



F C T C

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

S E C R E T A R I A T

Good country practices in the implementation of WHO FCTC Article 5.3 and its guidelines

**Report commissioned by the Convention Secretariat
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Introduction

In 2008, the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) adopted Guidelines¹ to assist Parties in their implementation of Article 5.3. Since then many Parties have made progress and established measures to protect their policies from interference by the tobacco industry. However, many Parties continue to report that tobacco industry interference persists and is the single biggest challenge to tobacco control efforts.

In 2016, the Convention Secretariat's report to the Conference of the Parties at its seventh session (COP7), Implementation of Article 5.3 of the WHO FCTC, noted that the tobacco industry remained the greatest barrier to implementation of the convention for a number of Parties.² The tobacco industry continues to prevent, weaken and delay effective implementation of the convention and also to engage in and interfere with international organizations. The report acknowledged the need for additional measures to counter such efforts.

Subsequently, COP7 requested the Convention Secretariat to facilitate sharing of best practices among Parties to implement Article 5.3.³ This document was prepared in response to that decision.

Information for this report was obtained from the Party reports submitted to the WHO FCTC database, particularly from Parties' answers to additional questions on Article 5.3 implementation. Additional information was obtained through searches on Parties' websites, the International Legal Consortium of the Campaign for Tobacco-Free Kids website, and direct communication with officials from Parties' departments/ministries of health via the Convention Secretariat.

This report provides a selection of advanced practices in implementing Article 5.3. It draws from a variety of Parties' experiences, including those recommended in the guidelines. While some Parties have taken a whole-of-government approach, which is the ideal, others have adopted measures to protect the ministry/department of health from interference by the tobacco industry as a first step. Others have introduced policies on certain measures recommended in the guidelines, such as transparency. This report also provides examples of the denormalization of the tobacco industry, such as the banning of tobacco-related corporate social responsibility (CSR) activities and divestments from the tobacco business.

I. Legislative requirements covering Article 5.3 of the Convention

In the following examples, Article 5.3 has been included as a component in the Party's tobacco control legislation.

1. Uganda: Comprehensive law on tobacco control with Article 5.3 provisions survives legal challenge

Among the stated purposes of Uganda's Tobacco Control Act (2015) is to "insulate tobacco control policies, laws and programmes from interference by the tobacco industry".⁴ The Tobacco Control Act makes it the duty of the government to protect tobacco control policies from tobacco industry interference and to ensure transparency of any interactions with it.

Part VIII of the Act closely follows the terms stated in Article 5.3 Guidelines regarding the protection of tobacco control policies from commercial and other vested interests of the tobacco industry. These include:

- duty of Government
- government interaction with the tobacco industry
- prohibition on partnerships and endorsements of the tobacco industry
- prohibition on voluntary contributions from the tobacco industry
- prohibition on incentives or privileges for tobacco businesses
- penalty for contravention of proposed measures

- prevention and management of conflicts of interest.

Article 5.3 Guideline Principles	Uganda Tobacco Control Act 2015
Principle 1: <i>Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.</i>	The Tobacco Control Act aims to “control the demand and supply of tobacco and its products to the population ... to promote the health of persons and reduce tobacco related illnesses and deaths”. Part VIII of the Act addresses tobacco industry interference.
Principle 2: <i>Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</i>	Duty of Government “Ensure that there is transparency in the interactions of Government with the tobacco industry.”
Principle 3: <i>Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.</i>	Prohibition on partnerships and endorsements of the tobacco industry Prohibition on “non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement or tobacco industry code of conduct in the place of legally enforceable tobacco control measures”. “Prohibition on voluntary contributions from the tobacco industry.”
Principle 4: <i>Avoid conflicts of interest for government officials and employees.</i>	Prevention and management of conflicts of interest “A person shall not be assigned a position to contribute to or where the person is likely to contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control activities if that person has engaged in any occupational activity with the tobacco industry within less than two years of the proposed assignment.” “Contravention of this measure is punishable by a fine, imprisonment for a term not less than 5 years and compensation to the government as the situation may deem.”
Principle 5: <i>Require that information provided by the tobacco industry be transparent and accurate.</i>	Contents of reports by the tobacco industry to the Committee are to include the following. <ul style="list-style-type: none"> • “The quantity of tobacco or tobacco product manufactured, imported or distributed by the manufacturer, importer or supplier, the quantity which is sold, and the revenues from the sales. • “The corporate taxes owed and paid. • “The contents and emissions of the tobacco product. • “The tobacco product revenues and profits. • “All activities attempted or undertaken to influence the formulation or implementation of any policy or legislation, directly or indirectly, related to tobacco control or public health. • “The identification of lobbyists and lobbying firms and all other persons, including employees used for the purpose of taking or attempting action to influence the formulation or implementation of any policy or legislation.”
Principle 6: <i>Denormalize and</i>	All forms of tobacco-related socially responsible activities are

<i>regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.</i>	prohibited.
<i>Principle 7: Do not give preferential treatment to the tobacco industry.</i>	“Prohibition of incentives or privileges to tobacco businesses.”

In November 2016, British American Tobacco (BAT) Uganda challenged the Tobacco Control Act through a petition filed in Uganda’s Constitutional Court. They claimed that over 20 clauses in the Act were unconstitutional, including the provisions relevant to Article 5.3, i.e. the prohibition on the government’s employment of individuals who have been involved in any occupational activity with the tobacco industry and the prohibition on the grant of incentives or privileges to the tobacco industry. In May 2017, BAT Uganda filed an application in court for a temporary injunction on the implementation of tobacco control activities. The Government of Uganda submitted that the spirit behind the provisions in the act is to protect both current and future generations from the devastating health, economic and environmental effects of tobacco as guided by the WHO FCTC, to which Uganda is party.⁵ The Constitutional Court dismissed BAT’s application on the basis that it had no justifiable grounds for an injunction. The ruling was made on 18 May 2017, a day before the Tobacco Control Act became fully operational. The Constitutional Court reserved the reasons for its ruling for the judgment in the main petition, which is still pending as of the publication of this report.

