

The background of the cover features a close-up of a wooden gavel resting on a wooden bowl. Inside the bowl, several cigarettes are visible. The background is a blurred South African flag with its characteristic red, white, green, and blue horizontal stripes. A dark blue banner is overlaid on the top and bottom of the image.

SOUTH AFRICA

TOBACCO INDUSTRY INTERFERENCE INDEX

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Endorsements

This report is endorsed by the following organizations:

Research Unit on the Economics of Excisable Products (REEP), University of Cape Town.

Africa Centre for Tobacco Industry Monitoring and Tobacco Research (ATIM).

National Council Against Smoking (NCAS)



National Council
Against Smoking^{NPC}



Research Unit on the Economics
of Excisable Products



Global Center for
Good Governance
in Tobacco Control

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National Council
Against Smoking_{NPC}



ATIM
AFRICA CENTRE FOR TOBACCO
INDUSTRY MONITORING AND POLICY RESEARCH



Research Unit on the Economics
of Excisable Products



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FOREWORD

The past three years have been difficult for most South Africans. More than 100 000 people have died from Covid-19. The economic, social and mental health consequences of Covid-19 will take years, possibly even decades, to resolve themselves

Currently inflation is high, unemployment is extremely high, allegations of corruption and mismanagement in government persists, and electricity load-shedding has never been this severe. The government has many priorities. Unfortunately, tobacco control does not seem to be one of them. South Africa's tobacco control policy and outcomes have regressed in the past 15 years.

Between the mid-1990s and 2005 South Africa was a world leader in tobacco control, but those glory days are long over. Since 2008, no tobacco control legislation has been passed. It took nearly four and a half years (May 2018 – Sept 2022) for the new Tobacco Products and Electronic Delivery Systems Control Bill to be introduced to parliament. It is still uncertain when the bill will be passed into law.

While the government has been falling far behind, the tobacco industry has been hard at work developing and marketing new products. If you walk into a shopping mall, you will find new and emerging products sold in glossy stores and kiosks. They're even sold at local grocery stores and corner shops. These "harm reduction" products, once considered cessation aids, have now found a new market among youth who have never used cigarettes. In a context where marketing, promotion, and use of these new and emerging products is unregulated, the vaping industry (which is largely owned by the tobacco industry) has been able to operate freely.

Although new and emerging products are becoming increasingly popular, traditional cigarettes are still the most popular product of choice. Since 2010, excise tax increases on cigarettes have been only marginally higher than the inflation rate. Stagnating cigarette prices, and a thriving illicit market have undone much of the gains from the past. Before 2010 illicit trade in tobacco products was less than 10%. Since then, things have changed dramatically.

In 2023, the illicit market comprises more than 50% of the market. The 20-week Covid-19 sales ban in 2020 encouraged some smokers to quit, at least temporarily, but in the long term, the sales ban entrenched the illicit market. Cheap, illicit cigarettes are very accessible. Consumption increases when the price falls. Unsurprisingly, smoking prevalence has increased. The 2021 Global Adult Tobacco Survey indicates that smoking prevalence was around 24% in 2021, up from 20% in 2017 (an estimate from the National Income Dynamics Study).

At the centre of the smoking problem is the tobacco industry. The structure of the industry has changed a lot in the past 15 years. Local (non-multinational) manufacturers produce cheap, untaxed cigarettes, capturing market share from the multinationals. While some companies flout South Africa's excise tax laws more than others, there are no saints in the industry. Like any company, the tobacco companies have a mandate to make profits for their shareholders. Where tobacco companies differ from most other companies is that they are more likely to use unethical and deviant means to achieve their objectives. This report shines light on some of these activities, especially on how they are trying to influence government policy, their response to these interferences and public perception.

The government should prioritize excise tax compliance. Placing Gold Leaf Tobacco Corporation under curatorship in August 2022 was a step in the right direction. The Gold Leaf brands are still sold for very low prices, indicating that the excise tax has probably not been paid.

Real change will happen if the South African Revenue Services and other government institutions prioritize illicit tobacco sales. Although South Africa has signed the Protocol to Eliminate Illicit Trade in Tobacco Products, it has not ratified it. This, despite repeated appeals by the public health community. By ratifying the Protocol, South Africa commits itself to implement the Protocol's provisions, of which the most important are to secure the supply chain. It would also become part of a network where it can learn from other countries.

One positive development is that an excise duty of 2.90 ZAR per millilitre of e-liquid will be implemented from 1 June 2023. There was much industry opposition to the tax, as you will read in the report. This is hardly surprising, given the commercial interests at stake and the previous actions of the tobacco industry.

For this two-year period, the industry interference score is higher than for the previous reporting period, suggesting that industry interference has increased. This is bad for public health. We hope that the government will use this report to be more aware of the industry's interference tactics, and to be more vigilant in future.

**Corné van Walbeek and
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BACKGROUND & INTRODUCTION

In 2019, it was estimated that the tobacco market share/ retail volume in the country was held by British American Tobacco South Africa (BATSA) (71.4%), followed by Japan Tobacco International (JTI) 12.2%, Philip Morris International (PMI) 8.9%, Gold Leaf Tobacco Corporation (GLTC) 6.1% and local manufacturers like Mastermind Tobacco (MT), Imperial Tobacco Group (ITG) and others 1.4%.¹ Since 2010, local tobacco manufacturers entered the market with lower-priced brands and gained market share with an increased presence during the COVID-19 pandemic when cigarette sales were banned for five months.¹

