

# 2021 TOBACCO INDUSTRY INTERFERENCE INDEX

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



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on Tobacco Control

September 2021



### **Editorial Team**

HealthJustice Philippines

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

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### **About HealthJustice**

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<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ATIGA</b>	ASEAN Trade in Goods Agreement
<b>AFP</b>	Armed Forces of the Philippines
<b>BIR</b>	Bureau of Internal Revenue
<b>BOC</b>	Bureau of Customs
<b>BSP</b>	Bangko Sentral ng Pilipinas
<b>CHED</b>	Commission on Higher Education
<b>COP</b>	Conference of the Parties
<b>CSC-DOH JMC No. 2010-01</b>	Civil Service Commission-Department of Health Joint Memorandum Circular No. 2010-01
<b>CSO</b>	Civil Society Organization
<b>CSR</b>	Corporate Social Responsibility
<b>DepEd</b>	Department of Education
<b>DOF</b>	Department of Finance
<b>DOH</b>	Department of Health
<b>DOST</b>	Department of Science and Technology
<b>DOT</b>	Department of Tourism
<b>DSWD</b>	Department of Social Work and Development
<b>DTI</b>	Department of Trade and Industry
<b>ENDS</b>	Electronic Nicotine Delivery System
<b>ENNDS</b>	Electronic Non-Nicotine Delivery System
<b>FDA</b>	Food and Drug Administration
<b>HTP</b>	Heated Tobacco Products
<b>IACT</b>	Inter-Agency Committee on Tobacco
<b>INB</b>	Intergovernmental Negotiating Body
<b>JTI</b>	Japan Tobacco International
<b>JVOFI</b>	Jaime V. Ongpin Foundation Inc.

# Table of Abbreviations

<b>LTG</b>	LT Group, Inc. (Lucio Tan Group)
<b>MMDA</b>	Metropolitan Manila Development Authority
<b>MPOWER</b>	Monitoring tobacco use and prevention policies Protecting people from tobacco smoke Offering help to quit tobacco use Warning about the dangers of tobacco Enforcing bans on tobacco advertising, promotion and sponsorship Raising tobacco taxes
<b>NCCA</b>	National Commission for Culture and the Arts
<b>NTA</b>	National Tobacco Administration
<b>OLA</b>	Office for Legal Affairs
<b>PECIA</b>	Philippine E-Cigarette Industry Association
<b>PEZA</b>	Philippine Economic Zone Authority
<b>PNB</b>	Philippine National Bank
<b>PHW</b>	Pictorial Health Warning
<b>PMFTC</b>	Philip Morris Fortune Tobacco Corporation
<b>PMI</b>	Philip Morris International
<b>PNP</b>	Philippine National Police
<b>PRC</b>	Philippine Red Cross
<b>PTI</b>	Philippine Tobacco Institute
<b>RA</b>	Republic Act
<b>SEATCA</b>	Southeast Asia Tobacco Control Alliance
<b>US-ABC</b>	United States-ASEAN Business Council
<b>WG</b>	Working Group
<b>WHO</b>	World Health Organization
<b>WHO FCTC</b>	World Health Organization Framework Convention on Tobacco Control

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# Introduction

**In the Philippines, there is a contradiction: while there are policies addressing tobacco industry interference, the undeniable fact remains that the tobacco industry is considered a stakeholder in developing tobacco control policies.**

In 2020, the tobacco industry took advantage of the opportunities presented by the COVID-19 pandemic. It increased its visibility through provision of urgent donations to hospitals, to different government agencies, and to communities. They relied on old partners and tapped new ones. This not only allowed them to strengthen their relationship with the government, but also, build up a positive perception with the public.

While positioning itself as a good samaritan, it is also pushing for favorable policies, lobbying to weaken regulations on novel tobacco products, such as heated tobacco products, and asking for exemption from restrictive classification of tobacco as a “non-essential good.”

While different countries all over the world are recognizing

that protection of public health from tobacco industry interference<sup>1</sup> is an important step to ensure that their goals for tobacco control are achieved, the tobacco industry quickly adapts its strategies and tactics to protect its business.

Thus, monitoring and reporting tobacco industry interference is crucial, not only in identifying and counteracting what the industry is doing, but also identifying the patterns and how the industry is changing its strategies.

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<sup>1</sup> Tobacco Industry Interference is defined as a broad array of tactics & strategies utilized by the tobacco industry to interfere with the setting and implementing of tobacco control measures. (Source: DOH-CSC JMC 2010-01)

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# Methodology

**This is the eighth report reviewing the implementation of the Philippines of Article 5.3 of the WHO FCTC based on the Tobacco Industry Interference Index.**

Covering incidents of tobacco industry interference from January 2020 to March 2021, relevant pieces of evidence were gathered, reviewed, and scored based on the questionnaire provided by Global Center for Good Governance in Tobacco Control.

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. 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 top twenty (20) most commonly reported incidents of

tobacco industry interference and referenced to specific recommendations in the Article 5.3 Guidelines.

The questionnaire for the report was updated in 2015 to quantify the intensity, frequency, or severity of a given incident of interference by providing specific guides (assessment tools) on how to assess specific situations. The intent was to remove the subjectivity by assigning a number, and put all respondents or researchers on the same page when assigning a score.

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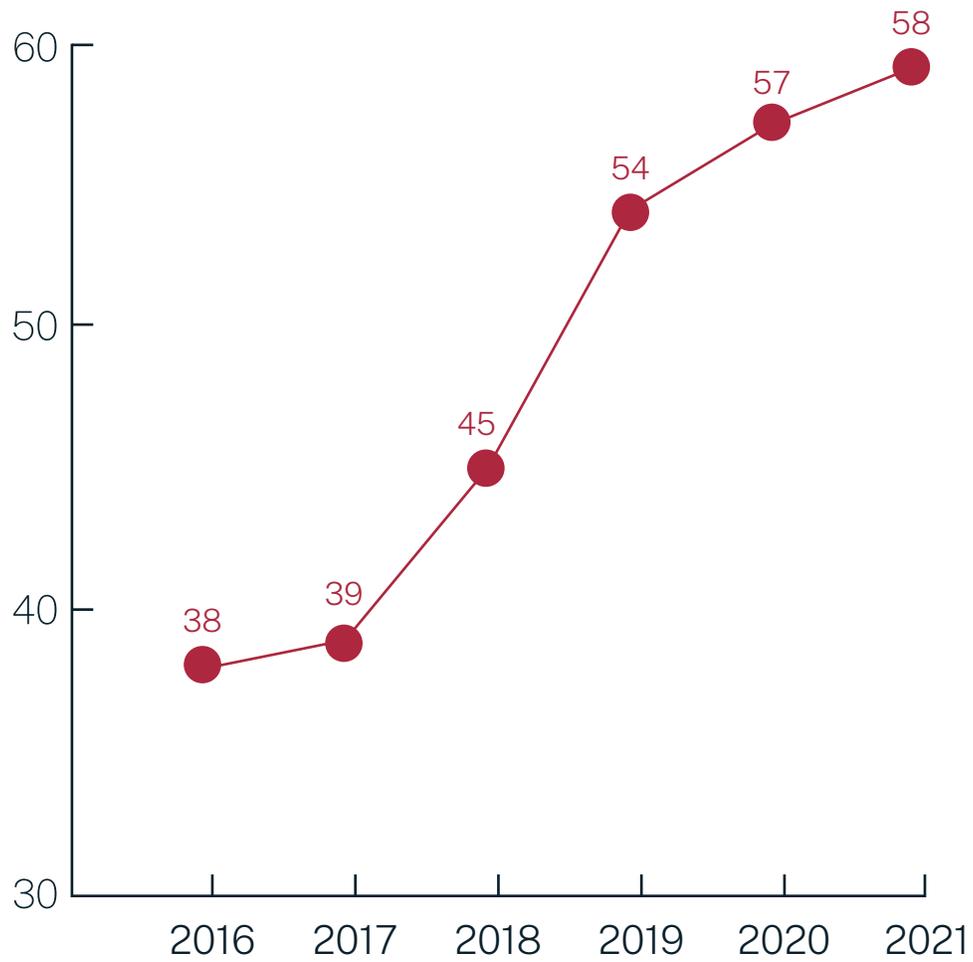
# Tobacco Industry Interference Index

