

Tobacco Control and Trade Agreements: Exploring A Research Consortium For California, and Strategies for Change

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CPATH Mission

research, analysis and advocacy
to advance global economic
policies that improve and protect
public health

Historic Opportunity to Advance Health

- The President's SOTU: "join with our allies to eradicate...extreme poverty in the next two decades: by **saving the world's children from preventable deaths.**"
- Trans-Pacific Partnership (TPP), a trade pact with eleven Pacific Rim nations, would threaten public health and promote preventable deaths.
- The announcement of a new trans-Atlantic agreement heightens our concerns.

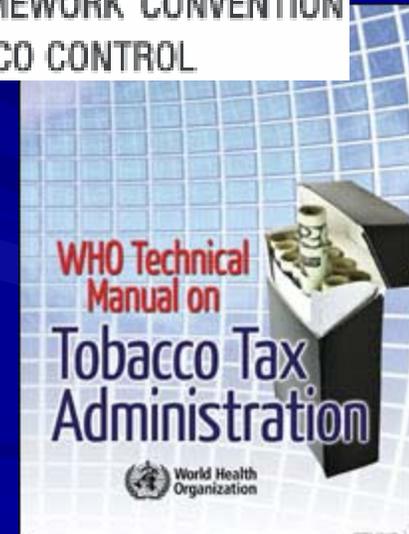
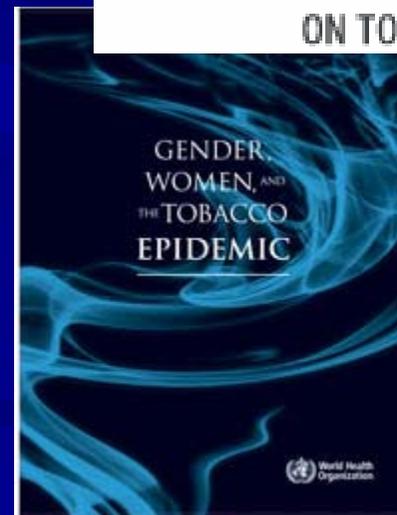
Meeting Mission

- Reinvigorate the campaign to advance tobacco control in the U.S. and worldwide
- Explore common goals and strategies
- Describe and establish framework to link and activate our members, agencies, and influence policy
 - Research questions
 - Ongoing communication and collaboration

Framework Convention on Tobacco Control

“to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke”

- Established minimum standards in the areas of
 - tobacco demand reduction
 - passive smoking
 - packaging and labeling
 - health awareness
 - advertising
 - sale to minors
 - smuggling, etc.



Tobacco Industry and Trade Rules

- Tobacco companies have recently accelerated the use of global trade rules to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, Norway, and Ireland.
- Curtailing these loopholes is of the utmost urgency.
- Current trade rules strengthen the global legal rights of the tobacco industry to challenge national, state, and local measures that seek to reduce tobacco consumption, including the 2009 U.S. Tobacco Control Act.
- Trade rules promote cheaper prices for tobacco and tobacco products by lowering tariffs

“It’s not about health”

Trade Arguments



Health Arguments

LOCAL

NATIONAL

GLOBAL

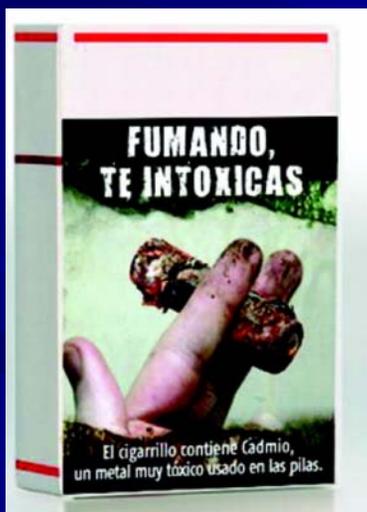
URUGUAY



Tabaré Vázquez, MD

2009 Tobacco Control Legislation

- Increase warning labels from 50% to 80%,
- Placement of one of six selected health images on every package
- Prohibit the use of “brand families”



TPP



CPATH



8

LOCAL

NATIONAL

GLOBAL

URUGUAY



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Philip Morris initiates arbitration against Uruguay over new labeling requirements, taxes

May 11, 2010

Slow Burn

A row over cigarette-sales restrictions pits Uruguay against Philip Morris.