The Act established a national Tobacco Control Committee. Key officials from the Ministry of Health and the Center for Health, Human Rights and Development (representing civil society) met the senior management and technical team of the Office of the Prime Minister to agree next steps.⁶ The team also sought meetings with relevant ministries on the tobacco control committee to offer a briefing on tobacco industry tactics and the need to insulate tobacco control laws from commercial and vested industry interests.



Center for Health, Human Rights, Development (CEHURD) and other civil society groups met the Ministry of Agriculture, Animal Industry and Fisheries senior management and the technical team to discuss effective implementation of the Tobacco Control Law.⁷



19 April 2017: The Center for Health, Human Rights and Development met the Office of The Prime Minister and discussed next steps for the implementation of the Tobacco Control Act (2015).⁸

2. Gabon: Importance of implementing a mechanism to facilitate legislation on Article 5.3

Gabon’s comprehensive tobacco control legislation, adopted in 2013,⁹ provides measures to protect tobacco oversight policies from commercial and other interests of the tobacco industry. It begins with an important overarching principle of protection for tobacco control policies:

“The implementing decrees of the law, although elaborated in 2014, were not promulgated till 2016. We are convinced that it is the tobacco industry that caused this delay. While the decrees had already been drawn up and were forwarded to the Council of State for verification of conformity, the tobacco industry would propose organizing a workshop to draw up other implementing decrees instead of those already in circulation.”

— *Dr Frédéric Mbungu Mabiala, Director of the National Programme of Mental Health and Control Against Tobacco, Alcoholism and Drugs, Ministry of Health, Gabon.*

“The State shall ensure that the activities or attempts of the tobacco industry do not discredit, impair and compromise the national and international public policy relating to tobacco control. It shall also ensure that any action to enable the commercial interests or other special interests of the tobacco industry does not interfere with the development and implementation of the tobacco policy.” (Chapter 7, Article 32).⁹

The law and its implementing decree require that interactions between the government and the tobacco industry must be transparent and justified. They ban tobacco industry participation in tobacco control-related meetings and activities, define and prohibit tobacco industry-related conflicts of interest for public servants, and require the tobacco industry to provide information periodically on their activities and products.¹⁰

The industry is responsible for damages and other losses resulting from the effects of tobacco use, which are to be compensated in accordance with the provisions of the law. “The activities of the tobacco industry must not undermine or call into question actions for tobacco control. The tobacco industry cannot conduct the following activities:

- carry out philanthropy or patronage actions
- use lobbying firms or pressure groups
- carry out disinformation campaigns
- fund research
- use opinion leaders or other industries
- create and use front organizations.”¹⁰

Failure to comply with the provisions concerning interference by the tobacco industry and its representatives is punishable by a fine of FCFA 5 million to FCFA 50 million (€7625 to €76 250), and/or imprisonment from three months to two years if the interference is accompanied by corruption. The same penalty is applicable to any official or representative of the State who participates, authorizes or tolerates any illicit activity on the part of the tobacco industry.

Although Gabon developed five WHO FCTC-compliant implementing decrees in 2014, tobacco industry interference delayed their enforcement until April 2016.

Gabon faces challenges, including difficulty in collecting information on the activities of tobacco companies. According to a Ministry of Health official, when information is requested from the tobacco industry: “They often refer you to the Gabonese Tobacco Board, which is a platform for marketing tobacco products in Gabon. It is therefore difficult to have all the accurate information about their affairs.”¹¹

Civil society has called for a tobacco factory located in the heart of the capital city to be relocated in accordance with the provisions of the law. In recent months, this factory has halted production. Currently, tobacco sold in Gabon is imported. The Gabonese state was a major shareholder in this factory. It manufactured cigarettes in Libreville and its share of ownership has since been reduced to 10 percent.¹²

The Article 5.3 component of the Gabon’s Tobacco Control Law (Chapter 7) provides for the law to protect tobacco control policies, and to treat a tobacco state enterprise like any other company within

the tobacco industry. The tobacco industry proposed a pro-industry law in the legislature but it was rejected.

3. Republic of Moldova: Ending Memoranda of Understanding, and contributions from the tobacco industry

The Tobacco Control Law¹³ adopted in 2015 aims to protect tobacco control policy from commercial and other vested interests of the tobacco industry, and to prevent and manage conflicts of interest for public servants. Chapter 4: Article 17.10-13 covers four aspects of Article 5.3.

- 1) Prohibition on partnership with and support from the tobacco industry. This includes non-binding agreements and memoranda of understanding (instead of legal tobacco control measures) and financial or other contributions from the tobacco industry.
- 2) Prohibition of voluntary contributions, financial or otherwise, from the tobacco industry or its representatives. This includes any contribution that aims to promote the tobacco industry or its corporate image.
- 3) Prevention and management of conflicts of interest. This includes prohibiting any person who is or has been involved in the management and/or promotion of enterprises in the tobacco industry in the last 24 months, from participating in the development and implementation of public policy on tobacco control.
- 4) Raising public awareness and public education. This requires the Ministry of Health to develop and distribute information on the “necessity to protect public policies on tobacco control from the commercial and other interests of the tobacco industry, and from strategies and practices used, openly or covertly, by the tobacco industry, to undermine and obstruct the development and implementation of public policy on tobacco control, including charitable contributions to public and private organizations”, in addition to the risks of cultivating and processing tobacco and the toxicity and addictiveness of tobacco and the health risks of tobacco use.

