Preventing Tobacco Industry Interference:

A Toolkit for Advocates and Policymakers

Based on the Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC Article 5.3)
SEATCA is a multi-sectoral alliance established to support ASEAN countries in developing and implementing effective tobacco control policies. It responds to the serious need to fast-track tobacco control policies in South-east Asia. Working to identify tobacco control priorities in the region and coordinating efforts on these priorities, SEATCA promotes knowledge-sharing among countries for effective, evidence-based tobacco control measures and regional cooperation among its advocacy partners.

SEATCA is acknowledged by governments and academic institutions for its advancement of tobacco control movements in Southeast Asia. In 2004, the WHO Western Pacific Regional Office (WPRO) presented the World No Tobacco Day Award to SEATCA. WHO-WPRO has since engaged SEATCA to provide technical assistance directly to government officials across the region.

HealthJustice aims to bridge the gap between health and law to empower Filipinos to make healthy choices. The founding members of HealthJustice include doctors, lawyers, and economists who have been recognized for their services in both the private and public sector, especially in the field of promoting policy change in the fields of health, environment, and human rights.

The vision of HealthJustice is to enlighten Filipinos to make the right health choices and endow them with equal access to health. Its mission is to be the source of information (research), formation (alliance building), transformation (capacity building), and translation (dissemination) for priority public health policies.

First published in October 2010; Second published in April 2012; Third published in December 2015

Southeast Asia Tobacco Control Alliance (SEATCA)
Thakolsuk Place, Room 2B, 115 Thoddamri Road, Nakornchaisri, Dusit Bangkok, 10300 Thailand
Phone: +66 2 668 3650
Fax: +66 2 241 0082
www.seatca.org

and

HealthJustice, Inc.
6/F Victoria Bldg. Quezon Avenue, Quezon City, Philippines
Phone: +63 2 6875031 local 331; +63 929 7716188
www.healthjustice.ph

SBN 978-616-90022-4-6

Copyright text © HealthJustice, Inc. and SEATCA copyright photographs © as indicated separately.

All rights reserved. This publication may be freely reproduced or transmitted for non-commercial purposes only. Commercial use or transmission in any form or by any means, electronic or including photocopy, recording or any other information storage and retrieval system, requires prior permission in writing from the publisher.
FCTC Article 5.3 Toolkit
Preventing Tobacco Industry Interference
I. INTRODUCTION

Purpose of this Toolkit ................................................................. 4
Take Action ............................................................................. 7
Quick Ways to Raise Awareness ............................................. 7

II. WHO FCTC ARTICLE 5.3 GUIDELINES ........................................ 8
Guiding Principles .................................................................. 8
- Fact Sheet: Article 5.3: How and Why ..................................... 11
Tobacco Industry Practices and Motives .................................. 12
- Quick Self-Tests: Government Agencies: Role in Tobacco Control 13
Best Practices ....................................................................... 18
Key Steps ............................................................................. 18

III. TOBACCO INDUSTRY INTERFERENCE IN ASEAN ..................... 16
Tobacco Industry Interference in Health Policies in ASEAN, 2009 .......... 16

IV. TRANSLATING ARTICLE 5.3 OF THE WHO FCTC INTO REALITY 22
Effective Article 5.3 Implementation ........................................ 22
- A. Establish a Core Group .................................................. 23
- B. Develop a Plan .................................................................. 23
- Checklist: Implementing Article 5.3 of the WHO FCTC: Action Planning 24
- Case Study: Philippines ...................................................... 25
- C. Implement the Action Plan ............................................. 26

Article 5.3 Recommendations .................................................. 27

Recommendation 1 .................................................................. 27
Raise Awareness about Tobacco Industry Interference ....................... 27
- A. Systematic Monitoring and Reporting ................................ 27
  a. The Tobacco Industry ...................................................... 28
  b. Definitions: Tobacco Industry ....................................... 28
- Quick Self-Tests .................................................................. 30
  c. Examples of Monitoring Tools and Reports ..................... 31
- B. Materials ........................................................................ 33
- C. Alliances ........................................................................ 34
- D. Media ............................................................................. 35
- E. Programs ........................................................................ 38
- F. Policies ........................................................................... 39
- Sample: Reminder for Diplomatic Missions .......................... 39
- Sample: Declaration of Interest ........................................ 40

Recommendations 2, 3, and 4: .................................................. 41
Develop Policies to Implement the Art. 5.3 Recommendations ................ 41
- A. Policies ......................................................................... 42
  Integration into Codes of Conduct ...................................... 42
- Fact Sheet: Role of Public Officials in the Global Tobacco Treaty .... 43
- Checklist: Code of Conduct: Ability to Protect Against Tobacco Industry Interference .................................................................. 45
- Sample: Sample Code of Conduct: Guidelines for Meetings with the...
Tobacco Industry............................................................. 46
B. Processes and Action Points........................................... 48
   ■ Sample: Sample Guidelines relating to Conduct of Officials: Denormalize so-called CSR........................................... 48
   ■ Template: Renunciation Letter for Offers of Partnership with the Tobacco Industry......................................................... 50
   ■ Checklist: Adoption of Code of Conduct in line with Article 5.3 of the WHO FCTC: Signs of Success.................................... 51
C. Personnel Policies..................................................... 52
   ■ Template: Model Hiring Policy: Revised Guidelines for Hiring Personnel.......................................................... 52
D. Transparency Measures........................................... 54

Recommendation 5:.......................................................... 55
Require Transparent and Accurate Information from the Tobacco Industry.......................................................... 55
   ■ Template: Requiring information from the Tobacco Industry.............................................. 56

Recommendation 6:.......................................................... 59
Denormalize and Regulate Tobacco Industry’s so-called CSR........................................................................ 59
   A. Nature of the Tobacco Industry’s so-called CSR.................................................. 59
   B. Raising Awareness............................................................................................. 60
   C. State and Personnel Policies.............................................................................. 62
   D. Policies Prohibiting Contribution................................................................. 62
   ■ Sample: Policy Prohibiting so-called Tobacco Industry CSR............................ 63

Recommendation 7:.......................................................... 64
Do Not Give Preferential Treatment to the Tobacco Industry................................................................... 64
   A. Taxes (Duty free and Tax Holidays).......................................................... 65
   B. Agricultural subsidies.................................................................................... 65
   C. Investment incentives ................................................................................. 65
   D. Trade and investment agreements............................................................ 65
   E. Treatment....................................................................................................... 65
   F. Investment portfolios..................................................................................... 66
   ■ Sample: Policy to ensure non-promotion of tobacco and the participation of health officials in trade policy...................... 67
   ■ Sample: Policy to ensure that no support is given to tobacco industry investments and so-called CSR.................................. 69

Recommendation 8:.......................................................... 71
Treat State-owned Tobacco Companies in the Same Way as Other Companies........................................ 71
   ■ Case Study: Thailand.................................................................................... 72

V. GLOBAL ACTION ON ARTICLE 5.3.................................................. 73
Global Action Against the Tobacco Industry.......................................................... 73
   A. International Organizations................................................................. 73
   B. Governments and Intergovernmental Bodies........................................ 74
   C. International Non-Government Organizations........................................... 75
   D. Final note.................................................................................................... 75
   ■ Fact Sheet: Global Tobacco Treaty and Governance: A Role of International Organizations............................................. 76
VI. CONCLUSION

1. Raising awareness
2. Building alliances
3. Ensuring that personnel rules:
   a. limit interactions with the tobacco industry
   b. prohibit partnerships
   c. protect against conflicts of interests
4. Sharpening rules and tools
5. Requiring information from the tobacco industry
6. Denormalizing and prohibiting so-called CSR
7. Removing benefits from and not giving preferential treatment to the tobacco business
8. Treating state-owned tobacco companies the same way

VII. ANNEX

A. Article 5.3 Guidelines (2008)
B. COP6 Decision on Implementation of Article 5.3 (2014)
C. List of Resources
D. ASEAN Tobacco Watch Homepage/ List of Articles (2015)
E. SEATCA Tobacco Industry Index Results (2015)
G. Genesis of the Philippine Policy on FCTC Article 5.3
This Toolkit for Preventing Tobacco Industry Interference presents a range of issues, policy options, and considerations that governments need to take into account when implementing Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). The success of the business of the tobacco industry depends on the continued patronage of its products by the public. The end goal of tobacco control policies, which is to lower consumption of tobacco products, is directly opposed to the business interests of the industry. Hence, it can be expected that the tobacco industry will stop at nothing to prevent effective tobacco control policies.

In 2001, the World Health Assembly (WHA) unanimously adopted Resolution 54.18 in response to the evidence that the tobacco industry had been subverting the position and the role of governments and WHO as well as of efforts to reduce tobacco consumption. The said resolution urges members to be alert to any efforts by the tobacco industry to undermine public health policies. The WHO FCTC recognizes that tobacco industry interference poses the single greatest threat to tobacco control. It has been documented that the tobacco industry has used strategies to subvert, hinder, and prevent tobacco control efforts. Hence, one of the General Obligations of Parties to the WHO FCTC is Article 5.3. It is the key provision aimed at protecting public health policies from interference by the industry.
Article 5.3 Guidelines recommend that Parties undertake the following in relation to tobacco industry:

**RAISE AWARENESS**

- of tobacco industry tactics and Article 5.3

- Thailand: developed anti-tobacco CSR videos in social media; Art. 5.3-related publication is translated into local language.

- Philippines: warned government agencies not to receive tobacco industry donations; established a multi-sectoral 5.3 Committee.

- Bulgaria: maintains a website that reveals tobacco industry tactics.

- Canada: civil society organizations keep close track of tobacco activities.

- Some countries reflect Article 5.3 principles or stipulate the exclusion of the tobacco industry in policies and laws (e.g., Lebanon, Seychelles, Turkey, Philippines, Ukraine).

**LIMIT INTERACTIONS**

- with the tobacco industry

- Many countries limit any interaction with the tobacco industry to those that are strictly necessary for regulation, and provide a mechanism to ensure transparency in meetings that occur. In several cases, more stringent rules apply to committees in charge of tobacco control policies: Australia, Brazil, Bulgaria, Canada, Finland, Ireland, Latvia, Lebanon, Mexico, Netherlands, Panama, Philippines, Serbia, Singapore, Swaziland, UK.

- Philippines: interactions by civil servants with the tobacco industry that are not necessary for its strict regulation, supervision, and control are prohibited, and violators are subject to administrative discipline.

**REJECT PARTNERSHIPS AND AGREEMENTS**

- with the tobacco industry

- Tobacco industry’s participation in health policy development has been rejected or expressly disallowed in: Canada, Kuwait, Namibia (banned from the Committee), Latvia (by law), Lebanon (prevented from participating in parliamentary committee meetings on tobacco), and Philippines (disallowed from participating in a local government public hearing on smoke free).

**DO NOT GIVE PREFERENTIAL TREATMENT**

- to the tobacco industry

- Norway: pension funds may not be invested in stocks that profit from tobacco production.

- Singapore: BAT reported “loss of tax incentives citing Article 5.3.”

- US: although not a party to the FCTC, the US has a law prohibiting the use of government money to promote the sale or export of tobacco in foreign countries.

- Certain government funds of New Zealand, Australia, and Hong Kong also screen out tobacco investments.

**TOOLS**

- **Awareness Raising Fact Sheet & Tools** P. 37

- **Incident Report Form** P. 46

- **Renunciation Letter** P. 50

- **No Benefit for Tobacco Policy** P. 67
RECOMMENDATIONS

Partake the following in relation to tobacco industry:

AVOID CONFLICT OF INTERESTS

with the tobacco industry

» Countries that adopt or implement Code of Conduct provisions to protect against tobacco industry influence: Australia, Brazil, Bulgaria (avoid communication with tobacco industry representatives), Djibouti, Philippines, Serbia (covers “perception of conflict of interest”).

COLLECT INFORMATION

REQUIRE ACCURACY AND TRANSPARENCY

from the tobacco industry

» Practically all countries require / publicly disclose / use for purposes of regulation, specific information from the tobacco industry ranging from ingredients to business activities and communication. Among those that require information in accordance with Article 5.3 are Bulgaria, Canada, Fiji, Mexico, Seychelles, Suriname, and Swaziland.

» Art. 5.3 recommends that governments penalize the tobacco industry for submission of false or inaccurate information.

DENORMALIZE AND REGULATE SO-CALLED

SOCIALLY RESPONSIBLE ACTIVITIES

of the tobacco industry

» Research shows that the tobacco industry uses so-called CSR initiatives to secure access to policymakers and influence their decisions.

» Some countries ban contributions from the tobacco industry (either completely or to health-related agencies), or ban its publication: Brazil, Kuwait, Montenegro, Oman, Serbia, Singapore, Thailand.

» In the Philippines, aside from a comprehensive policy, specific policies were issued for vulnerable institutions such as health, education, and revenue departments.

» In 2012, the COP5 did not grant observer status to an international organization, the Interpol, because it received so-called CSR funds from Philip Morris.

TEMPLATES

CODE OF CONDUCT
TEMPLATES/SAMPLES, P. 46

POLICY ON REQUIRING
INFORMATION FROM
THE TOBACCO INDUSTRY, P. 55

POLICY ON BANNING
TOBACCO INDUSTRY
CONTRIBUTION (CSR), P. 63

THE TOOLKIT

BEST PRACTICES
QUICK WAYS TO RAISE AWARENESS

- Disseminate Fact Sheets
  1. Article 5.3: How and Why (p. 11)
  2. Role of Public Officials in the Global Tobacco Treaty (p. 43)
  3. Global Tobacco Treaty and Governance: A Role of International Organizations
  4. SEATCA Bulletin: Prevent Tobacco Industry Interference
- Learn from examples of
  1. Monitoring Tools (p. 27)
  2. Materials
  3. Media
- Take a Quick Test on:
  1. Government Agencies: Role in Tobacco Control
  2. Raising Awareness about Article 5.3 of the FCTC
- Take a Quick Test on potential policy interventions using Code of Conduct:
  Ability to Protect Against Tobacco Industry Interference (p. 45)
- Check out the case studies and best practices
- Review Implementing Article 5.3 of the WHO FCTC: Action Planning Checklist (p. 24)
- Consider sample policies and templates:
  1. Reminder for Diplomatic Missions (p. 39)
  2. Declaration of Interest (p. 40)
  3. Sample Code of Conduct: Guidelines for Meetings with the Tobacco Industry (p. 46)
  4. Sample Guidelines relating to Conduct of Officials: Deformalize so-called CSR (p. 48)
  5. Renunciation Letter for Offers of Partnership with the Tobacco Industry (p. 50)
  7. Requiring Information from the Tobacco Industry (p. 56)
  8. Policy Prohibiting so-called Tobacco Industry CSR (p. 63)
  9. Policy to ensure non-promotion of tobacco and the participation of health officials in trade policy (p. 67)
  10. Policy to ensure that no support is given to tobacco industry investments and so-called CSR (p. 69)
- See Adoption of Code of Conduct in line with Article 5.3 of the WHO FCTC: Signs of Success
- Consider using the monitoring tools and reports (see examples on p. 27)

1 Sample Declaration of Interest available in the Annex
The guiding principles adopted by the Parties to the WHO FCTC are, as follows:

1. **There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and public health policy interests.**

   This conflict of interest principle reflects the unanimous recognition by different countries of the fact that the business of the tobacco industry contributes greatly to diseases, deaths, and other social ills, including increasing poverty. Because of this conflict of interest, governments must protect the setting and implementation of public health policies from any interference by the tobacco industry to the greatest extent possible. The words “fundamental and irreconcilable” emphasize that this is one principle that leaves no room for compromise, not even when the tobacco industry happens to be state-owned.
2. **Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.**

This principle underscores the need for transparency and accountability measures to govern how governments and their agencies, personnel, and agents interact with the tobacco industry. Any interactions by any government branch (executive, legislative, judiciary) responsible for setting and implementing tobacco control policies should be accountable and transparent.

3. **Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.**

In order to effectively implement WHO FCTC Article 5.3, governments must require the tobacco industry to submit specific information that will eliminate industry activities undermining tobacco control, and that will assist in the setting and implementation of effective tobacco control measures. In addition, the tobacco industry must be made accountable for its actions and for the accuracy and completeness of the information it provides.

4. **Because its products are lethal, the tobacco industry should not be granted incentives to establish or run its businesses.**

Governments providing preferential treatment or incentives to the tobacco industry would invariably be protecting and promoting interests that are diametrically opposed to those of public health.

**GUIDING PRINCIPLES**

In accordance with the Guiding Principles, eight specific recommendations were developed to assist the Parties in implementing Article 5.3 of the WHO FCTC.

Each recommendation listed below is accompanied by some challenges and questions that governments will face in implementing tobacco control measures, followed by recommended actions under the Article 5.3 Guidelines to address these challenges.

According to the Guidelines, each Party should:

1. **Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.**

   **Challenge:** Lack of understanding of the past and present interference by the tobacco industry, including strategies and tactics used by the industry to interfere in tobacco control.

   **Recommended action:** Raise awareness about the addictive and harmful nature of tobacco products and about who compose the tobacco industry, and how they have interfered and continue to interfere in policy development and implementation.

2. **Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.**
**Challenge:** Some tobacco industry and government interactions are necessary for purposes of industry regulation, supervision, or control; many are not.

**Recommended action:** Avoid interactions with the tobacco industry unless strictly necessary.

(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.

**Challenge:** The tobacco industry creates partnerships with and offers voluntary agreements and policy drafts to the government.

**Recommended action:** Do not partner with or accept, support, or endorse any offer of assistance from the tobacco industry.

(4) Avoid conflicts of interest for government officials and employees.

**Challenge:** The tobacco industry gives donations, contributions, and gifts, or invites officials to be their consultants. The government has investments in the tobacco business.

**Recommended action:** Do not accept contributions, gifts, or special invitations from the tobacco industry.

(5) Require that information collected from the tobacco industry be transparent and accurate.

**Challenge:** The tobacco industry does not disclose and is not transparent about its activities, including lobbying and political contributions.

**Recommended action:** Require the tobacco industry to be transparent and accountable.

(6) Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility” (CSR).

**Challenge:** The tobacco industry does so-called CSR to remove attention from the harmful effects of its tobacco products, to interfere in public health policy, and for it to serve as a marketing and public relations strategy.

**Recommended action:** Denormalize so-called CSR by not partnering or participating in such activities and by disallowing any government agency from accepting tobacco industry contributions.

(7) Do not give privileged treatment to tobacco companies.

**Challenge:** The government gives incentives, exemptions, or benefits to the tobacco industry.

**Recommended action:** Do not give privileges or benefits to the tobacco industry.

(8) Treat state-owned tobacco companies in the same way as any other tobacco industry.

**Challenge:** Existence of state-owned tobacco monopolies or companies.

**Recommended action:** Treat all tobacco companies, including state monopolies, the same way.
<table>
<thead>
<tr>
<th>CHALLENGES FACED</th>
<th>RECOMMENDATIONS UNDER THE ARTICLE 5.3 GUIDELINES TO ADDRESS THE CHALLENGES</th>
<th>POLICIES/PROGRAMS THAT MUST BE DEVELOPED OR ADOPTED</th>
<th>IMMEDIATE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of understand of the past and present interference by the tobacco industry, including industry strategies and tactics</td>
<td>Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies</td>
<td>Programs and surveillance systems to raise awareness about tobacco industry interference, and identification of tobacco industry players</td>
<td>Conduct awareness-raising activities, including media action</td>
</tr>
<tr>
<td>The tobacco industry interacts with government</td>
<td>Avoid interactions unless strictly necessary</td>
<td>Code of Conduct and similar personnel policies; corresponding state policies</td>
<td>Utilize existing laws governing public officials</td>
</tr>
<tr>
<td>The tobacco industry partners with and provides policy drafts to government</td>
<td>Do not partner with or accept policy drafts from the tobacco industry</td>
<td>Code of Conduct and similar personnel policies; corresponding state policies</td>
<td>Utilize existing laws governing public officials</td>
</tr>
<tr>
<td>The tobacco industry creates conflicts of interest for government officials</td>
<td>Do not accept contributions, gifts, or invitations from the tobacco industry</td>
<td>Code of Conduct and similar personnel policies; corresponding state policies</td>
<td>Utilize existing laws governing public officials</td>
</tr>
<tr>
<td>The tobacco industry is not transparent</td>
<td>Require the tobacco industry to be transparent and accountable</td>
<td>Laws or rules regulating the tobacco industry (on transparency, information, privileges, and investment)</td>
<td>Utilize existing laws regulating the tobacco industry; awareness-raising activities, including media exposure</td>
</tr>
<tr>
<td>The tobacco industry does so-called CSR to remove attention from the harmful effects of tobacco</td>
<td>Denormalize so-called CSR of the tobacco industry</td>
<td>Policies/programs for surveillance and enforcement of tobacco advertising and sponsorship bans</td>
<td>Utilize advertising laws; awareness-raising campaigns, including media exposure</td>
</tr>
<tr>
<td>The government gives exemptions or benefits to the tobacco industry</td>
<td>Do not give privileges or benefits to the tobacco industry</td>
<td>Laws prohibiting (or removing) benefits to the tobacco industry</td>
<td>Review government laws and contracts providing such benefits</td>
</tr>
<tr>
<td>Existence of state monopolies</td>
<td>Treat state monopolies the same way</td>
<td>Additional provision in the above-cited policies to ensure that such policies apply equally to state monopolies</td>
<td>Encourage government to withdraw its investment from the tobacco business</td>
</tr>
</tbody>
</table>
The tobacco industry has been identified as the principal vector of tobacco-related diseases. In order to successfully implement tobacco control policies, it is important to understand its motives and interests whenever it approaches government officials. The illustration below provides examples of some of the challenges that the Article 5.3 Guidelines seek to address with regard to tobacco industry motives and practices.

<table>
<thead>
<tr>
<th>WHEN THE TOBACCO INDUSTRY REPRESENTATIVE DOES THIS:</th>
<th>THE ULTERIOR MOTIVE IS TO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lobbies or requests to be part of tobacco control task forces or committees</td>
<td>Delay or derail the development, implementation, and enforcement of tobacco control policies</td>
</tr>
<tr>
<td>Submits position papers on policies and proposes alternative wordings</td>
<td>Delay or derail the implementation of stricter laws against the tobacco industry</td>
</tr>
<tr>
<td>Appoints former prominent government officials as tobacco company board members or consultants</td>
<td>Use the influence of government officials to lobby within the government</td>
</tr>
<tr>
<td>“Befriends” and invites public officials to scientific conferences or study tours</td>
<td>Have allies within the government, buy their silence on anti-tobacco measures, or induce them to take a pro-tobacco industry position</td>
</tr>
<tr>
<td>Disseminates research papers about the harm of smoking and the viability of smoking rooms</td>
<td>Mislead people into thinking that there is a safe level of exposure to tobacco smoke and that ventilated smoking rooms offer adequate protection from secondhand smoke</td>
</tr>
<tr>
<td>Donates to universities or research institutions involved in cancer research</td>
<td>Use the credibility of universities and research institutions to legitimate the tobacco industry’s false claims and give the perception that it is concerned about cancer</td>
</tr>
<tr>
<td>Funds “youth smoking prevention” programs and donates money for environmental programs</td>
<td>Counteract tobacco control measures by influencing the perception of the public and media, project the tobacco industry as a good corporate citizen, and deflect issues relating to the harm of tobacco and the damage caused by the tobacco industry</td>
</tr>
</tbody>
</table>
GOVERNMENT AGENCIES: ROLE IN TOBACCO CONTROL

☐ QUICK SELF-TEST

Name/Position: ____________________________
Government Agency: ____________________________

Is your agency concerned with public health policy in relation to tobacco control? Find out more by answering the questions below:

IS YOUR AGENCY INVOLVED IN:

☐ The development or approval of policies, programs, and projects that may be related to tobacco control?

