

7

Negotiation and Health Diplomacy: The Case of Tobacco

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Editors' Note

The Framework Convention on Tobacco Control (FCTC) was the first treaty negotiated under the auspices of the World Health Organization (WHO) and the world's first international health treaty. The process of diplomatic negotiations that led to the FCTC was discussed in the previous volume of case studies in this series.¹ This had particular emphasis on the work of the Inter-governmental Negotiating Body (ING) and provided insights into the positions, perspectives and experiences of one of the central actors in it, the government delegation of the United States of America (USA).

Only governments hold authority to determine the final wording of a Convention such as the FCTC and decide whether to sign and ratify the negotiated text. However, the processes that lead up to the final wording — beginning with pressure at the national and international levels to address a major health problem and continuing through the formal and behind-the-scenes diplomacy that determine the success or failure to achieve a consensus text — involve many other stakeholder groups, including civil society organizations (CSOs) and individuals, non-governmental organizations (NGOs) and the private sector. These actors can have a profound influence on the positions of negotiating delegations, both directly

172 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

and through their engagement with the media and their influence on public perceptions and attitudes to which governments may respond.

1. Multilateral and Multi-Stakeholder Negotiations: Overview of Key Concepts for this Case Study²

The goal of the present chapter is to describe and analyze the multi-stakeholder negotiation process which unfolded during the negotiation of the World Health Organization's (WHO) Framework Convention on Tobacco (FCTC), including the influencing and negotiation behavior of the different stakeholder groups and how their disputes resulted in the completion of the FCTC, the initiation of negotiations and agreement on a protocol for FCTC Article 15 (the illicit trade in tobacco products), and the unfinished negotiations towards a protocol for FCTC Article 13 (tobacco advertising, promotion, and sponsorship).

The process of international policy-making and negotiating conventions is complex and involves many different stakeholders. Four broad groups shape the global governance policy-making: governments, transnational companies (TNCs), international non-governmental organizations (I-NGOs), and inter-governmental organizations (IGOs). The last three are non-state actors and contradict the traditional view of international relations as a purely a state-centric business.

While TNCs are profit-oriented and pursuing commercial interests, I-NGOs are motivated by values rather than material concerns. Confrontations of some NGOs with other non-state actors or governments are often carefully staged to generate maximum attention, attract new members, and gain visibility. On the other side, many business groups have established foundations or non-profit organizations (NPOs) to promote their interests. Despite the fact that I-NGOs and TNCs may differ in their interests, at times they use similar approaches to influence the multi-stakeholder environment.

Non-state actors and state actors draw on different sources of influence to shape international policy-making. Governmental institutions are often the battle ground of conflicting interests between national groups representing particular interests and government bureaucrats representing government policies. Prolonged policy disputes often lead to weakening of

Negotiation and Health Diplomacy: The Case of Tobacco 173

state institutions and a strengthening of power of non-state actors. At the same time, international governance is increasingly characterized by cooperative partnerships involving governmental as well as transnational I-NGO actors.

In contrast to the state actors, TNCs are subject to fewer political fluctuations because their structure, in general, is hierarchically organized, private ownership — based, and lacks most of the participative elements characterizing governmental institutions. In view of the growing pressure of civil society groups (e.g., I-NGOs), an increasing number of TNCs have added business diplomacy to their management functions in order to comply with new international standards (e.g., the OECD Guidelines for Multi-national Enterprises).^{3,4}

IGOs, on the other hand, can be divided into two subdivisions according to their institutional environment and purpose. Some IGOs are core institutions of the United Nations (UN) system, while others are rather detached from it. This distinction is important in terms of legal proceedings and overall bargaining power, since they may or may not have the opportunity to link issue-areas. The other important distinction is between IGOs that focus on problems of international policy coordination and those that deal with problems of technical cooperation.

The non-governmental organization (NGO) field is characterized by its heterogeneity. There are NGOs acting within national boundaries and those operating on an international level with representative offices in other countries. Their field of activities can range from business and economic development to faith or health issues. However, it is often not clear who an international policy-oriented NGO represents.

Applied to this case analysis, the dominant actors in this multi-stakeholder conflict pertaining to tobacco control are the following institutions and organizations (Figure 7.1):

- Multi-national companies (MNCs): tobacco TNCs and private and public enterprises
- IGOs: WHO
- Governments: Ministries of Health, Economic Affairs, Foreign Affairs, and Finance
- I-NGOs: anti-smoking alliances and pro-business NPOs

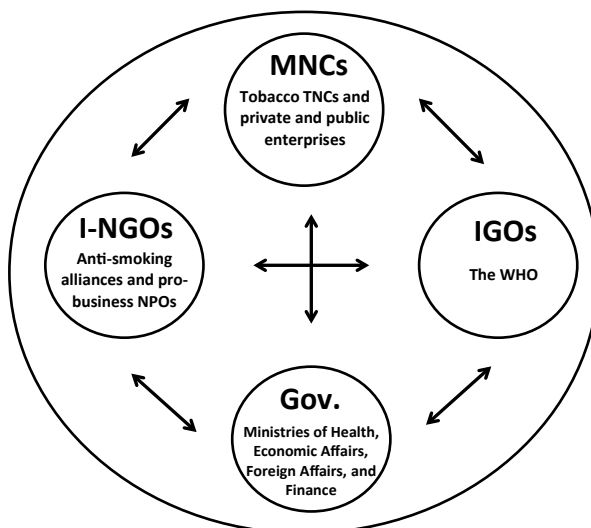


Figure 7.1. Stakeholder interaction in the FCTC negotiation.⁵

The enormous costs to individuals and societies of the economic and health burdens resulting from tobacco consumption and the enormous profits made by the tobacco industry from the sale of tobacco products constitute very powerful elements of the context in which the FCTC negotiations took place. They provide the motive forces for the efforts by different stakeholders to promote or counter the creation of strong measures to curb tobacco use. The following analysis therefore includes an overview of these motivating forces as well as the combating, influencing, and negotiation behavior that the different stakeholder groups deployed.

2. The Problem: Increasing Global Tobacco Consumption and Costs of Smoking for Economies and Societies⁶

2.1 Global Consumption of Cigarettes⁷

Global consumption of cigarettes has been rising steadily since manufactured cigarettes were introduced at the beginning of the 20th century. While

Negotiation and Health Diplomacy: The Case of Tobacco 175

consumption is levelling off and even decreasing in some countries, more people are smoking worldwide, and smokers are smoking even more cigarettes. Due to the expanding world population, the absolute numbers of smokers will probably increase by 2030, even if prevalence rates fall. The expected continuing decrease in male smoking prevalence will be offset by the increase in female smoking rates, especially in low- and middle-income countries (LMICs).

The consumption of tobacco has reached the proportions of a global epidemic. Tobacco companies are producing cigarettes at the rate of five and a half trillion a year — nearly 1,000 cigarettes for every man, woman, and child on the planet.