Uruguay Takes on Tobacco Giant Philip Morris

Published November 23, 2010 | Fox News Latino

Print | Email | Share | Recommend 29 | Tweet 6



It started as a David vs. Goliath battle: Philip Morris International, the world's second largest tobacco company, against the second largest nation in [Latin America](#), Uruguay, whose population equals the state of Oregon.

The tobacco giant is suing Uruguay



LOCAL

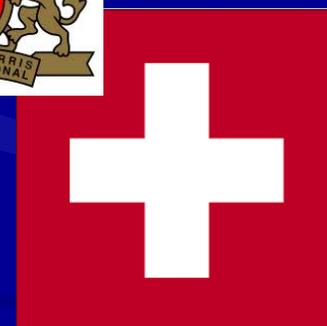
NATIONAL

GLOBAL

- **Trade Agreement:**
1991 Bilateral Investment Treaty
- **Alleged Violation:**
Infringement on intellectual property without compensation
- **Court:** via Investor-State Mechanisms:



URUGUAY



SWITZERLAND

Procedural Details

Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay (ICSID Case No. ARB/10/7)

Original Arbitration Proceeding

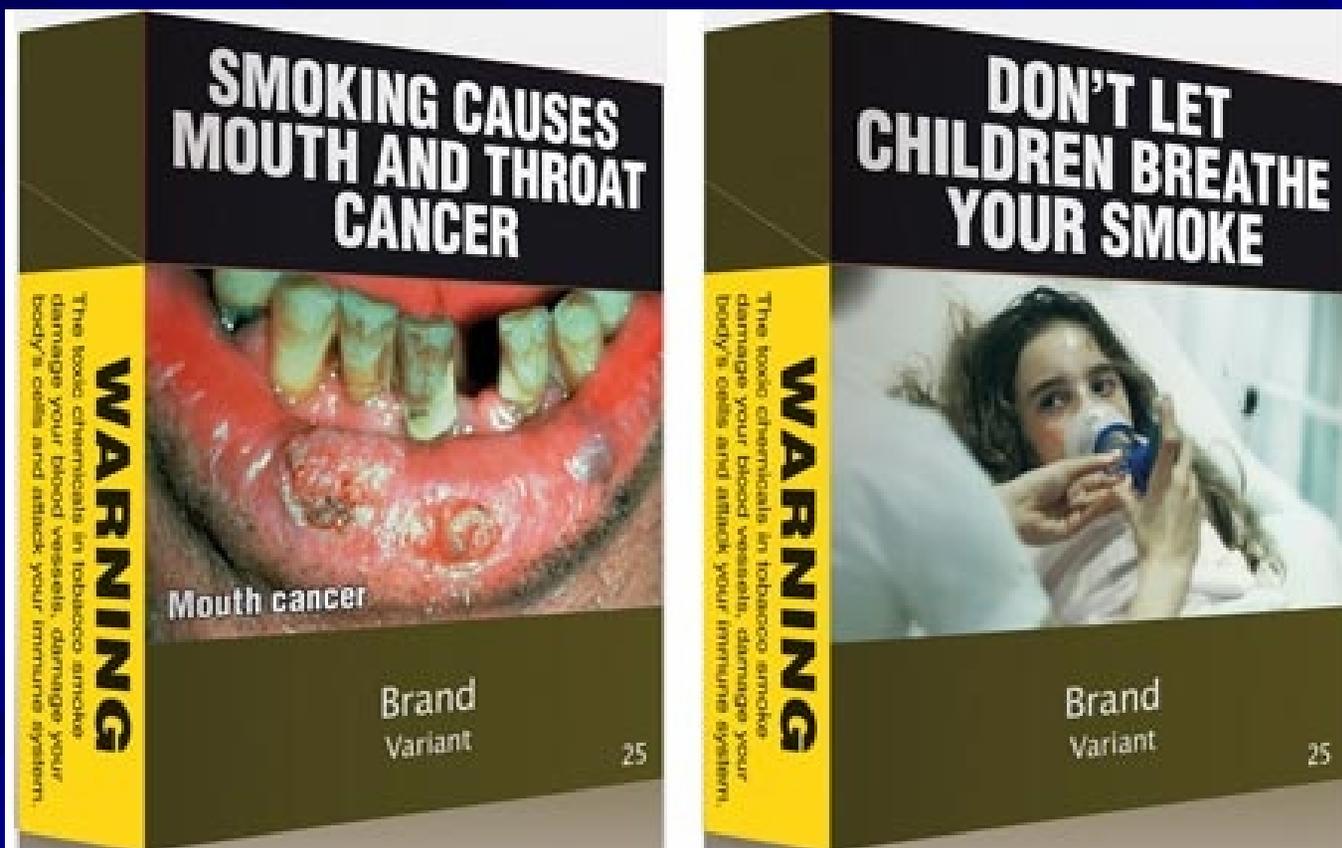
| Date | Development |
|---------------------------------------|---|
| March 26, 2010 | The Secretary-General registers a request for the institution of arbitration proceedings. |
| March 15, 2011 | The Tribunal is constituted. Its members are: Piero Bernardini (Italian), President; Gary B. Born (U.S.); and James R. Crawford (Australian). |
| May 25, 2011 | The Tribunal holds a first session by telephone. |
| September 06, 2011 | The Tribunal issues a procedural order concerning confidentiality. |
| September 24, 2011 | The Respondent files a memorial on jurisdiction. |
| January 24, 2012 | The Claimants file a counter-memorial on jurisdiction. |
| April 20, 2012 | The Respondent files a reply on jurisdiction. |
| July 20, 2012 | The Claimant files a rejoinder on jurisdiction. |
| February 05, 2013 - February 06, 2013 | The Tribunal holds a hearing on jurisdiction in Paris. |

