PREVENTING TOBACCO INDUSTRY INTERFERENCE

A Toolkit for Policy Makers and Advocates
based on the Guidelines for the Implementation of Article 5.3 of the
WHO Framework Convention on Tobacco Control (WHO FCTC Article 5.3)

Avoid conflict of interest
Transparency
Accountability
Raise Awareness
Denormalize so-called TI CSR

Health Justice
PHILIPPINES
Toolkit for Policy Makers and Advocates

Preventing Tobacco Industry Interference

Based on the Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC Article 5.3)
ABBREVIATIONS

Association of Southeast Asian Nations - ASEAN
Civil Service Commission - CSC
Conference of the Parties - COP
corporate social responsibility - CSR
Department of Health - DOH
Department of Interior and Local Government - DILG
Department of Science and Technology - DOST
Framework Convention on Tobacco Control - FCTC
local government unit - LGU
National Housing Authority - NHA
non-government organization - NGO
tobacco industry - TI
UN Convention Against Corruption - UNCAC
World Health Assembly - WHA
World Health Organization - WHO

AUTHOR

Atty. Deborah Sy, Executive Director, Health Justice

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Dr. Caleb Otto, former senator, Republic of Palau
Atty. Alexander Padilla, Undersecretary, Department of Health, Philippines
Commissioner Mary Ann Mendoza, Civil Service Commission, Philippines
Dr. Prakit Vathesatogkit, Secretary-General, Action on Smoking and Health Thailand
Ms. Bungon Ritthiphakdee, Director, SEATCA
Dr. Mary Assunta Kolandai, Senior Policy Advisor, SEATCA
Dr. Ulysses Dorotheo, SITT Project Director, SEATCA
Ms. Tan Yen Lian, Manager, Knowledge and Information, SEATCA

PHOTO CREDITS

Dr. Ulysses Dorotheo
Ms. Tan Yen Lian
Ms. Bianca Pascual
Photoxpress.com
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Foreword

Tobacco kills over 5 million people annually. By 2030, the death toll could reach 8 million, 80% of whom will be in low and middle-income countries. In response to this growing epidemic, the World Health Assembly unanimously adopted the WHO Framework Convention on Tobacco Control (FCTC), which came into force in February 2005. Its objective is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.

Predictably, the FCTC has come under attack by the tobacco industry, which continues to use its political and economic influence to prevent and undermine effective government regulation, thus posing the single greatest threat to implementation of the FCTC’s lifesaving measures.

Article 5.3 of the treaty obligates ratifying countries (171 Parties as of 11 November 2010) to protect their health policies from tobacco industry interference. The Article 5.3 Guidelines, unanimously adopted by State Parties in 2008, begin by recognizing the tobacco industry’s fundamental and irreconcilable conflict with public health, and follow with concrete policy recommendations. This toolkit is meant to be an aid to government officials, to facilitate understanding and to create more tangible steps in implementing FCTC Article 5.3.

This document would not have been possible without the contributions of Dr. Caleb Otto (Palau), Undersecretary Alexander Padilla (Philippines), and Dr. Prakit Vathesatogkit (Thailand), who were instrumental in the development of the FCTC Article 5.3 Guidelines. I am also grateful to the SEATCA team for their valuable reviews and editorial work in finalizing this document.

Deborah Sy
I. INTRODUCTION

Purpose of this Toolkit

This Toolkit for Policy Makers and Advocates for Preventing Tobacco Industry Interference presents a range of issues, policy options, and considerations that each State needs to take into account when implementing Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).

The success of the business of the tobacco industry depends on the continued patronage of its products by the public. The end goal of tobacco control policies, which is to lower consumption of tobacco products, is directly opposed to the business interests of the industry. Hence, it can be expected that the tobacco industry will stop at nothing to prevent effective tobacco control policies.

In 2001, the World Health Assembly (WHA) unanimously adopted Resolution 54.18 in response to the evidence that the tobacco industry has been subverting the position and the role of governments and WHO to promote health by reducing tobacco consumption. The said resolution urges members to be alert to any efforts by the tobacco industry to continue its subversive practices.

The WHO Framework Convention on Tobacco Control (hereafter FCTC) recognizes that tobacco industry interference poses the single greatest threat to tobacco control. It has been documented that the tobacco industry has used strategies to subvert, hinder and prevent tobacco control efforts. Hence, one of the General Obligations under the FCTC is Article 5.3. It is a key provision aimed at protecting public health policies from interference by the tobacco industry.

Tobacco industry interference undermines effective tobacco control programs and policies. Thus, Article 5.3 is a necessary element of the FCTC, not only to protect against tobacco industry interference, but also to facilitate implementation of other articles of the FCTC.
Toolkit Usage Guide

This Toolkit serves as a practical starting point for those involved in implementing FCTC Article 5.3. Policymakers, tobacco control advocates, and other persons responsible for promoting or implementing tobacco control and/or transparency and accountability in government will find it useful.

Basic Framework

This toolkit utilizes a basic framework to analyze what needs to be done based on the Recommendations listed in the Article 5.3 Guidelines. To provide further clarification on how these recommendations came about and what their implementation would entail, this toolkit will provide some tools for each of the recommendations.

<table>
<thead>
<tr>
<th>THIS GUIDE IS NOT</th>
<th>THIS GUIDE IS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A one-size fits all model</td>
<td>• A generic model that can be customized to reflect a country’s unique environment</td>
</tr>
<tr>
<td>• A mandatory document</td>
<td>• A starting point and a tool for self-assessment</td>
</tr>
<tr>
<td>• Intended to provide all the answers</td>
<td>• A prompt on the issues to consider</td>
</tr>
</tbody>
</table>

Elements of the Toolkit

The toolkit provides guidance to the drafting groups and policy makers by providing questions that prompt discussion and broader understanding of the issue.

Signs of Success to determine the gaps, objectives, possible strategies and areas for improvement. This will help in developing a firm action plan.

Questions are listed under the Quick Self-Tests. These will help the reader in reflecting on the key strengths and weaknesses of existing policies and will serve as prompts for FCTC Article 5.3 priority areas for implementation. Note that not all questions will be relevant to each country’s situation.

Checklists are also provided to assist in ensuring the comprehensiveness of the plans to implement FCTC Article 5.3.

Finally, essential features of the policy drafts are discussed under the section on Templates to give policy makers a range of policy options to prioritize.

After going through the Quick Self-Test, compare the current situation with the target or...
II. FCTC ARTICLE 5.3 GUIDELINES

GUIDING PRINCIPLES

With the adoption of the Guidelines for the Implementation of FCTC Article 5.3 (Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry) by the FCTC Parties in 2008, the international community specified underlying principles in relation to protecting public health policies from the commercial and vested interests of the tobacco industry.

The guiding principles adopted by the Parties to the FCTC are as follows.

1. There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and public health policy interests.
   This conflict of interest principle reflects the unanimous recognition by different countries of the fact that the business of the tobacco industry contributes greatly to diseases, death, and other social ills, including increasing poverty. Because of this conflict of interest, governments must protect the setting and implementation of public health policies from any interference by the tobacco industry to the greatest extent possible. The words “fundamental and irreconcilable” emphasize that this is one principle that leaves no room for compromise, not even when the tobacco industry happens to be State-owned.

2. Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
   This principle underscores the need for transparency and accountability measures to govern how governments, its agencies, personnel, and agents interact with the tobacco industry. The Guidelines also encourage the regional organizations or regional economic integrations such as the Association of South East Asian Nations (ASEAN) to adopt the principles and policies embodied therein.

3. Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
   In order to effectively implement Article 5.3, governments must require the tobacco industry to submit specific information that will eliminate industry activities to undermine tobacco control and that will assist in the setting and implementation of tobacco control measures. In addition, the tobacco industry must be made accountable for its actions and for the information it provides.

4. Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.
   Governments providing preferential treatment or incentives to the tobacco industry would invariably be protecting and promoting interests that are diametrically opposed to those of public health.
RECOMMENDATIONS TO IMPLEMENT
ARTICLE 5.3

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

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

According to the Guidelines, each Party should:

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

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

*Recommended action:* Raise awareness about the addictive and harmful nature of tobacco products and about who the tobacco industry is and how they have interfered and continue to interfere.

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

*Challenge:* Some tobacco industry and government interactions are necessary, many are not.

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

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

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

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

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

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

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

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

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

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

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

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

*Recommended action:* Denormalize so-called CSR by not partnering or participating in such activities and by disallowing any government agency from accepting tobacco industry contributions.
The table below illustrates challenges faced in relation to tobacco industry interference and the means to address them.

