Tobacco Industry Interference Index

2016 ASEAN Report on Implementation of WHO Framework Convention on Tobacco Control Article 5.3
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Editorial Team
Mary Assunta Kolandai, Bungon Ritthiphakdee, Ulysses Dorotheo, Jennie Lyn Reyes-Peoro, and Tan Yen Lian

Cover and Layout Design
Worrawan Jirathanapiwat and Wendell Balderas

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Thakolsuk Place, Room 2B, 115 Thoddamri Road, Dusit, Bangkok 10300 Thailand
Tel: +66 2 241 0082

SEATCA
The Southeast Asia Tobacco Control Alliance (SEATCA) is a regional network that 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.

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The WHO Framework Convention on Tobacco Control recognized the Parties’ “need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts”.

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

Introduction

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.

This third Tobacco Industry (TI) Interference Index is a civil society report assessing the implementation of World Health Organization Framework Convention on Tobacco Control (WHO FCTC) Article 5.3 in the ASEAN region. Nine (9) countries (i.e., Brunei, Cambodia, Indonesia, 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. Myanmar and Vietnam are participating for the first time.

This third report shows that a few countries are moving forward in their efforts to implement the FCTC Article 5.3 Guidelines; however, others are facing increased industry interference. Overall, there still remains much room for improvement in the implementation of the FCTC Article 5.3 Guidelines in the ASEAN region.

Tobacco control measures under the FCTC cannot be implemented effectively if industry interference is not rooted out; hence, Article 5.3 is crucial for the success of the FCTC. Governments need to be proactive and vigorous in their efforts to put in place safeguards and measures to prevent unnecessary TI interactions, limit necessary ones, and set up public disclosure procedures to protect public health policies.

The first report covered the period 2009–2012, which provided a baseline for the TII Index. Respondents in seven (7) countries in the ASEAN region were asked to consult with advocates, partners, government agencies, and non-government organizations on the top 20 most commonly reported incidents of tobacco industry interference referenced to specific FCTC Article 5.3 Guidelines recommendations. The second report covered the period 2013-2014, while this third report covered 2015 to identify any changes since the previous report. References are from publicly available evidence to support choice of answers, although in some instances, there may be no evidence available.

In this third report, the list of questions has overall been retained with minor adjustments. Two (2) questions on TI-related corporate social responsibility (CSR) activities have been collapsed into one (Q5). With the tobacco industry utilising third parties to represent its interests, a new question on rules for the disclosure or registration of tobacco industry entities and affiliate organisations has been added (Q12). The scoring system was revised and made more rigorous based on feedback from country and regional partners. This revised scoring may not adequately capture the differences between the years.

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3 Questionnaire for Brunei Darussalam was filled out by the government
4 WHO Framework Convention on Tobacco Control, http://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1
* Speech at the tenth anniversary of the entry into force of the WHO FCTC in Brazil, November 5, 2015; http://www.who.int/fctc/mediacentre/news/2015/koreabrazil/en/
Main Findings

Overall interference from the tobacco industry remains a big problem in countries in the ASEAN region. Figure 1* below shows the ranking of countries according to their level of implementation of Article 5.3 in the region.

- Brunei Darussalam maintains its good record, and the Philippines shines as a leader in the region on dealing with tobacco industry interference through introduction of concrete measures.
- Cambodia and Malaysia show good progress in addressing industry interference especially in policy development.
- Indonesia, a non-Party to the FCTC, continues to languish at the bottom as tobacco industry interference worsens.
- Myanmar and Vietnam, new entrants in the survey, show high levels of industry interference.
- Countries that have unnecessary interaction with the tobacco industry also face high levels of tobacco industry influence in policy development.
- Governments still accept or endorse offers of assistance from the tobacco industry in implementing tobacco control policies.
- Tobacco industry related corporate social responsibility activities remain a vulnerable entry point for governments to relate with the industry by endorsing its contributions.
- While Philippines and Thailand have instituted concrete measures to prevent or reduce tobacco industry interference, there is not much improvement across the region such as having a procedure for disclosing interactions with the industry.

