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POLICIES AND PRACTICES

that Protect Against Tobacco Industry Interference

*A Handbook on the Implementation
of Article 5.3 of the WHO's Framework Convention on Tobacco Control (WHO FCTC)
and Related Actions*

February 2018

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About GGTC

The Global Center for Good Governance in Tobacco Control (GGTC) is a WHO FCTC Knowledge Hub on Article 5.3. It is a partnership program of the School of Global Studies, Thammasat University, Thailand, and the Southeast Asia Tobacco Control Alliance (SEATCA) to promote and enhance good governance in tobacco control through a whole of government approach.

For more information, visit: www.ggtc.world and <http://untobaccocontrol.org/kh/article-53/>

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I. Introduction

This handbook summarizes reports on the practices on the implementation of Article 5.3 of the World Health Organization – Framework Convention on Tobacco Control (WHO FCTC) in order to prompt information exchange among Parties. It aims to raise awareness of international instruments that Parties to the FCTC can use to support domestic / country implementation of the treaty provision that protects tobacco control policies from tobacco industry interference. It also lists some progress by the global community in countering tobacco industry's efforts at the global or regional level.

To further support knowledge dissemination on these topics, the Center for Good Governance in Tobacco Control (GGTC) is undertaking further research to elaborate on the broad narratives in this handbook.

II. Country Level

A. Good Practices at Country Level

Reports of tobacco industry tactics to undermine tobacco control policies have progressively increased since the public health community agreed to implement the life-saving measures outlined in the WHO FCTC. The treaty itself, particularly Article 5.3, anticipated the tobacco industry's strategies: 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.³⁹ With this provision, a few countries started taking measures to prevent tobacco industry interference...mostly in the form of general provisions in legislation echoing the Article 5.3 provision.

After the Article 5.3 Guidelines were adopted in 2008, Parties were provided with the much-needed guidance to articulate the measures needed to protect health policies from tobacco industry interference. Article 5.3 covered various means of protecting policies such as by requiring transparency from the tobacco industry, rejecting partnerships, denormalizing so-called corporate social responsibility (CSR) activities, raising awareness of tobacco industry tactics, strengthened code of conduct (avoiding conflicts and limiting interactions), and refusing any preferential treatment for the tobacco industry.

With the recommendations provided by the Guidelines, Parties to the FCTC have since adopted more sophisticated measures to prevent tobacco industry interference.

Table 1 below compiles good practices at country level on the implementation of Article 5.3 from publicly available reports, such as:

- WHO FCTC, Examples of implementation of Article 5.3 communicated through the reports of the Parties.
- WHO FCTC, Good country practices in the implementation of WHO FCTC Article 5.3 and its guidelines: Report commissioned by the Convention Secretariat, Prepared by Mary Assunta, January 15, 2018.
- Corporate Accountability International, Roadmap to protecting health from Big Tobacco: A guide for implementation of the Framework Convention on Tobacco Control's Article 5.3.

Table 1. Good Practices at Country Level on the Implementation of Article 5.3

Country / Year	Type of Action/ Year	Description / Details
Antigua and Barbuda	Tobacco Control Legislation	<i>Non-involvement of tobacco industry in policy development</i> “The tobacco industry is not involved in any decisions regarding public health policy. The country’s tobacco control legislation includes a requirement protecting public health policies from the tobacco industry.” ¹
Australia,	Australian Public Service Code of Conduct 2008-2009	<i>Transparency and conflict of interest policy</i> “Details of meetings held between the Department of Health and Ageing and the tobacco industry, including consultations in relation to Australia’s plain packaging measures, are notified to the public on the Department’s website. The Australian Government maintains a Register of Lobbyists and a Lobbying Code of Conduct to ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity, and honesty. Government officials are required to comply with the Australian Public Service Code of Conduct,” ² which “requires that all government officials ‘take reasonable steps’ to avoid conflicts of interest.” ³
Brazil	2012	<i>Limited and transparent interactions; non-partnership; conflict of interest policy; no preferential treatment</i> “Brazil requires members of its multi-sectoral national committee for tobacco control, CONICQ, to avoid conflicts of interest, banning acceptance of gifts or offers of partnerships from the tobacco industry. In addition, it bans preferential treatment of the tobacco industry by CONICQ members.” ⁴
Bulgaria	National Programme for Tobacco Control Development of a Normative Act in Progress	<i>Transparency and non-interaction with the tobacco industry</i> “A website maintained within the frame of the National Programme for Tobacco Control is used to reveal the tactics of tobacco industry. Ministry of Health officials avoid any form of communication with representatives of tobacco industry. There are plans to develop a normative act requiring that all State institutions and municipal structures ensure that all contacts with tobacco industry are transparent.” ⁵
Burkina Faso,	Tobacco Control Legislation, 2010	<i>Transparency of interactions and tobacco industry information; no preferential treatment</i> “Burkina Faso’s tobacco control law requires the government to raise awareness about the harms of tobacco, as well as the industry’s activities. Also mandated by law are the disclosure of tobacco industry information and its activities, the prohibition of preferential treatment, and transparent ‘relations’ with the tobacco industry.” ⁶

