



Southeast Asia Tobacco Control Alliance

# **Tobacco Industry Interference Index**

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

2017

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## **About SEATCA**

SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by assisting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO FCTC. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control movements in Southeast Asia, the WHO bestowed on SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General's Special Recognition Award in 2014.

For more information, visit: [www.seatca.org](http://www.seatca.org)

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# Tobacco Industry Interference Index

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

## Introduction

Recent journalistic exposé have brought the extent of tobacco industry interference to the forefront. A Reuters investigation has revealed Philip Morris International's (PMI) offensive efforts across several countries on how it works to subvert the WHO Framework Convention on Tobacco Control (FCTC) implementation on multiple levels. According to the exposé, PMI has focused "its vast global resources on bringing to heel the world's tobacco control treaty" and "works to subvert the treaty on multiple levels".<sup>1</sup>

In the ASEAN region, interference from the tobacco industry remains a big problem. The tobacco industry continues to interfere with, deter and thwart government efforts to protect public health through both overt and covert means. It lobbies and dissuades governments from developing and implementing stringent tobacco control policies that are effective. Such obstructive tactics must be exposed to illustrate the various ways in which the industry carries out these activities, and also to identify vulnerable sectors so that steps can be taken to address ways to stop interference.

FCTC Article 5.3 is often described as the backbone of the Convention as it guides countries to protect their tobacco control policies from the vested interests of the tobacco industry.<sup>2</sup> The FCTC cannot be implemented effectively if industry interference is not rooted out. However Article 5.3 is the least effectively implemented Article. The solution lies in the hands of governments. Governments need to be proactive and vigorous in putting in place safeguards and measures to prevent unnecessary TI interactions, limit necessary ones, and set up disclosure procedures to protect public health policies.

This Tobacco Industry (TI) Interference Index, the fourth in the series,<sup>3,4,5</sup> is a civil society report assessing the implementation of FCTC Article 5.3 among ASEAN countries. Nine (9) countries (i.e., Brunei,<sup>6</sup> Cambodia, Indonesia,<sup>7</sup> Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Vietnam) participated in this survey and have been ranked from the lowest level of TI interference to the highest. This fourth report covers the period 2016 and identifies any changes compared to the previous (2015) report. References are from publicly available evidence to support choice of answers, although in some instances, there may be no evidence available. The same scoring method used in previous report has been retained. Table 1 provides the full scores for the nine countries.

Overall, progress in the implementation of Article 5.3 has been snail-paced. A few countries moved forward in their efforts to implement the Article 5.3 Guidelines while a few faced increased industry interference. Other countries made progress in one area and regressed in another, resulting in little movement. There still remains much room for improvement in the implementation of the FCTC Article 5.3 Guidelines in the ASEAN region.



***The days when tobacco industry representatives could offer self-serving advice and influence policy-makers by providing resources are coming to an end. But we have to put the nails in the tobacco industry's coffin and ensure that its interference is ended.***<sup>8</sup>

*-Vera da Costa e Silva, Head of WHO FCTC Secretariat*

<sup>1</sup>A Karla et al. Inside Philip Morris campaign to subvert the global anti-smoking treaty, Reuters, 13 Jul 2017 <http://www.reuters.com/investigates/special-report/pmi-who-fctc/>

<sup>2</sup>Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control, [http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf?ua=1)

<sup>3</sup>SEATCA 2014 Tobacco Industry Interference Index, <http://www.seatca.org/dmdocuments/SEATCA-TII%20Index%20Report.pdf>

<sup>4</sup>SEATCA 2015 Tobacco Industry Interference Index, [http://seatca.org/dmdocuments/TII%20Index%202015\\_F\\_11Aug.pdf](http://seatca.org/dmdocuments/TII%20Index%202015_F_11Aug.pdf)

<sup>5</sup>SEATCA 2016 Tobacco Industry Interference Index, <http://seatca.org/dmdocuments/TII%20Index%202016.pdf>

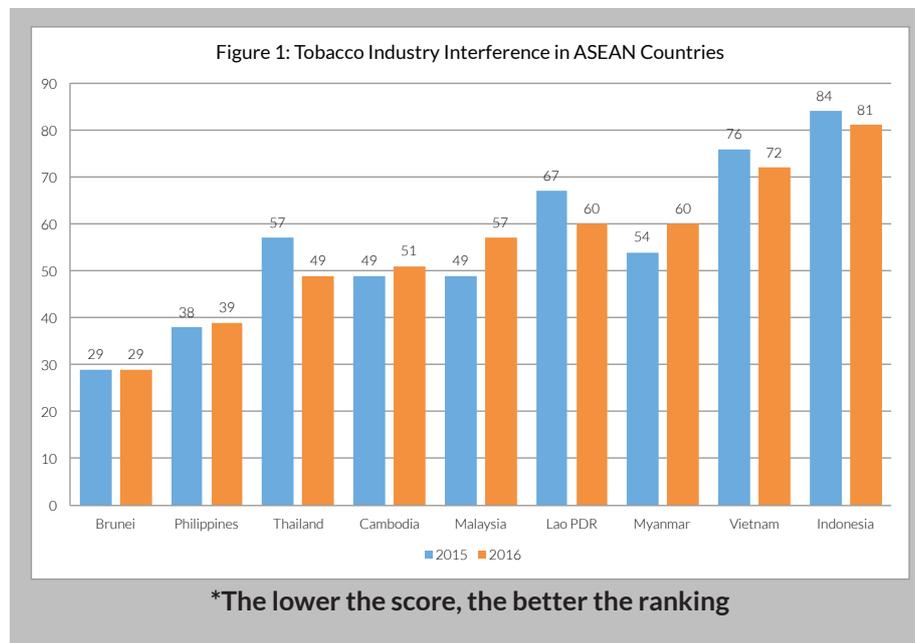
<sup>6</sup>Questionnaire for Brunei Darussalam was filled by the Ministry of Health