This law was agreed after much delay and interference from the tobacco industry by the U.S. Chamber of Commerce, which has a seat on the regulatory review panel. It actively lobbied against Moldova’s legislation, significantly delaying its enactment. The Chamber’s tactics included complaining to the President that the legislative measures were extreme.¹⁴ However, Article 5.3 supports the protection of health policy from vested commercial interests, and the law was passed.

II. Intersectoral circulars and guidelines

The following two examples show how circulars and guidelines can be applied across the civil service, as well as to government officials on the national committee responsible for WHO FCTC implementation.

1. Philippines: A Joint Memorandum Circular to protect the bureaucracy from tobacco industry interference

In 2010, the Philippine Civil Service Commission (CSC) and Department of Health (DOH) issued Joint Memorandum Circular (JMC) No. 2010-01¹⁵ to protect the bureaucracy from tobacco industry interference. This JMC provides a code of conduct for all government officials in relation to the tobacco industry. It is consistent with the Article 5.3 Guidelines. Broad policy definitions of the tobacco industry include all those that work for or on behalf of the industry, and those who work to further its interests.

Consistent with the Anti-Graft and Corrupt Practices Act of the Philippines¹⁶ and the WHO FCTC, this JMC requires all public officials to:

- reject any interaction with the tobacco industry unless strictly necessary for its regulation, supervision and control;
- make all “necessary” interactions public and transparent;
- reject any form of direct or indirect contribution from the tobacco industry; and
- disclose any interest in the tobacco industry.

The CSC has jurisdiction to hear complaints relating to violations of the JMC by public officers under its disciplinary authority, which are subject to administrative proceedings.

Following the issuance of the JMC, several government departments enacted their own codes of conduct to implement the circular in a manner relevant to their department’s work. The DOH developed monitoring forms to promote compliance with its 2010 internal policy, which is a more stringent version of the JMC that applies to all DOH agencies and personnel. The Department of Education (DepEd) adopted a policy to prohibit tobacco industry donations to, or sponsorships of, public schools and warned those reported to have received tobacco-related CSR indirectly.¹⁷ In 2016, the regulations concerning DepEd were further strengthened in order to include private educational institutions.¹⁸

Other government agencies that have issued their respective regulations compliant with the JMC include the Department of Social Welfare and Development (DSWD), the Department of Labour and Employment, the Department of Science and Technology, the Department of Foreign Affairs, the Bureau of Internal Revenue, and the Metro Manila Development Authority.

The JMC has helped create awareness about tobacco industry interference and the obligations of non-health departments in implementing the WHO FCTC. When a multinational tobacco company approached the Bureau of Customs (BOC) to be a “partner” in curbing the illicit tobacco trade, the BOC sought advice from the CSC and was informed that it would violate the JMC to pursue such a partnership.

The Department of Health set up an interagency committee on Article 5.3 to facilitate implementation of the JMC. It is composed of high-level officials and staff from various government agencies, such as the CSC, DOH, DepEd, DSWD, and the Office of the President, as well as civil society representatives.

The DOH and CSC, in partnership with civil society representatives, have conducted several workshops across the country to raise awareness about tobacco industry interference, Article 5.3, and the JMC. CSC personnel and lawyers serve as resources in these capacity-building activities among government agencies, including at the local government level. The CSC has also developed monitoring and reporting procedures to ensure that the policy is effectively implemented.

Denormalizing tobacco-related “corporate social responsibility” (CSR) activities is an important component of tobacco industry regulation. The Secretary of Health has sent warning letters to the recipients of tobacco company donations, highlighting possible violations of advertising laws and the obligation to protect public health from the vested interests of the tobacco industry. When the tobacco industry conducted activities with the National Tobacco Administration (NTA), the CSC informed the NTA that such activities are a form of unnecessary interaction that violates the JMC. While it is a big challenge to eliminate tobacco industry interference completely, the JMC is an effective tool to manage it.

2. Brazil: Ethical Guidelines for National Committee on WHO FCTC

In 2012, the Brazilian Minister of Health ordered that ethical guidelines¹⁹ be established for the members of the Intersectoral Committee for Implementation of WHO FCTC and its Protocols (CONICQ). It is composed of representatives from 18 ministries and federal-level agencies. CONICQ is responsible for implementing intersectoral policies to ensure that the country complies with the convention. The Minister of Health presides as the President of the Committee.

The purpose of the ethical guidelines is to prevent interference by the tobacco industry in public policy for tobacco control and ensure that the conduct of CONICQ members accords with the WHO FCTC Article 5.3 Guidelines. The ethical guidelines highlight the fact that public health interests are irreconcilable with the interests of the tobacco industry and state that CONICQ's activities must be transparent and accountable, in accordance with the Article 5.3 Guidelines. The guidelines facilitate the adoption of measures to ensure that the National Tobacco Control Policy is implemented in an atmosphere free of pressure, as well as to ensure the integrity and impartiality of the work carried out within CONICQ.

The guidelines include a clause on conflicts of interest. It states that to prevent a situation with a potential conflict of interest, the CONICQ member should withdraw from its activities for as long as the situation persists. The guidelines stipulate that when interaction between a government representative and the tobacco industry is necessary, it must be in the form of an official hearing. The government representative must be accompanied by another public servant. Furthermore, a record of the hearing must be prepared, including a list of persons present and the matters discussed.

In addition, CONICQ members are prohibited from accepting gifts, services, and research funding from the tobacco industry. The guidelines require members of CONICQ to avoid participation in seminars or similar events promoted or sponsored by the tobacco industry.



CONICQ conducts regular meetings with various government representatives such as the Ministry of Foreign Affairs, the Ministry of Finance, the National Health Surveillance Agency and others.

Members of CONICQ also formed part of the Brazilian delegation to the seventh session of the COP (COP7)

III. Regulations on Article 5.3

Some Parties have utilized Article 5.3 of the Convention to protect health ministries from interference by the tobacco industry as a first step, since tobacco control falls within the jurisdiction of this department. This has the potential to extend government-wide as a next step. Below are examples from Panama and Thailand.