Country / Year	Type of Action/ Year	Description / Details
Canada	Administrative Measure	<i>Non-partnership with the tobacco industry</i> "Canada has adopted administrative measures, such as Health Canada's policy of not partnering with the tobacco industry on tobacco control programming. Health Canada has discussed the Article 5.3 Guidelines with its federal partner departments and with relevant departments of provincial/territorial governments that are collaborators in the Federal Tobacco Control Strategy (FTCS)." ⁷
Colombia	Administrative Measure, 2009	<i>Non-involvement of tobacco industry in policy development</i> "The Colombia Congress removed Big Tobacco's seat from the policy table during the development of the country's 2009 national tobacco control legislation. This ultimately facilitated and accelerated negotiations, resulting in regulations consistent with the FCTC." ⁸
Cook Islands	Tobacco Control Legislation	<i>Transparency of tobacco industry information; non-partnership; conflict of interest policy</i> "The Cook Islands' Tobacco Products Control Act prohibits any contributions from the tobacco industry to public officials or candidates, whether directly or indirectly. It also requires the tobacco industry to test and report on the contents of its products." ⁹
Costa Rica	Tobacco Control Legislation, 2009	<i>Protection against tobacco industry interference</i> "Costa Rica introduced legislation with explicit measures to protect against tobacco industry interference." ¹⁰
Djibouti, 2007	Tobacco Control Legislation, 2007 Administrative measure: "The 2007 Presidential Decree"	<i>Article 6.4 of the Tobacco Control Act of 2007; 2007 Presidential Decree - Non-interference of the tobacco industry with national tobacco control policy</i> Article 6.4 of the Tobacco Control Act of 2007 requires that "in setting and implementing public health policies with respect to tobacco control, the various sectors ensure that these policies are not influenced by commercial and other interests of the tobacco industry in accordance with national legislation." "The 2007 Presidential Decree establishing the inter-sectoral tobacco control committee mandates the committee to follow and ensure non-interference of the tobacco industry with national tobacco control policy." ¹¹
Ecuador	Tobacco Control Legislation, 2009	<i>Protection against tobacco industry interference</i> "Ecuador introduced legislation with explicit measures to protect against tobacco industry interference." ¹²
Finland	Administrative Measure	<i>Limited interaction with the tobacco industry</i> "Interaction with the industry is limited mainly to open requests for comment. Several reports on tobacco industry activities have been published. Many NGOs have adopted a policy of not interacting with tobacco companies, their affiliates or any other companies that work with tobacco industry, such as advertising agencies." ¹³
Gabon, 2013	Tobacco Control Legislation, 2013	<i>Gabon Law No. 006/2013 - Protection of tobacco control policy from tobacco industry interests</i> "The law provides measures to protect tobacco oversight policies from commercial and other interests of the tobacco industry, and begins with an important overarching principle of protection for tobacco control policies." ^{14 15}
Honduras, 2010	Tobacco Control Legislation, 2010	<i>Honduras' 2010 Special Law for Tobacco Control - No tobacco industry interference</i> "The law prohibits interference by commercial and other interests associated with the tobacco industry." ¹⁶

Country / Year	Type of Action/ Year	Description / Details
Ireland	Administrative Measure	Limited interaction with the tobacco industry “Officials from the Department of Health meet with representatives of the tobacco industry only when such meetings are necessary to effectively regulate the industry and progress tobacco control policies.” ¹⁷
Kenya	Tobacco Control Legislation, 2007	Tobacco Control Act 2007 - Protection of tobacco control policy from tobacco industry interference “The law prohibits interference, collaboration and/or consultation with the tobacco industry in the formulation and implementation of all tobacco control policies.” ¹⁸
Latvia	Administrative Measure, 2010	Prohibition of the tobacco industry in participating in the State Committee on Restriction of Smoking “No member of the tobacco industry is allowed to participate in the process of tobacco-control policy development.” ¹⁹
Lebanon	Administrative Measure, 2011	No tobacco industry participation in policy development “The tobacco industry and its representatives were prevented from participating in the parliamentary committee meetings, which were held to debate the tobacco control law adopted on 17 August 2011.” ²⁰
Mexico	Administrative Measure	Disclosure on government interactions with the tobacco industry “Officials of the Ministry of Health are required to adhere to the guidelines for implementation of Article 5.3 in all communications and other relations they have with the tobacco industry. In observance of the principle of the right to information under national law, any interested person may petition the Federal Institute of Access to Information, for details of meetings between the tobacco industry and the authorities.” ²¹
Moldova	Tobacco Control Legislation, 2015	Moldova Tobacco Control Law - Conflict of interest policy; protection of tobacco control policies from tobacco industry interests “The law contains provisions for protecting tobacco control policies from commercial and other vested interests of the tobacco industry and for preventing and managing conflicts of interest for public servants.” ^{22 23}
Mongolia	Tobacco Control Legislation, 2005	Transparency; non-partnership; CSR regulation; no preferential treatment “Mongolia’s law on tobacco control grants the FCTC authority over Mongolian law; in the event of any conflict, the FCTC prevails. The law also requires transparency of the tobacco industry and its front groups. Moreover, it regulates the government, recommending against preferential treatment of the tobacco industry, banning partnerships in drafting tobacco control policies, and raising awareness of the tobacco industry’s abuses to government officials. Finally, the law bans tobacco industry CSR and requires the government to reject offers of CSR from the tobacco industry.” ²⁴
Namibia	Tobacco Control Legislation, 2010	Non-partnership; conflict of interest policy “Namibia’s tobacco control law contains provisions on conflicts of interest, barring individuals with connections to the tobacco industry from participating in the Tobacco Products Control Committee. It also forbids the tobacco industry from contributing financially to any organized activity, which could be interpreted to include any gift to a government official.” ²⁵
Netherlands	Tobacco Control Legislation	Transparency and limited interaction with the tobacco industry “The Dutch Government is transparent with regard to all contacts with the tobacco industry or retail industry and provides, on request, information on the nature and frequency of these contacts, and the people who are involved. The Government only consults the industry on executive matters that have a direct influence on the industry and interacts with the industry only to the extent strictly necessary. The Government does not endorse any partnership or other non-binding agreements with tobacco industry. Tobacco control policy, in general, is not discussed with the industry.” ²⁶

