

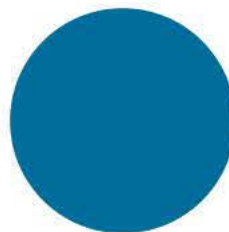
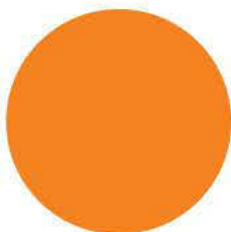
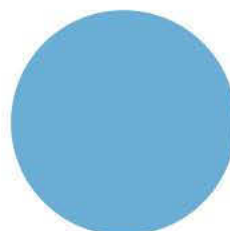
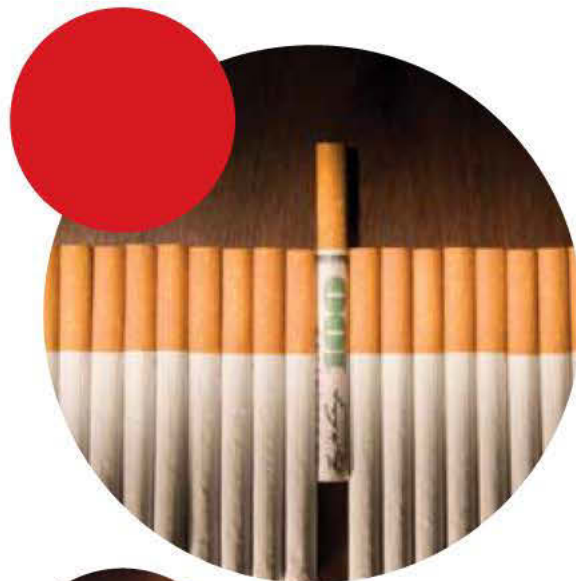


HEALTH IS NOT NEGOTIABLE

/ 2nd. edition

Civil Society against the Tobacco Industry's Strategies in Latin America

- CASE STUDIES 2014



Alderete, Mariela

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HEALTH IS NOT NEGOTIABLE

2nd. Edition

Civil Society against the Tobacco
Industry's Strategies in Latin America

CASE STUDIES 2014

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INTRODUCTION

Mortality attributable to tobacco consumption and the burden it represents to families and national health systems is an issue of growing concern, mainly across developing countries. Latin American countries have made much headway in the implementation of tobacco control policies over the last few years. Most of them have already ratified the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) and there is a strong collaboration bond within the region to promote, apply and defend the treaty policies. Nonetheless, further progress still needs to be made in the adoption of a number of measures, such as tobacco tax increases and the complete ban on tobacco advertising, promotion and sponsorship, as well as strengthening the enforcement of already adopted measures.

Article 5.3 of the FCTC commits the States to the Treaty to protect their public health policies from the commercial interests -and interests of any other nature- of the tobacco industry, since it is their duty to guarantee the human right to health over any other individual interest. However, in most countries of the region, the tobacco industry is conducting actions aimed at hindering the enactment and adoption of tobacco control legislation, establishing bonds with decision-makers and other key stakeholders, taking full advantage of the exceptions and loopholes in the legislation, litigating against governments that seek to protect health, and undermining transparency of public actions.

Although it tries to position itself as a legal and socially responsible industry, it manufactures and sells a highly addictive product that is the

proven cause of many diseases, most of which are mortal. But although there is plenty of information available on the harmful effects of tobacco, the population is habitually unaware of the veiled actions of the tobacco industry, aimed at hindering the advance of health policies that are against their economic interests and of the marketing strategies it uses to promote initiation on tobacco consumption among the youth.

In this context, some civil society organizations committed to the advocacy and promotion of the right to health, started to work in 2010 on a regional project to monitor and counter the strategies of the industry in four Latin American countries: Argentina, Brazil, Colombia and Mexico. This initiative was developed after having recognized the need to concentrate efforts to respond to the actions of the tobacco companies that often repeat themselves in similar ways in most of the countries. Furthermore, it was the basis for the design and dissemination of tools for monitoring the actions of tobacco corporations and of the response strategies to denounce and stop their advance.

The publication “Health is not Negotiable. Civil Society against the Tobacco Industry’s Strategies in Latin America. Case Studies 2010 – 2012” was the result of the first stage of joint work, aimed at explaining the complex processes that arise during the discussion and implementation of tobacco control policies in the four aforementioned countries. The reported cases sought to uncover the specific tobacco industry’s strategies to block tobacco control policies and the efforts made by the civil society organizations of the region to counter them and protect the right to health.

In the light of the increasing interest and commitment shown by several organizations, a meeting was held in April 2013 in the City of Buenos Aires to analyze and share information on the actions taken by the tobacco industry in the region. As a result of said gathering, organizations from twelve countries signed a joint declaration in which they committed to work in collaboration and requested governments to adopt the necessary measures to ensure the exclusion of the tobacco industry from the definition and treatment of health policies and to reject any agreements with such corporations.

This publication is a further result of the joint work undertaken in 2010 and of the close collaboration among organizations of the countries in the region. Its purpose is to show the incompatibility between effective public health policies and the tobacco industry's commercial interests, exposing the actions performed by transnational companies to undermine tobacco control policies. In that sense, the report is a continuation to the processes initiated in Brazil, Mexico, Argentina and Colombia and incorporates the interesting and rich case studies of Uruguay, Chile and Peru.



Organizations from twelve Latin American countries gathered in Buenos Aires for the purpose of agreeing on actions to defend health policies from the tobacco industry's interests. 04/23/13

What is Tobacco Industry Interference?

It is the set of actions undertaken by the tobacco industry aimed at blocking the design or implementation of tobacco control policies, or at positively positioning the industry in the market or exerting pressure on different stakeholders to uphold their commercial interests.



ASSIM COMO A
FUMAÇA,
A INDÚSTRIA DO
CIGARRO
NÃO RESPEITA
LIMITES

01

BRAZIL

Inhabitants

190,732,694¹

Prevalence of Tobacco Consumption

12.1% of adult population²

Year of FCTC Ratification

2005

Main Tobacco Control Laws and Measures in Force in the Country

Federal Law no. 12.546 enacted in 2011 (section 49) establishing:

- ▶ A ban on tobacco advertising at points of sale.
- ▶ 100% smoke-free environments in all enclosed public spaces and workplaces.
- ▶ Pictorial health warnings covering 100% of one of the pack sides and, as from 2016, expanding to 30% of the other side.
- ▶ Increase in cigarette taxes, as well as setting of a minimum retail price. This led to a 20% increase in cigarette prices in 2012, and shall reach a 55% increase in 2015.

Leading Tobacco Companies in the Country and Market Share

- Souza Cruz, subsidiary of British American Tobacco: 77.2% of the market³
- Philip Morris International: 16% of the market⁴

In 2010, the Brazilian National Health Surveillance Agency (Agência Nacional de Vigilância Sanitária, ANVISA)⁵ submitted two proposals to public consultation for the implementation of new tobacco control measures:

- ▶ Public Consultation 112, which sought to prohibit the use of additives such as menthol, clove, fruit and other flavorings and aromatic spices in cigarettes.
- ▶ Public Consultation 117, which sought to ban the advertising, promotion and sponsorship of tobacco products, including the display of packs in retail outlets, and to increase the size of health warnings.

Flavorings and aromatic spices such as menthol, clove, chocolate and fruit are widely used in several countries to make cigarettes and tobacco products more palatable and attractive, especially among young people.



The complete ban on advertising, promotion and sponsorship of tobacco products, as well as the prohibition on the use of additives such as flavorings and aromatic spices in cigarettes, are effective policies to reduce tobacco consumption. These measures have been consensually agreed upon by the International Community in the Framework Convention on Tobacco Control and its guidelines.

The proposal to prohibit advertising was partially incorporated in Federal Law no. 12.546, passed in December 2011, which, among other measures, includes the implementation of 100% smoke-free environments in all enclosed public spaces as well as tax increases. On the other hand, the ban on the use of additives, provided for in Public Consultation 112, was not included in the law and was entrusted to ANVISA.

After an arduous process of public debate and an aggressive campaign carried out by the tobacco industry and its allies against the proposal in the mass media and at different levels of the federal government⁶, government. In March 2012 ANVISA finally published the Resolution no. 14 (RCD 14/2012), prohibiting the use of additives in cigarettes⁷, except for sugar, but for the exclusive purpose of replacing the original components lost in the tobacco leaf drying process.



SOURCE:
 1 - O Estado de S.Paulo, Caderno Vida, 03/14/12
 2 and 3 - Folha de S.Paulo, 03/14/12

- 1 ANVISA bans production and trade of artificially flavored cigarettes.
- 2 Health Surveillance bans sale of flavored cigarettes.
- 3 The government prohibits the sale of flavored cigarettes in the country.

Why should the use of additives in cigarettes be banned?

Additives increase palatability and appeal of tobacco products, thus favoring smoking initiation. Flavored cigarettes are the preferred choice among young people. The aim is to reduce initiation of children and adolescents in the use of an addictive product, taking into account that 90% of smokers start smoking before reaching the age of 19.



The Tobacco Industry seeks to block the ban on additives

The resolution prohibiting the use of additives such as menthol and clove in cigarettes sold in Brazil (RDC 14/2012) had great visibility, since it was the first country in the world to prohibit the use of menthol in cigarettes. Cigarette manufacturers were granted a period of 18 months, as from the publication of this law, to withdraw all flavored cigarettes from the national market and 24 months for the other tobacco derivatives.

This triggered a strong reaction from the tobacco industry and its allies. The TI mobilized different stakeholders to stand up against this measure, asserting that there would be a negative impact on the Brazilian economy, since it would imply huge economic losses for tobacco growers and encourage smuggling.

In the Executive Power, the Brazilian Tobacco Industry Association (ABIFUMO) submitted a petition before the ANVISA requesting the release of 180 substances used as additives in

tobacco products. Despite the opinion against the easing of the rule, expressed by the technical area of this body, ANVISA's Board of Directors decided to partially accept the appeal filed by the tobacco industry, although this decision was not unanimously taken. As a consequence, it authorized the use of 121 additives for another year. The ban on menthol, clove and other ingredients providing distinctive flavors to cigarettes was kept, as well as the original term for the implementation of this rule.



SOURCE:
Folha do S. Paulo, 07/31/13



The more attractive tobacco products are, the higher the number of consumers and the negative impact on public health. Therefore, the guidelines of articles 9 and 10⁸ of the Framework Convention on Tobacco Control (FCTC) recommend “prohibiting or restricting the ingredients used to improve the flavor of tobacco products”.

Furthermore, a legislator allied with the tobacco industry submitted a bill to suspend the implementation of ANVISA's resolution on additives, although by June 2014 this project has not been voted yet.

Simultaneously, the tobacco industry implemented a legal strategy to thwart the prohibition of additives. Through its allied groups, it filed at least four legal actions to override the resolution published by ANVISA prohibiting the use of additives. One of these legal actions was advanced by the National Confederation of Industry (Confederação Nacional da Indústria, CNI), which challenged the constitutionality of the measure (Ação Direta de Constitucionalidade - ADIN).



Victory of the tobacco industry in the Supreme Court of Justice casts doubts on ANVISA's control over the sector.

SOURCE:
Rede Brasil atual, 09/22/13

Civil Society Response

In response to this situation, the civil society carried out several strategies to defend the resolution prohibiting the use of additives.

On one hand, the Aliança de Controle do Tabagismo (Alliance for the Control of Tobacco, ACT) was admitted as Amicus Curiae⁹ in the case to be decided by the Supreme Court of Justice on the constitutionality of ANVISA's resolution.

Furthermore, the ACT submitted three legal opinions in favor of ANVISA's resolution, written by reputable local legal jurists¹⁰.

Besides, the civil society has undertaken several actions to counter the industry's interference, such as opinion polls, mass media campaigns and dissemination of information on the subject.



1 Just as the smoke, the tobacco industry has no limits.
2 The tobacco industry needs limits.

Civil society strategies for the promotion of tobacco control measures

Mobilization letters from national and international organizations in response to tobacco industry claims, highlighting the great appeal of flavored cigarettes, especially among young people.

Mass media and social network campaigns to show the risk posed by flavored cigarettes among young people and the strategies used by the tobacco industry to attract new consumers.

Opinion polls.

Advocacy among legislators and decision-makers.

Dissemination of information on the additives prohibition policy through press releases, articles and editorials.

ACT Brazil Campaign to promote ban on additives.

"We place this cigarette here to draw your attention. The tobacco industry does exactly the same thing with children and young people. Colorful packages, flavors and display near candies. They are visible for children and young people. Look at them".



The prohibition on additives, still on hold

By June 2014, the Brazilian prohibition on the use of additives, a measure for the prevention of smoking and promotion of public health, is still pending implementation.

Apart from the discussions held for at least the last three years, and the Regulatory Resolution published by ANVISA in 2012, the tobacco industry managed to stop the implementation of the resolution by means of a precautionary measure granted by the Supreme Court of Justice in favor of the industry a few days before its entry

into force in September 2013. In this sense, the interference of the tobacco industry through different channels, including legal actions, has thwarted, so far, the implementation of this tobacco control policy.

