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Uruguay Wins Judgment Against Big Tobacco

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Little Uruguay beat the odds, according to dozens of Latin American and European newspapers, which dramatically announced the country’s victory over a powerful multinational tobacco company with stories all headlined “David Triumphs over Goliath.” It took six years of pressures and threats, but at last the position of the Montevideo government prevailed on July 8, when the World Bank’s International Center for Settlement of Investment Disputes (ICSID) based in Washington, D.C., ruled against tobacco giant Philip Morris International (PMI) (NotiSur, Feb. 4, 2011).

Uniform cigarette packaging
The Uruguayan daily La República wrote of the ICSID, “In condemning the world’s largest cigarette producer, it acknowledged tobacco and tobacco smoke kill those who use it and those who are obliged to live with smokers, the passive smokers, including most notably children. Without expressly saying so, the agency supported the country’s public health policy and opened the way for it to apply complementary measures that, in fact, will remove the numerous logos as well as any other sign of the major cigarette brands from the view of Uruguayans.”

The ruling of the World Bank tribunal is unprecedented internationally. It puts government health decisions above a company’s commercial claims and establishes that jurisprudence on a global level.

President Tabaré Vázquez said, “Uruguay defended its sovereign power to set health-warning norms, prohibiting the use of symbols or terms tending to undermine the false suggestion that some cigarette brands are less harmful than others … Without violating any treaty or international agreement, the government has met its unwavering commitment to protect the health of the people.”

Using the jargon of soccer, the Uruguayans’ favorite sport, the Center for the Investigation of the Tobacco Epidemic (Centro de Investigación para la Epidemia de Tabaquismo) said, “We played and won a game on the road, because for a government to take the case to trade and investment courts outside the national stage is a risk, more so when Uruguay alleged public health was the principal motive for its policies. Moreover, the PMI suit was against Uruguay, but its real campaign was against the world. PMI chose the country that had the least ability to defend itself, but also one that showed the greatest successes in efforts to combat smoking. If it had won in the ICSID, punishing the most successful country, the tobacco company would have punished the world.”

10-year anti-smoking campaign
This story began in early 2006 when, during his first term, President Tabaré Vázquez (2004-2010, re-elected in 2015) signed a law prohibiting smoking in enclosed public places. The law also demanded that all tobacco companies remove all misleading references on their packaging—words such as “gold,” “light,” and “mentholated—and use 80% of the packaging to reproduce tough and realistic images and warnings that smoking kills and causes lung cancer and other diseases (pulmonary emphysema, heart failure, strokes, etc).
In 2010, after being forced to withdraw from the market seven of the 12 products it offered Uruguayan smokers, the multinational decided to sue Uruguay for alleged violation of the Bilateral Investment Treaty (BIT) signed with Switzerland, the country to which PMI, formerly based in Richmond, Virginia, has moved its headquarters.

The company argued that Uruguay’s policy was equivalent to “confiscation,” because it implied an “expropriation” of the company’s investment to capture market. It closed its production plant, abandoning the workers, and demanded the Uruguayan government pay it an indemnity of US$25 million. At that time, PMI’s global business was twice Uruguay’s gross domestic product. Today, it is even larger than that.

**Smoking down overall and among youth**

Beyond the ICSID ruling, the events showed that Vázquez, a prestigious medical oncologist dedicated to the fight against smoking, was right, and that the stark reality he showed his countrymen would lead them to quit smoking.

As in any poor country, statistics in Uruguay are scarce. It is known, nevertheless, that the number of smokers dropped from 35% in 2006 to 22.2% in 2014 while the percentage of 15- to 29-year-old consumers fell from 22.8% to 8.4%. The Tobacco Control Program expressed concern that some sectors of society have a higher-than-average percentage of smokers. Such is the case with construction workers, 44.1% of whom use tobacco, and health workers, where the rate is 22.8% even though it would be logical for the percentage in that sector to be under the national average. With a population of just over 3.4 million, with 2.2 million who say they either smoke or have smoked at one time, Uruguay is not a big market for Philip Morris. What drove PMI to file the suit in the ICSID, as it said, was the example that it could set to the rest of the countries in the world.

Minutes after learning of the decision, Vázquez spoke on radio and television networks to warn multinationals that “from now on, when they try to adjust an agreement with the threat of litigation [in 2006 Vázquez had used the word ‘blackmail’], they will encounter our precedent.”

Despite his extreme restraint, which led him to ask that the verdict not be celebrated, the president recalled his participation in the last UN General Assembly in September 2015, when he dedicated all of his time to talking about the PMI suit. At that time, Vázquez had been adamant, though, inexplicably, he wasn’t now. “Life is precious and priceless,” he had said at the time. “It is essential to adopt political stances to confront the growing cancer threat. The vector of the smoking habit is not mosquitoes, or birds, or rats. It is the tobacco industry’s desire to multiply profits without any qualms about killing its own customers.”

**ICSID backed pharmaceutical multinationals in the past**

The ruling was unprecedented. One of the government advisers recalled that, in the 1990s, the ICSID had repeatedly decided against poor countries that had attempted to limit the duration of international patents. As an example, he cited the time India lost a lawsuit against multinational pharmaceutical firms when it tried to manufacture generic drugs to confront the growing HIV epidemic.

In PMI’s history, the company had seen mostly legal successes. It had lost two individual suits in the US in which it had to compensate relatives of people who had smoked its brands a total of US$3.05 billion. The victims, who suffered from incurable lung cancer, were a woman (awarded US$50,000)
and a man (awarded US$3 billion). The US$3 billion verdict was issued in 1999 in a California court and remains the largest fine in the world granted a victim of a company. At the end of last year, in a suit that did not go before the ICSID because it involved Australia, a country that does not have a bilateral investment treaty with Switzerland, Philip Morris lost and had to compensate the Canberra government. Although these three cases resulted in convictions against the tobacco industry, they did not establish a legal precedent on a global level the way the resolution issued by the ICSID in support of the health and life of Uruguayans did.

For years, the view that smoking is an epidemic—according to Vázquez, it has killed more people than all the wars of the 20th century—has been confirmed in the decisions of various governments, and the tobacco industry has been on the decline.

First, the sponsorship of major sporting events by tobacco companies—notably basketball and auto racing—was eliminated. Taking tobacco ads (such as the famed Marlboro man) off television, newspapers, magazines, and other publications followed. Then there was the decision to ban smoking inside stadiums when the last World Cup was played in Brazil.

Once the ICSID ruling was made public, the tobacco company announced, almost resignedly, that it would not appeal the decision and that it would pay the US$8.5 million compensation imposed (US $7 million to Uruguay, to be distributed to retired persons who receive minimum stipends, and US $1.5 million for expenses generated by ICSID).

Complementary measures will now follow. Cigarette packages will all be the same: They will be identified exclusively by the brand, in the same typographical font and color so as to prevent any differences and deceptions about the best one or the one with the least impact in terms of health. When summing up the future measures, Public Health Minister Jorge Basso said the uniform design is meant to eliminate any potentially attractive element that one product could have over another, such as colors, added flavors, aromas, types of filter, or quality of paper.

The government expects to reduce the number of smokers by an additional 20% in the two years following implementation of the measures.

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