls at Thailand Airport Duty Free Shop	34
Figure 31: Special Edition Pack of Indian cigarette	34
Figure 32: Promotion on Apparel, Thailand & India	35
Figure 33. Promotion of International CSR Partnerships by Pakistan Tobacco Company in Pakistan Daily	35

List of Boxes

Box 1	Open Doors for Tobacco Promotion in Indonesia	19
Box 2	Systematic Implementation: Bangladesh Way	23
Box 3	Violations to Action in Pakistan	23
Box 4	Hesitant Enforcement: Sri Lanka’s Challenge	25
Box 5	Surrogate Sponsorships: Wolf in Sheep’s Clothing	27
Box 6	Circumventing Laws under Corporate Garb	28
Box 7	Unholy Nexus: State Patronage of CSR	29
Box 8	Look Who is Advocating Cross-Border TAPS Bans?	30
Box 9	Riding the Film Waves, Gliding over the Borders	32

List of Abbreviations

ASCI	Advertising Standards Council of India
ASH	Action on Smoking and Health
BATA	Bangladesh Anti Tobacco Alliance
B & H	Benson & Hedges
CBA	Cross Border Advertising
CD	Compact Disc
COP	Conference of Parties
COTPA	Cigarettes and Other Tobacco Products Act, 2003
CSR	Corporate Social Responsibility
CTC	Coalition for Tobacco Control
DMS	Department of Medical Services
DVD	Digital Video/Versatile Disc
FCTC	Framework Convention on Tobacco Control
ITC	Indian Tobacco Company
ITCC	Institute of Tobacco Consumption Control
NATA	National Authority on Tobacco and Alcohol
NATC	National Alliance for Tobacco Control
NGO	Non Governmental Organization
PEMRA	Pakistan Electronic Media Regulatory Authority
PHFI	Public Health Foundation of India
POS	Points-of-sale
SAARC	South Asian Association for Regional Cooperation
SEAR	South East Asia Region
TAPS	Tobacco Advertising, Promotion and Sponsorship
WHO	World Health Organization
WHO SEARO	World Health Organization South East Asia Regional Office

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Executive Summary

This joint research study conducted by the Centre for Media Studies¹ and HealthBridge² sought to research, review, and identify legislative and implementation status with regard to Tobacco Advertising, Promotion and Sponsorship (TAPS) regulations in South and South East Asian countries. This study was the first of its kind, striving to identify existing forms of TAPS and related regulations, cross-border implications of TAPS and the level of compliance existing TAPS measures with the Framework Convention on Tobacco Control (FCTC), and challenges and opportunities for future action. This situational analysis also laid the foundation for future research and TAPS control policies in the South and South East Asia region.

The study included 10 countries in South & South East Asia: Bangladesh, Bhutan, India, Indonesia, Maldives, Myanmar, Nepal, Pakistan, Sri Lanka, and Thailand. In addition to desk research, the research team gathered information from key informants in the study countries using qualitative questionnaires and interviews (some in person and others by telephone). Using FCTC Article 13 guidelines as the frame of reference, the team collated, analyzed, and presented the information that it collected from the variety of sources.

The study's findings indicated that four of the study countries (Bhutan, Maldives, Nepal, and Indonesia) are yet to enact legislation regulating TAPS, while the remaining six (Bangladesh, India, Myanmar, Pakistan, Sri Lanka, and Thailand) currently have some form of legislation in place. While direct advertising - except for at points-of-sale - is on the decline in the majority of the countries which currently have tobacco advertising laws, indirect advertising - in particular brand stretching - remains a challenge for regulators and enforcers. Surrogate advertising and

¹ Centre for Media Studies (CMS) is an independent, not-for-profit, multi-disciplinary development research facilitative body. The Centre has been set up with the objective of tapping and integrating various sources of information, analysis, and research leading towards more informed decision-making. Please see more details of CMS work listed at www.cmsindia.org

² HealthBridge works with partners world-wide to improve health and health equity through research, policy and action. HealthBridge is a non-profit, non-governmental organization that aims to identify, understand, and bridge gaps in public health, including gaps between (i) needs and technologies; (ii) evidence and policies; and (iii) policies and practice. Its India programme, in particular, focuses on advancing tobacco control policies regionally and globally. More details about its programmes could be found at: www.healthbridge.ca

sponsorship are common across all of the study countries and therefore constitute key areas of concern.

The study identified product placement in movies and Corporate Social Responsibility (CSR) promotions as the emerging bastions of tobacco sponsorship across the study region, more so in countries that have banned TAPS in mainline media. It was noted that India and Sri Lanka disallow the former and require the masking of any tobacco use in movies. The Sri Lankan law, in particular, has the potential to curb CSR promotions.

As regards the monitoring and enforcement mechanisms established by the countries, the research team observed that, in most cases, such mechanisms were in their formative stages; where present, they lacked accessibility, efficacy, and resources. Nevertheless, Bangladesh and Sri Lanka provided some early best practices in monitoring and enforcement systems and procedures.

The laws of most countries did not address the issue of cross-border TAPS effectively. The laws of some countries (Sri Lanka & Thailand), while prohibiting TAPS in domestic media platforms (such as films, video clips and music), explicitly exempted inflowing TAPS from other territories that were not meant exclusively for their country. Satellite television, films, disks, personal apparel, tobacco packets, airport duty free shops, and the internet were identified as key cross-border TAPS platforms that are yet to be recognized in regulatory efforts, except to certain extent in Myanmar.

In order to comply with FCTC requirements and deadlines, countries in the study region need to urgently review their laws with a view to prohibit all forms of domestic and cross-border TAPS originating within their territory. The countries need to recognise that inter-sectoral engagement and the involvement of the relevant wings of the government – including the Ministries of Communication and Broadcasting that have direct control over the media and Customs Department for the cross-border movement of TAPS materials - is necessary for effective enforcement. The regional offices of WHO, SAARC, and ASEAN have a greater role to play in monitoring, reporting, and facilitating cross-border co-operation to regulate TAPS across the borders. Cross-border TAPS issues need more discussion within a robust COP mechanism to facilitate the exchange of information and co-ordination.



Background of the Study

1.1 Context

There is conclusive evidence indicating that tobacco advertising and promotion contribute to increases in tobacco consumption. Research also confirms that the regulation of tobacco advertising, promotion, and sponsorship is a key factor for reducing tobacco use and uptake, thus assisting in curbing the tobacco epidemic.³

Article 13 of the WHO Framework Convention on Tobacco Control (FCTC) obligates Parties to the treaty to implement a comprehensive ban on all Tobacco Advertising, Promotions and Sponsorship (TAPS), including Cross-Border Advertising (CBA) originating within their respective territories, within five years of entry into force of the treaty for each Party. The Guidelines on the Implementation of Article 13 developed by the third Conference of the Parties (COP-3) further elaborates the best practices to eliminate TAPS at both domestic and international levels. Being early ratifiers of the treaty, most countries in South and South East Asia are required to meet their obligations under this Article by 27 February 2010.

In keeping with their FCTC obligations, some of the Governments in South and South East Asia have already enacted or amended their laws to ban various forms of TAPS in certain media. However, most of these countries are yet to enact laws and mechanisms prohibiting TAPS

comprehensively and as envisaged under FCTC - covering all media platforms, diverse and subtle forms of promotion, and responsible entities. The cross-border effects of TAPS originating in each territory, and their regulation, are yet to gain attention in most jurisdictions.

The global nature of media presents unique challenges to creating environments that block the promotion, glamorization, or display of tobacco use. Nevertheless, media ownership patterns and up-linking systems in the region are mostly managed by limited number of firms, which in turn presents unique opportunities to explore cross-border controls on TAPS in Asia.

This joint research conducted by the Centre for Media Studies and HealthBridge sought to research, review, and identify legislative and implementation status with regard to TAPS in South and South East Asian countries, existing forms of TAPS, their cross-border implications, and the way forward to control them for the benefit of the populations in this region and beyond.

1.2 Objectives

As evident from the previous section, this study was first of its kind in striving to identify the compliance of TAPS regulations in the study countries with the FCTC and the challenges and opportunities thereof.

More specifically, the objectives of the study were:

1. To examine the nature and extent of TAPS in South & South East Asia, including media estimates and projections to the extent possible;
2. To review the regulations for TAPS in South &

³ National Cancer Institute (US Department of Health and Human Services, National Institutes of Health) Monograph No. 19, 2008, "The Role of the Media in Promoting and Reducing Tobacco Use", Edited by Ronald M. Davis, Elizabeth A. Gilpin, Barbara Loken, K. Viswanath, Melanie A. Wakefield et. al.

- South East Asian countries, with special focus on cross border promotions originating from or entering each country;
3. To identify challenges to regulating TAPS across the borders in South & South East Asia; and
 4. To explore existing and potential bilateral and regional mechanisms, fora, platforms, and resources to monitor and regulate cross border TAPS.

1.3 Geographical Scope of the Project

The study focused on 10 countries in South & South East Asia: Bangladesh, Bhutan, India, Indonesia, Maldives, Myanmar, Nepal, Pakistan, Sri Lanka, and Thailand.

1.4 Methodology

The study was primarily a desk research initiative, including literature and legislative review and the examination of Internet resources. The research team also used qualitative questionnaires to collect information directly; some interviews were conducted in person while others were completed by telephone. The research steps included:

1. **Development of Conceptual Framework & Questionnaires:** The research team developed a conceptual framework that reflected the broad study parameters and elaborated the scope of each parameter. Based on the conceptual framework, the team then developed open-ended questionnaires for each category of respondents.
2. **Identification of key study informants:** The research team prepared a list of study stakeholders, categorized them, and then identified potential respondents by stakeholder category in each country.
3. **Data Collection:**
 - a. The research team collected data using the questionnaires.
 - b. Key informant interviews were conducted in each country on selected elements of the study.
 - c. A round table discussion was organized in New Delhi for key Indian informants.
 - d. The research team collected and reviewed legislative documents and implementation reports.
 - e. The team also searched the internet and reviewed and analyzed all information it

collected on TAPS in the region from credible sources;

4. **Data Analysis:** The research team analyzed the information it collected from the above-listed sources.
5. **Preparation of Report:** The team prepared the research report against the identified indicators for the study.

1.5 Sources of Information

The research team identified a broad range of key stakeholders and potential respondents for the study, including civil society organizations, NGOs, Ministries of Health, Ministries of Information and Broadcasting, Ministries of Communication, media organizations, associations of broadcasters, and advertisers in the study countries. Regional Fora with current involvement or potential involvement in TAPS regulations were also identified and approached as sources of information. In addition, through the snowballing technique, key informants identified by preliminary respondents from the study countries were also contacted to elicit further information.

The study team developed open-ended qualitative questionnaires for each stakeholder category that included critical questions regarding the status of legislation and implementation with regard to TAPS and cross-border TAPS. Personal and telephone interviews and email correspondence with key informants enriched the team's understanding of the systems currently in place in each country. Respondent information is enclosed in Annexure-I.

The research team's analysis of the sector-wise responses indicated that the NGO sector, followed by governments, provided the most substantive responses; on the other hand, there was almost no response from the media sector except for Prasar Bharati (national media regulator) in India. The governments of Bhutan, India, Maldives, Myanmar, and Pakistan provided critical input. Unfortunately, despite repeated efforts, this study could not elicit response from the governments of Indonesia, Bangladesh, Thailand, Sri Lanka, and Nepal. NGOs from each study country where contacts were available responded with their perspectives. There were no NGO respondents available from Bhutan, Maldives, or Myanmar. WHO-SEARO actively contributed to the study; representatives of some of the other regional



Fig. 1: Delhi Consultation

organizations of relevance to TAPS regulation cited limited knowledge on the subject and expressed their inability to contribute to the study.

The presence of study researchers in India facilitated additional access and opportunities to gather in-depth data regarding TAPS implementation and cross-border challenges specific to that country. Additionally, a consultation was held in Delhi for key stakeholders implementing, monitoring, and regulating TAPS in India to seek their perspectives and inputs regarding the issues under discussion. Internet resources were tapped to supplement information for the study.

