

2023 TOBACCO INDUSTRY INTERFERENCE INDEX

The Philippine Report on the Implementation of Article 5.3 of the World Health Organization Framework Convention on Tobacco Control



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of Article 5.3 of the World Health Organization
Framework Convention on Tobacco Control

October 2023



Editorial Team

HealthJustice Philippines

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SEATCA promotes health and saves lives by assisting Association of Southeast Asian Nations (ASEAN) countries in accelerating and effectively implementing the evidence-based tobacco control measures contained in the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).

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Contents

Introduction	1
Methodology	3
Tobacco Industry Interference Index	5
Industry Participation in Policy Development	11
Industry CSR Activities	15
Benefits to the Tobacco Industry	19
Unncessary Interaction	21
Transparency	27
Conflict of Interest	31
Preventive Measures	33
Recommendations	35

Abbreviations

ASEAN	Association of Southeast Asian Nations
CSC	Civil Service Commission
DepEd	Department of Education
DoH	Department of Health
DSWD	Department of Social Welfare
EO	Executive Order
FDA	Food and Drug Administration
HB	House Bill
I-ACT	Inter-Agency Committee on Tobacco
JMC	Joint Memorandum Circular
JTI	Japan Tobacco International
NTA	National Tobacco Administration
PMFTC	Philip Morris Fortune Tobacco Corporation
PTI	Philippine Tobacco Institute
RA	Republic Act
ULPI	Universal Leaf Philippines
WHO FCTC	World Health Organization Framework Convention on Tobacco Control

Introduction

After enduring the hard sting of a global pandemic, the Philippines in 2022 found itself navigating a new set of challenges.

Economic recovery, adjusting to a post-pandemic environment and changes in political leadership usher in a time of both hope and uncertainty. This is the landscape in which the tobacco industry continues to aggressively pursue its goals, including on public governance.

The adroitness of Big Tobacco manifested itself in these particularly trying times. Its decades-old tactics for surviving and flourishing amid different crises — political, societal, legal, and reputational — are brazenly updated. Hardships provided opportunities for tobacco companies to improve their standing and present themselves in a positive light and as part of the solution.

The tobacco companies still tried to portray themselves as the good samaritans. In the period covered by this report, they have positioned themselves as partners in economic recovery and social development, as well as champions of justice and equal opportunities.

Their ways remain insidious: hobnobbing with political leaders, speaking out at public assemblies and getting involved in government projects at national and local levels, to weave their presence into the fabric of community life.

Big Tobacco's association with the government is particularly dangerous. This opens up pathways to diluting public health policies and influencing

2 Introduction

decision-makers, to the detriment of the very people they should be protecting. The government, which is supposed to put the welfare of the people first, could very well be the vanguard of the tobacco industry's interests. This sobering reality is what makes it imperative to regularly assess how countries are implementing Article 5.3 of World Health Organization Framework Convention on Tobacco Control (WHO FCTC).

Methodology

This report covers incidents of tobacco industry interference that took place from July 2022 to March 2023. These incidents are evaluated in accordance with the scoring system provided by the Southeast Asia Tobacco Control Alliance (SEATCA).

WHO FCTC Article 5.3 requires governments of party countries to protect their policies from tobacco industry interference. This is the tenth report on the Philippines' implementation of Article 5.3 of WHO FCTC. This assessment is based on the Tobacco Industry Interference Index Questionnaire, which was formulated to monitor country progress in implementing WHO FCTC Article 5.3 in the Association of Southeast Asian Nations (ASEAN) region.

All information in this report was obtained from publicly accessible and verifiable sources, which include official websites of government agencies and private corporations, online news platforms, public statements and anecdotal reports, among others. The entire report was circulated to civil society groups and experts for review and validation,

incorporating their comments and recommendations.

This report contributes to a body of evidence on the long-standing history of tobacco industry interference in the Philippines. It is revelatory of the pattern of actions of the industry and the vulnerability of the country's socio-political culture and public institutions that allows for the tobacco industry's exploitation.

Tobacco Industry Interference Index

The Tobacco Industry Interference Index is a civil society review of the implementation of the FCTC Article 5.3 in the Philippines.

It contains publicly available and verifiable information on incidents of tobacco industry interference from July 2022 to March 2023.

The incidents are rated according to the indicators in the Tobacco Industry Interference Index Questionnaire developed by SEATCA. The indicators were drawn directly from Article 5.3 Guidelines and thereafter modified for better suitability for ASEAN nations. The results of the Questionnaire are used to arrive at an assessment of how countries, individually and as a region, are faring in implementing WHO FCTC Article 5.3 and its Guidelines.



6 Methodology

The Questionnaire attempts to quantify the intensity, frequency or severity of a specific incident of tobacco industry interference. It was updated to lessen subjectivity in scoring and increase comparability of country results through the introduction of more specific guidelines and standardization of search methods and resources.

The Questionnaire is limited to tobacco industry interference and does not cover the whole spectrum of the tobacco industry's tactics, which could be the subject of a separate index.

Overall, the Index is a tool to monitor the progress, or lack thereof, of the Philippines in addressing tobacco industry interference through the implementation of WHO-FCTC Article 5.3. Trends show that the country has consistently deteriorated with industry interference increasing. The higher the score in the Index, the greater is the industry interference. The Philippines has obtained a score of 45 in 2017; 54 in 2018; 57 in 2019; 54 in 2020; 58 in 2021; and 59 in 2022. This year, the Philippines scored a total of 60 points showing further deterioration.

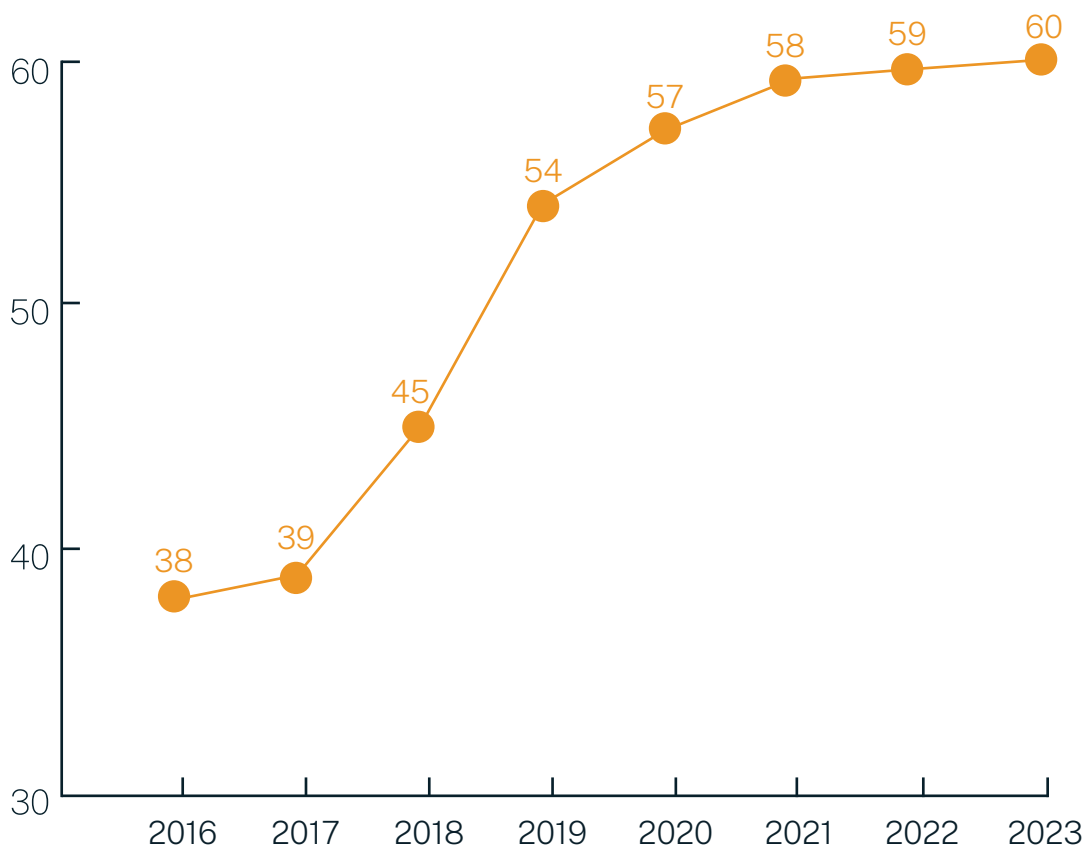


Figure 1. Philippines' score over time on the Tobacco Industry Interference Index