Cigarettes account for the largest share of manufactured tobacco products, constituting 96% of total value sales. Asia, Australia, and the Far East are the largest consumers (2,715 billion cigarettes), followed by the Americas (745 billion), Eastern Europe and Former Soviet economies (631 billion), and Western Europe (606 billion).⁷

2.2 Costs to the Economy⁸

The tobacco industry uses economic arguments to persuade governments, the media, and the general population that smoking benefits the economy. It claims that if tobacco control measures are introduced, tax revenues will fall, jobs will be lost, and the economy on the whole will be negatively affected. But the industry greatly exaggerates the economic losses, if any, which tobacco control measures will cause and they never mention the economic costs which tobacco inflicts upon every country. Tobacco's cost to governments, to employers, and to the environment includes social, welfare, and health care spending, loss of foreign exchange in importing cigarettes, loss of land that could grow food, costs of fires and damage to buildings caused by careless smoking, environmental costs ranging from deforestation to collection of smokers' litter, absenteeism, decreased productivity, higher numbers of accidents, and higher insurance premiums. Overall, smoking brings great costs to the economy and society.

Organizations combating tobacco propose the implementation of efforts to equalize taxes across different tobacco products. The *Tobacco Atlas* reports that the retail price of a pack of cigarettes varies among and within

countries.⁹ Cigarette prices are influenced by many factors, including the tobacco market structure (monopoly, oligopoly, or competitive market) and tobacco tax system (size and structure of the excise tax). Significant price differentials may exist between so-called premium and economy cigarette brands, which is the result of a tobacco industry strategy to target specific segments of the population, or from the tax structure favoring ad valorem tax over specific tax. According to the *Tobacco Atlas*, specific tax, established as a fixed amount of money collected by the government per cigarette, would result in more uniform cigarette prices, thereby reducing the price gap between cheap and premium brands. This would encourage smokers to quit or lower consumption as opposed to simply switching to cheaper brands to avoid price or tax increases.⁹

2.3 Costs to Society

Smoking also brings about opportunity costs, since society gives up the opportunity to invest in other important things because valuable resources are spent treating smoking-related illnesses.¹⁰ These opportunity costs can be identified when comparing the relative weight of tobacco-related healthcare costs versus missed opportunities for programs and services.¹¹ The money spent on tobacco often reduces resources available for basic necessities such as nutrition, health care, and education.⁹ Examples of the cost to society in different countries include: US\$96 billion spent on tobacco-related healthcare costs in the United States of America (USA) from 2000 to 2004 instead of being spent on other sectors such as transportation, education, public safety, and rural development; US\$16.6 billion spent on tobacco-related healthcare costs in France; US\$9.5 billion in the UK; US\$6.2 billion in China; and US\$2.8 billion in Canada.

Opportunity costs impose a significant burden on tobacco users and their families, burying many of them in a vicious cycle of poverty that can span generations. Spending on tobacco products diverts resources from essential goods and services, including education, food, clothing, shelter, and transportation. Furthermore, expenditures on tobacco inhibit progress toward UN Millennium Development Goals. Studies confirm that a comprehensive ban on tobacco advertising reduces smoking: one study on 22

high-income countries found that comprehensive bans decreased tobacco consumption by 6.3%, while another study on 30 low- and middle-income countries found that partial bans were associated with a decrease of 13.6% and comprehensive bans reduce smoking by 23.5%.¹²

2.4 Tobacco Industry Marketing¹³

Tobacco companies spend billions of dollars each year to market their products and overcome the impacts of anti-smoking campaigns by governments, I-NGOs, and IGOs who want to inform the population about the health risks and costs of smoking. The United States Federal Trade Commission reported that, in 2005, cigarette companies spent US\$13.11 billion on advertising and promotion, down from US\$15.12 billion in 2003 but nearly double what was spent in 1998.¹⁴ The increase, despite restrictions on advertising in most countries, was an attempt to appeal to a younger audience, including multi-purchase offers and giveaways such as hats and lighters, along with traditional store and magazine advertising. According to the United States Centers for Disease Control and Prevention (US-CDC), in 2011, cigarette companies spent US\$8.37 billion on advertising and promotional expenses in the USA alone, up from US\$8.05 billion in 2010. Furthermore, the five major smokeless tobacco manufacturers in the USA spent US\$451.7 million on smokeless tobacco advertising and promotion in 2011, an increase from US\$442.2 million spent in 2010.

In the USA, for example, the money cigarette companies spent in 2011 on marketing amounted to approximately US\$23 million per day or almost US\$27 for every person (both adults and children) in the country. The following three categories totalled approximately US\$ 7.76 billion and accounted for 92.7% of all cigarette company marketing expenditures in 2011:

1. Price discounts paid to retailers or wholesalers to reduce the price of cigarettes to consumers (US\$7 billion).
2. Promotional allowances paid to cigarette retailers, such as payments for stocking, shelving, displaying, and merchandising particular brands (US\$357 million).

178 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

3. Promotional allowances paid to cigarette wholesalers, such as payments for volume rebates, incentive payments, value-added services, and promotions (US\$401 million).

There is clear evidence that tobacco advertising, promotion, and sponsorship have tangible effects of increasing the number of smokers, especially among young people. A study in the United Kingdom (UK) concluded that, for each form of tobacco marketing recognized by young people, the likelihood of smoking initiation increased by 7%. Another study showed that familiarity with local tobacco billboards increases the likelihood that adolescents would start smoking.¹⁵ Marketing by the tobacco industry successfully addresses specific populations: the most heavily advertised brands were the preferred brands of cigarettes smoked by adolescents (ages 12–17 years) and young adults (ages 18–25 years) during 2008–2010.¹³

The tobacco industry also targets women by producing brands specifically for them. Marketing toward women is dominated by themes of social desirability and independence, which are conveyed by advertisements featuring slim, attractive, and athletic models.

Advertising and promotion of certain tobacco products also appear to target members of racial/minority communities. For example, marketing to Hispanics and American Indians/Alaskan Natives has included advertising and promotion of cigarette brands with names such as Rio, Dorado, and American Spirit. The tobacco industry has also targeted African American communities in its advertisements and promotional efforts for menthol cigarettes (e.g., campaigns that use urban culture and language to promote menthol cigarettes, tobacco-sponsored hip-hop bar nights with samples of specialty menthol cigarettes, targeted direct-mail promotions, etc.).

As evidence of how costly tobacco advertising, promotion, and sponsorship can be to society, several countries and provinces have sued tobacco companies over the cost to the public budget incurred by patients of tobacco-related diseases. In the 1998 Master Settlement Agreement, the five largest tobacco companies in the USA agreed to pay at least US\$200 billion compensation to 46 states over 30 years.¹⁶ Similar cases have been brought in a number of other countries¹⁷ including Australia.¹⁸

3. Negotiation of WHO Framework Convention on Tobacco Control and Related Protocols

3.1 History of the Convention

The 2003 FCTC marked an important milestone¹⁹ for two reasons: it represented the first time since the birth of WHO in 1948 that WHO actually wielded its treaty-making power according to Article 2(k) of WHO Constitution²⁰, and the 2003 FCTC was the first international convention organized for public health.²¹

The idea of an international convention on tobacco control was conceived in 1993 by American law professors Dr. Ruth Roemer and Dr. Allyn Taylor, who then proposed the idea to Neil Collishaw — then head of the tobacco control unit in WHO. Collishaw began exploring this possibility and received support from several experts in the field. The idea was promoted by the 9th World Conference on Tobacco or Health in 1994, which called on national governments, ministers of health, and WHO to initiate an international convention.²² Canadian participants of the 1994 Conference conveyed the proposal to Dr. Jean Larivière, member of the Canadian delegation to the World Health Assembly (WHA). Through the lobbying efforts of Larivière and his colleagues, the idea was introduced to WHO and in May 1996 the WHA adopted resolution WHA49.17(9) calling for an international framework convention.