Country / Year	Type of Action/ Year	Description / Details
New Zealand	Administrative Measure, 2011	<p><i>Non-partnership and transparency on dealings with the tobacco industry</i> “In implementing Article 5.3, the New Zealand Ministry of Health states it must be transparent in its dealings with the tobacco industry. Since 2011, the Ministry has maintained a publicly available online register of meetings it has had with the tobacco industry.²⁷The Ministry indicates the date of such meetings, who attended, and the topics discussed.”²⁸</p> <p>The government does not have any partnerships with the tobacco industry, and does not grant incentives, privileges, benefits or preferential tax exemptions to the latter.^{29 30}</p>
Norway	Administrative Measure, 2014	<p><i>Guidelines for observation and exclusion from the Government Pension Fund Global - Divestment from tobacco production industry</i> “The Parliament passed ethical standards to prevent the Government Pension Fund Global from investing in tobacco companies.”³¹</p>
Oman	Administrative Measure	<p><i>Conflict of interest policy and prohibition in accepting donations from the tobacco industry</i> “A conflict of interest report form was introduced for members of the National Committee for Tobacco Control. The Ministry of Health alerted all concerned government units not to accept aid and donations from tobacco companies.”³²</p>
Panama	Tobacco Control Legislation, 2004	<p><i>Panama’s Law 40 of 2004 - Transparency of interactions with and prohibition from accepting donations from the tobacco industry</i> “All relations of the Ministry of Health with the tobacco industry are undertaken within the National Commission for the Study of Smoking in Panama, and are recorded.”³³</p> <p>“Panama’s Law 40 of 2004 includes Article 5.3 and considers acts such as accepting donations from the tobacco industry to run counter to the law.”³⁴</p>
Philippines	Administrative measure: Department of Health and Civil Service Commission Joint Memorandum Circular (JMC), 2010	<p><i>Joint Department of Health and Civil Service Commission Circular - Protection of the bureaucracy against tobacco industry interference</i> The Department of Health and the Civil Service Commission have issued a Joint Memorandum Circular (JMC) No. 2010-01 on June 26, 2010 on “Protection of the bureaucracy against tobacco industry interference.”³⁵</p> <p>“A committee on Article 5.3 has been established to coordinate efforts to protect public health policies from tobacco industry interests. The committee is led by the Presidential Anti-Graft Commission and includes government and civil society representatives.”³⁶</p>
Poland	Administrative Measure, 2018	<p><i>Conflict of interest; warning against receiving support from the tobacco industry</i> Polish Ministry of Health raised awareness among all Chancellors, Vice Rectors, and Deans of Medical Schools in Poland about the WHO FCTC, Article 5.3, Foundation for a Smoke-Free World, and the WHO’s statement in relation it, declaring that it treats the said foundation, which is funded by Philip Morris International (PMI), as tobacco industry activity. The letter states that any research receiving support from the foundation will not be considered for policy development/ legislation.³⁷</p>
Serbia, 2005	Administrative measure: Code of conduct, 2005	<p><i>Conflict of interest; transparency; prohibition from receiving sponsorships/ support from the tobacco industry</i> “No health care institution may accept any support from the tobacco industry. No tobacco control activity may be sponsored by the tobacco industry. Codes of conduct for members of the Council for Tobacco Control and National Committee for Tobacco Prevention specify that their members may not have any kind of relations with tobacco industry that could be perceived as creating a conflict of interests and all are obliged to sign a declaration of interests.”³⁸</p>

Country / Year	Type of Action/ Year	Description / Details
Singapore	Administrative Measure: Guidelines Governing Interaction with Tobacco Industry	<p>Health Promotion Board Guidelines - Transparency and limited interaction with the tobacco industry</p> <p>“The Health Promotion Board has put in place guidelines governing interaction with tobacco industry. Minutes are taken of meetings and the discussions follow an agreed agenda.”³⁹</p>
Thailand, 2010	Tobacco Control Legislation, 2010/2017	<p>Regulation of Department of Disease Control Regarding How to Contact Tobacco Entrepreneurs and Related Persons B.E. 2553 (2010) - Protection of the Department of Disease Control from tobacco industry interference</p> <p>“The Regulation seeks to protect the Thai Department of Disease Control from tobacco industry interference. The Department of Disease Control is the lead department for tobacco control. The Regulation applies specifically to the Department and is a good first step towards implementing Article 5.3.”^{40 41} During a tobacco industry-backed global conference in 2009, “Thailand pulled government officials from major tobacco conference and arrested exposition organizers for violating national tobacco control law.”⁴²</p> <p>Since July 2017, Thailand has a comprehensive ban on tobacco-related CSR activities, covering tobacco advertising, promotions, and sponsorship.⁴²</p>
Turkey	Administrative Measure	<p>Protection of tobacco control policy from tobacco industry interests</p> <p>“The Tobacco and Alcohol Market Regulatory Authority has published its internal regulation reflecting all guiding principles of the guidelines for implementation of Article 5.3.”⁴⁴</p>
Uganda	Tobacco control legislation, 2015	<p>The Tobacco Control Act, 2015 - Transparency; protection of tobacco control policies from tobacco industry interference</p> <p>“Among the stated purposes of Uganda’s Tobacco Control Act, 2015 is to ‘insulate tobacco control policies, laws and programs from interference by the tobacco industry.’⁴⁵ The law makes it the duty of the government to protect tobacco control policies from tobacco industry interference and to ensure transparency of any interactions with the industry.”⁴⁶</p>
Ukraine	Tobacco Control Legislation, 2009	<p>Article 4 of the Tobacco Control Act - Primacy of public health policy over tobacco industry interests</p> <p>Article 4 of the Tobacco Control Act declares “priority of the public health policy as compared to financial, tax and corporate interests of economic subjects, the activity of which is related to the tobacco industry” and calls for the “participation of individuals and citizens’ groups, whose activity is not related to the tobacco industry, in policies on prevention and reduction of consumption of tobacco products and their harmful influence on the health of the population.”⁴⁷</p>
United Kingdom, 2009	Administrative Measure, 2009	<p>Healthy Lives, Healthy People: A tobacco control plan for England - Transparency and protection of tobacco control strategies from vested interests</p> <p>“The plan states that to ensure further transparency, the Government is committed to publishing the details of all policy-related meetings between the tobacco industry and Government departments. This excludes meetings to discuss operational matters to reduce the illicit trade in tobacco and bilateral meetings between tobacco manufacturers and HM Revenue and Customs. In the future, organizations engaging with the Department of Health on tobacco control, for example by responding to consultation exercises, will be asked to disclose any links with, or funding received from, the tobacco industry. Local authorities are encouraged to follow the Government’s lead in this area, and to take necessary action to protect their tobacco control strategies from vested interests.”⁴⁸</p>

B. Case Studies of Countries with Article 5.3 in their Governance Policies

Some governments have started to address tobacco industry interference in their policies and legislation.



