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For Immediate Release:
July 24, 2013

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Will U.S. Face Trade Sanctions as Deadline Passes for U.S. to Alter Law Curbing Teen Smoking, Ruled Against by World Trade Organization?

As Consumer Groups Praise Administration for Not Weakening the Law, Final Decision on Administration's Anti-Smoking Policy Could Shift Back to WTO

WASHINGTON, D.C. – As the World Trade Organization (WTO) deadline passes today for the United States to comply with a WTO ruling against a U.S. ban on sweet-flavored cigarettes targeting youth, the spotlight shifts back to the WTO, which now could authorize trade sanctions if requested by Indonesia, the country that won the WTO challenge.

“We now have to wait and see whether the World Trade Organization will slam us with trade sanctions because the United States wants to maintain a policy to keep tobacco companies away from our children,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “After last year’s rulings against U.S. dolphin protections and popular consumer labels letting Americans know where their food comes, will the WTO depart from its anti-consumer legacy or choose to punish the United States for a commonsense public health law?”

On Tuesday, the Food and Drug Administration (FDA) requested [public comment](#) on an issue related to the WTO ruling: the health implications of menthol cigarettes. The Obama administration [stated](#) that the FDA’s action constitutes compliance with a 2012 [World Trade Organization order](#) to alter a key component of the Obama administration’s landmark Family Smoking Prevention and Tobacco Control Act of 2009 (FSPTCA).

That law bans sweet-flavored cigarettes that entice youth to smoke. It shut down the sales of chocolate, strawberry and other sweet-flavored cigarettes sold only by U.S. firms as well as the sale of clove-flavored cigarettes that both U.S. and foreign tobacco companies were marketing. The WTO’s April 2012 final ruling against the FSPTCA concluded that the United States could ban sweet-flavored cigarettes marketed to youth only if it banned all flavored cigarettes, including menthols. The FDA will receive comments for 60 days on potential regulation of menthol cigarettes, after which the administration will decide what, if any, action will be taken.

It remains to be seen whether Indonesia will accept the FDA announcement or appeal to the WTO to enact trade sanctions against the United States. Indonesia convinced the WTO that the ban on its U.S. sale of clove-flavored cigarettes violated WTO anti-discrimination rules. U.S. consumer and health groups were outraged by the ruling, which effectively forbade incremental policies designed to target anti-smoking efforts at key populations – in this case, children.

The WTO's April 2012 ruling against the anti-smoking FSPTCA law was soon followed by WTO rulings against two other popular U.S. consumer policies. In May 2012, [the WTO ruled against voluntary "dolphin-safe" tuna labels](#) that, by allowing consumers to choose to buy tuna caught without dolphin-killing fishing practices, have helped to dramatically reduce dolphin deaths. In June 2012, [the WTO ruled against the popular U.S. country-of-origin labeling \(COOL\) meat labeling program](#) that informs U.S. consumers where their meat comes from and assists regulators in tracking food-borne illness outbreaks.

The administration recently announced solutions to both cases that strengthen rather than weaken consumer and environmental safeguards. Mexico and Canada have threatened to challenge the new U.S. meat labeling policy at the WTO, which would issue a final decision about whether the new labels meet WTO rules. Mexico has also vowed to challenge the enhanced dolphin-safe labeling program, which would place that policy before the WTO as well. If the WTO does not rule that the strengthened U.S. safeguards satisfy WTO requirements, Mexico and Canada could impose trade sanctions against the United States unless and until the U.S. policies are changed to the satisfaction of the WTO.

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