1.6 Critical Indicators

Using FCTC Article 13 Guidelines as the frame of reference, information was collected from multiple sources, collated and analyzed; the results are presented in this report with supporting tables and graphs summarizing the status of each country on critical indicators as follows:

- Status of law/ stage of development
- Forms of TAPS prohibited
- Forms of TAPS exempted/unregulated
- Mechanisms for implementation of the law
- Law enforcement mechanisms
- Cross-border TAPS – prevalent forms
- Cross-border TAPS policies
- FCTC compliance: domestic and cross-border TAPS policies

1.7 Scope of the Study

The study has managed to present as comprehensive a picture as is possible with reference to the study indicators based on the responses from Government and Non Governmental in-country sources. Findings of the study could stimulate policy action and improve implementation of TAPS within and across the study countries. This study also provides a rich ground for future research and policies.

1.8 Limitations of the Study

This research study was based on the information received and gathered electronically through different sources and key informants from study countries. The research team's experience shows that electronic responses tend to be time-consuming and to some extent incomplete. Among the key informants contacted, response rates were generally poor among the governments and nearly nil from media agencies. In some cases, the information made available was incomplete and repeated efforts to elicit clarifications or more information did not succeed, posing challenges for the triangulation of data for validation. The perspectives of media stakeholders were conspicuous by their absence. While every effort was taken to verify information through multiple sources, gaps between reported responses and actual scenarios must be factored in when considering the study's findings.

Analysis and Results

On the basis of the data collected from different sources related to the indicators identified in the previous chapter, this chapter provides a review and analysis of the key findings. This chapter presents the review under the following sections:

1. **Status and Scope of Domestic TAPS Policies:** this section provides information on the law and regulations in each study country, the forms of domestic TAPS, platforms and responsible entities regulated, and the level of compliance of the domestic policies with the FCTC.
2. **Implementation and Enforcement Mechanisms:** this section provides a brief description of the implementation, monitoring and enforcement processes of existing laws and the status of law implementation.
3. **Cross-border TAPS:** this section addresses information on cross-border TAPS throughout the region, regulatory initiatives undertaken by participating countries, and their compliance with the FCTC. It also sheds light on emerging issues, challenges, and opportunities pertaining to TAPS.
4. **Challenges and Opportunities for Regulating TAPS:** this section identifies barriers and stepping stones to TAPS control within countries and across borders.

2.1 Status and Scope of Domestic Taps Policies

The existence of legislation for TAPS regulation being the essential first step in reducing TAPS, this sub-section attempts to analyze the current legislative status and its implications for practice in the study countries.

2.1.1 Legislation on TAPS

Most of the study countries have enacted tobacco control legislation or initiated legislative processes in the past 5 years. Some of the countries that are yet to enact relevant laws currently have executive regulations at national or sub national levels that restrict tobacco advertising in select media. The following table summarizes information on the status of TAPS laws in the study countries. Additional information is provided below the table.

Table. 1: Status of Legislation on Domestic TAPS

Countries	Status of legislation
Bangladesh	Law prohibiting advertising and sponsorship of smoking products in mainline media, except at point-of-sale (POS), enacted in 2005.
Bhutan	No law yet. Draft Law on TAPS is pending before the Parliament. Executive order prohibiting TAPS exists.
India	Law prohibiting direct and indirect advertising in all major media, except at points-of-sale and on tobacco packages, enacted in 2003.
Indonesia	No law yet. Government order restricting the timing and content of advertising in electronic media exists.
Maldives	Executive regulations regarding TAPS exist, but under the country's new Constitution they are due to be given legal status through legislation.
Myanmar	Law prohibiting tobacco advertising in all forms enacted in 2006.
Nepal	Draft law prepared and awaiting Parliamentary consideration. Royal decree prohibited tobacco advertising in electronic media in 1998.
Pakistan	Law of 2002 restricts tobacco advertising in major media in terms of size, content and timing.
Sri Lanka	Law prohibiting TAPS enacted in 2006.
Thailand	Comprehensive legislation banning TAPS, including display and promotions at points-of-sale, exists.

Bangladesh: The “Smoking and Tobacco Usage (Control) Act, 2005” and its rules prohibit advertising and sponsorship of smoked tobacco products, such as cigarettes, bidis, cheroot, cigar & mixtures used in pipe. Advertising of non-smoking forms of tobacco is not covered under the current Bangladesh law.

Bhutan is yet to ban TAPS by law. The draft Tobacco Control Act 2008, which includes TAPS regulations, is awaiting passage in the parliament. The draft Bill aimed at creating tobacco-free Bhutan recommends prohibiting all major forms of direct and indirect TAPS across diverse media. Currently, the country has a few royal decrees through which tobacco production and use are banned in the country.

India’s tobacco control law, namely the “Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003” (COTPA) is administered by the Ministry of Health and Family Welfare. It prohibits direct and indirect advertising of all tobacco products but has exempted advertising at points-of-sale and on tobacco packages. Separately, the Advertising Code under the Cable Television Networks Rules, administered by the Ministry of Information & Broadcasting, prohibited all direct and indirect promotion of tobacco production, sale, and consumption in 2000. However, its recent notification grants brand extensions with certain caveats.

Indonesia is yet to have TAPS legislation and it is yet to accede to the FCTC. At present, there is a regulation which restricts the timing and content (directed to youth) of TAPS in the electronic media. There are ongoing civil society efforts to table a draft law prohibiting TAPS in the Parliament.

Maldives’ former constitution gave government agencies the mandate to issue regulations/ standards regarding TAPS. Accordingly, an executive order prohibited tobacco advertising in Government media in 1984 and a circular from Ministry of Health and Family welfare prohibited all forms of TAPS in 1995. Under its new constitution that was adopted in 2008, all such regulations are to be given legal status for enforcement by an act of Parliament. Pending such action, an enabling law that gives interim legal status to all loose regulations has been enacted; it expires in August 2009. Maldives would therefore need to legislate TAPS regulations under the National Health Act

or the Act on Tobacco Control by August 2009 for them to be enforceable.

Myanmar’s “The Control of Smoking and Consumption of Tobacco Products Law” of 2006 regulates all forms of direct, and several forms of indirect, tobacco advertising and sponsorship. The law enjoins that there should be counter-communication that sensitizes public about adverse health effects of tobacco smoking and consumption.

Nepal is yet to ban TAPS by law. A draft law prepared in 2006 is awaiting the Parliament’s consideration. Meanwhile, a Government decree prohibited tobacco advertising in the electronic media in 1998. In 2006, the Supreme Court of Nepal ordered the Government to prohibit tobacco advertising in print media.

Pakistan’s “Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002” developed Guidelines restricting tobacco advertising in various media in terms of timing, location, content, and size. The country is yet to require a comprehensive ban on all forms of TAPS. Instead, it has been attempting to increasingly extend the restrictions on tobacco advertising to various media.



Fig. 2: POS Display in Thailand

Sri Lanka has enacted “The National Authority on Tobacco and Alcohol Act, No. 27 of 2006” that prohibits most forms of direct and indirect TAPS. Interestingly, it is the only law in the region that regulates the promotion of both tobacco and alcohol through a single legislation.

Thailand’s “Tobacco Products Control Act, 1992” prohibits TAPS in a wide range of forms and platforms, including most indirect forms. The country reviews the law periodically on the basis of the information gathered at the ground level on its compliance and effectiveness and modifies it for better results. The latest revision extended the prohibition to advertising and display of tobacco products at the points-of-sale - the only country in WHO-SEARO region to have attempted this by law.

The study countries present a diverse scenario with regard to the status and scope of TAPS legislation. While six of the countries have laws (with varying levels of comprehensiveness), four are yet to enact legislation and currently restrict TAPS using executive orders. Among those with legislation, Thailand seems to have the most comprehensive ban while Pakistan has the least comprehensive restrictions. The population in the region uses a wide variety of tobacco products; all countries but Bangladesh regulate TAPS of all tobacco products. Countries with executive orders are also spread across a broad spectrum: Bhutan’s orders have banned virtually all TAPS in the country, while Indonesia’s regulations merely restrict advertising on television within certain hours.

Notably, most of these countries have developed or amended their laws progressively in the last 5 years. The development and adoption of the FCTC in the early years of this decade have been cited as a stimulus for this legislative progress.

2.1.2 Regulated Forms of Domestic TAPS & Platforms

This sub section primarily explores the diverse forms of TAPS and the platforms (used for their promotion) that have been regulated by the study countries through legislative or other administrative measures. Some of these regulations have implications for cross-border TAPS regulations (explained in detail under Sub Section 2.3).

Bangladesh: The existing law bans direct advertisements and sponsorships of the smoking forms of tobacco in all major media, except at points-of-sale. It categorically bans advertising in any form in the print and electronic media;

this includes billboards and handbills. It specifically prohibits advertising of tobacco brand names, logos, trademarks, and signs on any printed document. The law also prohibits certain forms of indirect advertising, such as the free distribution of tobacco products, tobacco-sponsored events, trademark and logo advertising, scholarships, gifts, and prizes. The law thus covers platforms including print and electronic media, theatres, films, billboards, emails, Internet, and automatic vending machines.



Fig. 3: Bidi Advertising, Dhaka, Bangladesh

Bhutan: The draft law recommends banning all advertisement of tobacco or tobacco products, in the print media, radio, films, television, video tapes, Internet, and outside on billboards and transport vehicles. It further suggests banning the free distribution of tobacco products, use of tobacco brand names, and trademarks. The country has neither national nor international tobacco companies nor marketers operating within its jurisdiction. It has four radio broadcasters, four newspaper firms, one national television channel, and numerous private film companies, all of which have been sensitized against TAPS promotion. At the moment, as a policy, the government does not allow any media-related advertisement and sponsorship of tobacco products.

India: The tobacco control legislation (COTPA 2003), along with its rules, ban all forms of direct and indirect advertising in all mainstream media (electronic and print media, and in the outdoors), except at POS. Besides direct advertising, this includes free sampling, trademark diversification, brand stretching, brand sharing, sponsorships, scholarships, gifts, and prizes. Rules under the law, which are currently stayed in the court, restrict

advertising at points of sale to the mere listing of the type of tobacco products available along with a health warning. It also prohibits the display of tobacco products that permit visibility and access to minors and in the vicinity of educational institutions. The Indian law covers platforms ranging from handbills to billboards and videotapes. In 2005, it further pioneered the outlaw of the display of tobacco products and their use in movies and television programmes; this ban has recently been overturned by the Delhi High Court.

All the same, rules under the Cable Television Act of Information and Broadcasting Ministry that had originally banned all direct and indirect tobacco advertising in cable channels, have recently been watered down, to allow brand extensions that do not display tobacco products or their associations. This presents a contradictory legislative environment for tobacco-related brand stretching in the country, wherein COTPA has completely outlawed it, while Cable Television Act permits it with certain caveats.



Fig. 4: Brand Stretching on Mumbai's Government Transport System, India

Indonesia: In the absence of laws, a Government regulation restricts direct tobacco advertising on television between 5 am and 9.30 pm. All other forms of advertising, promotion, and sponsorship, except free sampling, are permitted for tobacco producers and importers. Cigarette packs, brand names, smoking and words associated with children, teenagers and pregnant women are, however, disallowed in the advertisements.

Maldives: Executive regulations have prohibited TAPS in most forms and platforms.

Myanmar: The Myanmar law is very comprehensive and regulates TAPS in all forms of media. It bans not only direct advertising but also specifically bans tobacco sponsorship and publicizing by any other means. Further, it bans the sale



Fig. 5: Product Display Behind Cashier's Desk at Male Retail Store, Maldives

of toys, confectioneries in the form of tobacco products, or tobacco labels on any goods. Myanmar law is unique in venturing to prohibit all promotional descriptions, including in newspapers (as in Sri Lankan news clipping in Figure 6 below) journals, and magazines, high-technology mass media channels, and tobacco branding on personal goods.

Nepal: Tobacco advertising in television and radio is prohibited in Nepal. It is reported that some of the districts in the country has also banned tobacco billboards.

Pakistan: Tobacco advertising on television channels is allowed only in the wee hours of the morning, between 3 & 4 am, accompanied by a health warning. As per the guidelines under the Pakistani tobacco control law, advertisements on various platforms such as magazines, billboards, newspapers, and at shops are restricted in terms of size, location, and target groups. The guidelines have outlawed incremental advertising of tobacco, such as smoking in movies, dramas and TV programmes, banners, billboards, and other paraphernalia displayed during sports events and sports coverage. Engaging sports stars and young artists in tobacco advertising is prohibited; the law stipulates that such "promoters" must be over 40 years of age.

