

Trade responses to restrictions on the marketing of unhealthy commodities

A rapid review of reactions of the producers and sellers of unhealthy food, alcohol, tobacco and e-cigarettes

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Overview

Background

The Scottish Government plans to restrict in-premise marketing of food and non-alcoholic drinks high in fat, sugar or salt (HFSS). This is to reduce consumption and related harms.

Aim

This review aims to improve our understanding of how the tobacco, alcoholic drinks, and HFSS food and drink industries respond to these restrictions.

The restrictions include in-premise price promotions or placement promotions of unhealthy products.

Main findings

- Industry responses varied. Some responded positively to restrictions, while others responded negatively.
- Manufacturers and wholesalers support and encourage retailers to adapt to, or minimise the impact of, restrictions to maintain sales.

- Retailers change product stock and pricing structures to reduce or remove the impact of restrictions on profits.
- Manufacturers reformulate products so they are no longer restricted in cases where it is practical to do so.
- Industry shifts its marketing focus to products that are not restricted. This can be either desirable or undesirable, depending on how healthy those products are.
- Marketers use familiar branding on exempt products to promote restricted products by proxy.

Considerations for policy-makers

Legislation should:

- be clear and specific to reduce the chance of it being misunderstood
- minimise inconsistencies in the settings, products and circumstances to which restrictions apply
- be robust against negative industry responses, either by seeking to prevent loopholes, or by updating legislation quickly in response to negative feedback

Implementation should include carrying out robust monitoring and evaluation of interventions.

Effective enforcement is crucial to the effectiveness of this type of intervention, so appropriate local authority resources must be in place.

Limitations of this report

There is a lot of evidence about responses to tobacco marketing restrictions, but less evidence related to alcoholic drinks and HFSS products.

We know that different industries often respond to restrictions in similar ways. However, we cannot be sure that the HFSS food and drink industry will respond to in-premise marketing restrictions in the same way as the tobacco industry.

Much of the academic evidence available concerns countries other than the UK. Industry response is likely to vary in different countries because of differences in the social policy contexts, cultural contexts and effectiveness of enforcement.

Introduction

Background

Marketing of food and non-alcoholic drinks high in fat, sugar or salt (HFSS) drives consumption of these products, which is associated with weight gain and related health risks at the population level.[1]

The Scottish Government has set out plans to introduce restrictions on some forms of marketing of HFSS products.[2]

These restrictions could include price promotions (such as quantity discounting) and restrictions on where products can be placed in settings where food and non-alcoholic drinks are sold to the public.[3]

Purpose

To maximise the impact of restrictions on marketing, it is important to consider:

- how marketers' behaviours may change in response to those restrictions
- how those responses might affect the intended public health impacts

From a public health perspective, responses can be positive or negative.

Responses may include attempts to limit the intended impact of restrictions, but may equally include steps taken to adapt in ways that support public health goals.

Understanding likely industry responses can help inform more effective legislation.

This report is intended to help inform development of legislation.

Scope

We have reviewed and synthesised academic evidence and trade press reports on how different aspects of industry (retail, wholesale and manufacturing) adapt to marketing restrictions.

Owing to limitations of the evidence base around HFSS product marketing interventions, the review also includes evidence related to restrictions on marketing of alcohol and tobacco. This was based on strong evidence that these different industries often respond in similar ways to marketing restrictions.[4-9]

This report acknowledges a broad definition of marketing that includes any aspect of product, price, place or promotion used to sell a product more effectively.[10] However, in line with the Scottish Government's proposed policy, this review focuses on the use of pricing and placement as marketing tools.

Limitations

This review does not consider high-level policy strategy such as lobbying or litigation.

Instead, it focuses on practical, operational responses to the announcement or implementation of restrictions that industry undertakes as it seeks to adapt to changes.

Method

Types of articles reviewed

The review comprises two parts:

1. a non-systematic rapid review of academic journal articles
2. a content analysis of trade press articles

Limited evidence base on HFSS products

We anticipated that the evidence base on HFSS industry responses would be limited because these types of policies have not been implemented widely and because their effects are complex.

To address this, the review also incorporates evidence and content related to interventions to restrict the marketing of alcohol and tobacco products.

We hope that insights from experiences of the restriction of those can be applied to HFSS products.[11,12]

Academic journal articles

We identified articles by searching academic literature databases (Medline, Econlit, CINAHL, Proquest and Scopus) and manually filtering search results for relevance.

The initial search was supplemented by a search for articles about tobacco and alcohol marketing restrictions, which identified further relevant articles.

The search and screening processes for each search are outlined in Appendices 1 and 2, respectively.

The selected articles were very diverse in terms of research design, so a narrative synthesis was conducted.

We read each article in detail and extracted relevant pieces of evidence. We then thematically categorised those pieces of evidence into different types of industry responses that emerged.

Trade press articles

We identified articles by conducting advanced searches of trade news sources within the Nexis database and manually filtering search results for relevance.

The Nexis database aggregates articles from tens of thousands of national and regional newspapers, business publications and company and industry reports.

We then carried out qualitative media content analysis. The process of searching for, screening and excluding articles is outlined in Appendix 2.

Synthesis and reporting

The findings are structured around the themes that emerged from the academic and trade press evidence.

Where one theme contains evidence from both academic studies and trade press articles, those pieces of evidence are presented alongside each other, along with the source of each piece of evidence.

Included academic studies

We identified 13 relevant academic articles:

- 3 about trade responses to HFSS food and drink policies
- 10 about trade responses to tobacco or electronic nicotine delivery systems (ENDS) policies

We did not identify any relevant articles about alcohol policies, although alcohol marketing policies were mentioned briefly in one article as a point of comparison with HFSS product marketing policies.

Screening

The screening process identified a wealth of academic literature related to the need for policy to restrict marketing of these unhealthy commodities, and much about trade responses to those policies.

However, the majority ($n = 775$) of articles were excluded, because they were about marketing restrictions (e.g. advertising restrictions) or trade responses beyond the scope of this review (e.g. attempts to prevent, delay or weaken legislation).

The included studies were methodologically diverse but used appropriate research designs. Designs included systematic reviews, narrative reviews, qualitative interview studies and one policy analysis.

Findings are presented under thematic categories of response that emerged during narrative synthesis of the articles.

Included trade press articles

We identified 33 relevant articles for analysis:

- 20 discussed tobacco
- 9 discussed HFSS products
- 5 discussed alcohol

Note: some articles mentioned more than one category of products.

Table 1 shows the distribution of selected articles between different publications.

