Handbook on Implementation of WHO FCTC Article 5.3

Policies and Practices that Protect Against Tobacco Industry Interference

Second Edition

September 2018
argued that this is unreasonable.

4. “A person, body or entity that contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control” shall not provide preferential treatment, investment in tobacco venture, establish a tobacco business (wholesale, manufacturing or import, given any incentive to any phase of tobacco growing and tobacco product production or marketing. BAT claims that the coverage is broad and covers the entire arm of government: the executive, legislature, and judiciary, and that the provision discriminates against entities doing lawful business, trade, and occupation within the tobacco industry.

III. Global Level

A. International Instruments that Take Tobacco Industry Interference into Consideration

Table 3 below summarizes, in chronological order, the international instruments that have been adopted or developed to be consistent with or to support the implementation of WHO FCTC Article 5.3 which provides:

In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.  

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<tr>
<th>International Organization / Year / Parties</th>
<th>International Instrument / Details</th>
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<td>“10. Encourages members of the Task Force, as appropriate and in line with their respective mandates, to develop and implement their own policies on preventing tobacco industry interference, bearing in mind the model policy for agencies of the United Nations system on preventing tobacco industry interference, in order to ensure a consistent and effective separation between the activities of the United Nations system and those of the tobacco industry.”</td>
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<tr>
<td>Number of Members: 54</td>
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<tr>
<td>World Health Assembly (WHA), 2016</td>
<td>WHA Resolution 69.10: Adoption of the Framework for Engagement with Non-State Actors</td>
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<td>Number of</td>
<td>In 2016, the WHA’s Resolution 69.10 adopting the Framework for Engagement with Non-State Actors (FENSA) provided clear rules for non-engagement with the tobacco industry and other non-state</td>
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<td>Members: 193 actors that work to further the interests of the tobacco industry. Setting the standard for private sector engagement with a United Nations (UN) agency, FENSA provides:</td>
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<td>“WHO does not engage with the tobacco industry or non-State actors that work to further the interests of the tobacco industry.”186 187</td>
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<td>“WHO does not engage with the tobacco industry or with non-State actors that work to further the interests of the tobacco industry. The latter includes but is not limited to: entities and subsidiaries engaged in the manufacturing, distribution and/or sale of tobacco or tobacco-related products; entities working to specifically further the interests of the tobacco industry through lobbying, advertising, legal advice or similar activities; entities being funded, supported or influenced in their governance by tobacco-related entities; and entities having tobacco industry or their representatives among their members.”188189</td>
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<tr>
<td>United Nations, 2015 United Nations General Assembly Resolution 70/1: Sustainable Development Goals (SDGs)</td>
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<td>“Goal 3: Ensure healthy lives and promote well-being for all at all ages</td>
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<td>Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate.”190</td>
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<td>“38. Recognize the fundamental conflict of interest between the tobacco industry and public health.”191</td>
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<td>WHO FCTC, 2008 Decision FCTC/COP3(7): Guidelines for the Implementation of Article 5.3 of the WHO FCTC</td>
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<td>“Guiding Principles:</td>
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<td>Principle 1: There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.</td>
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<td>Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.</td>
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<td>Principle 3: Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is</td>
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International Organization
/ Year /
Parties

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<td>accountable and transparent.</td>
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<td>Principle 4: Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.&quot;</td>
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International Labour Organization

While the international community has seen some global trends on protection against tobacco industry funding or influence, the International Labour Organization (ILO) is still in the process of resolving some concerns relating to the tobacco industry.

ILO serves as advisor to the board of the Eliminating Child Labor in Tobacco-growing (ECLT) Foundation, an organization established in 2002 and purely funded by tobacco companies. Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco International (JTI), Imperial Tobacco, and other tobacco industry players fund ECLT and serve as its board members.

ILO has reportedly received $15 million from JTI and groups associated with huge tobacco companies for “charitable partnerships” to address child labor in tobacco fields.

The public health community has vigorously censured ILO’s engagement with the tobacco industry. In October 2017, about 200 organizations and individuals from various parts of the world have urged ILO to stop receiving money from the tobacco industry and to cut off its relationship with it.