Another catalyst followed when Dr. Gro Harlem Brundtland, elected as WHO Director-General in 1998, promoted tobacco control as the priority of her term and established the Tobacco Free Initiative.²³ The 52nd session of the WHA in 1999 established an international working group to prepare draft elements for the treaty. Its next session evaluated and accepted the draft submitted by the working group. The Inter-governmental Negotiating Body (INB) was created to negotiate the draft and met six times between 2000 and 2003. During this time, the tobacco companies set up Project Cerberus²⁴ — a voluntary regulatory scheme — as an alternative to the international convention. By 2001, this move had proved to be a failure, however. Many other unsuccessful attempts by the tobacco industry to prevent the establishment of an international convention were also discovered.²⁵ Examples of these undertakings included using “independent” academic institutions,

180 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

journalists, and consultants to criticize WHO, influence WHO's regional offices, and sabotage conferences on tobacco.²⁶

In May 2003, the 56th session of the WHA adopted WHO FCTC, which was quickly ratified and went into force on 27th February 2005. With 179 parties as of 19th October 2014, it is one of the most widely embraced treaties of the UN.^{27,28}

3.2 Protocol Negotiations under FCTC Articles 13 and 15

WHO FCTC was established in 2003 with the goal of reducing adverse health effects from tobacco use around the world. Governed by a Conference of Parties (COP) which meets bi-annually, WHO FCTC has been complemented with the development of guidelines on the implementation of several articles of the FCTC. In its first session in 2006, the COP simultaneously established two expert groups to work out templates for two possible protocols, one relating to Article 13 on advertising, promotion, and sponsorship of tobacco products and the other relating to Article 15 regarding illicit trade in tobacco products. However, while negotiations on the protocol on Article 15 went through and the protocol was adopted²⁹ in November 2012, the COP decided against the necessity of a protocol on Article 13. Due to parties' concerns about the necessity for such a protocol and the demand of resources from other projects, eventually discussion on the protocol on cross-border advertising, promotion, and sponsorship was postponed.

Incomplete negotiations on Articles 13 Protocol

Need for a Protocol on Article 13

With regulations regarding traditional forms of advertising, promotion, and sponsorship becoming tighter and tighter in many countries, the tobacco industry is devising new methods to circumvent them. Online advertisement is now an important medium for tobacco companies, with advantages such as a global reach and round-the-clock accessibility, as well as the majority of potential targets being young people. Via popular social networking websites like Facebook, the tobacco industry attempts

to lure people with fan pages where they can become a fan of the brand, which is in direct violation of Article 13 and Facebook advertising guidelines.³⁰ Employees from tobacco companies promote their brands through Facebook groups, “posting photographs of brand-related events, products, and promotional items.”³¹

A study of tobacco-related videos on YouTube reports that a majority (71.2%) of these videos are pro-tobacco while only a small minority (3.7%) have anti-tobacco content. Although tobacco companies deny any involvement with these online clips, the study voices its suspicion that “some of the videos were high quality and look professionally made. Many also conformed to brands’ themes and contained images or music that may be copyrighted to tobacco companies.”³² These forms of advertising, promotion, and sponsorship are cross-border by nature.

The shift to Internet advertising makes stronger measures regarding cross-border advertising, promotion, and sponsorship even more imperative. A protocol on Article 13 could strengthen international collaboration in battling publicity efforts by the tobacco industry. Governments of countries hosting big tobacco companies may be unwilling or unable to exercise its jurisdiction on these violations of the FCTC. A binding protocol would enable countries negatively affected by these acts to take matters into their own hands and aid these parties in carrying out investigations and obtaining binding verdicts. Although no protocol can ensure total support and cooperation from the hosting country, such binding international obligations would put enormous pressure on the government to drop their backing for the tobacco industry.

Details of a proposed template for the protocol to Article 13, developed by a COP expert group, were set out in a document for the 2010 meeting of the COP.³³

Efforts towards a Protocol on Article 13

COP1 (2006) established an expert group to elaborate a template on a protocol on tobacco advertising, promotion, and sponsorship. This expert group concluded that, due to the numerous obligations that parties already agreed to in the main text of the convention, the need for a protocol to create new responsibilities and rights was “somewhat unclear.”³⁴ In the

final report submitted to COP2, the expert group suggested relying on guidelines to assist the states in the implementation of Article 13 and, if a protocol was to be pursued, the text should be drafted in a careful way to avoid unnecessary duplication with the existing obligations stipulated by the Convention.

The results of the COP1 expert group deliberations were presented to COP2 (2007), which decided to create a working group to draft guidelines and identify elements of a possible protocol as well as other measures contributing to the implementation of Article 13. Regarding the likely components of a protocol, this working group emphasized the international collaboration aspect of the battle against cross-border advertising, promotion, and sponsorship of tobacco.³⁵ Four specific issues were put forward: notification and response procedures, cross-border cooperation between enforcement agencies, exercise of jurisdiction, and recognition and enforcement of foreign judgments.³⁶

When presented to COP3, the working group's guidelines were adopted by the parties, while note was taken of the recommendations for a possible protocol.³⁷ COP3 did not decide on any further work towards a complete protocol. The fourth session of the COP in 2010 established another expert group to monitor and assist in the implementation of the guidelines concerning cross-border tobacco advertising, promotion, and sponsorship. However, it was agreed that, because a lot of funds and efforts were needed for other projects, any discussion on a protocol on Article 13 would be deferred until after the work on the guidelines and the protocol on illicit trade had been finished. Meanwhile, WHO has issued detailed guidelines³⁸ for the implementation of Article 13.

Completed negotiations on protocol to Article 15 of WHO FCTC

After six years of intense negotiation, the protocol to Article 15 regarding the illicit trade of tobacco products was adopted at the 5th session of the COP (12th to 17th November 2012, Seoul, Republic of Korea). It was the first protocol to WHO FCTC and a new treaty in its own right.²⁹ Under the protocol, the parties proposed to establish a global tracking and tracing system for tobacco products and reached agreement on other measures,

such as licensing, liability, enforcement, information-sharing, and mutual legal assistance. These measures were designed to counteract and eventually eliminate the illicit trade in tobacco products.

