
Perú

**TOBACCO
INDUSTRY
INTERFERENCE
INDEX
2023**

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Author/s:

PERMANENT NATIONAL COMMISSION TO COMBAT TOBACCO – COLAT

Flavia Radovic Ragonesi

Abel Limache Garcia

Acknowledgements:

The Index 2023 Peru Chapter is dedicated to Dr. Luis Pinillos Ashton, after more than 35 years teaching health and tobacco control prevention in our country.

We are grateful to the people and institutions that unconditionally and selflessly support progress in tobacco control measures.

We recognize the integrity of the authorities that do not succumb to the industry lobby and that, from their position, contribute to the implementation of public health policies in favor of citizens.

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Background and Introduction

Peru is experiencing a process of distancing from democratic principles, which is reflected in the devaluation of institutions, political instability and the prioritization of commercial interests over the needs of people at all levels, including the protection of the right to health. A scenario of this nature is propitious for the industry to intervene in the public sphere.

The right to health is hidden by corrupt or inefficient politicians who act against the interests of citizens on priority issues such as access to a decent health service, hospital infrastructure, disease treatment and health prevention.

This reality is starkly and unquestionably reflected in tobacco control, which for more than 13 years has not been able to advance in legislative matters, since the tobacco industry (TI) lobby has entrenched itself in Congress and other sectors of the State.

Currently, the bill 3437/2022-CR, supported by COLAT and the institutions that defend public health, is being debated in Congress, which seeks to update the law in accordance with the provisions of the FCTC and regulate electronic cigarettes; The legislative initiative proposes expanding the spaces free of tobacco smoke and other emissions, totally prohibiting the advertising of both types of products, prohibiting the sale of cigarette packs of less than 20 units, prohibiting flavored cigarettes, and implementing art. 5.3 of the FCTC, regulating the interaction and transparency between the industry and the authorities.

The Health and Vulnerable Populations Commission and the Consumer Defense Commission have approved two opinions, which are pending debate in the plenary session of Congress. remain, the opinions propose withdrawing COLAT from the law, which currently has powers to monitor compliance with the norm, which means going back on acquired rights in tobacco control, and favors the industry and its allies.

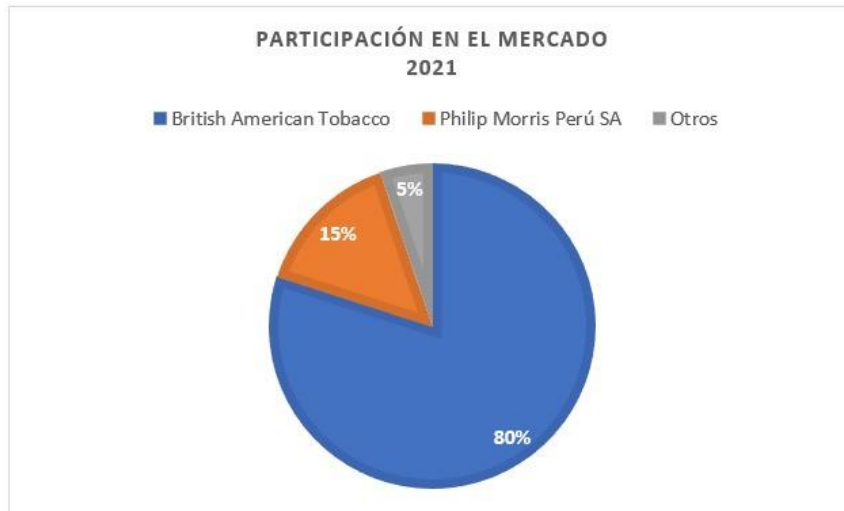
In recent years, the 2020 and 2021 Index – Peru Chapter have revealed how industry interference has been manifested through the boycott of tobacco control bills submitted to Congress, especially those that proposed a total ban on advertising, promotion, and sponsorship.

However, in the last two years, the industry and its allies have gone on the offensive, through a series of legislative initiatives aimed at imposing new rules on the control of tobacco products and nicotine products.

And it is that the Peruvian market is governed by an oligopoly that seeks to maintain the status quo regarding tobacco control regulations and regulate electronic cigarettes on its own terms.

Most of the tobacco products consumed in Peru are imported. The two main tobacco companies that control the tobacco market in Peru are British American Tobacco (BAT) which occupies 80% of the market and Philip Morris 15%.

In the following graph we can see the market share of tobacco products in Peru:



Fuente: [Euromonitor International July 2022](#)

In Peru, it is estimated that 27.6% of men and 12.7% of women are smokers. Although the current estimated prevalence is 19% and has decreased compared to previous years, it is also true that the impact of smoking has increased dramatically in our country: in Peru 22,374 Peruvians die each year and more than 126,000 fall ill from smoking each year for different ailments: chronic obstructive pulmonary disease (COPD), pneumonia, stroke, heart disease, lung cancer and other cancers. Of the 100% of deaths that occur each year in Peru, 22% of them are related to tobacco use.