* The lower the score, the better the ranking.
I. Tobacco Industry Participation in Policy Development

Brunei, Cambodia and Malaysia show improvement in curbing TI influence in policy development (Figure 2), while Indonesia still faces high level of industry participation. There were no incidences of industry participation in policy development in both Cambodia and Malaysia. Thailand shows a deterioration in halting industry interference in policy development. Its Excise Department under the Ministry of Finance received technical assistance from the International Tax and Investment Center (ITIC) on excise tax reform.5 The ITIC is a known tobacco industry lobby group.6 In 2015, the Thai government also accepted and acted on a proposal by the Thai Tobacco Monopoly (TTM) to investigate and reorganise Thai Health Promotion Foundation (ThaiHealth). The investigation resulted in negative press for ThaiHealth.7,8 ThaiHealth is recognised as an international success case study of health promotion funded by 2% surcharge on tobacco and alcohol tax revenues.

The Philippine Tobacco Institute (PTI) and National Tobacco Administration (NTA) continue to pose a threat as members of the Inter-agency Committee - Tobacco (IAC-T) of the Philippines as provided in its Tobacco Regulation Act (Republic Act 9211) legislated in 2003. In 2015, the PTI looked for ways to influence policies related to tobacco control. The TI along with other business groups formed an alliance, Fight Illicit Trade (FIT) to collaborate with the Bureau of Customs to fight illicit trade. However, there are no reports of collaboration in 2015. The PTI also submitted a position paper to government agencies on the draft Implementing Rules and Regulations (IRR) of the Graphic Health Warnings Law – including a proposal to reduce Department of Health’s powers in implementing the law and to amend the definitions in the IRR in such a way that would impede and restrict the law’s proper implementation. The IAC-T (which includes the PTI and NTA) is tasked to monitor compliance of the Graphic Health Warning Law.9 The final graphic health warnings IRR limited the powers given to the Department of Health.

Vietnam shows high level of interference in policy making. In March 2015, the Ministry of Finance issued Directive 04/CT-BCT which specifies the role of Vietnam Tobacco Association (VTA) to fund

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6 International Tax and Investment Center; http://www.tobaccotactics.org/index.php/International_Tax_and_Investment_Center
7 Net widens in probe of ThaiHealth, Bangkok Post; 20 Oct 2015; http://www.bangkokpost.com/print/735444/
9 Republic Act No. 10643
government activities in controlling illicit trade of tobacco.\textsuperscript{10} In April 2015, the Market Management Department in the Ministry of Trade and Industry (MOTI) organized a forum in cooperation with VTA to discuss solutions to enhance inspection and control of cigarette smuggling and illicit trade. Myanmar, on the other hand, is open to accepting assistance from the tobacco industry in implementing tobacco control policies.

Indonesia, still a non-Party of the FCTC, continues to face strong TI participation and interference in policy development. The tobacco industry is regarded like any other industry and is treated as a stakeholder by the government. Intervention is not always initiated by the tobacco industry. In many circumstances, the government requests for input from the tobacco industry before formulating regulations or during the drafting process, which can impact public health. There is currently a pro-tobacco bill in Parliament for debate which serves to protect tobacco farmers rather than public health. If passed, this bill has the potential to roll-back the few achievements in tobacco control such as the pictorial health warnings currently applied on cigarette packs.

There was no meeting of the Conference of the Parties (COP) in 2015, and there is no evidence of the tobacco industry being represented in other COP-related meetings for this period. Most governments have made efforts to ensure their delegations to the previous sixth session of the Conference of the Parties (COP6) in 2014 rejected industry sponsorship. Vietnam, however, had a tobacco industry representative in their delegation to COP6.\textsuperscript{11}

\section*{II. Tobacco Industry-related CSR Activities}

Tobacco companies use corporate social responsibility (CSR) activities to circumvent laws regulating the industry, and as a strategy to gain access to elected officials who are empowered to approve and implement tobacco control policies.\textsuperscript{12} Recommendation 6 of the Article 5.3 Guidelines requires countries to de-normalize the tobacco industry’s CSR activities. However, these are still not banned among ASEAN countries and serve as a loophole the industry exploits.\textsuperscript{13} Several countries (i.e., Cambodia, Lao PDR, Singapore, Thailand and Vietnam) have banned the publicity of such CSR activities.

