Tobacco Industry Duplicity: Recycling an Old Marketing Code

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Tobacco Industry Duplicity: Recycling an Old Marketing Code

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About SEATCA
SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by supporting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO Framework Convention on Tobacco Control. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control in Southeast Asia, the WHO bestowed upon SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General’s Special Recognition Award in 2014. SEATCA is an official NGO Observer to the WHO FCTC Conference of Parties and a co-initiator of the Global Center for Good Governance in Tobacco Control (GGTC).

For more information, visit: www.seatca.org
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Introduction

Tobacco Transnational Corporations (TTCs) have been amplifying their claims of “transforming” their business and going “smoke-free” through use of new tobacco products.

In 2016, Philip Morris International (PMI) announced its goal to switch cigarette smokers to its so-called “reduced-risk” products. This drive for alleged industry transformation is supported by the Foundation for a Smoke Free World (FSFW), an organization founded in 2017 through a 12-year grant from PMI and, as of 2022, it has received $240 million from PMI. Based on FSFW’s 2020 tax documents, PMI remains its sole funder. Despite this, FSFW describes itself as “independent from PMI.” Since its inception, FSFW has been funding research and lobbying for the use and “risk-proportionate” regulation of PMI’s new tobacco products.

Central to the work of FSFW is the Tobacco Transformation Index (TTI), a report to measure the so-called transformation of the global tobacco industry by ranking the progress of the 15 largest tobacco companies in phasing out cigarettes and offering “reduced-risk alternatives.” FSFW provided funding to Euromonitor International Inc. (UK) and think tank SustainAbility to develop this report, which, given its PMI funding bias, cannot be considered an objective or independent undertaking. In 2019, Euromonitor also received funding from PMI’s IMPACT project on illicit trade.

Perceived transformation is an essential tobacco industry strategy. Globally, there are 1.3 billion smokers, and the annual global cigarette consumption is at 5.8 trillion, but it is projected that this will fall to 4.55 trillion by 2025. Some TTCs, like PMI and British American Tobacco (BAT), have announced that they are transforming to reduce the health impact of smoking, stressing the harms caused by cigarettes. While these companies want to be viewed as altruistic, this is merely a business decision to ensure their survival. There is no genuine transformation; they continue to make and promote their harmful cigarettes around the world. The industry itself has admitted in a PMI-funded report that 95% of the retail sales for majority of the 15 tobacco companies are cigarettes. The industry continues to oppose effective tobacco control measures, especially in developing countries, where there are less stringent tobacco regulations.

The transformation narrative is part of the industry’s plan to continue to hook customers with its addictive and deadly products and to be treated as stakeholders and gain public and government acceptance for its new products, to maintain company growth and increase profits at a time when there is declining cigarette sales and increased perception among youths about the harm and addictiveness of tobacco products. Even with admission of the harmful impact of its products, the industry puts the responsibility on the consumer to stop smoking cigarettes and switch to its new products, but there is no concomitant responsibility on the industry to stop producing and selling cigarettes.
The tobacco industry’s promotion of new tobacco and nicotine products, such as Electronic Nicotine Delivery Systems (ENDS) and Heated Tobacco Products (HTP), has been under the guise of promoting tobacco harm reduction. It refers to these products as “reduced-risk” products and differentiates them from cigarettes and other tobacco products, which it brands as “high-risk” products. This is similar to the industry rhetoric that light, mild, or low-tar cigarettes are “less harmful” than regular cigarettes. In reality, this is to increase the popularity and use of these new tobacco products, while effective government regulations for these products are lagging behind their rising market growth.

It is predicted that the market for ENDS and HTPs will significantly increase to US$ 67.4 billion by 2030. Despite the industry emphasis that ENDS and HTPs are not advertised or sold to the youth, use of these products has grown rapidly among the youth. In the US, one in five high school students used e-cigarettes in 2020. In 2019, after a Reuters exposé, PMI suspended its global social media campaign when it was called out for tapping a young social media influencer, in violation of its own internal marketing standards.