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

The report provides evidence of tobacco industry interference and situations that reveal weaknesses or loopholes that the industry exploits. It is an attempt to define the measures and elements that contribute to the ability of the tobacco industry to interfere with public health policy making. The questions were designed based on specific situations that the WHO FCTC Article 5.3 Guidelines seek to address.

Using the Index can be a tool to monitor whether the Philippines is making progress, maintaining status quo, or deteriorating when addressing tobacco industry interference. The scores are based on a particular indicator on the level of industry interference and the responses of the government in addressing them based on publicly available evidence.

As compared with the previous years, there is a steady increase in the score of the Philippines in the Index with the biggest jump of the scores in the years 2017 to 2019. It jumped from 45 in 2017 to 54 in 2018, then 57 in 2019, and 58 in 2020. Higher score every year indicates progressive deterioration in addressing tobacco industry interference, possibly due to stronger interference by the tobacco industry, as well as, lesser capacity of the government to resist or prevent tobacco industry interference.



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

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

**Table 1. Summary of tobacco industry interference indicators in the Philippines**

<b>INDICATOR</b>		<b>Score</b>
<b>1. Level of Industry Participation in Policy-Development</b>		
1	The government <sup>1</sup> accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry <sup>2</sup> in setting or implementing public health policies in relation to tobacco control <sup>3</sup> (Rec 3.1)	5
2	The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)	5
3	The government allows/invites the tobacco industry to sit in government interagency/multi-sectoral committee/advisory group body that sets public health policy. (Rec 4.8)	5
4	The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) <sup>4</sup> (Rec 4.9 & 8.3)	1
<b>Subtotal</b>		<b>16</b>
<b>2. Industry CSR activities</b>		
5	A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)	5
	B. The government (its agencies and officials) receives contributions <sup>5</sup> (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)	
<b>Subtotal</b>		<b>5</b>
<b>3. Benefits to the Tobacco Industry</b>		
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)	3
7	The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)	5
<b>Subtotal</b>		<b>8</b>

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, and overseas study tours

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

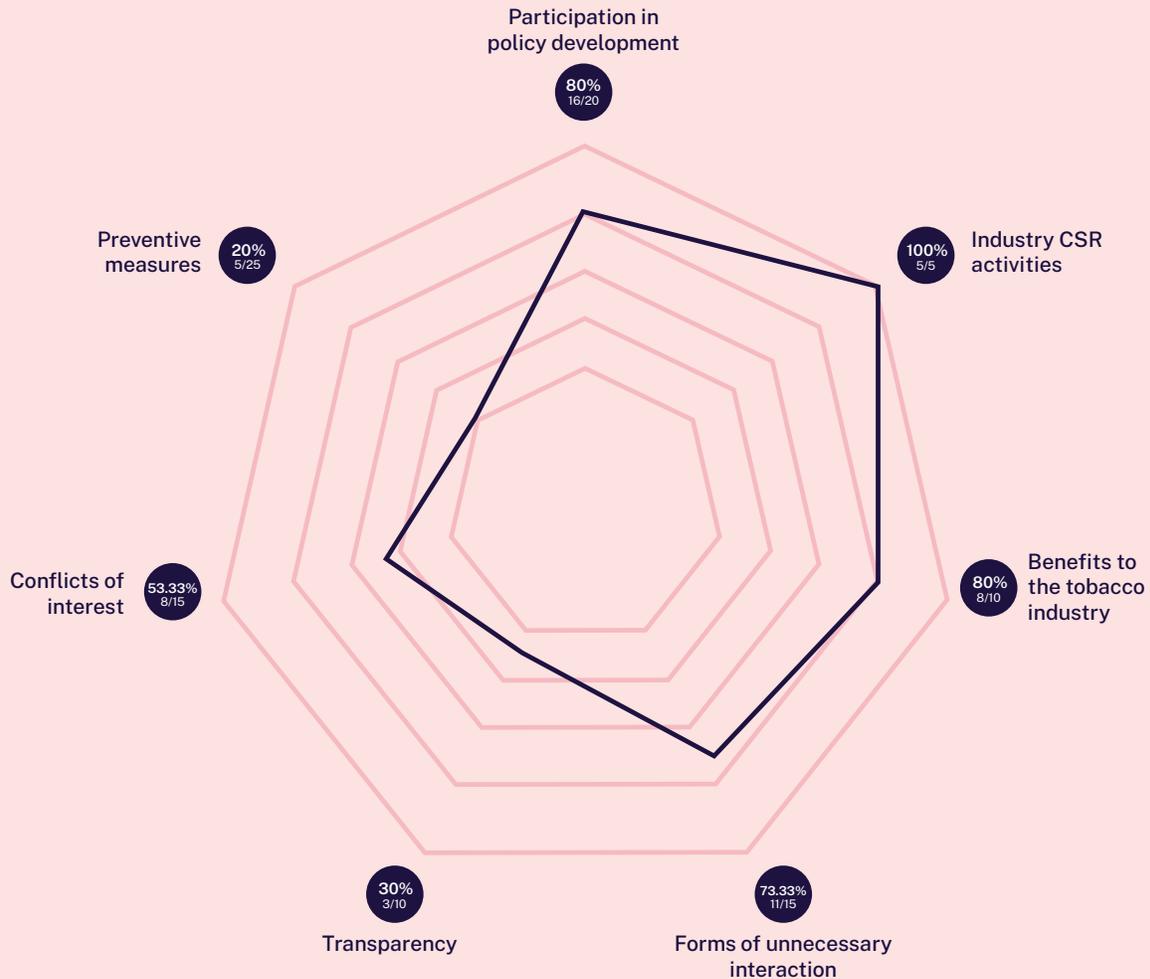
5 Political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

INDICATOR	Score
<b>4. Forms of Unnecessary Interaction</b>	
8 Top level government officials (such as President/Prime Minister or Minister <sup>6</sup> ) 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
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)	4
10 The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.	3
<b>Subtotal</b>	<b>11</b>
<b>5. Transparency</b>	
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)	0
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
<b>Subtotal</b>	<b>3</b>
<b>6. Conflict of Interest</b>	
13 The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)	5
14 Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)	3
15 Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0
<b>Subtotal</b>	<b>8</b>
<b>7. Preventive Measures</b>	
16 The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)	1

<sup>6</sup> Includes immediate members of the families of the high-level officials

INDICATOR	Score
17 The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)	1
18 The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)	2
19 The government has a program/system/plan to consistently <sup>7</sup> raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)	2
20 The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)	1
<b>Subtotal</b>	<b>7</b>
<b>TOTAL</b>	<b>58</b>

<sup>7</sup> 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.



