THE FRAMEWORK CONVENTION ON TOBACCO CONTROL: EFFECTS OF INTERNATIONAL TOBACCO REGULATION IN BRAZIL, 1990-PRESENT

By

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A THESIS PRESENTED TO THE GRADUATE SCHOOL
OF THE UNIVERSITY OF FLORIDA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

UNIVERSITY OF FLORIDA

2007

To my mother and father, Carmen and Antonio Catalá, whose courage and example have taught me the importance of always moving forward

ACKNOWLEDGMENTS

Many thanks to my committee chair Dr. Terry McCoy for his patience and direction throughout this process and Dr. Elizabeth Lowe McCoy, for incessantly believing in me and granting me the graduate assistantship that allowed me to complete my master's degree. Dr. Lowe McCoy has been a mentor, a friend and has set a wonderful example in my life. She has opened my eyes to many new things and given me opportunities to explore my interests. I am eternally grateful for her support. I also thank Dr. Marilyn Roberts for her enthusiasm on my thesis topic and her valuable insight into tobacco advertising.

I also thank my parents, who never doubted me, who have always allowed me the freedom to explore and whose strength I will always admire and try to duplicate. Thank you to my aunt and uncle, two of my favorites. Many thanks to the rest of my family and each one of my best friends; Julian, Gaby, Michelle, Esther, Vanessa and Dianna, the most eminent blessings in my life. I would also like to thank my unconventional heroine, BLZ.

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Abstract of Dissertation Presented to the Graduate School
of the University of Florida in Partial Fulfillment of the
Requirements for the Degree of Master of Arts

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December 2007

Chair: Terry L. McCoy
Major: Latin American Studies

The globalization of the anti-tobacco campaign has gained momentum over the last two decades as a result of the increasing, disproportionate number of tobacco related deaths in developing countries. Today, more than 70 % of tobacco-related deaths take place in developing countries. The increase in tobacco consumption is defined by a significant business-related factor: the business of selling and marketing tobacco products by transnational tobacco corporations.

In 2005, the World Health Organization (WHO) developed the Framework Convention on Tobacco Control (FCTC) in response to the growing tobacco problem. The FCTC is the first treaty to single out a particular industry for regulation at an international level. Many governments have hesitated to ratify the FCTC for fears that its implementation may have harmful economic consequences. This study seeks to determine if the regulation of big business in the interest of public health by ratifying the FCTC can be successful in halting the tobacco epidemic without damaging the economies of its signing parties. To accomplish this, this study analyzes the impact of Brazil's tobacco control policies on the economy. Brazil serves as a good case study because of its unique position within the tobacco-control debate: Brazil is a

developing country with strong economic stake in tobacco, but was committed to regulating tobacco even before its government ratified the FCTC. Perhaps more than any other party to the FCTC, Brazil has set an example that public health can be a top priority without compromising economic stability.

This study finds that tobacco control measures such as those in the FCTC can be implemented without compromising the economic stability of developing countries. The Brazilian case, while unique and only in its second year of officially implementing the treaty, offers positive results for both health advocates and those concerned with the country's economic well being.

CHAPTER 1
INTRODUCTION

The globalization of the anti tobacco campaign has gained momentum over the last two decades as a result of the increasing, disproportionate number of tobacco related deaths in developing countries. Today, more than 70 % of tobacco related deaths take place in developing countries. Unlike several other health problems, the increase in tobacco consumption is defined by a significant business-related factor: the business of selling and marketing tobacco products by transnational tobacco corporations (TTC's).

In 2005, the World Health Organization (WHO) developed the Framework Convention on Tobacco Control (FCTC) in response to the growing tobacco problem. The FCTC is the first treaty to single out a particular industry for regulation at an international level. Many governments have hesitated to ratify the FCTC for fears that its implementation may have harmful economic consequences. This study seeks to determine if the regulation of big business with the interest of public health by ratifying the FCTC can be successful in halting the tobacco epidemic without damaging the economies of its signing parties. To accomplish this, this study will analyze the impact of Brazil's tobacco control policies on the economy. Brazil serves as a good case study because of its unique position within the tobacco-control debate: Brazil is a developing country with strong economic stake in tobacco, but was committed to regulating tobacco even before its government ratified the FCTC. Perhaps more than any other party to the FCTC, Brazil has set an example that public health can be a top priority without compromising economic stability.

Problem Statement-Research Question

This thesis deals with the regulation of a harmful, yet legal consumer product in the interests of public health through an international regulatory agreement. Tobacco is different

from many other health challenges. Cigarettes are demanded by consumers and form part of the social custom of many societies. Cigarettes are extensively traded and profitable commodities, whose production and consumption have an impact on the social and economic resources of developed and developing countries alike. Economic considerations are therefore critical to the debate on tobacco control. Until recently these aspects have received little global attention.

The FCTC is the first major step at regulating tobacco on a global scale. Countries are not forced to become members and are often afraid that ratifying the convention will have negative economic consequences. To date, less than half of the countries in Latin America have ratified the FCTC, despite the region's escalating number of tobacco related deaths (World Health Organization, 2005). It is important to see if the massive public health benefits that accompany the implementation of tobacco control policies can be realized without high economic costs. Both of these issues are important ingredients for development, but are viewed as conflicting interests in many countries. The harmonization of the two issues has been hampered by the complex views and differing agendas of the parties involved in the debate. The TTC's, as well as some trade economists view tobacco control policies as a form of protectionism (Jha et al., 2000). Public health advocates and many international development organizations, such as the World Bank and IMF, view tobacco consumption as a hindrance to the sustainable development of countries and advocate tobacco control policies (World Bank, 1999). This study will examine the dispute in a historical framework and through the perspective of an international treaty, the FCTC and a developing country, Brazil, to understand the economic implications of enforcing a public health agenda that involves the regulation of an industry.

Historically, the international community has given priority to transnational corporations because their globalization and trade liberalization are considered essential to development.

Within the past two decades, the environmental community has pushed for environmental issues in trade agreements. The public health community has not gained the same amount of recognition.

There is a growing consensus among scholars and international organizations that public health should be a key aspect within the trade regime, and therefore, attention must be given to how trade and public health should interact. To date, the FCTC is the only international regulatory framework that addresses the issue of public health, and, unfortunately does not carry the same legal weight as the World Trade Organization's (WTO) regulations would carry. Because the WTO regulates the commerce of goods in the international marketplace, it is assumed that tobacco products would fall under its jurisdiction. Perhaps if every country were confident enough to become party to the FCTC, the WTO would be compelled to regulate tobacco within the trade regime.

Tobacco is among the greatest causes of preventable and premature deaths in human history (World Bank 1999). Yet comparatively simple and cost effective policies that can reduce its impact are already available through the FCTC. For governments that are intent on improving health within the framework of sound economic policies, action to control tobacco represents an unusually attractive choice. This main question addressed by this study is: What does the experience of Brazil tell us about the politics and economics of implementing the FCTC? This study aims to address the economic consequences of implementing tobacco control policies in a developing country using Brazil's implementation and consequent ratification of the WHO's FCTC tobacco control policies.

Background

Who is Big Tobacco?

"Big Tobacco" is the term that is usually applied to the "big three" tobacco corporations in the United States; Phillip Morris Inc. (PMI), British American Tobacco (BAT) and RJ Reynolds, but can also include other companies with a major stake in tobacco consumption, such as Lorillard or Brown & Williamson. For this study, the term Big Tobacco will refer to Philip Morris International and British American Tobacco Ltd., the largest multinational companies operating in Latin America, controlling 90 percent of the cigarette market. Philip Morris manufactures the world's most widely smoked cigarette, Marlboro, and manufactures one in every six cigarettes sold around the world. In 2003, Philip Morris changed its name to Altria Group and acquired the food processing company, Kraft Foods (Altria Group, 2007).

British American Tobacco (BAT) is the second largest private tobacco company, whose leading brands include Lucky Strike and Benson and Hedges. BAT was one of the first multinational companies to move into emerging markets in Asia, Africa, and Latin America and is now the market leader in more than 50 countries. Although headquartered in the United Kingdom, most of its business is in less developed countries (Callard *et al*., 2001). Similar to the use of various terms in the literature on the subject, this study uses the terms Big Tobacco and transnational tobacco corporations (TTC's) interchangeably.

FCTC

The FCTC is a milestone in the history of international collaboration in the field of public health. As an international agreement adopted by the 192 member states of World Health Organization. This treaty has the potential to impact the ways TTC's like PMI and BAT operate. Since the beginning of the FCTC's negotiation process, developing countries pushed for effective measures to reverse the global tobacco epidemic and hold TTC's accountable for their

abuses. India, Iran, Jamaica, Palau, Senegal, Brazil, South Africa and Thailand played key leadership roles during the negotiations. Early in the treaty's development, evidence from once-secret corporate documents showed that the tobacco industry had operated for years with the expressed intention of subverting the role of governments and WHO in implementing health policies (World Health Organization, n.d). The World Health Assembly responded in 2001 with a resolution, calling on WHO to monitor the global impact of the tobacco industry's political activities and urging governments to ensure the integrity of health policy development. This paved the way for the treaty to include provisions protecting public health policies from interference by TTC's. The WHO explains that the FCTC was:

> …developed in response to the globalization of the tobacco epidemic. The spread of the tobacco epidemic is exacerbated by a variety of complex factors with cross-border effects, including trade liberalization, direct foreign investment, global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes (World Health Organization, 2005).

Within a year there were 168 signatories, making it one of the most quickly embraced UN treaties ever. Over 40 countries had ratified it by late 2004, triggering its entry into force on February 27, 2005 in the ratifying countries. The 40th ratification made it the first international, legally binding public health treaty under the auspices of WHO. The main provisions of the FCTC will be discussed later in this study.

Literature Review

The literature examining tobacco and international regulation is vast and covers various subjects including globalization, trade, public health, economics and science. The scope of this study requires a review of the literature related only to the economic aspects of tobacco control. The specific body of literature that examines the globalization of the tobacco epidemic has grown in recent years as the number of smokers in developing countries disproportionately increases despite decreasing numbers in high income countries. The main questions touched

upon by virtually every piece of literature concerning tobacco are: 1) Is the use of tobacco products harmful to users' health? 2) Should tobacco products be regulated? There is an overwhelming consensus among scholars, international organizations and even the tobacco industry itself concerning the first question. Since about 1950, more than 70,000 scientific studies have proven that smoking causes disease, disability and death (US Dept. of Health and Human Services, 1994). The literature on the scientific evidence against tobacco use will not be reviewed for this study.

Tobacco Regulation

The literature examining the second question, the issue of tobacco regulation, is contentious. Despite the strong consensus that smoking harms health, there is much debate about proper government roles, if any, in reducing smoking. Many argue that smoking is voluntary and is not illegal for adults, so the existence of an enormous health problem is not sufficient to justify interference with the tobacco industry's ability to sell its product as it sees fit. From a purely economic standpoint, there is little that economics can say about the preferences that determine smoking, except to try to understand how the addictive nature of cigarettes influences subsequent consumption.

Economists approach the tobacco question from two directions: 1) Individual choice and market failure and 2) The impact of reduced smoking on the local economy, specifically to the tobacco industry. A study by Jha, Musgrove, Chaloupka and Yureki titled "The Economic Rational for Intervention in the Tobacco Market" provides one of the most complete analyses on consumer choice and tobacco. Economic theory starts with the assumption that a consumer usually knows what is best for him or herself. This is known as the notion of "consumer sovereignty." The theory also assumes that privately determined consumption choices, including the decision whether to consume a particular product at all within a free competitive market, will

most efficiently allocate society's scarce resources. Within this framework, economic theory holds that if smokers consume tobacco with full information about its health consequences and addictive potential, and bear all costs and benefits of their choice themselves, there is no justification for governments to interfere. Mureki et al. suggest that an economic rationale for such intervention is justified when there are "failures" in tobacco markets.

In practice, the market for tobacco is characterized by three specific "market failures" or features that result in economic inefficiencies and that may therefore justify public intervention. A study by the World Bank, "Tobacco Control in Developing Countries" discusses the market failures that make the choice to buy tobacco products different from the choice to buy other consumer goods:

- First, there is an "information failure" about the health risks of smoking, especially in developing countries. Incomplete information about the risks of smoking leads to behavior that smokers would not otherwise choose for themselves.
- Second, most smokers start when they are children or adolescents when they are unable to make an informed choice; by the time they try to quit, many are addicted.
- Third, there is evidence that smokers impose costs on other individuals, both directly and indirectly.

Although a number of studies agree that regulating tobacco products is economically justifiable as a result of the failures in information and external costs that smoking poses to non-smoker, methods of regulation are not often specified. A bulk of the literature focuses on answering the following three questions:

1) Should tobacco be regulated internationally?

2) *How* should tobacco be internationally regulated and who should enforce those regulations?

3) What would be the economic effects on developing countries that opted to regulate tobacco?

There is a considerable amount of literature concerning all three issues. The third question has only been answered in theory, since the only form of international tobacco regulation to date is the WHO's FCTC, which recently came into force in February 2005.

International Regulation

A growing body of literature attributes the globalization of the "tobacco epidemic" as referred to by health related literature, to trade liberalization and regional and economic integration. A study by Callard, Collishaw and Swenarchuk suggests that the increase in tobacco consumption can be traced to the vectors of liberalized trade, more active marketing by multinational corporations and increased Westernization.

Taylor et al. provided the most comprehensive text on the impact of trade liberalization on tobacco consumption in "Tobacco Control in Developing Countries." Their research found that

> A variety of trade agreements in recent years have significantly reduced the barriers to trade in tobacco products. Economic theory suggests that the reductions in these barriers will increase competition within tobacco markets, reduce prices, and increase marketing efforts, as well as raise incomes. As a result, tobacco use is likely to increase, particularly in low income and middle-income countries (p.343).

The fact that trade liberalization is itself a very complex phenomena, regulating tobacco within that process is difficult. According to the World Health Assembly (WHA), international action to regulate tobacco is needed because a number of aspects of the tobacco problem are particularly transnational in nature and can only be dealt with effectively by international action. At present there are about 5 million deaths a year worldwide due to tobacco related disease, with the balance split approximately between developed and developing countries. By 2030, if present trends continue, the figure will have increased to 10 million deaths per year, with 70 % of these deaths taking place in developing countries. In a study commissioned by the Pan American Health Organization (PAHO) Bialous and Aguinaga (2002) concluded that the TTC's are stepping up their activities in developing countries in search of new markets as a result of the

increasing awareness of the health risks of smoking in Europe and North America. Callard, Collishaw and Swenarchuk also point out that as the disease burden of tobacco and ease of access because of trade liberalization shifts from the developed to the developing world, so does its accompanying economic burden. They explain that, poor nations, like poor individuals, are poorly equipped to deal with the health effects or economic consequences of smoking.