In accordance with its Article 43, the protocol was open for signature by all parties to WHO FCTC from 10th January 2013 until 9th January 2014. When it was closed for signature, the protocol had been signed by 53 states and the European Union. More than 50 parties participated in the event and 12 parties representing all six regions signed the protocol on this occasion. It will enter into force 90 days after the 40th party has ratified it.³⁹

4. Key Actors and their Roles: Framing Actors' Interests in the FCTC Negotiation

4.1 Non-State Actor Engagement in the FCTC

Despite the relatively fast pace of formal negotiations in the INB to create the FCTC, which reached a successful conclusion within five years, the road to initiate the process for international tobacco regulation was long and hard-fought. After almost a century in which tobacco products developed an image of glamor and culture, medical studies in the 1950s on the effects of tobacco smoke surprised the world. Richard Doll's preliminary report was the first to show scientifically the correlation between smoking and lung cancer by comparing smoking rates between hospital patients with and without lung cancer.⁴⁰ Confident of his findings, Doll published a new study in 1954 with a population sample of more than 40,000 doctors, which concluded that heavy smokers were 24 times as likely to die of lung cancer.⁴¹ These two studies shook the public health community and caused it to shift its research efforts towards the study of the effects of smoking tobacco.

Following Doll's work, two studies, done in the UK and USA respectively, started to move the tobacco effects issue from a purely scientific forum to a public one. The 1962 Royal College of Physicians' report⁴² and the 1964 United States Surgeon General's report⁴³ brought the reaffirmation of a direct link between smoking and cancer development to the attention of the public, whose concerns started putting pressure on policy-makers.⁴⁴ As the United States Surgeon General Luther Terry stated, “[the report] hit

the country like a bombshell. It was front page news and a lead story on every radio and television station in the USA and many abroad.⁴⁵ One of the immediate effects of the study was the creation of a National Interagency Council on Smoking and Health which had the mandate to develop and implement plans to fight smoking hazards.⁴⁶ Before any concrete political action was taken, the Surgeon's report inspired the creation of NGOs devoted to the fight against tobacco use, such as Action on Smoking and Health (ASH US) in 1967. Together with other organizations such as the American Cancer Society, these non-state actors collaborated in pressuring the USA government to take steps towards tobacco control.⁴⁷

Seeing these first steps within the USA, the international community began addressing the question of tobacco control. Responding to a call from the National Interagency Council on Smoking and Health, delegates from 34 countries participated, together with a diverse panel of health experts and activists, in the first World Conference on Smoking and Health (September 1967) held in New York City.⁴⁸ The conference was a great success, witnessing the involvement of important political and medical figures such as Robert Kennedy and Sir Austin Bradford Hill (co-author to Doll's 1950 and 1954 landmark studies). The conference subsequently developed into the World Conference on Tobacco and Health (WCToH) which, previous to the FCTC, was the globe's leading forum for addressing the issue. In the following decade, international attention to the matter rose exponentially, prompting civil society and the scientific community to take actions through advocacy and research. Indeed, in 1979, WHO Expert Committee on Smoking Control released a report suggesting the establishment of an international regulatory mechanism for tobacco control.⁴⁹ This was the first time the use of the WHA's treaty-making power was considered. Ten years later Professor V. S. Mihajlov expanded on the subject, publishing an article on the possibility of a legal international framework.⁵⁰

All this attention slowly led to states actually taking legislative steps to decrease tobacco consumption. In 1970, already realizing the importance of the media in public health subjects, the USA put a ban on airing tobacco product commercials on television and radio.⁴⁴ Some countries already took full scale tobacco regulation from the early 1980s. In 1981, the Egyptian government passed an anti-smoking law which included the establishment of standards on contents, packaging requirements, a ban on advertisement

and promotion by public entities or in popular locations, and the prohibition to smoke in public places.⁵¹ National action further developed in the 1990s, when a series of large-scale studies were undertaken for public policy recommendations. A 1992 United States Environmental Protection Agency report on second-hand smoke was the basis on which many state representatives discussed policy recommendations for addressing environmental tobacco smoke, and the effects of tobacco use in the developing world, at the 8th WCToH in Buenos Aires.⁵²

In the 1990s, the anti-tobacco movement began to pick up pace, shifting its development into the hands of WHO. In 1993, American law professor Dr. Ruth Roemer began lobbying and raising support for taking international legal actions towards tobacco control.⁵³ At the 9th WCToH the following year in Paris, Dr. Judith Mackay⁵⁴ and Roemer's joint resolution “to prepare and achieve International Convention on Tobacco Control to be adopted by the UN” passed with overwhelming support.⁵⁴

Led by the Canadian delegation, WHO adapted the 1994 world conference's resolution, resulting in the acceptance of WHA resolution 48.11 “to study the feasibility of developing an international legal instrument on tobacco control.”⁵³ The follow-up to this initiative was the 1996 WHA resolution 49.17 which called for an international framework convention on tobacco control.⁵⁵ The UN public health body had officially undertaken the task of creating a universal regulatory mechanism to control the tobacco epidemic.

4.2 International NGO Groups and Alliances

NGOs have extensively supported the anti-tobacco movement. These organizations include both global and local ones and are based in different regions of the world.

The importance of using NGOs in the implementation and watchdog process was mentioned at various times within the FCTC and COP guidelines. Civil society organizations (CSOs) can act as mediators between the decision-making body and the public. Thanks to their commitment and grass-roots nature, they can convey information regarding the FCTC efficiently. NGOs are also important for sensitizing politicians who will rule on the implementation of FCTC guidelines. Another major role NGOs

play is to counter obstructive activity by the tobacco industry.²⁴ Indeed, they constantly advise governments on the dangers of companies' interference and act to keep the tobacco industry out of public health discussions. Moreover, NGOs constantly seek the full implementation of FCTC recommendations within their own countries. A typical successful tactic is to ally with other NGOs in order to coordinate efforts more efficiently and share expertise throughout new networks.⁵⁶ Furthermore, CSOs make expert use of media channels to get their campaigns across, exerting much influence on the public. Recognizing the importance of these actors, WHO had the UN Fund for International Partnerships channelled into grants for capacity-building for NGOs.²⁵

A few of the NGOs and their roles are profiled below. Table 1 gives a representative listing of a number of the non-state actors in both the pro- and anti-tobacco control camps.