☐ The development and/or implementation of health-related policies and programs?

☐ The promotion of the welfare of vulnerable sectors including protecting the sector’s health?

☐ The development or implementation of policies on tobacco taxes and/or licenses (e.g., collects taxes or fees on tobacco and related products or proposes measures that affect the rates of taxes, fees, and duties)?

☐ The registration and licensing of or collection of any type of information from tobacco companies?

☐ The development or implementation of government policies relating to the promotion of integrity, transparency, and accountability of public officials?

☐ The interpretation and enforcement of relevant laws or policies such as tobacco-regulation laws (e.g., smoking bans, advertising bans, tobacco smuggling, tax evasion), as well as laws that promote integrity, accountability, and transparency of public officials?

☐ The development and implementation of policies, plans, and programs relating to the alleviation of poverty and attainment of targets of the Sustainable Development Goals (SDGs)?

HAS YOUR AGENCY:

☐ Signed any contract with the tobacco industry?

☐ Accepted, supported, or endorsed policy drafts from the tobacco industry? Given awards to the tobacco industry?

☐ Entered into partnerships or agreements with the tobacco industry? Received contributions from the tobacco industry?

☐ Given any privilege, incentives, or benefits to the tobacco industry? Participated in tobacco industry’s “socially responsible” activities?

☐ Allowed any publicity of tobacco industry’s so-called “socially responsible” activities?

☐ Allowed interaction with the tobacco industry that is not strictly necessary for effective regulation?

If you checked any of the above, then your agency could be a target of the tobacco industry.

For purposes of answering this questionnaire, the term “tobacco industry” refers to:

organizations, entities, associations, and individuals that engage in work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, and any other individual or organization that work to further the interests of the tobacco industry, including their lawyers, scientists, or front groups.

Source: WHO FCTC Article 5.3 Guidelines
It is often not enough to be aware of tobacco industry interference in government. Agencies should regularly assess their own capacity for complying with their obligations under WHO FCTC Article 5.3. The questions below can help agencies in their self-assessments.

**HAS YOUR AGENCY ESTABLISHED CLEAR POLICIES TO IMPLEMENT ARTICLE 5.3? DOES IT HAVE A POLICY:**

- To impose transparency and accountability measures on the tobacco industry and to ensure accuracy of information received from it?
- Not to solicit and to reject any type of contribution, including policy drafts, legal advice, financial aid, or donations in kind, from tobacco companies and those representing their interests?
- To reject any partnership with or to remove the perception of partnership with the tobacco industry and those representing its interests?
- To refuse giving preferential treatment, privileges, awards, benefits, exemptions, etc. to the tobacco industry?
- To raise awareness about the nature of tobacco products, tobacco industry interference, or about the true purpose of the so-called CSR activities of the tobacco industry?

The questions below can help identify steps in implementing WHO FCTC Article 5.3 obligations. Answers in the negative may require further action.

**WHAT CAN YOUR AGENCY DO IN TERMS OF IMPLEMENTING ITS ARTICLE 5.3 OBLIGATIONS?**

- **Defining the Scope.** Has your agency identified the specific individuals, firms, or entities including government agencies that can be considered as representing the interests of the tobacco industry? Has this been disseminated throughout the agency?
- **Incorporating Policies.** Has your agency’s human resource processes (e.g., recruitment, promotion, and performance management, etc.) adopted policies related to avoiding conflicts of interests with the tobacco industry?
- **Raising Awareness.** Does your agency ensure that the rationale behind tobacco industry interference is communicated to the staff regularly? How does your agency monitor whether the communication has been received, understood, and accepted? Does your agency brief new staff at all levels to address the importance of protecting public health policies from tobacco industry interests? Are these values incorporated into other training programmes?
- **Monitoring.** How does your agency monitor, collect, and exchange information related to tobacco industry interference? Is there a coordinating and monitoring body, with a corresponding budget, that is in charge of implementing and enforcing the said policies and codes of conduct?
- **Using Enforcement Mechanisms.** How does your agency enforce any violation of the policies related to tobacco industry interference? Is there a well-disseminated enforcement mechanism for codes of conduct and related policies that specify clear and proportionate sanctions in case of violations? Are there policies covering simple complaint and investigation procedure, whistle-blower provisions, and monitoring and reporting incentives?
- **Networking.** Does your agency work with other government bodies or agencies and NGOs not affiliated with the tobacco industry to ensure implementation of Article 5.3 of the WHO FCTC?
- **Securing Information.** Has your agency identified tobacco industry information that needs to be disclosed publicly? Have there been measures to ensure that this information is available to those working on tobacco control as well as to the public?
KEY STEPS

1. SET IT UP
   - Establish a Core Group (Committee)
   - Raise awareness
   - Strategize
   - Build capacity

2. ADOPT POLICIES
   - Code of Conduct
   - Require information
   - No incentives for tobacco
   - No CSR from tobacco

3. MONITOR
   - Monitor and report the progress
   - Evaluate the policies, strategies, and programs
   - Continue monitoring interference

BEST PRACTICES

ESTABLISH A MULTI-SECTORAL FORUM
In early 2009, the Philippines set up a multisectoral 5.3 committee that includes the ministry of health, civil service, other government agencies, and NGOs.

PUBLISH MEETINGS & PAPERS
Australia and New Zealand require public disclosure of meetings with the tobacco industry. All notices of meetings and reports are posted on the government website.

ADOPT A CODE OF CONDUCT
In 2010, the Philippines adopted a policy to “Protect the Bureaucracy from Tobacco Industry Interference” which includes revisions to its Code of Conduct, a monitoring / reporting process, and administrative sanctions.

EXCLUDE TOBACCO INDUSTRY FROM MEETINGS
In Albay, Philippines, government lawyers excluded Philip Morris from intervening in a Smoke-Free Ordinance hearing in 2012. For 3 consecutive meetings, representatives of over a hundred governments agreed to eject the tobacco industry from the gallery during the International Negotiating Body sessions for the Illicit Trade Protocol. The Indian government severed ties with a tobacco conference that included tobacco industry representatives.

REJECT DONATIONS / DENORMALIZE SO-CALLED CSR
In Thailand and Singapore, so-called CSR from the tobacco industry, if any, cannot be published. The Philippine Department of Education and Land Transportation Regulatory Board adopted a policy to reject tobacco industry donations. The Shanghai World Expo 2010 returned a donation from a tobacco corporation.

REMOVE INCENTIVES
The Singapore government removed tax incentives of a tobacco company, citing FCTC Article 5.3.

REMOVE FINANCIAL INTERESTS, DIVEST STOCKS
The Norwegian government announced that it will sell its stock investments, estimated to be worth $2.1B, in companies that derive more than 5% of their profits from tobacco.
The tobacco industry has never been short of innovative ideas to promote its deadly products, and over the years, despite the industry’s intentions having been exposed, it continues to undermine tobacco control activities and fight tobacco industry regulation. To protect its commercial interest, tobacco companies use sophisticated tactics to challenge, discredit, weaken, obstruct, and delay implementation of effective tobacco control measures, including lobbying governments, politicians, and the media.

Parties to the FCTC recognise “the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts” (Preamble), and agree that in setting and implementing their public health policies with regard to tobacco control they shall “act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law” (Article 5.3).

Allowing tobacco corporations to influence tobacco control policy violates both the spirit and letter of the FCTC. World Health Assembly resolution 54.18 and FCTC Articles 12(e) and 20.4(c) further provide governments with the support of the international community to stand up to interference from the tobacco industry.

**How Does the Tobacco Industry Influence Tobacco Control Policies and Derail Effective Regulation?**

1. **Interference: Undermining FCTC Ratification and Implementation**

The FCTC seeks to regulate the industry or at least keep its activities in check with tight controls on tobacco products. The industry fights back in countries where it can still exert its influence.

Such interference can be done indirectly with the help of pro-tobacco industry government officials. In Indonesia, a letter dated 2 January 2004 was sent by the Head of District Parliament of Temanggung to then President Megawati Sukarnoputri on behalf of the Chairman of District Parliament and Indonesian Farmers Associations to appeal to the President not to sign the FCTC.

Following in 2005, when the Vice-Chairman of Indonesian Forum of Parliamentarians on Population and Development (IFPPD) in his capacity as Chairman of the Tobacco Farmer Association in a seminar on Employment Opportunity vs Health...
said, “Indonesia should not ratify FCTC at the moment”. Till today, due to the strong lobby from the tobacco industry, Indonesia remains the only non-party to the FCTC in the ASEAN region.

2. Industry Is the Problem, Not A Stakeholder In Public Health

The industry has often requested to be part of national and sub-national tobacco control task forces or committees, by promoting itself as a stakeholder. However, by analogy, a government would normally not include private companies in regulatory bodies that decide on their very trade.

In Cambodia in 2007, BAT Cambodia representatives urged the government to consult it on the formulation of any law pertaining to tobacco control during a meeting with the Commission on Public Health and the National Assembly.

Since 2003, as set forth in Section 29 of Republic Act 9211 (Tobacco Regulation Act 2003), the Philippine Tobacco Institute (PTI) and the National Tobacco Administration (NTA) sit as members of the Inter-Agency Committee-Tobacco (IACT) tasked with the law’s implementation. This enables PTI to interfere in decision-making despite their obvious conflict of interest. This inclusion of a tobacco industry representative in the IACT has been questioned repeatedly by tobacco control advocates. In 2008, there were also reports that Philip Morris Philippines Manufacturing Inc. (PMP-MI) requested to be involved in the meetings of the Legazpi City Anti-Smoking Committee.

In 2000, tobacco companies entered into a 25-year Government and Tobacco Industry Contract with the Laotian government that restricts tobacco tax to 15%, although the law stipulates a tax rate of 55%.

3. Diluting Government’s Efforts

To weaken strong tobacco control laws, the industry is known to draft and distribute tobacco-friendly sample legislation to the government as a ready-to-adopt alternative. BAT Cambodia gave its own draft law on tobacco control to the Council of Ministers in 2007 to thwart any possibility of the government’s introduction of tobacco regulation that would be unfavorable to the industry.

In other instances, the industry is known to have submitted position papers, letters, and comments to policymakers that directly oppose proposed measures or offer diluted tobacco-friendly alternatives to them. In Malaysia, when Ministry of Health officials were preparing for the introduction of graphic warnings on cigarette packs in compliance with Article 11 of the FCTC, PMI, BAT, and JTI submitted their proposals on what the health warnings should be.

In Malaysia, the Confederation of Malaysian Tobacco Manufacturers (CMTM) wrote to the Health Ministry in an attempt to defer the ban on kiddie pack in 2005 and graphic health warning on cigarette packs. The industry was successful, and the Health Ministry explained that the postponement of the ban by another five years was to coincide with the advent of the ASEAN Free Trade Agreement (AFTA) in the country, and also to allow tobacco farmers a grace period to switch to alternative crops (which started more than 15 years earlier) under the National Agricultural Policy.

PMI interfered in government administration in Thailand when they organized the Fiscal Policy Office Forum in 2006. Another way to delay the implementation of a policy is by using trade or economic issues as reasons. In Malaysia and Indonesia, for example, the industry was known to delay health-related policies by raising these issues, and surprisingly, these governments allowed trade and economic issues to supersede the importance of health concerns. In Malaysia, the ban of kiddie packs was deferred with the explanation that the ban would affect the livelihood of tobacco farmers. The industry would also try to defend its rights to use the terms “light” and “mild”, saying that these are not descriptors of the products. In the Philippines, the tobacco industry’s doomsday tactics to oppose the introduction of graphic health warning (GHW) measures included an unfounded prediction of potential economic collapse and devastation of the tobacco farmers.

Besides maintaining close contact with policymakers to soften their anti-tobacco stance, the industry also involves third parties to exert pressure and champion its cause. It is to reinforce an impression on the lawmakers that indeed...
farmers, retailers, restaurateurs, and others named by the industry are going to be badly affected.

In Cambodia, tobacco farmers were used by BAT to praise the company in 2008 on a television documentary of how tobacco cultivation improved their standard of living. Restaurateurs, through their association in Malaysia, were used to convince the government that if smoking was banned in restaurants, they would experience a drastic drop in business...Congressmen of the major tobacco-producing provinces used tobacco farming concerns to oppose the graphic health warning and sin tax bills during legislative committee hearings and meetings in the Philippines.

The industry has also been very active in Vietnam lobbying policymakers in different ways to delay and weaken tobacco control regulations.

4. Mission Misinformation: How It Is Done

The industry is known to misinform the public and the government with half-truths and lies over the years. One of the better known deceptions is the use of descriptors such as “light” and “mild” which have been known to mislead smokers into thinking that such light, mild, and low-tar cigarettes are less harmful to health than regular cigarettes. Scientific evidence has proven that there is no health benefit to smoking light, mild, and low-tar cigarettes, and that smoking such cigarettes carries the same risk of lung cancer, heart attacks, and other tobacco-caused disease as regular cigarettes.

In Malaysia, it has been observed that in the months leading up to the annual National Budget announcement, the tobacco industry would increase press coverage on tobacco smuggling activities in the country and may conduct a “tour” for journalists to showcase its activities for tobacco farmers. This appears to be an attempt to dissuade the government from increasing tobacco tax.

In 2006, in the Philippines, despite not meeting the compliance deadline set by law, PMPMI issued a sworn statement that they had not committed any violation of RA 9211’s health warning provision when in fact, the legal mandate and deadline for compliance is clear under the law. In supporting its argument, PMPMI used a personal (neither legal nor official) opinion given by the Secretary of Health in an ambush phone patch interview as evidence in their favor.

The following year, after a lower court ruled in its favor, Fortune Tobacco issued numerous misleading press statements regarding the interpretation of RA 9211’s outdoor advertising ban provisions, based on a decision that is not final. PTI also issued statements that it is complying with the law. Then in 2008, PMPMI sent official statements to the media announcing that they are complying with the law with regard to their sponsorship of the Eraserheads concert, and that it does not involve a violation of the mass media advertising ban. PMPMI later withdrew sponsorship after the Department of Health threatened legal prosecution.

In 2008, in relation to a proposed health warning bill in Congress that would ban misleading descriptors, such as “light” and “mild” as required under Article 11 of the FCTC, JTI placed newspaper advertisements telling the public that “mild” and “low tar” are not necessarily safer than regular cigarettes.

5. Threat: See You In Court

While ASEAN governments may hesitate to file suits against the tobacco industry, the latter commonly uses threats of court action to protect its profits. However, such threats are seldom executed because a good relationship with the government is important.

For Thailand, a leader in tobacco control in the ASEAN region, effective legislation did not come easy. When the Thai government planned to introduce graphic warnings on cigarette packs in 2002, PM reacted by threatening to sue the Public Health Ministry. PM claimed that 1) the Public Health Ministry would be infringing on its freedom of speech and communication; and, 2) its trademark rights, protected under the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), would be violated. It sent letters to high-ranking gov-
ernment officials including the Public Health Minister in February 2002. The Thai health officials remained firm, and the Public Health Minister endorsed the new regulations prioritizing public health concern over business interests. All companies supplying cigarettes to Thailand were given 12 months to comply.

Then in 2005, PM (Thailand), British American Tobacco (Thailand), JTI, and the state-owned Thailand Tobacco Monopoly threatened to sue the Thai Health Ministry for banning cigarette displays at points of sale. The industry argued that the ban beginning 24 September 2005 would deprive them of their right to display their products. It also argued that concealing the packs would make it difficult for the industry to check the authenticity of its products and for the tax authorities to verify tax collection.

The industry proposed to limit display space to one pack per brand and enforce existing rules that include tough penalties for retailers who sell cigarettes to minors. The industry’s proposals were rejected and the ban was implemented. When CP Seven-Eleven convenience store chain did not comply, Thailand’s leading lawyers prepared to file a lawsuit against the retail stores. Seven-Eleven backed down. This incident also documented how the industry instigated retailers, such as Seven-Eleven, to flout the law.

To date, the industry in the Philippines is perhaps the boldest in the Southeast Asian region to actually take the government to court. In 2007, for example, PTI challenged the IACT in court regarding the definition in RA9211 of outdoor advertising at points of sale. (By 2010, over 12 cases had been initiated by the tobacco companies to challenge policies relating to health warning, smoke-free enforcement, promotions, advertisement, and tobacco regulation.)

6. Stretching the Timeline: Implementation Can Wait

Employing delay tactics is one of the most common methods used by the industry because they are more likely to be accepted by a government. In order to do so, the industry has to generate justifications, even if these are half truths or outright lies. There are, however, problems in obtaining evidence for these activities because these are done by lobbying policymakers and sometimes through pressure groups such as retailer associations.

In Indonesia, industry interference with policy formulation and implementation is known to have been conducted over the years. Thus, it is suspected that the industry has been indirectly involved with the unreasonable objection to the inclusion of the tobacco control draft bill in the Parliament’s legislative agenda for the past three years despite the support of a significant number of parliamentarians.

Similar strategies have also been used in Malaysia when a sports sponsorship ban supposed to be implemented in December 2005 (under the Control of Tobacco Product Regulations [CTPR] 2004), was suddenly deferred to December 2006 without any public announcement or amendment to the legislation. Also, in spite of its earlier public announcement to implement a ban on the sale of kiddie packs (less than 20 sticks) in 2005, the Malaysian Health Ministry deferred it until 2010. The industry utilized the media and its allied group - tobacco farmers - to reinforce its arguments against the ban with claims that it threatens the livelihood of tobacco farmers.

In 2006, the Philippine Tobacco Institute and its members including PMPMI, BAT, and JTI requested a 4-month postponement/delay of implementation of the RA9211 deadline that required the industry to print 30% text warnings on the front of tobacco packages despite knowing about the deadline 3 years before. (In 2015, the tobacco companies questioned the graphic warning templates issued by the health ministry, causing a 4-month delay in implementation of the law.)

Although anti-tobacco legislation in Thailand is tough, TTM and PM audaciously delayed picture pack warnings and the ban on the display of cigarette packs at the points of sale.

7. Lack of Transparency: Closed-Door Deals

Countries in the ASEAN region do not have a system of disclosure or a transparent system of recording minutes of any
meetings the tobacco industry has with government officials or politicians.

Coupled with lack of public access to information, this creates opportunities for corruption, which by the same token, is hard to provide documentary evidence for.

8. Industry Appointment: Having Influential Personalities on Its Board

The industry engages personalities of influence into its companies as directors or similar decision-makers so that it can persuade government policymakers through its established networks and influence.

In 2001, Kenneth Clarke, former chancellor and secretary of state for health in the UK, went to Vietnam on behalf of BAT to seek approval to expand production in the country, whereas in Laos, a former policymaker was engaged by the industry as a legal consultant recently to lobby policymakers on tobacco control regulations. Sok Siphanna, who was the former Secretary of State of the Ministry of Commerce of Cambodia, spoke favorably of BAT tobacco farming at Kompong Cham province. In Indonesia, the ex-Coordinating Minister of Economics and Industry was made a Sampoerna Foundation board member in 2005. Tan Sri Abu Talib bin Othman became the chairman of British American Tobacco Malaysia Berhad in 1994, a year after his services as Malaysia’s attorney general (1980-1993). Ironically, despite his position in BATM, he is a director of Geneagles Hospital (KL) Sdn Bhd, Oncology Centre (KL) Sdn Bhd, and chairman of the Human Rights Commission of Malaysia. In the Philippines, former Congressman Salacnib Baterina has been a counsel for PTI since 2007. Another prominent figure, Antonio Abaya, a retired army general, has been the president of Fortune Tobacco, for more than 20 years.

Thailand is not spared from this strategy either because it is known that the Thai Tobacco Monopoly Board consists of former high-ranking government officials including those from the military.

9. Violation: Caveat Emptor (Let the Buyer Beware)

On BAT Malaysia’s website, it states that the company’s business is “not about persuading people to smoke” and that smoking “should only be for adults who are aware of the risks.” This is BAT’s attempt to exonerate itself from liability should smokers try to sue the company because it can claim smokers got into the habit by their own choice after they have been warned of the health consequences. However, this caveat emptor principle is outdated and does not apply here.

In reality, the industry does promote to youth and non-smokers. It is known to blatantly violate laws or to circumvent them, such as by offering free cigarettes. Distribution of free cigarettes is carried out in Indonesia, even at events largely patronized by youth. In Vietnam, despite a ban on person-to-person promotions, female sales promoters are seen going from table to table offering cigarettes in cafes, pubs, and food outlets. There were reports that cigarette promoters have been visiting night entertainment outlets ad hoc in Malaysia to promote their products.


Tobacco companies sponsor community activities and projects that are associated with the poor. However, no amount of community work can exonerate an industry that produces a product that is addictive, causes diseases, and brings early death.

Annually, the Thailand Tobacco Monopoly produces a list of corporate social responsibility (CSR) activities, which can be done through government departments/agencies or via government non-tobacco-related health initiatives (e.g., nutrition, malaria, disaster relief, etc.).

CSR is very much alive in Cambodia and Vietnam in the form of subsidy to farmers, houses for the poor, and disaster relief aid. In 2007, BAT Cambodia organized a study tour for members of parliament to Kompong Cham. Similar type
of industry-sponsored study tour for government officers is also an ongoing event in Vietnam.

PM in Thailand has been funding and holding drug prevention programmes. It also has offered scholarships, educational, art or sport programmes, environmental initiatives, and research programmes. BAT (Malaysia) offers scholarships to selected students and conducted reforestation programmes just as in Cambodia...What the industry refrained from highlighting is the fact that despite the reforestation programme, it is an industry that uses much natural resource – wood – to cure tobacco leaves, produce paper for various parts of the cigarettes, its packs, and even the filter which actually is cellulose acetate.

Between 1994 and 2007, PMPMI held its PM Philippines Arts Awards and in 2007 and 2008, it introduced the Bright Leaf Agriculture Journalism Awards. Recent contribution to schools manifested in the form of donation of three Toyota Corollas by PMPMI to support the Department of Education’s Adopt-a-School Programme 2008 by PMPMI through its affiliate, Philippine Band of Mercy (PBM). Fortune Tobacco Corp. also donated to the Adopt-a-School programme.

Many press releases were issued by PMPMI when it opened a regional warehouse in Subic Bay Freeport Zone. They reported that the regional warehouse will boost the Philippine economy, but failed to mention the addiction and deaths its products cause. To facilitate its public relations effort, reporters were invited to tour the PMPMI factory and subsequently a late evening documentary on a major television network featured the plant tour.

“Educational” tours for journalists to factories or farms are effective in building networks with the press and projecting a good image for both the government and the public. In December 2006, PM Thailand sponsored and organized such a tour for a group of journalists from the Association of Economic Journalism to visit the Royal Flora Festival in Chiang Mai, Thailand, while exposing them to its PM-sponsored youth and environmental programme.

In 2008, the industry in Indonesia presented journalism awards to improve its relationship with the press and ultimately its press coverage. The industry needs the press to keep its good image alive in the public eye.

