

THE TBT AGREEMENT AND TOBACCO CONTROL REGULATIONS

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ABSTRACT

The article analyses reports issued by the panel and the Appellate Body in the US – Measures Affecting the Productions and Sale of Clove Cigarettes dispute and attempts to assess their broader consequences for national tobacco control policies. Both reports are particularly important because they clarify the limits existing under WTO law, in particular the TBT Agreement, in this policy space. In this context, the article investigates whether the WTO dispute settlement bodies interpreted relevant rules of the TBT Agreement in a manner that provides countries with sufficient regulatory autonomy while ensuring at the same time that their technical measures do not create unnecessary obstacles to trade. It also examines the potential impact of standards established in these reports on other tobacco control measures that are either currently discussed in the TBT Committee (e.g., Canadian and Brazilian restrictions on the content of cigarettes) or already challenged in the formal WTO dispute settlement process (i.e. Australian plain packaging law).

KEYWORDS: *WTO, clove cigarettes, tobacco control measure, tobacco and international trade, plain packaging*

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