



*To the attention of the Working Group on the issue of human rights and transnational corporations and other business enterprises regarding the thematic report on corporate influence in the political and regulatory sphere*

The Global Center for Legal Innovations on Food Environments within the Health and Human Rights Initiative at the O'Neill Institute for National and Global Health Law at Georgetown Law brings to your consideration information on how corporate undue influence is exerted in public health policy and regulatory spheres.

In this document we focus on the behavior of tobacco and food industries, which manufacture and sell unhealthy commodities associated with the development of non-communicable diseases (NCDs). According to the World Health Organization (WHO), NCDs kill 41 million people each year, equivalent to 71% of all deaths globally.<sup>1</sup> The Pan-American Health Organization (PAHO) defines NCDs as “a group of conditions that are not mainly caused by an acute infection, result in long-term health consequences and often create a need for long-term treatment and care”.<sup>2</sup> These conditions include cancers, cardiovascular disease, diabetes and chronic lung illnesses.<sup>3</sup> NCDs tend to be of “long durations and are a result of a combination of genetic, physiological, environmental and behavioral factors”.<sup>4</sup> Most NCDs are caused by preventable risk factors, such as tobacco use, physical inactivity, unhealthy diets and the consumption of alcohol.<sup>5</sup> Given their impact, reduction of NCDs has been established as one of the targets of the Sustainable Development Goals.<sup>6</sup>

Both tobacco and food and beverage (F&B) industry activities have negative impacts on health and other human rights such as the rights to adequate food as well as children's rights. At the same time, they have used different tactics to oppose, weaken and delay the adoption of regulations. Therefore, their activities in the political and regulatory spheres should be considered under the framework of issues that States must address in compliance with their obligation to protect human rights, including the right to health and other health-related rights. It is worth noting that this States' duty to regulate business activities, does not replace companies' responsibility to carry out due diligence processes regarding their operations, including their behavior in the regulatory space.

We present our inputs in four sections. First, we provide a definition of what undue influence entails. Second, we present the model of Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC), which incorporates a comprehensive approach in facing the paradigmatic case of corporate influence by tobacco industry. In third place, we describe how Corporate Social Responsibility (CSR) activities by F&B industry are being used as a marketing strategy to increase the consumption of

---

<sup>1</sup> WHO (ed), 'Fact Sheet, Noncommunicable Diseases' <<https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> accessed 18 May 2022.

<sup>2</sup> PAHO, 'Noncommunicable Diseases' <<https://www.paho.org/en/topics/noncommunicable-diseases#:~:text=The%20term%20NCDs%20refers%20to,diabetes%20and%20chronic%20lung%20illnesses>> accessed 18 May 2022.

<sup>3</sup> *ibid.*

<sup>4</sup> WHO, 'Fact Sheet, Noncommunicable Diseases' (n 1).

<sup>5</sup> WHO, 'Noncommunicable Diseases: Risk Factors' <<https://www.who.int/data/gho/data/themes/topics/topic-details/GHO/ncd-risk-factors#:~:text=Most%20noncommunicable%20diseases%20are%20the,blood%20glucose%20and%20raised%20cholesterol>> accessed 18 May 2022.

<sup>6</sup> “3.4 By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being.” See: <https://www.un.org/sustainabledevelopment/health/>



unhealthy products; and at the same time as a strategy to create an environment favorable to the undue influence of such industry in the policy and regulatory-making processes, particularly with respect to the adoption of measures aimed at discouraging the consumption of their products.<sup>7</sup> Finally, we will present some recommendations to be considered in the upcoming thematic report.

## 1. Defining 'undue influence'

Undue influence is any activity that results in the policy-making process 'shifted away from the public interest towards narrow private interests'.<sup>8</sup> We also consider as undue the activities of interest groups carried out to influence the policymaking process when they them exerted in an 'opaque' or non-transparent way or in a 'disproportionate'<sup>9</sup> manner. For instance, when enterprises use their political networks to have a prominent say in consultations related to regulations while common citizens or underrepresented groups have not had the same power to influence such policies.

Therefore, the concept of undue influence covers both illegal practices that can amount to corruption (such as bribery or trading in influence)<sup>10</sup>, as well as other practices or activities that intend to direct public policy away from public interest, even if they are legal. In this sense, undue influence can include lobbying activities, donations, and campaigns and other communicational tactics to deviate attention from a public interest issue, in this case, a public health concern. Moreover, activities from interest groups to influence policymaking processes that are exerted in an opaque or non-transparent way, and the use of power held by these groups to have a, decisive, prominent or disproportionate influence in the policy-making processes, should also be considered as undue influence.

Policies that are adopted seeking a private economic interest rather than the public one, have negative impacts in valuable principles such as transparency, participation, and accountability. In addition, undue influence of private interest in the policy-making process causes adverse impacts on human rights. It interferes with State's obligation to protect human rights, for example when the regulations are not adopted at all, or do not properly protect the human rights involved because their design and provisions are not aimed at protecting the public interest and the effective realization of human rights but is deviated to pursue private interests. In the health sphere, undue influence has negative impacts on the rights to health, adequate food, access to information, children's rights, among others and, at the same time, it hinders the potential of public health interventions.

Thus, addressing undue influence is mandatory for States to comply with their obligations to protect and guarantee human rights under the international treaties that they have ratified, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Moreover, from the concrete point of view of States' obligations in relation to the right to health, they must address

---

<sup>7</sup> Madureira Lima, J., Galea, S. Corporate practices and health: a framework and mechanisms. *Global Health* 14, 21 (2018). <https://doi.org/10.1186/s12992-018-0336-y>

<sup>8</sup> Hernández-Aguado I, Chilet-Rosell E. Pathways of undue influence in health policy-making: a main actor's perspective. *J Epidemiol Community Health* 2018;**72**:154-159. <http://dx.doi.org/10.1136/jech-2017-209677>

<sup>9</sup> Raphaël Kergueno, et al. Deep Pockets, Open Doors. Big tech lobbying in Brussels, (2021), Transparency International EU.

<sup>10</sup> United Nations Convention against Corruption (2004). Available at: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)



determinants of health,<sup>11</sup> including the commercial ones,<sup>12</sup> understood as the group of strategies and practices of the private sector that have impacts on health. Undue influence is precisely one of the strategies deployed by corporations of unhealthy commodities.<sup>13 14</sup>

In addition, given their impact on human rights, activities that fall under the concept of undue influence, should be analysed, and addressed by businesses in their due diligence processes.

