

# TOBACCO INDUSTRY INTERFERENCE INDEX

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The Philippine Report on the Implementation of Article 5.3  
of the WHO Framework Convention on Tobacco Control

*September 2020*





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on the Implementation of Article 5.3 of the  
WHO Framework Convention on Tobacco Control**

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HealthJustice is a non-stock, non-profit organization created to fulfill the vision of bridging the gap between public health and law through policy development and research. It is committed to be the leading resource in research and capacity-building for priority public health policies.

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# Acknowledgment

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# Table of Abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ATIGA</b>	ASEAN Trade in Goods Agreement
<b>BIR</b>	Bureau of Internal Revenue
<b>BOC</b>	Bureau of Customs
<b>CHED</b>	Commission on Higher Education
<b>COP</b>	Conference of the Parties
<b>CSC-DOH JMC No. 2010-01</b>	Civil Service Commission - Department of Health Joint Memorandum Circular No. 2010-01 (Protection of the Bureaucracy Against Tobacco Industry Interference)
<b>CSO</b>	Civil Society Organization
<b>CSR</b>	Corporate Social Responsibility
<b>DepEd</b>	Department of Education
<b>DOF</b>	Department of Finance
<b>DOH</b>	Department of Health
<b>DOST</b>	Department of Science and Technology
<b>DOT</b>	Department of Tourism
<b>DSWD</b>	Department of Social Work and Development
<b>ENDS</b>	Electronic Nicotine Delivery System
<b>ENNDS</b>	Electronic Non-Nicotine Delivery System
<b>FDA</b>	Food and Drug Administration
<b>HTP</b>	Heated Tobacco Products

<b>IACT</b>	Inter-Agency Committee on Tobacco
<b>INB</b>	Intergovernmental Negotiating Body
<b>JVOFI</b>	Jaime V. Ongpin Foundation Inc.
<b>MMDA</b>	Metropolitan Manila Development Authority
<b>MPOWER</b>	Monitoring tobacco use and prevention policies Protecting people from tobacco smoke Offering help to quit tobacco use Warning about the dangers of tobacco Enforcing bans on tobacco Raising tobacco taxes
<b>NCCA</b>	National Commission for the Culture and the Arts
<b>NTA</b>	National Tobacco Administration
<b>OLA</b>	Office for Legal Affairs
<b>PECIA</b>	Philippine E-Cigarette Industry Association
<b>PMFTC</b>	Philip Morris Fortune Tobacco Corporation
<b>PMI</b>	Philip Morris International
<b>PNP</b>	Philippine National Police
<b>PTI</b>	Philippine Tobacco Institute
<b>RA</b>	Republic Act
<b>SEATCA</b>	Southeast Asia Tobacco Control Alliance
<b>TII INDEX</b>	Tobacco Industry Interference Index
<b>US-ABC</b>	United States - ASEAN Business Council
<b>WG</b>	Working Group
<b>WHO</b>	World Health Organization
<b>WHO FCTC</b>	World Health Organization Framework Convention on Tobacco Control

# Introduction

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Effective tobacco control is directly opposed to the commercial objectives of the tobacco industry. Thus, the industry can be expected to thwart tobacco control policies to ensure that an economically successful business continues.

Article 5.3 is an essential provision of the WHO FCTC:

“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

It enshrines the irreconcilable conflict of interest between the tobacco industry and public health. The WHO FCTC binds signatory states to insulate their public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, in accordance with national law.

To give more clarity and guidance to Parties to the Convention, the Article 5.3 Guidelines were unanimously adopted in 2008. The Guidelines provide for eight main recommendations with 34 sub-recommendations to governments to ensure that the industry is prevented from exerting its influence on public health policy.

While the strategies of the tobacco industry around the world are nothing novel, and in fact, well-documented, there has been little effort to measure and compare the responses of the government or its ability to respond to these strategies. The TII Index intends to gauge the level of industry interference and the responses or measures by the government to implement Article 5.3 of the WHO FCTC. The purpose of the Index is to define the measures and elements that contribute to the ability of the tobacco industry to interfere with policymaking. The assessment could provide an indication of the government's capacity to resist tobacco industry interference.

# Methodology

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This is the seventh report reviewing the implementation of the Philippines of Article 5.3 of the WHO FCTC based on the TII Index.

Relevant pieces of evidence covering incidents of tobacco industry interference from January to December 2019 were gathered, reviewed, and scored based on the questionnaire provided by SEATCA

Sources for the research were based on publicly available or commonly known information. The research was limited to information sourced from official websites, news reports, tobacco company reports, and verifiable anecdotal reports. The results were shared with a core group of civil society groups for review and subjected to their validation. In this report, the following organizations were consulted: ASH Philippines, WomanHealth Philippines, Social Watch Philippines, and the Rural Poor Institute for Land and Human Rights Services. The report was revised and finalized based on the inputs gathered from the core group.

The questions were based on the top 20 most commonly reported incidents of tobacco industry interference in the Southeast Asian countries and referenced to specific recommendations in the Guidelines.