Framework Convention Alliance (FCA)

The FCA, an umbrella organization that holds more than 350 NGOs,⁵⁷ was created in 1998 from a collaboration between the Tobacco-Free Initiative (TFI) and civil society interested in the convention project. Like the TFI, the FCA is divided in regional offices which are in close contact with the TFI in order to better coordinated actions. The FCA assisted in the development and adoption of effective evidence-based guidelines on implementation of the FCTC and kept civil society, government officials, and the media fully informed about the FCTC process by delivering highly respected position papers, news bulletins, website content, and other advocacy material. The large membership, as well as generous funds, of the FCA allows it to be very effective in monitoring implementation. Indeed, the FCA “created a monitoring and reporting tool to hold governments accountable for their commitments under the FCTC.”⁵⁸

Corporate Accountability International (CAI)

CAI was established in 1977 as INFACT. In 1994, it began its Challenging Big Tobacco Campaign which currently aims to keep the tobacco industry in check and to expand the implementation of the FCTC.⁵⁹ In 1999, with the development of the FCTC idea, CAI established an umbrella

Table 7.1. Non-State Actors in the FCTC

Civil Society Pro-FCTC	Civil Society Aiding Tobacco Industry	Major Companies Involved
<ul style="list-style-type: none"> • Framework Convention Alliance (umbrella organization) • Corporate Accountability International • Network for Accountability of Tobacco Transnationals (umbrella organization and watchdog) • Consumers International • Vision for Alternative Development • Action on Smoking and Health USA, UK • Americans for Nonsmokers' Rights • Media Alliance in Tobacco Control • Union for International Cancer Control • World Medical Association 	<ul style="list-style-type: none"> • APCO (public relations firm) • Agro-Tobacco Services (coordinating organization) • Burson-Marsteller (public relations firm) • Cato Institute (non-profit research foundation) • Center for Indoor Air Research (created by the tobacco industry, now defunct) • Covington & Burley (law firm) • Federal Focus Inc. (non-profit foundation) • Hallmark Marketing Services (public relations firm) • INFOTAB (company consortium) • Ingredients Ban Coalition (NPO) • ITGA (NPO) • SH & B (law firm) • TASSC (NPO) • The Weinburg Group (consultancy) 	<ul style="list-style-type: none"> • Philip Morris (PM USA and PM International) • British-American Tobacco • Japan Tobacco International • Imperial Tobacco • RJ Reynolds • Universal Leaf Tobacco Company

188 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

organization, the Network for Accountability of Tobacco Transnationals, which helps institute effective controls over tobacco corporations and contributes to the establishment of broad global standards that hold corporations accountable for policies, practices and products that endanger human health and the environment.⁶⁰

Vision for Alternative Development (VALD)

Part of the FCA, VALD is the leading NGO in Ghana advocating for the passage, implementation, and enforcement of the FCTC. It works on the ground to fight for FCTC implementation and has created an alliance of people involved in the media known as the Media Alliance in Tobacco Control, which focuses attention on tobacco control in Ghana. This allows them to use press conferences and news articles as well as radio and television programs as tools to advocate for the FCTC. Moreover, VALD collaborates with government institutions to get its suggestions and concerns more directly to policy-makers. VALD also acts in other countries, and in particular it helped the tobacco control movement in Sierra Leone by sharing its expertise with local activists.^{56,61}

Action on Smoking and Health (ASH US)

ASH US, a member of FCA, was established in 1967 by “John F. Banzhaf III, and a distinguished body of physicians, attorneys and other prominent citizens who saw the need for an effective organization to represent non-smokers’ rights.” As one of the central active CSOs that took part in the anti-tobacco movement, ASH US now advocates for the full implementation of the FCTC within the USA.⁴⁷

4.3 World Health Organization

Since WHO intended the FCTC to be a worldwide agreement on tobacco regulation, the negotiations would have to find common ground for Member States. When planning the treaty development structure, WHO Director-General Dr. Brundtland had to keep in mind all the obstacles that multilateral negotiations could pose. Besides the common goal of improving public health, key characteristics that allowed this landmark

Negotiation and Health Diplomacy: The Case of Tobacco 189

multilateral treaty to be successfully negotiated in as little as five years were its political awareness, open and multisectoral nature, its effective regional approach, individual nations' willingness to undertake early actions, and widespread mistrust of the tobacco industry.

Being its first treaty, WHO was putting its image at stake as failure to reach an agreement would dramatically reduce its credibility. Aware that negotiations had to happen between diplomats representing various states, WHO carefully ensured that every aspect of the negotiations was dealt with in a politically smart way. Indeed, when WHA resolution 52.18 established an inter-governmental working group (IWG) in 1999 to prepare draft elements of the treaty and the INB to negotiate a framework convention and protocols, the choice for the position of the IWG chair fell on Kimmo Leppo from Finland. This was an astute political move to facilitate the negotiation process as, besides having already been a strong supporter of the process,¹⁹ Finland was soon to have its European Union presidency turn. This allowed a strongly committed country, with prospective negotiating power over possible resistance by high-income countries, to lead the process.

To bridge differences between the positions of producer and consumer countries, a prominent international diplomat was chosen from a country that is both an exporter and importer of tobacco: Celso Amorim from Brazil. In fact, despite being a major producer, Brazil was already a leader in tobacco control and, being Brazil's Permanent Representative to the UN, Amorim had the necessary diplomatic experience for the task. The 2002 election of Brazil's new ambassador Luiz Felipe de Seixas Corrêa as the new chair of the INB demonstrated coherence in the politically tactful behavior present at the FCTC table. Indeed, this both allowed the negotiation process to continue smoothly and avoided any compromising political struggle for the chairmanship.¹⁹

The measures of the FCTC tackle the tobacco issue through regulation of many different governmental areas. Indeed, being a highly consumed product, tobacco affects many different subjects of public interest (agriculture, manufacturing and service industries, public health, social well-being, etc.). Hence, it was critical to treat the issue in an all-encompassing manner with the help and expertise of all interested activists. Realizing this, the UN Secretary-General Kofi Annan established in 1999 the ad hoc

190 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

Interagency Task Force on Tobacco Control. This allowed WHO to coordinate 17 UN agencies so it could have the logistic ability to correctly tackle every aspect of tobacco control. In particular, the big advantage derived by this collaboration method was the obtainment of studies on tobacco relative to each sector and the development of efficient economic provisions within the FCTC.¹⁹

4.4 Key Country/Government Actors

Governments are key actors in the negotiation process and the FCTC is only signed by states. Countries and their respective governments have to cope with often contradictory interests and stakeholders. Applied to the FCTC negotiation process, this could mean accommodating opposing stakeholders such tobacco producers (TNCs and local tobacco companies), tobacco consumers (part of civil society), health institutions having to provide care for tobacco-related health problems, advocacy groups and NGOs attempting to ban tobacco smoking, and lobby groups trying to defeat the anti-tobacco alliances.

The main exporters are the Netherlands, Germany, Brazil, Poland, and the USA, while the main importers are Japan, Italy, France, Germany, and the USA.⁶² It is noteworthy that, of these countries, only the USA has not ratified the FCTC. This has been attributed to legal complexities in the Constitution and federal system of the USA (see the chapter on tobacco in the earlier volume of case studies in this series for a detailed discussion of the inter-governmental aspect of the negotiations.)⁶³

4.5 Tobacco Industry Transnational Corporations⁶⁴

In recent years, publicly traded tobacco companies have consolidated through privatization and mergers. Today, there are five major private tobacco companies: Philip Morris International (PMI), Altria/Philip Morris USA, Japan Tobacco International, British American Tobacco (BAT), and Imperial Tobacco. In addition to these corporations, there are 16 state-owned tobacco companies that are the leading cigarette manufacturers in specific countries. China National Tobacco Corporation (CNTC) is the largest state-owned tobacco company, producing more cigarettes than any other

Negotiation and Health Diplomacy: The Case of Tobacco 191

company in the world. In 2008 CNTC manufactured 2.1 trillion of the 5.9 trillion cigarettes produced worldwide.

