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Primer on Good Governance and Tobacco Control



Introduction

This primer makes the case for why tobacco control policies, particularly those geared towards protecting public health policymaking from the tobacco industry, are, in reality, good governance policies. It is intended for advocates and governments around the world to give them additional tools to be able to implement the life-saving measures enshrined in the global tobacco treaty, formally known as the World Health Organization Framework Convention on Tobacco Control (FCTC).

For years, governments and advocates operated under the assumption that tobacco control policies are exclusively public health policies in nature. Though the primary goal of the FCTC will always be to reduce tobacco consumption worldwide, which is certainly a public health goal, since the adoption and entry into force of the FCTC, governments are increasingly recognizing that the policy issues involved span a range of legal frameworks.

This primer focuses on the aspects of the FCTC that can and should be considered good governance policies in addition to public health policies. These policies, such as codes of conduct for government officials, transparency measures, and policies to protect against conflict of interest, facilitate the workings of any and all governmental institutions.

In the context of tobacco control, they are geared towards safeguarding the policymaking process from the corrupting influence of the tobacco industry, which has operated for decades with the express intent of blocking, delaying, and weakening tobacco control policies that save lives.

These safeguards, enshrined in Article 5.3 of the FCTC, are arguably among the most effective measures that governments can implement to speed up the implementation of all of the other areas of the treaty.

These measures are, in effect, anti-corruption measures. They are geared towards freeing governments from the influence-peddling, manipulation, and bullying of a wealthy corporation whose goal is to block policies that would reduce tobacco use. Thus, challenging tobacco industry interference is challenging corruption, and safeguarding public health from the tobacco industry is safeguarding governmental institutions and the public's well-being.

The good news is that governments don't have to reinvent the wheel in order to enact these measures. Most countries have good governance laws on the books already. Anti-corruption laws, lobby registers, codes of conduct – these policies already exist in a majority of countries. What is required is dedicated advocacy to ensure these are made applicable to implementing Article 5.3 or alternatively

update and incorporate the safeguards enshrined in Article 5.3 into these existing good governance measures – speeding up the process of FCTC implementation.

This primer demonstrates that protecting public health and protecting governments from corrupting influences like the tobacco industry go hand-in-hand. Given the increasing number of children who become addicted to tobacco every day, and the increasingly desperate tactics that the tobacco industry uses to undermine public health policies, it is imperative that governments act now to implement the good governance policies enshrined in the FCTC.

This primer highlights the opportunity that countries have to strengthen their anti-corruption measures by incorporating the FCTC's Article 5.3 provisions into existing good governance or anti-corruption laws. The primer also examines Article 5.3 through the lens of corruption and good governance and calls on governments around the globe to situate implementation of Article 5.3 within and/or in annex to their existing policies on corruption and good governance.

Background

Every year, tobacco kills nearly six million people. Around the world, families continue to suffer the devastating health, financial and social consequences of tobacco-related diseases. Despite the strides made in curbing the tobacco epidemic, tobacco remains the largest preventable cause of death in the world.¹ The World Health Organization (WHO) projects the death toll from tobacco will rise to more than eight million by 2030, with 80 percent of those deaths occurring in the Global South.²

A major policy shift occurred when the World Health Organization (WHO) launched negotiations on a global tobacco treaty, the Framework Convention on Tobacco Control (FCTC). Since the treaty's entry into force in 2005, it has become international law in effect in 178 countries, protecting nearly 90 percent of the world's population. Tobacco industry interference, however, remains the single greatest threat to full implementation of the treaty.³

The Tobacco Industry has no Place in Public Health

The tobacco industry, by selling a product that has no known benefits and, if used as instructed by the manufacturer, kills up to half of its users, has an irreconcilable conflict of interest with the goals of public health policymaking. This industry is a driving force in not only the rising death toll, but is also blocking, undermining, and delaying efforts to implement the treaty and save lives, driven solely by the pursuit of profit. For decades, the tobacco industry has used its political influence and economic power to prevent effective public health policies and regulations. As such, it must be kept out of public health policymaking altogether.