Table 1: Distribution of selected articles between publications

Publication	Number of articles
The Grocer	11
Convenience Store	11
Forecourt Trader	6
Independent Retail News	2
British Baker	1
Just Drinks	1
Off Licence News	1

Findings: support for retailers

Manufacturers and wholesalers support retailers to adapt to restrictions on product placement.

Academic and trade press articles documented ways in which transnational tobacco companies (TTCs), wholesalers and trade bodies supported and incentivised retailers to continue to promote tobacco after point of sale (POS) display bans.

The examples in the following sections show how retailers were being supported to act within the constraints of restrictions. However, the review did identify some examples of retailers being encouraged to go against restrictions.

Equipment to enable compliance and promotion

Two academic articles documented TTCs providing equipment to retailers in response to POS display bans.

Manufacturers provided equipment

Watts and colleagues carried out a telephone survey of 800 randomly selected Australian retailers in August 2018. They asked a series of questions about benefits offered to them by tobacco companies and what retailers agreed to in return.[13]

The study found that TTCs responded to display bans by supplying retailers (particularly convenience and grocery stores) with tobacco cabinets, price lists and tobacco accessories.

Similarly, in 2021, Amul and colleagues reviewed a wide range of activities conducted by TTCs to try to increase tobacco sales in Southeast Asia.[14]

They found that 'after Thailand's tobacco display ban, TTCs circumvented restrictions with [...] transparent point-of-sale displays showing brand logos and colours'.

Retailers valued support from manufacturers

Several trade press articles discussed how TTCs provided tobacco cabinets to retailers.

The quotations from retail operators below show that retailers were confident that manufacturers would provide them with equipment.

The quotes also illustrate their satisfaction with the equipment and the support provided to help them use it:

[A TTC] will supply us with the equipment to ensure our tobacco is fully covered.

Forecourt Trader, June 2014

[An owner of petrol stations and convenience stores] said: 'The suppliers at [TTCs] have been more than helpful, I can't knock them at all. They've provided us with advice, planograms and training.'

Forecourt Trader, February 2015

One representative of a TTC described the value of these 'behind-the-counter solutions'.

They said the solutions allowed them to comply with the restrictions while maximising the promotion of tobacco sales.

They clearly, legally signpost that tobacco is for sale, showcase a retailers' [sic] product range and availability, offer secure storage and, in the case of [gantries supplied by a TTC], are provided and installed free-of-charge.

Forecourt Trader, February 2018

Incentives

The survey by Watts and colleagues [13] found that TTCs offered retailers a range of incentives and benefits with the apparent aim of compensating for potential loss of sales due to legislation.

These included discounts on wholesale purchases, gifts (e.g. gift cards, confectionary, event tickets) and rewards (e.g. prizes in return for increasing sales or showing product knowledge).

In some cases, manufacturers offered this support in exchange for increased orders of their products.

Trade press articles identified various types of support given to retailers by manufacturers, wholesalers and industry bodies.

Some of the support was framed as support to comply with restrictions. However, many were framed as support to maximise sales despite restrictions.

POS bans in Colombia

Uang and colleagues [15] carried out a qualitative analysis of news sources, and interviews with policy-makers and health advocates regarding the implementation of tobacco control legislation in Colombia (including POS display bans).

Their findings suggest that trade bodies actively encouraged retailers to continue to display tobacco products and brand logos.

The article describes affiliates of TTCs as trying to 'blunt' the legislation 'by creating promotions aimed at storeowners, stating that:

companies encouraged storeowners to display cigarettes conspicuously, telling owners that tobacco company representatives would make surprise visits to give monetary prizes to stores with conspicuous displays.

(Uang and Colleagues, p1054)

Guidance

Articles described industry-produced publications, websites and apps aimed at retailers.

Examples included:

- guidance produced by one TTC 'to advise retailers to maximise profits from tobacco' (Forecourt Trader, February 2014)
- a website provided by another TTC presenting retailers with 'advice on how to maximise sales in the category once the doors are installed'
- guidance issued by another TTC to help retailers 'avoid any loss of sales when displays go dark' (Forecourt Trader, February 2015)

Many of the articles contained advice to retailers on how to respond to the legislation to maintain sales, often delivered by representatives of TTCs.

Industry representatives spoke of the importance of training staff to inform customers about tobacco products:

Although the law says retailers can't initiate discussions about tobacco products with adult tobacco consumers, they can be informed about the products stocked and answer questions, if asked.

Forecourt Trader, February 2014

As the market goes dark, it will become even more important for retailers to be aware of new innovations and the differences between products - for example, what makes one capsule cigarette different from another - so they can answer any queries adult smoking customers may have.

Convenience Store, 1 March 2013

These examples highlight tobacco manufacturers' perception of the potential role of shop staff themselves in promoting restricted products.

It also shows their willingness to encourage retailers to prepare to fulfil that role.

Manufacturers' and retailers' concerns

Two quotations of representatives of TTCs suggested they were concerned about the possibility of retailers reducing their tobacco stock in reaction to display bans, and that they were keen to discourage retailers from doing so:

If you reduce your range significantly you could lose customers for good.

Forecourt Trader, February 2015

[A TTC] says its level of support is scrutinised on a call-by-call basis and continues to take into account the range of tobacco carried, the volume sold and the retailer's continued commitment to the tobacco category.

Forecourt Trader, February 2014

TTCs' apparent concerns that retailers might reduce their product range were supported by this perspective from a retailer who felt that maintaining their current range of stock would not be practical under POS display restrictions:

One certainty is that a display ban will force ranges in large stores to be rationalised.

[A convenience store operator], who is trialling a solution in his smaller stores, said the challenge of finding brands behind screened off displays would make it impossible to manage the magnitude of brands and variants currently sold. 'We simply won't be able to work with the proliferation of brands and variants currently available. I'll be removing slow sellers such as 10s, and some menthol variants,' [he] says.

Convenience Store, 20 January 2012

Findings: retailer non-compliance

Non-compliance in Southeast Asia

Amul and colleagues [14] carried out a systematic review of tobacco industry tactics in Southeast Asia.

They found that retailers violated restrictions in Southeast Asian countries with weak enforcement.

They also noted that TTCs were responsible for enabling and encouraging these violations.

TTCs did this by installing non-compliant POS displays and by offering retailers rewards and other incentives for not complying.

Non-compliance in Israel

Bar-Zeev and colleagues [16] analysed tobacco control coalition communications via social media (WhatsApp) regarding tobacco industry tactics in Israel.

The tactics were to bypass legislative efforts, test the limits of the legislation or test the government's ability to enforce the legislation.

This included civil society and professional organisations, including public health, medicine, public policy, public administration and communications.

They found that the display cases provided to retailers by TTCs were not compliant with POS display restrictions.

