Southeast Asia Tobacco Control Alliance

Tobacco Industry Interference Index

ASEAN Report on Implementation of WHO Framework Convention on Tobacco Control Article 5.3

2014

The Southeast Asia Tobacco Control Alliance (SEATCA) is a regional network. SEATCA works closely with governments, non-government organizations (NGOs), development agencies, and the academe to advance tobacco control in the ASEAN region. SEATCA has actively promoted effective and evidence-based measures under the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), increased participation and cooperation among advocates, organized regional forums for sharing lessons learned and best practices in advancing tobacco control policies, and played a significant role as a regional leader in tackling urgent priority issues in the region.

Reasonable efforts have been made to ensure the accuracy of information presented in this report. If there are unintentional errors or omissions, please get in touch with SEATCA.

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Tobacco Industry Interference Index

ASEAN Report on Implementation of WHO Framework Convention on Tobacco Control Article 5.3

Introduction

The tobacco industry works to defeat, dilute, and delay effective tobacco control measures. Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC)[1] is therefore the backbone of the FCTC, as the treaty cannot be implemented effectively if industry interference is not rooted out. Its effective implementation is vital in protecting public health and achieving the goals of tobacco control. In order to provide more clarity and substance and to facilitate implementation, the Parties to the FCTC unanimously adopted the Article 5.3 Guidelines at the 3rd Session of the Conference of the Parties (COP3) to encourage governments to establish, among other safeguards, measures to limit tobacco industry interactions with governments and to put in place public disclosure procedures. Despite their unanimous adoption in 2008, there still remains much room for improved implementation of the Guidelines in the ASEAN region.

The Article 5.3 Guidelines make eight main recommendations with 34 sub-recommendations to governments to ensure that the industry is prevented from exerting its influence on public health policy. From these, 20 recommendations were selected as indicators to assess implementation in seven ASEAN countries: Brunei Darussalam, Cambodia, Lao PDR, Indonesia, Malaysia, the Philippines, and Thailand. This index is a first attempt at scoring and ranking the countries in their implementation of Article 5.3. The 20 indicators are grouped under 7 simplified categories described below and cover the period after the adoption of the Article 5.3 Guidelines between 2009 and 2013). This tobacco industry interference index is a civil society report prepared collaboratively with tobacco control groups from their respective countries. The index for Brunei Darussalam was completed by the government.

Methodology

Respondents were asked to consult with advocates, partners, and government and non-government organizations for purposes of filling up a questionnaire. Questions were based on the top 20 most commonly reported incidents of tobacco industry interference in the seven selected Southeast Asian countries and referenced to specific FCTC Article 5.3 Guidelines recommendations. Respondents were required to provide publicly available evidence to support each answer, although in some instances there may be no evidence available. The Principal Investigator directly communicated with the respondents to ensure that each question was understood in the same way by all respondents. The PI reviewed all answers for purposes of verifying their accuracy. To ensure fairness, the results were reviewed collectively by all the respondents. A third party consultant reviewed the results to verify accuracy of answers from a regional perspective.

Limitations

1. Respondents were limited by the information available to them publicly, through the internet or newspapers and tobacco company reports; hence the results tend to represent a conservative view. This is more pronounced in countries that provide limited access to government information.

[1] WHO Framework Convention on Tobacco Control http://www.who.int/fctc/guidelines/adopted/article_5_3/en/index.html

- Answers to questions under "Forms of Unnecessary Transaction" that imply that certain unnecessary interactions had not happened since 2009 does not mean there is absolutely no such transaction for some countries. In countries where there are no policies, whether written or not, to prohibit or limit interaction, and where access to public information is low (such as Cambodia, Laos, and Indonesia), it is still possible that interactions occurred but the respondents had no evidence to point to.

2. Questions calling for objective answers:
   - Answers to questions under Conflict of Interest (Q 13-15) and Preventive Measures (Q 16-20) are objective. These were based on a review/knowledge of existing policies related to tobacco control, particularly Article 5.3 and its Guidelines, to see whether or not measures cited in the question exist.
   - Answers to questions under Benefits to the Tobacco Industry (Q 7-8) are objective; however since respondents do not possess sufficient knowledge of all possible benefits given by the government to the tobacco industry, the question was answered as a matter of perception supported by some evidence. Advocates may not be aware of the existence of incentives given to the industry; hence, answers to the effect that no incentives are given to the tobacco industry do not mean that there are absolutely no benefits given to the tobacco industry. Further research is needed to better corroborate this information.