The questionnaire for the report was updated in 2015 to quantify the intensity, frequency, or severity of a given incident of interference by providing specific guides or assessment tools on how to evaluate specific situations. The intent was to remove the subjectivity by assigning a number and put all respondents or researchers on the same page when assigning a score. The scores were ultimately compared with results from other countries. However, because of the revision in the scoring system, it may not adequately capture the difference from the previous years prior to the update.

# Tobacco Industry Interference Index

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The Tobacco Industry Interference Index is a civil society review of the implementation of the Article 5.3 Guidelines in the Philippines. It is an attempt to define the measures and elements that contribute to the ability of the tobacco industry to interfere with public health policy-making. The questions were designed based on the specific situations that the Guidelines seek to address.

The questions are grouped into seven categories:

- I.** Level of participation in policy development;
- II.** So-called CSR activities;
- III.** Benefits to the tobacco industry;
- IV.** Forms of unnecessary interaction;
- V.** Transparency;
- VI.** Conflict of interest; and
- VII.** Preventive measures.

The tobacco industry has historically used several strategies and tactics to shape and influence tobacco control policy. The report provides evidence of tobacco industry interference and potential situations that reveal weaknesses or loopholes that the industry exploits.

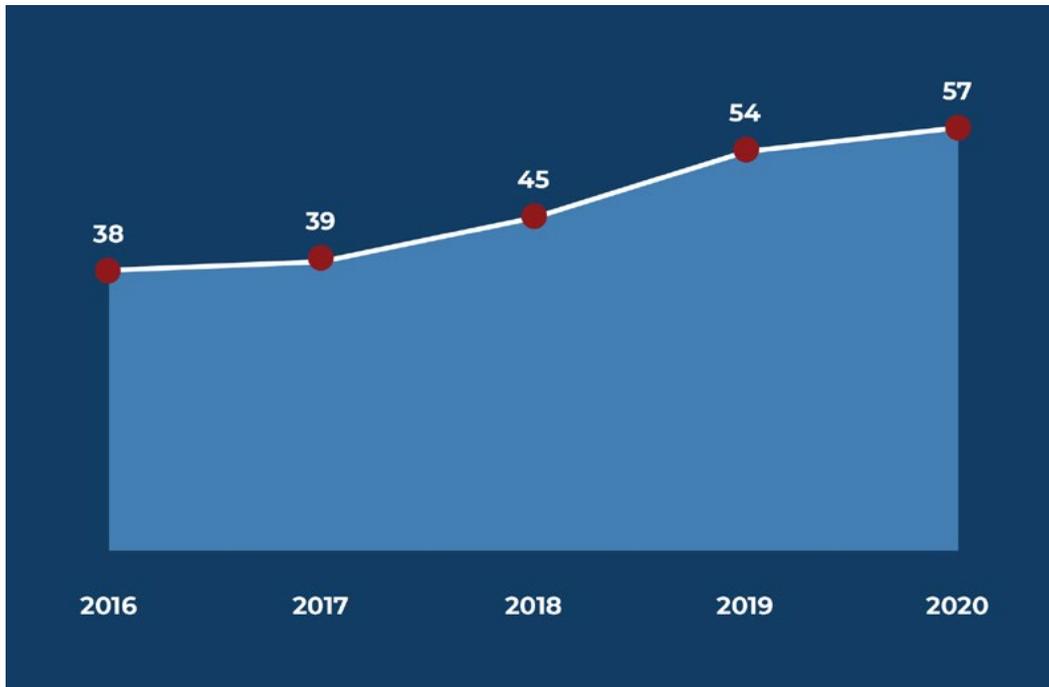
According to the WHO, some of these tobacco industry tactics include intelligence gathering, public relations, lobbying, political funding, corporate social responsibility, litigation, and smuggling.<sup>1</sup> As different countries all over the world are recognizing that protection of public health from tobacco industry interference is an important step to ensure that their goals for tobacco control are achieved, the tobacco industry is also improving its strategies and tactics to protect its business. Thus, monitoring and reporting tobacco industry interference is crucial not only in identifying what the industry is doing, but also in identifying the patterns and how the industry is changing its strategies.

Monitoring on an annual basis serves to measure whether the Philippines is making progress, maintaining the status quo, or deteriorating when addressing tobacco industry interference. The scores are based on a particular indicator on the level of industry responses and the responses of the government in addressing them based on publicly available evidence.

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<sup>1</sup> World Health Organization, Tobacco Industry Interference with Tobacco Control, p. 12 (2008).

## The Philippines' Score on the Tobacco Industry Interference Index



*Lower scores show better implementation of Article 5.3*

As compared with the previous years, there is a steady increase in the score of the Philippines in the Index: 45 in 2017, 54 in 2018, and 57 in 2019. The higher score indicates progressive deterioration in addressing tobacco industry interference possibly due to stronger interference by the tobacco industry and lesser capacity of the government to resist or prevent tobacco industry interference.