1. Panama

Prior to Panama's ratification of the WHO FCTC in 2004, there were agreements with the tobacco industry that had to be revoked with the convention's entry into force. Panama has no voluntary agreements with the tobacco industry. Panama adopted and implemented a code of conduct for public officials setting the standards for any dealings with the tobacco industry.

In 2012, the National Commission for the Study of Smoking was granted new functions aimed at monitoring compliance for implementation of the WHO FCTC and its guidelines, including Article 5.3 (Resolution 745 of 2012)²⁰.

The Ministry of Health designated this commission to deal exclusively with the tobacco industry or representatives/groups representing them. The commission will interact with the tobacco industry

only when, and to the extent strictly necessary, to enable effective regulation of the industry and its products. All interactions between the commission and the industry shall be carried out in a transparent manner. The procedures are set out below.

- i. In no case shall a member of the commission meet the tobacco industry or with persons or groups representing them, or organizations affiliated with it.
- ii. Meetings should follow the written agenda, and no additional topics should be addressed.
- iii. The commission shall draw up the meeting's minutes. These shall be kept in the archives of the General Directorate of Public Health. If required, this material may be made public by the internal commission, DIGESA or at the request of organizations recognized as leaders in the implementation of the WHO FCTC, its protocols and/or guidelines.
- iv. No member of the Commission may have, or have had, in the three years prior to and after his/her designation, any relationship with the tobacco industry or with persons or groups representing it, or organizations affiliated with it.

3. Thailand

In 2013, the “Regulation of Department of Disease Control Regarding How to Contact Tobacco Entrepreneurs and Related Persons B.E. 2553 (2010)” was established²¹ to protect the Thai Department of Disease Control from tobacco industry interference. The Department of Disease Control is the lead department for tobacco control. The regulation applies specifically to the department and is a good first step towards implementing Article 5.3. The WHO FCTC recommends that governments create awareness on the harm of tobacco and it is therefore important to support the department to ensure it can exercise its functions without interference.

The regulation states that contact between an official and entrepreneur or related person may be made only if necessary and specifically only for action under the tobacco products control law, or any other WHO FCTC measures, in order to ensure the effective control of tobacco products. If contact is made, the following information shall be recorded: (1) date and time of contact; (2) name and title of the responsible official; (3) name, title and address of the entrepreneur or related person; and (4) record of the issues discussed. If an entrepreneur or related person requests a meeting, they shall submit an official letter of intent describing its purpose to the Director of the Office of Tobacco Control or the Director of the Office of Disease Prevention Control.

In the event that a meeting takes place, the regulation clearly specifies how it shall be conducted. The regulation requires the entrepreneur or related person to sign a letter before the meeting starts certifying that they will neither take photographs or record sound nor publicize its contents for commercial benefit. The official shall produce the summary of the meeting and is responsible for making its contents available to the public.

Government organizations are prohibited from accepting donations from the tobacco industry. The tobacco state enterprise, the Thai Tobacco Monopoly (TTM), is treated in the same way as other tobacco companies. All tobacco control policies apply to both private tobacco companies and the TTM. The TTM is not involved in tobacco control policy development. Initially only the TTM was prohibited from engaging in CSR activities, but from July 2017 there has been a complete ban on all tobacco-related CSR activities in Thailand.

Thailand's new tobacco control law, Tobacco Products Control Act B.E. 2560, went into effect in July 2017. To implement the law, a “National Tobacco Products Control Committee” will be established whose criteria exclude anyone who, “owns, is a related person or a stakeholder in a business involving tobacco products whether directly or indirectly”.²² This rule is an important development for Thailand in its efforts to implement Article 5.3 and also applies to the state-owned tobacco enterprise (Article 5.3 Guidelines, Principle No. 8).

In addition, the tobacco industry is required to provide information about tobacco production, import and marketing expenses as required in Recommendation 5.2 of the Article 5.3 Guidelines: “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.”²²

IV. Transparent interactions with the tobacco industry deemed necessary

World Health Assembly resolution WHA54.18 on transparency in tobacco control, citing the findings of the Committee of Experts on Tobacco Industry Documents, stated that “public confidence would be enhanced by transparency”. They called on WHO to “continue to inform Member States on activities of the tobacco industry that have negative impact on tobacco control efforts”.²³ Article 5.3 in Principles 2, 3 and 5 underlines the importance of accountability and transparency.

Recommendation 2.2: Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example, through public hearings, public notice of interactions, disclosure of records of such interactions to the public.

Recommendation 5.1: Parties should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent

Several Parties have established measures requiring transparency when dealing with the tobacco industry. The following are some examples.

1. European Union

The European Ombudsman reported the establishment of measures to limit interactions with the tobacco industry and to ensure the transparency of those interactions that do occur in line with Recommendation 2 of the Article 5.3 Guidelines. The European Ombudsman published the following on its website²⁴:

As a body that investigates complaints about maladministration in the institutions and bodies of the European Union, the European Ombudsman is particularly keen to ensure strict compliance with the overall ethical framework that applies to EU officials including, transparency, conflicts of interest, revolving doors and accountability.

In complying therefore with Article 5(3) of the Convention and its implementing Guidelines the Ombudsman has thus decided to proactively publish online:

(i) any planned meetings of herself, members of her Cabinet, and her staff with representatives of the tobacco industry (including lawyers, advisors, consultants and lobbyists acting on behalf of tobacco companies)

(ii) the list of participants of such meetings, and

(iii) the minutes drawn up after a meeting has taken place

In line with the Ombudsman's commitment to strengthen further transparency and maintain an open dialogue with stakeholders, the Ombudsman and her staff will only interact with organizations and self-employed individuals acting on behalf of the tobacco industry who already feature in the Transparency Register jointly set up by the Commission and the European Parliament.

