



TOBACCO INDUSTRY INTERFERENCE INDEX

Thailand Report on the Implementation of
Article 5.3 of the WHO Framework
Convention on Tobacco Control
September 2019



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of the WHO Framework Convention on Tobacco Control
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Acknowledgment

ASH-Thailand would like to acknowledge the Southeast Asia Tobacco Control Alliance (SEATCA) for its support and guidance in developing the report. We also thank Mary Assunta from SEATCA for her technical advice in the preparation of this Index.

The information from this report will form part of the Global Tobacco Industry Interference Index, a global survey of how public health policies are protected from the industry's subversive efforts, and how governments have pushed back against this influence. The tobacco Industry Interference Index was initiated by the South-East Asia Tobacco Control Alliance (SEATCA) as a regional report with support from the Bill and Melinda Gates Foundation. The Global Tobacco Industry Interference Index is part of a global publication of the Global Centre for Good Governance in Tobacco Control (GGTC) at the School of Global Studies in Thammasat University and the STOP project with support from Bloomberg Philanthropies.

Suggested citation

ASH-Thailand, Tobacco Industry Interference Index : Thailand Report on the Implementation of the WHO Framework Convention on Tobacco Control, September 2019.

Introduction

Article 5.3 is an essential provision of the WHO Framework Convention on Tobacco Control (FCTC), it enshrines the irreconcilable conflict of interest between the tobacco industry and public health. The FCTC binds signatory states to insulate their public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, in accordance with national law. Countries around the world are recognizing that protection of public health from tobacco industry interference is an important step to ensure that their goals for tobacco control are achieved.

To give more clarity and guidance to Parties, Article 5.3 Guidelines was unanimously adopted in 2008. The Guidelines provide for 8 main recommendations with 34 sub-recommendations to governments to ensure that the industry is prevented from exerting its influence on public health policy.

While the tobacco industry has been utilizing similar tactics around the world, there has been little effort to measure and compare the responses of the government on their ability to respond to these strategies. The Tobacco Industry Interference Index intends to gauge the level of industry interference, as well as the responses or measures implemented by the government to implement Article 5.3 of the FCTC. The purpose of the Index is to define the measures and elements that contribute to the ability of the tobacco industry to interfere with policymaking. The assessment could provide an indication of the government's capacity to resist tobacco industry interference.

Methodology

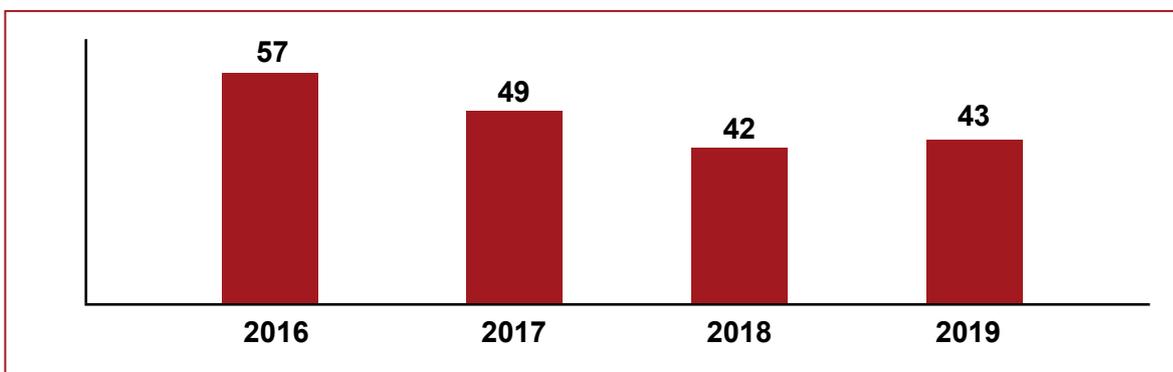
The Tobacco Industry Interference Index is an attempt to define the elements that contribute to the ability of the tobacco industry to interfere with public health policy making. Information sources for the research were based on publicly available or commonly known information. The research was limited to information sourced from official websites, news reports, tobacco company reports, and verifiable anecdotal reports. Covering incidents of tobacco industry interference from January to December 2018, relevant pieces of evidence were gathered, reviewed, and scored based on the questionnaire provided by Southeast Asia Tobacco Control Alliance (SEATCA). The results were shared with a core group of civil society groups for review and subjected to their validation. The report was revised and finalized based on the inputs gathered from the core group.

