FACT SHEET

Award in *Philip Morris Brands Sàrl, et al. v. Oriental Republic of Uruguay*,

ICSID Case No. ARB/10/7 (8 July 2016)

1. What happened?

   A. An Arbitral Tribunal ruled in Uruguay's favor against tobacco giant Philip Morris.

   B. Further, the Tribunal ordered Philip Morris to pay Uruguay's fees and other costs, an award in excess of $7 million.

   C. Specifically, the Tribunal rejected Philip Morris' challenge to two regulations adopted by Uruguay to protect public health against tobacco-related death and diseases, and prevent the false advertising of tobacco products.

   D. The specific regulations upheld by the Arbitral Tribunal (1) prohibited tobacco companies from marketing cigarettes in ways that falsely present some cigarettes as less harmful than others—because, in truth, no cigarettes are safe to smoke and none are less harmful than any others; and (2) required tobacco companies to use 80% of the front and back of cigarette packs for graphic warnings of the health hazards of smoking.

2. What is the significance?

   A. This is a landmark decision because it affirms the sovereign rights not only of Uruguay but of all States to adopt laws and regulations to protect public health by regulating the marketing and distribution of cigarettes and other tobacco products.

   B. It is also significant because it enables Uruguay (as well as other States committed to protection of public health) to take additional measures to reduce tobacco consumption, and related deaths and illnesses, by further restricting the false and misleading marketing of cigarettes and other tobacco products.

   C. To that end, Uruguay itself will soon require all tobacco products to be sold in generic or plain packages, with even larger warnings of the harms caused by smoking, in an effort to further reduce smoking levels.

   D. It is now inevitable that many other States, which have been awaiting this decision before adopting similar regulations, will follow Uruguay's example.

   E. The decision is also significant because it erects a barrier to the cynical use of international arbitration by Philip Morris and other tobacco companies to stop States from taking reasonable measures to protect public health. Not only have Philip Morris' claims against Uruguay been rejected, but the company has been ordered to pay Uruguay's legal fees. Its strategy of misusing the arbitration process to dissuade States from adopting meaningful regulation of tobacco marketing has failed. States need no longer fear the risks or costs of such a challenge to their sovereign rights.

3. What is the context?

   A. Under the leadership of President Tabaré Vázquez (2005-2010, and 2015-present), Uruguay has been committed to the protection of public health, in particular, by efforts to reduce smoking. President Vazquez, an oncologist, has direct knowledge of the death and disease smoking causes. As a result of Uruguay's tobacco control regulations and policies, smoking rates have been reduced from approximately 35% to approximately 23% between 2005 and 2014. Among youth, the rate has fallen to 8.2% as of 2014.

   B. The two regulations challenged by Philip Morris were adopted in 2008 and 2009. In March 2010, Philip Morris filed its demand for arbitration with the International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank. Because Philip Morris International is incorporated in Switzerland, it sought arbitration under the terms of a bilateral investment treaty between Switzerland and Uruguay.

   C. One of the regulations prevented tobacco companies from selling different versions of the same brand of cigarettes. Known as the "Single Presentation Requirement," it stopped Philip Morris, for example, from selling Marlboro, its leading brand, which is normally sold in red and white packages, in gold, blue, or green and silver packages. Uruguay considered (and proved to the Arbitral Tribunal) that the use of multiple variants of the same brand was intended to falsely communicate to consumers that some variants were less harmful than others, when the company knew this was untrue.

D. The other regulation obligated tobacco companies to increase the size of required health warning labels on the front and back of cigarette packs from 50% to 80% of the pack. Many States have adopted similar regulations, because it has been proven that larger health warnings are more effective.

E. Following extensive written pleadings, oral hearings on the merits of the case were held in October 2015 before an ICSID Arbitral Tribunal, presided over by Professor Piero Bernardini of Italy. The other arbitrators were Gary Born of the United States and James Crawford of Australia (currently a Judge on the International Court of Justice in The Hague).

F. In addition to upholding Uruguay's regulations, the Tribunal also ruled that Uruguay's courts did not violate Philip Morris' rights, or deny it justice, when it challenged the regulations before those courts.

G. Uruguay's lead defense counsel were Paul Reichler, Lawrence Martin, Andrew Loewenstein and Clara Brillembourg of the law firm Foley Hoag LLP, in Washington, DC.

H. The delegation of the Government of Uruguay at the oral hearings was led by Dr. Miguel Angel Toma, Secretary of the Presidency, accompanied by, among others, the Minister of Public Health, Dr. Jorge Basso, and Uruguay's Ambassador to the United States, Dr. Carlos Gianelli.

I. Philip Morris was represented principally by its Executive Vice President and General Counsel, Marc Firestone, and the law firm Sidley Austin LLP, in Washington, DC.

4. <u>What were the specific legal findings?</u>

A. Uruguay did not violate any of its obligations under the Switzerland/Uruguay Bilateral Investment Treaty, or deny Philip Morris any of the protections provided by that Treaty. Specifically:

- Uruguay's regulatory measures did not "expropriate" Philip Morris's property. They were *bona fide* exercises of Uruguay's sovereign police power to protect public health, developed by highly trained tobacco control experts and physicians in the Ministry of Public Health with the support of experts from civil society.
- The measures did not deny Philip Morris "fair and equitable treatment" because they were not arbitrary; instead, they were reasonable measures strongly supported by the scientific literature, and had received broad support from the global tobacco control community.
- The measures did not "unreasonably and discriminatorily" deny Philip Morris the use and enjoyment of its trademark rights, because they were enacted in the interests of legitimate policy concerns and were not motivated by an intention to deprive Philip Morris of the value of its investment.

- Uruguay's courts did not "deny justice" to Philip Morris. Instead, the Tribunal found that Philip Morris received due process and fair treatment from the Uruguayan courts.

5. What does this mean for the future of tobacco regulation in Uruguay and the world?

A. The Tribunal's decision is a positive sign for future global tobacco regulation.

B. Uruguay continues to address the harms caused by tobacco consumption. Uruguay intends to enact further policies to continue to promote the public health of its citizens, including a requirement that cigarettes be sold in plain or generic packaging that cannot be used to lure adolescents, or other persons, into tobacco addiction.

C. This ruling demonstrates that other States can and should move forward with progressive tobacco control legislation to protect the health of their own citizens.

The entire Award, in English and Spanish, as well as President Vázquez's comments on it, will be made available online today at http://presidencia.gub.uy/.