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Do Countries Enact Public-Health–Related Measures on Foreign Investment for Reasons Beyond Safeguarding Public Health Itself, such as Economic or Political Interests?

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Abstract. In this work, the paper investigates why countries adopt public-health–related regulatory measures on foreign investment and whether such actions are motivated purely by health concerns or also by economic and political considerations. Through a comparative case study of Uruguay's tobacco regulation, Argentina's water tariff control, and China's restrictions on foreign involvement in COVID-19 vaccine R&D, the research identifies public health protection as the dominant factor, though economic stabilization and political legitimacy also play significant roles. The findings demonstrate that public welfare consistently outweighs other interests when states implement regulatory measures on foreign investment, contradicting the stereotype that only developed welfare states are inclined to prioritize health protection. At the same time, these policies can generate unintended economic or political consequences, ranging from enhanced fiscal revenue to strained investor relations. This paper argues that balancing public health priorities with investor protection requires clearer treaty exceptions, transparent compensation mechanisms, and more precisely drafted investment agreements. The research contributes to international investment law by offering insights into how states can safeguard public health while minimizing disputes with foreign investors, ultimately highlighting the need for more balanced and forward-looking treaty design.

Keywords: Public health, Foreign investment, International investment law, Case study, Investor–state dispute

1. Introduction

As a country with one of the highest smoking rates, the Uruguayan government banned smoking in all public spaces in 2006, becoming a country with one of the strictest tobacco control regulations. After that, it implemented several tobacco regulations in its foreign investment, and led to legal disputes with its foreign investors. However, as another country of the highest smoking rates and lung cancer rates, China didn't implement strict tobacco regulation because tobacco tax is the most important source of its military income. This raises a question: are countries enacting public-health-

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related measures on foreign investment for reasons beyond safeguarding public health itself, such as economic or political interests?

International Investment Law governs foreign direct investment and the resolution of disputes between foreign investors and sovereign states. Its core content is the International Investment Agreement (IIA), which can be divided into Bilateral Investment Treaties (BITs) and Multilateral/Regional Investment Treaties, confirming the obligations of the host country and the rights available to investors. According to the World Investment Report 2022, it is estimated that there are more than 2,500 BITs active in the world today [1]. The disputes between investors and states are solved by Investor-State Dispute Settlement (ISDS). It is a mechanism that allows foreign investors to bring arbitration claims through international arbitration mechanisms, such as the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNICITRAL), directly against host governments, enabling investors to seek compensation when they believe state actions have violated their treaty-protected rights.

After delving into related cases, a thesis can be concluded: Countries overweigh public health welfare than any other economic or political interests when they take measures on foreign investment. Different from the stereotype that developed and welfare countries are more willing to take public-health–related measures on foreign investment, in fact, all countries would take immediate measures on foreign investment to guard their people's public health. However, the results of these measures may bring positive or negative impacts on the countries' economy and politics.

This paper would introduce the research reason and significance of the research topic, and after comparing relevant cases in different circumstances from Uruguay, Argentina and China, a common rule can be concluded, which can lead to the thesis. Additionally, in response to the conclusions, suggestions on how to improve the current situation would be made based on research.

2. Literature review

For the past few years, more international investment agreements have been focusing on health regulation, raising public awareness of the protection of health, safety, and the environment. However, the earlier generation of investment treaties did not contain contents relevant to public health or environmental protection, which led to a situation where tribunals had much difficulty in evidencing that the party had definitely violated such public welfare, which is closely relevant to people's life quality and human rights [2]. Historical cases such as this have demonstrated to states the importance of explicitly referencing public health and environmental concerns in investment agreements to better safeguard human welfare.

Thus, many states have taken measures to protect public health and the environment. The following are the existing legal mechanisms on public health protection.

First, from the state level, states make national policy statements clarifying that they have the right to regulate investment agreements and that public health and environmental protection measures are non-compensable policy tools and are not subject to investor stabilization claims. This can reaffirm the host state's legislative sovereignty over health and environmental regulations [3].

Second, in the process of treaty drafting, states adopt General Exceptions in international investment agreements. Heralding that necessary measures for the protection of life security, health and environment can be taken without breaching investment obligations ensures states' self-judging exception. Besides, they implement "sector-specific carve-outs", carrying out complete exclusions or heightened thresholds for investor claims in sensitive sectors, such as tobacco, medicine and

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vaccines, to avoid disputes [2]. The author also suggests that the drafting of agreements' exception language should be around measures “related to” public health rather than the stricter “necessary” test, and that treaties should include positive incentives to direct private capital toward public health infrastructure, inspired by the Kyoto Protocol’s renewable energy provisions.