Luckily, Parties to the treaty, in order to enable the treaty to fulfill its potential and save up to 200 million lives by 2050,⁴ adopted Article 5.3 of the FCTC. This article, the backbone of the treaty, obligates State Parties to the Convention to protect their health policies from tobacco industry interference. In 2008, Parties unanimously adopted specific guidelines⁵ to implement Article 5.3 and safeguard public health against the tobacco industry.

Some countries have implemented tobacco control laws modeled on all of the FCTC's articles and accompanying guidelines, including its good governance and anti-corruption policies, enshrined in Article 5.3, and others are continuing to follow suit. However, the implementation of these good governance policies has been sporadic and inconsistent across regions.

This primer gives governments the tools necessary to speed up the implementation of the FCTC's good governance and anti-corruption policies in the following ways:

1. Making the case that challenging tobacco industry interference is indeed challenging corruption.

2. Making the case that implementing safeguards against the tobacco industry is equivalent to safeguarding governments and the public good.
3. Highlighting the opportunity that governments have to update existing anti-corruption or good governance laws in order to meet their obligations under the FCTC.
4. Highlighting success stories from the Southeast Asian region where framing tobacco control as anti-corruption has been helpful in building the political will necessary to pass these policies.

Tobacco Industry Interference = Corruption

According to the WHO Committee of Experts on Tobacco Industry Documents, “tobacco companies have operated for many years with the deliberate purpose of subverting the efforts of the World Health Organization to address tobacco issues. The attempted subversion has been elaborate, well-financed, sophisticated, and usually invisible.”⁶ The following section of the primer reviews Transparency International’s definition of corruption, why tobacco industry interference can be considered a form of corruption, and ends with a case study from Indonesia that demonstrates this fact.

Transparency International defines corruption as “the abuse of entrusted power for private gain” and grand corruption as “acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.”¹

Definitions of Good Governance and Anti-Corruption in the Context of Tobacco Control

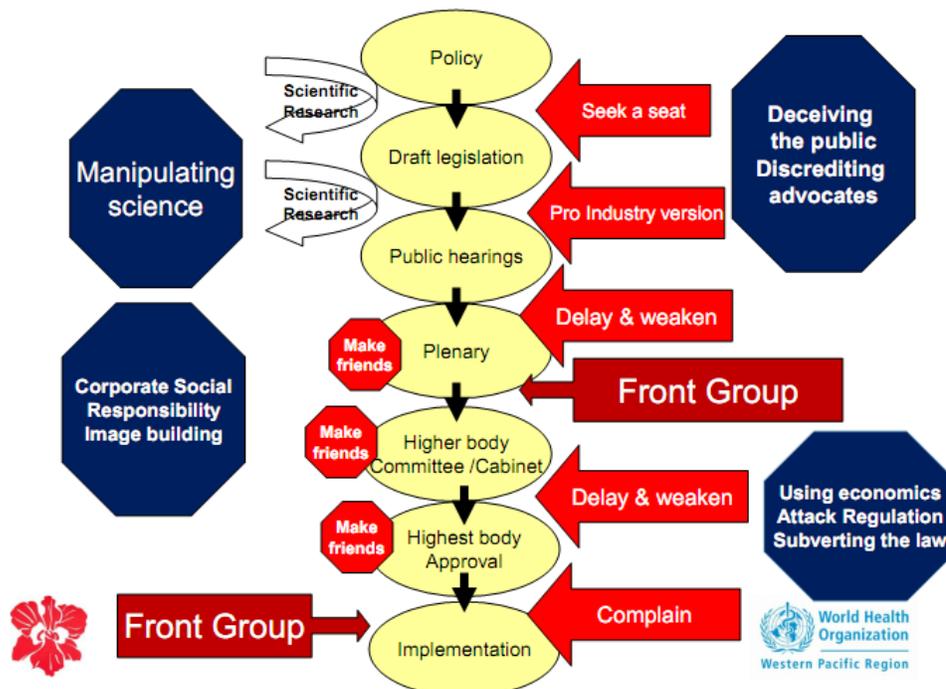
The tobacco control movement has been working tirelessly for decades to create a framework of good governance around tobacco products to regulate the tobacco industry and its affiliates, particularly with a view to protecting public health policies from commercial and other vested interests of the industry.

