



# ASIAN STATE-OWNED TOBACCO ENTERPRISES

Challenges & Opportunities in Implementing  
WHO FCTC Article 5.3



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### ACRONYMS

<b>CIC</b>	Committee on Investment and Cooperation	<b>MOH</b>	Ministry of Health
<b>CMSC</b>	Committee for Management of State Capital at Enterprises	<b>MOIT</b>	Ministry of Industry and Trade
<b>CNTC</b>	China National Tobacco Corporation	<b>NHC</b>	National Health Commission
<b>COP</b>	Conference of the Parties	<b>PHW</b>	Pictorial health warning
<b>CSR</b>	Corporate social responsibility	<b>NA</b>	National Assembly
<b>FCTC</b>	Framework Convention on Tobacco Control	<b>STMA</b>	State Tobacco Monopoly Administration
<b>GO</b>	Government office	<b>SOE</b>	State-owned enterprise
<b>ILA</b>	Investment License Agreement	<b>TI</b>	Tobacco industry
<b>LLC</b>	Limited liability company	<b>Vinataba</b>	Vietnam National Tobacco Corporation
<b>LTL</b>	Lao Tobacco Limited	<b>WHO</b>	World Health Organization

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# INTRODUCTION

**Tobacco industry (TI) interference has been identified to be the largest barrier and the greatest threat to the implementation of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) worldwide.<sup>1</sup> Article 5.3, which cautions Parties against TI interference and provides guidelines on measures to protect their public health policies, however, remains among the least implemented of the WHO FCTC articles.<sup>1</sup> While Article 5.3 has overall been a challenge to implement, it is even more so for Parties that have State-owned tobacco monopolies or joint ventures with tobacco companies.**

Recommendation 8 of the Article 5.3 guidelines<sup>2</sup> calls on Parties to “treat State-owned tobacco industry in the same way as any other tobacco industry”, however, it is not clear how governments with these entities are implementing the recommended measures. There are 16 countries where State-owned tobacco enterprises are the principle tobacco manufacturers.<sup>3</sup>

*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.*

This report documents the experiences of the People’s Republic of China, Viet Nam, Lao PDR and Thailand that have State-owned tobacco enterprises of varying sizes and operations, and how these have impacted WHO FCTC implementation. Within these Parties, the TI is often regarded as a government agency, rather

than as a commercial entity, and viewed positively as any other business, albeit owned by the State. This dual role of the government as both regulator and regulated industry is oftentimes confusing and is crucial to understanding the tobacco control dilemma facing these countries. State ownership has created privileges for the TI and provides the government institutional excuses to put the interests of the TI in a unique position in tobacco control, regardless of Article 5.3, which clearly requires the opposite.

While these Parties have provided their official reports to the Conference of the Parties (COP), the details on how they are implementing Article 5.3 remain vague. Thailand, while owning a tobacco monopoly, has made great strides in tobacco control measures. This review seeks to provide some details on the challenges faced by China, Viet Nam and Lao PDR relevant to recommendations contained in the Article 5.3 guidelines and looks at Thailand’s experience in dealing with its State-owned tobacco enterprise.

# COMMON CHALLENGES ACROSS THE COUNTRIES

This review has shown some commonalities across the countries:

- a. Three Parties (China, Lao PDR and Viet Nam) do not have any specific plan to demonstrate implementation of Article 5.3.
- b. Despite the Article 5.3 guidelines, the Parties view the tobacco industry positively and their business interests are given preference over tobacco control.
- c. There is a revolving door between the government and the TI with senior government officials taking leadership positions in the TI (or vice versa) that creates opportunities for policy intervention.
- d. The TI is viewed as a legitimate stakeholder in tobacco control; it even has a seat in tobacco control committees or is able to actively provide its positions as a government entity.
- e. State ownership of the TI is contributory to the delay, dilution, or undermining of effective tobacco control measures.



## 1. Countries that are lagging or do not have specific plan on implementation of Article 5.3

China offers an official response in its report to the COP that it implements Article 5.3. In China's 2018 report on whether Article 5.3 guidelines have been utilized when developing or implementing policies, it reported that this was not applicable.<sup>4</sup> Viet Nam reported in 2014 that it had adopted and implemented policies and programmes to protect its tobacco control policies from commercial and other vested interests of the TI; however, in its 2018 report it stated that it has no policy or programme in place on Article 5.3.<sup>5</sup> Lao PDR has moved forward by reporting that it is applying Article 5.3 guidelines and has developed a Health Professional Code of Conduct, approved by the Health Minister in December 2018.<sup>6</sup>



## 2. The tobacco industry is viewed positively and its interest is given preference over tobacco control

Due to a skewed 25-year contract establishing the Lao PDR government's joint venture with the tobacco industry, favoring the tobacco business and enabling it to pay lower taxes, hence cheaper cigarettes, the country lost more than USD 144 million revenues over these past 18 years. In Viet Nam, because of patronage and institutional connection, the government accommodated requests from the tobacco industry to pass lower tobacco excise tax rates in 2014 and delay the year of implementation to 2016.



## 3. Revolving door between senior government officials and the tobacco industry

In Viet Nam, senior leadership moves between the government and the TI flows both ways and opens the door for interference. The Director General of Viet Nam National Tobacco Corporation (Vinataba) was appointed as Vice Minister of Ministry of Industry and Trade (MOIT). Other senior officials of MOIT have been appointed as Vice Director and Board Member of Vinataba. In Lao PDR, the Ministry of Finance (MOF) was appointed to the Board of the Lao Tobacco Company.

In China, the State Tobacco Monopoly Administration (STMA) shares the same leadership with China National Tobacco Corporation (CNTC), where the director of STMA is also the general manager of CNTC. STMA centralizes and unifies the management of property, production, sales, and domestic/ foreign trade.

These appointments present conflict of interest problems for tobacco control. Recommendation 4 of the Article 5.3 guidelines calls on Parties to avoid such conflicts of interest for government officials.



#### 4. Tobacco industry is viewed as a stakeholder in tobacco control

The TI actively intervenes in the development of tobacco control policies across the three Parties. In China, the STMA has a seat in the WHO FCTC implementation body, the “Inter-Ministerial Leading Group,” which comprises eight Ministries and Commissions. In Viet Nam, Vinataba has participated in policy discussions with the government on measures to control tobacco smuggling, including recommending to the government to use the Tobacco Control Fund for this purpose, when this fund is meant for public health programmes. In Lao PDR, the TI proposed the adoption of a minimum price policy on cigarettes, which will have no impact on reducing tobacco consumption. The proposal was made through the Ministry of Industry and Commerce and approved by the same Ministry although the Health Ministry opposed the proposal.



#### 5. Tobacco control measures delayed, diluted or undermined by the tobacco industry

Given its major role in China’s highest-level tobacco control mechanism, the STMA is able to hinder the formulation of domestic tobacco control policies on a large scale, at both national and sub-national levels. China has yet to introduce pictorial health warnings on packs or national smoke-free legislation to protect people’s most basic health rights in indoor smoke-free public places. Implementing smoke-free public places is one of the few WHO FCTC measures that has a recommended deadline, in the FCTC guidelines.

In Viet Nam, the TI actively undermines tobacco control measures such as by opposing pro-health tax increases. Vinataba sent official comments to the Law Drafting Committee, other related Ministries, and the National Assembly recommending a small tax increase and to delay the effective date of the Excise Tax Law implementation. There was only a minimal tax increase in Viet Nam following this industry intervention.

In Lao PDR, the industry also successfully delayed by six months the implementation of pictorial health warnings on cigarette packs by appealing to non-health sector and ministry (e.g., Ministry of Industry and Commerce) of the government to intervene.

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# PROGRESS & OPPORTUNITIES

**Good country practices in the implementation of Article 5.3 and its guidelines<sup>7</sup> have been documented. While challenges remain, there are also opportunities where actions can be taken and have been put in place in countries with State-owned enterprises (SOE) such as Thailand. These opportunities will be explored as a way forward for the Parties.**

**a. Implementing Recommendation 8.3 of the Article 5.3 guidelines:**

This recommendation states, “Parties should ensure that representatives of State-owned tobacco industry do 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 COP.” Viet Nam, Lao PDR and Thailand do not include any TI representatives in their delegations to the sessions of the COP.

**b. Ministry of Health should take leadership**

Since the Ministry of Health is responsible for tobacco control, it should take leadership. In China in 2018, a crucial change was made to the Inter-Ministerial Leading Group on WHO FCTC Implementation where the National Health Commission (NHC) replaced the Ministry of Industry and Information Technology as the Chair of the Group. With this change, it is envisioned that the NHC is more than just a “coordinator” and will also be an active promoter and defender of tobacco control.

**c. Code of Conduct**

Thailand has a code of conduct for MOH officials when interacting with the TI. Lao PDR’s Ministry of Health has approved a code of conduct for health professionals. This code based on Recommendation 4.2 of the Article 5.3 guidelines, will put in place a procedure for government officials when dealing with the TI.

**d. Policy on tobacco industry-funded entities**

In November 2017, Viet Nam became the first country in Asia to adopt a policy to not cooperate with the PMI-funded Foundation for a Smoke-Free World (FSFW). The Ministry of Health alerted all government ministries, highlighting the WHO reiteration of the basic principle in the Article 5.3 guidelines that there is a fundamental conflict of interest between the TI and public health. The PMI-funded FSFW while declaring its efforts for a smoke-free world, PMI continues to promote tobacco and oppose proven effective tobacco control measures.

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# GOOD PRACTICE IN ADVANCING TOBACCO CONTROL — THAILAND EXPERIENCE

**Thai Tobacco Monopoly (TTM), now called the Tobacco Authority of Thailand (TAOT) is a State-owned enterprise under the supervision of Ministry of Finance, Thailand. TAOT operates in the tobacco production and distribution business.**

However, Thailand also has stringent tobacco control measures. While there is interference from the tobacco industry, the government however is committed to fulfill obligations under the WHO FCTC, including the implementation of Article 5.3 and its guidelines.<sup>8</sup>

The legal system requires public consultations for any law development including 'Tobacco Product Control Law', hence all sectors including tobacco industry were invited to provide comments to the draft law. Both TAOT and other tobacco companies made their voices heard in 2015-2016 and were able to cause a delay in presenting the law to the Cabinet and the Parliament. The Tobacco Control Law was amended and passed in April 2017, with strong provisions on non-engagement with tobacco industry and their vested interest.