Moreover before any meeting request can be agreed, the Ombudsman and her staff will remind representatives of the tobacco industry of the above rules.

2. Australia

The Australian Department of Health, in accordance with Article 5.3 Guidelines, informs the public of any meetings it holds with the tobacco industry by making an announcement on its website.²⁵ For example, its consultations in relation to plain packaging measures were notified on the website. The

records of such meetings start from 2009, after the WHO FCTC Article 5.3 Guidelines were adopted, and indicate which tobacco company met the department and the issue discussed.

The Australian Government also maintains a Register of Lobbyists and a Lobbying Code of Conduct (2008) to ensure that contact between lobbyists and government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.²⁶ Lobbyists from certain tobacco companies are registered.²⁷

Furthermore, it is a legal requirement in Australia that any donation to a registered political party valued at AUS\$ 10 000 or greater must be declared to the Australian Electoral Commission, and donor annual returns are posted online.²⁸ The register shows the tobacco industry made contributions towards elections between 1998 and 2011. The Australian Government currently does not accept donations from the tobacco industry. The New South Wales Electoral Commission banned donations from the tobacco industry in 2004.²⁹ The Australian Labour Party has banned such donations since 2004, while the Liberal Party banned them in 2013.

3. New Zealand

In implementing Article 5.3, the New Zealand Ministry of Health states it is, “required to observe complete transparency in its dealings with the tobacco industry”. Since 2011, the ministry has maintained a publicly available online register of meetings with the tobacco industry.³⁰ The ministry indicates the date of such meetings, who attended, and the topics discussed.

The New Zealand government does not have any partnerships with the tobacco industry. No incentives, privileges, benefits or preferential tax exemptions are granted to the tobacco industry. The Ministry of Health also makes available on its website annual tobacco returns filed by tobacco manufacturers and importers.³¹

V. Policy on curbing tobacco industry interference at diplomatic missions

Decision FCTC/COP6(14)³², adopted by the Parties at the sixth session of the COP (COP6) urged Parties “to raise awareness and adopt measures to implement Article 5.3 and its implementing Guidelines among all parts of government including diplomatic missions”.

The United Kingdom of Great Britain and Northern Ireland is the first Party to have specific guidelines on tobacco for its diplomatic missions. Guidelines for overseas posts³³ were revised to clarify that support given to the tobacco industry by diplomatic posts should be consistent with the WHO FCTC and Article 5.3, as well as the United Kingdom government’s commitment to protect public health policy from the commercial and other vested interests of the tobacco industry. Its definition of the tobacco industry is also based on the WHO FCTC. The guidelines for overseas posts state:

The Department of Health (DH) have decided to be more prescriptive in relation to the provision of support to the tobacco industry, to ensure any such support is consistent with the provisions of the WHO Framework Convention on Tobacco Control (FCTC). The Government takes very seriously its obligations as a Party to the (FCTC). This includes the treaty commitment at Article 5.3 to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

For the purposes of the guidelines, taking into account Article 1 of the FCTC, the WHO provides the following definition: ‘Tobacco industry’ means tobacco manufacturers, wholesale distributors, and importers of tobacco products. In addition, the term ‘tobacco industry’ includes tobacco growers, associations or other entities representing any of the above, as well as industry lobbyists.

The guidelines list activities that overseas posts cannot engage in, including:

- involvement in activities with the specific purpose of promoting the sale of tobacco or tobacco-related products;

- encouraging investment in the tobacco industry, or providing any assistance in helping tobacco companies influence non-discriminatory local business policies to their advantage (e.g.: taxation, plain/standardized packaging, etc.);
- attendance or otherwise supporting receptions or high-profile events, especially those where a tobacco company is the sole or main sponsor and/or which are overtly to promote tobacco products or the tobacco industry (such as the official opening of a United Kingdom tobacco factory overseas);
- endorsing, supporting, forming partnerships with, or participating in activities of the tobacco industry that could be described as “socially responsible” that relate, for example, to public education or that are aimed at improving public health;
- lobbying against any local administration’s policies that are aimed at improving public health.

Since the tobacco industry has utilized front groups, think tanks, and research institutions to do its bidding, the guidelines also require diplomatic posts to verify such institutions: “Posts should also endeavour to verify whether an organization, body, group or institution that makes any approach regarding tobacco control has any affiliation to or link with the tobacco industry. Posts may wish to make any disclosed links transparent.”

These Guidelines for overseas posts serve as a good example of implementation of the COP6 decision on Article 5.3 related to diplomatic missions.

VI. Denormalizing tobacco-related corporate social responsibility activities

The tobacco industry’s core activities to manufacture, promote and sell a harmful product are in conflict with the goals of public health policies with respect to tobacco control. Article 5.3 Guidelines recommend that Parties “denormalize and, to the extent possible, regulate activities described as ‘socially responsible’ by the tobacco industry, including but not limited to activities described as ‘corporate social responsibility’ (CSR)” (Recommendation 6).

Both WHO FCTC Article 5.3 and Article 13 Guidelines identify CSR activities by the tobacco industry as a form of sponsorship, conclude that the resultant publicity qualifies as advertising and promotion, and recommend they both be prohibited. The table below lists Parties that have legislated to impose bans on tobacco-related CSR activities.