## 2. The undue influence of tobacco corporations and the model of article 5.3 of the FCTC

Article 5.3 of the FCTC mandates States to take actions to protect the adoption and implementation of '*public health policies with respect to tobacco control... from commercial and other vested interests of the tobacco industry*'.<sup>15</sup> In order to support States in fulfilling this obligation, in 2008 the FCTC Conference of the Parties adopted a set of guidelines on implementation of Article 5.3.<sup>16</sup>

To understand the origin and rationale of Article 5.3, it is important to look at the historical context in which it was adopted. The FCTC was negotiated between 2000 and 2003, immediately after the publication of the so-called 'tobacco papers'.<sup>17</sup> In 1998, in fact, as part of a multi-billion settlement concluded in the United States, the major tobacco companies agreed to publish millions of internal documents detailing decades of illegal, aggressive, and ruthless tactics employed to oppose tobacco control regulations around the world, as well as at the WHO. The tactics included not only direct lobbying, but also use of front groups, discrediting of advocates, secret surveillance, and manipulation of science.<sup>18</sup> The tobacco documents' archive arguably represents the biggest repository of undue corporate influence in policy and regulatory matters.

Today, after more than twenty years, we know that the tobacco industry is not an exception. Rather, it has been the harbinger of a global phenomenon, arguably providing the 'playbook' for corporate influence in policymaking in many different sectors.<sup>19</sup> This typically consists in five complementary tactics:<sup>20</sup>

---

<sup>11</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, para. 4.

<sup>12</sup> Ilona Kickbusch, Luke Allen and Christian Franz, 'The Commercial Determinants of Health' (2016) 4 *The Lancet Global Health* e895.

Rochford C, Tenneti N, Moodie R. Reframing the impact of business on health: the interface of corporate, commercial, political and social determinants of health *BMJ Global Health* 2019;**4**:e001510.

<sup>13</sup> Melissa Mialon, 'An Overview of the Commercial Determinants of Health' (2020) 16 *Globalization and Health* <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-020-00607-x>> accessed 10 May 2022.

<sup>14</sup> Madureira Lima, J., Galea, S. Corporate practices and health: a framework and mechanisms. *Global Health* **14**, 21 (2018). <https://doi.org/10.1186/s12992-018-0336-y>

<sup>15</sup> WHO FCTC, Article 5.3: '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'.

<sup>16</sup> WHO FCTC, Conference of the Parties, Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control FCTC/COP3(7) (22 November 2008).

<sup>17</sup> Stanton A Glantz and others, *The Cigarette Papers* (University of California Press 1998).

<sup>18</sup> World Health Organization. Tobacco company strategies to undermine tobacco control activities at the World Health Organization. Geneva, World Health Organization, 2000.

<sup>19</sup> Vital Strategies, 'Fool Me Twice - an NCD Advocacy Report' (2017) <[https://www.vitalstrategies.org/wp-content/uploads/2019/06/FoolMeTwice\\_Report.pdf](https://www.vitalstrategies.org/wp-content/uploads/2019/06/FoolMeTwice_Report.pdf)> accessed 17 July 2019.

<sup>20</sup> These five "D" tactics are a revisited version of what proposed by: Michael E Mann, *The New Climate War: The Fight to Take Back Our Planet* (Hachette UK 2021).



- Deny: refuting any responsibility for harms caused by their products, claiming that the evidence is not conclusive and there is still room for doubt;
- Deflect: switching attention away from their responsibility to concurring or alternative causes of harm, such as individual behaviors;
- Divide: using media campaigns and front groups to create disagreement among advocates;
- Deceive: manipulating science and data to conceal their responsibility;
- Delay: using any procedural or policy tool to postpone the adoption or entry into force of regulations;

To support States in protecting their policies from the tobacco industry, the guidelines to Article 5.3 of the FCTC provide a set of recommendations. The first guiding principle enshrined in the guidelines is that *'[t]here is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests'*.<sup>21</sup> In taking this view, the guidelines posit that, by nature of their own business model, tobacco corporations have goals that are incompatible with public health. This provision is a strong, though unique, affirmation of the incompatibility of business and public interests in international law.<sup>22</sup>

It is important to highlight that taking this view does not exclude that, in some cases, corporate actors may be consulted in the policy-making or regulatory process. Even the FCTC Guidelines to Article 5.3 do not eliminate the possibility that policy-makers could *'interact with the tobacco industry...when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'*.<sup>23</sup> Essentially, interactions are not allowed in contexts such as making strategic plans or setting public health goals. However, they can be permitted as part of the process of designing and implementing effective regulations. At the core, Article 5.3 of the FCTC does not prohibit interactions with the tobacco industry, but rather mandates strict regulation of such interactions.

While some of the recommendations of the guidelines to Article 5.3 are linked to the fundamental and irreconcilable conflict between tobacco industry and public health goals, others do not. Accordingly, some of these recommendations could be useful when addressing undue influence in other economic sectors. Examples of these recommendations include:

- Recommendation n 2: 'Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.' This recommendation comprises two complementary actions: on one hand, reduce interactions to only those necessary (as described above), and on the other, ensuring that any interaction is conducted in a transparent manner. For this reason, the guidelines recommend that *'[w]henver possible, interactions*

---

<sup>21</sup> Ibid., Guiding principle 1.

<sup>22</sup> 'Global Health Disruptors: WHO Framework Convention on Tobacco Control' (2018) <<https://blogs.bmj.com/bmj/2018/11/28/global-health-disruptors-who-framework-convention-on-tobacco-control/>> accessed 3 December 2018.

<sup>23</sup> 'WHO FCTC, Conference of the Parties, Decision "Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry"' FCTC/COP3(7) Recommendation 2.1.



*should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public*.<sup>24</sup>

- Recommendation n 4: 'Avoid conflicts of interest for government officials and employees.' This recommendation comprises several actions which include: mandatory disclosures for all public officials, employees, consultants, and contractors; a ban on public officials and employees to receive any payments or gifts from the tobacco industry; a ban on any person working for the tobacco industry or with financial interests in the tobacco industry to participate in public health policy work.<sup>25</sup>
- Recommendation n 5: 'Require that information provided by the tobacco industry be transparent and accurate.' This recommendation instructs States to adopt rules and mandatory penalties that would compel the tobacco industry to share information about all its activities, including production, marketing, and affiliated organizations and individuals.
- Recommendation n 6: '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."' This recommendation includes a prohibition for government and public entities to accept any financial contributions or to endorse any 'socially responsible' activities of the tobacco industry.