These measures show that certain countries place much importance on the protection of public health, security, and the environment. However, if not taken well, these measures can lead to loss of investment confidence. For example, the AWG / Urbaser v. Argentina, also known as Water Utilities Privatization Dispute, was given rise to by the conflict between the Argentine government’s will to maintain affordable water for the public by freezing tariffs to maintain water affordable to the public, and water companies’ damaged interests. As a result, the Argentine government was facing compensation and loss of investment confidence [2]. Countries applying HSE protection measures to foreign investment regulation do impact their future investment.

In response to states’ public health protection measures, investors have also taken relevant countermeasures to protect their own benefits. They would initiate ISDS arbitration, claiming that the state has violated Fair and Equitable Treatment (FET), Legitimate Expectations and MFN [2]. They would also require compensation for states’ violation of stabilization clauses [3].

However, much of the existing literature focuses on the competition between states’ and investors’ measures and countermeasures, but only a few of them focus on how to strike a balance between protecting states’ public health welfare and investors’ benefits.

3. Methodology

This research adopts a qualitative case study methodology to explore what are the main influencing factors to a states’ decision on whether enact regulatory measures on foreign investment to protect their national public health. Case studies are particularly well-suited for examining the complex dynamics in context, allowing for in-depth analysis of the motivation for states to protect public health against certain foreign investment and how can we strike a balance and promote public health protection while guaranteeing the foreign investors’ rights. The case study approach enables the investigation of causal mechanisms and strategic behavior within particular regulation cases, while also allowing for the comparison of patterns across different institutional settings.

The paper draws on three comparative case studies: (1) Uruguay’s strict control on tobacco packaging, (2) Argentina’s control of water price to guard its people’s health against the lack of access to water, and (3) China’s vaccine control during COVID-19. Each case is selected for its relevance to the broader research question, its variation in institutional, economic, and public benefit context, and the availability of primary and secondary source material. Data sources include agreement texts, arbitral awards, official state submissions, government statements, and scholarly commentary. Analysis proceeds through structured, focused comparison, applying common analytical questions to each case (e.g., How is international investment law invoked? What legal arguments are advanced? What are the capabilities and benefits for the state to do so?). This design facilitates both within-case factor analyzing and cross-case generalization regarding the strategic protection of public health.

While the paper does not seek to generate statistically generalizable findings, the case study methodology enables theoretical insight into the underlying reasons of states’ choice to regulate foreign investment and to protect public health, which can shed light on us to look for a more powerful mechanism to guarantee public health while not violating the benefits of foreign investors.

DOI: 10.54254/2753-7048/2025.LD29285

4. Hypotheses

This paper advances the argument that states are selectively taking regulatory measures to foreign investors to protect public health, and this situation needs to be improved by forming a better mechanism to ensure the benefits of both parties, the investors and the people in the host state. Based on the case study, the paper formulates three core hypotheses to guide its empirical inquiry.

H1: States are more willing to work on public health regulation in foreign investment for economic consideration, whether they have economic capability or economy-developing expectations.

For example, developed countries are expected to do more on public health regulation because they are rich in capital. This hypothesis focuses on the cost and the impact on future investment, as well as the economic benefits and their contribution to the development of regulation on foreign investment for public health.

H2: States with suitable institutional mechanisms are more willing to work on public health regulation in foreign investment.

For example, democratic welfare states are expected to do more on public health regulation because their mechanism is more transparent and they have more tendency to protect public welfare in order to in order to maintain governmental operating mechanisms and win political support from the public. This hypothesis focuses on the political access to the regulation on foreign investment for public health and highlights the role of the government.

H3: States overweigh public health welfare than other considerations. This hypothesis emphasizes the importance of public welfare itself.

5. Case study 1: Uruguay's anti-tobacco measures

Uruguay has implemented some of the world's most stringent tobacco-control regulations over the past two decades. In 2006, the government banned smoking in all enclosed public spaces, becoming the first Latin American country to do so [4]. Building on this foundation, Ordinance 514 (2008) mandated a "single presentation" requirement, which prohibited tobacco companies from marketing multiple variants under a single brand name. Shortly thereafter, Presidential Decree 287 (2009) increased the size of graphic health warnings on cigarette packages from 50 percent to 80 percent of both the front and back surfaces, leaving only 20 percent for branding [5].

