

# Protecting policy space for public health nutrition in an era of international investment agreements

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**Abstract** Philip Morris has recently brought claims against Australia (2011) and Uruguay (2010) under international investment agreements (IIAs). The claims allege that Philip Morris is entitled to compensation following the introduction of innovative tobacco packaging regulations to reduce smoking and prevent noncommunicable diseases (NCDs). Since tobacco control measures are often viewed as a model for public health nutrition measures, the claims raise the question of how investment law governs the latter. This paper begins to answer this question and to explain how governments can proactively protect policy space for public health nutrition in an era of expanding IIAs. The authors first consider the main interventions proposed to reduce diet-related NCDs and their intersection with investment in the food supply chain. They then review the nature of investment regimes and relevant case law and examine ways to maximize policy space for public health nutrition intervention within this legal context. As foreign investment increases across the food-chain and more global recommendations discouraging the consumption of unhealthful products are issued, investment law will increase in importance as part of the legal architecture governing the food supply. The implications of investment law for public health nutrition measures depend on various factors: the measures themselves, the terms of the applicable agreements, the conditions surrounding the foreign investment and the policies governing agricultural support. This analysis suggests that governments should adopt proactive measures – e.g. the clarification of terms and reliance on exceptions – to manage investment and protect their regulatory autonomy with respect to public health nutrition.

Abstracts in **عربي**, **中文**, **Français**, **Русский** and **Español** at the end of each article.

## Introduction

In 2010, the tobacco multinational Philip Morris brought a claim against Uruguay under an international investment agreement (IIA) between that country and Switzerland. The following year, the company brought a claim against Australia under an IIA between that country and Hong Kong Special Administrative Region in China. These claims challenge tobacco packaging and labelling policies on several grounds, among them that large graphic health warnings and so-called “plain packaging” are arbitrary and unreasonable measures, expropriate trademarks and undermine good will indirectly.<sup>1,2</sup> Challenges to public health policies are relatively rare under IIAs. However, Philip Morris’ claims illustrate how the autonomy of states to engage in product regulation to protect and promote public health – outside the sphere of tobacco control – can be challenged in the context of an IIA. This paper addresses important questions about domestic regulatory autonomy and explores the implications of investment law for public health nutrition policies designed to prevent diet-related noncommunicable diseases (NCDs) and curb their enormous social and economic costs.<sup>3</sup> It highlights the neglected role of public health policy-makers in national decisions pertaining to investment and investor protection and examines ways to protect policy space for public health nutrition.

### Foreign direct investment and nutrition regulation

As the global epidemic of diet-related NCDs has escalated, it has become increasingly clear that healthy eating initiatives based on public education need to be supported by policies to improve the food environment.<sup>3,4</sup> The current “obesogenic” environment, in which unhealthful foods are heavily marketed, easily available and often the cheapest options, makes it dif-

ficult for consumers to make healthy choices in response to information and education. A growing global consensus is forming around the need for governments to implement public health nutrition regulation in the form of food taxes and subsidies, informative product labelling, marketing restrictions and urban planning initiatives targeting processed and pre-prepared (e.g. “fast”) foods high in salt, sugar, saturated fats and trans fats.<sup>3–7</sup>

The above-mentioned interventions apply to the end products of complex food supply chains, any stage of which is usually open to investment by international companies (Fig. 1). Foreign direct investment (FDI) in the entire food supply chain has increased rapidly during the past 20 years. Between 1990 and 2009, FDI in the food, beverage and tobacco sectors of developed countries increased 11-fold; investment in these sectors in developing economies increased fourfold<sup>8</sup> and is projected to continue to rise.<sup>9</sup>