The civil society, that hopes to see the prevalence of health protection in the decision of the Supreme Court of Justice in Brazil, is eagerly awaiting for its final decision, determining if the measure can be implemented or not.



SOURCE: TribunaHoje, 08/09/2013



SOURCE: DW, 09/25/13

- 1 Minister of the Supreme Court authorizes the sale of flavored cigarettes.
- 2 Ban on flavored-cigarettes leads to a legal dispute in Brazil.



According to a study published in 2012¹¹, based on data taken from the poll performed in the period 2005-2009 with students aged 13-15 of 13 Brazilian capital cities, adolescents' first smoking experiences involve flavored cigarettes. 58.2% of the boys and 52.9% of the girls that claimed to have already tried cigarettes stated that they preferred flavored cigarettes, in particular menthol-flavored cigarettes. They said that it is the flavor what they find appealing.

▶ A work group is created to analyze the list of 121 substances, having to deliver its report and conclusions within a term of 8 months.

December
2013



September
2013

▶ The Supreme Court puts on hold the resolution prohibiting additives in cigarettes and the measure is not implemented within the established term.

▶ ANVISA's Board publishes the list of 121 substances that can be used in cigarettes for a period of 12 months.

August
2013

▶ ANVISA'S Administrative Board meets and decides which portion of the list would still be prohibited (characteristic flavors, such as menthol, clove, etc.) and which portion shall be subject to review for a period of one year.

July
2012

▶ The ban on the use of additives (flavors and aromatic spices) in cigarettes (RDC 14) is approved.

March
2012

▶ The public hearing on ANVISA's consultations is held.

December
2011

▶ ANVISA launches Public Consultation 112 to assess the acceptance of a policy aimed at banning the use of additives in cigarettes.

November
2010

NOTES

- 1 - Source: 2010 Population Census.
 - 2 - Source: Brazil. Ministério da Saúde. Secretaria de Vigilância em Saúde. Departamento de Vigilância de Doenças e Agravos não Transmissíveis e Promoção de Saúde. Vigitel Brasil 2012: vigilância de fatores de risco e proteção para doenças crônicas por inquérito telefônico. Brasília: Ministério da Saúde, 2013.
 - 3 - Source: Report of the company Empiricus Research for Souza Cruz, May 2013: <http://www.empiricus.com.br/wp-content/uploads/2013/05/Souza-Cruz-Adwords.pdf> (Accessed in June 2014) [Available in Portuguese]
 - 4 - Source: http://www.revistavoto.com.br/site/noticias_interna.php?id=4121&t=Philip_Morris_inaugura_fabrica_e_integra_acoes_em_Santa_Cruz_do_Sul (Accessed in June 2014) [Available in Portuguese]
 - 5 - ANVISA is an autonomous public agency responsible for overseeing products subject to health surveillance- such as medicines and food- empowered to issue regulations concerning the production, sale and distribution of said products within the framework of existing legislation. For further information visit: <http://portal.anvisa.gov.br/wps/portal/anvisa-ingles> (Accessed in June 2014)
 - 6 - **Health is not Negotiable. Civil Society against the Tobacco Industry's Strategies in Latin America. Case Studies 2010-2012.** Fundación Interamericana del Corazón Argentina. Corporate Accountability International Colombia, Fundación Interamericana del Corazón México, Aliança de Controle do Tabagismo; Buenos Aires, available at: http://www.ficargentina.org/index.php?option=com_content&view=article&id=249:la-salud-no-se-negocia&catid=92:publicaciones&Itemid=84&lang=en (Accessed in June 2014)
 - 7 - Resolution - RDC Nº 14, of March 15, 2012, published in the Official Gazette [Diário Oficial da União (DOU)] of 03/16/2012, Nº53, page 176; Available at (Accessed in January 2014): http://portal.anvisa.gov.br/wps/wcm/connect/d50d8f804d44b146bcecf4031a95fac/Resolucao_RDC_14_Teores_e_Aditivos_16Mar12.pdf?MOD=AJPERES [Available in Portuguese]
 - 8 - Partial guidelines for the implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control. Available at: http://www.who.int/fctc/guidelines/adopted/article_9and10/en/
 - 9 - An amicus curiae or "friend of the court" is a legal concept through which a third person that is not a party to the action, generally legal persons or individuals that are experts on the matter of the conflict, appear before the court for the purpose of providing information that can be relevant to the judge at the time of issuing his/her decision.
 - 10 - See: http://actbr.org.br/uploads/conteudo/859_Parecevirgilio.pdf - http://actbr.org.br/uploads/conteudo/860_ParecerJoseDelgado.pdf http://actbr.org.br/uploads/conteudo/861_ParecerVedovato.pdf [Available in Portuguese]
 - 11 - USE OF FLAVORED CIGARETTES AMONG BRAZILIAN ADOLESCENTS: A STEP TOWARD NICOTINE ADDICTION? Figueiredo, V; da Costa e Silva, V; et al. Best Poster Award at the 15th World Conference on Tobacco or Health, Singapore, March 20-24th 2012. Available at: http://www.actbr.org.br/uploads/conteudo/812_pesquisa_aditivos.pdf [Accessed in June 2014]
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02

ARGENTINA

Inhabitants

40.091.359¹

Prevalence of Tobacco Consumption

22.1% of adult population²

Year of FCTC ratification

It was signed in 2003, but ratification is still pending.

Main Tobacco Control Laws and Measures in Force in the Country

National Law no. 26.687 of 2011:

- ▶ Pictorial health warnings.
- ▶ 100% smoke-free environments in all enclosed public spaces and workplaces.
- ▶ Comprehensive ban on tobacco advertising, promotion and sponsorship (excluding points of sale and direct advertising targeted for people over 18).

Leading Tobacco Companies in the Country and Market Share

- Massalin Particulares, subsidiary of Philips Morris International: 70% of the market.
- Nobleza Piccardo, subsidiary of British American Tobacco: 26% of the market.³

In June 2011, the National Tobacco Control Law no. 26.687 was enacted, generating a change in tobacco control public policies in Argentina. Nearly two years later, in May 2013, it was regulated by means of a proper text meeting international standards.

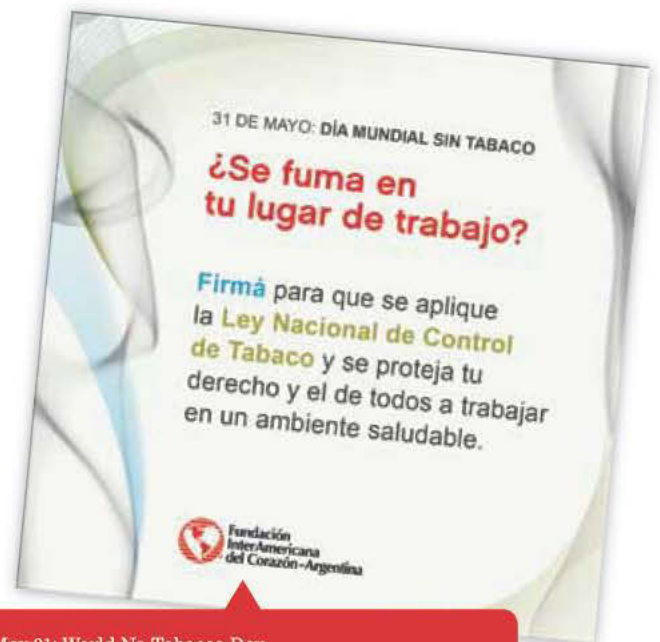
It was a hard process, hindered by the economic interests against tobacco control policies, which were overcome by means of the commitment of certain government sectors and the monitoring and promotion efforts of the civil society. The main obstacle for the approval of a regulation adhering to the spirit of the law was the opposition of gambling halls to the adoption of 100% smoke-free environments.

The National Lottery (Lotería Nacional, entity regulating games of chance) submitted a formal petition for the introduction of exceptions to the law and the authorization of smoking areas in gambling halls. Although this petition was not directly submitted by the tobacco industry, it is remarkable that the report of the regulatory entity of bingo and casinos put forward the same arguments used by the tobacco companies in their program "Convivencia en Armonía" (Coexistence in Harmony)⁴. As per its report, 100% smoke-free environments would cause economic losses and limit individual freedoms; thus, it proposed the authorization of smoking areas and the use of ventilation fans.

The civil society performed several actions to monitor the regulation drafting process, promote its approval and strengthen the public policy. Between 2012 and 2013, the Fundación Interamericana del Corazón - Argentina (FIC Argentina) submitted nine requests for the access to public information in order to review the draft regulation file: three of them were submitted before the Ministry of Health, another three were submitted before the Presidency, two were submitted before the Ministry of Economy and another was sent to the Ministry of Education. This allowed to verify the existence of a draft regulation complying with health

protection standards and also helped detect the aforementioned report by National Lottery.

As a strategy to strengthen the public policy, FIC Argentina offered to provide technical support to the Ministry of Health. Simultaneously, it submitted a report to answer to the false statements put forward by Lotería Nacional, which was incorporated to the regulation file. Besides, two public signature campaigns were conducted and several press releases were sent in connection with the need of regulating the national law, in order to encourage its approval and provide visibility to the process.



May 31: World No Tobacco Day
Do people smoke in your workplace? Sign for the enforcement of the National Tobacco Control Law and the protection of yours and everyone's right to work in a healthy environment. Fundación InterAmericana del Corazón - Argentina.

[Signature campaign to request the regulation of the National Tobacco Control Law]



Fortunately, the standing of the National Lottery was not taken into consideration⁵ and the law was regulated in May 2013.

The main measures included in the regulation⁶, main tool for the full enforcement of the law enacted in 2011, are:

- ▶ The creation of the National Tobacco Control Coordination Committee integrated by several ministries, other state entities and civil society organizations.

- ▶ The adoption of monitoring and control measures.

- ▶ The establishment of mechanisms to submit claims and complaints.

- ▶ A strong restriction on the advertising strategies that can be used by the tobacco industry at the point of sale.

Although the law establishes a comprehensive ban on tobacco advertising, promotion and sponsorship, points of sale are exempted. Nonetheless, the regulation limits advertising actions significantly, since it only allows two ads per company (one with the list of brands and prices and the other for promotional purposes, both of which have to be smaller than 30 cm x 30 cm, static, bidimensional and without light or screens); it establishes that the ads cannot be visible from the outside of the point of sale and indicates that they shall include health warnings in no less than 20% of the announcement.



SOURCE:
Página 12 newspaper.
05/30/13

SOURCE:
Tiempo Argentino.
05/30/13

1 Every law has a way to avoid its loophole.

2 The Executive Power regulated the law restricting tobacco advertising.

Tobacco Industry's strategies to hinder the implementation and regulation of the law

Once the regulation was approved, the tobacco industry disseminated its opinion against advertising restrictions at the point of sale on the news. Massalin Particulares (Argentinian subsidiary of Philip Morris) stated that the company “believes regulations can strike the right balance between effectively limiting tobacco products advertising and preserving adult smokers’ right to be informed. Likewise, it is important to consider that arbitrary regulating policies can have a negative impact on the regional economies where tobacco is produced, as well as on tax collection by the State”⁷.

The argument that advertising is an instrument to “inform adult smokers” has been widely used by the tobacco industry in several countries to hinder the restrictions. However, there is scientific evidence supporting the fact that tobacco advertising and promotion activities increase initiation in tobacco consumption^{8,9,10} and that tobacco companies target non-smokers and the youth, specially from developing countries where advertising and promotion laws are lax and tobacco is more socially accepted.^{11,12}

As part of its strategy to weaken the implementation of advertising restrictions and disseminating its arguments, the tobacco industry requested an extension of the term to conform to the regulation at the points of sale¹³. Although the Ministry of Health dismissed the industry’s request, the latter continued conducting advertising actions in breach of the law, such as the use of big and luminous billboards that were visible from the outside of points of sale (all of this prohibited by the regulation). Due to the lack of a mechanism to penalize breaches, almost a year after the implementation of the regulation, the tobacco industry continues breaching the provision by conducting an aggressive advertising campaign at points of sale.



Tobacco advertising at points of sale in Argentina, in breach of the regulation.

The civil society monitors tobacco companies to strengthen the implementation of the law

To assess compliance with the law in terms of tobacco advertising, promotion and sponsorship and detect marketing strategies used by the tobacco industry, FIC Argentina, in cooperation with provincial representatives of the Alianza Libre de Humo de Tabaco Argentina (Smokefree Alliance of Argentina, ALIAR) conducted an observational protocol. During said research, more than 800 retail stores were assessed, all of them located within jurisdictions applying the advertising restrictions at the point of sale set forth in the regulation of the national law (namely, the City of Buenos Aires, the Greater Buenos Aires, La Plata, Mendoza and Cordoba).¹⁴ Through this protocol, conducted between October 2013 and March 2014, it was possible to verify that the tobacco industry was not complying with the law and that it had also started to deploy a strategy similar to that used in other countries, consisting on the use of big and attractive tobacco products' display stands.

