

**ARBITRATION UNDER THE
RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES**

**PHILIP MORRIS BRANDS SÀRL
PHILIP MORRIS PRODUCTS S.A.
AND
ABAL HERMANOS S.A.
CLAIMANTS**

V.

**ORIENTAL REPUBLIC OF URUGUAY
RESPONDENT**

ICSID Case No. ARB/10/7

***REQUEST TO FILE A WRITTEN SUBMISSION (AMICUS CURIAE BRIEF)
BY THE
PAN AMERICAN HEALTH ORGANIZATION***

6 MARCH 2015

PAN AMERICAN HEALTH ORGANIZATION
525 23RD STREET N.W.
WASHINGTON, D.C. 20037

1. Petitioner, the Pan American Health Organization (PAHO), respectfully seeks permission to act as a non-disputing party in this arbitration by filing with the Tribunal the written submission attached as an Appendix to this Application, pursuant to Article 37(2) of the Rules of Procedure for Arbitration Proceedings (Arbitration Rules) of the International Centre for the Settlement of Investment Disputes (ICSID).
2. Petitioner is the oldest public health agency in the world. It was founded by countries of the Americas in 1902 for the purpose of collaboratively addressing devastating epidemics of cholera, plague, typhus, influenza and other deadly diseases in the region. In its early years, Petitioner worked with Member States to establish the first regional uniform sanitary code, which was implemented region-wide in the 1930s. Petitioner also established a number of regional health centers with the intention of studying local problems and finding local solutions, while also building local research capacity. Since its founding, Petitioner has worked continuously with its Member States, other international organizations, and partners to develop and update strategies to address problems of health and disease facing the Region of the Americas. No other public health agency has the same depth of knowledge and experience as Petitioner regarding the health challenges facing the countries of the Americas, or the same level of success as Petitioner in helping countries address them. Those successes include the following milestones:
 - A gain of 30 years in average life expectancy in the Region of the Americas since 1902
 - Eradication of smallpox from the Americas
 - Eradication of polio from the Americas
 - Eradication of cholera from Central America
 - Elimination of the endemic transmission of measles, rubella and congenital rubella syndrome
 - Major reductions in infant and child mortality
 - Drastic reductions in mortality from tuberculosis
3. Petitioner also serves as a regional office of the World Health Organization (WHO), which was founded after World War II. While Petitioner entered into an arrangement with WHO in 1946, in which it agreed to serve as its Regional Office for the Western Hemisphere, Petitioner nevertheless maintains its separate and independent identity as PAHO and files this Application as such.
4. In addition, by agreement between the Organization of American States (OAS) and PAHO in 1950, Petitioner serves as the specialized health agency of the OAS, whose other specialized agencies include the Inter-American Development Bank and the Inter-American Institute for Cooperation on Agriculture. During its more than 110 year history, Petitioner has worked with the singular intention of improving the health of the peoples of the Americas by providing technical cooperation and mobilizing partnerships to improve health and quality of life.
5. Petitioner has 35 Member States in North, Central and South America and the Caribbean, four Associate Members (Puerto Rico, Aruba, Curaçao and Saint Maarten), three

Participating States (France, the Netherlands, and the United Kingdom), and two Observer States (Portugal and Spain). The Pan American Sanitary Conference is the supreme governing authority of the Organization and consists of the Ministers of Health from each Member State.

6. Article 1 of the PAHO Constitution provides that the fundamental purpose of the Organization is “To promote and coordinate efforts of the countries of the Western Hemisphere to combat disease, lengthen life, and promote the physical and mental health of the people.”¹ Consensus is built through Resolutions guiding Member States on best practices covering topics specific to a wide variety of health-related matters affecting the Region of the Americas, including the growing tobacco epidemic.
7. While the original focus of Petitioner’s work at the turn of the twentieth century was in the area of communicable diseases, due to advances made in the treatment and control of endemic diseases, a changing demographic in the Western Hemisphere, and the effects of globalization, the Organization is now focused not only on communicable diseases but also on noncommunicable diseases (NCDs), such as cancer, cardiovascular and respiratory diseases, and diabetes. The rise of NCDs in the Americas Region, combined with an initial focus by Member States only on the complications resulting from these diseases, led Petitioner to strongly promote the establishment, at the local level, of integrated interventions intended to promote health and prevent the risk factors for NCDs. While cancer, cardiovascular and respiratory diseases, and diabetes can be caused by a number of risk factors, they all share one common risk factor – tobacco use.
8. In the Americas, 145 million people smoke. They represent 12% of the more than 1 billion smokers worldwide. Moreover, tobacco use is responsible for 15% of all deaths of adults 30 years of age and over in the Region.² Together with second-hand smoke exposure, tobacco is responsible for approximately 1,000,000 deaths annually in the Region of the Americas.³
9. Starting in the early 1960s, Petitioner has promoted strategies to control tobacco use in all countries in the Region. As more and more evidence has become publically available over the years regarding the significant health risks associated with tobacco consumption – and as the tobacco industry has grown more and more aggressive in its advertising, marketing and sponsorship of tobacco products – Petitioner has diligently worked with its Member States, including Uruguay, to devise strong national strategies and also coordinated regional strategies for protecting citizens of the Americas against the hazards of tobacco use and second-hand smoke exposure.
10. Given Petitioner’s Constitutional mandate and its more than 110 year history as a champion for health in the Americas, Petitioner has a unique and in depth understanding of the specific health challenges facing the Region, and Uruguay in particular, including the tobacco epidemic. In its Submission, Petitioner will share with the Tribunal official technical information and evidence regarding distinct trends in tobacco marketing and consumption in