**Figure 2. Philippines' score per category on the Tobacco Industry Interference Index**

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

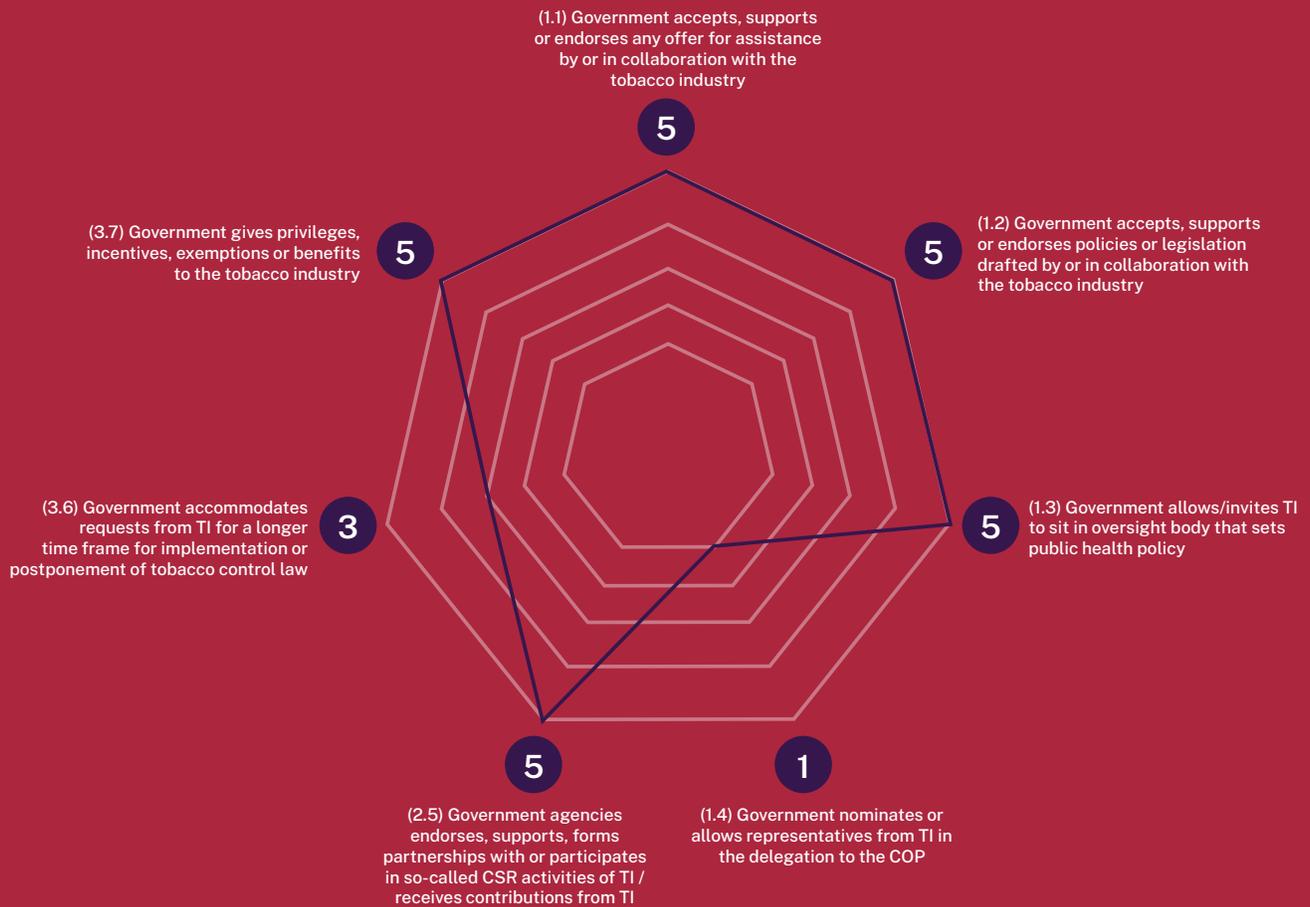
**Understanding the polygon chart**

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

**Computing interference percentages**

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





**Figure 3. PH TII score per indicator in Industry Participation in Policy Development (1.1-1.4), Industry CSR Activities (2.5), and Benefits to the Tobacco Industry (3.6-3.7)**

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

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## 1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

**The tobacco industry continues to have strong influence with policymakers and is attempting to erode gains in tobacco control policy.**

Despite the competing priorities and urgency of COVID-19 as a public health issue, several legislative hearings pushed through to discuss bills that are meant to water down tobacco control policies.

Republic Act No 11467, enacted into law in January 2020, authorizes the Food and Drug Administration (FDA) to regulate ENDS/ENNDS and HTPs.

The law gave FDA an express authority to “periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution” of both products.<sup>8</sup>

Other pertinent provisions include prohibiting the sale of HTPs, ENDS/ENNDS to non-smokers or persons below 21 years old, and limiting flavors to plain tobacco or plain menthol for ENDS/ENNDS.

However, Congress opted to deliberate on several ENDS/ENNDS bills that weaken the protection afforded to Filipinos

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<sup>8</sup> Sec. 3, Rep. Act No 11467 (2020).

in RA 11467. These bills were consolidated into House Bill No. 9007.<sup>9</sup> In the Committee hearings, the representatives of the tobacco industry were invited and given ample time to state their comments and position on the bills.<sup>10</sup>

It can be observed that tobacco industry representatives or resource persons were given more airtime to state their positions than those coming from the opponents of the ENDS/ENNDS bill. Resource persons of the tobacco industry based abroad were able to attend despite the short notice given to them.

They pushed for the adoption of harm reduction as state policy<sup>11</sup>, for making DTI the lead

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<sup>9</sup> House Bill 9007 is entitled, “An Act Regulating the Manufacture, Use, Sale, Packaging, Distribution, Advertisement and Promotion of Electronic Nicotine and Non-Nicotine Delivery Systems and Heated Tobacco Products.”

<sup>10</sup> Philip Morris Fortune Tobacco Corporation (PMFTC), JUUL Labs, Philippine E-Cigarette Industry Association (PECIA), The Vapers Philippines, Japan Tobacco International (Philippines), RELX Technology, Harm Reduction Alliance of the Philippines

<sup>11</sup> Sec. 2, House Bill 9007, An Act Regulating the Manufacturer, Use, Sale, Packaging, Distribution, Advertisement, and Promotion of

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regulatory agency instead of the FDA<sup>12</sup>, and for allowing the advertisements, promotions, sponsorships<sup>13</sup> of ENDS/ENNDS and HTPs, and their indoor use in designated vaping areas<sup>14</sup>, and for lowering the minimum age of access to 18 years old<sup>15</sup> from 21 years old.