As the tobacco market has consolidated under a few major companies, the direction of these companies has begun to change. Traditionally, company buyouts took place in order to consolidate and expand cigarette market share. Now tobacco companies are branching out into other areas of tobacco products and technology. In recent years, the major tobacco companies have purchased corporations that produce oral tobacco, such as snus. In 2011, PMI bought patent rights to a technology that delivers nicotine-infused aerosol. In the same year, BAT established Nicoventures, a separate company dedicated to creating alternative nicotine products that offer the same experience expected from cigarettes without some of the risks of smoking.

Estimates of revenues from the global tobacco industry vary widely but are likely approaching half a trillion dollars annually. Although tobacco is ultimately a financial burden on the governments and health-care systems of countries, it is also a source of government revenue through tobacco taxes and additional profit for those countries with state-owned tobacco companies. Each year the tobacco industry in China contributes over 7% of the central government's total revenue. The combined income of the tobacco industry is similar to the Gross Domestic Product of countries such as Poland, Sweden, Venezuela, or Saudi Arabia.

Example of a major tobacco TNC: Philip Morris International

Headquartered in the USA, PMI employs over 90,000 people worldwide and its products are sold in about 180 countries. In 2013, it held an estimated 15.7% share of the cigarette market outside the USA.⁶⁵

PMI uses national and international legal systems to protect its trade in tobacco. It has sued many countries, as well having many domestic issues in the USA, for carrying out measures that it believes would threaten its business. Following the approval of the FCTC, Philip Morris Asia has been suing Australia over their adoption of the Plain Packaging Act 2011, claiming that “removing its trademarks from tobacco packaging will cut its profits and see fake brands flood the market.”⁶⁶ This case was still underway in the Australian legal system in 2014. In parallel, there have

been challenges to Australia’s plain packaging law by BAT in Australia’s High Court and by several countries in the World Trade Organization.⁶⁷

PMI states that “one of our principal goals is to be a socially responsible company, at both a local and global level. Because of this, we are passionate about our social performance.”⁶⁸ Examples of PMI’s actions under the heading of corporate social responsibility have included (1) advertising for aid to citizens in Afghanistan displaced due to violence, the homeless in Pakistan, earthquake victims in Chile, and providing reconstructive and emergency assistance and aid due to natural disasters in Japan and Indonesia,⁶⁹ (2) direct relief to poor and hungry people in Singapore, Romania, Lithuania, South Korea, and Mexico,⁷⁰ (3) improving rural conditions and promoting sustainability in Malawi, Indonesia, and Thailand, and (4) other corporate contributions, including charitable donations.⁷¹

New tobacco industry strategies in view of FCTC

Having lost the negotiation and ratification battle, the tobacco industry moved its efforts towards stopping or altering the implementation guidelines process. In particular, they used their front groups, such as the “Ingredients Ban Coalition,” to fight against several sections of the FCTC, including Articles 9, 10, 17, and 18. These groups tried to put pressure on negotiators participating in the COP. They argued that, through the guidelines addressing the contents of tobacco products (Article 9) and the regulation of tobacco product disclosures (Article 10), the implementation of FCTC guidelines would create huge economic losses for specific countries that would therefore result in unemployment. Although Articles 17 and 18 are meant to address these specific issues, the NGOs controlled by the tobacco industry still argued that the relative guidelines did not present viable economic and health alternatives to tobacco production as, they claimed, the planned shift to other kinds of crops did not address environmental and economic effects in an inclusive way.⁷² Besides trying to stall the regulating process, the tobacco industry also continued its strategy to support ineffective tobacco control policies and to sponsor programs related to corporate responsibility, attempting to ameliorate their public image by showing the public that they are actually trying to do something about the negative health effects caused by tobacco.⁷³ However, these seemingly well-intended social activities, such as youth education programs, have proven to be greatly ineffective.⁷⁴

Methods of interference in the FCTC⁷⁵

The most effective tactics by the tobacco industry aimed at interfering with public health regulations processes have all involved the media playing a central role. Indeed, through the use of industry-sponsored journalists, scientists, NGOs, and events, the tobacco industry has continuously attempted to distract the public from tobacco control conventions and scientific discussion. Industry elements (private consultants acting for tobacco companies, but officially independent) would organize seminars in which they trained members of the press to harass contributors through personally sensitive questions and to take control of press conferences so as to deviate from their main topic.⁵² Parallel events, or awareness campaigns, would be prepared in order to shift media attention and to make it easier for journalists on the industry's payroll to criticize tobacco control by comparing it to other important health issues that are not properly addressed by the international community.⁵² The comparison method has also been used to point out the inefficiencies and failures of anti-smoke programs rather than their merits, making the public more wary of how state money is spent.⁵² Besides being generally aimed at covering stories unrelated to smoking's health risks, tobacco industry press management also publicizes anti-regulation protests.⁷⁴ Indeed, non-profit groups that are funded and effectively controlled by leading industry companies have coordinated tobacco farmers' protests concurrently with health conventions, so that if the meetings did get coverage, it would be negative.⁵²

Employment of third party agents is an effective standard operating procedure for corporate interest groups when attempting to interfere within public forums. The tobacco industry makes great use of seemingly independent NGOs, NPOs, science and research institutes, and private consultants in order to keep all of its obstructive activities concealed and therefore more effective. If tobacco companies were to openly support research institutes and unilaterally advocate against tobacco control, no one would take any of their positions into consideration since they would clearly have a massive conflict of interest. Hiding behind the cloak of NGO status gives the tobacco industry much more credibility — for example, as in the case of the International Tobacco Growers' Association (ITGA), a group created by tobacco companies in 1984, claiming to represent the industry's workers' constituency.⁷⁶ This strategy also provides

political weight, as it allows companies to affect the political orientations of growers, processors, deliverers, and all other involved labourers.

Moreover, controlling seemingly independent NPOs affords the tobacco industry access to conferences and public forums where it can advocate its policies and stances.¹⁹ Groups like the ITGA argue for pro-tobacco positions through the use of biased studies produced by industry-funded researchers, who also try to conceal their link to their tobacco patrons.^{76,77}

In the economic/scientific research field, the tobacco industry has not desisted from financing any possible plan that could alter results related to smoking. Through the corruption of scientists⁷⁸ and other deceitful tactics, the industry was intent to create a feeling, both within the general public and the political class, that medical results regarding smoke effects could not be trusted and were not entirely negative. Indeed, through the use of “independent” business analysts and private research institutes, the tobacco industry created research papers aimed both at supporting the economic loss argument and at questioning the danger of second-hand smoke.⁷³ These papers served as the basis for organizing forums where industry agents (especially public relations consultants) would teach their fake statistics to diplomats and politicians who were meant to negotiate future health conventions.⁵² Indeed, thanks to their infiltration within the public health world, tobacco companies were always up to date with WHO regulation initiatives and could hence plan their future interference moves⁷⁴ and construct fictitious scientific counter arguments⁷⁷ accordingly. Moreover, this kind of research was also aimed at distracting the attention of policy-makers from tobacco control legislation.⁷⁸ The connections the industry managed to make within WHO (and in particular within the Pan American Health Organization⁷⁹ branch) allowed it to influence its policy efforts, deviating much of the attention towards child vaccination and AIDS prevention.⁵²