According to the TC Law, the National Tobacco Control Committee will not invite or engage anyone who "owns, is a related person or a stakeholder in a business involving tobacco products whether directly or indirectly" to be the members of any committee related to tobacco control at both national and local level.<sup>9</sup> This criterion applies to TAOT as well as to other tobacco companies.

This policy is also applied to the Thai delegation to the COP or any WHO FCTC-related meetings, and does not include any representatives from the TAOT.

The law also bans all forms of tobacco-related CSR activities, requires plain packaging on tobacco products and requires the TI to report its earnings and marketing and other expenses. Additionally, no exceptions or privileges are given to the TAOT, including no extra phase-in implementation time for tobacco control measures;

Thailand advances tobacco control through a strategic combination of a committed Ministry of Public Health (MOPH) providing leadership on policy and law, working closely with a supportive and dynamic civil society and academe, and effective utilization of the media with messages that the public can relate with.



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# RECOMMENDATIONS

**WHO FCTC Article 5.3 guidelines should be implemented in their entirety. State-owned tobacco enterprises should be treated in the same way as any other TI in respect of setting and implementing tobacco control policy. This report has identified some opportunities for China, Viet Nam and Lao PDR to take immediate action. Accordingly, they should:**

- 1.** Implement a full ban on all forms of tobacco industry-related CSR activities as recommended in the WHO FCTC. Partial bans and restrictions on advertising alone are ineffective.
- 2.** State-owned tobacco enterprises should not be given any incentives to operate or enjoy any benefit to conduct their business.
- 3.** The government must put in place a procedure for interaction with the TI and disclose all records of interaction with the TI for purposes of transparency.
- 4.** Governments adopt code of conduct for Ministry of Health when dealing with the TI is a good first step. However, this must be extended to include all government officials.
- 5.** A cooling-off period of at least three years should be observed to prevent revolving door of government officials being appointed to tobacco companies and vice-versa.
- 6.** Though a State-owned tobacco enterprise may be seen as a government agency, however it is still a tobacco company and should not be given a seat at the policy making table. Government delegations to the COP must not include representatives from the TI.
- 7.** The industry must be asked to submit information on tobacco production, manufacture, market share, marketing expenditures and revenues. In this manner, the government can access the information necessary to the formation and implementation of effective tobacco control policy.

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# CHINA

## INTRODUCTION

China is one of the few countries in the world that still retains a tobacco monopoly franchise system. The Chinese tobacco industry is also the only unit in the country that retains the administrative monopoly system of “government-company integration”— the administrative functions of the government, the macro and industrial management functions, and the business functions of the enterprise all integrated into one entity. This system is written in the “Law of the People's Republic of China on Tobacco Monopoly” and is explained as “unified leadership, vertical management, and monopoly franchise”. The State Tobacco Monopoly Administration (STMA) shares the same leadership with China National Tobacco Corporation (CNTC); the director of STMA is also the general manager of CNTC. STMA centralizes and unifies the management of property, production, sales, and domestic/ foreign trade. Currently, CNTC controls more than 90% of the domestic cigarette market.

After decades of development, China has grown into the world's largest consumer and producer of tobacco. There are more than 300 million smokers in the country, accounting for nearly one-third of the world's smokers.<sup>10</sup> China's tobacco production also accounts for 42% of the world's total, and the production continues to rise.<sup>11</sup> At present, the total number of employees in the TI (excluding farmers) is 550,000; there are 58 directly affiliated institutions; 446 prefecture-level bureaus (companies), 2,283 county-level bureaus (marketing departments); 105 cigarette manufacturing enterprises and machine manufacturing enterprises, 56 tobacco leaf processing factories, and 140 other units and enterprises.<sup>12</sup>

In the early days of China's “reform and opening-up” era, the TI was regarded as an important contributor of national interests, representing one of China's industrial achievements. Yet the narrative of this industrialized victory has become less convincing in the 21st century, in particular, with the adoption of the WHO FCTC. The Chinese TI itself acknowledges that it faces the “great change” in its own development,<sup>13</sup> since the Chinese government, as a Party to the WHO FCTC, is obliged to take measures in accordance with the recommendations of the FCTC, including developing

domestic public health policies that can eventually control tobacco use and reduce smoking rates.

The industry still maintains a strong ability to influence policy due to its high profits and entrenched relationships with government departments. Article 5.3 of the WHO FCTC explicitly requires that “Parties shall act to protect these policies from commercial and other vested interests of the TI in accordance with national law.”<sup>14</sup> But in China, on the grounds of the “government-company integration”, the separation of ownership and management, which has been achieved by most of the State-owned enterprises (SOE) in the country, does not exist in the TI. The industry in many ways is regarded as a government body, rather than a normal State-owned business (for example, CNTC can directly distribute subsidies to tobacco farmers). Accordingly, as a government department, STMA's role as a regulatory body highlights certain challenges; it often shows its commercial leanings and nature as a corporate entity in the market.

This colliding role between the government as a regulator and as owner of a company whose fiduciary responsibility is to increase profits for the business, is crucial to understanding the tobacco control dilemma in China. It has created privileges for the TI and inadvertently placed the interests of the TI in a unique position in tobacco control, regardless of Article 5.3, which clearly requires the opposite.

### 1. Structure of STMA/ CNTC

The organizational structure of STMA and CNTC is both huge and complex. It can be generally classified into four components as “the national bureaus and head office department”, “directly affiliated institutions”, “provincial tobacco monopoly bureau (company)”, and “provincial-level tobacco industrial company”. In the Chinese narrative context, the industry is divided into administrative establishment and company establishment. The former is generally referred to as “the bureau” (ju), while the latter is referred to as “the company” (gong si). For example, STMA is referred to as the “national bureau” (guojia ju), and the CNTC is the “parent company” (zong gong si). Due to the integration structure of government and enterprise, it can be

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found in many commercial papers and policy files that the two titles are often tied together by brackets, e.g, Sichuan Provincial Monopoly Bureau (Company).

The specific organizational structure is as follows:

## **1. Departments and units of the national bureaus and the parent company:**

### **1.1 Internal Divisions**

- i. General Affairs Office  
(Department of Foreign Affairs)
- ii. Department of Development Planning
- iii. Department of Monopoly Supervision and Management
- iv. Department of Economic Operation
- v. Department of Policy, Regulation, and System Reform
- vi. Department of Financial Management and Supervision (Department of Audit)
- vii. Department of Science and Technology
- viii. Department of Personnel (Party Committee)
- ix. Regulative Management Office
- x. Board Office

### **1.2 Directly Affiliated Units**

- i. Employee Training Centre  
(School of Party Committee)
- ii. Tobacco Economy Research Institution
- iii. Tobacco Economy Information Center
- iv. Service Centre

### **1.3 Non-Profit Centre**

- i. China Tobacco Association

### **1.4 Directly Affiliated Company**

- i. China Tobacco Leaf Company  
(Water Source Project Construction Office)
- ii. China Cigarette Sales Company
- iii. China Tobacco Investment and Management Company
- iv. China Tobacco Machine Company
- v. China Tobacco International Company
- vi. China Tobacco Commerce Logistics Company
- vii. China Tobacco Industry Development Company
- viii. China Shuangwei Investment company
- ix. China Tobacco Journal Company

## **2. Directly affiliated institutions**

1. Zhengzhou Tobacco Research Institution
2. Hefei Design Institution
3. Employee Further Education Institution
4. Nantong, Kunming, Zhuhai Acetate Fiber Company

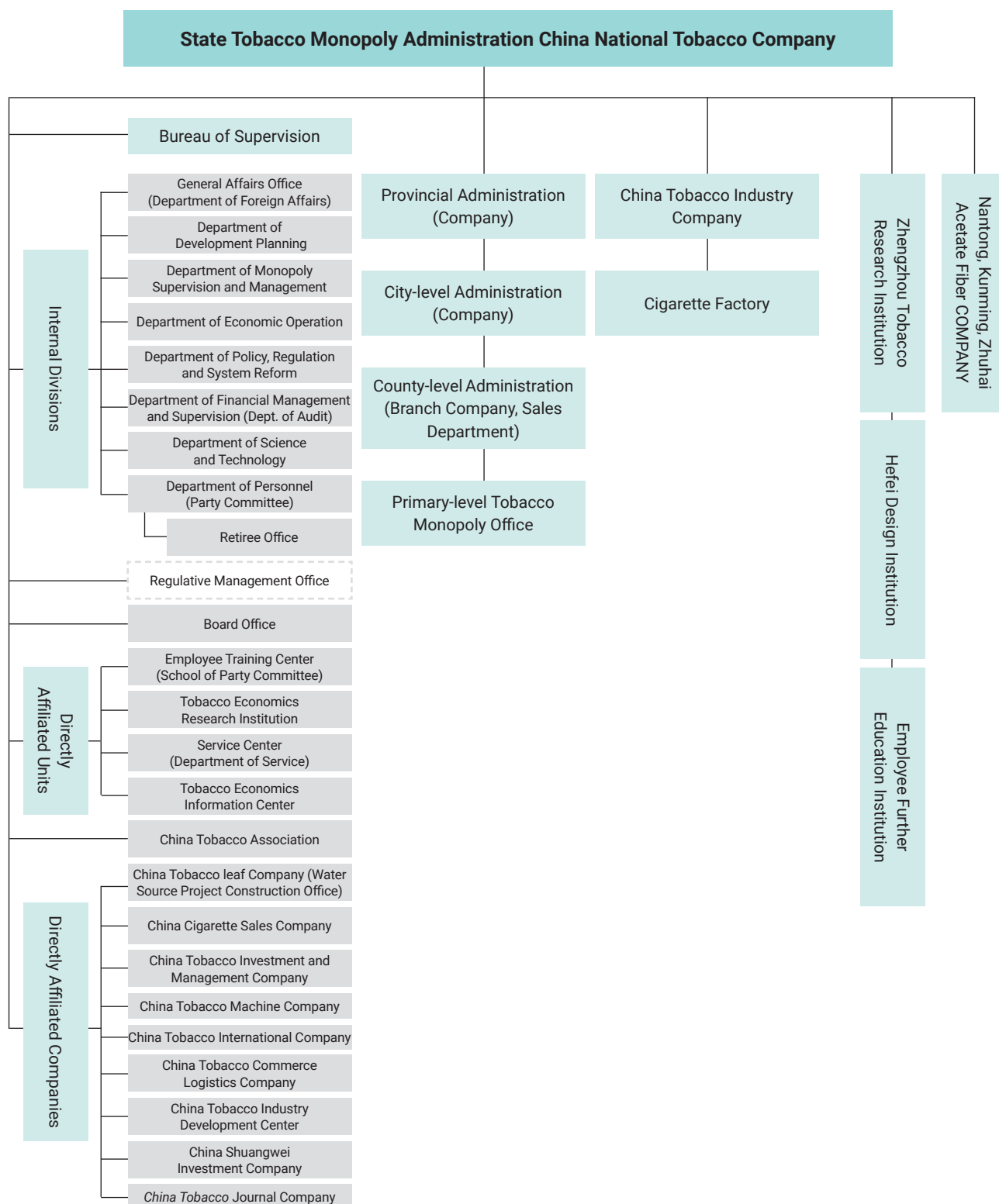
## **3. Provincial-level tobacco monopoly bureau (company)**