From the development of the questionnaire it has become evident that while art. 5.3 in the law, there will be no progress in the implementation of the FCTC due to the obstruction of the industry, which interferes in tobacco control policies in the different spheres of power.

This year, the Index records an increase in industry interference and poor responses by public officials to interference. Peru has deteriorated and its score has increased to 59 points, compared to 53 points in 2021.

An important example is the issue related to taxes. Since Peru adopted the tax policy of annually updating the ISC* for tobacco products, the industry has been deploying a huge media campaign, seeking to convince the authorities and the public that tax increases are ineffective in reducing consumption and smuggling is increasing, even exceeding the sale of illegal cigarettes over legal ones, which is not true.^{1,2,3,4,5}

A legislative initiative is being debated that proposes withdrawing the powers to set the Selective Consumption Tax (ISC) on tobacco products from the Ministry of Economy and Finance, and that this power be transferred to Congress, the State Power with the highest levels of corruption and citizen rejection.

¹ <http://bitly.ws/HvXq>

² Diario El Comercio. <http://bitly.ws/HvXw>

³ Diario Gestión. <http://bitly.ws/E6KN>

⁴ <http://bitly.ws/DYjn>

⁵ Diario Gestión. <http://bitly.ws/HvY3>

Added to this onslaught are legislative initiatives that seek to reverse acquired rights in tobacco control and flexibly regulate the consumption and marketing of electronic nicotine administration systems, in addition to setting irrelevant tax rates.

The Index on the Interference of the Tobacco Industry 2023 is an instrument of national and international scope, which demonstrates in detail the industry's strategies to infiltrate government decisions to delay tobacco and nicotine control policies, or even, as in Peru, to impose their own laws, relativizing the damage they produce in the body and the impact on the country's economy and development. The industry tends to underestimate the effectiveness of the measures established in the Framework Convention for Tobacco Control and to position a post-truth in the collective imagination, which seeks to distort and manipulate official information to superimpose it on its lies.

We do not lose hope that this situation will be reversed in our country, and that this instrument will help the authorities, institutions and civil society to counteract the industry on the public agenda and not give in to its lobby, to finally save thousands of Peruvians from death and illness due to the use of tobacco and nicotine.

This report is based on a questionnaire developed by the Southeast Asia Tobacco Control Alliance. There are 20 questions based on the WHO FCTC 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 report includes information on incidents from April 2021 to March 2023, but also includes incidents prior to 2022 that still have relevance today.

Summary Findings

I INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

- Formally, Peru does not receive assistance from the tobacco industry for the implementation of tobacco control policies. However, since Law 28705 was modified in 2010, there has been no progress in tobacco control, because there is a level of industry participation in public policies that have produced a series of acts that qualify as interference, but that do not violate the legal system.
- The interaction of TI with the State is evident in different actions, such as the systematic filing of bills for a total ban on advertising; the promotion of laws to control tobacco and electronic cigarettes aligned to their interests; the attack on the tax policy for tobacco products, and even joining the Working Group against the Illicit Trade of Tobacco Products of the Ministry of Production, among others.
- Industry union spokesmen oppose regulating TI interaction with the authorities, considering that the measure is excessive.
- Although the TI does not attend the COPs or integrate the Multisectoral Commission for Tobacco Control led by MINSA, it is also true that there is little representation in official delegations; and on the other hand, the Commission lacks personnel and budget, and has a focal point that depends on the Directorate of Health Promotion, without direct capacity for control, supervision or monitoring of TI activities.

2 INDUSTRY CSR ACTIVITIES

- During the study period, no social or corporate responsibility activities have been publicly recorded.
- However, the TI supports the private entity Banco de Alimentos Perú, which distributes food to the poor population to alleviate hunger and reduce anemia and malnutrition, two endemic problems that affect the most depressed socioeconomic classes, an obligation that the government does not solve; In this way, Philip Morris shows an image concerned about the well-being of the population, when dealing with an industry that is predatory of public health and the environment.

3 BENEFITS TO THE INDUSTRY

- In tobacco control laws, the entry into force is usually provided in 180 days, for some measures such as implementing the regulation or coordinating imports in progress that have been approved; There are also congressmen who have proposed in their legislative initiatives, a period of 2 to 3 years to implement plain packaging.
- When the laws are of interest to TI, the terms are shorter (90 days) and even the day after the regulation is published, such as those related to dismantling the current tax policy.

- Officially, there are no public privileges or tax exemptions for tobacco, but they are occurring in practice, due to the attack on tax policies through laws that remove powers to the MEF to increase taxes on tobacco or with favorable regulations for electronic cigarettes.
- It also contributes to the media campaigns with studies paid for by the industry, which indicate that the increase in taxes increases smuggling.

4 UNNECESSARY INTERACTION

- High-level government officials do not meet publicly with tobacco companies, but if they did, this interaction would not be prohibited.
- No official information has been found regarding assistance in the tobacco control legislation, or operatives in the control of the measures or alliances between the government and the industry.