REFERENCES AND NOTES:

World Health Organization. Framework Convention on Tobacco Control, 2005
Suara Merdeka. “Jangan tutup pabriknya, cari solusinya”. 26 April 2005
Letter request and signed undertaking
PTI position paper regarding GHW citing commercial interests. Congressmen’s response to GHW bill in press releases
Pleadings for the case People vs PM
Ministry of Commerce of Cambodia Website, www.moc.gov.kh
British American Tobacco Malaysia, Board of Directors, http://www.batmalaysia.com/OneWeb/sites/BAT_BAT62VKM3/nfs/bfe4e60c0b027b86a9955b7f7d639f35/1764ddc8585f3515073e285755d8bc3b/OpenDocument
The Asia Pacific Forum of National Human Rights Institutions, Abu Talib bin Ohman, Malaysia, http://www.asiapacificforum.net/contact/fd-member/binohman-abutalib-malaysia
18 Excellence, BAT(Cambodia) Newsletter, August 2007

EFFECTIVE ARTICLE 5.3 IMPLEMENTATION

How can the state ensure the effective implementation of Article 5.3 of the WHO FCTC?

While an answer to this question has many dimensions, effective implementation can be initiated by creating an environment for the right culture and values through administrative policies and programs. It is simply not enough to rely on codifying the general obligation in national law or having a code of conduct to build resistance to tobacco industry interference.

One cannot overemphasize the importance of having government officials understand the rationale behind tobacco industry interference and its impact on public health. Public officials and personnel must be able to build a culture of resistance against tobacco industry interference in order for them to consciously and continuously respond to and report evolving forms of tobacco industry interference, and recognize the tobacco industry’s various disguises and schemes.

Given the constant change in the government’s environment and administration, maintaining the tobacco industry-resistant culture poses a constant and continuing challenge.

The recommendations under the Article 5.3 Guidelines can be categorized into provisions relating to:

1. **RAISING AWARENESS**

2. Developing **POLICIES for the STATE** for purposes of:
   (a) REJECTING PARTNERSHIPS with the tobacco industry
   (b) REQUIRING INFORMATION from the tobacco industry
   (c) REMOVING / NOT GIVING PRIVILEGED TREATMENT to the tobacco industry

3. Developing **POLICIES for PUBLIC OFFICIALS** for purposes of:
   (a) AVOIDING CONFLICTS OF INTEREST
   (b) PROHIBITING / LIMITING INTERACTION with the tobacco industry

4. **DENORMALIZING so-called CSR** of tobacco companies
A. ESTABLISH A CORE GROUP

Everything starts with a catalyst. Key persons or a core group must be willing to push forward with actively protecting public health from the vested and commercial interests of the tobacco industry, such as those who understand the issue the most, those working in tobacco control or public health, and/or those working on promoting transparency, integrity, and good governance.

In the Philippines, the core group members include high-level officials in the Department of Health (DOH), Civil Service Commission (CSC), and several NGOs. Other potential partners include the Ombudsman and anti-corruption agencies.

Because the scope of Article 5.3 is broad and affects agencies and offices other than the Ministry of Health, it is critical to identify key champions that belong to the legislative branches and other government agencies. Often, government agencies are not aware of their role in tobacco control unless they form part of an interagency committee or body on tobacco control. Hence, the Article 5.3 Guidelines create an opportunity to welcome new members into the customary “interagency” tobacco control groups. New members may include public service agencies, anti-corruption groups, licensing authorities, and others.

The multifarious nature of the recommendations under the Article 5.3 Guidelines requires the core group to select strategic areas to pursue and prioritize. Each recommendation suggests a list of measures that can be undertaken.

B. DEVELOP A PLAN

Knowing exactly what needs to be done to counter tobacco industry interference requires a comprehensive plan with the right stakeholders. The challenge is to institutionalize a whole-of-government approach in implementing Article 5.3 of the FCTC. A structured plan can be developed in accordance with the pertinent recommendations of the Article 5.3 Guidelines.
DEVELOPING A NATIONAL STRATEGY

- Identify elements of government with interest in tobacco control.
- Identify a lead person or institution. This includes identifying a focal point within each institution or participating organization that is responsible for or has expertise in the various measures (e.g., codes of conduct, tobacco industry information regulations, etc.).
- Identify policy development fora and mechanisms that can be used to coordinate the activities of the government, the private sector, and civil society in the development of the national strategy.

IMPLEMENTING A NATIONAL STRATEGY

- Identify a lead person or institutions, as well as persons within each institution or participating organization, for each element of the national strategy.
- Identify mechanisms for coordination.
- Develop and disseminate tools and fact sheets; provide updates to deepen understanding of the issues.
- Establish a response team to address emerging issues.
- Elaborate the national strategy.
- Develop action plans to build capacity, allocate/mobilize resources, among others.

COLLABORATING WITH CIVIL SOCIETY ORGANIZATIONS

- Include the civil society perspective in the development and implementation of strategies.
- Bring civil society groups together to participate in monitoring, surveillance, and reporting.

PREVENTING TOBACCO INDUSTRY INTERFERENCE

- Identify national coordinating bodies or point persons.
- Identify a monitoring and reporting process and mechanism.
- Promote pertinent policies through information dissemination programs.
- Provide training programs for relevant agencies, including the judiciary.
- Conduct a baseline survey of the adequacy of existing laws and identify policy gaps.
- Identify and prioritize actions so that national laws and the legal infrastructure will conform to international norms.

CREATING ARTICLE 5.3 IMPLEMENTATION CAPABILITY

- Determine roles and functions needed to implement policies relating to Article 5.3.
- Identify contacts within government, including those in law enforcement, tobacco regulation, anti-corruption, education, communities, or local governments.
- Identify partners from non-government organizations (NGOs), private sector, and academe who have expertise in the area of transparency and accountability.
- Conduct and disseminate regular situational analysis and awareness regarding tobacco industry interference.
- Provide sustainable funding.
- Develop implementation and enforcement tools and procedures relating to implementation of policies relating to Article 5.3.

PROMOTING A NATIONAL CULTURE OF TOBACCO INDUSTRY RESISTANCE

- Implement comprehensive awareness programs for all government personnel (include private sectors, when possible).
- Review and update existing policies with government personnel and stakeholders.
- Develop awareness of emerging issues to enhance a coordinated response to tobacco industry tactics.
- Implement a surveillance, monitoring, and reporting mechanism.
- Support outreach to private sectors to denormalize tobacco industry’s so-called CSR.
- Build the capacity of other units or agencies to replicate national efforts.
- Build, allocate, and mobilize resources.
ESTABLISH A CORE GROUP AND TAKE ACTION.

In the Philippines, members of the Core Group on Article 5.3 include high-level officials in the Department of Health, Civil Service Commission, and several NGOs. Other potential partners include the Ombudsman and anti-corruption agencies.

In July 2009, an Article 5.3 Committee was formally set up under the Department of Health to develop implementation strategies to fulfill the obligations under Article 5.3 as elaborated by the Guidelines.

The Committee is composed of DOH directors and high-level policymakers; high-level representatives from the Civil Service Commission, Office of the President, as well as civil society and NGO representatives. The body meets regularly and has created a working group for Inter-Agency Outreach, Policy Development, and Communications.

The inter-agency outreach working group coordinates the meetings with key government agencies to ensure that Article 5.3 is implemented in these agencies. The policy development working group focuses on developing strategies and policies required to promote a tobacco industry-resistant culture. The communications group develops tools, response mechanisms, and information, education, and communication (IEC) materials to raise awareness about tobacco industry interference. It has produced fact sheets, posters, and videos relating to Article 5.3. It has also developed letter templates and press materials.

In June 2010, the DOH and CSC issued Joint Memorandum Circular 2010-01, prohibiting government workers from interacting with any tobacco corporation or company, except “when strictly necessary for the latter’s effective regulation, supervision, or control.”

RAISE AWARENESS.

Consultations with government agencies regarding Article 5.3 have encouraged some agencies to initiate their own Article 5.3-compliant policy. For instance, in January 2010, the Land Transportation and Franchising Regulatory Board (LTFRB) has required all PUVs and land transportation terminals to be 100% smoke-free. PUV drivers and operators are responsible for posting “No Smoking” signs in their vehicles, and drivers are responsible for warning their passengers and co-workers against smoking inside PUVs.

BUILD CAPACITY.

In 2010, the DOH provided initial support for CSC to conduct trainings among CSC officers on JMC implementation. The CSC continues to conduct trainings, aims to incorporate JMC implementation into existing programs, and constantly develops tools. The legal department of the CSC significantly contributes to the technical aspects of the training. Professionals in civil society contribute to these efforts as well.

BUILDING ALLIANCES.

The CSC continues to reach out to partners by conducting interagency 5.3 meetings on a quarterly basis. CSC personnel and lawyers also serve as resource persons in capacity-building activities of LGUs, government agencies, and other entities interested in implementing the JMC.

TAKE IMMEDIATE ACTION.

In August 2014, an online news agency reported that the National Tobacco Administration (NTA) was liable for unnecessary interaction with Mighty Corp., a local tobacco company. The NTA administrator posed together with a tobacco company’s president in a synchronized tree-planting activity. The tobacco company’s website reports: “NTA lauds Mighty Corp. on its contribution in the tobacco industry.”

In response to this news item, the CSC wrote a letter to the NTA warning it that any activities undertaken jointly with Mighty Corporation is a form of unnecessary interaction and violates the JMC.

As a response to publicly available reports that imply a possible violation of the JMC, the CSC had sent similar reminder/warning letters to a few local government units and government offices, such as the Department of Trade and Industry.

PREPARE TO OVERCOME CHALLENGES.

The JMC has not eliminated TI interference but has been an effective tool to manage it. A law passed in 2003 created a mechanism for the tobacco industry to interfere. An association of tobacco companies, the Philippine Tobacco Institute (PTI), sits as a member of the Interagency Committee that is tasked to implement the Tobacco Regulation Act. While legislative bodies are working to change this law, the JMC serves as the tobacco control advocates’ strongest weapon to counter tobacco industry interference in this committee.

The tobacco industry, including those protecting its interests, undermines the JMC at every opportunity and seeks to have the Article 5.3-based policy revoked. The CSC continues to stand firm in order to uphold its mandate to promote integrity in public service.
C. IMPLEMENT THE ACTION PLAN

Action plans can only be implemented if sufficient resources are allocated for the same. In the Philippines, the capacity of a core group of advocates was developed and the same core group proceeded to develop a strong policy on Article 5.3. After some time, the ministry of health set aside a seed grant for the CSC to raise awareness of the Article 5.3 policy (JMC). This resulted in several instances where tobacco industry interference was averted to give way to better public health measures and good governance practices. Box 1 illustrates the outcomes of implementing the Article 5.3 Action Plan in the Philippines.

Box 1. JMC in Action

a. The Department of Education adopted a policy to prohibit TI contributions (so-called CSR of TI) in public schools and warned those reported to have received TI CSR indirectly.

b. The Department of Health introduced a more stringent version of the JMC that applies to all agencies and personnel in the agency.

c. When a multinational tobacco company approached the Bureau of Customs to be a “partner” in curbing illicit trade, the government agency sought advice from the CSC and was informed that it would violate the JMC if it pursues this partnership.

d. The Department of Labor and Employment, the Department of Science and Technology, the Department of Foreign Affairs, the Bureau of Internal Revenue, and the Metro Manila Development Authority have issued their respective regulations consistent with the JMC.

Box 2. JMC in a Nutshell

Consistent with the Anti-Graft and Corrupt Practices Act and the FCTC:

1. All public officials shall:

   Not interact with the tobacco industry (TI) unless strictly necessary for its regulation;

   Make all “necessary” interactions public and transparent;

   Not receive any form of direct or indirect contribution from TI; and,

   Disclose interests in the TI.

2. Violations of JMC are subject of administrative proceedings.

3. Heads of agencies must include implementation of the JMC in their annual agency reports.

Tobacco Industry
NO REGARD FOR HUMAN TRAGEDY

“Defendants have marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.”

[blockquote]
In practical terms, Recommendation 1 implies that governments must:

a. **Monitor and document** examples of tobacco industry interference.

b. Develop **materials** about tobacco industry interference and the government’s obligations under Article 5.3 of the WHO FCTC (e.g., FAQs, news articles, posters).

c. Build **alliances** among civil society groups, NGOs, and government agencies, and identify champions in key agencies that need to be involved. Consultative meetings and workshops are useful in explaining this recommendation to other government bodies/agencies and civil society groups.

d. Develop and implement a **media** plan to disseminate information about the harms of tobacco and tobacco industry interference. This should include publicizing actions taken to prevent tobacco industry interference, such as letters sent to warn government agencies about tobacco industry interference.

e. Establish **programs** to systematically conduct surveillance, monitor, document, act upon, and disseminate instances of tobacco industry interference.

f. Develop **policies** or provide technical assistance to develop policies that institutionalize surveillance and monitoring activities, awareness-raising programs, and reporting mechanisms.

The guidelines refer to “tobacco industry interference” not only as interference by the tobacco industry itself but also, as appropriate, by organizations and individuals that work to further its interests. This broad definition is based on the vast body of evidence that shows how tobacco companies have used and continue to use various types of persons and entities to further their commercial and vested interests at the expense of public health.

Transnational tobacco companies’ internal documents have pointed to the fact that they utilize the following types of intermediaries to thwart public health interests:

- lawyers
- public relation firms
- advertising agencies
- front groups, including retailers and tourism associations

In many cases, however, the list is longer. Hence, in codifying policies to protect public health interests from the tobacco industry, it is recommended that governments adopt a broad definition to cover all possible tobacco industry representations.
The following pages illustrate some methods of raising awareness about Article 5.3 and the tactics of the tobacco industry through: (a) systematic monitoring and reporting; (b) materials; (c) alliances; (d) media; (e) programs; and, (f) policies.

A. MONITOR AND DOCUMENT

The first step to monitoring and documenting is identifying the (a) tobacco industry and those representing its interests, and (b) those contributing to tobacco control efforts.

THE TOBACCO INDUSTRY

Since the tobacco industry comes in different disguises, defining it to avoid misunderstanding is a big challenge. As long as it is not clear to people and policymakers who the tobacco industry is and how it misbehaves, it will be difficult for them to establish a case of tobacco industry interference.

One possible way to resolve this is to identify specific individuals, firms, or entities which are known to have tobacco industry interests and have promoted these interests, and categorize them as part of the tobacco industry. This list must be disseminated throughout the government and relevant civil society sectors in order to ensure that government personnel are forewarned.

After dissemination, it may be assumed that any act favorable to the tobacco industry, such as granting incentives or partnering with the tobacco industry, may be considered to have been done knowingly.

The Article 5.3 Guidelines refer to “public health policies with respect to tobacco control.” They apply to persons, bodies, or entities that contribute to, or could contribute to, the formulation, implementation, administration, or enforcement of such policies.

Almost all government agencies, to a certain degree, contribute or could contribute to the setting or implementation of public health policies with respect to tobacco control.

Refer to the Quick Self-Tests in the following pages to determine the extent to which government agencies or personnel are contributing to tobacco control. This is further elaborated in the section “Government Roles in Setting and Implementing Tobacco Control Policies.”

DEFINITIONS: TOBACCO INDUSTRY

The technical definition of “tobacco industry” in the WHO FCTC is limited to “tobacco manufacturers, wholesale distributors, and importers of tobacco products.” However, the countries that have ratified the WHO FCTC, through the Art 5.3 Guidelines, have adopted broader definitions of “tobacco industry” for purposes of making all responsible entities accountable.
For instance, the Guidelines to the Implementation of Article 13 of the WHO FCTC (Tobacco Advertising, Promotions, and Sponsorships) have identified more entities that can be held accountable because they are likely to promote tobacco industry interests in marketing tobacco products.

These include:
- Tobacco retailers and their agents and associations.
- Persons or entities that produce or publish content (e.g., advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, Internet, mobile phone, satellite, and game-content producers).
- Any entity that makes any relevant form of contribution, those that receive any relevant form of contribution, and any intermediaries that facilitate the making or receiving of a relevant form of contribution.
- Persons or entities, for example, media and event organizers, sports people, celebrities, film stars and other artists, who should be banned from engaging in tobacco advertising, promotion, and sponsorship.

When defining conflicts of interests, the tobacco industry includes potential contractors or tenderers with its interests. Any entity or person, when promoting or representing the interests of tobacco manufacturers, wholesalers, and distributors, are also included in the broad definition of “tobacco industry” for purposes of implementing Article 5.3 of the WHO FCTC.

### Organizations and their Links with the Tobacco Industry

<table>
<thead>
<tr>
<th>WHO THEY ARE</th>
<th>WHAT THEY DO</th>
<th>WHO IS INVOLVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adam Smith Institute</td>
<td>Libertarian think tank. Made submission to 2012 Department of Health consultation on standard packs.</td>
<td>Receives tobacco industry funding. Has worked with CECCM.</td>
</tr>
<tr>
<td>Alcan Packaging</td>
<td>Supplier to tobacco industry. Made a submission to the 2008 Department of Health consultation on tobacco control.</td>
<td>Subsidiary of Amcor, a multinational packaging company.</td>
</tr>
<tr>
<td>Alliance for Intellectual Property</td>
<td>A coalition of trade and enforcement organisations.</td>
<td>Members include the AntiCounterfeiting Group and the British Brands Group.</td>
</tr>
<tr>
<td>American Chamber of Commerce to the European Union</td>
<td>Represents American business interests in the EU.</td>
<td>BAT and Philip Morris are members.</td>
</tr>
<tr>
<td>Amcor Tobacco Packaging</td>
<td>Global supplier of packaging solutions based in Australia. Made submission to 2012 consultation on standardized packaging.</td>
<td>Client of the tobacco industry with &quot;strong international relationships with major customers&quot;</td>
</tr>
<tr>
<td>American-European Community Association</td>
<td>Provides a forum for discussion of key global business, economic, and political affairs.</td>
<td>Philip Morris, BAT, and Imperial are all members.</td>
</tr>
</tbody>
</table>

In 2014, ASH UK released a brief for party parliamentary group on smoking and health on tobacco front groups and lobbying tactics of the tobacco industry. The document lists over 100 organizations linked with the tobacco industry, their actions, and what tobacco industry or company is involved. Organizations named include local associations, suppliers, and affiliates as well as US- or Europe-based organizations and international think tanks. It also lists over 20 public relations agencies and law firms representing tobacco industry interests.

Does your office conduct any of the following activities?

- Continuously and consistently raises awareness of policies relating to WHO FCTC Article 5.3.
- Informs and educates all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies from the commercial and other vested interests of the tobacco industry, and the strategies and tactics it uses.
- Raises awareness about the tobacco industry’s practice of using individuals, front groups, and affiliated organizations to act, openly or covertly, on its behalf or to take action to further its interests.
- Ensures that all branches of government and the public are informed and made aware of the true purpose and scope of the so-called corporate social responsibility (CSR) activities of the tobacco industry.
- Collects and exchanges knowledge and experience among pertinent agencies with respect to tobacco industry practices.
- Monitors compliance with policies to counter tobacco industry interference, and supports the exchange of information to promote international cooperation in accordance with the WHO FCTC.
- Engages the support of NGOs and other members of civil society (not affiliated with the tobacco industry) in monitoring tobacco industry activities as well as government’s compliance with policies to counter tobacco industry interference.

Thailand: The meeting of the National Committee on Tobacco Control included deliberation on Article 5.3 and preparation of implementation plan to be submitted to Cabinet for further directives.

Publications about the dishonest behavior and devious nature of the tobacco industry are translated into Thai language and disseminated:

- Tobacco industry’s internal documents
- US publication, Trust us: We are the tobacco industry
- Fact sheet on tobacco industry’s CSR
- WHO publication on tobacco industry’s interference in public policy

Philippines: The Department of Health is required to state the following policy statement in all its correspondences, contracts, and issuances relating to tobacco control: “The Department of Health does not deal with the tobacco industry or those representing its interests.” In addition, all DOH personnel are required to publicly denounce any tobacco industry donation or perception of partnership.

The Civil Service Commission circulated a memorandum reminding government agencies of the Article 5.3 and the JMC, and continues to send letters to various government agencies as needed to respond to queries regarding tobacco industry interference.

United Kingdom: The Secretary of State for Health wrote to counterparts in all other government departments to remind them of their responsibility to abide by the Article 5.3 Guidelines, including disseminating such Guidelines and offering advice on their implementation.

In 2013, the United Kingdom issued guidelines for its officials to “avoid a long list of actions that could be seen to support the tobacco industry.”
EXAMPLES OF MONITORING TOOLS AND REPORTS

Typically, incidents of tobacco industry interference are discussed in the course of examining challenges in developing and implementing tobacco control measures, but many of these remain undocumented. Efforts to document interference in a systematic manner need to be encouraged as incidents of interference will form the basis for counter or preventive action.

Below are some examples of systematic reporting and tools developed to encourage reporting:

In 2014, ASH UK released a brief for party parliamentary group on smoking and health on tobacco front groups and lobbying tactics of the tobacco industry. The document lists over 100 organizations linked with the tobacco industry, their actions, and what tobacco industry or company is involved. Organizations named include local associations, suppliers, and affiliates as well as US- or Europe-based organizations and international think tanks. It also lists over 20 public relations agencies and law firms representing tobacco industry interests.

With inputs from civil society organizations, local government officials, and the ministry of health, HealthJustice managed to collate evidence of tobacco industry interference and efforts to counter them.

In October 2010, Action on Smoking and Health (ASH) Australia launched a step-by-step guide entitled “Countering Tobacco Tactics” to systematically identify, monitor, and prevent tobacco industry interference in public health in Australia.
To encourage reporting and submission of complete data, this incident report is adopted by the Art. 5.3 Committee of the Philippines. Any person can submit this to the 5.3 Committee or the Civil Service Commission.

Beginning 2014, SEATCA has encouraged advocates in the region to assess the level of interference in the country using the list of indicators adopted from the Art. 5.3 Guidelines. The results are summed up in a regional report that ranks countries in their progress on avoiding tobacco industry interference.
B. MATERIALS

Informational, educational, and communication (IEC) materials are important tools to describe the importance of tobacco control and of exposing tobacco industry tactics. Some of the materials that advocates found useful in implementing Article 5.3 include:

- **PREVENT TOBACCO INDUSTRY INTERFERENCE**
  - What makes the tobacco industry unique?
  - A United Front
    - “Tobacco is not just a product, it is a function. It is a disease. It is a weapon. It is a declaration of war. It is a declaration of war on the health of our children and our future generations.”
  - A L ightning lecture
    - “Defend our tobacco companies, have had a history of guilt in this world, but their record is a shameful one.”
  - The bulletin is published and distributed by SEATCA to advocates within the region. Advocates and government officials have used this material as part of their training kit to explain Art. 5.3 of the FCTC.

- **NO DEAL with the TOBACCO INDUSTRY**
  - Protect Public Health from the commercial and vested interests of the Tobacco Industry, Promote integrity, accountability and transparency in Public Office
  - The Philippine Civil Service Commission promotes its work on the implementation of Art. 5.3 policies through its official website.

- **NO TOBACCO**
  - This poster was produced and disseminated by the Philippine health ministry for government offices in 2010 as part of a communications plan to raise awareness on tobacco industry interference. The latter part translates to: “Government offices not to be fooled by the tobacco industry.”

**Recommendation 1: Raise Awareness**

- **RECOMMENDATION 1: Raise Awareness**
  - 1. Increase awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with tobacco control measures. (see article 5.3)
  - 2. Encourage citizens to enforce their rights as tobacco control advocates and consumers. (see article 5.3)
  - 3. Raise awareness of the need to implement effective tobacco control policies. (see article 5.3)
  - 4. Reduce the demand for tobacco products. (see article 5.3)
  - 5. Protect the health of the public. (see article 5.3)

C. ALLIANCES

Raising awareness through consultative meetings and training workshops helps in drawing more allies to assist in implementing Article 5.3 of the FCTC. Outreach by the right group or individual makes a big difference. In the Philippines, the CSC plays a crucial role in promoting multisectoral coordination in the implementation of the JMC.