Good governance is the act of public institutions conducting public affairs and managing public resources in an efficient and transparent manner. This requires transparent government dealings and accountability of the industries with whom they deal. The fundamental tenet of good governance is transparency in order to avoid corruption or the appearance thereof.

Behind Closed Doors, Big Tobacco Lures Policymakers into Corruption

On the surface, it is evident that when the tobacco industry meets with government officials behind closed doors and compels them to weaken or delay live-saving public health measures, the ensuing government action can be considered corruption. Thus, the tobacco industry's manipulation of policymakers has a corrupting influence.

Figure 1
The Policy Making Process and TI Interference



Courtesy: DR. Susan Mercado, WHO Western Pacific Regional Office

Though the most visible form of tobacco industry interference in policymaking is Big Tobacco's global "intimidation by litigation campaign," where it sues governments like Thailand that are enacting bold health measures, it certainly isn't the only form of interference.

Because the industry has a direct conflict of interest with public health and because of its history of undermining public health measures, all attempts to influence policy outcomes for the benefit of its bottom line and at the expense of public health and public trust in governments – whether through lobbying, creating financial or other relationships, or partnering with governments - can be considered to have a corrupting influence on decision-makers.

Most forms of corrupting activities are more clandestine. When the tobacco industry offers to draft legislation or lobbies decision-makers, it happens behind

closed doors – it has to operate clandestinely in order to influence. This lack of transparency amounts to corruption.

These clandestine forms of interference can be much more effective for the industry than litigation. It is these tactics that are fomenting corrupt practices within governments.

The case study below from Indonesia describes a typical case of corruption as a result of tobacco industry interference.

I. Indonesia’s Disappearing Tobacco Clause – Interference in Policymaking

In 2009, a critical clause identifying tobacco as an addictive substance mysteriously disappeared from the text of the Indonesian National Health Bill. “The bill that passed the Parliament on September 14th defined tobacco as an addictive substance, but that clause on tobacco was deleted in the version of the bill that was sent by Parliament to the President’s Office for signature.”⁷ The influence of the tobacco lobby was suspected to be the cause.

Ribka Tjiptaning (then deputy chairwoman of the Democratic Party of Struggle) and Asiah Salekan (lawmaker from Golkar Party) said that the commission received last-minute appeals from the Indonesian Tobacco Farmers’ Association, the Central Java Regional Representatives Council and the District Legislative Councils Association objecting to the tobacco clause.

On the basis of these tobacco industry front groups’ appeals, Ribka issued a written order to the House Secretariat’s office to remove the ‘tobacco is an addictive substance’ clause. Ribka later purportedly said it required further consultations with other lawmakers. When the Indonesian Tobacco Control Network picked up on this, it created the anti-corruption group KAKAR and raised awareness of the issue, fighting to have the clause included again. Ribka and two of her colleagues were reported to the national police, but the case was dropped “because it’s not categorized as a crime.”⁸

According to an inside source, who had previously lobbied for the tobacco industry, this secret lobbying was why the tobacco clause disappeared from the bill.⁹

Ribka was finally sanctioned for her role in this scandal when the House of Representatives Ethics Council found her guilty of attempting to erase the clause. The Council has barred her from chairing any special committee or working committee until her term ends in 2014.¹⁰

Kartono Muhammad, chairman of the coalition also known as Kakar, said the group had learned that the House’s Ethics Council, which conducted investigations into the deletion of the clause, had found “indications” it had been removed deliberately. “We are more certain than ever that there was a systematic effort to purposely omit the article from the health bill.”

*From the Jakarta Globe
Jan 27, 2010*

List of Corrupt Practices Fueled by Tobacco Industry Interference:

Corruption in the context of tobacco control ranges the gamut of tobacco industry interference tactics fueling dishonest or fraudulent conduct by those in power. The common understanding of corruption typically involves some form of bribery but, in fact, it can include many more subtle variations. For example:

- a. Giving preferential treatment to the tobacco industry;
- b. Accepting political contributions from the tobacco industry;
- c. Permitting involvement in policymaking of government officials with conflicts of interest due to prior employment by the tobacco industry;
- d. Accommodating requests from the industry for postponement of compliance with regulations;
- e. Failing to institute a code of conduct for interactions of public and government officials or all agencies and branches of government with the tobacco industry;
- f. Permitting the tobacco industry to participate in or even dictate policy development and decision-making;
- g. Meeting and interacting with the tobacco industry unnecessarily and without public disclosure or transparency;
- h. Entering into non-binding or non-enforceable agreements with the tobacco industry;
- i. Failing to require that information provided by the tobacco industry be transparent and accurate;
- j. Accepting money for tobacco industry corporate social responsibility programs;

All of these activities are instigated by the tobacco industry, are designed to manipulate policymakers, and usually lead to weakened, delayed, or blocked public health policies. The case of the Sin Tax in the Philippines is a good example of a subtle variation of corrupt activity and what it can lead to.