Reasons for non-compliance

Legislation not clear

Bar-Zeev and colleagues [16] blamed poor compliance with tobacco control legislation in Israel on a lack of specificity of language in the legislation, a lack of strong implementation guidelines and a lack of comprehensive enforcement.

Retailer's choice

In addition to encouragement from TTCs or other parts of industry, Crosbie and colleagues [17] identify that retailers may simply choose not to comply.

Their 2017 study combines a review of legislation, analysis of media articles and analysis of interviews with key stakeholders. It investigates the implementation of a package of tobacco control policies in Costa Rica, including a POS display ban.

While the authors found that compliance with most advertising, promotion and sponsorship restrictions was good, retailers typically continued to display cigarette packages at POS.

Findings: stock and pricing

Changing product lines

Some trade press articles reported on restrictions on quantity-based discounting of alcohol. They described how retailers responded to legislation by changing the product lines they stocked.

These quotations show how retailers could ensure that the specific products included in multipack units were not also stocked as individual items. This meant the products included in multipacks would not count as being discounted.

There are anomalies in the legislation, however, so if the retailer doesn't sell individual bottles or cans, there are no restrictions on the pricing of quantity purchases. Likewise, if a store sells single 56.8cl cans of a beer, they could still offer discounts on multipacks of 50cl cans. As a result, some retailers are now looking at range adjustments to respond to the new rules.

Off Licence News, 30 September 2011

A number of retailers have stopped selling single cans of beer due to the requirement for individual units to reflect the price of multipacks.

Convenience Store, 4 January 2013

Discounting individual items

Another response to restrictions on quantity-based discounting was to reduce the price of individual items.

Backholer and colleagues' [18] 2019 review highlighted a potential lesson from alcohol policy.

In response to Scotland's restrictions on multibuy promotions on alcohol in 2011, retailers increased price discounts on single products.

This unintended consequence may have reduced the effectiveness of the policy in reducing affordability and purchasing of alcohol, although there is strong evidence that the intervention was still effective.[19]

Effect of price promotions

Watt and colleagues' [20] review of the effects of price promotions on driving consumption of unhealthy food and drink identifies that retailers 'will act to maintain profitability' to limit the effect of restrictions.

However, it states that the effectiveness of retailer responses has not been tested enough to be predicted confidently.

In the trade press, articles reporting on both restrictions on quantity-based discounting of alcohol and tobacco display bans described how retailers would (or could) change pricing strategies to reduce the impact of legislation.

One article described a wine retail chain that had previously focused on quantity discounting. However, it had responded to the Scottish legislation by reducing the prices of single bottles in Scotland to make individual bottles as affordable as they had been in multipacks:

[A wine retail chain] offers multibuy discounts as a key part of its business plan, and in response to the new legislation the company has opted for a solution that actually sees Scottish customers getting a better deal than their neighbours south of the border. Scottish shoppers will pay the multibuy discount price on a wine even if they are only purchasing a single bottle.

Off Licence News, 30 September 2011

In another article, an academic who had led research into alcohol purchasing explained why this approach may have successfully reduced the impact of the legislation:

Dr Ryota Nakamura from UEA's Norwich Medical School [...] said: 'The industry appears to have responded to the ban by replacing multi-buy with simple price reduction, which made it possible for Scottish consumers to buy alcohol at a discounted price but with a smaller financial outlay. This might have mitigated the intended effects of the policy.'

Just Drinks, 26 November 2013

Findings: responses to product inclusion criteria

Academic and trade press articles identified the ways that manufacturers' and retailers' responses could be influenced by the extent to which marketing restrictions are applied to different products.

In 2022, Ling and colleagues [21] published a narrative review of the policy challenges presented by the changing 'landscape' of tobacco and nicotine products.

They identified the example of the Japanese and Korean markets shifting away from electronic nicotine delivery systems products, which were strictly restricted, towards 'aggressive promotion' of the less-restricted heated tobacco products.

This may illustrate industry's willingness to prioritise products that can be marketed more freely.

It also contributes to a broader point that marketing legislation can be outpaced by the rapid development and marketing of new products.

Using unrestricted products to promote restricted products

Some academic articles found instances of the tobacco industry finding legitimate ways to continue promoting tobacco products by putting tobacco branding on innocuous products, such as lighters,[14] clothing,[14] lanyards and holders.[21]

Regulating these practices may be challenging due to difficulty in categorising them as tobacco products. However, tobacco accessories are included in Scotland's restrictions on the display of tobacco at POS.

The use of tobacco accessories as a 'signpost' to promote tobacco in the UK (excluding Scotland) was reported in some trade press articles:

A number of retailers, with the exception of those in Scotland, are choosing to feature accessories on display stands and off-gantry fixtures, using them as a signpost for tobacco in-store.

Convenience Store, 26 August 2016

[An operator of a convenience store], near Silverstone, is planning to make much more of his accessories display once the shutters come down.

'We will be relocating the accessories to a special unit in a much more prominent position at the side of the counter. Accessories can provide very healthy profit margins so making the most of them, while at the same time signposting the fact you still sell tobacco, can only be a good thing,' he says.

Convenience Store, 20 June 2014

A representative of a manufacturer of tobacco accessories explained the promotional role of tobacco accessories:

[An accessories manufacturer representative] thinks this could provide retailers with a distinct opportunity to showcase their accessories range - while also highlighting the fact that they still sell tobacco to adult smokers who may be in doubt once the shutters come down.

In a bid to help them do so, and raise its own profile in the process, [the manufacturer] has created a new [roll-your-own] accessories unit which is designed to sit at the customer side of the counter.

Convenience Store, 20 June 2014

Findings: inconsistencies in restrictions

Benefits to retailers not affected by restrictions

Large retailers implemented tobacco display bans in the UK in 2012, but small retailers did not have to implement these until 2015.

Many trade press articles reported on different ways that small retailers may benefit from this inconsistency.

This quote illustrates that some thought small retailers could profit from being the only ones allowed to display tobacco:

We know from speaking to supermarket shoppers that because they will not be able to see the products or their prices, a small proportion of smokers will purchase more of their cigarettes needs from [convenience stores], off-licences, newsagents and forecourts.

The total sales uplift for these other channels has been estimated to be anywhere between £0.5bn to £1bn. This figure is not purely on tobacco sales, but is due to additional category purchases that could be made when smokers visit their convenience store more.

Convenience Store, 20 January 2012

Consistent with this, one retailer was reported to have experienced a rise in sales after a competing larger retailer had pre-emptively conformed to display restrictions:

[A convenience store operator] is reporting a rise in his weekly tobacco sales following his local [supermarket's] decision to comply with the display ban ahead of the April deadline.