In recent years, as governments adopt comprehensive bans or severely restrict tobacco advertising, promotion and sponsorship, tobacco companies have increased their CSR spending in the ASEAN region. Philip Morris International (PMI), for example, increased its spending in three (3) countries (i.e., Malaysia, Philippines and Thailand) in the ASEAN region from USD 1.5 million in 2009 to USD 2.5 million in 2015.\textsuperscript{14} PMI spends the lion’s share of its CSR handouts in Indonesia and the Philippines, about USD 6 million and USD 1.8 million respectively, which are also its largest cigarette markets among ASEAN countries.

Brunei, Lao PDR and Malaysia show no record of government endorsement of TI related CSR activities. All governments, except Brunei and Thailand, receive some form of contribution (monetary or otherwise) from the tobacco industry. Thailand is extending the ban on CSR activities to the whole industry (both the tobacco monopoly and private companies) and is in the midst of approving legislation.


\textsuperscript{11} Vietnam: a representative of the tobacco industry participated in COP6 in Moscow as part of the Vietnam delegation.

\textsuperscript{12} 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

\textsuperscript{13} 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

\textsuperscript{14} Philip Morris International charitable contributions; http://www.pmi.com/eng/documents/2009_charitable_contributions_total.pdf

In Indonesia, the government accepts, endorses and participates in CSR activities of the tobacco industry. In April 2015, the Minister of Youth and Sports officially opened the National Djarum Circuit (Djarum SIRNAS) for badminton in Li Ning Sulawesi Open 2015. In his speech, he said: "Hopefully, Djarum SIRNAS is able to bring back young athletes who will restore the glory of the Indonesian Badminton在未来他们将被取代，这是一个非常重要的印尼羽毛球被世界追随。"15 In December 2015, the Head of Ecosystem Restoration Directorate General of Conservation, Natural Resources and Environment Ministry participated and spoke at Djarum’s ‘Trees for Life’ project.

In Myanmar, the tobacco industry contributes to disaster relief for which it receives tax exemptions. In September 2015, Japan Tobacco International (JTI) Myanmar visited the Secretary of Myanmar Investment Commission and made a small donation towards flood victims.16 In February 2016, Myanmar approved legislation for pictorial health warnings (PHW) on cigarette packs to come into effect on 1 September 2016. In March, JTI Myanmar along with British American Tobacco (BAT), met with the Myanmar Investment Commission about the PHW17 although this department has nothing to do with the public health measure.

In Vietnam, the state-owned enterprise, Vietnam National Tobacco Corporation (VINataba), contributes funds to the national programme on poverty and hunger eradication. In 2015, VINATABA contributed funds to the coast guards and was thanked by the head of the coast guards.

In Cambodia, the Forestry Administration has endorsed BAT’s tree planting project. JTI sponsored a project for clearing landmines (2015-2016) through the Cambodian Mine Action Centre (CMAC) in affected villages in Odder Meanchey and Siem Reap provinces using “HeroRats.”18 The head of CMAC is special advisor to the Prime Minister and regarded as a government official.19

In the Philippines, since the Joint Memorandum Circular 2010-01 (JMC)20, many government departments have drawn up their respective Codes of Conduct banning government officials from receiving or supporting TI-related CSR activities. While such activities have reduced drastically, the tobacco companies still find ways to contribute to local government units (LGUs) through foundations and the American Chamber of Commerce which fronts Philip Morris Fortune Tobacco Corporation (PMFTC) in such activities. In 2015, the American Chamber of Commerce launched project Embrace21 in partnership with PMFTC and LGUs in the province of Bohol in Tagbilaran City. The project is to build classrooms in 12 municipalities in Bohol most affected by the earthquake and provides school supplies and toys to schoolchildren. The project will run for the next 3 years.