<table>
<thead>
<tr>
<th>CHALLENGES FACED</th>
<th>RECOMMENDATIONS UNDER THE ARTICLE 5.3 GUIDELINES TO ADDRESS THE CHALLENGES</th>
<th>POLICIES/PROGRAMS THAT MUST BE DEVELOPED OR ADOPTED</th>
<th>IMMEDIATE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of understanding of the past and present interference by the tobacco industry, including industry strategies and tactics</td>
<td>Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies</td>
<td>Programs and surveillance systems to raise awareness, explaining tobacco industry interference, and listing of tobacco industry players</td>
<td>Awareness-raising activities, including media action</td>
</tr>
<tr>
<td>The tobacco industry interacts with government</td>
<td>Avoid interactions unless strictly necessary</td>
<td>Code of Conduct and similar personnel policies State policies</td>
<td>Direct action based on existing laws governing public officials</td>
</tr>
<tr>
<td>The tobacco industry partners with and provides policy drafts to government</td>
<td>Do not partner with or accept policy drafts from the tobacco industry</td>
<td>Same as above</td>
<td>Same as above</td>
</tr>
<tr>
<td>The tobacco industry creates conflicts of interest for government officials</td>
<td>Do not accept contributions, gifts or invitations from the tobacco industry</td>
<td>Same as above</td>
<td>Same as above</td>
</tr>
<tr>
<td>The tobacco industry is not transparent</td>
<td>Require the tobacco industry to be transparent and accountable</td>
<td>Laws or rules regulating the tobacco industry (on transparency, information, privileges, and treatment)</td>
<td>Direct action based on existing laws regulating the tobacco industry, awareness-raising activities, including media exposure</td>
</tr>
<tr>
<td>The tobacco industry does so-called CSR to remove attention from the harmful effects of tobacco</td>
<td>Denormalize so-called CSR of the tobacco industry</td>
<td>Policies/programs for surveillance and enforcement systems</td>
<td>Direct action based on advertising laws, and awareness raising campaigns, including media exposure</td>
</tr>
<tr>
<td>The government gives exemptions or benefits to the tobacco industry</td>
<td>Do not give privileges or benefits to the tobacco industry</td>
<td>Laws prohibiting benefits to the tobacco industry</td>
<td>Review of government laws and contracts providing such benefits</td>
</tr>
<tr>
<td>Existence of State monopolies</td>
<td>Treat state monopolies the same way</td>
<td>Additional provision in the above cited policies to ensure that such policies apply equally to state monopolies</td>
<td>Encourage government to withdraw its investment in the tobacco business</td>
</tr>
</tbody>
</table>

(7) Do not give privileged treatment to tobacco companies.  
*Challenge:* Government gives incentives, exemptions, or benefits to the tobacco industry.  
*Recommended action:* Do not give privileges or benefits to the tobacco industry.

(8) Treat State-owned tobacco companies in the same way as any other tobacco industry.  
*Challenge:* Existence of state tobacco monopolies.  
*Recommended action:* Treat all companies, including State monopolies, the same way.
EXAMPLES OF TOBACCO INDUSTRY INTERFERENCE

To illustrate further, here are some of the tobacco industry’s more common tactics to undermine tobacco control activities and fight tobacco industry regulation.

In April 2009, Philip Morris and the Department of Environment and Natural Resources (DENR) of the Philippines signed a Declaration of Mutual Cooperation where Philip Morris donated trashcans with ashtrays to DENR to display in public places. Studies suggest that the presence of ashtrays encourage or remind people of smoking. Ironically, DENR is the agency in charge of implementing the Clean Air Act, which bans smoking in all indoor spaces.

Early in 2009, the Bureau of Internal Revenue (part of the Department of Finance of the Philippines) awarded the Billionaire’s Club Awards to Philip Morris as one of the highest taxpayers. Many other businesses have received the award but only Philip Morris’s award was widely publicized. This created the perception of partnership with the government.

In early 2009, Philip Morris approached the Philippine Bureau of Customs to sign a Memorandum of Agreement with the company regarding counterfeit cigarettes. The Customs officials were unaware that, at this time, the FCTC Illicit Trade Protocol Negotiations were ongoing and that State Parties had been asked to send representatives from the customs and law enforcement offices. Around this time, Philip Morris also offered their security marking system for possible adoption by the Philippine government.
Tobacco companies donate to schools and sponsor educational programs and school activities. This type of donation inevitably reaches the young, who are likely to form a positive impression or tolerant attitude toward tobacco use and tobacco companies.

More examples of tobacco industry interference

- In 2001, while the FCTC was still being negotiated, British American Tobacco (BAT), Philip Morris International (PMI), and Japan Tobacco International (JTI) jointly introduced guidelines, called the International Tobacco Products Marketing Standards (ITPMS). This was the industry’s global strategy to offer self-regulation and implicitly question the need for the treaty. Although the FCTC was adopted unanimously by Member States at the 56th World Health Assembly on May 21, 2003, the ITPMS was never withdrawn. It was still promoted by the industry thereby sending a message that governments can choose between the FCTC and the industry guidelines.

- In 2001, Lao Tobacco Limited, Inc. entered into a 25-year Investment License Agreement with the Lao PDR government that restricts tobacco excise tax rate to 15%, although the law stipulates a tax rate of 55%.

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

These examples of tobacco industry interference and more can be found in Tobacco Industry Interference in Health Policy in ASEAN Countries (2009), a SEATCA publication, available online at resources.seatca.org/Tobacco%20Industry%20Interference.pdf
# Tobacco Industry Practices and Motives

The tobacco industry has been identified as the principal vector of tobacco-related diseases. In order to successfully implement tobacco control policies, it is important to understand the motives and vested interests of the tobacco industry whenever it approaches government officials. The illustration below provides examples of some of the challenges that the Article 5.3 Guidelines seek to address with regard to tobacco industry motives and practices.

<table>
<thead>
<tr>
<th><strong>When the tobacco industry representative does this:</strong></th>
<th><strong>The ulterior motive is to:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lobbies or requests to be part of tobacco control task forces or committees</td>
<td>• Delay or derail the development, implementation, and enforcement of tobacco control policies</td>
</tr>
<tr>
<td>Submits position papers on policies and proposes alternative wordings</td>
<td>• Delay or derail the implementation of stricter laws against the industry</td>
</tr>
<tr>
<td>Appoints former prominent government officials as tobacco company board members</td>
<td>• Use the influence of government officials to lobby within the government</td>
</tr>
<tr>
<td>“Befriends” and invites public officials to scientific conferences or study tours</td>
<td>• Have allies within the government, buy their silence on anti-tobacco measures, or induce them to take a pro-tobacco industry position</td>
</tr>
<tr>
<td>Disseminates research papers about the harm of smoking and the viability of smoking rooms.</td>
<td>• Mislead people into thinking that there is a safe level of exposure to tobacco smoke and that the tobacco industry is concerned about it</td>
</tr>
<tr>
<td>Donates to universities or research institutes involved in cancer research.</td>
<td>• Use the credibility of universities and research institutions to legitimize the tobacco industry’s false claims and give the perception that it is concerned about cancer</td>
</tr>
<tr>
<td>Funds “youth smoking prevention” programs and donates money for environmental programs.</td>
<td>• Counteract tobacco control measures by advocating for ineffective youth smoking prevention programs and influence the perception of the public and media, project the tobacco industry as a good corporate citizen, and deflect issues relating to the harm of tobacco and the damage caused by the tobacco industry.</td>
</tr>
</tbody>
</table>
Quick Self-Test

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

IS YOUR AGENCY INVOLVED IN:

☐ The development or approval of policies, programs and projects that may be related to tobacco control?
☐ The development and/or implementation of health-related policies and programs?
☐ The protection of the welfare of vulnerable sectors where programs to protect vulnerable sectors include health component?
☐ The development or implementation of policies on tobacco taxes and/or licenses (e.g. collects taxes or fees on tobacco and related products or proposes measures that affect the rates of taxes, fees duties)?
☐ The collection of any type of information from tobacco companies?
☐ The development or implementation of government policies relating to the promotion of integrity, transparency and accountability of public officials?
☐ The enforcement of relevant laws or policies such as tobacco-regulation laws (e.g. smoking bans, advertising bans, tobacco smuggling, tax evasion), as well as laws that promote integrity, accountability and transparency of public officials and/or tobacco companies?

HAS YOUR AGENCY:

☐ Signed any contract with the tobacco industry?
☐ Accepted, supported or endorsed policy drafts from the tobacco industry?
☐ Given awards to the tobacco industry?
☐ Entered into partnerships or agreements with the tobacco industry?
☐ Received contributions from the tobacco industry?
☐ Given any privilege, incentives or benefits to the tobacco industry?
☐ Participated in tobacco industry’s “socially responsible” activities?
☐ Allowed any publicity of tobacco industry’s so-called “socially responsible” activities?
☐ Allowed interaction with the tobacco industry that is not strictly necessary for effective regulation?

☑ If you checked any of the above, then your agency could be a target of or used for tobacco industry interference.