5 TRANSPARENCY

- Although there is no official record of meetings between the TI and public officials, there are indications of coordination with congressmen and/or their advisers, due to the predictions and/or opinions of the tobacco control bills, influenced by the ITEM.
- Law No. 28024 that regulates the management of interests in the public administration applies to all types of managers and does not specifically regulate TI interaction with public officials.

6 CONFLICT OF INTEREST

- Although Law 28094 prohibits the contribution of companies to political parties, cases of simulation have been reported, fragmenting the amounts and using natural persons as contributors, to later demand their compensation through laws that favor their commercial interests.
- There is no official information on public officials that come from TI or public officials that have been hired by TI.

7 PREVENTIVE MEASURES

- There are no records of the interaction with the tobacco industry and its representatives, nor official requests to the TI to report on tobacco production.
- More than 90% of the cigarettes consumed are imported and come mostly from the BAT and PM.
- Tobacco exports grew by 8%, for a value of 2,522,000 US dollars.
- Lobbying, philanthropy and political contributions are not prohibited.
- The Tobacco and Nicotine Control Bill for the protection of life and health is being debated in Congress, which includes the interference of the Industry.
- The State has not implemented art. 5.3. of the FCTC, despite the fact that in 2015, the Needs Assessment for the implementation of the FCTC identified it as a gap in tobacco control policies.
- Consequently, the country lacks an express regulation to reject and punish contributions from the tobacco industry and attempts to bribe public officials.

- Periodically, COLAT informs and/or denounces the interference of the IT in the different spheres of power, as a consequence of the lack of implementation of art. 5.3. of the FCTC.

Recommendations

RECOMMENDATION 1

Enact the Tobacco and Nicotine Control Law, which includes the regulation against TI interference and apply the measure to conventional cigarettes and electronic cigarettes.

RECOMMENDATION 2

Approve the regulation of the law and develop an appropriate regulation so that the measure is effective and makes the interaction of the industry and the authorities transparent.

RECOMMENDATION 3

Avoid any form of industry intervention in the implementation of tobacco and nicotine control policies, including the elimination of contraband.

RECOMMENDATION 4

Warn public opinion that TI is a predatory health industry, which makes this type of donations with the sole objective of laundering its image and achieving less strict regulations to increase sales volumes and profits.

RECOMMENDATION 5

Shorten the deadlines for the implementation of the Tobacco and nicotine control laws, especially the approval of the regulation.

RECOMMENDATION 6

Counter TI campaigns that seek to discredit efficient tobacco control measures and tax policies, to avoid strict and efficient legislation.

RECOMMENDATION 7

Promote local studies that refute the biased studies of TI in public opinion and the authorities

RECOMMENDATION 8

Implement a Tobacco Control Unit from the State, which officially monitors the activities of the TI and its interaction with authorities.

RECOMMENDATION 9

Implement art. 5.3 in the upcoming Tobacco and nicotine control law specifically for TI interaction with authorities.

RECOMMENDATION 10

Implement art. 5.3 in the upcoming Tobacco and nicotine control law specifically for the prohibition of contributions to political parties and the prohibition of hiring former TI officials as health authorities, and other regulations on the hiring of public officials by tobacco companies.

RECOMMENDATION 11

Implement art. 5.3 in the forthcoming Tobacco and nicotine control law, specifying that the government should not condone or participate in activities that the tobacco industry describes as socially responsible.

RECOMMENDATION 12

Empower civil society to monitor industry activities and control compliance with the Tobacco and nicotine law, including complaints regarding TI interference in public health policies.

Peru

Tobacco Industry Interference Index 2023

Results and Findings

	0	1	2	3	4	5
INDICATOR I: Level of Industry Participation in Policy-Development						
I. The government 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. in setting or implementing public health policies in relation to tobacco control (Rec 3.4) ⁷⁸					4	
<p>Formally, the government of Peru does not accept, support or receive offers of assistance from the tobacco industry or any entity or person working according to its interests for the development or implementation of public health policies related to tobacco control.</p> <p>While there are some measures to safe guard public officials from interacting with the TI, however there is no specific rule or protocol that expressly prohibits it. Therefore, it can be affirmed that there is a level of participation of the industry in public policies that have produced a series of acts that qualify as interference, but that do not violate the legal system.</p> <p>As a result, the tobacco industry manages to infiltrate certain State agencies, openly and/or surreptitiously, both in the Executive and in the Legislative Branches.</p> <p>Peru has signed and ratified the WHO Framework Convention on Tobacco Control (FCTC) in 2004 through Legislative Resolution No. 282805 and Supreme Decree 054-2004⁹¹⁰; however, neither Law 28705, Law for the Prevention and Control of the Risks of Tobacco Consumption, nor its amendment (Law 29517), nor its regulations,^{11,12,13,14} has Article 5.3 of the Convention been implemented.</p> <p>There are general laws that regulate transparency and the management of interests for the State apparatus, including:</p> <ul style="list-style-type: none"> • Law 27806 on Transparency and Access to Public Information, establishes that all State entities are subject to the principle of Publicity.¹⁵ • Law No. 28024 regulating the management of interests in the public administration.¹⁶ • Law 28094 on Political Organizations, which in its art. 31 prohibits corporate contributions to political parties; In this case, there have been reported cases of political parties that have 						