Most health epidemics are not inherently tied to the consumption of a specific, legal consumer good. Since there is a growing consensus among scholars that the most influential vector of globalization on the tobacco epidemic is trade liberalization, many argue that the WTO should take into consideration the effects of trade on public health and regulate the tobacco industry through trade agreements (Jha et al. 2000; Bloom, 2001; Woo, 2002; Taylor et al. 1999). Trade advocates seek to increase availability and use of products and services; while public health advocates struggle to decrease availability and use of tobacco. Public health advocates respond that the benefits of liberalized trade (increased access to improved and cheaper consumer products) are actually drawbacks in when it comes to tobacco goods, since increased access results in negative health consequences, so they should be regulated, if not excluded from trade agreements (Weissman, 2001).

There are rationales for trade barriers that are economically justifiable, such as the temporary protection of an infant industry and the use of protectionist interventions as a temporary strategy for promoting economic development, protection of the environment and labor rights. As evidence on the health consequences of smoking has accumulated, some have argued for restricting tobacco-related trade as a way to reduce the death and disease resulting from tobacco use. Similar arguments have been used to defend trade restrictions in the case of other goods with negative externalities. These arguments are most well-developed in the area of

environmental policies, with recent research adapting these arguments to consider the negative externalities associated with tobacco use (Bloom, 2001).

In "Public Health, International Trade and the FCTC" Bloom et al. suggests that because trade agreements treat tobacco as a conventional good, they incorporate an inaccurate presumption that expanding commerce in tobacco products is beneficial for society. Bloom et al. suggests the reasons why trade rules have not been developed for tobacco products as they have for so many other products:

> 1) The principles of free trade are deeply held within the trade community and the burden of proof on a proposal for special treatment of any product is formidable.
>
> 2) The public health community, unlike the environmental movement, has not been significantly engaged in international trade issues.
>
> 3) The tobacco industry is one of the most politically and economically powerful entities in the world and has been fully engaged in the trade community at the multinational level for decades and has made trade liberalization in tobacco products a top priority.

Economic Impact of Regulating Tobacco

Although the WHO's FCTC was not ratified until 2003, there is a significant amount of literature examining the impact that such a treaty would have on the economies of developing countries. Advocates of tobacco control argue that regulating tobacco is justified and would eventually help the economies of the signing parties. Parties advocating against the implementation of the FCTC, namely the TTC's, argue that restricting tobacco sales and promotion would cause the loss of thousands of jobs, a decrease in government revenues, and an increase in illegal activity, especially smuggling (World Health Organization, 2000).

In its landmark 1999 report, "Curbing the Epidemic: Governments and the Economics of Tobacco Control" the World Bank explored the economic dimensions that need to be addressed if nations were to become party to an international agreement such as the FCTC. The World Bank concluded that tobacco control is very desirable because even small reductions in a disease

burden of such large size bring highly significant health and economic gains. The World Bank deemed the tobacco industry's policy arguments to be unpersuasive, given that new jobs replace old jobs, tobacco taxes empirically increase government revenues, and tobacco taxes still reduce consumption and increase revenues in places where smuggling is high. The World Bank has since decided to prohibit the use of the Bank's resources to finance tobacco production. The IMF, aligned with the World Bank's tobacco policy has established similar conditions for its loans. Both organizations encourage countries to become signatories of the FCTC (World Bank, 1999).

Jacobs et al. describe the size and nature of the tobacco industry, both farming and manufacturing. They then examine the impact of tobacco control measures on countries' economies, in particular on employment. They found that, if tobacco consumption were to fall because of control policies, the net impact on total employment would be minimal or zero in most countries, since the money consumers once spent on tobacco would be spent instead on other goods and services, hence generating jobs.

Another belief among parties that are opposed to regulating tobacco is that governments will lose revenues if they increase cigarette taxes because people will buy less The World Bank suggests that even substantial cigarette tax increases will reduce consumption while increasing tax revenues. The proportionate reduction in demand does not match the proportionate size of the tax increase, since addicted consumers respond relatively slowly to increases in price.

Most scholars and international organizations agree that the FCTC offers a long term approach to global coordination on tobacco control (Taylor *et al.*; 1999 Jha *et al.* 1999; World Bank, 1999).

Significance of this Thesis

While there was no shortage of analysis that speculates on the economic effects of regulating tobacco, no single study has examined the actual impact of FCTC policies. Few people now dispute that smoking is damaging human health on a global scale. Many governments have avoided taking action to control tobacco - such as higher taxes, comprehensive bans on advertising and promotion, and encouraging farmers to diversify away from growing tobacco because of concerns that their interventions might have harmful economic consequences. For example, some policymakers fear that reduced sales of cigarettes would mean the permanent loss of thousands of jobs; that higher tobacco taxes would result in lower government revenues; and that higher prices would encourage massive levels of cigarette smuggling. This thesis examines the global challenge, brought on by public health advocates, facing Big Tobacco, one of the most powerful industries in the world. It aims to test the assertions that tobacco control policies are damaging to the economy using Brazilian experience.

The FCTC is a critical tool for promoting public health and corporate accountability and its implementation would help to end the global tobacco epidemic. Its history to date provides lessons that may be applicable when challenging other industries that threaten health, environmental and human rights. The 2003 issue of Tobacco Reporter, a prominent industry journal stated that: “Tobacco executives caution other industries about allowing WHO to assume such control over their global market.” BAT pointed out that as the world’s first international health agreement, the FCTC sets a precedent that could affect many other industries (Lerner, 2003).

Approach and Organization

Primary sources from the World Health Organization, the Pan American Health Organization, the World Bank, Phillip Morris International and British American Tobacco Ltd.

aided in compiling the research. An analysis was conducted, relying primarily on industry documents, scholarly journal articles, news articles, and reports relating to the economic impact of the FCTC in Brazil and elsewhere. To gain a better understanding of the globalization of tobacco, I attended the World Conference on Tobacco or Health (WCTOH), a global meeting of governments, advocates, businesses and researchers in Washington DC in June 2006. There, I attended sessions on the FCTC, tobacco advertising, smuggling, trade and other topics relating to the business end of the global tobacco issue. I also had the opportunity to speak with several Brazilian public health officials, professors, government officials and businessmen connected to both sides of the tobacco issue in several Latin American countries.

Chapter 2 of this study provides an overview on the history of international tobacco control. Prior to the FCTC's entry into force, there had been attempts at international tobacco regulation between countries and the World Trade Organization. This chapter explores the barriers to controlling tobacco that trade agreements have posed in the past, highlighting the dispute settlement process within the WTO. This chapter covers attempts at international tobacco control up until the ratification of the FCTC.

Chapters 3 examines the Framework Convention on Tobacco Control (FCTC). This will include a discussion on the nature of conventions, the measures and provisions set forth in the convention and its enforceability. Chapter 3 also documents the drafting of the FCTC and lists the countries that have signed and ratified the convention.

Chapter 4 will discuss tobacco control in Brazil to date. This will include a discussion about the scope of the tobacco problem in Brazil, its tobacco economy, and the government's first steps in regulating tobacco before the FCTC was ratified. A discussion of the drafting and ratification process including the hurdles posed by the tobacco industry's lobby will also be

included in this section. Further, this chapter will examine Brazil's commitment to tobacco control and the economic impact of tobacco control policies despite the countries' heavy economic interests in tobacco exporting and manufacturing.

Chapter 5 concludes the study with an analysis of the economic impacts of Brazil's tobacco policies and ratification of the FCTC. Future research and recommendations for policy makers is also presented along with generalizations about changing policy and behavior.

CHAPTER 2
DEVELOPMENT OF INTERNATIONAL TOBACCO REGULATION

Introduction

Although tobacco is considered the single most significant threat to global public health, international efforts to regulate tobacco and transnational tobacco corporations (TTC's) have only emerged within the past fifteen years. Because tobacco is a legal consumer good, justifying its restriction has been difficult despite consensus about its harmful side effects. The main factor that drew international attention to the tobacco epidemic was explosive increase in consumption of tobacco in developing countries in the 1990's. This increase was surprising, since most of the high income countries had experienced a decrease as a result of the widespread knowledge of the dangers of smoking. This chapter sets the stage for the WHO's development of an international tobacco treaty by discussing the evolution of international tobacco control.

First, this chapter provides an overview on the history of the beginnings of tobacco control that took place in the U.S. This includes a discussion on the discovery of the dangers of smoking, laws put in place to restrict the tobacco industry and improvements in public health recorded among the U.S. population after restrictions were put in place. Despite recorded health improvements in the U.S. and in other high income countries, it soon became evident that globalization of the TTC's was shifting the tobacco epidemic to the developing world. The second part of the chapter focuses on the trade-public health debate that arose in response to the increasing number of tobacco related deaths in developing countries. This section includes a discussion on trade liberalization and its links to the spreading of tobacco diseases and the WTO's past handling of trade disputes involving tobacco products. Finally, this chapter outlines the position taken by international regulatory organizations including the World Bank and the

WHO to regulate tobacco internationally. A discussion about the events leading up to the UN's adoption of the FCTC concludes the chapter.

Tobacco Regulation in the U.S.

Regulating tobacco first became a national concern in 1964 when U.S. Surgeon General[1] Luther Terry's Report on Smoking and Health was published, detailing scientific evidence on the harms of smoking (Center for Disease Control, n.d). Since that report was published, federal regulations have been placed on tobacco products in the U.S. Limited federal regulations include: required Surgeon General Warnings on cigarette packs, prohibition of television advertising, and some agricultural safeguards (American Heart Association, n.d). Individual states have taken further action by passing clean indoor air laws that require public areas to be smoke-free. In addition, Big Tobacco voluntarily regulated its advertising practices as a result of the 1998 Master Settlement Agreement (MSA) the largest civil settlement in U.S. history. These actions have proven to be successful in reducing the number of smoking related deaths in the U.S. over the past fifty years (Center for Disease Control, n.d). This section discusses the federal, statewide and voluntary regulations that have shaped the history U.S. tobacco control.

During the past three decades, the US Supreme Court has struggled with a major contemporary American issue - the role of advertising and its regulation in matters of public health and corporate freedom of speech. Although the findings in the 1964 Surgeon General's report sparked controversy over the role of advertising in consumers' choice to smoke, the tobacco industry asserted that advertising does not cause adults to start smoking nor does it increase the amount they may already smoke. Instead, the industry claimed, and continues to

[1] The Surgeon General of the United States is the head of the United States Public Health Service Commissioned Corps and is the leading spokesperson on matters of public health in the U.S. government. The Surgeon General is nominated by the U.S. President and confirmed via majority vote by the Senate (US Department on Health and Human Services, n.d.).

claim, that advertising merely enhances the market share of a particular brand over another (Bayer *et al*., 2002). Agencies like the Better Business Bureau (BBB)[2] and the Federal Trade Commission (FTC)[3] warned the tobacco industry that it should adhere to basic principles of truth and fairness in its campaigns in anticipation of a public backlash, since concealing the possible dangers of smoking from their consumers could cost them their advertising freedoms. The industry did not adjust their campaigns and people became outraged that Big Tobacco continued to advertise despite the established medical and health findings published in the Surgeon General's report. Critics of the industry's continued advertising practices argued that "A more flagrant assault against public welfare had never been witnessed in the United States" (Bayer *et al*., 2002).

Public outcry over the tobacco industry's inaction prompted the creation of the Public Health Cigarette Smoking Act, one of first the major bills passed by the U.S. Congress since the 1964 U.S. Surgeon General's report. The Act, signed into law by President Richard Nixon in 1970, required that health warning labels be placed on all cigarette packs. In 1981, the FTC reported that the health warning labels as mandated by the Public Health Cigarette Smoking Act had little effect on American smoking habits, so Congress the passed the Comprehensive Smoking Education Act of 1984, requiring more specific health warnings which read:

- SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.

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[2] The Better Business Bureau (BBB), founded in 1912, is an organization based in the United States and Canada. The BBB states its purpose is to act as a mutually trusted intermediary between consumers and businesses to resolve disputes, to facilitate communication, and to provide information on ethical business practices (Better Business Bureau, n.d)

[3] The Federal Trade Commission (FTC) is an independent agency of the United States government, established in 1914 by the Federal Trade Commission Act. Its principal mission is the promotion of consumer protection and the elimination and prevention of anticompetitive business practices (Federal Trade Commission, n.d)

- SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- SURGEON GENERAL'S WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.
- SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide. (Center for Disease Control, n.d).

This federal move prompted many states to adopt new tobacco regulations, forcing the industry's lobbying group, the Tobacco Institute, to ask for federal intervention on state and local matters that they felt infringed on their First Amendment Rights.

In 1996 the U.S. Food and Drug Administration (FDA)[4] attempted to assert jurisdiction over tobacco products under the Food, Drug, and Cosmetic Act. For decades, the FDA said it lacked authority to regulate tobacco, but in 1996 it cited new evidence that the industry intended its products to feed nicotine addictions, therefore making cigarettes a drug delivery system. The FDA proposed to regulate cigarettes as a hybrid involving both a drug and a medical device. It intended to dictate tobacco advertising and promotional campaigns, strengthen warning labels and tightening sales restrictions (Campaign for Tobacco Free Kids, 2001). In response, Big Tobacco sued the federal government, arguing that the FDA lacked legal authority to regulate tobacco products. The case eventually landed in the Supreme Court. In June 2000, The United States Supreme Court ruled 5-4 that Congress had not expressly given the FDA legal authority to regulate the tobacco industry, and that the Congress must specifically enact legislation to allow the FDA to regulate tobacco. As a result, all FDA's attempts to further regulate tobacco at the federal level were dropped, including the federal minimum age requirement for purchasing

[4] The Food and Drug Administration (FDA) is an agency of the United States Department of Health and Human Services and is responsible for regulating food, dietary supplements, drugs, biological medical products, blood products, medical devices, radiation-emitting devices, veterinary products, and cosmetics in the United States (Food and Drug Administration, n.d).

tobacco products (18 years old), as well as federal rules requiring retailers to check photo identification. (American Heart Association, n.d).

In February 2007, a bipartisan group of lawmakers reintroduced legislation, once again pushing to give FDA the same authority over cigarettes and other tobacco products that it already has over many other consumer products. Democratic Senator Edward Kennedy said that "Congress cannot in good conscience allow the federal agency most responsible for protecting public health to remain powerless in dealing with the enormous risks of tobacco, the most deadly of all consumer products." Many tobacco companies opposing this legislation, set to be voted on in 2007, have argued that the bill would favor companies like Phillip Morris, who enjoys strong brand loyalty that could allow them to weather advertising restrictions without losing market share. They claim that they will continue to oppose any bill that conveys an unfair advantage or disadvantage to any manufacturer (LSU Law Center, 2000). Because restricting tobacco products brings into question general principles such corporate freedom of speech, unfair advantage and the role of advertising in consumer choice, it is likely that the U.S. government will continue to struggle with the federal regulation of tobacco.