The tobacco industry has a long history of deceptive practices. In December 1953, the leading US tobacco companies conspired against the growing scientific evidence linking lung cancer with smoking and jointly published in 1954 a full-page advertisement in 448 newspapers across the US, titled “A Frank Statement to Cigarette Smokers,” intended to sow doubt about research linking their products with lung cancer. They said these studies were “inconclusive” and that they, as “responsible” companies, would jointly set up the Tobacco Industry Research Committee (TIRC, later renamed Council for Tobacco Research) to conduct research on the health effects of smoking, but its real goal was to shroud growing evidence on the harms of cigarettes and mislead the public.
The industry also introduced filters as a response intended to reassure smokers that it was making cigarettes safer, but it has been proven that filters do not actually make cigarettes less harmful and only mislead smokers into thinking that they were reducing their health risks. After the 1964 US Surgeon General’s report on smoking and health conclusively stated that smoking caused lung cancer, the industry continued to push for filtered cigarettes to counter the report. It also introduced "light" and "mild" cigarettes, which supposedly emitted reduced tar and nicotine concentrations based on machine testing with ventilated filters. However, in real life, smokers do not inhale like machines and compensate by covering the filter ventilation holes and taking more frequent and deeper puffs. Nonetheless, the industry marketed these cigarettes as "healthier," and smokers and non-smokers falsely perceived that "light" and "mild" cigarettes as less damaging to their health.

In 1998, internal tobacco industry documents were made public, exposing the industry and bringing to light what it had known and kept secret for decades. Despite the now insurmountable evidence that smoking causes lung cancer and other serious diseases, the tobacco industry has never admitted to any harm or liability.

The tobacco industry is marketing ENDS and HTPs as less harmful. They are not.

Despite the industry emphasis that ENDS and HTPs are not advertised or sold to the youth, use of these products has grown rapidly among the youth.
In 2022, the PMI-funded FSFW, through the Tobacco Transformation Index, announced that it had developed a marketing code, which it would finalize for release in 2023, to serve as a guide for the industry. Results of a marketing study (Phase 1) and the proposed marketing code were discussed in a report. As an overarching framework, it states that reduced-risk products should be advertised and promoted to existing nicotine and tobacco users and not promoted to youth and non-smokers. The role of social media as an important platform to reach consumers was emphasized. Implementation of the marketing standards was also highlighted through monitoring and evaluation mechanisms.

FSFW has declared that it supports a comprehensive ban of tobacco advertising, promotions, and sponsorship to achieve harm reduction, and tobacco companies publicly state that they do not market to the youth. Yet, the industry has been fighting tobacco advertising regulations in developing countries. For example, in the Philippines, the industry has fought bans on tobacco advertising and sued Balanga City for enacting an ordinance aimed at protecting the youth from tobacco marketing  while in Indonesia, it pushes advertising near schools and, in a judicial review, defended tobacco advertising on TV.

The study for the proposed code misleadingly states that the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) focuses on high-risk products and dismisses the FCTC as being problematic, because "[it] does not differentiate between the relative harm of different products." While it stated that research findings support the view that high-risk products cannot be marketed responsibly, given the harm they cause, it made a distinction for reduced-risk products and their role in harm reduction if marketed responsibly. Thus, it aims to limit FCTC’s coverage only to cigarettes and other conventional tobacco products, but not to newer tobacco and nicotine products.

In truth, at its 6th session in 2014, the Conference of Parties (COP) to the WHO FCTC decided to invite Parties “to consider prohibiting or regulating ENDS/ENNDS, including as tobacco products, medicinal products, consumer products, or other categories, as appropriate, taking into account the high level of protection for human health.” Similarly, in 2018, at its 8th session, the COP reminded that heated tobacco products are tobacco products and should be subject to policy and regulatory measures in line with the FCTC.
Recycling the Old Tobacco Marketing Code

In 2001, the three largest transnational tobacco companies and four smaller cigarette companies agreed to adhere to a set of new global tobacco marketing standards, the International Tobacco Marketing Standards (ITMS). This was introduced while governments were negotiating the WHO FCTC; hence, there was mounting pressure on the industry. This code continues to be used and has not been withdrawn.