⁶ 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

⁷ The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

⁸ "Offer of assistance" may include draft legislation, technical input, recommendations, oversees study tour

⁹ Legislative Resolution approving the WHO Framework Convention on Tobacco Control. <http://bitly.ws/EmU3>

¹⁰ Supreme Decree 054-2004. Taken from the Internet: <http://bitly.ws/DYaX>

¹¹ Congress of the Republic. <http://bitly.ws/vZh4>

¹² Ministry of Health. <https://bit.ly/2QyNfkv>

¹³ Ministry of Health. <https://bit.ly/32Xuau1>

¹⁴ Ministry of Health. <https://bit.ly/32XHkrj>

¹⁵ Congress of the Republic of Peru. <https://bit.ly/3gNy41g>

¹⁶ Congress of the Republic of Peru: <http://bitly.ws/DYcC>

simulated the contribution of significant sums of money from companies through different modalities of fraud, fragmenting the amounts and using natural persons as contributors,¹⁷¹⁸ then, companies demand the recovery of their contributions, through laws and regulations that favor their commercial interests, to the detriment of the health, economy and development of citizens.¹⁹

These rules have failed to prevent the tobacco industry's interference in the branches of government, which have manifested themselves in various actions, such as:

- Achieve the shelving of bills of total prohibition of advertising.²⁰
- Sponsor a tobacco control law in the interests of the industry.²¹
- Achieve authorization for the manufacture of tobacco products in phase 2 of the Economic Reactivation Program.²²
- Media attack the ISC update to tobacco products. ²³, ²⁴²⁵²⁶
- Propose bills to withdraw the power of the Ministry of Economy and Finance (MEF) to update the Selective Consumption Tax (ISC) on tobacco products.²⁷
- Join the intersectoral working group against illicit trade in tobacco products, convened by the Ministry of Production. ²⁸
- To get the Commission for the Elimination of Illegal Bureaucratic Barriers of INDECOPI to agree with it in a complaint about ALHT against a municipal ordinance, despite the fact that there is jurisprudence of the INDECOPI Tribunal itself that has dismissed complaints of this nature.²⁹

It has been detected in the Committees of the Congress of the Republic that are responsible for reviewing legislative initiatives on tobacco control, such as the Health, Economy, Consumer Protection and Constitution Commissions, the lobby of the industry to facilitate bills aligned with its interests; or interfering in bills aligned with public health, distorting their opinions.

Congresswoman Lady Camones' Bill 3437-2022-CR "Tobacco and Nicotine Control Act for Life and Health Protection" has specifically provided for the incorporation of two articles on industry interference.

Industry managers, such as the Foreign Trade Society (COMEXPERU) opposed the measure as being excessive.³⁰