While raising awareness about Article 5.3, the Department of Health (DOH) and Civil Service Commission (CSC) also managed to build alliances to counter tobacco industry interference. Photo shows then DOH Undersecretary Padilla speaking at a forum on tobacco industry interference with former CSC Commissioner Mary Ann Mendoza looking on.

D. MEDIA

Media plays a key role in raising awareness about tobacco industry interference. A comprehensive media plan to raise awareness about the tobacco industry’s tactics is ideal. The support of media practitioners have proven to be invaluable as can be seen in these examples:

PHILIPPINES

1. The Philippine Department of Health sent a letter to warn government agencies about receiving money or other form of donation (e.g., so-called CSR) from the tobacco industry, and a leading newspaper published the message on its front page.


2. Efforts of civil society organizations in promoting awareness of the Philippine policy on tobacco industry interference (i.e., DOH-CSC JMC) help in reminding government officials of the policy. In this article, advocates celebrate the third year anniversary of the policy.

3. Information about the tobacco industry and those representing its interests can be unearthed by investigative journalists. Excerpts from the magazine show how journalists mapped out the politicians who are against certain tobacco control measures in the Philippines.

Regional efforts complement country efforts in raising awareness about tobacco industry tactics.

5. Media exposure helps in increasing awareness of the gains in countering tobacco industry interference. In this article, the launch of the 2015 ASEAN Tobacco Industry Interference Index is publicized and efforts of the Philippine Civil Service Commission was lauded.
GLOBAL exposure of tobacco industry tactics especially in prestigious news outlets greatly aids in raising awareness of tobacco industry interference and the need to counter it.

3. Efforts of the World Health Organization in promoting awareness of Art. 5.3 and tobacco industry tactics on a global level also play a significant part in facilitating exposure of tobacco industry interference in media. In 2012, the WHO chose the theme “Tobacco Industry Interference” for World No Tobacco Day 2012, and published a document on stopping tobacco industry interference.

4. The New York Times had published an exposé of tobacco industry tactics challenging tobacco control laws in poorer countries.

5. In June 2015, with support from advocates around the world and international civil society organizations, the New York Times shared an investigative report based on incidents around the world, exposing the tactics of an organization working to further the interest of the tobacco industry, the American Chamber of Commerce.
Recommendation 1: Raise Awareness

7. Video documentaries that expose the tactics of transnational tobacco corporations (such as John Oliver’s satirical narrative of tobacco companies’ use of trade litigation and BBC’s report on BAT and the evidence of bribery) provide a clear picture of tobacco industry behavior. These aid policymakers in understanding why it is important to treat the tobacco industry differently in accordance with Article 5.3 of the FCTC.

8. Social media is also a potent means of raising awareness. Aside from a note verbale circulated to the Parties of the FCTC to warn governments about the event of the International Tax and Investment Center (ITIC), the WHO FCTC Secretariat used social media, including Facebook, to promote awareness about ITIC’s links to the tobacco industry and to remind Parties of their obligations under Article 5.3 of the FCTC.

11. The words of champions like the WHO Director General provide good material for media. Above is one of many articles published to document the speech of the WHO chief describing the tobacco industry as ruthless and devious.
E. PROGRAMS

Having clear programs to deal with tobacco industry interference and informing the public of the same is an important aspect of raising awareness. At the same time, raising awareness is a critical element for the success of programs, which can include programs on raising awareness, training, enforcement, among others.

Source: CSC Project Management Unit, courtesy of Beverly Samson

The Philippine Civil Service Commission has an enforcement program which includes distribution of a handbook that explains how the public can report and file cases relating to tobacco industry interference.
F. POLICIES

Policy issuances on Article 5.3 can provide the basis for a systematic monitoring mechanism, a media campaign, or tobacco industry regulation. The JMC contains provisions that require heads of agencies to include reports of tobacco industry interference in their annual reports. The Department of Labor, Department of Science and Technology, Department of Foreign Affairs, Bureau of Internal Revenue, and Metro Manila Development Authority, among others, have issued their respective policies to implement the JMC.

REMINDER FOR DIPLOMATIC MISSIONS

Below is an example of a reminder issued in accordance with the JMC. It is also consistent with the COP6 decision to “raise awareness and adopt measures to implement Article 5.3 among all parts of government, including diplomatic missions.”

Department of Foreign Affairs Memorandum re: CSC-DOH JMC No. 2010-01 (24 May 2013)

OFFICE OF THE UNDERSECRETARY FOR ADMINISTRATION

MEMORANDUM

TO: The Home Office
   Foreign Service Posts
   Regional Consular Offices

FROM: RAFAEL E. SEGUI
Undersecretary for Administration

SUBJECT: CSC-DOH Joint Memorandum Circular No. 2010-01

DATE: 24 May 2013

All Offices, Foreign Service Posts and Regional Consular Offices are instructed to comply with the provisions and guidelines set forth in attached CSC-DOH Joint Memorandum Circular (JMC) No. 2010-01 on the Protection of the Bureaucracy Against Tobacco Industry Interference.

The JMC covers all government personnel, regardless of status, in the national or local government including government-owned and controlled corporations, with original charters, state colleges and universities.

The document establishes strict guidelines on matters pertaining to dealings both directly and indirectly with the Tobacco Industry, such as, but not limited to: (a) unnecessary interaction; (b) preferential treatment; (c) accepting gifts, donations, and sponsorships; (d) financial interests; (e) analogous favors extended family members; (f) conflict of interest; and, (g) engagement in occupational activities.

Annex A of the JMC provides for the rules when dealing with the Tobacco Industry is absolutely necessary.

For compliance.

The Department of Foreign Affairs memorandum reaches out to all foreign service posts including regional consular offices to remind them of the general prohibitions of the JMC and code of conduct that should be followed in case interactions are strictly necessary for regulation.

The COP6 decision on Art. 5.3 implementation, which was adopted in October 2014, specifically urged Parties to “raise awareness and adopt measures to implement Art. 5.3 among all parts of government including diplomatic missions.” Diplomatic missions have been targeted by tobacco companies to promote export or sale of tobacco in foreign countries as well as to influence negotiations relating to the FCTC.
DECLARATION OF INTEREST

One of the ways to jumpstart monitoring of tobacco industry interference is to have a policy that mandates agencies to require a declaration of interests to be filled out as a standard operating procedure in all meetings, events, or as a requirement for all employees.

☐ Consistent with the principle that there is an irreconcilable conflict of interest between the tobacco industry and its representatives on the one hand, and public health on the other hand, the undersigned hereby declares that he/she is, at present, not knowingly representing or receiving any contribution or compensation, directly or indirectly, whether financial or otherwise, from any tobacco or tobacco product manufacturer, wholesale distributor, importer of tobacco products, tobacco retailers, or any parent, affiliate, branch, or subsidiary of a tobacco or tobacco product manufacturer, wholesale distributor, importer or retailer, front group, or any other individual or organization, such as an interest group, advocacy organization, lawyer, law firm, scientist, lobbyist, advertising agency, business, or foundation, that represents or that works to further the interests of the tobacco industry.

☐ I have interests to declare at present (describe the interest, e.g., identity of tobacco-related commercial entity, nature of interest/s or relationship, etc.).

☐ In case of any past interests related to the tobacco industry, please list the details of such interest/s in the blank provided (name of tobacco company or of person or entity representing the tobacco industry, date of involvement, details of involvement).

Signed on this 22nd day of April, 2012.

Name:

I represent that the information given above is correct, accurate, and complete.

Signature:

Source: This form is derived from the one used by the Philippine government during its capacity-building workshops and other events related to Article 5.3 of the FCTC.
These three recommendations go hand in hand. They govern the behavior of the state, its agencies, instrumentalities, and personnel vis-à-vis the tobacco industry. To promote compliance, governments can:

a. Develop policies for all concerned government agencies and officials to avoid or limit interaction with, prevent conflicts of interests with, and reject any partnerships or agreements with or contributions from the tobacco industry. This should include laws that prohibit campaign contributions to political parties or politicians. Many of these can be embodied in codes of conduct, amendments of laws on public officials (e.g., anti-graft and corrupt practices laws, codes of ethical conduct, election laws, rules governing public service, implementing rules and regulations of government agencies).

b. Develop and implement an action plan and process on how to reject interactions / partnerships / agreements / contributions, or offers of the same, made by the tobacco industry. This includes establishing a process for divestment of tobacco industry interests, incorporate a “no tobacco industry relationship” clause into contracts, and integrate safeguards in codes of conduct and anti-corruption programs. This also involves identification of the proper authority to monitor and enforce policies.

c. Adopt personnel and hiring policies consistent with preventing conflicts of interests.

d. Adopt transparency measures, such as public notices, public participation, and public records of meetings with the tobacco industry that are deemed strictly necessary.

In the Philippines, the DOH and the CSC issued Joint Memorandum Circular 2010-01 to protect the bureaucracy from tobacco industry interference. The circular prohibits all interactions with the tobacco industry unless strictly necessary for regulation, and mandates the reporting of any incident of tobacco industry interference. All tenured government officials are subject of disciplinary action for violation of the policy.

In Australia, the public is notified of any necessary meetings with the tobacco industry and the minutes of these meetings are posted online.
A. POLICIES

What is the role of the “Code of Conduct for Public Officials” in implementing Article 5.3 of the WHO FCTC?

A set of rules under the Article 5.3 Guidelines applies specifically to the conduct of government officials and employees. Recommendation 4 of the Guidelines states that governments must ensure that their officials and employees avoid conflicts of interests and make reference to the International Code of Conduct for Public Officials adopted by the United Nations General Assembly.

In order to effectively implement the Article 5.3 policies relating to conflicts of interest, the pertinent provisions would need to be introduced and incorporated into national legislation or administrative frameworks of countries’ codes of conduct. This might require adjustments of existing legal and administrative provisions or the addition of new ones in order to make the codes enforceable. Also, provisions containing requirements for the training of public officials may have to be introduced in the national legislation or administrative guidelines.

Institutional adjustments may also be required, including the appointment of focal persons or designation of bodies that will coordinate, provide technical assistance and training, and oversee implementation.

INTEGRATION INTO CODES OF CONDUCT

The Article 5.3 Guidelines imply the recognition of the existence of codes of conduct and laws in many countries relating to public officials’ ethical standards.

Implementation of provisions relating to the code of conduct of government officials may be done through a systematic integration of the principles and recommendations of the Article 5.3 Guidelines into existing codes of conduct. This is a more practical approach as opposed to creating and implementing a whole new code of conduct since most of the countries in the region already have in place comprehensive codes of conduct for all categories of public officials.

It must be noted that while some countries have distinct codes of conduct applicable only to high-, medium-, or low-level officials, respectively, others have codes of conduct for specific categories of public officials. Article 5.3 policies must be consistently integrated into each of these categories, where applicable.

Notably, agencies that are likely to be targeted by the tobacco industry, such as ministries of trade, investment, agriculture, labor, customs, and finance, would benefit the most from strict codes of conduct that take into account the recommendations of Article 5.3 of the FCTC. Such offices should consider providing specific mechanisms to protect decisions relating to tobacco from tobacco industry influence.

In most countries, codes of conduct are incorporated into both domestic laws and administrative policies. In such cases, corresponding amendments and adjustments must be made in these laws and corresponding policies to reflect the principles and recommendations found in the Article 5.3 Guidelines.

Fortunately, many countries had the opportunity to review their respective codes of conduct for public officials in conjunction with their adoption of the United Nations Convention against Corruption of 2003 (UNCAC), which entered into force on 14 December 2005. The ongoing reviews of the codes of conduct in compliance with the UNCAC present an opportunity to introduce provisions consistent with Article 5.3 of the WHO FCTC.
WHO FCTC: Global Tobacco Treaty

The WHO Framework Convention on Tobacco Control (FCTC) is a treaty that aims to address the devastating health, social, economic, and environmental consequences of tobacco consumption and exposure to tobacco smoke. The first treaty developed under the auspices of the WHO, it came into force in June 2004 and has been ratified by over 180 Parties.

General Treaty Obligation: Article 5.3

The FCTC embodies numerous evidence-based measures to reduce smoking and exposure to tobacco smoke, promote alternative livelihood, and regulate the tobacco industry in various aspects of operation. Article 5.3 of the FCTC is an overarching obligation that allows Parties to fulfill the objectives of the treaty by obligating them to protect their public health policies from the commercial and other vested interests of the tobacco industry.

Article 5.3 Guidelines

The Guidelines for the Implementation of Article 5.3 were adopted by consensus by treaty Parties in 2008 to assist the governments in enforcing Article 5.3. The guidelines make sure that the efforts to protect tobacco control from the tobacco industry are comprehensive and effective. They recommend that governments establish measures to:

1. Raise awareness about the harmful nature of tobacco products and tobacco industry interference;
2. Limit interactions with the tobacco industry and ensure the transparency of interactions that occur;
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry;
4. Avoid conflicts of interest for government officials and employees;
5. Deformalize activities described as “socially responsible” by the tobacco industry;
6. Require that information provided by the tobacco industry be transparent and accurate;
7. Do not give preferential treatment to the tobacco industry; and,
8. Treat state-owned tobacco industry in the same way as any other tobacco industry.

Specific Concern for Public Officials

Most of the items in the Guidelines refer to the conduct of public officials. Specifically, they provide that public officials should be prohibited from doing the following:

- Having partnerships, non-binding or non-enforceable agreements with the tobacco industry;
- Accepting or endorsing policy drafts from the tobacco industry;
- Having financial interest in the tobacco industry;
- Representing the tobacco industry in tobacco control bodies;
- Receiving contributions, gifts, or donations from the tobacco industry;
- Participating in “socially responsible” activities of the tobacco industry; and,
- Granting privileges, incentives, or benefits to the tobacco industry.

Transparency Measures Recommended

- Disclosure and management of conflict of interest for officials, employees, consultants, and contractors involved in setting and implementing public health policies with respect to tobacco control;
- Transparent interaction with the tobacco industry through public hearings, public notices of interactions, and disclosure of records;
- Disclosure of tobacco industry activities;
- Disclosure or registration of tobacco industry-affiliated entities including lobbyists;
- Disclosure of current or previous work with the tobacco industry by applicants for public office position.
involving setting and implementing public health policies; and, • Declaration and divestment of government officials of their direct interest in the tobacco industry.

Coverage: Public Health Policies with respect to Tobacco Control

The purpose of Article 5.3 is to protect public health policies with respect to tobacco control. The measures recommended apply to officials who have roles to play in developing or implementing policies, programs, and strategies relating to the following sectors, among others, in light of certain FCTC provisions:

a. Agriculture (Art. 17: Economically viable alternatives to tobacco; Art. 18: Protection of the environment and the health of persons)
b. Culture and Arts (Art. 13: Tobacco advertising, promotion, and sponsorship)
c. Customs (Art. 15: Illicit trade in tobacco products)
d. Development/ Sustainable Development (Art. 17: Economically viable alternatives to tobacco)
e. Education (Art. 12: Education, communication, training, and public awareness)
f. Environmental (Art. 8: Protection from exposure to tobacco smoke)
g. Foreign Affairs or International Cooperation (Art. 2: Relationship with other agreements; Art. 20, 21, 22: Scientific and technical cooperation and communication of information)
h. Health/ Food and Drug/ Regulatory Agencies (Art. 9/10, 11, 13)
i. Justice (Art. 19: Liability)
j. Local Government (Art. 16: Access restrictions, etc.)
k. Public Information (Art. 12: Education, communication, training, and public awareness)
l. Public Service
m. Social Welfare
n. Sports (Art. 13)
o. Tax or revenue
p. Trade (e.g., Art. 9/10: Regulation of the contents of tobacco products and regulation of tobacco product disclosures; Art. 17: Economically viable alternatives to tobacco)

REFERENCES:


i. Guidelines for the Implementation of Article 5.3 of the FCTC, Recommendation 3.1.
ii. Ibid, Recommendation 3.4.
iii. Ibid, Recommendation 4.7.
v. Ibid, Recommendation 4.10.
vi. Ibid, Recommendation 6.2.
ix. Ibid, Recommendation 2.2.
x. Ibid, Recommendation 5.1.
xii. Ibid, Recommendation 5.3.
xii. Ibid, Recommendation 4.5.
xii. Ibid, Recommendation 4.6.
Above is a set of assessment questions that will help in determining the extent of adjustments that need to be done to adopt codes of conduct based on the recommendations embodied in the Article 5.3 Guidelines.
A template for amendments to the Code of Conduct can be found in the annex of the CSC-DOH Joint Memorandum Circular for Protecting the Bureaucracy against Tobacco Industry Interference (CSC-DOH JMC), as well as the DOH Department Memorandum on Protecting the Bureaucracy against Tobacco Industry Interference (DOH DM). This annex pertains to Code of Conduct provisions recommended for government agencies in the Philippines. Like most countries, each government agency in the Philippines has a Code of Conduct and hence, the policy adopted is one that calls for its amendment, and not the development of a new one.

GUIDELINES FOR MEETINGS WITH THE TOBACCO INDUSTRY

OBJECTIVE: To provide clear guidance on how government personnel should behave when dealing with the tobacco industry.

COVERAGE: All government personnel with special precautions and specific provisions for decision-makers in agencies vulnerable to tobacco industry interference.

ELEMENTS:
1. Broad definition of “contribution”
2. Strictly prohibits all public institutions from receiving contributions from the tobacco industry
3. Requires private institutions to report any contributions from the tobacco industry

MODE: This can be issued as an order for compliance of institutions concerned.

**Rules which shall be included in the Amendment of the Code of Conduct of Each Agency**

(i) Public officials and employees shall limit interactions with the tobacco industry to those strictly necessary for its regulation and to ensure the transparency of those that occur.

(ii) In the event that a meeting is strictly necessary, officials and employees shall abide by the following rules:

1. Set the meeting agenda.
2. Ask the industry about what it wants to discuss— in writing – then decide whether to agree with the meeting or not. Stick to the agenda and make the meeting brief.
3. Clarify the goal and structure of the meeting.
4. Before the meeting, it must be made clear that such interaction does not imply partnership, dialogue, or collaboration. Indicate in writing to the tobacco industry that it may not mischaracterize the nature of the meeting.
5. Hold the meeting at the premises of the department/institution/agency/local government. Ensure that any photograph taken of this meeting is strictly for documentation purposes only and not for the public relations activities of the tobacco industry.
6. Predetermine the meeting participants by asking for the names and positions of those who will attend the meeting.
7. Moderate the meeting. A lawyer must be present and must closely advise the official/employee/representative during the meeting.
8. Write the official minutes. A voice recording of the meeting may be made to assist the staff in preparing the transcript of the meeting. Such transcript must be filed for record purposes and be made available to the public upon request.
9. Maintain the right to terminate the meeting at any point.
10. Distribute information on the meetings as appropriate. Publicly correct any misinformation regarding the meeting.
11. Decide on follow-up questions that must be answered after the meeting.
12. All non-mediated exchanges (in person, phone, or email) between officials, employees, and representatives of the agency should be avoided.

(iii) Public officials and employees shall declare any interest in the tobacco industry. A public official shall resign from his position in the tobacco industry within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.

For the purpose of this rule, interest in the tobacco industry means personal, financial, or other interests, including, but not limited to:
1. having an existing ownership or investment in the tobacco industry;
2. being a member of the Board of Directors, an officer of the corporation, or a partner in a partnership in the tobacco industry; and,
3. receiving any contribution from the tobacco industry.

(iv) Public officials and employees shall not demand or receive any contribution from the tobacco industry for themselves, their families, relatives, friends, or any other persons, or organizations. Contributions shall include, but are not limited to, payments, gifts, and services, monetary or in kind, research funding, financial aid, policy drafts, and legal advice.

(v) Public officials and employees shall avoid the creation of any perception of real or potential partnership or cooperation with the tobacco industry, and shall publicly correct any perception of partnership that may have been created.

(vi) Public officials and employees of agencies which have a role in setting and implementing public health policies with respect to tobacco control, shall inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service; and, shall require applicants for such public office positions to declare any current or previous occupational activity with any tobacco industry, whether gainful or not.

Source: CSC-DDH Joint Memorandum Circular 2010-01, Annex A

These guidelines mirror the rules outlined in “Ethical Guidelines for Meeting with Tobacco Industry” by Judith Mackay and Mary Assunta.
B. PROCESSES AND ACTION POINTS

Below is a sample set of action required to encourage behavior that prevents tobacco industry interference based on what is required under the DOH DM. These guidelines provide for processes and action points, such as steps to reject contributions from the tobacco industry, and a requirement to incorporate “no tobacco industry relationship” clauses into all contracts. In addition, these guidelines identify the person/office where reports should be submitted.

Aware of the higher level of risk and responsibility with respect to tobacco industry interference, the Philippine Department of Health went a step further than the Civil Service initiative on amending the Code of Conduct, and provided specific guidelines on how health officials should take action to denormalize tobacco industry’s so-called CSR activities. It appointed a division to take charge of this function in order to assist the rest of the department as well as other civil servants in implementing the policies geared towards implementing Article 5.3.

Guidelines to Denormalize the So-Called CSR Activities of the Tobacco Industry

1. The so-called “corporate social responsibility” (CSR) activities of the tobacco industry include the involvement of the tobacco industry in any youth, public education, political, social, financial, educational, community, or other tobacco control initiative and, in any manner, of initiatives directly or indirectly related to tobacco control.

2. The tobacco industry shall not be allowed to make public disclosures of activities described as “socially responsible” or the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.

3. The (Division) shall conduct an awareness-raising and information campaign on the true purpose and scope of activities described as “socially responsible” by the tobacco industry. The campaign shall likewise explain how these so-called CSR activities harm tobacco control policy development and implementation.

4. When officials are approached about, or become aware of, so-called CSR activities, they shall promptly document and report the same, not later than 15 days from knowledge, to the officials of the (various offices) and the heads of local government units. Upon receipt of such report, the officials shall:

   a. issue a public admonition in writing to the tobacco industry representative/s responsible for so-called CSR activities being sponsored and promoted, directly or indirectly, by the tobacco industry, including public disclosures of such activities and the expenditures therefor;

   b. issue a letter to the particular office, entity, or unit that received, about to receive, or approached by the tobacco industry for so-called CSR activities, reminding the latter that such is prohibited and that they are required to document and report in accordance with these Guidelines; and,
c. promptly document and report the same to the (Ministry of Justice) or other appropriate agency in order to commence the appropriate prosecution of the party responsible therefor.

5. The officials, in coordination with heads of local government units, shall immediately report to the Office of the Minister/Secretary all instances of so-called CSR activities sponsored and promoted by the tobacco industry, including offers to sponsor and promote the same, in their respective territorial jurisdictions. The report shall specify the actions taken by such officials and heads in response to such activities or offers.

6. Officials shall include the following statement in all issuances, contracts, public documents, communications, exchanges, and interactions directly or indirectly involving tobacco:

‘The Department of Health does NOT deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate the tobacco industry and tobacco products.’

7. The (Division) shall utilize the information and other details obtained in the course of or as a result of enforcing this policy in updating and revising the awareness-raising and information campaign.

As part of an awareness-raising strategy, this policy should be included in all communications, correspondences, and contracts.
The letter below may be published as a response to the tobacco industry's invitation or offer of partnership or assistance.