# I. Tobacco Industry Participation in Policy Development

Tobacco Industry Participation in Policy Development						
INDICATORS	0	1	2	3	4	5
1. The government accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control. (Rec. 3.1)						X
2. The government accepts, supports, or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec. 3.4)						X
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/advisory group body that sets public health policy. (Rec. 4.8)						X
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the Conference of the Parties (COP) or other subsidiary bodies or accepts their sponsorship for delegates. i.e. COP 4 & 5, Intergovernmental Negotiating Body 4 & 5, Working Group) (Rec. 4.9 & 8.3)		X				

**The tobacco industry participated and exerted influence in tobacco control policy development and implementation.**

In several meetings and hearings held by the House of Representatives and the Senate, tobacco industry representatives were invited as resource persons. They provided their inputs and comments on proposed bills on (1) tobacco tax increase; (2) tax increase of heated tobacco products (HTP), electronic nicotine delivery system (ENDS), and electronic non-nicotine delivery system (ENNDS); and (3) regulation of HTP, ENDS, and ENNDS.

During the deliberation of the tobacco tax increase at the first half of the year, local business groups, farmers' groups, and retailers expressed their opposition to further increases in tobacco tax. They cited usual industry arguments, such as it would result in higher incidence of illicit trade,<sup>2</sup> displacement of farmers,<sup>3</sup> and exacerbation of their increasingly difficult situation.<sup>4</sup> Even some of the senators expressed that the Universal Health Care could be fully implemented without the need for new tobacco tax increase, thus, arguing that new increase on tobacco taxes were unnecessary.<sup>5</sup>

Industry representatives testified that increasing taxes would contribute to higher incidence of illicit trade in the country.<sup>6</sup> Atty. Chita Herce, Fiscal and Government Relations Manager of Philip Morris Fortune Tobacco Corporation (PMFTC), said that increasing taxes would aggravate the incidence of illicit trade, increasing it from 13.3% in 2019 to 14.2% in 2022, with equivalent revenue losses of about P14.2 billion to P16.8 billion, based on projections from the Euromonitor International.

Republic Act No. 11346 raised cigarette tax from P35.00 to P45.00 for the year 2020, its first year of implementation. This will be followed by an increase of P5.00 every year until the rate reaches P60.00 in 2023 and a 5% increase every year from 2024.<sup>7</sup>

However, HTP, ENDS, and ENNDS were classified separately from cigarettes and taxed at a lower rate. The government sought to correct this by pushing for a separate bill that aims to increase tax on HTP, ENDS, and ENNDS. The Department of Finance (DOF) and the Department of Health (DOH) both held the position that these products should be taxed at a similar rate as cigarettes.<sup>8</sup> On the other hand, the tobacco industry argued that HTP, ENDS, and ENNDS should not be taxed similarly. They lobbied for a risk proportion tobacco tax,<sup>9</sup> stating that these are less harmful than combustible tobacco products.

2 Dela Peña, 'Local businessmen warn vs high sin tax proposals,' January 28, 2019, Available at <https://www.philstar.com/business/2019/01/28/1888628/local-businessmen-warn-vs-high-sin-tax-proposals>.

3 Business Mirror, 'Farmers upset as new excise tax hike on 'sin' items looms,' January 9, 2019, Available at <https://businessmirror.com.ph/2019/01/09/farmers-upset-as-new-excise-tax-hike-on-sin-items-looms/>.

4 Ison, 'Tobacco farmers appeal for relief from excise tax hikes' January 28, 2019, Available at <https://www.pna.gov.ph/articles/1060266>.

5 Torregosa, 'UHC can be implemented sans tobacco excise — senators,' February 17, 2019, <https://news.mb.com.ph/2019/02/17/uhc-can-be-implemented-sans-tobacco-excise-senators/>.

6 Cu, 'PTI: New excise rates to boost illicit tobacco,' February 6, 2019, Available at <https://businessmirror.com.ph/2019/02/06/pti-new-excise-rates-to-boost-illicit-tobacco/>.

7 Republic Act No. 11346.

8 Minutes of Meeting, Committee on Ways and Means, Philippine Senate dated September 5, 2019.

9 Leyco, 'PMI wants 'risk proportion' tobacco tax,' September 23, 2019, Available at <https://business.mb.com.ph/2019/09/22/pmi-wants-risk-proportion-tobacco-tax/>.

Several hearings were held in both the House of Representatives and in the Senate. Representatives of the tobacco industry were invited to the hearings and given time to state their comments and opposition to the bills:

- Philip Morris Fortune Tobacco Corporation (PMFTC);
- Juul Labs; and
- Philippine E-Cigarette Industry (PECIA).<sup>10</sup>

The number of pro-industry resource persons is almost the same as the number of tobacco control resource persons.<sup>11</sup>

RA No. 11467 was signed in January 2020. It imposed higher tax rates than what was initially imposed on HTP, ENDS, and ENNDS under RA 11346. However, the rates are still substantially lower than rates imposed on cigarettes, which is aligned with what the tobacco industry was pushing for.

**Illustration of Difference in Tax Rates**

<b>Year</b>	<b>Cigarette tax (RA 11346) per pack</b>	<b>HTP (Old rates RA 11346) per pack of 20 units</b>	<b>HTP (New rates RA 11467) per pack of 20 units</b>
2020	Php 45.00	Php 10	Php 27.50
2021	Php 50.00	5% indexation starting 2021	Php 30.00
2022	Php 55.00		Php 32.50
2023	Php 60.00		5% indexation starting 2023
2024 onwards	5% indexation starting 2024		

<sup>10</sup> Minutes of Meeting, Committee on Ways and Means, Philippine Senate dated September 5, 11, 2019.  
<sup>11</sup> *Ibid.*

There are 18 proposed bills in the House of Representatives that seek to regulate ENDS, ENNDS, and HTP.<sup>12</sup> Usually, there are about five bills on a topic discussed in Congress, possibly showing the growing interest of legislators on this issue. The Committee on Trade and Industry and Committee on Health held joint hearings last December 2 and 10 to discuss the measures.

