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Worldwide news and comment

SOUTH AMERICA

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Uruguay: civil society challenges tobacco industry interference

Over the past few decades, Uruguay has secured great achievements in tobacco control, followed in turn, by favourable health outcomes. After becoming the first indoor-smoke-free country in the Americas region in 2006, a comprehensive tobacco control law was passed in 2008. By this time, the Uruguayan government had already enacted the world's largest pictorial health warning labels and implemented regulations which permitted only one variant per brand, which is still a unique regulation at present. After various unsuccessful domestic legal challenges against these regulations, Philip Morris International (PMI) set a request of arbitration in 2010 with the International Centre for Settlement of Investment Disputes (ICSID) under the Uruguay-Switzerland bilateral investment treaty. The company claimed that the one variant per brand and the pictorial health warnings infringed the intellectual property provisions protected by this trade agreement.

After 6 years, the ICSID rejected PMI's claims and ruled that Uruguay had the sovereign right to protect public health over any other corporate commercial rights. During this 6 year period, strong alliances were built between government, civil society, advocates and academic experts, as well as strong support provided by the international tobacco control community.

In 2020, plain packaging of tobacco products was implemented in Uruguay, a policy which has proved to protect consumers and future smokers from misleading terms, increasing risk perception and avoiding fancy design features attractive to kids. Countries which implemented plain packaging before Uruguay, have reported tobacco industry strategies in reaction to it. Design features, logos and imagery were introduced inside packs as well as design changes to the cigarette sticks as a last marketing vehicle between industry and consumers. With this in

mind, Uruguay's plain packaging regulations included comprehensive standardisation of the inside of packs, cigarette sticks themselves and prohibition of extra contents. Uruguay has long been regarded as a global tobacco control leader and these regulations were consistent with such leadership.

That is why it was shocking when, 2 years later, on September 2nd, 2022, the Uruguayan government announced a decree to modify the plain packaging regulation, allowing branding, logos, colours, textures and other features in the inside of packs. This decree was the fourth of several changes in tobacco regulation in the present administration (other changes include the revoking of the heated tobacco products (HTP) sales ban; elimination of a ban on tobacco industry tax waivers, dismissing a proposal of pictorial health warnings on HTP packaging, and allowing the Vapers Association to promote vaping, in a country where e-cigarette sales are banned) which tobacco control experts and civil society have opposed, and appear contrary to the provisions of the WHO Framework Convention for Tobacco Control. The decree had strong support from officials from several ministries, including the Ministry of Health, together with suspected front groups which promoted misleading arguments about contraband tobacco, the illegal tobacco market and unemployment as a direct result of tobacco control policies. Fifty-eight institutions including academic groups, scientific societies, medical unions, civil society and well-respected scientific leaders from other fields publicly opposed this decree, which was described as a "step backwards in Public Health". A week after the decree was passed, the President of Uruguay disclosed to the media, that the decree was enacted in response to local tobacco industry requirements.

Civil society did not stay quiet. The Uruguayan society of tobacco studies (Sociedad Uruguaya de Tabacologia - SUT), a scientific multidisciplinary civil society organisation which has played an active role in Uruguay's tobacco control achievements to date, including the PMI bilateral treaty challenge, filed a lawsuit just a few weeks later. The legal challenge had two different strands. First, an appeal for revocation was presented to the President of Uruguay, but the deadline for the President to act in this regard has now passed, meaning that the case will have to be solved at an administrative court, which could take years to reach a decision. The second strand was a direct appeal for protection or "amparo" filed

at a Family Court. These kinds of appeals for amparo have immediate suspensive effects but are unlikely to be successful in Uruguay. SUT's arguments were mostly based, not in tobacco control national law or international treaties but on the Child and Adolescent National Code. This Code explicitly states that government should protect children and adolescents from the stimuli of tobacco and other drugs. Considering that branding, logos, design features are associated with smoking behaviour, including smoking uptake among youth, a comprehensive, evidence-based case was presented. On October 19th, the Family Court ruled in favour of SUT's claim, meaning that the decree allowing in-pack marketing features cannot go ahead until higher courts come to a final decision.