The industry’s efforts at keeping its disguise were successful to the point of managing to influence some of the most respected world medical institutions. One well-known example was a study, published in the *British Medical Journal* in 2003, that supported the idea that the link between lung cancer and second-hand smoking was close to negligible.⁸⁰ In fact, this study’s funding was provided by a tobacco industry proxy organization called the Center for Indoor Air Research (now extinct) and

Negotiation and Health Diplomacy: The Case of Tobacco 195

presented data that was later declared by its source, the American Cancer Society, to have been misused.⁷³ Another way the tobacco industry makes use of official research centers is by using secondary research private contracting. Some USA federal laboratories have the opportunity to do side research for private organizations in order to cover their costs, allowing companies to sponsor biased research that is seemingly federally approved. An example is the Oak Ridge National Laboratory which, although officially dedicated to nuclear energy research, has conducted studies questioning the scientific standards used for second-hand smoking risk assessment.⁷³ When the tobacco lobby does not manage to influence and obstruct real scientific research, it tries to reinterpret the unwanted study^{74,81} and publicize it, through their media machine, as something supporting their positions, thereby ensuring it is misunderstood.⁷³

One of the most effective methods to increase political weight and means of interference is the creation of large lobby groups. The tobacco industry is part of two major lobbies (not counting itself as one): one pointed at the modification of scientific standards and the other pointed at fighting private negative economic effects of tobacco control. The first interest group is an alliance comprising all those industries that have an interest in making it impossible for regulations to base themselves on a reasonable scientific risk evaluation. In particular, the Chemical Manufacturers Association and PMI collaborated in the campaign for “good epidemiology” and “sound science” to lobby against possible European regulations stemming out of an extensive International Agency for Research on Cancer study.⁷⁸ This “large support” technique is meant to make the tobacco industry’s proposals more credible as their specific interests would be just small parts of a broader proposal, giving the false idea that the tobacco industry is not behind it.⁷⁸ The second interest group that tobacco companies are part of is the overarching tobacco-related economic sector. Indeed, by creating alliances with agrochemical, retail, and hospitality sectors, the tobacco industry built up a front of interest groups meant to put political pressure on policy-makers.⁷⁴

Classic political lobbying remains a major tobacco industry tool for influencing regulation processes. Lobbying methods range from classic attempts to gain public officials’ favors through different sorts of corruption methods (like giving gifts to influential people or indirectly

sponsoring their political campaigns)⁷⁴ to more pragmatic methods of threatening their political success. Indeed, the tobacco industry has been working to supplant local politicians that support control legislation by proposing and backing a series of candidates to run against them in elections. This reflects the tobacco industry strategy that if effective policy changes can happen at a local level, then they will soon happen at wider levels.⁷³

Because politicians are becoming increasingly aware of such tobacco industry schemes and the negative image effects that these could have on them, tobacco companies shifted their lobby activity towards pressuring to support “accommodation” legislation⁷³ and programs that are alternative to all-encompassing regulation schemes, such as the FCTC.²⁴ The tobacco industry considers accommodation legislation as a way in between regulating second-hand smoke and still allowing people to smoke indoors. Examples of such proposed laws include the implementation of regulation only in the presence of minors (e.g., allowing indoor smoking only at late hours), the creation of a signal system identifying which establishments should allow smoking indoors, or the required installation of proper ventilation systems to allow smoking.⁷³ All these proposals, however, do not properly address the health risks caused by tobacco smoke inhalation.

Moves by the tobacco industry outside WHO/FCTC

TNCs and local stakeholders allied to the tobacco industry have promoted a number of court cases against government implementation of various protocols of the FCTC. This strategy aims at reducing the other parties’ power through legal disputes, lobbying, and warning of serious adverse consequences (e.g., invoking the risk of rising unemployment and reduction of tax revenues) if the tobacco industry is made to shrink due to the measure implemented by the government.⁸² Examples, which can be found in the listings of the International Centre for Settlement of Investment Disputes,⁸³ involve countries in every part of the world and issues including manufacturing and warehousing, trademarks, advertising, promotion, sponsorship, product display, packaging, labelling, smoke free laws, graphic health warnings and banning of misleading descriptors, free speech, and trademarks and intellectual property.

5. Linkages to Other International Agreements and Tobacco-Related Government Actions Outside the FCTC

World Trade Organization (WTO)

In 2002, the WTO and WHO published a joint report on the WTO Agreements and Public Health,⁸⁴ identifying the most relevant WTO rules and/or agreements for tobacco control, including:

- the Technical Barriers to Trade (TBT) agreement in relation to product requirements such as packaging and labelling;⁸⁵
- the Agreement on Agriculture in relation to government support for tobacco production;⁸⁶
- the General Agreement on Trade in Services in relation to restrictions on cigarette advertising;⁸⁷
- the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) in relation to trademark protection and the disclosure of product information considered by producers to be confidential;⁸⁸ and
- Article XX(b) of the General Agreement on Tariffs and Trade (GATT) on general exceptions “necessary to protect human, animal or plant life or health.”⁸⁹

Some tobacco control policies, like regulations on tobacco advertising, might be found “illegal” under existing WTO rules. According to Callard *et al.*,⁹⁰ “internet advertising restrictions [...] face a series of potential difficulties under international trade agreements. One problem emanates from the WTO services agreement [under which] a country which agrees to open its borders to advertising might be required to treat foreign advertising agencies providing tobacco advertising over the internet with rights equal to domestic advertisers — even though the content of the foreign ones cannot be effectively regulated under the recipient country’s laws.”

“Advertising and related services” is one of the sectoral areas in which WTO members have been engaged in services negotiations.⁹¹ This sector includes (1) the sale or leasing of advertising space or time, (2) planning, creating and placement services of advertising, and (3) outdoor and aerial advertising and delivery of samples and other advertising materials.

Advertising services are listed in the Services Sectoral Classification List (document MTN.GNS/W/120), developed for scheduling purposes under the GATT, as a sub-category of “Other Business Services.” The activities covered are defined through reference to group 871 of the UN provisional Central Product Classification (CPC). In turn, CPC 871 is made up of three sub-categories:

- i. sale or leasing services of advertising space or time (services provided in soliciting advertising space or time for newspapers, other periodicals, and television stations);
- ii. planning, creating, and placement services of advertising (to be displayed through the advertising media); and
- iii. other advertising services not elsewhere classified (including outdoor and aerial advertising services and delivery services of sample and other advertising material).⁹²

According to the WTO website, there are commitments in advertising services in the schedules of 51 WTO members (which together represent 80% of world merchandise trade and the majority of global advertising activity).⁹³ Most of the commitments cover the sector in full and do not exempt any specific market segments. However, in a number of cases, exemptions relate to advertisements for goods which may be considered sensitive for health and safety reasons and/or have been made subject to import authorization. It is conceivable that other members maintaining similar measures may have felt that these are covered by Articles VI (domestic regulation) or XIV (health- and safety-related exceptions) of the GATT and thus need not be scheduled.⁹² WTO members have exempted, for example, specified advertising activities (production of commercials for radio and television, or skywriting) or advertising destined for “sensitive” products (tobacco, alcohols, pharmaceuticals, etc.). Indeed, WTO disputes involved packaging and other aspects related to tobacco, but not advertising. Tobacco-related WTO disputes cited different GATT articles as well as the agreements on customs valuation, sanitary and phytosanitary measures, TBT, and TRIPS. However, no specific citations were made in relation to the GATT.⁹⁴