Philippines Sin Tax – Conflicts of Interest and Lack of Transparency

On December 2012, the Philippines signed Republic Act No. 10351 or the Sin Tax Law, instituting much needed reforms that had failed to pass for 16 years. With such an important measure for public health, the tobacco industry employed several strategies to block or water down the law. The tobacco industry held meetings with legislators, participated in hearings in Congress, released false and/or misleading information, invested in a strong media campaign against the policy, and used tobacco farmers to influence legislators to support their position.

One of the well-known strategies of the tobacco industry is to influence policymakers, particularly those holding prominent positions. After proposing a tobacco control policy that bore a strong resemblance to the recommendations of Philip Morris Fortune Tobacco Corporation (PMFTC),¹¹ Senator Ralph Recto, former

Chairman of the Senate Ways and Means Committee, was forced to resign¹² from his position amid accusations of having held secret meetings with the tobacco industry.¹³ Interestingly, Philip Morris invested a \$300-million manufacturing plant in Batangas, the province of Sen. Recto, prompting tobacco control advocates to criticize the position of Recto and accuse him of conflict of interest.

Senator Recto's policy, a sin tax bill on alcohol and tobacco, was supported by British American Tobacco (BAT)¹⁴ and parroted standard industry arguments on tax and illicit trade. After his resignation, Recto said he wanted to hear from "stakeholders" and saw no problem with meeting with the industry's lobbying group¹⁵, said to be the strongest in Asia¹⁶. This attitude is a true testament to the strength of the Philippine tobacco lobby and highlights the need for awareness-raising among lawmakers, in line with Article 5.3 guidelines, about the threat that the tobacco industry poses to the integrity of public health policies.

General Corruption Indicators

I. Transparency International's Corruption Perception Index

Transparency International defines corruption as "the abuse of entrusted power for private gain" and grand corruption as "acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good."¹⁷ Transparency International's Corruption Perceptions Index ranks countries "by their perceived levels of corruption, as determined by expert assessments and opinion surveys."¹⁸ It is a composite index drawing on corruption-related data from a variety of institutions that determines the degree to which corruption is perceived to exist among public officials and politicians.

The indicators used to measure corruption are closely related to the guidelines set forth to help implement Article 5.3 by safeguarding tobacco control and public health from the interests of the tobacco industry.

Reputation Index

In 2011, to further confirm the qualification of tobacco industry interference in public health and tobacco control policymaking as corruption, a survey of 85,000 international respondents showed that the tobacco industry ranked lowest for reputation among all industry categories – well behind any others. The study, conducted by the independent Reputation Institute, the world leading reputation consulting firm, and the Institute's Australian Research Partner, AMR Australia, rated all major industries in 25 categories for reputation. By far the worst performing category was tobacco, which rated a score of only 50.1 – well behind the next lowest category (utilities – 59).¹

Based on extrapolation of the data available,¹⁹ some of these measures of corruption that are specifically related to tobacco control measures are as follows:

Transparency Indicator	Requirements
Transparency of dealings and decision-making	<ul style="list-style-type: none"> • Public access to information • Media scrutiny of governmental activities
Conflicts of interest of government officials	<ul style="list-style-type: none"> • Personal relations with industry executives, representatives • Vested interests, such as investments in the industry
The existence of codes of conduct	<ul style="list-style-type: none"> • Should protect against conflicts of interest
Financial oversight	<ul style="list-style-type: none"> • Regulation of political financing • Auditing of spending by an independent auditing body • Transparent public procurement

Countries with Existing Anti-Corruption Laws

In a review of anti-corruption laws in Asia Pacific countries,²⁰ almost all ASEAN countries have in place a legal framework to protect against corruption (see table below). This means that the groundwork is already laid for these countries to simply update their current laws to protect against tobacco industry interference in line with Article 5.3.

