

I, DR. WINSTON ABASCAL, hereby state as follows:

I. BACKGROUND

1. I am a Uruguayan citizen. I graduated as a medical doctor from the University of the Republic in 1975. Since 2005, I have served as Director of the National Tobacco Control Program (PNCT), an initiative created by the Ministry of Health for the purpose of coordinating and providing advice regarding national policy on tobacco control. In that capacity, I am responsible for advising the Minister of Public Health and the General Director of Health on the development and implementation of a national policy for the control of tobacco, in compliance with Uruguayan law and the Framework Convention on Tobacco Control.

2. Prior to assuming this post, from 1995 to 2000, I worked as Director in the Health Promotion Directorate of the Ministry of Public Health. As part of that Directorate, among others, there was a Program for the Prevention of Toxic Habits, which included the prevention of tobacco use and alcoholism. In 1999, I acted as the Head of the Delegation to the United Nations Population Fund's Cairo+5 Conference and worked on drafting the text of the Declaration of that Conference. In 2000, I coordinated the Uruguay Health Program 2010, which included activities to prevent tobacco use and coordination with civil society organizations that work on tobacco control. Also, on behalf of the Ministry of Public Health, I was a member of the National Alliance for Tobacco Control, an entity created that year with the participation of State institutions and civil society. The National Alliance for Tobacco Control promoted Uruguay's participation in the discussion of the text of the Framework Convention's document, as well as its subsequent signature and ratification.

3. With regards to the practice of my profession, I obtained my degree as a surgeon from the School of Medicine of the University of the Republic. I have been working in that capacity since

then. As part of my professional practice, I often provide counsel to patients about the harmful effects of tobacco use and the benefits of quitting. From 1980 to 1982, as part of a scholarship from the Konrad Adenauer Foundation of the Federal Republic of Germany, I worked as Assistant to the Clinical Surgeon at a hospital in the city of Karlsruhe, which is part of the University of Fribourg. I then acted as an invited physician at the Venusberg Surgical Clinic of the University of Bonn in the Federal Republic of Germany. In the year 2001, I obtained a diploma in Health Services Administration from the University of Montevideo, in Uruguay.

4. In my capacity as Program Director, I collect information on smokers' tendencies, the tobacco market in Uruguay, and the actions of tobacco companies in Uruguay. I am also continually exposed to information on advances made in the global and regional discourse on tobacco control, including reports, studies, surveys and literature on the subject. In addition, I have participated, as a representative of the Uruguayan government and in my personal capacity as expert in tobacco use regulations, in international forums on tobacco control. Likewise, I have participated in many conferences on tobacco control. I have represented Uruguay in the last three Conferences of the Parties to the Framework Convention ("COP"), the COP3 Conference held in South Africa in 2008, the COP4 Conference held in Punta del Este, Uruguay in 2010, and the COP5 Conference held in Seoul, South Korea in 2012, and will participate in the next COP6 Conference, which will be held on October 13-18, 2014 in Moscow, Russia. In addition, I represented Uruguay in the MERCOSUR and Associated States' Inter-Governmental Tobacco Control Commission since its inception. Also, I have been an advisor to the Ministries of Health of Mexico, Guatemala and Ecuador, and have participated in meetings with the Health Commissions of the Mexican Congress, the National Legislative Assembly of the Federal District of Mexico, and the National Legislative Assembly of Ecuador during the development of laws on tobacco control.

II. THE NATIONAL TOBACCO CONTROL PROGRAM

5. The National Tobacco Control Program (PNCT) is an agency within the Ministry of Public Health specifically focused on the national policy on the subject. I have served as Director of the Program since its inception in 2005. The Program was created after Uruguay ratified the WHO Framework Convention on Tobacco Control. As with other national programs of the Ministry, the PNCT reports to the General Directorate of Health and the Minister of Public Health. In the course of its work, the PNCT is in frequent contact with other institutions of the State and civil society.

