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China's position in negotiating the Framework Convention on Tobacco Control and the revised International Health Regulations



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ABSTRACT

This paper examines China's position in the negotiations of the Framework Convention on Tobacco Control and the revised International Health Regulations. In particular, it explores three sets of factors shaping China's attitudes and actions in the negotiations: the aspiration to be a responsible power; concerns about sovereignty; and domestic political economy. In both cases, China demonstrated strong incentives to participate in the negotiation of legally binding international rules. Still, the sovereignty issue was a major, if not the biggest, concern for China when engaging in global health rule making. The two cases also reveal domestic political economy as an important factor in shaping China's position in international health negotiations.

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Global health governance relies on formal and informal rules, norms, and processes to address transnational health challenges. While there has been a dramatic increase in the number and variety of global health agreements in the past decade, only two have established new and formal binding rules in global health governance: the Framework Convention on Tobacco Control (FCTC) in 2003 and the revised International Health Regulations (IHR) in 2005.¹ The FCTC is the first use of the World Health Organization's (WHO) constitutional treaty-making power to negotiate a legally binding international convention, and it has helped to create an unprecedented, worldwide tobacco control movement. Likewise, the revised IHR establish rules and processes that enable the WHO and its member states to identify and respond to international public health emergencies more effectively.

Due to the critical role China has played in the dynamics of health, development, and security, its participation was

essential to successfully negotiating major international health agreements. China is the world's largest tobacco producer and has the world's largest smoking population. With 1.2 million people dying from smoking annually, China is also the country worst affected by tobacco use.² In addition, China plays a crucial role in global health security: many major disease outbreaks that had significant epidemiological, economic and political implications worldwide have originated in China. Indeed, it was the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003 that highlighted the need for a new international legal framework for infectious disease control.

This paper examines China's position in the negotiations of the FCTC and the revised IHR. By drawing upon existing literature and key informant interviews,³ it explores three factors that shaped China's attitudes and actions in negotiations: the aspiration to be a responsible power, concerns about sovereignty, and domestic political economy.

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Negotiating the FCTC

The idea of having a framework convention protocol for tobacco control originated from a group of academics and anti-tobacco activists, but it did not gain momentum until it received strong support from the newly elected WHO Director-General Gro Harlem Brundtland in 1998. In May 1999, the World Health Assembly—the governing body of the WHO—unanimously passed WHA52.18, a resolution to establish an intergovernmental negotiating body (INB) to draft and negotiate a framework convention on tobacco control and a working group composed of WHO Member States to undertake preparatory work for the INB.

From the very beginning, China had been ambivalent towards the negotiation of a multilateral treaty limiting tobacco use. Starting in the 1990s, China aimed to redefine its place in the international system; it now wished to be viewed not as a rule breaker or a challenger, but as an internationally responsible power that actively engages in international affairs, even though moving in this direction entailed acceptance of more restraints on its sovereignty.⁴ Driven by the new sense of accountability and commitment, many Chinese officials and scholars supported the ‘sacrosanct principle’ that public health concerns should be given precedence over tobacco-related trade.⁵ Secondly, China was also hoping to use the FCTC to maintain the dominant status of domestic tobacco firms by blocking trade liberalization in tobacco production and curtailing tobacco smuggling by transnational tobacco companies.⁶ Both of these factors might explain why China was among the 59 countries pledging financial and political support for FCTC while the Member States were voting for WHA52.18.

On the other hand China was concerned that the FCTC negotiation might undermine its sovereignty. Internally, because the tobacco industry was considered an important contributor to the state coffers, China worried that an internationally binding treaty might restrict its policy options in promoting economic development (upon which the regime’s legitimacy hinges). Externally, because the convention would be a treaty, which only state actors can join by definition, China was concerned that Taiwan, which it considers a renegade province, might use the negotiations as an way to expand its international space and pursue a ‘two China’ or a ‘One China, One Taiwan’ agenda. According to a US negotiator, ‘the biggest issue’ China had with WHO at that time was ‘ensuring that Taiwan did not get observer status at the organization or any other UN agency.’⁷

The need to balance these multiple interests and concerns was reflected in the four seemingly contradictory principles that the Chinese government set for the negotiation: 1) the treaty should not undermine the important status of tobacco industry in China’s national economy; 2) China should explicitly support tobacco control; 3) treaty making should respect state sovereignty; and 4) China should not concede on matters of principle, but could be flexible on minor issues.⁸

China’s deep aspirations and concerns underscored the importance for it to engage actively in the treaty-making process. When the WHO convened the first meeting of the

intergovernmental negotiating body (INB1) in October 2000, China sent a large delegation consisting of representatives from 13 central ministries.⁹ From then on, China participated in all six INB sessions. The Ministry of Health (MOH) was the primary central ministry supporting strong tobacco control. It had a champion at the WHO to support its tobacco control cause – a Chinese public health expert named Yang Gonghuan – who happened to be working in the WHO’s Tobacco Free Initiative. But to the surprise of all the other participating countries, which did not allow the tobacco industry to officially participate in the negotiations, the Chinese delegation included a representative from the State Tobacco Monopoly Administration (STMA). Unlike its regulatory counterparts in other countries, STMA shares its management staff with the China National Tobacco Corporation (CNTC), a state-owned manufacturer of tobacco products and also the world’s largest cigarette maker. This unique governance arrangement made STMA the de facto representative of China’s giant tobacco industry.

With the involvement of multiple bureaucratic agencies from different functional domains, consensus building became less likely in the policy process. Furthermore, in the single-minded pursuit of economic growth in post-Mao China, public health has often been relegated to a backburner issue. As a result, the MOH is bureaucratically weak and often has to rely heavily on interagency cooperation to accomplish its policy goals.¹⁰ By contrast, the economic clout of the STMA/CNTC have placed it in a strong position to lobby and influence policy. Beginning in 1987, tobacco has provided the biggest single source of tax revenue in China. In 2002, the tobacco industry generated 8% of China’s annual fiscal revenue through taxation; in Yunan Province, the share was as high as 49%.¹¹

The head of delegation was theoretically responsible for the negotiations. Xiong Bilin, an official from the National Development and Reform Commission, was the head of the Chinese delegation between INB3 and INB6. He was keenly aware of the importance of balancing different bureaucratic interests. On the one hand, he stressed the importance of the tobacco industry, saying that ‘For a long time, Chinese economic development will depend on the tobacco industry to accumulate fiscal revenue and to partially solve the employment issue.’⁸ On the other hand, he noted that as a responsible power, China should support tobacco control. Yet, a compromise between the MOH and the STMA/CNTC was difficult to reach not only because of the tobacco industry’s fundamental conflict of interest with public health, but also because of the MOH’s lack of leverage in the interdepartmental bargaining process. Perceiving the FCTC as a threat to China’s tobacco industry, the STMA formed a working group to study the treaty and proposed counter-strategies for the Chair’s Text from INB3 through INB6 in early July 2001.¹²

The conflict between the MOH and the STMA/CNTC first surfaced in INB1. The STMA representative found fault with the FCTC wording concerning ‘the devastating health, social, environmental and economic consequences of tobacco consumption’ and insisted that the word ‘devastating’ be removed.¹³ His frequent speeches at INB1 gave the WHO officials the impression that China was not serious about

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