Sri Lanka: The National Authority on Tobacco and Alcohol Act, No. 27 of 2006, prohibits tobacco advertising (Section 35), sponsorships (Section 36), and the free distribution of tobacco products (Section 37) in all major forms of media. Under this law, all forms of direct and most forms of indirect TAPS, with the exception of communication at points-of-sale, are prohibited. It bans tobacco advertisement using signs, symbols, brand names,

trademarks associated with tobacco products, and names of manufacturers. It also bans tobacco industry sponsorship of any educational, cultural, social, or sporting organization, activity, or event. The Sri Lankan law is unique in venturing further and providing the scope to regulate the corporate social responsibility activities of tobacco companies by prohibiting the promotion of any financial or other support given to such activities.



Fig. 6: Promotional News: John Player's Ad in Sri Lankan News Report

Thailand: The Tobacco Product Control Act, 1992, bans all forms of direct and indirect tobacco advertising in the print and electronic media and at points of purchase. The ban outlaws brand stretching, brand sharing, trademark diversification, and all surrogate advertising (any action enabling people to identify the advertised name and logo with tobacco products). Tobacco sponsorship of sports and services and various forms of promotion including gifts, discounts, coupons, free sampling, tobacco imitations, and free distribution are also prohibited. Since 2005, a complete ban on the retail display of tobacco products was instituted, resulting in 500,000 retail outlets throughout the country being prohibited from displaying cigarettes. Thailand requires non-live domestic programmes on television to mask any display of tobacco products or their use.



Fig. 7: Taking Kids for a Ride: Tobacco Promotion on Go Kart, Thailand

The study countries vary widely in the forms of TAPS and platforms regulated within their jurisdictions. All but Thailand allow product display and some form of tobacco advertising at points-of-sale. Among the 10 countries, the Thai law seems to have covered the most forms of TAPS and platforms including at points-of-sale, followed by Sri Lanka. At the other end of the spectrum are Nepal, which has regulated TAPS in just the electronic media, and Indonesia, which restricts merely television-based advertising during certain hours.

The past five years have witnessed much “innovation” in TAPS regulations in the region. The countries in the region stand out globally for their pioneering efforts to extend the TAPS regulations to newer forms and emerging platforms. India was the first country in the world to venture to completely prohibit TAPS in movies and television programmes in 2005. Myanmar has banned advertising over satellite television and promotional reports in newspapers and magazines since 2006. Sri Lanka is among the few that have attempted to curb corporate social responsibility promotions. Thailand was among the first three countries in the world to ban tobacco display and promotion at points of purchase in 2005.

2.1.3 Unregulated Forms of Domestic TAPS & Platforms

An analysis of the information gathered from the countries demonstrates that some forms of TAPS and platforms are yet to be regulated by law or other measures in the study countries. A country wise listing is as follows:

Bangladesh: Advertising of non-smoking forms of tobacco in any media is not regulated in the country. Advertising at points-of-sale is permitted, while promotional discounts and brand stretching are not explicitly prohibited.



Fig. 8: Marlboro POS Notice, Bangladesh

India: Advertising at points-of-sale and on tobacco packages are explicitly exempted from the scope of the tobacco control law. Cable Television Rules permit tobacco-related brand extensions when they are not displaying tobacco products or associations thereof. Tobacco product displays and advertising at points-of-sale is still not completely prohibited, but restricted to merely listing the type of products available for sale on surfaces no more than 30 by 60 cm.



Fig. 9: Stretching POS Restrictions, Goa, India

Indonesia: Except for the restriction on tobacco advertising on television to certain hours, all other media avenues are open to TAPS, including the outdoors, and printed and electronic media.

Box: 1

Open Doors for Tobacco Promotion in Indonesia

The annual report of Indonesia's cigarette major reads: "Indonesian (tobacco) companies have almost total freedom to advertise their products in any format and through almost any communication vehicle."...

Source: Sampoerna, 1995 Annual report



Fig. 10: Mobile Advertising on Bikes in Jakarta, Indonesia

Maldives: Tobacco product display at Points-of-purchase is unregulated in Maldives.



Fig. 11: Product Display at Malls, Male, Maldives

Myanmar: Indirect forms of advertising such as brand stretching, trade mark diversification, and promotional discounts do not find reflection in Myanmar law.

Nepal: All media and forms except advertising on radio and television remain unregulated vis a vis TAPS in the country.

Pakistan: The TAPS prohibitions based on timings, size, location, and target groups allow significant room for advertisements and sponsorship of tobacco products across platforms within the applicable restrictions. For instance, the existing law permits billboards not exceeding 1 square meter, advertisements up to A4 size in magazines and of one square inch in newspapers, free sampling other than at public events and educational institutions, and tobacco products as gifts in contests promoted other than through radio and television.

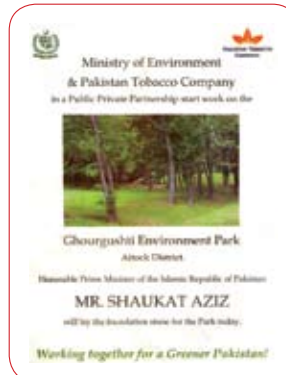


Fig. 12: Over Sized Ad in Pakistan Daily



Fig. 13: Stretching POS Price Communication, Sri Lanka

Sri Lanka: The country's current law allows price lists by product at points-of-sale.

Thailand: Promotion of Corporate Social Responsibility activities of tobacco companies are not yet prohibited in the country.



Fig. 14: Thai Tobacco Monopoly Sponsors Environmental Camps for School Children

Not surprisingly, existing TAPS in the study countries coincide largely with the unregulated forms and platforms of promotion (at POS in Bangladesh, India, and Sri Lanka; newsprint in Pakistan; billboards in Indonesia; CSR in Thailand). The tobacco companies appear to be shifting their marketing focus and advertising expenditures to avenues that are beyond the reach of existing laws. This indicates that partial bans limited to certain forms of TAPS or on certain platforms or restricting TAPS of a certain form or on platforms in terms of size, location, time, or target group clearly do not work in reducing exposure to tobacco advertising. It further points to the need for regulations that comprehensively ban TAPS of all forms across all platforms and covering all responsible entities.

2.1.4 Responsible Entities

Responsible entities comprise all those in the marketing chain responsible for TAPS and therefore those who are in a position of responsibility to implement regulations controlling TAPS. This includes, but is not limited to, tobacco companies, advertisers, media agencies, content developers, service providers, event organizers, telecommunication companies, and models who take part in promotions. As Table 2 shows, a review of existing legislation in the study countries reveals that, more or less, all of the countries which have tobacco control laws that cover TAPS (existing and enacted or draft), address responsible entities.

The laws of study countries hold responsible a host of entities within the tobacco industry, media and communication sector, distribution and support service firms, and the beneficiaries of industry sponsorship or payments – sometimes right up to the models who take part in promotions. FCTC Article 13 Guidelines suggest that TAPS laws cover as many responsible entities as are reasonably involved in TAPS and make them liable to the extent proportional to their level of control, responsibility, and commercial benefit. The study countries could do better in systematically involving all possible entities responsible for compliance of their TAPS laws.

Table 2: Responsible Entities for Implementation of TAPS Regulation

	Tobacco industry	Communication industry	Distribution firms	Support services	Scholarship beneficiaries
Bangladesh	Cigarette companies	Advertisers, Media agencies & publishers, Video & filmmakers, Theater owners	Video distributors	Video distributors	Sponsorship seekers, Tournament hosts
Bhutan	Tobacco manufacturers, distributors, exporters, importers and retailers	Advertising agencies Media owners Publishers, Internet hosts, Film producers	Video & film shop owners	Display platform owners, Event managers	Educational cultural social & sporting organizations
India	Tobacco producers, distributors, suppliers and sellers	Media owners, Film & video makers, Advertising agencies	Film and video sellers	Platform owners, Models	Sponsorship seekers
Maldives	Retailers		Import firms		
Myanmar	Tobacco companies	Advertisers, Media agencies, Publishers	Video & film display firms	Content writers, Event managers	Sponsorship seekers
Pakistan	Tobacco companies	Media owners, Film owners			
Sri Lanka	Tobacco manufacturers	Film makers, Publishers, Media agencies	Film distributors		Sponsorship beneficiaries
Thailand	Tobacco manufacturers, importers, and distributors	Publishers, Media agencies		Service providers	Show hosts

2.1.5 Penalties

The study countries with tobacco control laws or draft laws include varying penalties for persons, agencies, or organizations violating the law. Such penalties are primarily fines or imprisonment. The country-wise penalties mentioned in the laws are noted hereunder:

Bangladesh: If any person contravenes the TAPS provisions in the law, he/she could be punished with imprisonment up to three months and/or with fines up to 1000 Taka (15 US\$). TAPS offences are cognizable, bailable, and triable by the Magistrate of any court upon written complaint by an authorized officer.

Bhutan: All advertising materials contravening the proposed law are to be confiscated and fines equivalent to the prescribed fine or the value of the material (whichever is higher) are to be levied on offenders. Bhutan's draft law suggests increasing fines for subsequent offences against its proposed TAPS ban, but has not yet finalized the penalty amount. The draft law recognizes TAPS offences to be cognizable, bailable, and triable by court.

India: Under Indian law, the contravening advertisement and related material may be seized and forfeited to the Government, which will dispose of it as proscribed by law. On conviction, the person/agency may be punished in the case of first conviction with imprisonment for a term which may extend upto two years and/or with fines which may extend to Rupees 1000.00 (21 US\$); in the case of a second or subsequent conviction, the punishment is increased to imprisonment for a term which may extend to five years and/or to fines which may extend to five thousand Rupees.

Myanmar: The penalty for violating TAPS is 20,000 to 50,000 Kyats (174 -435 US\$) for the first offence and punishable with imprisonment for a term which may extend to 2 years. The second and subsequent offences may attract a penalty of 50,000 – 200,000 Kyats. Obstruction to inspection is punishable with imprisonment up to 2 years and/or a fine. TAPS offences are cognizable, bailable, and triable in court.

Pakistan: The Ordinance of Pakistan mentions that any person who contravenes Section 7, 8, or 9 (Prohibition of advertisement and sale of cigarettes and storage, sale and distribution etc.) shall be punished with a fine which may

extend to Rupees 5000 (62 US\$); in the case of a second or subsequent offence, the offender may face imprisonment of up to three months and/or or a fine which shall not be less than Rupees 100,000.

Sri Lanka: Contravention of Sri Lanka's Tobacco Advertising regulation under the NATA Act 2006 is punishable, following conviction after a summary trial before a Magistrate, to a fine not exceeding 2 million Rupees (1,740 US\$). Violation of the ban on tobacco sponsorship, price incentives, and corporate social responsibility promotions attract fines up to Rupees 50,000 (435 US\$) and/or imprisonment up to 2 years.

Thailand: According to the legal provisions of Article 19 of the Thai tobacco control law, direct advertising is punishable by a fine up to 200,000 Bahts (5,805 US\$);

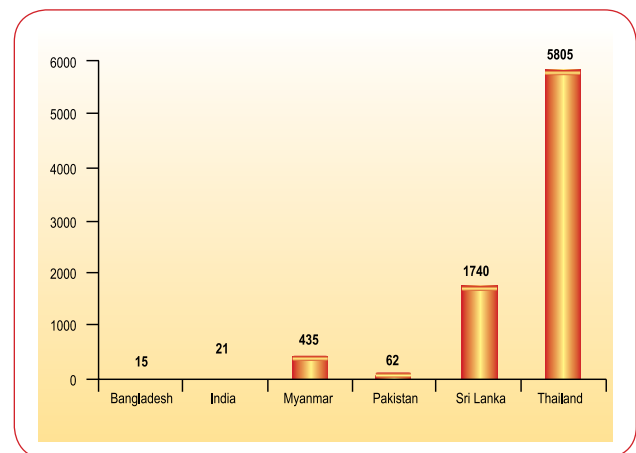


Fig. 15: Fines for First - Time Tobacco Advertising Offence (In US Dollars)

Most of the participating countries use a combination of fines and imprisonment to deter TAPS. Some like India and Myanmar levy increasing fines and terms of imprisonment for repeated offences. The fines vary largely in terms of their value from 15 to 5805 US dollars for first-time violations of tobacco advertising bans. Thailand levies the highest level of fine for first-time violators of tobacco advertising regulations. Given that primary responsible entities are well-resourced tobacco companies, the fines need to be substantially high to command compliance and deter offences. The review also indicates that the study countries need to have penalties of varying terms and values for different responsible entities, based on their level of control, commercial gains and investments in TAPS.

