

KEY FINDINGS/RECOMMENDATIONS

- Public health proponents should seek high levels of *de jure* autonomy when health surveillance and/or regulatory agencies are established, including independent budgets, longer terms of appointed leadership, and delinking from congressional participation.
- Health surveillance/regulatory agencies should engender *de facto* autonomy by asserting their mandate to monitor and regulate public health, and protecting from attacks on their *de jure* autonomy. Agencies should be mindful of the following:
 - ◆ Maintaining a strong public profile predicated upon high levels of expertise and protection of the general public
 - ◆ Overreaching, as alienating powerful constituents could undermine their ability to engender positive public health policies

Opportunities and Challenges of Brazil's National Coordinating Mechanism

Following the conclusion of the WHO FCTC negotiations in 2003, Luiz Inácio Lula da Silva issued a Presidential Decree of August 1, 2003, creating the National Commission for the Implementation of the WHO FCTC and its Protocols (Portuguese acronym: CONICQ). CONICQ was one of the first coordinating mechanisms in the world to include all sectors of government in an attempt to facilitate a whole-of-government approach to FCTC implementation and tobacco control policy generally. The structure of the commission was developed in order to systematize tobacco control within the government while preventing industry interference in tobacco control policy by explicitly excluding tobacco industry representation on CONICQ. The commission has played an important role in setting norms for government-industry interactions and has worked to establish synergies across different sectors of government. For example, the health sector has worked closely with the Ministry of Agrarian Development to come up with strategies to implement Articles 17 and 18 of the WHO FCTC.

CONICQ has also experienced a number of challenges, including conflicting policy preferences between health agencies and sectors that have traditionally supported tobacco industry activity. These conflicts have been particularly salient as Brazil has worked to set global standards for tobacco control. CONICQ has a difficult task of bringing together historically divergent sectors in order to create alignment and construct new policy initiatives in the interests of tobacco control.

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- The leadership of CONICQ should continue to strengthen relationships between the sectors of government that have demonstrated commitment to FCTC implementation (e.g., Ministry of Finance and Ministry of Agrarian Development).
- CONICQ should work with civil society organizations and other sectors of government to enforce the norms of government-tobacco industry interactions set out in the "transparency ordinance" (Ordinance from the Ministry of Health n. 713/2012). This work should target those Ministries, such as Agriculture, who work closely with tobacco industry representatives, particularly the Sectorial Chamber on Tobacco.
- CONICQ should continue to work with key decision makers to establish a whole-of-government policy on tobacco and tobacco control that takes into account issues of government support for tobacco growing and manufacturing, and aligns with FCTC obligations.

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THE POLITICAL ECONOMY OF TOBACCO CONTROL IN BRAZIL: Protecting Public Health in a Complex Policy Environment

As Brazil and many other governments work toward improving public health policies, it is crucial to consider the broader economic and institutional policy-making context. Specific to tobacco control, a number of key themes emerge:

- The potential implications of new trade and investment agreements
- The intersection and interaction of international agreements and domestic policies
- The importance of autonomous governmental institutions that promote public health
- Promoting intra-governmental cooperation to generate pro-health policies

The research findings and recommendations presented here were developed through surveys of existing research and official documents, and key informant interviews across all relevant sectors. The themes are germane to broader efforts to improve public health policies around the globe, particularly prevention of noncommunicable diseases (NCDs).



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Implications of New Trade Agreements for Tobacco Control in Brazil

Free trade agreements (FTAs) substantially liberalize trade between participating countries and thereby go above and beyond commitments made at the World Trade Organization (WTO). FTAs pose two risks for tobacco control.

First, lower tariffs (customs duties) may stimulate tobacco consumption by leading to lower retail prices for imported products and increasing competition among producers. Our analysis suggests that it is difficult to predict the impact of lower tariffs on retail prices in Brazil.