Organizations representing the electronic cigarette industry and the tobacco industry attended the hearings as resource persons. In favor of the regulation of ENDS/ENNDS and HTPs, but not banning them, were the PECIA and tobacco companies, such as PMFTC and Juul Labs, Inc. Likewise, Quit4Good,<sup>13</sup> an Australian business company that sells a cessation product to help people quit smoking, expressed its support for the bills.<sup>14</sup>

A report published by HealthJustice Philippines showed that the tobacco industry has been a major actor for influencing policy formulation for ENDS in the Philippines.<sup>15</sup> The study shows that among the bills proposing regulation in the 17th Congress, six were oriented to adopting ENDS industry positions, thereby demonstrating industry origin or draftsmanship. More importantly, three bills — two at the House of Representatives and one in the Senate — show the involvement of Philip Morris International (PMI).

In particular, these PMI-linked bills seek to pre-empt the regulation of heated tobacco products, especially its IQOS brand, and the approval of their health claims by regulatory bodies.

Similar to previous years, the Philippine Tobacco Institute (PTI) and the National Tobacco Administration (NTA) continue to be members of the Inter-Agency Committee Tobacco (IACT), a committee tasked to implement the provisions of RA No. 9211 or the Tobacco Regulation Act and monitor compliance with RA No. 10643 or the Graphic Health Warnings Law.

Significantly, however, the DOH has reported during several CSO-led Article 5.3 Committee meetings led by Civil Society Organizations (CSOs) that they have refused requests for meetings from the tobacco industry and their front groups. They cited the CSC-DOH Joint Memorandum Circular No. 2010-01 (CSC-DOH JMC No. 2010-01) as the basis for their action. This is an indicator that the DOH remains to protect its processes from the influence of the tobacco industry.

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<sup>12</sup> House bills 40, 500, 1508, 1510, 1703, 2277, 2862, 2929, 3049, 3083, 4816, 5072, 5099, 5310, 5510, 5561, 5630, and 5702.

<sup>13</sup> Quit4good <https://quit4good.com.au/pages/about-quit-4-good-nicotine-free-oral-strips>.

<sup>14</sup> House of Representatives, 18th Congress, First Regular Session, Committee Daily Bulletin, December 2, 2019.

<sup>15</sup> HealthJustice, "Tobacco and E-Cigarette Industry Interference in Public Health Policy in the Philippines," p. 4.

## II. Industry-Related CSR Activities

Industry-Related CSR Activities						
INDICATORS	0	1	2	3	4	5
<p>5. A. The government (its agencies and officials) endorses, supports, forms partnerships with or participates in so-called corporate social responsibility (CSR) activities organized by the tobacco industry. (Rec. 6.2)</p> <p>B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec. 6.4)</p>					X	

The WHO FCTC and its Guidelines recommend that Parties ban so-called CSR activities of tobacco companies, as these are means to access and influence policymakers and to continue to advertise tobacco products or brands.

In previous years, through the CSC-DOH JMC No. 2010-01, there has been a decrease in direct partnerships and unnecessary interactions between the government and the tobacco companies.

Tobacco companies continued conducting so-called CSR activities by courting these through foundations and other organizations. PMFTC, through its CSR arm Embrace, partners with Jaime V. Ongpin Foundation Inc. (JVOFI). Since 2018, the Philippines has monitored more direct partnerships involving the tobacco industry and the officials of the national government or the local government units.

In 2019, it was monitored that PMFTC conducted at least 24 of their so-called CSR activities. Most of the CSR activities were done in partnership with the Philippine National Police (PNP), local government units, local government politicians, and representatives in Congress. Their usual activities involved making donations to school children, giving medical equipment to different barangays, and organizing medical missions.

The increasing number of so-called CSR activities and partnerships with different government agencies indicates the need to strengthen the monitoring of industry interference and to intensify communication strategies so that government is properly informed that these partnerships are not allowed under the CSC-DOH JMC No. 2010-01.



*Embrace, through Jaime V. Ongpin Foundation, Inc. (JVOFI), donated nebulizers to Brgy. Perez City of Meycauayan, Bulacan. The donation was received by Brgy. Capt. Anthony M. Camacam and the Council. The tarpaulin for the event clearly indicates that the donation came from PMFTC.<sup>16</sup>*

<sup>16</sup> Information and photo from the Facebook page of Allan Ray Baluyut, Provincial Board Member of the 4th District of Bulacan Available at <https://www.facebook.com/photo.php?fbid=229222058004717&set=pcb.229222131338043&type=3&theater>.