Laws of countries like Bangladesh, India, Myanmar, and Bhutan (draft law) treat TAPS offences as cognizable and bailable. Most laws are silent about the seizure, confiscation, forfeiture, and disposal of violating materials.

other forms of indirect advertising are punishable by fines up to 20,000 Bahts (580 US\$).

2.1.6 FCTC Compliance of Domestic TAPS Policies

The Framework Convention on Tobacco Control contains two provisions with specific deadlines for compliance by its Parties. One of these is Article 13, which pertains to Tobacco Advertising, Promotion and Sponsorship. Parties to the treaty are required to implement a comprehensive ban on TAPS within five years of the treaty's entry into force. The Conference of the Parties (COP) further developed detailed Guidelines to assist the Parties with the implementation of this Article. As Annexure- I indicates, most of the study countries were among the first 40 ratifiers of the treaty, and as such are required to comply with Article 13 within five years of the treaty's entry into force, i.e. by 27 February 2010.

Information available on the TAPS policies of the study countries was analyzed to identify their level of legislative compliance with Article 13. The scope of the policies was broadly categorized as in Table 3 on the basis of meeting FCTC standards as per the newly developed Guidelines on Article 13.

Table 3: FCTC Compliance Categories

Rank	Compliance with FCTC Art 13 Guidelines
Minimal	Limited/Partial/Minimum legislative standards met
Moderate	Legislation needs to be upgraded further to meet FCTC standards
Complete	FCTC standards met

Based on this categorization, the level of compliance of TAPS policies of the study countries with Article 13 Guidelines of the FCTC is presented in Table 4 below:

Table 4: FCTC Compliance of Domestic TAPS Policies

Country	Level of Compliance
Bangladesh	Moderate
Bhutan	Minimal
India	Moderate
Indonesia	Minimal
Maldives	Minimal
Myanmar	Moderate
Nepal	Minimal
Pakistan	Minimal
Sri Lanka	Moderate
Thailand	Moderate

The above table clearly shows that in terms of policies, all of the study countries have moved towards compliance with FCTC, but with varying degrees of success. 50 percent have policies that reflect moderate compliance with FCTC requirements, while the other half is yet to legislate comprehensively. It also indicates that the study countries need to take significant and decisive measures to move forward significantly from the beginnings made in legislations or executive measures and their mechanisms for monitoring and enforcement.

2.2 Implementation and Enforcement Mechanisms

Is the policy framework of the study countries matched by implementation and is there a mechanism for assessing implementation or lack thereof? Who is responsible for enforcing TAPS laws in the country? Answers to such questions are addressed in the following sub-sections.

2.2.1 Implementation and Enforcement of TAPS

Bangladesh: Bangladesh has developed a multi-pronged strategy for TAPS law implementation. The law uniquely provides for mobile courts to take cognizance of violations of advertising regulations and take on-the-spot action.

Bhutan: Bhutan's Communication Authority is primarily responsible for implementing its TAPS regulations. Royal Bhutan police assists the authority in enforcement action. Further, Bhutan has implemented multi-sectoral co-ordination for tobacco control measures including TAPS control. This includes the Ministry of Health, Ministry of Trade and Industries, Department of Revenue and Customs, City Corporations & Municipalities, Royal Bhutan Police, Road Safety and Transport Authority, the broadcast and print Media, Office of Legal Affairs, the Ministry of Education, and the Bhutanese public. It has a high-level National Steering Committee on Tobacco Control to implement and monitor national tobacco control.

India: In 2008, Ministry of Health and Family Welfare organized several training programmes at the state level for law enforcers with a view to create awareness among them about tobacco control laws, including TAPS. At the national level, advocacy with stakeholder ministries has been undertaken to implement TAPS. A national Steering Committee comprised of relevant government

Box: 2

Systematic Implementation: Bangladesh Way

Soon after the passage of the tobacco control law in 2005, Bangladesh began its implementation efforts by organizing a workshop of key stakeholders to develop a national plan, which serves as the road map for implementation. Since then, it has set up Implementation Task Force Committees at national, district and sub-district levels. These multi-sectoral task forces have representatives from a host of Government departments, NGOs, and medical, legal, and media associations. Their mandate includes implementation of the law, creating awareness about the law, monitoring compliance, addressing violations, and reporting on actions taken. NGOs are actively engaged in these committees to educate, monitor, and enforce the law.

Members of the public or NGOs could report violations to the local implementation task force. A mobile court is then called out to initiate action against the offending establishments/agencies. Mobile courts involve a magistrate and police officer(s), who have the powers to implement the law on the spot. They are set up with a view to quicken the dispensation of justice in non-criminal cases. In some cases, these courts have rolled out bulldozers to bring down the violating outdoor advertisements, loudly communicating the firmness of purpose.

Source: Bangladesh Ministry of Health and Family Welfare, 30 May 2007 & Correspondence with Work for Better Bangladesh, July 2008.

departments, NGO representatives, and other stakeholders has been set up to guide monitoring and enforcement. While the committee is empowered to take cognizance of TAPS violations under the tobacco control law and decide penalties for violators, in practice its role has been reduced to strategy formulation and review of implementation.

In India's federal system of governance, it is also imperative that States implement the laws enacted at the national level. Most of the State-level Steering Committees are yet to be constituted and become functional. In fact, this national-state interface makes enforcement complicated, requiring both the center and all states to adopt standardized

protocols for implementation. As it is envisaged that the police will enforce the law at district and sub-district levels, there will be a burden added to the already overburdened enforcement machinery that has other priority concerns.

Maldives: The Ministry of Economic Development, Maldives Customs Services, and the Ministry of Health and Family Services are responsible for various aspects of TAPS enforcement. The Ministry of Economic Development looks into licensing and regulations, Customs Services screens and controls the entry of tobacco advertisement materials from outside the country, and the Ministry of Health undertakes periodic random inspections. These authorities have offices at both national and sub-national levels.

Myanmar: A national focal point for tobacco control has been identified in the Ministry of Health, which is primarily responsible for Myanmar's TAPS regulation. It has set up a National Tobacco Control Committee to implement and monitor the legislation.

Pakistan: A statutory body (committee on tobacco advertisement guidelines) is responsible for monitoring violations against the tobacco advertisement guidelines. A Technical Advisory Group addresses violations during its quarterly meetings. The government has set up committees at federal, provincial and district levels to lead implementation of tobacco control measures, including TAPS regulations.

Sri Lanka: The Sri Lankan law envisaged a National Authority on Tobacco and Alcohol (NATA) to enforce and monitor the implementation of its provisions, including prohibition of TAPS, and to address violations. It also enjoined upon the government the task of involving NGOs in the implementation of the National Policy on Tobacco & Alcohol and to receive communication from the public on related issues. The country has since established the Authority, established an inter-ministerial committee, and developed an FCTC implementation plan. The guiding principle of this plan is inter-sectoral coordination.

Thailand: The FCTC policy implementation provisions, as they apply to TAPS, have been met in terms of establishing focal points, national co-ordination committees, a national plan of action, and a budget for implementation. The National Tobacco Control Committee was established in 1989. This committee's functions include policy

formulation, development of guidelines, monitoring and evaluation, formulation and development of laws, as well as research and development.

Most countries in the region have taken the multi-sectoral committee route to implement and co-ordinate enforcement of TAPS laws. Large countries have made efforts to cover extensive media and populations through sub-national mechanisms. Bangladesh stands out for its successful engagement of mobile courts in enforcement action and Sri Lanka has set up a distinct Authority to co-ordinate implementation. None of the countries reported on the efficacy of the existing implementation machinery in achieving legislative goals.

2.2.2 Existing Monitoring Mechanisms

Bangladesh: In Bangladesh, NGOs help the Government to enforce and monitor the law. They regularly send information on law violations to local governments (district commissioners or the Tobacco Nodal Officers) and ask them to call out a mobile court. If the local officials fail to respond, the media is notified to attract help from higher authorities. Bangladesh has also set up law implementation committees involving NGOs at national and sub-national levels. These committees take cognizance and action on violations reported by civil society.

Bhutan: The Communication Authority is responsible for monitoring TAPS in the country, while the Royal Bhutan Police assists the agencies with enforcement.

India: A steering committee at the National level has been established to facilitate the enforcement and monitoring mechanism for TAPS legislation and regulations. Similar committees are being set up in the States as well. The Ministry of Information and Broadcasting also has a committee that oversees implementation of its laws. Mechanisms to co-ordinate violations reported to these diverse committees are yet to be set up and publicized.

Maldives: While no coordinating mechanism specific to TAPS exists, various government agencies responsible for TAPS regulation are represented in the National Tobacco Control Committee which is mandated with overall policy coordination for tobacco control, including TAPS regulations

Myanmar: A National Tobacco Control Committee has been established with representation from different

ministries and key stakeholders, chaired by the National Focal Point person for tobacco control. This Committee monitors tobacco control programme, including TAPS policies.

Pakistan: Civil society organizations such as Journalist Health Forum, Coalition for Tobacco Control (CTC), Network for Consumer Protection, and the National Alliance for Tobacco Control (NATC) working with the country's Tobacco Control Cell act as watchdogs and regularly report non-compliance in the media and to the enforcement authorities. These NGOs monitor violations of the Ordinance and liaise with the Tobacco Control Cell, which takes actions to ensure implementation of the Ordinance.

Box: 3

Violations to Action in Pakistan

In recent times, the Tobacco Control Cell in Pakistan's Ministry of Health has taken cognizance of the increasing indirect tobacco promotion through TV programmes and tele-dramas. Tobacco sponsorship of cultural activities, mobile cinema halls, gifts, and advertising at retailers has also been reported. As regards smoking in films and TV programmes, the Tobacco Control Cell has raised the matter with the Pakistan Electronic Media Regulatory Authority (PEMRA), requesting it to stop smoking scenes in TV programmes/dramas. Following reports of tobacco companies holding medical camps in collaboration with provincial support, the Minister of Health has directed Chief Secretaries of the four provinces to not to associate with tobacco companies in the name of corporate social responsibility. Similarly, the Information and Broadcasting Ministry has been alerted to tobacco companies' mobile cinema halls and sponsorship of cultural events.

Source: Tobacco Control Cell, Ministry of Health, Pakistan.

Sri Lanka: The National Authority on Tobacco and Alcohol (NATA) was established to enforce and monitor law implementation and to tackle violations. Non-governmental organizations regularly report violations observed in various parts of the country. However, proactive and timely action against violations is yet to be considered by the Authority. Nor have regulations to implement the law been developed.

Box: 4

Hesitant Enforcement: Sri Lanka's Challenge

Sri Lankan law requires the screening of smoking and drinking scenes in movies to be masked and violations attract fines up to Rupees 2 million. A complaint to NATA, Sri Lanka's law enforcement authority for tobacco and alcohol, alleged that a local TV channel screened a movie last year wherein the use of masks were deceitfully superimposed on the screen only after the smoking and drinking scenes/sequences were over. In mitigation, it was told that the film in question was made before the NATA Act was passed and therefore it was not illegal to exhibit the offending episode to the public. After a lot of deliberation and recognizing the channel's reputation, NATA thought that 'persuasion through education is more effective than prosecution'.

Source: *The Island Opinion (On-line), Sri Lanka.*

Thailand: As mentioned earlier, the National Tobacco Control Committee was established in 1989. This committee's functions include monitoring and evaluation of tobacco control policies including TAPS, formulation and development of new laws, and research and development. It is a strong network of both government and non-governmental organizations working towards tobacco control

Most of the study countries in the region have established some form of monitoring mechanism for assessing compliance with their domestic laws and orders. Almost all, except Bhutan and Myanmar, have included NGOs and other civil society organizations, including the media, in their monitoring committees and rely heavily on them to serve as watchdogs of implementation and to report violations. In all the countries, civil society stressed the need for publicizing the monitoring and enforcement mechanisms widely and formalizing their roles thereof. None of the countries reported evaluation of their monitoring and enforcement mechanisms.