These recommendations could be applied to any economic sectors, but would be particularly relevant in the sectors whose activities impact public health, such as the F&B industry. As the Special Rapporteur on the Right to Food stressed in a recent report, the 'high concentration of corporate power allows a relatively small group of people to shape markets and innovation in a way that serves the ultimate goal of shareholder profit maximization and not the public good'.<sup>26</sup> This view has been echoed in many civil society and governmental submissions in a WHO consultation on conflicts of interest in nutrition policy.<sup>27</sup>

### **3. The Food and Beverage industry's strategic use of Corporate Social Responsibility activities**

The elevated consumption of unhealthy commodities –such as processed and ultra-processed foods and sugary beverages– is a main cause of the increase of NCDs prevalence and 'can be traced to

---

<sup>24</sup> *ibid* Recommendation 2.2.

<sup>25</sup> Although conflicts of interest is not a term defined by Article 5.3 guidelines, Annex 5 to the WHO Technical Report on Article 5.3 provides a list of examples of situations that may lead to a real or perceived conflicts of interest for WHO collaborating centers: support from companies with incompatible business activities; support from companies with direct commercial interest; support from companies with indirect commercial interest, support for the production of WHO guidelines or recommendations; commissioned research or other work; unspecified donations from companies; support for salary of specific staff or posts; secondment of company employees; interactions, affiliations, relations and interests of staff. See: WHO, 'Technical Resource for Country Implementation of WHO Framework Convention on Tobacco Control Article 5.3 on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry' (2012).

<sup>26</sup> Interim report of the Special Rapporteur on the right to food, Michael Fakhri, A/76/237 (July 2021), para 19.

<sup>27</sup> Rob Ralston and others, 'Towards Preventing and Managing Conflict of Interest in Nutrition Policy? An Analysis of Submissions to a Consultation on a Draft WHO Tool' (2021) 10 International Journal of Health Policy and Management 255.



specific and recurring practices of the food and beverage industry'.<sup>28</sup> The F&B industry produces commodities 'with little nutritional value [and] are often manufactured to be cheap, tasty, and easy to preserve for long periods of time, making them highly profitable'.<sup>29</sup>

Various international bodies and mandates have underscored the importance of addressing diet-related risk factors to NCDs through a human rights perspective. The Committee on Economic, Social and Cultural Rights (CESCR) stated in its General Comment No. 14 (GC 14) that states have a duty to prevent, treat and control various diseases, including NCDs.<sup>30</sup> The GC 14 also affirmed that states have an obligation to fulfill the right to health by taking positive measures, such as disseminating appropriate information relating to health lifestyles and nutrition and supporting people in making informed choices about their health.<sup>31</sup> Similarly, CESCR's concluding observations on various state reports have addressed NCDs risk factors. For instance, the concluding observations on the 4<sup>th</sup> periodic report of Argentina recommended the state to 'adopt a regulatory framework that expressly recognizes the rights to food and steers public policies that ensure access to health, nutritious and sufficient food, especially for disadvantaged groups',<sup>32</sup> and to 'take effective measures to discourage the consumption of unhealthy foods and beverages'.<sup>33</sup>

Additionally, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health emphasized the pervasive role promotion and marketing by the F&B industry have played as a cause of an increased consumption of unhealthy foods.<sup>34</sup> The Rapporteur also issued a statement stressing States' duty to regulate the activities of non-state actors such as the F&B industry and expressed that states 'should develop regulations and intervene, for instance, to restrict marketing of food products with excessive amounts of critical nutrients in order to protect public health'.<sup>35</sup> The Rapporteur emphasized that children are 'especially vulnerable to diet-related NCDs because they may be dependent on others, such as parents or schools, for food, and because they are more susceptible to marketing strategies'.<sup>36</sup>

Likewise, the Inter-American Commission on Human Rights (IACHR) has recognized how the power dynamics shown by corporations that market unhealthy products to children, or lobby against the implementation of policies intended for public health protection, 'have differentiated impacts on

---

<sup>28</sup> See Isabel Barbosa, Belen Ríos and Tovar Ariadna, 'State Obligations in the Context of Unhealth Diets: Paving the Way within the Inter-American Human Rights System' (2021) 11 *Revista Internacional de Derechos Humanos* 4 <<https://ojs.austral.edu.ar/index.php/ridh/article/download/647/905/>> accessed 20 May 2022.

<sup>29</sup> *ibid* 5.

<sup>30</sup> UN, Committee on Economic, Social and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)' (2000) E/C.12/2000/4 para 16 <<https://digitallibrary.un.org/record/425041?ln=en>> accessed 27 May 2022.

<sup>31</sup> *ibid* 37.

<sup>32</sup> UN, Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the 4th Periodic Report of Argentina' (2018) E/C.12/ARG/CO/4 para 46 <<https://digitallibrary.un.org/record/1656196?ln=en#record-files-collapse-header>> accessed 27 May 2022.

<sup>33</sup> *ibid*.

<sup>34</sup> Anand Grover, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Unhealthy Foods, Non-Communicable Diseases and the Right to Health' (2014) A/HRC/26/31 pt 11 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/127/76/PDF/G1412776.pdf?OpenElement>> accessed 20 May 2022.

<sup>35</sup> Dainius Pūras, 'Statement by the UN Special Rapporteur on the Right to Health on the Adoption of Front-of-Package Warning Labelling to Tackle NCDs' <<https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>> accessed 18 May 2022.

<sup>36</sup> *ibid*.



populations in situations of greater vulnerability'.<sup>37</sup> As a consequence, the IACHR called states to 'establish and enforce legal frameworks and adopt measures that effectively prevent, address, and punish the negative commercial impact on the rights of children and adolescents, adopting whatever additional measures may be necessary'.<sup>38</sup>

### 3.1. CSR as a marketing strategy

CSR is defined as a corporate 'voluntary action that claims to act in the public interest through the prioritization of wider social objectives rather than simply being profit-driven'.<sup>39</sup> CSR recognizes that modern companies are accountable to society and have duties beyond those related with their business operations.<sup>40</sup> CSR can include various types of actions, for instance, environment protection, personnel or community support, equal access to opportunities, representation of minority groups, dissemination of information, among others.<sup>41</sup> However, CSR practices have been utilized by corporations to influence relevant market stakeholders, such as consumers and decisionmakers, and to benefit itself and 'maximize shareholder value'.<sup>42</sup>