The protocol allowed to observe the strategic relevance of the point of sale for the tobacco industry. The results indicated that the tobacco companies did not adjust their advertisements to comply with the regulatory framework and continued using ads that were twice and even three times greater than the limit of 30 cm x 30 cm. Likewise, said ads fully exceed the set amount of two per company and are typically luminous and visible from the exterior of the retail stores. As a result, breaches against the regulation were detected in 73% of the visited points of sale.

Another remarkable issue is that the lack of a complete ban on advertising has given rise to new strategies that, even though they do not constitute breaches to the current regulatory framework,


take advantage on the loophole regarding product display. In this sense, as in other countries, the use of big and attractive product stands and cigarette packages as decorative elements has been detected.

To counter the new strategies of the tobacco companies, the information obtained by FIC Argentina was submitted before the authorities of the National Health Ministry and the proper implementation of the control mechanisms provided for in the regulation was requested, in order to monitor compliance with the law in terms of tobacco advertising, promotion and sponsorship.

The commitment of the authorities within the Ministry of Health to strengthen the implementation of the law led to the approval, in March 2014, of resolution 425/2014, establishing monitoring actions and fines for exhibiting tobacco ads, either directly or indirectly, on the streets and public spaces, since this is legally forbidden.



Attractive displays of tobacco products used by the tobacco industry in Argentina



Among the measures adopted as from the enactment of the tobacco control law was the creation of a National Tobacco Control Coordination Committee. This committee, mainly aimed at enforcing National Law no. 26.687, is made up by several public entities and representatives of the civil society, such as the Fundación Interamericana del Corazón-Argentina (FIC Argentina), the Union Antitabáquica Argentina (UATA), the Asociación Argentina de Tabacología (AsAT) and the Alianza Libre de Humo de Tabaco Argentina (ALIAR) among others. The creation of this cross-sectoral commission is a very significant step towards the formalization of civil society engagement in the adoption of tobacco control policies. In this sense, it has been a scenario through which FIC Argentina was able to suggest the signature of a resolution on the conflict of interests with the tobacco industry, thus formally limiting the relationship with the sector, in agreement with Article 5.3 of the Framework Convention on Tobacco Control.

New challenges for tobacco control in Argentina

The implementation process of tobacco control policies in Argentina has made significant headway over the last few years. The civil society has taken an active role in this progress by demanding transparency and monitoring compliance with the legislation. In this sense, the participation of the organizations has been crucial for strengthening the implementation of the law and its regulation. This participation has been embodied in multiple actions, such as public complaints in the mass media and social networks, requests for access to public information aimed at strengthening

the State's transparency mechanisms, the development of research providing evidence on the tobacco industry's actions, and permanent articulation and joint work with the National Program on Tobacco Control of the National Ministry of Health.

Even though there have been several advances, there are new challenges that require an integral strategy to strengthen tobacco control measures. On the one hand, in view of the detected breaches it is evident that it is necessary to strengthen

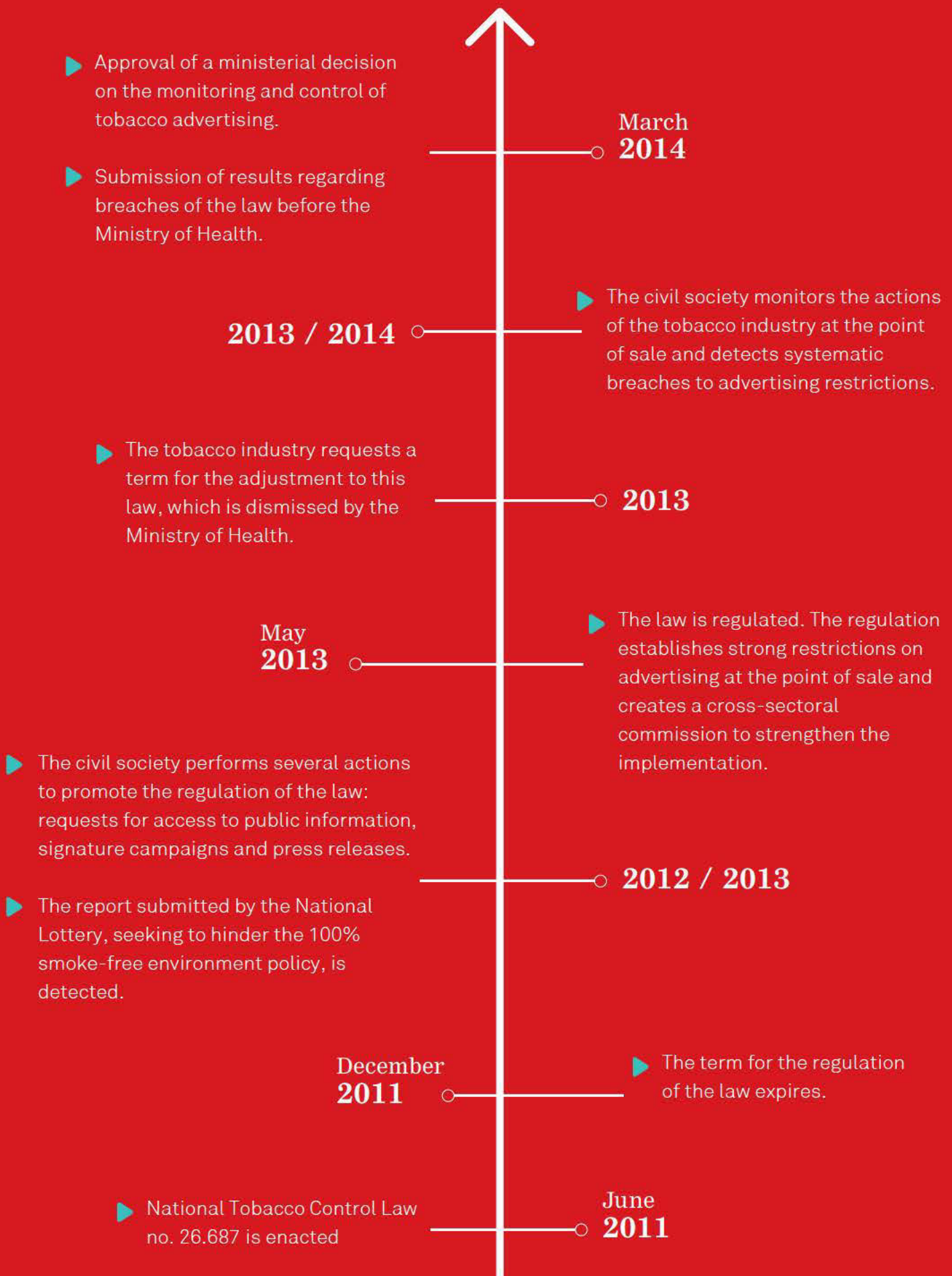
control and penalization mechanisms for the compliance with the law. But also, given the progress in regulatory matters, the tobacco industry begins to deploy new marketing strategies to avoid losing their market share by taking full advantage of legal loopholes, such as the increasingly attractive display of its products and the diversification of points of sale in different type of venues, such as restaurants and nightclubs.

In the light of this situation, the next step for tobacco control in Argentina shall be to generate the proper conditions to promote a complete ban on tobacco advertising, promotion and sponsorship throughout the whole territory, with no exceptions, since it is the most effective way to limit the marketing strategies of the tobacco industry, as recommended by the Framework

Convention on Tobacco Control and its guidelines. It should be noted that some provinces have already moved towards this goal by setting forth in their jurisdictions a standard that is higher than that of the national law, by prohibiting all forms of advertising. This certainly provides an opportunity to show the effectiveness of the measure and promote it, both at the sub-national and national levels.

At the same time, it is crucial to promote the adoption of other effective tobacco control policies, such as tax increases, and strengthening health policies by encouraging transparency in government actions and generating formal mechanisms limiting the relationship between the tobacco industry and decision-makers.





NOTES

- 1** - Source: 2010 National Census, National Statistics Bureau of Argentina (Instituto Nacional de Estadísticas y Censos, INDEC). Available at: <http://www.censo2010.indec.gob.ar/> (Accessed in June 2014). [Available in Spanish]
 - 2** - Source: Global Adult Tobacco Survey (GATS), National Ministry of Health and National Statistics Bureau, 2013. Available at: http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/GATS_FactSheetARG_FINAL.pdf (Accessed in June 2014). [Available in Spanish]
 - 3** - Source: Framework Convention Alliance - Bulletin 93 (3/7/2009). Available at: http://www.ftc.org/publications/bulletins/doc_view/383-bulletin-issue-93-friday (Accessed in June 2014).
 - 4** - See: <http://www.vadat.com/convivencia/> (Accessed in June 2014) [Available in Spanish]
 - 5** - For additional information see Health is not Negotiable. Civil Society against the Tobacco Industry's Strategies in Latin America. Case Studies 2010-2012; Fundación Interamericana del Corazón- Argentina, Corporate Accountability International Colombia, Fundación Interamericana del Corazón- Mexico, Alianza de Control de Tabagismo; Buenos Aires, 2012. Available at: http://www.ficargentina.org/index.php?option=com_content&view=article&id=249:la-salud-no-se-negocia&catid=92:publicaciones&Itemid=84&lang=en (Accessed in June 2014).
 - 6** - The regulation is a crucial tool to put into effect the implementation of the law, as well as to limit the exceptions provided for in the legal text (both in terms of advertising and smoke-free environments) and to determine enforcement and control entities and operative circuits for complaining and penalizing eventual breaches.
 - 7** - Source: Diario Tiempo Argentino, 05/30/2013. Available at: <http://tiempo.infonews.com/2013/05/30/sociedad-102825-el-ejecutivo-reglamento-la-ley-que-restringe-publicidades-de-tabaco.php> (Accessed in June 2014) [Available in Spanish].
 - 8** - Lovato C, Linn G, Stead LF, Best A. Impact of tobacco advertising and promotion on increasing adolescent smoking behaviors. *Cochrane Database Syst Rev.* 2003; (4): CD003439.
 - 9** - Moodie C, MacKintosh AM, Brown A, Hastings G. Tobacco marketing awareness on youth smoking susceptibility and perceived prevalence before and after an advertising ban. *European Journal of Public Health.* 2008 Mar 24 [Epub ahead of print].
 - 10** - Lopez Mi, Herrero P, Comas A, et al. Impact of cigarette advertising on smoking behavior in Spanish adolescents as measured using recognition of billboard advertising. *Eur J Public Health.* 2004;14:428-432.
 - 11** - Targeting the Poor: Casualties in Cambodia, Indonesia and Laos. Southeast Asia Tobacco Control Alliance (SEATCA). March 2008.
 - 12** - BAT's African Footprint. Action on Smoking and Health. 2008.
 - 13** - The existence of an extension request submitted by the tobacco industry to conform to the regulation was informed by representatives of the National Ministry of Health during the first meeting held by the National Tobacco Control Coordination Commission on July 2, 2013.
 - 14** - By virtue of the federal system in place in Argentina, provinces must adhere to the national law to apply it within their territories or can enact their own tobacco control laws. In this framework, though most of the jurisdictions have adhered to or passed legislation in accordance with the national standards, by May 2014 four provinces have already adopted a complete ban on tobacco advertising, promotion and sponsorship that is more stringent than the ban set forth by the national law.
-



03

MEXICO

Inhabitants

112.336.538¹

Prevalence of Tobacco Consumption

23.60%²

Year of FCTC Ratification

2004

Main Tobacco Control Laws and Measures in Force in the Country

100% smoke-free environments at the sub-national level:

▶ Mexico City (2008), Tabasco (2008), Morelos (2011), Veracruz (2012), Zacatecas (2012), State of Mexico, Nuevo León, Baja California (2013) and Baja California Sur (2014).

General Law on Tobacco Control, 2008:

▶ Pictorial Health Warnings

Special Tax on Production and Services Law, amendment of its Section 20, Fraction I, Subsection C) (entered into force as of January 1, 2011):

▶ Considerable tobacco taxes.

Companies in the Country and Market Share

- Philip Morris Mexico, subsidiary of Philip Morris International: 73.5%³

- British American Tobacco Mexico: 26.5%

In October 2010, the Mexican Congress approved a tobacco tax increase of 6.20 Mexican pesos (USD 0.50) on the 20-cigarette pack and of 4.20 Mexican pesos (USD 0.34) on the 14-cigarette pack. This measure, achieved after an aggressive campaign promoted by civil society organizations and by the great commitment of some legislators, represented a 25% increase in the final selling price of cigarette packs.

After the tobacco tax increase in 2010, no further progress has been achieved in connection with this issue. Thus, the taxation policy has lost effectiveness over the years, since there is no automatic adjustment compensating the effects of inflation.