2.2.3 Mechanisms for Reporting TAPS Violations

The table below indicates the mechanisms for reporting violations in the study countries and their redress process.

Table 5: Violation Reporting Mechanisms

Country	Violation Reporting Agency	Enforcement Process
Bangladesh	Law Implementation Task Force at National, District and Sub District level	Any violations reported or tracked are taken up by the committees and action taken.
Bhutan	Bhutan Narcotic Control Agency and Royal Bhutan Police	The violations are tracked by the Bhutan Narcotic Control Agency or any other designated agency responsible for tobacco control and action is initiated through Royal Bhutan Police.
India	Steering Committees at national and state levels	Violations could be reported to the Steering Committees at the state or national levels.
Indonesia	Not Applicable	Not Applicable
Maldives	Ministry of Health	
Myanmar	1. Police Department 2. District Health Department	The violations could be reported to either Police or District Health Department. The complaints received by District Health Committee are also forwarded to Police, which are empowered to take action on violations as per the legislative provisions.
Nepal	Not Applicable	Not Applicable
Pakistan	Committee on Tobacco Advertisement Guidelines & Technical Advisory Group at national level Provincial and District committees	The Technical Advisory Group receives the complaints on violations from Committee on Tobacco Advertisement Guidelines and discusses them in their quarterly meetings and proposes action against offenders.

Country	Violation Reporting Agency	Enforcement Process
Sri Lanka	National Authority on Tobacco and Alcohol (NATA)	The violations are reported to the NATA which initiates proceedings and actions
Thailand	National Tobacco Control Committee	The violations are reported to the National Tobacco Control Committee, which take actions.

Monitoring and reporting mechanisms in most of the study countries have taken the form of committees or authorities. While committees are critical to assess and move forward the implementation agenda, a functional reporting mechanism needs to have community-wide presence, easy public accessibility, and a speedy redress and feedback facility. Telephone help lines or Internet sites that allow public to report violations and receive timely reports on action taken are critical to effective monitoring and implementation of TAPS laws. These need to be adequately publicized to facilitate their optimal use. India for instance has a single telephone helpline for tobacco control legislative matters to service its billion plus population spread over 611 districts. It is hardly known to the public and community watchdog organizations.

It is notable that study countries engage “reactive” enforcement, one where the enforcement agencies act in response to a complaint received. There is critical need to complement this with “proactive” enforcement - whereby enforcers actively monitor compliance, sensitise responsible entities, and initiate penalties against offenders.

2.2.4 Resource Allocations for Implementation

The study had set out to gather the information on resource allocation for implementation of TAPS Control and monitoring. In spite of repeated requests, this data was not available from any of the study countries. The data derived from the WHO MPOWER Report 2008 as relevant to the study countries has been reproduced in Figure.16. The data shows allocations by the respective countries for tobacco control initiatives as a whole, not separately for TAPS control and monitoring.

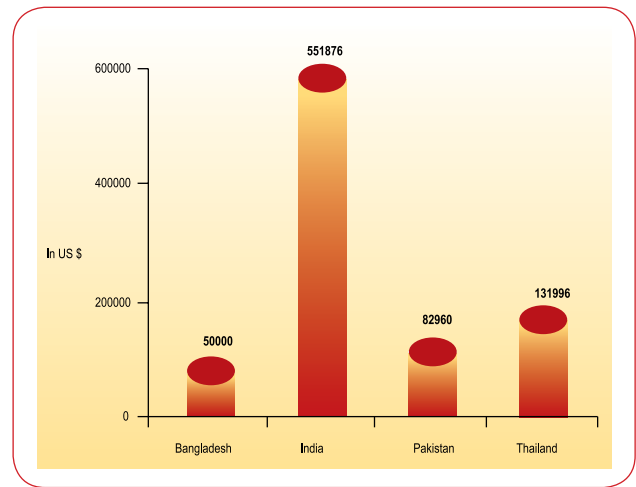


Fig. 16: Resource allocation for Tobacco Control

The above figure indicates that India has made the highest allocations, followed by Thailand. Nevertheless, these figures do not reflect spending on TAPS specifically. Resources in Bangladesh, India, and Pakistan are made available through annual budgets approved by the respective Governments, and therefore do not represent a sustainable form of resources. Thailand’s tobacco control allocations are made through a consistent 2% tax on tobacco and alcohol dedicated to health promotion. The draft Bill of Bhutan requires the Government to provide adequate funding for implementing the law. Except for these 2 initiatives, sustainable sources of funding for TAPS implementation or tobacco control at large appears to be completely missing in the region.

2.2.5 Reported Forms of Current TAPS

In spite of legislation or executive orders being passed, monitoring and implementation mechanisms being set up, and regulations being enforced, TAPS has been observed, including in prohibited forms, from all study countries except Bhutan. The research could not locate information about existing forms of TAPS in Maldives.

Bangladesh: Most forms of regulated TAPS disappeared following the passage of the comprehensive tobacco control law in 2005. The main form of on-going advertising takes advantage of the exemption in the law for point-of-sale advertising and display of promotional posters in shops. Since Marlboro entered the market post ad ban, they display stickers saying “Marlboro available here” at shops and stalls. Tobacco companies distribute promotional materials such as handbills, leaflets, stickers, and gifts to students and customers. They sponsor computer education



Fig. 17: Tobacco Promotion on Key Chain & Wallet, Bangladesh

and tree plantation as corporate social responsibility contributions. These activities are then published in the print media where tobacco advertising is prohibited. In terms of brand stretching, tobacco companies promote different essential goods such as food items and cement using the tobacco brand names.

Bhutan: Bhutan reported domestic TAPS to be non-existent in the country, attributing it to the absence of national and international tobacco companies and marketers operating within the country.

India: The ban on direct advertising of tobacco products is implemented effectively in urban pockets of the country. Nevertheless, direct advertising, particularly of smokeless tobacco products like gutkha and pan masala, feature in newspapers, public transport, kites, calendars, and at the tobacco vendors. The ban on indirect advertisements of tobacco products has suffered serious setback due to legal challenges and poor enforcement. Indirect advertising of tobacco products is rampant in all forms of media

and feature regularly in newspapers, television, public transport, billboards, magazines, and in market places. In India, cigarette companies engage heavily in using surrogate advertising and brand stretching. Tobacco companies, through their surrogate products, sponsor events such as fashion shows, music, sports events, and bravery awards, which are in turn promoted through the mass media.

Box: 5

Surrogate Sponsorships: Wolf in Sheep's Clothing

Indian Tobacco Company (ITC), whose major business is in cigarettes, has ventured into other business lines including apparels, hospitality, processed food including biscuits, and academic exercise books for children. Under the guise of brand extension of its flagship cigarette brand "Wills", it promotes Wills Lifestyle as a clothing line. Wills Lifestyle sponsors fashion shows popularly called the 'Wills Fashion Week', providing ample exposure and recall of the cigarette brand. ITC also launched an Information Communication Technology (ICT) initiative called 'e-Choupal' that apparently offers farmers on-line farming solutions and marketing outlets for farm inputs and produce. The initiative, widely promoted through media, has fetched the company several national and international CSR honors.

Source: HRIDAY, India

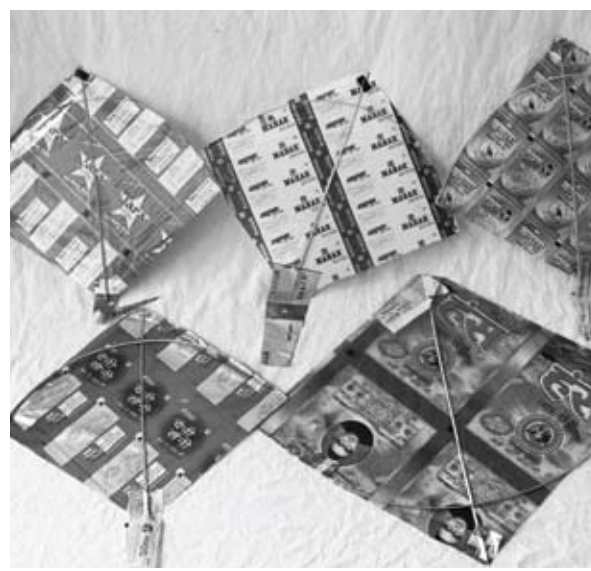


Fig. 18: Tobacco Promotion on Kites, India

Box: 6

Circumventing Laws under Corporate Garb

Godfrey Philips, one of India's cigarette majors, formerly promoted its popular brand Red & White through sponsoring Bravery Awards. Following legal action against this prohibited tobacco sponsorship, the company now promotes it as Godfrey Philips Bravery Awards, engaging its corporate identity. As Godfrey Philips is registered as a tobacco brand under the Trademarks Act of India, these promotions violate India's TAPS ban.

Source: *Burning Brain Society, India.*

Indonesia: Given that the Indonesian regulation restricts tobacco advertisements merely during certain hours on television, tobacco companies directly advertise their products in all forms of media including outdoor, print, and electronic; they also continue to target restricted groups.



Fig. 19: Youth Targeted Bill Board, Jakarta, Indonesia

Sponsorship of youth-targeted events is one of the key strategies of the Indonesian tobacco industry in marketing its products and interacting directly with target customers. The events range from music festivals, movies, television reality shows and sports, arts, cultural and religious events.

As part of their image-building efforts, several tobacco companies have been reaching communities under the guise of Corporate Social Responsibility (CSR). Tobacco industry surveillance in Indonesia conducted from January to October 2007 by the National Commission for Child



Fig. 20: Sponsorship of Youth Jazz Festival, Jakarta, Indonesia

Protection, Indonesia, found that CSR-related activities were widely prevalent in various fields like disaster responses, education, economy, environment, culture, sports, and fundraising.

Maldives: Some forms of point-of-sale advertising exist, such as display of tobacco packets in malls, display of cigarette brand labels on shop windows, and product information sheets supplied by brand distributors. Given the transitional governance phase in the country, there is currently lax enforcement of existing regulations, owing to ambiguity of the regulation, confusion over roles and responsibilities of various government agencies, and lack of resources.



Fig. 21. Product Information Posters at Retail Stores, Maldives

Myanmar: While Myanmar has banned most forms of tobacco advertising, advertising continues at the airport and on wares.



Fig. 22: Tobacco Labels on Hospitality Wares, Myanmar

Nepal: Aggressive print, media, and billboard advertising exists in the country, except in the districts where billboards are banned. Sport and music concerts are being increasingly sponsored by tobacco companies.



Fig. 23: Tobacco Billboards in Thamel, Nepal

Pakistan: Owing to the exemptions in timings, content, and location allowed for TAPS in various media, both direct and indirect forms of advertising has been reported across the country's media. Since tobacco advertising on television was restricted, smoking scenes in TV dramas

serials have reportedly increased. Instances of sponsorship such as Red and White snooker championship are quite common. Recently a conference on climate change was organized with the co-sponsorship by Pakistan Tobacco Company, British High Commission, and University of Manchester UK. Tobacco Companies run mobile cinema halls for youth, entry to which is against empty cigarette boxes. The industry is also arranging private functions with policy makers under the guise of CSR.

Box: 7

Unholy Nexus: State Patronage of CSR

PESHAWAR (APP): NWFP (North West Frontier Province) Minister for Social Welfare & Women Development visited a one day free medical camp arranged by Pakistan Tobacco Company in Basic Health Unit Jhanda in District Swabi on Saturday. The Provincial Minister on this occasion distributed free medicines among the patients.... The NWFP Minister on this occasion praised Pakistan Tobacco Board for holding a one day free medical camp for the poorest of the poor. She added that government believed in Public- Private Partnership whether belonged to any sector.