Covering 23 provinces, 5 autonomous regions, and 4 municipalities. There are also city-level and county-level branches respectively.

#### 4. Provincial-level tobacco industrial company (17)

**FIGURE 1: THE STRUCTURE OF STMA AND CNTC<sup>15</sup>**

### The Framework of Tobacco Industry



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To implement the WHO FCTC, an “Inter-Ministerial Leading Group” (hereinafter referred to as the Leading Group) composed of eight Ministries and Commissions was established by the approval of the State Council in 2007. The basic line-up of the inter-ministerial leadership team before 2018 was: the Ministry of Industry and Information Technology (MIIT), the Ministry of Health (now replaced by National Health Commission, NHC), the Ministry of Finance (MOF), the Ministry of Foreign Affairs (MAF), State Administration for Industry and Commerce (SAIC), General Administration of Quality Supervision, Inspection and Quarantine (GAQSIQ), General Administration of Customs (GAS), and STMA.

Before 2018, the lead agency of this group was MIIT. This effectively gave the STMA the leading role because it is one of the core administrative branches inside MIIT, and a political representative from the TI is one of eight standing committee members of MIIT.<sup>16</sup> As the STMA is an important regulatory body of the TI, the industry acts as both a referee and a business -- it oversees itself. The inherent conflicts in this institutional arrangement are directly contrary to the requirements of Article 5.3 and explains to a large extent the weak attitudes towards promoting tobacco control measures.

Although the MOH was the vice-chair of the Leading Group before 2018, they may have faced some challenges to negotiate with other more powerful ministries, such as MIIT, when there were conflicts over health issues.<sup>17</sup> This was particularly evident in the national smoke-free legislation proposed/ negotiated in the previous year.

Early 2018, a crucial change was made to the WHO FCTC implementation mechanism. In the institutional reform plan of the State Council, NHC replaced the MIIT as the leading department (or Chair) of the Leading Group. Observers regard this as a positive move for tobacco control, because it distinguishes the respective functions of the government and the business and is conducive to promoting tobacco control. However, some tobacco control experts remain sceptical about the change and point out that the STMA is still a core member of the group. Thus, it is possible that NHC will play a “coordinator” role, rather than of a promoter of tobacco control, championing for stronger policies. Another significant change is that the mandate for tobacco control within the NHC has also shifted from the Department of Publicity and Health Promotion to the Department of Planning, which has had only a limited background in tobacco control. Starting afresh provides an opportunity to steer the agenda in the pro-health direction.

## 2. Tobacco Control policy and legislation

Due to the administrative monopoly nature of China's TI and the institutional arrangements that benefit the interests of the TI, the industry's interference in the formulation of tobacco control policies has rarely been hampered. As one of the Parties to the WHO FCTC, China should have met the requirements of Article 8 for example within five years from the entry into force of the Convention in 2006. But so far China has not introduced a national smoke-free law to protect people's most basic health rights to clean air in indoor public places. This has much to do with the TI's ability to participate directly or indirectly in tobacco control policy development and provide key inputs to the process.

In 2014, the Legal Affairs Office of the State Council publicly solicited opinions on the “Regulations on Smoking Control in Public Places (Draft for Review)” on its official website. The draft clearly stipulates that “all indoor public places are prohibited from smoking”. In March 2016, the State Council's annual legislative plan included the law in the legislation plan of that year. However, from the “Draft for Review” in 2014 to the “Draft based on Soliciting Opinions” in 2016, the scope of smoke-free venues has changed dramatically: four types of indoor public places where smoking is now allowed were newly added, including restaurants, leisure places, accommodation places, and airport terminals. According to tobacco control experts in China, this reflects the attitudes of STMA, which raised several reasons to dispute the original contents of 100% smoke-free policy.<sup>18</sup>

The “2017 China Tobacco Control Performance Report” issued by STMA explicitly mentioned that the “Regulations on Smoking Control in Public Places” were not included in the legislative plan because:

*“In 2017, the Legal Affairs Office of the State Council listed the opinions and disputes collected from all the related parties in a reply to the relevant proposals of the Two Sessions, and made a statement: According to the Procedures for the Formulation of Administrative Regulations, the basic conditions for the formulation of the regulation are not yet ready...this regulation is not included in the 2017 legislative work plan of the State Council, considering that there is considerable controversy over the main contents of the regulations.”<sup>19</sup>*

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Since the TI has been given a big role in the highest-level tobacco control leadership mechanism, the STMA and CNTC are able to participate in the formulation of domestic tobacco control policies even at sub-national level. Sometimes such intervention can be carried out in an indirect way, as some of the tobacco control experts in China have mentioned in key informant interviews conducted, where some proposed local tobacco control legislations were handed by the legislative department to the local tobacco bureaus for review and comments. This provides an opportunity for local governments to put economic interests ahead of health needs, and therefore encourage the local TI.<sup>20</sup> Driven by this kind of interest, the introduction and implementation of tobacco control policies at the local level is often more difficult.

Sometimes the policymaking authority for tobacco control is directly given to the tobacco bureau. For example, Article 11 guidelines of WHO FCTC on packaging and labelling recommendations the implementation of graphic warnings on tobacco packaging is completely within the jurisdiction of STMA and CNTC.<sup>21</sup> As a result, the policy recommendations have not been put on the agenda of the Leading Group despite strong public support and advocacy efforts from both health authorities and civil society. In the newly revised “Provisions on cigarette packaging labels in the People’s Republic of China” that are jointly issued by the STMA and the GAQSIQ (in effect from October 2016), only the fonts, the size of the text warning and the colours of the warnings are fine-tuned. However these minimal changes have been recognized by STMA, as “another forceful measure to strengthen control tobacco compliance in China.”<sup>22</sup>

### 3. Participation in sessions of the COP

Based on the same institutional design designating them as regulatory bodies, representatives of the TI are able to participate in the WHO FCTC Conference of the Parties (COP) (Table 1). Being part of the Chinese delegation, they have a seat at the international negotiation table of each COP to discuss the WHO FCTC and its implementation. This practice, which directly contradicts Article 5.3 of the Convention has received considerable criticism from the public.

In COP2 and COP3, China’s delegation had two STMA representatives. In 2008, during COP3, Article 5.3 guidelines were negotiated and adopted; however, after the adoption of the Article 5.3 guidelines, at COP4 in 2012, China increased representatives from STMA to five. Subsequent representation was maintained at four officials.

**TABLE 1: CHINA DELEGATES TO COP SESSIONS WHO WERE FROM THE TOBACCO INDUSTRY<sup>23</sup>**

COP session	Delegates from tobacco industry
COP1 2006	<ol style="list-style-type: none"> <li>1. Deputy Director-General, Department of Foreign Affairs, State Tobacco Monopoly Administration (STMA)</li> <li>2. Division Director, Department of foreign Affairs, STMA</li> <li>3. Assistant Researcher, Yunnan Academy of Tobacco Science</li> </ol>
COP2 2007	<ol style="list-style-type: none"> <li>1. Director, General Office, STMA</li> <li>2. Deputy Director, General Office, STMA</li> </ol>
COP3 2008	<ol style="list-style-type: none"> <li>1. Deputy Director-General, General Office, STMA</li> <li>2. Deputy Director, General Office, STMA</li> </ol>
COP4 2010	<ol style="list-style-type: none"> <li>1. Bureau Chief, Tobacco Monopoly Bureau</li> <li>2. Deputy Director, State Tobacco Monopoly Bureau</li> <li>3. Officer, State Tobacco Monopoly Bureau</li> <li>4. Officer, State Tobacco Monopoly Bureau</li> <li>5. Officer, State Tobacco Monopoly Bureau</li> </ol>
COP5 2012	<ol style="list-style-type: none"> <li>1. Deputy Director-General, STMA</li> <li>2. Deputy Director, STMA</li> <li>3. Deputy Director, STMA</li> <li>4. Officer, STMA</li> </ol>
COP6 2014	<ol style="list-style-type: none"> <li>1. Deputy Director-General, STMA</li> <li>2. Director, STMA</li> <li>3. Director, STMA</li> <li>4. Deputy Director, STMA</li> </ol>
COP7 2016	<ol style="list-style-type: none"> <li>1. Member, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>2. Member, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>3. Deputy Director General, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>4. Member, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> </ol>
COP8 2018	<ol style="list-style-type: none"> <li>1. Officer, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>2. Officer, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>3. Deputy Director General, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> <li>4. Deputy Director, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC</li> </ol>

In 2016, the WHO FCTC Secretariat issued a statement calling for the rejection of representatives of the TI to participate in COP7 in New Delhi, India.<sup>24</sup> The China government utilised the “Inter-Ministerial Coordination Leading Group on the Implementation of the Framework Convention on Tobacco Control” avenue to include the tobacco representative who attended the COP.<sup>25</sup> This strategy was repeated in

2018 at COP8 in Geneva, Switzerland. The Deputy Director of Foreign Affairs Department under STMA, a representative of the TI, who participated in the COP meetings, was in the participants list as representing the “Deputy Director General, General Office of the Inter-ministerial Coordination and Leading Group on the Implementation of WHO FCTC”.<sup>26</sup>

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#### 4. Report to the COP

Although China has reported to the COP that the Article 5.3 guidelines are not applicable to them, there remains a need to adhere to and implement Recommendation 8. While the national reports say they protect and safeguard public health, the reality is different.