Table 1: Tobacco Market share in South Africa

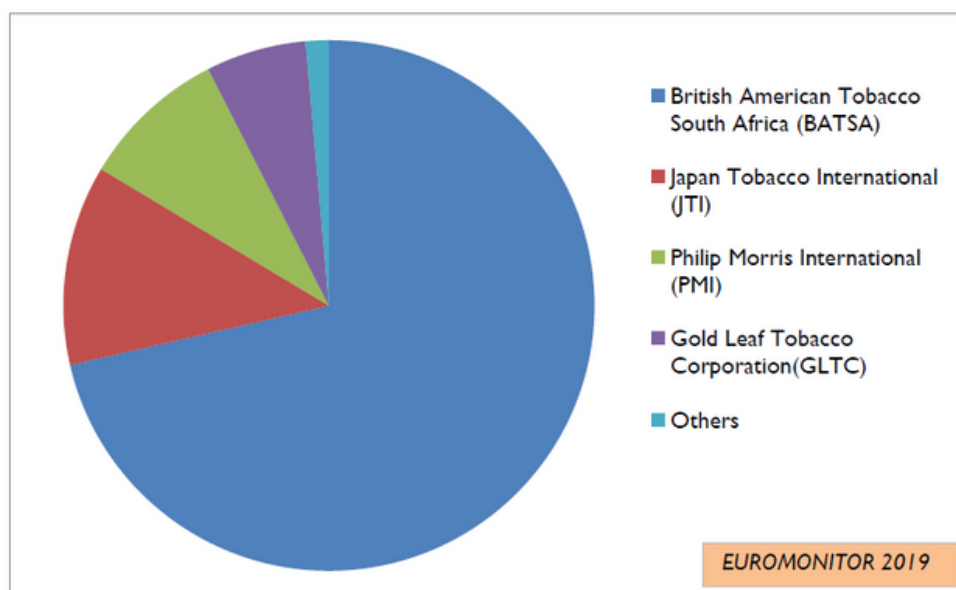


Table 1: Tobacco Market share in South Africa

This is the fourth report on the Tobacco Industry Interference Index (TII) for South Africa. The report covers the period April 2021 to March 2023, The tobacco industry interference continued in this 2-year period and there was no progress made in the implementation of Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).² The finalization and adoption of a code of conduct for the implementation of Article 5.3 for government officials on preventing tobacco industry interference, is still awaited.³

Whilst the government signed the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products⁴ ten years ago (2013), there were no further steps taken to ratify this protocol. The ratification of the protocol is essential amongst other issues, to pave the way for the implementation of an independent Track and Trace (T & T) system in the country. In 2021, the hope for a T & T system was dispelled when the South African Revenue Services (SARS) reported to parliament that the tender for a T & T system was discontinued.⁵ Local tobacco manufacturers said the disappearing tender was a sign that the government was influenced by the international tobacco giants, when the now-defunct tobacco industry body (Tobacco Institute of Southern Africa), pushed back against the tender soon after it was announced.⁶ Furthermore, there has been a decrease in excise revenue over the past few years and this revenue is substantially below budget; and the illicit trade of tobacco products has become entrenched everywhere, in the country. The ratification of the protocol, together with the implementation of stronger supply chain control and a T & T system is critically needed to address illicit trade; and an increase in the excise tax will not result in raising more substantial revenue.⁷

In Aug 2022, the tobacco industry inflated the size of the illicit trade as a tactic to argue that higher taxes will lead to an increase in illicit trade. BATSA announced that the illicit cigarette trade in the past year comprised 70% of the total market.⁶ Following this announcement, the Research Unit on the Economics of Excisable Products (REEP) used gap analysis techniques that estimated that illicit trade was 54% - 58% of the total market in 2020 and 2021 respectively.⁶ These estimates were lower than the BATSA's estimate of 70% but there is still cause for concern. REEP found that the BATSA's estimate was misleading for three reasons. Firstly the 70% figure referred to the proportion of shops that sell illegal cigarettes in only one province of the country. Secondly, the shops that sold illegal cigarettes may have also sold legal sales cigarettes (numbers could be inflated). Thirdly, placing undue emphasis on the 70% figure disguised the finding that, for the country overall, the number of stores that sold illicit cigarettes dropped from 47% in 2021 to 34% in 2022.⁶

REEP found no evidence to show that excise tax increases were linked to an increase in illicit trade in the country. When illicit trade increased rapidly from 2010 - 2021, excise taxes increased at an average rate of only 2% per year. REEP concluded that illicit trade of tobacco products is high due to weak supply chain controls and not because excise taxes are too high.⁸

In Dec 2021, the South African Revenue Services (SARS) reported to the Finance Select Committee, in parliament that illicit trade could not be resolved through excise rate adjustments but needed to be addressed through compliance and law enforcement mechanisms.⁹ SARS reported to have rebuilt internal capacity and that their Inter-Agency Working Group on Illicit Trade (IAWG) implemented enforcement measures and conducted several raids, seizures, and destruction of illegal cigarettes.⁹ These compliance measures included collaboration with other law enforcement agencies and the tobacco industry to address issues in the tobacco supply chain.⁹ A big bust of one of the tobacco manufacturers occurred when SARS seized and took control of GLTC bank accounts and assets. SARS found that GLTC had evaded tax, obtained cash from illicit tobacco sales and laundered money through cash-in-transit and gold companies. GLTC allegedly paid bank employees to move about 3 billion ZAR (165 million USD) out of the country, without authority.¹⁰

In this reporting period, two key resources became available to assist the government in curbing illicit trade in the country. These resources were the establishment of the first e-library in 2021 on tobacco taxation and illicit trade; and in 2022, a groundbreaking study was completed on the cost of a T & T system. The new e-library was established at REEP and launched by WHO FCTC Knowledge Hub on tobacco taxation and illicit trade. The e-library forms part of a global network of seven WHO FCTC Knowledge Hubs, each of which has a different area of expertise. The Knowledge Hub on tobacco taxation and illicit trade is an essential resource for policy makers, students and researchers on tobacco taxation and illicit trade.¹¹ The paper on the study by REEP titled “How much to pay for a track and trace system: a simulation model for South Africa”, illustrated that T&T is a cost-effective solution for controlling illicit tobacco trade. The authors encouraged the government to implement a T&T system. The simulation model provides guidance on a T&T procurement process by estimating the maximum costs of the system per pack and provides a per-pack cost of the system that would allow the government to recover all costs associated with such a system. The simulations also illustrate that implementing a T&T system in South Africa would both reduce consumption (licit and illicit) and generate additional revenue.¹² These are two valuable resources that could assist SARS in the development and implementation of an independent T & T system, and also assist in counteracting the arguments and data on illicit trade presented by the tobacco industry. However, there is no indication from the government on whether a tender for a T & T system will be re-considered in the future.