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

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

It is often not enough to be aware of tobacco industry interference in government. Agencies should conduct regular self assessments to be aware of their capacity for complying with their Article 5.3 obligations. The questions below can help agencies assess their readiness and capacity to comply with their Article 5.3 obligations:

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

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

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

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

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

How can the State ensure the effective implementation of Article 5.3?

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

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

Given the constant change in the government environment and administration, maintaining the tobacco industry-resistant culture as an important part of everyday life poses an ongoing challenge.

To provide further clarification on how these recommendations came about and what their implementation would entail, this toolkit provides some tools for each of the recommendations.

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

1. RAISING AWARENESS
2. Developing POLICIES for the STATE that:
   (a) REJECT PARTNERSHIPS
   (b) REQUIRE INFORMATION, and
   (c) DON’T GIVE PRIVILEGED TREATMENT
3. Developing POLICIES for PUBLIC OFFICIALS that:
   (a) AVOID CONFLICTS OF INTEREST and
   (b) LIMIT INTERACTION
4. DENORMALIZING so-called CSR of tobacco companies
III. TRANSLATING FCTC ARTICLE 5.3 GUIDELINES INTO REALITY

What Governments Need to Do

ESTABLISH A CORE GROUP AND DEVELOP A PLAN

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

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

Because the scope of Article 5.3 is broad and reaches agencies and offices other than the Ministry of Health, it is critical to identify key champions that belong to the legislative branches and other government agencies. Often, government agencies are not aware of their role in tobacco control unless they form part of an Interagency Committee on Tobacco Control. However, it must be noted that the Article 5.3 Guidelines open an opportunity to welcome new members to the customary “interagency” tobacco control groups. This may include the Civil Service Agency or Ombudsman.

The multisectoral nature of the recommendations under the Article 5.3 Guidelines requires the Core Group to select strategic areas to pursue and prioritize. Each Recommendation suggests a list of measures that can be undertaken. Depending on the circumstances, some specific measures may need to be prioritized over the others. Measures under each Recommendation are listed on the next pages.

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**Government Agencies Targeted by the Tobacco Industry**

Global studies show a pattern as to the type of government bodies that the tobacco industry prefers to “target” or partner with due to their existing or potential role in tobacco control measures:

- Ministries or Departments of
  - Finance
  - Education
  - Culture
  - Customs
  - Social Welfare
  - Agriculture
  - Environment
  - Tobacco (Board)
- Congress or National Assemblies
- Local government units (LGUs)
- Semi-government agencies or commissions
Checklist for Developing a Strategy

Below are some steps that can be followed when developing a strategy to implement Article 5.3.

Developing a National Strategy
- Identify elements of government with interest in tobacco industry control.
- Identify a lead person or institution, as well as a focal point within each institution or participating organization, for each element in the national framework (e.g., codes of conduct, tobacco industry information regulations, etc.).
- Identify policy development fora and mechanisms that can be used to coordinate the activities of the government, the private sector, and civil society in the development of the national strategy.

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

Collaborating with Civil Society Organizations
- Include the civil society perspective in the development and implementation of strategies.
- Bring civil society groups together to address common interests.

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

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

Promoting a National Culture of Tobacco Industry Resistance
- Implement comprehensive awareness programs for all government personnel (include private sectors, when possible).
- Review and update existing policies with government personnel and stakeholders.
- Develop awareness of emerging issues to enhance a coordinated response to tobacco industry tactics.
- Implement a surveillance, monitoring, and reporting mechanism.
- Support outreach to private sectors to denormalize tobacco industry’s so-called CSR.
- Build the capacity of other units or agencies to replicate national efforts.
- Build, allocate and mobilize resources.
Case Study: Philippines

In July 2009, an Article 5.3 Committee was formally set up under the Department of Health (DOH) to develop implementation strategies to fulfill the obligations under Article 5.3 as elaborated by the Guidelines. The Committee is composed of DOH directors and high-level policy makers, high level representatives from the Civil Service Commission (CSC), Office of the President, as well as civil society and NGO representatives. The body meets monthly and has created a working group for Inter-agency Linkages, Policy Development and Communications.

The Inter Agency Linkages working group coordinates the meetings with key government agencies to ensure that Article 5.3 is implemented in these agencies.

The Policy Development working group focuses on developing strategies and policies required to promote a tobacco industry-resistant culture.

The Communications group develops tools, response mechanisms and IEC materials to raise awareness about tobacco industry interference. It has produced fact sheets, posters, and videos relating to Article 5.3. It also developed letter templates to enjoin agencies to reject donations from the tobacco industry.

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

In accordance with Article 5.3, the LTFRB “shall endeavor to partner with government agencies, civil society organizations, and the private sector, except those representing tobacco industry interests, in order to fully implement this memorandum circular.”

Successful Campaigns

No Smoking in PUVs

Effective 07 January 2010, the Land Transportation and Franchising Regulatory Board (LTFRB) has required that all Public Utility Vehicles (PUVs) and public land transportation terminals be 100% smoke free.

PUV drivers and operators are responsible for posting "No Smoking" signs in their vehicles and drivers are responsible for warning their passengers and co-workers against smoking inside PUVs.

In accordance with Article 5.3, the LTFRB “shall endeavor to
RECOMMENDATION 1

Raise awareness about the harmful nature of tobacco products and about tobacco industry interference in tobacco control policies

In order to achieve Recommendation 1, the government must take the lead to:

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

b. **Develop Materials** about tobacco industry interference and the governments obligations under Article 5.3. (e.g., FAQs, news articles, posters).

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

d. **Develop & Implement a Media Plan** to disseminate information about the harms of tobacco and tobacco industry interference. This should include publicizing actions taken to prevent tobacco industry interference such as letters to warn government agencies about interference.

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

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

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**Case Studies**

In **Thailand**, documents about the dishonesty and devious nature of the Tobacco Industry is translated into Thai language.

An **Australian** survey shows that the tobacco industry ranks among the “least trusted,” second only to a second-hand car dealer.

In the **Philippines**, the DOH is required to state in all its correspondence and issuances relating to tobacco control: “The Department of Health does not deal with the tobacco industry or those representing its interests.” All health personnel are required to publicly denounce any tobacco industry donation or perception of partnership.
Raising Awareness

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

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

One possible way to resolve this is to identify specific individuals, firms, or entities which are known to have tobacco industry interests, and have promoted these interests, and categorize them as part of the tobacco industry. This list must be disseminated throughout the government and relevant civil society sectors in order to ensure that government personnel are forewarned. After dissemination, it may be assumed that any acts favorable to the tobacco industry such as granting incentives or partnering with the tobacco industry may be considered to have been done knowingly.

Another category that needs to be defined are “those contributing to tobacco control policies.” Depending on how this is defined, this group may include some or practically all government agencies or personnel or local government.

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

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

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

In many cases, however, the list is longer. Hence, in codifying policies to protect public health interests from the tobacco industry, it is recommended that governments adopt a broad definition to cover all possible tobacco industry representations.
The Article 5.3 Guidelines apply to “setting and implementing Parties’ public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.”

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

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

**Broad definition of the “tobacco industry” supported by Parties to the FCTC**

The technical definition of “tobacco industry” in the FCTC is limited to “tobacco manufacturers, wholesale distributors and importers of tobacco products.” However, the 168 countries that have ratified the FCTC have adopted broader definitions of “tobacco industry” for purposes of making all responsible entities accountable.

For instance, the Guidelines to the Implementation of Article 13 (Tobacco Advertising, Promotions and Sponsorships) have identified more entities that can be held accountable because they are likely to promote tobacco industry interests in marketing tobacco products.

These include:

- Tobacco retailers and their agents and associations.
- Persons or entities that produce or publish content (e.g. advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, and Internet, mobile phone, satellite and game content producers).

- Any entity that makes any relevant form of contribution, those that receive any relevant form of contribution and any intermediaries that facilitate the making or receiving of a relevant form of contribution.
- Persons or entities, for example media and event organizers, sports-people, celebrities, film stars and other artists, who should be banned from engaging in tobacco advertising, promotion and sponsorship.

When defining conflicts of interests, the tobacco industry includes the potential contractors or tenderers with tobacco industry interests. Needless to say, any entity or person, when promoting or representing the interests of the tobacco manufacturers, wholesalers and distributors, are also included in the broad definition of “tobacco industry” for purposes of implementing Article 5.3.
Quick Self-Test

Defining which agencies contribute to tobacco control sets in motion the recommendations provided in the Article 5.3 Guidelines. Find out if your agency is one which needs to be vigilant in its compliance with the Article 5.3 obligations. This process can be skipped if the Article 5.3 Recommendations apply to all agencies.

DOES YOUR AGENCY ENGAGE IN THE FOLLOWING TOBACCO CONTROL MEASURES?