However, the existence of these laws alone is not sufficient to protect against the tobacco industry manipulation of policymakers. The Indonesia and Philippines case studies demonstrate that additional action to modify these laws is needed by governments in order to address the tobacco industry's corrupting influence. SEATCA has also created a tobacco industry interference index that demonstrates that ASEAN countries are experiencing high levels of tobacco industry interference in public health policymaking. It is clear that urgent action is needed.

Country	Anti-Corruption Law Already in Place
Brunei	<ul style="list-style-type: none"> • Prevention of Corruption Act of 1984, revised Sept 15, 2002²¹ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit: Part III, Sec. 6 ○ Bribery: Part III, Sec. 10 and 11
Cambodia	<ul style="list-style-type: none"> • Cambodia Law on Anti-Corruption, NS/RKM/0410/004, April 19, 2010.²² <ul style="list-style-type: none"> ○ Interest/financial disclosure: Chapter 4, Articles 17-20 ○ Bribery: Chapter 6, Articles 33 & 34: Bribes to Foreign Public Officials or Officials of Public Int'l Orgs

Indonesia	<ul style="list-style-type: none"> • Indonesia Law on the Commission to Eradicate Criminal Act of Corruption, Revised February 2012²³ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit: Chapter II, Article 3 • Indonesia Amendment to Law No. 31/1999 on Corruption Eradication, Law No. 20/2001 dated November 21, 2001²⁴ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit: Articles 5.1, 5.2 • Penal Code of Indonesia²⁵ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit, Bribery: Articles 209, 210, 418, 419
Laos	<ul style="list-style-type: none"> • Decree of the President of the Lao People’s Democratic Republic On the Promulgation of the Law on Anti-Corruption, May 25, 2005²⁶ <ul style="list-style-type: none"> ○ Bribery: Chapter 2, Article 10
Malaysia	<ul style="list-style-type: none"> • Laws of Malaysia Act 694, Malaysian Anti-Corruption Commission Act 2009²⁷ <ul style="list-style-type: none"> ○ Bribery: Part IV, Sections 16-21
Philippines	<ul style="list-style-type: none"> • Philippine’s Act No. 3019, Anti-Graft and Corrupt Practices Act, August 17, 1960²⁸ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit, Bribery: Section 3
Singapore	<ul style="list-style-type: none"> • Republic of Singapore Prevention of Corruption (Amendment) Act 2002, October 31, 2002²⁹
Thailand	<ul style="list-style-type: none"> • Overview³⁰ • Anti-Money Laundering Act of B.E. 2542^{31,32} • Thailand Organic Act on Counter Corruption, B.E. 2542 (1999)³³ <ul style="list-style-type: none"> ○ Financial disclosure: Chapter III, Part I & II ○ Conflict of interest: Chapter IX, Sect. 100-103 • Thailand Criminal Code (1956)³⁴ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit, bribery: Chapter 1 & 2
Vietnam	<ul style="list-style-type: none"> • Vietnam Order No. 26/2005/L-CTN of December 9, 2005, On the Promulgation of Law, Anti-corruption Law, November 29, 2005³⁵ <ul style="list-style-type: none"> ○ Protecting against policy manipulation for profit, bribery: ○ Transparency: Chapter II, Section 1 ○ Code of Conduct: Chapter II, Section 3 ○ Financial disclosure: Chapter II, Section 4

What does Article 5.3 Require?

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control requires that “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry.”³⁶

According to Campaign for Tobacco-Free Kids, “relevant good governance measures, such as the United Nations General Assembly’s International Code of Conduct for Public Officials, the United Nations Convention against Corruption, various Organization for Economic Cooperation and Development Principles and Recommendations, and measures adopted domestically to implement these instruments, can be used to implement Article 5.3 where they align with Article 5.3 and the Guidelines. Where they do not, these measures still can provide guidance for drafting Article 5.3-specific measures since they share some common objectives with Article 5.3. Domestic laws addressing the right to information, lobbying, political contributions, and other Article 5.3-relevant topics also can be used in these ways.”¹

It acts as a roadmap for governments to update existing anti-corruption measures in order to protect against tobacco industry interference.