3. Questions calling for subjective answers:
   - All other questions are subjective and are answered based on the evidence available to tobacco control advocates in the country. The answers are accurate as to the affirmative answers (existence of an incidence of interference) because evidence is provided for each answer. However, the intensity and scale of the interference is based on a collective assessment of the limited evidence available.
   - Questions that require answers like "rarely, frequently, and always" have numeric equivalents (e.g. 75% of the time), but these are not intended to be a quantification of the evidence available. Instead, answers to these types of questions merely represent the perception of tobacco control advocates in a country.

Findings

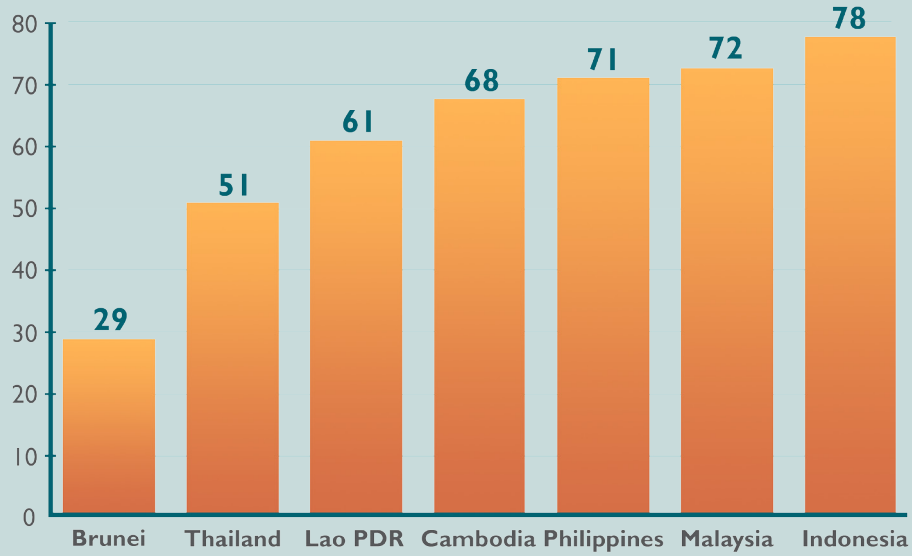
The scores serve as an indicator of the level of tobacco industry interference (TII) based primarily on evidence available publicly as well as stakeholders' perception. Table 1 provides the complete survey score. The seven countries are ranked[2] (Figure 1) from the lowest level of interference to the highest: Brunei (29), Thailand (51), Lao PDR (61), Cambodia (68), Philippines (71), Malaysia (72), and Indonesia[3] (78).

Main Findings:

- Countries that face high levels of unnecessary interaction with the tobacco industry also face high levels of tobacco industry participation in policy development;
- Most governments do not allow any tobacco industry representatives on their delegation to sessions of the Conference of the Parties or its subsidiary bodies nor accept their sponsorship for delegates;
- Most governments still accept or endorse offers of assistance from the tobacco industry in implementing tobacco control policies;
- Most governments receive tobacco industry contributions (monetary or in kind) or endorse industry CSR activities;
- Governments do not have a procedure for disclosing interactions with the tobacco industry;
- Governments do not prohibit contributions from the tobacco industry to political parties nor require full disclosure of any contributions;
- Countries still have a long way to go in implementing FCTC Article 5.3 Guidelines.

[2] Questions 8 and 15 - countries may not have sufficient information to score accurately.
[3] Indonesia is a non-Party to the WHO Framework Convention on Tobacco Control.

Figure 1:
Level of Tobacco Industry Interference in Seven ASEAN Countries



I. Tobacco Industry Participation in Policy Development

Figure 2 shows the level of tobacco industry participation in policy development in the seven countries. Brunei, Thailand and Lao PDR curb industry participation, while the Philippines and Indonesia have high levels of participation. On the positive side, most of the governments do not allow representatives from the tobacco industry in their delegations to the Conference of the Parties (COP) sessions or other FCTC-related meetings nor accept any industry sponsorship to these meetings.[4]

Brunei, Lao PDR, Malaysia, and Thailand do not allow the tobacco industry to sit in the multi-sectoral committee/ advisory group that sets public health policy. The governments of Indonesia and Malaysia accept, endorse, or consider legislation drafted by or done in collaboration with the tobacco industry. Since Indonesia is a non-Party to the FCTC and does not attend the negotiations, it did not score on the issue of industry representation in delegations The Philippines' Tobacco Regulation Act (RA9211) gives the tobacco industry a seat in the Inter-Agency Committee (IAC) on Tobacco. This legislation was enacted in 2003 before the Philippines ratified the FCTC and adopted Article 5.3 Guidelines and can only be amended by its Congress.