- Sets and/or implements health-related policies and programs.
- Develops or approves policies, programs and projects that may be related to the regulation of tobacco companies through the passage of legislation, or issuance of orders and opinions (e.g., secure marking systems; taxation; anti-smuggling measures; ban on advertising, promotions, and sponsorships; tobacco industry interference; packaging; education campaigns, etc.).
- Proposes measures that affect the rates of taxes, fees, and duties and sets or implements policies on tobacco taxes, import quotas, licenses (e.g. collects taxes, duties, or fees on tobacco and related products).
- Protects the welfare of vulnerable sectors by including a health component in programs to protect vulnerable sectors.
- Regulates, directly or indirectly, tobacco products, tobacco companies and/or its activities (promotions, advertising, packaging, product content).
- Collects any type of information from tobacco companies.
- Sets or implements policies relating to the promotion of integrity, transparency and accountability.
- Enforces relevant laws or policies related to tobacco-regulation laws such as smoking bans, advertising bans, tobacco smuggling, tax evasion, as well as laws that promote integrity, accountability and transparency.
- Prosecutes or adjudicates cases relating to tobacco companies and their liability.
- Sets or implements national strategies for alleviation of poverty and other tobacco-influenced targets of the UN Millennium Development Goals.
Quick Self-Test

Does your agency implement public awareness raising programs? Find out by answering the questions below:

DOES YOUR AGENCY CONDUCT ANY OF THE FOLLOWING ACTIVITIES?

☑ Continuously and consistently raises awareness of Article 5.3 policies.

☑ Informs and educates all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry.

☑ Raises awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.

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

☑ Collects and exchanges knowledge and experience among pertinent agencies with respect to tobacco industry practices.

☑ Monitors compliance with tobacco industry interference policies and Article 5.3 and support the exchange of information to promote international cooperation in accordance with the FCTC.

☑ Engages the support of NGOs and other members of civil society (not affiliated with the tobacco industry) in monitoring compliance with policies and tobacco industry activities.
RECOMMENDATIONS 2 to 4

2. Establish measures to limit interaction
3. Reject partnerships and agreements
4. Avoid conflicts of interest for government officials and employees

Implementing these three Recommendations go hand in hand. To achieve these recommendations, the government must first ensure that awareness had been raised among target groups in charge of establishing measures and policies in line with these recommendations. It also requires that alliances and champions have been identified to:

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

(b) Develop and Implement an action plan and process on how to reject interactions, partnerships/ contributions/ agreements or offers of the same made by the tobacco industry,

(c) Establish a process for divestment of tobacco industry interests, incorporate a “no tobacco industry relationship” clause in contracts, adopt transparency measures during necessary meetings, and integrate safeguards in codes of conduct and anti-corruption programs,

(d) Adopt personnel and hiring policies consistent with preventing conflicts of interests,

(e) Identify the proper authority to monitor and enforce the policies.

Case Studies

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

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

Article 5.3 Recommendations

What is the role of the Government in implementing tobacco control? How can conflicts of interest be avoided?

Basic Framework

The first part of this section discusses how all agencies play a direct or indirect part in setting and implementing tobacco control strategies and programs and helps agencies assess their involvement in policy development, implementation, and enforcement.

The second part focuses on how government agencies can avoid conflicts of interest by providing a template of codes of conduct for government personnel to govern their interactions with the tobacco industry.

Elements

The previous section contained Quick Self-Tests to allow government agencies to determine if they play a direct, indirect, remote, or central role in tobacco control. However, it is important to stress that all government agencies, unless they provide specialized and limited functions, have some level of contribution to tobacco control or at least a potential to contribute to it. Thus, the Article 5.3 Guidelines apply to all government agencies.

This section provides another Quick Self-Test to determine the degree to which government agencies engage in the policy making process, and provides policy models that, if observed, will reflect compliance with Article 5.3.

The second part of this Section focuses on checklists for government personnel. It discusses the International Code of Conduct for Public Officials adopted by the UN General Assembly and provides guidelines on how Codes of Conduct can be modified to ensure compliance with the Article 5.3 Guidelines. These standards include provisions on:

- Accountability
- Declaration of interests
- Sustained awareness-raising efforts
- Enforcement

It also discusses other personnel policies that may be necessary to prevent tobacco industry interference in key government agencies that set or implement tobacco control policies.
Government Roles in Setting and Implementing Tobacco Control Policies

The FCTC has expanded the traditional view of “public health policies related to tobacco control” to include specific measures that are not often included in the mandate of government health agencies. According to the FCTC, education, product regulation, tax, tobacco smuggling, alternative crops and livelihood, transparency, among others, have an impact on public health policies with respect to tobacco. Thus, all agencies in charge of the above fields now have distinct roles in tobacco control and are bound to protect public health policies from tobacco industry interference.

To illustrate: in many cultures, tax is not viewed as a public health measure; however, since the FCTC has included this as a primary tobacco control measure in the public health treaty, governments are now obliged to recognize tobacco taxation not only as a revenue measure but also as a public health measure. The power to tax is not normally vested in the ministry of health’s scope of authority. This emphasizes the need to recognize the other government agencies’ roles in setting tobacco control policies.

Setting Policies
Legislative bodies of government generally have the authority to set policies or pass laws related to tobacco control. Legislative bodies can also be the key to the adoption of a comprehensive Article 5.3 Implementation Law that can include all the recommendations under the Guidelines. Because of their role in tobacco control, there needs to be a specific emphasis on protecting legislators from the influence of the tobacco industry. In fact, the internal documents of the tobacco industry show that legislators are the prime targets of tobacco industry interference. In many countries, legislators are elected officials. Thus, the Article 5.3 Guidelines recommend the prohibition of contributions to political parties to prevent the tobacco industry from influencing elected officials and their election.

The judiciary also has a role in looking into tobacco control policies through its rulings and decisions relating to controversies involving the tobacco industry. But the more apparent role belongs to specialized government agencies like Ministry of Health and Departments of Tax and Customs, and other agencies that the FCTC clearly addresses as “competent authorities” to set policies relating to tobacco control.

In addition, there are also agencies whose primary mandates are to protect specific marginalized population or sectors. These are also endowed with the function to promote the health of such sectors, such that they also have a strong role in setting tobacco control policies. These include the agencies responsible for the welfare of women, children, the urban poor, indigenous peoples, the elderly, people with disabilities, or members of the
labor sector. It is possible that the charters or enabling laws of these agencies authorize them to “set” public health measures with respect to tobacco control to protect these vulnerable sectors.

**Implementing Policies**

Government agencies that “contribute to implementing public health policies with respect to tobacco control” cover a very broad range of agencies spanning almost the entire bureaucracy. “Implementation of policies” is a broad function that involves all types of efforts meant to operationalize policies. This includes oversight and other committees, creation and running of related programs, administration and enforcement of laws.

All government agencies, entities and instrumentalities, including local governments, have either an expressed or implied mandate to comply with all laws and implement all existing, related laws and policies. Some regulatory agencies even require persons or establishments that are subject to their regulations to comply with existing policies or laws, including tobacco control laws or policies. Therefore, most, if not all, government agencies would ultimately, be able to contribute to implementing public health measures with respect to tobacco control.

For instance, in the Philippines, the National Housing Authority (NHA) has the authority to impose a Smoke Free Housing policy. This puts it in a position to contribute to tobacco control. If local governments are mandated to collect business taxes from and regulate tobacco retailers, they may also be in a position to contribute to tobacco control.

In addition, courts with their power to interpret provisions of the law play a special role in implementing public health policies with respect to tobacco control.

**Enforcing Policies**

Some government agencies specialize in enforcement of all laws and would therefore qualify as an agency that implements tobacco control laws. A good example is the police force in charge of enforcing smoking bans as well as the prosecutors in charge of the prosecution for violations of the law. Invariably, issues relating to liabilities would also highlight the role of the judiciary and the department of justice.

Considering that practically all government agencies have a role in tobacco control, it would be ideal to enact a comprehensive law or policy on “Protecting Government from Tobacco Industry Interference” that should apply to all government agencies and all government personnel. In addition to this, more stringent measures can supplement policies in government agencies or bodies that have a direct role in setting and implementing tobacco control measures.

**Government Agencies Involved in Tobacco Control**

All government agencies, unless they provide specialized and limited functions, have some level of contribution to tobacco control or at least a potential to contribute to it. As such, Article 5.3 provisions apply to all government agencies.

In reality, however, there may be a compelling need to distinguish the level of involvement of each agency in order to distinguish varying degrees of restrictions in dealing with the tobacco industry. For instance, sanctions may differ if a public official from the Department of Trade failed to declare his tobacco industry holdings vis-à-vis a public official from the Department of Transportation who has done the same. This emphasizes the need to distinguish the different roles of each agency in setting and implementing public health policies relating to tobacco control (as discussed earlier).

**Centralized Bodies**

In many countries, monitoring of the implementation of Agency Policies is done by a central administrative body or by another branch of government. In other countries, the government agency or entity is supreme in its own jurisdiction.
or enjoys such autonomy and independence that bar administrative regulation unless it is questioned by other branches of government as part of the check and balance process.