Lower scores show better implementation of Article 5.3, higher scores indicate higher levels of interference

Summary of tobacco industry interference indicators in the Philippines

INDICATOR		Score
1. Level of Industry Participation in Policy-Development		
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)	5
2	The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)	5
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)	5
4	The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) (Rec 4.9 & 8.3)	1
Subtotal		16
2. Industry CSR activities		
5	A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)	5
	B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)	
Subtotal		5
3. Benefits to the Tobacco Industry		
6	The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)	0
7	The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)	5
Subtotal		5
4. Forms of Unnecessary Interaction		
8	Top level government officials (such as President/Prime Minister or Minister) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)	5
9	The government accepts assistance/offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)	2

8 PH TII Indicator Summary

INDICATOR		Score
10	The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.	4
Subtotal		11
5. Transparency		
11	The government does not publicly disclose meetings/interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)	4
12	The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)	3
Subtotal		7
6. Conflict of Interest		
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)	5
14	Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)	4
15	Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0
Subtotal		9
7. Preventive Measures		
16	The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)	1
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)	1
18	The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)	2
19	The government has a program/system/plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)	2
20	The government has put in place a policy to disallow the acceptance of all forms of contributions/ 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. (3.4)	1
Subtotal		7
TOTAL		60

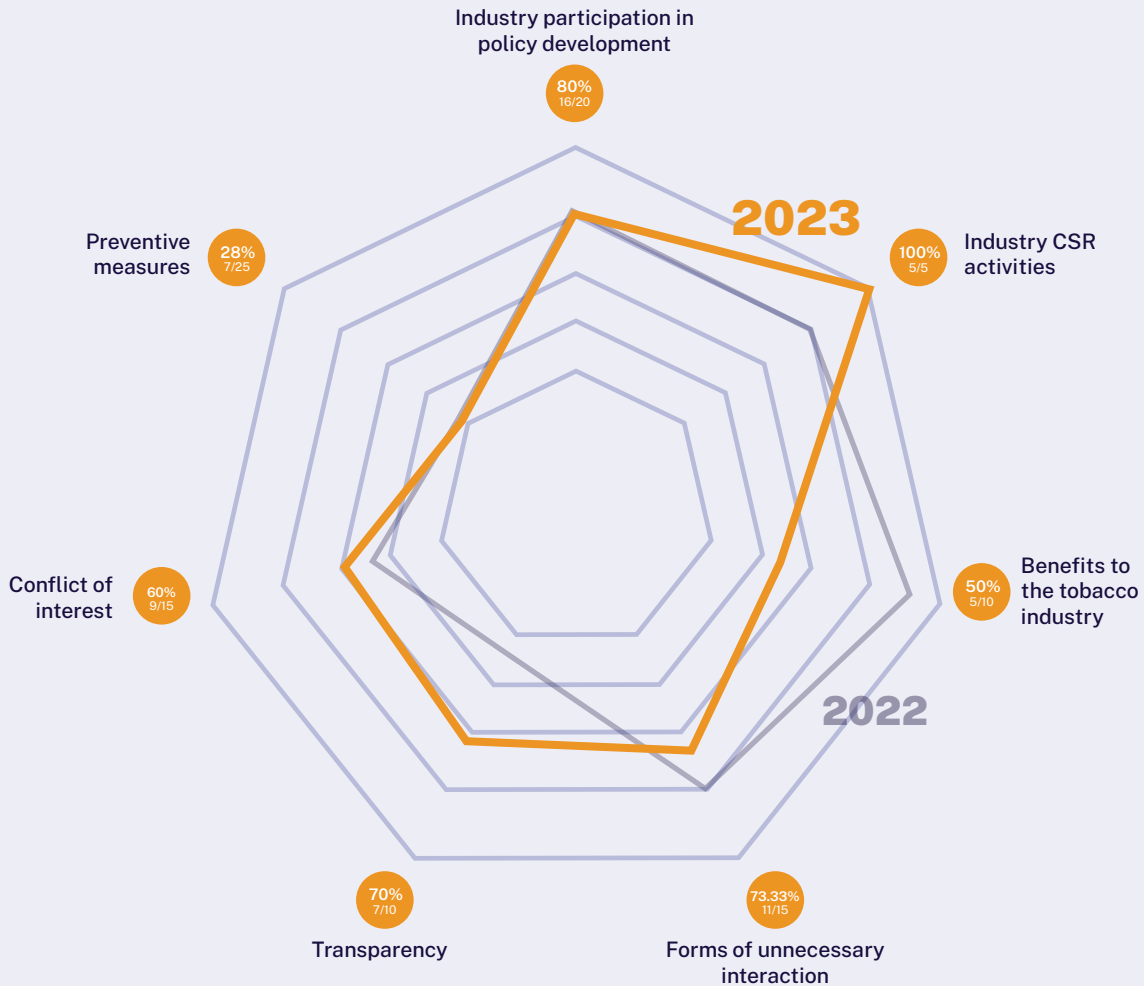
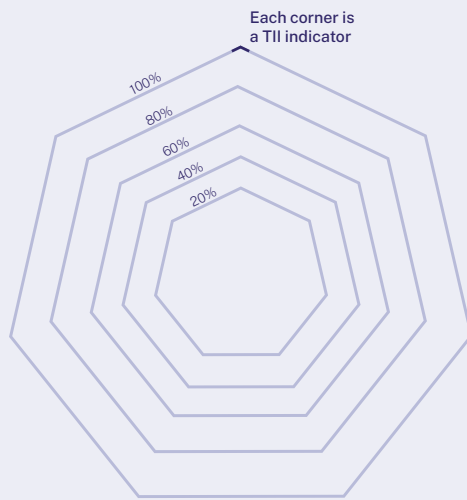


Figure 1. Philippines' score per category on the Tobacco Industry Interference Index 2023

The farther out from center, the higher the level of interference



Understanding the polygon chart

With all figures based on statistics in Table 1, all polygon charts represent tobacco industry interference in the Philippines. Each corner represents a category in Figure 2, or an indicator in Figures 3 to 5. Inner polygons represent the degree of interference, the level of interference increasing as one moves toward the outward corners of the biggest polygon. In Figure 2 above, each increase in size represents an increase of 20% from the center, the biggest polygon being 100% or the highest score. In Figures 3 to 5 in the following pages, they instead represent an increase in 1 point based on Table 1, with 5 represented by the biggest polygon being the highest score.

Computing interference percentages

All percentages in Figure 2 are computed based on the perfect score per indicator, as shown in Table 1. For example, for *Indicator 2: Industry CSR Activities*, the highest interference score is 5/5. The PH scores are exactly this, or 100%, and thus the sharpest corner in this indicator. In *Indicator 5: Transparency*, 10/10 is the perfect score, and the PH scores 3 here, making the percentage score for this indicator 30%. Lower scores are closer to the center, meaning a lower level of tobacco industry interference.