Convenience Store, 2 March 2012

Change in marketing focus

Trade press articles suggested that tobacco manufacturers and wholesalers were taking the opportunity to use small retailers to promote new and revised products while tobacco displays were still allowed:

Tobacco manufacturers are certainly not blind to the small stores opportunity, with many now viewing convenience stores as integral to the success of new product launches or packaging refreshes.

Convenience Store, 1 March 2013

Learning from experience

Some articles noted that small retailers could learn lessons from the impact of the legislation on large retailers. They could also learn from the experiences of retailers following similar legislation in Australia:

When the display ban was implemented in Australia, the 'out of stock' rates of some leading brands increased by 600% overnight. To ensure this doesn't happen in multiple grocery stores in this country, retailers will need to ensure their units and store rooms are well-stocked, effectively merchandised and their range is always available.

The Grocer, February 2012

Findings: healthier products

Changing the ingredients

Several articles about HFSS marketing restrictions discussed changing the ingredients (reformulating) so they were no longer restricted.

Some manufacturers described reformulation as feasible, and an opportunity to compete with rival brands. However, most manufacturers described it as a difficult challenge.

Some manufacturers were concerned that their past progress in reducing fat, sugar and salt in some products would not be sufficient for those products to be exempt from restrictions.

Benefits

Some representatives of brands of cakes, sorbet and ice cream welcomed HFSS product marketing restrictions as a business opportunity.

They explained that their products are either sufficiently low in fat, sugar and salt, or can be reformulated to be exempt:

One brand that is compliant is [a manufacturer of sugar-free and high-protein cakes], which has won listings at [various supermarkets chains] for its low-sugar, high-protein cakes.

'We have another one of the big four lined up for January,' says [the CEO].

'It's HFSS that's driving our growing distribution and the fact that the big players aren't moving on this. It's easier for them to acquire than develop their own products, so we've had a couple of talks with big brands about that as well.'

The Grocer, 16 October 2021

[A sorbet manufacturer] will this year increase the amount of fruit in its [mango sorbet] to ensure it avoids the clampdown, while its raspberry variant is already compliant.

'This meant we could advertise on London's TfL network as part of our first ever outdoor campaign in September,' [a company representative] says.

The Grocer, 5 February 2022

Concerns

Representatives of other manufacturers were concerned that reformulation can be challenging, expensive and potentially harmful to health. It could also harm the quality and desirability of products:

Sugar in baked goods goes further than just sweetness. Providing attributes including colour, bulk, flavour, preservative, humectancy and texture, sugar reduction remains a challenge for the baking industry.

Issues around reformulation include increased numbers of ingredients, ones that consumers are not familiar with, all often without significant changes in the energy content of products. Also, the cost of replacing the sugar can be high.

British Baker, January 2019

Consumers are also increasingly wary of artificial ingredients, and some fibre-based sweeteners can cause digestive problems.

The Grocer, 16 October 2021

The same article went on to suggest that retailers are anxious about the limited range of cakes and biscuits that will be exempt from the new restrictions:

Some report a growing frustration among retailers about the lack of cakes and biscuits that will be able to fill their gondola ends once the new rules come into force in January. 'They're desperate,' says one supplier.

Most brands in the cakes and biscuits aisle have between 15 and 18 points in the HFSS scoring and there are some that are 23. To be compliant you need three or less.

The Grocer, 16 October 2021

Reformulation efforts not rewarded

Some articles reported that manufacturers who have previously reduced the fat, sugar or salt content of their products (either voluntarily or in response to the UK soft drinks industry levy) will be frustrated when they find that those reformulated products are not low enough in fat, sugar and salt to be exempt from marketing restrictions:

[A UK soft drinks manufacturer] is among those concerned at the potential impact of the ban, which industry sources described as a 'kick in the teeth' given it has already reformulated 99% of its portfolio so that its products are not hit by the soft drinks sugar levy.

The Grocer, 3 November 2018

It's undoubtedly a blow for manufacturers that have invested heavily in reformulation.

[A multinational confectionary manufacturer], for example, spent three years developing the lower-sugar [milk chocolate], trialling 35 recipes in six rounds of consumer testing. It argues that the government should be 'rewarding businesses who are innovating and providing consumers with greater choices', rather than including everything in its clampdown.

The Grocer, 15 August 2020

Promoting healthier products

A small number of articles suggested that retailers should focus more on promoting healthier products.

Doing this will discourage statutory restrictions by showing responsible behaviour and could also attract customers.

What small retailers need to do is adopt a measured approach and make an effort to draw in shoppers not only with sugar-based offerings next to the till, but also with more healthy snacks and drinks across the store. Everything, as they say, in moderation.

Independent Retail News, 25 January 2019

One article highlighted independent shopkeepers who had voluntarily improved the balance of HFSS and non-HFSS products at POS in anticipation of future legislation:

[An independent retailer] is ensuring she stays ahead of any more upcoming legislation by removing children's sweets from her counter.

'We used to sell chocolate lollipops at the counter and they sold really well there but I can see this being outlawed soon enough so I thought we should take some initiative.'

Convenience Store, 10 August 2018

Rather than moving unhealthy products away from the checkout, [a retailer] thinks that adding healthy options is the way forward.

'The important thing is to provide choice so whilst we have some [new confectionery products] in dump bins at the counter, we also have fruit at the counter,' he says.

Convenience Store, 10 August 2018

Findings: policy-making

Importance of trade responses

Backholer and colleagues [18] highlight the importance of trade responses to the success of restrictions. They also discuss the challenging nature of predicting those responses:

The eventual impact on purchasing behaviour and population health is likely to be strongly influenced by the response of customers, manufacturers and retailers, which remains unknown until such policies are implemented in practice.

Backholer and colleagues, p252

Responsive legislation

McLaughlin and colleagues [22] stress that predicting industry responses is difficult, and that policy therefore needs to be able to be amended following implementation:

For example, because the tobacco industry employs a broad array of tactics to lower retail prices (and continually devises new tactics), it is difficult to craft a policy that addresses every foreseeable category and permutation of industry price discounting tactics. Therefore, to remain effective this type of policy must be revised periodically as new industry strategies emerge.

McLaughlin and colleagues, p1845

Revising policies to keep pace with industry adaptations is challenging, as Ling and colleagues [21] highlight:

As the industry continues to reinvent itself to stay in business, regulatory authorities mostly play ‘catch up’. Current strategies which give the industry ample time to market products while they are brought under regulatory frameworks are not helpful for public health.

Ling and colleagues, p225

The authors go on to recommend that policy-makers create broad legislation that can cover changes to products:

Policies that anticipate changes to products and that ensure regulatory provisions are broad enough to accommodate future potential products will save time, money and lives.