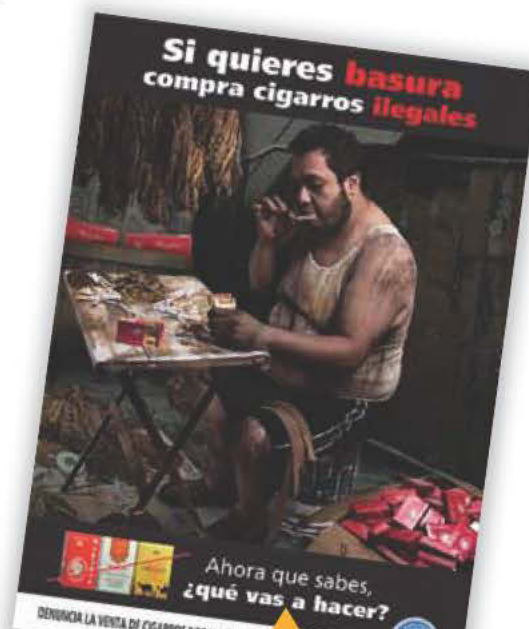
Tobacco industry seeks to thwart the tobacco tax increase arguing that it will lead to cigarette smuggling

After the implementation of cigarette taxes in Mexico, the tobacco industry strived to spread the idea that this measure would boost smuggling of tobacco products. Therefore, it carried out a dissemination strategy that included campaigns in the media and on the streets, lobbying decision-makers and alliances with shared interest groups.

To provide visibility to these arguments, in July 2011 different trade organizations supported by BAT and PMI formed the “Alliance against Illegal Products”, which has been committed since then to defending the interests of the tobacco industry by means of a simple and fallacious argument: tax increases led to a significant increment in the illegal trade of cigarettes.

During February 2013, the Alliance against Illegal Products launched a campaign to denounce the illegal cigarette trade. Its message had mass media coverage, for the purposes of halting the implementation of the tobacco tax increase in 2013. The campaign featured huge billboards across the main avenues of Mexico City, ads in

public means of transport, posters in stores, messages in social networks and the creation of a webpage.



Mass media campaign conducted in February 2013 by the Alliance against Illegal Products

“If you want trash, buy cigarettes in the illegal market. Now that you know, what are you going to do?”

TI STRATEGIES TO BLOCK TOBACCO CONTROL POLICIES

01

Lobbying government officials



"Vote-buying is an habitual practice conducted both in the House of Representatives as well as in the Senate, typically involving the federal government, the state governments, some municipal governments, parliamentary coordinators, entrepreneurs, and lobbying companies (...). As it is usually the case every year, lobbyists from the tobacco and soft drinks industries play the most active role in trying to convince legislators in exchange of personal benefits."

SOURCE: "Vote-buying in Congress". La Crónica. Mexico, 10/15/2013

02

Use of front groups to defend their interests

"The National Association of Wholesalers (Asociación Nacional de Abarrotereros Mayoristas, A.C., ANAM), the National Association of Supermarkets and Department Stores (Asociación Nacional de Tiendas de Autoservicio y Departamentales, A.C., ANTAD) and the Mexican Institute for the Promotion of Wholesalers and Miscellaneous Industries' Trade (Instituto Mexicano de Impulso al Comercio de Abarrotes y Misceláneas, A.C., IMICAM) reported the creation of an "Alliance against Illegal products", aimed at strengthening legal trade in Mexico and preventing the growth in the sale of illegal products within the country (...). Companies such as Philip Morris Mexico and British American Tobacco are also engaged in said Alliance."

SOURCE: "Alliance against illegal products". Empresasydinero.com. 07/18/2011



03

Campaigns using deceptive arguments in order to relate tobacco tax increases to the increment in cigarette smuggling



Tax Reform will double cigarette smuggling

SOURCE: EL Economista, Mexico, 01/10/13

The Civil Society reacts against tobacco industry's strategies

The campaign conducted by the Alliance Against Illegal Products -allegedly aimed at fighting against tobacco smuggling- had great visibility. However, the slogan used in the campaign (“If you want trash, buy cigarettes in the illegal market”) had a deceitful message intended to promote tobacco consumption and generated the false expectation that legal cigarettes do not cause a serious health detriment. This was the belief of Fundación Interamericana del Corazón México (FIC Mexico), and thus, in March 2013, it filed a complaint before the Federal Commission for the Protection of Sanitary Risk (Comisión Federal para la Protección de Riesgos Sanitarios, COFEPRIS) for breaches to the General Law on Tobacco Control and its regulations committed by the Alliance against Illegal Products’ advertising campaign. The grounds of the complaint were that advertising of tobacco products on the streets is prohibited and that said campaign had a partially subliminal message by highlighting the phrase: “If you want, buy cigarettes”.

The complaint filed by the civil society before COFEPRIS was successful. The entity addressed the accusation performed by FIC Mexico and withdrew the campaign of the Alliance Against Illegal Products from the streets of Mexico City since it was in violation of the tobacco advertising restrictions set forth by the Federal Law on Tobacco Control. Nonetheless, although the campaign was withdrawn, the tobacco industry and its allied groups continued making public statements on the alleged increase in illegal trade due to the increment in tobacco taxes; this fact significantly hindered the progress of tax policies.

“For at least three weeks now, an illegal and deceitful advertising campaign is being conducted by the Tobacco Industry, with giant billboards displayed on the streets and posters placed in the Mexico City Metro. The Interamerican Heart Foundation reported that said posters include messages promoting cigarette consumption. Although the alleged purpose is to fight illegal trade, the campaign states that there are ‘legal and quality cigarettes’, thus generating the expectation that these are not seriously detrimental to health- explained Erick Antonio Ochoa, member of the civil organization”.

SOURCE: “Tobacco companies accused of conducting a deceitful campaign in the Metro System”
La Jornada, Mexico, 03/14/13.



CIVIL SOCIETY ACTIONS TO ENCOURAGE UPDATE OF TOBACCO TAXES

02 Collaboration with legislators to submit bills favorable to tobacco tax increases



01 Complaint against TI actions

Press conference of civil society organizations to denounce TI deceitful campaigns



Legislators and civil society representatives announce a project during a press conference



03 "Global Forum on Tobacco Control Public Policies" where legislators, authorities, opinion leaders and civil society researchers discussed the impact of tobacco consumption on health, as well as the elaboration and implementation of policies for the reduction and prevention of tobacco consumption.

Global Forum on Tobacco Control Policies

04 Campaign for tax increases



Poster of the campaign displayed on the streets

Tobacco Control Challenges in Mexico

Civil society organizations performed multiple actions to promote a new tobacco tax increase: they offered technical support to legislators and other government authorities, submitted data and information on the benefits of this measure to the health of Mexican people, and encouraged public debate in discussion forums and in the media. Simultaneously, Fundación Interamericana del Corazón México, Alianza Contra el Tabaco, the Mexican Council against Tobacco Consumption, Alianza Nacional para el Control de Tabaco, Red México sin Tabaco and Comunicación, Diálogo y Conciencia (CODICE), with the support of The Campaign for Tobacco-Free Kids, launched the campaign “Tobacco Taxes really work”, aimed at demanding legislators and Executive Power officers to support the increase and indexation of the special tax on tobacco products.

However, despite the great efforts made by some legislators and civil society organizations to enhance tobacco control policies in Mexico, the proposals for increasing taxes were unsuccessful. On October 31, 2013, the Senate ratified the decision of not including an increase in tobacco taxes, and to exempt the excise tax on cigars and fully hand-rolled tobacco products. The only measure in favor of tobacco control included in

the tax reform was the obligation to include a safety code on packages and boxes of tobacco products for the purposes of monitoring their production, distribution and final sale.

As from the approval of tobacco tax increases in 2010, the tobacco industry accelerated its reaction and started to implement interference strategies to thwart the adoption of the measure. Year after year, the barriers imposed by the tobacco companies had become much more difficult to overcome. Despite the efforts of the civil society organizations to defend the Mexicans’ right to health, the tobacco industry has displayed increasingly aggressive strategies to achieve its goals. In this context, the challenge shall be to keep working in order to promote and strengthen the policies to fight against tobacco use, as well as denouncing the actions of the tobacco companies to block them.





**November
2013**

- ▶ Projects for the amendment of the General Law on Tobacco Control are debated, but the Tobacco Industry blocks the initiatives.
- ▶ The Mexican Congress approves a reform that suppresses the 35-cent tax on cigars and other fully hand-rolled tobacco products.

**September
2013**

- ▶ Civil Society Organizations introduce the campaign “Tobacco Taxes really work”.

**May
2013**

- ▶ The Federal Commission for the Protection of Sanitary Risk (COFEPRIS) addresses the complaint. The campaign against illegal products is withdrawn from the streets of Mexico City.

**March
2013**

- ▶ FIC Mexico files a formal complaint against the advertising campaign of the Alliance against Illegal Products for its breach of the Tobacco Control Law through its subliminal messages aimed at promoting tobacco consumption.

**December
2012**

- ▶ Projects for the amendment of the General Law on Tobacco Control are discussed, but the tobacco industry blocks the initiatives.

**March
2011**

- ▶ Tobacco companies launch a campaign against tobacco taxes, claiming an increase in smuggling.

NOTES

1 - Source: National Institute of Geography and Statistics (Instituto Nacional de Geografía y Estadística, INEGI) 2010 Population and Housing Census. Available at: www.inegi.org.mx (Accessed in June 2014) [Available in Spanish]

2 - Source: 2011 National Survey on Addictions, tobacco report. Available at: www.conadic.salud.gob.mx (Accessed in June 2014) [Available in Spanish]

3 - Source: PMI International, 2012 Annual Report, March 2013, p. 40 (the information is considered confidential by the Secretaría de Hacienda y Crédito Público [Mexico Ministry of Finance and Public Credit] Available at: <http://investors.pmi.com/phoenix.zhtml?c=146476&p=irol-reportsannual>

04

COLOMBIA

Inhabitants

47.464.523¹

Prevalence of Tobacco Consumption

17% of the population aged 12-65²

Year of FCTC Ratification

2008

Main Tobacco Control Laws and Measures in Force in the Country

Law no. 1335 of 2009:

- ▶ 100% smoke-free environments
- ▶ Health warnings with pictograms covering 30% of the package
- ▶ Complete ban on tobacco advertising, promotion and sponsorship
- ▶ Prohibition to sell cigarettes by the unit and packs containing fewer than ten units

Leading Tobacco Companies in the Country and Market Share

- COLTABACO, subsidiary of Philip Morris International: 48.70 %
- PROTABACO, subsidiary of British American Tobacco: 47.70%³



In year 2009, Colombia enacted Law no. 1335 or Tobacco Control Law, which adopted important policies from the World Health Organization's Framework Convention on Tobacco Control (FCTC). The main measures that Colombia incorporated to its legal regime include the adoption of 100% smoke-free environments in all enclosed public spaces, the inclusion of health warnings with pictures in cigarette packages, the ban on the sale of cigarettes by the unit, the obligation for manufacturers and importers to supply information on the ingredients and the

development of educational programs intended to prevent tobacco consumption and promote smoking cessation.

Furthermore, the Colombian Law was the first in the region to include a complete ban on all forms of advertising, promotion and sponsorship of tobacco products, in line with Article 13 of the FCTC and its guidelines. This measure was implemented in July 2011 and raised great expectations, since only a few countries in the region had implemented such a policy by then.

The new strategy of the tobacco industry to interfere with the advertising ban: promotional games

Despite the existence of a complete ban on tobacco advertising, promotion and sponsorship, and notwithstanding the ratification by the Colombian Constitutional Court⁴ of said measure as per the provisions of the FCTC⁵, the tobacco industry continued promoting its products through

innovative strategies⁶. Among said strategies, there was the development and dissemination of promotional games intended for managers and retail outlet owners, aimed at strengthening their ties with them and with their consumers for the purposes of increasing their sales.





Advertising material of the promotional game “Mi tienda de película” (My movie-like store) launched by Philip Morris International – COLTABACO (PMI) as part of an advertising campaign for the introduction of the L&M brand in Colombia. The flyer instructs the seller to place the product in a visible place as a condition to win the prize during a surprise visit.

“My Movie-Like Store. I’m the main actor in the EVOLución and this is My Movie-Like Store.”

“Evolution in quality and flavor, at a better price.”



What is a promotional game?

Promotional games are forms of advertising and promotion through which companies offer prizes to sellers (retailers) for the purposes of boosting their sales. To gain those prizes, the managers or owners of the stores have to comply with certain conditions: to place particular brands in a visible place, to exceed certain sales volumes in connection with a specific product or to promote a particular brand among their clients, etc.

Like lotteries, raffles and draws, promotional games in Colombia are supervised by the State and are legally regulated. In the case of promotional games promoted by the tobacco industry, they have the authorization of State entities regulating games of chance (although they are in violation of the existing complete ban on advertising, promotion and sponsorship of tobacco products). In addition, they also enjoy taxation privileges (they are exempted from taxes), since the main commercial activity of tobacco companies is not the organization of raffles or draws.

To put in context the importance of promotional games as a strategy to gain sellers' loyalty, it is necessary to refer to the point of sale. There is ample evidence showing the importance of the point of sale in cigarettes' advertising and marketing strategies⁷. Retail strategies include a variety of elements of promotion, ranging from

the display of the product, brand activation or renewal, discounts or special prices, up to the alliance with retailers to enhance sales through active recommendations.