Mighty Corporation’s Wong Chu King Foundation (WCKF) sponsored the construction of classrooms in Piat, Cagayan22 and the unveiling ceremony in August 2015 was attended by Mayor Black Villacete and LGU officials who expressed appreciation for WCKF.

### III. Benefits to the Tobacco Industry

The tobacco industry continues to obtain benefits to do its business in several countries.

Overall, the tobacco industry continues to obtain benefits to do its business in several countries, either by getting longer lead time for compliance to regulations, postponement of more stringent legislation to reduce tobacco use, or enjoying incentives and other exemptions. With the exception of Brunei,  

18 The JTI Foundation: Rats to the rescue; http://jtifoundation.org/projects/rats-rescue/  
20 Civil Service Commission - Department of Health Joint Memorandum Circular No, 2010-01; http://www.smokefree.doh.gov.ph/uploads/attachments/199597c6480f1fbad91e61cfd8c1a3a4a15621de.pdf  
22 The Standard; https://issuu.com/thestandardph/docs/the_standard_-_20150606_-_saturday_2c20e89a76dc04
Malaysia and Myanmar, the other governments accommodated requests from the tobacco industry for a longer implementation time or a postponement of tobacco control laws in 2015.

Benefits to the tobacco industry, such as privileges and tax exemptions, remain a problem in Lao PDR and Indonesia. In Lao PDR, where Imperial Tobacco and Lao Tobacco Company together control 93% of all tobacco sold, the government continues to lose tax revenue under the unfair Investment License Agreement (ILA) that has capped ad valorem tobacco tax rates at between 15% and 30% until 2026 when the country's standard rate is 55%. Since 2002, the Lao government has lost over USD 80 million in revenue because of this agreement. In Indonesia, while value-added tax (VAT) for all consumer products is 10%, cigarettes have been given a discount for many years at only 8.4%. In 2015, the VAT for tobacco was raised slightly to 8.7%, which is still not the full amount.

In the Philippines, PMI has a tobacco leaf warehouse in the Subic Bay Free Port Zone and a manufacturing facility in the First Philippines Industrial Park. As a result, it received income tax holiday (ITH) for four (4) to a maximum eight (8) years; after the ITH, exemption from national and local taxes with only a special 5% tax rate on gross income; and exemption from duties and taxes on imported capital equipment spare parts, material and supplies. Thailand has also awarded tax exemption for native tobacco leaves, while Cambodia export tax was exempted for registered farmers producing more than 3,000 tons of tobacco leaf.

The Thai government faced a delay in putting the amended tobacco control law on the Cabinet agenda. While the Vietnam government accommodated requests from the tobacco industry, which argued for lower tax rate and delayed the date of its implementation by one (1) year. The Indonesian government continues to accommodate demands from the tobacco industry to provide more time for implementation or delay the regulation of tobacco control as seen in not acceding to the FCTC.

When it is reported that 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

Brunei, Cambodia, Malaysia and Myanmar had no record of public officials attending any social functions of the tobacco industry nor accept any assistance from the tobacco industry for enforcement activities (Figure 3). In Lao PDR, Vietnam and Indonesia there were incidents of senior government officials interacting with the tobacco industry by attending industry functions, handing out awards, and conducting factory visits.

In Vietnam, the Deputy Prime Minister attended a tobacco industry event entitled “30 Glory Years of VINATABA” in April 2015 and at the opening speech praised the tobacco industry.23 At this event, VINATABA received a First-class Order of Independence award from the Vietnam government.24 The Minister of Industry Indonesia visited factories of large tobacco companies and then announced that the Ministry is working on the tobacco industry roadmap 2015-2019, which would increase cigarette production over the next five (5) years.25

In Philippines, Thailand and Vietnam the tobacco industry provided assistance to the government in the enforcement of curbing illicit trade in tobacco products. In Philippines for example, Mighty Corporation conducted the destruction and disposal of fake cigarettes carrying its brands that were seized by the authorities. The seizure efforts were ran jointly with the Bureau of Customs, National Bureau of Investigation, Philippine National Police - Criminal Investigation and Detection Group and the Bureau of Internal Revenue.  