The group comprised of PMI, BAT, and Japan Tobacco, Inc. and four smaller cigarette companies – Compania Industrial de Tabacos SA of Bolivia, Grupo Iberoamericano de Fomento SA of Spain, Papastratos of Greece, and Thailand Tobacco Monopoly – adopted the ITMS as a self-regulation to prevent tobacco marketing activities aimed at attracting young people. The ITMS contains five standards: content standards, media usage standards, sponsorship standards, distribution, and minimum age restrictions.

The ITMS were similar to those adopted by the industry in the US, Canada, and Great Britain in the 1960s. The industry introduces such voluntary industry codes to prevent government from implementing effective regulatory bans and restrictions. There are also no penalties for voluntary codes. The ITMS was also found to be weaker than existing global standards on tobacco regulations.

Many similarities are found between the 2001 standards for tobacco and the current rhetoric in the code being proposed by the Tobacco Transformation Index. Both allow the industry to advertise while seeming to focus on preventing marketing activities that target youth. The 2001 standard discourages advertising that arouses the interest of youth; distribution of promotional items to young people; sponsorship of events or activities in which young people participate; the labeling of the packaging of tobacco products, and the sale of cigarettes to minors under 18 years of age (Table 1).
Table 1: Comparison of ITMS (2001) and Proposed Reduced-Risk Products Marketing Code (2022)

<table>
<thead>
<tr>
<th>Accountability</th>
<th>Accountability</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Honest, truthful, sensible, and responsible way to market tobacco.</td>
<td>The onus is on companies to ensure that their marketing activities are legal, decent, honest and truthful. Companies act with a sense of responsibility to the consumer and society. Where doubt occurs, companies take a cautionary approach.</td>
<td>The tobacco industry cannot be relied on to act honestly or truthfully when it has tried to hide evidence of harm of its products to avoid liability. Despite the rhetoric, it has been acting irresponsibly in advertising and marketing to minors and has never taken a cautionary approach. The industry also lobbies for the weakest possible and ineffective regulation of its marketing practices under the guise of &quot;sensible&quot; regulation.</td>
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<th>Transparency</th>
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<tr>
<td>Information about the standards will be made available to the public, through the website.</td>
<td>Companies inform consumers when they are marketing to them. Marketing is clearly labelled as such, and it is not disguised as non-marketing material.</td>
<td>Currently with social media platforms and the use of paid influencers endorsing products, it is often unclear which content is company marketing and which is not. Companies do not publicly disclose their spending on direct and indirect marketing, including lobbying and so-called corporate social responsibility activities.</td>
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<tr>
<th>Product messaging</th>
<th>Product messaging</th>
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<tr>
<td>Advertisements should not imply that smoking leads to success in sports, career or sex life or increases popularity. Advertisements should not be &quot;appealing&quot; to young people. The rules prohibit using celebrities to advertise or feature people who are or appear to be under 25 years of age.</td>
<td>Implying that reduced-risk nicotine and tobacco product use contributes to sporting, sexual, social or professional success is prohibited. Individuals (including celebrities) shown in marketing are over 30 years old, and do not appear to be younger than 30 years old. Individuals (including celebrities) are not used to imply that consumption of the product leads to sporting, sexual, social or professional success. Advertisements and other marketing materials often show smoking as cool, imply social acceptability and success, and employ young and attractive models. Celebrities and social media influencers are used to endorse tobacco products specifically because they imply sporting, sexual, social, or professional success. Persons over 30 years old can easily appear much younger than they are. Tobacco product marketing schemes include contests with cash prizes and giveaways that are sports-related or luxury products such as motorcycles, cars, and the latest electronic gadgets. PMI and BAT still sponsor Formula 1.</td>
<td></td>
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</table>
## Table 1 (cont)