Although federally tobacco regulation is lax, many U.S. states have enacted their own set of tobacco control policies. These restrictions range from tax increases to full smoking bans in bars, workplaces, restaurants and hotels. In 1988, California voters passed Proposition 99, which raised the tobacco excise tax by twenty-five cents and allocated $90 million annually for tobacco control. Massachusetts, Arizona, Oregon, referenda have increased tobacco excise taxes and dedicated a fraction of the revenues to reducing tobacco use. Legislatures in other states such as Alaska, Hawaii, Maryland, Michigan, New Jersey, New York, and Washington have increased tobacco taxes substantially. Figure 1.1 lists the cigarette taxes rates imposed by each state and

ranks them from highest to lowest. By acknowledging the danger of cigarettes, raising tobacco taxes and restricting advertising has not only discouraged people from buying pricier cigarettes, it has changed society's perception of smoking.

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STATE	TAX RATE (¢ per pack)	RANK	STATE	TAX RATE (¢ per pack)	RANK
Alabama	42.5	40	Nebraska	64	31
Alaska	180	7	Nevada	80	26
Arizona	200	4	New Hampshire	80	26
Arkansas	59	33	New Jersey	257.5	1
California	87	24	New Mexico	91	23
Colorado	84	25	New York	150	13
Connecticut	151	11	North Carolina	35	44
Delaware	55	36	North Dakota	44	39
Florida	33.9	45	Ohio	125	16
Georgia	37	41	Oklahoma	103	19
Hawaii	160	10	Oregon	118	18
Idaho	57	34	Pennsylvania	135	15
Illinois	98	22	Rhode Island	246	2
Indiana	55.5	35	South Carolina	7	51
Iowa	36	42	South Dakota	53	38
Kansas	79	28	Tennessee	20	48
Kentucky	30	46	Texas	141	14
Louisiana	36	42	Utah	69.5	30
Maine	200	4	Vermont	179	8
Maryland	100	20	Virginia	30	46
Massachusetts	151	11	Washington	202.5	3
Michigan	200	4	West Virginia	55	36
Minnesota	123	17	Wisconsin	77	29
Mississippi	18	49	Wyoming	60	32
Missouri	17	50	Dist. of Columbia	100	20
Montana	170	9			
			U. S. Median	80.0	

Figure 2-1. US State Cigarette Taxes, 2007. Source: Tax Policy Center, 2007

The 1998 Master Settlement Agreement (MSA) was also an important factor in regulating tobacco in the U.S. The MSA arose out of many separate law suits brought by various individual States against the tobacco industry for Medicare costs associated with smoking-related diseases. The agreement was originally negotiated between the four largest tobacco companies (Philip Morris USA, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corp., and Lorillard Tobacco Company) and 46 U.S. States and 6 U.S. Territories. The MSA exempted the

companies from liability from state governments and settled the lawsuit in exchange for a combination of yearly payments to the states, estimated at over $206 billion, and voluntary restrictions on advertising and marketing of tobacco products (Geyelin, 1998). The MSA also created and currently funds The American Legacy Foundation, an anti-smoking advocacy group that is responsible for such anti-smoking campaigns like The Truth[5]. The agreement was meant to provide state governments with compensation for smoking related medical costs and to help reduce smoking in the United States. Another major contribution that came out of the MSA was that the tobacco companies were forced to make their private industry documents open to the public (California Office of Attorney General, n.d). The information extracted from these documents has shed light on the tobacco industry's business practices around the world and aided in jump starting international tobacco regulation.

Public health advocates have criticized the MSA as being too lenient on the major tobacco companies. An article in the Journal of the National Cancer Institute described the MSA as an "opportunity lost to curb cigarette use", citing public health researchers' views that not enough of the MSA money was being spent on anti-smoking measures (Twombly, 2004).

Federal and state regulations along with voluntary campaigns funded by the Industry, are responsible for changing the social acceptability of smoking in the U.S. According to the CDC, 46.5 million U.S. smokers have quit over the last 40 years (Center for Disease Control, 2006). Smoking rates have been steadily declining among men and women since the 1964 Surgeon General's report, with a 50 year low recorded in 2004 (Center for Disease Control, 2006).

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[5] The Truth campaign is the largest national youth-focused anti-tobacco education campaign ever. It is designed to engage teens by exposing Big Tobacco's marketing and manufacturing practices. The campaign has been successful, with nearly 90 percent of youths aged 12 to 17 - 25 million - said the ad they saw was convincing (Truth Campaign, n.d).

Globally evidence on the dangers of smoking has not had the same effect on developing countries as has on high income countries, nor has the tobacco industry fallen under the same amount of scrutiny and regulation. Today, approximately 1 in 3 adults, or 1.1 billion people smoke. Of these, a disproportionate 80% are live in developing countries. Increased trade liberalization is often cited as the main reason for this imbalance, since the removal of trade barriers increases demand, fuels competition, lowers prices and attracts new customers.

International Trade and Tobacco

The idea that trade liberalization exacerbated tobacco use became evident when expansion of trade in tobacco products began in the 1980's. The most notable example of tobacco trade expansion took place when the U.S. applied pressure on behalf of the tobacco companies to open the markets of Japan, South Korea, Taiwan, and Thailand. These actions were taken by the United States Trade Representative under Section 301 of the US Trade Act of 1974 (Chaloupka and Laixuthai, 1996). Section 301 of the Trade Act of 1974, is the US legislative device designed to open foreign markets to U.S. exports of goods and services. The US government succeeded in negotiating bilateral agreements that removed excise taxes and distribution practices that discriminated against U.S. tobacco products, except in Thailand. Studies found that the market share of U.S. cigarettes in countries affected by the Section 301 agreements rose sharply after their tobacco markets were opened (Taylor *et al*., 1999). Estimates implied that U.S. market shares for the American cigarettes were 600% higher, on average, in 1991 than they would have been had these markets remained closed. Most notably, research found that the opening of the Japanese, Taiwanese, South Korean, and Thai cigarette markets led to a significant increase in cigarette smoking in these countries. They estimated that per capita cigarette consumption, by 1991, was 10% higher, on average, in the four countries than it would have been in the absence of the bilateral agreements (Chaloupka and Laixuthai, 1996).

The issue of trade liberalization influencing international tobacco consumption are matters that lie under the authority of the World Trade Organization and the World Health Organization. Since WTO controls the international movement of tobacco products around the world, many feel that the WTO should take on the responsibility of controlling the tobacco epidemic by allowing countries to restrict the importation of foreign tobacco. The ways in which the WTO interprets and rules on trade-public health issues have historically been narrow and mostly trade-focused (Taylor et al, 1999). Although the WTO does not deny the significance of protecting public health within trade practices, since there is a direct relationship between health and development, there is little mention about trade and public health within the WTO's agreements. (World Trade Organization and World Health Organization, 2002).

The WTO was established in 1995 to replace the General Agreement on Trade and Tariffs (GATT), which dated back to 1948. This was the consequence of a decision made by governments after seven years of negotiations during the Uruguay Round which ended in 1994 (World Trade Organization, n.d) With the WTO's creation, trade rules were expanded to cover new issues that emerged during the 1980s and 1990s. While the GATT dealt with trade in goods only, the WTO covers trade in services and intellectual property and introduced a new dispute settlement system equipped to deal with new trading concerns (World Trade Organization, n.d) The only reference to a country's ability to restrict trade in the name of health lies in Article 20(b) of the GATT, which dates back to the 1948. Article 20(b) provides a highly limited exception for national measures designed to protect public health that would otherwise violate GATT obligations and are only relevant if a trade violation is found. Article 20(b) GATT reads:

> *Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this*

Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures;

(b) Necessary to protect human, animal or plant life or health (World Trade Organization and World Health Organization, 2002).

The only instance where Article 20(b) has been applied to tobacco products and health took place in 1989 between Thailand and the WTO. This first international attempt to control tobacco trade internationally emerged out of the same U.S. agreements that opened the Asian markets discussed above. Examining U.S. efforts to open the cigarette market in Thailand will help to assess the impact of the trade liberalization with respect to cigarettes.

The case of Thailand

In 1966, Thailand enacted a bold tobacco control program that included a comprehensive ban on both cigarette advertising and a ban on tobacco imports. U.S. tobacco companies challenged Thailand's ban on advertising and imports, prompting an investigation by the United States Trade Representative who referred the matter to the WTO's GATT. Thailand contended that the ban on imports was justified by the objective of public health policy and was therefore covered under Article 20(b) of the GATT.

In a landmark decision, GATT's panel found that Thailand could "give priority to human health over trade liberalization as long as the proposed measures were "necessary." The panel concluded that Thailand's restriction on imports could be considered "necessary" in terms of Article 20, only if there were no alternative measure consistent with the GATT, or less inconsistent with it, that Thailand could reasonably be expected to achieve its health policy objectives. Based on the GATT panel's analysis of the "necessity" of the Thai measures, the panel concluded that Thailand's practice of permitting the sales of domestic cigarettes, while banning the importation of foreign cigarettes, was not "necessary" and, therefore, not justifiable

under Article 20(b), since alternatives to banning the importation of cigarettes were available to protect public health (World Trade Organization and World Health Organization, 2002).

The panel further found that requiring foreign tobacco companies to abide by tobacco-control regulations that applied equally to domestic and foreign tobacco products was appropriate and consistent with GATT obligations. GATT upheld Thailand's advertising ban and went on to state that various tobacco control measures could be adopted and applied to both domestic and imported tobacco, in lieu of an import ban, and still be consistent with GATT. The panel also noted that a ban on advertising applying to both domestic and imported cigarettes would be justified under the GATT, even if it created unequal competitive opportunities between domestic and foreign firms, because advertising may stimulate demand for cigarettes (World Trade organization and World Health Organization, 2002). This was the first and only WTO decision involving manufactured tobacco products.

According to the World Bank, the Thailand decision it set a critical precedent for other countries, and sends a message that member nations can adopt strong anti-tobacco control legislation as long as the measures are aimed at protecting health and do not discriminate between domestic and imported tobacco. Many scholars have noted that it cannot be assumed that Article 20(b) of the GATT will be applied in a manner that supports the protection of public health in future tobacco decisions (Bettcher *et al*., 2001). After all, the WTO regime is primarily aimed at limitation of health-based restrictions to those that are necessary and minimally burdensome to trade.

Critics of the GATT panel's decisions regarding tobacco products claim that the panel's interpretation of the necessary requirement under Article 20(b) excessively restricts the capacity of countries to adopt standards to protect public health (Schoenbaum, 1997). They claim that the

standard employed by the GATT panel when considering Thailand's import ban requires countries to adopt the least trade restrictive policy possible, inordinately favoring the expansion of free trade over national authority to protect public health (Taylor *et al*., 1999). Other critics say that the Thai case has been mistakenly viewed by some as an important victory for public health advocates. They claim that although the GATT's decision upheld strong, non-discriminatory public health measures as consistent with international trade commitments, the liberalization of the tobacco trade in Thailand, as well as the other 3 Asian nations that were prompted to open their markets to expand the imports of cigarettes considered qualitatively superior to those produced by the domestic tobacco companies led to an overall increase in tobacco consumption in these nations. The Thai trade case and the research concluding that smoking in the Asian countries had increased significantly after opening their markets for tobacco expansion intensified the international debate between the public health and trade regimes.

History of the Trade vs. Public Health Debate

The interests of the WHO and the WTO are at odds within the trade vs. health debate, but much more so when manufactured tobacco products are involved. In 2000, the annual World Conference on Tobacco or Health held its first debate that centered on the issue of international trade in tobacco. Specifically, the debate focused on whether the rules governing international trade inhibits nations from being able to adopt strong tobacco control measures. This question fit in with the central trade issue of the 1990's: whether trade agreements and WTO system of trade rules overrode other important societal values, such as environmental protection, food safety, and public health. Trade advocates argued that the main setback to tobacco control was not the international trade rules. Rather, it was the failure of governments around the world to find the political will to adopt strong tobacco control policies in the face of powerful tobacco companies.

They suggested that the increasing amount of smokers in developing countries could be attributed to governments' failure to put the public health concerns of their people above the commercial interests of the tobacco companies and of those who make their living from growing tobacco. In addition, trade advocates added that the WTO rules, particularly Article 20(b) of the GATT, provided governments with far more latitude to adopt measures to safeguard public health than the WTO critics acknowledged.

Although the WTO advocates did not deny the significance of protecting public health within trade practices, they emphasized that the ultimate goal of free trade is the increased production and consumption of beneficial products, or, goods, which justifies free trade policies. The problem with tobacco, of course, is that it is not a beneficial product. Each additional unit of consumption has been shown to cause additional suffering and death, as well as a net economic loss to the economy of the nation in which it is consumed and to the global economy. According to Bloom et. al., the distinction between a beneficial product and a harmful one essentially turns the traditional presumption in favor of free trade on its head with respect to tobacco. Bloom et al. points out if the use of a product is uniformly harmful; the presumption should be against promoting increased trade in that product (Bloom, 2001)

Public health advocates argued that trade advocates focused too much attention on the workings of WTO provisions, and not enough attention on the actual problem: the unique nature of the product in question (Shapiro, 2002). The facts suggest that smoking is the leading preventable cause of death and disease in the world, and that about half of all long term smokers die of diseases caused by their addictive habit. Public health advocates argued that the very fact that tobacco products are so lethal, even when they are consumed in a normal way, sets them

apart from other products in commerce, and requires that they be treated as an exception to ordinary trade rules.

Many public health advocates argue that the Thailand case illustrates problem with the treatment of tobacco products within the trade regime. Even though closed markets and clear discrimination against foreign products are "abomination" to trade, they may have significant public health benefits (Shapiro, 2002). A closed market allows the government to maintain control over the market, prevent marketing and pricing competition that accompany trade liberalization, and exclude products that may be especially enticing to children.

Some tobacco control advocates believe that WTO panels will always err on the side of trade at the expense of public health in trade disputes (Weissman, 2001). Trade advocates point to recent WTO appellate decisions to refute that accusation. In 2000, the WTO ruled in favor of French ban the production and import of asbestos products from Canada. The WTO panel decided that France has the right to maintain its ban under Article 20, which allows for actions instituted for the protection of public health (Callard et al., 2001). It is difficult to predict how trade disputes involving tobacco will be determined under an international tobacco treaty like the FCTC.

International Organizations and Tobacco Control

In light of the growing consensus that trade liberalization contributes to for the spread of the tobacco epidemic, it has been assumed that regulating tobacco trade policies would be the best way to control tobacco. WTO agreements outline the difficulty facing the regulation of tobacco control at an international level via the trade regime. Other international organizations have adopted policies that control tobacco indirectly. This section details the actions taken by the World Bank and the World Health Organization that have shaped international tobacco control in recent years.

World Bank

Since 1991 the World Bank has had a formal policy of not lending for tobacco production and encouraging tobacco control. The policy contains five main points (World Bank, 1999):

- First, the Bank's activities in the health sector discourage the use of tobacco products.
- Second, the Bank does not lend directly for, invest in, or guarantee investment or loans for, tobacco production, processing or marketing
- Third, the Bank does not lend indirectly to tobacco production activities, to the extent that this is practicable. For countries highly dependent on tobacco growing, the Bank's aim is to help the countries diversify away from tobacco.
- Fourth, tobacco and its related processing machinery and equipment cannot be included among imports financed under loans.
- Fifth, tobacco and tobacco-related imports may be exempt from borrowers' agreements with the Bank to liberalize trade and reduce tariffs.