In this sense, promotional games organized by the tobacco industry are focused on boosting their sales by means of advertising and promotion prohibited by law and also tax exempted.



Communication material of the promotional game "Los Propios" of COLTABACO (PMI) giving instructions regarding brand promotion and retailer participation

To carry out these actions against the Colombian Tobacco Control Law, the tobacco industry requested State entities such as COLJUEGOS⁸ and Department Lotteries, to authorize promotional games exempted from taxes, within their legal competence to supervise and authorize the organization of games of chance. Said regulatory entities authorized tobacco industry's promotional games, although such authorization to implement games encouraging the sale of tobacco products (either directly or indirectly) is against the policy of complete ban on tobacco advertising, promotion and sponsorship. Thus, promotional games

expanded through different cities of Colombia and the tobacco industry found in this strategy a modality that was apparently legal (but only apparently) to keep promoting its products.



Civil society actions to counter tobacco industry strategies

Civil society organizations committed to tobacco control, such as Corporate Accountability International Colombia (CAI), started monitoring tobacco industry's promotional actions so as to report them before the relevant authorities and request their cessation.

Thus, between 2012 and 2013 several draws and/or promotional contests -approved by the pertinent authorities- were detected: some of

them conducted by COLTABACO (PMI), such as "El dueño del aviso", "L&M EVO reta lo común", "Mi tienda de película", "Mi chaza de película", "La súper chaza reta lo común", "Festival internacional L&M EVO" (authorized twice), "Tu marca mundial L&M EVO" and "La jugada L&M EVO" as well as other contests organized by PROTABACO (BAT), such as "El incógnito", "Compra, Rota y Gana", "La semana que te premia", "Copa unidos", and "Vive la Navidad".



SOURCE:
El Espectador, 06/04/13

In view of this situation, the civil society undertook several measures aimed at demanding the declaration of illegality of the promotional games and the interruption of the tobacco industry activities in this respect.

In the first place, there was a notification addressed to COLJUEGOS stating the

unlawfulness of the Excepted Promotional Games, since they were in violation of Law No. 1335 of 2009, as per its Section 16: "All forms of promotion of tobacco products and derivative products are prohibited". Besides, they requested updated information about which tobacco industry games had been approved and under which conditions.

Based on this request, COLJUEGOS sent the documents or administrative acts approving the Excepted Promotional Games, thus enabling access to the complete information on the permissions granted to the tobacco industry.

Thereafter, a legal document supporting the arguments submitted before COLJUEGOS was sent to strengthen the petition to stop authorizing the tobacco industry's promotional games. The arguments submitted set forth the following: a) that promotional games are focused on boosting sales, and b) that these practices are aimed at the advertising and promotion of the brand, in breach of section 16 of Law no. 1335.



Material advertising a promotional game for BAT's brand Mustang. The retailer is directed to display and sell the product in order to win a prize. (Image taken in the first semester of 2012)

"Sell and display Mustang Azul. DON'T FORGET to sell and display Mustang Azul. Material targeted at and for the exclusive use of marketing channels. Soon mystery shopper will reward your fidelity."

On October 10, 2013, COLJUEGOS sent a communication answering that it understood the arguments submitted, and stated that "COLJUEGOS should apply the prohibition set forth

in Law 1335 of 2009 and not authorize or exempt the tobacco companies when the games are intended to increase the sales of tobacco and its derivative products. This would also be applicable when they are conducted among store owners, since it derives in the promotion of tobacco and boosting of sales through an indirect promotion".

As a result of the civil society claim, on February 12, 2014, COLJUEGOS informed the tobacco companies BAT and PMI that it would "abstain from granting exemptions or authorizations for the performance of promotional games in their distribution channels (i.e. points of sale) which are intended to increase tobacco sales, in express application of section 16 of Law 1335 of 2009".



Notification sent by COLJUEGOS to the tobacco companies BAT and PMI announcing them that it would abstain from authorizing promotional games, since they are a form of promotion of tobacco consumption, prohibited by Law no. 1335

"The company considers that it is not violating the competition regime, since it is deciding on an issue related to their powers legally granted, and it is not going to grant exceptions or authorizations for the promotional games of all the tobacco companies that may request them from now onwards, since they constitute an action of tobacco promotion prohibited by law."

This decision by COLJUEGOS has significant impact on the path to achieving the enforcement of Law 1335, since it was favorable to the Colombian public tobacco control policy and, with a technical and legal basis, acknowledges that promotional games are a form of advertising related, either directly or indirectly, to the encouragement of tobacco consumption.

Apart from the petitions submitted before COLJUEGOS, the civil society also submitted requests to put an end to the authorization of promotional games before other district entities regulating games of chance, such as Lotería de Bogotá (Bogotá Lottery), an industrial and commercial company of the Capital District of Bogota (with legal personality, administrative autonomy and own patrimony) in charge of authorizing the games performed in the Colombian capital city.

The request, based on the same legal arguments submitted before COLJUEGOS, received a negative answer. In fact, Lotería de Bogotá did not accept the tobacco control claims, but rather admitted the explanations of the tobacco industry, insisting on the following aspects: that tobacco trade is licit, that promotional games are exclusively aimed at marketing channels and that they would not affect the end consumer.

However, in view of the national nature of COLJUEGOS jurisdiction, and based on the decision recently taken by said entity, the civil society continues requesting the local authorities to put an end to the permissions granted to the promotional games.

Lessons learned

Promotional games, mediated by the assumption of legality arising from the authorizations granted by COLJUEGOS and Lotería de Bogotá, constitute an interference strategy of the tobacco industry that normalizes a commercial practice that breaches the Colombian law. Likewise, it counteracts the efforts to reduce tobacco consumption and exposure to tobacco smoke.

Tobacco companies made skilful use of the legality assumption from the authorizations granted to promotional games. However, the efforts to stop the tobacco industry's strategies were successful. But the most remarkable aspect of this case is that the entity regulating the games of chance acknowledged that the complete ban on advertising includes promotional games in distribution channels or points of sale; this was the same interpretation given by the upper constitutional court a few years before, when considering that the complete ban on

advertising, promotion and sponsorship set forth in Law no. 1335 of 2009 is a comprehensive clause that includes as a form of advertising and promotion the display of the product, the deals with distributors, promotional contents and games, payment of a reward for sale volumes and incentive plans, among other actions.

It is evident that with partial advertising restrictions it is not possible to achieve the effective reduction of tobacco consumption and health protection goals, since the exceptions are used by the tobacco industry to redirect their marketing expenses and develop innovative strategies to continue advertising their products and gaining new consumers. Therefore, the Colombian case illustrates the importance of having a legal framework establishing a complete ban on advertising, in line with Article 13 of the FCTC and its guidelines.

▶ COLJUEGOS notifies the tobacco companies (BAT and PMI) regarding its decision to abstain from authorizing promotional games.

February
2014

▶ The preliminary answer from COLJUEGOS is received, acknowledging that the entity should not authorize promotional games; but it also states that the entity must apply a legal concept of legitimate confidence and inquire the arguments of the tobacco industry before providing a definite answer to the process.

November
2013

▶ The civil society files a petition before COLJUEGOS and Lotería de Bogotá, indicating the breach of the law and requesting the termination of the authorizations granted to the tobacco industry's promotional games.

August
2013

▶ On the World No Tobacco Day, the civil society exposes before the press the existence of tobacco industry's promotional games addressed to retailers.

May
2013

▶ The civil society starts monitoring the actions of the industry regarding advertising, promotion and sponsorship of tobacco products.

July
2012

▶ The complete ban on tobacco advertising, promotion and sponsorship comes into force.

June
2011

▶ Tobacco Control Law no. 1335 is passed in the Colombian Congress.

May
2009

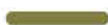
NOTES

- 1** - Source: Colombia National Administrative Department of Statistics (Departamento Administrativo Nacional de Estadística, DANE). See: <http://www.dane.gov.co/> (Accessed in June 2014) [Available in Spanish].
 - 2** - Source: 2013 PAHO Tobacco Control Report for the Region of the Americas, p.34. Available at: <http://goo.gl/wp83sH> [Available in Spanish]. See: www.paho.org.
 - 3** - Superintendency of Industry and Commerce (Superintendencia de Industria y Comercio). Paper 11. Effects of the monitoring, control and regulation public policies in the tobacco market in Colombia. 2013 Graphic 4. Market share per volume of cigarettes sold in year 2011. Page 17.
 - 4** - See Decision on enforceability C-830 of 2010. Available at: <http://www.corteconstitucional.gov.co/relatoria/2010/c-830-10.htm> (Accessed in June 2014) [Available in Spanish]
 - 5** - According to the FCTC, "tobacco advertising and promotion implies any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly". Framework Convention on Tobacco Control, World Health Organization, 2003
 - 6** - For additional information see: Health is not negotiable. Civil society against the tobacco industry's strategies in Latin America. Case Studies 2010-2012; Fundación Interamericana del Corazón Argentina, Corporate Accountability International Colombia, Fundación Interamericana del Corazón Mexico, Alianza de Controle do Tabagismo; Buenos Aires, 2012. Available at: http://www.ficargentina.org/index.php?option=com_content&view=article&id=249:la-salud-no-se-negocia&catid=92:publicaciones&Itemid=84&lang=en (Accessed in June 2014)
 - 7** - Wakefield M, Germain D, and Henriksen L. The effect of retail cigarette displays on impulse purchase. *Addiction*. Feb 2008; 103(2):322-8
 - 8** - COLJUEGOS is the National Industrial and Commercial Company administrating the profit monopoly of the games of chance. COLJUEGOS is the authority that controls, at a national level, the gambling sector; at a municipal and department level, they are exploited and authorized by an entity called Departmental Public Capital Society [Sociedad de Capital Público Departamental, SCPD], and the lotteries by delegation.
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05

CHILE



Inhabitants

15.116.435¹

Prevalence of Tobacco Consumption

40.6% of adult population²

Year of FCTC Ratification

2005

Main Tobacco Control Laws and Measures in Force in the Country

Law no. 20.660 of 2013 (amending Law no. 19.419):

- ▶ 100% smoke-free environments in all enclosed public spaces
- ▶ Complete ban on tobacco advertising, promotion and sponsorship
- ▶ Demand to tobacco companies to report their expenses in lobbying, Corporate Social Responsibility Programs and their alliances with other companies or organizations.
- ▶ Higher number and rotation of pictorial health warnings.

Leading Tobacco Companies in the Country and Market Share³

- British American Tobacco: 96% of the market
- Philip Morris International: 2% of the market

In September 2011, the project to amend Tobacco Control Law no. 19.419 was filed in the Chilean Congress by the Executive Power for its discussion in the House of Representatives. This project proposed the implementation of 100% smoke-free environments as the central theme and spirit of the law.

During its discussion process, the civil society led by the initiative Tobacco-Free Chile [Chile Libre de Tabaco, CHLT] performed several actions to endorse the implementation of 100% smoke-free

environments and to propose other measures recommended by the Framework Convention on Tobacco Control (FCTC), such as the complete ban on advertising and a higher number and rotation of health warnings, among others.

On the other hand, the tobacco industry made great efforts to block the enactment of the law and achieve a tailor-made regulation, protecting their commercial interests at the expense of the Chilean people.

BAT Chile lobbying during the discussion of the tobacco control law

As the bill proceeded through its legislative phases, and when entering the Senate for its discussion, several modifications were introduced increasing the restrictions for the purposes of reducing tobacco consumption and protecting the population's health. One of them was the incorporation of the complete ban on advertising, promotion and sponsorship.

Against the recommendations of Article 5.3 of the FCTC⁴, the Congress authorized BAT Chile to participate in the discussion held in the Health Committees of the House of Representatives and the Senate to state its views. The tobacco company gave its opinion on several aspects of the bill, and particularly objected to the advertising restrictions.

In their first submission before the Senate's Health Committee, the representatives of BAT Chile resorted to the same arguments used in most of the countries. In this sense, they stated that the complete ban on advertising would violate the principle of legal equality, the right

to carry out an economic activity, the right to non-discrimination by the State and the right to property. Besides, the representatives of the tobacco industry claimed that the existing restrictions on advertising were already against the principle of free competition and that the Chilean Constitution authorized legislators to regulate constitutional guarantees, but never to suppress them.⁵

BAT Chile's submission before the Senate proposing sanctions to illegal trade, deadlines for including health warnings and regulation of advertising at the point of sale, all of them serving the corporate interests.

"British American Tobacco Chile. Our Standing regarding amendments to Tobacco Control Law. July 2012.

Advertising: Chile leads restrictions. The point of sale is the only information channel available."



But apart from the reports and formal submissions authorized to the tobacco company, a significant event took place during the discussion process: BAT Chile was publicly accused of lobbying by the Minister of Health, Dr. Jaime Mañalich⁶ and by parliamentary members of the opposition⁷.