¹⁷ Newspaper El Comercio. <https://bit.ly/3nDrgon>

¹⁸ Newspaper La República. <https://bit.ly/3u5nsP7>

¹⁹ BBC World. Newspaper La República. <http://bitly.ws/DYdZ>

²⁰ Management Journal. <https://bit.ly/3aTmDRR>

²¹ Congress of the Republic. <https://bit.ly/3t2USNe>

²² Management Journal. <http://bitly.ws/DYeT>

²³ Management Journal. <https://bit.ly/2QLWbTo>

²⁴ ComexPeru. <https://bit.ly/3xD4mIR>

²⁵ Newspaper El Comercio. <https://bit.ly/3e5JoEw>

²⁶ Newspaper El Comercio. <https://bit.ly/2QHnZsc>

²⁷ Congress of the Republic of Peru. <http://bitly.ws/DYha>

²⁸ Ministry of Production. <https://bit.ly/2Sazcli>

²⁹ Newspaper El Peruano. <https://bit.ly/3aOwKHI>

³⁰ Foreign Trade Society. <http://bitly.ws/DYjn>

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<p>However, in Report No. D000023-2022-PCM-SSGEIP, issued by the Secretariat of Public Integrity of the Presidency of the Council of Ministers (PCM), it has issued a favorable opinion, since the measure is aligned with Law 28024 Law on Political Organizations, which ensures the transparency of State actions.</p> <p>The bill is being discussed in the Commission on Health and Vulnerable Populations, and in the Commission for Consumer Defense and Public Services Regulatory Agencies.^{31,32}</p>						
<p>2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)</p>						5
<p>Officially, the Peruvian government does not accept, support or sponsor policy proposals or laws developed by or in relation to TI; However, the tobacco industry and its managers coordinate legislative initiatives presented by congressmen conditioned to the lobby and its perks.</p> <p>Once the legislative initiatives have been presented on the Congress website; or the regulations on the website of the corresponding Ministry, publicly and officially, the same TI and its managers present their opinions, according to their interests.³³</p> <p>Eventually, the State could consider offers of assistance from the TI for the adoption of legislative measures in tobacco control, if the government of the day allows it, because the interaction between the industry and the authorities is not regulated or prohibited.</p> <p>Currently, several bills that seek to undermine current tobacco control policies are being discussed in different Congressional Committees, including:</p> <ol style="list-style-type: none"> 1. Draft Law 3412/2022-CR "Law that regulates the marketing, advertising and consumption of electronic cigarettes", presented by Congresswoman Jhakeline Katy Ugarte Mamani, which regulates the marketing, importation and advertising and consumption of electronic cigarettes, which suffers from several limitations, among them, allows different forms of advertising.³⁴ 2. Bill 3732/2022-CR, a law that "Limits the commercialization of vaporizers", by Congresswoman Rosío Torres Salinas, allows the indiscriminate use of vaporizers, and allows different forms of advertising.³⁵ 3. Draft Law 536/2021-CR, "Law amending art. 61 of the Law of the General Sales Tax (IGV) and Selective Consumption Tax (ISC) presented by Congresswoman Patricia Rosa Chirinos Venegas, which proposes to withdraw the competence to set the ISC to tobacco products to the Ministry of Economy and Finance (MEF), to transfer it to Congress.³⁶ 4. Bill 2304/2022-CR, "Law that incorporates liquid solutions used by vaporizers into the regulatory framework of the ISC as an alternative to reduce the harms of smoking" by Congressman Juan Carlos Mori Celis, proposes to remove the powers of the MEF to set the ISC to transfer it to Congress; It proposes an irrelevant tax on e-cigarettes and allows their use on premises, at the discretion of the owner.³⁷ 						

³¹ Congress of the Republic of Peru. Commission on Health and Vulnerable Populations. <http://bitly.ws/DYmm>

³² Congress of the Republic of Peru. Consumer Defense Commission and Public Services Regulatory Agencies. <http://bitly.ws/DYn6>

³³ Congress of the Republic of Peru. <http://bitly.ws/DYG5>

³⁴ Congress of the Republic of Peru. <http://bitly.ws/DYGU>

³⁵ Congress of the Republic of Peru. <http://bitly.ws/DYHz>

³⁶ Congress of the Republic of Peru. <http://bitly.ws/DYha>

³⁷ Congress of the Republic of Peru. <http://bitly.ws/DYlw>

5. Bill 3137/2022-CR of Congresswoman Martha Lupe Moyano Delgado, proposes to remove the powers of the MEF to set the ISC to transfer it to Congress; It proposes an irrelevant tax on e-cigarettes.³⁸
6. Bill 4178/2022-CR of Congressman Jorge Alberto Morante Figari, proposes to allow vaping in premises and restaurants, open spaces of higher education centers; proposes a single warning that vaporizers are only potentially addictive; proposes to advertise vapers on radio and TV from 9 pm, among other permissive measures to vapers.³⁹

This set of legislative initiatives aims to roll back tobacco control rights, weakly regulate e-cigarettes and reverse tax policy, which has been working successfully.

Other bills aligned with the FCTC have also been presented:

7. Bill 4717/2022-CR Alejandro Soto Reyes: Law prohibiting all tobacco advertising.⁴⁰
8. Bill 4315/2022-CR of Congresswoman Francis Jhasmina Paredes Castro "Legal framework for the electronic cigarette market and neutral labeling" that proposes to include in art. 61 of the IGV and ISC Law on electronic cigarettes, so that they have the same tax as tobacco products; and implement plain packaging for tobacco products; proposes the deadline of 3 years to implement this measure.⁴¹
9. Bill 3437/2022 CR of Congresswoman Lady Mercedes Camones Soriano "Law on tobacco and nicotine control for the protection of life and health", which seeks to regulate tobacco products and nicotine products in the same way, and which, among other important measures, such as the total prohibition of advertising, Plain packaging, banning flavored cigarettes, and increasing the size of health warnings propose specific articles against industry interference.⁴²

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) I Never 5 Yes						5
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Currently, the Peruvian government allows the tobacco industry to participate in the Working Group against the Illicit Trade in Cigarettes, of the Ministry of Production (PRODUCE), composed of representatives of the sectors involved in this problem (National Superintendence of Customs and Tax Administration - SUNAT, Public Ministry, National Police of Peru and the National Institute for Defense and Protection of Intellectual Property - INDECOPI); the Tobacco Committee of the National Society of Industries also participates in the Working Group.⁴³

On the other hand, there is the Multisectoral Commission for Tobacco Control, which works informally, organized by the Directorate of Health Promotion of the General Directorate of Strategic Interventions in Public Health (DGIESP) of the Ministry of Health, which includes other sectors involved, such as the Ministry of Foreign Affairs, Ministry of Education, INDECOPI, SUNAT, Ministry of Agriculture, Ministry of Justice, and members of civil society, such as the