Following Decree 287, Philip Morris International (PMI) withdrew several Marlboro variants—such as Red, Gold, and Green—from Uruguay's market, citing the economically unviable single-presentation rule. In 2010, PMI filed an ICSID claim under the Switzerland–Uruguay Bilateral Investment Treaty, alleging indirect expropriation of its trademarks and breach of fair and equitable treatment. However, in July 2016, the tribunal dismissed all PMI claims, recognizing Uruguay's measures as legitimate exercises of its public-health "police powers" and ordering PMI to pay Uruguay's legal costs [5].

As a result, from 2005 to 2011, per-capita cigarette consumption in Uruguay decreased by 4.3 percent annually, which is far more significant than in countries that haven't implemented measures against tobacco [6]. The measures taken have brought many health gains, which can be translated into fewer hospitalizations and chronic-disease treatments, easing pressure on Uruguay's public health system. They have also brought economic benefits. Although the threat of arbitration briefly chilled some tobacco investments, higher cigarette taxes have led to a significant increase in financial inflows. Modeling suggests that the 23 percent reduction in smoking prevalence over six years would yield long-term savings in tobacco-related healthcare costs and productivity gains from

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a healthier workforce [7]. Besides, in 2022, Uruguay utilized approximately 812 hectares of land for tobacco cultivation, reflecting a 4.8% decrease compared to 2010 (FAOSTAT [accessed January 2024]). This gives way to the plantation of other crops and contributes to the rise in agriculture.

Uruguay has one of Latin America's highest smoking rates. Smoking accounted for approximately 14 percent of Uruguay's total mortality in 2004, contributing to lung cancer, cardiovascular disease, and other chronic illnesses, with an estimated seven tobacco-related deaths per day [6]. By enhancing warning labels and limiting branding, the government aimed to reduce smoking prevalence and associated healthcare burdens.

Beyond health, tobacco-control measures were also driven by economic reasons. Uruguay steadily increased excise taxes on cigarettes, peaking at a 70 percent tax rate on the retail price by early 2010, which nearly doubled pack prices, thereby both discouraging consumption and boosting government revenue [8]. Reduced disease burden promised lower public healthcare expenditures, while higher tobacco taxes created a new revenue stream to fund health programs.

Uruguay's regulations sit at the intersection of international treaty obligations and domestic law. The 2004 ratification of the FCTC obliged Uruguay to adopt evidence-based measures, which it transposed into Law 18.256 and subsequent decrees. These national instruments exemplify how states implement FCTC provisions on packaging, labeling, advertising, and public smoking bans. Importantly, Uruguay paired legislative action with sustained tax policy, embedding public-health goals within fiscal frameworks.

The analysis confirms that Uruguay's measures yielded both substantial health and economic gains. The case also highlights the resilience of robust public-health policy. When Philip Morris initiated ICSID arbitration challenging Uruguay's single-presentation and 80 percent warning requirements, the tribunal upheld Uruguay's "police powers" doctrine and dismissed investor claims, ordering Philip Morris to pay Uruguay's legal costs.

This case exemplifies that public-health-related measures on foreign investment are driven mainly by public health imperatives, while they can also bring economic interests at the same time. Uruguay implemented tobacco control measures on foreign investment to guard the public health welfare of its nation; meanwhile, the leveraged tobacco tax can in fact secure revenue and the decreased smoking rate saves medical costs.

6. Case study 2: Argentina's water price control

In response to the severe economic crisis of 2001-2002, the Argentine Republic enacted emergency measures to manage its water and sanitation services, which had been privatized in the 1990s. Under 30-year concessions awarded to consortia such as Aguas Argentinas S.A. (including foreign investors AWG, Urbaser, Azurix, and Vivendi), water tariffs were originally subject to periodic adjustment mechanisms. However, from 2002 onward, Argentina froze these tariffs and declined to convert them into U.S. dollars-aiming to maintain affordable water prices despite hyperinflation and peso devaluation [2]. This led investors to initiate investor-state arbitration proceedings under various BITs and the ICSID Convention, most notably AWG Group Ltd. v. Argentina (2003-2015) and Urbaser S.A. v. Argentina (2007-2016).

The tariff freeze was justified by Argentina as essential for protecting public health and safety. Access to potable water is constitutionally recognized as vital to the health and well-being of nearly ten million residents of Buenos Aires and its environs. Argentine authorities argued that any tariff increase would render water unaffordable for vulnerable populations, undermining the human right to water and posing serious public health risks [9].