These World Bank policies have been applauded for their leadership in establishing different norms for tobacco enterprises than for other commercial activities. Some World Bank policies may remain in conflict with public health objectives, such as the Bank support of privatization of state monopolies. Before 1999, the economic aspects of controlling tobacco received little global attention, since most focus on tobacco issues revolved around the health effects of smoking. The World Bank published a landmark report titled "Tobacco Control in Developing Countries" which filled the gap between the health and economic aspects of tobacco. The report focused on issues such as; the costs of tobacco use, the economic rationale for government intervention in the tobacco market, policies to reduce demand and supply, the impact of advertising and promotion and the taxation of tobacco products (Jha et al., 1999). This report is responsible for much of the dialogue about international tobacco control and provided a sound economic basis for the WHO to begin negotiations on an international health treaty focusing on tobacco.

The World Health Organization (WHO)

In 1996, the WHO decided to exercise their treaty making ability to establish the Framework Convention on Tobacco Control, the first international public health treaty. Since its establishment in 1948, the WHO only used its constitutional powers to propose legally binding international law sparingly. Before the FCTC, the WHO's only notable contributions to binding international law were the International Health Regulations (IHR), concerning the control of three contagious diseases: cholera, plague, and yellow fever (Woo, 2002). As the scope of international law broadened beyond the traditional international law issues of diplomacy, trade, and war to include human rights and environmental protection agreements, international consensus regarding health law was becoming more and more probable. This growth in international law, the inaction by other international organizations of the issue of tobacco contributed to the WHO's decision to use international law to achieve its objectives by creating the FCTC.

The WHO Constitution defines its wide international responsibilities in the field of health generally as the *"attainment by all peoples of the highest possible level of health."* Health is very broadly defined as *"a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*" The Constitution also says that *"All necessary action to attain the objective of the Organization"* is within the functions of the WHO. Since most of the functions in the WHO Constitution are administrative, technical, or developmental in nature, the WHO has been more active in these methods of promoting health rather than in the making of international health law. The exception to this rule is Article 2(k), an enumerated function stating that the WHO may "*propose conventions, agreements and regulations, and make recommendations with respect to international health matters and to perform such duties as may be assigned thereby to the Organization and are consistent with its objective.*" (Woo,

2002). The WHO had been addressing the issue of tobacco control by issuing resolutions since 1986. As non-binding international law, the resolutions had little effect, so in 1996, the World Health Assembly (WHA), the WHO's governing body, passed Resolution 49.17 to begin work on the FCTC.

In 1998, WHO Director-General, Dr. Gro Harlem Brundtland made global tobacco control a priority through the establishment of a Cabinet Project, The Tobacco Free Initiative, whose goal was to focus international attention, resources and action upon the global tobacco epidemic. Brundtland worked with WHO member states to secure a negotiating mandate for the FCTC and began mobilizing public opinion in favor of global rules for tobacco control (World Health Organization, n.d).

In May 1999, the 52nd World Health Assembly opened up multilateral negotiations on the FCTC. Resolution WHA52.18 established two bodies to draft the framework convention, to complete negotiations, and to submit the final text for consideration by the 56th World Health Assembly. These two bodies included a technical working group to prepare the proposed draft elements and an intergovernmental negotiating body to draft and negotiate protocols. Both bodies were open to all Member States and regional economic integration organizations to which their Member States had transferred competence over matters related to tobacco control (World Health Organization, n.d).

The WHO Director-General; opened a public hearing in 2000 to provide a forum for the public health community, the tobacco industry, and farmers' groups to submit their case. After six negotiating sessions were conducted by the Intergovernmental Negotiation Body (INB) the final text of the FCTC was transmitted to the 56th World Health Assembly for Consideration. On May 21, 2003, the World Health Assembly unanimously adopted the WHO FCTC.

Conclusion

Chapter 2 laid out the development of international tobacco regulation. It detailed the U.S. experience in regulating tobacco which began the anti-smoking movement that inspired other countries to adopt tobacco control policies. Importantly, this chapter illustrated that despite public awareness of the dangers of smoking, developing countries had a disproportionate and rising number of smokers when compared to high income countries. The opening of tobacco markets in the 1980's in developing countries is revealed as the key factor responsible for that trend. These findings eventually fueled the debate between the public health community and the trade regime, which centered around the issue on whether tobacco should be restricted through trade agreements. The inherent principles behind free trade and the case of Thailand suggest that, presently, the trade regime is perhaps not the appropriate realm that should be used to regulate tobacco. This chapter introduced the World Bank and the World Health Organization as the leading international organizations with respect to tobacco control. The World Bank has contributed to global tobacco policy by providing an economic rationale for regulation in their landmark report Tobacco Control in Developing Countries and has also adjusted their lending policies to discourage tobacco production and processing. The chapter concludes with the WHO's bold move to address the tobacco issue under their jurisdiction by creating the Framework Convention on Tobacco Control.

The history on the development of tobacco control surveyed in this chapter suggests that international regulation is becoming a top priority within the international community. Regulation is becoming less of an option and more of an obligation, especially in developing countries where a disproportionate number of people are dying from smoking related diseases. It seems that the initiative taken by the international community is one that is willing to enforce its public health agenda even it means foregoing economic and trade principles. Chapter 3 provides

an overview of the FCTC's provisions, implementation and enforceability with special attention given to the controversial provisions impacting the economies of its signing Parties.

CHAPTER 3
2003 FRAMEWORK CONVENTION ON TOBACCO CONTROL

Introduction

The World Health Organization's Framework Convention on Tobacco Control is a groundbreaking treaty in many aspects: it is the first international public health treaty; the first treaty proposed by WHO, and the first to regulate a legal consumer good at an international level. The treaty has been signed by 168 countries and is legally binding in 147 ratifying countries, representing over 2.3 billion people (World Health Organization, n.d). The FCTC "reaffirms the right of all people to the highest standard of health." The treaty is unique in nature because it represents a paradigm shift in developing a strategy to address addictive substances. The FCTC was developed in response to the globalization of the tobacco epidemic which has been facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment by TTC's. Other factors also addressed by the treaty, such as global marketing, transnational tobacco advertising, promotion and sponsorship, and international movement of smuggled cigarettes have also contributed to the substantial increase in tobacco use. The Convention is intended as a global regulatory complement to national and local actions to control tobacco use, and it is expected to facilitate international commitments to tobacco control and harmonization of national policies in this area. The treaty also includes mechanisms designed to "enhance the technical capacity of poor countries in developing tobacco control programs and strengthening their implementation" (Bettcher *et al*., 2001). This chapter is divided into 3 sections, each discussing one aspect of the Framework Convention on Tobacco Control.

The first section of Chapter 3 discusses the nature of the FCTC and international law, with special attention given to the legality of the FCTC, its relationship with other existing

international obligations and the process by which State parties to the FCTC incorporate the treaty into domestic law and policy. In addition, the general provisions set forth in the FCTC are presented. Second, this chapter focuses on the FCTC's articles that are most likely to impact the economies of countries that become Parties to the treaty. This includes a discussion on the tobacco industry's argument that such provisions are detrimental to the economies of developing countries and provides findings from several studies, namely studies conducted by the World Bank, that counter the industry's contentions. Chapter 3 concludes with a discussion about Big Tobacco's response to the FCTC and its attempts to undermine its ratification and implementation. The Articles set forth in the FCTC to combat activities by the tobacco industry that undermine FCTC's efforts are also presented.

FCTC and International Law

The FCTC is a legally binding international treaty as defined by the 1969 Vienna Convention on the Law of Treaties (VCLT). The VCLT, drafted by the International Law Commission (ILC) of the United Nations, is responsible for codifying and defining international law on treaties. It defines a treaty as "an international agreement concluded between States in written form and governed by international law." The generic term "convention" is a title used for negotiations associated with international organizations, and is synonymous with the generic term "treaty." The basic principles regarding the observance of treaties comes from Article 26 of the VCLT, which provides that "Every treaty in force is binding upon the parties to it and must be performed in good faith" (United Nations, 1963).

International Treaty Law

As a general rule, conventional international law, or, treaty law, is a voluntary undertaking and its provisions are only binding only upon those states that have consented to them. The adoption of a treaty represents the close of negotiations and is followed by its entry into force.

The FCTC details the requirements for entry into force in the final clauses of the convention. In virtually all cases, multilateral treaties allow States to accept the treaty by means of either (a) signature followed by ratification or (b) accession, the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. In the former case, signature is merely a preliminary step (International Law Commission, 2005). Member States that have signed the Convention indicate that they will strive in good faith to ratify, accept, or approve it and show political commitment not to undermine the objectives set out in it. Ratification is the process whereby a state expresses its consent to be bound by a treaty, involving formal confirmation by the state of its initial signature to the treaty. Ratification is normally required before a treaty becomes binding in member states. A treaty usually enters into force as international law after a certain number of states ratify it. The FCTC required 40 ratifications for entry into force (Framework Convention Alliance, n.dB). The treaty met its 40-member mark in November 2003 when Peru completed its ratification (Framework Convention Alliance, n.dC).

In the event of a dispute with respect to interpretation or application of the Convention, Article 27 of the FCTC states that "the Parties concerned shall seek through diplomatic channels a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation or conciliation"(World Health Organization, 2005).

Throughout the United Nations system, the general rule is that once a treaty has been adopted by an organ or conference of an international organization, then that organization "takes no substantive interest in the steps to bring the treaty into force, except to the extent that the organization may act as a depositary and carry out formal steps required in that capacity" (Szasz, 1997). In the case of the FCTC, the WHO's actions are limited to symbolic steps to encourage

ratification, such as recommending the treaty to its members, adopting resolutions, encouraging member nations to participate in the treaty, or requiring its executive head to report periodically on progress made in bringing the treaty into force among Member States (Blanke and Silva, 2004).

International Requirements and the FCTC

A series of international and domestic requirements must be met before a treaty enters into force. Discrepancies between national obligations pursuant to some international agreements and countries that have ratified the treaty may not be congruent. The WTO and other trade and investment agreements contain far reaching liberalization provisions that go beyond regulating tariffs and requiring countries to treat domestic and foreign producers equally. These include provisions placing limits on country flexibility in the areas of product standards and intellectual property. Countries have a strong incentive to comply with WTO requirements since countries found violating WTO rules must either change their laws or face costly trade sanctions (Callard *et al*., 2001).

Normally, in the case of a conflict between two treaties, two rules of international law outlined in the Vienna Convention on the Law of Treaties apply. First is the principle of *lex specialis*, which says that treaties of a specific nature take precedence over treaties of a more general nature (Szasz, 1997). Second is the principle of *lex posterior*, or the "later in time" rule, which stipulates that more recent treaties will take precedence over earlier treaties. According to the International Law Commission (ILC), *Lex specialis* and *lex posterior* can apply only to States which are parties to both treaties in question. Since the FCTC is a relatively new treaty, it is expected that these international laws will favor tobacco control measures (Blanke and Silva, 2004). With the constant negotiation of new trade agreements, many trade agreements will soon

be "later in time." than the FCTC. This leaves the FCTC in a gray area as far as precedence over conflicting agreements.

During the drafting process for the FCTC, three resolutions called for the international tobacco control community to work vigorously to exclude and remove tobacco and tobacco products from bilateral and multilateral trade agreements that would have negative public health consequences. The final draft of the treaty is silent on its relationship to trade agreement. (Mitka, 2000). It is still uncertain how conflicts between FCTC implementation and trade agreement obligations, if any, will be resolved (Callard *et al*., 2001).

As discussed in Chapter 2, many public health advocates have voiced concerns over the tobacco industry's reaction to FCTC provisions that may not be in the industry's best interests. The fear is that the tobacco companies will be quick to push for action to be taken against countries enforcing tobacco control laws. To date, the only dispute related to tobacco control that has arisen under WTO agreements involved Thailand's import and advertising ban on manufactured tobacco products, where a health exception under Article 20 of the GATT allowed Thailand to ban advertising on tobacco products as long as the ban was equally applied to both domestic and imported tobacco products. Despite overlapping interests between trade and public health agreements, the WHO is working closely with the WTO to minimize potential conflicts between the FCTC and other agreements (Bloom, 2001).

FCTC Provisions

Provisions set in the final draft of the WHO's FCTC are wide and varied. Main provisions include regulation of tobacco through: advertising, promotion and sponsorship; illicit trade; liability; packaging and labeling; training and education; and research and surveillance. FCTC also establishes institutions and mechanisms necessary for the functioning of the treaty, such as the Conference of Parties, the Secretariat and the dispute settlement procedures (Framework

Convention Alliance, n.dB). Most measures deal primarily with demand reducing strategies and are contained in Articles 6-14. These include 1) Price and tax measures to reduce demand (increasing price and taxes on tobacco products and 2) Non-price measure to reduce demand, which include:

- Protection from exposure to tobacco smoke
- Regulation of the contents of tobacco products
- Regulation of tobacco product disclosures
- Packaging and labeling of tobacco products
- Education, communication and public awareness
- Tobacco advertising, promotion and sponsorship, and
- Demand reduction measures concerning tobacco dependence and cessation

The core supply reduction provisions in the FCTC are contained in Articles 15-17 and include:

- Illicit trade (smuggling) in tobacco products
- Sales to and by minors; and,
- Provisions of support for economically viable alternative activities to tobacco production.

In addition to the goals set out in the provisions, drafters say that these measures should:

- Raise the profile of tobacco issues in the media and legislatures around the world
- Give new impetus to efforts to strengthen national legislation and action to control the harm caused by tobacco
- Help mobilize national and global technical and financial support for tobacco control;
- Bring new national ministries, including those dealing with foreign affairs and finance, more deeply into the tobacco control effort; and
- Provide tobacco control organizations with critical opportunities to build alliances nationally and internationally, educate policymakers, and raise public awareness of the health hazards of tobacco and the activities of the tobacco industry (Mitka, 2000).

Economic Implications of the FCTC

Countries that want to support the FCTC at the national level face some obstacles. According to the American Cancer Society, TTC's attempt to persuade governmental authorities and the public that smoking has economic benefits. They claim that FCTC measures to control tobacco will reduce tax revenues and increase unemployment and cigarette smuggling. Many governments seriously consider arguments of the tobacco industry that adopting the FCTC will

affect the economy by reducing the fiscal gains from growing, processing, manufacturing, exporting and taxing tobacco. These concerns are a formidable barrier to tobacco control. The provisions set forth in the FCTC that are most controversial in terms of negatively impacting a country's economic stability are those related to tobacco tax increases, alternatives to tobacco production, smuggling of tobacco products and control in advertising, promotion and sponsorship. This section details those FCTC provisions and develops the arguments by the tobacco industry, economists and the World Bank on why these tobacco control measures laid out by the FCTC are beneficial or detrimental to countries that enforce them.