China's slow progress towards full and effective FCTC compliance is linked to TI interference as shown above. However, the conflict of interest issue has not been sufficiently addressed in national reports. In reports to the COP (2009, 2010, 2104, 2016, 2018)<sup>27</sup> on Article 5.3, if action has been taken to "Prevent polices from interventions of the TI's business", the response has been "yes".

#### CONCLUSION

The separation between the government regulatory body and the regulated market has been eliminated. The conflict between public health and business interests is the fundamental cause of China's tobacco control dilemma.

Due to the tax contributions of the TI, the government appears to favour the industry and relax WHO FCTC implementation. The Leading Group that incorporates STMA into its core membership has made the TI's contributions be used as bargaining chips in tobacco control policy-making. In the formulation of domestic policies, the TI intervenes in policy formulation in various direct or indirect ways and combines the interests of politics and business. At the international level, representatives of the TI routinely participate in the COP sessions.

One strategy to tackle this problem in China would be the appeal to institutional reforms of both the WHO FCTC implementation mechanism and the government-company integration system. In addition to the existing health education campaigns about the harms of tobacco smoke and other tobacco control measures, it is essential for tobacco control advocates to be more alert to the policies from inside the TI, so that the policy window of such institutional reform can be grasped in time and lead to a more effective policy-making environment for public health.

In order to prevent the TI from having a direct role in tobacco control policy-making, a "firewall" between the TI and tobacco control policy in China must be established and monitored.<sup>28</sup> STMA should be removed from having any regulatory responsibility for tobacco control policy. This arrangement would maintain China's current multisectoral, whole-of-government approach to tobacco control policy, but ensure greater transparency, accountability and effectiveness by ensuring tobacco control policy is free of interference from the vested interests of the TI.



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# VIET NAM

**Viet Nam has been transforming from a centrally planned economy towards adopting more market-oriented economic policies. State intervention, including direct control of production through State-owned enterprises (SOE) in certain sectors, however, remains relatively extensive, although this has been on the decline following a series of reformation and equitization of State-owned enterprises.<sup>29</sup>**

Businesses that remain 100% State-owned include those considered essential for national security and the maintenance of public order, implementation of poverty eradication, or to guarantee the supply of goods and services that would not be viable for private enterprises such as energy, telecommunications, aviation, and banking.<sup>30</sup> The State's regulation of the industry remains tight and largely driven by trade and investment policies, resulting in increased production and consumption of tobacco products. Currently, Viet Nam is among the region's top producers of cigarettes with 106.8 billion sticks produced in 2016.<sup>31</sup>

Viet Nam has 15.6 million adult smokers, with an overall smoking prevalence of 22.5% (45.3% among men and 1.1% among women).<sup>32</sup> Recognizing an imminent health crisis from tobacco use, the Viet Nam Committee on Smoking and Health (Vinacosh) was created under the auspices of the Ministry of Health (MOH) to undertake tobacco control in 1989. By 2000, an ambitious National Tobacco Control Policy (NTCP) was adopted through Government Resolution No. 12/2000/NQ-CP. This set out policy objectives on numerous aspects of tobacco control and signaled the government's political consideration for public health.

To implement the NTCP, the government has issued a series of government decrees and prime ministerial directives that both provided substantive regulations and elaborated frameworks and plans for implementing the WHO Framework Convention on Tobacco Control (FCTC), which Viet Nam became a Party to in 2005.<sup>33</sup>

Recommendation 8 of FCTC Article 5.3 Guidelines clearly states to "treat State-owned tobacco industry in the same way as any other tobacco industry"; however, the effective implementation of Viet Nam's public health roadmap is challenged and hampered by the government's majority ownership that collides with its role to regulate the TI.

This country case study on Viet Nam reviews the TI's tactics to interfere with, influence, and undermine tobacco control policies. Further, it provides recommendations to the government on how to protect its public health policies from the vested interests of the TI and implement FCTC Article 5.3.

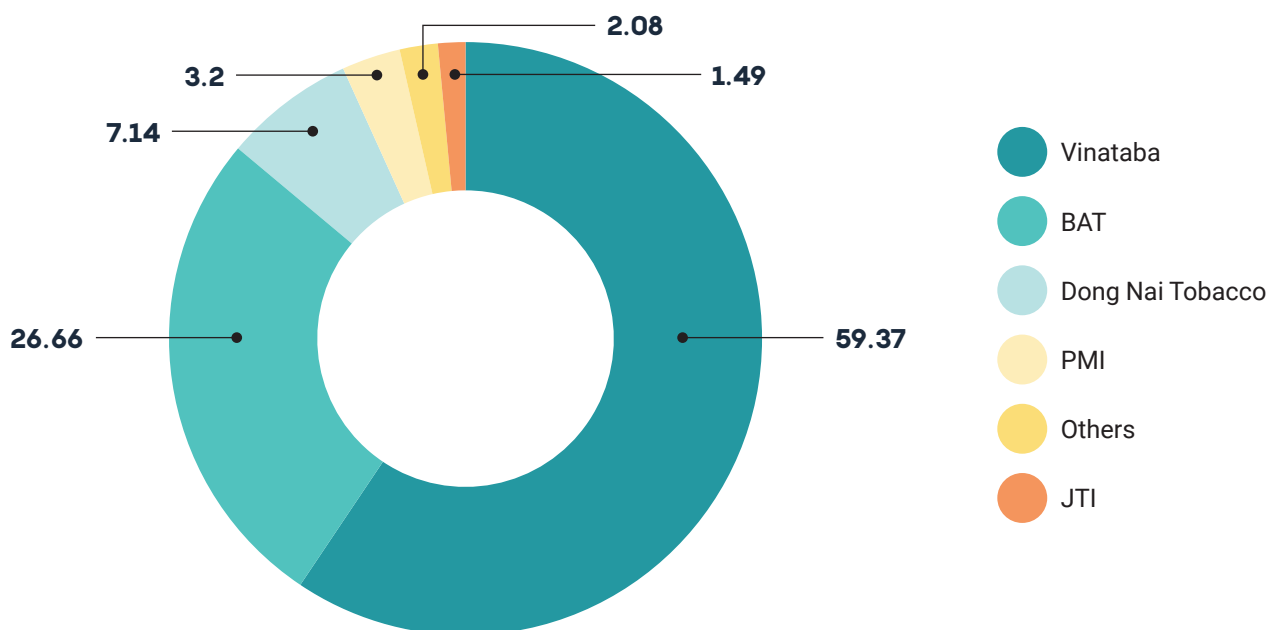
## STRUCTURE OF THE TOBACCO INDUSTRY

Viet Nam's TI currently consists of 30 companies consolidated under six corporations: Viet Nam National Tobacco Corporation (Vinataba), Khanh Viet Corporation, Sai Gon Industry Corporation, Dong Nai Food Industry Company, 27/7 Company, and Binh Duong Industry Service and Tobacco Limited Company (Figure 2). These corporations are invested in diverse industries, but tobacco production and trading are their major businesses and are either "government or public owned and belonging to the central or a local government, a ministry, or the Communist Party".<sup>34</sup>

Vinataba, which accounts for more than half (59%) of the total market share in terms of domestic consumption and export volume, is State-owned and gives the government a firm grip in managing the TI. Multinational companies producing and distributing tobacco products in Viet Nam are required to affiliate with Vinataba via joint venture companies, which allow transnational tobacco companies (TTCs) to gain an entry point with the government.

Japan Tobacco International (JTI) first cooperated with Vinataba to produce Mild Seven (now Mevius) cigarettes in 2000. British American Tobacco (BAT) was the next to gain access to the domestic market and has since achieved a dominant market presence among TTCs through leaf development, licensed manufacturing, and trade.<sup>35</sup> Existing joint ventures and corresponding market shares are BAT (26.66%), Philip Morris International (PMI) (3.27%) and JTI (1.49%).<sup>36</sup>

**FIGURE 2: TOBACCO COMPANY CIGARETTE MARKET SHARE IN VIET NAM, 2016**



### STATE-OWNED TOBACCO INDUSTRY'S POSITION IN GOVERNMENT STRUCTURE

In 1995, the former Union of Vietnamese Tobacco Enterprises was incorporated as Viet Nam National Tobacco Corporation (Vinataba) by promulgation of Decree No. 108/HDBT by the Minister Council. Under this new “state” model, Vinataba was empowered to appoint officials as well as have control over investment and pricing, autonomy of finance and operations, scope of business and expansion.<sup>37</sup> The government, as the executive organ of the National Assembly, and through the Ministry of Industry and Trade (MOIT), keeps the right to appoint the chair and chief executive officer (CEO) of Vinataba.<sup>38</sup>

Import prohibitions on cigarettes and other tobacco products were eliminated upon Viet Nam's accession to the WTO in 2007. However, a subsidiary of Vinataba, Viet Nam Tobacco Import Export Company (Vinataba IMEX), maintains control as the leading importer of machinery, tobacco and materials for the TI in Viet Nam, and is also an exporter of tobacco leaf, cut rag, and cigarettes.<sup>39</sup>

Vinataba has undergone a series of structural and operational transformations from a State corporation to a State-owned, one-member limited liability company (LLC) that it is today. By definition, under Viet Nam's Law on State-owned Enterprises,<sup>40</sup> State LLCs with one or more members means a “limited liability company in which all members are State companies or in which some members are State companies and other members are organizations authorized by the State to contribute capital, and which is organized and operates pursuant to the Law on Enterprises”.