In sum, HB 9007 adopts the policy proposals and position of the tobacco and vaping industries and completely disregarded the recommendations of the WHO, DOH, FDA, other public health experts and health advocates to strictly regulate these products.

The Joint House Committees on Health and Trade approved the Committee Report last August 2020, and HB No. 9007 was already passed in May 2021. In the Senate, the counterpart bill was set for the first hearing last March 17, 2021.

The bill was initially referred to the Committee on Health, but it was transferred to the Committee on Trade. Senator Pia Cayetano then raised an objection to this, and the bill was taken up jointly

by both the Committees of Health and of Trade.

### **Members of Congress questioned the Food and Drug Administration and other government agencies' receipt of funding from Bloomberg Philanthropies**

Rep. Deogracias Savellano (Ilocos Sur) and Rep. Estrellita Suansing (Nueva Ecija), both hailing from tobacco growing provinces, jointly filed House Resolution 1396 questioning FDA's receipt of funding from Bloomberg Philanthropies. On March 16, 2021, the first hearing of the congressional inquiry was conducted.

During the meeting, lawmakers pressed on the extent of influence Bloomberg Philanthropies has in policy making, making it appear that the latter is intruding, dictating, and controlling the country's tobacco control policies.

To support this contention, a summary of grants totaling \$2,000,000 and allegedly given to government agencies such as the CSC, DepEd, FDA, DOH, MMDA, and others was enumerated. It was stated that the influence is violative of the country's independence and sovereignty.

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Electronic Nicotine and Non-Nicotine Delivery Systems and Heated Tobacco Products (HB 9007.

12 Sec. 19, HB 9007.

13 Sec. 11-13, HB 9007.

14 Sec. 15, HB 9007.

15 Sec. 7, HB 9007.

Asst. Commissioner Ariel Ronquillo from the Civil Service Commission provided an opinion that the donations, and partnership of FDA with the Union are not illegal. He also stated, after inquiry from Rep. Sharon Garin, that the donations received by lawmakers from foundations associated with the tobacco industry is illegal. The basis of the prohibition is JMC 2010-01, which was issued pursuant to the Philippines' commitments of the FCTC, particularly Article 5.3.



Philippine Red Cross Chairperson Sen. Richard Gordon, received the donation of a bio-molecular laboratory from the LT Group, Inc. last May 2020.

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## 2. INDUSTRY CSR ACTIVITIES

**The WHO FCTC and its Guidelines recommend that Parties ban so-called corporate social responsibility activities of tobacco companies, as it is a means to access and influence policymakers and continue to advertise tobacco products or brand.**

We monitored an increase in partnerships between the tobacco industry and the government, as well as observed reliance on the industry for donations, especially to address the urgent needs due to the COVID-19 pandemic.

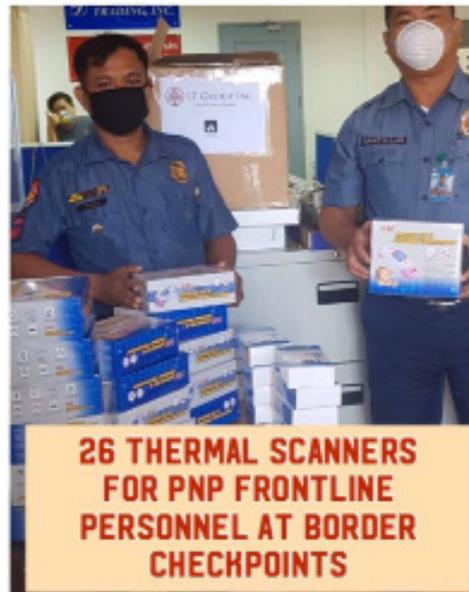
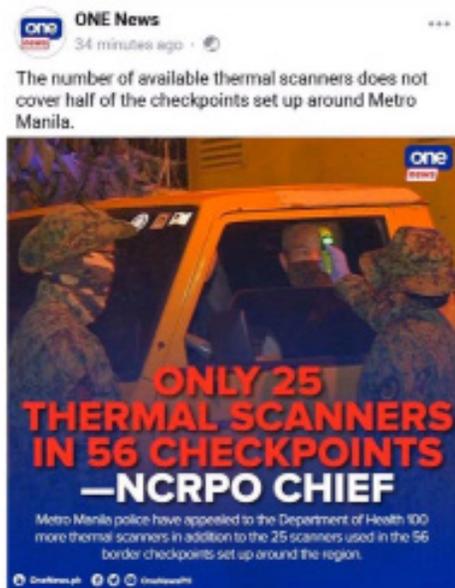
Tobacco companies continued conducting their so-called CSR activities directly through their companies, their foundations, or by coursing it through other organizations. Philip Morris Fortune Tobacco Corporation, through its CSR arm, Embrace, partners mainly with Jaime V. Ongpin Foundation Inc. (JVOFI). It was monitored that PMFTC and/or LT Group, Inc. conducted 34 out of the 36 monitored industry donations or so-called CSR activities in 2020.

Most of the donations were done in partnership with local government units, local government officials, the Philippine National Police, and several members of the House of Representatives. This year

there seems to be a shift in strategy in that, while PMFTC still conducts CSR activities through their Embrace program, some of the donations have been conducted by its parent company—the Lucio Tan Group, Inc. (LTG).

Despite the change of sponsor, it is well known in the country that the Lucio Tan Group (LTG) co-owns the biggest tobacco company in the country. The LTG includes PMFTC, along with other companies like Philippine Airlines, Tanduay Brewery, Philippine National Bank, etc. Many of the donations and CSR activities it conducted mention PMFTC as sponsor of the activity. These CSR activities are conducted through their program called “Help Flows.”

Taking advantage of the COVID-19 pandemic, tobacco companies were active in donating medical equipment, and personal protective equipment to hospitals, as well as food supplies to



communities affected by lockdowns. Some of the donations for the local government were coursed first through politicians, such as the congressmen, and local government officials.

The increasing number of so-called CSR activities and partnerships with officials from different government agencies indicate the need to strengthen monitoring of industry interference and to intensify communication strategies so that government officials are properly informed that these partnerships are not allowed under the Joint Memorandum Circular of the Civil Service Commission.

### 3. BENEFITS TO THE TOBACCO INDUSTRY

To help curb COVID-19, the government imposed a lockdown that restricted transport of products to just essential goods. Tobacco was considered a non-essential good and its transport and delivery was restricted in areas where a lockdown imposed in mid-March 2020.

The Department of Health issued a Department memo on tobacco control in light of the COVID-19 pandemic, stating that tobacco and vapor products shall not be classified as essential goods.<sup>16</sup>

Industry sources reported that, while there was no outright ban on sales, the manufacture of tobacco had to stop during the lockdown imposed in Luzon and other parts of the country.<sup>17</sup>

Philip Morris Inc. reported that their total market in the Philippines was down by 12% in 2020, mainly reflecting

the impact of pandemic-related quarantines, as well as industry-wide price increases.<sup>18</sup>

By April 2020, Secretary Dominguez of the Department of Finance was quoted saying that lifting transportation on tax-paid cigarettes is “under consideration because the absence of cigarettes encourages illicit trade.”<sup>19,20</sup> Restriction on the transport and delivery of tobacco products was subsequently lifted.