Price and Tax Increases

Tax and price increases are widely recognized as one of the most powerful policy tools in reducing tobacco use and the single most cost-effective intervention (World Bank, 1999). Increasing the price and tax on cigarettes is considered an especially effective way to reduce consumption in developing countries, since people with low incomes tend to be highly sensitive to price increases (Vargas and Campos, 2005). Article 6 of the FCTC commits Parties to treat tobacco taxation as a health measure, rather than a fiscal measure, and encourages Parties to adopt tax and price policies to discourage tobacco consumption. Although it is difficult and undesirable to develop a common tax regime under the FCTC, it is suggested within Article 6 that each party should commit to raise its tobacco taxes to at least the rate of growth of incomes, and considerably ahead of inflation (Action on Smoking and Health, 2002). The Article also suggests that some fraction of tobacco tax revenue should be dedicated to funding tobacco control and cessation programs like the Truth campaigns in the U.S. Also, Article 6 stipulates that duty free sales of tobacco products should be suspended, since duty free is an unjustified tax break to travelers, and opens a back door route to the black market by allowing retail access to tobacco products on which the full duties have not been paid (World Health Organization, 2005).

Article 6 is the one of the more controversial provisions in the FCTC because increasing tobacco taxes has many economic implications for countries that opt to become Parties to the FCTC. The most common concern is that increases in tobacco taxes will lead to reductions in tobacco tax revenues for governments. Another argument is that tax increases would lead to significant reductions in employment in tobacco growing and manufacturing, as well as more general wholesaling, retailing, and other sectors. In addition, some TTC's argue that raising taxes on cigarettes will increase smuggling activity, which is a major concern for governments, especially in developing countries where crime is already a problem. Several studies indicate that that raising tobacco taxes can only be beneficial to individuals and governments for both financial and health reasons (World Bank, 1999; Jha *et al*., 2000; Iglesias and Nicolau, 2006).

Big Tobacco and some policymakers frequently argue against raising tobacco taxes on the basis that the resulting reduction in demand will cost governments vital revenue. Given the relatively inelastic demand for tobacco products and the current share of tobacco taxes in price, nearly every country has substantial room for increasing tobacco tax revenues by increasing tobacco taxes (Sunley et al., 1999, 409). Moreover, even in countries where demand is relatively more elastic and taxes account for a relatively high share of tobacco prices, increases in these taxes will lead to increases in tax revenues. A good example that illustrates the benefits of raising tobacco taxes is the United Kingdom, where cigarette taxes have been raised repeatedly over the past three decades. Partly because of these increases, and partly because of the steady increase in awareness about the health consequences of smoking, consumption has declined sharply over the same time, with the annual number of cigarettes sold falling from 138 billion to 80 billion over the last thirty years. Despite the decreasing number of sales, tobacco tax revenues for the government are still rising. For every tax increase of 1% in the U.K.,

government revenues increased between 0.6 and 0.9 percent. In 1999, a model developed by Sunley et al. (1999) using the experiences of the UK and several other countries indicated that an increase of 10% in cigarette taxes would lead to an increase of almost 7%, on average in cigarette tax revenues (Sunley et al., 1999).

Advocates of the FCTC argue that policymakers should hope that tobacco consumption falls to such low levels that, eventually, tobacco tax revenues would begin to fall as well. Ideally, an ultimate loss in government revenue would be considered a success, since the ultimate aim for the FCTC is to benefit public health. Based on current patterns, the number of smokers is expected to grow in low income countries over the next three decades so it is unlikely that raising taxes would affect revenue in the short run. Because it is a possibility that in the long term governments may indeed lose tobacco tax revenues, FCTC panels encourage governments to introduce alternative income taxes or consumption taxes that would replace the revenue from tobacco taxes (World Health Organization, 2005).

Smuggling

The second most common argument against FCTC provisions for raising tobacco taxes is that doing so will contribute to increased cigarette smuggling and criminal activity. Each year, approximately 400 million cigarettes are illegally smuggled across international borders, making cigarettes the world's most widely smuggled legal consumer product (World Bank, 1999). This presents a major problem, especially for developing countries because it allows for the evasion of duty fees and taxes that would normally go towards improving public health, education and infrastructure. Normally, cigarettes legitimately move through an 'in-transit' regime without bearing tax until they reach their final end market, at which point tax is payable. Most smuggling involves the cigarettes moving out of the untaxed distribution chain and entering the final end-market illegally, often through a third country. This can happen by legal export

followed by illegal re-import or cigarettes in transit may be diverted from the legal to the illegal distribution chain (Campaign for Tobacco Free Kids, 2001B).

One of the key measures in the FCTC is the development of a regime to tackle tobacco smuggling, an issue important for both fiscal and human health. Under Article 15 of the FCTC, Parties accept a number of obligations which are aimed at eliminating illicit tobacco trade. They accept these obligations recognizing that "*the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development of and implementation of related national law, in addition to sub-regional, regional and global agreements, are essential components of tobacco control*" (World Health Organization, 2005).

It has been argued by the TTC's that higher taxes will contribute to increased cigarette smuggling and associated criminal activity. In fact, the TTC's advise governments to *reduce* tobacco tax rates in order to discourage smuggling (Bialous and Shatenstein, 2002). Some studies have shown that even in the face of high rates of smuggling, tax increases bring increased revenues and reduce cigarette consumption (Mackay *et al*., 2006; World Bank, 1999). While smuggling is a serious problem, and while steep differing tax rates between countries are an incentive to smugglers, the appropriate response to the smuggling problem is not to reduce tax rates or forego tax increases. Instead, taxes should be increased and governments should be more vigilant against crime (Campaign for Tobacco Free Kids, 2001B).

One particular study that looked at reducing tobacco taxes to counter smuggling activity references Canada's experience in 1991. The Canadian government cut taxes sharply because they were experiencing an increase in smuggling activities. As a result of the tax cut, the prevalence of smoking among the entire population rose as a whole and federal tobacco tax revenues fell by more than twice as much as predicted (Jha *et al*. 1999). In South Africa,

tobacco taxes were raised by more than 450% in the 1990's. On average, smuggling activity rates rose from 0% to 6% during that time and sales fell by 20%. Despite an increase in smuggling, total tax revenues more than doubled (Jha *et al*., 1999). In order maintain or even increase government revenue despite the prevalence of smuggling, the FCTC encourages the harmonization of cigarette tax rates between neighboring countries and advises governments to crack down on crime associated with the illicit trade of cigarettes.

Tobacco Advertising , Promotion and Sponsorship

The tobacco industry spends billions of dollars per year on advertising, marketing and promotion. In the United States alone, with less than 5 percent of the world's smokers, tobacco companies spent over US$8 billion on advertising and promotional expenditures in 1999 (Campaign for Tobacco Free Kids, 2001A). The FCTC includes non-price measures to control tobacco advertising and promotion, since the only form of advertising restrictions in some countries are voluntarily adopted by the tobacco industry and prove to be ineffective (Bialous and Shatenstein, 2002). Article 13 of the FCTC details the conditions set on tobacco related advertising and promotion:

- *Each Party…shall undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include…a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory.*
- *As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:(a) Prohibit all forms of tobacco advertising promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create erroneous impressions about its characteristics, health effects, hazards or emissions.*(World Health Organization, 2005).

Tobacco advertising is defined as any commercial communication whose main, secondary or incidental aim or effect is to promote a tobacco brand or to promote tobacco use (FCA, 2001). Direct and indirect advertising methods include sponsoring sporting events and teams; promoting

rock concerts and discos; placing their brand logos on t-shirts, backpacks and other merchandise popular with children; branding non-tobacco items with tobacco brands and logos such as clothing, holidays and contests; and giving away free cigarettes and brand merchandise in areas where young people gather, such as at rock concerts, discos and shopping malls (Framework Convention Alliance, 2001B).

It is important for policymakers who are interested in controlling tobacco, while maintaining government revenue, to know whether cigarette advertising and promotion affect consumption. Based on the strength of current studies, the World Bank recently concluded that bans on advertising and promotion prove to be effective, but only if they are comprehensive, covering all media and all uses of brand names and logos (Jha et al., 1999). There is a strong debate about the impact of cigarette advertising on consumers. Public health advocates argue that such advertising increases consumption. The tobacco industry has argued that advertising does not recruit new smokers, it merely encourages confirmed smokers to stay with, or switch to a particular brand (Campaign for Tobacco Free Kids, 2001A). Since empirical studies on the issue of whether cigarette advertising increases demand have been historically inconclusive, researchers have turned instead to studying what happens when tobacco advertising and promotion are banned in order to determine if consumption rises or falls.

A recent study of 22 high income countries based on data from 1970 to 1992 concluded that comprehensive bans on cigarette advertising can reduce smoking, but partial bans have little to no effect (Framework Convention Alliance, 2001A). Another study of 102 countries found that per-capita cigarette consumption in countries with comprehensive (total) declined by about 8 %, while consumption rates in countries with partial bans declined by only 1% (Framework Convention Alliance, 2001B).

While many tobacco users generally know that tobacco use is harmful, studies show that most are unaware of the true risks, even in countries in which there has been a great deal of publicity about the health hazards of tobacco (Nathan, 2004). In 1999, the World Bank said that, "People's knowledge of the health risks of smoking appears to be partial at best, especially in low- and middle-income countries where information about these hazards is limited." The FCTC's alliance believes that health warning labels help inform consumers of these dangers and are an important component in a national health education program at no cost to the government (Framework Convention Alliance, 2001B). Health warnings labels are now required in the majority of countries and increasingly creative methods are being used to present their messages. In one of its strongest provisions, Article 11 of the FCTC requires that warning messages should cover at least 50% of the principal display areas of the package (i.e. both the front and back), but at a minimum must cover at least 30% of the principal display areas (Mackay *et al*., 2006). It also requires that the messages be rotated and encourages the use of pictures and pictograms as well as the use of non-health messages (e.g. "Quit smoking— Save money") (World Health Organization, 2005). Misleading words implying reduced health risk, such as "light" or "mild" are also prohibited.

The tobacco industry has argued that neither increasing the size of the warning labels nor the use of pictures will be any more effective than the existing labels in reducing consumption (Framework Convention Alliance, 2001B). In Poland in the late 1990's, new warning labels that occupy 30 % of the two largest sides on the cigarette pack were found to be strongly linked with smoker's decisions to quit. In Australia, warning labels were strengthened in 1995 and also proved to have been greater in causing smokers to quit than when the older, less strongly worded labels were used. In Canada, a survey suggested that half of the smokers intending to quit or cut

back their consumption were motivated by what they had read on their cigarette packs after warning labels were made more graphic (Jha et al., 1999). One key weakness of warning labels that is noted by the World Bank is that they will not reach some poorer individuals, particularly in developing countries since it is common to buy cigarettes singly rather than in packs.

If consumption rates fall dramatically as a result of the FCTC's provisions requiring its signing Parties to undertake non price measures such as comprehensive bans on all forms of advertising and requiring stronger warning labels, it is expected that government revenues from tobacco sales would decrease. Advocates of the FCTC's advertising provisions argue that such impact on revenue would be gradual, and any losses due to advertising and promotion bans would be offset by the increase in revenue generated by increasing tobacco tax rates (World Bank, 1999).

Economically Viable Alternatives to Tobacco

As tobacco is an important cash crop in some countries, Articles 4.6, 17 and the Preamble of the FCTC urges countries to promote economically viable alternatives for those involved in tobacco production. The Framework Convention Alliance says that economic incentives can encourage tobacco farmers and workers involved in cigarette manufacturing and distribution to shift towards more productive types of employment, improving overall public welfare without sacrificing livelihoods or creating undue hardship (Mackay *et al*., 2006):

> Article 17
>
> *Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and , as the case may be, individual sellers.*
>
> Article 4.6
>
> *The importance of technical and financial assistance to aid the economic transition of tobacco growers whose livelihoods are seriously affected as a consequence of tobacco control programs in developing country Parties, as well as Parties with economies in*

transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development.

Preamble:

Mindful of the social and economic difficulties that tobacco control programs may engender in the medium and long term in some developing countries and countries with economies in transition, and recognizing their need for technical and financial assistance in the context of nationally developed strategies for sustainable development.

Tobacco is grown in over 120 countries, of which about 80 are developing countries. Globally, tobacco production has doubled since the 1960's, totaling 6.5 million metric tons in 2004 (Mackay et al., 2006). In developing countries, increasing demand and favorable policies have resulted in a threefold increase in production, while production has declined by more than 50% in developed countries. Four countries account for two-thirds of the total global production: China was responsible for 42 % of all tobacco grown, with the U.S., India, and Brazil producing 24% between them. Assessing the way falling demand will affect tobacco farming communities is critical for countries that want to become Party to the FCTC. Studies in most high income countries suggest tobacco growing areas have been diversifying and making successful economic adjustments for decades (Jha *et al*., 1999). The Framework Convention Alliance believes that countries should take measures at the national level to explore alternatives to tobacco crops, encourage diversification and develop mechanisms to promote alternative livelihoods. They argue that similar substitution programs have been supported by governments for other products. The success and impact of crop diversification in developing countries has not been thoroughly established.

Another risk in encouraging alternatives to tobacco agriculture, manufacturing and production is governments' fear of creating unemployment. This fear is mainly derived from the arguments of the tobacco industry, which say that control measures will result in millions of job losses around the world (Framework Convention Alliance, n.dA). For all but a very few agrarian

countries heavily dependent on tobacco farming, such as Zimbabwe and Malawi, the World Bank argues that that there would be no net loss of jobs, and there might be job gains if global tobacco consumption fell. This is because money once spent on tobacco would be spent on other goods and services, thereby generating more jobs. It is predicted that even the few tobacco dependent economies will have a market big enough to ensure their jobs for many years, even in the face of gradually declining demand because with the numbers of smokers set to rise, this process will occur over many decades. (Ranson *et al.*, 1999).

Big Tobacco and the FCTC

The tobacco industry was against a strong, legally binding FCTC, and originally felt that "The WHO's Framework Convention on Tobacco Control [was] fundamentally flawed and [would] not achieve its objectives" (British American Tobacco, 2000). For most TTC's, the FCTC "represents an unprecedented challenge to the tobacco industry's freedom to continue doing business," as noted in a BAT industry document proposing a broad strategy to confront the WHO (World Health Organization, 2000). Several tobacco industry documents detail the industry's anticipation and concern over the implementation of the FCTC:

> Now that the World Health assembly has conducted and approved the process to proceed with the drafting of the [FCTC] and the accompanying protocols, it is timely that we now take stock and draw up a strategy and action for the coming year (World Health Organization, 2000).

BAT and PMI say that they support the FCTC's attempts to regulate tobacco internationally. A BAT industry document says that they "Accept that tobacco should be regulated, but are in favor of sensible regulation, and feel that FCTC is a one-size-fits-all approach and needs to be looked at more nationally, [Since] what may work in one country may not work in another country" (World Health Organization, 2000). According to Phillip Morris' website, their position on the FCTC is a positive one:

> The FCTC marks a big step forward because it sets global standards for tobacco control measures. We hope it will encourage more governments to move towards comprehensive tobacco regulation – that is, a regulatory framework where fiscal policy, consumer information, licensing and other measures complement each other. Above all, the FCTC is an opportunity to take a fresh look at tobacco regulation, to ask what measures are most likely to reduce the harm done by smoking and to combine those measures into effective regulatory regimes (Phillip Morris International, n.d).