As of January 2018, ILO’s Governing Body is confronted with the need to decide if it should keep its partnership with the industry. During its meeting in Geneva in March 2018, the ILO’s proposed integrated strategy stated that child labor remains widespread and noted the need to transition from donor-industry funding to development-partner funding that aligns with integrated approaches and international developmental goals. The decision on the matter has been pending and it is to be made by the Governing Board comprising of fifty-six (56) titular members (28 governments, 14 employers, and 14 workers).
B. Tobacco Industry Interference in UN Agencies and the International Community’s Response

Model policy for agencies of the United Nations system on preventing tobacco industry interference

In 2006, 2008, and in 2010, the Secretary General reported at ECOSOC’s Substantive Sessions on various types of tobacco industry interference within the UN System, such as conflicts of interest. The reports emphasized the need to raise awareness on WHO FCTC Article 5.3 and policies against tobacco industry engagement, such as those from the United Nations Development Programme (UNDP) and the International Atomic Energy Agency (IAEA).

In 2014, COP6 decided to request the WHO FCTC Secretariat to make appropriate recommendation in light of the tobacco industry engagement in key international organizations, and to seek collaboration with such international organizations to raise awareness of the fact that their “administrative, financial and other decisions affect implementation of Article 5.3 of the WHO FCTC,” and to promote “the principles of Article 5.3 and its implementing Guidelines, including rejection of any direct or indirect contributions, technical and financial, from the tobacco industry.”

In 2016, the model policy for agencies of the UN system on preventing tobacco industry interference was adopted by members of the UN Interagency Task Force on the Prevention and Control of Non-Communicable Diseases (UNIATF). Its purpose is “to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive, effective and consistent across the United Nations system including the UN itself and its funds, programmes, specialized agencies, other entities and related organizations.”

In 2016, the COP mandated the WHO FCTC Secretariat to continue encouraging bodies under the UN to adopt mechanisms to address tobacco industry attempts to impede the implementation of tobacco control efforts.

UN Global Compact

One UN office that actively seeks out funding from the private sector is the UN Global Compact (UNGC), a voluntary initiative encouraging businesses globally to adopt sustainable and socially responsible policies.

A research conducted by the Ad Hoc Inter-Agency Task Force on Tobacco Control criticized the UN’s Global Compact “for harboring tobacco companies under its umbrella.” In response to numerous criticisms, the Global Compact announced as early as 2014 that it “actively discourages...
tobacco companies from participation in the initiative and does not accept funding from tobacco companies.”  

Consistent with the model policy and global trends to shun tobacco funding, UNGC’s Integrity Policy Update, dated 12 September 2017, stated that: “the UN Global Compact will increase scrutiny of companies upon entry into the initiative, review engagement with existing participants, and institute new exclusionary criteria for companies involved in certain high-risk sectors – including the production and manufacture of tobacco products, and nuclear, chemical, or biological weapons. Participating companies whose business involves manufacturing or producing tobacco products will be delisted effective 15 October 2017” (emphasis supplied).  

Table 4. Policies of International Intergovernmental Organizations that Protect against Tobacco Industry Interference

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<thead>
<tr>
<th>International Organization / Year</th>
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<td>United Nations Development Programme (UNDP), 2013</td>
<td>“Guiding Principles for Partnerships: Advance UNDP goals; Maintain integrity, independence, and impartiality; Ensure transparency; Non-exclusivity and no unfair advantage; Cost-effectiveness; Clearly defined roles and responsibilities and shared risk and benefits. UNDP has defined a set of exclusionary criteria outlining those business practices considered unacceptable to the organization, and these include the ‘manufacture, sale or distribution of tobacco or tobacco products.’”</td>
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<tr>
<td>United Nations Educational, Scientific and Cultural Organization (UNESCO), 1997</td>
<td>The Guidelines forbid any private sector involved in the “production or distribution of tobacco (products)…” to be a funding source for collaboration with UNESCO.</td>
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<tr>
<td>World Bank, 1999</td>
<td>“The Bank does not lend directly for, invest in, or guarantee investments or loans for tobacco production, processing, or marketing.”</td>
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<tr>
<td>International Atomic Energy Agency (IAEA)</td>
<td>“The IAEA has a checklist for partnership agreements to exclude the manufacturers or distributors of goods widely recognized as harmful to public health, or against public morals. Tobacco products are included in the list.”</td>
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Red Cross

Although not an intergovernmental organization (IGO), the Red Cross policy on refusing tobacco-backed funds is considered a significant policy covering many constituents due to its presence in practically all states. The International Federation of Red Cross and Red Crescent Societies (IFRC), along with 190 member-countries of National Red Cross and Red Crescent Societies worldwide, act before, during, and after disasters and health emergencies to assist vulnerable people. Red Cross’ policies potentially affect trends in CSR in over 190 countries where it is operating.