Ling and colleagues, p225.

Understanding modern marketing

Jackson and colleagues [23] look at modern marketing campaigns of multinational companies. They discuss how these companies produce a range of marketing messages in different forms through different channels.

The researchers describe how multinational companies use many different marketing channels at the same time to present consumers with frequent, consistent messages about their products. For example, in the same day we might see a television advertisement for a product, then a billboard advertisement for the same product, and then see that product presented at the point of sale in a shop.

Jackson and colleagues [23] explain how these complex marketing strategies mean that if governments restrict only one marketing channel, they should expect marketers to continue to get their messages across through other channels.

Discussion

This review brings together academic evidence and trade press on HFSS marketing restrictions.

We looked at how the retailers, wholesalers and manufacturers of HFSS products, tobacco products and alcohol respond to the announcement or implementation of certain forms of marketing restrictions.

By analysing each set of articles, we identified a broad range of different trade responses. These were mainly related to restrictions on either the display of tobacco products or quantity discounting of alcohol.

Most responses fit within one of two broad categories of approaches to reducing or nullifying the impact of restrictions:

- retailers being supported and encouraged by manufacturers and wholesalers to adapt to, or reduce the impact of, restrictions on placement of products
- retailers changing product stock and pricing structures to adapt to, or get around, restrictions on quantity-based discounts

Placement of products

The evidence on industry responses to placement of products was all related to the restrictions to display of tobacco products at the POS.

TTCs were willing to support retailers to either overturn or compensate for tobacco POS display bans. This may indicate that unhealthy commodity industries are willing to invest in reducing the impact of product placement restrictions.

There was some academic evidence of retailers failing to comply with restrictions, although these examples were in low- and middle-income countries. These may differ from Scotland in their policy-making practices and standards of enforcement.^[16]

Quantity discounting

The evidence on industry responses to quantity-discounting was predominantly related to restrictions on alcohol sales.

Academic and media articles described how retailers changed their product lines, pricing structures or discounting strategies to reduce the impact of restrictions on price promotions.

This may mean that, in isolation, restrictions on price promotions have limited effectiveness due to the range of responses available to the trade. However, restricting price promotions alongside other restrictions on price may be effective in limiting the industry's ability to maintain sales.

Scotland's introduction of restrictions of quantity-based discounting and a minimum unit price for alcohol represents an attempt to do this. Minimum Unit Pricing is currently being evaluated.

Varied responses to restrictions

Most responses were intended to reduce negative impacts on sales, with the effect of limiting potentially positive impacts on health.

However, some responses were more aligned with the public health goals. This included manufacturers reformulating products to be exempt from restrictions and retailers promoting alternative, healthier products.

There were also examples of how industry changed their marketing activities to focus more on unrestricted products. In some cases, this may be a desirable outcome of good compliance. However, in other cases, industry was found to use unrestricted products to effectively promote restricted products.

There was some evidence that TTCs responded to tobacco POS display bans by investing in new, less-regulated alternative products. It is reasonable to expect food and drink manufacturers to use familiar branding on non-restricted products to promote HFSS products.

Limitations of review

Focus on tobacco

The evidence in this study has a disproportionate focus on tobacco. This is to be expected given how widespread and well-established tobacco marketing regulation is, and how relatively new and untested the equivalent policies are for alcohol and HFSS products.

There is a growing body of literature that highlights strong similarities in how different unhealthy commodity industries respond to regulation. Therefore, there is value in public health professionals sharing learning across different unhealthy commodities.[4,5,7-9,24,25]

However, we must acknowledge that there are fundamental differences between commodities (both in terms of their inherent features and their policy contexts) that require caution in the transference of learning between them.

Evidence outside the UK

Much of the academic evidence did not focus on Scotland or the UK.

Lessons from one country may not be relevant to countries with different economic and cultural profiles.

However, it may be significant that many of the types of HFSS products that restrictions would affect are produced by multinational corporations. The companies might be expected to repeat strategies that they have found to be successful elsewhere.

Number of articles

A relatively small number ($n = 13$) of relevant academic articles were identified.

It should be noted that the research designs used by the studies are limited in the extent to which they can prove causal links between restrictions and responses, or be generalised beyond their specific contexts.

The complexity of the social systems involved means that the types of controlled research designs that could produce causal evidence are often impossible.

The evidence found was also influenced by the research question, which focused on unintended consequences instead of measuring effectiveness, which lends itself to more exploratory and interpretative research designs.

Sources of evidence

While a long list of industry publications was identified during the scoping stage of the project, the final searches were limited to those publications available in the Nexis database.

The Nexis database is valuable for conducting media research as it allows sophisticated search terms, similar to those used with academic literature databases. Search processes are transparent and replicable in a way that internet search engines are not.

While Nexis does not archive some relevant publications, it is likely that the range of publications included in the study captured a suitably wide range of perspectives.

Strengths of review

We brought together findings from two distinct information sources: academic journal articles and trade press articles.

The value of this is demonstrated by the extent to which most themes that emerged from the articles were supported by both information sources.

While trade press can be expected to offer a more industry-focused perspective, when used together with academic evidence, it helps to add explanatory depth to the findings. This is particularly useful where it includes the perspectives of individuals within unhealthy commodity industries.

Considerations for policy-makers

Legislation

Clear

Legislation and accompanying guidance should be as clear and specific as possible. This is to reduce the number of ambiguities that might be misinterpreted in a way that harms the effectiveness of the intervention.

Consistent

Legislation may benefit from minimising inconsistencies in the settings, products or circumstances to which restrictions are applied.

Resilience

Legislation should be robust against negative industry responses. Following evidence of potential negative responses and writing legislation that is sufficiently detailed to prevent them would be beneficial.

Legislation could be written to be sufficiently broad that any attempts to bypass the legislation would be prevented.

Legislators may feel that comprehensively preventing negative responses is impractical, and instead plan to rapidly amend legislation in reaction to responses as they are observed.

This points to the value of monitoring and evaluating the implementation of marketing restrictions to better understand how industry is responding. It is also important to understand the effects of those responses.

This will help to inform amendments to existing legislation and to inform more robust legislation to restrict marketing of unhealthy commodities in the future.

Other considerations

Role of online retail

Beyond considering different categories of the physical retailer, policy-makers might also consider the potential role of online retail in disrupting the impact of in-premise marketing restrictions.

Varying industries responses

Conversely, acknowledging differences in how different parts of the industry might respond to restrictions could be useful.

This review illustrates how some food manufacturers see product placement restrictions as a business opportunity due to either their current products being exempt, or their willingness to reformulate their existing products.