In 2000, the WHO released a report detailing the tobacco industry's tactics in obstructing tobacco control policy processes. The report found that the tobacco companies spent vast amounts of money diverting attention away from the public health issues raised by tobacco use, attempted to reduce budgets for the scientific and policy activities carried out by the WHO and sought to foster views that WHO's tobacco control programs were a "First World" agenda carried out at the expense of the developing world (Framework Convention Alliance, n.dA). It has also been noted that the tobacco industry has interfered in the implementation process in countries who were already Parties to the FCTC. Three weeks after Mexico ratified the FCTC, both Phillip Morris and BAT conducted private negotiations with the Ministry of Health that led to an agreement that prevented the government from raising taxes if the tobacco companies would, in return, fund certain unrelated health programs. That agreement led to the defeat of numerous tobacco control regulations, including tax increases and an advertising ban called for by the treaty. After international uproar about the agreement between the industry and the Ministry of Health erupted, Congress successfully passed annual tobacco tax increases through 2009 (Sebrei, 2006).

Industry documents also show Philip Morris/Altria profiled regions to determine which countries would support the treaty, and would be susceptible to industry influence:

> Clearly, there is a marked contrast between those end markets that have capability to act (Argentina, China, Germany)…and the big players that [will] be a priority (Brazil, Germany. Japan). We may want to put some thought to establishing a core group of managers from around the world to target these countries. More sniper, less scatter gun (Bialous and Shatenstein, 2002).

In light of the evidence that the tobacco industry was prepared to strategize against the ratification and implementation of the FCTC, the WHO included provisions to provide governments with the support of the international community to stand up to interference from the tobacco industry. The FCTC's Preamble, Article 12(e), Article 20.4(c) and Article 5.3 each mention the responsibility of the Parties to protect tobacco control measures from the tobacco industry. Article 5.3 of the FCTC states that;

> *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* (World Health Organization, 2005).
>
> *Recognizing the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts* (World Health Organization, 2005).
>
> *Each Party shall cooperate with competent international organizations to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention or national tobacco control activities* (World Health Organization, 2005).

Conclusion

Chapter 3 introduced the FCTC and described its legality, provisions, and context within the international legal system. Most importantly, Chapter 3 laid out those FCTC provisions deemed most controversial in terms of the economic impact they would have on the FCTC's signing Parties: increasing tobacco price and taxes, tobacco advertising and sponsorship and support for economically viable alternatives to tobacco. Analysis by health economists concluded in most cases that the FCTC will not harm national economies, even those of tobacco growing nations, especially as the FCTC deals primarily with demand reduction strategies, except for the control of smuggling. Much of the evidence supporting the FCTC's tobacco control measures is from high income countries. For developing countries, where the FCTC's

economic implications are of most interest, only theoretical implications have been made. The next chapter looks at the economic impact of FCTC's provisions in a developing country-specific setting. Using Brazil's experience in ratifying and implementing FCTC's tobacco control measures will help to determine if a developing country with strong interests in tobacco can enact strong anti-tobacco measures to improve health without hurting their economy.

CHAPTER 4
TOBACCO CONTROL IN BRAZIL

Brazil has established itself as a global leader in tobacco control. Brazil's legislation controlling tobacco has been praised for its strength, comprehensiveness and integration of measures at the national, state and municipal levels (Blanke and Silva, 2004). Strikingly, Brazil has achieved these results even though tobacco plays an important role in its economy. Brazil has a population of 186 million living in more than 5500 municipalities located in 26 states, and the capital, the Federal District of Brasilia. With over 750,000 tobacco growers, Brazil is the world's largest tobacco leaf exporter, third largest tobacco producer and eighth largest cigarette exporter (Blanke and Silva, 2004)

The primary goal for this chapter is to examine Brazil's tobacco control policies and determine whether those policies were detrimental to the economy to date. This assessment will require a discussion about tobacco control policies prior to the FCTC, the FCTC's ratification in Brazil, enforcement of those policies, and most importantly, whether those policies actually decreased tobacco consumption amongst the Brazilian population. It is important to note that although Brazil did not ratify the FCTC until 2005, tobacco control policies were already in sync with a majority of the FCTC's provisions. Effects of tobacco control policies on Brazil's economy can be interpreted as strong indicators of the FCTC's effects on the economy of a developing country.

First, this chapter discusses the tobacco economy in Brazil. Next, it reviews Brazil's tobacco control policies before it became a party to the FCTC. This includes a discussion about tobacco regulations that were put in place during the 1990s when Brazilians were becoming increasingly concerned with the health effects of tobacco. Third, a discussion about Brazil's ratification of the FCTC and the obstacles that public health officials encountered while the

Treaty was being debated in the Senate. Lastly, this chapter will examine several studies assessing Brazil's efforts in finding economically viable alternatives to tobacco farming, its experiences with regard to tobacco tax revenues despite decreases in consumption, and its struggle with the illegal trade of tobacco products.

Brazil's Tobacco Economy

Brazilian cigarette manufacturing began in 1903 in Rio de Janeiro with the founding of Souza Cruz, the country's first tobacco company. Souza Cruz became a subsidiary of British American Tobacco (BAT) in 1914, and BAT currently owns 75% of the company. Plantations established in the southern states of Rio Grande do Sul, Santa Catarina, and Paraná in the 1920s and 1930s introduced Virginia and Burley tobacco varieties in the 1950s. In the 1980s, Brazil's tobacco processing facilities were modernized and a genetically manipulated strain of high nicotine tobacco was smuggled into the country by BAT's North American subsidiary, Brown and Williamson Tobacco, which increased demand for Brazilian tobacco. The cigarette export sector expanded rapidly and by 1994, Brazil was the world's third largest tobacco producer (after China, USA, and India), the world's top exporter of tobacco leaf, and the world's eighth largest cigarette exporter (Shafey *et al*., 2002).

In 2002, Souza Cruz was Brazil's fourth largest company, controlling 84% of the legitimate domestic cigarette market, employing 5046 people, and reporting profits of more than US$253 million on sales of US$1.044 billion in 2000. Philip Morris International dominates the remainder of Brazil's cigarette market (Vargas and Campos, 2005).

Currently, Brazil is the biggest tobacco exporter and the third largest tobacco producer in the world (Vargas and Campos, 2005). In 2000 it produced 595,000 metric tons of tobacco leaves and exported 341,000 tons which brought in US$ 961.2 million in revenues (Vargas and Campos, 2005). The position reached by Brazil in the world tobacco leaf marketplace can be

attributable to: (1) the comparatively low cost of production, resulting mainly from the employment of tobacco growers and their families, which means less spending on salaries, (2) the integrated production system, involving contracts directly between farmers and the industry and (3) the high quality of the tobacco produced in Brazil (Vargas and Campos, 2005). With regard to opportunities for the Brazilian tobacco in the international market, a combination of circumstances, such as the decrease of world stocks and the reduction of tobacco production in Zimbabwe and in the U.S. have helped Brazil maintain its position as the biggest world exporter (National Cancer Institute of Brazil, 2002).

Tobacco represents an important source of permanent jobs. The tobacco industry has argued that enacting tobacco control policies will result in million of job losses in Brazil. The Brazilian Tobacco Grower's Association (AFUBRA) claims that there are approximately 1.5 million people working in a tobacco related sector. There are no government studies that support or even come close to these estimates. Surveys carried out by the Brazilian Institute of Geography and Statistics (IBGE) indicate that AFUBRA significantly overestimates the number of workers associated both directly and indirectly with the tobacco industry. In IBGE's comparative analysis of the total number of people employed in the production, distribution, manufacturing and all other activities associated with tobacco between 1996 and 2000 they concluded that the maximum number persons working in tobacco were less that one million (Iglesias and Nicolau, 2005). Whatever the numbers, it is clear that the tobacco industry is important to the Brazilian economy. The amount jobs that the industry provides is often skewed by the TTC's in order to strengthen the argument that tobacco control policies will have a negative effect on the economy.

Tobacco Control before the FCTC

The first time the Brazilian people were officially given information about the health effects of tobacco came in 1987, when the Ministry of Health established an Advisory Board on Tobacco Use Control. Three years later, and inspired by U.S. actions, Brazil's Ministry of Health issued Ruling No. 490, which recommended that smoking be restricted in indoor public places, that tobacco advertising should be regulated, and that tobacco companies include health warnings on all tobacco product packaging and advertisements was mandatory (Cavalcante, 2004). Health warning labels were to be written clearly, in contrasting colors and would read "*The Ministry of Health Advises: Smoking causes damage to health*[6]" (Blanke and Silva, 2004). Public campaigns against tobacco grew in importance as tobacco's harmful side effects became known, and radio and TV campaigns discussing the effects of secondhand smoke began changing public perceptions on smoking.

In 1989, the Brazilian National Cancer Institute (*Instituto Nacional de Câncer*) (INCA), under the auspices of the Ministry of Health, started the National Tobacco Control Program (NTCP). The NTCP sought to strengthen regulations on cigarette health warnings. In 1994, NTCP proposed a bill banning all direct and indirect advertising and promotion of tobacco products and required stricter health warning labels. When the proposed bill arrived in congress, an intense debate about its constitutionality broke out between the government and the tobacco industry and its allies, which included advertising professionals and representatives of television and radio advertisers (Cavalcante, 2003). The industry and its allies argued that the bill violated their corporate freedom of expression. Tobacco control advocates welcomed this debate because they felt it provided additional publicity about the harmful effects of smoking (Silva, 2003). The

[6] Portuguese Cigarette Pack Health Warning: "*O Ministério de Saúde Alerta: Fumar Faz Mau a Saúde*"

outcome of this debate was relatively weak legislation that restricted tobacco advertising between the hours of 9pm and 6pm and included less assertive warnings on cigarette packs.

Tobacco control measures in the early 1990's were not as strong as public health advocates would have liked, but studies show that these measures did have an impact on cigarette consumption (Silva *et al*., 1999). Decreases in real cigarette prices in 1990-1991 because of high inflation rates and between 1992 and 1994 should have led to an increase in consumption, but it actually fell in the late 1980's and early 1990's. This suggests that the usual effects of lower prices was counteracted by other factors such as health warnings on cigarette packs, limits on indoor smoking and restrictions on tobacco advertising (Silva *et al*., 1999).

In 1999, the creation of a regulatory agency represented a landmark in tobacco control for Brazil. The National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária*), ANVISA, was set up in order to regulate and enforce laws that restricted tobacco packaging and advertisements. In 2000, the Senate passed a tobacco advertising ban, covering ads on television, radio, newspapers, magazines, outdoor billboards and merchandising. The new law also prohibited tobacco sponsorship of sports and cultural events, with a two year grace period to end all sponsorship contracts (Blanke and Silva, 2004). Both tobacco growers and manufacturers alleged that such measures would promote a negative social and economic impact to the tobacco industry (US Department of Agriculture, 2007). ANVISA Resolution No.46 (2001) made Brazil the first country in the world to prohibit the use of any labeling or advertising of tobacco products as "mild" "light" or "low tar." In 2006, the U.S. passed the same law restricting the use of those same terms. Table 4.1 lists ANVISA's tobacco control regulations in recent years.

Table 4-1. Recent Brazilian tobacco regulations

Federal Tobacco Legislation	Year	Tobacco Control Provision
Resolution 46	2001	Banned the use of the terms “light” “mild” and “low tar” in labeling of cigarette packs.
Resolution 104	2001	Mandated the insertion of images and warnings that must cover 100% of one of the largest surfaces on each tobacco product.
Resolution 302	2002	Banned sales of food and packages promoting tobacco products.
Resolution 14	2003	Banned the use of sentences like “only for adults” and replaced them with: “Prohibits sales to all persons under eighteen.”
Resolution 15	2003	Bans online sales and advertisements: Prohibits Advertisements in newspapers, magazines, internet and national events.
Resolution 335	2003	Called for more aggressive and graphic images and messages to be printed images obtained from real patients

In addition to the provisions detailed in Figure 4.1, the beginnings of the FCTC negotiation process and the Brazilian government’s involvement with the FCTC negotiations reflected further strengthened political will to regulate tobacco (Cavalcante, 2003). In 2003, Resolution 335 called for even stricter and more graphic warning labels. Today, warning labels in Brazil are extremely graphic. The images consist of patients with amputated limbs, photos of actual smokers' lungs, and fetuses affected by smoking. The most recent images play on the fact that smoking can cause impotence. A survey conducted shortly after Resolution 335 was passed found that these images caused 67% of smokers to think about quitting smoking and caused 54% to change their opinions about the health effects of smoking (Blanke and Silva, 2004). The tobacco industry, perceiving these changes in social perception as a threat to the well being of the industry, began obscuring the warnings by inserting pamphlets similar in size to the warning labels between the cigarette pack and the wrapping film. By doing this, warning labels were hidden within the pamphlet and would easily fall out of the pack once the consumer opened the product. As the agency responsible for enforcing resolutions on tobacco packaging, ANVISA

imposed fines on Philip Morris and British American Tobacco for violating mandatory health warning regulations (ANVISA, n.d).

Aside from laws banning advertising and promoting health warnings, the Brazilian government also passed a resolution forbidding the Central Bank of Brazil from issuing loans for tobacco production in partnership or association with the tobacco industry. This decision took place after the Brazilian government discovered that resources allocated to the National Program for the Strengthening of Family Farming (PRONAF) were being used to subsidize tobacco crops because of the intervention by tobacco companies (National Cancer Institute of Brazil, 2004). Although the government's intentions were not aimed at restricting tobacco loans to improve health, it was a decision that restricted tobacco in general and brought into question the integrity of the TTC's operating in Brazil.

These national measures illustrate Brazil's early commitments to tobacco control, even before the FCTC negotiations began. Although most of the regulation was adopted before the FCTC came into force, most Brazilian tobacco regulations were already in accordance with the FCTC provisions.

Brazil and the FCTC

After having played an important role in the negotiations of the FCTC, Brazil was the second country to sign on the first day it was available for signature. The Brazilian Congress began reviewing the FCTC text on August 27, 2003, after its official presentation to the House of Representatives by the Minister of Health. Having been granted the rank of highest priority, the issue did not have to be considered by a Special House Committee and its ratification was approved on May 13, 2004 and sent to the Senate. A move to give the FCTC priority was halted at the request of a Senator who represented the Southern region where a majority of Brazil's tobacco is grown. The Senator said his request was based on the desire to carefully consider the

situation of the tobacco growers. Controversy arose over the Senator's concerns because he was linked with officials from the Brazilian Tobacco Industry Association (AFUBRA), a high ranking member organization of the International Tobacco Grower's Association (ITGA). ITGA and its member organizations have notoriously been linked with and influenced by the TTC's in various countries (Bialous, 2004).