The progress on strengthening tobacco control in the country has also been long and slow. It took nearly four and a half years (May 2018 – Sept 2022) for the new Tobacco Products and Electronic Delivery Systems Control Bill [B33-2022]¹³ to be introduced to parliament. The reasons for this stalling may be due to the weak political will, changes in the political leadership in the Ministry of Health, the Covid-19 pandemic and tobacco industry interference. The new Bill, once approved, will repeal the current Tobacco Products Control Act, 1993 (Act 83 of 1993), as amended and serve to strengthen public health measures and align with the WHO FCTC.¹⁴

The new bill will allow the Minister of Health to issue regulations for any new tobacco products;¹⁵ introduce 100% smoke-free indoor and some outdoor areas, ban the sale of cigarettes from vending machines, introduce standardized packaging, ban tobacco displays at the point-of-sale and regulate the use, advertising and marketing of electronic nicotine delivery systems and electronic non-nicotine delivery systems (ENDS and ENNDS).¹⁶ The new bill made no concessions for tobacco manufacturers of ENDS, ENNDS and nicotine pouches, despite pressure from the tobacco industry to take a softer stance on new tobacco products.¹⁷

The 2021, the Global Adult Tobacco Survey (GATS) found that tobacco use among current cigarette smokers increased in the country. According to the GATS results, 23.9% of South Africans are current cigarette smokers.¹⁸ This is significantly higher than the 19.9% that was estimated in 2017 in the National Income Dynamics Study (NIDS).⁷ The GATS is timely for the implementation of the new tobacco bill for which local data are much needed.

The marketing, promotion, and use of ENDS and ENNDS is unregulated. The tobacco industry promoted the sale of ENDS/ENNDS and related products at kiosks, online events and on social media during this reporting period.¹⁹ In Feb 2022, the government announced plans to impose excise duty of 2.90 ZAR per milliliter of e-liquid (0,16 USD/ml) for vaping products from 1 Jan 2023.²⁰ The implementation date for this new tax was postponed to 1 Jun 2023 and was included in the 2022 Taxation Laws Amendment Bill.²⁰ This postponement of six months is of concern, since government is known to succumb to tobacco industry pressure. Furthermore, the South African Bureau of Standards (SABS), a government statutory agency, established a National Technical Committee on ENNDS in the same year (2022). The committee planned to develop guidelines on sampling, terminology, methods for testing and analysis, quality management, safety, product specifications, storage, packaging, and transportation requirements.²¹

In response to these government announcements, the tobacco industry rejected the inclusion of ENDS/ENNDS in the new tobacco bill. The Vapour Products Association of South Africa (VPASA), a tobacco industry front group called for government to legislate ENDS /ENNDS separately from conventional combustible tobacco and tobacco products.²² VPASA claimed that the new tobacco bill and the proposed new taxation will undermine entrepreneurs through shop closures, resulting in job losses and a loss in tax revenue.²³

Considering the above, the score on the tobacco interference index (TII) for South Africa in this 2-year reporting period, is 64 which is higher than the score of the previous reporting period of 2021 (61). This score is indicative of the continued tobacco industry interference in the country and lack of progress by the government in implementing the guidelines of Article 5.3. There is an urgent need for government action to ratify the Protocol to Eliminate Illicit Trade in Tobacco Products and to adopt a code of conduct for government officials and politicians in line with Article 5.3 guidelines. It is strongly hoped that the consultative process in approving the new tobacco bill will also serve to revive interest in the ratification of the protocol and implementation of measures that have been proven to reduce the illicit trade in tobacco products.

This report is based on a questionnaire developed by the Southeast Asia Tobacco Control Alliance. There are 20 questions based on the Article 5.3 guidelines. Information used in this report is obtained from the public domain only. A scoring system is applied to make the assessment. The score ranges from 0 - 5, where 5 indicates highest level of industry interference, and 1 is low or no interference. Hence the lower the score, the better for the country. The 0 score indicates absence of evidence or not applicable. Where multiple pieces of evidence are found, the score applied reflects an average. The report includes information on incidents from April 2021 to March 2023, but also includes incidents prior to 2013 that still have relevance today.

Summary Findings

1

INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

In Nov 2021, the government excluded the tobacco industry from the delegations to the WHO FCTC Conference of the Party (COP 9) meeting; and the Meeting of the Parties (MOP2) to the Protocol to Eliminate Illicit Trade in Tobacco Products. The tobacco industry indirectly influenced government decision making and policies by partnering with non-governmental bodies that worked closely with government.

2

INDUSTRY CSR ACTIVITIES

The CSR efforts from the tobacco industry included non-health related activities like support for veterinary vaccinations, stock theft prevention and environmental conservation. The tobacco industry partnered with non-governmental organizations that worked with the government. The activities involved a food programme, sponsorship for academic scholarships and monetary contributions for research and events. The funds for one event and the research were later returned to the tobacco industry by the respective agencies following objections from civil society organizations.

3

BENEFITS TO THE INDUSTRY

The 10-year delay (2013 – 2023) in ratifying the Protocol to Eliminate Illicit Trade in Tobacco Products worked in favour of the overall tobacco industry. The tender on a T & T system was cancelled and the current self-reporting system (from the tobacco industry) on tobacco production is open to potential tobacco industry manipulation. The four-and-a-half-year delay in the introduction of the new tobacco bill to parliament allowed for the continued use of existing loopholes in the current legislation. The unregulated use of ENDS and ENNDs in the country allowed the tobacco industry to market these devices and products under the guise of harm reduction.

4

UNNECESSARY INTERACTION

The tobacco industry interacted with government officials at CSR events and through front groups. Some senior politicians and the state president appeared on social media with the tobacco industry representatives which reflected a proximity between high-level politicians /government and the tobacco industry.