<sup>7</sup>Indonesia is a non-Party to the WHO Framework Convention on Tobacco Control

<sup>8</sup>'There ain't no such thing as a free lunch', Dr Vera da Costa e Silva, Head, WHO FCTC Secretariat

<http://www.who.int/fctc/secretariat/head/statements/2017/head-fctc-there-aint-no-such-thing-as-a-free-lunch/en/>

Figure 1\* shows the ranking of countries according to their level of implementation of Article 5.3 in the region. In comparison to 2015, overall there is no significant improvement across countries for 2016. See Table 1 for detail scores for each country.



## Summary Findings:

- Brunei Darussalam maintains its good record, and the Philippines still holds second position in the region, but both countries have not advanced in strengthening their implementation of Article 5.3.
- Vietnam and Indonesia show high levels of industry interference, although both countries show marginal improvement.
- Malaysia and Myanmar have deteriorated and are showing greater industry interference.
- Indonesia, a non-Party to the FCTC, continues to languish at the bottom as tobacco industry interference worsens. However, Indonesia shows marginal improvement with the Ministry of Health drawing up guidelines for industry interaction.
- Countries that have unnecessary interaction with the tobacco industry continue to make themselves vulnerable to high levels of tobacco industry influence in policy development.
- Tobacco-related corporate social responsibility activities provide an avenue for government officials to participate directly in the industry's activities and endorse them.
- Myanmar still shows high levels of industry interference by giving benefits to the tobacco industry.
- While Philippines and Thailand have instituted concrete measures to prevent or reduce tobacco industry interference, there is not much improvement across the region. Many countries still have not implemented a procedure for disclosing interactions with the industry.

**Table 1. Summary: Tobacco Industry Interference Index in ASEAN Countries**

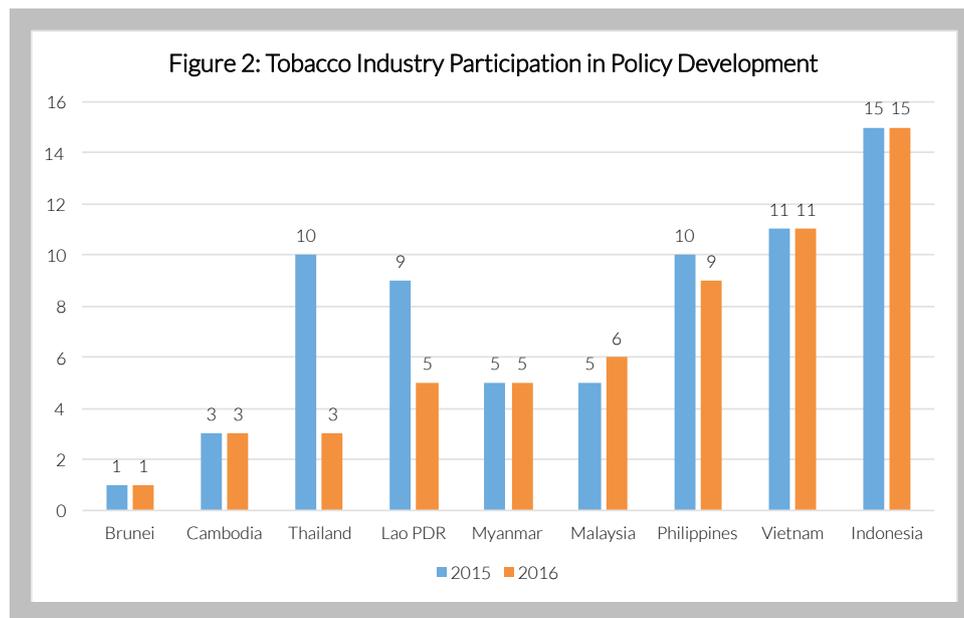
INDICATORS	BN	KH	ID	LA	MY	MN	PH	TH	VN
<b>Level of Participation in Policy-Development<sup>9</sup></b>									
1. The government accepts, supports or endorses offer for assistance by or in collaboration with the tobacco industry in implementing tobacco control policies (Rec 3.1)	0	1	5	3	0	3	2	1	4
2. The government accepts, supports or endorses legislation drafted by/ collaboration with the tobacco industry (Rec 3.4) <i>Score 5 if pro-tobacco industry, and 1 if pro-advocate. Proportionately rate the scores from 1-5 depending on the amount or quantity/ value</i>	0	1	5	1	0	1	0	1	2
3. The government allows the tobacco industry to sit in multi-sectoral committee/ advisory group that sets public health policy (Rec 4.8) <i>1 Never 5 Yes</i>	1	1	5	1	5	1	5	1	5
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)	0	0	0	0	1	0	2	0	0
<b>Subtotal</b>	<b>1</b>	<b>3</b>	<b>15</b>	<b>5</b>	<b>6</b>	<b>5</b>	<b>9</b>	<b>3</b>	<b>11</b>
<b>So-called CSR activities</b>									
5. The government receives contributions from the tobacco industry (including so-called CSR contributions) (Rec 6.4) The government agencies/officials endorses, forms partnerships with/ participates in tobacco industry CSR activities (Rec 6.2)	0	3	5	0	3	4	2	3	5
<b>Subtotal</b>	<b>0</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>5</b>
<b>Benefits to the Tobacco Industry</b>									
6. The government accommodates requests from the industry for longer implementation time or postponement of tobacco control law (Rec 7.1) For each incident, provide a base score of 3 if there is a policy that remains pending due to tobacco industry efforts. No score if there is no proposed or pending policy at all. Time Frame: +1 Longer time frame was granted, +1 extremely long time is granted, -1 if there is a justifiable reason (elections, calamity) Type of Health Policy/ Type of Government Agency Involved: -1 if related to local government, -2 if related to agriculture, -2 if related to trade, +1 if referring to policy of health department, women, children, or education.	N/A	1	5	3	5	4	0	1	0
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3) <i>For each incentive/benefit, give base score of 3; Subject: +1 if the incentive is specific to a tobacco company; Term/Period: +1 if term of the benefit extends beyond usual term of elected officials; Granting Authority: -1 if the grant is granted by local govt; Type: +1 if exemption refers to excise tax or duty free; + if a subsidy is involved</i>	0	4	5	5	3	3	5	2	4
<b>Subtotal</b>	<b>0</b>	<b>5</b>	<b>10</b>	<b>8</b>	<b>8</b>	<b>7</b>	<b>5</b>	<b>3</b>	<b>4</b>
<b>Forms of Unnecessary Interaction</b>									
8. 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) <i>Provide base score of 3: -1 for mitigating circumstance and +1 for aggravating circumstance</i>	0	1	5	1	1	0	0	3	5
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement (Rec 3.1 & 4.3)	0	1	4	5	1	1	0	2	5
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry (Rec 3.1)	0	1	5	5	1	0	5	3	5
<b>Subtotal</b>	<b>0</b>	<b>3</b>	<b>14</b>	<b>11</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>8</b>	<b>15</b>