Importance of reformulation

Some retailers may be concerned about a lack of appealing products to fill high-traffic areas of shops, but this vacuum will likely be filled by manufacturers willing and able to reformulate.

For this type of intervention to be effective, it is essential retailers comply with restrictions. Therefore, it is necessary for local authorities to be prepared and resourced to enforce the legislation.


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Appendix 1: HFSS products

Table 2 shows the search result by source for HFSS products.

Table 2: Search result by source 

Database	Results
Medline	374
Econlit	29
CINAHL	297
Proquest (Public Health, ASSIA, Sociological Abstracts)	257
Scopus	319
Total	1276
Total after duplicates removed	663

Search strategy

Each of the selected sources was searched for articles published before 3 March 2022.

To do this we used a search string developed iteratively to try to ensure all relevant articles were captured.

Search strings differed between different databases due to specific features and syntaxes of databases.

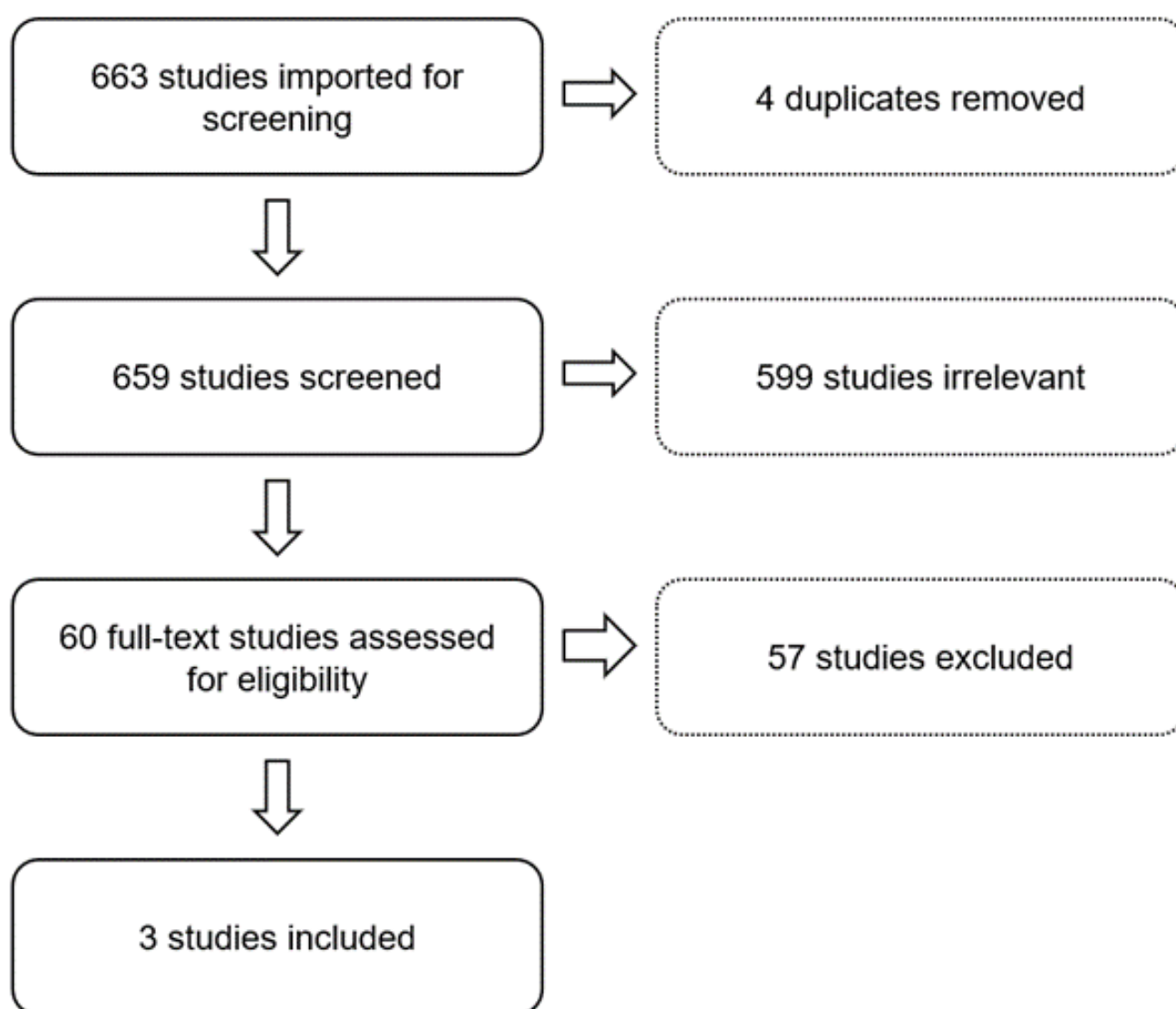
To save space, only the search string for Medline is presented as an illustration (see Table 3).

Table 3: Search strategy 

Line	Term	Results
1	exp Dietary Sucrose/	4414
2	exp High Fructose Corn Syrup/	195
3	exp Dietary Fats/	95,619
4	exp Fast Foods/	2782
5	exp Carbonated Beverages/	3199
6	exp Food Habits/	186,729
7	exp Food Preferences/	15,841
8	("high in fat sugar and salt" or HFSS or unhealthy food* or high sugar or high salt or high fat or high calorie or high energy dens*).ti,ab,kf.	71,676
9	(fizzy drink* or carbonated drink* or carbonated beverage* or soft drink* or sport drink* or sports drink* or soda or energy drink* or cola or sugary drink* or sugar sweetened beverage* or SSB or SSBs).ti,ab,kf.	21,315
10	(junk food* or fast food* or fastfood* or takeaway food* or take away food* or burger* or snack food* or snackfood* or salty snack* or sugary snack* or fried food* or fattening food* or obesogenic food* or obesogenic item*).ti,ab,kf.	9083
11	(high fructose or HFCS or high sucrose or confectionary or sweets or candy).ti,ab,kf.	11,399
12	or/1-11	365,171
13	(price promot* or multi-buy* or multibuy* or product placement or "3 for 2" or "buy 1 get 1 free" or "buy one get one free" or half price or BOGOF or promotional price or discount price* or discounted price* or price discount* or discounting or promotional display* or price reduction* or special offer* or special deal* or flyer or flyers or leaflet* or advert*).ti,ab,kf.	180,151
14	12 and 13	2944
15	limit 14 to (english language and yr="2014 - 2022")	1402
16	((response* or respond or change or subvert* or undermine* or get round or getting around or get around or getting around or circumvent or decision making or profit or tactic* or challenge*) adj3 (marketing or industry or industries or company or companies or business* or lobby* or manufactur* or organization* or organisation* or trade or retailer*).ti,ab,kf.	15,389
17	15 and 16	22
18	Health Policy/	70,870
19	Public Policy/ec	635
20	Advertising/lj [Legislation & Jurisprudence]	1848


Line	Term	Results
21	Food Legislation/	2480
22	(policy or policies or legislation or legislative or government* or law or laws or state intervention* or government intervention*).ti,ab,kf.	551,411
23	18 or 19 or 20 or 21 or 22	587,053
24	15 and 23	380

Flowchart of screening process



Appendix 2: Tobacco and alcohol

Table 4 shows the search result by source for tobacco and alcohol.