Brunei does not allow the tobacco industry to participate in health policy development, accepts no contributions from the tobacco industry or CSR activities, gives no benefits to the industry, has no unnecessary interaction with the industry, and requires the industry's representatives to provide information periodically. It must be noted that Brunei does not grow tobacco, has no cigarette manufacturing facilities, and has a very small tobacco market.

II. Industry-related CSR Activities

Corporate Social Responsibility (CSR) activities by the tobacco industry are not banned among ASEAN countries, although a few (Cambodia, Singapore and Thailand) have banned their publicity. This is a loophole the industry exploits.[5] Based on publically available information the tobacco companies have in recent years increased their CSR spending in the ASEAN region. Philip Morris International (PMI), for example, increased its spending in six countries in the ASEAN region from USD 8.2 million in 2009 to USD 10.2 million in 2012.[6] In the Philippines and Thailand, PMI more than doubled its spending, while in Malaysia it increased its CSR expenses by 5-fold.

[4] For Question 4, the Philippines National Tobacco Administration, which was established specifically to promote tobacco farming, is classified as an entity working to further the tobacco industry's interests. Representatives of the NTA have served on delegations to meetings of the COP and bodies established pursuant to the COP decisions.

[5] End tobacco industry corporate giving: An overview of CSR in Southeast Asia, SEATCA handout, 2012 http://www.seatca.org/dmdocuments/CSR%20Handout_2012_Final.pdf

All governments, except Brunei, receive some form of contributions (monetary or otherwise) from the tobacco industry. With the exception of Brunei and Lao PDR, government agencies or officials endorse tobacco industry CSR activities or form partnerships with the industry in receiving contributions. An exposé from the Philippines shows how tobacco companies use CSR activities to circumvent laws regulating the industry and as a strategy to gain access to elected officials with the power to approve and implement tobacco control policies.[7] Recommendation 6 of the Guidelines requires countries to de-normalize the tobacco industry's CSR activities.

III. Benefits to the Tobacco Industry

With the exception of Brunei and Thailand, other governments accommodate requests from the tobacco industry for a longer implementation time or a postponement of tobacco control law. Benefit to the tobacco industry such as privileges and tax exemptions are still a problem in Lao PDR and Indonesia. For example, the industry in Lao PDR obtained a 5-year tax holiday and capped tobacco tax at 15%-30% till 2025.

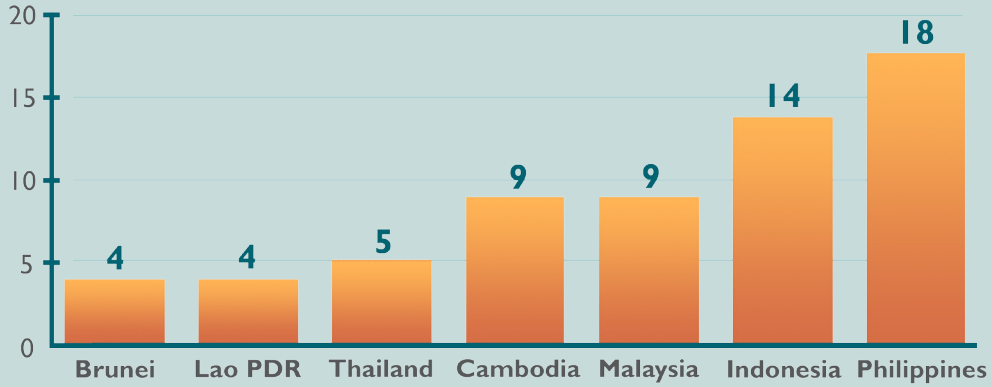
Indonesia and Malaysia have accommodated requests from the tobacco industry to grant a longer implementation period for legislation (longer than 6 months for implementation of pictorial health warnings) or postponement of tobacco control law. Indonesia has granted 18 months to the industry to apply pictorial health warnings on cigarette packs effective mid-2014, although Indonesian tobacco companies are already exporting packs with PHW to Brunei, Malaysia and Singapore. In Malaysia implementation of the ban on kiddie packs (less than 20 sticks) enacted in September 2004 was postponed for six years till May 2010. Also in Malaysia, restaurants and eating places are not 100% smoke-free to accommodate requests from the tobacco industry's representatives.