For instance, in the Philippines, it is often the legislative body or judiciary which questions the anomalous transactions of administrative agencies. A separate body has also been established to investigate and try such transactions if it involves graft and corruption. These bodies are required to be independent and impartial and thus, have a policy to refrain from private sector partnerships and other transactions with the private sector. In the case of local governments, the Department of the Interior and Local Governments (DILG) has an oversight function over the local government units (LGUs) but they are required to respect the principle of local autonomy. No sanctions can be imposed by the DILG but they can recommend the suspension of local officials and only the President can approve it. Other centralized bodies like the Commission on Audit is in the position to regulate sources of funding received by the government.

The centralized bodies and branches with oversight and regulatory function over other agencies should have specific policies and programs to implement Article 5.3 in all the government instrumentalities within their jurisdiction.

On the other hand, each government agency should possess a sufficient level of awareness regarding tobacco industry interference in order to detect it and to resist it. They can do a quick self-assessment that will help them determine areas of Article 5.3 implementation that need attention.

**Agencies authorized to regulate the tobacco industry**

There is a special class of agencies that have jurisdiction or regulatory authority over the tobacco industry and those representing their interests. These agencies must be identified very specifically to ensure that they adopt policies in accordance with Art 5.3 Recommendation to require transparency from the tobacco industry. In most countries, these include the Ministry of Trade, Ministry of Investments, Securities and Exchange Regulation Commission, Food and Drug Authority, Ministry of Agriculture, Ministry of Taxes and Ministry of Customs.

Because of the mandate given to these agencies to regulate certain industries, they are in the position to require the much needed information from the tobacco industry that will assist in implementing the whole range of tobacco control measures. These transparency measures are necessary to support the tobacco control efforts and consultations with the tobacco control community will provide guidance as to what information should be required from the tobacco industry. Some examples are already enumerated under the Guidelines to Implementing Art 13 of the FCTC. These include information on their marketing, sales expenses and promotional and so-called CSR activities, as well as information about their affiliates and contractors.

These agencies also have the authority to require accountability from the tobacco industry with respect to any information they are required to submit. They can impose sanctions on the tobacco industry for any failure to submit complete and accurate information.
Government Action

The government can initiate action through the executive branch. This is an arena where changes are made through executive order, by changes in rules or administrative practices, and use of veto powers by elected executives. Some government agencies under the executive branch are specifically mandated to “set” public health policies with respect to tobacco control. This primarily lies within the jurisdiction of the ministry or department for public health and related or similar bodies.

In addition, government agencies with a specific role in tobacco control such as regulatory agencies are also in a position to impose more active measures such as requiring transparency from the tobacco industry or removing any privilege granted to the tobacco industry.

The government must also act through its legislature to enact or amend laws in order to fully implement Article 5.3 in accordance with its Guidelines.

The table below provides an illustration of the different measures appropriate for agencies that normally have a primary, secondary, indirect, or other role in contributing to tobacco control.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Relationship/example of measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Health</td>
<td>DIRECT</td>
</tr>
<tr>
<td></td>
<td>• “No interaction, partnership, contribution policy” applies</td>
</tr>
<tr>
<td></td>
<td>• Disqualifications of officials construed liberally</td>
</tr>
<tr>
<td></td>
<td>• Number of years disallowed to engage with related industry lengthened</td>
</tr>
<tr>
<td></td>
<td>• Strict monitoring and enforcement required, with high penalty for violations</td>
</tr>
<tr>
<td></td>
<td>• Should be in charge of mandatory monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Police Department</td>
<td>INDIRECT</td>
</tr>
<tr>
<td></td>
<td>• “No interaction, partnership, contribution policy” applies</td>
</tr>
<tr>
<td></td>
<td>• Disqualifications of ranking officials construed strictly</td>
</tr>
<tr>
<td></td>
<td>• Reasonable number of years disallowed to engage with related industry, if applicable</td>
</tr>
<tr>
<td></td>
<td>• Must have integrated the “no tobacco industry interference policy” in their existing monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Department of Interior</td>
<td>CENTRALIZED BODY</td>
</tr>
<tr>
<td>and Local Governments</td>
<td>• “No interaction, partnership, contribution policy” applies</td>
</tr>
<tr>
<td></td>
<td>• Disqualifications may apply in some positions to ensure impartiality</td>
</tr>
<tr>
<td></td>
<td>• Must have integrated the “no tobacco industry interference policy” in their existing monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Department of Fisheries</td>
<td>REMOTE</td>
</tr>
<tr>
<td></td>
<td>• “No interaction, partnership, contribution” policy applies</td>
</tr>
<tr>
<td></td>
<td>• Disqualifications may not be applicable</td>
</tr>
<tr>
<td></td>
<td>• Awareness raising programs may be extended by other competent agencies</td>
</tr>
</tbody>
</table>
Quick Self-Test

Government action can take the form of adoption of policies. Inter-agency support is essential to ensure effective coordination and implementation.

The questions below assist in taking stock of the available resources and mechanisms that can be utilized to implement Article 5.3, as well as opportunities for improvement.

☑ Is there a codification of Government Agency Rules and Policies?
  • How is the codification or law amended, interpreted, and implemented?
  • What type of administrative or legislative policies need to be drafted to effect changes or add details to this Code or Law?
  • Which agencies are in charge of:
    (a) Dissemination of revisions in the said code or law?
    (b) Monitoring the implementation of the said code or law?

☑ Is there a centralized national body in charge of monitoring the activities of all government agencies?

☑ Does the Constitution or other laws condone the acceptance of private sector support or contribution?
  Or in case of State owned tobacco companies, inter-agency contributions?
  • What is needed to carve an exception to this rule?

☑ Does each government agency have the authority to issue its own Policy relating to rejecting partnerships and contributions from the private sector?
  • To what extent is it authorized to implement it?
  • Are there any sanctions for non-compliance to its own policies?
  • What is the compliance level of policies wherein sanctions are not specified?

☑ Does the Code or Law and/ or related administrative or legislative documents provide for mechanisms for implementation like sanctions, complaint procedure, adjudication procedure?
  • What are the procedures involved in cases of violations of said code or law
  • Which agencies or persons are in charge of adjudicating such cases? To which agency can this be appealed?

Policies and Laws

Based on the Article 5.3 Recommendations, the government should adopt, among others, the following:

1. State Policies on
   (a) No partnership, contribution, or interaction with the tobacco industry
   (b) No incentive to the tobacco industry
   (c) No investment in the tobacco industry

2. Laws to regulate the tobacco industry
   (a) mandatory disclosure of information by the tobacco industry
   (b) prohibition on publication of so-called CSR of the tobacco industry and other forms of advertising

These are some of the key preventive measures that make the government “tobacco-industry interference-resistant,” whether the tobacco industry refers to a government or partly government entity or a private one. In case of a government-owned tobacco industry or State-owned monopolies, governments must first ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing the tobacco industry.
Checklist: Government Policy / Action

Here are some of the key preventive measures that make the government “tobacco-industry interference-resistant,” whether the tobacco industry refers to a government or partly government entity or a private one. In case of a government-owned tobacco industry or State owned monopolies, governments must first ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing the tobacco industry.

A. NO INTERACTION POLICY

The government, or any branch, agency or body thereof is implementing a firm policy to avoid interactions with the tobacco industry and interacts with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products. Ensuring that such interactions are conducted transparently and publicly, e.g. public hearings, public notice of interactions, disclosure of records of such interactions to the public.

In addition, the pertinent government agencies have a policy to prohibit any person employed by the tobacco industry or any entity working to further its interests from:

- being a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy,
- serving on delegations to meetings of the Conference of the Parties (COP), its subsidiary bodies or any other bodies established pursuant to COP decisions, or
- being awarded any contract for the carrying out of any work related to setting and implementing public health policies with respect to tobacco control. This refers to candidates, tenderers or bidders for government projects.

B. NO PARTNERSHIP POLICY

The government, branch, agency or body has clear, well-disseminated rules on prohibiting any partnerships with the tobacco industry, specifically:

- Not to accept, support or endorse partnerships and non-binding agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.
- Not to accept, support or endorse any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.
- Not to accept, support or endorse any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.
- Not to accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.
- Not to endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.
- Not to award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.

C. NO INCENTIVE POLICY

The government, branch, agency or body has established a policy not to grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses and not to provide any preferential tax exemption to the tobacco industry, as well as to exempt/remove the tobacco industry from any existing privileges, incentive or benefit scheme or preferential exemptions.
D. NO CONTRIBUTION POLICY

The government, branch, agency or body has firm laws or rules and corresponding sanctions on prohibiting the acceptance of any contribution from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.

The national government or the pertinent government agencies have rules and corresponding sanctions to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.