³⁸ Congress of the Republic of Peru. <http://bitly.ws/DYII>

³⁹ Congress of the Republic of Peru. <http://bitly.ws/DYJB>

⁴⁰ Congress of the Republic of Peru. <http://bitly.ws/DYJN>

⁴¹ Congress of the Republic of Peru. <http://bitly.ws/DYJY>

⁴² Congress of the Republic of Peru. <http://bitly.ws/DYGS>

⁴³ Ministry of Health. <http://bitly.ws/E6JR>

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Permanent National Commission for Tobacco Control (COLAT) and CEDRO; the tobacco industry is not included in this Commission ⁴⁴ .						
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, GNI 4 5, WG) (Rec 4.9 & 8.3) For non-COP year, follow the previous score of COP year. ⁴⁵ For non-Parties, apply a score of '0'		1				
<p>The government does not nominate or allow tobacco industry representatives to be part of the COP Delegation; to date, the TI has not participated in any of the COPs.</p> <p>They were part of the Official Delegation of COP 9 in The Hague (2021):</p> <ul style="list-style-type: none"> • Bernardo Roca Rey, Permanent Representation in Geneva, for the Ministry of Foreign Affairs • Joel Collazos, Focal Point of the Ministry of Health • Flavia Radovic, President of COLAT 						
INDICATOR 2: Industry CSR activities						
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)						
B. The government (its agencies and officials) receives CSR contributions (monetary or otherwise, including CSR contributions) from the tobacco industry or those working to further its interests during the pandemic. (Rec 6.4) ⁴⁶			2			
<i>NOTE: exclude enforcement activities as this is covered in another question</i>						
<p>There has been no government support or CSR activities and partnerships for the study period.</p> <p>No financial contributions have been recorded or made public by the industry in the reporting period. There has been no profit record during the pandemic, as has been verified in other countries in the region</p> <p>However, Banco de Alimentos Perú received donations from Philip Morris.⁴⁷ Banco de Alimentos Perú is a private non-profit entity that partners with companies and NGOs from different sectors. The population perceives it as a public entity, because its social purpose is to alleviate hunger and reduce anemia and malnutrition, two endemic problems that affect the most deprived socioeconomic classes that the government does not resolve; in this way Philip Morris shows an image concerned about the welfare of the population, when it comes to a predatory industry of public health and the environment.</p>						
INDICATOR 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					4	

⁴⁴ Ministry of Health. <http://bitly.ws/E6JR>

⁴⁵ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

⁴⁶ political, social financial, educations, community, Technical expertise or training to counter smuggling or any other forms of contributions

⁴⁷ Facebook de Banco de Alimentos Perú. <http://bitly.ws/DYLr>

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tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)						
<p>The government usually provides for the entry into force of a rule for up to 180 days for the corresponding adjustments or for the entry into force of the regulation that regulates it; In the case of tobacco control laws, this period is usually granted for imports that at the date of approval of the standard are confirmed purchase orders, in conditions of shipment on the trip or in the process of internment to the country.⁴⁸</p> <p>In the period studied, Ministerial Resolution No. 035-2021/EF that provided for the annual update of the Selective Consumption Tax (ISC) on tobacco products, entered into force the day after its publication, however, in the case of laws and/or regulations, there is a greater leniency for adaptation to the new regulations.⁴⁹</p> <p>The legislative initiatives recently presented, described in the answer to question 2 of the 2023 Index that are aligned with the interests of the industry, usually propose relatively short deadlines for their implementation (90 days) and even, of entry into force the day after the publication of the norm, as is the case of those related to dismantling the current tax policy, favorable to the industry.</p> <p>On the other hand, there are legislative initiatives that propose the excessive period of three years to implement some measures, such as plain packaging (PL 4178/2022-CR).⁵⁰</p> <p>The government allows international travellers to bring in duty-free 400 cigarettes or 50 cigars or 250 gr. of tobacco.⁵¹</p>						
7. The government gives privileges, incentives, tax exemptions or benefits to the tobacco industry (Rec 7.3)						5
<p>Officially, there are no public privileges or tax exemptions for tobacco. However, the TI acts in the media, questioning tax policies, every time the Ministry of Economy and Finance (MEF) updates the Selective Consumption Tax (ISC) on tobacco products, which aims to recover the tax burden on tobacco products; that is, the tax only increases whenever the percentage variation of the Consumer Price Index (CPI) is equal to or greater than 1% with respect to the year prior to the update.⁵²</p> <p>The industry, with the bills presented in fiscal matters, intends to impose new rules of the game.</p> <p>The novelty of this provision is that heated tobacco products were included in the new update of the ISC, in line with the policy established in the Multiannual Macro-Economic Framework 2021 – 2024.⁵³</p> <p>The media campaign deployed by the TI, pointed out that the increase in ISC has been very harsh and will increase smuggling exponentially. The economic magazine Gestión published an article pointing out that the market is dominated by illegal products; collecting in a biased and incomplete</p>						

⁴⁸ General Law for the Prevention and Control of the Risks of Tobacco Consumption. <http://bitly.ws/vZh4>

⁴⁹ Ministry of Economy and Finance. <https://bit.ly/2ReDbNo>

⁵⁰ Congress of the Republic of Peru. <http://bitly.ws/DYJB>

⁵¹ IATA TRAVEL CENTRE. <http://bitly.ws/Hw7d>

⁵² Ministry of Economy and Finance. <http://bitly.ws/E6Ks>

⁵³ Ministry of Economy and Finance. <http://bitly.ws/E6KD>

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way the version of the Development Analysis Group (GRADE) and Colat. The Ministry of Economy and Finance (MEF) has postponed the update of the ISC 2023 that was to be carried out in January, to eventually make the adjustment in July.⁵⁴