Philippines

The Philippines paved the way for countries looking to incorporate Article 5.3 guidelines into national policy. On June 24, 2010, the Philippine Civil Service Commission and the Department of Health announced a Joint Memorandum Circular (JMC) to protect the bureaucracy against tobacco industry interference.⁴⁹

The JMC closely follows FCTC Article 5.3 guidelines. It bans government workers from interacting with any tobacco corporation or company, except when strictly necessary for the latter's effective regulation, supervision, or control. The JMC includes a Code of Conduct, a monitoring/ reporting process, and administrative sanctions.

In 2012, the Philippines Department of Education (DepEd) issued a circular, Order No. 6/2012, which restricts interaction of its officials with the tobacco industry and includes a prohibition of the tobacco industry contributing funds to educational institutions. Following this Order, public schools cannot receive CSR contributions from the tobacco industry. In 2016, DepEd issued its Policy and Guidelines on Comprehensive Tobacco Control (DO 48, s. 2016), expanding its scope to cover private schools, "for the effective implementation of a cohesive and comprehensive tobacco control program to promote a healthy environment in and around schools and DepEd offices."



Mongolia

Mongolia's national Law on Tobacco Control explicitly states that its policy is to "protect the public health policy from negative influences of tobacco industry within the legal framework" and that it supports the "participation of private and non-governmental organizations without any relationship with tobacco industry in developing and implementation of policy and programmes on tobacco control." The law follows this through by banning tobacco industry sponsorship of cultural, sports, and other social events, and any donations, contributions, or grants from the tobacco industry.



Thailand

Thailand has a similar policy on the tobacco industry for its Ministry of Health. Through a cabinet decision, Thailand prohibits the acceptance of all forms of contributions from the Thai Tobacco Monopoly, including offers of assistance, policy drafts, or study visit invitations to the government and its officials. Although the Thai Tobacco Monopoly is a state-owned enterprise, Thailand has demonstrated that it needs to halt any possible avenue for tobacco industry interference and that state-owned tobacco entity is to be treated in the same way as any other tobacco industry (Article 5.3 Guidelines, Principle No. 8).

In 2010, Thailand came up with a regulation to protect its Department of Disease Control from tobacco industry interference.⁵⁰ And on July 2017, Thailand adopted a comprehensive ban on tobacco-related CSR activities, covering tobacco advertising, promotions, and sponsorship.⁵¹ This law also requires tobacco companies to declare their marketing expenses. Expert Committee Members recruited by the Tobacco Products Control Committee cannot own, be a related person or a stakeholder in a business involving tobacco products whether directly or indirectly.⁵²



Uganda's government has developed measures to embed the letter and spirit of FCTC Article 5.3 in its national legislation and policy process. On 28 July 2015, its Parliament passed a comprehensive, FCTC-compliant Tobacco Control law, with a whole Part (VIII) in favor of Article 5.3.⁵³

The law seeks, among others, to "identify and sensitize the target audience of relevant stakeholders, including civil society, members of parliament/decision-makers on the health, economic, and environmental aspects of tobacco control, as enshrined in the WHO FCTC, as a justification and background for tobacco control, and the need to insulate tobacco control policies from commercial and vested interest of the tobacco industry."⁵⁴ Its key components are:

- "Duty of government;
- Government interaction with the tobacco industry;
- Prohibition of partnerships and endorsements of the tobacco industry;
- Prohibitions of voluntary contributions from the tobacco industry;
- Prohibitions of incentives or privileges to the tobacco industry;
- Penalties for contravention; and,
- Prevention and management of conflict of interest, including penalties."⁵⁵

Uganda's policy was drafted following these strategies:

- "Insertion and tracking of provisions on Article 5.3 in the working draft of the Tobacco Control bill at every stage;
- Inclusion of implementation measures, like sanctions, penalties...how breach will be enforced, and how to adhere to the provisions of Article 5.3 in the spirit of the WHO FCTC and guidelines;
- Ensuring that the drafting language captures the letter and the spirit of Article 5.3 and its implementation guidelines; and,
- Setting the drafting agenda to avoid situations where the industry comes up with a draft that may leave out key areas of regulation in their guise to self-regulate."⁵⁶

III. Global Level

A. International Instruments that Take Tobacco Industry Interference into Consideration

The table below summarizes, in chronological order, the international instruments that have been adopted or developed to be consistent with or to support the implementation of FCTC Article 5.3.

Efforts are currently underway to encourage bodies under the United Nations (UN) to adopt mechanisms to address tobacco industry attempts to impede the implementation of tobacco control efforts. A pertinent model policy for the UN system has been developed by the FCTC Secretariat. Concerns relating to the tobacco industry are being raised with the International Labour Organization's (ILO's) Governing body as well as the Open-Ended Inter-Governmental Working Group (OEIGWG) on Transnational Corporations and Other Business Enterprises with Respect to Human Rights.

Table 2. International Instruments that Have Been Adopted or Developed to be Consistent with or to Support the Implementation of WHO FCTC Article 5.3

International Organization / Year / Parties	International Instrument / Brief Definition
UN Economic and Social Council (ECOSOC), 2017 Number of Parties: 54	Title: Resolution E/2017/L.21 <i>10. Encourages members of the Task Force, as appropriate and in line with their respective mandates, to develop and implement their own policies on preventing tobacco industry interference, bearing in mind the model policy for agencies of the United Nations system on preventing tobacco industry interference, in order to ensure a consistent and effective separation between the activities of the United Nations system and those of the tobacco industry.</i> ⁵⁷
United Nations Global Compact (UNGC), 2017 Number of Participants: 12,500+	Title: UN Global Compact Integrity Policy Update <i>Effective 12 September 2017, the UN Global Compact will increase scrutiny of companies upon entry into the initiative, review engagement with existing participants, and institute new exclusionary criteria for companies involved in certain high-risk sectors – including the production and manufacture of tobacco products, and nuclear, chemical, or biological weapons.</i> <i>Participating companies whose business involves manufacturing or producing tobacco products will be delisted effective 15 October 2017.</i> ⁷¹
WHO, 2016 Number of Parties: 181	Title: Model policy for agencies of the United Nations system on preventing tobacco industry interference <i>The purpose of this policy is to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive, effective and consistent across the United Nations system including the UN itself and its funds, programmes, specialized agencies, other entities and related organizations</i> ⁵⁸
United Nations (UN), 2016 Number of Parties: 193	Title: Sustainable Development Goals <i>Goal 3: Ensure healthy lives and promote well-being for all at all ages</i> <i>Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate.</i> ⁵⁹