<sup>9</sup>Q1, Q5, Q9, Q10: Scores are cumulative, starting with score 3. Level of officer: +1 if high level officer involved in receiving; -1 if low level or local level officer; Level of support: -1 if only attendance, +1 if acknowledgement in speech, +1 if money was accepted, -3 if there was rejection of offer, +1 if there is a contract, -1 if draft or policy paper merely received.

INDICATORS	BN	KH	ID	LA	MY	MN	PH	TH	VN
<b>Transparency</b>									
11. The government does not publicly disclose meetings/ interactions with the tobacco industry where such interactions are strictly necessary for regulation. (Rec 2.2) <i>For each meeting/ interaction not disclosed, give base score of 3; +2 if the meeting is not strictly necessary, -1 if minutes were taken, -1 if TC advocates were asked to be present, -1 if the meeting is in a public office, +1 if photos were taken, +1 if high level officials were involved, -1 if there is a mechanism for disclosure of tobacco meetings.</i>	4	2	5	3	3	3	0	3	5
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliate organizations, and individuals acting on their behalf including lobbyists. <i>If rules exist for tobacco companies, provide a base score of 3. -1 if affiliated organizations are included, -1 if individuals/ lobbyists are included; If no rules exist, the score is 5. -1 if a policy is being considered.</i>	4	5	5	4	5	5	3	4	5
<b>Subtotal</b>	<b>8</b>	<b>7</b>	<b>10</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>3</b>	<b>7</b>	<b>10</b>
<b>Conflict of Interest</b>									
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) <i>1 Never 5 Yes; If such a prohibition does not exist for tobacco companies, provide a base score of 5: -1 if a policy is being considered, -1 if there is a partial policy, -1 if there is a policy but not enforced.</i>	1	5	5	1	5	5	5	5	1
14. Retired senior officials work for the tobacco industry (Rec 4.4) <i>Provide base score of 3: -1 for mitigating circumstance and +1 for aggravating circumstance</i>	0	1	5	1	4	3	4	5	0
15. Current government officials and their relatives hold positions in the tobacco business including consultancy positions (Rec 4.5, 4.8 & 4.10) <i>Provide base score of 3: -1 for mitigating circumstance and +1 for aggravating circumstance</i>	0	4	1	5	0	2	0	4	4
<b>Subtotal</b>	<b>1</b>	<b>10</b>	<b>11</b>	<b>7</b>	<b>9</b>	<b>10</b>	<b>9</b>	<b>14</b>	<b>5</b>
<b>Preventive Measures</b> <i>1 Yes, 2 Yes but partial only, 3 Policy/ program being developed, 4 Committed to develop such a policy/ program, 5 None</i>									
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	5	1	2	5
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards they should comply when dealings with the tobacco industry (Rec 4.2)	5	4	2	5	5	5	1	2	5
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)	4	5	2	4	5	5	2	3	2
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	3	2	5	1	2	5
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	2	5	3	5	1	2	5
<b>Subtotal</b>	<b>19</b>	<b>20</b>	<b>16</b>	<b>22</b>	<b>20</b>	<b>25</b>	<b>6</b>	<b>11</b>	<b>22</b>
<b>TOTAL</b>	<b>29</b>	<b>51</b>	<b>81</b>	<b>60</b>	<b>57</b>	<b>60</b>	<b>39</b>	<b>49</b>	<b>72</b>

## I. Tobacco Industry Still Participates in Policy Development

Thailand and Lao PDR show significant improvement in reducing tobacco industry participation in policy development while Malaysia shows a slight deterioration (Figure 2). In Thailand, in contrast to the previous year, for 2016, there was no reported incidence of the government accepting, or responding to any initiative from the tobacco industry in implementing tobacco control measures. In Lao PDR, the government did not accommodate the tobacco industry's request to reduce the size of the pictorial health warning (PHW) from the proposed 75% to 50%. Although the industry tried to interfere, the government successfully passed the law requiring 75% PHW.