5

TRANSPARENCY

There is no government policy that requires the disclosure of meetings and/or interactions with the tobacco industry. The government indirectly accepted assistance from the tobacco industry through involvement with tobacco industry front groups

7

PREVENTIVE MEASURES

There is no government policy that also requires tobacco industry interactions with government to be recorded. The tobacco industry provides information to the Minister of Health and to SARS as per the current tobacco legislation. SARS introduced two measures to limit duty losses in the tobacco industry which fall short of the supply chain provisions of the Protocol to Eliminate Illicit Trade in Tobacco Products.⁴ There is still no code of conduct for Article 5.3 for government officials and politicians.

6

CONFLICT OF INTEREST

In 2022, political parties for the first time, publicly disclosed the sources and amounts of private funding received, in accordance with the Political Party Funding Act.²⁴ A handful of parties disclosed having received large donations.²⁵ The tobacco industry is not required by current law to disclose their political donations and the potential conflict of interest exists, since some political parties are known to have close relationships with the tobacco industry. In addition, a former judge of South Africa is a member of the council of PMI IMPACT that funds projects against illicit trade.

Recommendations

**These recommendations are repeated (as per the previous reports) and remain relevant.*

The recommendations require careful consideration by the whole government for implementation of guidelines on Article 5.3.

01

Ratify the Protocol to Eliminate Illicit Trade in Tobacco Products.

02

Finalise and implement a code of conduct for Article 5.3 for government officials and politicians.

03

Fast track the passing of the new Tobacco Products and Electronic Delivery Systems Control Bill [B33-2022] inclusive of a ban on all forms of contributions (CSR and political) from the tobacco industry.

04

Limit and ensure transparency of all interactions between tobacco industry representatives and government.

05

Develop and implement a policy (for government officials and politicians) with protocols and procedures to record interactions between government and the tobacco industry.

06

Develop and implement a comprehensive awareness campaign for government officials, decision-makers, and politicians on the obligations of the WHO FCTC with a special focus on Guidelines on Article 5.3, tobacco industry tactics and tobacco CSR activities.

South Africa Tobacco Industry Interference Index 2023

Key Findings and Results

LIST OF INDICATORS

INDICATOR 1: LEVEL OF INDUSTRY PARTICIPATION IN POLICY-DEVELOPMENT

INDICATOR 2: INDUSTRY CSR ACTIVITIES

INDICATOR 3: BENEFITS TO THE TOBACCO INDUSTRY

INDICATOR 4: FORMS OF UNNECESSARY INTERACTION

INDICATOR 5: TRANSPARENCY

INDICATOR 6: CONFLICT OF INTEREST

INDICATOR 7: PREVENTIVE MEASURES

Results & Findings

	0	1	2	3	4	5
Indicator 1: Indicator 1: Level of Industry Participation In Policy-Development						
1. The government ¹ accepts, supports, or endorses any offer for assistance by or in collaboration with the tobacco industry or any entity or person working to further its interests. ² in setting or implementing public health policies in relation to tobacco control ³ (Rec 3.4)	0					
The Ministry of Health (MOH) / National Department of Health (NDoH) did not accept any offers of support, assistance, or any collaboration in setting public health policies in this period. There was no record of offers from the tobacco industry relating to public health that was made to the government						
2. The government accepts, supports, or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)		1				
The government did not accept all proposals made by the tobacco industry. The tobacco industry submitted the following:						
2.1 Control of Tobacco Products and Electronic Nicotine Delivery Systems Bill: The industry made submissions for amendments to the proposed however when the bill was tabled in parliament, there were no concessions to manufacturers of e-cigarettes and nicotine pouches. ²⁶						
2.2 Rates and Monetary Amounts and Amendment of Revenue Laws Bill (includes changes and increases on excise duties on tobacco): The tobacco industry (South African Tobacco Transformation Alliance (SATTA), Black Tobacco Farmers Association (BTFA) and BATSA presented objections to the Select Committee of Finance (SeCoF), which were rejected. ⁹						
2.3 Minimum Legal Retail (MLR) Price for cigarettes: The government did not respond to BATSA’s call for the MLR price for cigarettes to be 28 ZAR (1,59 USD) as a measure for consumers to differentiate between legal and illegal products. ²⁷						
2.4 New excise tax for electronic devices: The Vapour Products Association of South Africa (VPASA) called on businesses to oppose the government’s proposal for a new excise duty on vaping products. VPASA requested Treasury to conduct further market research because the tax would increase the average price of their products by 138% and BATSA claimed that this excise tax would divert consumers to the illicit market that would lead to further growth in illicit trade. ²⁸ The tobacco industry requested an extension for the implementation date for the new excise duty on ENDS/ENNDS to 1 January 2024 which was rejected by government. ²⁰ VPASA maintained that the excise duty will result in a drop in sales and could cause job losses and requested Treasury to delay the implementation of the new excise tax until a regulatory framework for this sector was effected. ²⁸ The SeCOF recommended that the Treasury consider the input by the tobacco industry that the proposed implementation of the new vaping tax was too ambitious as that there was a need to conduct a study to better understand the ENDS/ENNDS market. ²⁰ The Treasury extended the implementation date for this new tax by six months from 1 Jan 2023 to 1 Jun 2023 ²⁰ which is indicative of possible tobacco industry influence.						

¹ The term “government” refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority.

² The term, “tobacco industry’ includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

³ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour.