Draft laws have also been submitted proposing to transfer the power to regulate the ISC for tobacco products to Congress, which is currently the responsibility of the Ministry of the Economy and Finance, which has greater technical capacity and expertise in the field; bills seeking to impose irrelevant taxes on tobacco products and nicotine products have also been introduced in Congress.^{55,56}

These initiatives jeopardize tobacco tax policies, since the Congress of the Republic is the power of the State with the high levels of corruption and collusion with lobbies of all types of industries, in addition to holding the highest levels of rejection by citizens; in this framework are Bills No. 536/2022-CR (Patricia Rosa Chirinos Venegas), 3137/2022-CR (Martha Lupe Moyano Delgado) and 3732/2022-CR (Rosío Torres Salinas).^{57,58,59,60}

INDICATOR 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) ⁶¹				3		
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High-level government officials do not meet publicly or foster relationships with tobacco companies, however, this interaction is not expressly prohibited or regulated, so it would not be illegal or unethical under the Peruvian legal system.

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)	0					
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No official information has been found on acceptance of assistance or offer in tobacco control legislation, such as organization of tobacco product control operations, policies and/or prohibition of sale to minors.

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) <i>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>	0					
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No official information has been found on alliances or agreements between the government and industry or its allies made publicly in the period analyzed.

⁵⁴ Management Journal. <http://bitly.ws/E6KN>

⁵⁵ Congress of the Republic of Peru. <http://bitly.ws/DYha>

⁵⁶ Congress of the Republic of Peru. <http://bitly.ws/DYII>

⁵⁷ Newspaper La República. <http://bitly.ws/DYXG>

⁵⁸ Congress of the Republic of Peru. <http://bitly.ws/DYha>

⁵⁹ Congress of the Republic of Peru. <http://bitly.ws/DYII>

⁶⁰ Congress of the Republic of Peru. <http://bitly.ws/DYHz>

⁶¹ Includes immediate members of the families of the high-level officials

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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)				3		
<p>There is no official information on public meetings between the government and the TI during the period reviewed regarding regulatory issues, but there are indications that the industry meets and/or coordinates with congressmen, advisors or members of the Congressional Committees, which is seen from the formulation of documents, such as interpretations and / or opinions of tobacco control bills which show signs of influence of TI that weaken the contents.</p>						
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		
<p>Law No. 28024 approved by Supreme Decree No. 120-2019-PCM, and its regulations, regulate the management of interests in public administration as a lawful activity to promote one's own legitimate interests or those of third parties in the public decision-making process, in order to ensure transparency in the actions of the State.^{62,63}</p> <p>It is a law applicable to all types of managers and for all areas, but it does not specifically regulate the interaction of TI with public officials.⁶⁴</p> <p>There is the national list of interest management of the National Superintendence of Public Registries (SUNARP) that is meager basic and not relevant.⁶⁵</p> <p>In the period reviewed, there has been no regulatory innovation regarding the management of interests regulated in Law 28024, except for bill 3437/2022-CR.⁶⁶</p>						
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) / Never 5 Yes		1				
<p>Law 28094 (Law of Political Organizations) prohibits the contribution of companies to political parties.⁶⁷</p> <p>However, there are criminal complaints against political parties that do not declare to the National Jury of Elections (JNE) the large economic or in-kind contributions made by different companies, simulated through the fraudulent modality of fragmenting the amounts and using the</p>						

⁶² Congress of the Republic of Peru. <http://bitly.ws/DYcC>

⁶³ Congress of the Republic. <http://bitly.ws/DYZb>

⁶⁴ Portal of Radio Programs of Peru. <http://bitly.ws/DYYX>

⁶⁵ National Superintendence of Public Registries (SUNARP). <http://bitly.ws/E6LD>

⁶⁶ Congress of the Republic of Peru. <http://bitly.ws/DYG5>

⁶⁷ Ministry of Women and Vulnerable Populations. <https://bit.ly/3u7GdS2>

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name natural persons, who in most cases do not even know that have usurped their names, or even died. ⁶⁸						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)	0					
There is no publicly available information on retired public officials who have been hired by the TI during the study period.						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0					
There is no official information on current public officials and/or family members who have been hired by the IT in the period analyzed.						
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
There is no public information regarding a specific procedure for disclosing records of interaction with the tobacco industry and its representatives.						
All procedures are governed by the provisions of Law 27806 on Transparency and Access to Public Information, and Law No. 28024 that regulates the Management of Interests in the Public Administration that are general, whose regulations were approved by Supreme Decree No. 120-2019-PCM. ^{69,70,71}						
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); <i>1 for whole of government code; 2 for Yes but partial if only MOH</i>				3		
The Peruvian government has not implemented any code of conduct or in any way implemented Article 5.3 of the FCTC in its national legislation.						
However, Bill 3437-2022-CR of Congresswoman Lady Camones "Tobacco and Nicotine Control Act for the Protection of Life and Health" is under debate in the Congressional Health Commission, which ⁷² contains the following articles:						
Article 14°.- Transparency in the interaction between the authorities and the Industry.						
Any interaction between authorities and public officials with the industry must be carried out in a public and transparent manner, protecting public policies from their commercial interests. Public officials and servants govern their actions by the principles, duties and prohibitions established in						