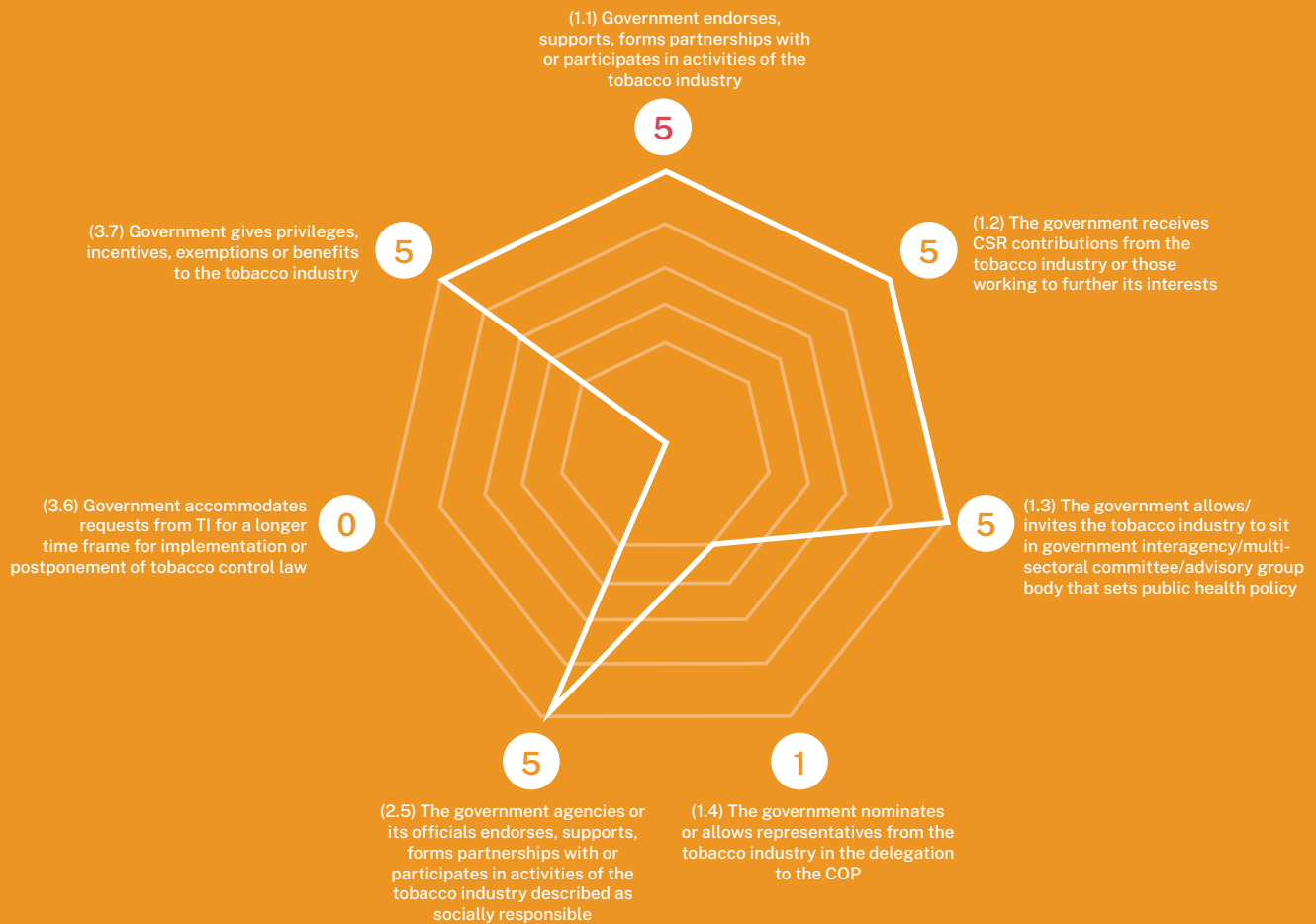


Figure 2. PH TII score per indicator in Industry Participation in Policy Development (1.1-1.4), Industry CSR Activities (2.5), and Benefits to the Tobacco Industry (3.6-3.7)

The higher the score and the farther out from center, the higher the level of interference
 Scores displayed above are out of 5 per indicator

1 Industry Participation in Policy Development

Congress passed the pro-industry vape regulation law, and the President chose not to exercise his veto power.

The Vape Regulation Bill lapsed into law on July 25, 2022 following the inaction of President Ferdinand “Bongbong” Marcos Jr. for 30 days when the bill was transmitted to his office by Congress.

The Vaporized Nicotine and Non-Nicotine Products Regulation Act, Republic Act (RA) No. 11900, known as the vape regulation law, places the authority to “set technical standards for safety, consistency, and quality of the products [...]” on the Department of Trade and Industry (DTI), the “primary coordinative, promotive, facilitative, and regulatory arm of the government for the country’s trade, industry, and investment activities.”¹ It is likewise with the DTI that manufacturers and importers of heated tobacco products, vapor products and novel tobacco products shall register.²

1 Section 2, Executive Order No. 133 (1987).

2 Sec. 18, Republic Act No. 11900 (2022).

This is problematic because it ignores the independent nature of the Food and Drug Administration as a regulatory agency of products that can pose significant risks to life, health and safety of the people such as heated tobacco and vapor products.

The law also lowered the age of access to these products from 21 to 18 years old as provided for in RA No. 11467, expanding the industry’s reach to much younger customers.³ This has been loudly decried by the Department of Education (DepEd) and children’s rights groups across the country. According to DepEd, around 1.1 million students were in the 18-20 years age bracket in the school year 2020-2021.^{4,5}

The Vape Regulation Bill was opposed by many civil society

3 Ibid.

4 Inquirer.net ‘Bill allowing younger vapers lapses into law,’ available at <https://newsinfo.inquirer.net/1635286/bill-allowing-younger-vapers-lapses-into-law>.

5 PTV News ‘Child rights advocates decry law lowering vape access from 21 to 18,’ available at <https://ptvnews.ph/child-rights-advocates-decry-law-lowering-vape-access-from-21-to-18>.

groups, government agencies and public health advocates and experts, including the Department of Health (DoH); DepEd; Food and Drug Administration (FDA); Philippine College of Physicians; and Philippine Pediatric Society.^{6,7}

In a privilege speech in the first regular session of the Senate of the 19th Congress, Senator Pia Cayetano expressed disappointment over the bill lapsing into law. “Science clearly tells us just how harmful these products are, while medical experts have repeatedly said how the vape bill masquerades as a health measure, as it really pushes for deregulation, not regulation, and harm introduction, not harm reduction,” she said.⁸

Japan Tobacco International (JTI) Philippines, Philip Morris Fortune Tobacco Company (PMFTC) and Associated Anglo-American Tobacco Corporation, among others, supported and lobbied for the law.⁹

6 Business World Online ‘Medical groups reassert opposition to vape bill,’ available at <https://www.bworldonline.com/health/2022/01/26/425732/medical-groups-reassert-opposition-to-vape-bill>.

7 Inquirer.net ‘Opposition to Vape Bill may exacerbate smoking, top Filipino doctors say,’ available at <https://newsinfo.inquirer.net/1548331/opposition-to-vape-bill-may-exacerbate-smoking-top-filipino-doctors-say>.

8 Inquirer.net ‘Pia Cayetano fumes over lapse of vape bill into law,’ available at <https://newsinfo.inquirer.net/1635081/pia-cayetano-fumes-over-lapse-of-vape-bill-into-law-2>.