This case illustrates once again, in the same country, how an engaged local civil society is fundamental to successfully defending public health policies and people's rights from tobacco industry interference regardless of government administrations.

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ASIA

Japan: country's stake in Japan Tobacco International thwarts tobacco control progress

Japan Tobacco International is the second largest transnational tobacco company in the world. The Japanese government owns a third of this business. Japan Tobacco International sells its products in 120 countries across the globe.

Tobacco control policies in Japan lag in comparison to those of other countries. For example, there are no pictorial health warnings on tobacco packets in Japan (while 134 other countries have already implemented such warnings), smoking

areas are still permitted in restaurants (28% of the world has implemented total smoking bans in restaurants), and tobacco tax (the most effective measure to drive down tobacco product use) remains less than the rate recommended by the WHO Framework Convention on Tobacco Control (FCTC). Tobacco Control experts believe that this lack of comprehensive tobacco control regulations in Japan is due in large part to the state's part ownership of JTI.

In addition to these regulatory shortfalls in Japan, JTI and consequently Japan is being criticised for its continued sales in Russia. Unlike other companies that have withdrawn their business from the country following its invasion of Ukraine, JTI still operates in Russia. According to JTI's website it is the "biggest investor and the leading tax contributor in the Russian tobacco industry. Over the past 20 years its investments in the Russian economy have exceeded \$4.6 billion (US dollars)." Manabu Sakuta, Chairperson of the Japanese Society for Tobacco Control wrote a letter to members of the Japanese parliament arguing that the money Russia makes from JTI's products facilitates the execution of the Russian war and is therefore associated with the extreme suffering by Ukrainian citizens.

Sakuta stated, "The prime minister of Japan Fumio Kishida is Chair of the G7 this year. It is a conflict of interest to Chair the G7 while his country provides funding to the Russian government."

The G7 is an informal grouping of seven of the wealthiest nations to discuss geopolitical, economic and climate issues. The group also discusses world events and threats. Russia was previously part of this group (then the G8) until expelled for annexing Crimea in 2014.

Sakuta argued that in the international community, it is unavoidable that business activities exert an influence on politics and security issues and stated, "I hope that the Liberal Democratic Party Tobacco Diet Members' Alliance will promote responsible business activities while responding to domestic and international affairs."

NORTH AMERICA

USA: the Master Settlement Agreement turns 25

This year marks the 25 year anniversary of the Master Settlement Agreement (MSA) - a settlement that was reached between 46 US states and the tobacco industry to recover the costs of treating tobacco-related illnesses. The final settlement involved tobacco companies paying

\$206 billion over 25 years up to this year, 2023, after which time payments will be based on the companies' domestic cigarette sales.

The MSA opened the door to domestic and international legal challenges against the tobacco industry for its wrongdoing and paved the way for increased regulation such as advertising and lobbying restrictions. For example, the MSA imposes restrictions on marketing, advertising and promotion practices such as those that target youth.

One of the most enduring impacts of the MSA has been Truth Initiative, which continues to advocate and educate the public in tobacco prevention and cessation. Truth Initiative CEO and President, Robin Koval, reflected on the impact of the MSA, saying:

"The historic work of the state Attorneys General in creating the Master Settlement Agreement significantly advanced our nation's public health by holding the tobacco industry responsible for the enormous harm it has and continues to cause our nation. Today, state Attorneys General are continuing this legacy by holding the industry accountable for the serious youth e-cigarette public health crisis ignited by JUUL and perpetuated by many of the same tobacco companies who were part of this landmark settlement. The MSA also led to the creation of our organisation, that in addition to playing a significant role in driving down youth smoking rates to historic lows, is leading the fight to protect a new generation from the relentless pursuit of the tobacco industry and harms of nicotine addiction through a holistic suite of **truth** branded e-cigarette prevention education and quitting resources proven to work."