FDI in the food sector has occurred primarily in the processed food and beverage industries and in retail outlets, such as supermarkets and convenience food stores, selling products associated with the nutrition transition – i.e. products low in cereal and fibre and high in sugars, salt and saturated and trans fats.<sup>10,11</sup> These foods are the main targets of global recommendations to reduce consumption. Seven of the top 100 transnational corporations – with combined foreign sales in excess of 400 billion United States dollars (US\$) in 2010 – are involved in the production and retail sale of processed foods.<sup>12</sup> The beverage sector accounts for most of the food-related FDI originating in the United States of America<sup>13</sup> and the processed food industry is one of the top 10 sectors attracting FDI in India.<sup>14</sup> Of the world’s top 15 franchises, seven have strong interests in highly processed and “fast” foods.<sup>12</sup> In 2011 the combined sales of the top global food service outlets was

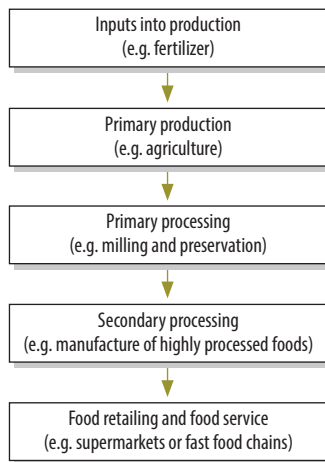
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(Submitted: 6 March 2013 – Revised version received: 13 August 2013 – Accepted: 27 August 2013 – Published online: 4 October 2013)

Fig. 1. **A simplified food supply chain, showing key points for investment**



around US\$ 230 billion dollars.<sup>15</sup> Thus, the key targets of public health nutrition interventions are the objects of extensive – and growing – investment activity.

Concerns have also been raised that the substantial recent growth in FDI in agriculture, with direct foreign ownership of agricultural land being a common feature,<sup>16</sup> could limit government influence over the modes of production of healthful foods.<sup>17,18</sup> Investment in agricultural land is now high. In 2011, the High Level Panel of Experts on Food Security and Nutrition reported that international investors had leased or purchased an estimated 50 to 80 million hectares of land in middle- and low-income countries, about two thirds of them in sub-Saharan Africa.<sup>16</sup> Global inward FDI in the agriculture and hunting sectors totalled US\$ 3425.9 million in 2010, a drop from a high of US\$ 6379.4 million in 2008 – during the global food crisis and before the global economic crisis.<sup>19</sup>

In some cases a single company invests at multiple points in the food supply chain. In Brazil, for example, Coca-Cola has invested in the refinement of cane sugar, the production of beverage concentrates, the bottling of sugar-sweetened beverages and refrigeration. In Ecuador, the company has invested in the bottling of sugar-sweetened beverages and in advertising companies.<sup>19</sup> This type of vertical investment in the food supply creates efficiencies from an economic point of view but it also gives a company greater power within a country's food supply. It thus increases both

the cumulative effect of policy interventions on a given investor's interests and the investor's motivation and capacity to contest regulation.

### Investor protection and public health nutrition policy

Governments actively encourage and compete for FDI, mainly for economic and political reasons. FDI can create employment and thus contribute to human capital development in the host country. It can also facilitate technology transfer, promote competition in the domestic input market and contribute to the host country's corporate tax revenues.<sup>20–22</sup> Governments offer a range of incentives to attract FDI, including tax holidays, land grants and other forms of subsidies, and legal protections beyond those offered to domestic investors.

The opening of the market in Myanmar provides a contemporary example of benefits offered to foreign investors that are likely to have direct effects on consumption patterns and may reduce public health policy space. In 2012, a new foreign investment law came into force. It set out several types of tax incentives available to foreign investors: (i) five-year income tax holidays; (ii) accelerated depreciation for capital assets; (iii) exemptions from duty on machinery and production inputs; and (iv) income tax exemptions for profits reinvested in Myanmar.<sup>23</sup> These incentives lower production costs for investors such as Coca-Cola, which recently announced its plans to invest directly in Myanmar and begin bottling in the country to target the domestic market.<sup>24</sup> If the lower costs of production are passed on to consumers in the form of lower prices, the demand for Coca-Cola products in Myanmar will probably increase under the law of supply and demand.