Both Vietnam and Indonesia demonstrate high levels of industry interference. Indonesia continues to allow the tobacco industry to intervene in tobacco control policy development. As previously noted,<sup>10</sup> intervention is not always initiated by the tobacco industry. Pro-tobacco industry policies are developed both at the national and provincial level. For example industry supporters advanced a pro-tobacco industry Bill in 2016 in the parliament. There appeared to be strong cohesion between the parliamentarians and cigarette producers. The tobacco industry's powerful influence in parliament is seen when the House Speaker was sacked by the Parliament Honorary Council for postponing deliberations of the draft Bill in November 2016. Industry front groups and lobby groups play a crucial role in representing the industry arguments.

In Vietnam, the government accepted an offer to collaborate with the TI in controlling tobacco smuggling. The Ministry of International Trade has endorsed a recommendation from the TI to divert 50% of the tobacco control fund for enforcement of tobacco smuggling problem.<sup>11</sup>

## II. Tobacco-related CSR Activities Still Flourish

Although Article 5.3 recommends a ban on all tobacco-related CSR (Corporate Social Responsibility) activities, only Thailand has banned these activities as of July 2017 while Vietnam has a partial ban and allows certain types of sponsorship. This gives the tobacco industry, both local and transnational companies, opportunities to conduct CSR activities and involve public officials. Malaysia's deterioration

<sup>10</sup>SEATCA 2016 Tobacco Industry Interference Index. <https://seatca.org/dmdocuments/TII%20Index%202016.pdf>

<sup>11</sup>Lang Son Government Web portal. 14/04/2017. <http://www.langson.gov.vn/ubnd/system/files/vbdh/3615.pdf>

<sup>12</sup>Yayasan Salam 'Back to school Program' 2 Jan 2016. [https://www.pmi.com/resources/docs/default-source/our\\_company/2016\\_contributions.pdf?sfvrsn=3fb38bb5\\_10](https://www.pmi.com/resources/docs/default-source/our_company/2016_contributions.pdf?sfvrsn=3fb38bb5_10)

is evident when the Minister of Domestic Trade, Cooperatives and Consumerism (DTCC) officiated at the Philip Morris-sponsored “Back to School” programme organised by Yayasan Salam, the recipient of the TI-CSR grant.<sup>12</sup> Despite calls by the Ministry of Health to ban vaping and sale of e-cigarettes, strong lobbying by the vaping industry resulted in the non-nicotine based e-cigarettes being allowed and to be regulated by the DTCC Ministry.

A vape factory opened in Malaysia in 2017 where the Deputy Minister of DTCC was scheduled to officiate at the opening ceremony but cancelled his participation after receiving protests from the public health groups. The Minister however defended his Deputy by saying, “[t]hat is a business opportunity. ... There is nothing wrong for them to do business here.”<sup>13</sup> The DTCC’s position is contrary to that of the Health Ministry.

In the Philippines, despite the Civil Service Commission–Department of Health Joint Memorandum Circular (JMC)<sup>14</sup> prohibiting government officials from collaborating with the TI on CSR activities, there were many TI partnerships programmes involving the Police Department and several mayors in cities. In Myanmar, the Department of Rural Development (DRD) endorsed British American Tobacco’s CSR activities by providing a list of villages where BAT can conduct its activities, committing to help BAT as much as they can for this CSR project.<sup>15</sup>

In Indonesia, the government continues to accept CSR contributions from cigarette companies. Government agencies or officials support this form of partnerships by participating in CSR activities organized by the TI which are mostly at the provincial level. Despite the Education Ministerial Decree that bans CSR activities by tobacco companies in schools, there are numerous programs involving students and teachers. Some of these activities are conducted outside the schools to circumvent the Decree. In January 2016, PT HM Sampoerna, the local affiliate of Philip Morris International, for example had organized a student creativity exhibition in three districts of East and Central Java, namely Lumajang, Rembang and Klaten. The program received the support of the local Ministry of Education offices, the school committee and parents who participated in these events.<sup>16</sup>

Partial bans on CSR activities don’t work as illustrated in the experience of Vietnam. Despite the restriction limiting the types of tobacco-related CSR activities that can be carried out, it has made no difference to the extent the TI continues to conduct these activities. The TI channels its funds focusing on supporting activities that are popular, connected to the People’s Committee and involve high profile ministries such as the Ministry of Justice<sup>17</sup> and the National Police.<sup>18</sup> Vinataba for example contributes funds to the National Program on poverty and hunger eradication in Vietnam.<sup>19</sup>



***The fact is that accepting proceeds from this foul trade is increasingly viewed as reprehensible, and rightly so. ... We can't trust in free lunches any longer. Never again.***<sup>20</sup>

<sup>13</sup>Tharayana Arumugam. Vape factory to open in Malaysia despite objection, New Straits Times, 15 May 2017 <https://www.nst.com.my/news/nation/2017/05/239489/vape-factory-open-msia-despite-objections>