Ratification of the FCTC was put on hold while the Senate called public hearings on the economic impact of tobacco control policies. At the same time, AFUBRA launched surveys on its website, which asked peoples' opinions on "WHO's proposal to eradicate tobacco." Even though the FCTC does not prohibit countries from planting tobacco, neither does it force countries to replace tobacco growing with alternative crops (National Cancer Institute of Brazil, 2004). AFUBRA also ran advertisements and generated press reports supporting its stance against Brazil's ratification of the FCTC in regional and national news media, emphasizing that the economic benefits of tobacco and the "eradication" of tobacco would cause millions of job losses and prompt a "mass rural exodus" in addition to billions of dollars in lost government revenue (Bialous, 2004).

In August 2004, the Senate issued its opinion in favor of ratification. A tobacco industry dominated chamber under the Ministry of Agriculture called for delaying the decision until after municipal elections were held during the following October. Despite the efforts of governmental and non-governmental groups to clarify that ratification would not mean an immediate end to tobacco production, ratification was postponed with no new date set for reconsideration. The industry's assertions that major economic loss and social unrest would follow ratification of the FCTC made headlines in Brazil and were effective in postponing FCTC discussions. Organizations such as National Cancer Institute (INCA) and the National Tobacco Program

(NTCP) worked hard to counter and dispel what they called misinformation about the FCTC's provisions.

It was important for public health advocates to attract attention to the issue because if Brazil failed to ratify the FCTC, a message of inconsistency would be sent to the international community, since Brazil had a leading role during the whole negotiation process. The medical community played an important role in the struggle to approve the FCTC, sending letters to each senator, asking for their support of its approval. In addition, public health advocates participated in public pro-FCTC hearing held in tobacco growing communities. After two years of negotiation in the Senate, on November 3, 2005, the Brazilian government finally ratified the FCTC.

Impact of Control Measures

The impact of Brazil's tobacco control legislation remains difficult to measure. Although direct evidence is not available to attribute changes in cigarette consumption to specific laws and programs, few observers doubt that Brazil's laws are important factors in reducing consumption. Indirect evidence of Brazil's success or failure in reducing tobacco consumption can be deduced based on: (1) comparisons between the prevalence of smoking in large Brazilian cities, (2) the declining cigarette sales in the country. The only national survey on smoking available that can be used for comparison with present consumption rates was carried out in a 1989 national household survey conducted by the Ministry of Health. In 2003, the World Health Survey carried out by the WHO used similar variables, cluster sampling procedures and applied them to all Brazilian households. The 1989 survey used two questions to evaluate smoking: (1) "Do you smoke cigarettes, a pipe or cigars?" and (2) "How much do you smoke per day?" The 2003 survey also asked similar questions: (1) "Do you currently smoke any tobacco product?" (2) "If yes, what amount?" More current studies based on these comparative household surveys

conclude that smoking prevalence in Brazil has decreased significantly between 1990 and 2004. The most comprehensive study on the subject, published by the WHO, is Monteiro et al.'s "*Population based evidence of a strong decline in the prevalence of smokers in Brazil"* that concluded that smoking prevalence dropped from 34.8% in 1989 to 22.4% in 2003, a decrease of approximately 35% over 14 years (Monteiro *et al*., 2007). This particular study attributes the decline to: (1) A concentration of efforts on behalf of the Brazilian government's NTCP, and (2) The total ban on cigarette advertising and promotion.

Although cigarette consumption is still high, the 22.4% prevalence places Brazil in a favorable position in relation to other countries undergoing economic transition. In the Americas, the percentage of smokers in Brazil is closer to that of the U.S. (20.8% in 2004) and Canada (20% in 2005) than to that of other Latin American countries such as Mexico (34.8% in 1998), Cuba (37.2% in 1995), or Argentina (40.4% in 2000) (Monteiro *et al*., 2007).

Tobacco Farming in Brazil

Recognizing the impact that a drop in consumption will have on the long term production demand, governments who are party to the FCTC search for economically viable alternatives for tobacco growers. Tobacco production and processing are very important economic activities in the southern states of Brazil where the hilly terrain in conducive to growing tobacco. Rio Grande do Sul, Santa Catarina and Paraná account for almost 90% of the land devoted to tobacco farming and for 93% of the tobacco produced in the country. According to the Brazilian Tobacco Growers Association (AFUBRA), more than 600 districts and almost 160,000 growers, mainly small landowners, are involved in growing tobacco in these states. Although there is an increasing will to stop planting tobacco, particularly by tobacco farmers from the Southern region, a 2002 survey showed that 74.7% of tobacco growers in the South want to stop growing tobacco, but feel lack of support from the government in doing so (Etges *et al*., 2002).

Evidence of economically viable alternatives to tobacco growing is scarce, so many countries are hesitant to even consider large scale transitions away from tobacco. Most studies only theorize on the impacts that such transitions would have on local and national economies. In Brazil, there has been one major study that examines the economic impact of tobacco control policies that encourage the substitution of tobacco crops. *Crop Substitution and Diversification Strategies: Empirical Evidence from Selected Brazilian Municipalities,* by M.A. Vargas and R. Campos was commissioned in 2004 by the World Bank and analyzes three selected experiences of diversification and crop substitution in the South of Brazil. This study concluded that there are viable alternatives for tobacco crops, which have provided equivalent net returns and more sustainable livelihoods (Vargas and Campos, 2005). Despite obstacles, the case studies demonstrate that specific development programs, placed within broader rural development programs make it possible to switch from tobacco to alternative crops, even in regions that are heavily reliant on tobacco. Also, the three case studies show that efforts to foster crop substitution have been linked with identification of new market channels and opportunities for adding more value to alternative food crops (Vargas and Campos, 2005, 7).

Vargas and Campos' study focused on the municipalities of Santa Cruz do Sul, Schroeder and Santa Rosa de Lima. Santa Cruz do Sul, also referred to as "The Brazilian Capital of Tobacco" is an important area for the Brazilian tobacco industry because of its network of small family farms that are closely linked to TTC's. Most municipalities surrounding the area of Santa Cruz do Sul are significantly dependent on activities associated with the tobacco industry. During the 1990s, the region became highly vulnerable to the competitive pressures that came about when the TTC's began increasing tobacco production in other developing countries. The modernization of tobacco plants that came about as a result of that increased competition resulted

in drastic job losses. Several initiatives to diversify from tobacco began taking place soon after. The Center of Assistance for Small Farmers (CAPA) played a key role in assisting farmers in selling “agro-ecological products” that included vegetables, rice and *erva-mate* (Brazilian tea). The average annual income from tobacco per family had been estimated at US$ 1,181 compared to $US 4,684 estimated for families associated with CAPA initiatives (Vargas and Campos, 2005). Another pilot project in this area, the Association of Brazilian Fish Farmers (*Braspeixe*) was supported by the municipal Secretary of Agriculture, the State Government and the University of Santa Cruz do Sul. Although this project is still in its first stages, Vargas and Campos say that the project has already created 50 reservoirs representing 20 small farms and intends to serve as a model for diversification away from tobacco.

In the state of Santa Catarina, both the municipalities of Schroeder and Santa Rosa de Lima were less reliant on income from tobacco growing activities than in Santa Cruz do Sul. In these areas, the success of crop substitution initiatives were aided by the existence of favorable conditions for growing alternative crops. In Schroeder, tobacco was phased out gradually and has not been grown since 2001. Farmers in this municipality were dissatisfied with their dependence on tobacco and its dwindling revenues. Ninety two growers got together and formed the Banana Producer's Association of Schroeder (ABS) and slowly diversified away from tobacco. The gross income per hectare was approximately US$2700 for bananas, a considerably higher net income than they had experienced when growing tobacco, although figures were not given (Vargas and Campos, 2005). In Santa Rosa de Lima, tobacco was attractive for its profitability and for providing financial security to farmers because sales were guaranteed. In the mid 1990s government restrictions on agricultural benefits for tobacco products and the volatility of the tobacco market resulted in revenue loss by producers and led many of them to

give up tobacco production. The Federal University and the State's government agency for agricultural research and rural extension services (EPAGRI) came together to support tobacco transition towards organic food crops. The Brazilian National Agency for Small Business (SEBRAE) also helped cover farmers' training costs. In this municipality, the value of agricultural production for tobacco decreased from 82.17% in 1994 to 64.68% in 2002 (Vargas and Campos, 2005). The 17.49% difference was substituted successfully with organic food production.

Although Vargas and Campos' results were favorable and indicate that tobacco control policies that encourage crop diversification, as stated by FCTC Article 17, three significant barriers remain: 1) farmers' financial dependence on tobacco companies, 2) public policies to support the tobacco industry and 3) the high profitability from tobacco crops, especially when compared with other traditional food crops (Vargas and Campos, 2005).

The most significant barrier to crop diversification is farmers' financial dependence on tobacco companies. Brazilian tobacco farming involves an integrated production system where contractual obligations between small farmers and TTC's exists. Within this system, TTC's provide all inputs such as seeds, fertilizers, pesticides and irrigation systems and guarantee the purchase of each farmer's entire tobacco crop. In exchange, farmers are bound to selling the crop for what4ever price the TTC demands. This system allows TTC's to assume complete control over the tobacco value chain at local levels (Vargas and Campos, 2001). Vargas and Campos explain that this system has become a strong mechanism to increase farmers' dependence on tobacco companies. Vargas and Campos' second barrier to successful crop are the public policies that presently support the tobacco industry. Since tobacco growing in Brazil is concentrated in several specific regions in the South that are much more heavily dependent on

tobacco than the country as a whole, the "political weight" of tobacco in the regional economy does not leave much room for policies that encourage crop substitution (Vargas and Campos, 2005, 9). For example, the state government of Rio Grande do Sul created a program specifically focused on the development of the tobacco industry during the 1990s. This kind of program is what allowed BAT subsidiary, Souza Cruz to take advantage of tobacco tax revenues and use them to build a US$900 million processing plant (Vargas and Campos, 2005). These existing tax benefits for the TTC's will remain in place at least until tobacco control becomes a larger political issue. The third barrier to diversifying away from tobacco in the South of Brazil, according to Vargas and Campos, is the tobacco crop's high profitability. Although the profitability of tobacco farming has fallen during recent years, tobacco remains a highly attractive crop to small family farmers, providing higher income per unit than other crops (Curbing, 1999). The costs of tobacco production are five times higher than the costs associated with corn, and six times higher than those associated with bean production (AFUBRA, n.d). A study by Silva (2002) points out that the cost of land, a major operational cost is not taken into account for these AFUBRA figures.

Despite the obstacles, the case studies in Vargas and Campos report demonstrated diversification programs could make switching from tobacco to alternative crops viable, even in areas that are heavily dependent on tobacco. More importantly, these cases show the Brazilian government taking action to assist their farmers in finding economically viable alternatives to tobacco farming. These efforts by the government were documented before Brazil ratified the FCTC and agreed to foster this sort of diversification.

Tobacco Taxes and Government Revenue

Tobacco is an important source of government revenue in Brazil, since tobacco products are considered luxury items and have a heavy tax burden. Parties to the FCTC commit to raise

tobacco taxes to at least the rate of growth of incomes, and considerably ahead of inflation (FCTC Article 6). But, governments are often hesitant to increase tobacco taxes because they believe it reduces consumption and in turn decreases government revenues. Because the demand for cigarettes is inelastic, an increase in tax or price results in an increase in revenue. This section documents Brazil's tobacco tax policies over the past decade and explains the relationship between those policies and their effects on the illegal cigarette trade.

R. Iglesias and J. Nicolau's 2006 report, *A Economía do Controle do Tabaco nos Países do Mercosul e Associados* is the most recent and comprehensive study on the effect of tobacco tax increases on government revenue and smuggling in Brazil. Iglesias and Nicolau point out that, although the Brazilian government has followed the advice of the World Bank in many aspects of tobacco control, its history of tobacco taxation has not always followed the prescription given by the FCTC to raise cigarette taxes in order to discourage consumption. There are three key issues that the Brazilian government must keep in mind: 1) Cigarette prices and consumption show opposite trends; If prices and taxes are raised, per capita consumption will decline; 2) A decrease in consumption as a result of higher prices will not generate losses in government revenue; and 3) Higher prices and taxes increase smuggling activity. The contradictory nature of these issues make it difficult to adopt a sound tobacco tax policy.

During the 1990s, before the threat of smuggling became a reality in Brazil, the government increased tobacco taxes in order to discourage consumption. Cigarette IPI taxes, a tax on manufactured goods, were doubled from 15% to 30%. The price measures in combination with non price measures, such as advertising bans and health restrictions reduced cigarette consumption and increased government tobacco tax revenues. In 1999, the IPI taxation system was altered, reducing the effectiveness of IPI taxation on cigarettes. When compared with the

early 1990s, tobacco prices and tax revenues are less today than they were during that time. As a result, between 1996 and 2003 government revenue from tobacco taxes decreased from US$ 2.9 billion to US$ 648 million. Iglesias and Nicolau found that the price elasticity of demand for Brazilian cigarettes is 0.42, meaning that increasing prices or tax on cigarettes by 10% would generate a 4.2% decrease in consumption. Given the low price elasticity, a tobacco tax increase would actually increase government tobacco tax revenue. Iglesias and Nicolau conclude that the Brazilian government should revert back to the same tax policies used during the 1990s in order to regain government tobacco tax revenue.

In a study by Guindon et al., 2002 *Trends and affordability of cigarette prices*, data from Brazil indicated that there is ample room to increase tobacco prices through taxation, since Brazil is a country with one of the lowest cigarette prices (Figure 4.2). Guindon et al. found that cigarette prices have failed to keep up with increases in the general price level of goods and services, rendering them more affordable in 2000 than they were at the beginning of the decade. Opportunities to increase government revenue and improve health through reduced consumption brought about by higher prices have been overlooked in Brazil.

Iglesias and Nicolau say that tobacco price and tax increases have not been overlooked, but avoided in Brazil for two reasons 1) Non price measures have been successful in reducing cigarette consumption among the population, and 2) the Brazilian government fears that raising prices will further exacerbate cigarette smuggling.

