

## **Background: Legal action by the European Commission against cigarette smuggling**

The European Commission decided to launch a tobacco smuggling complaint against several cigarette manufacturers in August 2001, together with the following Member States: Italy, Germany, France, Spain, Portugal, Greece, Belgium, The Netherlands, Finland and Luxembourg.

On 19 February 2002, the U.S. District Court in New York dismissed the EC and Member States' smuggling claims on the basis of the "revenue rule", a technical rule according to which a U.S. court need not enforce a foreign tax claim.

In its ruling, the District Court also held that the "revenue rule" does not necessarily apply to other aspects of the EC and Member States' claims and dismissed this part of the case "without prejudice".

The EC and the Member States appealed this ruling before the 2nd Circuit Court of Appeals in New York on the basis that the "revenue rule" does not apply to the EC case.

The EC's appeal was supported by formal interventions, known as "amicus curiae" briefs, by the World Health Organisation

<http://www.who.int/>

and two U.S. organisations, the Campaign for Tobacco-Free Kids

<http://www.tobaccofreekids.org/>

and the Federal Law Enforcement Officers Association (FLEOA)

<http://www.fleoa.org/>.

On 14 January 2004, the Second Circuit Court of Appeals affirmed the dismissal of the smuggling claims and ruled that the "revenue rule" barred those claims. However it also confirmed that the EC and the Member States may replead their other claims in a separate action.

The EC and the Member States have submitted a Petition for Writ of Certiorari to the Supreme Court of the United States to appeal against the ruling of the Second Circuit Court of Appeals. This was filed by the Supreme Court on April 12, 2004 under Docket No. 03-1427.

**(1)** The following Member States have participated in the appeal: Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal and Spain.

This updated briefing is derived from press release IP/04/51 of 15/01/2004