In Vietnam, the Deputy Minister of Trade and Industry (MOTI) received a delegation from PMI in May 2015. The MOTI and PMI exchanged views on policies and mechanisms to develop Vietnam’s tobacco industry as well as the opportunities for cooperation between VINATABA and PMI, which would include collaboration with relevant government agencies on preventing illicit trade in cigarettes. At this meeting the MOTI reaffirmed its support for foreign investment to invest and expand in Vietnam. The Ministry of Finance has also issued a circular on mechanism for raising, management and allocation of funds for initiatives against contraband cigarettes and counterfeit tobacco production and trading. This connects the tobacco industry directly with funding of enforcement activities.

Similarly in Thailand, the TTM, provides incentive to the government in seizing illicit trade tobacco. This is a deterioration for Thailand as previously the tobacco industry has not been involved nor contributed to any enforcement activities.

Government officials remain vulnerable when they participate in activities conducted by the American Chamber of Commerce and the US ASEAN Business Council where Philip Morris International is a Board member and Vice Chair of the Customs Committee. PMI has access to ASEAN Directors-General of Customs meetings through this channel. For example, PMI was a facilitator at the World Customs Organization Asia-Pacific Regional Workshop Combating Counterfeiting and Piracy held in April 2015 in Kuala Lumpur organised by the Malaysian Customs Department.

30 Thai Tobacco Monopoly to award authorities for cracking down on illicit cigarettes; NNT, 26 Feb 2016; http://bit.ly/2cnsEj
V. Greater Transparency Needed

There has been no improvement in transparency in dealing with the tobacco industry in the region. The prevailing public perception is that 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 tobacco industry communicates with governments on any matter that concerns their business. However, there is no systematic record keeping of what the industry is saying to governments, its recommendations, and its impact on tobacco control. The public may be informed of government decisions after such meetings through press statements. Transnational tobacco companies such as PMI, BAT and JTI have specialised staff (e.g., Regulatory Affairs Manager), whose job is to communicate and represent the industry’s interest to governments.

The Vietnamese and Indonesian governments are “open” about their interactions with tobacco industry as they see this interaction as “normal”; however, details about the interaction are not publically available. The Vietnamese government has a closed door working procedure, and its interactions are conducted according to Vietnamese law and practice. Indonesian policy makers do not disclose their meetings and interactions with the tobacco industry, and the public is eventually informed of pro-industry legislations. For example, the pro-tobacco industry bill introduced for debate in Parliament in 2014 was rejected by the end of the previous administration. However, the bill has re-emerged in the 2014 – 2019 period, being listed among the priority bills in 2015, and has been revised by adding protection of tobacco farmers as its main objective.

In the Philippines, there is a slight improvement as there was a public consultation to discuss the draft Implementing Rules and Regulations of the graphic health warnings on cigarette packs. Government officials, civil society and the tobacco industry were invited to the meetings, and the minutes of the meeting were circulated after the meeting. The Philippines’ Joint Memorandum Circular (JMC) requires such disclosure and for government departments to report on their interaction with the industry; however, the Civil Service Commission (CSC) does not have any full information about meetings of other agencies with the tobacco industry. Agencies such as the Department of Agriculture and the Department of Trade and Industry do not publicly disclose such meetings nor submit documentation/ reports to the CSC, while the Department of Health is required to keep a public record of persons and entities identified as part of the tobacco industry.

In Thailand, minutes of meetings with the tobacco industry are recorded, including those attended by high-level officials; however, they are not made public. Transparency in this matter would greatly assist governments to protect themselves from undue influence and interference from the industry. It would also expose the lies and myths that the industry perpetuates to governments.

Most governments have not set up rules or a procedure for the disclosure or registration of tobacco industry entities affiliates organizations and individuals acting on their behalf including lobbyists. Such a register would be helpful to governments to identify the industry as increasingly the tobacco companies’ lawyers, hired consultants, and third party entities are approaching governments to lobby on its behalf.

