

Articles

EXPLORING A MODEST BALANCE FOR TRADE IN TOBACCO, ANTI-TOBACCO SMUGGLING AND HEALTH CONCERNS IN LIGHT OF THE DOMINICAN REPUBLIC-CIGARETTES CASE

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ABSTRACT

In this paper, the author considers that if we are to realize the goal of the alleviation of the health threat resulting from tobacco use, a modest, but possibly useful start of balance between free trade in tobacco and tobacco controls would be to explore a more lenient space for tobacco control policy from the existing dichotomy contexts within the WTO legal order. Using Dominican Republic-Cigarettes as a case study, the author addresses two issues in terms of anti-tobacco smuggling and health concerns, i.e. GATT Article III:4 on national treatment and the general exceptions of GATT Article XX. The author argues that in the analysis of a violation of national treatment, adopting a narrow constructed interpretation on “like product” and “less favourable

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treatment” can offer a safer avenue for the legitimacy of anti-tobacco smuggling policy. In addition, the author argues that undertaking a properly balanced analysis through the notion of “necessary” might also provide a more balanced harbor for those measures found to be WTO-inconsistent and secure a justification under these exceptions.

KEYWORDS: *illicit trade, tobacco, Dominican Republic-Cigarettes, national treatment, necessity, FCTC*