International Organization / Year / Parties	International Instrument / Brief Definition
United Nations Development Programme (UNDP), 2013 Number of Parties: 193	<p>Title: <i>Policy on Due Diligence and Partnerships with the Private Sector</i> <i>Guiding Principles for Partnerships: Advance UNDP goals; Maintain integrity, independence, and impartiality; Ensure transparency; Non-exclusivity and no unfair advantage; Cost-effectiveness; Clearly defined roles and responsibilities and shared risk and benefits</i></p> <p>UNDP has defined a set of exclusionary criteria outlining those business practices considered unacceptable to the organization, and these include the “manufacture, sale or distribution of tobacco or tobacco products.”⁶⁰</p>
United Nations, 2013 Number of Parties: 193	<p>Title: <i>UN Interagency Task Force on the Prevention and Control of Non-communicable Diseases (NCDs)</i> <i>Decision FCTC/COP7(8): Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry – Requested the Convention Secretariat to continue to promote the use of the Model policy for agencies of the United Nations system on preventing tobacco industry interference, developed by members of the United Nations Interagency Task Force on the Prevention and Control of NCDs, in accordance with Article 5.3.</i></p> <p>Specifically noted is UNDP’s work in supporting countries to develop multisectoral, whole-of-government responses to NCDs, including through strengthened multisectoral governance arrangements, investment case development, and the integration of NCDs and tobacco control into national and local development plans and strategies.⁶¹</p>
United Nations, 2012 Number of Parties: 193	<p>Title: <i>Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases</i> <i>38. Recognize the fundamental conflict of interest between the tobacco industry and public health.</i>⁶²</p>
WHO FCTC, 2008 Number of Parties: 181	<p><i>Guidelines for the Implementation of Article 5.3 of the WHO FCTC</i></p>
WHO, 2005 Number of Parties: 181	<p>Title: <i>WHO Framework Convention on Tobacco Control</i> <i>Article 5.3 – 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.</i>³⁹</p>

B. Red Cross Policy on Refusing Tobacco Funding

Although not an international instrument, the Red Cross policy on refusing tobacco-backed funds is considered a significant international policy due to the Red Cross’ presence in practically all states. The International Federation of Red Cross and Red Crescent Societies (IFRC), along with 190 member-countries of National Red Cross and Red Crescent Societies worldwide, act before, during, and after disasters and health emergencies to assist vulnerable people. Red Cross’ policies potentially affect trends in CSR in over 190 countries where it is operating.

The Red Cross has long adopted a policy not to accept funds from tobacco, alcohol, and arms. During the World No Tobacco Day celebration on May 31, 2013, the Governing Board of the International Federation of the Red Cross/Red Crescent resolved to enjoin National Societies to desist from receiving money from the tobacco industry.⁶³

In June 2015, the IFRC issued an Internal Guidance Brief on their non-engagement with tobacco companies. This document—which was disseminated to National Societies, including their staff and volunteers—states, among others, that it upholds principles to dissociate itself from “an industry that contributes to significant mortality, illness and suffering worldwide.”⁶⁴

C. Responses to Tobacco Industry Interference at the International Level

The tobacco industry’s interference at international agencies, intergovernmental organizations, and international private/ trade associations/ non-government organizations is well documented. The table below lists some examples of the way the international community and international bodies have responded to tobacco industry interference at the global level.

Table 3. International Community and International Bodies’ Responses to Tobacco Industry Interference at the Global Level

International Organization	Examples of Global Tobacco Industry Interference and Responses ⁶⁵
UN System	<p>The Secretary General reported to the United Nations Economic and Social Council (ECOSOC) on various types of tobacco industry interference within the UN System, such as conflict of interest. These were reported at ECOSOC’s Substantive Sessions, specifically in 2006, 2008, and 2010 “in the context of reporting on the work of the Tobacco Task Force (reports E/2006/62, E/2008/59 and E/2010/55).”</p> <p>The reports emphasized the need to raise awareness on FCTC Article 5.3 and policies against tobacco industry engagement, such as those from the UNDP and the International Atomic Energy Agency (IAEA), were duly noted in the reports.</p> <p>FCTC Conference of the Parties (COPs) has acknowledged this report, and the FCTC Secretariat has been promoting a model policy for the UN system on the protection against tobacco industry interference.⁶⁷</p>
UN Global Compact	<p>A research conducted by the Ad Hoc Inter-Agency Task Force on Tobacco Control criticized the UN’s Global Compact “for harboring tobacco companies under its umbrella.”⁶⁸</p> <p>In response to numerous criticisms, the Global Compact has announced that it “actively discourages tobacco companies from participation in the initiative and does not accept funding from tobacco companies.”⁶⁹</p> <p>Based on its recent Integrity Policy Update, starting September 12, 2017, “the UN Global Compact will increase scrutiny of companies upon entry into the initiative, review engagement with existing participants, and institute new exclusionary criteria for companies involved in certain high-risk sectors – including the production and manufacture of tobacco products, and nuclear, chemical, or biological weapons. Participating companies whose business involves manufacturing or producing tobacco products will be delisted effective 15 October 2017.”⁷⁰</p>

International Organization	Examples of Global Tobacco Industry Interference and Responses ⁶⁵
International Labour Organization	<p>The International Labour Organization (ILO) serves as advisor to the board of the ECLT Foundation, an organization established in 2002 and purely funded by tobacco companies. Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco International (JTI), Imperial Tobacco, and other tobacco industry players fund ECLT and serve as its board members.^{73,74}</p> <p>Recently, ILO has reportedly received \$15 million from JTI and groups associated with huge tobacco companies for “charitable partnerships” to address child labor in tobacco fields.⁷⁵</p> <p>The public health community has vigorously censured ILO’s engagement with the tobacco industry.⁷⁶ In October 2017, about 200 organizations and individuals from various parts of the world have urged ILO to stop receiving money from the tobacco industry and to cut off its relationship with it.⁷⁷</p> <p>As of January 2018, ILO’s governing body is confronted with the need to decide if it should keep its partnership with the industry.⁷⁸</p>
World Customs Organization	<p>In 2013-14, some of World Customs Organization’s (WCO) global and regional events on illicit trade of tobacco were reportedly sponsored by the Digital Coding and Tracking Association (DCTA), an association backed by BAT, JTI, PMI, and Imperial Tobacco Group, claiming to be dedicated to combatting illicit trade of tobacco.</p> <p>The University of Bath - Tobacco Control Research Group exposed the association’s ties to the tobacco industry and revealed the loopholes of the coding system promoted by the DCTA (i.e., Codentify, originally developed by PMI). Public health advocates have publicly criticized the coding system and raised concerns about its links with the WCO.</p>