Governments encourage investment in the food sector not just in competing for FDI, but also to improve food security, since FDI is perceived as conducive to improved food production and processing technologies and more efficient and reliable food supply chains.<sup>17</sup> Governments promote investment in agricultural production through various types of subsidies. As is true of other incentives to attract FDI, such subsidies and other measures to promote food security can lower the cost of producing the products that are of greatest concern in a public health nutrition context. The

subsidization of corn production in the United States provides a classic example. Production subsidies were originally justified partly on food security grounds, but today a substantial proportion of this subsidized corn production goes into making high fructose corn syrup<sup>25</sup> and other caloric sweeteners, which makes calories cheaper for a population that already consumes them in excess.

Proposed public health nutrition measures are intended to reduce the consumption of end products that are high in fat, salt and sugar. Insofar as they reduce product sales and limit retail expansion, they can be perceived as potentially undermining the value of investments at any point in the food supply chain. The result is an implicit tension between government action to promote food security and economic growth by encouraging investment, and government action to reduce the consumption of highly processed foods to prevent diet-related NCDs. Although these tensions are not new, they are likely to increase in light of the World Health Assembly's recent endorsement of the global action plan for the prevention and control of NCDs 2013–2020, which specifies the need to use policy measures, including fiscal policies, to “discourage the consumption of less healthful options”. These tensions will be compounded by growing FDI in the processed and “fast” food industry. The recent claims brought by Philip Morris against Australia and Uruguay also highlight the legal risks associated with public health regulation. Investments such as the ones made by Coca-Cola in Myanmar also highlight the need for the public health community to play a more active role in policy-making regarding investment.

### Legal instruments governing investment

Various legal instruments provide protection for foreign investors. They include domestic laws governing FDI or property rights more generally; contracts and other legally binding agreements between a foreign investor and a government; and IIAs. Importantly, how a government incentivizes investment can have legal implications for subsequent regulation. In other words, a government runs the risk of tying its own hands with respect to public health nutrition regulation in the process of seeking to attract investment. This risk is

most evident in the context of contracts and IIAs.

Contracts between a government and a foreign investor are often seen in cases in which an investor purchases state-owned assets or in which a government has offered inducements to investment. Contracts are also commonly used to limit the regulatory changes that can affect an investment through what is known as a stabilization clause. For example, when the Laotian Government sold its national tobacco monopoly to a foreign investor, the government agreed to fix the excise tax on tobacco products for a period of 25 years.<sup>26</sup> Large sporting events provide another example of how state contracts can limit governments' regulatory power. Companies such as Coca-Cola and McDonalds sponsor the International Olympic Committee (IOC), so when the Committee contracts with Olympic host cities, it makes certain that the companies in question are allowed to advertise during the games.<sup>27</sup> Similar contracts have been problematic in the context of Formula One racing; the tobacco industry sponsors the sporting body, which then contracts with governments that are either contemplating restrictions on tobacco advertising or already have them in place.

Like contracts, IIAs grant foreign investors, including large multinationals, legal rights above and beyond those of domestic investors. IIAs are usually bilateral agreements that protect the assets of nationals of one contracting party while such assets are invested in the territory of the other contracting party. The bilateral investment treaty between Australia and Hong Kong Special Administrative Region (China) constitutes an agreement of this type. Philip Morris (Asia) alleges that, under such a treaty, its ownership of the Australian subsidiary Philip Morris Limited provides the legal basis for a claim in response to Australian tobacco packaging laws. Foreign investors are able to bring claims directly under the dispute settlement mechanisms of IIAs, which means that disputes are resolved at the international level rather than in domestic courts or in accordance with domestic law.

Typically, IIAs protect investors from expropriation. These agreements oblige the contracting parties to pay compensation for expropriation of an investment (e.g. direct taking of title or seizure) or for other measures having

an equivalent effect (e.g. destroying the economic value of an investment or keeping the owner from being able to manage, use or control the property in a meaningful way).<sup>28</sup> Usually IIAs also provide a guarantee of fair and equitable treatment and of protection against discrimination based on the origin of the investor or investment.