CSR has been classified as ethic, altruistic and strategic. Ethic CSR is related to the idea of avoiding risks, even if no profits are generated. Altruistic CSR involves philanthropic actions and does not necessarily have a connection with the main business operations of a corporation, and it goes beyond mitigating or preventing corporate risks. Finally, strategic CSR aligns philanthropy with profits by creating financial benefits to the 'perceived corporate social responsibility'.<sup>43</sup> When employing strategic CSR, the companies' interest is not to contribute and collaborate with society but rather to advance their financial goals. Furthermore, market forces tend to create financial incentives for companies that are perceived as socially responsible.<sup>44</sup> According to the specialized literature, all expenses incurred for strategic CSR are considered investments, even when the benefits are going to be visible in the long-term.<sup>45</sup>

---

<sup>37</sup> IACHR and Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, 'Business and Human Rights: Inter-American Standards' pts 265 and 360 <[http://www.oas.org/en/iachr/reports/pdfs/Business\\_Human\\_Rights\\_Inte\\_American\\_Standards.pdf](http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf)> accessed 20 May 2022.

<sup>38</sup> *ibid* 361.

<sup>39</sup> NCD Alliance and SPECTRUM, 'Signaling Virtue, Promoting Harm. Unhealthy Commodity Industries and COVID-19' 18 <[https://ncdalliance.org/sites/default/files/resource\\_files/Signalling%20Virtue%2C%20Promoting%20Harm\\_Sept2020\\_FI\\_NALv.pdf](https://ncdalliance.org/sites/default/files/resource_files/Signalling%20Virtue%2C%20Promoting%20Harm_Sept2020_FI_NALv.pdf)> accessed 20 May 2022.

<sup>40</sup> Wayne Visser, *The A to Z of Corporate Social Responsibility* (Rev and updated ed, Wiley 2010) 122–131.

<sup>41</sup> Archie B Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38 *Business & Society* 268; Ioannis Assiouras, Ozge Ozgen and George Skourtis, 'The Impact of Corporate Social Responsibility in Food Industry in Product-harm Crises' (2013) 115 *British Food Journal* 108; Sen Sankar and Bhattacharya C.B., 'Does Doing Good Always Lead to Doing Better? Consumer Reactions to Corporate Social Responsibility' (2001) 38 *JMR, Journal of Marketing Research* 225.

<sup>42</sup> G Hastings and J Liberman, 'Tobacco Corporate Social Responsibility and Fairy Godmothers: The Framework Convention on Tobacco Control Slays a Modern Myth' (2009) 18 *Tobacco Control* 73, 1.

<sup>43</sup> Daniela Pantani and others, 'The Marketing Potential of Corporate Social Responsibility Activities: The Case of the Alcohol Industry in Latin America and the Caribbean: Marketing Potential of CSR Actions' (2017) 112 *Addiction* 74.

<sup>44</sup> Geoffrey P Lantos, 'The Boundaries of Strategic Corporate Social Responsibility' (2001) 18 *Journal of Consumer Marketing* 595.

<sup>45</sup> *ibid*.



CSR strategies have market-strategy objectives (e.g. increase the brand value) and non-market strategy ones (e.g. gain political and consumer legitimacy).<sup>46</sup> Both dimensions equally influence a company's marketing strategy. It has been documented that CSR activities are implemented by companies to improve their corporate image and relationship with the community, as a significant element of a corporation's marketing strategy.<sup>47</sup> They have as the direct and indirect objective the promotion or consumption of a product. From a marketing perspective, CSR activities provide benefits to companies such as: positive product evaluations by consumers; upgrade on the image and brand personality; enhancement and improvement of a store's appeal, brand election, loyalty to the brand and commitment; recognition of the brand, brand recommendations and firm market value.<sup>48</sup>

CSR has also been used 'strategically as a tool to advance commercial and political interests',<sup>49</sup> and shape policy agendas.<sup>50</sup> Furthermore, CSR initiatives are regarded as a strategic tool to control and minimize the risk of losing a company's good reputation among relevant actors<sup>51</sup> and to influence consumers, who are positively influenced by CSR endeavors.<sup>52</sup> CSR engagements can also 'help circumscribe the scope of health interventions to unthreatening acts that don't challenge economic interests'.<sup>53</sup> In order to advance these interests, specialists advise companies to publicize their CSR actions, so as to generate a more positive impact in society and to be differentiated from other businesses.<sup>54</sup>

Due to its apparently benign purposes, CSR is usually not regulated. This lack of regulation allows for the continuation of all types of CSR, including strategic CSR that aims for consumption increase of specific products. Through a marketing scope, CSR activities tend also to be unregulated or have limited or insufficient regulations. Corporations often try to conceal the CSR undertakings' marketing component or the self-promoting interest that triggers them, making companies often unaccountable for the impact these actions have on human rights and other general interests such as public health. According to some specialists, CSR are not regarded as marketing because they have a 'smaller population reach and their marketing components [cannot] be accessed easily'.<sup>55</sup>

### **3.2. CSR as advertising, promotion, and sponsorship activities**

Marketing communications involve an integrated approach to advertising and promoting the purchase and sale of goods<sup>56</sup>, as well as sponsorship activities. As previously noted, the FTC is an exceptional

<sup>46</sup> Benjamin Wood and others, 'Market Strategies Used by Processed Food Manufacturers to Increase and Consolidate Their Power: A Systematic Review and Document Analysis' (2021) 17 *Globalization and Health* 17, 2.

<sup>47</sup> NCD Alliance and SPECTRUM (n 38) 18; FIC, Argentina, Interamerican Heart Foundation, 'Corporate Social Responsibility Programs from the Tobacco Industry in Argentina' <[https://www.ficargentina.org/wp-content/uploads/2020/01/2001\\_RSE.pdf](https://www.ficargentina.org/wp-content/uploads/2020/01/2001_RSE.pdf)> accessed 20 May 2022.

<sup>48</sup> Assiouras, Ozgen and Skourtis (n 40).

<sup>49</sup> NCD Alliance and SPECTRUM (n 38) 18.

<sup>50</sup> *ibid.*

<sup>51</sup> Assiouras, Ozgen and Skourtis (n 40).

<sup>52</sup> Mowen John C., 'Further Information on Consumer Perceptions of Product Recalls' (1980) 7 *Advances in consumer research* 519; Kathleen Cleeren, Marnik G Dekimpe and Kristiaan Helsen, 'Weathering Product-Harm Crises' (2008) 36 *Journal of the Academy of Marketing Science* 262.