LOCAL

NATIONAL

GLOBAL

AUSTRALIA



LOCAL

NATIONAL

GLOBAL

- **Trade Agreement:**
1993 Bilateral Investment Treaty
- **Alleged Violation:**
Infringement on intellectual property
without justification or compensation
- **Court #1:** UN Commission on
International Trade Law

AUSTRALIA



HONG KONG

LOCAL

NATIONAL

GLOBAL

- **Trade Agreement:**
GATT, TRIPS, and TBT
- **Alleged Violation:**
Overly restrictive policies and thus discriminatory action
- **Court #1:** UN Commission on International Trade Law
- **Court #2:** WTO Dispute Settlement

AUSTRALIA



HONDURAS



UKRAINE



DOMINICAN
REPUBLIC

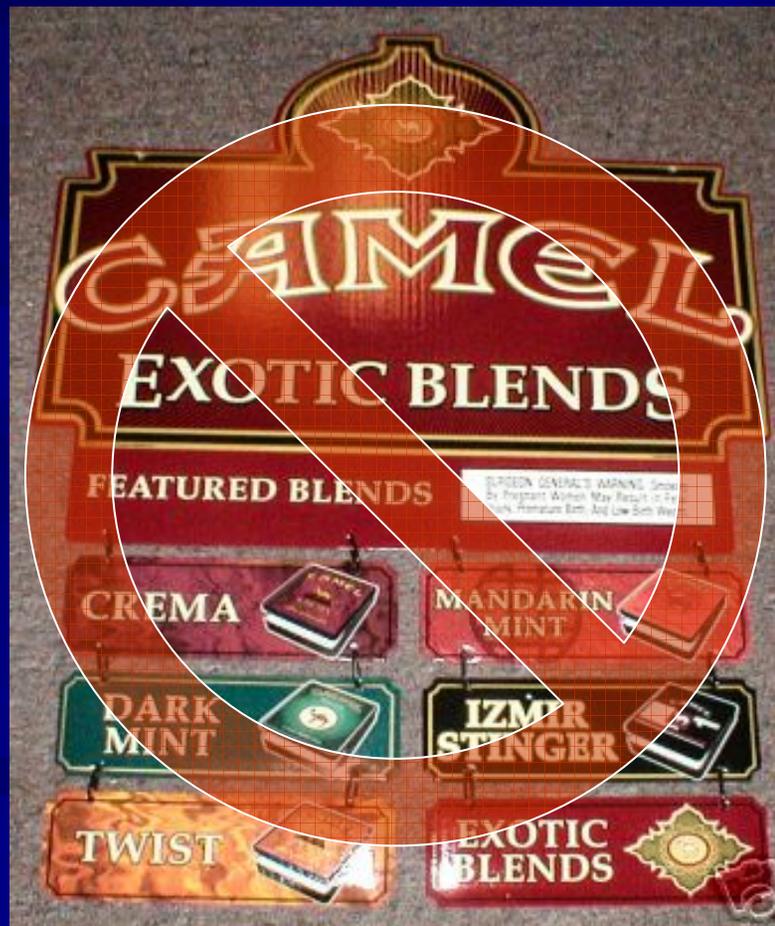
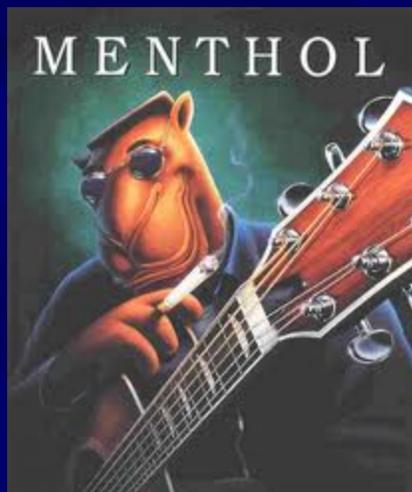
LOCAL

NATIONAL

GLOBAL

U.S.A.

