What if tobacco were simply prohibited?
by Valentin Petkantchin, associate researcher at the Institut économe Molinari

In their fight against smoking, many governments, including the French government, have continued to raise taxes and increase the volume of regulations. This has reached the point where the possibility of tobacco prohibition has been raised openly in some countries, with legislative proposals being put forward.

The economic and social effects of prohibition policies have been analysed extensively, with the cure found to be worse than the disease. Prohibition has led to consumption of lower-quality products posing greater dangers to the health, along with illicit trafficking, contraband, high enforcement costs and a level of corruption that, together, create a burden on public finances and on society as a whole.

"DE-NORMALISATION" OF THE LEGAL SUPPLY OF TOBACCO

In this era of Internet purchases and globalised exchanges, the idea of prohibiting the sale of a product such as tobacco – with a history going back thousands of years – may simply appear unreal.

However, driven in particular by the WHO Framework Agreement on Tobacco Control, which took effect in 2005, public authorities in many countries have committed themselves to the notion of tougher restrictions on tobacco consumption and also – something relatively new – on tobacco supply.

Beyond ever-higher taxes – now more than 80% of French retail cigarette prices – and a growing number of smoking prohibitions, this framework convention calls for a series of measures setting new limits on the marketing and sale of tobacco.

This incomplete list includes, for example:

• Compulsory health warnings on packages with shocking images aimed at dissuading people from smoking. Ten European countries, including France, require these images.
• A ban on displaying cigarettes at points of sale (under-the-counter requirement). This ban already exists in Iceland, Ireland and Norway, with Finland set to follow in 2012.
• A prohibition on producers’ use of graphic presentations (logos, designs, brand images, etc.) to differentiate their packaging from other brands. This involves imposing so-called “neutral” or “generic” packaging. Australia is the first country to impose this measure, starting this year (2012). Legislative proposals along these lines have been presented in France.

The stated aim of this regulatory arsenal is the "de-normalisation" of the tobacco industry, says Yves Bur, a member of the French National Assembly and the originator of one such proposal.

With demand refusing to disappear, this logic, aimed increasingly at suppressing the legal supply of tobacco, could lead down the road to the tobacco industry being nationalised (a public monopoly that could easily offer “generic” tobacco products) or to the sale of tobacco being prohibited either de jure (with a prohibition by law) or de facto (by gradually making it unprofitable for legal


6. See the bill proposed by Yves Bur aimed at requiring neutral and standardised cigarette packaging, No. 3005, submitted 7 December 2010. A similar proposal on neutralisation and standardisation of tobacco products (No. 4048) was submitted on 7 December 2011.

7. In France, for example, the percentage of people who smoke went between 2005 and 2010 from 32% to 34% of the population aged 15-75 — Rapport national IFCT France (2011), p. 7.
suppliers to provide tobacco products). The neo-prohibitionist option has been discussed by various specialists in the anti-tobacco battle. French economist and public figure Jacques Attali says this topic should be at the centre of debate in the 2012 French presidential campaign.

Some countries have already proposed legislation to this effect. One such bill in Finland calls for the country to become smoke-free by 2040. A bill in Iceland aims to prohibit cigarette sales except in pharmacies, and – after 10 years – only with a doctor’s prescription.

Clark, a South Asian country, has already taken the plunge. In 2004, it enacted a total ban on tobacco sales. This failed to make consumption disappear, however, and a black market has replaced the official market to meet existing demand. As a study notes, “illegal tobacco smuggling, including black market sales due to the sales ban in Bhutan, remains robust.”

Theory and experience confirm the consequences of these types of prohibitionist policy.

PROHIBITION DOES NOT MAKE CONSUMPTION DISAPPEAR

These policies are justified to the public by the notion that decreeing the prohibition of a product is all it takes for the product to cease being consumed. This reasoning – however tempting its simplicity may be – is, in reality, an illusion. Why is this so?

First, it is misleading, because prohibition, though it may increase the financial cost of procuring the forbidden product, does not lead to the disappearance of the ultimate reasons that explain why the product is still desired, sought and demanded.

Beyond the issues of addiction and known health risks, it is hard to deny that individuals who – however knowingly – decide to smoke, get a subjective pleasure in some form or other (excitement, better stress management, peer pressure, etc.). Accordingly, the only lasting way to make tobacco disappear would be for smokers to decide of their own free will to change their lifestyles and stop smoking, which they can do at any time in the absence of and regardless of any prohibition, as many ex-smokers have done.

Prohibition inevitably runs up against consumers’ “sovereignty” in deciding on the products they wish to consume and for which they are prepared to pay the price. By disregarding this, public authorities are putting the cart before the horse.

This is why we can observe that prohibition policies do not cause consumption to disappear. And declines in consumption, if they occur, tend not to be long-lasting.

This is what happened during what was undeniably one of the western world’s harshest prohibition experiences, namely the “dry law” in force in the United States from 1920 to 1933. According to estimates, while alcohol consumption trended downwards prior to prohibition, reaching a low point in 1920-1921 at the start of it, consumption went back up subsequently. For example, although consumption remained lower than before the First World War, by 1929 it was five times higher than in 1921 and 16% higher than in 1918, in other words before the “dry law” was imposed.