<sup>53</sup> NCD Alliance and SPECTRUM (n 38) 34.

<sup>54</sup> Lantos (n 43).

<sup>55</sup> Pantani and others (n 42).

<sup>56</sup> See WHO, Conference of the Parties to the WHO Framework Convention on Tobacco Control, 'Elaboration of Guidelines for Implementation of Article 13 of the Convention' (2008) *FTC/COP/3/9 pt 5* <[https://apps.who.int/iris/bitstream/handle/10665/75650/FTC\\_COP3\\_9-en.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/75650/FTC_COP3_9-en.pdf?sequence=1&isAllowed=y)> accessed 20 May 2022.





example of an international instrument that expressly addresses CSR as an array of practices that fall within companies advertising, promotion<sup>57</sup> and sponsorship<sup>58</sup> strategies.

As a result of the increasing interest of tobacco companies to 'portray themselves as good corporate citizens by making contributions to deserving causes or otherwise promoting 'socially responsible' elements of their business practices'<sup>59</sup>, the Guidelines for Article 13 of the FCTC expressly contemplate CSR actions as sponsorship activities.<sup>60</sup>

Therefore, the Guidelines for Article 13 of the FCTC recommend states to prohibit contributions from companies to 'any other entity for 'socially responsible causes', as this is a form of sponsorship. Publicity given to 'socially responsible' business practices of the tobacco industry should be banned, as it constitutes advertising and promotion'.<sup>61</sup> Also, the Guidelines for Implementation of various articles of the FCTC<sup>62</sup> call on states to 'regulate activities described as 'socially responsible' by the tobacco industry, including but not limited to activities described as 'corporate social responsibility'.<sup>63</sup> According to these Guidelines, the CSR activities of the tobacco industry are 'an inherent contradiction, as industry's core functions are in conflict with the goals of public health policies with respect to tobacco control'.<sup>64</sup>

Just as there are serious concerns on the use of CSR by the tobacco industry,<sup>65</sup> evidence shows that the pervasive use of CSR by other industries pose similar risks to public health. For instance, the alcohol industry's CSR initiatives almost never promote the prevention policies recommended by the WHO.<sup>66</sup> On the contrary, various studies have demonstrated that the positive impact of preventing the consumption of alcoholic beverages through CSR is low in comparison with the potential negative impact.<sup>67</sup> A study showed that more than half of the CSR actions implemented by the alcohol industry in Latin America have the potential of promoting products, demonstrating that these actions have a marketing strategic role and not a philanthropic one.<sup>68</sup> CSR actions by the alcohol industry are used with the purpose to advance public relations objectives and with political and economic interests in mind, that conflict with public health interest.<sup>69</sup> Studies have shown that the alcohol industry uses

---

<sup>57</sup> The FCTC defines advertising and promotion as "any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly". See article 1, c).

<sup>58</sup> The FCTC defines sponsorship "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 either directly or indirectly". See article 1, g).

<sup>59</sup> Hastings and Liberman (n 41) 2; WHO, Conference of the Parties to the WHO Framework Convention on Tobacco Control (n 55) pt 25.

<sup>60</sup> WHO, Conference of the Parties to the WHO Framework Convention on Tobacco Control (n 55) pt 26.

<sup>61</sup> *ibid* 28.

<sup>62</sup> WHO, Framework Convention on Tobacco Control, 'Guidelines for Implementation, Articles 5.3, 8, 9, 10, 11, 12, 12 and 14' <[https://apps.who.int/iris/bitstream/handle/10665/80510/9789241505185\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/80510/9789241505185_eng.pdf?sequence=1)> accessed 20 May 2022.

<sup>63</sup> *ibid* 13.

<sup>64</sup> *ibid* 17.

<sup>65</sup> FIC, Argentina, Interamerican Heart Foundation (n 46); Gary J Fooks and others, 'Corporate Social Responsibility and Access to Policy Élites: An Analysis of Tobacco Industry Documents' (2011) 8 PLoS Medicine e1001076; Hastings and Liberman (n 41) 1.

<sup>66</sup> NCD Alliance and SPECTRUM (n 38) 18.

<sup>67</sup> Thomas Babor and Katherine Robaina, 'Public Health, Academic Medicine, and the Alcohol Industry's Corporate Social Responsibility Activities' (2013) 103 American Journal of Public Health 206.

<sup>68</sup> Mialon and McCambridge (n 65).

<sup>69</sup> Pantani and others (n 42).

<sup>69</sup> Melissa Mialon and Jim McCambridge, 'Alcohol Industry Corporate Social Responsibility Initiatives and Harmful Drinking: A Systematic Review' (2018) 28 European Journal of Public Health 664.



CSR actions for political purposes and to oppose to regulations that aim to effectively diminish problematic alcohol consumption.<sup>70</sup> It has also been demonstrated that through CSR activities, companies in the alcohol industry define issues and guide the public debate while also promoting self-regulation and using this as indirect marketing to succeed in emerging markets.<sup>71</sup>

Just as in tobacco control, specialists recommend the regulation of CSR activities implemented by the alcohol industry. In that regard, experts have underscored that ‘the implementation of any alcohol control measures should include banning or restricting the publicity efforts of the industry’s CSR and informing the public of the alcohol industry’s notion of social responsibility’.<sup>72</sup>

### **3.3. CSR activities as marketing by the food and beverage industry**

Health and wellbeing have been used as a way of ‘securing brand value and consumer goodwill at a time when rising obesity rates are demanding new level of accountability’<sup>73</sup> from the F&B industry. Therefore, CSR is regarded as a largely strategic response from the F&B industry to governmental regulation, and at the same time, as an opportunity and strategic justification for the F&B to assume a health and sports promoting role.<sup>74</sup> Simultaneously, F&B industry’s CSR strategies ‘hold the potential to perpetuate the propensity to blame individuals cast as making poor and ‘uninformed’ lifestyle choice for their health outcomes, with punitive consequences for existing health inequalities and social justice more broadly’.<sup>75</sup>

CSR allows the F&B industry to frame itself as a partner to promote health and sustainable development<sup>76</sup>. With the concern that obesity and NCDs represent, and the role the F&B industry has played in reaching higher rates of obesity and diseases, the ‘business case for the entwining of CSR and health is clear’.<sup>77</sup> Health has a huge ‘brand value’ and this ‘has paved the route to its creative uptake in the language and practices’<sup>78</sup> of the F&B’s industry CSR. The F&B industry relies heavily on the maintenance of trust<sup>79</sup> and CSR has the potential for generating trust in local communities, governments, international organizations and other stakeholders.