The eight principles in the Guidelines of Article 5.3 was formulated based on prior evidence of tobacco industry tactics to undermine policymaking. As such, the recommendations under each principle in the guidelines are designed to safeguard the policymaking process from a specific tactic.

The recommendations are based on good governance and anti-corruption measures that have been directed specifically to the tobacco industry. These measures are designed to isolate corrupting influences from policymakers and increase transparency: the core tenets of good governance policies, as we see in Transparency International’s corruption index indicators.

Campaign for Tobacco-Free Kids makes the case for why the tobacco industry deserves special attention when it comes to good governance policies: “isolation and transparency are required [for the tobacco industry] because of the fundamental and irreconcilable conflict of interest between the goals of tobacco control and those of the tobacco industry, arising from the inherently deadly nature of tobacco products. The tobacco industry’s longstanding and relentless actions to subvert effective tobacco control policies also demonstrate the need for isolation and transparency.”³⁷

In essence, effective implementation of Article 5.3 rests on the effective isolation of tobacco control and public health policy measures from the influence and interference of the tobacco industry. It also serves to ensure transparency in the operations and actions of governments and of the industry and of their interactions, where permitted, to avoid corruption or the appearance thereof.³⁸

Article 5.3 in the Good Governance and Anti-Corruption Context

Article 5.3 is one of many good governance or anti-corruption measures. As such, it addresses the core problem faced by tobacco control – the influence and

interference of the tobacco industry in public health policy – by requiring transparency of governments and of the industry in order to avoid corruption.

Like other good governance measures, Article 5.3 of the WHO FCTC can easily be understood in the context of an anti-corruption law.

Similarities between Corruption Indicators and Corruption Intended to be Prevented by Implementation of Article 5.3 Guidelines

Elements in common among anti-corruption laws and Article 5.3 include transparency measures, issues of access to information and conflicts of interest, among others.

Corruption Indicators	Article 5.3 Guidelines
Protecting against policy manipulation for profit	Safeguarding public health policymaking from tobacco industry
Public access to information	Tobacco industry should release information to government
Transparency of dealings and decision-making	Interactions between tobacco industry and gov'ts should be transparent
Lobbying and interest disclosure	Government officials disclose conflicts of interest, lobbying register
Codes of conduct through which conflicts of interest can be avoided	A code of conduct should be established that dictates the terms of interactions between government officials and the tobacco industry.
Bribing/financial disclosure	Government officials should not take money from or invest in the tobacco industry.

Article 5.3 is an Anti-Corruption Measure and Should be Included in National Anti-Corruption and Good Governance Laws

These guidelines isolate and nullify the tobacco industry's corrupting influence and bring its activities out into the open to allow for public scrutiny. This public scrutiny delegitimizes the tobacco industry in the public eye and discourages future collusion between policymakers and the tobacco industry.

Parties in several regions around the world have incorporated the obligation to protect health policies from tobacco industry interference into their national laws and regulations. Among these are Djibouti,³⁹ Honduras,⁴⁰ Kenya,⁴¹ Mongolia,⁴² Panama⁴³ and the Philippines.⁴⁴

Given the framing of Article 5.3 as an anti-corruption measure, State Parties to the FCTC can implement Article 5.3 using existing anti-corruption legislation. Though methods for doing so vary, one effective means of ensuring enforcement of such policies is to attach the recommendations from the Article 5.3 guidelines to anti-corruption laws already in place.

This has dual benefits. First, updating laws is much easier politically than passing new ones. Second, a monitoring and enforcement body already exists. The new policies can be administered and enforced by the anti-corruption agency already tasked with oversight and enforcement of the existing or upcoming anti-corruption law.

A clear example of this would be an ethical code of conduct. Many countries already have ethical codes of conduct for their employees. If employees violate these codes of conduct, there are sanctions or penalties that are usually overseen by an Ombudsman. In order to incorporate Article 5.3's requirements, this code of conduct would need to be specifically updated to include its recommendations around preventing conflicts of interest among employees with the tobacco industry, interactions between the industry and government employees, and not taking money or gifts from the tobacco industry.