<sup>14</sup>Civil Service Commission-Department of Health Joint Memorandum Circular No. 2010-01; <http://www.smokefree.doh.gov.ph/uploads/attachments/199597c6480f1fbad91e61cfd8c1a3a41a5621de.pdf>

<sup>15</sup>Corporate Social Responsibility Program with CAD <http://cadmm.org/what/csr-projects-with-cad/>

<sup>16</sup>Sampoerna untuk Indonesia Gelar Pameran Kreativitas Siswa, Koran Sindo, 20 January 2016

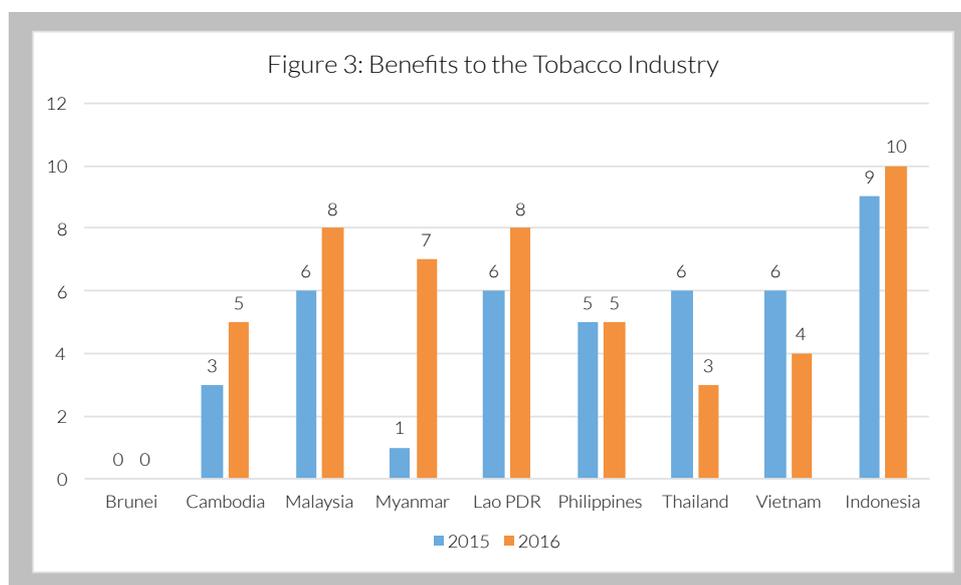
<sup>17</sup>Ho Chi Minh Law Newspaper. *Sở Tư pháp TP.HCM trao nhà tình nghĩa tại Bến Tre*. 14/04/2017; Available from: <http://plo.vn/thoi-su/so-tu-phap-tphcm-trao-nha-tinh-nghia-tai-ben-tre-666468.html>

<sup>19</sup>Environmental resources newspaper. *Vinataba tặng 120 căn nhà tình nghĩa cho huyện Bắc Ái*. 14/04/2017; Available from: <http://baotainguy-enmoitruong.vn/suc-khoe-doi-song/201609/vinataba-tang-120-can-nha-tinh-nghia-cho-huyen-bac-ai-2730762/>

<sup>20</sup>There ain't no such thing as a free lunch', Dr Vera da Costa e Silva, Head, WHO FCTC Secretariat <http://www.who.int/fctc/secretariat/head/statements/2017/head-fctc-there-aint-no-such-thing-as-a-free-lunch/en/>

### III. Tobacco Industry Continues to Receive Benefits

The tobacco industry in many countries continue to receive benefits through a variety of ways and in 2016 several countries saw a deterioration (Figure 3).



In Malaysia there were several policy measures which were defeated, delayed or postponed in 2016 because of interference from the tobacco and other related industries which mobilised front groups and lobby groups to champion their opposition:

- Ministry of Health announced its plan on plain packaging in February 2016. There were numerous protests from industry lobby groups in the media and a month later (March) the Health Minister said his Ministry will talk to the tobacco companies on intellectual property rights. Since then, there has been no update on this policy.<sup>21</sup>
- There was no tax increase on tobacco following statements from the tobacco industry that it will worsen smuggling.
- Contrary to recommendations from the Health Ministry to ban e-cigarettes, non-nicotine e-cigarette was allowed by bringing in other ministries for regulation, extending the authority to the Ministry of Domestic Trade, Cooperatives & Consumerism and the Ministry of Science, Technology and Innovation.
- A public consultation on licensing of cigarette retailers was carried out early in the year but following protests from retailer groups there was no decision.

Both Myanmar and Lao PDR saw a delay in the implementation of their new legislation requiring pictorial health warnings on cigarette packs in 2016. In Lao PDR, the implementation of PHW was delayed by 7 months (moved from October 2016 to May 2017) with the industry citing the often used excuse that they had “a large stockpile of printed packets” and even requested “a reduction in the size of the graphic image from 75 percent to 50 percent of the pack.”<sup>22</sup> In Myanmar, Japan Tobacco International (JTI) and BAT met with the Myanmar Investment Commission in March 2016 requesting more time to prepare the packs with PHW, past the September deadline. There are still tobacco packs being sold which are not compliant with the PHW requirement.<sup>23</sup> Similarly in Cambodia, when the new PHW came into place in July 2016, there was low compliance of the law among the tobacco companies.<sup>24</sup>