	0	1	2	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)				3		
<p>There was no evidence of government departments (health and non-health) allowing the tobacco industry to serve on committees that set public health policy. However, the tobacco industry are members of organizations that work closely with the government as shown in the examples below:</p> <p>3.1 The Business Leadership South Africa (BLSA) included the membership of BATSA, PMI and Remgro Ltd.²⁹ BLSA worked with government officials /policy makers on various issues, in this period to:³⁰</p> <ul style="list-style-type: none"> ✓ change regulations around the private generation of electricity. ✓ assist State-Owned Enterprises (SOEs) by supporting the Presidential State-Owned Enterprises Council (PSEC) in identifying and seconding retirees to support the PSEC (which is ongoing). ✓ support local government by providing interim specialist skills to municipalities. ✓ support Operation Vulindlela (OV), a joint initiative of the Presidency and National Treasury to accelerate the implementation of structural reforms and support for economic recovery. (OV aims to modernize and transform network industries, including electricity, water, transport and digital communications.) ✓ assist in resolving policy blockages over skilled immigrant visas, rural water pricing and the processing of water use applications to improve the ability of business to operate and invest. <p>BLSA also stated that it is engaged on multiple fronts on policy development, supporting ethics in business and government, and in helping during crises.³⁰</p> <p><i>*The information on the specific role of the tobacco industry in the above activities is not available. The tobacco industry influence on government is inferred through their membership with BLSA.</i></p> <p>3.2 BATSA was listed as a partner and sponsor of the Southern Africa Node of the Millennium Project (SAMPNODE).³¹ The SAMPNODE is an independent non-profit global participatory futures research think tank of futurists, scholars, business planners, and policy makers who work for international organizations, governments, corporations, NGOs, and universities. The SAMP included the membership of the Department of Science and Technology,³¹</p> <p><i>*The information on the role of BATSA in the SAMPNODE is not available. The BATSA influence on government is inferred through their membership with SAMPNODE.</i></p>						
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) ⁴ (Rec 4.9 & 8.3) For non-COP year, follow the previous score of COP year. For non-Parties, apply a score of '0'		1				
<p>There were no tobacco industry representatives in the South African delegation to COP 9 and the second session of the Meeting of the Parties (MOP2) to the Protocol to Eliminate Illicit Trade in Tobacco Products that was held in Geneva, Switzerland in Nov 2021.³²</p>						

INDICATOR 2: Industry CSR activities

<p>5. A. Government agencies or their officials endorse, support, form partnerships with or participates in activities of the tobacco industry described as “socially responsible” or “sustainable”. For example, environmental programs. (Rec 6.2)</p> <p>B. The government (its agencies and officials) receives CSR contributions⁵ (monetary or otherwise, including CSR contributions) from the tobacco industry or those working to further its interests during the pandemic. (Rec 6.4)</p> <p><i>NOTE: exclude enforcement activities as this is covered in another question</i></p>							4
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The current Tobacco Products Control Act (TPCA) 83 of 1993 (as amended) bans contributions but permits charitable contributions provided they are not for the purpose of advertising [Section 3(2)]. This is a loophole in the current legislation.

5A. The tobacco industry participated with the government in non-tobacco related activities.

- ✓ Lemang Agricultural Services (LAS) is funded by BATSA as a division within AFGRI Agri (a leading agricultural services company). LAS assisted farmers in partnership with the government. The Thabo Mofutsanyana District Municipality (Free State), in collaboration with LAS and the South African Police Services (SAPS) stock theft unit, visited farm in Dihlabeng to vaccinate animals and to assist farmers to register for assistance from stakeholders that work with the Department of Agriculture.³³

5B. The tobacco industry provided funding for events that included government and other government related agencies:

- ✓ PMI provided sponsorship for the 2022 Africa Trade and Customs Week Summit. The Tobacco Control Alliance in South Africa raised objection about this as a direct violation of the current TPCA 83 of 1993 (as amended) with the host of the event, Dandem Investments and several government departments. This objection was also supported by the African Tobacco Control Alliance (ATCA) and other African civil society organizations. Dandem Investments denied any violation of the law. There was no evidence to show that PMI withdrew sponsorship or that PMI was withdrawn from the program. The PMI logo was removed from the event page and materials. This high-level summit included government officials and organizations like the World Customs Organization, United Nations Conference on Trade and Development, World Trade Organization, International Trade Centre, International Finance Corporation (World Bank Group) and the United Nations Economic Commission for Africa. The sponsorship occurred whilst the new tobacco control bill was heading to parliament for vote into law. Many organizations believe that this sponsorship was strategic to influence government policy.³⁴ Many organizations from within the country and from Africa raised the alarm on the PMI relationship with this summit.³⁴
- ✓ In 2022, The Foundation for Professional Development (FPD) was the main sponsor of the 7th South African Tuberculosis (TB) Conference. In the previous year (2021), the FPD accepted a research grant worth 2 million ZAR (114 000 USD) from PMI’s Foundation for a Smoke-Free World (FSFW) to conduct research on how tobacco use affects people’s recovery from mild COVID, over time. The alarms were raised and the conference only continued, after FPD agreed to: 1) immediately end this contract; 2) withdraw the study submitted for academic journal publication; and 3) return the unspent funds.³⁵
- ✓ PMI’s FSFW funded the International Commission to Reignite the Fight Against Smoking, to host a webinar for the launch of their report on how the use of electronic devices can end

⁵ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

the submission of the new bill in Sept 2022. The new bill will proceed through the National Assembly to the National Council of Provinces, and ultimately to the president for assent.⁴³ The timeframes for each stage is still to be determined. The Minister of Health did not provide concessions to the tobacco industry for ENDS/ ENNDS and nicotine pouches when the new bill was tabled in parliament.²⁶

The tobacco industry objected to the new bill by:

- ✓ Placing emphasis on the increase in illicit trade of tobacco products. BATSA announced restructuring and retrenching 200 workers due to loss in cigarette volume as a direct result of the COVID19 cigarette sales ban, which led to the growth of the illicit market.³⁵
- ✓ Running a petition (from Sept 2022 to date) concurrently with the introduction of new tobacco bill to parliament. The petition is to stop the passing of the new bill. Vaping Saved My Life (VSML) started the petition with a call for a clearer distinction between combustible tobacco and electronic nicotine devices (ENDS) based on evidence and risk.⁴⁴
- ✓ Requesting more scope to communicate with consumers. Philip Morris SA (PMSA) urged the government to ease rules restricting tobacco advertising for “smoke-free” products, by arguing that they needed more scope to inform consumers about alternatives to smoking.⁴⁵
- ✓ Arguing for lower taxation. BATSA maintains that hikes in excise tax may lead to greater price differences between nearby countries, encouraging tobacco smuggling across borders and higher taxes on tobacco can create opportunities for criminals and potentially undermine the government revenue and health objectives. BATSA used this argument to call for lower taxation and to draw attention away from implementing new tobacco control policies.⁴⁶
- ✓ Arguing for an extension of time for implementation of the Taxation Laws Amendment Bill (TLAB). VPASA and VPSL requested that the implementation of the excise duty on electronic devices included in the Taxation Laws Amendment Bill (tabled in parliament in Nov 2022) be delayed by a year to 1 Jan 2024. The tobacco industry recommended that a Socio-Economic Impact Assessment (SEIA) study be undertaken by the government, to understand the impact of the proposed excise tax on the industry. Treasury postponed the implementation by 6 months to 01 June 2023, citing that it (SARS) and taxpayers needed this extension for the administration of the system.²⁰ This delay worked to the benefit of the tobacco industry.