⁶⁸ Newspaper La República. <http://bitly.ws/DZ5N>

⁶⁹ Newspaper El Peruano. <http://bitly.ws/DZ5V>

⁷⁰ Congress of the Republic. <http://bitly.ws/DYcc>

⁷¹ Newspaper El Peruano. <http://bitly.ws/DZ65>

⁷² Congress of the Republic of Peru. <http://bitly.ws/DYiT>

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<p>Law 27815, Law on the Code of Ethics of the Public Service. The applicable specifications and mechanisms will be developed in the regulations of this law.</p> <p>Article 15°.- Industry interference and the establishment of standards, measures and public policies Any industry intervention in the establishment and implementation of tobacco and nicotine control policies, standards and measures is prohibited; Likewise, any form of association, alliance, agreement, participation, campaign, program, financial, in-kind or other contribution between the State and industry and/or any natural or legal person advocating for the industry or representing its interests is prohibited.</p>						
<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>						5
<p>There is no official information indicating that the government requests the tobacco industry to provide regular information on tobacco production.</p> <p>More than 90% of cigarettes consumed in Peru are imported and come mostly from the BAT and PM tobacco companies. Therefore, the government does not request information on production or manufacturing.⁷³</p> <p>According to the Regional Trade Report of the San Martín Region (I Semester of 2022), of the Ministry of Foreign Trade and Tourism, tobacco exports grew by 8% to the European Union (90%), Dominican Republic (4%), Hong Kong (1%), United Kingdom (1%) and Costa Rica (1%); worth US\$2,522,000.⁷⁴</p> <p>Lobbying, philanthropy and political contributions are not prohibited.</p>						
<p>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)⁷⁵</p>						5
<p>The Peruvian government does not have a program, system and/or plan for the implementation of art. 5.3. of the FCTC.</p> <p>Periodically, COLAT informs and/or denounces the interference of the IT in the different spheres of power, as a consequence of the lack of implementation of art. 5.3. of the FCTC.⁷⁶</p> <p>The Needs Assessment for the implementation of the WHO Framework Convention on Tobacco Control in Peru (2015), identified as a gap in tobacco control strategies and regulations tobacco control, and recommended establishing a specific standard or code of conduct that determines</p>						

⁷³ Ministry of Economy and Finance. <http://bitly.ws/E6Mx>

⁷⁴ Ministry of Foreign Trade and Tourism. <http://bitly.ws/E6Ng>

⁷⁵ 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.

⁷⁶ Permanent National Commission on Tobacco Control. <http://bitly.ws/DZ6d>

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that all branches of government should not approve, support, form businesses or engage in activities that the tobacco industry describes as socially responsible. ⁷⁷						
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)						5
<p>The Peruvian government does not have a clear and frontal policy to prevent any form of contribution and/or gifts from the tobacco industry, including offers of assistance, draft policies or invitations for study visits or offered to the government, its agencies, officials and their families.</p> <p>As art. 5.3 of the FCTC, our legal system lacks an express regulation to reject and sanction eventual contributions from the tobacco industry and attempts to bribe public officials.</p> <p>Congresswoman Lady Camones' Bill 3437-2022-CR "Tobacco and Nicotine Control Act for the Protection of Life and Health" is currently being debated, which includes two specific articles regarding IT interference.⁷⁸</p>						
TOTAL SCORE						59

⁷⁷ Pan American Health Organization. <http://bitly.ws/DZ6j>

⁷⁸ Congress of the Republic of Peru. <http://bitly.ws/DYiI>

Annex A: Sources of Information

	TOP TOBACCO COMPANIES/ DISTRIBUTORS	MARKET SHARE	BRANDS	SOURCE
1	British American Tobacco	83%	Lucky Strike. Kent. Pall Mall. Winston. National. Inca. Premier.	http://bitly.ws/EmX7
2	Philips Morris	10%	Marlboro L&M	http://bitly.ws/EmXj

	TOP MEDIA/ NEWSPAPERS	URL
1	El Comercio	https://elcomercio.pe/
2	La República	https://larepublica.pe/
3	Gestión	https://gestion.pe/
4	Perú 21	https://peru21.pe/
5	Correo	https://diariocorreo.pe/
6	El Peruano	https://elperuano.pe/

	MAIN TOBACCO INDUSTRY ALLIES/ FRONT GROUPS	TYPE (FRONT GROUP, LOBBY GROUP, INDIVIDUAL)	SOURCE
1	Respect for respect	Front Group	http://bitly.ws/EmZK
2	Association of Winemakers of Peru	Front Group	http://bitly.ws/En36
3	Tobacco Manufacturers Committee	Front Group	http://bitly.ws/En36