Relatively few claims in connection with the food-chain have been filed under IIAs. Disputes involving the food industry have had to do with import restrictions on beef to prevent the spread of bovine spongiform encephalopathy ("mad cow disease");<sup>29</sup> prohibitions against the use of certain pesticides to protect human health;<sup>30</sup> the redistribution of private farm lands;<sup>31,32</sup> modifications to agricultural subsidy regimes;<sup>33</sup> and a discriminatory tax on high fructose corn syrup – but not on other sweeteners – imposed to protect Mexico's cane sugar industry from unfair competition.<sup>34</sup> A search of Investment Claims<sup>35</sup> – Oxford University's suite of investment arbitration disputes – using the keywords *food*, *nutrition* and *agriculture* revealed no publicly reported challenges to public health nutrition measures under IIAs. This should not be taken to mean, however, that IIAs are irrelevant when it comes to public health nutrition. A more likely explanation for the absence of claims is that regulation in the interest of public health nutrition is a relatively new area of activity.

IIAs protect the legitimate expectations of investors when these expectations were induced by the host state and served as the basis for the investment. Investors have no right to expect the regulatory environment to remain unchanged, but if a host state induces investment, such an action may later affect the application of provisions governing expropriation and fair and equitable treatment. For example, legitimate expectations may come into play when a host state has provided incentives for upstream investment in the food-chain but also downstream measures to regulate the products of that investment. Another example is that of a host state that has negotiated a form of self-regulation with an investor but that has subsequently shifted to a stricter regulatory approach. The greatest legal risk occurs in cases in which states assure investors that they will be exempted from certain types of regulations or taxes.

These examples are not intended to suggest that public health nutrition measures ordinarily violate IIAs. They show, instead, that although IIAs are usually interpreted in a manner that favours state autonomy in implementing measures to protect health, some actions to induce investment can tie the hands of regulators by exposing a country to the risk of legal liability. In essence, the legal implications of regulation must be judged on a case-by-case basis.

### Preserving policy space

Growing FDI in the food and beverage sectors, an increased recognition of the need for public health nutrition regulation and more frequent recourse to litigation by foreign investors make it essential that the public health community be engaged in matters concerning investment policy. It is important for policy-makers, particularly in countries in the early stages of the nutrition transition, to ensure that FDI is managed in a way that minimizes the health risks potentially arising from lowered production costs. Risk management should take place within the framework of existing IIAs and governments must avoid entering into future investment agreements that overly constrain their regulatory autonomy with respect to public health nutrition. The goal should be to strike a balance between allowing host states sufficient autonomy to engage in public health nutrition regulation and incentivizing investment in the food-chain. In addition, transparency and predictability – both in terms of the regulatory environment and of the rules governing public health nutrition measures – are valuable and should be pursued.

### Managing foreign investment

In the case of new investments, policy-makers need to evaluate whether granting incentives that may lower production costs, will jeopardize public health by making unhealthful products more affordable. They also need to ensure that investment contracts that facilitate incoming investment do not tie the hands of regulators in ways likely to undermine health, as in the example of the tobacco monopoly in the Lao People's Democratic Republic.

An important aspect of managing risk under existing and future IIAs is the importance of clarifying and managing the "legitimate expectations" held by a foreign investor. One overarching

approach is to develop national policy statements on public health nutrition measures clarifying in advance that a foreign investor cannot legitimately expect the host country to not issue public health nutrition measures. To complement this approach, host states could clarify the legitimate expectations of an investor at specific points – for example, when entering into investment contracts (e.g. for the farming of land), when creating or implementing schemes incentivizing investment in the food-chain, and when engaging in partnerships with investors, such as in the context of self-regulation.