VI. Conflict of Interest

Brunei prohibits political contributions from the tobacco industry and continued to not have any conflict of interest. The other countries maintained their status quo in that they 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 (Figure 4). There is limited information on this in countries and responses are subject to advocates’ own knowledge.
In Vietnam, the Deputy Director of the Department of Light Industry (under MOTI) was appointed to be Vice Director of VINATABA. The Vice Director of Industrial Policy and Strategy Institute (under MOTI) was appointed as a board member. Vu Van Cuong, the Chairman of the Board of VINABATA is a member of the Communist Party and has a senior position in the party.

In Thailand, retired senior government officials have regularly been appointed as TTM board members. 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.

In Lao PDR, key current government officials from the Ministries of Finance and of Industry and Commerce are also in the Board of Management of Lao Tobacco Limited (LTL). For example, the Vice Minister of Industry and Commerce is the Chair of LTL, and the Vice Director General of the Enterprise Department joined the LTL Board upon retirement.

In the Philippines, retired high-ranking government officials are working for the tobacco industry or with private companies such as law firms that have tobacco companies as clients. Former Solicitor General Estelito Mendoza is counsel of Lucio Tan, the Chairman of Philip Morris Fortune Tobacco Corporation (PMFTC). Retired General Edilberto Adan is the Director and President of Mighty Corporation, while retired Judge Oscar Barrientos is its Executive Vice President. No current officials hold positions in the tobacco industry. In media articles on Mighty Corporation’s CSR activities, its executives are described by the titles they held as public officials.

In Indonesia, Eddy Abdurrahman has held many senior positions in various government agencies, including Director General of Customs and Excise, Ministry of Finance; Advisor to the Finance Minister for International Economic Relations, Ministry of Finance; and Secretary of the Coordinating Minister for Economic Affairs. In February 2015, Eddy Abdurrahman was appointed BAT/Bentoe’s Board as an Independent Commissioner. Indonesia has General Guidelines to tackle Conflict of Interest (Regulatory Reforms Minister No. 37/2012), which prohibits government officials from working with any types of industries/establishments outside the government services.

35 VINATABA; http://www.vinataba.com.vn/?page=define&key=about_message&menu_id=86
VII. Preventive Measures: Philippines leads the way

Overall, there has been no improvement in countries instituting preventive measures to curb interaction with the tobacco industry (Figure 5). Most government departments outside the Departments/ Ministries of Health have no knowledge of FCTC Article 5.3 Guidelines and treat the tobacco industry like any other industry or investor.

This is particularly true in the case of Indonesia, which treats the tobacco industry like any other industry and, despite the huge tobacco death toll, still does not see the need to accede to the FCTC. The concept of “tobacco industry interference” in public health remains foreign and unseen as a problem.

Philippines and Thailand are doing better than other countries in putting in place 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 officials 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.

Through a Cabinet decision, Thailand prohibits the acceptance of all forms of contributions from the TTM, including offers of assistance, policy drafts, or study visit invitations to the government and its officials; however, this applies only to the TTM. The government through the Article 5.3 Committee is now developing a procedure to raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines.

37 FCTC Article 5.3 Guidelines Best Practice: The Role of the Public Service Commission, March 2015, SEATCA; http://www.tobacrowatch.seatca.org/publications/
Brunei, Indonesia, Malaysia, Thailand and Vietnam 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. PMI spent USD 62 million in 2014 to roll out its “Don’t Be a Maybe, Be Marlboro” campaign around the world including in Thailand, Philippines and Indonesia. Although it is the leading selling cigarette brand in Singapore, and among the top seven (7) brands in Malaysia, Philippines, Vietnam and Indonesia, national governments have no information on how much the company had spent locally, or how to stop the aggressive marketing campaign, which clearly targets teenagers.

While governments have made some efforts towards raising awareness on policies relating to Article 5.3 Guidelines, these are not carried out in a systematic or consistent manner. Most governments still do not have a procedure for disclosing records of interactions with the tobacco industry and its representatives. If this effort is stepped up and done systematically, it will assist governments towards better implementation of the Guidelines.