In November 2018, Vinataba, which was functioning as a SOE under MOIT, was handed over to the Committee for Management of State Capital at Enterprises (CMSC). The transfer of SOEs to the CMSC is to realize Resolution 12-NQ/TW issued at the fifth session of the 12th Party Central Committee, on setting up a specialized body representing State ownership at SOEs and State capital at businesses.<sup>41</sup> It is not yet evident how this removal of State function to represent ownership of enterprises (such as Vinataba) from State administrative management agencies would affect the government's treatment of the TI vis-à-vis its obligations under the WHO FCTC.

## TOBACCO CONTROL POLICY AND LEGISLATION

Table 2 summarizes main laws and regulations that govern tobacco and tobacco control in Viet Nam.<sup>42</sup>

**TABLE 2: TOBACCO CONTROL LEGISLATION**

Effective date	Summary of Provision
January 1, 2006	Law No. 36/2005/QH11 on Commercial Law and State President Order No. 10/2005/LCTN on the Promulgation of Law No. 36 covering all commercial activities including sale and purchase of goods, provision of services, investment, commercial promotion and other activities for the profit purpose.
January 30, 2007	Ministry of Health Decision No. 02/2007/QD-BYT requirements covering manufacturing of tobacco products, marketing and their consumption in Viet Nam.
May 10, 2007	Prime Minister Directive No. 12/2007/CT-TTg on Strengthening Tobacco Control Activities covers ban on tobacco advertising, promotion and sponsorship; smoking bans in public places and public transport; and plans for increasing the size of health warnings on tobacco products.
June 28, 2007	Prime Minister Decision No. 88/2007/QD-TTg which approves the overall strategy of the Viet Nam's tobacco industry towards 2020.
August 2, 2007	Decree No. 119/2007/ND-CP on Tobacco Manufacturing and Trade regulates tobacco growing, production, sales and marketing. The Decree also specifies the size, content, format of health warnings on tobacco product packaging.
August 21, 2009	Prime Minister Decision No. 1315/QD-TTg on ratification plan for the implementation of the WHO FCTC addresses tobacco control policy areas including tax and price; smoking bans; packaging and labeling; advertising, promotion, and sponsorship; and restrictions on retail sales.
May 1, 2013	Law No. 09/2012/QH13 on Prevention and Control of Tobacco Harms  Ministry of Health and Ministry of Industry and Trade Joint Circular No. 05/2013/TTLT-BYT-BCT on Guiding the Labeling and Printing of Health Warnings on Tobacco Packages establishes the requirements for packaging and labeling, including requirements for health warnings.
July 29, 2013	Prime Minister Decision No. 47/2013/QD-TTg on the establishment and approval of bylaws governing the organization and activities of Viet Nam Tobacco Control Fund (VNTCF).
August 15, 2013	Government Decree No. 67/2013/ND-CP detailing a number of articles and measures to implement the Law on Prevention and Control of Tobacco Harms applicable to tobacco trade and contains related requirements related to licensing and manufacturing
January 15, 2016	Ministry of Finance Decision No. 70/QD-BTC on minimum selling price of cigarettes.

While Viet Nam passed a comprehensive tobacco control law in 2013 (Law on Prevention and Control of Tobacco Harms), which makes public places smoke-free; bans tobacco advertising, promotion, and sponsorship, and applies pictorial health warnings on cigarette packs, the government has submitted conflicting reports on its implementation of Article 5.3 of the WHO FCTC.

In its report to the FCTC Convention Secretariat in 2014, Viet Nam reported that it has adopted and implemented

policies and programmes to protect its public health policies with respect to tobacco control from commercial and other vested interests of the TI. Based on the report, these entail (1) translating, printing and disseminating the WHO FCTC and Article 5.3 Guidelines; (2) organizing activities to TI counter interference; and (3) providing the arguments to counter the tobacco interference to policymakers during the law development process.<sup>43</sup> The report submitted in 2018, however, states that Viet Nam had no policy or programme in place concerning Article 5.3.<sup>44</sup>

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## STATE-OWNED TOBACCO INDUSTRY TACTICS IN BLOCKING TOBACCO CONTROL MEASURES

### 1. Dual role as regulator and stakeholder

Viet Nam's TI often uses its stakeholder position and insists on the role of "an affected counterpart" to provide comments on draft legislation on taxation and illicit trade during policy development on these measures. The tobacco industry used this tactic to attend consultative workshops and provide comments on the draft Excise Tax Law/decrees in 2010. The TI sent official letters to the Law Drafting Committee, related Ministries, Government Office (GO) and National Assembly (NA) with the request to not increase tobacco tax and to delay the effective date of the Excise Tax Law.<sup>45</sup>

Vinataba has also participated in policy discussions with the government on measures to control tobacco smuggling. It has provided recommendations to the NA, GO, MOIT and other ministries, and local governments to supplement the purpose of using the Tobacco Control Fund for cigarette smuggling control.<sup>46</sup> In 2017, in order to advise the Deputy Prime Minister Truong Hoa Binh, Head of the National Steering Committee 389 (on the implementation of Prime Minister's Directive No. 30/CT-TTg on strengthening the smuggling control), the Standing Office of the National Steering Committee held a meeting with Vinataba to discuss measures to fight cigarette smuggling.<sup>47</sup>

### 2. Patronage through close relationship with government (MOIT) and high-level policymakers

The structural umbrella of the MOIT that governs SOEs allows for the exchange and interaction between key officials of MOIT and Vinataba. In 2009, the Director General of Vinataba was appointed Vice Minister of MOIT.<sup>48</sup> In 2014, the Deputy Director of Department of Light Industry and Vice Director of Industrial Policy and Strategy Institute, both under the MOIT, were respectively appointed as Vice Director<sup>49</sup> and Board Member of Vinataba.<sup>50</sup>

Through this patronage and institutional connection, the TI has an open door to influence policymaking at the highest level. The outcome of interference is evident when the government accommodated requests from the TI to successfully pass lower tax rates in 2014 and delay the year of implementation to 2016.<sup>51</sup>

### 3. Funding meetings and study tours of government agencies

Vinataba has funded meetings and study tours for policymakers and key government officials to visit other countries during crucial moments in the development and implementation of tobacco control policies, considering that the TI's position is often contradictory with the government's original tobacco control proposal.

Recent reports from Viet Nam Government Inspectors showed that between 2012-2016, the Minister and officers of MOIT (at that time) had received funds from Vinataba to go abroad. For example, in 2016, Vinataba funded officers to go on trips to Cuba, Argentina, and Panama. In 2014, it also paid for three officials from the MOIT to visit Australia, Belgium and the US to attend exhibitions and other non-official activities. In 2013, Vinataba financed three officials from the MOIT to visit the Netherlands, France and Belgium to study anti-smuggling activities.<sup>52</sup> These make one suspect the underlying purposes of these trips which may be interpreted as 'incentives' which may influence government officials in finalizing and executing public policies under their mandate.

### 4. Corporate social responsibility activities create a positive civic image

According to the Law on Prevention and Control of Tobacco Harms, all kinds of corporate social responsibility (CSR) activities are banned except those for disaster relief and poverty alleviation, but no publicity is allowed for these activities. Vinataba has however provided consistent funding on a variety of high-profile activities or those that involve high-level government officials and ministries, which are then publicized widely by the media. Publicity on these CSR activities clearly shows that they are not confined to what is allowed within the law: building union houses,<sup>53</sup> providing support to government agencies involving enforcement in illicit trade and incentive programs for the police,<sup>54</sup> coast guards<sup>55,56</sup> and border patrols;<sup>57</sup> in addition to disaster relief<sup>58,59,60</sup> and poverty alleviation projects.<sup>61,62,63,64,65,66</sup>

The government continues to recognize the TI's contributions and has bestowed upon Vinataba numerous recognitions and awards for "its achievements in operations that contribute to the economy, development of socialism and national protection",<sup>67</sup> which enhances Vinataba's positive public image.

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## 5. Lack of transparency and public accountability

The government is “open” about its interactions with the TI, which are viewed as “normal” according to Viet Nam’s laws and practice; however, the detailed information on interactions with the TI is not always available to the public.<sup>68</sup> This lack of transparency, and hence the lack of public accountability, creates opportunities for government discretion and corruption. The TI can and has taken advantage of weak institutional safeguards and the lack of measures to prevent interference or corruption, which remains a problem in governance.

### **PARTICIPATION IN SESSIONS OF THE COP**

Based on the participants list to the COP, the Viet Nam delegation did not include any representatives of the TI.

### **REPORT TO THE COP**

In 2014, Viet Nam reported activities to the COP including translating, printing and disseminating the WHO FCTC and Article 5.3 Guideline, and organizing activities to counter TI interference in many meetings and workshops.<sup>69</sup> In the 2018 report indicated Viet Nam has utilised Article 5.3 Guidelines when developing or implementing policies in this area.

### **CONCLUSION**

Any government decision that accommodates the TI’s requests will result in delays and watering down of tobacco control policies, hence is detrimental to public health. Partial bans or restrictions on publicity of tobacco related CSR activities are not effective as illustrated in Viet Nam’s experience. When enforcement agencies accept assistance from the TI, which is a business entity, it may compromise the department’s role as a regulator. Contributions from the TI can come in the form of study tours and these must be avoided. Any collaboration with the TI makes the government vulnerable to the industry’s recommendations which can jeopardise tobacco control such as government funds being diverted away from their intended purpose. Tobacco control funds must be used specifically for public health education and programmes, and not to protect the TI’s business from illicit trade.

# LAO PDR

## INTRODUCTION

Lao PDR is a country of 6.6 million people, with a single-party socialist government. It is one of the poorest countries in the world, ranked at No. 139 in the UN Human Development Index in 2018.<sup>70</sup> About 34% of the population live on USD 1.25 a day and about 28% live below the poverty line. Lao PDR ratified the WHO FCTC in September 2006. The smoking prevalence is 50.8% among males and 7.1% among females.<sup>71</sup> While Lao PDR is making progress in tobacco control however it faces challenges from the TI.