Source: Frontier Post, November 30, 2008

Sri Lanka: While direct advertising of tobacco products in the country is on the decline, there is still indirect TAPS. The main target groups are women and young adults. Incidents have been recorded of the tobacco industry trying to get political advantage by supporting national endeavors



Fig. 24: CSR Promotions in Sri Lankan News Paper

such as Grow More Food, farmer support programmes, disaster rehabilitation, and the promotion of English and information technology training. These corporate social responsibility efforts are in turn promoted in the media, violating the country's prohibition on CSR promotion. Films, tele-drams, print and point-of-sale are the platforms widely used by the tobacco companies. Tobacco companies circumvent the law's limitation of POS communication to a price list by installing large and attractive cigarette holders with price announcements. Brand stretching and diversification are also prevalent.

Thailand: Following Thailand's enactment and implementation of effective regulations on TAPS in diverse forms across a broad spectrum of media, the industry has shifted its promotional efforts and resources largely to Corporate Social Responsibility (CSR) activities, such as supporting school building projects, sports, and cultural events. The activities are run under the company's name with the objective of networking with civil society, government officers, and policy makers. Despite fairly good compliance of the tobacco control law, a few violations were tracked, particularly in movies with smoking scenes on cable television.



Fig. 25: Thai Tobacco Monopoly sponsored Children's Play Ground

Interestingly, in countries that have tried to restrict advertising in selected media or to implement bans on selected forms of advertising, it has been observed that the tobacco companies shift their communication strategies to the unregulated/ less regulated ones. Advertising at points-of-sale, exempted under the advertising laws in most of the study countries, is a case in point. All countries, including those with restrictions instead of a ban on advertising at points-of-sale, reported those as continuing bastions for industry's communication.

This review also shows that in the wake of increasing regulations of mainstream mass media and direct advertising, tobacco companies are increasingly engaging in advertising at points-of-sale, brand stretching, sponsorships, and corporate social responsibility activities in countries that are yet to ban them. In at least five of the study countries, both direct and indirect advertising of tobacco products are still prevalent as a result of either weak laws or weak implementation of the existing laws. In almost all the countries, the tobacco industry emerges as a great patron of CSR.

2.2.6 Compliance Scores

On the basis of existing domestic policies, the following categories have been developed to assess the level of policy compliance in the study countries.

Table 6: Compliance Grades

Nature of Enforcement	Grade	Score range
Occasional, some of the regulated forms at select locale	Minimal Compliance	0-2
Most times, most of the regulated forms	Moderate Compliance	3-5
Country wide, most of the times, most of the regulated forms	Nearing Full Compliance	6-8
Country wide, at all times compliance of all regulated forms	Complete Compliance	9-10

The compliance in study countries has been graded as shown in the table below on the basis of scores assigned to each country against existing domestic policies; it does not, however, reflect the level or scope of the policy implementation vis a vis FCTC standards.

Table 7: Compliance Scores

Country	Level of Policy **	Level of Compliance/ score
Bangladesh	Moderate	Nearing Full Compliance(6/10)
Bhutan	Minimal	Nearing Full Compliance (8/10)
India	Moderate	Moderate Compliance (4/10)
Indonesia	Minimal	Minimal Compliance (2/10)
Maldives	Minimal	Moderate Compliance (5/10)
Myanmar	Moderate	Nearing Full Compliance (6/10)
Nepal	Minimal	Moderate Compliance (4/10)
Pakistan	Minimal	Moderate Compliance (4/10)
Sri Lanka	Moderate	Moderate Compliance (5/10)
Thailand	Moderate	Nearing Full Compliance (8/10)

**See Table 4 for details.

As the table indicates, there appear to be active efforts on the part of the study countries to enforce the policies that do exist in their jurisdictions. Nevertheless, countries like India and Sri Lanka with reasonably sound TAPS laws require strengthening their enforcement to achieve effective compliance. At the other end of the spectrum, countries like Nepal, Pakistan, and Indonesia need to both strengthen their TAPS policies and improve their enforcement.

Diversity in the scope of the regulations and the geographical and political differences between the study countries make comparisons difficult. For instance, Bhutan is yet to implement a comprehensive legislation banning TAPS. However, it appears that it is enforce its executive orders nearly fully. Thailand on the other hand, has a comprehensive TAPS ban and enforces it nearly fully across the diverse forms and platforms.

2.3 Cross Border TAPS

FCTC Article 13 Guidelines recommends that:

Parties with a comprehensive ban or restriction on tobacco advertising, promotion and sponsorship should ensure that any cross-border tobacco advertising, promotion and sponsorship originating from their territory is banned or restricted in the same manner as domestic tobacco advertising, promotion and sponsorship. Parties should make use of their sovereign right to take effective actions to limit or prevent any cross border tobacco advertising, promotion and sponsorship entering their territory, whether from Parties that have restrictions or from Non- Parties, recognizing that in some cases effective actions might have to be addressed in a Protocol.

One of the major areas of this research study was the presence of cross-border TAPS in study countries, measures to control them, and the challenges faced by the countries in tackling them.

2.3.1 Existing Cross Border TAPS Regulations

On examining the existing laws and guidelines of the study countries for cross-border TAPS regulations, the following were identified:

Bangladesh: The country's tobacco control law is silent about cross-border in-flow and out-flows of TAPS. However, its provisions regulating domestic TAPS of

smoking products across print and electronic media serve to reduce out-flow of TAPS from the country to other territories.

Bhutan: Bhutan strictly prohibits the domestic production of advertising, videos, movies, and cultural shows depicting use of tobacco except educational clips used for health promotion. The Tobacco Control Board and Tobacco Control Unit proposed in the Ministry of Health's bill are expected to communicate with international and regional organizations and local and foreign NGOs to effectively carry out tobacco control. This could by inference include, among other measures, exchange of information on TAPS crossing its borders and co-operation for enforcement. The proposed Internet ad ban could prevent TAPS in-flow and out-flow from the country. Currently, any CDs or films with tobacco content that is aired on local or national media are regulated broadly under the Bhutan Information, Communication and Media Act, 2006.

India: The Indian COPTA 2003 specifically restricts both the import and export of tobacco products, but not its advertising or other communication. Nevertheless, given the wide reception of Indian print and electronic media regionally and globally, India's ban on TAPS, including the attempted prohibition on the display of tobacco products and use in films and TV programmes, has far reaching implications for reducing TAPS internationally. The latter was, however, recently overturned by Delhi's high court.

Myanmar: As in Bhutan, Myanmar law requires the Central Board for Tobacco Control to maintain communication with international and regional organizations, including NGOs, to effectively carry out tobacco control. This provides a legislative framework for future arrangements for the exchange of information and cooperation regarding cross-border TAPS. Further, Myanmar prohibits TAPS over other high technology mass media communication systems (read satellite television) - a key channel of both import and export of cross-border TAPS globally.

Pakistan: The Pakistan Ordinance & Guidelines are silent on cross-border TAPS. Given that the restrictions under the Ordinance do not prohibit TAPS comprehensively, hardly any control over cross-border TAPS could be anticipated at this point in time.

Sri Lanka: The National Authority on Tobacco (NATA) specifically exempts incoming media that is not particularly

targeted at Sri Lanka. It allows tobacco advertising in printed materials available in Sri Lanka if printed outside the country non-exclusively for the country. Similarly, tobacco advertising on radio and television is permitted if it is not meant mainly or only for the country.

Thailand: Like Sri Lanka, Thailand's law allows incoming broadcast or printed matter carrying tobacco advertising originating out of Thailand that is not specifically for domestic distribution.

Box: 8

Look Who is Advocating Cross-Border TAPS Bans?

While condemning India's TAPS ban, Y C Deveshwar, Chairman of ITC-India's largest Cigarette manufacturer- unwittingly ended up advocating cross-border TAPS bans. Times of India, August 7, 2001 reads.

"... On the ban on cigarette advertising, ITC has urged the government to create a level playing field as advertisements of Bangladeshi cigarettes are aired on ATN Bangla channel. Furthermore, he felt the clever usage of Formula 1 circuit by Marlboro will lead to smuggling of imported brands.

Incidentally, MNCs spend more on advertisements that what is the net worth of ITC Ltd. Urging the government to create a regulatory framework, Deveshwar said his company was quite content in increasing its share in a shrinking basket".

Hindu Business line of February 8, 2001 quotes him:

"... Lets analyze it (ad ban) in an orderly manner. At present we have international companies like Marlboro which are promoting Formula 1 racing. These programmes are aired across India through various uplinked channels. There has to be a mechanism to regulate. Now if the Government stops Indian companies than the consumers will shift to International cigarette brands.

One has to assess the Indian market scenario in totality. Either you have to control all these foreign companies which are not under Government control. It has to be thought through. It should not make Indian industry uncompetitive".

Source: Times of India/Hindu Business line

2.3.2 Reported Cross-Border TAPS

The analysis of the information collated further identified the various forms of TAPS that are currently entering or leaving the study countries.

Films/Television Programming: Sri Lanka, Bhutan, Nepal, Bangladesh, and Pakistan reported receiving movies with smoking promotion from India. Since India has a very vibrant media and entertainment industry that has wide following in the neighboring countries and elsewhere, the potential for its export/piracy with cross-border TAPS is significant and implications far reaching. Pakistan also reported its tele-dramas and movies with tobacco promotion having viewership among Hindi and Urdu-speaking people beyond its borders. Maldives and Bhutan are typical in that they do not have any local tobacco companies or marketers. Nevertheless, both reported receiving smoking contents in international movies, over satellite TV and the Internet.

Box: 9

Riding the Film Waves, Gliding over the Borders

Much of the tobacco promotion over Sri Lankan borders reportedly comes via Hindi and Tamil films that are telecasted regularly over many TV channels and their CDs and cassettes [which are] flooding the country. In containing this promotion, the Sri Lankan National Authority on Tobacco and Alcohol issued a new directive in recent times directing media to mask the scenes with tobacco and alcohol promotion.

Product placement in movies is a recognized tobacco industry tactic that tends to increase as other forms of direct advertising are curbed. India, home for Bollywood (Hindi movie industry with the largest global viewership based in Mumbai) and Kollywood (Tamil movie industry based in Chennai) pioneered to prohibit it by law in 2005, which has since met with legal challenges.

Source: Alcohol and Drug Information Center, Sri Lanka.

Cassettes and Discs: Sri Lanka, Bangladesh, India, and Nepal cite cassettes and CDs as key sources of in-flow of cross-border TAPS. Bhutan suspects the availability of CDs and movies from outside its territory for home viewing. Besides thwarting TAPS laws in destination countries, very

often these cassettes, CDs, and DVDs are pirated copies, thus breaking piracy laws as well.

Direct Advertising: In Nepal, print media, and bill boards carry advertisements of American cigarette brands like Marlboro, which is not locally produced. Sri Lanka's exemption to trans-border promotions in its TAPS law makes it vulnerable to cross-border programmes with tobacco content such as of Pall Mall including at points of sale where domestic TAPS is prohibited. Bangladesh has banned all domestic tobacco advertising on television, but it reports receiving it through international television channels.



Mary Assunta, a Malaysian, found this billboard on a Jakarta street and noted that Philip Morris is advertising a Marlboro sponsored Malaysian event in Indonesia, where as such advertisements and sponsorships are prohibited in Malaysia since 2004.

Fig. 26: Malaysian Marlboro Motor Racing Ad in Jakarta, Indonesia

During the pre-advertising ban days in 2000, a research study monitored ATN Bangla, a Bangla TV channel broadcast through Thai satellite into Bangladesh and northeastern parts of India. It found 38 tobacco advertisements for 7 brands of cigarettes and 2 brands of bidis covering 14 minutes and 13 seconds in just the two peak hours of youth viewership on a Saturday evening between 8 and 10 pm. While Bangladesh has since banned advertising of smoking products, the report indicates the extent and routes of cross-border TAPS that is possible in the region.

Printed Matter: Sri Lanka reported receiving tobacco advertisements in printed form, such as through magazines, from India. This points to the need for Sri Lanka to disallow current exemptions to incoming TAPS materials. There is also scope to expand Customs clearance, currently limited to screening materials for pornography and threats to national security, to monitoring tobacco content.

On the other hand, Sri Lankan Airlines magazine, Serendib, carries extensive advertisements of Dunhill and other cigarettes. It is noteworthy that most of the destinations of this airline, including several of the study countries like Bangladesh, India, Thailand, and Sri Lanka itself have banned tobacco advertising in the print.



Fig. 27: Tobacco Promotion in Sri Lankan Airlines Magazine

Maldives reported “Product Information” materials and other freebies being regularly sent by the tobacco industry from other countries to local distributors.