¹ PAHO Constitution. Available at:
http://www.paho.org/hq/index.php?option=com_content&view=article&id=100&Itemid=40324&lang=en

² Pan American Health Organization, Tobacco Control Report for the Region of the Americas. (2013) p.1

³ *Id.*

Uruguay and the greater Americas Region and, based on Petitioner's technical expertise, how those trends can and are being effectively addressed through well-crafted tobacco control legislation, regulations and policies, such as those in dispute here. For example, Petitioner's Submission describes the early and ongoing efforts in the Americas region by Petitioner and its Member States to address tobacco use and its related harmful effects on public health; the growing recognition that the tobacco industry's advertising and promotion of tobacco products was being aimed at specific target groups (such as women and young people) and was meeting with measurable success in countries such as Uruguay; evidence that the traditional patterns of smoking seen in other regions of the world were at times reversed in countries of the Western Hemisphere; and the approaches to tobacco control that were meant to address the region-specific challenges being faced by countries in the Americas.

11. Petitioner's Submission also contains details regarding tobacco control strategies mandated by PAHO's Governing Bodies – for implementation by PAHO Member States, including Uruguay – beginning in the 1960s. It also demonstrates how Uruguay's regulatory framework directly responded to these regional mandates, as well as international mandates such as those under the World Health Organization Framework Convention on Tobacco Control.
12. The information set forth in Petitioner's Submission addresses matters within the scope of the dispute. Specifically, Petitioner's Submission establishes the regional and country-specific context in which Uruguay's regulatory approach on packaging and labeling of tobacco products was developed, as well as the reasonableness and effectiveness of this approach when considering the ever-changing strategies implemented by the tobacco industry to attract new smokers as smokers either died or quit. The Petitioner also provides information on the tobacco industry's response to tobacco control efforts in the Region, which may be highly relevant to the context of this dispute.
13. Petitioner also wishes to assure the Tribunal that its Submission is not duplicative of the *amicus curiae* brief submitted jointly in this matter by the World Health Organization and The WHO Framework Convention on Tobacco Control Secretariat. While Petitioner understands that the WHO brief generally focuses on the evidentiary basis underlying specific tobacco control measures and provides evidence gathered globally from WHO Member States regarding the scope and impact of the tobacco epidemic, Petitioner's Submission focuses specifically on the context in which Uruguay and other countries in the Americas Region regulate tobacco, the distinct challenges they face, and regional strategies developed by Petitioner and its Member States to address those challenges.
14. PAHO has a significant interest in the proceedings because the outcome of the dispute between the Parties in this case will have an impact on more than 50 years of work in the Americas Region in the area of tobacco control – work that has proven to be extremely effective in reducing tobacco use and exposure to tobacco smoke. In its Submission, Petitioner will outline the significant gains that have been made by countries of the Region of the Americas, including Uruguay, in reducing tobacco consumption, and why these public health gains are at risk in this arbitration. More importantly, as more developed countries in the Region have moved to implement tighter tobacco control laws, the tobacco industry has turned its attention to the developing countries, heavily focusing its advertising and marketing

strategies on low income populations, women and especially young people. Consequently, the outcome of this case may not only have dire consequences for the ability of PAHO Member States, including Uruguay, to protect the public health of their populations, but could have potential major adverse implications for the health and wellbeing of the most vulnerable populations in the Region of the Americas. As a result, Petitioner and its Member States have publicly recognized and fully support Uruguay's efforts to protect its citizens from the harmful effects of tobacco consumption, including through its implementation of the 80% Rule and the Single Presentation Rule,⁴ which are currently being challenged in this proceeding.

15. For these reasons, Petitioner respectfully requests that the Tribunal accept its Application to file with the Tribunal the written submission attached as an Appendix to this Application.



Dr. Carissa F. Etienne, Director
Pan American Health Organization

Attachment

⁴ Pan American Health Organization. 50th Directing Council. Resolution CD 50R6, *Strengthening the Capacity of Member States to Implement the Provisions and Guidelines of the WHO Framework Convention on Tobacco Control*. Available at: <http://www2.paho.org/hq/dmdocuments/2010/CD50.R6-e.pdf>.