## STRUCTURE OF THE TOBACCO INDUSTRY

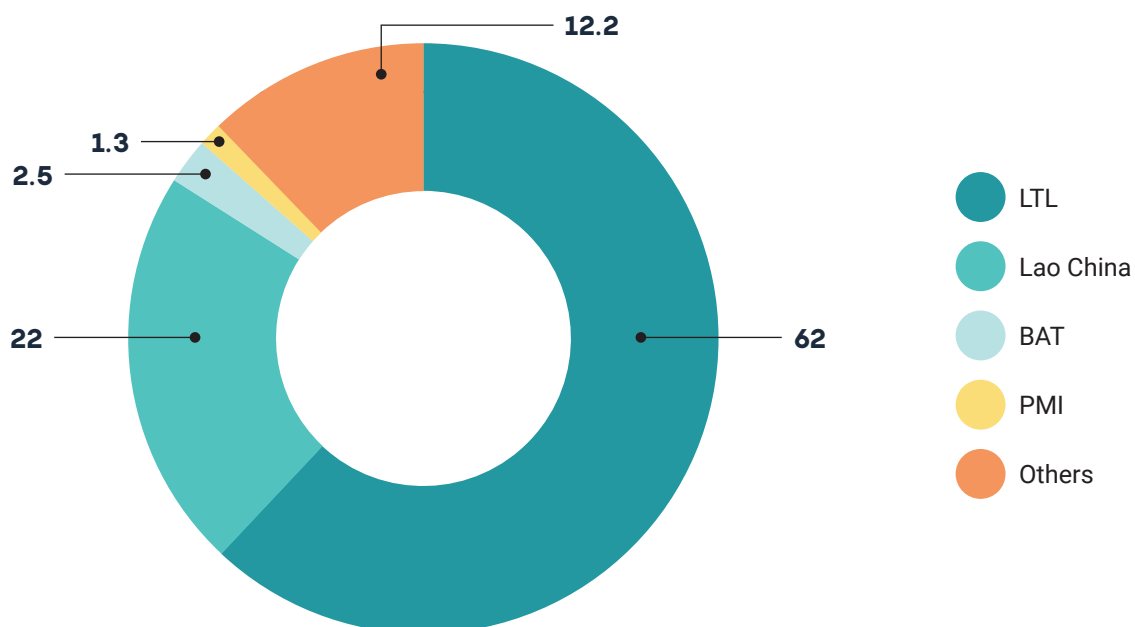
Five years prior to the WHO FCTC ratification, in November 2001, a 25-year Investment License Agreement (ILA) was signed between the Committee for Investment and Cooperation (CIC) of Lao PDR, Coralma International and S3T Pte Ltd. This contract established Lao Tobacco Limited (LTL) as a joint venture of the government with the TI. Since then, the

Imperial Tobacco Group has taken over the shares of Coralma and S3T and now owns 53% of the joint venture, while the Lao government owns the remaining 47%. LTL is currently the largest tobacco company in Lao PDR with a cigarette market share of 62%<sup>72</sup> (Figure 3).

The ILA also grants LTL tax incentives (i.e. a tax holiday and low tax rates) to grow its business investment in the country. Although intended to boost foreign investment in Lao PDR, the longer term impact on the economy and well-being in this developing country has been negative. The government has not only been losing tax revenues for the past 18 years, but also has to deal with the addiction, diseases, deaths, and healthcare costs of tobacco use.

After LTL, Lao-China Hongta Good Luck Tobacco Co.Ltd. (100% owned by Chinese investors and formerly called Lao-Chinese Lucky Tobacco Company) has the second largest market share and enjoys incentives similar to the ILA, although it is not part of the contract.

**FIGURE 3: TOBACCO COMPANY CIGARETTE MARKET SHARE IN LAO PDR, 2016<sup>73</sup>**



LTL operates its own production chain, from leaf processing to cigarette manufacturing and sales and marketing. According to Euromonitor, the company has expanded its production capacity, between 2014 and 2016, as a result of the vertical integration (control the supply chain from manufacturing to end sales). The integration enables them to ensure low prices of their brand, A *Deng*, the most popular domestic brand in the country. Additionally, LTL receives ready raw tobacco

supply locally, with low prices to maximize tobacco consumption demand in both rural and urban areas.

## TOBACCO CONTROL POLICY AND LEGISLATION

All tobacco companies in Lao PDR must comply with the legal requirements and tobacco control measures listed in Table 3 below:

**TABLE 3: TOBACCO CONTROL LEGISLATION**

Year	Legislation
1994	Official notice from the Prime Minister's Office on tobacco advertising ban -ban on billboards and all direct tobacco-related advertising but excluding indirect advertising
2005	Tax Law No 04/NA, was enforced. The excise tax is applied on the factory price or the imported price that includes customs tariff. The ceiling rate was 55%.
2006	Lao PDR government ratified the WHO FCTC; Ministry of Health adopted textual health warning of 6 rotating warning messages.
2009	Tobacco Control Law was enforced; has measures to manage, monitor and inspect the production, importation, distribution and sale-purchase of tobacco products and smoke-free areas.
2010	Law on tobacco advertising ban was enforced. Tax Department collected tobacco specific tax of LAK 100 per pack.
2011	Tax Department increased tobacco specific tax from LAK 100 to LAK 500 per pack.
2012	The Amended Tax Law (No 05/NA, 20 December 2011) came into force. The excise tax rate is increased from 55% to 60% where a special profit tax rate of 26% is applied to companies engaged in the manufacture, import and sale of tobacco.
2013	Prime Minister Decree on Tobacco Control Fund was approved with two income sources: 2% of industry profit and LAK 200 per pack.
2014	Minister of Finance approved the transfer of the revenue from 2% of the company's profit tax and LAK 200 per pack specific health tax to the Tobacco Control Fund.
2016	Pictorial health warnings (PHWs) law enforced on all tobacco products (Top 75% front and back); Law banning all corporate social responsibility activities of tobacco companies. Excise tax law passed; rates are 30% (2016-2017); 45% (2018-2019) and 60% (2020 onwards) of factory price. Minister 'Regulation on Tobacco Control Law Implementation' requires the tobacco industry to report (once a year) on ingredients in cigarettes.
2018	Government's order to stop other tobacco companies who are not the Parties to the ILA benefitting from the Agreement. Minimum Price Policy (increase minimum price from LAK 3,000 to LAK 4,000 per pack) and specific tax increased from LAK 500 to LAK 600 per pack.

Although the domestic laws and tobacco control measures are enforced on all tobacco companies, the companies are not required to submit reports detailing their production volumes and values and other activities such as marketing and sales. Moreover, the government as a shareholder of LTL is not required to publicly disclose meetings/ interactions with the TI.

## LAO TOBACCO LTD AND OTHER TOBACCO COMPANIES' INTERFERENCE IN TOBACCO CONTROL MEASURES

Article 5.3 guidelines in Recommendation 8 calls on Parties to treat State-owned tobacco industry in the same way as any other TI.<sup>74</sup> The LTL (with the 47% ownership of the State) can be seen as a State-owned enterprise – however, one that has benefitted both as a private company receiving benefits for being an investor, and also having easy access to policymakers by virtue of the government's ownership. The Ministry of Industry and Commerce has their official seat in the board of LTL. In addition, the LTL hires retired senior government officials as advisors. Besides providing advice to the industry, former government officials enhance better relationship between the industry and the government, which helps facilitate the tobacco business in Lao PDR.

The examples below illustrate how the LTL tried to delay and undermine implementation of tobacco control according to the WHO FCTC.

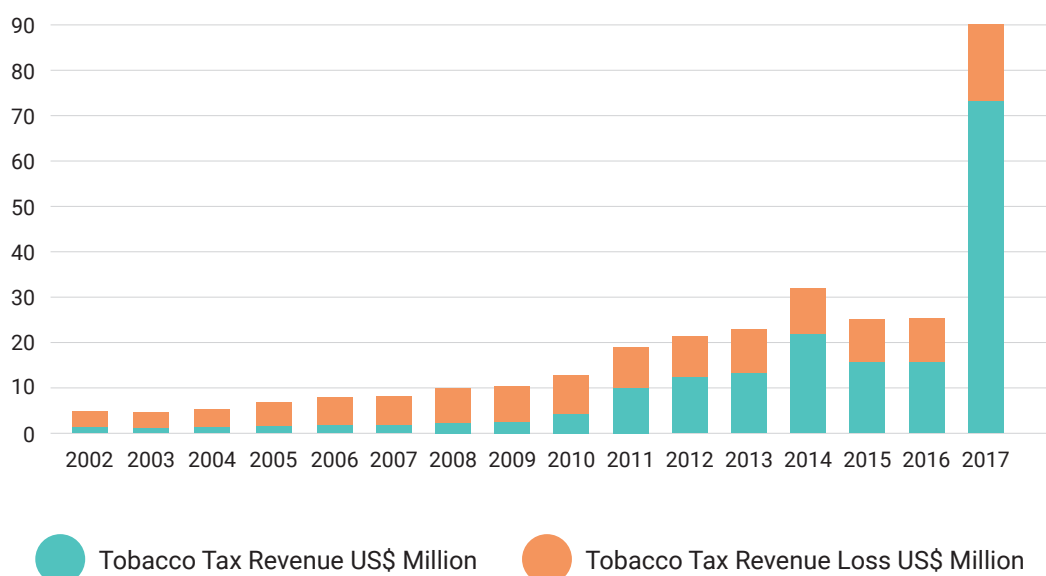
### 1. Unfair Investment License Agreement (ILA) results in tax loss

The major disadvantages for the Lao Government resulting from the ILA is on tobacco tax policy as the agreement fixed the excise tax rate applicable to LTL for the initial 25-year period (from 2001-2026): 15% of the production cost if production cost is less than LAK 1,500 per pack of 20 units and 30% of the production cost if production cost is either equal to or more than LAK 1,500 per pack of 20 units. These rates enforced on LTL and Lao-Chinese Lucky Tobacco Company are much lower than the rate stipulated by law, resulting in cheap and very affordable cigarettes.