The Red Cross has long adopted a policy not to accept funds from tobacco, alcohol, and arms. During the World No Tobacco Day celebration on May 31, 2013, the Governing Board of the International Federation of the Red Cross/Red Crescent resolved to enjoin National Societies to desist from receiving money from the tobacco industry.\(^{219}\)

In June 2015, the IFRC issued an Internal Guidance Brief on their non-engagement with tobacco companies. This document—which was disseminated to National Societies, including their staff and volunteers—states, among others, that it upholds principles to dissociate itself from the tobacco industry, “an industry that contributes to significant mortality, illness and suffering worldwide.”\(^{220}\)

C. Case Studies on Responses to Efforts by International/ Regional Organizations that Represent Tobacco Industry Interests

The tobacco industry has backed or established international organizations to pursue its interests. Below are case studies where the global community responded to efforts of such organizations to undermine tobacco control policies.

1. International Tax and Investment Center

   1.1. ITIC Relationship with the Tobacco Industry

The International Tax and Investment Center (ITIC) claims to be an international think tank that works closely with governments on fiscal and trade issues,\(^{221}\) but its board includes representatives coming from four (4) tobacco companies, namely, PMI, JTI, BAT, and Imperial Tobacco. Based on analysis of internal tobacco industry documents,\(^{222}\) the organization has been identified as a tobacco industry front group.??
1.2. ITIC Tactics in Interfering with the WHO FCTC during the Adoption of the Article 6 Guidelines (Price Measures)

ITIC sponsored an event intended to challenge COP6 adoption of Article 6 Guidelines; the time and venue was strategically set just before/during the COP6 and near the COP6 session venue in Moscow. It invited tax officials from FCTC Parties and WHO member-states that are observers to the COP. 224

Response: Note Verbale of the Framework Convention Secretariat

The Framework Convention Secretariat (FCS) issued a Note Verbale (NV) to warn against attending the event. 102 For many delegates and government officials, it was the first time they were apprised that the ITIC event is not an activity related to or endorsed by COP, and that ITIC is tobacco industry-funded. In addition, CSOs circulated information about ITIC arguments and how they undermine the proposed Article 6 Guidelines. 225 Due to these efforts, the ITIC event was hardly attended by COP delegates.

On 04 March 2016, the FCS issued another NV that expressed concern about meetings organized by ITIC and advised Parties that tobacco industry interference (e.g., ITIC-organized regional and global meetings) is “damaging for tobacco-control efforts worldwide.” 226 It reminds Parties to “reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.” 227 It issued the NV amidst reports that tobacco companies are proposing to some FCTC Parties to sign agreements in which the former will take on certain tasks in controlling the tobacco supply chain; and, reports that the tobacco industry is actively endorsing the use of Codentify, a coding system it developed.

The aforesaid NVs have increased the awareness of FCTC Parties and COP observers about ITIC and its activities; thus, many of them have refused to participate in ITIC events.

1.3. ITIC and its Involvement in Tax/ Customs Global Events

On its website, ITIC claims that it regularly sponsors and participates in global events where tax and customs officials from all over the world will be in attendance. For instance, in 2014, ITIC presented its report on “The Illicit Trade in Tobacco Products and How to Tackle It” to over 150 enforcement officials from various countries during the World Customs Organization (WCO) meeting in Brussels. 228 One such widely promoted event was the 12th Annual Asia-Pacific Tax Forum, held in New Delhi on 5-7 May 2015.

Response: World Bank and Host Country Response

After much global campaigning from CSOs, the World Bank withdrew from the 12th Annual Asia-Pacific Tax Forum, held in New Delhi on 5-7 May 2015, which
was co-organized by a consortium financed by several transnational tobacco companies. The Indian government officials, touted by ITIC to inaugurate the event, also decided not to participate.\textsuperscript{229} \textsuperscript{230}

1.4. ITIC Challenging Civil Society Groups

In 2015, the Southeast Asia Tobacco Control Alliance (SEATCA) published “ITIC’s ASEAN Excise Tax Reform: A Resource Manual,” which revealed how ITIC’s report is undermining global best practice in tobacco taxation in the region.\textsuperscript{231} In 2014, it also critiqued ITIC’s Asia-11 Illicit Tobacco Indicator 2012,\textsuperscript{232} which together with other ITIC reports, were widely disseminated to finance ministers in Southeast Asia. Shortly after, ITIC president Daniel Witt sought to meet with SEATCA to have a “round-table discussion” with stakeholders on the matter. It was later revealed that the meetings are meant to make SEATCA rectify its “errors.” A series of letters were written to complain about SEATCA’s inaccuracies and refusal to engage with ITIC. Letters were written to various individuals associated with SEATCA to pressure its executive director to participate in ITIC meetings. A subsequent letter, written by an Australian consultant, accused SEATCA of unreasonableness, lack of transparency, accountability, and good governance, and of continuing to “dismiss competing views and disparage those who hold them.”\textsuperscript{233}

Response: Civil Society Groups Unified in the Denouncement of Tobacco Industry Funds/ Ties

Various civil society groups responded to defend SEATCA’s position and criticized ITIC for its tobacco industry tactics. In 2017, ITIC announced that it has removed tobacco industry representatives from its board and declared that it would no longer receive sponsorships from the tobacco industry.\textsuperscript{234} Its previous papers supporting tobacco industry interests are no longer available on its website’s resources list.