Airports: International airports constitute a unique platform that provides product exposure to hundreds of international passengers, including from countries that have banned TAPS.



Fig. 28: Promotion on Airport Trolley, Yangon Airport, Myanmar

The duty free shops at airports across the region, including in countries that have banned TAPS in most forms like Bangladesh, India, and Thailand, display tobacco promotions in various forms. The Government of India's duty free shops at Delhi international airport have posted a large and unmistakable '&' sign of the Benson & Hedges brand against its characteristic yellow background. Similar stands were spotted at Dhaka's international airport. Thailand has banned display of tobacco products at points-of-sale throughout the country. However, the duty free shops at its international airport have "power walls" of cigarettes.



Fig. 29: B & H Promotion at Government Duty Free Shop at Delhi Airport, India

TAPS at such points where people cross borders expose the country's citizens and citizens, including children, of other countries that have banned TAPS to tobacco promotion.



Fig. 30: Banned Power Walls at Thailand Airport Duty Free Shop

Tobacco Packs: Bhutan has banned the sale of tobacco products and all forms of TAPS within its territory. However, Indian tobacco products reach the country through illegal trade. Indian tobacco packs and promotional messages therein serve as direct advertising in an otherwise TAPS- free environment of the country.

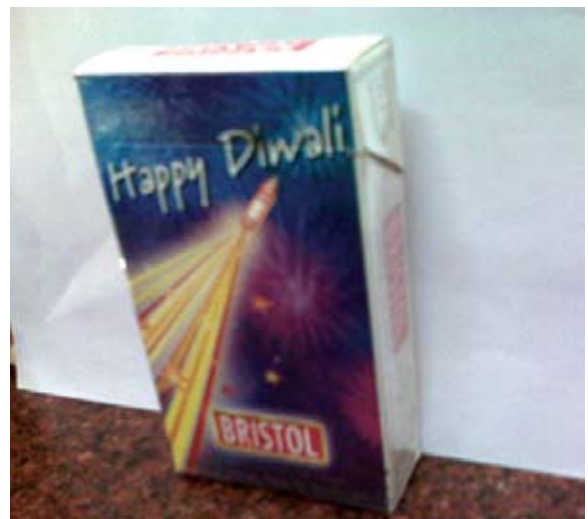


Fig. 31: Festival Special Edition Pack of Indian Cigarette

Personal wares/apparels: Tobacco companies place their brand names and logos on personal apparels such as T-Shirts, caps, key chains, wrist bands, and bags. These in turn are carried across borders by international passengers.



Fig. 32: Promotion on Apparel, Thailand & India

Internet: In recent times, the World Wide Web has emerged as the popular media among Asia's youth. Sensing opportunity, bidi manufacturers in India, Bangladesh, and Pakistan now have on-line presence promoting their flavored products, as do Indonesian sites promoting clove cigarettes (Kreteks). A study conducted by the US Centers for Disease Control reported huge markets for these flavored bidis in the country. Except for general restriction on internet use in Myanmar, there are no regulations in the region regarding TAPS on the internet.

International CSR Promotion: Figure 33 brings to light the unique scenario of the Pakistan Tobacco Company co-sponsoring a Corporate Summit on Climate Change in Karachi late in 2008. While the newspaper advertisement for the summit appeared in the Pakistan daily Dawn, the co-sponsors being British High Commission, University of Manchester & University of Boston indicate the mileage, access, and acceptance of the company nationally and internationally.

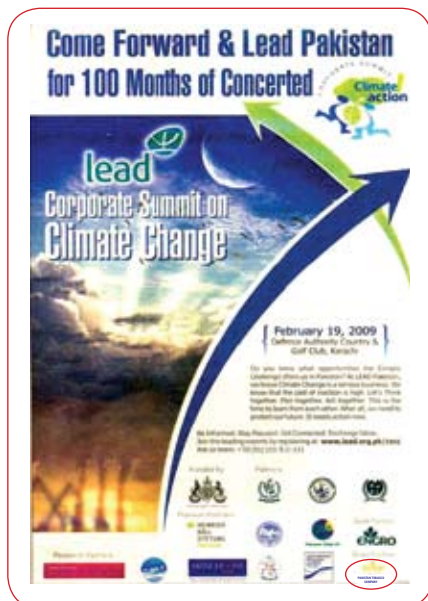


Fig. 33: Promotion of International CSR Partnerships by Pakistan Tobacco company in Pakistan Daily

By the very nature of cross-border TAPS, it broadly falls into three categories:

- **Riding Transmitters:** TAPS created in a country is sent to another over a transmitter. e.g. satellite TV up-linking & Internet
- **Moving Targets:** where the platform bearing TAPS moves across borders. e.g. tobacco packs, apparel, vehicles, disks, magazines
- **Positioning TAPS where people cross borders:** e.g. advertising at air/sea ports, border towns, in-flight magazines

The study region of South and South East Asia represents a unique environment that typifies the reach and influence of cross border TAPS. The region includes India, the powerhouse of TAPS in the region, and Bhutan and Maldives that have literally no internal production of TAPS. Yet the presence of TAPS reportedly suspected in the latter two countries indicates the power of cross-border promotions to penetrate otherwise isolated populations across the borders.

Analysis of available information indicates that countries such as Indonesia and Nepal that are yet to legislate on domestic TAPS are most vulnerable to it, even in direct forms, from other countries. Where TAPS laws exist, lack of measures on in-flow and outflow of TAPS defeats the purpose of domestic TAPS laws in de-glamorizing tobacco among its population and open the doors to international tobacco companies. It is particularly unhelpful, such as in Sri Lanka, to exempt trans-border in-flow of TAPS from domestic TAPS laws. As responses indicate, cross-border TAPS is an area that is yet to be seriously addressed by the governments of any of the study countries. According to the FCTC Article 13, domestic legislations must have provisions to tackle export of cross-border TAPS; however, there is limited mention of cross-border TAPS policy in the study countries.

2.3.3 FCTC Compliance of Cross-Border TAPS Policies

According to the FCTC Article 13, the comprehensive ban on TAPS needs to cover cross-border TAPS originating within a Party's territory. As Section 2.3.1 details, countries involved in this study have begun to take measures that have regulatory implications for cross-border TAPS. But these are not sufficiently developed or enforced to assess compliance with the FCTC standards as detailed in the Article 13 Guidelines. It would make a significant matter for a later enquiry.

Steps taken by study countries to regulate domestic TAPS such as on television (Bangladesh, India, Myanmar Nepal, Sri Lanka, Thailand) and Internet (Myanmar) deters outflow of those forms of promotions from their territories. India's effort to regulate TAPS in movies brings to light the recommendations of the Article 13 Guidelines regarding entertainment media. Myanmar and Bhutan have built into their laws mechanisms that could become useful for the exchange of information and co-operation on enforcement that the Guidelines suggest.

In achieving FCTC compliance, all the study countries, without exception, need to specifically address cross-border TAPS in their policies, monitoring, enforcement, and inter-regional co-ordination.

2.4 Challenges and Opportunitis in Regulating TAPS Across South & South East Asia

2.4.1 Challenges to Regulating TAPS

Respondents identified diverse factors that posed challenges to the development and implementation of TAPS policies. Further, reports and analysis of information presented above throw light on further challenges which are described below.

A. DOMESTIC FRONT:

1. **Loopholes in Laws:** The laws of most countries in the region have allowed exemptions to various forms of TAPS. As the study reveals, the tobacco industry has been exploiting these loopholes to shift its promotions to the unregulated platforms and forms of TAPS, thereby defeating the purpose of the TAPS bans.
2. **Lack of Enforcement Infrastructure:** While all countries in the region have initiated monitoring and enforcement of TAPS laws, the ineffectiveness of the current mechanisms demonstrate a need for a planned approach, with adequate human, technical, technological, and financial resources that would make the enforcement mechanism agile, public friendly, cost-effective, and accessible.
3. **Point-of-sale Advertising:** Among direct advertising avenues within country jurisdictions, points-of-sale

emerged as a difficult terrain for regulation. The reasons range from the political sensitivities around economically vulnerable retailers, the conflict between vendor rights and consumer rights, and unlicensed retailer shops and street vending to vast populations in larger countries.

4. **Brand Extensions & Trademark Diversifications:**

Tobacco companies have increasingly resorted to registering and using their tobacco brand names, trademarks, and corporate identities for non-tobacco products and services and vice versa. This makes it legally challenging to enforce bans on brand stretching and diversifications, as the industry tends to claim disassociation between the products advertised and their tobacco wares. This has the potential to attract legal battles over intellectual property rights and trade laws.

5. **Promotion of Corporate Social Responsibility Activities:**

These are seen as legitimate business practice by companies, and it is challenging to prove that they spend far more money in promoting the activity to the public and policy makers than in advancing the philanthropic cause. CSR promotions get past the sieve of most of the comprehensive TAPS bans. The legitimacy it earns the companies helps to improve their image and gains them access to policy-making bodies.

6. **Lack of Public Awareness:** The analysis of the information collected highlights the absence of campaigns to raise public awareness about the impact of advertising on consumer behavior and government bans on TAPS. Unless and until the public is aware of the impact of TAPS, their rights under the law, TAPS enforcement, and complaints mechanisms, the penalties on violators, and the regulation and monitoring of violations will continue to be difficult.

B. ACROSS BORDERS:

1. **Lacunae in National Laws:** A review of national TAPS laws reflects the lack of provisions against inflow of TAPS from other countries. Furthermore, some national laws explicitly allow TAPS inflow while curbing domestic forms. This lack of legislative framework poses challenges for monitoring, reporting, or implicating incoming TAPS into a country, far less prohibiting it.

2. **Lack of Capacity among Governments & Civil Society:** Many of the responses collected through the study revealed limited knowledge among Government and NGO participants regarding cross-border TAPS entering or leaving their respective countries or laws to regulate them, far less mechanisms to monitor or gauge their extent, and still less mechanisms to report them.
3. **Smuggling of Media Products:** Piracy of films, video, and print materials with tobacco promotions and their cross-border smuggling in the form of video and digital CDs and audio tapes are yet to be reckoned as a major source of cross-border TAPS. Customs authorities in both source and recipient countries are not sufficiently trained to monitor and seize such products.
4. **Technological Barriers:** Given the rapid technological advances in media and communication, countries have reported that they lack in the technical know-how and infrastructure to curb the inflow of TAPS such as through the Internet, live telecast over satellite television, and mobile phones.
5. **Lack of Inter-country Co-ordination Mechanisms:** SAARC and ASEAN are two geo-political groupings to which the study countries belong. The study highlighted the absence of any deliberation on the issue of cross-border TAPS in any SAARC meeting and the ignorance of SAARC secretariat. ASEAN's effort to regulate TAPS in its countries is also not known. The challenge is to get this issue on the agenda for discussion among and within these regional economic and political bodies and engage them for inter-country co-ordination in monitoring, reporting, and curbing cross-border TAPS.
6. **Geo-politics:** The responses on cross-border inflow of TAPS pointed to the hesitation of countries to report and discuss it with source countries. This could partly be due to the lack of mechanisms for monitoring, reporting, and redressing such complaints. But it also points to larger geo-political modesties sustained among the countries in the region.

2.4.2 Opportunities for Regulating TAPS

While there are several challenges that retard TAPS

regulations, it is pertinent to notice the emerging opportunities to advance the policy goals. Some of these were revealed by the research as discussed below:

1. **FCTC's Article 13 guidelines:** The Third Session of the Conference of the Parties to the WHO FCTC was held in Durban, South Africa, 17-22 November 2008. At this meeting, the COP adopted the guidelines for implementation of Article 13 (Tobacco advertising, promotion and sponsorship, while recommendations on further measures relating to cross-border tobacco advertising, promotion and sponsorship were outlined. These guidelines provide guidance based on evidence and best practices to Parties for fulfilling their treaty obligations regarding TAPS. The guidelines also point towards actions essential to prohibit cross-border TAPS, including exchange of information and international co-operation. These newly developed guidelines have brought fresh focus and support to regulate TAPS.
2. **FCTC compliance deadline:** The deadline of 5 years (from the entry into force for each Party) for compliance with Article 13 of the FCTC brings a sense of timeliness and urgency among the countries to undertake their obligations. As could be seen in Annex- I, the study countries must quicken their efforts to meet the treaty deadlines *vis a vis* TAPS. Most of the study countries would also qualify to report on the progress of their work on TAPS regulation in one year's time. This could serve as an impetus to speed up action.
3. **Increasing legislative environment:** The increasing regulations on TAPS in the study countries are expanding the TAPS-free zones and de-normalizing TAPS. It has raised the profile of the issue and laid the framework on domestic TAPS among the study countries, which could be expanded to discuss cross-border TAPS concerns.
4. **Improving Political Stability:** Countries in the South and South East Asia region that formed part of this study are separately witnessing increasing domestic efforts to form politically stable governments representing the people. This could provide increased access and influence of public opinion on governmental action. The emerging democracies also present the political opportunity to create fresh legislative

frameworks, including on TAPS. Thus Maldives, Bhutan, and Nepal are awaiting the formulation of their constitutions and passage of their draft TAPS laws.