Smuggling

Cigarette smuggling is a widespread problem undermining tobacco control efforts by providing cheap unregulated cigarettes that stimulate demand while simultaneously decreasing tax revenues needed for tobacco control and health promotion. Globally, smuggled cigarettes are

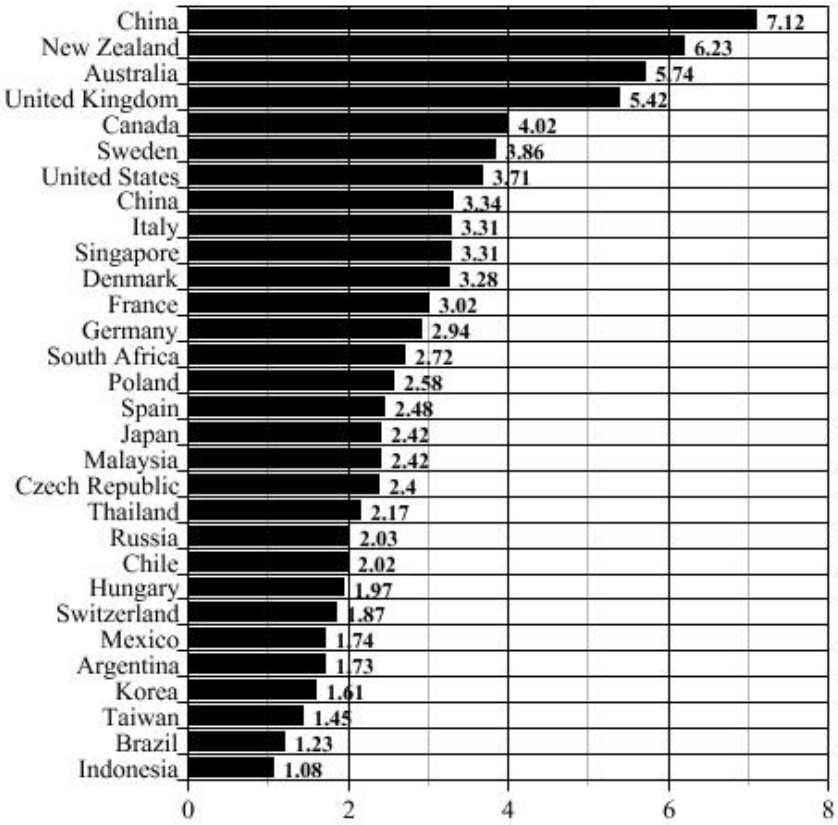

Figure 4-1. Prices (USD$ per Pack) of Imported and Local-Brand Cigarettes at Purchasing Power Parity, Selected Economies, March 2001. Source: Source: Guindon, Tobin, and Yach (2002). Reprinted from Tobacco Control 11 (1): 38(2002), with permission of the BMJ Publishing Group.

estimated to account for 6–8.5% of total consumption, but in Brazil, smuggled cigarettes were estimated to account for 31–37% of the total market (Shafey *et al*., 2002). Brazil has one of the largest incidences of contraband cigarettes in Latin America. Smuggled cigarettes account for approximately US$1.4 billion in tax evasion. Despite several attempts to combat contraband sales in Brazil, no significant declines were registered over the period of 2005 and 2006 (Euromonitor, 2007). According to industry experts, more than educating consumers, it is essential for the country to oversee its borders, particularly those of Argentina and Paraguay, where there is a great volume of illegal trading. Although studies show that the problem of smuggling is related to organized crime, rather than tax differences among countries, Brazil's

Internal Revenue Service (SRF) believes that Brazil's smuggling problem is due to taxation differences between Brazil and neighbor countries. In Brazil, cigarettes taxes are 73.3% of the price, whereas in Argentina it is 67%, Uruguay, 67%, and Paraguay, 13% (Food and Agriculture Organization, 2003). The illegal market can sell cigarettes cheaper than in the formal market. While the average price in the formal market is US$ 0.46, in the illegal market it is US$ 0.30 (Food and Agriculture Administration, 2003). These illegal cigarettes now represent 34% of the volume of cigarettes sold per year, jumping from 5 percent of the market in 1991 and 20 percent in 1995. According to the Brazil-U.S. business council, Brazil would net $500 million a year in lost cigarette tax revenue if counterfeiting were eliminated.

The table below shows the evolution of the Brazilian cigarette market, according to the Nielsen/IDS survey. The table indicates that between 1991 and 2004, total sales of cigarettes have fallen, while smuggled (unfair competition) cigarettes have steadily increased.

Brazil's commitment to the FCTC and its provisions against smuggling will hopefully encourage the government to monitor smuggling routes more closely, set up a tracking system to detect counterfeit cigarettes, and punish those involved in illicit border trade.

Table 4-2. Brazilian cigarette market (billion units)

Year	Legal sales	Illegal sales	Total sales	Percentage of total illegal sales
1991	148	9	157	5.1%
1992	123	6	129	4.6%
1993	115	15	130	11.5%
1994	105	24	129	18.6%
1995	116	28	144	19.4%
1996	115	36	151	23.8%
1997	108	44	152	28.9%
1998	91	56	147	38.1%
1999	97	45	142	31.7%
2000	95	47	142	33.1%
2001	100	51	151	33.8%
2002	96	46	142	32.4%
2003	92	41	133	30.1%
2004	92	41	133	30.1%

Source: USDA 2004

Conclusion

Chapter 4 laid out the history of tobacco control in Brazil. More importantly, this chapter examined the economics of tobacco control in Brazil over the past decade. Brazil's efforts to fight the tobacco epidemic yielded important results early on: annual per capita cigarette consumption decreased 35% between 1989 and 2004. These outcomes are unprecedented for a developing country with strong economic interests in tobacco. This chapter exposed the realities of a developing country's struggle to fight the tobacco epidemic while trying to lessen the burden that a decrease in tobacco consumption may have over its citizens.

The concept that there is nothing as profitable as tobacco no longer makes any sense. There are several examples in the South of Brazil where local society initiatives got organized to search for economically feasible alternatives and were successful. Vargas and Campos detailed the practices of tobacco growing municipalities that were successful in finding economically viable alternatives to tobacco farming.

Although Brazil's tobacco tax policies are not those prescribed by the FCTC, Brazil's case does serve two important lessons: Decreasing tobacco taxes seems to promote smuggling, but does not guarantee stability in government revenue. Iglesias and Nicolau's study points out the opposite: government revenues from tobacco taxes have decreased since the government decreased IPI taxes in 1999. Before 1999, government revenues from tobacco taxes had been increasing as a result of the IPI tax increases in the early 1990s.

The most difficult barrier to achieving a successful tobacco control agenda are the realities of cigarette smuggling. There is an overwhelming consensus among scholars that tobacco control policies in Brazil have proven to be effective in reducing cigarette consumption. The illegal cigarette market severely undermines tobacco control efforts because there is no way to

control the market. Iglesias et al (2006) says that the main weakness in Brazil's tobacco control policies to date is the lack of effective measures to address and control the cigarette smuggling.

CHAPTER 5
CONCLUSION

The questions posed at the beginning of this study dealing with whether and how tobacco products should be regulated internationally have been studied in depth by scholars and international organizations. Consensus among these parties that tobacco is dangerous and should be regulated, coupled with the fact that developing countries are increasingly carrying the burden of the tobacco epidemic shaped a new question for this study: What are the economic consequences of implementing tobacco control policies in a developing country? This study found that, although trade advocates and the tobacco industry have argued that regulating tobacco internationally through the World Health Organization's Framework Convention on Tobacco Control would be detrimental to the economies of developing countries, improved public health and economic stability can be achieved simultaneously. This study used Brazil's experiences implementing the WHO's FCTC to provide a lens through which the politics and economics of implementing tobacco control policies in a developing country could be better understood.

Main Findings

The main finding of this study was that implementing tobacco control policies such as those proposed by the FCTC would not hurt the economies of countries that became Parties to and enforced those measures. This study is intended as a starting point for countries to understand the positive outcomes that can result from becoming a Party of the FCTC. The Brazilian case, while unique and only in its second year of officially implementing the Treaty, offers positive results for both health advocates and those concerned with the country's economic well being. Each chapter of this study contributed to laying out the path to which international tobacco regulation has become a reality.

Development of International Tobacco Control

The main finding concerning the history of the development of tobacco control was that, at present, the trade regime is perhaps not the appropriate realm that should be used to regulate tobacco internationally. The inherent principles behind free trade, the conflict between public health advocates and trade advocates and an analysis of the outcome for Thailand's tobacco trade dispute cited in Chapter 2 were indicative of the international attitude towards tobacco regulation to date. Despite inaction within the trade regime, this study identifies the World Bank and the World Heath Organization as being the leading international organizations regulating tobacco. The World Bank has contributed to global tobacco policy by providing an economic rationale for regulation in their landmark report Tobacco Control in Developing Countries and adjusted their lending policies to discourage tobacco production and processing.

FCTC and the Economy

The World Health Organization's Framework Convention on Tobacco Control, the first international public health treaty was the first of its kind to offer countries a transnational path to regulating tobacco in order to improve overall public health. Despite the fact that some countries have their own set of tobacco policies, this Treaty made a bold statement against the transnational tobacco corporations that had been shifting their marketing and production efforts to developing countries during the 1990s. This study concluded that regulating tobacco seems to be a global goal, as evidenced by the speed with which countries signed and are ratifying the treaty, many having already met several of its recommendations. After reviewing FCTC policies in Chapter 3, led to several findings: (1) implementation of the FCTC measures is not compulsory (2) The text of the treaty imposes no constraints to production, subsidies to production, tobacco consumption or trade, and (3) the wording of the text provides flexibility that allows countries to adopt the proposed measures and, at the same time, respects their

constitutional limitations. Although these finding are clear from the wording of the treaty itself, it is important to emphasize them because they refute tobacco industry claims that the FCTC is a rigid, compulsory document.

The economic impact of specific FCTC provisions in this report were assessed using the World Bank's 1999 report *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. This report reviewed a large body of evidence and concluded strongly that in most countries, tobacco control would not negatively impact the economy. The World Bank's team recommended strongly that governments not forego the benefits of tobacco tax increases because they feared the possible impact on smuggling, but rather act to deter, detect and punish smuggling. This study found that, still, many governments hesitate to act decisively to implement FCTC provisions because they fear that tax increases and other tobacco control measures might harm the economy by reducing the economic benefits their country gains from growing, processing manufacturing and taxing tobacco (Jha et al., 2000; Mackay et al., 2006, Mitka, 2000).

Impact of Tobacco Regulation: Brazilian case

Implementation of FCTC measures have proven positive for the Brazilian economy overall and will continue to be beneficial. Despite tobacco's importance in Brazil's economy, recognition of tobacco's health consequences by Brazilian authorities led to some important tobacco control measures. Banned practices include sales of cigarettes to minors, radio and television advertising, sale of tobacco products in health centers and schools, and smoking in public places, libraries and public transportation. More stringent advertising regulations became effective in January 2002, requiring graphic anti-smoking images on cigarette packs and prohibiting the use of deceptive descriptive terms such as "light" and "mild". In addition, the Brazilian government had already been adjusting cigarette taxes and prices in an effort to reduce

consumption. When Brazil became a Party to the FCTC in 2005, after strong opposition from the tobacco lobby, more provisions were added to Brazil's already broad set of tobacco policies. In addition to the advertising restrictions and public smoking laws that were in place, the FCTC required that the government promote economically viable alternatives for tobacco workers and growers.

A major finding of this study was that Brazil's experiences restricting advertising, raising tobacco taxes, and finding alternatives to growing reduced tobacco consumption, were not detrimental to the economy This is important because a bulk of the FCTC's prescriptions are related to these types of non-price measures. The Brazilian case strongly suggests that finding alternative, economically viable livelihoods for tobacco farmers that have been historically dependent on tobacco is promising. Several municipalities in the South of Brazil, all dependent on tobacco on some level worked with local government and organizations to find alternative crops.

If present national agrarian policies adopt FCTC proposals, the future scenario may show employment instead of unemployment, and farming activities that would be beneficial to the Brazilian population. Brazil's tax policies toward tobacco have not been uniform over the past decade because of the country's cigarette smuggling problem. Brazil's tax policies in the early 1990s were in sync with the World Bank and the FCTC's prescription for reducing tobacco demand without losing, and possible increasing government revenue. When taxes were high, consumption fell, and government revenue increased. Cigarette smuggling activity increased around the same time. This caused the government to keep cigarette prices the same and reduce taxes. Today, smuggling rates in Brazil are higher than ever, accounting for an average 35% of the market. Despite the high smuggling rates, one significant finding of this study was that

cigarette smuggling is caused at least as much by general corruption as by high tobacco product tax increases. One significant policy suggestion would be that governments take stricter action against illegal cigarette smuggling in order to balance out the positive gains that result from FCTC policies.

Another major finding of this study was that advertising bans and strict health warnings are economically sound tobacco control policies and strong reasons for countries to support the FCTC. Most international organizations credit advertising bans and strict health warnings for the astonishing 35% decrease in cigarette consumption documented in Brazil over the past 14 years (Cavalcante). Despite a decrease in consumption during these years, government revenue did not fall. This study also suggested that price measures were also responsible for Brazil's success in reducing consumption during that time.

Significance and Future Research

It was clear that there was a great need for country-specific analysis in order to provide a basis for policy making on tobacco control within a sound economic framework. Examining the recent progress of tobacco control policies in a developing country is the best way to lend support to the analysis of the economics of tobacco control. Brazil served as an excellent case for this study because it is a developing country that had enacted tobacco control policies for over a decade before the FCTC came into force.

Since health is a central issue for sustainable development, tobacco control is being increasingly viewed by governments as an important component of a strong development agenda. This study suggests that the FCTC is not something to be feared because its main objective is to promote human welfare. As pointed out in this study, the consensus between societies that health gains are desirable is reflected in the tobacco policies and actions of the

World Health Organization and in other international organizations. This study takes a first step by looking at actual outcomes in a country that has historically been a leader in tobacco control.

Also, this study can be beneficial for other types of international regulatory agendas that countries are hesitant to adopt. It introduces the idea that national governments should defend global public health in the same way that they have gradually embraced environmental protection policies that have made a significant impact on the interaction between global commerce and the well being of the environment.

The study is limited because of time, information available and because of the difficulty in defining direct versus indirect effects of tobacco control policies on the economy. The FCTC is only in its second year in Brazil, and, although tobacco control policies had been in effect for several years prior to the FCTC, specific information about the success or failure of tobacco regulations and the economy are not clear. As scholars and economists point out, clearly separating outcomes from FCTC policies can be difficult, especially when illegal cigarette trade is taking place on a large scale.

While this study found that tobacco control policies could be enacted without reducing tobacco tax revenue for governments and eliminating tobacco farming and jobs in the short term, more research and time is needed in order to quantify results for countries who remain hesitant to regulate tobacco. Also, future research should focus on specific countries with different interests in tobacco in order to understand if the effects of tobacco control policies are general or country-specific. Additionally, a more close examination of the inner working of illegal cigarette trade are paramount in achieving accurate data on the effects of tobacco regulations in developing countries.

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BIOGRAPHICAL SKETCH

Lourdes Catalá was born and raised in West Palm Beach, Florida. She graduated with honors from the University of Florida in 2004 with a Bachelor of Arts in Political Science and a minor in Latin American studies. In 2005, she returned to the University of Florida to pursue a master of arts degree with a concentration in Latin American Business Environment Program and a graduate certificate in translation studies. During her time in graduate school, Lourdes studied abroad in Rio de Janeiro, Brazil where she learned Portuguese and became familiarized with the Brazilian business culture. Lourdes also studied abroad in Santiago, Chile where she was also exposed to the Chilean business environment. The idea for her thesis on international regulation of tobacco products grew out of her experiences with and interest in American businesses operating in Latin America.