D. Case Studies on Actions/Measures in Responding to Efforts by International/Regional Organizations that Represent Tobacco Industry Interests

The tobacco industry has backed or established international organizations to pursue its interests. Below are case studies where the global community responded to efforts of such organizations to undermine tobacco control policies.

1. International Tax and Investment Center (ITIC)

1.1. ITIC Relationship with the Tobacco Industry

ITIC claims to be an international think tank that works closely with governments on fiscal and trade issues,⁷⁹ but its board includes representatives coming from four (4) tobacco companies, namely, PMI, JTI, BAT, and Imperial Tobacco. Based on analysis of internal tobacco industry documents conducted by University of Bath’s online academic resource, tobaccotactics.org, the organization has been identified as a tobacco industry front group.⁸⁰

1.2. ITIC Tactics in Interfering with the WHO FCTC during the Adoption of the Article 6 Guidelines (Price Measures)

ITIC sponsored an event intended to challenge COP6 adoption of Article 6 Guidelines; the time and

venue was strategically set just before/during the COP6 and near the COP6 session venue in Moscow, and ITIC invited tax officials from FCTC Parties and WHO member-states that are observers to the COP.⁸¹

Response: Note Verbale of the Framework Convention Secretariat

The Framework Convention Secretariat (FCS) issued a Note Verbale (NV) to warn against attending the event.¹⁰² For many delegates and government officials, it was the first time they were apprised that the ITIC event is not an activity related to or endorsed by COP, and that ITIC is tobacco industry-funded. In addition, civil society organizations (CSOs) circulated information about ITIC arguments and how they undermine the proposed Article 6 Guidelines. Due to these efforts, the ITIC event was hardly attended by COP delegates.

On 04 March 2016, the FCS issued another NV that expressed concern about meetings organized by ITIC and advised Parties that tobacco industry interference (e.g., ITIC-organized regional and global meetings) is “damaging for tobacco-control efforts worldwide.”⁸² It reminds Parties to “reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.”⁸³ It issued the NV amidst reports that tobacco companies are proposing to some FCTC Parties to sign agreements in which the former will take on certain tasks in controlling the tobacco supply chain; and, reports that the tobacco industry is actively endorsing the use of Codentify, a coding system it developed.

The aforesaid NVs have increased the awareness of FCTC Parties and COP observers about ITIC and its activities; thus, many of them have refused to participate in ITIC events.

1.3. ITIC and its Involvement in Tax/ Customs Global Events

On its website, ITIC claims that it regularly sponsors and participates in global events where tax and customs officials from all over the world will be in attendance. For instance, in 2014, ITIC presented its report on “The Illicit Trade in Tobacco Products and How to Tackle It” to over 150 enforcement officials from various countries during the WCO meeting in Brussels.⁸⁴ One such widely promoted event was the 12th Annual Asia-Pacific Tax Forum, held in New Delhi on 5-7 May 2015.

Response: World Bank and Host Country Response

After much global campaigning from CSOs, the World Bank withdrew from the 12th Annual Asia-Pacific Tax Forum, held in New Delhi on 5-7 May 2015, which was co-organized by a consortium financed by several transnational tobacco companies. The Indian government officials, touted by ITIC to inaugurate the event, also decided not to participate.^{85 86}

1.4. ITIC Challenging Civil Society Groups

In 2015, the Southeast Asia Tobacco Control Alliance (SEATCA) published “ITIC’s ASEAN Excise Tax Reform: A Resource Manual,” which revealed how ITIC’s report is undermining global best practice in tobacco taxation in the region.⁸⁷ In 2014, SEATCA also critiqued ITIC’s Asia-11 Illicit Tobacco Indicator 2012,⁸⁸ which together with other ITIC reports, were widely disseminated to finance ministers in Southeast Asia. Shortly after, ITIC president Daniel Witt sought to meet with SEATCA to have a “round-table discussion” with stakeholders on the matter. It was later revealed that the meetings are meant to make SEATCA rectify its “errors.” A series of letters were written to complain about SEATCA’s inaccuracies and refusal to engage with ITIC. Letters were written to various individuals associated with SEATCA to pressure its executive director to participate in ITIC meetings. A subsequent letter, written by an Australian consultant, accused SEATCA of unreasonableness, lack of transparency, accountability, and good governance, and of continuing to “dismiss competing views and disparage those who hold them.”⁸⁹

Response: Civil Society Groups Unified in the Denouncement of Tobacco Industry Funds/ Ties

Various CSOs responded to defend SEATCA's position and criticized ITIC for its tobacco industry tactics. In 2017, ITIC announced that it has removed tobacco industry representatives from its board and declared that it would no longer receive sponsorships from the tobacco industry.⁹⁰ Its previous papers supporting tobacco industry interests and arguments remain on its website's resource lists.

2. International Tobacco Growers Association (ITGA)

2.1. ITGA Relationship with the Tobacco Industry

ITGA claims to represent the interest of farmers at various global and regional fora, yet its main supporters are transnational tobacco-related companies, including Alliance One International, Imperial Tobacco International, Universal Leaf, PMI, BAT, JTI, etc.

