

WTO case on Australia tobacco law could have vast impact

May 4 2014, by Jonathan Fowler

A landmark challenge to Australia's plain-packaging law for cigarettes and cigars at the WTO could have vast implications for how governments square the rules of trade with radical public health measures.

The case against Canberra has been spearheaded by cigar-producing nations Cuba, the Dominican Republic and Honduras, which say brandless packaging is an assault on their trading rights.

World Trade Organization chief Roberto Azevedo is expected within days to name a three-member panel of independent experts on the laws of commerce, who will then have six months to issue a ruling on whether Australia is out of line.

"Resolution of this dispute is critical because it will go a long way toward indicating whether the WTO will allow countries to take reasonable actions that are intended to protect the public's health in an equitable and non-discriminatory fashion", Michael Siegel, a professor at the Boston University School of Public Health, told AFP.

The WTO panel was authorised in late April by a closed-door meeting of its dispute settlement body.

The Geneva-based WTO ensures that its 159 member economies respect the rules of global commerce and its panels have the power to authorise counter-measures by the wronged countries, such as raising import

tariffs on the guilty party's goods.

An initial ruling would not be the end of the story, however, as the WTO dispute settlement process can grind on for years, amid appeals, counter-appeals and assessments of compliance with rulings.

Australia's law was fought tooth and nail by the [tobacco](#) industry before and since its entry into force in December 2012.

But it is lauded by the World Health Organization and campaigners around the globe, who appreciate Canberra's longstanding vanguard role in the fight against tobacco use—the leading global cause of preventable death, claiming six million lives a year worldwide.

Key anti-smoking measure

The legislation requires all tobacco products to be sold in drab green boxes, use the same typeface and contain graphic images of diseased smokers.

Canberra and its supporters argue that by hitting the industry's branding power and by pushing stark messages, the law will help curb the number of smokers, notably young people who might otherwise take up the habit and thereby replenish the industry's customer base.

"Tobacco [plain packaging](#) is a legitimate measure designed to achieve a fundamental objective: the protection of [public health](#)," a spokesperson for Australia's Department of Foreign Affairs and Trade told AFP.

"Australia will vigorously defend the challenges to tobacco plain packaging in the WTO. Australia is confident the tobacco plain packaging measure is consistent with WTO obligations," the spokesperson said.

"Introducing tobacco plain packaging was the next logical step to restrict promotional material on [tobacco products](#), closing one of the few remaining avenues for tobacco advertising in Australia."

Australia maintains that because plain packaging treats all players equally, it does not constitute discrimination under the so-called TRIPS agreement covering trade and intellectual property rights.

The argument that the law breaches trademark rules also failed to convince the Australian High Court in a case brought by tobacco firms.

Canberra also accuses its rivals of dragging out the process of filing WTO complaints, thus discouraging other countries from adopting similar legislation until their compatibility with trade rules is clear.

Plans to bring in plain packaging rules across the 28-nation European Union have been sluggish, but Britain, Ireland and New Zealand have now said they plan to forge ahead.

'Detrimental to fair competition'

Honduras, Cuba and the Dominican Republic say the legislation harms their traditional cigar brands, thereby hurting farmers and hundreds of thousands of cigar-sector employees in the three countries.

"We will do everything we can in order to protect the jobs, export revenues and [intellectual property rights](#) that are invaluable to our developing economy," said the Dominican Republic's WTO ambassador, Luis Manuel Piantini.

"Plain packaging is not only an ineffective health policy, but also one that is detrimental to fair competition in the marketplace," he added.

Fellow plaintiffs Indonesia and Ukraine, meanwhile, are both leading raw tobacco and cigarette exporters.

Analysts say the case tests the balance between TRIPS rules and measures that government argue are in the public interest, meaning a ruling could open a Pandora's box of other cases.

TRIPS public interest exemptions have in the past been interpreted as being related to security or morals, rather than health or the environment, said Fredrik Erixon, director of the European Centre for International Political Economy.

"This is going to set a precedent," he told AFP.

"What we're talking about here is the extent to which a government actually can deny a company the right to communicate its own trademark, to distinguish its own goods from other goods."

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