Truth Initiative also first created the library of previously secret tobacco industry documents published as part of the MSA. The University of California, San Francisco (UCSF) Truth Tobacco Documents Library now contains more than 15 million documents. These documents have been a treasure trove for researchers around the world who have exposed the machinations of the tobacco industry and how it undermines and impedes the tobacco control efforts of the WHO and its member states.

While, the MSA has undoubtedly helped tobacco control not only in the US but also around the world, unfortunately, the consensus is that the MSA has caused minimal *financial* harm to the tobacco industry. Even now, tobacco stocks are regarded as an attractive investment opportunity. By the early 2000's, it was

reported that States were not using their MSA payments to fund tobacco control efforts, and even more shockingly, some were even reportedly making payments to private tobacco producers to aid their businesses and investing in tobacco company stocks. A 20 year review conducted by Campaign for Tobacco Free Kids in 2018 reported that states have spent only 2.6% of their total tobacco-generated income (both taxes and revenue from the MSA) on tobacco control programmes. The tobacco industry was largely able to offset the financial hit from the MSA by passing it on to its customers with increased tobacco prices. Even at the time of the settlement, opinion was divided, as many felt that the exclusion of many of the tobacco control elements which had featured in its forerunner the Global Settlement Agreement, left the MSA weaker.

There is then, still much to be accomplished in tobacco control. In the quarter century since the MSA, we have seen advances in smoke-free environments, the adoption of the Framework Convention on Tobacco Control, plain packaging regulations, restrictions on marketing and advertising, calls for bans on cigarette filters, suggestions of "polluter pays" regulations and even some jurisdictions moving to outright sales bans. Yet, the tobacco industry reinvents itself as the solution to the tobacco epidemic, trying to reengage governments and policy makers through the auspices of "harm reduction". While many countries are embracing tobacco endgame policies and goals and setting ambitious targets for reducing smoking prevalence, new nicotine and tobacco product consumption is increasing. We can expect the landscape of tobacco control to change as much in the next twenty-five years as it has in the last twenty-five.

USA: the USA v Philip Morris: Judge Gladys Kessler dies

As well as the 25 year anniversary of the MSA, this year has also sadly marked the death of a key figure in the fight for global tobacco control, the renowned judge presiding over the case of the USA v Philip Morris, *et al*, Judge Gladys Kessler. This case, pursued by the United States Department of Justice, was entirely separate to the case brought by the 46 States that culminated in the MSA.

Described as a masterpiece in legal scholarship, Judge Kessler's opinion laid out in detail the culpability of the tobacco industry in the global tobacco epidemic and contributed additional documents to

the University of California, San Francisco (UCSF) Truth Tobacco Documents Library.

Tried under the Racketeer Influenced and Corrupt Organisations Act (RICO), the defendants (Tobacco Companies) were found liable for covering up evidence about the catastrophic health consequences of their products, misleading people about the dangers of secondhand smoke and the addictiveness of nicotine and marketing their products to children. Stating that the tobacco companies have “marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted,” her final opinion ran to 1652 pages. Kessler also ruled that tobacco companies could no longer market their products as “light,” “low-tar,” or “mild” or use any words that suggested that some tobacco products were less harmful than others.

Although she issued her opinion in August 2006, the appeals and litigation continued for another decade, and only

in 2017 did the tobacco companies finally start running the (watered-down) corrective statement advertisements as directed by Judge Kessler. In fact, only last year, in 2022, was the last outstanding suit resolved, and on July 1 of this year (2023) corrective statements will also finally appear at the point-of-sale for tobacco products. This remedy requires corrective statements such as “Smoking kills on average 1200 Americans. Every day” to be displayed in English and Spanish in stores for 21 months. The full list can be found here.

In her obituary in the *New York Times*, the then president of the Campaign for Tobacco Free Kids, Matthew L. Myers commented on Kessler’s decision and the seismic shift it created in the world’s perception of tobacco companies. “Without any question it (the ruling) has been the final word, ending any debate about the fact that the tobacco industry long knew the harm caused by its products, intentionally designed its products to reach kids and minorities and engaged

in a 40 year campaign to deceive the public.”

A fine legacy indeed.



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