**Letter Renouncing Partnerships with the Tobacco Industry**

To: (Name of Organization or Person representing the Interests of the Tobacco Industry)  
From: _______________  
Re: Offer of Assistance/ Contribution/Partnership  
Date:

Your offer of (state the offer made by the tobacco industry) is duly noted. In response, we wish to express that the (country) recognizes that smoking is the leading cause of preventable death around the world as it kills one out of every two smokers through a tobacco-related disease. Of the 1.3 billion smokers in the world, over 80% come from developing and low-income countries such as ours. And to battle this epidemic, our government has ratified the WHO Framework Convention on Tobacco Control (FCTC), and committed to protect our policies from the commercial and vested interests of the tobacco industry (Article 5.3, General Obligations, FCTC).

Our office is aware that accepting assistance, partnerships, or contributions from the tobacco industry provides it with a platform to access policymakers and to disguise the harms of the product. Our office also observes transparency in dealings with the tobacco industry where such interaction is strictly necessary for regulation, in accordance with (cite policy, if any).

Hence, we see no other recourse except to publicly reject your offer/ invitation and remind you that such offers may lead to violations of code of conduct of public officials or our obligations under the WHO FCTC. (OPTIONAL: In addition, your activity may fall under acts that are prohibited under national laws on tobacco advertising, promotion, and sponsorship regulations.)
Above are indicators of success in adopting policies consistent with the Article 5.3 Guidelines.
C. PERSONNEL POLICIES

Separate personnel policies may also be necessary to ensure full implementation of Article 5.3 of the WHO FCTC relating to government officials. One example is a hiring policy to ensure that no member of the tobacco industry or anyone representing its interests is hired in a position that exerts influence on tobacco control policies. Other policies and programs may also be useful, such as a divestment program, to ensure that all interests in the tobacco industry are divested.

These types of policies also serve to raise awareness about tobacco industry interference. The lure of high income from tobacco industry investments or employment can be offset by the prospect that such investment or employment creates a disqualification for certain types of public office in the future.

MODEL HIRING POLICY

Guidelines for hiring and firing of government personnel are often documented in memos or human resource manuals. Such a policy can be issued as a department memorandum or an order by a centralized personnel agency of the government.

Revised Guidelines for Hiring of Personnel

TO: 
FROM: 
SUBJECT: Revised Guidelines for Hiring of Personnel

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) obligates the State to protect its public health policies against the commercial and other vested interest of the tobacco industry. The Guidelines for the Implementation of Article 5.3 recommend that Parties develop clear policies requiring applicants for public office which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with the tobacco industry, and for public officials to declare and divest their direct interest in the tobacco industry. The WHO FCTC further encourages that Parties implement measures beyond those recommended by the treaty and its guidelines.

In view of the foregoing, the agency hereby issues the following guidelines:

Section 1. The office, as an agency which can contribute to tobacco control, shall not hire applicants who have direct or indirect interest in the tobacco industry.

For the purpose of this rule, interest in the tobacco industry means personal, financial, or other interests, including, but not limited to:
  a. having an existing ownership or investment
  b. receiving or having received any contribution from the tobacco industry within three (3) years prior to his/her application with the agency
  c. being a member of the Board of Directors, an officer of the corporation, or a partner in a partnership

Section 2. The Personnel Department shall screen the candidates for the vacant positions and ensure that disclosure of tobacco industry relationship, including current or previous occupational activity, is included in the applicant’s data sheet.
It shall be the responsibility of the Personnel Department to check or verify previous employment and other information stated in the applicant’s data sheet.

It shall also require all applicants to sign an “Undertaking” or “Oath” stating that in case they are accepted, they will not receive any contribution or have any interest in the tobacco industry for x years after leaving service.

Section 3. Applicants previously employed by the tobacco industry and are not disqualified under Section 2 will not be assigned to positions where they will be tasked with the creation, implementation, administration, or enforcement of tobacco control policies.

Section 4. For the purpose of this rule, the term “tobacco industry” shall apply to organizations, entities, associations, and individuals that work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups, and any other individual, or organization that work to further the interests of the tobacco industry.

Section 5. The Personnel Department shall submit a report, signed by its head, on a quarterly basis, stating its action in compliance with this order.

Section 6. Any costs incurred related directly or indirectly to the implementation of this Order shall be sourced from the funding of X Department.

Section 7. Effectivity
(Note: Ideally, the policy should take effect immediately after its adoption, subject to other requirements in the national laws of each country.)
D. TRANSPARENCY MEASURES

The government can take measures to promote transparency of any meetings with the tobacco industry. Below is an example of a public notification of tobacco industry meetings set up on Australia’s website. It lists down meetings and issues discussed.

RECOMMENDATION 5

IN ACTION

III

ARTICLE 5.3

REQUIRE THAT INFORMATION COLLECTED FROM THE TOBACCO INDUSTRY BE TRANSPARENT AND ACCURATE

This recommendation presumes that an interaction with the tobacco industry is strictly necessary or required by law. Its operation relies on government bodies or offices that have a specific task of regulating the tobacco industry directly or indirectly. Hence, the first step is to identify the government agencies in charge of regulating the industry, and then to:

a. Raise awareness among government agencies regulating the tobacco industry

b. Take stock of information collected from the tobacco industry and identify other tobacco industry information that needs to be gathered to help in setting and implementing tobacco control measures effectively.

c. Identify obstacles to collecting and disseminating information such as confidentiality clauses and address these.

d. Adopt a policy or law to require additional information as needed to implement tobacco control measures effectively. If possible, incorporate this policy into laws pertaining to freedom of information or commercial/business/corporate laws.

e. Establish a process and a database system to make the information easily accessible to the public.

f. Ensure that proper sanctions are imposed for failure to submit information or for providing false information, and that such incidents are properly publicized to serve as a deterrent.

INFORMATION THAT TOBACCO COMPANIES SHOULD BE REQUIRED TO DISCLOSE

1. Manufacture
2. Market share
3. Marketing expense
4. Revenues
5. Lobbying activities
6. Political contributions and activities
7. Philanthropic activities
8. Affiliated entities
9. Agents or individuals acting on their behalf, including lobbyists
10. Marketing and promotional activities, including product design features, retailer incentives, any financial or other support to events, groups or individuals (Art. 13 Guidelines)
11. Product information such as type of tobacco leaves used, ingredients, change in ingredients, purpose of ingredients, contact details of the ingredient’s supplier, product characteristics or design features, results of tests, contact information of all manufacturing and importing facilities (Art. 9/10 Guidelines)
12. Information pursuant to licensing and tracking such as location of manufacturing units, warehouse, production equipment including model and capacity, bank accounts, documentation regarding criminal records, intended market for the products, customer information, shipment information (Art. 15, Protocol on the Elimination of Illicit Trade)

POLICY TO REQUIRE INFORMATION FROM THE TOBACCO INDUSTRY

Various government agencies require different types of information from the tobacco industry as part of their operations. For instance, production, income, and assets are reported to the national revenue authorities as well as the local authorities for taxation purposes and for the granting of permits, respectively. The various Guidelines adopted by the Parties for the implementation of the FCTC refer to more types of information that would enable governments to further regulate tobacco industry’s operation especially in marketing, advertising, and sponsorship. There is insufficient data on the kinds of information that the tobacco industry is required to submit in different jurisdictions. Many governments, including local ones, are wary about demanding new types of information from the tobacco industry under the assumption that these are confidential or trade secrets. However, the guidelines, being based on evidence and best practice, suggest that the information listed in them are actually required in some jurisdictions and should
be required from the tobacco industry in order to effectively implement provisions of the FCTC. Parties to the FCTC can benefit from updating each other on the various types of information governments require from the tobacco industry, the level of detail required, manner and frequency of submission, etc. To facilitate treaty implementation, this type of information exchange should be undertaken in accordance with the FCTC.

For purposes of regulation and improving tobacco control policies, governments need to develop clear policies outlining what information is required from the tobacco industry, the form and frequency of submission, the agency reviewing the information submitted, and the sanctions for failure to comply. The tobacco industry is expected to resist the requirement to submit information under the guise that these are trade secrets. Trade secret rules do not prohibit disclosure to government; instead they prevent public disclosure. It is possible for governments to provide limited exceptions (in the form of a short and specific list) as to the information item that should not be disclosed to the public without justifiable cause or reason.

DRAFT POLICY

Below is a draft policy template that sums up the list of information to be demanded from the tobacco industry and provides for sanctions in case of submission of false information.

OBJECTIVE: To ensure that tobacco industry information relevant to tobacco control is available to the public.

COVERAGE: This policy applies to agencies that regulate or have jurisdiction over any organization comprising the tobacco industry.

ELEMENTS:
1. Identifying and gathering pertinent information that will help the government comply with its obligations under the WHO FCTC.
2. Disclosure of or registration of entities, organizations, or individuals affiliated with or acting on their behalf.
3. Obliging agencies to share information with other agencies and with the public with the intention of promoting transparency and accountability in government. Civil society’s access to information is essential in encouraging its participation in monitoring the tobacco industry.
4. Requiring that documents submitted must be with the understanding that such contain true and accurate information in order to ensure reliability of documents from and accountability of the tobacco industry.

MODE: This policy can be adopted through a law or an issuance by the pertinent ministry. The local government can also be required to gather pertinent business information. The Securities and Exchange Commission can require information relating to registration of tobacco industry affiliation.

Requirement of Information from the Tobacco Industry

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) obligates the State to protect its public health policies against the commercial and other vested interest of the tobacco industry. The guidelines for the implementation of Article 5.3 recommend that Parties develop policies requiring transparent and accurate information about the activities and practices of the tobacco industry to facilitate its regulation. The WHO FCTC further encourages that Parties implement measures beyond those recommended by the treaty and its guidelines.

In view of these objectives, the following rules are hereby promulgated:
The term “tobacco industry” shall refer to organizations, entities, associations, and individuals that
work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups, and any other individual, or organization that work to further the interests of the tobacco industry.

1. The agency shall require transparent and accurate information from the tobacco industry. It shall require the tobacco manufacturers, importers, and its affiliates (option: including front groups) to submit periodically and regularly (state specific periods here) and as requested by this agency, the following information:

   a. Reports for disclosure or registration of the tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists.

   b. Information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, such as lobbying, philanthropy, political contributions.

   c. Information about tobacco advertising, promotions, and sponsorship, such as, but not limited to:

      i. The kind of advertising, promotion, or sponsorship, including its content, form, and type of media
      ii. The placement and extent or frequency of the advertising, promotion, or sponsorship
      iii. The identity of all entities involved in the advertising, promotion, and sponsorship, including advertising and production companies
      iv. In case of cross-border advertising, promotion, or sponsorship originating from a Party's territory, the territory or territories in which it is intended to be or may be, received
      v. The amount of financial or other resources used for advertising, promotion, or sponsorship

   d. Any information required to support the tobacco control measures.

2. The information shall be provided in accordance with forms provided (by the agency or attached in the annex) which may be updated and revised as needed. The agency shall make sure that the information submitted by the tobacco industry will be accessible to the public for scrutiny, copying, or reproduction. (OPTIONAL: except for (list information items) which may not be publicly disclosed without a written request and for public interest and other justifiable causes.)

3. The agency shall incorporate information collected from the tobacco industry into the information, education, and communication campaigns in order to raise awareness of the harms of tobacco use and exposure to secondhand smoke as well as the tactics and strategies of tobacco companies.

4. All reports from the tobacco industry required to be submitted to the agency must be with the undertaking that such documents contain true and accurate information.

5. Any person who submits documents with false information will be subject to prosecution for perjury or other applicable penalties (cite existing law, if any). In case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer in charge and employee/s responsible for the violation.

II. Enforcement Mechanism
1. The agency shall notify the tobacco industry of the pertinent documents needed to be submitted and the corresponding deadlines for submission. In the absence of a deadline, the reports shall be submitted at the end of each year.

2. There shall be no exemption from the submission of reports. If nothing is to be reported, the tobacco industry must file a statement alleging the same.

3. The agency shall impose appropriate sanctions for the failure of the tobacco industry to submit its re-
ports. Significant fines shall be imposed for each day that the tobacco industry fails to submit the report. (if allowed by law, list specific fines or sanctions under the title “Penalty”)

4. Documents submitted to the agency shall be received and processed by the X Department. It shall be responsible for verifying the accuracy of the contents of the documents.

5. X Department shall make sure that the documents shall be available for public knowledge, scrutiny, copying, or reproduction.

III. Monitoring
On a quarterly basis, the X Department shall submit copies of the documentation to the agency and the list of documents submitted/not submitted by the tobacco industry.
To promote public disclosure and transparency, X Department is mandated to record or document all requests made before its office. The logbook shall contain the information about the requesting party, the document requested, and the corresponding action made.

IV. Integration into the Program
The agency shall integrate the policy into its programs related to the promotion of public disclosure of transactions involving public interest and transparency in the government. (Specify all known programs here.)

V. Sustained Awareness-Raising Program
   a. The agency shall inform and educate all government personnel about the industry practice of using individuals, front groups, and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interest of the tobacco industry.
   
   b. It shall encourage government personnel to monitor, report, and exchange knowledge among pertinent agencies and civil society representatives with respect to tobacco industry practices.

VI. Funding
All costs incident to the implementation of this policy shall be sourced from the budget of X Department. (or subject of annual budget allocation)

VII. Effectivity
(Note: It is suggested that the policy be made effective after it complies with the publication requirement to inform affected persons about the new rules of the agency, subject to national laws.)

---

1 Guidelines for Implementation of Article 5.3 of the WHO FCTC, Recommendation 5.1.
2 Ibid., Recommendation 5.3.
3 Ibid., Recommendation 6.2.
4 Ibid, Par. 41.
There is an inherent contradiction when the tobacco industry, which makes its money by causing deaths and diseases, engages in activities that are “socially responsible.” The ultimate intention of the tobacco industry’s public relations strategy is to distance its image from the lethal nature of its products, and Governments should not allow themselves to become an instrument to this.

Furthermore, the tobacco industry uses its so-called CSR to promote, directly or indirectly, tobacco consumption. Hence, government sectors, especially those most likely to be targeted (agriculture, environment, education, social welfare, local governments) must:

a. **Raise awareness** of the tobacco industry’s ulterior motives for doing its so-called CSR activities. This includes monitoring and documenting such activities, as well as publicizing the policies that require its stricter regulation or that limit interactions and relationships with it.

b. **Warn ranking public officials**, government agencies, and other related or affiliated entities about the impact of participating in such so-called CSR activities with a view to encouraging the return of past donations and avoiding future contributions.

c. **Publicly return, reject, or protest** the contribution or offer of contribution of the tobacco industry.

d. **Ensure that agencies in charge of regulating tobacco emphasize in their internal and external communications** that they will not deal with the tobacco industry and will take active measures to avoid any interactions with the it other than those strictly necessary and mandated by law.

e. **Prohibit the tobacco industry from undertaking its so-called CSR activities** or, if this is not constitutionally possible, ban all publications of so-called CSR activities while imposing a strict requirement for it to submit reports as to the amounts and beneficiaries of such activities.

### A. NATURE OF THE TOBACCO INDUSTRY’S SO-CALLED CSR

Like most companies, the tobacco industry ventures into corporate social responsibility (CSR) activities to make its portfolio more appealing to investors.

However, the tobacco industry is not like any other company. It thrives on peddling a product that is so lethal that it kills half of its consumers. Tobacco indus-
try’s so-called CSR activities are a mere façade to detract the focus from the devastating health impact of its products. Internal tobacco industry documents reveal that the tobacco industry allots a small percentage of company profits to conceal and suppress the negative publicity that results from the harmful effects of its products.

At the same time, it uses such activities to shamelessly promote its products. Where there is an absolute ban of tobacco advertisement, the industry uses its so-called CSR activities to keep its name in the media. It also takes advantage of such activities to partner with government agencies in order that it may continue to have an influence on key persons in government. The biggest negation is probably when it donates to projects benefiting public health and youth programs. The WHO pointed out that the inherent contradiction in the tobacco industry’s so-called CSR arises from the fact that the latter’s core functions are in conflict with the goals of public health.

Policymakers, government agencies, and non-governmental organizations should be more vigilant in dealing with the tobacco industry. The Article 5.3 Guidelines recommend that states prohibit government officials and employees from participating in the so-called CSR activities of the tobacco industry and to reject any contribution from it. The Guidelines further recommend that governments denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry. These so-called CSR activities are actually marketing and public relation strategies that fall within the definition of advertising, promotion, and sponsorship, which should be banned under the WHO FCTC.

It is hard to ignore such activities of the tobacco industry because the practice has already been entrenched, and also because it is difficult to disregard the amount of money being offered to fund worthwhile projects, especially when there are many people relying on these.

However, the government is responsible for promoting health and protecting the people from the devastating effects of tobacco products. There is a clear conflict of interest and a greater disadvantage to public health if it continues partnering with or receiving donations from the tobacco industry.

**B. RAISING AWARENESS**

The best means to denormalize tobacco industry’s so-called CSR is to expose its true nature. And this is best done through awareness-raising campaigns and media blitz. In Thailand, publications about the tobacco industry’s lies have been published in the vernacular to expose its motives. The protest of the tobacco control movement in the country against the global tobacco industry exhibit, Tab Expo, manifests the high level of public awareness on the industry’s ill motives.

Initiatives to raise awareness about tobacco industry interference and motives also promote efforts to denorm
Denormalize the industry’s so-called CSR activities.

Another strategic measure to counter the industry’s so-called CSR is by direct action such as publicly condemning or rejecting any donations from it. Direct action can also be done by writing official and publicly accessible letters to the industry. The objectives are to avoid inadvertently advertising cigarette companies or brands, avoid influencing the youth, reject enticing partnerships and interactions with government employees, and the like. A more sustainable measure is to adopt a policy banning such activities and/or the publication thereof.

The biggest challenge in denormalizing the tobacco industry’s so-called CSR is the strong lure of money and resources. Many beneficiaries, including governments, find it hard to resist the resources that the tobacco industry is donating, and hence, many will find it difficult to resist or to condemn such donations. Public awareness needs to be systematically raised to foster understanding of how and why doing something seemingly harmless as CSR can actually be bad especially if this involves the tobacco industry.

The role of media cannot be overemphasized when it comes to denormalizing so-called CSR because this requires raising awareness of the following:

(a) the true nature of CSR; and,
(b) initiatives or trends in rejecting or condemning so-called CSR activities of the tobacco industry.

In countries that have successfully denormalized the tobacco industry’s so-called CSR, the public’s level of awareness of the true nature of the tobacco industry and its so-called CSR is high. In addition, actions taken against it or that which exposes its true nature is well-publicized in effective media channels.

In many of the said countries, civil society action was instrumental in denormalizing the so-called CSR. In 2010, resulting from the outcry of alliances of NGOs globally, Bill and Melinda Gates Foundation declared that it would withdraw its support from the Canadian International Development Research Centre (IDRC) due to the reported linkage of its board chair with the tobacco industry.

The education sector is a clear target of the tobacco industry’s so-called CSR in the region. This is shown in a report on donation trends of tobacco industry conglomerate Philip Morris which devoted 1/3 of its so-called CSR efforts to education.
The 103-year-old main building of the Francisco Benitez Memorial School in Pagsanjan, Laguna gets a new coat of paint as Philip Morris Philippines Manufacturing Inc., led by managing director Chris Nelson (right, painting handrail in the school), joined the Department of Education’s Adopt-a-School Program and Brigada Eskwela. Through its "Embrace" advocacy campaign, Philip Morris Philippines is reportedly helping improve the quality of public education in the country.

The long-running Philip Morris Philippines (PMPMI) campaign to partner with Department of Education’s programs, which included funding the painting of public primary and secondary schools, ended with the JMC.

C. STATE AND PERSONNEL POLICIES

The government’s act of issuing policies to implement Article 5.3, such as Code of Conduct specifying the protection from tobacco industry interference, policies to reject partnerships and contributions, laws to require transparency and information from the tobacco industry, and the public’s support of these policies, create an environment that is ripe for denormalizing the industry’s so-called CSR. It is important, however, that these policies are not treated as mere scraps of paper but are consistently enforced. The enforcement action of these policies would further contribute to the environment where the industry’s so-called CSR is denormalized.

Once policies are adopted by the government, the role of civil society becomes even more vital. As with many transparency groups, there is much reliance on NGOs to serve as watchdogs and to assist in policy enforcement.

D. POLICIES PROHIBITING CONTRIBUTION

The Article 5.3 Guidelines create a new opportunity for many other government agencies to contribute to denormalizing the tobacco industry’s so-called CSR activities, including those done with the private sector. Policies protecting the private sector, which is often targeted by the tobacco industry, will further boost the effort to denormalize such activities.

Many of the donations from the tobacco industry are coursed through the private sector, including philanthropic organizations or charitable institutions, and given to the public or private sector through research institutions, NGOs, universities, government agencies’ programs, etc. One way to ensure that the so-called CSR is denormalized is to encourage the private sector, through the government regulatory bodies, to reject tobacco industry contributions. An example is a declaration by the Commission on Higher Education to support WHO FCTC Article 5.3 and a request for all universities and higher education institutions to reject any contribution from the tobacco industry or those representing its interests.

Another potent area to adopt such policies is the Ministry for Youth or Ministry for Social Welfare. These agencies can urge those under their jurisdiction to refuse tobacco industry contributions and donations, and better yet, to make the receipt of such contributions illegal, such that receiving tobacco industry money will create a social stigma.

It bears stressing that, if prohibited, the equivalent of current donations from the tobacco industry may be recovered through earmarking of tobacco taxes. In Australia, tobacco taxes were dedicated for sports sponsorships when tobacco sponsorship of sports was banned. Not only has this removed the sector’s chains of dependence on the tobacco industry, it has also provided it with a more sustainable source of funding.
A good example of “no contribution” policy that can be issued by the education ministry is shown below. A policy adopted by the Department of Education of the Philippines, it specifies that none of the schools will be allowed to receive any form of donations or contributions from the tobacco industry. Because this specific policy stems from principles aimed at maintaining integrity of public officials in accordance with Article 5.3, it applies only to public schools. In most jurisdictions, the ministry of education has the authority to ban contributions to the education sector, especially primary and secondary schools, for the welfare of children.

No-CSR Policy for Education Ministry: Department of Education Order No. 6, s. 2012

The Department of Education (DepEd) Order provides explicitly that school heads are covered.

The JMC (national policy on Article 5.3) on which this is based also recommends avoiding perceptions of partnership with the tobacco industry.
DO NOT GIVE PREFERENTIAL TREATMENT TO THE TOBACCO INDUSTRY

Regardless of whether the tobacco industry is owned by the government or not, all the recommendations should apply in the same manner. In a way, having a state-owned tobacco industry makes it easier for the government to regulate its own tobacco industry in accordance with the obligations embodied in WHO FCTC Article 5.3 and its Guidelines. For instance, depending on the level of control the government has over the tobacco industry, many of the measures listed in this Toolkit, such as the requirement of making certain information available, can be adopted through well-disseminated inter-governmental policies. In addition, governments with a state-owned tobacco industry may focus on some distinct measures that need further consideration:

a. Remove tax exemptions or benefits that accrue to government entities. Most governments exempt government entities or corporations from certain taxes. The state-owned tobacco industry should be specifically excluded from this, because this provides undue benefit to the industry and is not consistent with the commitment to promote alternative livelihoods under Articles 17 and 18 of the WHO FCTC.

b. Adopt a policy to ensure that the state-owned tobacco industry does not undertake any so-called CSR activities and remits any excess money to the government, either as taxes or as part of the revenue stream, which may be earmarked for health promotion purposes.

c. Require the state-owned tobacco industry to set up a publicly accessible database of its transactions and operations in order to ensure transparency of information that is relevant to implementing tobacco control policies.

d. Establish internal arrangements in government to create an environment where the influence and authority of the state-owned tobacco industry and its personnel, in relation to other government entities, are minimized or limited.

