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Andrés Gaudán

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Uruguay Fights Big Tobacco

by Andrés Gaudín

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Hit by a lawsuit by tobacco company Philip Morris International that could cost it hundreds of millions of dollars if it loses, Uruguay has received the support of the governments of 171 countries, the World Health Organization (WHO), the Southern Cone Common Market (MERCOSUR), and hundreds of nongovernmental organizations (NGOs) throughout the world that consider the small South American country's measures restricting tobacco consumption an example for others to follow in defending public health.

On Nov. 15, 2010, the Fourth Session of the Conference of the Parties (COP4) of the WHO Framework Convention on Tobacco Control (FCTC) began, and not coincidentally the UN organization had decided to hold the meeting in Uruguay. For six days, the dispute with the multinational based in Lausanne, Switzerland, was on the tongues of all participants, who, at the end of the meeting, released a declaration expressing their "firm commitment to prioritize the implementation of health measures designed to control tobacco consumption," which has been successfully carried out in Uruguay.

The dispute between Philip Morris and the Uruguayan government began to take shape on March 1, 2006, the day that the administration of progressive former President Tabaré Vázquez (2005-2010) passed a law that made Uruguay the fifth nation in the world and the first in Latin America to impose severe restrictions on tobacco companies. Initially, as in Spain, Ireland, Italy, and Great Britain, smoking was banned in all common spaces in public and private settings (government offices, restaurants, bus terminals, commercial establishments, and even in the hallways and other common spaces in apartment buildings).

Cigarette packaging must show tobacco's dangerous effects

In the next few years, the restrictions increased. Now, 80% of the front and back of each cigarette package must have a photograph showing the detrimental effects of tobacco on the health of human beings. "They are very strong images, if not shocking and even almost horrendous," said a story in the daily Le Courier of Geneva, Switzerland.

The sides of the cigarette packages must include warnings against the noxious effects of nicotine. The use of deceptive adjectives, such as "light" or "low," which tobacco companies use to make some products appear less harmful, is illegal. Absolutely prohibited are sponsorships of sports activities in general or any sports teams. Tobacco companies are banned from advertising in print, on radio or TV, and in any public space. Taxes on cigarettes rose 100%.

Philip Morris International said this battery of restrictions and prohibitions applied in defense of public health violates international free-trade agreements. That is the basis for the lawsuit filed March 26, 2010, with the World Bank's International Center for Settlement of Investment Disputes (ICSID) in Washington, DC.

The multinational company alleged that the photographs that companies are forced to put on the front and back of the cigarette packs partially cover their logo, which is an undue expropriation.
of profits without compensation, violating the intellectual-property-rights protections of the free-trade agreement signed between Uruguay and Switzerland, where the company has been based for several years, since moving its headquarters from the US.

After banning smoking in common spaces, Uruguay saw significant success. "As in any poor country, statistics are not up-to-date," said cardiologist Adriana Rodríguez, an expert at the Centro de Investigaciones de la Epidemia de Tabaquismo in Uruguay, telling participants at the WHO meeting that between March 2006 and March 2008—the first two years the law was in effect—the percentage of smokers dropped from 32.3% to 25% (some 100,000 persons), the number of registered patients with acute myocardial infarction (heart attack) dropped 17% (43,000 cases), and the level of contamination from tobacco smoke in closed environments was reduced by 90%.

From a purely economic perspective, the tax increase boosted revenues by US$190 million.

While Rodríguez gave her report, outside the meeting room at the exclusive Uruguayan resort of Punta del Este, the "death clock," installed by the NGO Alianza para el Convenio Marco, showed every five seconds the macabre reality that tobacco use had claimed a new victim, another life added to the more than 50 million deaths worldwide since 1999.

**Contest between unequals**

On Jan. 15, an article in the Spanish edition of the US magazine Newsweek referred to the "mother of asymmetric battles...little Uruguay, with a population of 3.5 million," against "the international tobacco colossus, with a market capitalization of US$107 billion and legions of high-priced lawyers and lobbyists."

Weeks earlier, on Nov. 14, 2010, The New York Times had published an investigative report prior to the Punta del Este meeting and did not overlook the Uruguay-Philip Morris dispute. "As sales to developing nations become ever more important to giant tobacco companies, they are stepping up efforts around the world to fight tough restrictions on the marketing of cigarettes," wrote the Times. "This year, Philip Morris International sued the government of Uruguay, saying its tobacco regulations were excessive....World Health Organization officials say the suit represents an effort by the industry to intimidate the country, as well as other nations attending the conference, that are considering strict marketing requirements for tobacco."

The article said that the multinational's annual sales total US$66 billion, twice Uruguay's annual GDP. French news agency Agence France-Presse (AFP) accepted the two-to-one ratio but disagreed with the Times figures, putting Philip Morris' volume of sales at US$62.1 billion and Uruguay's GDP at US$31.5 billion (2009 data, the latest available in both cases).

Former President Vázquez, along with the WHO and the US newspaper, said that Philip Morris' reaction is intended as a warning to other countries. "The most vicious opposition to an Uruguay free of tobacco smoke does not come from Uruguayan smokers, and there are still many of them; it does not come from the merchants who sell tobacco products, and there are also many of them, with every right to make a good living; it comes from Philip Morris," Vázquez told the representatives of the 171 countries at the meeting.

Vázquez said that in Uruguay, with its small population, the tobacco industry is irrelevant and employs a small labor force. Only 0.4% of the arable land is dedicated to tobacco cultivation and, at peak harvest time, the industry employs slightly more than 1,000 workers. "Therefore," said
Vázquez, "what Philip Morris is trying to accomplish with its complaint against Uruguay is to throw out a warning to all countries moving against nicotine dependence and say to them, 'Watch out. What is happening to Uruguay can also happen to you.'"

Vázquez, an oncologist who ended his five-year term with a nearly 70% approval rating, is now working with the international campaign against tobacco addiction to get Switzerland to agree to modify the bilateral investment treaty signed with Uruguay, precisely the agreement whose alleged violations allowed the Philip Morris suit. In that case, Vázquez says, the multinational's suit would lose its justification.

While Uruguay works on finding a substantive solution, which could come through an addendum excluding products harmful to health from the treaty, the government is receiving demonstrations of solidarity from around the world. US NGOs Campaign for Tobacco-Free Kids, the American Cancer Society, the International Heart Foundation, and the World Lung Foundation published ads in major newspapers around the world supporting Uruguay "for its leadership in implementing a policy to control tobacco and its decision to confront the tobacco companies."

Those organizations, and at least ten others, will each donate US$500,000 to help defray Uruguay's litigation costs before the ICSID. The WHO put at Uruguay's disposal a technical team that will provide the scientific basis for Uruguay's defense. New York Mayor Michael Bloomberg's Bloomberg Philanthropies offered legal assistance and will help pay the fees of the law firm Foley Hoag of Boston, which will defend Uruguay before the ICSID.

Within this solidarity package, Swiss NGO Berne Declaration and its Uruguayan affiliate Centro de Investigación para la Épida de Tabaquismo nominated Philip Morris as one of the six nominees for the 2011 Public Eye Award, which distinguishes a company as "the worst corporation in the world." In the Web-based Public Eye People's Award, Philip Morris tied with BP for second place.

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