Second, FTAs may place additional legal constraints on the ability of parties to implement tobacco control measures. Contemporary FTA negotiations highlight four important issues for consideration:

- Investment commitments that protect foreign investments and give foreign investors new legal rights
- Commitments to protect trademark rights above and beyond those set out in the law of the WTO (“TRIPS Plus”)
- Rules governing regulatory decision making that may provide the tobacco industry with a platform to resist regulation
- Tobacco-specific language, which could carve tobacco out of new commitments, but also affect interpretation of existing commitments

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In Brazil, with every negotiation of a new international trade or investment agreement, the public health community should evaluate the effect of tariffs and new legal constraints on tobacco consumption and tobacco control measures. Furthermore, establishing active platforms for discussion of public health and trade may help balance economic interests with the prioritization of health.

Investment and Fiscal Incentives in the Brazilian Tobacco Sector

Governments use investment and fiscal incentives, such as tax holidays, to attract investment. In the tobacco context, these incentives generate savings that lower the cost of production. Evidence suggests that tobacco consumption is likely to increase if these savings are passed on to the consumer through lower prices. For this reason, Guidelines to Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC) recommend that parties should not grant incentives to tobacco companies.

In Brazil, however, fiscal incentives have been offered in a number of different forms – including tax exemptions, subsidies in the form of seeds for growing other crops during the off-season, and loans to support tobacco growing – at both the state and federal levels. If subsidies act as a side-payment to placate growers with respect to tobacco control, they may have a positive impact on the political economy of tobacco control, such as assistance for the development of alternative livelihoods. However, subsidies supporting manufacturing in Brazil do nothing but support the industry and strengthen its political position. Accordingly, subsidies for manufacturing should be opposed on both health and economic grounds.



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In the context of investment incentives and subsidies, the tobacco control community should do the following:

- Recognize that subsidies and incentives to growers may be used as a payoff for political advances in tobacco control, but that approaches to develop sustainable alternative livelihoods are preferable to approaches that support tobacco growing.
- Oppose – on health and economic grounds – fiscal incentives and other subsidies offered in the tobacco sector.

Theorizing Regulation – Formation and Effects of the FCTC

In late 2010, the Conference of the Parties to the WHO FCTC adopted Partial Guidelines to Articles 9 and 10 of the Convention concerning regulation of the contents of tobacco products and regulation of tobacco product disclosures. Soon thereafter, Brazil’s health regulatory and surveillance body, the *Agência Nacional de Vigilância Sanitária* (ANVISA), launched a public consultation concerning a proposal to ban additives in tobacco products. This proposal and the regulation that followed would not have occurred but for adoption of the Partial Guidelines to Articles 9 and 10.

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- To limit the influence of the tobacco industry, and ensure good outcomes for public health, it is important to frame WHO FCTC guideline development as a technical rather than political process.
- The technical process of developing WHO FCTC guidelines can provide a forum for learning by parties and diffusion of policies from one party to another.
- The process of developing the Partial Guidelines to Articles 9 and 10, and their role in Brazilian regulation, holds important lessons for global efforts to prevent and control NCDs. The creation of international fora comprised of states, focused on technical regulatory issues, may facilitate learning, policy diffusion, and stronger regulation of risk factors for NCDs.

Institutional Design and Governance

Many scholars and observers of good governance argue that greater levels of agency autonomy can help to insulate decision makers from political influence and/or interference as they seek to develop rules and regulations. In theory, individuals in regulatory agencies are typically better informed and more rational and neutral in their rule-making efforts than their political peers who might be facing and/or serving competing interests. In Brazil, the health regulatory ANVISA has taken advantage of its high levels of statutory or *de jure* autonomy to regulate tobacco through proven policy interventions such as warning labels, restrictions on advertisement and promotion, and bans on tobacco additives and flavorings. Their strong reputation for professionalism, expertise, and promoting the public good has engendered greater *de facto* autonomy, which they leverage to develop pro-health policies. The tobacco industry recognizes that ANVISA has a negative effect on its business goals and, as a result, has attacked its authority through legal means and the media.



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