*Embrace, through JVOFI, provided free health care services in a Health Caravan on January 26, 2019 at Barangay 21, Caloocan City. Beneficiaries were senior citizens and children coming from low-income families. The project was a partnership with Akbayanihan Partylist and barangay officials.<sup>17</sup>*



*Embrace distributed medicine for senior citizens through Quezon City Councilor Allan Reyes in January 2019.<sup>18</sup>*

<sup>17</sup> 'Caloocan City Residents Provided Health Care Needs,' Information and photo from JVOFI website. Available at <https://jvofi.org/caloocan-city-residents-provided-health-care-needs/>.

<sup>18</sup> Information and photo from the Facebook page of Quezon City Councilor Allan Reyes, Available at <https://www.facebook.com/allanreyscares/photos/a.2003397246359985/2274467499252957/?type=3&theater>.

### III. Benefits of the Tobacco Industry

Benefits of the Tobacco Industry						
INDICATORS	0	1	2	3	4	5
6. The government accommodates requests from the tobacco industry for a longer time frame for the implementation or postponement of tobacco control law. (e.g. 180 days is common for pictorial health warnings, tax increase can be implemented within 1 month). (Rec. 7.1)	X					
7. The government gives privileges, incentives, exemptions, or benefits to the tobacco industry. (Rec. 7.3)						X

Under the ASEAN Trade in Goods Agreement (ATIGA), tobacco leaf and other tobacco related additives imported into the Philippines enjoy zero import duties.<sup>19</sup>

The Philippines allows international travelers to bring 400 sticks of cigarettes into the country without paying any duties or taxes. This is higher than what other countries in Southeast Asia allow. This is double the amount allowed in Malaysia. Other countries like Singapore, Brunei, and Hongkong only allow one pack or 20 sticks of cigarettes.<sup>20</sup> An amendment of the policy is necessary so that the Philippines can lower the number of sticks allowed to be brought in duty-free or prohibit this altogether.

<sup>19</sup> <https://www.asean.org/uploads/archive/documents/atiga/Annex2-Philippines.pdf> (pg 45, Items 1370 -1384).

<sup>20</sup> <https://www.iatatravelcentre.com/PH-Philippines-customs-currency-airport-tax-regulations-details.htm>.

## IV. Forms of Unnecessary Interactions

Forms of Unnecessary Interactions						
INDICATORS	0	1	2	3	4	5
8. Top-level government officials, such as President or Prime Minister/ Minister, meet with or foster relations with the tobacco companies by, among others, attending social functions and other events sponsored or organized by the tobacco companies and other activities furthering their interests. (Rec. 2.1)					X	
9. The government accepts offers of assistance, monetary or otherwise, from the tobacco industry, for the purpose of strengthening the enforcement of tobacco control laws. The activities here include conducting raids on tobacco smuggling, implementing smoke-free policies, and enforcing the prohibition of sale of tobacco products to minors (including monetary contribution for these activities). (Rec. 4.3)					X	
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec. 3.1)				X		

All the incidents included here are based on publications and postings and would require extensive investigation to ascertain whether or not these constitute direct violation of existing laws and policies in the Philippines. However, for purposes of rating only, these incidents may fall under unnecessary interactions.

Unnecessary interactions between the tobacco industry and top-level officials of the government were monitored. In October 2019, a group of legislators, including the chairperson of the Committee on Health in the House of Representatives, went on a study

tour in London to meet with Member of Parliament (MP) David Amess. The tour was organized by the Office of Senator Vicente Sotto.<sup>21</sup> Sir David Amess has been shown to support PMI’s UNSMOKE campaign and was quoted saying “Smoking is a health risk. It is damaging for the smoker and for the people around them. I was delighted to attend today’s event to discuss how we can unsmoke the UK.”<sup>22</sup>



*In October 2019, Philippine legislators met with UK Member of Parliament David Amess, who expressed support for PMI’s UNSMOKE campaign.<sup>23</sup>*

<sup>21</sup> Information and photo from the Facebook page of Rep. Helen Tan. Available at <https://www.facebook.com/DoktoraHelenTan>.

<sup>22</sup> ‘Sir David attends Unsmoke event, Available at <https://www.davidamess.co.uk/news/sir-david-attends-unsmoke-event>.

<sup>23</sup> Information and photos from the Facebook page of Rep. Ferdinand Hernandez <https://www.facebook.com/CongDinandHernandez/photos/a.988356821269894/2182713148500916/?type=3&theater>.  
<https://www.facebook.com/CongDinandHernandez/photos/a.988356821269894/2177651905673707/?type=3&theater>.

There were several instances where government agencies, such as the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR), accepted assistance from the tobacco industry on the enforcement of tobacco control laws. The BOC conducted an anti-smuggling operation with representatives of tobacco companies present and tasked them to help inspect the labels and packaging of tobacco products.<sup>24</sup>

BIR Commissioner Caesar Dulay stated in an interview that he would be meeting with representatives from Philip Morris, Japan Tobacco, and other cigarette companies, as well as those handling the Internal Revenue Stamps Integrated System. The purpose would be to find out how to address the illicit trade activity they discovered, which is the recycling of tax stamps to put on fake cigarette packs.<sup>25</sup>

An event which sought to destroy several machines used in the manufacture of illicitly traded cigarettes was organized and attended by government agencies and tobacco companies. Those in attendance included the PMFTC President Lawrence Chew, JTI Philippines General Manager Manos Koukourakis, DOF Secretary, and officials of the BIR, BOC, and NBI.