According to the complaints (which had great repercussion in the national mass media) BAT representatives had exerted undue pressure on the parliamentary members to halt the enactment of the law.

“There are massive lobbying actions undertaken (by the tobacco company) and taking place in the halls, in conversations, through telephone calls to parliamentary members, in trying to find which point can be influenced to hinder the enactment of the legislation.”

Minister of Health, Jaime Mañalich, during the discussion held in Congress regarding tobacco control law.

SOURCE: Emol.com, 01/02/13

Through their allied senators, the industry managed to make the legislation undergo a review by the Committee on Constitutional Matters, Legislation and Justice regarding advertising bans. Reports were submitted in favor and against this measure and finally the Committee ruled in favor of the advertising ban, mainly claiming that the provisions of the Framework Convention on Tobacco Control prevailed over the national legislation.

It should be noted that the industry also acted to promote the review of the bill by the Senate's Agriculture Commission so as to analyze the prohibition on additives proposed by the Ministry of Health⁸. The tobacco company and its allied senators filled the chambers of the Congress with tobacco growers, who claimed that if the prohibition on additives was approved, it would be impossible then to grow tobacco in Chile and they would lose

SOURCE: www.emol.com, 01/02/2013

SOURCE: www.emol.com, 01/27/2012

- 1 Representative Accorsi denounces that tobacco companies' lobby influenced the voting of the law.
- 2 Minsal further criticizes tobacco companies' lobby before the voting of the law.

their jobs⁹. This false statement gained the support of the parliamentary members from tobacco growing areas, and the law was eased at that point.

Lobby: financial connection of British American Tobacco Chile with Libertad y Desarrollo.

BAT connections with the political class in Chile

The tobacco industry in Chile has built influential networks to have access to decision-making levels. According to a report of Tobacco-Free Chile¹⁰, one of the main strategies of BAT in Chile is to include representatives of all political trends in its management body. Therefore, its local Board of Directors has recently incorporated ministers of the military regime, of the Coalition Governments and of former president Sebastian Piñera's office.

Likewise, the chairman of the Board of Directors of BAT Chile, Carlos Cáceres -former Minister of Finance and Domestic Affairs of Augusto Pinochet- is also chair of the Institute of Freedom and Development [Instituto Libertad y Desarrollo], main center of neoliberal right thinking and training of experts of the Independent Democratic Union party (UDI). This party, which was part of the coalition government of the former president Piñera, was the main opponent to the tobacco control law. The Former Ministry of the General Presidency Office, Cristian Larroulet, was a member of the Institute of Freedom and Development; and Teodoro Ribera Neumann, one of the directors of BAT since 2009, resigned to this position in mid 2011 to undertake the position as Minister of Justice.

During the legislative proceeding, Tobacco-Free Chile denounced said conflict of interest. A journalistic investigation verified this fact and revealed that BAT Chile made a millionaire donation to the Institute of Freedom and Development.



The tobacco control bill proceeds with the support of the civil society

During its processing in Congress, Tobacco-Free Chile, with the support of other national and international organizations, performed

several actions to support the bill and to propose measures in line with the FCTC.

Technical documents were submitted in favor of the legal initiative before the Health Commissions of the House of Representatives and the Senate and before the Labor Commission of the Senate. Furthermore, meetings were held with some benches of political parties as well as bilateral meetings with a hundred parliamentary members of the entire political spectrum. Tobacco-Free Chile, with the national representation of the Pan American Health Organization (PAHO), mobilized medical societies, academic organizations and health unions to add social support to

the implementation of 100% smoke-free environments, support that was also materialized in a press release of a capital city newspaper and public statements addressed to the Congress.

A significant support during the proceeding of the law was the one provided by the international community on tobacco control of the region; its representatives sent letters to the parliamentary members and visited Chile to speak with the mass media and hold meetings in Congress.

CIVIL SOCIETY ACTIONS TO SUPPORT TOBACCO CONTROL LAW



01 Signature campaign

02 Opinion polls to show citizenship support



03 Press articles

Sonia Covarrubias, Coordinator of Tobacco-free Chile

05 Submissions and filings of reports before the parliamentary commissions and congressmen



"Tobacco-Free Chile To the Public Opinion I also support a tobacco-free Chile"

04 Public support to the bill on behalf of national and international organizations and personalities

Finally, with the strong conviction of the Ministry of Health and despite the lobbying tactics of the tobacco industry, in February 2013 Law no. 20.660 was enacted in Chile, amending Tobacco Control Law no. 19.419. Its principal measures include, among others: the implementation of 100% smoke-free environments in all enclosed public spaces, the expansion of the ban on advertising,

promotion and sponsorship to the points of sale- only place excepted in the previous law- and a significant progress to provide more transparency to the activities of the tobacco companies, by requesting annual reports about their contributions and donations, alliances with third-parties, execution of contracts and corporate social responsibility activities.

Strategies of the industry to bypass the advertising ban at the point of sale

The new law entered into force in March 2013 and its approval was a severe blow against the tobacco industry, since the points of sale -approximately 28,000¹¹ throughout the country- are the most important means of contact from where it can perform advertising and marketing strategies to promote its product.

packages stands in stores, groceries and supermarkets, although this was an unauthorized strategy of advertising and promoting tobacco products. Therefore, in mid 2013, the civil society filed a public complaint against BAT Chile for promoting its products through this new channel.

Nonetheless, the interference of the industry to hinder the advertising ban did not cease after the enactment of the law. The tobacco industry withdrew the advertisements from the points of sale and replaced them with big cigarette



Display of tobacco products at Chilean points of sale.

By virtue of the filed claim, the Subsecretariat of Public Health issued an official letter¹² with directions to the Regional Health Ministerial Offices (SEREMI) across the country to proceed to denounce the violators of the Tobacco Law who placed package displays at points of sale before the Local Police Court. Progress in this sense is

an important precedent, since it acknowledges that big package displays (strategy used in several countries when advertising at the point of sale is prohibited) are a way to promote tobacco products.

Battles won and new strategies

The Chilean case clearly illustrates the interference strategies carried out by the tobacco companies during the debate of the tobacco control laws, many of which have been reported by the civil society of numerous countries in their own discussions and implementation processes of tobacco control laws.

In view of the unsuccessful efforts of BAT Chile to block the enactment of the rules prohibiting advertising, it is expected that they will continue interfering in this field with new actions, claims and litigations. In fact, by June 2014 the conflicts continue and have proceeded to the legal field, with legal submissions (still pending resolution) on behalf of BAT Chile before the General Comptroller's Office to block the implementation of the law.

Even so, the progress made by Chile in terms of tobacco control is remarkable, since it has turned into one of the few countries in the region to have adopted a complete ban on advertising and that has implemented innovative transparency mechanisms requiring tobacco companies to fully report their expenses allocated to promotion and lobbying, as well as their donations, alliances with other companies and organizations and their expenses in activities of corporate social responsibility.

▶ The Ministry of Public Health issues Official Letter no. 2256 prohibiting the placement of tobacco displays at points of sale and classifies them as a violation to advertising restrictions.

July
2013

June
2013

▶ The civil society publicly reports the placement of cigarette displays at points of sale.

▶ Law no. 20660, in line with the FCTC, is enacted.

February
2013

January 2012 - January 2013

▶ The Minister of Health and parliamentary officers denounce tobacco companies' lobbying actions to hinder the approval of the bill.

▶ A bill to amend Law no. 19419 on tobacco control enters the Congress.

September
2011

NOTES

- 1** - Source: National Institute of Statistics [Instituto Nacional de Estadísticas], Chile 2002.
 - 2** - Outcomes of the 2009-2010 National Health Survey. Chile Ministry of Health. Available at: <http://epi.minsal.cl/estudios-y-encuestas-poblacionales/encuestas-poblacionales/encuesta-nacional-de-salud/resultados-ens/> (Accessed in June 2014) [Available in Spanish]
 - 3** - Economy. Excise tax on tobacco. Thanks for Smoking. BCI. April 2010. Available at: <http://www.bci.cl/medios/filiales/bciestudios/economia/2010-04-28%20ITA.pdf> (Accessed in June 2014) [Available in Spanish]
 - 4** - Article 5.3 of the FCTC and its guidelines demand commitment of the States to the Treaty to the protection of public health policies with respect to tobacco control and other vested interests of the tobacco industry.
 - 5** - BAT Chile's submission in the Health Commission of the Senate, July 2012. Available at: www.batchile.com See: <http://goo.gl/qWTNX7> [Available in Spanish]
 - 6** - "Minsal further criticizes tobacco companies' lobby before the voting of the law". Available at: www.emol.com See <http://goo.gl/aSV2k3> (Accessed in 2014) [Available in Spanish].
 - 7** - "Representative Accorsi denounces that tobacco companies' lobby influenced the voting of the law". Emol.com- 01/27/2012. Available at: <http://www.emol.com/noticias/nacional/2012/01/27/523597/accorsi-denuncia-gran-lobby-de-tabacaleras-previo-a-votacion-de-ley.html> (Accessed in June 2014) [Available in Spanish]
 - 8** - Press Article. Growers and producers express their concern regarding the project to suppress additives in cigarettes. Available at: http://www.senado.cl/prontus_senado/site/artic/20120830/pags/20120830165551.html (Accessed in June 2014) [Available in Spanish]
 - 9** - This strategy was also used in Brazil during voting of the resolution prohibiting the use of additives. See: Health is not Negotiable- Civil Society against the Tobacco Industry's Strategies in Latin America. Case studies 2010-2012; Fundación Interamericana del Corazón, Argentina, Corporate Accountability International Colombia, Fundación Interamericana del Corazón, Mexico, Aliança de Controle do Tabagismo; Buenos Aires, 2012. Available at: http://www.ficargentina.org/index.php?option=com_content&view=article&id=249:la-salud-no-se-negocia&catid=92:publicaciones&Itemid=84&lang=en (Accessed in June 2014)
 - 10** - Report on the Tobacco Industry in Chile, Maria Teresa Valenzuela. Tobacco-Free Chile. Available at: <http://www.chilelibredetabaco.cl/wpcontent/uploads/2012/05/industria-tabacalera-en-chile-hoja-informativa-mayo-2012.pdf> (Accessed in June 2014) [Available in Spanish]
 - 11** - BAT Chile. Available at: http://www.batchile.com/group/sites/BAT_7ZHF2R.nsf/vwPagesWebLive/DO7ZMGAS?opendocument&SKN=1 (Accessed in June 2014)
 - 12** - Official Letter no. 2256, issued by the Sub-secretariat of Public Health on July 15, 2013, stating that the "law sets forth in its article 3 that advertising of tobacco and of related products of the brand is prohibited. In its article 2, it establishes in letter a) that for the purposes of this law, advertising shall be understood as any form of promotion, information or action for the purpose of, or intended for, promoting a product made with tobacco or tobacco consumption. In this sense, it is worth highlighting that any form of corporate social responsibility, announcement in magazines, newspapers or other means of advertising are prohibited, even if they are purely informative, as well as any form of communication seeking to highlight a product over other products, such as the devices that have been progressively installed at points of sales where the price list is highlighted over other products within the store and the systems that have been installed in galleries and other places to highlight the display windows and products."
-

06

PERU

Inhabitants

30.475.144¹

Prevalence of Tobacco Consumption

13.3% of urban population²

Year of FCTC Ratification

2004

Main Tobacco Control Laws and Measures in Force in the Country

Law no. 28.705 of 2006, amended by Law 29.517³ of 2010:

- ▶ 100% smoke-free environments
- ▶ Health warnings with images occupying 50% of each side

Leading Tobacco Companies in the Country and Market Share

British American Tobacco dominates most of the market⁴



In a Plenary Session held on March 30, 2010, the Peruvian Congress passed Law No. 29.517, amending Tobacco Control Law no. 28.705 with 55 votes in favor, 4 against and 11 abstentions.

The enactment of this new law implied the adoption of the 100% smoke-free environments policy in Peru, since it introduced the suppression of smoking areas in all enclosed public spaces, with no exceptions.

For the effective implementation of the Peruvian Tobacco Control Law, the local governments are required to approve their corresponding adherence ordinances. In this context, the civil society represented by the Permanent National Commission on Tobacco Control [Comisión Nacional Permanente de Lucha Anti Tabáquica, COLAT] and representatives of the Pan American Health Organization (PAHO) worked with experts from 22 local governments of Lima to draft a model ordinance. Such model ordinance has been and continues to be promoted by the civil society committed to tobacco control among local governments and was already approved by several Peruvian Municipalities, enabling an increasing number of citizens to be protected from the exposure to tobacco smoke.

SOURCE:
Peru 21, 03/31/10



1 "Prohibition to smoke in restaurants, nightclubs and offices"

2 "Smoking is prohibited"

SOURCE:
El Comercio 03/31/10



Constitutional Challenge against the Tobacco Control Law

Six months after the enactment of Law 29.517, a petition with over 5,000 signatures was submitted for the purposes of promoting an action of unconstitutionality against said law⁵.