When it is reported no incentives were accorded to the tobacco industry, it does not mean that absolutely no benefit was given. The presence of foreign tobacco investors in a country would indicate they naturally enjoy foreign investor privileges. Information on this may not be publically available to advocates. More research is needed to corroborate this information.

IV. Forms of Unnecessary Interaction

Overall Indonesia, Malaysia and the Philippines report high levels of unnecessary interactions with the tobacco industry. These three countries also face high levels of tobacco industry participation in policy development. Cambodia, Lao PDR and Thailand report that top-level government officials do not meet with nor foster relations with tobacco companies,

Figure 2:
Level of Tobacco Industry Participation in Policy Development



[6] Philip Morris International charitable contributions, http://www.pmi.com/eng/documents/2009_charitable_contributions_total.pdf http://www.pmi.com/eng/about_us/corporate_contributions/documents/contributions_in_2012.pdf

[7] Tobacco CSR thwarts ad ban, no smoking laws, Judith Balea, 31 May 2013, http://www.rappler.com/newsbreak/30315-tobacco-csr-work-thwarts-ad-ban,-no-smoking-laws

such as attending social functions and events sponsored or organized by the tobacco companies. In 2009 when Tabinfo, a tobacco industry trade event was held in Bangkok, although Thailand has a state tobacco monopoly, government officials were instructed not to endorse the event.

Cambodia, Indonesia, Malaysia and Thailand accept assistance or offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke-free policies. For example the Royal Malaysian Customs collaborated with the Confederation of Malaysian Tobacco Manufacturers (CMTM) in conducting anti-smuggling activities. Several governments still accept, support, endorse, or enter into partnerships or agreements with the tobacco industry. For example, the Cambodian government had accepted financial assistance from British American Tobacco (BAT) to build an airport smoking room designed with cigarette brand colours.

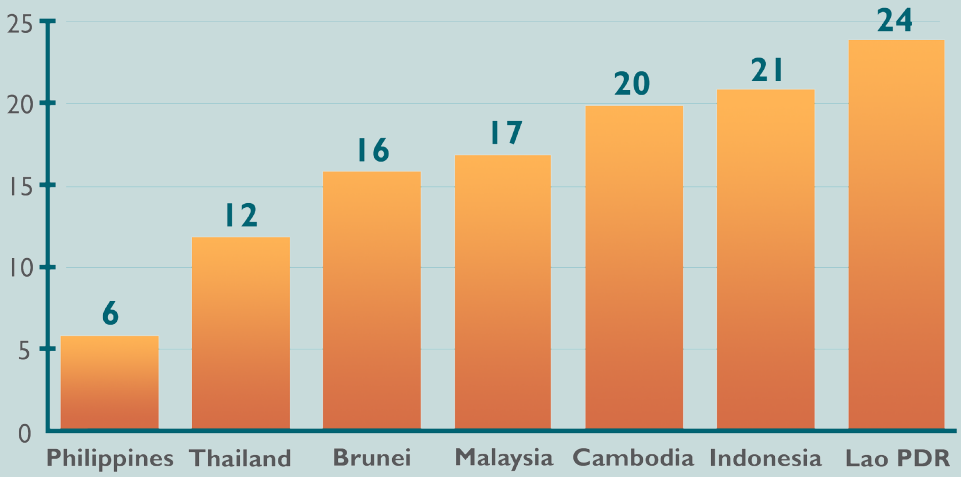
V. Transparency

The public perception is most governments have not put in place procedures, which enable them to publicly disclose meetings or their interactions with the tobacco industry. This includes not indicating when the meetings with the industry take place, their purposes, or the contents and outcomes of the meetings. The public may be informed of government decisions after such meetings through press statements.