### Protecting regulatory autonomy

It is important that policy-makers protect their policy space in future IIAs. In contemporary treaty practice, states have adopted several approaches to address the scope of their powers to regulate in the public interest. These approaches include: general exceptions; language clarifying the meaning of indirect expropriation and of fair and equitable treatment; clauses carving out specific areas of investment; and clauses permitting contracting parties to refuse

to establish investments on specified grounds.<sup>36</sup> Some states have also taken more assertive steps. For example, the Gillard government in Australia declared that it would not seek agreements having investor–state dispute settlement provisions.<sup>37</sup>

The use of clarifying terms and general exceptions is as relevant to public health nutrition measures as it is to other measures to protect public health. Contrary to what happens in the tobacco sector, however, clauses that simply “carve out” investment in the food-chain (a form of exclusion) from IIAs might not strike a proper balance – depending on the other incentives and protections in place – between the need to incentivize investment and the need to ensure policy space. This highlights the complexity of the policy environment and suggests the need for a more detailed examination of the role of IIAs in the public health nutrition context.

### Conclusion

Tension exists between an investment regime that promotes investment in the food-chain and the goals of public

health nutrition measures. Incentives to investment can lower production costs and make unhealthful products more affordable; investment contracts can tie the hands of health regulators; and IIAs can limit a host government’s regulatory autonomy, particularly when it has induced a foreign investor to invest. In a context of growing government concern over NCDs, increasing foreign investment in the food and beverage sector, and greater reliance on investment law to protect the interests of investors, health policy-makers should play a more active role in shaping investment policy.

Our analysis highlights the need for additional research on the intersection of investment and public health nutrition policy, especially descriptive studies on how states are balancing the interests discussed in this paper and how different policies affect investment and public health nutrition regulation. There is also a need for legal studies on the implications of different legal instruments and the most appropriate legal approaches to implementing different policy options. ■

**Competing interests:** None declared.

### ملخص

#### حماية نطاق سياسات التغذية في مجال الصحة العمومية في حقبة الانفاقيات الاستثمارية الدولية

وأحكام القضاء ذات الصلة ودراسة طرق تعظيم نطاق السياسات من أجل التدخل المعني بالتغذية في مجال الصحة العمومية في إطار هذا السياق القانوني. ومع تزايد الاستثمار الأجنبي عبر سلسلة الأغذية وإصدار مزيد من التوصيات العالمية لكبح استهلاك المنتجات الضارة بالصحة، تزداد أهمية قانون الاستثمار باعتباره جزءاً من الهيكل القانوني الذي يحكم توريد الأغذية. وتعتمد آثار قانون الاستثمار بالنسبة لتدابير التغذية في مجال الصحة العمومية على عدة عوامل، هي: التدابير ذاتها، وشروط الانفاقيات السارية، والظروف التي تكتنف الاستثمار الأجنبي، والسياسات التي تحكم الدعم الزراعي. ويقترح هذا التحليل أن تقوم الحكومات باعتماد تدابير استباقية – مثل توضيح الشروط والاعتماد على الاستثناءات – لإدارة الاستثمار وحماية استقلالها التنظيمي فيما يتعلق بالتغذية في مجال الصحة العمومية.

قامت شركة فيليب موريس مؤخراً برفع دعاوى قضائية ضد أستراليا (2011) وأورغواي (2010) بموجب الانفاقيات الاستثمارية الدولية (IIAs). وتزعم الدعاوى بحق شركة فيليب موريس في التعويض بعد سن اللوائح تعبئة التبغ المبتكرة للحد من التدخين وتوقفي الأمراض غير السارية. وبما أن تدابير مكافحة التبغ ينظر إليها في الغالب كنموذج لتدابير التغذية في مجال الصحة العمومية، تثير الدعاوى تساؤلاً حول الكيفية التي يحكم بها قانون الاستثمار تلك الأخيرة. وتحاول هذه الورقة الإجابة على هذا التساؤل وأن توضح كيف تستطيع الحكومات حماية نطاق السياسات من أجل التغذية في مجال الصحة العمومية على نحو استباقي في حقبة الانفاقيات الاستثمارية الدولية الموسعة. ويمعن المؤلفون النظر أولاً في التدخلات الرئيسية المقترحة لتقليل الأمراض غير السارية ذات الصلة بالنظام الغذائي وتداخلها مع الاستثمار في سلسلة توريد الطعام. ثم يقومون بمراجعة طبيعة أنظمة الاستثمار