During the event, the DOF Secretary thanked the private sector for joining forces with the government in helping fight smuggling and tax evasion.<sup>26</sup>

The Department of Science and Technology (DOST) signed a Memorandum of Understanding with the US-ASEAN Business Council (US-ABC) that purportedly seeks to promote the development and implementation of science, technology, and innovation initiatives of the government in the private sector.<sup>27</sup> HealthJustice Philippines called the attention of DOST about the matter and reminded them of the CSC-DOH JMC No. 2010-01 and its own memorandum circular against tobacco industry interference. PMI and JUUL Labs are members of the US-ABC.<sup>28</sup>

At the local government level, Manila Mayor Francisco Domagoso signed a Memorandum of Agreement at his office with JVOFI. Officials of PMFTC were also present at the event.<sup>29</sup>

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24 Almonte 'BOC seizes printing machines for fake cigarette labels,' June 27, 2019, Available at <https://www.portcalls.com/boc-seizes-printing-machines-for-fake-cigarette-labels/>.

25 Rivas 'New scheme: Cigarette tax stamps traded for sardines, noodles,' April 9, 2019, Available at <https://www.rappler.com/business/227761-cigarette-tax-stamps-traded-sardines-noodles>.

26 Department of Finance 'Dominguez cites heightened vigilance vs illicit tobacco trade,' Available at <https://www.dof.gov.ph/dominguez-cites-heightened-vigilance-vs-illicit-tobacco-trade/>.

27 DOST-ITCU. 'DOST signs MOU with US-ASEAN Business Council.' September 29, 2019 Available at <https://pia.gov.ph/news/articles/1027813>.

28 US-ASEAN Business Council. Our Members. Available at <https://www.usasean.org/about/members>.

29 Information and photo from the Facebook page of Mayor Domagoso, Available at [https://www.facebook.com/iskomorenodomagoso/vid-eos/418280572380810/UzpfSTExNjU4NTM5ODUwNDg1MzoxMzYyNDQ4MDAwNTg1MjQ3/?\\_\\_tn\\_\\_=%2Cd-k-R&eid=ARDYSTixp8PCYe6ntHkb-5bC9\\_kVz2Uq2hMTqrnXFgdl3ojfOfsv1k3yu6JxxdfMEDBfkpmmUG4LR\\_UfT](https://www.facebook.com/iskomorenodomagoso/vid-eos/418280572380810/UzpfSTExNjU4NTM5ODUwNDg1MzoxMzYyNDQ4MDAwNTg1MjQ3/?__tn__=%2Cd-k-R&eid=ARDYSTixp8PCYe6ntHkb-5bC9_kVz2Uq2hMTqrnXFgdl3ojfOfsv1k3yu6JxxdfMEDBfkpmmUG4LR_UfT).

## V. Transparency

Transparency						
INDICATORS	0	1	2	3	4	5
11. The government does not publicly disclose meetings or interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)	X					
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists.				X		

Section 3.1 of the CSC-DOH JMC No. 2010-01 requires transparency in all interactions with the tobacco industry. Meanwhile, its Annex outlines the procedure to be observed when meeting with the tobacco industry is strictly necessary. The procedure includes documenting the meeting and distributing information about the meeting.

Section 5.2 of the same Circular requires government agencies to document any interaction they had with the tobacco industry to the CSC. To ensure transparency and accountability, the government agency shall make copies of these documents accessible to the public.

In the civil society-led Article 5.3 Committee meeting organized by HealthJustice Philippines, different members have shared anecdotal information about tobacco industry executives meeting with different government agencies. News reports and CSR activities also show interactions of the tobacco industry with different government agencies. However, the Philippines does not have any publicly available reports that can confirm these meetings.

## VI. Conflict of Interest

Tobacco Industry Participation in Policy Development						
INDICATORS	0	1	2	3	4	5
13. 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. (Rec. 4.11)						X
14. Retired senior government officials form part of the tobacco industry, such as former Prime Minister, Minister, or Attorney General. (Rec. 4.4)				X		
15. Current government officials and relatives hold positions in the tobacco business, including consultancy positions. (Rec. 4.5, 4.8, & 4.10)				X		

All the incidents included here are based on publications and postings and would require extensive investigation to ascertain whether or not these constitute a direct violation of existing laws and policies in the Philippines. However, for purposes of determining the rating in this Section, incidents which show that a former government official is subsequently employed by the tobacco industry will be considered as “Conflict of Interest.” While these former government officials are no longer connected to the government, by virtue of their previous government post, they can influence the development of tobacco control policies and the enforcement thereof.

As regards retired senior officials forming part of the tobacco industry, former Solicitor General Estrelito Mendoza is counsel of Lucio Tan, the Chairman of PMFTC. The following retired government officials form part of the Board of Trustees of Tan Yan Kee Foundation Inc., the CSR arm of Lucio Tan Group of Companies:

- Former Chief Justice Artemio Panganiban;
- Former Prime Minister Cesar E.A. Virata; and
- Former Governor of Bangko Sentral ng Pilipinas Amando Tetangco.<sup>30</sup>

<sup>30</sup> Tan Yan Kee Foundation, Inc. <http://www.tanyankee.org/about-us.html>.