VI. Conflict of Interest

Brunei prohibits political contributions from the tobacco industry. Other countries do not prohibit or require full disclosure of such contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns. In Malaysia and Thailand, retired senior officials have worked for the tobacco industry. In Malaysia for example, the former Attorney-General (1980-1993) upon his retirement became the Chairman of BAT Malaysia (1994 to 2012). Relatives of current high level officials also work for the industry in both Malaysia and Thailand. In Thailand the current Permanent Secretary of Ministry of Interior is on the Thai Tobacco Monopoly's executive board, while a Minister in the Prime Minister's Office owns a tobacco leaf business. Overall there is limited information on this in countries and responses are subjected to advocates own knowledge. Respondents who answered positively provided evidence. It is also possible that those who said 'Never' do not have the information or simply do not have the perception that this is an issue.

Figure 3:
Preventive Measures to Curb Tobacco Industry Interaction



VII. Preventive Measures

Most governments do not have a procedure for disclosing records of interactions with the tobacco industry and its representatives. Philippines and Thailand are doing better than other countries in instituting measures to restrict tobacco industry interaction (Figure 3). As recommended in the Article 5.3 Guidelines, one way to de-normalize the tobacco industry is through a Code of Conduct or guidelines for officials when dealing with the tobacco industry. In 2010, the Philippine Civil Service Commission and Department of Health issued Joint Memorandum Circular 2010-01, which aims to protect the bureaucracy against tobacco industry interference in accordance with Article 5.3 Guidelines by limiting interactions with the industry and rejecting partnerships with tobacco companies. The Philippines is the first country in Asia to have such a Circular. Thailand and Lao PDR have a similar policy for their respective ministries of health.

Through a Cabinet decision, Thailand prohibits the acceptance of all forms of contributions from the Thai Tobacco Monopoly, including offers of assistance, policy drafts, or study visit invitations to the government and its officials; however, this applies only to the Thai Tobacco Monopoly. Brunei, Indonesia, Malaysia and Thailand require the tobacco industry to submit information on tobacco production, manufacture, market share, and revenues; however, the tobacco industry is not required to provide information on marketing expenditures, expenses on lobbying, philanthropy and political contributions.

While governments have made some effort towards raising awareness on policies relating to Article 5.3 Guidelines, these are not carried out in a systematic or consistent manner. If this effort is stepped up and done systematically, it will assist governments towards better implementation of the Guidelines.

Recommendations and Way Forward

Article 5.3 implementation requires a "whole of government" approach and not just by the Ministries of Health. Information on the assortment of benefits given to the tobacco industry is incomplete. There are still unnecessary interactions between the industry and governments, and transparency in dealings with the tobacco industry is a recurring problem. For the immediate, the following must be done:

- Disclose all interactions with the tobacco industry;
- Implement a Code of Conduct based on Article 5.3 Guidelines;
- Ban so-called CSR activities by the tobacco industry; and
- Require the tobacco industry to disclose periodically information on tobacco production, manufacture, market share, revenues, expenditure on marketing, lobbying, philanthropy and political contributions.

De-normalize the Tobacco Industry and Stop Its Interference

Both governments and civil society need to be more pro-active in de-normalizing the tobacco industry. Misinformation, exaggerations and threats from the industry and its front groups must be exposed and challenged. Governments need to scrutinise any statistics and research provided by the tobacco industry and its allies.

Acknowledgement

We acknowledge the valuable contributions from various country partners in the preparation of this Tobacco Industry Interference Index.