ITGA claims that the WHO FCTC puts the livelihoods of millions of growers at risk. According to the Framework Convention Alliance (FCA), the global civil society group supporting tobacco control, "ITGA does nothing to help tobacco farmers and farm workers trapped in cycles of poverty and debt bondage because of the industry's exploitative tobacco buying practices and unfair contracts."⁹¹

2.2. ITGA Tactics in Interfering with the WHO FCTC during the Adoption of Guidelines (Articles 9/10, 17/18)

In 2010, during the FCTC COP4, the ITGA reportedly rallied tobacco farmers from several countries together in order to influence the negotiations and to thwart the approval of Articles 9 and 10 Guidelines and progress report on Articles 17 and 18.⁹²

Response:

When ITGA applied for observer status in 2010, the COP4 took note of the report that information available on the official website of the organization shows that its activities "may not be in line with the aims and spirit of the Convention," in particular with regard to Article 5.3. The COP4 then rejected ITGA's application for observer status.⁹³

3. ASEAN Intellectual Property Association (IPA)

3.1. ASEAN IPA is an association of intellectual property owners that meets annually to celebrate World Intellectual Property Day.

3.2. ASEAN IPA's Tactics in Interfering with the WHO FCTC as well as Intellectual Property and Plain Packaging in ASEAN

In 2016, ASEAN IPA wrote letters to governments in the ASEAN region to warn against the harmful consequences of cigarette plain packaging in the region.

Response:

The regional NGO, SEATCA, refuted ASEAN IPA's arguments and informed governments in the region of the association's background and agenda. Nevertheless, the association continues to raise intellectual property issues on plain packaging in light of the planned adoption of the measure by some countries in the region.

In February 2018, the Singapore Ministry of Health launched public consultations for plain packaging and 75% picture-based health warnings (from the current 50% graphic health warnings). There are currently only eight (8) other countries in the world that have adopted a policy on implementing tobacco plain packaging. Singapore is the first country in ASEAN to move forward with plain packaging.

4. American Chamber of Commerce (ACC)

4.1. ACC and its Relationship with the Tobacco Industry

Globally, business associations have been reported to directly influence tobacco control policies in behalf of the tobacco industry. For instance, ACC, an association of US businesses including Philip Morris, has been reported to promote tobacco industry interests in various countries all over the world.

Many other regional or global business or trade associations continue to play a part in the tobacco industry's efforts to undermine tobacco control policies. A typical regional strategy is exemplified by the ASEAN Business Council, which annually sets meetings with high-level officials in each country in the ASEAN region, making way for meetings/ unnecessary interactions between US tobacco company leaders and top-level government officials.⁹⁴

4.2. ACC's Tactics in Interfering with the WHO FCTC

In June 2015, the New York Times released a report on the extent of lobbying that ACC had undertaken in Australia, Burkina Faso, El Salvador, the European Union, Ireland, Jamaica, Kosovo, Moldova, Nepal, New Zealand, the Philippines, Ukraine, United Kingdom, and Uruguay⁹⁵ to dilute and delay life-saving tobacco control measures.

Response:

As a response to the exposé, CVS Health, an ACC member and a huge retailer chain across the US, decided to leave the association in 2015.⁹⁶ US senators also criticized ACC's actions.

5. Foundation for a Smoke-Free World

5.1. Foundation for a Smoke-Free World and its Relationship with the Tobacco Industry

On 13 September 2017, PMI announced that it will commit US\$1 billion to a Foundation for a Smoke-Free World over the next twelve (12) years. It was reported that the new foundation will focus on funding research to support policy and collaborative initiatives on harm reduction. The foundation's president was formerly with the WHO.⁹⁷

Response:

Within two weeks of the announcement, the Convention Secretariat for the WHO FCTC issued a statement denouncing key aspects of the foundation, among others, its leadership, the funding, new tobacco products, and potential interactions with the tobacco industry. It reminds FCTC Parties that: "Parties to the WHO FCTC should note that any collaboration with this Foundation, due to its current funding arrangement that comes from a tobacco multinational, would constitute a clear breach of Article 5.3 of the Convention concerning tobacco industry interference."⁹⁸

Below are vital excerpts of the WHO statement dated 28 September 2017:

Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) obliges Parties to act to protect public health policies from commercial and other vested interests of the tobacco industry in accordance with national law. Guidelines for implementation of Article 5.3 state clearly that governments should limit interactions with the tobacco industry and avoid partnership. These Guidelines are also explicit that Governments should not accept financial or other contributions from the tobacco industry or those working to further its interests, such as this Foundation.

Strengthening implementation of the WHO FCTC for all tobacco products remains the most effective approach to tobacco control... If PMI were truly committed to a smoke-free world, the company would support these policies. Instead, PMI opposes them. PMI engages in large scale lobbying and prolonged and expensive litigation against evidence-based tobacco control policies such as those found in the WHO FCTC and WHO's MPOWER tobacco control, which assists in implementation of the WHO FCTC. For example, just last year PMI lost a six year investment treaty arbitration with Uruguay, in which the company spent approximately US\$ 24 million to oppose large graphic health warnings and a ban on misleading packaging in a country with fewer than four million inhabitants.⁹⁹

In January 2018, the Polish Health Ministry used the WHO statements to warn universities against receiving research funding from the foundation.¹⁰⁰

Since the launch of the foundation, more and more public health advocates have renounced its efforts.¹⁰¹ Seventeen deans of the top schools of public health in the USA have announced that their schools are not accepting funding from or pursuing work with the Foundation for a Smoke-Free World.

Annex 1

WHO Framework Convention on Tobacco Control Secretariat's Statement on the launch of the Foundation for a Smoke-Free World

19 September 2017

The WHO Framework Convention on Tobacco Control Secretariat (Convention Secretariat) notes the launch of the Foundation for a Smoke-Free World, led by a former official of the World Health Organization.

The Convention Secretariat regards this tobacco industry-funded initiative as a clear attempt to breach the WHO FCTC by interfering in public policy. It is a deeply alarming development aimed at damaging the treaty's implementation, particularly through the Foundation's contentious research programmes.

The WHO FCTC is the world's only tobacco control evidence based treaty and has been commended by global leaders as providing the primary roadmap to a tobacco-free world. It has 181 Parties, representing 180 States and the European Union, and is supported by numerous nongovernmental organizations.

The Convention Secretariat wishes to make the following points and clarifications:

1. With regard to the president of this Foundation

Although the president of the Foundation was part of the WHO Secretariat during the negotiation of the WHO FCTC, the treaty had no single architect. It resulted from the work of hundreds of committed government representatives, individuals and organizations, and that is its greatest strength – teamwork.