## VII. Preventive Measures

Preventive Measures						
<i>SCORING for this section: 1- Completely yes; 2 – Partially yes; 3 – Policy or program being developed; 4 - Committed to develop such a policy or program; and 5 - None.</i>						
INDICATORS	0	1	2	3	4	5
16. The government has put in place a procedure for disclosing the records of the interaction, such as the agenda, attendees, minutes, and outcome of the meetings with the tobacco industry and its representatives. (Rec. 5.1)		X				
17. The government has formulated, adopted, or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec. 4.2)		X				
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, political contributions, and all other activities. (Rec. 5.2)			X			
19. The government has a program, system, or plan to consistently raise awareness within its departments on policies relating to Article 5.3 Guidelines. (Rec 1.1 & 1.2)			X			
20. The government has put in place a policy to disallow the acceptance of all forms of contributions or gifts from the tobacco industry, monetary or otherwise, including offers of assistance, policy drafts, or study visit invitations given, or offered to the government, its agencies, officials, and their relatives. (Rec. 3.4)		X				

There are preventive measures in place to implement Article 5.3 Guidelines. The CSC and the DOH issued in 2010 the CSC-DOH JMC No. 2010-01 which applies to all officials and employees of the government. The Circular prohibits the interaction with the tobacco industry unless strictly necessary for its effective regulation. Where there is a necessary interaction with the tobacco industry, the Circular requires transparency through the submission of reports or minutes of meetings that are publicly accessible.

Article 3.1 and the Annex of the CSC-DOH JMC No. 2010-01 provide that any necessary interaction of public officials and employees with the tobacco industry should be documented in a specific manner and be in an official transcript of records, which should be filed and be made available to the public upon request.

In addition, Article 5.2 of the abovementioned Circular requires agencies to give information on interactions with the tobacco industry, any preferential treatment given to it, and any offer of donation made by it to any public official or employee, and to make copies of its documentation accessible to the public. Further, Article 6.1 of the same Circular requires agencies to include their compliance with it in their annual performance reports.

<b>The JMC No. 2010-01 prohibits the following:</b>	
<b>1.</b>	Unnecessary interaction with the tobacco industry
<b>2.</b>	Preferential treatment to the tobacco industry
<b>3.</b>	Accepting gifts, donations, and sponsorship from the tobacco industry
<b>4.</b>	Financial interest in the tobacco industry
<b>5.</b>	Accepting other analogous favors from the tobacco industry
<b>6.</b>	Conflict of interest with the tobacco industry

It also requires heads of agencies to inform officials and employees of the policy against tobacco industry interference and to amend their respective codes of conduct by incorporating the rules provided in Annex A of the Circular. The Circular specifies that any violation covered under it is a ground for administrative disciplinary action.

Monitoring and countering tobacco industry interference are essential to effectively implement the Circular. This systematic action was shown in the past when the DOH and CSC, with a strong civil society support, held monthly meetings to identify Article 5.3 violations. They discussed steps to address these violations, planned activities to disseminate information, held workshops, engaged and met with different government agencies, and even created a communication plan for Article 5.3 implementation.

While the Article 5.3 Committee has not met regularly in past years, HealthJustice Philippines organized in 2019 a CSO-led Article 5.3 Committee which serves as a platform where tobacco control advocates can have a dialogue with the government and report tobacco industry interference for the appropriate action of the latter.

While there is no increase in the specific budget for activities related to Article 5.3, after the CSC culminated its Bloomberg project, the implementation of the Circular has been mainstreamed in the functions of the CSC and is currently being led by the Office for Legal Affairs (OLA). According to the OLA, their activities now center on holding seminars and visiting government agencies to discuss matters pertaining to tobacco control, particularly the tobacco industry interference.

The DOH has also heeded the call of the CSO-led Article 5.3 Committee to reconvene the Article 5.3 Committee. While the meeting was cancelled, the DOH has committed to reschedule the meeting.

Like the DOH, the Department of Social Work and Development (DSWD) continues to strengthen the implementation of the CSC-DOH JMC No. 2010-01 and their respective policies against tobacco industry interference through the conduct of capacity building activities among its personnel and other information dissemination activities.

The Department of Education (DepEd) has also intensified the dissemination of their policy against tobacco industry interference in light of the incidents cited in the Philippine Tobacco Industry Interference Report of 2018. DepEd issued periodic reminders to schools about refraining from accepting gifts, donations, and sponsorships from the tobacco industry. DepEd also conducted an MPOWER Training for their Regional and Schools Division Tobacco Control Coordinators.