The questions were based on the twenty (20) most commonly reported incidents of tobacco industry interference in South East Asia and referenced to specific recommendations in the Article 5.3 Guidelines. The questions are grouped into seven categories:

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

Thailand shows a significant improvement in compliance with Article 5.3 compared to previous years.

Thailand' Score on the Tobacco Industry Interference Index



Lower score shows lower interference and better implementation of Article 5.3

Compared to previous years, the total score of Thailand in the Tobacco Industry Interference Index has declined from 57 in 2015 to 43 in 2018. The lower score indicates stronger tobacco control policies and laws with better capacity of the government to resist or prevent tobacco industry interference.

Country summary

1	Industry participation in policy development: Thailand's biggest improvement is there was no incidence of government accepting, endorsing any offer of assistance from or collaboration with the tobacco industry in implementing health policies.
2	TI related CSR activities: In July 2017, Tobacco Products Control Act 2017 came into force. This new law bans all tobacco related CSR activities, as required under FCTC Article 13 and Article 5.3 Guidelines (Recommendation 6). Previously the ban applied only to the Thai Tobacco Monopoly (TTM), but the other transnational tobacco companies could conduct CSR activities. Some of the CSR activities identified in 2017 were carried out before May 2017. The TTM is seen as a government agency and conducted some CSR activities attended by several officials.

3	Benefits given to the tobacco industry: No benefits were given to the tobacco industry. However, there is still a tax exemption for native tobacco leaves. International travellers are allowed to bring 200 cigarettes, or no more than 250 grams of smoking tobacco into Thailand.
4	Unnecessary interaction: Since the government owns the TTM, there were regular meetings (each trimester or 4 times a year) between TTM and high level officers from the Ministry of Finance. TTM involved government officials in their program to control smuggling.
5	Transparency: While minutes were taken during meetings with the tobacco industry however information from these meetings are not made public.
6	Conflict of interest: Retired senior government officials have regularly been appointed as TTM board members. Current government officials such as a senior officer from the Excise Department and the Ministry of Finance are TTM board members. Since the TTM is a state enterprise, the appointment is seen as normal.
7	<p>Preventive measures: The new Tobacco Products Control Act in Section 40 requires the manufacturer or importer of tobacco products to report the volume of production or importation, market share, marketing expense, income and expense in their annual report, audited financial statement and any other information for the benefits of tobacco products control to the Committee. The Rules, and procedures as stipulated in the Ministerial Regulations are being drawn up.</p> <p>Currently there is guidelines for Ministry of Public Health (MOPH) when interacting with the tobacco industry. Other ministries can establish their respective regulation, following MOPH and the Office of the Civil Service Commission that has regulation to prohibit civil servants' interaction with the tobacco industry that applies to all ministries.</p> <p>While there is no contribution from the tobacco industry offered to the government, however there is no restriction on technical assistance or study visits.</p>

Recommendations

As Thailand makes progress in implementing, some areas need to be strengthened.

- a. Strictly enforce the ban on tobacco related CSR activities under the new tobacco control law and ensure there are no loopholes for the industry to exploit.
- b. Ensure retired senior government officials are not immediately appointed to the tobacco industry.
- c. The implementation regulations of the new tobacco control law are drawn up as soon as possible to protect government officials from tobacco industry interference.

INDICATORS

0 1 2 3 4 5

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 ² in setting or implementing public health policies in relation to tobacco control ³ (Rec 3.1)		x					
In 2018 there was no incidence of government accepting, endorsing any offer of assistance from or collaboration with the tobacco industry in implementing health policies.								
2.	The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)		x					
There was no incidence of the government accepting, supporting or endorsing any legislation drafted by the tobacco industry.								
3.	The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)		X					
1 Never 5 Yes								
The tobacco industry does not sit in the government multisectoral committee on tobacco control.								
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)		X					
The Thai delegation did not include any representatives from the tobacco industry to join COP8 meeting in 2018.								