The government also announced that tobacco industry sector can operate on 50% capacity in places where there is a Modified Enhanced Community Quarantine and 100%

<sup>16</sup> DOH Department Memorandum No. 2020-0246 Interim Guidelines on Tobacco Control in light of the COVID-19 Pandemic.

<sup>17</sup> Inquirer.net ‘Cigarette transport restrictions may ease as smuggling rampant amid COVID-19 lockdown,’ available at <https://business.inquirer.net/295188/cigarette-transport-restrictions-may-ease-as-smuggling-rampant-amid-COVID-19-lockdown>

<sup>18</sup> Philip Morris International 2020 Annual Report p. 47, available at [https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE\\_PM\\_2020.pdf](https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_PM_2020.pdf)

<sup>19</sup> Inquirer.net ‘Cigarette transport restrictions may ease as smuggling rampant amid COVID-19 lockdown,’ available at <https://business.inquirer.net/295188/cigarette-transport-restrictions-may-ease-as-smuggling-rampant-amid-COVID-19-lockdown>

<sup>20</sup> Philippine News Agency ‘Gov’t studying options for ban on sin products while on ECQ,’ available at <https://www.pna.gov.ph/articles/1100411>  
Inquirer.net, ‘Cigarette smuggling up despite lockdown,’ available at <https://business.inquirer.net/295224/cigarette-smuggling-up-despite-lockdown>



Embrace Program donated to the Maasin Central Elementary School, Iloilo in March 2020. This donation was facilitated through Iloilo Provincial Board Member John Mondejar. | Photo from John Mondejar

capacity during the General Community Quarantine.<sup>21</sup> Thus, an exception was carved for the tobacco industry based on information provided by the industry.

Senator Loren Legarda observed that there seems to be misleading messages about the role of tobacco in the pandemic, with the industry styling themselves “as vaccine developer and donor of personal protective equipment (PPEs) but they have, in fact, tried to get tax privileges and exemptions from quarantine

<sup>21</sup> One News, ‘LIST: Sectors Allowed Under ECQ, MECQ, GCQ,’ available at <https://www.onenews.ph/list-sectors-allowed-under-ecq-mecq-gcq>

rules for their supply chains.”<sup>22</sup>

### **Providing incentives, or benefits to the tobacco industry**

Under the ASEAN TRADE IN GOODS AGREEMENT (ATIGA) tobacco leaf, and other tobacco related additives imported into the Philippines enjoy zero import duties.<sup>23</sup>

The Philippines allows international travelers to bring 400 sticks of cigarettes

<sup>22</sup> Luci-Atienza, Manila Bulletin, ‘Legarda renews warning against tobacco use,’ available at <https://mb.com.ph/2020/05/31/legarda-renews-warning-against-tobacco-use/>

<sup>23</sup> <https://www.asean.org/uploads/archive/documents/atiga/Annex2-Philippines.pdf> (pg 45, Items 1370-1384)

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without any duties or taxes into the country. This is higher than what other countries in Southeast Asia allow. This is twice as much that is allowed in Malaysia.

In other countries like Singapore, Brunei, and Hongkong, they only allow 1 pack (20 sticks) of cigarettes. An amendment of the policy is necessary so that we, at least, lower the number of sticks allowed to be brought in duty-free or prohibit this altogether.

### **Lower Tax Rates for HTPs, ENDS, and ENNDS under RA 11467**

The tobacco industry pushed for lower excise tax rates for HTP, ENDS, and ENNDS, arguing that there should be a “risk proportion tobacco tax”<sup>24</sup> and it was deliberated in the Senate that these novel tobacco products should have the same rate as cigarettes.

RA 11467 law amending the National Internal Revenue Code of the Philippines was signed

into law on January 22, 2020.<sup>25</sup>

It increased the excise tax on heated tobacco products (HTPs), Electronic Nicotine Delivery Systems (ENDS) and Electronic Non-Nicotine Delivery Systems (ENNDS) or commonly known as e-cigarettes or vapor products.

While it was taxed a higher rate than what was initially imposed on it under RA 11346. The rates are still substantially lower than rates imposed on cigarettes, which is aligned with what the tobacco industry was pushing. In September 2020, PMI started sales of its IQOS in Manila.<sup>26</sup>

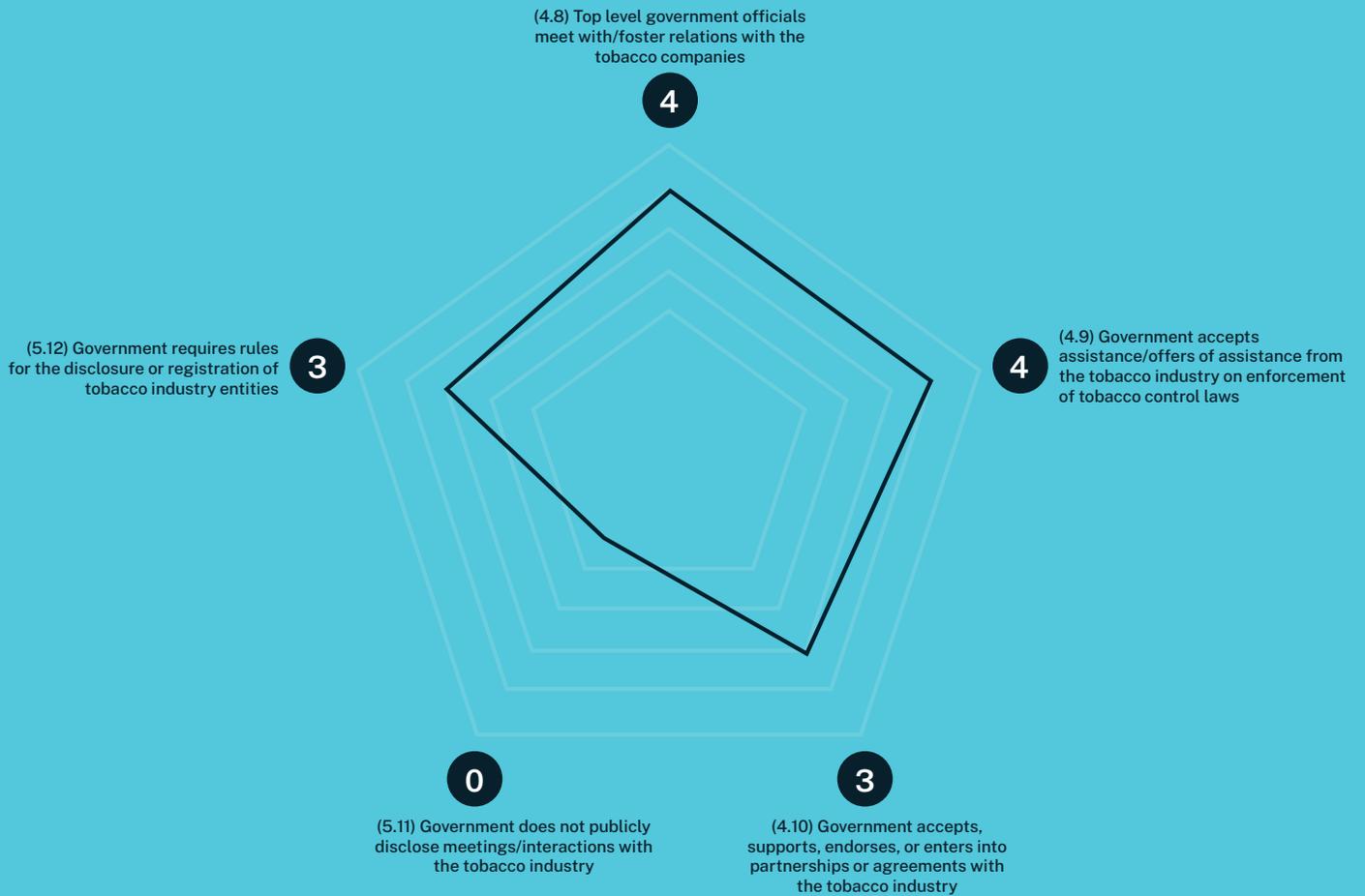
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<sup>24</sup> Leyco, ‘PMI wants ‘risk proportion’ tobacco tax,’ September 23, 2019. Available at <https://business.mb.com.ph/2019/09/22/pmi-wants-risk-proportion-tobacco-tax/>