E. NO INVESTMENT POLICY

The government, branch, agency or body has established a policy not to invest in the tobacco industry and related ventures. In case of governments with State-owned tobacco industry, any investment in the tobacco industry should not prevent governments, bodies, or agencies from fully implementing the FCTC.

F. DISCLOSURE POLICY

The government, branch, agency or body has rules and regulations requiring the tobacco industry to submit information on

- tobacco production and manufacture,
- market share,
- marketing expenditures,
- revenues, and
- any other activity, including lobbying, philanthropy, political contributions and any form of CSR, advertising, promotions and sponsorship.

In addition, the government, branch, agency or body, if it has a mandate of regulating industries, should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent.

- require the tobacco industry and those working to further its interests to periodically submit information about the industry and its operations.
- require rules for the disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists, with said rules applying to any person employed by the tobacco industry or any entity working to further its interests who is:
  (a) a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy,
  (b) serving on delegations to COP meetings, its subsidiary bodies or any other bodies established pursuant to COP decisions, or
  (c) awarded contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers.
- imposes mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.
- ensures public access to a wide range of information on tobacco industry activities as in a public repository (e.g. website).
- does not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.
- prohibits the tobacco industry or any entity working to further its interests from contributing to political parties, candidates or campaigns, or to requiring full disclosure of such contributions.
Code of Conduct Provisions

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

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

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

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

Integration in Codes of Conduct

The Article 5.3 Guidelines recognize the existence of codes of conduct and laws relating to public officials’ ethical standards in many countries and makes specific reference to the International Code of Conduct for Public Officials.

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

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

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

Fortunately, many countries had the opportunity to review their respective Codes of Conduct for public officials during the adoption of the United Nations Convention against Corruption of 2003 (UNCAC), which entered into force on 14 December 2005. Hence, it can be expected that there has been ongoing reviews of these Codes of Conduct and this presents an opportunity to introduce Article 5.3 provisions.
Checklist: Code of Conduct

Below is a set of Assessment Questions that will help in determining the extent of adjustments that need to be done to implement Article 5.3 based on the Guideline recommendations.

A. ESSENTIAL POLICIES

Does your agency have the following:

- A Code of Conduct that includes measures specifically prohibiting partnerships, contributions and unnecessary transactions with the tobacco industry?
- A Code of Conduct and Policies on Accountability and/or Declaration of Interests include both high level aspirational statements and statements about behavioral expectations that provide a benchmark for dealing with tobacco industry interference?
- A Hiring Policy that ensures applicants are not associated with the tobacco industry or other industry that poses a conflict of interest?
- A Personnel Policy that states that government employees should not work with the tobacco industry or other industry that poses a conflict of interest within a period of time after leaving government service?

B. ENFORCEMENT OF THE CODE OF CONDUCT

- Has the pertinent agency in the government identified which agencies or positions must require a declaration and divestment of interests in the tobacco industry?
- Does your agency provide for Accountability Measures and specify sanctions to government personnel for the act of giving incentives or memberships, and awarding partnerships or contracts to the tobacco industry or those representing their interests?
- Does your agency ensure that the rationale behind tobacco industry interference is communicated to your staff, customers and suppliers regularly? Does your agency have an induction for new staff at all levels that address the importance of protecting public health policies from tobacco industry interests? Are these values incorporated in other training programmes?
  (a) Do the Human Resource processes of your agency (e.g. recruitment, promotion and performance management etc.) refer to the hiring policies to assess suitability?
  (b) Does your agency have a process for ensuring that all official communication (e.g. policies, guidelines, statements, publications etc.) is in line with policies relating to conflicts of interest?
  (c) Does your agency involve staff and key stakeholders in the development and review of the related policies to ensure their continued relevance?
- Is there an evaluation of how well your agency’s policies in relation to Article 5.3 have been promoted, understood and integrated into agency operations and decision-making? Does your agency measure the impact of the Article 5.3-related policies against agency reputation?
- Are there firm reporting mechanisms, investigation procedures, and corresponding sanctions regime within the agency for breaches of codes of ethics or conduct? Are there clear and proportionate sanctions in case of violations, simple complaint and investigation procedure, whistle-blower provisions, and monitoring and reporting incentives? Are these well disseminated?
- Is there allocated funding and other resources for the promotion of transparency and accountability within the agency?
- Is there a coordinating and monitoring body with the corresponding budget that is in charge of implementing and enforcing the said policies and codes of conduct?
C. AWARENESS OF PROCESSES RELATING TO THE CODE OF CONDUCT

- Is there a Code of Conduct for all Public Officials? Are there separate ones for each agency or for different types of officials?

- Is there a centralized national body in charge of the review and/or implementation of the Code of Conduct for all public officials? Are there separate bodies for each agency?

- Which agency or government sector is in charge of changes in the Code of Conduct? What type of administrative or legislative policies need to be drafted to effect changes or add details to the Code of Conduct?

- If the country has ratified the UNCAC, which agency was mandated to ensure compliance with the treaty?

- Which agency/ies are in charge of:
  (a) dissemination of revisions in the Code of Conduct?
  (b) monitoring the implementation of the Code of Conduct?

- If each government agency has the authority to issue its own Code of Conduct, to what extent is it authorized to implement it? Is it also authorized to monitor, receive complaints, or adjudicate?

- Does the Code of Conduct and/or related administrative or legislative documents provide for mechanisms for implementation like sanctions, complaint procedure, and adjudication procedure?

- What are the procedures involved in cases of violations of the Code of Conduct by the public officials?

- Which agency/ies is in charge of adjudicating such cases? To which agency can this be appealed?

Signs of Success

The Recommendations under the Article 5.3 Guidelines include specific measures in addition to the general provisions under the UN International Code of Conduct for Public Officials. Most countries have an existing Code of Conduct and corresponding enforcement mechanisms but these may not be as well implemented as it is supposed to be. The specific recommendations relating to the tobacco industry reinforces these Codes of Conduct and encourages governments to take specific immediate action.

The government is successful in implementing Article 5.3 among government employees and officials if its Code of Conduct and pertinent personnel policies formulate adopt or incorporate:

- Code of Conduct provisions covering the tobacco industry and those representing their interests
- Accountability measures to ensure that State policies, prohibiting incentives, partnerships and interactions with the tobacco industry, are followed
- Requirement for government employees and officials to execute a Declaration of Interests
- Enforcement measures that include protection of whistle blowers and involvement of civil society
- Sustained awareness-raising efforts to ensure that the government personnel understands the need to protect themselves from tobacco industry influence.
Checklist: Signs of Success

Below are indicators of success in adopting policies consistent with the Article 5.3 Guidelines.

A. CODE OF CONDUCT

The code of conduct for public officials prescribes the standards with which they should comply with their dealings with the tobacco industry, including:

- ✔ avoiding interactions with the tobacco industry and limiting interactions with the tobacco industry only when and to the extent strictly necessary.
- ✔ ensuring transparency of all meetings, interactions with the tobacco industry.
- ✔ not allowing any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.
- ✔ not allowing such official to accept such contributions in behalf of government or private entities
- ✔ not endorsing, supporting, forming partnerships with or participate in activities of the tobacco industry.
- ✔ declaring any interests in the tobacco industry

B. ACCOUNTABILITY MEASURES

Government agencies should adopt policies to ensure that its officials or employees are accountable for and do not approve any transactions that:

- ✔ Allow the granting of incentives to the tobacco industry
- ✔ Allow or tolerate partnerships with the tobacco industry
- ✔ Allow any person employed by the tobacco industry or any entity working to further its interests:
  - (a) To be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.
  - (b) Serve on delegations to COP meetings, its subsidiary bodies or any other bodies established pursuant to COP decisions.
  - (c) To be awarded contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers.

C. DECLARATION OF INTERESTS

Government agencies or bodies with a role in setting and implementing public health policies with respect to tobacco control, are implementing a clear policy where their government personnel or public officials, including applicants to such positions, are required to declare interests in the tobacco industry, specifically:

- ✔ To inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.
- ✔ To declare any current or previous occupational activity with any tobacco industry whether gainful or not.
- ✔ To declare and divest themselves of direct interests in the tobacco industry.
- ✔ Not to have any financial interest in the tobacco industry, unless they are responsible for managing the government's ownership interest in a State-owned tobacco industry.

The policy on disclosure and management of conflicts of interest extends to consultants and contractors.
D. ENFORCEMENT MEASURES

The Central Government Body in charge of overseeing the conduct of government personnel or implementing / enforcing provisions relating to the Code of Conduct as well as each government agency or body adopting any of the above policies:

- Has provided adequate protection for whistleblowers.
- Is using enforcement mechanisms to ensure compliance with these policies, such as the bringing an action to court, and to use complaint procedures such as an ombudsman system.
- Has engaged the support of NGOs and other members of civil society not affiliated with the tobacco industry in the enforcement function.