Summary: Tobacco Industry Interference Index in ASEAN Countries

Indicators	BN	KH	ID	LA	MY	PH	TH
Level of Participation in Policy-Development 0. Not applicable, 1 Never, 2 Rarely: less than 10% of the time, 3 Sometimes:10-40% of the time, 4 Frequently:40-75% of the time, 5 Always: 75-100% of the time							
1. The government accepts, supports or endorses offer for assistance by or in collaboration with the tobacco industry in implementing tobacco control policies (Rec 3.1) *1 no incident 2 receives/ accepts/ acknowledges 3 supports or endorses 4 uses assistance/ repeats arguments 5 allows such assistance or collaboration to influence decisions on policy[1]	1	3	4	1	3	5	2
2. The government accepts, supports or endorses legislation drafted by/ collaboration with the tobacco industry (Rec 3.4)	1	3	5	1	3	5	1
3. The government allows the tobacco industry to sit in multi-sectoral committee/ advisory group that sets public health policy (Rec 4.8)	1	2	5	1	2	5	1
4. The government allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or subsidiary bodies or accepts their sponsorship for delegates. (Rec 4.9 & 8.3)	1	1	0	1	1	3	1
Industry-Related CSR Activities 0. Not applicable, 1 Never, 2 Rarely: less than 10% of the time, 3 Sometimes:10-40% of the time, 4 Frequently:40-75% of the time, 5 Always: 75-100% of the time							
5.The government receives contributions from the tobacco industry (including so-called CSR contributions) (Rec 6.4)	1	3	5	2	2	4	4
6.The government agencies/officials endorses, forms partnerships with/ participates in tobacco industry CSR activities (Rec 6.2) *1 acknowledges 2 endorses/ supports 3.participates (through officials) 4 forms partnership 5. Supports/ partners with AND participates[1]	0	5	5	0	2	3	4
Benefits to the Tobacco Industry 0. Not applicable, 1 Never, 2 Rarely: less than 10% of the time, 3 Sometimes:10-40% of the time, 4 Frequently:40-75% of the time, 5 Always: 75-100% of the time							
7.The government accommodates requests from the industry for longer implementation time or postponement of tobacco control law (Rec 7.1)	1	3	5	5	5	4	1
8.The government gives privileges, incentives, exemptions or benefits to the tobacco industry[2] (Rec 7.3)	1	1	5	5	2	3	2
Forms of Unnecessary Interaction 1 Never 5 Yes (even if only 1 incident in the past 2 years)							
9.Top level government officials meet with/ foster relations with the tobacco companies such as attending social functions and events sponsored or organized by the tobacco companies. (Rec 2.1)	1	1	5	1	5	5	1
10.The government accepts assistance/ offers of assistance from the tobacco industry on enforcement (Rec 3.1 & 4.3)	1	5	1	5	5	5	5
11.The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry (Rec 3.1)	1	5	5	1	5	5	1

[1]For Q11 which attempts to define the intensity of the government involvement in tobacco industry's so-called CSR; if there are more than one incident, please provide details of the incident and give a score for each incident. SEATCA will consolidate these and provide an average score

Indicators	BN	KH	ID	LA	MY	PH	TH
Transparency 0. Not applicable, 1 Never, 2 Rarely: less than 10% of the time, 3 Sometimes:10-40% of the time, 4 Frequently:40-75% of the time, 5 Always: 75-100% of the time							
12.The government does not publicly disclose meetings/ interactions with the tobacco industry where such interactions are strictly necessary for regulation. (Rec 2.2)	0	5	5	3	5	5	1
Conflict of Interest							
13.The government does not have a policy (whether or not written) 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 (Rec 4.11) *1 No 5 Yes	1	5	5	5	5	5	5
14.Retired senior officials work for the tobacco industry (Rec 4.4) 0. Not applicable, 1 Never, 2 Rarely: less than 10% of the time, 3 Sometimes:10-40% of the time, 4 Frequently:40-75% of the time, 5 Always: 75-100% of the time	1	1	1	5	5	3	5
15.Current government officials and their relatives hold positions in the tobacco business including consultancy positions (Rec 4.5, 4.8 & 4.10) *0. Technical officials necessary to manage SOE 1 Low to mid level public health officials 2. Non-tobacco control high-level public health official 3. Tobacco control related official (agriculture, customs) 4 tobacco control official in health ministry 5.any high level official (Minister, Prime Minister, including elected officials)	1	5	1	1	5	5	5
Preventive Measures 1. Yes, 2. Yes but partial only, 3. Policy/ Program being developed 4. Committed to develop such a policy/ program 5. None							
16.The government has a procedure for disclosing records of the interaction with tobacco industry and its representatives. (Rec 5.1)	5	5	5	5	5	1	2
17.The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards they should comply when dealing with the tobacco industry (Rec 4.2)	5	4	5	5	3	1	1
18.The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, and political contributions. (Rec 5.2)	1	5	1	5	2	2	4
19.The government has a program / system/ plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)	4	4	5	4	3	1	3
20.The government has a policy prohibiting the acceptance of all forms of contributions from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations to the government, officials and their relatives. (Rec 3.4)	1	2	5	5	4	1	2
TOTAL	**29**	**68**	**78**	**61**	**72**	**71**	**51**

[2](e.g. reduced income tax rates or property tax exemption, duty free imports of machineries and capital assets, subsidies for tobacco production, delayed implementation of excise tax increase, other incentives granted to foreign investors, duty free tobacco distribution in government owned facility or shop)

Towards a healthy, tobacco-free ASEAN

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