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<sup>25</sup> Rep. Act No 11467 (2020).

<sup>26</sup> <https://business.inquirer.net/306561/pmftc-opens-iqos-stores-in-metro-manila>



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

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



Memorandum of Agreement and Deeds of Donation Signing activity to handover two units of ambulances from the LT Group, Inc. and Jaime V. Ongpin Foundation Inc. (JVOFI) to the the Philippine Army last March 3, 2020. | Photo from the Philippine Army

#### 4. UNNECESSARY INTERACTION

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

PMFTC has a strong partnership with the Armed Forces of the Philippines. The company not only donated ambulances to the AFP,<sup>27</sup> but also tapped the

<sup>27</sup> Philippine Army website, 'Army receives ambulances, gears up against COVID-19 during anniversary,' available at <https://www.army.mil.ph/home/index.php/press-releases-2/667-army-receives-ambulances-gears-up-against-covid-19-during-anniversary>

Philippine Army to participate in its distribution of relief goods.<sup>28</sup> PMFTC was recognized by the Armed Forces of the Philippines and given two awards this year.

The first one was the Stakeholders Award given to the Embrace Program of PMFTC on July 2020.<sup>29</sup> On December 2020, the General Gilbert Gapay, chief of staff of the Armed Forces of the Philippines bestowed the Kapayapaan Award to PMFTC. for their

<sup>28</sup> Philippine News Agency 'Army helps distribute veggies, rice to Makati, Pasay families,' Available at <https://www.pna.gov.ph/articles/1099043>. Also available at <https://www.dzar1026.ph/philippine-army-namahagi-ng-gulay-at-bigas-sa-makati-at-pasay>, and at <https://rmn.ph/philippine-army-namigay-ng-mga-gulay-at-bigas-sa-mga-residente-ng-pasay-at-makati/>

<sup>29</sup> Philippine News Agency 'AFP fetes outstanding Dental Service personnel,' available at <https://www.pna.gov.ph/articles/1110723>



Philippine Economic Zone Authority (PEZA) Director General Charito Plaza and Japan Tobacco President John Freda in a helicopter to Baguio City inspecting potential economic zones last March 5, 2020. | Photo from Ching Plaza's Facebook profile

Corporate Social Responsibility program “Project Embrace” in a ceremony in Camp Aguinaldo, Quezon City.<sup>30</sup> Other top officials in the government also foster relations with the tobacco industry.

Philippine Economic Zone Authority Director General Charito Plaza was photographed going around Baguio City with Japan Tobacco President John Freda and Winston Uy of Universal Leaf (February-March 2020).<sup>31</sup>

Senator Richard Gordon, who is also the Chairman of

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30 Manila Bulletin, ‘Gapay awards top military personnel, units,’ available at <https://mb.com.ph/2020/12/21/gapay-awards-top-military-personnel-units/>

31 Information and photos from the Facebook page of Ching Plaza, available at <https://www.facebook.com/ching.p.ii/posts/2733236183450520>  
<https://www.facebook.com/ching.p.ii/posts/2675276832579789>  
<https://www.facebook.com/ching.p.ii/posts/2737149456392526>

Philippine Red Cross, received the donation of a bio-molecular laboratory from the LT Group, Inc. (LTG). The laboratory has its own automated ribonucleic acid (RNA) extraction and polymerase chain reaction (PCR) machines. With a floor area of 120 square meters, the 15-million fully-equipped lab will be set up inside PRC’s former blood center in Batangas City. It will be open to the public and will be manned by trained medical technologists.<sup>32</sup>

The Bureau of Customs continues to engage the participation of the tobacco industry in its enforcement activities. On May 11, 2020, the Bureau of Customs, through its Enforcement and Security

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32 Inquirer.net ‘Lucio Tan donates Batangas COVID-19 lab,’ available at <https://business.inquirer.net/298064/lucio-tan-donates-batangas-COVID-19-lab>. Also available at <https://bilyonaryo.com.ph/2020/05/24/lucio-tan-donates-p15m-COVID-19-testing-lab/>.

Service, led the destruction of smuggled cigarettes. The activity was witnessed by Customs Commissioner Rey Leonardo Guerrero and Deputy Commissioners along with Mr. John Freda, CEO of Japan Tobacco International.<sup>33</sup>

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<sup>33</sup> Inquirer, 'BOC destroys 109 million worth of illicit cigarettes,' available at <https://newsinfo.inquirer.net/1273004/boc-destroys-p109-worth-of-illicit-cigarettes>

The Bureau of Customs (BOC) destroys on Monday, May 11, 2020, P109 million worth of illicit cigarettes seized from 2018 until March 2020. Photo from BOC Public Information and Assistance Division