7. The government gives privileges, incentives, tax exemptions or benefits to the tobacco industry (Rec 7.3)						4
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7.1 In Feb 2023, the excise duties on alcohol and tobacco increased by 4.90% to align to inflation. The duty was increased as follows:

- 23g cigar increased by 5.47 ZAR (0,30 USD)
- A pack of 20 cigarettes increased by 0.98 ZAR (0,054 USD)
- A pack of 20 heated tobacco sticks increased 0.73 ZAR (0,040 USD)⁴⁷

The new tax on E-cigarettes: Nicotine and nicotine-substitute solutions in electronic delivery systems will be included in the tax net with rate of R2.90ZAR/ml (0,16 USD/ml) from 1 June 2023. The manufacturers of these products are required to apply for and obtain licenses for their manufacturing premises with SARS before 1 June 2023 and to submit their first excise duty account by 28 July 2023. The special storage warehouses in respect of these products should be licensed with SARS before 1 June 2023.⁴⁸

REEP and civil society organisations in South Africa recommended to the government that the tobacco taxation policy be revised to align with the recommendations of the WHO’s FCTC to ensure that tobacco products become less affordable over time. REEP urged the National Treasury to substantially increase the excise tax on tobacco products by at least 10 per cent; consider a multi-year taxation approach in which each year, tobacco excise taxes are increased by the inflation rate, plus a pre-announced additional percentage; and to accompany these systematic excise tax increases with efforts to strengthen the fight against illicit cigarettes.²⁰ These recommendations are yet to be considered by government.

7.2 Currently, travellers returning to the country benefit from the duty-free allowance on tobacco. According to SARS “the following goods may be imported into South Africa without the payment of customs duty and Value-Added Tax (VAT): Consumable goods in accompanied baggage. Goods falling within the following allowances may be imported without the payment of Customs duty and VAT as accompanied baggage. Crew members, including the master of a ship and the pilot of an aircraft, are only entitled to this rebate provided such members are returning to South Africa permanently:

- No more than 200 cigarettes or 20 cigars per person.
- No more than 250g of cigarette or pipe tobacco per person.”⁴⁹

7.3 In the absence of an independent track and trace system, SARS depends on the tobacco industry to self-report on their production. The incentive to under-report is substantial.⁶

7.4 The promotion and sale of ENDS and ENNDS is unregulated. E-cigarettes were not included in the current TPCA 83 of 1993 (as amended). The e-cigarettes fall under the Medicines and Related Substances Act of 1965 and should be registered with the South African Health Products Regulatory Authority (SAHPRA) and sold by prescription only. In practice e-cigarettes are marketed as a consumer product and sold in kiosks and shops.⁵⁰ There has been a growth in the opening of new stores throughout the country.

7.5 BATSA promoted its Better Tomorrow (“harm reduction”) strategy with the launch of a new ENDS product called VUSE. Stores were opened at key locations throughout the country and the products were promoted as harm reduction.⁵¹

INDICATOR 4: FORMS OF UNNECESSARY INTERACTION

8. Top level government officials (such as President/ Prime Minister or Minister⁶) 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)

4

Senior politicians from the country’s ruling party, the African National Congress (ANC) and the state president appeared in photographs with the tobacco industry on social media.⁵²

The ANC held a fund-raising event alongside its policy conference in July 2022. The Fair-Trade Independent Tobacco Association (FITA) posted photographs on social media with ANC leaders: The Gauteng ANC chairperson and Provincial MEC for Education, the ANC Treasurer-General and the State President. Although, this was not a government event, it was convened by the governing party, through the Progressive Business Forum, which presumably has a mandate from the governing party. These photographs reflect a proximity between high-level politicians /government and the tobacco industry.⁵²

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)

3

9.1 There is no record of direct working relationships or monetary contributions between government and the industry on enforcement issues.

⁶ Includes immediate members of the families of the high-level officials

9.2 The government received indirect assistance from the tobacco industry through involvement with non-governmental and civil organizations that are aligned /have partnerships with the tobacco industry.

- ✓ BATSA is a board member of the Consumer Goods Council of South Africa (CGCSA).⁵³ The South African Police Services (SAPS), International Consumer Goods Forum, and GS1 (international standards organization) are key stakeholders of CGCSA.⁵⁴ The CGCSA launched a toll-free hotline for the public on illicit trade and counterfeit products (tobacco, alcohol, food, pharmaceuticals, and clothing). CGCSA claimed that the purpose of reporting this information is to assist law enforcement to mitigate and address illicit trade in South Africa.⁵⁵
- ✓ Tax Justice SA (TJSA), a tobacco front organization works in partnership with SARS and the Consumer Goods Council of South Africa (CGCSA) called for new measures to tackle tax evasion. The founder of TJSA is aligned to “big tobacco”⁵⁶ and spearheaded the discredited 2018 #TakeBackTheTax campaign on behalf of the now defunct Tobacco Institute of Southern Africa (TISA). A website was created for the campaign that included an online petition. The petition aimed to solicit SARS, parliament, and law enforcement agencies to conduct investigations into tax evasion of all tobacco manufacturers and to implement and enforce new laws to address illicit trade of tobacco products. The campaign narrative also reflected on several tobacco industry tactics and arguments on illicit trade.⁵⁶
- ✓ TJSA echoed tobacco industry “speak” in the media about the threat of illicit tobacco and supported the BATSA funded Ipsos market research report findings.⁵⁷ Information on the TJSA website quoted that “3 out of 4 informal retail shops sell illegal tobacco products in the country.”⁵⁸
- ✓ TJSA initiated a new “Stop Skyf Capture” campaign (indirectly in support of SARS). The campaign is aimed at targeting crime syndicates involved in illicit trade and was launched at the same time as the SA High Court extended an order to freeze the assets of GLTC that was accused of stealing billions of rand in tax revenue from the state.⁵⁹
- ✓ The South Africa Tobacco Transformation Alliance (SATTA) launched a new campaign called “Know What You Smoke” to address illicit tobacco products. The campaign was based on an animated video aimed at helping smokers distinguish between legal and illicit products. The video was used to explain how the price of a packet of 20 cigarettes can be used to identify illicit cigarettes by demonstrating the costs involved in the various stages of the tobacco industry value chain, from “seed to smoker.” SATTA maintained that the campaign was used to support law enforcement agencies against illicit traders. SATTA also commended SARS on the confiscation of illicit cigarettes.⁶⁰