DOI: 10.54254/2753-7048/2025.LD29285

Beyond health, the measures were driven by macroeconomic imperatives. The peso's sharp depreciation threatened to push utility costs as well as inflation further upward. By freezing tariffs in pesos, the government sought to stabilize living costs and prevent additional fiscal strain on households, even though this eroded the revenue streams of concessionaires obliged to make dollar-denominated debt payments [10].

Argentina's social unrest during the crisis years made affordable essential public services a political necessity. Ensuring water remained priced within reach was critical to maintaining public order and confidence in government—a factor as consequential as health or economic goals.

The legal framework comprised the original concession contracts, the Emergency Law No. 25,561, and the presidential decrees on tariff-adjustment provisions. The enterprises relied on fair and equitable treatment (FET), indirect expropriation, and umbrella clauses in their BITs, whereas Argentina invoked its sovereign right to regulate under emergency and human-rights doctrines. The AWG tribunal recognized the legitimacy of Argentina's public-health objectives but held that the state could have employed less intrusive means-resulting in an award to investors [9]. In Urbaser, the tribunal for the first time explicitly referenced the human right to water, acknowledging "the population's health and access to water" as constitutional and international obligations, yet still found violations of Spain-Argentina BIT standards.

These arbitration outcomes that investors award from USD 100 million (AWG) to USD 30–40 million (Urbaser) demonstrate that, while public-health and human-rights arguments matter, they do not automatically prevent emergency regulatory actions from compensation claims.

Argentina's water-price interventions underscore that public-health–related measures affecting foreign investment are often motivated by health concerns, as well as broader economic and political interests. By freezing tariffs, Argentina aimed to stabilize its crisis-ravaged economy and preserve social stability. The investor–state outcomes further show that States must carefully design regulatory responses and investment contracts to reconcile essential public-health aims with the protection of foreign capital. Thus, these cases support the hypothesis that countries enact public-health measures on foreign investment for multifaceted reasons, safeguarding public welfare alongside pursuing economic stabilization and political legitimacy.

7. Case study 3: China's restrictive regime on foreign-related COVID-19 vaccine R&D

In response to the COVID-19 pandemic, the Chinese government imposed rigorous restrictions on any vaccine research and commercialization activities involving foreign investors or overseas partners. Under these measures, all investigational COVID-19 vaccines with foreign involvement were required to conduct their clinical trials within mainland China, submit comprehensive core R&D data to the National Medical Products Administration (NMPA), and operate strictly under China's domestic regulation. These constraints remained in force throughout emergency-use authorizations and conditional market approvals for vaccines such as BBIBP-CorV (Sinopharm) and CoronaVac (Sinovac) [11].

China's fundamental aim was to guard the nation's public health and safety by ensuring vaccine safety and efficacy data reflected its own population's genetic, demographic, and other related characteristics [11].

There also exist political reasons. The requirement to lodge all core R&D data domestically underscores the Chinese government's concern over the cross-border flow of human genetic resources and associated intellectual property, which are viewed as potential vectors for biothreat exploitation or loss of strategic advantage [11]. Besides, the visible control of vaccine research

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boosted public confidence in "China-made" vaccines and reinforced the government's role in crisis management.

China's approach reveals a comprehensively considered strategy in which public health considerations coexist with national security considerations and state branding. While the measures undoubtedly mitigated risks associated with untested foreign products, they also consolidated domestic R&D ecosystems, favoring local institutions and they centralized control over sensitive biological data, strengthening China's biosecurity.

This case directly illustrates that public-health–related restrictions on foreign investment may extend beyond the narrow goal of protecting health. China's policy enforcement also served to drive economic development of its domestic vaccine industry, safeguard national security by localizing sensitive data, and strengthen people's confidence in the government through state-led crisis management. Therefore, the Chinese COVID-19 vaccine restrictions exemplify that safeguarding public health can intertwine with other strategic motivations.

8. Cross-case analysis

Regarding the first hypothesis, the Argentina case is the only one of the three cases that demonstrates that economic considerations are sometimes taken into account when implementing a public-health-related foreign investment regulation. Therefore, economic factors can be concluded as a secondary factor when considering foreign investment regulation.

Regarding the second hypothesis, both the Argentina case and the China case demonstrate that political factors are being considered when implementing a public-health regulation in foreign investment. Therefore, political factors are also a consideration when thinking of implementing such regulatory measures.