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## 5. TRANSPARENCY

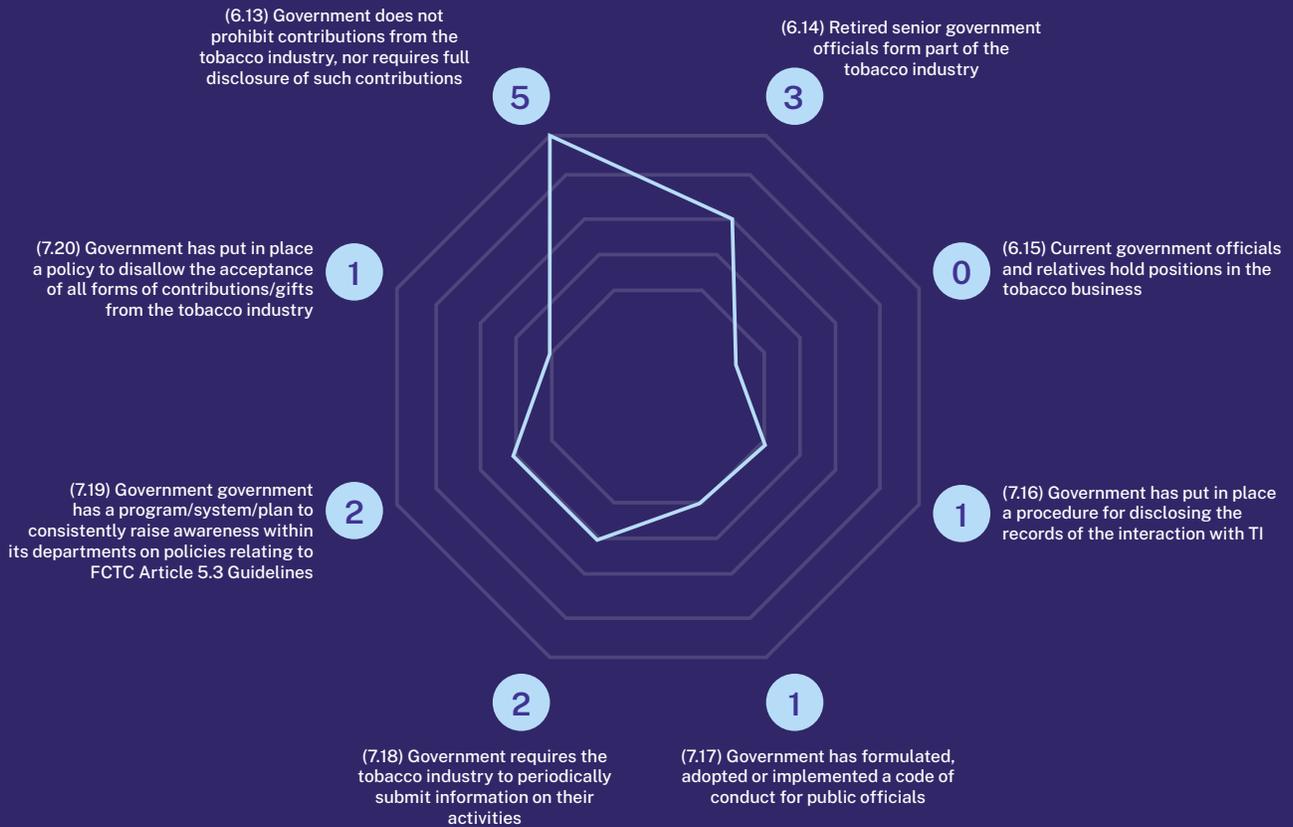
Section 3.1 of the DOH-CSC Joint Memorandum Circular 2010-01 requires transparency in all interactions with the tobacco industry and the Annex of the policy outlines the procedure to be observed when meeting with the tobacco industry is strictly necessary. The procedure includes documenting the meeting and distributing information about the meeting.

Section 5.2 of the same Memorandum Circular requires government agencies to provide information about any interaction they had with the tobacco industry to the CSC. To ensure transparency and accountability, the government agency shall ensure that copies of these documents will be accessible to the public. The CSC has not received any reports or disclosures of any meetings or interactions between the tobacco industry and government as required in the JMC.

There has been anecdotal information from tobacco control advocates about tobacco industry meetings in different government agencies

and news reports and CSR activities also show interactions of the tobacco industry with different government agencies. However, we do not have any publicly available reports that can confirm these meetings.

There are rules for tobacco companies to register tobacco industry entities (such as registration under the Securities and Exchange Commission, Bureau of Internal Revenue, etc). However, the current law does not require the disclosure of lobbyists of tobacco industry entities.



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

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

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## 6. CONFLICT OF INTEREST

Except for specific industries, there is no prohibition anymore on domestic corporations to give donations in aid of any political party or candidate or for purposes of partisan political activity. (Sec. 35i, RA 11232).

Moreover, individuals, including representatives of the tobacco industry are allowed, to contribute to political parties, candidates or campaigns.

As regards retired senior  
Except for specific industries, there is no prohibition anymore on domestic corporations to give donations in aid of any political party or candidate or for purposes of partisan political activity. (Sec. 35i, RA 11232).

Moreover, individuals, including officials forming part of the tobacco industry, former Solicitor General Estrelito Mendoza is counsel of Lucio Tan, the Chairman of PMFTC. He is also a new Director in the Philippine National Bank (PNB), a corporation that is part of the LT Group, Inc.<sup>34</sup>

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<sup>34</sup> PNB PH Company profile, available at <https://www.wsj.com/market-data/quotes/>

Former Undersecretary of Finance, Florencia Tarriela served as PNB Chairperson. She is currently an Independent Director of the LT Group, Inc.<sup>35</sup>

The following retired government officials form part of the Board of Trustees of Tan Yan Kee Foundation Inc., the CSR arm of LT Group, Inc.<sup>36</sup>:

- Former Chief Justice Artemio Panganiban
- Former Prime Minister Cesar E.A. Virata
- Former Governor of Bangko Sentral ng Pilipinas Amando Tetangco

Salvador Mison, the President of Fortune Tobacco Corporation, is a former Bureau of Customs Commissioner.<sup>37</sup> LTG conducts its tobacco business through its 99.6-percent ownership in Fortune Tobacco Corporation, which in turn owns 49.6 percent of PMFTC.<sup>38</sup>

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[PH/XPHS/PNB/company-people/executive-profile/137035](https://www.wsj.com/market-data/quotes/PH/XPHS/PNB/company-people/executive-profile/137035)

<sup>35</sup> LT Group Inc., available at <https://www.wsj.com/market-data/quotes/PH/XPHS/LTG/company-people>

<sup>36</sup> Tan Yan Kee Foundation, Inc. <http://www.tanyankee.org/about-us.html>

<sup>37</sup> PMFTC, General Information Sheet.

<sup>38</sup> As found in the organizational chart of the LT Group: <https://ltg.com.ph/organizational->

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## 7. PREVENTIVE MEASURES

There are preventive measures in place to implement Article 5.3 of the FCTC. The DOH and the CSC issued the CSC-DOH Joint Memorandum Circular (JMC) in 2010, which applies to all officials and employees of the government. The JMC prohibits interaction with the tobacco industry unless strictly necessary for its effective regulation.

Where there is a necessary interaction with the tobacco industry, the JMC requires transparency in all interactions through submission of reports or minutes of meetings that should be publicly accessible.

Article 3.1 and the Annex of the JMC provides that any necessary interactions between public officials and employees and the tobacco industry should be documented in a specific manner and required to be in an official transcript of records, which should be filed and be made available to the public upon request.

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chart/ PMFTC sets merger with Philip Morris PH, available at [business.inquirer.net/316425/pmftc-sets-merger-with-philip-morris-ph/amp](http://business.inquirer.net/316425/pmftc-sets-merger-with-philip-morris-ph/amp)

In addition, article 5.2 of the JMC requires agencies to give information on interactions with the tobacco industry, any preferential treatment given, and any offer of donation to the public official or employee by the tobacco industry, and to make copies of these documents accessible to the public.

Further, article 6.1 of the JMC requires agencies to include its compliance with the JMC in its Annual Report.

The Civil Service Commission, as the central personnel agency of the government, and the Department of Health issued the JMC, which sets forth measures to guide government officials and employees. The JMC prohibits the following:

1. Unnecessary interaction with the tobacco industry
2. Preferential treatment to the tobacco industry
3. Accepting gifts, donations, and sponsorship
4. Financial interest in the tobacco industry

5. Accepting other analogous favors
6. Conflict of interest with the tobacco industry

It also requires heads of agencies to inform officials and employees of the policy against tobacco industry interference and to amend their respective Codes of Conduct by incorporating the rules provided in Annex A of the JMC.