9 Manila Bulletin ‘PTI supports full implementation of vape law to fight illicit trade,’ available at <https://mb.com.ph/2023/01/18/pti-supports-full-implementation-of-vape-law-to-fight-illicit-trade>.

A bill favoring the tobacco industry was filed despite the need to prioritize measures addressing social and economic issues of greater urgency.

In January 2023, Senator Lito Lapid filed Senate Bill (SB) No. 1812, which sought to amend RA No. 10845 or the Anti-Agricultural Smuggling Act of 2016, particularly to place tobacco and tobacco products in the same category as rice, sugar, vegetables, and other essential food items. The effect would be to entitle tobacco and tobacco products to protection against smuggling. This move was criticized for its suspect timing and favorability to foreign tobacco companies.¹⁰

Tobacco industry representatives were asked for their views in an official Congress session.

JTI Philippines General Manager John Freda and PMFTC lawyer Noel De Luna were present at a hearing held by the Congress House Committee on Food and Agriculture on November 15, 2022 and were even provided opportunities to speak therein. The hearing was conducted to discuss House Bill (HB) No. 3917, which intends to make cigarette smuggling a form of economic sabotage. The bill was filed by

10 Philstar ‘Consumer group hits bill on tobacco smuggling,’ available at <https://www.philstar.com/nation/2023/02/27/2247997/consumer-group-hits-bill-tobacco-smuggling>.

Ilocos Norte representative Sandro Marcos, son of President Marcos.¹¹ Tobacco industry representatives are supporting this measure and see it as a way to protect the industry and its profits.

The tobacco industry continues to be represented in the Inter-Agency Committee on Tobacco (IAC-T) that implements the tobacco control legislation RA9211.

Laws identifying tobacco industry representatives as members of government bodies involved in tobacco control have yet not been amended, perpetuating a conflict of interest that has festered for years.

RA No. 9211 or the Tobacco Regulation Act identifies “[a] representative from the Tobacco Industry to be nominated by the legitimate and recognized associations of the industry” as one of the members of the Inter-Agency Committee on Tobacco (I-ACT),¹² which is decreed by the same law as possessing “exclusive power and function to administer and implement the provisions of this Act.”¹³

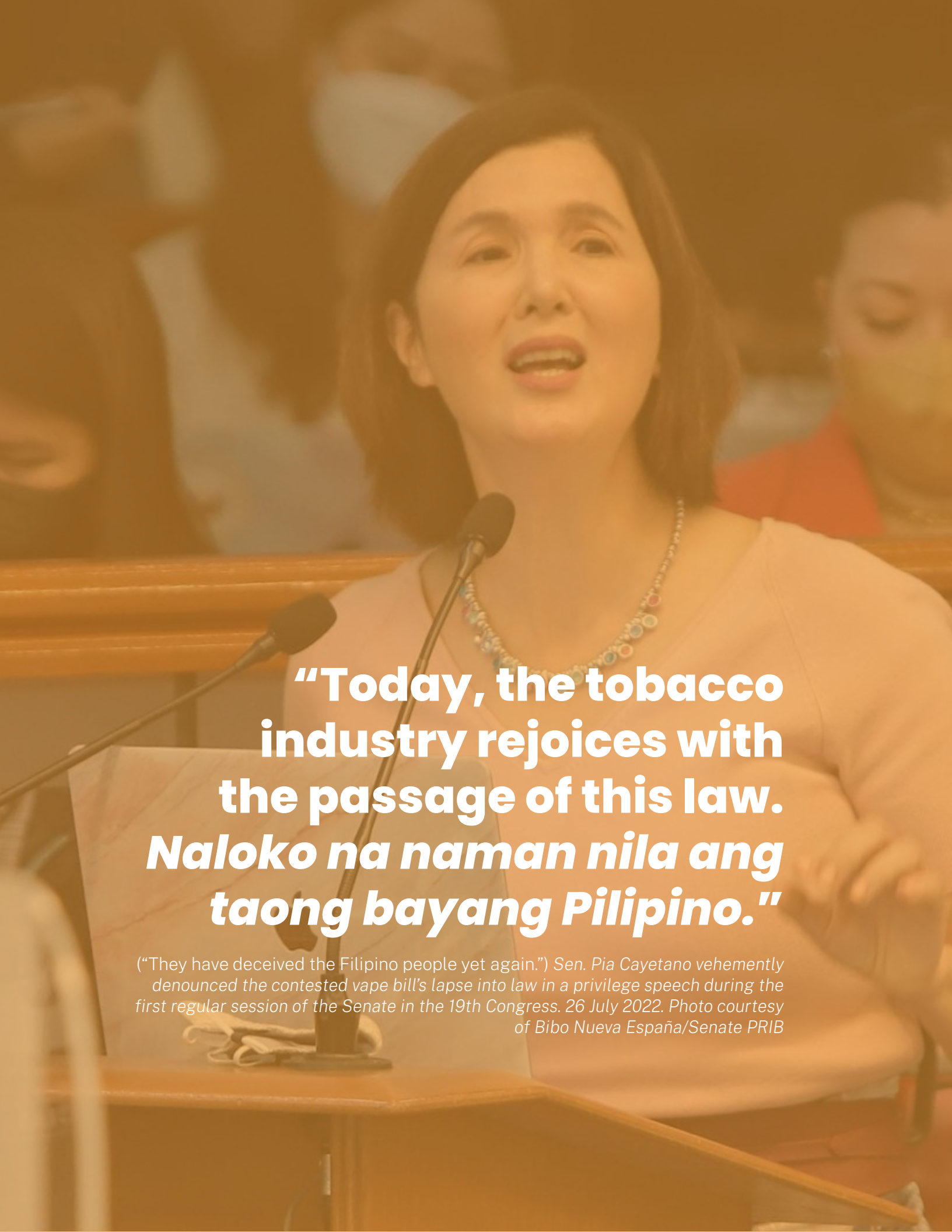
I-ACT is also mandated to monitor the implementation of the Graphic Health Warnings Law and initiate the proper action for any violation of its provisions.¹⁴

11 CNN Philippines ‘Int’l tobacco firms say passage of tougher sanctions vs tobacco smuggling ‘urgent’, available at <https://www.cnnphilippines.com/news/2022/11/15/tobacco-firms-bill-tougher-sanctions-smuggling.html>.

12 Sec. 29 (h), RA No. 9211 (2003).

13 Sec. 29, RA No. 9211.

14 Sec. 16 (3), RA No. 10643 (2014).



“Today, the tobacco industry rejoices with the passage of this law. *Naloko na naman nila ang taong bayang Pilipino.*”

(“They have deceived the Filipino people yet again.”) Sen. Pia Cayetano vehemently denounced the contested vape bill’s lapse into law in a privilege speech during the first regular session of the Senate in the 19th Congress, 26 July 2022. Photo courtesy of Bibo Nueva España/Senate PRIB

2 Industry CSR Activities

The tobacco industry continued to rampantly conduct CSR activities to enhance its reputation of being a partner of government, private sector and the community in uplifting lives.

These activities support the positioning of the industry as a *Good Samaritan* or *do-gooder*, entering into partnerships for their long-term insidious gain. The forging of some of these partnerships are very strategic, especially those with the government.

It is alarming that the industry was able to penetrate and strengthen networks with the security sector – the Philippine Army, Philippine Air Force, Philippine National Police – by supporting their community outreach activities such as medical missions and donation of relief goods and care packages in various communities all over the country. But what are most notable were donations of electronic gadgets such as computer units to the PNP’s 2nd Zamboanga City Mobile Force Company “Seaborne”, an expensive laser therapy machine

to the Philippine Army hospital, and even supporting Eastern Mindanao Command (EastMinCom)’s Server Room Project for the enhancement of their network capabilities and cyberspace security operations. For these activities, senior security officials were present during turnover ceremonies.

