

THE ROLE OF PUBLIC OFFICIALS IN THE GLOBAL TOBACCO TREATY

THE ROLE OF GOVERNMENT OFFICES IN CHARGE OF PUBLIC SERVICE, GOVERNANCE, AND TRANSPARENCY

WHO FCTC: Global Tobacco Treaty

The WHO Framework Convention on Tobacco Control (FCTC) is a treaty that aims to address the devastating health, social, economic, and environmental consequences of tobacco consumption and exposure to tobacco smoke. The first treaty developed under the auspices of the WHO, it came into force in June 2004 and has been ratified by over 180 Parties.

General Treaty Obligation: Article 5.3

The FCTC embodies numerous evidence-based measures to reduce smoking and exposure to tobacco smoke, promote alternative livelihood, and regulate the tobacco industry in various aspects of operation. Article 5.3 of the FCTC is an overarching obligation that allows Parties to fulfill the objectives of the treaty by obligating them to protect their public health policies from the commercial and other vested interests of the tobacco industry.

Article 5.3 Guidelines

The Guidelines for the Implementation of Article 5.3 were adopted by consensus by treaty Parties in 2008 to assist the governments in enforcing Article 5.3. The guidelines make sure that the efforts to protect tobacco control from the tobacco industry are comprehensive and effective. They recommend that governments establish measures to:

1. Raise awareness about the harmful nature of tobacco products and tobacco industry interference;
2. Limit interactions with the tobacco industry and ensure the transparency of interactions that occur;
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry;
4. Avoid conflicts of interest for government officials and employees;
5. Deformalize activities described as “socially responsible” by the tobacco industry;
6. Require that information provided by the tobacco industry be transparent and accurate;
7. Do not give preferential treatment to the tobacco industry; and,
8. Treat state-owned tobacco industry in the same way as any other tobacco industry.

Specific Concern for Public Officials

Most of the items in the Guidelines refer to the conduct of public officials. Specifically, they provide that public officials should be prohibited from doing the following:

- Having partnerships, non-binding or non-enforceable agreements with the tobacco industry;ⁱ
- Accepting or endorsing policy drafts from the tobacco industry;ⁱⁱ

- Having financial interest in the tobacco industry;ⁱⁱⁱ
- Representing the tobacco industry in tobacco control bodies;^{iv}
- Receiving contributions, gifts, or donations from the tobacco industry;^v
- Participating in “socially responsible” activities of the tobacco industry;^{vi} and,
- Granting privileges, incentives, or benefits to the tobacco industry.^{vii}

Transparency Measures Recommended

- Disclosure and management of conflict of interest for officials, employees, consultants, and contractors involved in setting and implementing public health policies with respect to tobacco control;^{viii}
- Transparent interaction with the tobacco industry through public hearings, public notices of interactions, and disclosure of records;^{ix}
- Disclosure of tobacco industry activities;^x
- Disclosure or registration of tobacco industry-affiliated entities including lobbyists;^{xi}
- Disclosure of current or previous work with the tobacco industry by applicants for public office position involving setting and implementing public health policies;^{xii} and,
- Declaration and divestment of government officials of their direct interest in the tobacco industry.^{xiii}

Coverage: Public Health Policies with respect to Tobacco Control

The purpose of Article 5.3 is to protect public health policies with respect to tobacco control. The measures recommended apply to officials who have roles to play in developing or implementing policies, programs, and strategies relating to the following sectors, among others, in light of certain FCTC provisions:

- a. Agriculture (Art. 17: Economically viable alternatives to tobacco; Art. 18: Protection of the environment and the health of persons)
- b. Culture and Arts (Art. 13: Tobacco advertising, promotion, and sponsorship)
- c. Customs (Art. 15: Illicit trade in tobacco products)
- d. Development/ Sustainable Development (Art. 17: Economically viable alternatives to tobacco)
- e. Education (Art. 12: Education, communication, training, and public awareness)
- f. Environmental (Art. 8: Protection from exposure to tobacco smoke)
- g. Foreign Affairs or International Cooperation (Art. 2: Relationship with other agreements; Art. 20, 21, 22: Scientific and technical cooperation and communication of information)
- h. Health/ Food and Drug/ Regulatory Agencies (Art. 9/10, 11, 13)
- i. Justice (Art. 19: Liability)
- j. Local Government (Art. 16: Access restrictions, etc.)
- k. Public Information (Art. 12: Education, communication, training, and public awareness)
- l. Public Service
- m. Social Welfare
- n. Sports (Art. 13)
- o. Tax or revenue
- p. Trade (e.g., Art. 9/10: Regulation of the contents of tobacco products and regulation of tobacco product disclosures; Art. 17: Economically viable alternatives to tobacco)

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- i. Guidelines for the Implementation of Article 5.3 of the FCTC, Recommendation 3.1.
- ii. Ibid, Recommendation 3.4.
- iii. Ibid, Recommendation 4.7.
- iv. Ibid, Recommendation 4.8.
- v. Ibid, Recommendation 4.10.
- vi. Ibid, Recommendation 6.2.
- vii. Ibid, Recommendation 7.1.
- viii. Ibid, Recommendation 4.1.
- ix. Ibid, Recommendation 2.2.
- x. Ibid, Recommendation 5.1.
- xi. Ibid, Recommendation 5.3.
- xii. Ibid, Recommendation 4.5.
- xiii. Ibid, Recommendation 4.6