The circular specifies that any violation covered under the JMC is a ground for administrative disciplinary action.

The JMC prohibits public officials and employees from soliciting, or accepting any gift, gratuity, favor, entertainment, loan, or anything of monetary value from the tobacco industry. Acceptance of policy drafts is also covered under the prohibition for unnecessary interaction with the tobacco industry and the avoidance of the creation of real or perception of partnership with the tobacco industry.

The DOH issued Administrative Order (AO) 2021-0022 “Guidelines on the Facilitation and Management of Donations to the Health Sector During the

COVID-19 Pandemic,”<sup>39</sup> outlining the rules for the department, officials and employees in their treatment of donations from the tobacco industry. The AO reiterates that donations from the tobacco industry is not allowed per the JMC in Annex G.

The Implementing Rules and Regulations (IRR) of the Food and Drug Law (Rep. Act 9711) contains a provision that empowers the agency to require information from the tobacco industry. However, the law has not been fully implemented because it has been derailed by lawsuits by the tobacco industry, which argued that the FDA does not have any jurisdiction over tobacco products.

As a result, the FDA has not been able to utilize this provision and obtain information from the tobacco industry. The law is also limited and only covers a certain scope of information from the tobacco industry.

Section 5 of the IRR authorizes the Product Research and Standards Development

<sup>39</sup> AO 2021-0022 may be accessed here: <https://doh.gov.ph/sites/default/files/health-update/DOH-NTFjao2021-0001.pdf>

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Division to conduct post-market surveillance programs, fact-finding activities or gathering and monitoring information on tobacco product risks and actions. There is no law that requires disclosure of marketing expenditures, and activities such as lobbying, philanthropy, political contributions.

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

However, the 5.3 Committee has not met regularly in the last few years. With limited budget, the conduct of activities related to Article 5.3 of the CSC in relation to the dissemination of the policy is also restricted.

This reality also mirrored in other government agencies. Thus, while there are policies in place, there seems to be no systematic program or plan to raise awareness about the JMC or Article 5.3, and no effective system to monitor and counteract tobacco industry interference.

It is noteworthy that some government agencies are continuing to conduct activities and publish policies that implement the JMC:

- In March 2020, the DOH released Department Memorandum No. 2020-0156 reiterating the CSC-DOH JMC and reminding that no donations or assistance from the tobacco industry must be made, and requiring that a Declaration of Interest (DOI) must be filled out and submitted by all donors as part of the administrative requirements in all donations and partnerships.
- The JMC was also reiterated in the Administrative Order on

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the Regulation on Vapor Products and Heated Tobacco Products (HTP) under the Food and Drug Administration (FDA) issued on December 1, 2020.

- Assistant Commissioner Ariel Ronquillo reminded the legislators that acceptance of donations from the tobacco industry is violative of the JMC in a Committee hearing in the House of Representatives.<sup>40</sup>
- On May 2020, DOH issued Department Memorandum No. 2020-0246 on the “Interim Guidelines in light of the COVID-19 Pandemic.” Guiding principles states that “Public health policies and endeavors shall be free from direct or indirect interference

from the tobacco industry, especially during the COVID-19 pandemic when partnerships and donations are pouring in from all sectors.”

- The Guidelines further reiterate the JMC, particularly provisions on unnecessary interactions with the tobacco industry, receiving donations, gifts from the industry, and endorsing so-called CSR activities sponsored or promoted by the tobacco industry.

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<sup>40</sup> Committee Hearing held on March 16, 2021 on House Resolution 1396 “A Resolution Directing the House Committee on Good Government and Public Accountability to Conduct an Inquiry, in Aid of Legislation, on the Questionable Receipt of Private Funding by the Food and Drug Administration (FDA) and Other Government Agencies and Institutions in Exchange for the Issuance of Specific and Pre-Defined Policies Directed Against a Legitimate Industry under the Philippine Laws and in Complete Disregard of the Rights and Welfare of Consumers”

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# Recommendations

**Even in the midst of a pandemic, it is clear that the tobacco industry is pushing forward with its business plan. In 2020, PMFTC launched IQOS in Manila, and the tobacco industry lobbied strongly for a bill that is favorable to ENDS/ ENNDS and heated tobacco products to reverse strong provisions enacted in RA 11467.**

The tobacco industry easily adapted, and exploited opportunities provided by the current public health crisis. They used the pandemic to rehabilitate their image through their so-called corporate social responsibilities and intensified their efforts to boost themselves as partners of the government.

At the same time, they continued to interfere in tobacco control. The tobacco control advocacy needs to adjust as quickly and to strengthen its efforts to expose the industry and to prevent it from thwarting gains in tobacco control.

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## **There is a need to protect the JMC and strengthen its implementation.**

There seems to be a concerted effort to reverse or weaken the CSC-DOH JMC on Protection of the Bureaucracy Against Tobacco Industry Interference. This was apparent in the hearings conducted in Congress.

The Philippines is recognized by countries around the world as one of the pioneers in the implementation of Article 5.3

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Guidelines, with the JMC as a best practice. It would be unfortunate if the tobacco industry succeeds in reversing or weakening this policy. Moreover, the JMC is considered as the basis for 5.3 policies by different government agencies, which aim to ward off tobacco industry interference. Abrogating the JMC will have a negative effect that will cascade to the policies of different government agencies.

Thus, it is significant that tobacco control advocates

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remain vigilant for any attack against the JMC and to ensure that it is protected from tobacco industry interference.

**There is a need to align the policies with Article 5.3 of the FCTC.**

There are policy areas where the Philippines remains non-compliant with the recommendations of the Article 5.3 Guidelines. There is a need to review the laws and policies to look into these areas and plan which can be addressed feasibly.

As a blatant example, the tobacco industry is viewed as a stakeholder and invited to attend legislative hearings and meetings of the government to give its inputs on proposed policies. It is clear from Article 5.3 that the tobacco industry should be excluded from contributing to public health laws.

There are no laws that prohibit campaign donations from the tobacco industry as recommended by the 5.3 Guidelines. There is also no law that requires crucial information from the industry, such as their expenditures on marketing, lobbying, and philanthropy.

**There is a need to review communication strategies on raising awareness on tobacco industry interference.**

Over the years, we have observed that the tobacco industry has identified certain partners in civil society, and government agencies and officials. Tobacco control advocates have a role to engage with these agencies, groups, or government officials to brief or remind them about Article 5.3 and/ or the JMC.

In any case, it will be good to bring their attention that civil society is monitoring these partnerships and to remind them that there is a reputational risk in dealing with the tobacco industry.

This effort has worked in the past, engaging with and briefing government agencies and foundations that have been receiving donations from the industry, resulted in those agencies or groups later rejecting partnerships with tobacco companies.

In addition, there needs to be a more systematic manner in raising awareness about tobacco industry interference. Regular

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reminders by the CSC in the media for public awareness, and sharing engaging materials through social media are just a few examples.

At this time, where there are competing health priorities, coupled with strong tobacco industry interference, it becomes crucial that the public continues to be informed and supportive of tobacco control.



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