**Challenge**

Since most countries already have anti-corruption laws, many believe these are sufficient and that they do not need additional measures to address tobacco industry interference. However, the fact that tobacco industry interference is prevalent and happens in every country shows that the existing anti-corruption measures are simply insufficient.

**Philippines: Code of Conduct to protect the bureaucracy from undue influence**

The Department of Health together with the Civil Service Commission issued the Joint Memorandum Circular No. 1 of 2010 (JMC), which serves as a protection of the bureaucracy against tobacco industry interference. This policy provides a code of conduct for all government officials in relation to the tobacco industry, which, consistent with Article 5.3 Guidelines, is broadly defined in the policy to include all those that represent the tobacco industry.39

Consistent with the Anti-Graft and Corrupt Practices Act and the FCTC:

1. All public officials shall:
   - Not interact with the tobacco industry (TI) unless strictly necessary for its regulation;
   - Make all “necessary” interactions public and transparent;
   - Not receive any form of direct or indirect contribution from TI; and,
   - Disclose interests in the TI

2. Violations of JMC are subject of administrative proceedings.

3. Heads of agencies must include implementation of the JMC in their annual reports.

**JMC in Action**

As of 2016, more than 20 national government agencies, local government units, state universities and colleges, and government-owned or controlled corporations in the Philippines have expressed support or implemented measures explicitly prohibiting their offices from interacting with the tobacco companies, retailers, and the like, unless such interactions are strictly necessary for their effective regulation and control.40 For example, the Department of Education, Department of Labor, Department of Science and Technology, Department of Foreign Affairs, Bureau of Internal Revenue, and Metro Manila Development Authority have issued their respective regulations compliant with the JMC.

- The Department of Education issued DepEd Order No.6, s.2012 Guidelines on the adoption and implementation of public health policies on tobacco control and protection against tobacco industry interference.
- The Metropolitan Manila Development Authority (MMDA) has added Rules on the protection of the MMDA through the Memorandum 10, s.2010 titled, Amended Code of Conduct and Ethical Standards for Officials and Employees of the Metropolitan Manila Development Authority.
- Based on the JMC, the BIR adopted Revenue Regulation (RR) 28-2014, which reiterates the rules in the JMC and added that any violation of the RR shall be deemed conduct prejudicial to the best interest of the service and shall constitute a grave offense.

38 You are the target: Global Marlboro campaign found to target teens; 2014; http://global.tobaccofreekids.org/en/industry_watch/marketing/youre_the_target
39 Republic of Philippines: Joint Memorandum Circular 2010 – 01, Civil Service Commission and Department of Health; http://www.smokefree.doh.gov.ph/uploads/attachments/199597c6480f1bad91e61cf8d6c3a41a5621de.pdf
40 CSC, DOH celebrate six year campaign Vs tobacco industry interference; http://www.csc.gov.ph/new-updates/1177-csc,-doh-celebrate-six-year-campaign-vs-tobacco-industry-interference
Governments have to dramatically step up their efforts to implement FCTC Article 5.3. Implementation of this FCTC general obligation is vital to strengthen overall tobacco control; however, efforts are lagging far behind since adoption of the FCTC Article 5.3 Guidelines in 2008. The recommendations stated in the Guidelines provide clear measures that governments can implement to curb industry meddling and disruption. Outside the Department/Ministry of Health, other government departments remain largely unaware of FCTC Article 5.3 and have not utilised its strength to regulate the tobacco industry. More concerted effort is needed to publicise the importance of implementing FCTC Article 5.3.

- **Procedures** need to be put in place to reduce tobacco industry participation in policy development in every country;
- **Transparency** is needed in dealing with the tobacco industry, and this is a major area that needs improvement;
- **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. Departments/ministries of health need to work more closely with the departments/ministries of trade and industry to address this. 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 expenditure on marketing, retailer incentives, philanthropy, lobbying, and political contributions.