EXAMPLES OF PREFERENTIAL TREATMENT

Tax exemptions
Investment incentives
Subsidies for tobacco production
Government investments in the tobacco industry

NO PREFERENTIAL TREATMENT FOR THE TOBACCO INDUSTRY

Article 5.3 Guidelines recommend not giving benefits and preferential treatment to the tobacco industry. Giving fiscal benefits and/or preferential treatment to the tobacco industry is tantamount to assisting it in promoting its deadly products. Not giving benefits that have monetary value creates an opportunity to decrease government spending. The savings can then be used for developmental activities. Below are some of the most common forms of incentives enjoyed by the tobacco industry in the region.
A. TAXES (DUTY FREE AND TAX HOLIDAYS)

There is no official global report on the amount of tax incentives being enjoyed by the tobacco industry across the world. Advocates in the region do not have access to such information. It is important to include such information in the monitoring of tobacco industry activities in order to regulate the same. In Laos, certain tobacco companies, as part of investment incentives, enjoy a 25-year tax cap. There are reports that certain countries in the region have considered removing duty-free privileges of tobacco products and have started computing their savings.

B. AGRICULTURAL SUBSIDIES

In some countries, tobacco enjoys some forms of direct or indirect subsidy from the government. Such practices continue despite the commitment of governments to promote alternative livelihood under the FCTC’s Article 17. The lack of access to information on the extent of subsidies provided to farming poses a great challenge in the ability to remove it and divert the subsidies to promoting alternative livelihood. As a means of reducing support for tobacco export, the US Doggett Amendment prohibits government funds from being used to promote the export and sale of tobacco including agricultural subsidies and programs.

C. INVESTMENT INCENTIVES

Investment incentives come in many forms. Common forms include tax incentives, including real property or income tax, to reduce cost of rent and access to ports. The Philip Morris regional warehouse in Subic is housed in an investment zone that extends a 5-year tax holiday and reduced leasing costs, among others.

D. TRADE AND INVESTMENT AGREEMENTS

Trade and investment agreements innately provide benefits to businesses and foreign investors. Contemporary trade and investment treaties provide even more incentives and benefits than traditional ones. Malaysia initiated a proposal to carve out tobacco from the modern free trade and investment agreement in the Asia-Pacific region, the Trans-Pacific Partnership Agreement. The lobby of the tobacco industry and compromises in negotiations led to a “partial carve-out,” or a provision that could limit the tobacco industry’s access to investor-state suits (i.e., limit the ability of tobacco companies to use the dispute settlement mechanisms of the treaty against the state to challenge tobacco control measures.)

E. TREATMENT

The influence and demands of the tobacco industry have led governments to grant it a preferential treatment. One example is the way that the tobacco industry has used embassies and diplomatic missions to promote its product in foreign countries in the context of free trade. This practice has led to outrage among advocates in Thailand and the US led to the development of the Doggett Amendment and EO 13193. The EO 13193 prohibits government agencies and personnel, including in embassies, to be an instrument in promoting the sale and export of tobacco, or in undermining of tobacco control measures in foreign countries.

F. INVESTMENT PORTFOLIOS

In developed countries, initiatives in removing tobacco from governments’ investment portfolios have began. Pension funds in Australia, Hong Kong, and the US have removed tobacco company investments from their portfolios. Reports state that in Australia alone, more than 30 superannuation funds have adopted tobacco-free mandates resulting in divestment of Aus$1.3bn.
An advocacy on socially responsible investments tracks the divestment of tobacco stock holdings of public and private organizations.

Initiatives of non-government organizations are critical in encouraging governments to remove investments in tobacco companies. According to Tobacco Free Portfolio, the divestment of tobacco stocks in Australia have been justified based on a range of factors including Australia being a signatory to the WHO FCTC, the long-term regulatory risk, litigation risk, reputation risk, baseline ethical expectations as well as human rights abuse in tobacco production.
In 2001, the US issued Executive Order 13193, a policy to ensure that the health ministry is involved in trade negotiation positions. The policy also ensures that embassies and diplomatic missions are not used by the tobacco companies to promote their products and to undermine tobacco control regulations in foreign countries.

Executive Order 13193 of January 18, 2001

Federal Leadership on Global Tobacco Control and Prevention

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It shall be the policy of the executive branch to take strong action to address the potential global epidemic of diseases caused by tobacco use. The executive branch shall undertake activities to increase its capacity to address global tobacco prevention and control issues through coordinated domestic action, limited bilateral assistance to individual nations, and support to multilateral organizations. International activities shall be directed towards deterring children from tobacco use, protecting non-smokers, and providing information about the adverse health effects of tobacco use and the health benefits of cessation.

Sec. 2. Responsibilities of Federal Departments and Agencies. (a) Tobacco Trade Policy. In the implementation of international trade policy, executive departments and agencies shall not promote the sale or export of tobacco or tobacco products, or seek the reduction or removal of foreign government restrictions on the marketing and advertising of such products, provided that such restrictions are applied equally to all tobacco or tobacco products of the same type. Departments and agencies are not precluded from taking necessary actions in accordance with the requirements and remedies available under applicable United States trade laws and international agreements to ensure nondiscriminatory treatment of United States products. Nothing in this Executive Order shall be construed (1) to modify the annual executive branch guidance to United States diplomatic posts on health, trade, and commercial aspects of tobacco, or (2) to affect any negotiating position of the United States on the Framework Convention on Tobacco Control.

(b) The Department of Health and Human Services’ (HHS) Role in Tobacco Trade Policy Deliberations. The HHS shall be included in all deliberations of interagency working groups, chaired by the United States Trade Representative (USTR), that address issues relating to trade in tobacco and tobacco products. Through such participation, HHS shall advise the USTR, and other interested Federal agencies, of the potential public health impact of any tobacco-related trade action that is under consideration. Upon conclusion of a trade agreement that includes provisions specifically addressing tobacco or tobacco products, the USTR shall produce and make publicly available a summary describing those provisions.
(c) International Tobacco Control Needs Assessment. The HHS, with the cooperation of the Departments of State, Commerce, and Agriculture, and in consultation with the appropriate national Ministry of Health, shall conduct a pilot assessment of tobacco use in a country other than the United States. Such assessment will be carried out through a compilation and review of surveys and other needs assessments already available and include:

(1) initial estimates of the burden of disease and other public health consequences of tobacco use;

(2) the status of tobacco control regulatory measures in place to curtail tobacco consumption and tobacco related disease; and

(3) an analysis of the marketing, distribution, and manufacturing practices of tobacco companies in given regions, and the impact of those practices on smoking rates, particularly among women and children. Such assessment shall be prepared and provided to interested agencies and other parties not later than December 31, 2001, and be updated as practicable.

(d) Research and Training in Tobacco Control. The HHS will develop a research and training program linking institutions in the United States and certain other countries in the field of tobacco control. Emphasis will be placed on the collection of standardized and comparable surveillance data; networks for communication, information and best practices; and the development and evaluation of culturally-targeted approaches to preventing tobacco use and increasing quit rates, especially among women and children.

Sec. 3. General. (a) Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) This order clarifies and strengthens Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

THE WHITE HOUSE,

William J. Clinton
In 2014, UK issued revised guidelines for overseas posts on support to the tobacco industry, which provide clear guidance on how personnel of diplomatic missions should behave to ensure that the tobacco industry is not given benefits or preferential treatment. The guidelines clearly outline that such personnel should not encourage investments in the tobacco industry, and provide a duty on the part of public officials to verify linkages of an organization with the tobacco industry.

**United Kingdom’s revised guidelines for overseas posts on support to the tobacco industry**

1. The Department of Health (DH) have decided to be more prescriptive in relation to the provision of support to the tobacco industry, to ensure any such support is consistent with the provisions of the WHO Framework Convention on Tobacco Control (FCTC). The Government takes very seriously its obligations as a Party to the (FCTC). This includes the treaty commitment at Article 5.3 to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

2. Existing guidance on the support available to UK companies overseas involved in the production of Tobacco products was circulated to FCO posts in 1999 (Diptels No. 584, 585 and 586). A further update was provided in 2005, (Diptel No.129) following the Framework Convention on Tobacco Control (FCTC) coming into force. The updated guidelines below have been prepared jointly by the DH, UKTI and FCO.

3. For the purposes of the guidelines, taking into account Article 1 of the FCTC, the WHO provides the following definition: “Tobacco industry” means tobacco manufacturers, wholesale distributors, and importers of tobacco products. In addition, the term “tobacco industry” includes tobacco growers, associations or other entities representing any of the above, as well as industry lobbyists.

**Guidelines:**

4. In line with our treaty obligations, Posts should encourage and support the fullest implementation of the provisions of the FCTC, including the implementation of comprehensive, evidence-based tobacco control strategies. Posts should offer access to expertise on public health, tobacco control and tackling the supply of illicit tobacco that exists within HMG.

5. Posts should limit interactions with the tobacco industry, including any person or organisation that is likely to be working to further the interests of the tobacco industry. In the event that interactions with the tobacco industry are necessary, these should be conducted with maximum transparency to demonstrate our compliance with the FCTC.

6. Posts must **not**:

   - Be involved in activities with the specific purpose of promoting the sale of tobacco or tobacco related products (including promotional goods);
   - Encourage investment in the tobacco industry, or provide any assistance in helping tobacco companies influence non-discriminatory local business policies to their advantage (e.g.: taxation, plain/standardised packaging, etc);
   - Accept any direct or indirect funding from the tobacco industry;
   - Accept advertisements for UK or local tobacco products in publications issued by Post, or sponsorship from tobacco companies for any activities, including Chevening Scholarships. Any government brand (including the FCO’s) must not be used together with the branding of a tobacco company or any tobacco product;
   - Attend or otherwise support receptions or high profile events, especially those where a tobacco company is the sole or main sponsor and/or which are overtly to promote tobacco products or the tobacco industry (such as the official opening of a UK tobacco factory overseas);
• Offer any endorsement of, or recommendations for, any tobacco company and should be careful to avoid creating the impression that any such endorsement exists;
• Endorse projects which are funded directly or indirectly by the tobacco industry and should avoid agreeing to any sponsorship of the activities or work of the tobacco industry;
• Endorse, support, form partnerships with, or participate in activities of the tobacco industry that could be described as “socially responsible”, that relate, for example, to public education or that are aimed at improving public health;
• Lobby against any local Administration’s policies that are aimed at improving public health; or
• Engage with foreign governments on behalf of the tobacco industry, except in cases where local policies could be considered protectionist or discriminatory.

7. Given the general, non-discriminatory basis of UK government support for UK business posts can, if approached, provide limited support (whilst avoiding providing the impression that they are promoting tobacco use) by:

• Offering to provide the basic trade, investment and political information that is available to other British businesses;
• Offering assistance to UK tobacco companies in resolving business problems e.g. customs or port clearance, smuggling, trademark violations etc, that are potentially discriminatory against British businesses; or
• Providing information to assist tobacco companies to comply with foreign government laws or regulations.

8. The DH has policy responsibility for tobacco control and for the implementation of the FCTC. Posts should avoid engaging with the tobacco industry or their representatives on matters of policy. Tobacco companies should be invited to provide their views on policy-related matters directly to the DH Tobacco Programme in London. Where policy is discussed, posts should consider providing an overview to the DH Tobacco Programme for information.

9. Posts should also endeavour to verify whether an organisation, body, group or institution that makes any approach regarding tobacco control has any affiliation to or link with the tobacco industry. Posts may wish to make any disclosed links transparent.

10. Posts should bear in mind that public health oriented civil society groups around the world are well organised and connected and may seek to highlight any activity that appears to conflict with the FCTC or these guidelines. The FCTC states that the “participation of civil society is essential in achieving the objective of the Convention and its protocols”.

Source: https://www.gov.uk/government/publications/tobacco-industry-guidance-for-uk-overseas-posts
This recommendation addresses specific situations where the government, whether deliberately or inadvertently, encourages tobacco industry investments. This reflects a defiance of the treaty-based commitments to tobacco control. Hence, governments must:

a. Enact laws that remove the tobacco industry from being a beneficiary of laws that provide business or investment incentives or privileges, such as Foreign Investment Laws, Economic Zone laws, and even Free Trade laws.

b. Repeal laws, orders, or policies that give preferential tax treatment to the tobacco industry.

c. Adopt policies to revoke, terminate, and ensure non-renewal of contracts that bring the tobacco industry under certain benefits and privileges.

d. Divest investments in the tobacco industry. This includes adopting policies in Treasury to remove the tobacco industry from investment portfolio/options for government funds. Government-owned and controlled corporations should also adopt the same investment policies.
Thailand has a state-owned enterprise (a.k.a. Thai Tobacco Monopoly). Its Ministry of Finance (MOF) is the agency that handles the tobacco enterprise under its excise tax department. The MOF’s interests are represented in the inter-agency National Committee on Tobacco Control—headed by the Ministry of Public Health (MPH)—whose members include representatives from education, public relations, and media. The MPH was vested with sufficient authority to ensure that those running the state-owned tobacco enterprise are not involved in tobacco control policy development.

DEALINGS WITH THE TOBACCO INDUSTRY

Aside from the state-owned tobacco company, multinational tobacco companies and various distributors play a key role in expanding Thailand’s tobacco market. In 2012, the Ministry of Public Health issued a policy to ensure that all private sectors involved with the tobacco industry (directly or indirectly receiving benefits from it) must follow strict rules of engagement. Meetings are not allowed unless “necessary”; necessary meetings are limited to those listed in the policy. The policy also lists guidelines to ensure that the meetings are well-documented and that photographs are not taken (similar to the Guidelines for Meeting with the Tobacco Industry by Assunta and Mackay, also attached to the Philippine JMC). The policy also includes a template “Letter of Certification” to be signed by tobacco industry representatives seeking meetings with health officials.
GLOBAL ACTION AGAINST THE TOBACCO INDUSTRY

How the world is supporting implementation of Article 5.3 of the Framework Convention on Tobacco Control

The tobacco product is deemed unique because it is the only consumer product that kills half of its users when used as intended by its manufacturers. The tobacco industry that continues to produce such a lethal product is also deemed unique because a tobacco treaty makes it so. Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC) creates an obligation on the part of governments to take steps to protect public health against the commercial and vested interests of the tobacco industry. It is the only private sector organization identified in treaty law as one whose interests are diametrically opposed to public health and interest, and thus, cannot be considered a partner of governments.

Article 5.3 of the FCTC is a testament to the fact that governments are not alone in fighting the tobacco industry. Increasingly, international organizations, concerned groups of civil society organizations from all over the world, and governments have stood together to denounce tobacco industry interference in its many forms.

A. INTERNATIONAL ORGANIZATIONS

United Nations (UN): Recognize the Conflict of Interest with Tobacco Industry

According to the United Nations General Assembly (UNGA), (2011 Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases), all governments, “recognize the fundamental conflict of interest between the tobacco industry and public health.”

In September 2015, the 193 member states of the UNGA also agreed to adopt as one of its 17 sustainable development goals (SDGs) the prevention of non-communicable diseases, among which is “Goal 3.a Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate.”

United Nations Development Programme (UNDP): No Engagement with Tobacco Industry

The UNDP adopted a policy on partnerships with the private sector which identified sectors in which engagements should be avoided because their goals are incompatible with the UN (classified as exclusionary). The manufacture, sale, or
distribution of tobacco is identified as one of such sectors along with manufacture of controversial weapons, pornography, objects subject to international bans or to the protection of endangered species; gambling; violations of treaty law, use and tolerance of forced or child labor. (Policy on Due Diligence and Partnerships with the Private Sector, 2013)

UN Global Compact: No Funding from Tobacco Industry

Despite criticisms revolving around the tobacco industry’s ability to indirectly participate in the UN Global Compact, the UN Global Compact Office pronounced that it does not accept funding from tobacco companies.

World Bank: No Support for Tobacco Industry Front Groups

In April 2015, the World Bank decided not to participate or financially support the event (12th Annual Asia Pacific Tax Forum) of the International Tax and Investment Centre (ITIC), an organization with a board that included tobacco company executives. This is despite that fact that ITIC, on its website, had already thanked the bank for “supporting” the event with “technical contributions and the participation costs of several governments.”

B. GOVERNMENTS AND INTERGOVERNMENTAL BODIES

Conference of the Parties and Subsidiary Bodies of the WHO FCTC: No Participation from the Tobacco Industry

In 2012, the Conference of the Parties to the FCTC deferred the consideration of the Interpol’s application as observer to the FCTC COP based on the information that the organization received funding from Philip Morris.

In 2009, the Intergovernmental Negotiating Body (INB) negotiating on the Protocol to Eliminate Illicit Trade decided to ask the observers in the gallery, comprised primarily of the tobacco industry, to leave the room after voting on the issue when governments raised concerns that tobacco company representatives were lobbying in the hallways. Subsequent meetings upheld the same protocol of not allowing tobacco industry to observe the negotiations.

Governments Negotiating the Tran-pacific Partnership Agreement (TPP): No benefit of investor-state dispute settlement to tobacco companies

Twelve governments (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam) created a new standard in free trade and investment agreements by incorporating a special provision in the TPP on denying benefits of investor-state dispute settlement mechanisms in relation to tobacco control measures. This allows governments to deny tobacco industry the benefit of suing governments for damages, a benefit granted to all other foreign investors in many other investment treaties. This marks the first time in the history of tobacco control that countries have negotiated a substantive provision relating to tobacco control in a trade and investment forum. Other countries in the SEA region interested in TPP membership include Cambodia, Indonesia, Laos, the Philippines, Taiwan, and Thailand.

“I urge all these countries to stand firm together, do not bow to pressure ... we must never allow the tobacco industry to get the upper hand,”

(WHO Director General, Dr. Margaret Chan, Oct 2011)

---

C. INTERNATIONAL NON-GOVERNMENT ORGANIZATIONS

International Red Cross: No Funding from Tobacco Industry

In June 2015, the International Federation of the Red Cross (IFRC) and Red Crescent Societies elaborated on its policy to refuse funding from the tobacco industry, specifically urging the National Red Cross and Red Crescent Societies “to refrain from accepting funds from the tobacco industry...” (Red Cross and Red Crescent non-engagement with tobacco companies, Internal guidance brief, June 2015)

“Accepting tobacco money harms IFRC’s reputation and credibility and impedes its efforts to be a leading organization in NCD prevention and control. NCDs share the highest burden of diseases, and there is consensus among all countries to add NCD prevention and control as a key goal for the Sustainable Development Goals (SDGs).”

Bill and Melinda Gates Foundation: Avoid Conflict of Interest with Organizations Headed by Former Tobacco Company Executive

In 2010, Bill and Melinda Gates Foundation, renowned for its contribution to global public health, withdrew its funding to IDRC (International Development Research Center), a public corporation that funds research in developing nations, when it was revealed that the chairperson of IDRC is a former director of Imperial Tobacco Canada (a subsidiary of British American Tobacco and one of the world’s largest tobacco transnational corporations).

Badminton World Federation (BWF)

Since 2013, the BWF has adopted a clear policy of protecting the integrity of badminton tournaments by shunning tobacco sponsorship or revenue alongside funding from illegal products and pornography. The BWF regulations state that: “The BWF are [sic] unable to grant sanction to tournaments which receive sponsorship or revenue from any individual or company whose brand relates to the sale of tobacco products, pornographic material or products that are illegal to sell or distribute in the applicant member association.” (Handbook II 2015/16 Laws and General Competition Regulations)

D. FINAL NOTE

Documented instances when the tobacco industry is prevented from interfering with public policy (or simply from increasing its access to policymakers, e.g., through tobacco funding or sponsorships) create precedents that make it easier for governments to prevent tobacco industry interference, and consequently, improve tobacco control measures.

Despite milestones reached in countering the tobacco industry at the global level, much more remains to be done in order to completely protect global health from the commercial and vested interests of the tobacco industry. Government commitments to implement the FCTC, including Article 5.3 as well as the clear guidance provided by the Article 5.3 Guidelines, are further enhanced by the COP6 Decision on the Implementation of the FCTC – which seeks to intensify collaborative action to address tobacco industry efforts internationally, and provides an opportunity to develop tools that systematically address tobacco industry interference including those at the global level.
The international public health community has agreed to pay special attention to the tactics of the tobacco industry to undermine tobacco control measures and promote a unique and inherently lethal product. Presently, there are 180 states that are Parties to the Framework Convention on Tobacco Control (FCTC), the first modern-day global public health treaty created under the auspices of the World Health Organization (WHO). In 2008, all FCTC Parties adopted the Guidelines for the Implementation of Article 5.3 of the FCTC, which recommend, among others, standards on dealing with the tobacco industry and its front groups, and prohibit governments from granting incentives, privileges or benefits to the tobacco industry and from accepting political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests.

In 2014, the global health community agreed to a coordinated approach in intensifying tobacco control efforts and protecting governments from the vested and commercial interests of the tobacco industry. FCTC Parties further decided to promote the implementation of Article 5.3 of the FCTC and its guidelines in various international organizations (IOs).

The role of IOs, including non-government organizations (NGOs), needs to be examined in the context of a multi-sectoral approach. The actions of these organizations influence state behavior, help transform the processes of international law, mobilize states, and leverage public opinion. IOs play a critical role in increasing awareness of the tobacco industry’s practice of using front groups to further its interests.

IOs need to recognize the dangers of treating the tobacco industry like any corporate citizen. Moreover, IOs that work on developmental issues must be prepared to support the implementation of the FCTC. Treaty obligations and guidelines offer governments with evidence-based standards of treatment for the tobacco industry based on documented nefarious practices of violating anti-corruption, agriculture, environmental, and labor laws. Treaty guidelines also recommend more stringent transparency standards that governments must require from the tobacco industry. For instance, Parties must adopt measures requiring information and penalizing the tobacco industry for any false and misleading submissions. Further, governments are obligated under treaty law to ban or restrict the tobacco industry’s corporate social responsibility activities, which, as evidenced from internal documents of the tobacco industry, were found to be mere strategies to promote its products, expand markets, increase profits, and influence policies relating to tobacco control.

WHAT MAKES TOBACCO UNIQUE?

Tobacco is unique in that it is the only consumer product that kills half of its consumers when used according to its manufacturers’ instructions. Far more people are killed by tobacco than by weapons, natural disasters, and road accidents combined. Tobacco-related deaths have risen to an alarmingly high rate of 6 million per year (15,000 a day)—a rate that may kill one billion people in the 21st century, if current trends persist. Tobacco also results in over 600,000 non-smokers dying each year from involuntary exposure to second-hand smoke, 28% (169,000) of which are children.

The tobacco epidemic is recognized as globalized, especially considering that presently, 180 Parties have ratified the FCTC, which entered into force in 2005.

The FCTC is the only treaty in the world to govern a consumer product. It is an evidence-based treaty which has become a tool for international cooperation and multilateral regulation as the tobacco epidemic transcends national borders. With a progressive 50% reduction in uptake and consumption rates, by the year 2050, 200 million lives are projected to be saved, and hundreds of millions more thereafter.

WHAT SETS THE TOBACCO INDUSTRY APART?