The attorney in charge of this preliminary phase of the unconstitutionality proceeding, Jaime Barco Roda, was also responsible for the registration of the service mark “Respeto x Respeto” [Respect for Respect] on November 19, 2010. This would be the immediate precedent to the creation of the Peruvian Taxpayers’ Association “Contribuyentes por Respeto”, think tank committed to the promotion of free trade, which has had an active role in the opposition to legislative initiatives towards the prohibition of tobacco advertising and its display at points of sale, as well as misleading the public opinion regarding the real scope of laws 28.705 and 29.5176. The Executive Director of said



SOURCE:
Contribuyentes por respeto,
www.respeto.pe, 10/10/12

SOURCE:
Contribuyentes por respeto,
www.respeto.pe, 08/22/12

Articles published by *Contribuyentes por Respeto* opposing to the 100% smoke-free environments policy.

- ① “The abuses of tobacco control”
- ② “Regarding venues with terraces”

association, Fernando Cáceres Freyre, is a former manager of British American Tobacco in Peru (BAT)⁷. This fact illustrates the connections between the tobacco industry and the parties filing the action.

On November 30, upon conclusion of the signature verification process, the action of unconstitutionality against Law 28.705, as amended by Law 29.517, was filed before the Constitutional Court.

The purpose of this legal action was to request the court to declare the unconstitutionality of the articles prohibiting tobacco consumption in all enclosed public spaces, as well as the prohibition on tobacco consumption in outdoor areas of educational facilities for adults, as set forth in the law.



“Welcome, 100% smoke-free healthy environment. Law 28705. Minsa-OPS-COMULAT/COLAT”

Among the main arguments claimed in the legal action, there are those that are commonly used by the tobacco industry to oppose to the implementation of 100% smoke-free environments legislation worldwide: the right to private initiative and freedom of enterprise;

the “right to smokers’ free development of personality” and the argument that the regulations providing for exclusive areas or facilities for smokers are sufficient enough to protect the health of non-smokers, against what abundant scientific evidence suggests⁸.

The prohibition to smoke in enclosed public spaces was not the only measure that was judicially challenged. In June 2012, British American Tobacco (BAT) filed a protective action [Amparo proceeding] to declare the unenforceability of Section 11, Subsection 5, of Law 29.517, which prohibits the sale of cigarette packs containing less than 10 units. The tobacco company’s request was dismissed by the judiciary and the measure is still applicable.

SOURCE:
El Peruano, 06/20/12



- 1 "Sale by the unit under debate"
- 2 "The tobacco industry confronts the state"

SOURCE:
Publometro, 06/21/12

Peru supports the 100% smoke-free environments policy

The Peruvian civil society, led by the Permanent National Commission on Tobacco Control (COLAT)⁹, worked intensely to counter the legal action filed on the grounds of unconstitutionality against the tobacco control law. For such purposes, it contacted the Law Clinic of Public Interest Actions of the Peruvian Pontifical Catholic University Law School to file an Amicus Curiae brief¹⁰ before the Constitutional Court, thus defending the legitimacy of the challenged laws. Furthermore, the civil society of Peru contacted

the O'Neill Institute for National and Global Health Law of Georgetown University Law Center and the international organizations, The Campaign for Tobacco-Free Kids and the Framework Convention Alliance, which were also admitted as Amicus Curiae and participated in the process by producing scientific and technical evidence through their legal/technical reports. The main arguments to counter the constitutional challenge against 100% smoke-free environments law were:


- ▶ The World Health Organization's Framework Convention on Tobacco Control (WHO FCTC) requests Member States to adopt 100% smoke-free environments in all enclosed public spaces. The FCTC is a human rights treaty and therefore has constitutional status within the Peruvian legal regime.
- ▶ There are several studies that show the serious detriment to health caused by tobacco and that indicate that the implementation of 100% smoke-free environments in enclosed public spaces is an effective measure for reducing tobacco consumption and exposure to second-hand smoke.
- ▶ Several States to the FCTC have already implemented the prohibition to smoke in enclosed public spaces since it reduces the prevalence of tobacco consumption, decreases the average number of cigarette consumption per day and encourages smoking cessation.
- ▶ The proposal to allow smoking areas served by smoking staff would generate the expansion of places that, as well as smoking, would allow selling food or beverages, so in practice it would be impossible to differentiate them from any other restaurant or pub, and the law demanding 100% smoke-free environments would become meaningless.

The Peruvian State played a significant role in the advocacy of the law. The efforts of the organizations were strongly supported by State Attorneys (of the National Congress and the Ministry of Health), with whom they had an open dialogue and defended the tobacco control laws and Framework Convention on Tobacco Control, with the support of the Ministry of Justice and Human Rights and the National Council for Defense.

Finally, on July 19, 2011, the Jurisdictional Session of the Constitutional Court rendered its decision. Said decision was to dismiss the

constitutional challenge against the 100% smoke-free environment law. Likewise, as per the provisions of Article 3 of the FCTC and of the State's duty to progressively protect the fundamental right to health acknowledged in Article 7 of the Constitution at the highest possible level, the court's decision determined that it would be constitutionally forbidden to adopt in the future legislative measures, or measures of any other kind, protecting to a lesser degree the fundamental right to health in the face of the tobacco epidemic, in comparison with the current legislation¹¹.

Additional strategies to block the implementation of 100% smoke-free environments legislation



In November 2011, after the dismissal of the action of unconstitutionality against the implementation of the 100% smoke-free environments law, some famous and exclusive restaurants in Lima filed several complaints before the Commission for the Elimination of Bureaucratic Barriers (Comisión de Eliminación de Barreras Burocráticas, CEB) of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) against the municipal ordinances that prohibited smoking in enclosed public spaces and workplaces.

At an initial phase, the CEB submitted its report before the court of the INDECOPI, supporting the complaint filed by the owners of the petitioning restaurants. In view of this situation, civil society representatives demanded the president of the INDECOPI to acknowledge the legitimacy of the municipal ordinances, alleging that they had replicated the texts inserted in the Regulation of the National Law no. 29.517 without amendments. Finally, a favorable decision from the court of the INDECOPI was received, through which the municipal ordinances and the legislation in favor of 100% smoke free environments gained significant support.

New challenges for tobacco control in Peru

By February 2014, General Law for the Prevention and Control of Tobacco Use Risks (Law no. 28.705), amended by Law no. 29.517 and the supplementary municipal ordinances, were fully in force.

The organized civil society, committed to tobacco control and mainly represented by COLAT, currently faces the challenge of promoting a

law prohibiting all forms of tobacco advertising, promotion and sponsorship, including a ban on its display at points of sale, in line with the World Health Organization's Framework Convention on Tobacco Control. In this sense, it is expected that the president of the Congress and the Board of Spokespersons of the political parties put in their agenda the debate and approval of the legal opinions that are greatly favorable.

On the other hand, the civil society is still working towards the approval of ordinances on behalf of municipalities, establishing the implementation of 100% smoke-free environments among their territories.

REGULACIÓN

Apaguen sus cigarrillos

La polémica sobre la prohibición de fumar en lugares públicos continúa, y se alistan nuevas medidas.

LINEA DE TIEMPO - ÁREAS DE FUMADORES

- Abril 2004**
Ley 28705
Crea áreas para fumadores en restaurantes, bares, hoteles, etc., separadas de las áreas donde se prohíba fumar y con características que impidan el traspaso del humo.
- Julio 2006**
D.S. 015-2006-SA
Áreas para fumadores no deben ser mayores del 10% del área de atención.
- Enero 2010**
D.S. 001-2010-SA
Modifica el área para fumadores al 10%.
- Abril 2010**
Ley 29517
Se prohíbe fumar en todo espacio público cerrado o al aire libre que sea susceptible de ser utilizado por un grupo de personas.
- Enero 2011**
D.S. 001-2011-SA
Modifica el porcentaje de obligatoria separación de fumadores y no fumadores, prohibiendo fumar por un tiempo y más de una persona.

PARA SABER MÁS:
Ley 29517: www.congreso.gob.pe
D.S. 015-2006-SA: www.gob.pe
D.S. 001-2010-SA: www.gob.pe
D.S. 001-2011-SA: www.gob.pe

SOURCE:
Semana económica,
01/08/12

"Put out your cigarettes"

CONGRESO DISCUTIRÍA HOY PROYECTO DE LEY SOBRE ESTE TEMA

Buscan eliminar publicidad de tabaco

ONG Respeto por Respeto pide más discusión sobre el tema

DIABEL DAMORA
diabeldamora@redesigea.pe

Con el pretencioso poder de la salud de los ciudadanos, el Congreso de la República pretende aprobar un proyecto de ley que propone prohibir la publicidad y promoción de cigarrillos. Previamente, ley se discutía en la Comisión de Producción de Tabaco, Ley 28705.

Al respecto, el director ejecutivo de la ONG Respeto por Respeto, Fernando Cárdena, señaló que dicho iniciativa demuestra una voluntad sincera que apunta a reducir el nivel de consumo del tabaco.

"Hay muchos evaluando en Atención, Control, Tráfico y Aduanas, que demuestran que prohibir la publicidad de estos productos no es lo correcto", agregó Cárdena, quien señaló que los argumentos de dicho proyecto de ley, Jaime Delgado y Valery Latorre, al parecer, quieren controlar por cuánto representa "más y mejor" el consumo.

Aún, el 10 de abril del año pasado, Legajo presentó el proyecto "N° 391", y un día después Delgado presentó el

CIUDADANO Propuesta afecta la libertad del consumidor a esta información

Delto

Desde el 2006 está prohibida la publicidad en televisión, radio e internet. También se prohíben los espacios de venta de cigarrillos en centros comerciales y en eventos donde haya un público menor de edad.

PERUANAIRIA "En un momento de fortalecimiento entre los consumidores y la industria, se debe tener presente que con estas medidas se

proponen imponer que más le conviene a la industria tabacalera y que no es un beneficio para el consumidor del tabaco y que además se debe tener presente que con estas medidas se

"Por eso pedimos que se haga un análisis más exhaustivo del tema y que se tomen en cuenta los intereses de los consumidores y de la industria tabacalera."

SOURCE:
Correo, 11/21/12

"Tobacco advertising elimination proposal"



"100% SMOKE FREE ENVIRONMENT"

January
2013

▶ The first instance resolutions declaring the municipal ordinances as illegal bureaucratic barriers are revoked. Thus, municipal ordinances establishing 100% smoke-free environments gained significant support.

▶ Exclusive restaurants in Lima file several legal complaints against municipal ordinances that prohibited smoking in enclosed public spaces.

November
2011

July
2011

▶ The Constitutional Court dismisses the constitutional challenge against the 100% smoke-free environment law.

▶ Organizations committed to tobacco control are admitted as Amicus Curiae before the Constitutional Court.

June
2011

▶ Action filed by groups related to the tobacco industry to declare unconstitutional the articles establishing the implementation of 100% smoke-free environments.

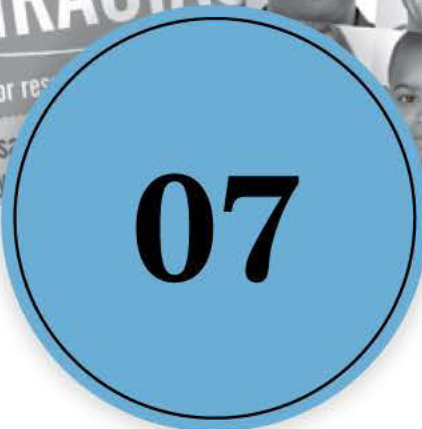
October
2010

▶ Enactment of Law 29,517, amending Law 28,705, establishing the implementation of 100% smoke-free environments in all enclosed public spaces.

March
2010

NOTES

- 1** - National Institute of Statistics and Informatics [Instituto Nacional de Estadística e Informática, INEI]. Available at: <http://www.inei.gob.pe> (Accessed in June 2014) [Available in Spanish]
 - 2** - Source: IV National Survey on Drug Consumption in Peru- 2010, National Commission for Development and Life without Drugs [Comisión Nacional para el Desarrollo y Vida sin Drogas, DEVIDA]. Available at: <http://www.devida.gob.pe> (Accessed in June 2014) [Available in Spanish]
 - 3** - As per the Political Constitution of Peru, every law subject to a modification must be amended by another law.
 - 4** - Source: Tobacco Atlas, third edition, American Cancer Society, 2009. Available at: <http://tobaccoatlas.org/> (Accessed in June 2014)
 - 5** - As per the Political Constitution of Peru, the Unconstitutionality Action is a constitutional guarantee against legally binding rules. In that sense, Section 203, Subsection 5, entitles 5,000 citizens or more to file said legal action with signatures verified by the National Electoral Jury [Jurado Nacional de Elecciones, JNE].
 - 6** - On this issue, see the press notes on tobacco published in the webpage of the association "Contribuyentes por Respeto": <http://www.respeto.pe> [Available in Spanish]
 - 7** - See: <http://www.linkedin.com/pub/fernando-c%C3%A1ceres-freyre/32/21b/47b> (Accessed in June 2014) [Available in Spanish]
 - 8** - U.S. Department of Human Health and Services, Report of the U.S. Surgeon General: How Tobacco Smoke Causes Disease: What it means to you. U.S. Department of Human Health and Services (HHS), Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.
 - 9** - <http://www.colat.pe/> (Accessed in June 2014) [Available in Spanish]
 - 10** - The legal concept of Amicus Curiae is the participation of a third person that is not a party to the action, to provide its technical opinion with respect to a matter of law in dispute.
 - 11** - The decision is available at: <http://www.tc.gob.pe/jurisprudencia/2011/00032-2010-AI.html> (Accessed in June 2014) [Available in Spanish]
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URUGUAY

Inhabitants

3.286.314¹

Prevalence of Tobacco Consumption

25%²

Year of FCTC ratification

2004

Main Tobacco Control Laws and Measures in Force in the Country

Law no. 18.256 of 2008 and modifications introduced by Law no. 18.362 (Art. 311):

- ▶ 100% smoke-free environments in all enclosed public spaces and/or public or private workplaces.
- ▶ Comprehensive ban on advertising, promotion and sponsorship of tobacco products, excluding points of sale.
- ▶ Health warnings with images or pictograms on packages.
- ▶ Tobacco Tax Increases.