Parties that have banned tobacco-related CSR activities, grouped by WHO region

WHO AFR	Chad, Ethiopia, Gabon, Guinea, Madagascar, Mauritius, Niger, Seychelles, Togo, Uganda
WHO AMR	Brazil, Panama, Uruguay
WHO EMR	Bahrain, Djibouti
WHO EUR	Georgia, Republic of Moldova, Norway, Russian Federation, Spain, Turkmenistan
WHO SEAR	Maldives, Nepal, Thailand
WHO WPR	Lao People’s Democratic Republic

Mauritius was among the first Parties to ban tobacco related CSR activities in 2008. The Public Health Act defines sponsorship to mean “any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use directly or indirectly”.³⁴ Tobacco companies usually conduct CSR activities to promote their corporate name. Therefore, the Mauritius ban says, “no person shall promote or cause to promote - a trade mark, manufacturer’s name, logo or brand name associated with a tobacco product” and cannot “offer any

scholarship or any form of sponsorship in relation to “a trade mark, manufacturer’s name, logo or brand name associated with a tobacco product.”

Nepal has a well-defined ban on tobacco-related CSR activities. It prohibits tobacco manufacturers and related parties from providing “any financial, technical, material, and structural assistance to educational seminary, theatre, religious discourse, preaching or health related organizations operated by government, non-government or private sectors”.³⁵ The law prohibits acceptance of financial, material and other assistance from the tobacco industry. The ban on CSR activities also prohibits public officials from accepting assistance and awards, as well as participating in national and international programmes like meetings, trips, training, seminars and conferences organized by invitation and with the assistance of tobacco companies.

Other Parties have instituted partial bans on tobacco-related CSR activities, such as banning publicity or restricting the tobacco industry to certain specified CSR activities. However, these restrictions have been found to be ineffective, as the tobacco industry can still exploit loopholes and continue to conduct CSR activities in order to access high-level officials and gain political influence.

An example of this policy gap was the Philippine DepEd’s Department Order No. 6/2012³⁶, restricting interaction by officials with the tobacco industry. The order includes a prohibition on the tobacco industry contributing funds to schools and school officials. However, this order was limited to public schools and the tobacco industry continued its CSR activities in private schools. In 2016 the DepEd closed this loophole by issuing Department Order No. 48 s. 2016 (Policy and Guidelines on Comprehensive Tobacco Control)³⁷. This prescribes rules on how parents, teachers, and school officials of private and public schools can facilitate the enforcement of the ban on sponsorships, including so-called CSR of the tobacco industry.

VII. Divestment from the tobacco business

Recommendation 7.2 of the Article 5.3 Guidelines calls upon Parties that do not have a State-owned tobacco industry not to invest in this industry and related ventures. Several Parties have started to divest their sovereign wealth funds and pension funds from the tobacco business.

1. New Zealand

The New Zealand Superannuation Fund (NZ\$ 34.5 billion) has a policy to exclude tobacco manufacturers. This is in order to maintain consistency with the Fund's mandate to adopt best practice portfolio management, maximize returns without undue risk and avoid prejudice to New Zealand's reputation as a responsible member of the world community.

According to Adrian Orr, the Chief Executive Officer:

In assessing the issue of tobacco manufacture, the Board concluded that the Fund's investment in this sector was inconsistent with our responsible investment standards. This decision was based on product safety issues and New Zealand's commitment to specific international conventions.³⁸

By 2010, all of the Crown's financial institutions had discontinued their investments in tobacco.³⁹

2. Australia

Australia's state superannuation fund, First State Super (AUS\$ \$81 billion), was among the first state pension funds to divest from tobacco in 2012. Although a key consideration of the Board was the impact that divestment could have on earnings, an analysis found that this would be negligible.⁴⁰

According to Michael Dwyer, the Chief Executive Officer of First State Super:

Our decision to divest from tobacco manufacturers reflects both the strong views expressed by our members, our employers and our support for Government initiatives to minimise tobacco consumption. We are comfortable that the decision does not compromise our ability to deliver good returns outcomes to members. We made the right decision for members of First State Super and I'm proud of that.³⁹

The director of the Future Fund, Australia's Sovereign Wealth Fund, announced in 2013 that its board had decided to drop its AUS\$ 222 million-stake in the tobacco industry, given tobacco's health consequences and addictiveness. The investments were divided among BAT, PMI, and JTI.⁴¹ Similarly, the governments of the Australian Capital Territory, New South Wales and South Australia have begun divesting their public investments in the tobacco industry.⁴²

3. Norway

Ethical standards prevent the Government Pension Fund Global from investing in tobacco companies.⁴³

4. France

In December 2016, the French Pension fund, *Fonds de reserve pour les retraites* (FRR), announced that it will no longer invest in tobacco and coal, and that by the end of 2017 this decision would apply to nearly all its existing investments. The FRR decision on tobacco was based on the understanding that engaging with companies would not lead to progress "because the whole purpose of engagement would be to demand that they should stop their activities altogether".⁴⁴ Any remaining tobacco investments will be removed in 2018.

VIII. Treating a State-owned tobacco industry in the same way as any other tobacco industry:
Thailand case study

Article 5.3 guidelines apply to all tobacco companies, regardless of the ownership (Recommendation 8 of the guidelines). The Thai Tobacco Monopoly (TTM) is a state-owned enterprise, yet the Thai government does not distinguish it from any other tobacco company.

Thailand: Implementation of Recommendation 8

<p>Recommendation 8.1: Parties should ensure that the State-owned tobacco enterprises are treated in the same way as any other member of the tobacco industry in respect of setting and implementing tobacco control policy.</p>	<p>Tobacco control laws apply to all tobacco companies operating in Thailand, including TTM. For example.</p> <ul style="list-style-type: none"> • Any public consultation on tobacco control which involves the tobacco industry, applies equally to the TTM and other tobacco companies. • No exceptions or privileges are given to the TTM. For example: <ul style="list-style-type: none"> - no extra phase-in implementation time for tobacco control measures; - ban on tobacco-related CSR activities since 2017. • No special benefits are given to the TTM. For example, tax on tobacco products applies equally to all tobacco companies, including the TTM.
<p>Recommendation 8.2: Parties should ensure that the setting and implementation of tobacco control policy is free from oversight or involvement by the tobacco industry.</p>	<p>The National Tobacco Products Control Committee’s criteria exclude anyone who “owns, is a related person or a stakeholder in a business involving tobacco products whether directly or indirectly”.⁴⁵ This criterion applies to TTM as well as to other tobacco companies.</p>
<p>Recommendation 8.3: Parties should ensure that representatives of State-owned tobacco industry do not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the COP.</p>	<p>TTM executives/staff/representatives are not members of the Thai delegation to the COP or any WHO FCTC-related meeting, nor do they belong to any subsidiary body of the COP.</p>