Like tobacco TNCs, governments have also taken actions against other governments with respect to the implementation of tobacco control

measures. Different WTO provisions were invoked regarding tobacco cross-border trade, customs and fiscal measures, trademarks, and plain packaging amongst others. A list of WTO cases is presented on its website⁹⁴ and further examples are given in the 2002 WHO-WTO publication.⁸⁴

Impact of future trade agreements

Tobacco is an important sector which is covered by a series of trade and investment agreements, including regional agreements. Much can be learned from the experiences of negotiating the FCTC and its protocols about the challenges to health diplomacy that will be involved and the strategies that the multiple actors may deploy.

An example of a proposed regional regulatory and investment treaty is the Trans-Pacific Partnership (TPP) Agreement. As of 2014, 12 countries throughout the Asia-Pacific region have participated in negotiations on the TPP, namely Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the USA, and Vietnam. The TPP Agreement, billed as a ‘free-trade agreement’, is likely to become the largest trade agreement outside of the WTO, but has been widely criticized as likely to inhibit free trade, strengthen measures to protect intellectual property rights, and give corporations the right to directly sue governments for regulations that infringe upon their profits or potential profits.⁹⁵

6. Conclusions and Future Challenges

Following the accumulation of decades of clear scientific evidence of the harmful effects of smoking, initiatives by individuals and organizations created a powerful anti-tobacco advocacy movement which ultimately led to the FCTC and, soon afterwards, to the protocol on illicit trade in tobacco products. While formally resulting from the participation of WHO Member States in an inter-governmental negotiating process, the successful negotiations on the world’s first two global treaties on public health also involved strong engagement by a multitude of non-state actors from both the pro- and anti-tobacco sides, utilizing a range of strategies to influence the outcomes.

An analysis of the processes that led to the successful creation of the FCTC and protocol provides a number of important lessons:

- Clear scientific evidence of a major public health threat is not necessarily sufficient in itself to move governments to a global agreement. It took over 40 years from Doll’s pioneering studies of the link between smoking and lung cancer to the initiation of a formal process for drafting the convention.
- Individuals often play key roles in global health diplomacy. In the creation of the FCTC, these included the efforts by figures with a passionate public health concern, such as the law professors Roemer and Taylor who proposed the idea of an international convention on tobacco, Dr. Judith Mackay who then helped to publicly launch the proposal for an international convention, WHO Director-General Dr. Brundtland who made tobacco control a priority for her term of office, and the countless officials and activists in diverse organizations who provided the energy and enthusiasm to maintain the necessary momentum and pressure for a strong outcome.
- NGOs and civil society groups, including professional bodies, made substantial contributions to influencing the progress of the efforts. These included NGOs on both sides of the argument — some representing the public health interest and pressing for strong anti-smoking measures, others representing the pro-tobacco position and attempting to derail, delay, or water down tobacco control measures.
- The private sector — especially the large tobacco MNCs — employed a variety of overt and covert strategies to support the pro-tobacco position. These ranged from presentation of economic arguments and the use of legal processes to the distortion and obfuscation of evidence relating to the harmful effects of tobacco use and efforts to either woo or challenge key politicians. Subsequent to the adoption of the FCTC and protocol, efforts have continued by the tobacco industry in both global and national arenas to legally challenge or weaken the implementation of tobacco control measures.
- Among the non-state actors, both the anti- and pro-tobacco movements made extensive use of the media to promote their causes and to influence politicians and decision-makers both directly and through

Negotiation and Health Diplomacy: The Case of Tobacco 201

the moulding of public opinion. With the emergence of new social media recently, the use of such new channels of direct global communication, which are presently subjected to very limited controls, has become a major strategy to supplement other channels of influence on the diplomacy process and on the positions of negotiators.

- Once the momentum had built to the point where the WHA decided on the need for a tobacco control treaty and initiated a formal process to begin drafting text, WHO’s role became pivotal. The commitment of resources — human, financial, and diplomatic — was critical to ensuring that momentum was maintained and that skilled and expert personnel were on hand to support the drafting, management of committees, accumulation of clear evidence and arguments on the effects of tobacco use, formal negotiations as well as behind-the-scenes diplomatic exchanges, and countering the covert actions being taken by major tobacco companies and their allies to impair the process.

Detailed understanding of the roles and strategies employed by different actors during the creation of the FCTC and the protocol will be important not only in continuing the efforts to create additional protocols to the FCTC, but also in relation to the possible use of international conventions to try to regulate other materials of public health concern. These might include aspects of food safety such as salt, fat, or sugar content, or emissions of harmful pollutants into the environment.

7. Acknowledgments

The authors benefitted from critical reading and invaluable editorial guidance of Stephen Matlin and thanks to Adolfo Gatti, Phan Ngoc, and Mario Filadoro for their excellent research assistance.

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204 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

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206 *Pathways to Global Health: Case Studies in Global Health Diplomacy — Volume 2*

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Negotiation and Health Diplomacy: The Case of Tobacco 207

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GLOBAL HEALTH DIPLOMACY – Vol. 5

PATHWAYS TO GLOBAL HEALTH

Case Studies in Global Health Diplomacy
(Volume 2)

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Published by

World Scientific Publishing Co. Pte. Ltd.

5 Toh Tuck Link, Singapore 596224

USA office: 27 Warren Street, Suite 401-402, Hackensack, NJ 07601

UK office: 57 Shelton Street, Covent Garden, London WC2H 9HE

Library of Congress Cataloging-in-Publication Data

Names: Matlin, Stephen, editor. | Kickbusch, Ilona, 1950– editor.

Title: Pathways to global health : case studies in global health diplomacy /
editors, Stephen Matlin, Ilona Kickbusch.

Other titles: Complemented by (work): Negotiating and navigating global health. |
Global health diplomacy ; v. 5.

Description: New Jersey : World Scientific, 2016. | Series: Global health diplomacy ; vol. 5 |
Complemented by Negotiating and navigating global health / edited by Ellen Rosskam &
Ilona Kickbusch. c2012. | Includes bibliographical references and index.

Identifiers: LCCN 2016028745 | ISBN 9789813144019 (hardcover : alk. paper) |
ISBN 9813144017 (hardcover : alk. paper) | ISBN 9789813144026 (pbk. : alk. paper) |
ISBN 9813144025 (pbk. : alk. paper)

Subjects: | MESH: Global Health | International Cooperation | Diplomacy |
Organizational Case Studies

Classification: LCC RA441 | NLM WA 530.1 | DDC 362.1--dc23

LC record available at <https://lccn.loc.gov/2016028745>

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

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Printed in Singapore