Health promotion has been traditionally a task assigned to governments, but the increasing intervention corporations have had in that arena ‘may be diminishing the degree of trust in the state as an authoritative source of health-related information’, and as a guarantor and protector of the public’s health.<sup>80</sup> The F&B industry is simultaneously regarded as a cause of various health issues and a key ally in targeting the exact same problems it created and contributed to.

In the context of the F&B industry, marketing has been used to refer to ‘any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal

<sup>70</sup> Mialon and McCambridge (n 65).

<sup>71</sup> Sungwon Yoon and Tai-Hing Lam, ‘The Illusion of Righteousness: Corporate Social Responsibility Practices of the Alcohol Industry’ (2013) 13 BMC Public Health 630.

<sup>72</sup> *ibid.*

<sup>73</sup> Clare Herrick, ‘Shifting Blame/Selling Health: Corporate Social Responsibility in the Age of Obesity’ (2009) 31 *Sociology of Health & Illness* 51, 3.

<sup>74</sup> *ibid* 3 and 8.

<sup>75</sup> *ibid* 11.

<sup>76</sup> NCD Alliance and SPECTRUM (n 38) 28.

<sup>77</sup> Herrick (n 72) 4.

<sup>78</sup> *ibid* 5.

<sup>79</sup> *ibid.*

<sup>80</sup> *ibid* 10.



and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service'.<sup>81</sup> Therefore, most of the CSR activities carried out by the F&B industry can be considered as marketing activities. This strategic use was very apparent throughout the COVID-19 pandemic as discussed below.

### 3.4. CSR of the F&B industry during COVID-19

The COVID-19 pandemic overburdened healthcare systems and constrained governments' ability to respond to pressing social, economic and health issues. Various national and international entities called for the private sector to assist in the health crisis, and industries such as the F&B effectively intervened, implementing a strategic use of CSR engagements through which it provided support and funds, but mostly advanced its own interests.

The F&B industry engaged in activities to tackle the impact of COVID-19 that fall within the CSR umbrella, while also utilizing COVID-19 narrative when creating marketing strategies aimed at increasing their profits. Many corporations in the F&B industry have carried out 'cause marketing campaigns' by linking their unhealthy products to causes marketed as intended to benefit other industries or sectors affected by the measures to counter the pandemic, such as lockdowns. Several of these market practices, that have as a result a higher demand of the corporation's unhealthy products, have been identified.<sup>82</sup>

Other corporate practices conducted during the pandemic have in other manners increased the corporations' association to public health policies tackling COVID-19, improving the company's reputation. Several examples of companies that attributed to their products certain characteristics that allegedly protect people against COVID-19 have been reported.<sup>83</sup> Overall, many organizations have reported that unhealthy commodity industries have used different strategies in order to 'link their products with the work of health professionals, emergency services and other front-line workers during the pandemic'.<sup>84</sup>

Additionally, during the pandemic the F&B industry has managed to obtain favorable treatment by positioning their products as essential.<sup>85</sup> In some countries, products such as tobacco, alcohol and processed food and drinks have been declared essential even though civil society warned of the risk posed by non-communicable diseases.<sup>86</sup>

The unhealthy F&B industry has carried out different actions in order to take commercial advantage of the framework provided by CSR. Those actions have helped the industry in 'positioning itself as a collaborative and necessary player in the economic, social and [the] health context'<sup>87</sup> during the

<sup>81</sup> WHO, 'Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children' 7 <[http://apps.who.int/iris/bitstream/handle/10665/44416/9789241500210\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/44416/9789241500210_eng.pdf?sequence=1)> accessed 20 May 2022.

<sup>82</sup> Global Health Advocacy Incubator (GHAI), 'Facing Two Pandemics, How Big Food Undermined Public Health in the Era of COVID-19' 12 <<https://advocacyincubator.org/two-pandemics/#:~:text=%E2%80%9CFacing%20Two%20Pandemics%3A%20How%20Big,influencing%20policy%20and%20putting%20disadvantaged>> accessed 20 May 2022.

<sup>83</sup> NCD Alliance and SPECTRUM (n 38) 11.

<sup>84</sup> *ibid* 11 and 13-17.

<sup>85</sup> See Global Health Advocacy Incubator (GHAI) (n 81) 21; NCD Alliance and SPECTRUM (n 38) 29.

<sup>86</sup> NCD Alliance and SPECTRUM (n 38) 29.

<sup>87</sup> Global Health Advocacy Incubator (GHAI) (n 81) 17.



COVID-19 pandemic.<sup>88</sup> The F&B industry has leveraged its intervention in COVID-19 related actions and policies to gain a reputation of a selfless and altruistic sector.<sup>89</sup> Several companies have linked their reaction to COVID-19 to existing CSR initiatives, underscoring ‘the extent to which corporate responses to the pandemic have served to advance longstanding strategic objectives’.<sup>90</sup>

Furthermore, CSR initiatives have created the impression of being able to provide ‘innovative solutions to the health and social impacts of COVID-19’<sup>91</sup> which at the same time allows companies to reframe issues and address reputational risks or vulnerabilities.<sup>92</sup> This is best proven by the initiative of businesses, including a well-known tobacco company, to develop a vaccine against COVID-19 at a time in which the media and public opinion’s interest was on solutions to the pandemic.<sup>93</sup>

The examples of corporate behavior below raise concerns of the use of CSR to primarily advance the F&B industry’s interests and how CSR has been used during COVID-19 as an excuse to strengthen its influence. The CSR activities implemented by the F&B industry will be assessed as part of an aggressive marketing tactic that has “negatively influenced consumer diets and drove some consumers to eat more ultra-processed food”.<sup>94</sup> It should be noted that because of the lack or regulation of CSR activities in many contexts, and because they are not generally perceived or regulated as advertising or marketing, F&B companies are not held accountable for the adverse impact that its CSR activities have on public health and human rights.

During the COVID-19 pandemic, F&B companies donated food and other items to frontline workers, medical personnel, small businesses, food banks, among others. Many donations of unhealthy edible products and sugary beverages were made to vulnerable populations<sup>95</sup>, including children and communities that live in poverty or have unequal access to nutritious and affordable food products. Some of these donations were made in partnership with public health authorities or local NGOs.<sup>96</sup> Many companies have donated sugar-sweetened beverages and other commodities in local communities in Mexico to attracting more consumers.<sup>97</sup> This practice is a strategy based on supporting communities to protect the company’s core interests.<sup>98</sup> Donations of baby formula have also been reported despite its prohibition in the International Code of Marketing of Breast-milk Substitutes.<sup>99</sup>

The F&B industry also funded educational platforms during the pandemic. This strategy ‘dangerously blends educational information with marketing’.<sup>100</sup> As a result, companies become a ‘reliable source of health-related information when they are not’<sup>101</sup> and assume a role as a stakeholder that ensures

---

<sup>88</sup> *ibid* 23.