E. SUSTAINED AWARENESS-RAISING EFFORTS

The government, branch, agency or body continuously and consistently raises awareness of these codes and policies as well as:

- Informs and educates all government personnel about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry.
- Raises awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.
- Ensures that all are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.
- Encourages government personnel to monitor, report and exchange knowledge among pertinent agencies with respect to tobacco industry practices. Not to have any financial interest in the tobacco industry, unless they are responsible for managing the government’s ownership interest in a State-owned tobacco industry.

Other Personnel Policies

Other personnel policies, which prevent tobacco industry interference in key government agencies that set or implement tobacco control policies, may also be necessary to ensure full implementation of the Article 5.3 Recommendations relating to government officials.

One example is a Hiring Policy to ensure that no member of the tobacco industry or anyone representing its interests is hired in a position that exerts influence on tobacco control policies.

Other policies and programs may also be useful such as a divestment program to ensure that all interests in the tobacco industry are divested. These types of policies also serve to raise awareness about tobacco industry interference. The lure of high income from tobacco industry investments or employment can be offset by the fact that such investment or employment creates a disqualification for certain types of public office in the future.
RECOMMENDATION 5

Require that information collected from the tobacco industry be transparent and accurate

This recommendation presumes that a necessary interaction with the tobacco industry is strictly necessary or required by law. Its operation relies on government bodies or offices that have a specific task of regulating the tobacco industry directly or indirectly. Hence, the first step is to identify the “tobacco regulating government agencies” (see discussion under Agencies Involved in Tobacco Control).

a. **Raise awareness among Tobacco-Regulating Government Agencies**

b. **Take stock** of information collected from the tobacco industry

c. **Identify** other tobacco industry information that need to be collected to help in setting and implementing tobacco control measures effectively

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

e. **Adopt a Policy or Law to Require additional information*** as needed to implement tobacco control measures effectively. If possible, incorporate this policy in the laws pertaining to Freedom of Information or commercial/business/corporate laws.

f. **Establish a process and a database structure and system** to make the information easily accessible by the public.

g. **Ensure proper sanctions are imposed** for failure to submit information or for providing false information and that these are properly publicized to serve as a deterrent.

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Information that tobacco companies should be required to disclose

(Based on the Guidelines for the Implementation of Article 5.3)

1. Production
2. Manufacture
3. Market share
4. Marketing expense
5. Revenues
6. Lobbying activities
7. Political contributions and activities
8. Philanthropic activities
9. Affiliated entities
10. Agents or individuals acting on their behalf, including lobbyists
11. Marketing and promotional activities, including product design features, retailer incentives, any financial or other support to events, groups or individuals (in accordance with Article 13 Guidelines)
12. Product contents and emissions (FCTC Article 9)
RECOMMENDATION 6
Denormalize and regulate activities defined as “socially responsible” by the tobacco industry

There is an inherent contradiction when the tobacco industry, which makes its money by causing deaths and diseases, engages in activities that are “socially responsible.” The ultimate intention of the tobacco industry’s public relations strategy is to distance its image from the lethal nature of its products and governments should not allow itself to become an instrument to this. Furthermore, tobacco industry uses the so-called CSR to promote, directly or indirectly tobacco consumption. Hence, governments especially those most likely to be targeted (Agriculture, Environment, Education, Social Welfare) must:

a. **Raise awareness of** the tobacco industry’s ulterior motive for doing so-called CSR (corporate social responsibility) activities. This includes producing appropriate materials on how the tobacco industry does this. This also includes **publicizing the** policies that require stricter regulations for the tobacco industry or those that limits interactions and relationships with them.

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

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

d. Ensure that “Tobacco Regulating Agencies” **emphasize in their internal and external communication** that their agencies do not deal with the tobacco industry and takes active measures to avoid any relationship with the tobacco industry other than those strictly necessary and mandated by law.

e. **Ban the tobacco industry from doing the so-called CSR** or if this is not Constitutionally possible, ban all publication of so-called CSR while imposing a strict requirement for the tobacco industry to submit reports as to the amount and beneficiaries of so-called CSR activities.

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**Case Studies**

**Singapore** has a law that prohibits the tobacco industry from publicizing their so-called CSR in the media.

In 2008, **Mauritius** passed its Public Health Act, prohibiting the offer of any scholarship or any form of sponsorship in relation to tobacco products, effectively banning so-called CSR by tobacco companies.

In the **Philippines**, the Health Secretary disseminated warning letters to the recipients of tobacco company donations highlighting possible violation of advertising laws and the obligation to protect public health from the vested interests of the tobacco industry.
Nature of the Tobacco Industry’s So-called CSR

Like most companies, the tobacco industry ventures into corporate social responsibility (CSR) activities to make their portfolio more appealing to investors. However, the tobacco industry is not like any other company. They thrive on peddling a product that is so lethal that it kills half of its consumers. Tobacco industry’s so-called CSR activities are a mere façade to detract the focus from the devastating health impact of its products. The tobacco industry continues to do its business, using the same strategies, and it is unthinkable how they think they can use a small percentage of their profits to erase all the negative publicity that results from the harmful effects of their products.

In truth, the tobacco industry uses these activities to shamelessly promote their products. Where there is an absolute ban of tobacco advertisement, the industry uses its so-called CSR activities to keep their name in the media. The tobacco industry also takes advantage of its so-called CSR activities to partner with government agencies in order to continue to have an influence on key persons in the government. The biggest negation is probably when the industry donates to projects benefiting public health and to programs that will help the youth. WHO points out the inherent contradiction in the tobacco industry’s so-called CSR is because the industry’s core functions are in conflict with the goals of public health.

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

It is hard to ignore the so-called CSR activities of the tobacco industry when it has been an entrenched practice and harder to ignore the amount of money being offered to fund worthwhile projects, especially when there are many people relying on these projects. However, the government is responsible for promoting health and protecting the people from devastating effects of tobacco products and there is a clear conflict of interest and a greater disadvantage to public health if it would continue partnering with or receiving donations from the tobacco industry.

Raising Awareness

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

Another strategic measure to counter tobacco industry’s so-called CSR is by direct action such as publicly condemning or rejecting a donation by the tobacco industry. This can be done through a policy banning so-called CSR activities by the tobacco industry and/or the publication thereof, or possibly
through a correspondence with the tobacco industry asking them to stop their so-called CSR activities to avoid inadvertently advertising their companies or brands, avoid influencing the youth’s impression of their companies and brands, avoid enticing partnerships and interactions with government employees, and the like.

The biggest challenge in denormalizing so-called CSR is in the strong lure of money and resources. Many grantees, including governments, find it difficult to resist the resources that the tobacco industry are donating and hence, many will find it difficult to resist such donations or to condemn such donations. There needs to be a systematic raising of public awareness in understanding how and why doing something as good as CSR can actually be bad if this comes from the tobacco industry.

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

(a) the true nature of CSR
(b) initiatives or trends in rejecting or condemning so-called CSR activities

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

In many of the said countries, civil society action was instrumental in denormalizing so-called CSR. A recent example was the declaration of the Bill and Melinda Gates Foundation to withdraw its support from the Canadian International Development and Research Centre (IDRC) due to a linkage between the head of IDRC Board and the tobacco industry. This was a result of the outcry of alliances of NGOs globally. The action of governments themselves in denormalizing so-called CSR of the tobacco industry leaves much to be desired, and the Article 5.3 Guidelines create new opportunities for this.

**State and Personnel Policies & Enforcement Systems**

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

Once policies are adopted by the government, the role of civil society is critical. As with many transparency groups, there is much reliance on NGOs to serve as watchdogs and assist in enforcement of policies that bind the government and its personnel.

**No Contribution Policies**

The Article 5.3 Guidelines create a new opportunity for many other government agencies to contribute to denormalizing tobacco industry so-called CSR including those done with the private sector. Policies to regulate the private sector who are often targeted by the tobacco industry will further boost the effort to denormalize so-called CSR.

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

Another potent area to adopt such policies is the Ministry for the Youths or Ministry for the Civil Society or Social Welfare. These agencies can urge those under their jurisdiction to refuse tobacco industry contributions and donations. Better yet, making the receipt of such contributions illegal. Such that receiving tobacco industry money will create a stigma. This will hasten the denormalization of the tobacco industry agencies in order to continue to have an influence on key persons in the government. The biggest negation is probably when the industry donates to projects benefiting public health and to programs that will help the youth. WHO points out the inherent contraction in tobacco industry so-called CSR because the industry’s core functions are in conflict with the goals of public health.
This Recommendation addresses specific situations where the government, whether deliberately or inadvertently, encourages investments by the tobacco industry. This reflects a defiance of the treaty-based commitments to tobacco control. Hence, governments must:

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

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

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

(d) Divest investments in the tobacco industry. This includes adopting policies in Treasury to remove the tobacco industry from the investment portfolio/options for the government funds. Government owned and controlled corporations should also adopt the same investment policies.
Regardless of whether the tobacco industry is owned by the government or not, all the Recommendations should apply in the same manner. In a way, having a State-owned tobacco industry makes it easier for the government to regulate its own tobacco industry in accordance with the obligations embodied in Article 5.3 and its Guidelines. For instance, depending on the level of control the government has over the tobacco industry, many of the measures listed above, such as the requirement of making certain information available can be adopted through well-disseminated intergovernmental policies. In addition, governments with a State-owned tobacco industry may focus on some peculiar measures that need further consideration:

a. Remove tax exemptions or benefits by virtue of being a government corporation or corporate owned. Most governments exempt other government entities or corporations from certain taxes. This provides undue benefit to the tobacco industry.