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**De-normalise the tobacco industry**

The tobacco industry is unique in that it is an industry that produces a product that kills half its customers prematurely. This amounts to more than 500,000 deaths in the ASEAN region a year and six million deaths worldwide. The FCTC Article 5.3 calls upon governments to de-normalise the tobacco industries' philanthropic activities.

"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"."

Governments need to recognise that the tobacco industry cannot be treated like any other regular business. It is vital for the whole of government to acknowledge that the tobacco industry needs to be stripped of its privileges and strictly monitored and regulated. It cannot be business as usual.

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42 WHO Framework Convention on Tobacco Control, Article 5.3 Guidelines, 2008; http://www.who.int/fctc/treaty_instruments/Guidelines_Article_5_3_English.pdf?ua=1
### Table 1. Summary: Tobacco Industry Interference Index in ASEAN Countries

<table>
<thead>
<tr>
<th>INDICATORS</th>
<th>BN</th>
<th>KH</th>
<th>ID</th>
<th>LA</th>
<th>MY</th>
<th>MN</th>
<th>PH</th>
<th>TH</th>
<th>VN</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Level of Participation in Policy-Development</strong>&lt;sup&gt;43&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>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</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>2. The government accepts, supports or endorses legislation drafted by/ collaboration with the tobacco industry (Rec 3.4) 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</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>3. The government allows the tobacco industry to sit in multi-sectoral committee/ advisory group that sets public health policy (Rec 4.8) 1 Never 5 Yes</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>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 &amp; 8.3)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>1</td>
<td>3</td>
<td>15</td>
<td>9</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td><strong>So-called CSR activities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>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)</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td><strong>Benefits to the Tobacco Industry</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>6. The government accommodates requests from the industry for longer implementation time or postponement of tobacco control law (Rec 7.1)</td>
<td>N/A</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>N/A</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>5</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>0</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>6</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td><strong>Forms of Unnecessary Interaction</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>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) Provide basic score of 3; -1 for mitigating circumstances and +1 for aggravating circumstance</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement (Rec 3.1 &amp; 4.3)</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry (Rec 3.1)</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>0</td>
<td>3</td>
<td>13</td>
<td>15</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td><strong>Transparency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. The government does not publicly disclose meetings/ interactions with the tobacco industry where such interactions are strictly necessary for regulation. (Rec 2.2) 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</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

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<sup>43</sup> There are no tobacco importers or retailers in Brunei after May 2014.

<sup>44</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 acknowledgment 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.
<table>
<thead>
<tr>
<th>INDICATORS</th>
<th>BN^43</th>
<th>KH</th>
<th>ID</th>
<th>LA</th>
<th>MY</th>
<th>MN</th>
<th>PH</th>
<th>TH</th>
<th>VN</th>
</tr>
</thead>
<tbody>
<tr>
<td>12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliates organizations, and individuals acting on their behalf including lobbyists. 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.</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>7</td>
<td>8</td>
<td>8</td>
<td>3</td>
<td>7</td>
</tr>
</tbody>
</table>

**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 | 5 | 5 | 1 | 5 | 5 | 5 | 5 | 1 |
| 14. Retired senior officials work for the tobacco industry (Rec 4.4) Provide base score of 3; -1 for mitigating circumstance and +1 for aggravating circumstance | 0 | 1 | 5 | 3 | 2 | 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) Provide base score of 3; -1 for mitigating circumstance and +1 for aggravating circumstance | 0 | 4 | 1 | 5 | 0 | 2 | 0 | 4 | 5 |
| Subtotal | | 1 | 10 | 11 | 9 | 7 | 10 | 9 | 14 | 6 |

**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 | 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 | 4 | 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 | 5 | 5 | 5 | 2 | 3 | 3 |
| 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 | 5 | 3 | 3 | 5 | 1 | 2 | 5 |
| Subtotal | | 19 | 20 | 21 | 21 | 20 | 25 | 6 | 14 | 23 |

**TOTAL**

29 | 49 | 84 | 67 | 49 | 54 | 38 | 57 | 76
Towards a healthy, tobacco-free ASEAN

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