<sup>89</sup> *See ibid* 20.

<sup>90</sup> NCD Alliance and SPECTRUM (n 38) 21.

<sup>91</sup> *ibid* 22.

<sup>92</sup> *ibid*.

<sup>93</sup> *ibid*.

<sup>94</sup> Global Health Advocacy Incubator (GHAI) (n 81) 22.

<sup>95</sup> *ibid* 15.

<sup>96</sup> *ibid* 15–16.

<sup>97</sup> NCD Alliance and SPECTRUM (n 38) 19.

<sup>98</sup> *ibid* 18.

<sup>99</sup> Global Health Advocacy Incubator (GHAI) (n 81) 15.

<sup>100</sup> *ibid* 13.

<sup>101</sup> *ibid*.



access to educational opportunities during a health crisis. This practice mostly targets children, who are at an impressionable age and are especially vulnerable.<sup>102</sup>

Many corporations have supported healthcare systems with strategic donations of money, medical devices, facemasks, hand sanitizers and other products to increase their goodwill and generate reputational benefits and relationships with local communities.<sup>103</sup> For instance, sugary-drink producers have donated and advertised their donations of COVID-19 test kits, surgical masks, respirators and surgical gowns;<sup>104</sup> and alcohol producers have donated hand sanitizers.<sup>105</sup>

A particular prevalent CSR action in which the F&B industry, has been involved is the establishment of COVID-19 emergency funds. These funds have provided these companies “with invaluable opportunities to secure legitimacy, protect solidarity, and build relationships with policy makers”.<sup>106</sup>

Additionally, companies belonging to the F&B industry have partnered with Ministries of Health, Education or Labor, municipalities, and other public authorities in order to enhance the effect of all CSR activities. An example occurred when a sugary drinks producer offered its social media space to the Ministry of Health and Presidential offices to communicate COVID-19 information.<sup>107</sup>

The F&B industry has also implemented collaborative strategies with civil society. These engagements ‘can offer major strategic advantages in linking global giants with the national esteem and local legitimacy of prominent campaigning organizations, and in associating manufacturers of damaging products with health objectives and with broader goals of social justice, poverty reduction and development’.<sup>108</sup> For instance, a worldwide known unhealthy food producer has actively engaged with renowned international and national NGOs that donate food products to communities in need and survivors of natural disasters.<sup>109</sup>

Other alliances between the F&B industry and leading health and development agencies have also served to advance the industry’s interests. These types of alliances have resulted in the donation of funds to institutions, such as the UN Development Program, the WHO and Red Cross societies, which have been used as a means to improve the reputation of the companies involved.<sup>110</sup> Additionally, the relationship between these agencies and certain companies ‘entail some action, engagement or endorsement from the organizations with which companies seek to collaborate’.<sup>111</sup>

Corporate social ‘interventions enabled companies to improve their image and strengthen their brands’<sup>112</sup> and to advance their commercial interests among public authorities and political actors. CSR actions have provided companies with an opportunity to approach decision-makers, influence them and demand special treatment. For instance, it has been noted that several corporations from the F&B industry that donated resources to alleviate the pandemic’s effect have also requested

---

<sup>102</sup> See *ibid.*

<sup>103</sup> *ibid* 17; NCD Alliance and SPECTRUM (n 38) 19 and 21.

<sup>104</sup> NCD Alliance and SPECTRUM (n 38) 19.

<sup>105</sup> *ibid* 20.

<sup>106</sup> *ibid* 21.

<sup>107</sup> Global Health Advocacy Incubator (GHAI) (n 81) 18.

<sup>108</sup> NCD Alliance and SPECTRUM (n 38) 24.

<sup>109</sup> *ibid* 25.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid* 42.

<sup>112</sup> Global Health Advocacy Incubator (GHAI) (n 81) 18.



governments to suspend the enforcement of certain public health policies, such as the collection of taxes to unhealthy food products and the implementation of the front-of-package warning labeling regulation.<sup>113</sup> Carrying out so called philanthropic actions while lobbying against health food policies is a common occurrence among the F&B industry.<sup>114</sup>

As mentioned before, most of the CSR actions implemented by the F&B industry alongside governments, international organizations and reputed institutions have been highly publicized. This allows companies to improve their reputation among consumers, showing ‘the specter of corporate capture’.<sup>115</sup>

The CSR actions carried out by the F&B industry are problematic, particularly if they are implemented during a health emergency context, such as the COVID-19 pandemic. The CSR efforts executed during the pandemic showed the industry’s effort to conceal the damage caused by their products and corporate actions. The F&B industry has contributed to higher mortality and morbidity rates associated to COVID-19. People that live with NCDs, that are often associated with a high intake of unhealthy products, have a higher probability of being severely affected by COVID-19 or die from it<sup>116</sup> and, just as the WHO has reported, people that live with NCDs have been the most affected by the pandemic.<sup>117</sup> Particularly, people who suffer from NCDs have a higher risk of hospitalization upon contracting the virus. In addition, the concurrence of deadly (infectious and non-communicable) diseases has had a negative impact on national health systems. Despite this impact, the F&B industry, throughout its CSR activities has concealed its responsibility in the health crisis and has managed to actually position itself as an ally in the prevention and combat of COVID-19.

#### 4. Conclusions

Although the tobacco industry’s archive on its pervasive practices is still unmatched in terms of size and comprehensiveness, there are similar records for other industries. The existence and extent of aggressive and ruthless tactics by industries other than the tobacco industry have been widely documented.<sup>118</sup> For these reasons, we believe that, when it comes to recognizing the ‘fundamental and irreconcilable conflict’ between corporate interests and public interests, such as public health, the tobacco industry is not a unique case. Accordingly, the principle enshrined in the guidelines to Article 5.3 of the FCTC guidelines could be extended to other industries.

---

<sup>113</sup> *ibid* 22.

<sup>114</sup> See NCD Alliance and SPECTRUM (n 38) 29.

<sup>115</sup> Global Health Advocacy Incubator (GHA) (n 81) 19.