INDONESIA



**2009 Family Smoking
Prevention and
Tobacco Control Act**

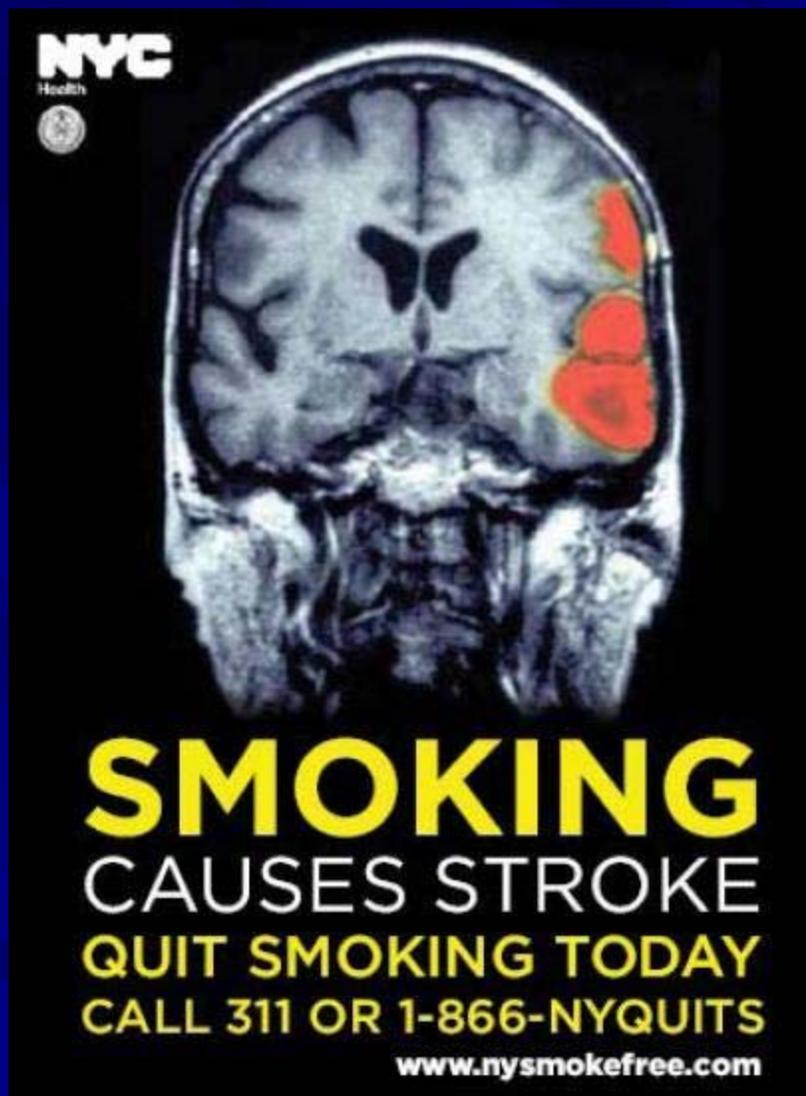
LOCAL



**NEW YORK
CITY**

NATIONAL

GLOBAL



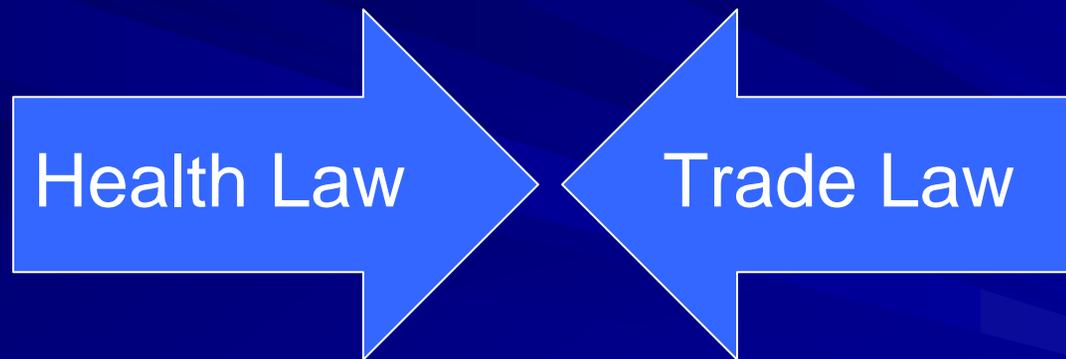
2009 NYC Board of Health resolution requiring tobacco retailers to display health messaging.

Appeals court rejected the resolution.

“Federal government gets to decide how to warn people about the dangers of cigarette.”

Tobacco Industry Strategy

- Trade agreements offer vehicle to contest domestic laws and regulations, where internal opposition fails



- At stake: the ability of governments at every level to safeguard the health of their own peoples.

LOCAL



**What about
Californians?**

It IS about health



NAFTA Suit: MTBE

- Methanex Corporation of Canada sued the United States for \$1 billion, claiming that the use of MTBE in gasoline caused environmental damage.
- Due to the lawsuit, Chevron Gasolines in Tahoe Basin promised to remove MTBE from use in gasoline.



Trade-based Challenges

- 1) the ability to ban flavored cigarettes
- 2) cigarette packaging and warning labels
- 3) point-of-sale product advertising
 - Trade-based lawsuits in Norway and Ireland
- 4) tobacco taxation

| FTA | Year | Changes to duties (taxes) on US tobacco exports |
|-------------|------|--|
| Colombia | 2011 | Immediate elimination (duty-free) |
| South Korea | 2011 | Eliminated within 10-15 years |
| Panama | 2011 | Immediate elimination |
| Peru | 2009 | Elimination immediately or within five years |
| Singapore | 2004 | Continues to be duty-free |
| Chile | 2004 | Immediate elimination |

Tobacco Policy Measures that could be undermined by Trade Agreements

- ➔ Tobacco tariff and tax policy
- ➔ Reducing exposure to second-hand smoke, clean indoor air rules
- ➔ Ingredient disclosure requirements
- ➔ Warning labels
- ➔ Restrictions on retail distribution networks for tobacco products
- ➔ Cigarette content regulation
- ➔ Bans on misleading descriptors –“light”“mild”
- ➔ Advertising, promotion, sponsorship, and marketing restrictions

Mele Lau-smith “Corporate Led Globalization”

WHAT DO TRADE AGREEMENTS DO?