Outcome: ITIC Rejects Tobacco Industry to Safeguard Reputation

In 2017, ITIC announced that it has adopted a resolution to immediately sever links with tobacco companies. ITIC’s Board resolved that it will no longer accept sponsorship from tobacco companies and that representative from tobacco firms will no longer serve in it. ITIC’s president admits that this is due to pressures that have consistently petitioned the organization to support the WHO FCTC. He added that this “was a necessary step to safeguard ITIC’s reputation and ensure its long-term effectiveness.” The Commonwealth Association of Tax Administrators has welcomed this policy.\textsuperscript{235}
2. International Tobacco Growers Association

2.1. ITGA Relationship with the Tobacco Industry

The International Tobacco Growers Association (ITGA) claims to represent the interest of farmers at various global and regional fora, yet its main supporters are transnational tobacco-related companies, including Alliance One International, Imperial Tobacco International, Universal Leaf, PMI, BAT, JTI, etc.  

ITGA claims that the WHO FCTC puts the livelihoods of millions of growers at risk. According to the Framework Convention Alliance (FCA), the global civil society group supporting tobacco control, “ITGA does nothing to help tobacco farmers and farm workers trapped in cycles of poverty and debt bondage because of the industry’s exploitative tobacco buying practices and unfair contracts.”

2.2. ITGA Tactics in Interfering with the WHO FCTC during the Adoption of Guidelines (Articles 9/10, 17/18)

In 2010, during the FCTC COP4, the ITGA reportedly rallied tobacco farmers from several countries together in order to influence the negotiations and to thwart the approval of Articles 9 and 10 Guidelines and progress report on Articles 17 and 18.

Response: Rejection of Application for Observer Status

When ITGA applied for observer status in 2010, the COP4 took note of the report that information available on the official website of the organization shows that its activities “may not be in line with the aims and spirit of the Convention,” in particular with regard to Article 5.3. The COP4 then rejected ITGA’s application for observer status.

3. ASEAN Intellectual Property Association

3.1. ASEAN IPA is an association of intellectual property owners that meets annually to celebrate World Intellectual Property Day.

3.2. ASEAN IPA’s Tactics in Interfering with the WHO FCTC as well as Intellectual Property and Plain Packaging in ASEAN

The ASEAN Intellectual Property Association (IPA) is a Philippine-based organization that aims to promote the development and protection of intellectual property in Southeast Asian countries. It is one of the over forty (40) organizations that submitted a total of thirty-six (36) amicus curiae in opposing
Australia’s plain packaging at the World Trade Organization (WTO). Its amicus brief had been adopted by oppositors Honduras, Indonesia, and Dominican Republic. In 2016, it wrote a series of letters to governments in ASEAN to warn against the harmful consequences of cigarette plain packaging in the region.

Response: SEATCA Counters ASEAN IPA Arguments

The regional non-government organization, SEATCA, refuted ASEAN IPA’s arguments. Through letters, it informed governments in the region of the association’s background and agenda.

The ASEAN IPA continues to raise intellectual property issues on plain packaging in light of the planned adoption of the measure by some countries in the region. Nevertheless, despite its tactics in the region, the Singapore Ministry of Health launched public consultations for plain packaging in February 2018.

4. US/ American Chamber of Commerce

4.1. Relationship with the Tobacco Industry

The US Chamber of Commerce, known in other parts of the world as American Chamber of Commerce (Amcham), is a global network of US business associations, most of which includes PMI. It has been reported to promote tobacco industry interests in various countries all over the world as evidenced, among others, by its own internal documents. Five US Chambers of Commerce (Mexico, Netherlands, Russia, Thailand, and United States) have amicus curiae opposing Australia’s plain packaging at the WTO. Its amicus brief had been adopted by oppositors Honduras, Indonesia, and Dominican Republic.