### 摘要

#### 国际投资协定时代保护公共卫生营养政策的空間

菲利普莫里斯公司最近已根据国际投资协定 (IIA) 向澳大利亚 (2011 年) 和乌拉圭 (2010 年) 提出索赔。索赔宣称，菲利普莫里斯公司有权在引入旨在减少吸烟和预防非传染性疾病 (NCD) 的创新烟草包装法规以后获得补偿。因为烟草控制措施通常被视为公

共卫生营养措施的典范，该索赔引起投资法律如何控制后者的问题。本文试图回答这个问题，并解释政府在 IIA 扩张时代如何积极主动保护公共卫生营养的政策空间。作者首先考虑所提出的旨在减少饮食相关非传染性疾病的主要干预措施，及其与食品供应链投资

的交集。然后审查投资制度的本质及相关案例法，并调查在这种法律环境中最大化公共卫生营养干预的政策空间的各种方法。随着整条食品生产链上外资的增加以及人们提出更多不鼓励不健康产品消费的全球建议，作为控制食品供应的法律体系的组成部分，投资法律在这方面的重要性也将提高。投资法律对于公共

卫生营养措施的含义取决于多种因素：措施本身、适用协定的条款、外资所处的环境以及主导农业扶持的政策。这一分析表明，政府应该采取积极的措施（例如澄清条款和依靠例外）以管理投资并保护其在公共健康营养方面的法规自主权。

## Résumé

### Protéger l'espace politique en matière de nutrition en santé publique dans l'ère des accords internationaux d'investissement

Philip Morris a récemment intenté une action en justice contre l'Australie (2011) et l'Uruguay (2010) en vertu des accords internationaux d'investissement (AI). Les plaintes allèguent que Philip Morris a droit à une indemnisation suite à l'introduction de la réglementation innovante sur les emballages de tabac pour réduire le tabagisme et prévenir les maladies non transmissibles (MNT). Comme les mesures de lutte contre le tabac sont souvent considérées comme un modèle pour les mesures de nutrition en santé publique, ces revendications soulèvent la question de savoir comment le droit sur les investissements régit ces dernières. Cet article tente de répondre à cette question et d'expliquer comment les gouvernements peuvent protéger de manière proactive l'espace politique en matière de nutrition en santé publique à l'ère de l'expansion des AI. Les auteurs considèrent d'abord les principales interventions proposées pour réduire les MNT liées à l'alimentation et leur intersection avec les investissements dans la chaîne d'approvisionnement des aliments. Ils passent ensuite en revue la nature des régimes d'investissement et de la jurisprudence pertinente, et ils

examinent les moyens de maximiser l'espace politique pour intervenir en matière de nutrition en santé publique dans ce contexte juridique. Avec l'augmentation des investissements étrangers dans l'ensemble de la chaîne alimentaire et le nombre croissant de recommandations mondiales qui sont publiées et qui découragent la consommation de produits nocifs pour la santé, le droit sur les investissements va gagner en importance au sein de la structure juridique qui régit l'approvisionnement des aliments. Les implications du droit sur les investissements pour les mesures de nutrition en santé publique dépendent de divers facteurs: les mesures elles-mêmes, les termes des accords en vigueur, les conditions concernant les investissements étrangers et les politiques de soutien à l'agriculture. Cette analyse suggère que les gouvernements devraient adopter des mesures proactives – c.-à-d. la clarification des termes et le recours aux exceptions – pour gérer les investissements et protéger leur autonomie réglementaire dans le domaine de la nutrition en santé publique.