“Liberalize” trade:



Facilitate global corporate transactions

Reduce barriers to trade

- Barriers to trade in steel & other goods = tariffs
- Barriers to trade in services = “measures”
 - Regulations
 - Laws
 - Administrative rulings



World Trade Organization (WTO)

- Formed 1995--emerged from General Agreement on Tariffs and Trade (GATT)
- Based in Geneva, Switzerland
- 158 member nations
- Ministerial meetings of all member countries every two years (e.g. Seattle, Doha, Cancun)
 - Between Ministerial meetings, ongoing “negotiations” and working group meetings
- Operates by “consensus” - but the “quad” countries dominate process
 - US, EU, Canada, Japan

Can Nations Protect Health?

- WTO permits national or sub-national “measures to protect human, animal or plant life or health”
- But: government measures to protect health cannot discriminate against foreign corporations or serve as disguised barriers to trade

Grounds for Trade Claim: Is the Measure...

- Necessary to protect health
- Least trade-restrictive possible
- A disguised discrimination against another country's products or services
- Based on scientific evidence
- Based on scientific proof of the risk of the regulated product or service
- Expropriation of a company's expected profits

WHO Framework Convention for Tobacco Control

- Bans sales to minors
- Promotes agricultural diversification
- Bans advertising promotion & sponsorship
- Rotates pack health warnings at 30-50% size
- Eliminates illicit trade in tobacco
- Violates WTO Rules?

Enforcing Trade Rules: WTO Dispute Resolution

- 3 WTO-appointed trade “experts” decide in closed session if a WTO policy has been violated
- They can impose economic sanctions on losing country
- These rules challenge domestic sovereignty to regulate and protect health and access to vital human services



Regional, Bilateral Agreements

- With failure of large international trade negotiations at WTO in 2003 and 2006, US now focuses on individual countries and smaller regions.
 - Australia
 - CAFTA (Central America Free Trade Agreement/ Dominican Republic)
 - Andean Region (Panama, Colombia, Peru), Korea
 - Trans-Pacific Partnership
 - EU proposal

Investor's rights, : NAFTA

- NAFTA: North American Free Trade Agreement, 1994
 - US, Mexico Canada
- Created new legal rights for foreign corporations to sue national governments if they assert that laws or regulations restrict trade:
- Investor's rights, Chapter 11

Right to Regulate Vs. Corporations' Right to Sue

- Foreign corporations can directly challenge national government actions.
- Grounds: the loss of current or future profits, even if caused by a government agency prohibiting the use of a toxic substance.

The TPP: Trans Pacific Partnership

- Regional: U.S., New Zealand, Australia, Brunei, Chile, Malaysia, Peru, Singapore, and Vietnam.
- Canada and Mexico joined; ? Japan
- All partners have signed the Framework Convention on Tobacco Control (FCTC); all but the U.S. have ratified it.

Why TPP? Why Now?

- Response to China's growing economic clout
- Opportunity to expand or constrain corporate rights over sovereign domestic policy-makers and policies

Tobacco Supports TPP

Philip Morris International

- Leading international tobacco company
- 7 of the world's top 15 cigarette brands
- Operates in all TPP countries

Goals:

- Freer trade in goods
- Increase services and investment across national borders
- Protect investor and intellectual property rights

Lack of Transparency

- Requests and offers, and negotiating texts are not open to review (even by Congress)
- Agreements are obscure and complex

Process is Secretive

- USTR Consults with:
 - Trade Committees in Congress
 - Advisory Committees
- Members sworn to secrecy
- Documents confidential

Fast Track Authority

- “Fast-track:” Once agreement reached, Congress can only vote up or down

Campaign for Public Health Representation

- US Trade Representative Advisory Committees
- Mechanism for domestic input into trade negotiations
- Provide formal, informal advice to executive branch
- 110 meetings in 2001

Trade Advisory Committees: Business: 42 Public Health: 0

| | | | |
|------------------|----|---------------|---|
| Pharma | 20 | Public Health | 0 |
| Tobacco | 7 | Public Health | 0 |
| Alcohol | 6 | Public Health | 0 |
| Food | 5 | Public Health | 0 |
| Health Insurance | 4 | Public Health | 0 |

Tobacco: 7 Public Health: 0

- **Tobacco Industry** - Representatives associated with this industry serve on at least 2 advisory committees:
 - Tobacco, Cotton and Peanuts (ATAC)
 - Consumer Goods (ITAC 4).
- Total Representatives Associated with Tobacco Industry: 7.