The tobacco industry is the only industry that treaty law requires to be strictly monitored. As part of their treaty obligations, FCTC Parties are required to protect their respective tobacco control measures from the commercial and vested interests of the tobacco industry.

The Preamble of the FCTC recognizes that Parties need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts. They need...
to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts.xiii

In 2011, the Political Declaration on the Prevention and Control of Non-communicable Diseases (NCD), issued by the United Nations General Assembly, recognized the fundamental conflict of interest between the tobacco industry and public health, and pledged to give high priority to the full implementation of the FCTC.xiv In May 2013, the Global Action Plan on Prevention and Control of NCDs 2013-2020, adopted by all WHO Member States (even those that are not Party to the FCTC), reiterated the need to protect tobacco control policies from the vested interests of the tobacco industry.xv

Tobacco manufacturers have been involved in many controversies ranging from suppressing evidence about tobacco’s health effects to engaging in an extensive illicit trade while supporting crime, terrorism, and armed conflict with its profits. Currently, the European Union (EU) is investigating Japan Tobacco for allegedly violating Syria’s sanctions and supporting the government’s attacks on dissidents there via illicit sale of cigarettes.xvi

Further reports describe many instances where global tobacco companies were charged with or found to be undermining tobacco control measures:

- Tobacco companies in the United States (US) were charged and found guilty of violating Racketeer Influenced and Corrupt Organizations laws, with the court explaining how the tobacco companies “sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.”xvii

- Tobacco companies were found to be complicit in cigarette smuggling and were required to pay settlement fees in the EU and Canada.xviii

- Tobacco companies were held liable for their actions/products in jurisdictions with strong legal systems (MSA in the US, Canadian class suit).xix

Despite its record of incorrigible behavior,xx the tobacco industry insists that it is just like any other corporate citizen selling a legal product, much like the food industry, and uses every opportunity to undermine the global recognition of its uniqueness. For instance, when graphic health warnings were introduced, tobacco companies would compare these with graphic warnings for sugary drinks and unhealthy food.xxvii

**WHAT SECTORS ARE AFFECTED BY THE TOBACCO INDUSTRY’S SPHERE OF INFLUENCE?**

A UN Development Programme (UNDP) report enumerated some of the sectors involved in FCTC implementation wherein the tobacco industry has extended its influence: trade, tax, education, justice and law enforcement, environment, and agriculture.xxviii

a. Anti-Corruption/Transparency: In 2012, British American Tobacco invoked a Transparency International report to publicizexxix that an international organization recognized it as one of the most “transparent” in terms of corporate and anti-corruption reporting. This is a far cry from the many instances where tobacco companies have been accused of corruption and of unduly influencing high officials (e.g., Philippines, Indonesia, EU).xxx Furthermore, instead of being transparent, the tobacco companies have been known to resist and undermine regulations, including the requirements to submit information of various forms.xxxi For instance, in its 2014 shareholders meeting, Phillip Morris (PM) voted against a proposal to declare its political contributions.xxxii

b. Agriculture: Tobacco companies claim to promote the welfare of farmers, yet are involved in contributing to a cycle of debt for tobacco farmers, mainly by keeping the price of tobacco leaves low.xxxiii

c. Environment: A majority of tobacco is wood-cured causing serious damage to the environment.xxxiv Instead of creating awareness, tobacco companies widely promote and fund unsustainable tree-planting activitiesxxxv that are severely disproportionate to the amount of damage caused by wood curing.xxxvi

d. Labor: Child labor in the production and farming of tobacco is a well-documented, continuing problem. A study shows that majority of children working in US tobacco farms were found to have green leaf symptoms.xxxvii Yet, the tobacco industry uses its international programme on child labor to create an impression that it is addressing child labor issues.xxxviii

**CAN THE TOBACCO INDUSTRY BE SOCIALLY RESPONSIBLE?**

Corporate social responsibility (CSR) is recognized as a key to political influence across policy domainsxxxix and is being used as a strategy to access policymakers with the objective to undermine tobacco control policies. xlv

The FCTC addressed this problem in various ways:

- Article 13 of the FCTC obliges Parties to promote and fund socially responsible tobacco control policies.xlvi
co sponsorship, including CSR as part of a comprehensive advertising ban.

- Article 13 guidelines further describe so-called tobacco CSR as a form of advertising:
  - "Tobacco companies may also seek to engage in ‘socially responsible’ business practices (such as good employee–employer relations or environmental stewardship), which do not involve contributions to other parties. Promotion to the public of such otherwise commendable activities should be prohibited, as their aim, effect or likely effect is to promote a tobacco product or tobacco use either directly or indirectly."\textsuperscript{xxxii}
  - "Public dissemination of such information should be prohibited, except for the purposes of required corporate reporting (such as annual reports) or necessary business administration (e.g., for recruitment purposes and communications with suppliers)."\textsuperscript{xxxiii}

\textbf{WHAT LEVEL OF TRANSPARENCY DO WE NEED FROM THE TOBACCO INDUSTRY?}

Transparency standards required from the tobacco industry include:

- Requiring tobacco companies to submit information to governments on tobacco production, manufacture, market share, marketing expenditures, revenues, and other activities, including lobbying, philanthropy, political contributions, and all other activities not (yet) prohibited under tobacco advertising, promotion, and sponsorship provisions of the FCTC.\textsuperscript{xxxiii}

- Ensuring the disclosure and registration of all the tobacco industry’s entities, affiliated organizations, and individuals acting on its behalf, including lobbyists.\textsuperscript{xxxiv}

- Making information acquired from the tobacco industry publicly available.\textsuperscript{xxxv} The tobacco industry should not be expected to voluntarily submit information. Instead, governments are urged to adopt measures that require information and penalize the tobacco industry for false and misleading submissions.\textsuperscript{xxxvi}

\textbf{WHAT IS THE ROLE OF INTERNATIONAL NON-GOVERNMENT ORGANIZATIONS IN ALL OF THESE?}

With a multi-sectoral approach to tobacco control, collaboration with various IOs is necessary, including those involved in trade, tax, education, justice and law enforcement, labor, environment, and agriculture.

Implicitly, international NGOs (“INGOs”) working closely with IOs should be conscious of their roles in promoting treaty implementation and observing international law. Scholars recognize that both IGOs and INGOs can be norm entrepreneurs that socialize and teach new norms, and that these new norms may influence state behavior.\textsuperscript{xxxvii} Hence, all IOs seeking to assist governments to comply with international law should not perpetrate actions that go against the same,\textsuperscript{xxxviii} such as promoting tobacco industry interests.

Organizations, international or otherwise, that promote tobacco industry interests take the risk of being perceived as being a front group for the industry. This perception could create problems in collaborating with governments because Article 5.3 Guidelines defines the tobacco industry as including front groups or "those that represent the interests of the tobacco industry." The said guidelines recommend governments to avoid interacting with such entities or individuals that represent tobacco industry interests, unless strictly necessary for its regulation.

The Guidelines for the Implementation of Article 13 state: “[p]arties should, in addition, raise awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organisations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.”\textsuperscript{xxxix}

\textbf{THE RED CROSS CASE STUDY}

Even the Red Cross recognizes the contradiction between collaborating with the tobacco industry and upholding the Fundamental Principles of Humanity and Interdependence.

On 31 May 2013 (World No Tobacco Day), the Governing Board of the International Federation of the Red Cross/Red Crescent adopted a resolution urging National Societies to refrain from accepting funds from the tobacco industry.

In June 2015, an Internal Guidance Brief, which provides for the non-engagement of the Red Cross and Red Crescent Societies with tobacco companies, was circulated to National Societies and was made available to Red Cross and Red Crescent staff and volunteers.

The Red Cross/Red Crescent Societies are important vectors of influence on governments and the civil society alike, particularly because of their close ties with their respective national governments and with their counterpart societies around the world. To open up this vast influence and network to an industry that is the leading cause of premature deaths around the world is to compromise the movement’s fundamental principles and to risk the credibility on which its effectiveness rests.
Protecting public health policies from the commercial and vested interests of the tobacco industry is probably the most challenging aspect of tobacco control and yet, it is the most important. The tobacco industry is the vector of the diseases that lead to the tobacco epidemic. As tobacco control and FCTC implementation formed part of a larger global goal, prevention of non-communicable diseases, outlined in the Sustainable Development Goals, the challenge of protecting public health policies against tobacco industry influence is expected to evolve. The tobacco industry can be expected to use the convergence of many health concerns and of many sectors to divert attention from tobacco control and to use other sectors/issues to influence decisions relating to tobacco control policies. Hence, governments that have invested in strong foundations, including policies and tools, to protect against tobacco industry interference in accordance with Article 5.3 of the WHO FCTC can be expected to make greater progress in tobacco control in the long run, and consequently, to be able to save more lives through life-saving tobacco control measures.

Reports show that most of the countries in the region, especially in places where smoking rates remain high, have higher levels of tobacco industry interference. Hence, governments in these countries must be more vigilant of tobacco industry tactics by:

1. **Raising awareness** about tobacco control and tobacco industry tactics. Using the tools, such as self-assessment or quick tests undertaken by government officials or briefing papers/fact sheets, can be the first step in raising awareness.

2. **Building alliances** (or establishing a core group) and working together to systematically monitor and report tobacco industry activities (see the monitoring tools). Civil society participation in monitoring is essential.

3. **Ensuring that rules or policies that govern government employees** are designed in a manner that:

   - **Limits their interactions with the tobacco industry**, and allows them to interact with the tobacco industry only when, and to the extent, strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.
     - Ensures transparency of meetings with the tobacco industry when necessary.

   - **Prohibits them from entering into any partnerships or non-enforceable agreements with the tobacco industry**, and if possible, reject and renounce such agreements or offers of partnership.
• Protects against conflicts of interest for those involved in setting and implementing tobacco control policies such as:

  o prohibition of tobacco industry representation on government bodies/committees/advisory groups involved in tobacco control;
  o prohibition of contributions, payments, gifts, etc by the tobacco industry to government officials or employees, or to government or quasi-governmental institutions (except payments mandated by law);
  o prohibition of political donations by the tobacco industry.

4. Further sharpening such rules and tools to respond to the known tactics of the tobacco industry. (see policy templates and best practices)

5. Requiring information from the tobacco industry operations and activities, ensuring that such information is accurate, and ensuring broad public access to this information. (see list of information that can be required)

6. Denormalizing and prohibiting the tobacco industry’s so-called CSR (see policy templates)

7. Removing benefits from and not giving preferential treatment to the tobacco industry

8. Treating state-owned tobacco companies in the same way as other companies (see case study)

Most of the tools, policy/reporting templates or forms, are meant to aid in prompting discussion about solutions.

The actions taken in the regional and global arena aid in exposing the true nature of the tobacco industry and its so-called CSR activities. In the treatment of tobacco business and funding, many international organizations and events have lumped the tobacco industry with the arms/weapons industry, pornography industry and human rights violators. Aside from exchanging information, governments can help one another by promoting the good practices of such international and intergovernmental organizations in treating the tobacco industry differently from other members of the private sector. (see Global Practices)
A. Article 5.3 Guidelines (2008)

B. COP6 Decision on Implementation of Article 5.3 (2014)

C. List of Resources

D. ASEAN Tobacco Watch Home page/ List of Articles (2015)

E. SEATCA Tobacco Industry Index Results (2015)


G. Genesis of the Philippine Policy on FCTC Article 5.3
Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control

on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry

INTRODUCTION

1. World Health Assembly resolution WHA54.18 on transparency in tobacco control process, citing the findings of the Committee of Experts on Tobacco Industry Documents, states that “the tobacco industry has operated for years with the express intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic”.

2. The Preamble of the WHO Framework Convention on Tobacco Control recognized the Parties’ “need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts”.

3. Further, Article 5.3 of the Convention requires that “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

4. The Conference of the Parties, in decision FCTC/COP2(14), established a working group to elaborate guidelines for implementation of Article 5.3 of the Convention.

5. Without prejudice to the sovereign right of the Parties to determine and establish their tobacco control policies, Parties are encouraged to implement these guidelines to the extent possible in accordance with their national law.

Purpose, scope and applicability

6. Use of the guidelines for implementation of Article 5.3 of the Convention will have an overarching impact on countries’ tobacco control policies and on implementation of the Convention, because the guidelines recognize that tobacco industry interference, including that from the State-owned tobacco industry, cuts across a number of tobacco control policy areas, as stated in the Preamble of the Convention, articles referring to specific tobacco control policies and the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

7. The purpose of these guidelines is to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive and effective. Parties should implement measures in all branches of government that may have an interest in, or the capacity to, affect public health policies with respect to tobacco control.

8. The aim of these guidelines is to assist Parties in meeting their legal obligations under Article 5.3 of the Convention. The guidelines draw on the best available scientific evidence and the experience of Parties in addressing tobacco industry interference.

9. The guidelines apply to setting and implementing Parties’ public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.

10. The guidelines are applicable to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi-quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and implementing tobacco control policies and for protecting those policies against tobacco industry interests should be accountable.

11. The broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures, such as those that Parties to the Convention are required to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.

12. While the measures recommended in these guidelines should be applied by Parties as broadly as necessary, in order best to achieve the objectives of Article 5.3 of the Convention, Parties are strongly urged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances.

GUIDING PRINCIPLES

Principle 1: There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.

13. The tobacco industry produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

---

1 “The term ‘Parties’ refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty and where the treaty is in force for such States and entities.” (Source: United Nations Treaty Collection: http://treaty.un.org/English/guide.asp?signatories)

2 Where appropriate, these guidelines also refer to regional economic integration organizations.
Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
14. Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.

Principle 3: Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
15. The tobacco industry should be required to provide Parties with information for effective implementation of these guidelines.

Principle 4: Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.
16. Any preferential treatment of the tobacco industry would be in conflict with tobacco control policy.

RECOMMENDATIONS
17. The following important activities are recommended for addressing tobacco industry interference in public health policies:

(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.

(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.

(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.

(4) Avoid conflicts of interest for government officials and employees.

(5) Require that information provided by the tobacco industry be transparent and accurate.

(6) Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.

(7) Do not give preferential treatment to the tobacco industry.

(8) Treat State-owned tobacco industry in the same way as any other tobacco industry.

18. Agreed measures for protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry are listed below. Parties are encouraged to implement measures beyond those provided for by these guidelines, and nothing in these guidelines shall prevent a Party from imposing stricter requirements that are consistent with these recommendations.

(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
19. All branches of government and the public need knowledge and awareness about past and present interference by the tobacco industry in setting and implementing public health policies with respect to tobacco control. Such interference requires specific action for successful implementation of the whole Framework Convention.

Recommendations
1.1 Parties should, in consideration of Article 12 of the Convention, inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.

1.2 Parties should, in addition, raise awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.

(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
20. In setting and implementing public health policies with respect to tobacco control, any necessary interaction with the tobacco industry should be carried out by Parties in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such a perception, Parties should act to prevent or correct this perception.

Recommendations
2.1 Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.

2.2 Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.

(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.
21. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.
Recommendations

3.1 Parties should not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.

3.2 Parties should not accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.

3.3 Parties should not accept, support or endorse any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.

3.4 Parties should not accept, support or endorse any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.

4 Avoid conflicts of interest for government officials and employees.

22. The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control is most likely to have a negative effect. Clear rules regarding conflicts of interest for government officials and employees working in tobacco control are important means for protecting such policies from interference by the tobacco industry.

23. Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations.

Recommendations

4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.

4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.

4.3 Parties should not award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.

4.4 Parties should develop clear policies that require public office holders who have or have had a role in setting and implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.

4.5 Parties should develop clear policies that require applicants for public office positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not.

4.6 Parties should require government officials to declare and divest themselves of direct interests in the tobacco industry.

4.7 Government institutions and their bodies should not have any financial interest in the tobacco industry, unless they are responsible for managing a Party’s ownership interest in a State-owned tobacco industry.

4.8 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.

4.9 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.

4.10 Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.

4.11 Taking into account national law and constitutional principles, Parties should have effective measures to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.

5 Require that information provided by the tobacco industry be transparent and accurate.

24. To take effective measures preventing interference of the tobacco industry with public health policies, Parties need information about its activities and practices, thus ensuring that the industry operates in a transparent manner. Article 12 of the Convention requires Parties to promote public access to such information in accordance with national law.

25. Article 20.4 of the Convention requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c) of the Convention, each Party should endeavour to cooperate with competent international organizations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.
Recommendations

5.1 Parties should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent.\[^{2}\]

5.2 Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the Convention.\[^{3}\]

5.3 Parties should require rules for the disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists.

5.4 Parties should impose mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.

5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure public access, in accordance with Article 12(c) of the Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as in a public repository.

(6) Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.\[^{4}\]

26. The tobacco industry conducts activities described as socially responsible to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies. Activities that are described as “socially responsible” by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as a public relations strategy that falls within the Convention’s definition of advertising, promotion and sponsorship.

27. The corporate social responsibility of the tobacco industry is, according to WHO,\[^{5}\] an inherent contradiction, as industry’s core functions are in conflict with the goals of public health policies with respect to tobacco control.

Recommendations

6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.

6.2 Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.

6.3 Parties should not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.\[^{6}\]

6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.

(7) Do not give preferential treatment to the tobacco industry.

28. Some governments encourage investments by the tobacco industry, even to the extent of subsidizing them with financial incentives, such as providing partial or complete exemption from taxes otherwise mandated by law.

29. Without prejudice to their sovereign right to determine and establish their economic, financial and taxation policies, Parties should respect their commitments for tobacco control.

Recommendations

7.1 Parties should not grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses.

7.2 Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the WHO Framework Convention on Tobacco Control.

7.3 Parties should not provide any preferential tax exemption to the tobacco industry.

(8) Treat State-owned tobacco industry in the same way as any other tobacco industry.

30. Tobacco industry can be government-owned, non-government-owned or a combination thereof. These guidelines apply to all tobacco industry, regardless of its ownership.

Recommendations

8.1 Parties should ensure that State-owned tobacco industry is treated in the same way as any other member of the tobacco industry in respect of setting and implementing tobacco control policy.

8.2 Parties should ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing tobacco industry.

---

\[^{2}\] Without prejudice to trade secrets or confidential information protected by law.


\[^{4}\] The guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control address this subject from the perspective of tobacco advertising, promotion and sponsorship.
8.3 Parties should ensure that representatives of State-owned tobacco industry does not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.

Enforcement and monitoring

**Enforcement**

31. Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms to meet their obligations under Article 5.3 of the Convention and these guidelines.

**Monitoring implementation of Article 5.3 of the Convention and of these guidelines**

32. Monitoring implementation of Article 5.3 of the Convention and of these guidelines is essential for ensuring the introduction and implementation of efficient tobacco control policies. This should also involve monitoring the tobacco industry, for which existing models and resources should be used, such as the database on tobacco industry monitoring of the WHO Tobacoo Free Initiative.

33. Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could play an essential role in monitoring the activities of the tobacco industry.

34. Codes of conduct or staff regulations for all branches of governments should include a “whistleblower function”, with adequate protection of whistleblowers. In addition, Parties should be encouraged to use and enforce mechanisms to ensure compliance with these guidelines, such as the possibility of bringing an action to court, and to use complaint procedures such as an ombudsman system.

**INTERNATIONAL COLLABORATION AND UPDATING AND REVISION OF THE GUIDELINES**

35. International cooperation is essential for making progress in preventing interference by the tobacco industry with the formulation of public health policies on tobacco control. Article 20.4 of the Convention provides the basis for collecting and exchanging knowledge and experience with respect to tobacco industry practices, taking into account and addressing the special needs of developing country Parties and Parties with economies in transition.

36. Efforts have already been made to coordinate the collection and dissemination of national and international experience with regard to the strategies and tactics used by the tobacco industry and to the monitoring of tobacco industry activities. Parties would benefit from sharing legal and strategic expertise for countering tobacco industry strategies. Article 21.4 of the Convention provides that information exchange should be subject to national laws regarding confidentiality and privacy.

**Recommendations**

37. As the strategies and tactics used by the tobacco industry evolve constantly, these guidelines should be reviewed and revised periodically to ensure that they continue to provide effective guidance to Parties on protecting their public health policies on tobacco control from tobacco industry interference.

38. Parties reporting via the existing reporting instrument of the Framework Convention should provide information on tobacco production and manufacture and the activities of the tobacco industry that affect the Convention or national tobacco control activities. To facilitate this exchange, the Convention Secretariat should ensure that the principal provisions of these guidelines are reflected in the next phases of the reporting instrument, which the Conference of the Parties will gradually adopt for use by Parties.

39. In view of the paramount importance of preventing tobacco industry interference in any public health policy with respect to tobacco control, the Conference of the Parties may, in the light of experience with implementing these guidelines, consider whether there is a need to elaborate a protocol in relation to Article 5.3 of the Convention.
DECISION

FCTC/COP6(14) Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry

The Conference of the Parties (COP).

Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco-control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on implementation of the WHO FCTC;

Recalling the resolution of the United Nations General Assembly in A/RES/66/2, which recognized the fundamental conflict of interest between the tobacco industry and public health, and United Nations Economic and Social Council (ECOSOC) resolution E/RES/2012/4, which recognized the same in relation to the work of the United Nations;

Acknowledging with appreciation the report of the Secretary-General to the ECOSOC at its substantive session in 2013 (E/2013/61), which recommended that the United Nations adopt guidelines to ensure objectivity in its work, in line with the principles of Article 5.3 of the Convention and its implementing guidelines;

Noting that global progress reports on implementation of the WHO FCTC, based on the reports of the Parties, reveal that tobacco industry interference remains one of the greatest obstacles to implementation of the Convention;

Recognizing that the tobacco industry is well-resourced and will continue to undermine tobacco-control efforts internationally, particularly for developing country Parties and Parties with economies in transition;

FCTC/COP6(14)

Noting with concern recent experiences indicating that tobacco industry strategies and tactics go beyond national borders as well as initiatives of the tobacco industry advising governments to challenge other countries’ tobacco-control measures at national and international levels;

Reiterating that international cooperation is essential to prevent interference by the tobacco industry in the formulation of public health policies on tobacco control, as recommended in the guidelines for implementation of Article 5.3 and also in line with Articles 22, 23.5(g), 24.3(c), (d), (e), and Article 25 of the WHO FCTC;

Acknowledging the task requested to the Convention Secretariat in operative paragraph 2, the Convention Secretariat might consider to seek external expertise, in line with past practice.

1. DECIDES to:

   (1) urge Parties to strengthen their implementation of Article 5.3 and intensify collaborative action to address tobacco industry efforts internationally; and

   (2) urge Parties to raise awareness and adopt measures to implement Article 5.3 and its implementing Guidelines among all parts of government including diplomatic missions.

2. REQUESTS the Convention Secretariat, in coordination with the WHO to:

   (1) examine the level of tobacco industry engagement in key international organizations which are in a position to contribute to WHO FCTC implementation, prepare a report on their impact on multisectoral collaboration for the implementation of the WHO FCTC, and make appropriate recommendations;

   (2) seek collaboration with pertinent international organizations, including regional, and subregional organizations, to raise awareness of their role in contributing to Parties’ implementation of Article 5.3 and that their administrative, financial and other decisions affect implementation of Article 5.3 of the WHO FCTC, by promoting the principles of Article 5.3 and its implementing Guidelines, including rejection of any direct or indirect contributions, technical and financial, from the tobacco industry;

   (3) propose tools that will facilitate where appropriate raising awareness and assisting with implementation of Article 5.3 among all parts of government;

   (4) identify and recommend options and sustainable mechanisms international cooperation on, and exchange of information related to, tobacco industry interference, building on the existing WHO Tobacco Industry Monitoring database or through a knowledge hub, in order to strengthen effective implementation of Article 5.3 of the WHO FCTC;

   (5) stimulate the reporting of Parties’ experiences in implementing Article 5.3 of the Convention through the reporting instrument of the WHO FCTC, and facilitate exchange of best practices through the establishment of a virtual community on the WHO FCTC information platform;

   (6) develop and promote monitoring tools that would encourage voluntary and timely sharing of further information in order to enhance the monitoring of tobacco industry interference, including at the international level and regularly report on findings to Parties.
(7) continue to develop, and make available on a continuous basis, the technical capacity required to carry out the tasks listed above and provide technical assistance to Parties upon their request, to implement Article 5.3 of the Convention.