Similarly, cigarette prohibitions were implemented in the 1890s in the states of Washington, North Dakota, Iowa and Tennessee. However, as noted in a study, “cigarette use declined between 1896 and 1902 but then increased continuously until the prohibitions...
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were repealed, between 1911 and 1922.16

A "BREATH OF FRESH AIR" FOR THE BLACK MARKET

As prohibition policies proves ineffective in making demand for a consumer good disappear, profit opportunities continue to exist. And with traditional networks for meeting demand being made illegal, prohibition automatically provides opportunities to illicit market players, who never fail to seize them.

As such, the neo-prohibition of tobacco would be all the more counter-productive, considering that there already exists a well organised black market in cigarettes. Whether in large quantities by the container load or in small quantities by Internet and mail, contraband is found not only in France and across Europe but also worldwide, fed by years of high taxes and regulations that penalise purchases on the legal market. Illicit traffic is estimated to account for 11% of the world market.17 The shortfall for European governments in uncollected tax receipts may amount to about 10 billion euros.18

In France, according to estimates in 2011, 20% of purchases are conducted outside the official system, escaping French taxation and regulation, with about 5% from the black market (contraband, counterfeits or Internet sales; see Figure 2).19

It would be illusory to think that the presence of this well established black market would not take over from the legal supply if ever the latter disappeared for some reason or other as a result of actions of an ever more prohibitionist nature by public authorities. The growth of this illicit market presents perverse effects that must not be underestimated.

PERVERSE EFFECTS ON HEALTH

The reputation effect, the existence of brands and the chance to be informed of a product’s characteristics enable a free market to satisfy consumers more effectively. Otherwise, consumers may have to choose lower-quality products on the illicit market or substitutes that are generally riskier for the health.

For example, under the "dry law" in the United States, alcohol consumption turned almost exclusively to spirits and drinks with an average alcohol level about 2.5 times the level (150% higher) that prevailed before and after prohibition.20 Black market liquor could contain substances that were dangerous to drinkers’ health and, in some cases, was made with industrial alcohol.

This situation now affects illegally produced contraband cigarettes. A study based on samples from the American illicit market showed that levels, for example, of cadmium and lead – metals potentially harmful to smokers’ health – can be 6.5 and 13.8 times higher, respectively, in counterfeit cigarettes than in original brand-name cigarettes.21 Similar results have been found in the United Kingdom22 and the Netherlands.23

In contrast to their stated aim, policies to “de-normalise” tobacco thus condemn smokers to getting tobacco that is potentially more harmful to their health on the black market. Prohibition would only worsen this type of situation.

ECONOMIC AND FINANCIAL COSTS THAT HURT PUBLIC FINANCES

On the one hand, prohibition would result in the disappearance of the legal tobacco sector, amounting to more than 16.6 billion euros in France in 2010.24 It would thus deprive all economic players – makers of tobacco products as well as distributors or retail sellers such as France's 28,000 tobacconists – of income from their activity

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(approximately 3.4 billion euros). Prohibition would also lead to the disappearance of about 13.2 billion euros in tax receipts. To this amount would have to be added the disappearance of receipts from the taxation of businesses (corporate income tax, etc.).

In addition, prohibition would occur at the expense of all taxpayers, smokers and non-smokers alike. Prohibition is a policy requiring the deployment of additional means to apply and enforce the ban on tobacco. The growth of the illicit market would mean, if prohibition is not abandoned, that it would "consume" services such as police and courts at a growing pace. These are scarce resources that, as a result, would not be available to protect the public against real attacks.

In the United States, the budget of the Bureau of Prohibition more than tripled in the 1920s. The trial and imprisonment of violators absorbed a growing share of judicial and penitentiary resources. As noted by economist Mark Thornton, "the court and prison systems were stretched to the breaking point, and the corruption of public officials was rampant."

Prohibition also leads to a rise in government spending and a degradation of public finances. The entire population also faces the risk of suffering from an increase in organised crime, with its accompanying violence and corruption. Rather than putting an end to the consumption of products considered harmful to the health, the fight against tobacco risks becoming a permanent and never-ending struggle against tobacco trafficking.

Prohibition, whether written into the law or the result of regulatory suppression of legal tobacco supply, injects new life into illegal trafficking, which moves in to meet demand, not in spite of but because of the ban.

CONCLUSION

Both theory and experience show that regulatory prohibition of a consumer good does not make the reasons it is consumed disappear. Prohibition systematically fails to meet the goal it seeks when it goes up against the free choice of consumers.

The fact remains that prohibition, whether written into the law or the result of regulatory suppression of legal tobacco supply, injects new life into illegal trafficking, which moves in to meet demand, not in spite of but because of the ban. Smokers will then have to content themselves with lower-quality products that are more dangerous to their health and about which they have less information.

While deficits and public debt race out of control in many countries such as France, this type of prohibition policy would also be an unwelcome source of higher government spending to "fight" the black market and the corruption caused by this very policy.

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