The Ministry of Health faces challenges from the tobacco industry when developing and implementing tobacco control measures. However, it refers to the requirements under WHO FCTC Article 5.3 (an international obligation) when dealing with the tobacco industry. Thailand is noted for its achievements in stringent tobacco control policy over the years. It presents a good example of a Party that has successfully managed to implement Article 5.3 Recommendation 8 while having a state-owned tobacco enterprise.

Conclusions

This report provides a range of examples of Article 5.3 measures WHO FCTC Parties have implemented to protect health policy from vested commercial interests. It is best when these protective measures are applied government-wide as some countries have done, either through national legislation or a circular. This government-wide approach stops the industry from utilizing non-health departments to represent its interests to undermine or weaken tobacco control. A few Parties have put in place measures to protect their Department/Ministry of Health as a first step.

It is important to establish transparency procedures when conducting all meetings with the tobacco industry. Several jurisdictions make information from these interactions public via their websites. This puts an end to the industry's misuse, misrepresentation or exploitation of such meetings for its advantage. Many jurisdictions have banned tobacco-related CSR activities, as recommended in Article 5.3, which aims to denormalize the tobacco industry. This measure severs the industry's access to high-ranking officials and the use of these activities to promote tobacco business.

The tobacco industry will not stop interfering in governmental decision-making. Implementation of Article 5.3 is crucial to achieve effective tobacco control measures.

Useful links and references:

Resources on Article 5.3: <http://apps.who.int/fctc/implementation/database/article/article-5/resources>.

¹ Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva.

http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf?ua=1

² Implementation of Article 5.3 of the WHO FCTC: Report by the Convention Secretariat (FCTC/COP/7/7). 27 Jul 2016, available at:

http://www.who.int/fctc/cop/cop7/FCTC_COP_7_7_EN.pdf?ua=1

³ Conference of the Parties to the WHO Framework Convention on Tobacco Control. Decision FCTC/COP7(8) in the Report of the seventh session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, 7-12 Nov 2016, New Delhi, India.

http://www.who.int/fctc/cop/cop7/FINAL_COP7_REPORT_EN.pdf?ua=1

⁴ Uganda, Act 22, The Tobacco Control Act 2015, 18 Nov 2015

<http://tobaccocontrollaws.org/files/live/Uganda/Uganda%20-%20TCA%20-%20national.pdf>

⁵ Center for Tobacco Control in Africa. BAT Uganda sues Uganda Government over the Tobacco Control Act 2015. Kampala. 10 May 2017. <http://ctc-africa.org/index.php/news/373-bat-uganda-sues-uganda-government-over-the-tobacco-control-act-2015>

⁶ Ministry of Health Uganda. Facebook. <https://www.facebook.com/Ministry-of-Health-Uganda-767949523254855/?fref=mentions>

⁷ Center for Health, Human Rights and Development. Facebook.

<https://www.facebook.com/cehurdug/photos/pcb.1833472300300531/1833471126967315/?type=3&theater>

⁸ Center for Health, Human Rights and Development. Facebook

<https://www.facebook.com/cehurdug/?fref=mentions>

⁹ Gabon. Law No. 006/2013 of August 21, 2013

<http://tobaccocontrollaws.org/files/live/Gabon/Gabon%20-%202013%20TC%20Law.pdf>

¹⁰ Gabon. *Decree No. 0284 / PR / MSPSSN*

<http://www.tobaccocontrollaws.org/files/live/Gabon/Gabon%20-%20Health%20Policy%20Decree.pdf>

¹¹ Email communication with Mabiála F., Directeur du Programme National de Santé Mentale et de Lutte contre le Tabac, Ministère de la Santé, Gabon. 13 Aug 2017

¹² ATCA. Tobacco industry interference in Gabon. <http://atca-africa.org/en/gabon>

¹³ LP 124: Legea privind controlul tutunului

<http://tobaccocontrollaws.org/files/live/Moldova/Moldova%20-%202015%20TC%20Amdts..pdf>

¹⁴ Danny Hakim. US Chamber of Commerce works closely to fight antismoking measures. The New York Times 30 Jun 2015. <https://www.nytimes.com/2015/07/01/business/international/us-chamber-works-globally-to-fight-antismoking-measures.html?smid=pl-share>

¹⁵ Civil Service Commission-Department of Health Joint Memorandum Circular No. 2010 -01. Protection of the Bureaucracy against tobacco industry interference. Republic of the Philippines 2010. <http://csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/164-csc-doh-joint-memorandum-circular-no-2010-01-protection-of-the-bureaucracy-against-tobacco-industry-interference.html>

¹⁶ Republic Act 3019: Anti-Graft and Corrupt Practices Act Republic of the Philippines, 1960

¹⁷ Republic of the Philippines. Department of Education Order No. 41, s. 2012. 24 May 2012

<http://www.officialgazette.gov.ph/2012/05/24/department-of-education-order-no-41-s-2012/>

¹⁸ Republic of the Philippines. Department of Education DO 48, s. 2016 - Policy and Guidelines on Comprehensive Tobacco Control. 28 June 2016 <http://www.deped.gov.ph/orders/do-48-s-2016>