Tobacco Control Rep. Appointed

Judy Wilkenfeld from the Campaign for Tobacco Free Kids appointed in 2005 as the first tobacco control representative to serve on a trade advisory committee.



Taking Action: San Francisco 2010 TPP Negotiations

■ Trans-Pacific Partnership



City and County of San Francisco

Tails Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100822

Date Passed: June 22, 2010

Resolution Calling on U.S. Trade Negotiators to Exclude lethal tobacco and tobacco products from the Trans-Pacific Partnership and other trade agreements negotiated by the United States, and urging the appointment of public health representatives to advise U.S. Trade Negotiators to protect public health.

June 22, 2010 Board of Supervisors - ADOPTED

Health Leaders Prescribe Caution on Trade Agreements

Drs. David Satcher, Joyce Lashof, Victor W. Sidel, Anthony Robbins, APHA, AMA, ANA, CPATH:

- New trade rules threaten ability of nations to protect public health
- Issue Call for Public Health Accountability



CPATH in Chicago 2011 TPP Negotiations

- CPATH and others present critique
- AMA releases statement calling for tobacco carve-out
- USTR initiates informal talks with “stakeholders”

TPP and Tobacco Control Exception

- The USTR announced it would present an exception for tobacco control measures in advance of a negotiating round for the Trans Pacific Partnership (TPP) in May, 2012
- Proposal on indefinite hold

Call For Advocacy

- Reinvigorate the campaign to advance tobacco control
- Assert critical priority of public health principles
- Forge consensus on a multi-pronged strategy to assure tobacco control measures not undermined by trade agreements

FTAA: Free Trade Area of the Americas - Defeated

- Launched in 1994. Negotiating deadline: 2005
- NAFTA for all 34 countries in North, Central, South America and the Caribbean (except Cuba)
- Most comprehensive proposed trade agreement in history, would have affected more than 800 million people

Possible Research Questions

- ❑ How is the tobacco industry using trade rules and agreements as a strategy to attack tobacco control measures at the state and local level?
- ❑ Under existing rules, how is/can the tobacco industry attack federal legislation, e.g., the Tobacco Control Act, and what strategies can effectively safeguard local, state, and federal tobacco control efforts?

Possible Research Questions

- ❑ Disseminate findings to state and local California governmental decision-makers and bodies and NGOs, sharing best practices used in other communities and nations to combat tobacco industry efforts, in order to strengthen tobacco control efforts in California.

Research Questions

- What arenas are proving successful at revealing and reversing industry strategies, or might be successful? What strategies best leverage the strengths of tobacco control at the local, state, national and international levels?

Research Questions

- Lessons from the exercise to propose a limited "exception" for tobacco control regulations during negotiations for the TPP?
- What are potential advantages of focusing advocacy on the powerful issues surrounding tobacco use, and what might be added by alliances with other constituencies?
 - Tobacco control policies and campaigns must contend with the nature of a product that remains legal, although lethal, in part because it is also addictive and therefore profitable.

Research Questions

- What are the right time frames and metrics to measure success?

Research Questions

Cost-Benefit:

Earnings to investors in tobacco

vs.

Health care costs of tobacco-related
morbidity and mortality

Policy: Toward a Higher Trade and Health Standard

- Exclude tobacco from international trade agreements
 - Trade agreements exclude other legal products and services that are hazardous or critical to public safety: some weapons, airline safety
- Promote policy coherence with international partners, based on active campaigns in the U.S.

Strengthen Democracy

- Inform communities about Fast Track
- Involve Health Ministries in trade negotiations

Incorporate FCTC in Trade Agreements

Consortium

- Establish a national/California consortium on tobacco control and trade

CPATH

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