It does not end there. The industry has also extended its magnanimity to government officials and local executives by courting donations of school supplies and computers, rice, relief and care packages, an ambulance etc. for various communities all over the country through them. Of course, giving out these donations would entail having the government officials involved present during the handover ceremony which is a win-win for the official and the industry as it cements their legitimacy in the communities. What is interesting is that these donations are going to communities with tobacco farms such as Abra, Mountain Province, Masbate or in areas with or nearby cigarette processing plants such as in Batangas and Cavite. In 2022,

the Provincial Government of Misamis Oriental received a real property donation amounting to USD 9,950,603 from Philip Morris International.¹⁵

It is also interesting to note that donations that are considered significant are given to areas where political influence can be generated. In fact, the City of Manila received a very generous donation of PHP 30 M from JVOFI for the construction of the state-of-the-art Sta. Ana Blood Bank. Its groundbreaking and eventual inauguration was led by no less than by Manila Mayor Maria Sheila “Honey” Lacuna-Pangan¹⁶. Even Presidential son and Ilocos Norte 1st District Representative Sandro Marcos was supported by the industry by its funding of the #BatangMalaya program, a global campaign against child labor with the Department of Labor and Employment (DOLE)¹⁷.

In August, 80 new homes were turned over to members of the Nawanao Riverside B Homeowners

Association. It was a partnership with the local government of Mandaue, the Social Housing Finance Corporation – Region 7 and Habitat for Humanity Philippines. It received funding from JTI Philippines.¹⁸

All of these give impetus for the call of tobacco control advocates for the government to strongly enforce Civil Service Commission (CSC)-DOH Joint Memorandum Circular (JMC) No. 2010-01 on the Protection of the Bureaucracy Against Tobacco Industry Interference to cover activities where the industry’s intent to influence the government is not very apparent.

However, it must be noted that the efforts being done by the tobacco industry to conduct these CSR activities are through various layers or fronts.

For example, JVOFI, a so-called NGO, is the main front of PMI for its CSR activities. Of course, PMI also works through its EMBRACE program, and there are also activities being coursed through LT Group which is the parent company of PMFTC in the country.

15 Philip Morris International Social Contributions 2022. <https://www.pmi.com/who-we-are/our-views-and-standards/standards/transparency>.

16 Tribune, ‘Sta. Ana Hospital opens own bloodbank,’ available at <https://tribune.net.ph/2023/06/28/sta-ana-hospital-opens-own-blood-bank/>

17 Official Facebook Page of Congressman Ferdinand Alexander “Sandro” Marcos’ District Office.

18 Habitat for Humanity ‘80 families receive new homes under Habitat Philippines’ Paknaan Housing Project in Mandaue City,’ available at <https://www.habitat.org.ph/news/paknaan-housing-project>.

There is also JTI which partners with government instrumentalities for its various CSR activities. It is important for government policies to be strengthened to uncover these connections and sophisticated propaganda machinations of the industry.

It is interesting how much money is involved and appears to be thrown by the tobacco industry in furthering their dangerous intent with a view to long-term gains. Filings of Philip Morris International show that its CSR arm, JVOFI, received USD 7.33 million in 2022 for alleged 'social welfare programs aimed in addressing societal challenges'. But this funding of course does NOT cover the full extent of the pie.

3 Benefits to the Tobacco Industry

The so-called vape regulation law loosened restrictions provided for under older laws.

The vape law discussed earlier is an undoing of many public health gains. As already stated, it lowered the age of access to e-cigarettes and heated tobacco products from 21 to 18 years old. It also weakened the regulatory power of the FDA considering that these products are highly detrimental to public health.

Taxes on e-cigarettes and vapes are much lower than those imposed on traditional cigarettes. Under Sec. 3 of RA No. 11467, by January 2023, the excise tax on a cigarette pack is P60. Meanwhile, as set forth by Sec. 3 of BIR Revenue Regulations No. 14-2022 in implementation of RA No. 11900, the excise taxes on a pack of 20 units or less of heated tobacco products and on a milliliter (or a fraction thereof) of nicotine salt/salt nicotine vapor products are only P32.65 and P52, respectively.

Tobacco products are still given preferential treatment.

By virtue of the ASEAN Trade in Goods Agreement (ATIGA), tobacco leaves and other tobacco-related additives imported into the country enjoy zero import duties. International travelers are allowed to bring 400 cigarette sticks tax-free into the Philippines, a much more generous allowance compared to what other countries in the region provide. Singapore and Hong Kong, for instance, limit the tax benefit to 20 sticks.

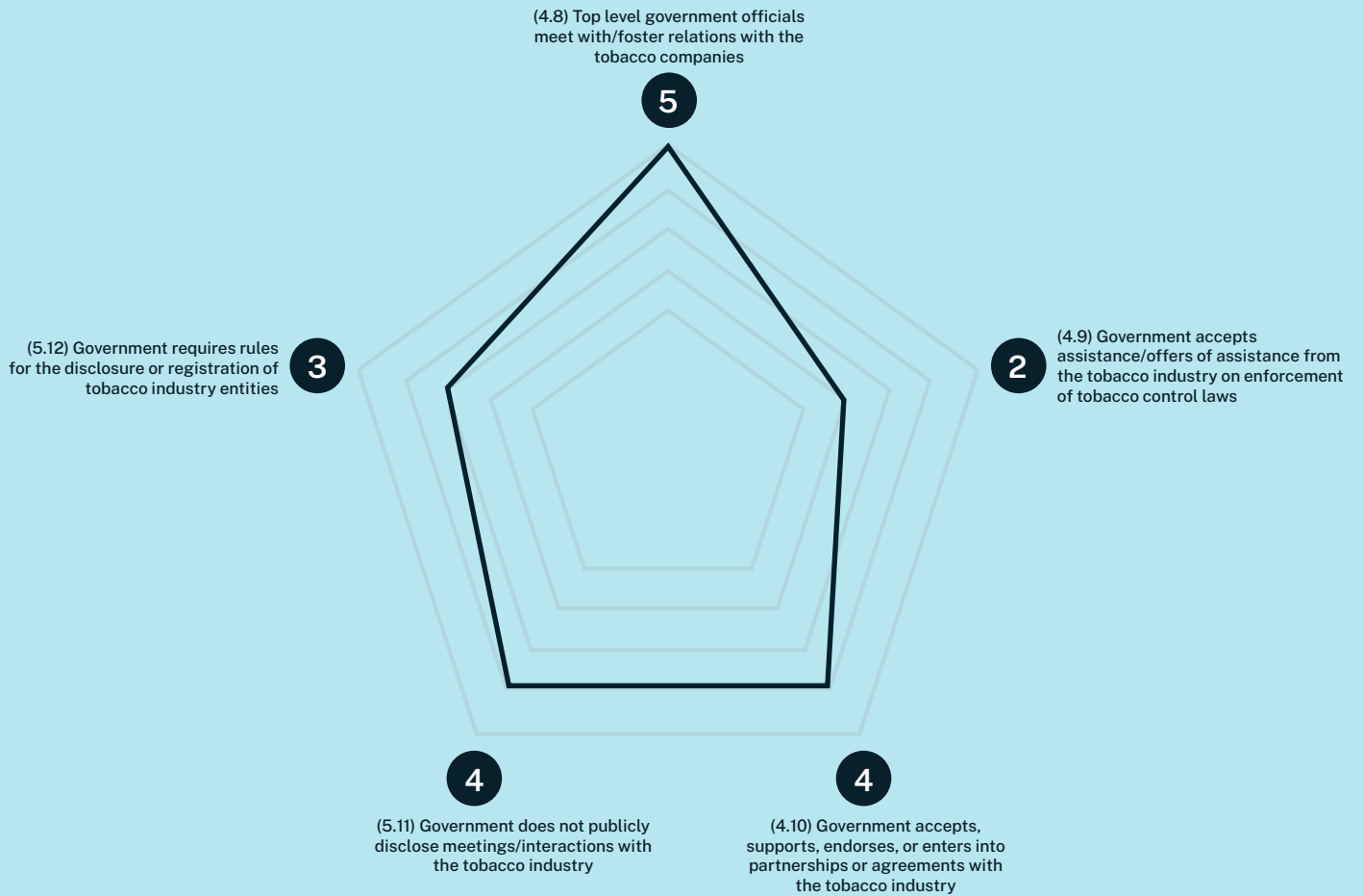


Figure 4. PH TII score per indicator in Forms of Unnecessary Interaction (4.8-4.10), and Transparency (5.11-5.12)