5. **Increasing best practices within study regions:**

Even as the study countries are in the early stages of TAPS regulations, several are already generating best practices as they build their foundational laws. Certain study countries are among the pioneers attempting to regulate TAPS in films, at points-of-sale and over satellite television and the Internet. This could motivate other countries to advance their TAPS policies and set precedence for cross-border TAPS regulations.

6. **Mobilizing Regional Foras:** Regional organizations such as SAARC, ASEAN, and Customs SEARO-RILO office present opportunities to be sensitized and engaged in cross-border TAPS regulation. Civil society in each of the South and South East Asian countries

working in the area of tobacco control could play a key role in sensitizing these bodies. Advocacy along these lines would help to place cross-border TAPS on the agenda for discussion and deliberation at their regional meetings.

7. **Increasing attention to cross-border tobacco issues:**

The ongoing negotiation of the protocol on illicit tobacco trade is prompting Parties to think about tobacco control concerns beyond their borders. This could set the impetus to consider similar issues such as cross-border TAPS that enter and leave countries. The illicit tobacco trade negotiations have also begun to enlist and engage customs and enforcement agencies in addressing that issue, providing opportunities for indirect learning of diverse tobacco control issues. This provides greater access and opportunity to customs and enforcement agencies to sensitize them about cross border movement of prohibited TAPS and engaging them in monitoring and seizures.

Summary and Next Steps

3.1 Summary of Key Findings

1. More than half of the 10 study countries have legislation prohibiting various forms of TAPS (Bangladesh, India, Myanmar, Pakistan, Sri Lanka, and Thailand); the rest have executive orders (Bhutan, Maldives, Nepal, and Thailand) regarding some TAPS forms.
2. In countries with weak policies (Indonesia and Nepal), national and international tobacco companies advertise undeterred, including from across the borders.
3. The study countries have innovatively attempted to regulate by law TAPS in movies, at points-of-sale, over the internet, on satellite television, and through corporate social responsibility.
4. While direct advertising except for those at points-of-sale is on the decline in majority of these countries, indirect advertising, in particular brand stretching, remains a challenge for regulators and enforcers. Surrogate advertising, sponsorship and brand extensions are common across the study countries and therefore constitute areas of concern.
5. Product placement in movies and Corporate Social Responsibility promotions are the emerging bastions of tobacco sponsorship across the study region, more so in countries that have banned TAPS in mainline media. India and Sri Lanka disallow the former and require masking of any tobacco use in movies. Sri Lanka's law could be effectively used against CSR promotions.
6. India, central to the media and entertainment industry in the region, has a tobacco control law prohibiting direct and indirect TAPS except at points-of-sale. However, the Broadcasting Ministry's law has conflicting stipulations for brand stretching. A

monitoring mechanism is in place at federal level in the country but most states are yet to constitute them. Strengthening enforcement at all levels is critical to reducing TAPS in the region.

7. While most countries have begun to set up monitoring and enforcement mechanisms, they lack accessibility, efficacy, and resources. Public awareness about them is extremely low.
8. Several countries have provisions for civil society involvement in monitoring and reporting violations. Capacities and involvement is in nascent stages across board.
9. Cross-border TAPS is a hitherto unattended area. The laws of most of the study countries do not address them. The laws of some countries (Sri Lanka & Thailand), while prohibiting TAPS in domestic media products such as films, video clips, and music, exempts inflowing TAPS from other territories that are not meant exclusively for their country.
10. Use of the Internet for tobacco promotions and the control of Internet-based TAPS are areas yet to be recognized in the regulatory efforts, except in Myanmar.

3.2 Next Steps

1. WHO FCTC and its Article 13 guidelines of have set gold standards for TAPS control and their fulfillment depends upon matching political will and decisive action by its Parties. Thailand sets an example for the rest of the study countries in terms of periodic review and revision of measures taken to address emerging tactics of the tobacco industry.
2. In order to comply with FCTC requirements and

timelines, countries in the region need to urgently review their laws with a view to prohibit all cross-border TAPS originating within their territories.

3. Currently, TAPS issues in the region are being championed by Ministries of Health. Given that regulation TAPS has implications beyond the scope of public health, it is necessary for active Inter-sectoral engagement and the involvement of other relevant wings of the government such as the Ministries of Communication and Broadcasting, Industry and Industrial Trade that have direct control over the media, and Customs Department for cross border movement.
4. A well thought out and public-friendly monitoring, reporting, and enforcement mechanism is critical to leverage the benefits of existing and future TAPS laws in the study countries. Sustainable sources of funding, such as through tobacco taxes, need to be dedicated for comprehensive results.
5. The findings point to the need for more civil society advocacy for the development of more comprehensive laws and to ensure the implementation, monitoring, and reporting of TAPS issues. It would be strategic for governments to effectively and officially engage the broad reach and continuous presence of NGOs in each country and to build their capacities in monitoring and enforcement.
6. Some key informants pointed to the need to prioritize the steps to be taken to set realizable objectives in the context of the regulation of cross-border TAPS and to address the challenges to regulating the Internet that is a source of TAPS across borders.
7. Cross-border TAPS issues need more discussion and understanding within COP to generate a meaningful response from relevant countries. Regional platforms

such as SAARC, ASEAN, and WHO regional offices need to be proactively engaged and sensitized to facilitate regional co-operation and co-ordination.

8. Pursuant to the COP-3 recommendation on “Other Measures to Eliminate Cross Border TAPS”, it would be useful to set up a website that serves as a regional knowledge hub to facilitate the issuance of notifications and responses related to cross-border TAPS originating from countries in the region. This could prove to be a model for other regions and could be stepped up over time to an international knowledge hub as per COP recommendations.
9. Public awareness about TAPS control and implementation mechanisms as articulated in FCTC is low. With improved awareness, the public would be empowered to participate in TAPS control measures. For instance, the consumer awareness media campaign ‘Jago Grahak Jago’ (Wake up Consumer, Wake up) in India is being used as a common platform by many agencies to empower citizens to take proactive steps in realizing their rights. The National Rural Health Mission Campaign is another such platform available for raising public awareness on TAPS issues in India.

In conclusion, the study countries reflect a head-start with regard to initiating action on TAPS, but much more needs to be done to protect their populations against the tobacco industry’s promotional efforts. Success in regulating TAPS lies in thinking ahead of the industry and countering its strategies in a timely manner. In doing so, these countries have the opportunity to raise global standards in TAPS regulation and build best practices that would help to create environments free of tobacco promotion and thus bring down tobacco use.



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Glossary

Bidi: A typical tobacco product smoked in South Asian countries, a bidi consists of dried tobacco flakes that are rolled in a tendu leaf and held together by a string.

Gutkha: A typical chewing tobacco product used in South Asian countries, gutkha is smokeless tobacco that contains additives and flavouring agents.

Kretek: Specifically produced in Indonesia, kretek are cigarettes that contain tobacco, cloves, and additives.

Paan Masala: Also typical in South Asian countries, paan masala is made of areca nut, spices, and a flavouring agent. It is available with or without tobacco and is chewed.

Tobacco advertising and promotion: The FCTC defines tobacco advertising and promotion as “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product either directly or indirectly.” Examples include direct advertising on electronic, print and outdoor media, product packaging, point of sale advertising, price discounts, product placement and display at retailers, sales promotions, Internet promotions, use of tobacco brand names, logos, or brand identities on non-tobacco products, activities, or events, placement of tobacco products, brands or tobacco use in the entertainment media.

Tobacco Sponsorship: The FCTC defines tobacco sponsorship as “any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.” Examples include financial contributions to sports, cultural, or educational programs, corporate social responsibility activities such as youth smoking prevention initiatives, and charitable contributions to public and private organizations and causes in exchange for the promotion of tobacco brand names, logos, or brand identities.

Brand extension or brand stretching: This is a marketing strategy through which a firm marketing a product with a well-developed image uses the same brand name in a different product category. “Brand stretching” in the context of the study occurs when a tobacco brand name, emblem, trademark, logo, or trade insignia or any other distinctive feature (including distinctive colour

combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or services are likely to be associated.

Brand Diversification: This occurs when a company attempts to diversify an established brand into a new market or product category, for the purpose of increasing the sale of the existing products and creating greater awareness of the brand in the market (in addition to generating additional earnings through the new product or market).

Trademark Diversification: Trademark diversification is an indirect form of advertising that uses the value of a known trademark to promote a variety of products.

Corporate Social Responsibility: In the context of this study, corporate social responsibility refers to any form of contribution by tobacco companies to any event, activity, or individual commonly in exchange for the promotion of the companies’ brand(s) or corporate identities with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

Surrogate advertising: This refers to duplicating the brand image of one product extensively to promote another product of the same brand name.

Power Walls: These are large, visually appealing displays of products intended to attract customers.

South Asia: Also known as Southern Asia, this is the southern region of the Asian continent which comprises the sub-Himalayan countries and, for some authorities, also includes the adjoining countries in the west and the east. For the purpose of this research, South Asian countries implied Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka,

South East Asia: The study also followed the WHO grouping of South East Asia region with the exception of DPR Korea and Timor Leste. This included Bangladesh, Bhutan, India, Indonesia, Myanmar, Maldives, Nepal, Thailand and Sri Lanka.

Media Platforms: These refer to any surfaces, media, or means of communication through which information can be shared. They range from a newspapers to billboards, tobacco packs, mobile phones, and the Internet.

Responsible Entities: The term “responsible entities” refers to the entire marketing chain that bears some responsibility for the idea, product, or image being marketed. It begins with the initiator of the advertising,

promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations. It also includes persons or entities that produce or publish content, such as advertising agencies, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, and Internet, mobile phone, satellite and game content producers and the models who take part in them. ■



Annexures

Annexure-I

FCTC Article 13 Compliance Deadline

Country	FCTC Ratification	Art 13 Deadline
Bangladesh	14 June 2004	27 February 2010
Bhutan	23 August 2004	27 February 2010
India	5 February 2004	27 February 2010
Indonesia	Yet to Accede	Not Applicable
Maldives	20 May 2004	27 February 2010
Myanmar	21 April 2004	27 February 2010
Nepal	7 November 2006	05 February 2012
Pakistan	3 November 2004	27 February 2010
Sri Lanka	11 November 2003	27 February 2010
Thailand	8 November 2004	27 February 2010

Annexure-2

List of Study Informants

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Aga Khan Hospital, Pakistan.
Alcohol and Drug Information Centre, Sri Lanka
Dhaka Ahsania Mission, Bangladesh
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Faculty of Pharmaceutical Sciences, Naresuan University, Thailand
Health Related Information Dissemination Amongst Youth, India
India Resource Centre, International Union Against Tuberculosis and Lung Disease, India
Information and Communication Bureau, Ministry of Health, Bhutan
Jeevaka Foundation, Sri Lanka
Ministry of Health and Family Welfare, India
Ministry of Health and Family Welfare, Myanmar
Ministry of Health, Maldives
Ministry of Health, Pakistan
National Commission for Child Protection, Indonesia
National Organization for Tobacco Eradication (NOTE-India), India
Prasar Bharati, India
Public Health Association, Indonesia
Resource Centre for Primary Health Care Nepal
South East Asia Tobacco Control Alliance, Thailand
Thot Consultants, India
Tobacco Free Initiative, WHO-SEARO
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Annexure-3

Photo Credits

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