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Uruguay Hints at Compromise in Arbitration with Philip Morris

Luke Eric Peterson (Investment Arbitration Reporter) · Wednesday, July 28th, 2010

A string of mainstream media reports are suggesting that Uruguay is looking to compromise with Philip Morris International in relation to a sensitive international arbitration.

On Tuesday, The UK-based *Guardian* newspaper reported that Uruguay

> has promised to water down anti-smoking laws after pressure from the tobacco giant Philip Morris, prompting accusations of corporate bullying.

More specifically, the paper reports that Uruguay will make certain changes to its strict tobacco control laws in order to comply with its "international trade obligations":

> "On some arguments, Uruguay is very strong from a legal point of view and changes aren't necessary. On other points, we need to make changes to the law or come up with a new law," the foreign affairs minister, Luis Almagro, said.

Readers of this blog may recognize that these developments come in the context of an arbitration claim initiated by Philip Morris International at the International Centre for Settlement of Investment Disputes (ICSID). For background on the claim, see this report from my *Investment Arbitration Reporter* newsletter (no subscription required).

It's not clear on what basis Uruguay has decided that its policy must be amended. According to the ICSID, the country has yet to instruct outside legal counsel. As such, it's not clear whether the government commissioned external legal opinions (or relied on internal legal advice) following Philip Morris International's filing of a damages claim under the Switzerland-Uruguay bilateral investment treaty.

If the claim goes forward, it promises to be an extremely sensitive arbitration. Already, a number of NGOs and activist groups have drawn attention to the dispute, and raised concerns about the potential for BITs (and their intellectual property protections) to foreclose the use of certain public health measures.

No doubt both parties are keen for the arbitration to be settled, rather than devolve into a circus. However, if Uruguay is blinking as a result of a conviction that its policies are not compliant with its bilateral investment treaty obligations, such a move may reverberate widely – with governments coming under pressure to create more breathing space in their treaties for public health measures. (Mind you, Uruguay's new tobacco regulations were some of the strictest in the world, so the arbitration was not necessarily a test-case for more middle-of-the-road measures).

I'm planning to make further inquiries in order to understand what legal advice Uruguay received – and from whom – as part of its recent announcement that it must tweak its tobacco policies.

I'll update readers if I find anything interesting.

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