

KEY FINDINGS AND RECOMMENDATIONS

- Mandated interagency arrangements can further constrain the work of tobacco control proponents depending on composition (e.g. industry presence and economic agency leadership) and scope of role.
- Interagency arrangements to implement the provisions of the Framework Convention of Tobacco Control must categorically exclude industry representation notwithstanding any mandated responsibility of officials to consult with legal commercial entities.
- Proponents of tobacco control should understand the risks and opportunities of incremental legislation. Some perceived legislative victories may create barriers to even stronger measures in the future.

Lessons from the 2012 Tobacco Tax Reform

The 2012 “sin tax” reform changed the structure and rates of government taxes on tobacco and alcohol products. The government’s decision to link the new tax revenues to the emerging universal health program, PhilHealth, was consistently identified by officials and the general public as the main reason to support the reform.

The coalition of civil society organizations supporting reform was meaningfully broad, consistently vocalized the same set of compelling messages, and developed strong relationships across government institutions by providing effective technical assistance. Many cited the general importance of technical assistance, within the country and externally, including intergovernmental organizations and international non-governmental organizations. Many also noted the link between the reform and a related dispute at the WTO about taxes on distilled spirits. Though a “loss” at the WTO, it became a major impetus for broader tax reform.

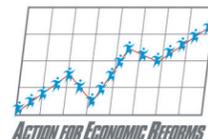
A recent WTO dispute between the Philippines and Thailand over cigarette taxes and challenges with possible tax evasion after the implementation of the recent Philippine sin tax suggest that, in order to administer ad valorem taxation effectively, governments need to have a strong command of product valuation both domestically and in traded products.

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- Linking tobacco excise tax reform to funding for a popular and useful public good such as universal health coverage may generate support across society.
- Engendering domestic technical capacity to support tobacco tax reform can increase the probability of successful policy change.
- International organizations can provide vital technical support for tax policy reform; these organizations must remain engaged throughout the process.
- International economic disputes may provide political opportunities for improved domestic and international public health policies.
- Governments must develop and maintain strong, effective, and transparent systems to determine and monitor valuation of products in the context of ad valorem taxes, or perhaps better, replace ad valorem taxes with specific taxes.

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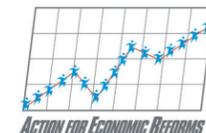
IMAGE PROVIDED BY JIMMY DOMINGO

THE POLITICAL ECONOMY OF TOBACCO CONTROL IN THE PHILIPPINES: Trade, Foreign Direct Investment, and Taxation

As governments work to improve tobacco control, they continually seek to balance public health and economic policies. In the Philippines, as in many countries, four themes emerge:

- Implications of emerging international trade and investment agreements
- The political economy of foreign direct investment and its impacts on health policies
- Challenges of intra-governmental cooperation and coordination
- Lessons from a recent restructuring of tobacco excise taxation

The findings and recommendations presented here were developed through a survey of official documents, existing literature, and interviews with key informants from all relevant sectors. Each line of inquiry provides lessons not only for those working at the intersection of tobacco control and economic policy, but for global health practitioners more broadly.



Implications of Emerging Free Trade Agreements for Tobacco Control

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

First, lower tariffs may stimulate tobacco consumption by increasing competition among producers, thus leading to lower retail prices for imports. In the Philippines, however, this is unlikely. The country already has very low tariffs on imported tobacco products, imposes zero tariffs on imports from Association of Southeast Asian Nations Members (with the exception of Vietnam), and has significant low-cost tobacco leaf-growing and domestic cigarette production.

Second, FTAs may place additional legal constraints on Parties' ability to implement tobacco control measures. Ongoing negotiations for a Trans-Pacific Partnership Agreement (the Philippines is not currently participating) highlight four issues for consideration in future FTA negotiations.