<table>
<thead>
<tr>
<th>International Tobacco Marketing Standards 2001</th>
<th>Proposed Reduced-Risk Products Marketing Code 2022</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td><strong>Health warnings</strong></td>
<td><strong>Health warnings</strong></td>
<td>The tobacco industry actively lobbies for the least effective and smallest possible health warnings to weaken any government-required health warnings.</td>
</tr>
<tr>
<td>Appropriate health warnings, as specified by law, shall be carried on all tobacco products and on the following consumer tobacco products brand advertising/promotional materials (where permitted).</td>
<td>Companies issue health or other warnings and messages accompanying any reduced-risk nicotine and tobacco packaging, marketing, promotion and sponsorship. The health warning highlights the health risk and potentially addictive nature of the product.</td>
<td></td>
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<tr>
<td><strong>Consumer targeting</strong></td>
<td><strong>Consumer targeting</strong></td>
<td>Harmful products should not be allowed to be advertised or promoted in any way. It is erroneous to think that ads directed at older people are not youth-appealing also. Youths are also not limited to pre-teen children but also include teenagers and young adult adolescents (mid-20s). Tobacco companies constantly target youths with advertisements, marketing schemes, and use of flavored products.</td>
</tr>
<tr>
<td>Reasonable measures should be taken to ensure that products are directed to adults only and not to the youth.</td>
<td>There is no use of images, licensed characters, brand characters, animations, cartoons or language which appeal to youth.</td>
<td></td>
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<tr>
<td><strong>Direct communications with customers and retailers.</strong></td>
<td>Individuals, who are or appear to be under the age of 30, are not depicted in any marketing. To mitigate the risk of youth appeal, anyone promoting nicotine products should be significantly above the legal age of consumption.</td>
<td>Regardless of their true age, most advertising models, brand ambassadors, and promotion or sales persons appear youthful and attractive.</td>
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<tr>
<td>Direct consumer communication is specific and age-validated.</td>
<td>No one should be the target of harmful products. Age verification, particularly online, is easily circumvented and ineffective.</td>
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<tr>
<td>International Tobacco Marketing Standards 2001</td>
<td>Proposed Reduced-Risk Products Marketing Code 2022</td>
<td>Comments</td>
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<tr>
<td><strong>Advertisement placement</strong>&lt;br&gt;Prevent outdoor billboards located in areas that are frequented by youth. It should not be placed within 100 meters of a school. Outdoor billboards should not exceed 35 square meters. Measures will also be taken to prevent youth from having access to tobacco products.</td>
<td><strong>Advertisement placement</strong>&lt;br&gt;Outdoor marketing is not within viewing distance of a school, an establishment frequented by youth, or on an access route to a school or an establishment frequented by youth.</td>
<td>The only places not frequented by youths are places without people. Only a comprehensive ban on advertising, promotion, and sponsorship will prevent youth exposure to industry marketing. Even if outdoor marketing, like billboards, is prohibited, youths are still exposed to industry advertising and marketing through other media. Youths have easy access to social media where they are exposed to tobacco advertisements and influencers used to promote these products. Age restrictions and verification, particularly online, are ineffective, easily circumvented, and often not enforced.</td>
</tr>
<tr>
<td><strong>Sales and distribution</strong>&lt;br&gt;Restrictions on advertisements, including through internet, to prevent access by minors.</td>
<td><strong>Sales and distribution</strong>&lt;br&gt;Websites offering direct sales of reduced-risk nicotine and tobacco products have a system for registering users and verifying age. Internet sales are therefore only made to registered users whose age has been verified. There is no sampling of reduced-risk nicotine and tobacco products, unless the age and smoking status of those being offered such products can be verified. Sampling activities do not take place near schools or educational establishments.</td>
<td>Even if websites have an age-verification system, these are porous, and the content can still be accessed by minors. Sampling of harmful products should be prohibited without exception. Biochemical tests of saliva, urine, and hair are not readily available to verify smoking status.</td>
</tr>
<tr>
<td><strong>Promotions</strong>&lt;br&gt;Only adults may receive promotional materials or participate in advertising or sponsored activities.</td>
<td><strong>Promotions</strong>&lt;br&gt;Promotional events are prearranged, with registered and vetted attendees.</td>
<td>The industry cannot be trusted to vet attendees, especially if not required by law.</td>
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More than twenty years after the release of the ITMS, industry-funded FSFW admits that “tobacco products, which cause over 8 million deaths a year, cannot be marketed responsibly.” In this case, how can we believe the same industry issuing a similar marketing code to govern its new products? It is apparent that this marketing code is just another industry ploy to present itself as a good corporate citizen and to avoid stringent regulations as it has done in the past. This tobacco industry strategy has been identified and codified in the FCTC Article 5.3 Guidelines, reminding governments to reject voluntary codes or non-enforceable agreements:

**Recommendation 3.1 states:*

“Parties should not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or persons working to further its interests.”

**Recommendation 3.3 states:**

“Parties should not accept, support or endorse any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.”

As with past voluntary codes or standards, we can predict that the reduced-risk products code will be used to delay or prevent regulations of ENDS and HTPs. The industry will disseminate and use this document to lobby for less stringent regulations with the government, further harping on the difference between “risk-reduced” and “high-risk” tobacco products. It will be used to justify voluntary compliance, instead of a legally enforceable tobacco control policy.

In the ASEAN, organizations and individuals promoting Electronic Smoking Devices (ESD), including tobacco and nicotine industry front groups, have been echoing in the media the message of risk-proportionate taxation and regulation, which was started by PMI (Annex).

In the Philippines, the tobacco and nicotine industry lobbied successfully for ENDS and HTPs to be taxed at a lower level than cigarettes and for the “vape law” that was enacted last July; this new law weakened already existing regulations by lowering the age of access to these products from 21 years old to 18 years old, allowing the sale of many e-juice flavors (previously restricted to tobacco and plain menthol only), and transferring the regulatory authority of the Food and Drug Administration to the Department of Trade and Industry, sending the wrong signal that commercial regulation of these products is more important than regulating on the basis of health.
In Malaysia, the government ended its ban on the sale of ESD. The government has announced the Trade Descriptions (Certification and Marking) of Electronic Devices Order 2022, effective 3 August 2022, allows ESD to be legally purchased in Malaysia, provided that the manufacturers and importers comply with certification and standards regulations. This decision comes after years of lobbying by the Malaysian Organization of Vape Entity (MOVE), which stated that electronic cigarettes are “deemed 95 percent less harmful than combustible tobacco.”

### Recommendations

1. **ENDS and HTPs should be banned.**

   Despite the claim of the industry that these are less harmful than other tobacco products, there is already clear evidence of serious harm, while the long-term risks and consequences of use and exposure are still unknown. Based on the precautionary principle, governments should ban ENDS and HTPs and avoid repeating the mistake of allowing cigarettes into the market. In cases where a comprehensive ban cannot be implemented, it is recommended that these products be strictly regulated.

2. **Governments should reject the reduced-risk marketing code being proposed by the tobacco industry.**

   Rejecting the marketing code will be in line with their commitment to the WHO FCTC, adhering to recommendations of the Article 5.3 Implementing Guidelines of the FCTC to not accept voluntary codes or non-enforceable agreements from the industry.

3. **Governments must implement FCTC Article 13**

   Governments must implement Article 13 and ban all forms of tobacco advertising, promotion and sponsorship, including on the internet.
## Annex

### Industry and its allies’ promotion of risk-proportionate regulation

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<thead>
<tr>
<th>Messenger</th>
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<tbody>
<tr>
<td>Philip Morris campaign</td>
<td>The role of risk-proportionate regulation in ending cigarette use (2019). Evidence-based and risk-proportionate regulation is essential to making a smoke-free future possible.</td>
</tr>
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### Malaysia

