

Trade, Investment and Non-Communicable Diseases: Strengthening Regulatory Capacity



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Structure

1. Basic features of international trade and investment agreements
2. Contemporary challenges to regulation under trade and investment agreements
3. Capacity building in this area



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Basic features of international trade and investment agreements



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The trade regime

- Trade agreements compel states to lower barriers to trade (liberalize trade).
- Barriers include tariff and 'non-tariff barriers', such as regulations.
- Rules governing non-tariff barriers seek to prevent regulatory protectionism (discrimination) and unnecessary regulation.
- Agreements also restrict use of agricultural and other subsidies and provide minimum standards of protection for intellectual property rights.



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Basic features of international investment law

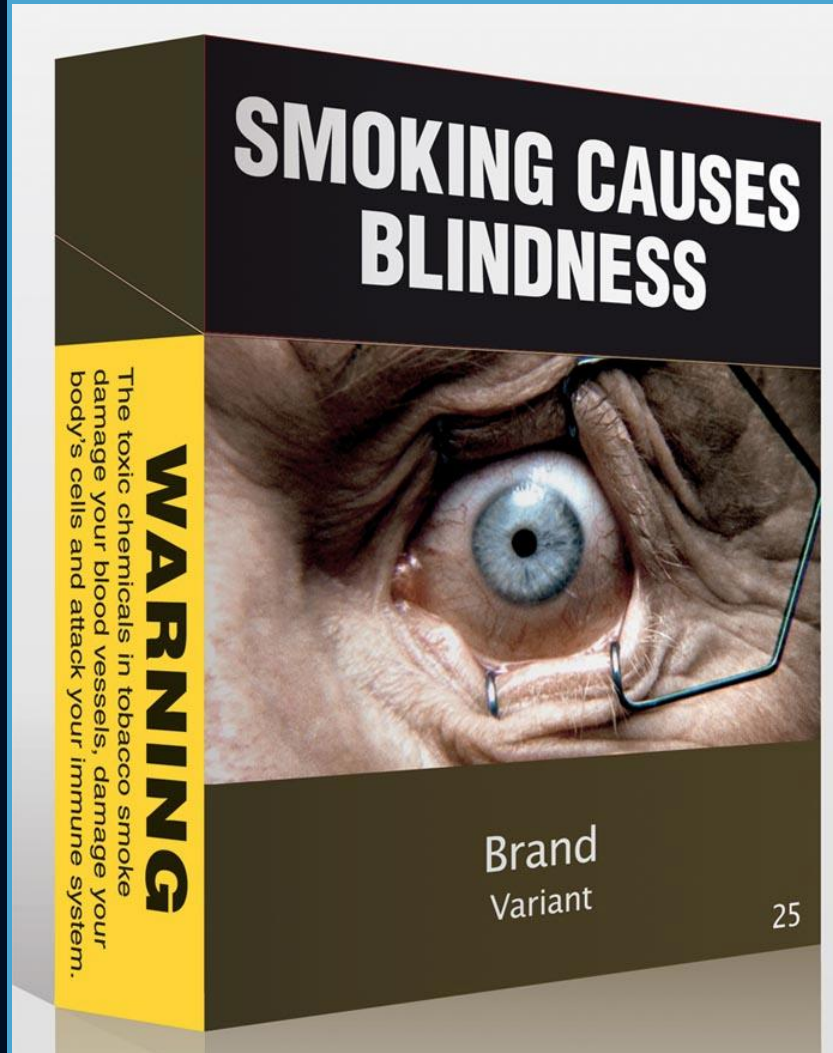
- Investment contracts between the state and an investor provide legal protection for the investor, including in the contexts of taxation and regulation.
- Investment treaties between states protect the property rights of foreign investors and are increasingly used to challenge regulation through international arbitration rather than domestic courts.

Contemporary challenges to regulation



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Plain packaging



- Referred to in Guidelines to the WHO FCTC
- Implemented by Australia
- Challenged at the WTO on the basis that it interferes with trademark rights and is more trade restrictive than necessary
- Challenged by Philip Morris under an investment treaty on the basis that it expropriates property rights and is unreasonable