The Foundation's president is in no way linked to the Convention Secretariat, nor does he represent the Convention Secretariat's views.

2. With regard to the Foundation's funding

The Foundation for a Smoke-Free World describes itself as an independent organization. It reportedly will be funded solely with almost US\$ 1 billion from Philip Morris International, the tobacco conglomerate.

There is extensive experience of tobacco-industry funded research that was later used to prevent effective tobacco control policies. It is clear that the industry aims to follow the same path in the area of non-traditional tobacco products, which are unregulated in many countries.

3. With regard to interactions with the tobacco industry

Parties to the WHO FCTC should note that any collaboration with this Foundation, due to its current funding arrangement that comes from a tobacco multinational, would constitute a clear breach of Article 5.3 of the Convention concerning tobacco industry interference.

Parties to the Convention have agreed, through the Guidelines to Article 5.3, that activities described as "socially responsible" by the tobacco industry, constitute a marketing and public-relations strategy that falls within the Convention's definition of advertising, promotion and sponsorship. Parties should not endorse, support, form partnerships with or participate in tobacco industry activities described as socially responsible. Tobacco industry is clearly looking for a seat at the table.

4. With regard to new products

The tobacco industry is introducing new products in pursuit of profit rather than public health. For example, new “heat-no-burn” products contain tobacco and electronic nicotine delivery systems (ENDS) contain nicotine, an addictive substance regulated through appropriate policies under Article 5.2(b) of the Convention related to legislative and administrative measures.

Parties to the Convention have agreed to consider applying regulatory measures to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS, as appropriate to their national laws and public health objectives. If other novel tobacco or nicotine products emerge, the way that they are treated needs to be considered in the same way.

5. With regard to possible effects on tobacco growers

Article 17 of the WHO FCTC requires Parties to promote, as appropriate, economically viable alternatives for tobacco workers and growers. The tobacco industry knows that it creates social problems, including the use of child labour. Initiatives endorsed by the industry and those it funds are not designed to solve the problems it creates, but to give a false impression of sympathy for its victims.

6. With regard to the impact of the WHO FCTC on public health

The WHO FCTC, despite the efforts of the tobacco industry to prevent progress, has substantially improved global public health through the evidence-based measures it endorses.

The WHO FCTC has been recognized as playing “a critical role as an authoritative and agreed catalyst and framework for action.” The use by the tobacco industry of research to prevent effective tobacco control policies, now in relation to non-traditional tobacco products, is proof that the policies originating from Parties’ implementation of the WHO FCTC provisions are having an important and lasting effect on tobacco control.

Source: WHO Framework Convention on Tobacco Control Secretariat’s statement on the launch of the Foundation for a Smoke-Free World, 19 September 2017, <http://www.who.int/fctc/mediacentre/statement/secretariat-statement-launch-foundation-for-a-smoke-free-world/en/>

WHO Statement on Philip Morris funded Foundation for a Smoke-Free World

28 September 2017

On 13 September 2017, tobacco company Philip Morris International (PMI) announced its support for the establishment of a new entity - the Foundation for a Smoke-Free World. PMI indicated that it expects to support the Foundation by contributing approximately USD 80 million annually over the next 12 years.

The UN General Assembly has recognized a “fundamental conflict of interest between the tobacco industry and public health.” (1) WHO Member States have stated that “WHO does not engage with the tobacco industry or non-State actors that work to further the interests of the tobacco industry”, (2) the Organization will therefore not engage with this new Foundation.

Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) obliges Parties to act to protect public health policies from commercial and other vested interests of the tobacco industry in accordance with national law. Guidelines for implementation of Article 5.3 state clearly that governments should limit interactions with the tobacco industry and avoid partnership. These Guidelines are also explicit that Governments should not accept financial or other contributions from the tobacco industry or those working to further its interests, such as this Foundation.

Strengthening implementation of the WHO FCTC for all tobacco products remains the most effective approach to tobacco control. Policies such as tobacco taxes, graphic warning labels, comprehensive bans on advertising, promotion and sponsorship, and offering help to quit tobacco use have been proven to reduce demand for tobacco products. These policies focus not just on helping existing users to quit, but on preventing initiation.

If PMI were truly committed to a smoke-free world, the company would support these policies. Instead, PMI opposes them. PMI engages in large scale lobbying and prolonged and expensive litigation against evidence-based tobacco control policies such as those found in the WHO FCTC and WHO’s MPOWER tobacco control, which assists in implementation of the WHO FCTC. For example, just last year PMI lost a six year investment treaty arbitration with Uruguay, in which the company spent approximately US\$ 24 million to oppose large graphic health warnings and a ban on misleading packaging in a country with fewer than four million inhabitants.

There are many unanswered questions about tobacco harm reduction (3), but the research needed to answer these questions should not be funded by tobacco companies.

The tobacco industry and its front groups have misled the public about the risks associated with other tobacco products. This includes promoting so-called light and mild tobacco products as an alternative to quitting, while being fully aware that those products were not less harmful to health. Such misleading conduct continues today with companies, including PMI, marketing tobacco products in ways that misleadingly suggest that some tobacco products are less harmful than others.

This decades-long history means that research and advocacy funded by tobacco companies and their front groups cannot be accepted at face value. When it comes to the Foundation for a Smoke-Free World, there are a number of clear conflicts of interest involved with a tobacco company funding a purported health foundation, particularly if it promotes sale of tobacco and other products found in that company’s brand portfolio. WHO will not partner with the Foundation. Governments should not partner with the Foundation and the public health community should follow this lead.

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<https://tobaccowatch.seatca.org/index.php/2018/02/01/more-oppose-claims-of-pmi-funded-foundation-for-smoke-free-world/>

<https://tobaccowatch.seatca.org/index.php/2017/12/19/public-health-advocates-want-out-of-smoke-free-foundations-mailing-list/>

<https://tobaccowatch.seatca.org/index.php/2017/12/01/switching-to-the-harmful-side/>

<https://tobaccowatch.seatca.org/index.php/2017/09/22/pmi-sets-up-new-foundation-to-whitewash-and-distract/>

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