- Chapters on investment protection may provide foreign investors, including tobacco companies, with additional legal rights. The Philippines has many such agreements in place, so new commitments appear unlikely to increase risk.
- Stronger obligations to protect intellectual property rights may expand trademark rights, and pose problems for packaging and labeling measures such as plain packaging.
- Provisions for regulatory processes may provide the tobacco industry with a new forum to challenge tobacco control measures, such as with respect to cost-benefit analysis.
- Tobacco-specific language may either protect or endanger tobacco control measures.

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In the Philippines, it is unlikely that lowering tariffs through new FTAs will stimulate demand, or that new investment chapters in FTAs will extend the rights of tobacco companies much beyond existing rights, but the effect of other rules must be judged at the time an agreement is negotiated.

Political Economy of Foreign Direct Investment and Impacts on Tobacco Control

Governments use investment and fiscal incentives, such as tax holidays, to attract foreign investment. These incentives lower production costs, and tobacco consumption is likely to increase if savings are passed on to the consumer. 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.

The Philippines has witnessed significant foreign direct investment (FDI) in its tobacco sector, particularly from Philip Morris International (PMI). PMI established operations in an industrial zone, but neither sought nor was granted incentives to invest. This suggests that the decision to do so was based primarily on capturing market share in an emerging market. Also, British American Tobacco has pledged to increase its investment in the Philippines. Policy-makers and health advocates should be vigilant in ensuring that incentives are not granted to the firm.

Debate continues about the effects of FDI on governments' decisions to regulate. Some believe that FDI typically leads to "capture" as governments dismantle regulatory frameworks to attract



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and maintain investments. Others argue that governments privilege domestic investment either because they believe it is in the public interest or because of entrenched political connections. Examining these beliefs in light of the 2012 tobacco excise tax reform reveals that the reality is very complex. Despite hundreds of millions of dollars in investment over more than a decade, PMI consistently failed to influence tobacco tax policies significantly, even as part of a recent joint venture with the largest domestic tobacco manufacturer. Other variables – including the tobacco tax's link to alcohol tax reform, shifting norms of governance, and specific characteristics of key institutional structures – had serious intervening effects. This does not suggest that foreign investors are not influential – the new PMI-Fortune venture continues to wield enormous resources in order to affect policy, sometimes successfully – but it does suggest that other variables can mitigate or even negate some of these relationships.

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Tobacco control proponents in and out of government should

- Be aware of potential challenges associated with new foreign investments in the tobacco sector, but not assume that the status quo is necessarily superior.
- Engender good governance around tobacco by supporting the tobacco control efforts of elected and unelected officials who promote pro-health public policies.
- Consider the risks and rewards of linking tobacco and alcohol excise tax reforms.

The Philippine government should ensure that

- Following FCTC Article 5.3, the government prohibits fiscal and investment incentives to tobacco companies, including to British American Tobacco.

Challenges of Intra-governmental Cooperation and Coordination

Interagency arrangements work to achieve policy coherence within government, including, for example, the incorporation of health objectives across sectors. Despite the potential benefits, challenges abound, including loss of autonomy for some agencies, stalemate or fragmentation, and resource inefficiencies. It is crucial to understand how such arrangements work in practice in order to preserve benefits while protecting against challenges. The Philippine government was one of the first to mandate an interagency arrangement for implementing tobacco control regulations, the Interagency Committee for Tobacco (IAC-T), which is charged with implementation, enforcement, and monitoring of the Tobacco Regulation Act (RA 9211). The agency's structure has generated deep concern among tobacco control proponents. The Department of Trade and Industry (DTI) chairs the agency with the Department of Health (DOH) relegated to vice-chair. Challenges also stem from the formal inclusion of an industry representative in the IAC-T. Design of the IAC-T also constrains the DOH's legal authority to enforce the RA 9211. In a case brought against the DOH by Philip Morris Manufacturing Incorporated, a court ruled that the IAC-T is the sole body charged with implementing the Act. Tobacco control efforts have suffered, too, because civil society organizations challenging industry representation on the IAC-T have often refused to participate in IAC-T meetings.



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