Consequently, between 2001 and 2016, the smoking prevalence rate in Lao PDR increased from 25.5% in 2012 to 27.9% in 2015, while the total revenue loss between 2002 to 2017 due to the ILA was estimated at USD 144 million (Figure 4).

**FIGURE 4: TOBACCO TAX REVENUE AND TOBACCO TAX REVENUE LOSS IN LAO PDR**

### Tobacco Tax Revenue and Tobacco Tax Revenue Loss in Lao PDR, 2002-2017





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## 2. Participation and/or interference in policy development

In 2016, when the government issued the pictorial health warnings (PHWs) law on all tobacco products (top 75% front and back), the TI led by LTL sent a letter to the Ministry of Health requesting a reduction of PHWs size from 75% to 50%. The industry provided the excuse that “they had a large stockpile of printed packets” and were unable to print 75% PHWs on cigarette packs. Although the government did not accommodate the industry’s request, the PHW implementation was delayed by 180 days (6 months) – due to industry interference. In 2018, the Government issued a Decree by the Prime Minister to penalize companies that violate the law.<sup>75</sup>

Besides the interference in PHWs law, the industry also interfered with tobacco tax and tobacco control fund policies. The Amended Tax Law (No 05/NA, 20 December 2011) increased excise tax rate from 55% to 60%, and a special profit tax rate of 26% is applied to companies engaged in the manufacture, import and sale of tobacco. In 2016, the new Excise Tax law was passed and the excise taxes rate were 30% (2016-2017); 45% (2018-2019) and 60% (2020 onwards) of factory price. Additionally, 2% of the company’s profit tax and LAK 200 specific health tax per pack should be dedicated to the Tobacco Control Fund.

However, over the past 17 years, the industry, particularly LTL has not complied with the excise tax law and has not paid the 2% tax and LAK 200 per pack for tobacco control. No action has been taken against the company for non-payment. It has taken advantage of a poor country like Lao PDR by taking advantage of the low tax rate benefit as agreed in the ILA.

Although the government does not officially allow or invite the TI to be part of decision-making process of public health policy, it is evident that the TI in Lao PDR is able to take control of public policy. They are not required to submit the report on tobacco production, manufacture, market share, marketing expenditures and revenues, or disclose or register TI entities, affiliated organizations, and individuals. Moreover, the government does not publicly disclose meetings/interactions with the TI. While the MOH does not meet with TI, other ministries, such as the Ministry of Industry and Commerce (MOIC), have communications with them.

## 3. Assistance provided to the government

The TI in Lao PDR often claims that raising the tobacco tax rates increase the illicit trade of tobacco products in the country. Therefore, they offer assistance to the government through anti-smuggling enforcement activities.

Recently in 2018, the industry proposed to the government to enforce a minimum price policy to set the lower limit of cigarette price and specific tax increase from LAK 500 to LAK 600. The TI claimed that they are concerned about tobacco consumption among youth, saying raising the cigarette price and tax will help prevent youth from taking up smoking. While the proposal seems credible, it will not make any impact on reducing consumption, since it is a minimal increase that will not reduce cigarette affordability. Instead, the TI will gain more revenues compared to the government.

The industry proposed the new policy, which was approved, through MOIC, although the Ministry of Health (MOH) was against it.

In December 2018, the Minister of Health approved a code of conduct for health officials when interacting with the TI. This code prohibits direct and indirect support from tobacco industry such as presents, gifts, cash, study fund and corporate social responsibility activities.

## PARTICIPATION IN SESSIONS OF THE COP

Based on the participants list to the COP, the Lao PDR delegation did not include any representatives of the TI.

## REPORT TO THE COP

In 2014, Lao PDR reported to the COP they are protecting public health policies from commercial and other vested interests of the TI. There are two articles in the Tobacco Control Law which refer specifically to protect government officials and public health policies from TI interference. Lao PDR noted the challenges they face by indicating that they have advocated to policy makers and government officers that Article 5.3 be integrated with other tobacco control meetings and workshops. However, the key message has reached only technical officials while the TI lobbies at a high political level.<sup>76</sup>

In the 2018, the Lao PDR government reported they are utilizing Article 5.3 guidelines and have developed a tobacco control code of conduct for health sector staff.<sup>77</sup>

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## CONCLUSION

Lao Tobacco Ltd. (LTL) under the Imperial Tobacco Group has successfully taken advantage of Lao PDR's government under the ILA since 2001 to present. Being a joint venture company with the government, LTL is able to gain access to key government officials and intervene on issues to protect its business. Most government departments and ministries view the tobacco business as any other business that brings about economic growth to the country. The industry is able to influence and participate in decision-making processes at the highest level of government. Although the government led by MOH is obliged to implement the WHO FCTC, and domestic laws and regulations have been passed, the TI has been operating outside of the law's purview since 2001. As a result, it damages the socio-economic situation of Lao PDR since the smoking prevalence rate is increasing while the government has lost about USD 144 million in revenues over the past decade.

## RECOMMENDATIONS

- a. The government should treat the LTL as any other TI and apply Article 5.3 to it, which includes not providing any benefit to the company to increase its profits. The USD144 million losses in revenue due to the ILA must be regained and further losses must not be allowed.
- b. Though the government has issued an order to prevent other tobacco companies that are not parties to ILA from benefiting from the agreement, the government should re-negotiate with LTL (under Imperial Tobacco) and revise the 25-year ILA to improve government revenue collection.
- c. The government should require the TI to comply with the current excise tax law and tobacco control fund law. The Tobacco Control Fund can initiate tobacco control activities to reduce the high smoking prevalence in the country.

# THAILAND: APPLYING FCTC ARTICLE 5.3 TO THAILAND'S TOBACCO MONOPOLY

## INTRODUCTION

Thailand has a tobacco monopoly, the Thai Tobacco Monopoly (TTM) registered as a government agency under the administration of the Ministry of Finance. Being part of the bureaucracy, TTM has access and opportunities to engage with policymakers and senior government officials and this presents the risk of interference and transparency issues. There are transnational tobacco companies (TTCs) namely Philip Morris International (PMI) and Japan Tobacco International (JTI) operating in Thailand.

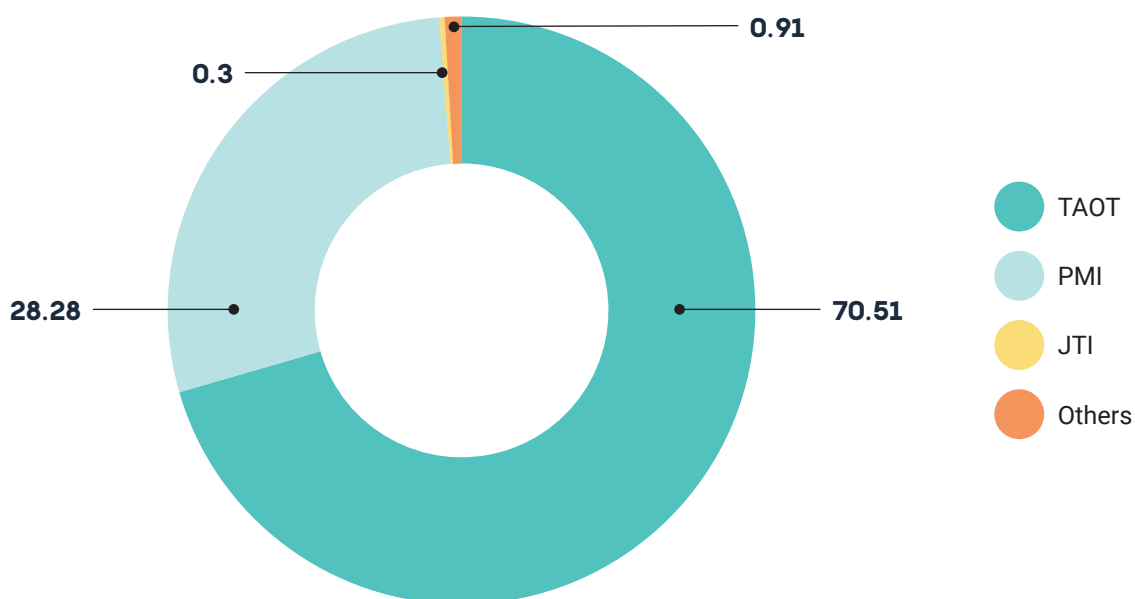
Thailand is internationally renowned for its stringent tobacco control measures. This report will review how

the government has applied WHO FCTC Article 5.3 to the TTM and the TTCs alike and how health policy is protected from TI interference.

## STRUCTURE OF THE TOBACCO INDUSTRY

Since its establishment in 1939, TTM has grown steadily and has the biggest cigarette market share in Thailand (Figure 5). In 2017, the company controlled 71% of cigarette market share<sup>78</sup> and reported it made a net profit of THB 9.34 billion (about USD 311 million), an increase of THB 482 million or 5.44%.<sup>79</sup> Revenue from cigarette sales rose by THB 2.95 billion (about USD 98 million) compared to the previous year.

**FIGURE 5: TOBACCO COMPANY CIGARETTE MARKET SHARE IN THAILAND**



Being subject to strong tobacco control policies and regulation, TTM's domestic sales have been declining every year. Hence, in recent years, the company has changed its marketing strategies to focus more on

export of cigarettes to the ASEAN countries as shown in the Table 4. Between 2013 and 2017, cigarette exports have doubled.

**TABLE 4: TTM CIGARETTE SALES FOR PAST 5 YEARS (2013 — 2017)<sup>80</sup>**

Fiscal Year	Domestic Sales (million sticks)	Exported Cigarettes (million sticks)
2013	33,072.87	35.64
2014	30,319.79	28.84
2015	30,836.45	69.14
2016	28,221.49	75.79
2017	28,807.87	70.56

TTM's change in marketing strategies led to its corporatization and name change in May 13, 2018 to 'Tobacco Authority of Thailand' (TAOT) however it remains a State-owned enterprise under the jurisdiction of the Ministry of Finance. TOAT is obligated to submit information on the volume of manufacturing, imports, marketing expenses, earnings and expenses as stated in Section 40 of Tobacco Product Control Act. B.E. 2560.<sup>81</sup>

### GOVERNMENT INVOLVEMENT IN TTM'S MANAGEMENT

As a government owned entity, former or current government officials are appointed to or employed by TTM. In 2014 the Permanent Secretary of Ministry of Interior was on the Thai Tobacco Monopoly's executive board, while a Minister in the Prime Minister's Office owned a tobacco leaf business.<sup>82</sup> Having government officials in TTM's Board of Director is normal for TTM since it enables the company to establish collaboration with government officials and provide opportunities for the company to have a say in relevant public policies. Government officials working for TTM are liaisons between TTM and other policymakers.