6. After it was established, the National Program served as the representative of the Ministry of Public Health on the Tobacco Control Advisory Commission. The authorities of the Ministry of Public Health created this Commission after they ratified the Framework Convention in 2004, so that the Government could take advantage of the experience of experts who were already working in Uruguay on the issue of tobacco addiction. Since then, the Advisory Commission has historically met approximately twice a month to discuss issues regarding tobacco control in Uruguay. The dialogue with the Commission can give rise to recommendations that in some cases are submitted to the Ministry of Health for consideration. If it is found that a given proposal of the Advisory Commission is worth the attention of the Minister of Public Health, the Director of the PNCT advises the Minister's office and the General Directorate of Health accordingly. Likewise, when initiatives come from the Ministry, the PNCT frequently refers them to the Advisory Commission for consideration, not only to endorse them but also to improve or supplement them. The Commission's main objective, and that of the PNCT, is to progressively comply with the provisions of the FCTC for the purpose of protecting public health in Uruguay.

III. ORDINANCE 514/008: THE SINGLE PRESENTATION REQUIREMENT

7. The Ministry and the Advisory Commission have been studying and debating the national tobacco policy for years. In fact, the PNCT and the Advisory Commission provided counsel to the Government regarding measures adopted in Decree 171/005 which, among other initiatives, prohibited the use of misleading terms, in conformity with the provisions of Article 11 of the Framework Convention.

8. After the use of misleading terms such as “*light*” was prohibited on tobacco packaging in 2005, the government and representatives of the several organizations that formed part of the Advisory Commission realized that the tobacco companies were replacing brands that included prohibited terms with new ones, the majority of which could be differentiated within the same family by their color. For instance, one could see that Marlboro Light was replaced by Marlboro Gold, and that Nevada Lights, whose box was already white, lost the term “light” but continued being identified by its white-colored pack. In addition, the companies continued extending the same brands to new varieties that were presented as cigarette options that contained less tar, which were perceived as less harmful alternatives of that brand, such as Marlboro Blue. Given that the brand families had multiple presentations that could be differentiated by elements on the packaging, including by color, the tobacco companies managed to perpetuate the misconception that some varieties of cigarettes were less harmful than others.

9. Given this situation, it was clear that action had to be taken. This problem was discussed several times by the Advisory Commission between 2005 and 2008. During the months following the approval of Law No. 18,256 in March 2008, the Commission focused on the next steps necessary to move forward and implement the law, including Article 8, which applied to this problem.

10. The PNCT, in consultation with the Advisory Commission, considered several options to combat the tactics used by the tobacco companies and to implement the mandate of Article 11 of the FCTC, among them, plain packaging and single presentation by brand. During the evaluation of the options it was decided that Uruguay was not ready to adopt plain packaging, which is why it opted for single presentation.

11. We took this step as a result of the historic behavior of the tobacco industry. The fact that there were multiple variants within the same brand gave consumers the idea that one variant was less harmful than another. The single presentation requirement would respond to the deception caused by brands with prohibited terms, which the companies had simply replaced. Thus, the measure would serve to limit the companies' ability to replace brands prohibited due to their deceptive descriptors, with new ones, now based on colors and other designs. At the same time, the measure would make it more difficult for companies to continue deceiving users in the future by using the extension of their brands to position new varieties as less harmful, as they had done for many years. The colors per se were not prohibited. What we wanted to prevent with the measure was the deception related to the existence of multiple presentations of the same brand (frequently, but not always, using colors), which insinuated that some presentations were less harmful than others.

12. Once the Advisory Commission and the PNCT approved the recommendation to prohibit multiple presentations of the same brand, the proposal was presented to the Ministry of Health. In my capacity as Director of the PNCT, I discussed this recommendation with the Minister of Health, who after conferring with the Ministry's authorities, agreed with the measure. With the Minister's authorization, I sent a draft of the measure to the lawyers for the General Directorate of Health, who gave it the proper legal form. Article 3 of the Ordinance was drafted to

incorporate the language of Article 11 of the FCTC, given that its purpose was to implement the Article. After this revision, the Minister signed it on 18 August 2008.

13. During the time in which the possibility of implementing the single presentation requirement was being discussed, I participated in several meetings with representatives of Abal Hermanos. I have read the testimonies presented by Claimants describing the conversations that took place during those meetings. I affirm that Claimants' allegations about what I stated during those meetings are incorrect. Dr. Herrera, local counsel for Abal Hermanos, alleges that I explained that I had decided to implement single presentation after I saw a smoker at a store ask for Marlboro Lights and receive Marlboro Gold in return.¹ I declare that this phenomenon was not only being noted by me on repeated occasions, but also by several members of the Advisory Commission and the public in general, and was discussed at length in the meetings of the Advisory Commission. It was a fact that often happened; it was not only my own experience. That is why the Advisory Commission asked the Ministry to send a Notary Public to verify that fact, which was carried out by PNCT.² This experience was not the catalyst that led to the implementation of that measure, but the marketing strategy that caused this substitution was. This marketing strategy was addressed in Article 11 of the Framework Convention, and as was seen in the fact that Uruguayans continued to be deceived into thinking that some cigarettes could be healthier than others, and in the cigarette marketing practices in Uruguay that promoted that deception. Therefore, the idea to prohibit the extension of brands was not the result of just one experience, nor was it my own invention.