(8) report on its findings and activities to the seventh session of the COF.

(Fifth plenary meeting, 18 October 2014)
A. OFFICIAL DOCUMENTS & WHO RESOURCES

1. WHO’s Technical Resources on FCTC Article 5.3 (2012), http://www.who.int/tobacco/publications/industry/technical_resource_article_5_3/en/

B. FACT SHEETS ON ARTICLE 5.3

3. Roadmap to protecting health from Big Tobacco: A guide for implementation of the FCTC’s Article 5.3, https://ia600301.us.archive.org/1/items/CAIArticle5.3Roadmap/CAI%20-%20Article%205.3%20Roadmap.pdf

C. TOBACCO INDUSTRY INTERFERENCE EXAMPLES

4. FCTC Article 5.3 Guidelines Best Practice: The Role of the Public Service Commission (2015), http://seatca.org/dmdocuments/Best%20PracticeCSC_Article%205%203_F%202015.pdf
10. Country report cards, TI surveillance (includes case studies of TI tactics in Southeast Asian countries particularly on packaging, advertising, POS, CSR) at http://resources.seatca.org/

TOBACCO INDUSTRY SURVEILLANCE DATABASE


**ART. 5.3 LEGISLATIVE TOOLS**

2. Legislative and Policy Templates for FCTC Article 5.3 Implementation: Protecting from Tobacco Industry Interference (2012), http://www.seatca.org/dmdocuments/Art%205.3%20Template%202012.pdf

**TOOLKIT**

3. 5.3 Toolkit for Governments (2012), http://www.theunion.org/what-we-do/publications/technical/the-fctc-article-5-3-toolkit-guidance-for-governments-on-preventing-tobacco-industry-interference
5. Preventing tobacco industry interference: FCTC Article 5.3 Toolkit (2012), http://seatca.org/dmdocuments/Art%205.3%20Toolkit%202012.pdf

**BEST PRACTICE / POLICY / LAWS**

4. Brazil’s Conflict of Interest Policy, http://www2.inca.gov.br/wps/wcm/connect/d3033e804eb68a4da137b3f111fa00e/Portaria+n%C2%BA+713-2012+GM-MS++Diretrizes+%C3%A9ticas+da+CONICQ.pdf?MOD=AJPERES&CACHEID=d3033e804eb68a4da137b3f11fa00ee
5. Burkina Faso’s prohibition of preferential treatment and policy to ensure transparent “relations” with the tobacco industry, http://www.tobaccocontrollaws.org/files/live/Burkina%20Faso/
11. Jamaica’s notice to implement Article 5.3, http://jamaica-gleaner.com/article/lead-stories/20150309/health-
minister-puts-friends-big-tobacco-notice


Tobacco Watch

Exposed: BAT exposed for offering bribes to African officials
Malaysia: efforts to regulate e-cigarettes intensifies
Who needs who more in the Philippines
UNDP makes public its exclusion of tobacco industry
Philippines: Tobacco Industry fails Trust Index
Malaysia: E-cig biz wins a small victory, no ban for now
End Ti Corporate Giving: A Review of CSR in Southeast Asia
Philippine: Countdown on Nov 5 deadline for PHW has begun
KT&G joins race for bigger overseas market share
Philip Morris meets Indonesian Parliamentarians in the US
BAT rebrands CSR to ‘CSI’
US health watchdog to take legal action against e-cigarette makers
Is Philip Morris talking to your Customs DG?
Tobacco Industry Meddles and Thwarts Tobacco Control in the ASEAN Region
Tobacco cultivation moving in opposite direction in S Philippines
Why tobacco industry exploits the poor though CSR activities
Do you have $50 million for legal defence?
Singapore’s decision to ban e-cigarettes ruffles PMI

## Table 1. Summary: Tobacco Industry Interference Index in ASEAN Countries

<table>
<thead>
<tr>
<th>INDICATORS</th>
<th>BN</th>
<th>KH</th>
<th>ID</th>
<th>LA</th>
<th>MY</th>
<th>PH</th>
<th>TH</th>
</tr>
</thead>
</table>
| **Level of Participation in Policy-Development**<br>0 Not applicable, 1 Never, 2 Rarely (<10% of the time), 3 Sometimes (10-40% of the time), 4 Frequently (40-75% of the time), 5 Always (>75% of the time)**<br>**1. The government accepts, supports or endorses offer for assistance by or in collaboration with the tobacco industry in implementing tobacco control policies (Rec 3.1)**<br>**1* no incident, 2 receives/accepts/acknowledges, 3 supports or endorses, 4 uses assistance/ repeats arguments, 5 allows such assistance or collaboration to influence decisions on policy**<br>2. The government accepts, supports or endorses legislation drafted by collaboration with the tobacco industry (Rec 3.4)<br>3. The government allows the tobacco industry to sit in multi-sectoral committee/advisory group that sets public health policy (Rec 4.8)<br>4. The government allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or subsidiary bodies or accepts their sponsorship for delegates. (Rec 4.9 & 8.3)**<br>**Subtotal**<br>**So-called CSR activities**<br>0 Not applicable, 1 Never, 2 Rarely (<10% of the time), 3 Sometimes (10-40% of the time), 4 Frequently (40-75% of the time), 5 Always (>75% of the time)**<br>5. The government receives contributions from the tobacco industry (including so-called CSR contributions) (Rec 6.4)<br>6. The government agencies/officials endorses, forms partnerships with/participates in tobacco industry CSR activities (Rec 6.2)<br>**1* acknowledges, 2 endorses/supports, 3 participates (through officials), 4 forms partnership, 5 supports/partners with AND participates**<br>**Subtotal**<br>**Benefits to the Tobacco Industry**<br>0 Not applicable, 1 Never, 2 Rarely (<10% of the time), 3 Sometimes (10-40% of the time), 4 Frequently (40-75% of the time), 5 Always (>75% of the time)**<br>7. The government accommodates requests from the industry for longer implementation time or postponement of tobacco control law (Rec 7.1)<br>8. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)**<br>**Subtotal**<br>**Forms of Unnecessary Interaction**<br>1 Never 5 Yes (even if only 1 incident in the past 2 years)**<br>9. Top-level government officials meet with/foster relations with the tobacco companies such as attending social functions and events sponsored or organized by the tobacco companies. (Rec 2.1)<br>10. The government accepts assistance/offers of assistance from the tobacco industry on enforcement (Rec 3.1 & 4.3)**<br>**Subtotal**

---

16 e.g., reduced income tax rates or property tax exemption, duty-free imports of machineries and capital assets, subsidies for tobacco production, delayed implementation of excise tax increase, other incentives granted to foreign investors, duty-free tobacco distribution in government-owned facility or shop.
Asking advocates in the region to assess the level of interference in their countries prompts them to action. The country report helps them prioritize and strategize while the regional report provides perspective to governments so they can see how far behind/ahead they are in the region in avoiding the influence of the tobacco industry.
Prevent Tobacco Industry Interference

FCTC Article 5.3 Implementation
A supplement to Preventing Tobacco Industry Interference: A Toolkit for Policy Makers and Advocates (2009)

Southeast Asia Tobacco Control Alliance (SEATCA) 2013

A government’s interests in lowering the consumption of tobacco products to promote public health, is diametrically opposed to the tobacco industry’s business interests. Hence, the tobacco industry will stop at nothing to challenge a government’s efforts so as to ensure the growth of profits from the sale of a lethal consumer product.

The tobacco industry has been known to dilute, delay and prevent effective tobacco control policies. Internal documents of the tobacco industry showed how the tobacco industry has systematically used its access to government officials in order to influence tobacco control policy to the detriment of public health and consequently, to socio-economic growth.

In 2004, the international community adopted the WHO Framework Convention on Tobacco Control (WHO FCTC) to curb the global tobacco epidemic. In response to the evidence that the tobacco industry had been subverting the position and the role of governments as well as undermining their efforts to reduce tobacco consumption, governments negotiating the treaty included Article 5.3 which mandates each party to the WHO FCTC to protect its public health policies from the commercial and vested interests of the tobacco industry. In 2008, parties to the FCTC adopted Article 5.3 Guidelines which explain in detail how governments can protect themselves from tobacco industry influence.

What makes the tobacco industry unique?

A Global Epidemic
“If nothing is done, 1 billion people will die from tobacco-related deaths in the 21st century.” WHO

A Dangerous Industry
“Defendants (tobacco companies) have marketed and sold their lethal products with zeal, with deception...without regard for the human tragedy...” US District Judge Gladys

Guidelines to FCTC Article 5.3 recommends that FCTC Parties:
1. Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
2. Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.
4. Avoid conflicts of interest for government officials and employees.
5. Require that information collected from the tobacco industry be transparent and accurate.
6. Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility” (CSR).
7. Do not give privileged treatment to tobacco companies.
8. Treat State-owned tobacco companies in the same way as any other tobacco industry.
How has Art 5.3 been implemented?
A majority of the examples cited below are from the FCTC parties’ reports that are submitted in accordance with the reporting mechanisms of the treaty.

**Prohibit Contributions**
(including so-called CSR and campaign contributions)

- Research shows that the tobacco industry uses so-called corporate social responsibility (CSR) initiatives to secure access to policy makers and influence their decisions.
- Some countries ban contributions from the tobacco industry (either completely or partially to health-related agencies), or ban its publication: Brazil, Kuwait, Montenegro, Oman, Philippines, Serbia, Singapore, Thailand, Vietnam.
- In the Philippines, aside from a comprehensive policy, specific policies were issued for vulnerable institutions such as health, education, and revenue agencies.

**Require Information**
Practically all countries require, or sometimes publicly disclose, specific information from the tobacco industry ranging from ingredients to business activities and communication. Among those that require information in accordance with Article 5.3 are Bulgaria, Canada, Fiji, Mexico, Seychelles, Suriname, and Swaziland.

**Remove Benefits or Incentives**
- Norway’s pension funds may not be invested in stocks that profit from tobacco production.
- Certain government funds of New Zealand, Australia, and Hong Kong also screen out tobacco investments.
- In Singapore, BAT reported “loss of tax incentives citing Article 5.3”.
- Although not a party to the FCTC, the US has laws prohibiting the use of government funds and executive agencies to promote the sale or export of tobacco in foreign countries.
Reject Participation

Tobacco industry’s participation in health policy development has been rejected or expressly disallowed in:

- Canada,
- Kuwait,
- Namibia (banned from the Committee),
- Latvia (by law),
- Lebanon (prevented from participating in parliamentary committee meetings on tobacco)
- Philippines (disallowed from participating in a local government public hearing on smoke free)

GLOBAL TRENDS

Members of the public, comprising mostly of the tobacco industry representatives, had been asked to leave WHO meetings in order to ensure that the tobacco industry is prevented from participating in negotiations or lobbying during the negotiations. Over a hundred FCTC parties agreed to this arrangement at Committee A of the Conference of the Parties in its 5th session (COP5), as well as at the Intergovernmental Negotiating Bodies (INBs) for the Protocol on the Elimination of Illicit Trade of Tobacco since 2009.

In 2012, the COP5 did not grant observer status to an international organization, the Interpol, because it received funds from Philip Morris.

Raise Awareness

- Thailand: developed short advertisements that explain why receiving funds from the tobacco industry (e.g. CSR, scholarships, grants) actually leads to another’s misfortune and grief, particularly the youth; translated American publications about the tobacco industry’s devious strategies to the local language
- Philippines: warned government agencies not to receive tobacco industry donations, established a multi-sectoral 5.3 Committee
- Bulgaria: maintains website that reveals tobacco industry tactics
- In some countries' legislation or policies, Article 5.3 principles are reflected; in some cases, counties stipulate the exclusion of the tobacco industry from participating in committees, or in availing of certain privileges. (such as Brazil, Lebanon, Seychelles, Turkey, Philippines, Ukraine)
Adopt and implement comprehensive Art 5.3 Policies

Philippines: A key anti-corruption agency, the Civil Service Commission, and the Department of Health (DOH) issued a policy extending to all civil servants the application of all pertinent recommendations from Art 53 Guidelines. The DOH issued an even more stringent policy to cover health personnel.

Limit Interaction/Require Transparency

Many countries limit any interaction with the tobacco industry to those that are strictly necessary for regulation, and provide a mechanism to ensure transparency in meetings that occur. In several cases, more stringent rules apply to committees in charge of tobacco control policies:

- Australia, Brazil, Bulgaria, Canada, Finland, Ireland, Latvia, Lebanon, Mexico, Netherlands, Panama, Philippines, Serbia, Singapore, Swaziland, UK

Adopt / Implement Codes of Conduct

Countries that adopt or implement Code of Conduct provisions to protect against tobacco industry influence:

- Australia
- Brazil,
- Bulgaria (avoid communication with tobacco industry representatives)
- Djibouti,
- Philippines (policy requires amendment of the existing codes of conduct),
- Serbia (covers “perception of conflict of interest”)

References:

British American Tobacco Presentation (2010)
Examples of Implementation of Article 5.3 communicated through reports of the Parties available at http://www.who.int/tobacco/parties_experiences/en/
**What you can do**

**Raise Awareness:** use *Diagnostic Tools* (p. 13, 23, 24 Toolkit) to assess risks in various government agencies vulnerable to tobacco industry interference.

**Integrate:** incorporate Article 5.3 implementation into the national tobacco control plan.

**Mainstream:** promote Article 5.3 implementation in multi-sectoral transparency and accountability programs particularly Code of Conduct adoption and implementation. See *Diagnostic Tools* (p. 30, 31, Toolkit) and Templates (p. 24).

**Launch Targeted Initiatives:**

- **Prohibit so-called CSR** from the tobacco industry; (See Templates, p. 29)
- **Disallow privileges**, benefits and incentives
- **Protect vulnerable activities and agencies through close monitoring** of interactions or contributions
- **Require information** from the tobacco industry (See Templates, p. 21)

Visit the SEATCA website: to download the complete toolkit, go to [http://www.industryinterference.seatca.org/index.php?option=com_content&view=frontpage&Itemid=1](http://www.industryinterference.seatca.org/index.php?option=com_content&view=frontpage&Itemid=1)

---

**Tobacco Industry Interference Trends**

The tobacco industry’s (TI) strategies have not changed but several forms of interference have become more prominent than the usual accessing officials through so-called CSR, delaying implementation, protracting litigation, donating to political candidates, using farmers to lobby, etc.

1. **ACCESS:** The following front groups or TI events have been used to gain access to policy makers or represent TI interests in different countries: International Tobacco Growers Association (ITGA), US-ASEAN Business Council, Protobex Asia, Asia Tax Forum.

2. **TRADE FORUM:** The TI appeals to trade ministry representatives to expand market access and enjoy trade and investment benefits. As TI uses the World Trade Organization (WTO) and International Centre for the Settlement of Investment Disputes (ICSID) facilities to challenge tobacco control measures, it also uses developing countries to deliver its message. Research shows a remarkable increase in participation from developing countries at the WTO when it comes to tobacco regulation.

3. **MISINFORMATION:** TI uses its network in the business associations to convince governments that it should be “just like any other industry” without regard to the fact that tobacco is the only consumer product that is subject of treaty regulation. In deliberate disregard of Art. 5.3 of the FCTC, TI claims to be a legitimate “government partner” when it comes to tobacco control. (e.g. education, anti-smuggling)
FCTC Parties adopted the Art. 5.3 Guidelines during the third session of the Conference of the Parties (COP3) in Durban, South Africa.

NOVEMBER 2008

With the initiative and support of the CSC, HealthJustice coordinated the first in-country meeting on Article 5.3 implementation and potential solutions. The attendees decided to set up an official interagency committee, a technical working group, in order to come up with administrative measures to implement Article 5.3. The meeting was attended by representatives from the different offices of the Department of Health, a representative from the Office of the President's anti-graft body, as well as representatives from civil society organizations, FCAP, HealthJustice, SEATCA, and UP College of Law Faculty Development Foundation, as well as a representative from the WHO.

FEBRUARY 2009

SEATCA organized the first Regional Art. 5.3 Workshop to raise awareness and promote implementation of Art. 5.3 Guidelines. Civil society Organization HealthJustice recommended inclusion of the Civil Service Commission and a representative from the Office of the President's anti-graft body in the list of invitees.

MARCH 2009

With the initiative and support of the CSC, HealthJustice coordinated the first in-country meeting on Article 5.3 implementation and potential solutions. The attendees decided to set up an official interagency committee, a technical working group, in order to come up with administrative measures to implement Article 5.3. The meeting was attended by representatives from the different offices of the Department of Health, a representative from the Office of the President, Philippine Anti-Graft Council, and representatives from civil society organizations, FCAP, HealthJustice, SEATCA, and UP College of Law Faculty Development Foundation, as well as a representative from the WHO.

APRIL - MAY 2009

The Civil Service Commission, represented by Commissioner Mary Ann Fernandez Mendoza, expressed interest in having a clear 100% smoke-free policy to sensitize government officials on tobacco control. The body agreed to work on giving civil servants the benefit of a 100% smoke-free policy. With technical support from HealthJustice and comments from the membership, the CSC issued the policy in time for the World No Tobacco Day in May 2009. HealthJustice developed a Smoke-Free Implementation Toolkit for CSC to assist it in implementing the policy.
In July 2009, the DOH issued an order to provide sustainable source of funding for the meetings of the 5.3 Committee. The body had agreed in its first meeting that Alexander Padilla of the health ministry should chair the meetings while Debo rah Sy of the civil society organization HealthJustice, should serve as vice-chair. Mary Ann Mendoza of the Civil Service Commission, preferred to serve as a member but the body considers it a co-chair. During this time, HealthJustice monitored and reported on various types of tobacco industry interference to allow the body to brainstorm on solutions.

CSC, DOH and HJ formed a technical working group to discuss the outlines of an Article 5.3 policy that is in line with existing civil service and good governance laws. CSC, along with DOH, and with financial support from UNDP, organized an inter-agency consultation in October 2009 to gather feedback from various government agencies about the proposed measures to implement Art. 5.3. In the widely attended consultative meeting, participants agreed that government agencies should not deal with the tobacco industry unless strictly necessary for regulation.

Pursuant to its exposure to FCTC provisions, the Land Transportation Franchise and Regulatory Board (LTFRB), with technical assistance from HealthJustice, issued its 100% smoke-free memorandum covering all public transportation. The LTFRB reflected Article 5.3 principles by committing to “partner with government agencies, civil society organizations, and the private sector except those representing tobacco industry interests.” In January 2010, the Commission on Higher Education also issued a memorandum to urge all its officials to reject contributions from the tobacco industry.
The Art 5.3 Committee focused on preparations for the second interagency consultations on a proposed JMC. At the same time, the committee proposed action points to respond to escalated reports of tobacco industry interference including donations of tobacco companies to Red Cross, government agencies, and various local government units, as well as tobacco industry membership in the Philippine Business for Social Progress which entered into a tripartite partnership with the Department of Health and the Global Fund. In response to reports of tobacco industry’s engagements with the Department of Science and Technology (DOST), the head of agency issued a reminder to its officials about the need to avoid the perception of partnerships with the tobacco industry, and attached news monitoring reports submitted to it by DOH.

With strong support from the DOH Secretary Esperanza Cabral and CSC Chairman Francisco Duque, two robust Art. 5.3 policies were adopted successively. The DOH-CSC JMC and DOH DM outline prohibitions and guidelines regarding tobacco industry interaction. The JMC covers all civil servants or public officials, while the DOH DM applies to all health personnel and agencies attached to the health ministry and provides for implementation measures specific to the agency’s operations. Being the world’s first comprehensive policy adopting Art. 5.3, the Philippine government received numerous statements of support from various international organizations and became a source of technical resource in the development of Art. 5.3 policies in the region.

To ensure sustainability of the milestone reached by the Art 5.3 Committee, the CSC, with the technical assistance of Healthjustice, managed to secure external funding including from DOH and from philanthropists. With this resource and subsequent support from the Union, the work programme in the years following the birth of the JMC involved: development of a strategic workplan, training/capacity building on and raising awareness of Smoke Free Memorandum and JMC, integration with CSC programmes, and coordination with DOH programmes. The adoption of the JMC gave birth to a new set of leaders in Art. 5.3 implementation from the project management unit and the office of legal affairs of the CSC.

With inputs from Deborah K. Sy, Mary Ann Fernandez Mendoza, Alexander A. Padilla
Acknowledgements

This toolkit was commissioned by the Southeast Asia Tobacco Control Alliance (SEATCA) and written by Atty. Deborah Sy of HealthJustice, with contributions from Dr. Mary Assunta Kolandai, Dr. Ulysses Dorotheo, Ms. Anne Jones, Ms. Gigi Kellett, Comm. Mary Ann Mendoza Fernandez, Dr. Caleb Otto, Atty. Alexander Padilla, Atty. Irene Reyes, Ms. Bungon Ritthiphakdee, Dr. Prakit Vathesatogkit.

Segments of this publication draw on forms and fact sheets prepared by Atty. Deborah Sy for the Philippine 5.3 Committee. The chapter on Tobacco Industry Interference in the ASEAN is adopted from the 2009 SEATCA publication by Dr. Foong Kin and Dr. Mary Assunta. In those materials, the inputs of country partners were acknowledged.

The support of various organizations in research and advocacy relating to tobacco industry tactics in the region throughout the years has immensely contributed to the wealth of knowledge and capacity that made the development of this toolkit possible. Hence, the support of the International Development Research Center (IDRC), International Union Against Tuberculosis and Lung Disease (Union), Campaign for Tobacco Free Kids (CTFK), Thaihealth Foundation, The Rockefeller Foundation, and American Cancer Society (ACS) is gratefully acknowledged.

Photo Credits: Dr. Ulysses Dorotheo, Dr. Bronwyn King, Ms. Abigail Libre, Atty. Patty Miranda, Atty. Irene Reyes, Ms. Beverly Samson, Mr. Pikasit Sitta, Ms. Tan Yen Lian, Ms. Bianca Pascual, Photoxpress.com

Editing: Mary Assunta, Bungon Ritthiphakdee, Allan Villanueva

Layout Design: Regina Mae Reynoso

Disclaimer

SEATCA has made every effort to ensure that, at the date of publication, this Toolkit is free from errors and that advice and information drawn upon have been provided in good faith. Neither SEATCA nor any person or organisation associated with the preparation of this Toolkit accepts liability for any loss which a user of this Toolkit may suffer as a result of reliance on the Toolkit and in particular for: • use of the Toolkit for a purpose for which it was not intended • any errors or omissions in the Toolkit • any inaccuracy in the information or data on which the Toolkit is based or which are contained in the document, or • any interpretations or opinions stated in, or which may be inferred from, the Toolkit. Nothing in this document should be taken as a substitute for legal advice, and in no case will SEATCA be responsible for the adequacy or inadequacy at law of any purported reliance on this document.