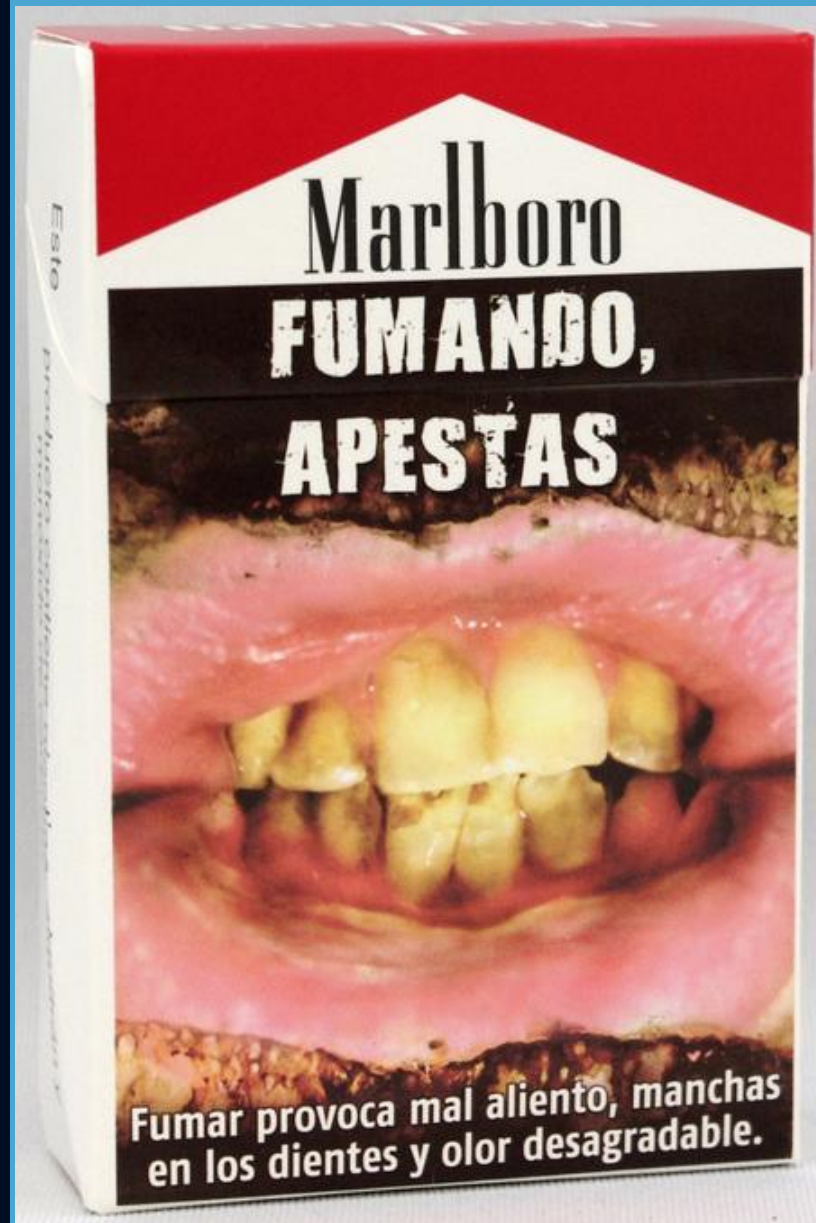


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Uruguayan packaging



- Graphic warnings covering 80% of the surface
- A ban on misleading branding, including brand variants
- Challenged by Philip Morris under an investment treaty on the basis that it expropriates property rights and is unreasonable

Product regulation



- US ban on clove but not menthol cigarettes ruled to be violation of WTO law
- Canadian and Brazilian restrictions on additives and flavors questioned in the WTO Committee on Technical Barriers to Trade (TBT Committee)



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Alcohol labeling



Type 1 “Drinking alcohol causes the hypertension liver cirrhosis”



Type 4 “Drinking alcohol leads to sexual impotency”



Type 2 “Drunk driving causes disability or death”



Type 5 “Drinking alcohol leads to adverse health effect and family problems”



Type 3 “Drinking alcohol leads to unconsciousness and even death”



Type 6 “Drinking alcohol is a bad role model for children and young people”

- Thai proposal questioned in the WTO TBT Committee in 2010 and under consideration since
- Turkish proposal also questioned



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Food labeling



- Chilean proposal for traffic light labeling questioned in TBT Committee since March 2013
- Indonesian, Peruvian and Thai labeling measures also questioned



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Capacity building



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Trade and tobacco control consultations

- Workshops in each of the six WHO regions from July 2012 – June 2012
- Technical assistance missions and 'train the trainer' in selected Member States



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Lessons learned

- Importance of horizontal (basic skills) training as well as using vertical (regulation specific) approaches
- Sustainability is a challenge both at the international and domestic levels
- Inter-departmental training can help bridge gaps between government agencies, but is unlikely to solve cooperation problems