It is noteworthy that some government agencies are continuing to conduct activities and publish policies implementing the CSC-DOH JMC No. 2010-01. Among these are the following:

- DOH announcements in the newspaper stating “No Deal with the Tobacco Industry”;<sup>31</sup>
- Commission on Higher Education (CHED) policy implementing the Circular;<sup>32</sup>
- DSWD Administrative Order No. 11, Series of 2019;<sup>33</sup>
- The Food and Drug Administration (FDA) advisory reminding physicians connected with public hospitals to follow the Circular and avoid interaction with the tobacco and e-cigarette industries;<sup>34</sup>
- Metro Manila Development Authority (MMDA) support for the tobacco control policy of the government through strict enforcement of tobacco control laws and dissemination of information;<sup>35</sup>
- Department of Tourism (DOT) and office circular for the adoption and implementation of the Circular within its own agency.<sup>36</sup>

Finally, in light of the Philippine Tobacco Industry Interference Index 2018, HealthJustice Philippines had a dialogue with the National Commission for Culture and the Arts (NCCA) to discuss with them the policy of the government against unnecessary interaction with the tobacco industry. As a result of the dialogue, NCCA issued Memorandum Order-Office of Executive Director-2019-05-114 on May 28, 2019 which implements CSC-DOH JMC No. 2010-01. This also included an order which states that any existing partnership, ventures, or dealings with the tobacco industry or any institutions related thereto is automatically terminated.

Thus, while there are policies in place, there seems to be no effective or systematic program, system, or plan to raise awareness about the Circular or Article 5.3 nor to monitor and counteract tobacco industry interference.

31 Department of Health, “No Deal with the Tobacco Industry: Building a Vigilant Public for the Protection of Tobacco Control Measures”, Available at <https://www.doh.gov.ph/BIHC/BIHC-Updates/NO-DEAL-WITH-THE-TOBACCO-INDUSTRY-Building-a-Vigilant-Public-for-the-Protection-of-Tobacco-Control-Measures-feature-article>.

32 Commission on Higher Education “Policy and Guidelines on Anti-Smoking and Tobacco Control,” Available at <https://ched.gov.ph/wp-content/uploads/National-Public-Consultation-on-the-draft-CMO-on-the-Policy-and-Guidelines-on-Anti-Smoking-and-Tobacco-Control-in-CHED-and-All-Higher-Education-Institutions-HEIs.pdf>.

33 Department of Social Welfare and Development, “Guidelines on the Adoption and Implementation of Policies on Tobacco Control and Protection Against Tobacco Industry Interference in the DSWD,” Available at [https://www.dswd.gov.ph/issuances/AOs/AO\\_2019-011.pdf](https://www.dswd.gov.ph/issuances/AOs/AO_2019-011.pdf).

34 Food and Drug Administration, FDA Advisor No. 2019-501, Available at <https://www.fda.gov/fda-advisory-no-2019-501-gentle-reminder-for-all-physicians-connected-with-public-hospitals-pertaining-to-doh-csc-joint-memorandum-circular-2910-01-and-urging-them-to-avoid-all-interaction-with-th/>.

35 <http://www.mmda.gov.ph/54-news/news-2019/4159-nov-21-2019-mmda-supports-duterte-s-ban-on-vaping.html>.

36 Department of Tourism Office Circular No. 2019-001 “Adoption and Implementation of the DOH-CSC JMC No. 2010-001” Issued on 23 January 2019.

# Summary and Recommendations

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There were gains and losses in 2019 in relation to tobacco control policies. On one hand, the increase in tobacco taxes is a victory for public health. It has helped reduce smoking prevalence and provided more funds for universal health care. On the other hand, while the Finance and Health Departments advocated for the same rate of excise tax for HTP, ENDS, and ENNDS, the resulting law provided a substantially lower rate than for conventional cigarettes, providing an incentive to consumers to switch to these newer products.

Given the fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests, it is expected that the industry will strongly oppose, thwart, or delay the implementation of effective tobacco control policies. Thus, their active participation in policy development and implementation remains a big concern.

Similar to 2018, many incidents showed partnerships with non-governmental organizations and government agencies through the tobacco industry's so-called CSR activities and interactions with government officials. Advocates have worked hard in the past to prevent and denounce these types of partnerships and they have been successful in severing ties between the industry and the government. Thus, seeing the engagement between the industry and government agencies is a big step backward.

The Philippines continues to observe developments in monitoring tobacco industry interference. However, there is a need to strengthen coordination among government agencies to ensure that effective preventive measures are developed and prompt and appropriate actions are taken. The CSO-led Article 5.3 Committee must continuously convene while the DOH must follow through with the scheduling of the meeting of the government-led Article 5.3 Committee.

The Philippines has policies that prohibit tobacco industry interference. However, it is clear that the policy implementation needs to be improved. The CSC-DOH JMC No. 2010-01 will not work without a strong monitoring and enforcement system. There are transparency and reporting requirements in place, but the government agencies need to be stricter in enforcing these and in imposing sanctions for violations.

The Circular was considered as one of the pioneer policies in implementing Article 5.3 of the WHO FCTC. Despite having a remarkable impact in the Philippines and success influencing other countries to adopt similar policies, it has its limitations. It needs to be revisited and strengthened. Otherwise, the tobacco industry will continue to circumvent its limitations. HealthJustice Philippines will be partnering with a state university to conduct a study on how to further protect the government from tobacco industry interference by mapping out points of contact of the industry in the government.

Support from the civil society to the government remains essential in building an environment that recognizes and denormalizes tobacco industry interference. This includes providing the technical support needed by the government in regularly monitoring incidence of industry interference, strengthening the communications campaign, and conducting regular advocacy meetings with policymakers and other government officials.



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