Table 4: Search results by source 

Database	Results
Medline	61
Econlit	16
CINAHL	49
Proquest (Public Health, ASSIA, Sociological Abstracts)	68
Scopus	72
Total	266
Total after duplicates removed	155

Search strategy

Each of the selected sources was searched for articles published before 16 March 2022.

To do this we used a search string developed iteratively to try to ensure all relevant articles were captured.

Search strings differed between different databases due to specific features and syntaxes of databases.

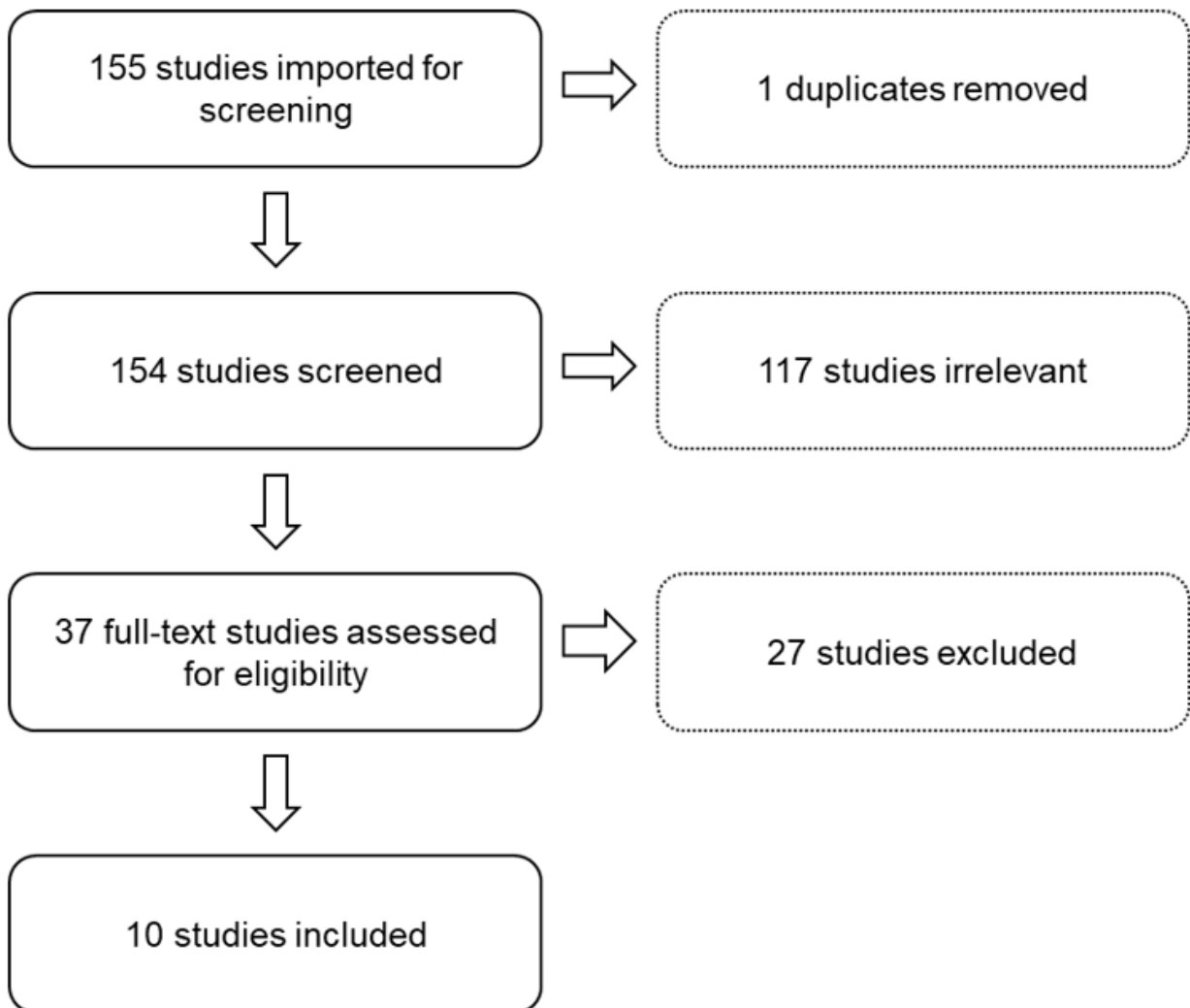
To save space, only the search string for Medline is presented as an illustration (see Table 5).

Table 5: Search strategy 

Line	Term	Results
1	(price promot* or multi-buy* or multibuy* or product placement or "3 for 2" or "buy 1 get 1 free" or "buy one get one free" or half price or BOGOF or promotional price or discount price* or discounted price* or price discount* or discounting or promotional display* or price reduction* or special offer* or special deal* or flyer or flyers or leaflet* or advert*).ti,ab,kf.	179,384
2	((response* or respond or change or subvert* or undermine* or get round or getting around or get around or loophole* or circumvent or decision making or profit or tactic* or challenge*) adj3 (marketing or industry or industries or company or companies or business* or lobby* or manufactur* or organization* or organisation* or trade or retailer*)).ti,ab,kf.	15,283
3	Tobacco Products/	6329
4	(tobacco or cigarette* or tobacconist* or e-cigarette* or nicotine vapour product* or electronic nicotine delivery system* or vape or vapes).ti,ab,kf.	169,079
5	exp Alcoholic Beverages/	22190
6	(alcohol* or booze or liquor or spirits).ti,ab,kf.	380,479
7	3 or 4 or 5 or 6	535,608
8	1 and 7	8387
9	limit 8 to (english language and yr="2014 -Current")	3633
10	2 and 9	63

Flowchart of screening process

Tobacco, nicotine and alcohol



Analysis

Researchers often take a quantitative approach to coding media content,[26] which allows for statistical analysis of large sets of data.

In this case, we took a qualitative approach to coding and analysis.