Currently, the chairman of TAOT is a retired Lieutenant General. The Deputy Permanent Secretary of the Ministry of Finance is the vice chairman of the company. Among the 18 Board of Directors, nine are current government officials or are serving in the army, three retired government officials, two academics and two are business representatives.<sup>83</sup>

### TTM'S ENGAGEMENT WITH PUBLIC OFFICIALS THROUGH ITS CSR ACTIVITIES

On 17 April 2012, the Cabinet agreed to a resolution<sup>84</sup> to prohibit the government sectors/ office from participating in tobacco related corporate social responsibility (CSR) activities. On 12 June 2012, the national strategic plan for tobacco control B.E. 2555-2557 (A.D. 2012-2014), which includes a ban on tobacco advertising, promotions and sponsorships including tobacco related CSR activities, was passed by the Cabinet and the National Health Assembly. Cabinet resolutions apply to all government sectors, including the State-owned Thai Tobacco Monopoly.<sup>85</sup>

However, TTM continued to conduct tobacco related CSR activities targeting youth and local communities. On TTM's official website, its CSR activities are categorized under its public relation section focusing on TAOT's staff visiting governmental agencies for celebration and/or handing out donations. Through these CSR activities, TTM engages with policymakers, high-level politicians and government officials at national land provincial level, and government institutions such as public hospitals.

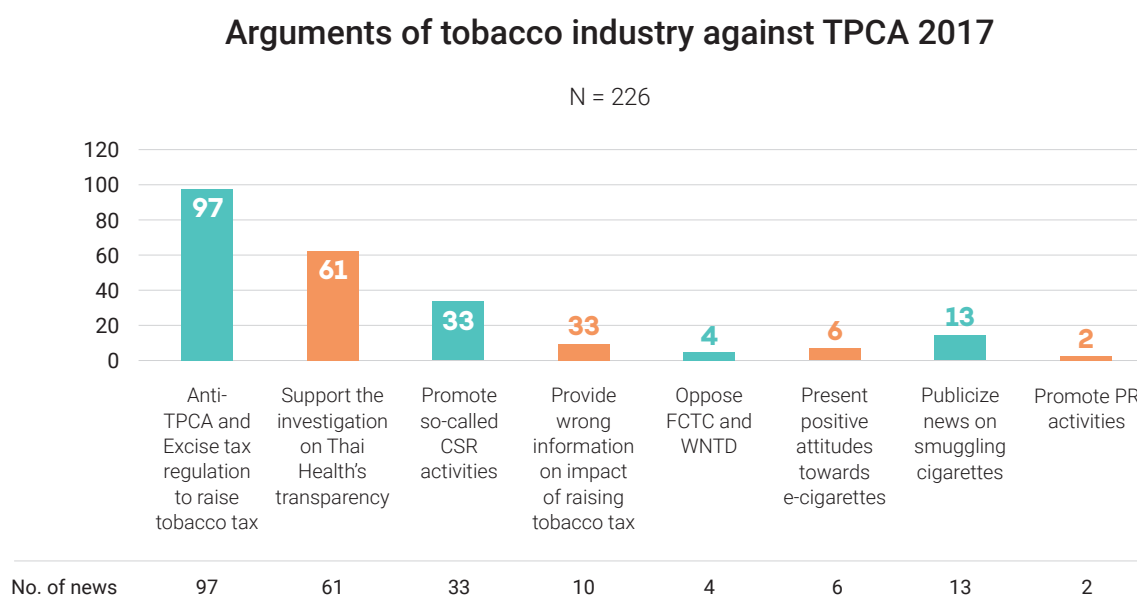
Section 35 of Tobacco Product Control Act 2017 prohibits the publicity of tobacco-related CSR activities<sup>86</sup> but still providing TTM the opportunity to either directly or indirectly involve government officials among intra-industry trade groups to participate in its so-called CSR activities.

## HOW TTM OPPOSES TOBACCO CONTROL POLICIES

The TTM's use of media to oppose the draft Tobacco Product Control Bill is presented in Table 5. To facilitate the review, 226 relevant news articles on

the TI's statements and arguments opposing the Bill between January 2016 and June 2017 were collected and reviewed.<sup>87</sup>

**TABLE 5: TOBACCO INDUSTRY PUBLIC PRESENCE**



The bulk of TTM's statements were an attack on tax increases, providing misleading information, complemented by publicizing news of increases in tobacco smuggling activities.

TTM opposed excise tax increase on tobacco stating that the subsequent price increase of cigarette packs would cause sales volume to decline by about 30-40 per cent and implied the said policy would become a burden to smokers.<sup>88</sup> To cope with the new excise tax policy, it revealed its plan to launch a new, cheap cigarette brand to reach smokers who cannot afford the price increase.<sup>89</sup> While TTM publicly stated, "We don't support anyone to smoke so whatever policies that can help people to quit smoking, we really are pleased to comply ..."<sup>90</sup>, however, TTM simultaneously launched a cheaper cigarette brand targeting the poor.

TTM also simultaneously attacked the Thai Health Foundation, a champion of public health, by filing a complaint against it.

TTM's staff, former and current, wrote several articles in prominent newspapers criticizing the TPCA bill, even claiming that the bill did not support the international trade policies on free trade and would put Thailand in trouble.<sup>91</sup> TTM used its legal status within the government to facilitate unnecessary interaction with government officials to express its criticisms of the tobacco control bill.

The TTM simultaneously built up its public image in the press with charitable good deeds through its CSR activities.

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## HOW THE TPCA BILL WAS PASSED

It is often asked how does Thailand, with a State-owned tobacco enterprise, still manages to pass strong tobacco control measures, such as the Tobacco Product Control Bill which was passed in 2017.

The Bureau of Tobacco Control (BTC), established under the Department of Disease Control, Ministry of Public Health, is the Secretary-General of the National Committee for the Control of Tobacco Use (NCCTU) as well as other sub-committee implementing the National Strategic Plan for Tobacco Control.<sup>92</sup> The National Strategic Plan for Tobacco Control was developed through collaborative efforts from all sectors including government and NGOs and aimed to achieve a smoke-free Thai society. This National Strategic Plan is a multidisciplinary plan and is approved by the Cabinet. The TTM is not part of the NCCTU committee on tobacco control.

Thailand is able to strengthen its tobacco control because there is political will to fulfill their obligation to the WHO FCTC. On the practical side, it is the strategic combination of a committed Ministry of Health providing leadership, working closely with a supportive and dynamic civil society, and effective utilization of the media with clear messages.

### a. Leadership from the Ministry of Health

A law drafting working group was established and Chaired by the Deputy Director General of Ministry of Public Health. The working group members played an important role from drafting the Bill to ensuring adequate technical assistance was provided to legislators. The working group met regularly to do its work.

### b. Dynamic civil society support

Article 4.7 of the WHO FCTC states: "The participation of civil society is essential in achieving the objective of the Convention and its protocols."<sup>93</sup> Civil society groups played an active role in championing tobacco control and supporting the Ministry of Health's action.

Civil society countered the TI's misinformation by providing factual information. The NGO community mobilized national public support and collected 16 million signatures, which demonstrates the extensive effort put into the campaign. Civil society groups also

held briefing sessions for key stakeholders in public health to ensure the message reached senior policy makers. Prominent leaders such as Buddhist monks played their part in reaching out to both policymakers and the public about the TPCA bill. Medical and public health experts played a key role in providing technical assistance and evidence to support the health policies.

### c. Supportive media

The media played a big part in conveying key messages to target audiences. Senior tobacco control champions gave interviews to newspapers and appeared on TV programs.

- » "Protect adolescents from smoking initiation": smoking prevalence among youth (13-18 years), is a growing problem.
- » The more than two-decade old Tobacco Products Control Act 1992 is outdated and does not address new tobacco products and the sophisticated marketing tactics of the TI in social media. Hence the law needed to be updated.
- » Thailand has signed and ratified the WHO FCTC and is obligated to integrate FCTC guidelines into national regulations.

## AN ACT THAT IS WHO FCTC COMPLIANT

The final outcome of the TPCA is that it is a strong law and overall is compliant with the WHO FCTC. The strength of the law is that it maintains a comprehensive ban on tobacco advertising, promotions and sponsorship (TAPS) according to Article 13 of the WHO FCTC and enables the government to proceed to introduce standardized (plain) packaging of tobacco. The law also requires the TI (Section 40) to report marketing expenses, earnings and expenses, which is a first in Asia. Legal experts and working group are now drafting the organic regulations to implement the TPCA 2017, such as the responsibilities of provincial and national tobacco control committees.

## PARTICIPATION IN SESSIONS OF THE COP

The Thai delegations to the COP sessions do not include any representatives of the TI.

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## CONCLUSION

As a government or State-owned and supervised entity, TAOT has access to and is able to interact with government officials especially from the non-health departments. However, its role to influence tobacco control policy is limited because the inter-sectoral committee on tobacco control does not allow TTM to have a seat. Every tobacco control measure is fought hard and won by applying a strategic combination of a committed Ministry of Health providing leadership, working closely with a supportive and dynamic civil society, and effective utilization of the media with messages to garner public support.

Countering the TI with facts is a crucial part of tobacco control. Requiring the TI to report on the volume of production or importation, market share, marketing expense, income and expense, will enhance monitoring of the industry and elicit greater transparency and accountability from the TI.

Thailand will make even greater progress in the implementation of Article 5.3 guidelines when they extend the MOH Code of Conduct on interactions with the TI to apply to all government departments. This Code provides greater transparency and also halts the participation of government officials in tobacco related CSR activities.

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