¹ First Herrera Statement, ¶ 3 (CWS-006).

² Gabriela Sierra del Cioppo, *Notarial Records* (19 Jan. 2009) (R-206).

14. Nor is it true that I personally drafted Ordinance 514 without any assistance from lawyers of the Ministry of Health, as Dr. Herrera contends.³ Any draft Ordinance considered by the Ministry of Health and turned over to the Minister for signature is first reviewed by the lawyers in the Ministry's General Directorate of Health or in the Ministry's General Secretary's Office. This includes the draft of Ordinance No. 514.

IV. DECREE 287/009: 80% WARNINGS

15. The PNCT also worked with the Advisory Commission with regard to increasing health warnings to 80%. In fact, in 2005 the PNCT and the Advisory Commission had already recommended that health warnings be increased to 50%, which was established by Decree 36/005.

16. In November 2008, the Conference of the Parties to the Framework Convention adopted the Implementation Guidelines for Article 11 of the FCTC. Based on the evidence reviewed during the course of four years since the ratification of the FCTC and before then, the Implementation Guidelines recommended that the warnings should cover more than 50% of the surface of a pack of cigarettes and as much of the surface as possible. Taking this into account, the PNCT and the Advisory Commission discussed best practices to implement warnings regarding increasing their size and adjusting their content.

17. In April 2009, the Minister of Public Health informed me that the President of the Republic had authorized us to continue our work to increase the size of the health warnings in line with the Convention's terms. In my capacity as Director of the PNCT, I brought the matter to the attention of the Advisory Commission, which had already been studying the issue of

³ First Herrera Statement, ¶ 4 (CWS-006).

improving the health warnings. In addition, we knew that one of the members of the Commission, Dr. Eduardo Bianco, had spoken with the President about this matter. During the course of discussing the options regarding the health warnings, several alternatives were addressed, including increasing them to 90% and considering plain packaging. Ultimately, the Advisory Commission agreed that the size of the health warnings should be 80%, thus providing space for the brand name on the lid of cigarette packs. The PNCT agreed with the measure; therefore, I brought the final recommendation to the attention of the Minister of Health. The Minister was also in agreement and authorized sending the proposal to the lawyers in the Directorate of Health for them to formalize the proposed decree. Once the draft decree was reviewed, it was referred to the attention of the Minister of Health for final consideration, and finally to the Executive Branch.

18. When the pictograms on the warnings were changed under Ordinance 466 some months after September 2009, in compliance with the requirement that pictograms be renewed every 12 months, the Ordinance incorporated the applicable requirements, including what had been established in Decree 287/009 and Ordinance 514/008.

19. I understand that Claimants argue that the decision to increase the size of the health warnings was a response to Mailhos' introduction of *alibi* brands to the market after the single presentation requirement entered into effect. This is not true. In the same respect, Mr. Dilley's allegation that I stated in meetings with representatives of Abal that the decision to increase the size of health warnings was a result of Mailhos' evasion of the single presentation requirement is incorrect. That was not the reason for the decision to increase the size of the health warnings. As has been confirmed by the Government on several occasions, the reason for increasing the size of the health warnings was to take a step forward in the struggle to make Uruguayans aware of the risks smoking poses to them and their families, to implement the recommendations of the FCTC,

and to take into account what the evidence had revealed, that the largest warnings are the most effective.

I hereby declare that the above statement is entirely true and correct to the best of my knowledge and belief. The facts and matters on which I offer my testimony in this statement are directly known to me. Counsel for the Republic has assisted me in the preparation of my statement based on interviews they held with me. I have carefully reviewed this text, and I certify that this statement is an accurate account of my testimony.

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WINSTON ABASCAL

Date: 9 October 2014_____

Place: Montevideo, Uruguay