<sup>21</sup>Health Ministry hits pause on plain tobacco packaging plan, Mayuri Mei Lin, Malay Mail Online 21 Mar 2016 <http://www.themalaymailonline.com/malaysia/article/health-ministry-hits-pause-on-plain-tobacco-packaging-plan#c06CpeMxrUh7Y5Fk.97>

<sup>22</sup>Laos postpones printing of pictorial health warnings on cigarette packets, Xinhua, 10 Oct 2016, [http://news.xinhuanet.com/english/2016-10/10/c\\_135741440.htm](http://news.xinhuanet.com/english/2016-10/10/c_135741440.htm)

<sup>23</sup>Tobacco giants behind Camel and Winston are ‘Liars’ – Myanmar Health Official, Joshua Carroll, Myanmar Business Today, 12 Dec 2016, <http://www.mmbiztoday.com/articles/tobacco-giant-behind-camel-and-winston-are-liars-myanmar-health-official>

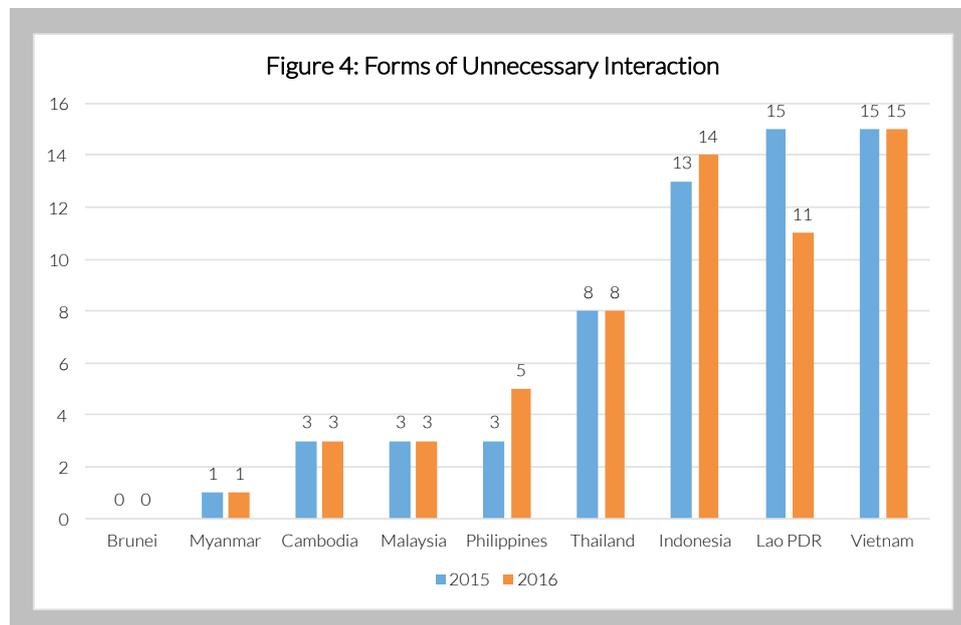
<sup>24</sup>Past deadline, most cigarettes still lack graphic pictures, Cambodia Daily 27 Jul 2016, <http://phsarpp.com/threads/past-deadline-most-cigarettes-still-lack-graphic-pictures.9125/>

The Cambodian Ministry of Commerce announced that Vietnam had agreed to waive all duties on 3,000 tons of dried tobacco imports from Cambodia. Publicity was given to the exemption urging tobacco growers to take advantage of the duty waiver.

In Indonesia, the tobacco industry continues to pay low taxes because of the complex 12-tiered taxation system. The system was scheduled for further simplification in 2016 however this was not carried out. The Customs and Excise Department was persuaded by the industry that tax increase would worsen illicit cigarette problem resulting in revenue loss for the government. A lower tax increase (10.54%) was announced for 2017.

## IV. Unnecessary Interactions Still Occur

Most countries showed no progress in reducing unnecessary interaction with the tobacco industry (Figure 4).



Lao PDR showed some improvement while there was deterioration in the Philippines and Indonesia. The TI tried to lobby the Deputy Prime Minister to weaken the PHW but its request was forwarded to the Ministry of Health and Ministry of Finance who decided in favour of tobacco control.

In the Philippines, a summit on climate change and agriculture was organized by Philip Morris Fortune Tobacco Corporation (affiliate of PMI), and the American Chamber of Commerce of the Philippines Inc. (AmCham), for about 230 participants which included city mayors, officials from Local Government Units, farmers, and representatives from the provincial and municipal agriculture offices. Despite the JMC which prohibits such a collaboration with the TI, the event which involved multiple government agencies took place.

In Vietnam, several ministerial level officials attended TI-related events or presented awards to the TI. The Ministry of Labour for example presented BAT with HR Award for successful human resource management in 2016.<sup>25</sup> Similarly in Indonesia throughout 2016, several Ministers presented various awards (such as 'Zero Accident Award', top tax contributors) to the tobacco companies which received wide press coverage.