We chose this approach because we found a relatively small sample of relevant articles. This meant that statistical analysis would not be effective, and, therefore, a more in-depth interpretation of the content of each article would be more valuable.

We read each article closely and extracted sections of text that were relevant to the research questions. We then categorised that text thematically into different types of industry responses.

The coding was inductive rather than deductive. This means that the categories we used to code the text came out of our reading and interpretation of the data, instead of being based on any pre-existing idea of what different industry responses might be.

Appendix 3: Media

UK-based industry publications

In collaboration with partner organisations, we made a list of UK-based industry publications related to the food and drink production and retail trades.

This list was then cross-referenced against the list of publications available to be searched in the Nexis news database.

The final set of publications searched included: The Grocer, Food Manufacture, Forecourt Trader, Convenience Store, Independent Retail News and British Baker.

The alcohol-specific publications Just Drinks and Off Licence News were added to the search for content related to alcohol marketing restrictions to increase the likelihood of finding relevant content.

Search strategy

The initial search strategy involved searching within date ranges around key announcements and legislative events, but this strategy returned very few articles.

A revised strategy involved searching within a much wider range of dates, beginning with the earliest announcement of governmental interest in the policy, and ending on 4 March 2022.

The following search string was used to identify articles relevant to HFSS policies:

(promotion! OR marketing OR multi-buy OR "temporary price reduction" OR "temporary price reductions" OR "meal deal" OR "meal deals" OR advert! OR display!) AND (unhealthy OR HFSS or "high in fat, sugar or salt" OR sweets OR "junk food" OR discretionary) AND (scotland OR scottish OR scot OR scots)

The search string was modified as appropriate to search for tobacco and alcohol policies.

The search strings were kept relatively broad to minimise the risk of excluding relevant articles.

The articles identified by the searches were manually screened for relevance, with one round of initial screening by headline and secondary screening on reading of article text.

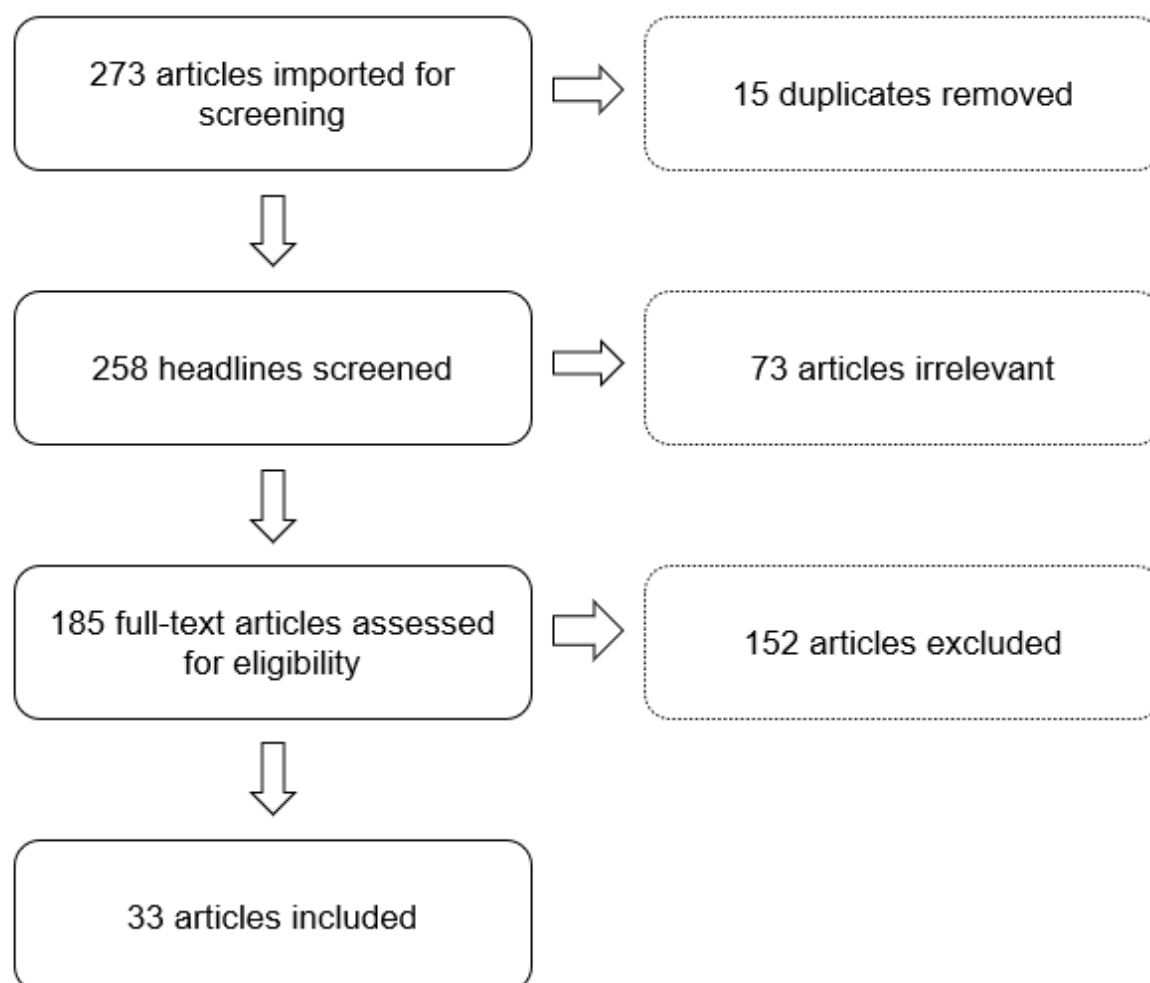
Where a search returned two different versions of the same article from different editions of a publication, the article with the shorter word count was excluded.

Of the search results that were excluded for being insufficiently relevant, some were news reports about interventions that did not cover trade responses, while other were false positives that were not related to the interventions of interest.

While the search strategy specifically targeted Scottish Government policies, articles focusing on corresponding UK Government policies (e.g. prohibiting tobacco displays and restricting in-premise marketing of HFSS products) were not excluded on the basis that trade responses to these policies are likely to be similar across territories.

Flowchart of screening process

Trade press content



Glossary

Point of sale (POS)	The location where a sale is conducted, such as a supermarket checkout.
Transnational tobacco company	Used to refer to the 'Big 4' world's largest transnational tobacco companies.
HFSS products	Food and non-alcoholic beverages high in fat, salt or sugar.
Heated tobacco product	A category of tobacco products that heat tobacco to produce tobacco vapour without combustion. Also referred to as heat-not-burn products.
Unhealthy commodity industry	Tobacco, alcohol and HFSS food and drink industries, but other industries are sometimes associated with this label.

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