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

c. Require the State-owned tobacco industry to set up a database that is publicly accessible to ensure transparency and accuracy of information that is required for purposes of implementing tobacco control policies.

d. Create internal arrangements in government to create an environment where there is no unnecessary interaction between the government personnel of the State-owned tobacco industry and those from public health.

RECOMMENDATION 8: Treat State–owned tobacco companies in the same way as any other tobacco industry
IV. POLICY TEMPLATES

Governments can adopt a national law covering all the areas of Article 5.3 Guidelines in order to ensure a comprehensive government policy, which does not bar each agency from issuing further specific rules and regulations.

On the other hand, even without a national law, agencies that contribute to tobacco control can already start implementing specific Article 5.3 measures in accordance with their respective mandates. Each agency can adopt their respective Codes of Conduct, or require the tobacco industry to submit certain information as a requirement for doing business.

Agencies can also adopt a hiring policy and their respective human resource departments can develop more specific guidelines to govern applicants to government positions.

To denormalize so-called CSR practices of the tobacco industry, the appropriate government agencies can take measures to ensure that the No Contribution policy is emphasized, even by private institutions that fall within their jurisdiction.

A. Comprehensive Government Policy

Objective: To ensure that the government agencies contributing to tobacco control are shielded from interference from the tobacco industry and those representing its interests.

Coverage: This policy applies to agencies that can contribute to various aspects of tobacco control as well as to all the bureaus, offices, bodies, agencies, and government-owned or controlled corporations assigned to the said agency.

Elements:

1. Identification and gathering of pertinent information that will help the government comply with the obligation under the FCTC.
2. Disclosure of or registration of entities, organizations or individuals affiliated with or acting on their behalf.
3. Require agencies to share information with other agencies and with the public will help in the promotion transparency and accountability in government. In order to encourage civil society’s participation in monitoring the tobacco industry, providing access to information to civil society is essential.
4. A provision requiring that documents submitted must be with the undertaking that such contain true and accurate information, in order to ensure reliability of the documents and accountability from the tobacco industry.

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

Objective: To ensure that tobacco industry information that helps in setting and implementing tobacco control measures, are available to the public.

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

Elements:
1. Identifying and gathering pertinent information that will help the government comply with the obligation under the FCTC.
2. Disclosure of or registration of entities, organizations or individuals affiliated with or acting on their behalf.
3. Obliging agencies to share information with other agencies and with the public will help in the promotion transparency and accountability in government. In order to encourage civil society’s participation in monitoring the tobacco industry, providing access to information to civil society is essential.
4. A provision requiring that documents submitted must be with the undertaking that such contain true and accurate information, in order to ensure reliability of the documents and accountability from the tobacco industry.

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

C. Code of Conduct

Objective: To ensure that existing Codes of Conduct and related programs and initiatives take into account the Article 5.3 provisions.

Coverage: This policy applies to all government personnel.

Elements:
1. Broad definition of the tobacco industry
2. Emphasis on encouraging reporting of violations and integration with existing programs has provisions on Divestment and Whistleblower Protection.

Mode: This policy is a document that contains proposed amendments to the Code of Conduct of government officials and employees. It may be enforced by the Central Government Body in charge of overseeing the conduct of government personnel or implementing provisions related to the Code of Conduct. It may also be enforced by each agency, if it has the capacity to create or modify its own Code of Conduct, to guide its officials and employees in their interaction with other officials, employees and the transacting public.
D. Hiring Policy

Objective: To ensure that the Human Resources Department of agencies which contribute to tobacco control provide necessary measures to ensure that the public officials in said agencies do not have tobacco industry interests. It aims to avoid a situation of conflict of interest for individuals who have current or previous connections with the tobacco industry.

Coverage: This policy applies to government personnel in agencies or bodies that contribute to tobacco control.

Elements:
1. Defines “interest” that needs to be declared
2. Specifies rules in dealing with applicants to public positions

Mode: This can be issued as a department memorandum or an order by a centralized personnel agency of the government.

E. No Contribution Policy

Objective: To ensure that certain agencies that has jurisdiction over other institutions, whether public or private, that can significantly contribute to tobacco control, provide necessary measures to ensure that these institutions are also shielded from tobacco industry interests. This aims to denormalize the tobacco industry’s so-called CSR activities.

Coverage: This policy applies to identified government agencies that contribute to tobacco control and has regulatory authority over certain institutions that are vested with public interest or that can significantly contribute to tobacco control. This can also apply to government agencies which regulate charitable or similar organizations which are often targeted by the tobacco industry for its so-called CSR activities.

Elements:
1. Applies strictly to all public institutions
2. Requires private institutions to report any contributions from the tobacco industry

Mode: This can be issued as an order that is circulated to institutions concerned or as a new regulation.
### Impact of Policies

The table below shows the list of template policies and the corresponding implementing agency expected to adopt them, as well as the expected output and impact of each.

<table>
<thead>
<tr>
<th>Policy</th>
<th>Agency/Department</th>
<th>Implementation</th>
<th>Impact</th>
</tr>
</thead>
</table>
| Requiring Information from the Tobacco Industry | Can be passed as part of national law or adopted and implemented by 
tobacco regulating agencies | Different agencies are requiring tobacco industry to regularly submit reports and these are publicly available | Improved monitoring of tobacco industry activities and enforcement of laws, more evidence to support decision making relating to tobacco regulation |
| Comprehensive Government Policy       | Can be adopted by agencies that can contribute to tobacco control or passed as part of national law | Government agencies, instrumentalities and bodies are required to raise awareness and monitor tobacco industry interference. 
Contributions are not received from the tobacco industry and the industry is not given any benefits. 
Pertinent agencies will require information from the tobacco industry and make it publicly available | Reduced conflict of interest situations with the tobacco industry 
Less opportunity for the tobacco industry to interfere with the setting and implementation of tobacco control measures |
<table>
<thead>
<tr>
<th>Policy</th>
<th>Agency/Department</th>
<th>Implementation</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code of Conduct</td>
<td>Can be adopted as amendment to the Code or as a policy by each appropriate agency, or the agency in charge of civil servants and other government personnel, and/or those in charge of promoting transparency in government (Ombudsman, etc.)</td>
<td>Investigative procedure and appropriate sanctions are available for dealing with the tobacco industry in violation of the code. Public officials are required to declare and divest financial interests in and contributions of the tobacco industry Whistleblowers are protected The Tobacco Industry interference issues are integrated into the transparency programs of the pertinent agencies</td>
<td>Reporting of violations are encouraged Reduced conflict of interest situations with the tobacco industry Less opportunity for the tobacco industry to interfere with the setting and implementing of tobacco control measures Minimize expense from tobacco control budget through integration with mainstream transparency programs</td>
</tr>
<tr>
<td>Hiring Policy</td>
<td>Can be adopted by the Human Resource Department of an agency</td>
<td>Government personnel working in tobacco control are not allowed to their knowledge to support the tobacco industry. Tobacco industry interests of government personnel, as well as applicants to government positions, are disclosed.</td>
<td>Less opportunity for the tobacco industry to interfere with the setting and implementing of tobacco control measures</td>
</tr>
<tr>
<td>No contribution policy</td>
<td>Can be adopted by the agencies that have jurisdiction over the academe and research institutions. Can also apply to agencies that have authority over charitable institutions</td>
<td>Institutions that are concerned with the welfare of the youth, including private institutions which are mandated to comply with State objectives, refuse tobacco industry contributions, including their so-called CSR activities</td>
<td>So-called CSR activities are denormalized</td>
</tr>
</tbody>
</table>
SEATCA

SEATCA is a multi-sectoral alliance established to support ASEAN countries in developing and putting in place effective tobacco control policies. It responds to a grave need to fast track tobacco control policies in Southeast Asia. The alliance works to identify tobacco control priorities in the region and to coordinate efforts on these priorities. SEATCA promotes knowledge-sharing among countries for effective, evidence-based tobacco control measures and regional cooperation among its advocacy partners.

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

HEALTH JUSTICE

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

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

Thakolsuk Place, Room 2B
115 Thoddamri Road, Nakornchaisri, Dusit
Bangkok 10300, Thailand
Website: www.seatca.org
Email: info@seatca.org

“working together to promote the implementation of effective evidence-based tobacco control measures in Southeast Asia”