## Резюме

### Защита пространства стратегий развития здорового общественного питания в эпоху международных инвестиционных соглашений

Некоторое время назад корпорация Philip Morris возбудила иски против Австралии (2011 г.) и Уругвая (2010 г.) в связи с международными инвестиционными соглашениями. В исках заявлялось, что Philip Morris имеет право на компенсацию в связи с введением новых предписаний по упаковке табачных изделий, направленных на сокращение курения и предотвращение неинфекционных заболеваний. Поскольку меры по борьбе с потреблением табака часто рассматриваются как модель для мер, направленных на развитие здорового общественного питания, в исках был затронут вопрос о том, как эти меры регулируются *инвестиционным правом*. Данный документ представляет собой попытку дать ответ на этот вопрос и разъяснить, каким образом правительства могут превентивно защищать свое пространство стратегий развития здорового общественного питания в эпоху роста международных инвестиционных соглашений. Сначала авторы обсуждают основные мероприятия, которые предлагается провести для сокращения неинфекционных заболеваний, связанных с питанием, и то, как эти мероприятия пересекаются со структурой инвестиций в систему поставок продуктов питания. Затем они рассматривают природу инвестиционных политик и

соответствующую правоприменительную практику и оценивают способы максимального расширения пространства стратегий и мероприятий по развитию здорового общественного питания, с учетом обозначенного юридического контекста. В связи с ростом зарубежных инвестиций в систему поставок продуктов питания и вынесением глобальных постановлений рекомендательного характера, препятствующих потреблению вредных для здоровья продуктов, будет возрастать важность инвестиционного права, как части законодательной системы, регулирующей поставку продуктов питания. Влияние инвестиционного права на меры, предпринимаемые для развития здорового общественного питания, зависит от различных факторов: самих мер, условий соответствующих соглашений, обстоятельств, определяющих характер зарубежных инвестиций, а также стратегий поддержки сельского хозяйства. Этот анализ свидетельствует о том, что правительствам следует принять превентивные меры, такие как прояснение условий и определение исключений, для управления инвестициями и защиты нормативно-правовой независимости в вопросах, касающихся здорового общественного питания.

## Resumen

### La protección de un espacio político para la nutrición en la salud pública en la era de los acuerdos internacionales de inversiones

Recientemente, Philip Morris ha presentado demandas contra Australia (2011) y Uruguay (2010) en virtud de los acuerdos internacionales de

inversiones (AI), en las que alega tener derecho a una indemnización a raíz de la introducción de las regulaciones innovadoras del empaquetado

del tabaco para reducir el tabaquismo y prevenir las enfermedades no transmisibles (ENT). Dado que las medidas para el control del tabaco suelen considerarse un modelo para las medidas de nutrición de salud pública, estas demandas plantean la cuestión sobre cómo la ley de inversiones controla estas últimas. El presente artículo trata de responder a esta pregunta y explicar cómo los gobiernos pueden proteger de forma proactiva el espacio político en materia de nutrición de salud pública en la era de la expansión de las inversiones internacionales. En primer lugar, los autores consideran las intervenciones principales propuestas para reducir las enfermedades no transmisibles relacionadas con la dieta y su confluencia con la inversión en la cadena de suministro de alimentos. A continuación, revisan la naturaleza de los regímenes de inversiones y de la jurisprudencia pertinente, y examinan formas de maximizar el espacio político para la intervención de la nutrición en la salud pública dentro de

este marco legal. Dado que las inversiones extranjeras aumentan en toda la cadena alimentaria, junto con las recomendaciones internacionales que desaconsejan el consumo de productos nocivos para la salud, también cobrará más importancia la ley de inversiones como parte de la arquitectura legal que rige el suministro de alimentos. Las consecuencias que la ley de inversiones tendrá en las medidas de nutrición en la salud pública dependerán de varios factores: las medidas en sí, los términos de los convenios aplicables, las condiciones que rodean la inversión extranjera y las políticas que rigen las ayudas a la agricultura. Este análisis sugiere que los gobiernos deben adoptar medidas proactivas, como dilucidar los términos y basarse en excepciones, para gestionar las inversiones y proteger su autonomía reglamentaria con respecto a la nutrición y la salud pública.

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