Regarding the third hypotheses, all of three cases can demonstrate that public health welfare matters a lot when implementing a public-health regulation in foreign investment. Therefore, public welfare can be concluded as the most primary factor that pushes a country to implement such foreign investment regulation measures.

Conclusively, we can come to the thesis that countries overweigh public health over any other economic or political interests when they take measures on foreign investment. Different from the stereotype that developed and welfare countries are more willing to take public-health–related measures on foreign investment, in fact, all countries would take immediate measures on foreign investment to guard their people's public health. However, the results of these measures may bring positive or negative impacts on the countries' economy and politics.

9. Recommendation

After coming to the thesis that prioritizes public health to any other considerations when implementing public-health-related foreign investment regulation, a valuable question has been raised: how to protect foreign investors' benefits while guaranteeing public health? How to better balance the welfare between investors and states in a situation that all countries prioritize their public health?

R1: Countries should make a clear statement to define the scope of public health exceptions to acknowledge investors in addition to the specific-sector carve-outs.

In the past agreements, there was only a broad statement that regulatory measures could be taken to protect public welfare and there was no statement defining the exact scope of areas. This measure would not only remind foreign investors clearly that certain fields of investment would be possibly

DOI: 10.54254/2753-7048/2025.LD29285

regulated for public welfare, but also limit the states from overreacting and violating investors' benefits dishonestly.

R2: State agencies should define the degree to which states can implement public-health-related measures against foreign investors. For example, state agencies mention in BITs an appropriate compensation for investors towards measures that would directly reduce the income of foreign investors.

This amendment would save more time and money for both parties of investment than being founded by a tribunal through ISDS. In the Argentina water price control case, the Argentine government directly controlled the water price to ensure people's access to water, which directly reduced the income of foreign investors and harmed their benefits. Argentina should have taken other measures that do less harm to the foreign investors; otherwise, it should compensate for the investors' loss.

10. Conclusion

This paper has argued that countries prioritize public health to other interests, such as economic and political benefits, when they take regulatory measures on foreign investment through comparative case studies of the public-health-related foreign investment regulations in Uruguay, Argentina, and China.

By comparing the common effective factors, the analysis showed that public welfare is the most decisive factor, while the extra economic and political effects are secondary considerations and effects. Based on this situation, several measures are recommended to better balance the welfare between investors and states. Both the exact scope of areas and the extent of regulation should be clearly stated.

There is a doubt that cultural differences would differ in what countries see as a public-health threat, contradicting the thesis that all countries would positively act on health grounds. For example, GMO regulation in the EU and the United States is different. The EU applies the Precautionary Principle to genetically modified organisms, demanding exhaustive risk assessments and allowing Member States to ban or restrict GMOs on health and environmental grounds. By contrast, the U.S. follows a science-based approach that presumes safety until proven otherwise, with streamlined approval for GM products and minimal labeling requirements [12]. However, regardless of differing world-views, virtually all countries adopted public-health–driven investment measures when faced with a sufficiently severe threat such as COVID-19. This doubt can only come true when the jeopardy of the potential threat is unclear, which is different from the preconditions of this paper.

Another critique is that not all governments have the capability to design and implement firm public-health exceptions in investment treaties, even if they wish to, especially when facing powerful multinational investors. For instance, the alcohol and processedfood industries have successfully pushed back on labeling or sugartax proposals in numerous Latin American and African countries [13]. However, all of three case studies were successfully carried out by developing countries that are relatively lacking in capability. Besides, countries can sue those industries for dishonest competition and leverage BIT templates from other countries or from international organizations to draft their own. Moreover, when public health becomes a national priority, which is often driven by epidemic crises, countries would reallocate budget, downscale feasible measures, and draw on external advisors to adopt necessary policy tools, demonstrating that capacity limitations are conquerable.

DOI: 10.54254/2753-7048/2025.LD29285

While these counterarguments highlight real constraints, they do not invalidate the central claim of this paper. Rather, they reinforce the importance of cultural differences and factual capacity while overlooking the degree of harm of the public-health threats and the national initiative.

Future research should analyze more cases in different countries and investment areas beyond Uruguay, Argentina, and China in the tobacco, water, and vaccine industries. A comparison between the implementation of public-health-related regulation in developed countries and developing countries should be carried out to find out whether there exists a significant difference in effects and final outcomes.

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