In June 2015, the New York Times released a report on the extent of lobbying that Amcham had undertaken in Australia, Burkina Faso, El Salvador, the European Union, Ireland, Jamaica, Kosovo, Moldova, Nepal, New Zealand, the Philippines, Ukraine, United Kingdom, and Uruguay to dilute and delay life-saving tobacco control measures.

Response: CVS Leaves US Chamber of Commerce

As a response to the New York Times exposé, CVS Health Corporation (a pharmacy healthcare company in the United States with more than 9,700 retail locations) decided to leave the association in 2015. US senators released a public statement critical of US Chamber of Commerce’s actions, and sent letters to companies represented by Board Members to find out their positions on the Chamber’s efforts to challenge tobacco control measures.
Globally, business associations continue to influence tobacco control policies on behalf of the tobacco industry. Over forty (40) business associations and organizations across the world publicly opposed plain packaging.247 A more regional strategy is exemplified by the ASEAN Business Council, which annually sets meetings with high-level officials in each country in the ASEAN region, making way for meetings/unnecessary interactions between US tobacco company leaders and top-level government officials.248

5. Foundation for a Smoke-Free World

5.1. Foundation for a Smoke-Free World and its Relationship with the Tobacco Industry

On 13 September 2017, PMI announced that it will commit US$1 billion to a Foundation for a Smoke-Free World (FSFW) over the next twelve (12) years. It was reported that FSFW will focus on funding research to support policy and collaborative initiatives on harm reduction. FSFW’s president was formerly with the WHO.249

Response: WHO and Public Health Community Warn against Cooperating with FSFW

Within two weeks of the announcement, the Convention Secretariat for the WHO FCTC issued a statement denouncing key aspects of FSFW, among others, its leadership, the funding, new tobacco products, and potential interactions with the tobacco industry. It reminds FCTC Parties that: “Any collaboration with this Foundation, due to its current funding arrangement that comes from a tobacco multinational, would constitute a clear breach of Article 5.3 of the Convention concerning tobacco industry interference.”250

Below are excerpts of the WHO statement dated 28 September 2017:

Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) obliges Parties to act to protect public health policies from commercial and other vested interests of the tobacco industry in accordance with national law. Guidelines for implementation of Article 5.3 state clearly that governments should limit interactions with the tobacco industry and avoid partnership. These Guidelines are also explicit that Governments should not accept financial or other contributions from the tobacco industry or those working to further its interests, such as this Foundation.

Strengthening implementation of the WHO FCTC for all tobacco products remains the most effective approach to tobacco control... If PMI were truly committed to a smoke-free world, the company would support these policies. Instead, PMI opposes them. PMI engages in large scale lobbying and prolonged and expensive litigation against evidence-based tobacco
control policies such as those found in the WHO FCTC and WHO’s MPOWER tobacco control, which assists in implementation of the WHO FCTC. For example, just last year PMI lost a six year investment treaty arbitration with Uruguay, in which the company spent approximately US$ 24 million to oppose large graphic health warnings and a ban on misleading packaging in a country with fewer than four million inhabitants.251

Since the launch of FSFW, more and more public health advocates have renounced its efforts.252 Seventeen (17) deans of the top schools of public health in the USA have announced that their schools are not accepting funding from or pursuing work with it.253

In January 2018, the Polish Health Ministry used the WHO statements to warn universities against receiving research funding from the foundation.254 Vietnam’s MOH also issued a memo “calling on the cabinet, local government, and mass organizations to coordinate the implementation of the WHO recommendation and to inform governments and health communities not to cooperate with FSFW.”255

In March 2018, during the 17th World Conference on Tobacco or Health (WCTOH), a global gathering of about 2,000 participants from the public health community, the conference organizers refused entry of FSFW representatives.256 In its Declaration, WCTOH urged “governments, scientists, research entities, foundations, and civil society organizations to reject or cease engagement with the Philip Morris International-funded Foundation for a Smoke-Free World and other initiatives of the tobacco industry.”257 The 17th WCTOH Declaration also adopted the Cape Town Declaration on Human Rights and a Tobacco-Free World, which urged everyone to reject or cease collaboration with FSFW and similar public relations initiatives of the tobacco industry.258

In September 2018, the Asia Pacific Conference on Tobacco or Health (APACT), a regional gathering of tobacco control delegates and key stakeholders seeking to end the tobacco epidemic, adopted a Declaration stating a similar position that: “Partnership with the tobacco industry is detrimental to all SDGs and the FCTC. To ensure good governance, governments, scientists, research entities, and civil society organizations must reject or terminate all partnerships or support from the tobacco industry, including the Philip Morris International-funded Foundation for a Smoke-Free World, and other initiatives of the tobacco industry…”259