<sup>116</sup> NCD, The Defeat-NCD Partnership, ‘Annual Report 2020’ 2 <[https://defeat-ncd.org/wp-content/uploads/2021/04/Defeat-NCD-Partnership\\_-2020-Annual-Report\\_31-March-2021.pdf](https://defeat-ncd.org/wp-content/uploads/2021/04/Defeat-NCD-Partnership_-2020-Annual-Report_31-March-2021.pdf)> accessed 27 May 2022.

<sup>117</sup> UNDP, UN Interagency Task Force on NCDs and WHO, ‘Responding to Non-Communicable Diseases during and beyond the COVID-19 Pandemic. Examples of Actions Being Taken by Selected Members of the United Nations Inter-Agency Task Force on the Prevention and Control of Non-Communicable Diseases’ 3 and 6 <<https://apps.who.int/iris/bitstream/handle/10665/346611/WHO-2019-nCoV-Non-communicable-diseases-Actions-2021.1-eng.pdf?sequence=1&isAllowed=y>> accessed 27 May 2022.

<sup>118</sup> David Michaels, *Doubt Is Their Product: How Industry’s Assault on Science Threatens Your Health* (Oxford University Press 2008); Naomi Oreskes and Erik M Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (Reprint edition, Bloomsbury Press 2011); Rob Moodie and others, ‘Profits and Pandemics: Prevention of Harmful Effects of Tobacco, Alcohol, and Ultra-Processed Food and Drink Industries’ (2013) 381 *The Lancet* 670; Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Univ of California Press 2013); Nicholas Freudenberg, *Lethal But Legal: Corporations, Consumption, and Protecting Public Health* (Reprint edition, Oxford University Press 2016); Mann (n 19).



Given the adverse impact of unhealthy commodities on human rights, included those of children, and bearing in mind their duty to protect human rights, States should regulate the advertising, promotion and sponsorship activities put into action by these industries. At the same time, to materialize the responsibility to respect human rights, industries should be seriously committed to identify, prevent, and mitigate the impacts of their operations on human rights, including those of marketing (promotion, advertising, and sponsorship) and those activities labelled as CSR.

The lack of regulation of CSR activities allows industries to carry out these activities as marketing strategies, without being accountable for the negative impacts of such activities on human rights and public health. There is sufficient evidence that demonstrates the negative impact of CSR initiatives by tobacco and alcohol companies on consumption prevention and health policies. CSR actions influence consumers and are also used for political purposes.<sup>119</sup> The actions deployed by F&B companies throughout the COVID-19 crisis, were aimed at marketing purposes<sup>120</sup>. The F&B industry donated unhealthy food and beverages in the middle of the COVID-19 pandemic, even to vulnerable people, despite (i) these products being known risk factors for NCDs; and (ii) a direct relationship between NCDs and COVID-19 exacerbation and aggravation. Ironically, at the same time, the F&B industry donated medical devices and other goods to treat COVID-19 patients and exploited these donations as marketing tools.

The F&B industry has contributed and continues to contribute to the decline of people's health in the course of their business operations. CSR activities should be considered as part of such operations, as are they disguised marketing strategies. Left unregulated, CSR activities will continue to allow the F&B industry to cultivate and take advantage of a reputation as an influential actor in health-related matters, and may grant the industry a prominent voice in policy and regulatory matters, despite the apparent competition between their economic interests and public health.

## 5. Recommendations

In order to counter the undue influence of corporations on the public and regulatory spheres, we present the following recommendations for the consideration of the Working Group in the drafting of the report:

- 1) In relation to industries that have irreconcilable interests with the public interest, such as the tobacco industry:
  - a. States should identify and recognize such industries and limit the interactions with them, their lobbyists, and front-groups – to such as is necessary to regulate the economic sector effectively, and exclude them from other decision-making settings;
- 2) At the minimum, and with respect to all industries:
  - a. States should ensure that interactions with industries' representatives, lobbyists, front-groups, are conducted in a transparent manner and guaranteeing the access to

---

<sup>119</sup> Fooks and others (n 64).

<sup>120</sup> Rohit Malik, 'Catch Me If You Can: Big Food Using Big Tobacco's Playbook? Applying the Lessons Learned from Big Tobacco to Attack the Obesity Epidemic' <<https://dash.harvard.edu/bitstream/handle/1/8965631/Malik%20Rohit.pdf?sequence=1&isAllowed=y>> accessed 20 May 2022; FIC, Argentina, Interamerican Heart Foundation (n 46).



- information to citizens on those interactions, for example, through public hearings, public notices, and disclosure of records;
- b. States should ensure that all the officials, consultants, members of expert or consultative committees, and contractors involved in the decision-making processes disclose any interest with industries, and should adopt mechanisms to address conflict of interests, including the exclusion or restriction of the participation in the decision-making processes.
  - c. Public officials and employees should be prohibited from accepting payments or gifts from such industries.
  - d. States should restrict individuals previously employed in these industries or with financial interests in them from working in related policy-making settings;
  - e. States should adopt rules and mandatory penalties that would compel these industries to share information about their activities, including production, marketing, and affiliated organizations and individuals;
  - f. States should adopt mechanisms to hold accountable officials, consultants, members or expert or consultative committees, and contractors involved in the decision-making processes, who breach the prohibitions, restrictions or disclosure provisions mentioned above;
- 3) States should regulate corporate social responsibility. The regulation should include:
- a. Preventing government and public entities from accepting any financial contributions or endorsing any activities presented as 'socially responsible' by industries.
  - b. Regulate food assistance programs and donations in order to ensure that all food and beverage products handed out are not unhealthy and that food product donations do not constitute a risk of creating or worsening health conditions;
  - c. Adopt and enforce mechanisms to hold companies accountable for their CSR activities.
- 4) States should ensure that initiatives addressing health crises such as the COVID-19 pandemic are “coherent with related health and development priorities, notably including effectively tackling NCDs”<sup>121</sup>;
- 5) To effectively respect human rights, companies should carry out due diligence processes to identify, prevent and mitigate adverse impacts of their operations, and considering:
- a. The unhealthy nature of the products they manufacture and sell, such as ultra-processed foods and sugary beverages;
  - b. The impact that marketing strategies deployed have on human rights (including advertising, promotion, and sponsorship activities);
  - c. CSR initiatives as part of their operations, to identify, prevent and mitigate their impact on human rights.

---

<sup>121</sup> NCD Alliance and SPECTRUM (n 38) 35.