

U.S. CHAMBER OF COMMERCE

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April 24, 2014

The Honorable Danilo Astori President Senate of Uruguay Palacio Legislativo Av. de las Leyes s/n Montevideo, Uruguay

Dear President Astori:

On behalf of the U.S. Chamber of Commerce, I write to share with you our concern regarding proposed legislation currently being reviewed by the Parliament of Uruguay that would, amongst other things, prohibit all tobacco products from being displayed by retailers in Uruguay.¹ While the U.S. Chamber of Commerce supports measures to achieve public health objectives, we believe this prohibition is both excessive and undermines intellectual property rights (IPR) that are a key component in achieving an innovative and competitive economy.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. One of the issues of greatest importance to our organization is the protection of IPR. The protection of these rights is vital to creating jobs, advancing economic growth, and generating breakthrough solutions to global challenges. Accordingly, we take seriously any proposal that weakens one industry sector because of its potential spill-over effect on other industry sectors. For the reasons set forth below, we think the prohibition on display of such products in retail stores establishes a bad precedent for companies from both of our countries.

The proposal to ban the display of any commercial tobacco product represents a serious threat to intellectual property as it would undermine the value of trademarks and trade dress used by international companies that operate in Uruguay. If this measure is approved, manufacturers' marks may no longer serve to distinguish one

¹ Folder 1221/2013 Prohibition of Advertising, Promotion and Sponsorship

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product from another. This will damage not only the affected companies and their workers but may also affect consumers, who may have less readily available information to make educated choices among different brands.

The proposed measure would also have a disruptive effect on the formal economy. While protection of public health is an important and legitimate objective, placing legal products out of the sight of consumers is likely to have unintended consequences such as encouraging illicit trade. As more customers move to the illicit trade, legitimate retailers lose customers, and in turn, revenue. This illicit trade costs governments significant amounts in tax revenue; hurts legal business and manufacturers; undermines public health objectives; and also funds organized crime and terrorism.

Finally, we believe the proposed measure is inconsistent with Uruguay's obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property (the TRIPS Agreement). TRIPS Article 20 states that the use of a trademark in the course of trade "shall not be unjustifiably encumbered by special requirements, such as . . . use in a manner detrimental to its capability to distinguish the goods and services of one undertaking from those of other undertakings." The proposed measure encumbers the use of the trademark because trademarks will no longer be visible to customers at the point of sale, making it impossible for customers "to distinguish the goods." Furthermore, there is no evidence that banning the display of tobacco products will reduce tobacco consumption. In light of the lack of reliable evidence that a display ban will have any effect in achieving public health objectives, the encumbrance on trademarks is unjustifiable.

In light of this, we request that the Parliament of Uruguay carefully consider proceeding in this direction. Other measures can be effective in protecting public health without undermining valuable intellectual property rights or international trade obligations. Toward that end, the U.S. Chamber of Commerce stands ready to engage in a constructive dialogue with the Parliament of Uruguay.

Sincerely,

cc: The Honorable Aníbal Pereira