So-called CSR activities

5.	A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)			X				
B. The government (its agencies and officials) receives contributions ⁵ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)								
<i>NOTE: exclude enforcement activities as this is covered in another question</i>								

INDICATORS

0 1 2 3 4 5

I. National Level

On 19 February 2018, Ms. Daonoi Suttiniphapunt, Managing Director of TOAT received the trophy and certificate in good governance and morality from King Mongkut's University of Technology Thonburi.⁶

On 23 March 2018, Ms. Daonoi Suttiniphapunt, Managing Director of TOAT received the award 'Executive of the Year 2018' from For Thai Social Foundation. The award was given by Air Chief Marshal Chalit Pukpasuk, the Privy Council of Thailand and the secretary general of Phradabos Foundation.⁷

II. Provincial level

On 6 February 2018, Nakhonphanom Tobacco Office, Don Nang Hong Tobacco Leave Division (which is a government office) grew organic vegetables to donate to local school – Don Nang Hong Burapasongklor School. The school could use donated vegetables to prepare lunch for students. Some vegetables were distributed to the officials in Don Nang Hong Tobacco Leave Division, Nakhonphanom Tobacco Office.⁸

On 15 February 2018, Mr. Somchai Kongklom, Manager of Petchaboon Tobacco Office welcomed Mr. Piboon Hattakitkosol, Petchaboon Governor to join the public forum called 'Sapha Kafae'. The forum invited representatives from different government agencies to discuss on public policies in Petchaboon Province. The forum was organized at Petchaboon Tobacco Office.⁹

III. Institutions under government

On 19 April 2018, TOAT opened 122nd branch of 'Willpower Institute' at TOAT in order to provide meditation training to people. Willpower Institute was founded by Luangphor (Buddhist monk) Viriyang Sirintharo, an eminent master teacher of meditation from Thailand.¹⁰

On 27 October 2018, TOAT donated 1,262,719.75 THB to Buddhist temple in Ayudhaya Province¹¹

Benefits to the Tobacco Industry

6	The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)				X		
	In August 2018, the Ministry of Finance followed the request of tobacco farmer associations to postpone raising the excise tax from 20% to 40% from 1 October 2019 to 1 October 2021 in order to reduce the burden that tobacco industry handled. ¹²						

INDICATORS

0 1 2 3 4 5

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)

X

1. Tax exemption for native tobacco leaves

According to Section 165 of Excise Act in 2017 (attached with this document), tax exemption is given for the tobacco in quantity not exceeding five hundred grams or shredded tobacco in the quantity not exceeding one kilogram, with no industrialized, with no industrialized purposes.¹³ However, the Excise Department will raise tax to tobacco leaves 10 Satang per gram in 2019.¹⁴

2. Duty free cigarettes

Travelers travelling to Thailand are exempted from duty in case of carrying no more than 200 cigarettes, or no more than 250 grams of tobacco or 250 grams of all type combined.¹⁵

3. Corporatization of TTM - TOAT

In May 2018, the government announced the corporatization of the TTM into Tobacco Authority of Thailand (TOAT) through the Tobacco Authority of Thailand Act B.E. 2561. However, TOAT will still remain under the authority of the Ministry of Finance. The TOAT now has several advantages in its business operation such as being able to conduct legal transactions on its own, expand its tobacco business, enter into new joint ventures and produce cigarettes for export. It announced plans to introduce Chinese cigarettes in Thailand in October, targeting the increasing number of Chinese tourists to the country. TOAT announced they signed an MOU with two Chinese companies, Shaanxi Jinye Science Education Group and Yunnan Reascend Tobacco Technology to produce cigarettes.¹⁶

Forms of Unnecessary Interaction

8 Top level government officials (such as President/ Prime Minister or Minister¹⁷) 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)

X

There is no publicly available evidence to show top level government official attending any social function organized by the tobacco industry.

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)

X

On 9 March 2018, TOAT in collaboration with officials of the Custom Department and 40 soldiers of the First Army Area to seize 14 shops selling E-cigarette in Klongthom Market, Bangkok. The activity was broadcasted by several famous television channels nationwide.¹⁸

INDICATORS		0	1	2	3	4	5
10	The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1)	X					
<p><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></p> <p>The government did not accept or entered into partnerships or agreement with the tobacco industry in 2018.</p>							
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)				x		
<p>Minutes were taken during the meeting, but NOT made public, sometimes high-level officials were involved</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					X	
<p>There is no registration of tobacco industry entities. But the representatives of the TTM are known.</p>							
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)					X	
<p>1 Never 5 Yes</p> <p>NACC law, Section 128 there are some regulations that are in line with FCTC Article 5.3 on Conflict of Interest. While, there is no complete prohibition of political contribution, some limits are set in the Organic Act on Political Parties, B.E. 2560 (2017) – Section 66 mentions that political parties must not accept donation from anybody (including TI) more than 10,000,000 THB a year, while the politicians must not accept gift from anybody (including TI) more than 3,000 THB.^{19, 20}</p>							
14	Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)						X
<p>Retired senior government officials (police officer) are appointed to the TOAT – Board member. Currently only one retired police general working as a board member.²¹</p>							
15	<u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)					X	
<p>Although the TTM has been corporatized to TOAT, its CEO is still regarded as a government official.</p>							