<table>
<thead>
<tr>
<th>Entity</th>
<th>Message</th>
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</table>
| Malaysian Organisation of Vape Entity | 15 December 2020
Malaysian Organisation of Vape Entity stated that the government should consider not taxing non-nicotine e-liquids. |
| BAT Malaysia | 20 October 2021
BAT Malaysia asked for a risk proportionate taxation and regulatory framework for reduced-risk products such as ENDS. |
| Malaysian Vape Industry Advocacy (MVIA) | 30 October 2021
Malaysian Vape Industry Advocacy stated that taxes for ENDS should be lower or equal to traditional nicotine products. |
| Malaysian Vape Chamber of Commerce (MVCC) | 16 December 2021
Malaysian Vape Chamber of Commerce asked for a review of the ENDS tax rate, and to introduce differentiated regulation from tobacco cigarettes. |
| Datametrics Research and Information (DARE) Pankaj Kumar, Managing Director | 16 March 2022
Datametrics Research and Information (DARE) repeated the message that the taxation of ENDS ought to be risk-proportionate to encourage smokers to switch to ENDS and quit smoking. It also raised that RM 1.20 per ml excise duty, as announced under Budget 2022 by the Finance Minister, is too high and will make ENDS expensive. |

### Philippines

<table>
<thead>
<tr>
<th>Messenger</th>
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</table>
| Philip Morris Fortune Tobacco Corporation President Denis Gorkun | November 21, 2019
Taxes on e-cigarettes or their smoke-free products like IQOS must be risk-proportionate and must be lower than cigarettes. |
### Pro-harm reduction groups
- Vapers PH
- Coalition of Asia Pacific Tobacco Harm Reduction Advocates (CAPHRA)
- Philippine E-Cigarette Industry Association (PECIA)
- Nicotine Consumers Union of the Philippines (NCUP)
- Harm Reduction Alliance of the Philippines (HARAP)

### December 30, 2020
Joint statement by several front groups calling for “reasonable, risk-proportionate and realistic regulatory framework for smoke free products.”

### December 13, 2020
Regulations on e-cigarettes (health warnings) should not be the same as cigarettes as it is less harmful.
Regulations must be based on science and evidence around smoke-free products.

### June 3, 2021
CAPHRA stated that a risk-proportionate bill in the Philippine Senate may encourage Southeast Asia public health policy to adopt harm reduction as a goal.

### June 14, 2021
CAPHRA shared that the Philippine House of Representatives passed a "landmark risk-proportionate legislation" and that the Senate is expected to pass a similar bill in the next months.

### June 16, 2021
CAPHRA promoted a report by Royal College of Physicians UK and advocates for incorporating risk-proportionate regulations into tax policy and public health promotion.

### July 22, 2021
CAPHRA and Vapers PH pushed for the passage of "most progressive and risk-proportionate vaping legislation in Asia Pacific" by the Philippine Senate.
<table>
<thead>
<tr>
<th>Messenger</th>
<th>Message</th>
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<tbody>
<tr>
<td>Vapers PH, Quit for Good, ENDS</td>
<td>July 29, 2021 Declaration signed by ESD advocates at the Asia Harm Reduction Forum pushes for the adoption of risk-proportionate regulations rather than ban of ESD.</td>
</tr>
<tr>
<td>Cigarette Smoke Thailand, Asosiasi Vape Indonesia</td>
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<tr>
<td>100 &quot;public health specialists&quot;</td>
<td>October 24, 2021 Joint letter to WHO calling for the promotion of tobacco harm reduction and to rebalance tobacco control policy to consider opportunities from reduced-risk products and regulate based on level of risks.</td>
</tr>
<tr>
<td>Clive Bates, director at Counterfactual Consulting Ltd.</td>
<td>March 14, 2022 Promotion of the adoption of risk-proportionate regulations, imposing the toughest measures on cigarettes, with proportionate consumer-protection measures on e-cigarettes and HTPs.</td>
</tr>
<tr>
<td>Chris Nelson, British Chamber of Commerce Philippines</td>
<td>April 18, 2022 Chris Nelson, former President of Philip Morris Fortune Tobacco Corporation, stated that the Vape bill will provide smokers with less harmful alternatives and that the bill provides a balanced and differentiated regulatory framework for vapor products and HTPs.</td>
</tr>
</tbody>
</table>
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A Healthy, Sustainable, Tobacco-Free ASEAN