The higher the score and the farther out from center, the higher the level of interference
 Scores displayed above are out of 5 per indicator

4 Unnecessary Interaction

The government and a tobacco company have joined forces in a private-public partnership allegedly for the sake of farmers.

The Kapatid Angat Lahat (KALAP) program is described as a “public private sector partnership initiative that aims to promote inclusive economic growth [for farmers]”¹⁹ by “integrating them into the value chain of large corporations.”²⁰ The expressed intent of KALAP is to help farmers with funding, mentoring and access to markets.²¹ It is spearheaded by Go Negosyo, a non-government organization advocating for entrepreneurial empowerment. One of the companies involved in this partnership is the Universal Leaf Philippines, Inc. (ULPI), the Philippine subsidiary of global

tobacco company Universal Tobacco.

According to its website, Universal Tobacco is the “leading global supplier of leaf tobacco, and leaf tobacco is [its] primary business and source of revenues.” Universal Leaf Tobacco Company, its primary subsidiary, is “responsible for the largest portion of [its] business, the procurement and processing of a variety of leaf tobaccos and providing supply chain services to manufacturers of consumer tobacco products.” It is headquartered in Virginia, USA and operates in over 30 countries.²²

A representative of ULPI joined the Secretary of the Department of the Interior and Local Government, other government officials and private sector executives in a KALAP meeting on January 9, 2023.²³

19 Go Negosyo ‘Kapatid Angat Lahat program,’ available at <https://gonegosyo.ph/programs/kapatid-angat-lahat>.

20 Go Negosyo ‘DILG Supports Kapatid Angat Lahat Agri Sector Program,’ available at <https://gonegosyo.ph/dilg-supports-kapatid-angat-lahat-agri-sector-program>.

21 NTA ‘NTA Joins KALAP Launch And MOA Signing In Malacañang,’ available at <https://www.nta.da.gov.ph/nta-joins-kalap-launch-and-moa-signing-in-malacanang>.

22 Universal Leaf Tobacco Company, <http://www.universalcorp.com/OurCompany>.

23 Inquirer.net ‘DILG supports Kapatid Angat Lahat,’ available at <https://newsinfo.inquirer.net/1715270/dilg-supports-kapatid-angat-lahat-agri-sector-program>.

Go Negosyo formally presented the KALAP program to NTA administrator and chief executive officer Belinda Sanchez at the NTA central office in Quezon City on January 26, 2023.

During this event, ULPI also presented company agricultural programs that it said would increase production. ULPI President Winston Uy talked about the expounded data management system of the company.²⁴

Uy graced the ceremonial signing of the KALAP memorandum of agreement between government officials and private sector representatives. The event took place at Malacañan Palace, the official residence of the President of the Philippines and the first family, on March 6, 2023.

President Marcos attended and spoke at the event, where he described KALAP as something that will “enable farmers and micro, small and medium enterprises to become more productive, profitable, sustainable, and globally competitive.”²⁵

²⁴ NTA ‘Go Negosyo Engages NTA For Possible Partnership,’ available at <https://www.nta.da.gov.ph/go-negosyo-engages-nta-for-possible-partnership>.

²⁵ NTA ‘NTA Joins KALAP Launch And MOA Signing In Malacañang,’ available at <https://www.nta.da.gov.ph/nta-joins-kalap-launch-and-moa-signing-in-malacanang>.

Industry people toured government officials in their facilities.

NTA top officials, including Sanchez, and former Agriculture Secretary William Dar, had a tour of the tobacco farms of ULPI in Balaoan, La Union and Narvacan, Ilocos Sur on February 20-21, 2023. Here, ULPI president Uy presented a new digital application called “Farm Location and Management” that their company’s technicians use in monitoring agricultural practices and tobacco production of their farmers. ULPI then gave a presentation on the different tobacco types being processed in its plant in Agoo, La Union. Uy spoke in detail about the air-cured native cigar broadleaf tobacco, which he claimed had great potential for local production.²⁶

The industry is putting pressure on tax authorities.

Multiple tobacco companies, through PTI, wrote a letter addressed to BIR Commissioner Romeo Lumagui Jr. in January 2023, stating how, in their opinion, the implementation of the vape regulation law would help in tax collection. In the same letter,

²⁶ NTA ‘NTA Visits ULPI Tobacco Contract-Growing Farms In Ilocos,’ available at <https://www.nta.da.gov.ph/nta-visits-ulpi-tobacco-contract-growing-farms-in-ilocos>.

PTI appealed to BIR to “fully implement certain provisions of the law.”²⁷ The Philippine E-Cigarettes Industry Association likewise publicly called for the same in the exact words used by PTI.²⁸

It is no mystery that BIR is being pressured by the industry to act in its favor. After all, it is charged by Sec. 22 of RA No. 11900, colloquially known as the “vape regulation law,” with significant powers that the industry may be keen on using to its advantage. Under the law, BIR is “mandated to issue revenue regulations prescribing the floor price or the minimum price of Vaporized Nicotine and Non-Nicotine Products or Novel Tobacco Products.”

Moreover, only merchants registered with BIR may be allowed to sell their products. BIR is obligated by law to “order the immediate recall, ban or seizure from public sale or distribution of Vaporized Nicotine and Non-Nicotine Products or Novel

Tobacco Products not registered with the BIR, including those sold online.”²⁹

Tobacco companies were honored by the local government.

In March 2023, the City Government of Davao honored PMFTC, among other companies, for being one of the top ten taxpayers of the city. The companies were awarded during a special event held at Acacia Hotel in Davao City.³⁰ Representatives were present to accept the awards on behalf of their respective companies.

State-sponsored festivities were conducted in partnership with the industry.

The government and people of Candon City in Ilocos Sur usually hold the Candon City Tobacco Festival every year. One of the event’s highlights is the tobacco beauty pageant where the winner is crowned as Miss Tobacco. The festival, including the pageant, took place again in March 2023 after a three-year hiatus due to the pandemic. According to Candon

27 Manila Bulletin ‘PTI supports full implementation of vape law to fight illicit trade,’ available at <https://mb.com.ph/2023/01/18/pti-supports-full-implementation-of-vape-law-to-fight-illicit-trade>.

28 GMA Network ‘Salceda seeks increase in taxes on vape story,’ available at <https://www.gmanetwork.com/news/topstories/nation/853726/salceda-seeks-14-increase-in-taxes-on-vape-products/story>.

29 Sec. 23, RA No. 11900.

30 Bombo Radyo ‘Mga nag-unang tax payers ning dakbayan, giila atol sa Pasidungog: Garbo sa Davao,’ available at <https://www.bomboradyo.com/davao/mga-nag-unang-tax-payers-ning-dakbayan-giila-atol-sa-pasidungog-garbo-sa-davao>.