10. The government accepts, supports, endorses, or enters into partnerships or non-binding agreements with the tobacco industry or any entity working to further its interests. (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

The government accepted indirect support from the tobacco industry through its involvement with organizations that included tobacco industry membership or partnership.

- ✓ BATSA, PMI and Remgro Ltd are members of Business Leadership South Africa (BLSA).²⁹ Remgro is an investment holding company and the Rembrandt Group (a subsidiary), officially known as the Rembrandt Trust Limited is a South African tobacco and industrial conglomerate. The BLSA signed a Memorandum of Understanding (MOU) with the National Prosecuting Authority (NPA) to provide support with technical skills to assist NPA build its cases and prosecute.³⁰
- ✓ BATSA extended its ESG priorities to incorporate the recycling of water from the tobacco production process and formed a partnership with the Council for Scientific and Industrial Research (CSIR). This was a strategic partnership since the CSIR receives a grant from the Department of Science and Innovation and the CSIR works directly with many government departments (Department of Agriculture, Land Reform and Rural Development, Department of Water and Sanitation, Department of Basic Education and Department of Mineral

Resources and Energy) in knowledge generation, scientific infrastructure development and skills enhancement.⁶⁰

- ✓ The CSIR worked with the Department of Science and Innovation (DSI): The Public Understanding of Biotechnology Unit in DSI worked with CSIR in developing vaccines from the leaves of tobacco plants to produce non-plant proteins (known as biopharming). The project aimed towards the commercialization of a global biotechnology industry that is fueled by the tobacco plant.⁶¹
 - CSIR used tobacco leaves to produce Rabivir, an antidote bites from rabid dogs.⁶²
 - CSIR developed a vaccine against avian influenza using tobacco plants.⁶³

INDICATOR 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
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The status quo remains the same as the last reporting period.
 The government does not have a policy with regulations that apply to the disclosure of meetings and interactions with the tobacco industry. However, Section 32(1) of the South African Constitution⁶⁴ states that everyone has the right of access to “any information held by the state” as well as “any information that is held by another person and that is required for the exercise or protection of any rights”. Section 32(2) provides that national legislation must be enacted to give effect to the right of access to information. This legislation is the Promotion of Access to Information Act (PAIA).^{65/66}
 *Meetings between the tobacco industry and government departments e.g., SARS and the parliamentary committee, are reported in the media on some occasions and not routinely reported. Government departments are not required by legislation to report / disclose any interactions with the tobacco industry.

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
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The status quo remains the same as the last reporting period.

- ✓ Tobacco entities must register /license with SARS (Excise) before starting to manufacture or deal in tobacco products.⁶⁷
- ✓ The tobacco industry is required to report to the government on standards used for the manufacture of reduced ignition propensity (RIP) cigarettes. The regulation requires re-certification of products every three years.⁶⁸ However, this is not being done due to a limited resources within government.
- ✓ There is no data recorded or registry of tobacco representatives and individuals acting on the behalf of the tobacco industry, including lobbyists.

INDICATOR 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) <i>I Never 5 Yes</i>						3
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The government does not have a policy to prohibit contributions from the tobacco industry.

The Political Party Funding Act, 2018 (Act no. 6 of 2018) was implemented on 1 April 2021.⁶⁹ In light of this, at the end of September 2022, all political parties were required to publicly disclose the sources and amounts of private funding received and submit audited financial statements to the Electoral Commission. However only a handful of parties disclosed receiving large donations.

The ANC, Democratic Alliance (DA) and Action South Africa (ASA) disclosed donations over the course of five financial reporting periods. The Economic Freedom Fighters (EFF) disclosed just one donation whilst it is known to have a relationship with the Chief Executive Officer of Carnilix (a company that is often accused of illicit cigarettes), but these names did not appear on the funding disclosures.²⁵ The EFF, DA, ANC and Action SA were the only political parties that declared donations to the Electoral Commission of South Africa (IEC) in the second quarter of the 2022-'23 financial year.⁷⁰

The current law does not require companies to disclose their political donations or expenditure directly to the shareholders either in the annual financial statements, or in the directors' report that must be included in the annual financial statements, or in the annual report.⁷¹

14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)									4
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PMI launched the IMPACT project (a100 million USD global fund) to support public, private, and non-governmental organizations to develop and implement projects against illegal trade and related crimes. The funding applications are judged by an Expert Council of individuals with close links to United Nations (UN) agencies and INTERPOL and Council members are financially compensated for their time. A former judge of the Supreme Court of South Africa who served as the High Commissioner for Human Rights at the United Nations, joined the PMI Impact project as a member of the council, in 2017.⁷² Previously, she was a judge at the International Criminal Court in the Hague and was the only female, judge at the International Criminal Tribunal for Rwanda, whose Presidency she held for four years.⁷³

15. Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)									0
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There are no publicly available records of government officials and relatives holding positions in the tobacco industry during this period.

INDICATOR 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)									5
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The status quo remains the same as the last reporting period.
*There is currently no policy and no procedures in place to disclose tobacco industry interactions.

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 for whole of government code; 2 for Yes but partial if only MOH								3
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The status quo remains the same as the last reporting period.
There has been no further development in finalising and implementing a code of conduct since the draft version of 2015.