¹⁹ Ministério da Saúde Gabinete do Ministro. Portaria N° 713, De 17 De Abril De 2012

http://bvsm.sau.gov.br/bvs/sau/legis/gm/2012/prt0713_17_04_2012.html

²⁰ Panama. Ministry of Health Resolution No. 745 on the National Commission for the Study of Tobacco. 2012 <http://tobaccocontrollaws.org/legislation/country/panama/laws>

²¹ Regulation of Department of Disease Control Regarding How to Contact Tobacco Entrepreneurs and Related Persons B.E. 2553. 2010. Published in the Government Gazette on 3 April 2012, in force

3 April 2013

http://apps.who.int/fctc/implementation/database/sites/implementation/files/documents/reports/thailand_annex5_in_relation_to_article_5_3.pdf

²² Thailand: The Government Gazette. Tobacco Products Control Act. B.E. 2560 (2017) 2 April 2017
[https://seatca.org/dmdocuments/Unofficial%20Translation%20Thailand%20Tobacco%20Product%20Control%20Act%20B.E.%202560%20\(2017\).pdf](https://seatca.org/dmdocuments/Unofficial%20Translation%20Thailand%20Tobacco%20Product%20Control%20Act%20B.E.%202560%20(2017).pdf)

²³ World Health Organization. Second Report of Committee B. Fifty-fourth World Health Assembly. 21 May 2001. A54/52 Agenda Item 13.5; page 13
http://www.who.int/tobacco/framework/wha_eb/ea5452%5b1%5d.pdf?ua=1

²⁴ European Ombudsman's implementation of Article 5(3) of the WHO Framework Convention on Tobacco control and the Guidelines adopted by the Parties to the Convention for the implementation of Article 5.3.

www.ombudsman.europa.eu/en/resources/ethics_and_conduct/declaration.faces/en/63286/html.bookmark

²⁵ Australian Government Department of Health and Ageing. Website:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-conv-public>

²⁶ Australian Government Register of Lobbyist and Lobbying Code of Conduct

<http://lobbyists.pmc.gov.au/>

²⁷ Australian Government Register of Lobbyists, Who is on the Register,

http://lobbyists.pmc.gov.au/who_register.cfm.

²⁸ The Australian Election Commission: Contribution Register.

<http://periodicdisclosures.aec.gov.au/Default.aspx>

²⁹ Electoral Commission NSW. Prohibited donors in NSW.

https://www.elections.nsw.gov.au/_data/assets/pdf_file/0006/129750/FD_00-1833_Fact_Sheet_Prohibited_Donors_V1F-AC.pdf

³⁰ Ministry of Health New Zealand. Public record of meetings with tobacco industry representatives.

<http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/who-framework-convention-tobacco-control/meetings-tobacco-industry-representatives>

³¹ New Zealand Ministry of Health. Tobacco Returns <http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/tobacco-returns>

³² Sixth Session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control. FCTC/COP6(14): Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. 18 Oct 2014

[http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6\(14\)-en.pdf](http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6(14)-en.pdf)

³³ UK Tobacco industry: Guidance for UK overseas posts. 6 March 2014

<https://www.gov.uk/government/publications/tobacco-industry-guidance-for-uk-overseas-posts>

³⁴ Government Notice No. 263 of 2008: The Public Health Act.

http://www.who.int/fctc/reporting/Annex2_Public_Health_Regulations_2008.pdf

³⁵ Government of Nepal. Tobacco Product Control and Regulatory Directive 2014

<http://tobaccocontrollaws.org/files/live/Nepal/Nepal%20-%20TP%20Regs%202014.pdf>

³⁶ Republic of the Philippines. Department of Education Order No. 41, s. 2012. 24 May 2012

<http://www.officialgazette.gov.ph/2012/05/24/department-of-education-order-no-41-s-2012/>

³⁷ Republic of the Philippines. Department of Education DO 48, s. 2016 - Policy and Guidelines on Comprehensive Tobacco Control. 28 June 2016 <http://www.deped.gov.ph/orders/do-48-s-2016>

³⁸ Tobacco Free Portfolio. Case study. The Toolkit. 3rd Edition

³⁹ Hansard (debates), Ethical Investment (Crown Financial Institutions) Bill, First Reading, August 4, 2010, http://www.parliament.nz/en-nz/pb/debates/debates/49HansD_20100804_00000932/ethical-investment-crown-financial-institutions-bill.

⁴⁰ Tobacco Free Portfolio. Case study. The Toolkit. 3rd Edition

⁴¹ Future Fund quits tobacco investment, Sydney Morning Herald, February 28, 2013,

www.smh.com.au/federal-politics/political-news/future-fund-quits-tobacco-investment-20130228-2f7yb.html.

⁴² Reporting Instrument of the WHO Framework Convention on Tobacco Control (2014), Australia, http://apps.who.int/fctc/implementation/database/sites/implementation/files/documents/reports/australia_2014_report_final.pdf.

⁴³ Guidelines for observation and exclusion from the Government Pension Fund Global, adopted December 18, 2014, <https://www.regjeringen.no/en/topics/the-economy/the-government-pension-fund/responsible-investments/guidelines-for-observation-and-exclusion/id594254/>

⁴⁴ IPE. 'French pension reserve fund turns its back on tobacco, coal'. Susanah Rust. 16 Dec 2016 <https://www.ipe.com/news/esg/french-pension-reserve-fund-turns-its-back-on-tobacco-coal/10016717.fullarticle>

⁴⁵ Thailand: The Government Gazette. Tobacco Products Control Act. B.E. 2560 (2017) 2 April 2017 [https://seatca.org/dmdocuments/Unofficial%20Translation_Thailand_Tobacco%20Product%20Control%20Act%20B.E.%202560%20\(2017\).pdf](https://seatca.org/dmdocuments/Unofficial%20Translation_Thailand_Tobacco%20Product%20Control%20Act%20B.E.%202560%20(2017).pdf)