Tobacco Companies Use Ethics and Transparency Groups to Repair Their Image

The screenshot shows the 'Awards and recognition' page for British American Tobacco. The page is structured as follows:

- Navigation:** ABOUT US, TOBACCO AND OUR PRODUCTS, CONSUMERS AND TRADE, SUSTAINABILITY, HEALTH AND SCIENCE, INVESTORS, MEDIA, CAREERS.
- Breadcrumbs:** Home > About us > Awards and recognition
- Section Header:** Awards and recognition
- Text:** The following is a selection of awards and recognition received by British American Tobacco p.l.c.
- 2013 Awards:**
 - CorporateRegister.com:** Our 2011 Sustainability Report received notable recognition at the annual Corporate Register Reporting Awards (CRRA), achieving top ten global ranking in four of the nine categories: 8th for Best Report, 4th for Relevance & Materiality, 10th for Openness & Honesty, 7th for Credibility through Assurance.
- 2012 Awards:**
 - Dow Jones Sustainability Indexes:** Selected for the 11th successive year in the 2012 Dow Jones Sustainability Indexes, scored on economic, social and environmental performance.
 - TRANSPARENCY INTERNATIONAL UK:** Ranked in the top 25 per cent of companies in Transparency International's 'Transparency in Corporate Reporting: Assessing the World's Largest Companies' study. British American Tobacco were awarded a score of 6.1 out of 10, placing us 23rd out of 105 companies. We scored 81 per cent in anti-corruption reporting and 100 per cent in organisational transparency.
- Right Sidebar:**
 - Share this page
 - See also: Environment, Corporate social investment, Sustainable tobacco farming
 - Who We Are 2013: Includes a photo of a person and text: 'Who We Are is the Group's corporate brochure. It tells the story of our business and makes known our views on the key issues that affect our industry.'
 - Who We Are (3.1 mb)

Ethical Corporation, organisers of the Ethical Corporation Asia 2004 conference in Hong Kong, had announced Philip Morris was a 'Gold Sponsor' and BAT a speaker and then dropped them after receiving protests from prominent ethicists around the world and several conference speakers withdraw their participation.⁴⁵

Since tobacco companies have such a damaged reputation, they try to restore their image by getting endorsements from groups working on transparency and ethical

issues by plugging into their activities and reports. BAT promotes its “recognition” by Transparency International in 2012. It is clear from BAT’s website that the “recognition” plays right into its corporate social responsibility strategy. This, in turn, gives the industry space to argue for a seat at the policymaking table.

The transparency and ethics community needs to consider the benefits of isolating the tobacco industry from its normal ranking systems. It also should update its policies around corporate contributions to exclude the tobacco industry.

Case studies

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.⁴⁶

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 issued a circular, Order No.6/2012, restricting 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.

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 by the tobacco industry.

Thailand

Thailand has a similar policy on the tobacco industry for their 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)

Conclusion and recommendations

National anti-corruption laws present an opportunity to strengthen the implementation and enforcement of Article 5.3 provisions, in accordance with the guidelines. Anti-corruption laws apply broadly to government officials across agencies as well as to other public health policy measures beyond tobacco control.

There are clear benefits to framing tobacco industry interference as corruption and Article 5.3 as an anti-corruption measure. Article 5.3 is the strongest tool to neutralize the tobacco industry and stop corruption. The Philippines is an example of a country that has paved the way by instituting concrete measures, but more work needs to be done. Parties to the FCTC and other countries should consider implementation of Article 5.3 via existing or forthcoming anti-corruption measures with built-in enforcement mechanisms.

- The tobacco industry's tactics to undermine public health measures lead to corruption.
- FCTC Article 5.3's focus on transparency and isolation of the corrupting influence of the tobacco industry makes it an anti-corruption and good governance policy.
- 9 out of 10 ASEAN countries already have anti-corruption measures. Thus the legal framework is already in place to implement many aspects of Article 5.3 Guidelines and these should be utilised.
- Governments need to update their existing anti-corruption measures in order to effectively protect public health policies from the tobacco industry.
- The national anti-corruption agencies of countries need to collaborate actively with departments of health to explore ways to halt tobacco industry interference.
- The transparency community should not take contributions from the tobacco industry and should exclude the tobacco industry from its current rating systems.

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