<sup>25</sup>People's Public Security Newspaper. Công ty BAT Việt Nam nhận giải thưởng Vietnam HR Award 2016. 14/04/2017; Available from: <http://cand.com.vn/doanh-nghiep/CONG-TY-BAT-VIET-NAM-NHAN-GIAI-THUONG-VIETNAM-HR-AWARD-2016-410346/>

## V. Transparency is Lacking When Dealing with TI

*There was no improvement in the government's transparency on interactions with the tobacco industry*

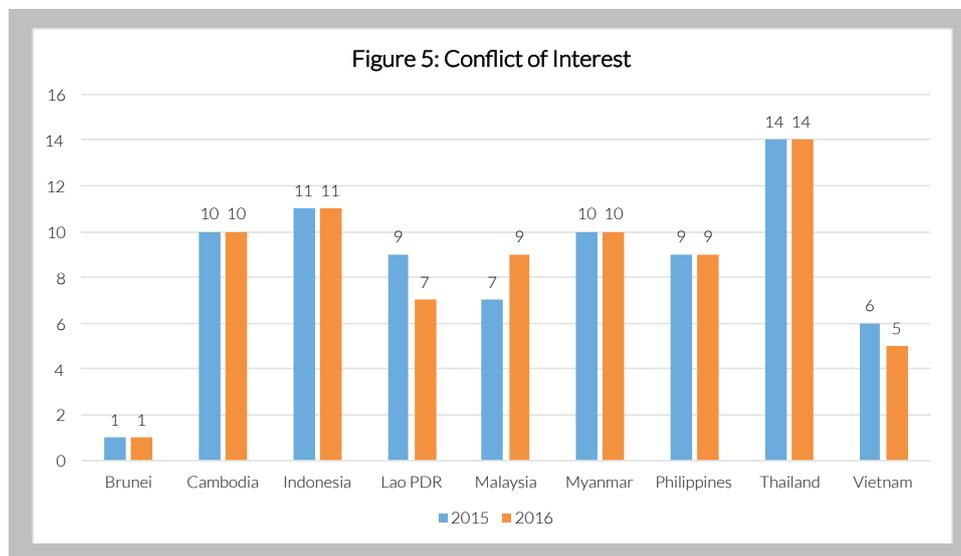
While governments do meet with the tobacco industry, most governments however do not disclose nature of these meetings/ interactions with the industry or if such meetings indeed took place. Minutes may be taken during these meetings, however they are not made public. The industry can misrepresent these meetings to its advantage as seen in Myanmar Health Ministry's meeting with JTI. JTI Myanmar claimed it obtained formal approval from the Ministry to place an advertisement in the newspaper. The Ministry denied granting such an approval.<sup>26</sup>

Tobacco manufacturers and distributors are usually registered, however most governments have not set up a procedure for the disclosure or registration of tobacco industry entities and its affiliate organizations and individuals acting on their behalf including lobbyists. This registration will be useful for governments so they will be able to identify the industry, the tobacco companies' lawyers, hired consultants, and third party entities are approaching governments to lobby on their behalf.

## VI. Conflict of Interest

It is status quo in Cambodia, Indonesia, Myanmar, Philippines and Thailand (Figure 5). There is a slight improvement for Lao PDR as no retired government official assumed a position with the tobacco industry recently.

In Malaysia the Secretary-General of the Ministry of International Trade and Industry (MITI), during her term, led the Malaysian government in the Trans-Pacific Partnership Agreement (TPPA) negotiations



where Malaysia proposed to exclude tobacco control measures from the TPPA. When the Ministry of Health announced plans for plain packaging in February 2016, the Sec-Gen supported the MOH stating it is the government's right to regulate on health issues. The official dismissed claims that plain packaging is a violation of international treaties. While still the Sec-Gen of MITI, the official was appointed as a Council Member<sup>27</sup> to the Institute for Democracy and Economic Affairs (IDEAS), a Malaysian think tank

<sup>26</sup>Myanmar Business Today. Tobacco Giant Behind Camel and Winston Are 'Liars' - Myanmar Health Official Joshua Carroll. 12 Dec 2016 <https://www.mmbiztoday.com/articles/tobacco-giant-behind-camel-and-winston-are-liars-myanmar-health-official/>

<sup>27</sup>Institute for Democracy and Economic Affairs. [www.ideas.org.my/about/people/tan-sri-dr-rebecca-sta-maria/](http://www.ideas.org.my/about/people/tan-sri-dr-rebecca-sta-maria/)

that opposes plain packaging. IDEAS received funds from JTI and PMI in 2015<sup>28</sup> and 2016.<sup>29</sup> Since 2015, IDEAS has been actively opposing tobacco control measures - especially plain packaging and tax increase.

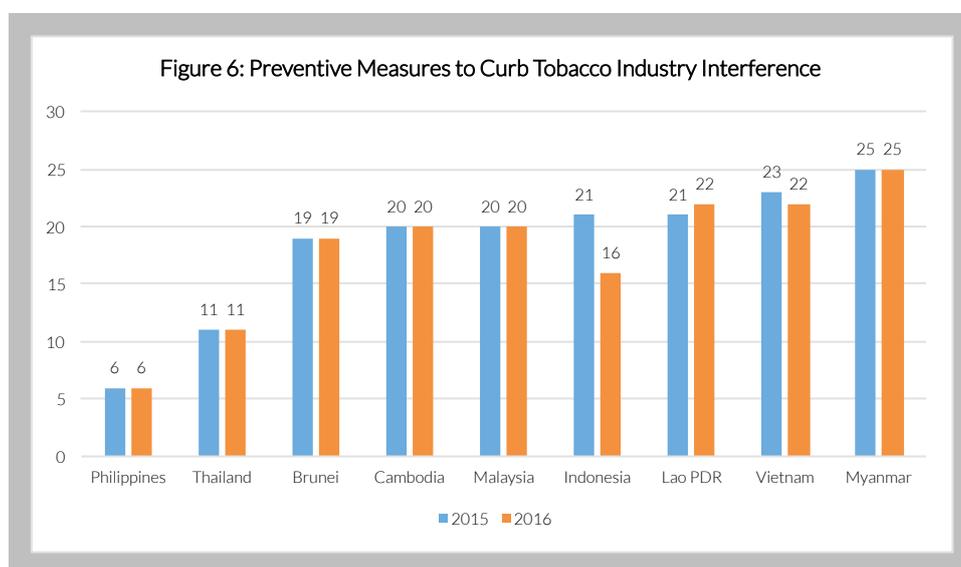
In Indonesia, the former Director General of Customs and Excise of the Ministry of Finance was appointed as Chairman of the BAT/Bentoel Company Audit Committee in March 2016 for three years. He formerly held several senior positions in various government agencies, including the Director General of Customs and Excise, and Advisor to the Finance Minister on International Economic Relations. He can be an influential voice in opposing tax increase.