INDICATORS

0 1 2 3 4 5

Preventive Measures

SCORING for this section: 1. Yes, 2. Yes but partial only, 3. Policy/ Program being developed 4. Committed to develop such a policy/ program 5. None

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)			x				
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At the juridical council deliberation, it was considered since the Ministry of Public Health had issued a ministerial regulation on “Guidelines on Interaction with Tobacco Entrepreneurs and Related Persons” and the Office of the Civil Service Commission’s regulation prohibited civil servants’ interaction with industry in a way that may lead to policy interference, this should apply to all ministries. Hence, the implementation of Recommendation 2 of WHO FCTC Article 5.3 was at ministerial regulation. TC law drafting working group will work with other ministries to develop the regulation on interaction with tobacco entrepreneurs and related persons, as MOPH had done earlier.

17	The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)			x				
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The new law was passed in 2017. The implementation regulations are being drawn up.

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)			X				
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Tobacco Products Control Act 2017

Section 40: The manufacturer or importer of tobacco products have the duty to report the volume of production or importation into the Kingdom, market share, marketing expense, income and expense as per Article 35, annual report, audited financial statement and any other information for the benefits of tobacco products control to the Committee, according to the rules, procedures and conditions as stipulated in the Ministerial Regulations by recommendations of the Committee. The implementing regulations are being drawn up.

This section aims to monitor whether tobacco industry is transparent and provides accurate information. Information provided will ascertain whether the tobacco industry violates the law by allocating the budget for tobacco industry related CSR activities, lobbying activities and any tobacco advertisement that is prohibited by law. If such expenses are found in the report, action will be taken against the tobacco industry as provided in the law. If false or incomplete information is provided by the tobacco industry, it shall be subjected to imprisonment or a fine as stated in Section 66.

INDICATORS		0	1	2	3	4	5
19	The government has a program / system/ plan to consistently ²² raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)			X			
Currently the ministerial regulation is established only in the MOPH. Other ministries can establish their respective regulation, following MOPH and the Office of the Civil Service Commission that has regulation to prohibit civil servants' interaction with the tobacco industry that applies to all ministries.							
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)			X			
There is no policy is in place. While there is no contribution offered to the government, however there is no restriction on study visits.							
TOTAL 43							

References

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
4. Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>
5. political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions
6. TOAT news, 20 February 2018, <https://www.thaitobacco.or.th/th/2018/02/0016836.html>
7. TOAT news, 23 March 2018, <https://www.thaitobacco.or.th/th/2018/03/0017302.html>
8. TOAT news, 7 February 2018, <https://www.thaitobacco.or.th/th/2018/02/0016631.html>
9. TOAT news, 16 February 2018, <https://www.thaitobacco.or.th/th/2018/02/0016805.html>
10. TOAT news, 19 April 2018, <https://www.thaitobacco.or.th/th/2018/04/0017601.html>
11. TOAT news, 27 October 2018, <https://www.thaitobacco.or.th/th/2018/10/0020939.html>
12. Thai Post, 29 August 2018, <https://www.ryt9.com/s/tpd/2878398>
13. Matichon Online, 7 September 2017, https://www.matichon.co.th/economy/news_656262
14. The Standard, 9 May 2019, <https://thestandard.co/tobacco-taxation/>
15. Thai custom, 3 October 2019, http://www.customs.go.th/list_strc_simple_neted.php?ini_content=individual_160503_03_160905_01&lang=en&left_menu=menu_individual_submenu_01_160421_01
16. Thai-Made Chinese Cigarettes, 16 July 2018, <https://www.tobaccoasia.com/product-news/thai-made-chi>
17. include immediate members of the families of the high level officials
18. TOAT news, 30 March 2018, <https://www.thaitobacco.or.th/th/2018/03/0017374.html>
19. Donation to Political Parties https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/article/article_20180418101402.pdf p.14
20. Organic Act on Political Parties, B.E. 2560 (2017) http://m.senate.go.th/eppo/3_60.pdf, p.21
21. <https://www.thaitobacco.or.th/th/board-of-directors-2>
22. 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.

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Published by ASH-Thailand with support from the
Southeast Asia Tobacco Control Alliance (SEATCA)
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