City mayor Eric Singson, the event was done in collaboration with PTI and NTA.³¹

Tobacco company representatives attend an event with the President.

In November 2022, President Ferdinand Marcos, Jr., First Lady Liza Araneta Marcos, First Son and Ilocos Norte Representative Sandro Marcos had lunch with PMI representatives in Malacanang. The lunch had a Filipino fiesta feel with colorful flaglets or banderitas and dancers in Filipino traditional attire. There was no information provided of discussions made during lunch but of course, it is public information that the President comes from Ilocos Norte which is the country's top tobacco producer.³²

Government-industry interactions in the covered period were unnecessary.

These interactions are all unnecessary. There was no reason for strict necessity for the industry

to be given an opportunity to be heard in Congress; to give a tour of their facilities to government officials; to explain their current work at a government office; and attend public events in state property with no less than the highest executive official of the land, among others.

31 Manila Bulletin 'Miss Tobacco PH crowned in Candon City on March 25,' available at <https://mb.com.ph/2023/3/21/miss-tobacco-ph-crowned-in-candon-city-on-march-25>.

32 PhilStar 'Marcos meets with Philip Morris execs,' available at https://www.philstar.com/headlines/2022/11/28/2226932/marcos-meets-philip-morris-execs?fbclid=IwAR2X-hqwiOQ5FfQl1ZkrOYviAT2AANKOmaM8KkC8BD82XeWT oP_cOBZ7eo



JVOFI and Quezon City Congress Representative medical mission for TODA drivers. In partnership with the Jaime V. Ongpin Foundation, Inc. (JVOFI), the Office of Congressman Ralph Tulfo conducted a medical mission for the TODA drivers of the 2nd District of Quezon City. 2 May 2023. Photo courtesy of Congressman Ralph Tulfo's Facebook page.

5 Transparency

There was no formal disclosure of the abovementioned incidents of industry interference.

Information on recent incidents of tobacco industry interference, which all appear to be unnecessary, was not disclosed through proper channels. This is contrary to Section 3.1. of the DOH-CSC JMC 2010-10 requiring government agencies to “give information about any type of agreement with the tobacco industry[...],” which shall include “reports on any interaction with the tobacco industry, any preferential treatment given to the tobacco industry and any offer of donation to the public official or employee by the tobacco industry.”

The Supreme Court affirmed the power of the Food and Drug Administration to regulate tobacco products.

It will be remembered that PTI, whose members include tobacco product manufacturers and distributors, filed in 2011 a

court case seeking to set aside the implementing rules and regulations of RA No. 9711 or the Food and Drug Administration Act of 2009. They argued that the rules were invalid for attempting to expand the law by giving the DoH and FDA — as opposed to just DTI — regulatory powers over tobacco products.

The case eventually reached the Supreme Court. In June 2022, the highest court of the land ruled with finality that FDA indeed has authority to regulate tobacco products. According to the Decision rendered by Court, “It is within FDA’s competence and mandate to ensure safety, efficacy, purity, and quality of health products which, based on the definition under the law, clearly includes tobacco products.”

The Court likewise categorically declared that DOH and FDA have “technical authority over matters of public health.” The ruling was hailed to be a victory

for the younger generations,³³ the Supreme Court explicitly affirmed the legally obligatory nature of WHO FCTC within the Philippine jurisdiction.

A license is necessary for operating as a business dealing in vapor products and heated tobacco products.

Under Sec. 3 of EO No. 106, s. 2020, “All establishments engaged in the manufacture, distribution, importation, marketing and sale of [Electronic Nicotine Delivery Systems/Electronic Non-Nicotine Delivery Systems, Heated Tobacco Products], or their components shall secure a License to Operate from the FDA.” RA No. 11346 also directs FDA to craft the implementing rules and regulations that will aid in the implementation of excise-tax related provisions.³⁴

FDA issued Advisory 2022-1068 dated 18 May 2022 on the “mandatory requirement of license to operate for all vapor product and heated tobacco product establishments beginning on 25 May 2022.” The licensing

guidelines are embodied in FDA Circular No. 2021-016 dated 14 July 2022.

There are no laws requiring the registration and disclosure specifically of tobacco companies and allied groups and lobbyists specifically.

Other than the usual business registration requirements, no registration and disclosure rules exist specifically for tobacco entities, their front groups and their lobbyists. It appears that the nature of the tobacco enterprise as harmful to society and health is still not fully recognized as deserving of stricter scrutiny and regulation than it is currently given.

³³ Philippine National Agency ‘Future gen wins in SC ruling on FDA power over tobacco products,’ available at <https://www.pna.gov.ph/articles/1176483>.

³⁴ Section 16.

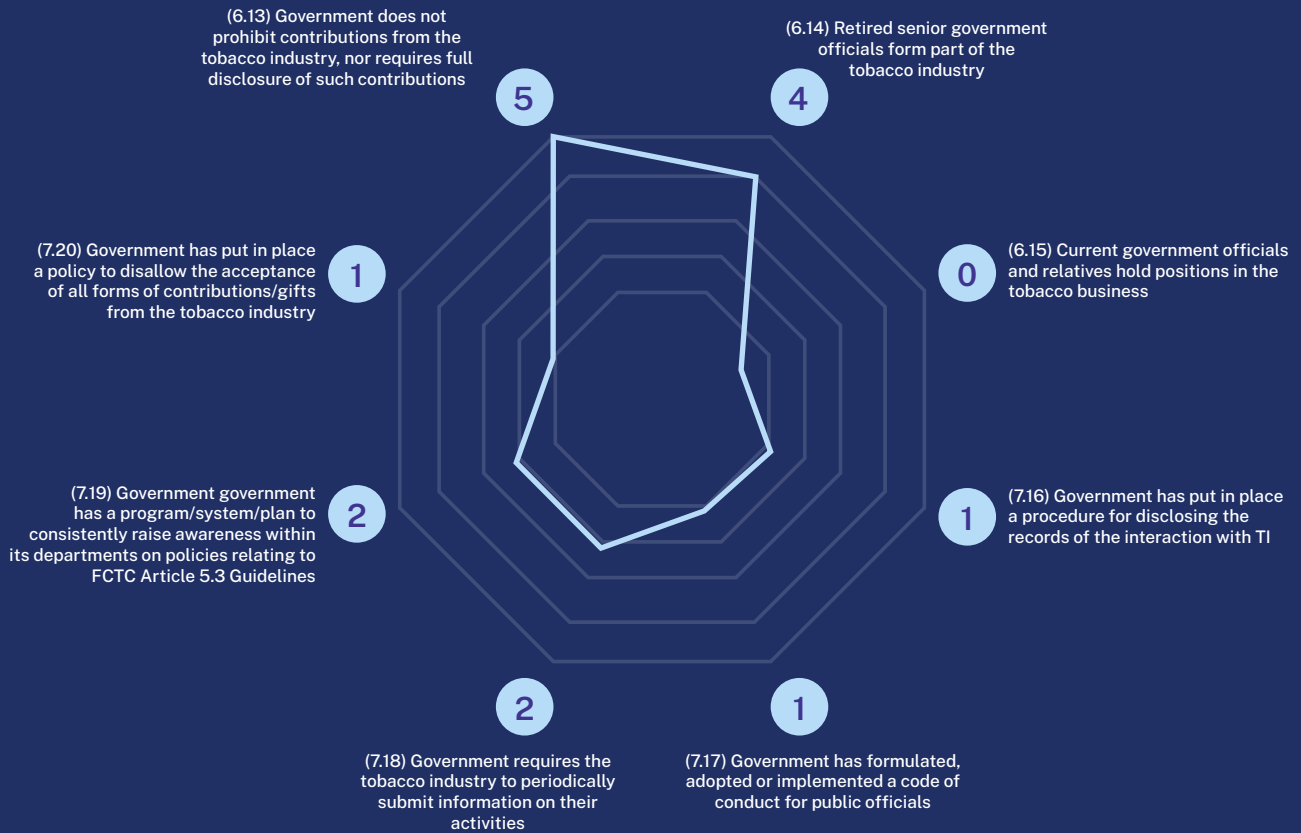


Figure 5. PH TII score per indicator in Conflict of Interest (6.13-6.15), and Preventive Measures (7.16-7.20)

The higher the score and the farther out from center, the higher the level of interference
 Scores displayed above are out of 5 per indicator

6 Conflict of Interest

Former top government officials form part of the tobacco CSR group.