The Vietnamese Minister of Industry and Trade appointed his close relative as an inspector to Vinataba and disciplinary action was taken against him and he lost his ministerial post. The Party Central Committee's must be acknowledged for stating that it "does not condone lack of good example and self-interest behaviour" for its own business.<sup>30</sup>

In Cambodia, the Chairman of BAT still remains a Senator. The government does not 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. In Thailand, retired senior government officials have regularly been appointed as board members of the Thai Tobacco Monopoly (TTM). Current government officials such as a senior officer from the Excise Department and the Ministry of Finance are TTM board members. Since the TTM is a state enterprise, the appointment is seen as normal.

## VII. More Preventive Measures Needed

In 2016 there was no progress in developing preventive measures in Thailand, Brunei, Cambodia, Malaysia, Lao PDR and Myanmar (Figure 6). Indonesia is the only country that showed some progress.



**The Ministry of Health put in place a policy to protect government officials within the National Ministry of Health administration from tobacco industry interference.** Health Minister Regulation No. 50/2016 on Guidelines for Managing Conflict of Interest with the Tobacco Industry within the Health Ministry

<sup>28</sup> Institute for Democracy and Economic Affairs. Annual Report and Financial Statements 31 Dec 2015 <http://ideas.org.my/wp-content/uploads/2010/01/Audit-Report-2015.pdf>

<sup>29</sup> Institute for Democracy and Economic Affairs. Report on Financial Statements 30 Sep 2016 <http://ideas.org.my/wp-content/uploads/2017/02/Audit-Report-2016-1.pdf>

<sup>30</sup> Vietnamplus newspaper. Vu Huy Hoang stripped of former industry-trade minister title. 25/01/2017; Available from: <http://en.vietnamplus.vn/vu-huy-hoang-stripped-of-former-industrytrade-minister-title/106403.vnp>.

applies exclusively to the tobacco industry. The government receives only some information from the tobacco companies. Information on tobacco manufacture such as personnel, land size, tobacco leaf production, import, export and market share is collected by the Central Bureau of Statistics. There is no obligation to report on other activities such as advertising, promotion and sponsorship expenditures.

The state enterprise of Thailand and Vietnam provide some information about tobacco production however these are limited. The health departments may not be able to access these data for regulation purposes. Tobacco companies do not disclose how much they spend on marketing and promoting their products and how much they spend funding front groups and trade/retailer groups for their lobbying activities.

Philippines and Thailand are doing better than other countries in instituting measures to restrict tobacco industry interaction. 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 public officials and employees when dealing with the tobacco industry. Philippines continues to show leadership in implementing its JMC as more government departments draw up Codes of Conduct for their respective officials.



### **Denormalise the tobacco industry**

*De-normalise 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.<sup>31</sup>*

## Challenges Remain

Many challenges still remain and need to be addressed:

- Non-health government departments appear to treat tobacco like any other consumer product, and the tobacco industry as they would any other industry, and this is a problem. It provides an avenue for the tobacco industry to intervene, oppose, delay and thwart tobacco control measures.
- Importance of Article 5.3 seems confined to only the Ministry/Department of Health and remains a non-issue with other departments.
- Lobby groups and trade/retailer groups are aggressive in opposing tobacco control measures.
- Tobacco companies will not disclose how much they spend on lobbying.

<sup>31</sup>WHO Framework Convention on Tobacco Control, Article 5.3 Guidelines, 2008;  
[http://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](http://www.who.int/fctc/guidelines/article_5_3.pdf)

## Recommendations

Article 5.3 Guidelines were adopted in 2008 which serves as a guide for governments to prevent tobacco industry participation in policy development. This Index has exposed the areas of weakness and areas where action is greatly needed:

- A whole-of-government approach is vital for FCTC Article 5.3 implementation. Governments need to record and document all meetings with the tobacco industry and their outcomes. The tobacco industry continues to obtain benefits to do its business in several countries. These benefits should cease.
- Transparency is needed in dealing with the tobacco industry, and this is a major area that needs improvement;
- Departments/ministries of health need to work closely with the departments/ministries of trade and industry to address this issue. A practical way forward would be to adopt a Code of Conduct for government officials;
- Ban CSR activities by the tobacco industry;
- Require tobacco companies to disclose and report on all expenditures on marketing, retailer incentives, philanthropy, lobbying, and political contributions.



## A Healthy, Sustainable, Tobacco-Free ASEAN

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[www.tobaccowatch.seatca.org](http://www.tobaccowatch.seatca.org)