<p>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)</p>						4	
<p>18.1 There is no independent Track and Trace (T & T) system for tobacco control in the country. In this reporting period, SARS introduced two measures to try to limit duty losses in the tobacco and cigarette industry, namely, “anti-forestalling” rules on the clearance of cigarettes; and draft rules on the installation of closed-circuit television (CCTV) cameras at <i>all manufacturing and storage warehouses</i> for tobacco.⁷⁴</p> <ul style="list-style-type: none"> ✓ SARS gazetted “anti-forestalling” rules in April 2021, effective from the same date to impose restrictions on the clearance of a large volume of cigarettes during the period leading up to the annual national budget speech (before the anticipated increase in the excise duty rate). Under these rules, importers and manufacturers of cigarettes can clear only a specific number of cigarettes for “home consumption” during the “controlled period” from 1 December each year and the mid-February of the following year (date of the national budget speech). It was hoped that the restrictions imposed will be successful in controlling the amount of forestalling that has become a practice in South Africa.⁷⁵ ✓ SARS introduced a new rule (Rule 19.09 of the Customs Act), to install (at SARS own cost) CCTV cameras in all tobacco manufacturing and storage warehouses. The CCTV cameras were to be installed strategically to capture the manufacture, storage, and loading of tobacco and tobacco products. The draft rule was expected to take effect as from 1 June 2022.⁷⁵ <p><i>*There is no information publicly available to confirm implementation, monitoring/ evaluation of the efficacy of these rules.</i></p> <p>18.2 SARS also reported on taking action to address illicit trade of tobacco products by increasing supervision of cigarettes exported via warehouses; improving the manual tracking of cigarettes in transit through South Africa; working with the tobacco industry experts to develop a way of detecting illicit cigarettes; improving authentication marking on cigarettes; doing more retail inspections and informing the public on how to identify illicit cigarettes.⁷⁶</p> <p><i>Whilst this was reported, there is no information publicly available on the implementation and or efficacy of these actions.</i></p> <p>18.3 The current Tobacco Products Control Act empowers the Minister to request information on, inter alia, ingredients and additives. Regulations for WHO FCTC Article 9 & 10⁷⁷ (regulation of the contents of products and regulation of tobacco product disclosures) have not yet been developed and implemented.</p> <p>18.4 The tobacco industry is required to submit information to SARS as per the external excise policy of 2020⁷⁸ and as stated on the SARS website⁶⁷ which excludes information on lobbying, philanthropy, political contributions, and all other activities. The tobacco entities are required to apply for a license with SARS (Excise) before manufacturing or dealing in tobacco products.</p>							
<p>19. The government has a program / system/ plan to consistently⁷ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)</p>						5	
<p>The status quo remains the same as in the last reporting period. There is no government program /system/ plan to consistently raise awareness within its departments on policies relating to WHO FCTC Article 5.3 Guidelines.</p>							

⁷ For purposes of this question, “consistently” means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

<p>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)</p>							5
<p>The current TPCA Act 83of 1993 bans contributions as per Section 3(2), but charitable contributions are permitted, provided they are not for the purpose of advertising. This is a serious loophole in the current legislation.</p> <p>There is no government 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.</p>							
<p>TOTAL SCORE</p>							<p>64</p>

ANNEXURE A: Photographs⁵²

State President and the FITA chairperson



ANC Gauteng Chairperson and FITA chairperson



ANC Treasurer General and FITA Chairperson



ANNEX B: Sources Of Information

	TOP TOBACCO COMPANIES/ DISTRIBUTORS	MARKET SHARE	BRANDS	SOURCE
1	British American Tobacco South Africa	71.4	Dunhill, Peter Stuyvesant Pall Mall Rothmans.	https://www.batsa.co.za/group/sites/BAT_A2ELAD.nsf/vwPagesWebLive/DO9YAEUN
2	Japan Tobacco International	12.2	Winston, Camel Benson & Hedges Winston · Glamour	https://www.jti.com/about-us/what-we-do/our-brands
3	Philip Morris International	8.9	Marlboro, Chesterfield, IQOS.	https://www.pmi.com/markets/south-africa/en
4	Gold Leaf Tobacco Corporation	6.1	Voyager, RG, Chicago, Sahawi, Sharp, Savannah.	https://www.gltc.co.za/about-us/
5	Mastermind Tobacco	1	Yes, Forum	
6	Imperial Tobacco Group	-		
7	Other	0.2		

	TOP MEDIA/ NEWSPAPERS	URL
1	Bhekisisa Centre for Health Journalism	https://bhekisisa.org/
2	News 24	https://www.news24.com/
3	The Conversation	https://theconversation.com/africa
4	Daily Maverick	https://www.dailymaverick.co.za/
5	Independent Online	https://www.iol.co.za/
6	Business Live	https://www.businesslive.co.za/
7	Business Day	https://www.businesslive.co.za/bd/
8	Engineering News	https://www.engineeringnews.co.za/
9	Biznews	https://www.biznews.com/
10	Timeslive	https://www.timeslive.co.za/
11	Sowetanlive	https://www.sowetanlive.co.za/
12	Daily Sun	https://www.sn124.com/dailysun
13	The Citizen	https://www.citizen.co.za/
14	Moneyweb	https://www.moneyweb.co.za/
15	African Insider	https://www.africaninsider.com
16	EB News Daily	https://www.ebnewsdaily.co.za/

	MAIN TOBACCO INDUSTRY ALLIES/ FRONT GROUPS	TYPE <i>(FRONT GROUP, LOBBY GROUP, INDIVIDUAL)</i>	SOURCE
1	Vapour Products Association South Africa (VPASA)	Front Group	https://vpasa.org.za/
2	South Africa Tobacco Transformation Alliance (SATTA)	Front Group	https://tobaccotransformationalliance.co.za/
3	Black Tobacco Farmers Association (BTFA)	Front Group	https://btfa.co.za/
4	Tax Justice South Africa (TJSA)	Front Group	https://taxjusticesa.co.za/
5	Vaping Saved My Life (VSML)	Front Group	https://vsml.co.za/

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