Tan Yan Kee Foundation is the CSR arm of LT Group, Inc., the parent company of Fortune Tobacco Corporation (FTC). FTC owns 50% of PMFTC Inc.³⁵ Former Chief Justice Artemio Panganiban, former Prime Minister Cesar E.A. Virata and former Bangko Sentral ng Pilipinas Governor Amando Tetangco, Jr. form part of the Board of Trustees of Tan Yan Kee Foundation.³⁶

Florencia Tarriela, former chairperson of Philippine National Bank, is an independent director of LT Group, Inc.³⁷ Salvador Mison, former Bureau of Customs

Commissioner, was the president of Fortune Tobacco and Basic Holdings, as well as former spokesperson of LT Group.³⁸

³⁵ Philippine Stock Exchange PMFTC company information, at https://edge.pse.com.ph/companyInformation/form.do?cmpy_id=12.

³⁶ Tan Yan Kee Foundation, 'About us' at <http://www.tanyankee.org/about-us.html>.

³⁷ Philippine Stock Exchange, LT Group information at https://edge.pse.com.ph/companyPage/directors_and_management_list.do?cmpy_id=12

³⁸ Philstar 'A knight in Kapitan's army retires,' available at <https://www.philstar.com/business/2022/02/21/2162136/knight-kapitans-army-retires>.

7 Preventive Measures

The DOH-CSC JMC 2010-01 contains prohibitions and guidelines for government officials in dealing with the tobacco industry.

The DOH-CSC JMC 2010-01 seeks to implement WHO-FCTC Art. 5.3 by prohibiting interactions between the tobacco industry and the government, unless “strictly necessary for its effective regulation.” The following acts, and those analogous thereto, are prohibited:

1. Unnecessary interaction with the tobacco industry
2. Preferential treatment to the tobacco industry
3. Accepting gifts, donations, and sponsorship
4. Financial interest in the tobacco industry
5. Accepting other analogous favors
6. Conflict of interest with the tobacco industry³⁹

Public officials are therefore not allowed to solicit or accept any

gift, gratuity, favor, entertainment, loan, or anything at all of monetary value from the tobacco industries. They must avoid any conduct that would tend to create any perception of having a partnership with the industry, real or otherwise.

Section 4.0 of the JMC tasks agency heads to inform officials and employees under their supervision about the policy against interference and amend the Codes of Conduct of their offices to incorporate this policy.

Under Section 5.0 of the JMC, government agencies are enjoined to “disseminate information about the addictive and harmful nature of tobacco products, tobacco industry interference with tobacco control policies, and the true purpose and scope of activities described as ‘socially responsible.’” It is to be noted that the last part of this directive specifically addresses the conduct of “CSR” in which the industry is always engaged. The effectiveness of the information dissemination

³⁹ Section 3.0.

efforts, however, is another issue altogether that will be addressed in the Recommendations section.

The JMC likewise requires disclosure and reporting of incidents of this sort to the CSC. The proper reports shall then be publicly accessible. Section 3.1 states that “Transparency in all interactions with the tobacco industry shall be observed.” The Annex sets out the applicable rules and procedure to be observed in cases where interaction is strictly necessary, which include government offices as the proper venue; the prohibition to use official documentation of the meetings as public relations material of the tobacco companies; the presence of a lawyer; the right to terminate the meeting at any point; and the avoidance of all non-mediated exchanges.

In the past years, government agencies have released issuances which were reiterations of the JMC, including CHED Memorandum Order No. 06 in 2021, DSWD Administrative Order No. 07 in 2018, and DepEd Department Memorandum No. 197, s. 2017. It is also notable that the DOH has consistently reiterated the JMC through DOH Administrative Order

No. 2023-0001, DOH Memorandum Circular No. 2019-0033, and FDA Department Memorandum No. 2018-0232. There is also no specific requirement under the law for tobacco companies to submit their financial performance information and activities, although the former may be gleaned from the annual disclosures required for companies to operate within the jurisdiction.

Recommendations

There is a need to align laws, policies and measures with WHO FCTC, which likewise needs greater recognition as part of the national legal system.

The Supreme Court's recent Decision affirming the regulatory power of FDA over tobacco products cites the WHO FCTC as a legal basis. This is a huge step taken with respect to recognizing the validity and importance of the global health treaty within the national jurisdiction.

Stricter compliance with WHO-FCTC Article 5.3 CSC-DOH JMC 2010-01 must be enjoined.

To pursue this objective, there must be continuous information campaigns in government offices at the national and local levels of the importance of insulating government organs, public officials, policies, and policy-making processes from the wiles of the tobacco industry to impress upon public officials their duty to act accordingly against tobacco

industry interference. Overall, there should be better communications strategies to address information gaps in the implementation of WHO-FCTC Art. 5.3 and CSC-DOH JMC 2010-01. These strategies should emphasize the validity and importance of WHO FCTC in the Philippine legal system and regulatory frameworks as well as the necessity to strictly implement CSC-DOH JMC 2010-10.

The forms that tobacco industry interference can take should be clarified in official memos and issuances to facilitate better implementation of anti-industry interference regulations.

This way, government officials may be better informed of and stay updated about novel tactics tobacco companies and their front groups may employ to evade the appearance of interference even when it is exactly that which they are engaged in. As in the recent cases of interference, government bodies have been found to be

embroiled in projects where the industry appears to only be subtly present.

It must be stressed that even a minimal degree of interaction between industry and government is still interference. Furthermore, what front groups are should be well-defined. It should be clear that interaction between government and industry front groups is interference. Existence of accessible industry interference reporting channels must be emphasized.

Government partnerships as well as receipt of donations from the private sector should be subject to stricter due diligence checks ensuring non-involvement in any way and to any degree with the tobacco industry.

Project requirements should explicitly state the need for compliance with WHO FCTC and CSC-DOH JMC 2010-01. Sworn statements from private sector representatives to this effect may even be required as a precondition to the commencement of the partnership with and receipt of donations from the private sector.

There should be an earnest effort to prosecute tobacco companies for their blatant acts of interference.

Lawmakers should be encouraged to formulate measures to deter tobacco industry interference effectively through enactment of laws that would punish tobacco industry interference.

Existing health policies and regulations should be updated in view of the proliferation of vapes and e-cigarettes and the passage of vape law.

The development of new regulations concerning vapes and e-cigarettes should be watched closely to guard against any attempt by the industry to thwart existing pro-health measures. At this juncture in which tobacco companies promise a “smoke-free” world, it has never been more crucial to stay prepared and anticipate issues that may arise. The industry is continuing on its journey to amass profits and power at the expense of lives and public health, and this time with a set of new weapons. The country, like the rest of the world, must stay vigilant and be prepared.

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