Ordinance 514/008- Ministry of Public Health:

- ▶ Restriction to only one product presentation per commercial brand.

Decree 287/009 and Ordinance 466/09 – Ministry of Public Health:

- ▶ Extension of warnings to 80% of the main surfaces of the cigarette packages and incorporation of new images.

Leading Tobacco Companies in the Country and Market Share

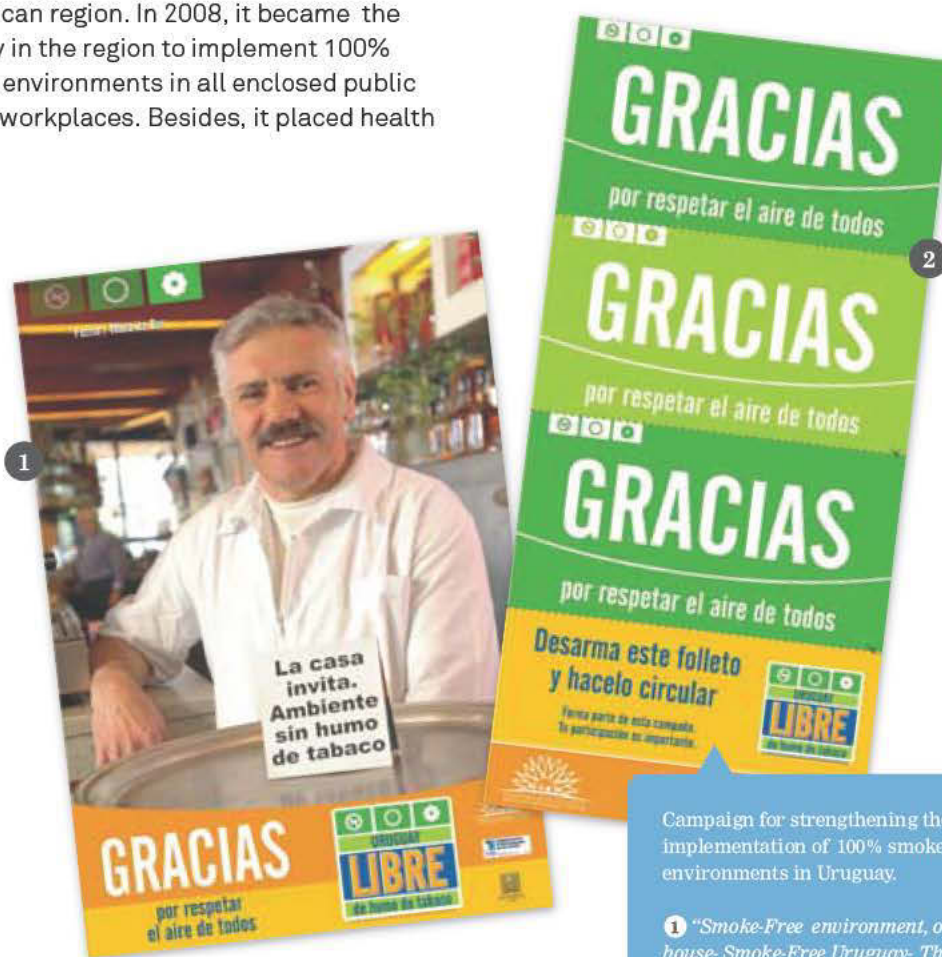
- Monte Paz, S.A.: 73% of the market.
- Abal Hnos, subsidiary of Philip Morris International: 10.5% of the market
- British American Tobacco: 3.6%³

The adoption of tobacco control policies in Uruguay gathered momentum since the election to presidency of Mr. Tabaré Vazquez, who understood the problem of the tobacco epidemic and its effect on the health, economy and development of the country, and decided to promote the immediate application of the main provisions of the Framework Convention on Tobacco Control (FCTC). In turn, the Uruguayan Congress understood the importance of setting forth a State policy on this issue and, in that context, the entire political spectrum supported the measures.

Between 2008 and 2010, Uruguay progressively adopted tobacco control policies that turned it into a pioneering country on this field within the Latin-American region. In 2008, it became the first country in the region to implement 100% smoke-free environments in all enclosed public spaces and workplaces. Besides, it placed health

warnings with images in cigarette packages that, in 2009, were extended to cover 80% of both main surfaces. Likewise, it increased tobacco taxes, provided coverage for tobacco cessation treatments and, as per a provision of the Executive Power, it established that tobacco companies could only trade a single presentation of cigarettes per brand: this forced tobacco companies to withdraw several products from the market.

However, since 2010 onwards the process for the approval of new regulations slowed down remarkably; this was even the case in connection with the enforcement of already passed regulations.



Campaign for strengthening the implementation of 100% smoke free environments in Uruguay.

1 "Smoke-Free environment, on the house- Smoke-Free Uruguay- Thanks for respecting the air we breathe"

2 "Thanks for respecting the air we breathe- Separate this brochure and distribute it- Smoke-Free Uruguay"

Philip Morris International files a complaint against the Uruguayan government

In February 2010, Philip Morris International (PMI) filed a complaint before the World Bank's International Center for Settlement of Investment Disputes (ICSID) against Uruguay for its alleged violation of a bilateral treaty, signed between Switzerland and Uruguay on the promotion and protection of investments in 1991.

The legislation challenged by PMI includes Decree no. 287/009 regulating Law no. 18.256 (03/10/2008) and ministerial ordinances no. 514/08 and no. 466/09. In its complaint, the tobacco company claims that the enforcement of said measures implies the substantial loss of the company's market share and therefore demanded the economic compensation of 2,000 million dollars for the tobacco control laws promoted by the former president, Tabaré Vazquez.

On the one hand, PMI challenged the Uruguayan measure allowing only one presentation per cigarette brand. However, this measure is

supported by the Guidelines of Article 11 of the FCTC, which were unanimously adopted by the Third Conference of the Parties (COP3) held in 2008. On the other hand, PMI's demand challenged the obligation to include health warnings in 80% of the two main surfaces of cigarette packages, despite the fact that several countries have already adopted this type of warnings. In fact, the aforementioned guidelines encourage the placement of the largest possible warnings, and even urge to take into consideration the use of plain packages (without logos or colors), which is an even more stringent measure than that implemented in Uruguay. Lastly, PMI considers that the warning images are not suitable or are out of step with the reality, although they are very similar to those used in other countries.

SOURCE: Búsqueda, 11/11/10



- 1 "Uruguay claims that Philip Morris' businesses "hinder" the "development" of the country, since they are in detriment to people's health"
- 2 "You can die from smoking"
- 3 "Smoking can kill you"

“Tobacco consumption, just as the war, kills many people (...) and enriches a few. It is obvious that this tobacco company (PMI), like all other tobacco companies, does not care much about the health of the consumers (...). It does not even care about the small Uruguayan market or the irrelevant competition of the local tobacco companies. What this company and other multinational tobacco companies are really interested in is to teach a lesson to Uruguay and intimidate other nations that are implementing public policies on tobacco control or intend to do so.”

Former Uruguayan President Tabaré Vázquez

SOURCE: "Former President accuses Philip Morris of wanting to 'teach a lesson' to Uruguay" AFP, 11/15/10

Uruguay's reaction

The complaint filed by PMI coincided with the change in the national Uruguayan government authorities in March 2010. To avoid litigation with PMI and safeguarding the country from the million dollar compensation threat carried out by the tobacco company, the new government considered taking administrative or legislative measures to push back the tobacco control policies, thus decreasing the size of the health warnings to 65% on both sides of the packages and easing the restriction on the commercialization of only one presentation per cigarette brand.⁴

However, the national and international civil society manifested against the reversal of the policies and provided strong support to the Uruguayan government to defend the measures and confront PMI.

Several international organizations related to tobacco control, such as the Framework Convention Alliance, The Campaign for

Tobacco-Free Kids, The International Union Against Tuberculosis and Lung Disease, American Cancer Society, Corporate Accountability International, InterAmerican Heart Foundation and Michael Bloomberg, among others, offered their technical and financial support for the country to face the tobacco company trial. The World Health Organization and the Pan American Health Organization also expressed their strong support to the Uruguayan standing.

SOURCE:
UyPress - Agencia Uruguaya de Noticias,
11/15/10





1 "Vazquez challenged Philip Morris yesterday and supported José Mujica"
SOURCE: El Observador, 09/24/10

2 "Health and fight against tobacco Uruguay is not alone against powerful Philip Morris"
SOURCE: Uypress – Agencia Uruguaya de Noticias, 11/17/10

3 "Government 'stalled' by Philip Morris complaint"
SOURCE: 190.com.uy, 09/28/11



Simultaneously, the local civil society, represented by the Tobacco Epidemic Research Center (Centro de Investigación para la Epidemia del Tabaquismo, CIET) expressed its opposition to the possibility of reversing the measures and

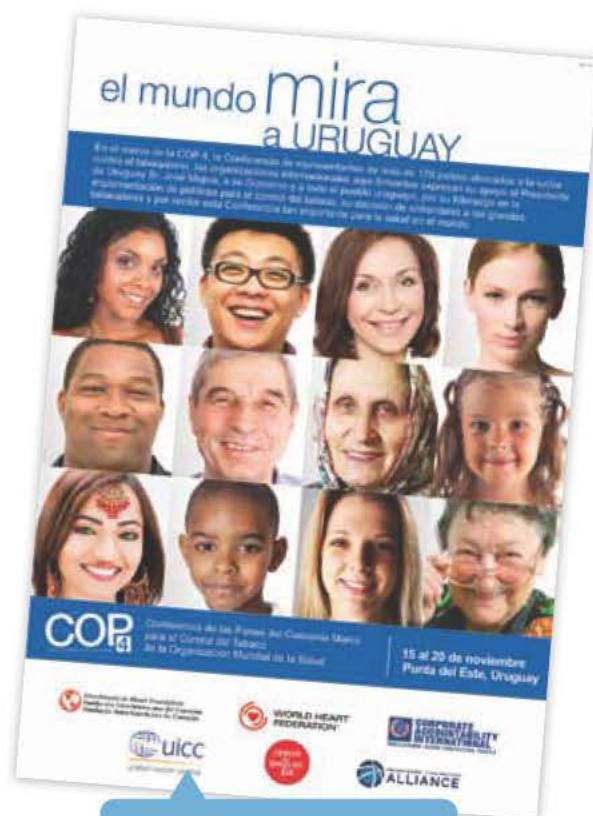
offered support to the government to face the complaint. In a press release sent to the mass media, the CIET reported that PMI was exerting pressure on the government to avoid arbitration in exchange of the easing of the regulation.⁵

"Earlier this month, the Tobacco Epidemic Research Center reported that the government was negotiating with Philip Morris a way out to avoid the arbitration trial filed by the tobacco company in exchange of easing the anti-tobacco legislation. The complaint (filed by the multinational company Philip Morris in February) was never intended to proceed; its sole purpose was to manipulate the government, exerting pressure based on the expenses in which the State would incur for its defense", said a press release disclosed these days by the CIET.

SOURCE: "According to Vazquez, Mujica showed "weakness". El País, 07/27/10.

The fourth meeting of the Conference of the Parties (COP4)⁸ of the Framework Convention on Tobacco Control, held at Uruguay in November 2010, was also a major boost to encourage the local government to face the tobacco company and defend the measures adopted by the previous office. Therefore, with all the support granted by the national and international community the new Uruguayan government was finally persuaded to reverse the policies and face the complaint.

In July 2012, after two years of discussions regarding the jurisdiction of the case, in which Uruguay claimed that the case should not be judged by the International Court, but by national courts, the arbitration court decided to admit the claim before the ICSID. By virtue of said decision, in March 2014 Philip Morris submitted its arguments before the ICSID and Uruguay is scheduled to do so in September 2014.



"The world is looking at Uruguay"

Tobacco control policies in Uruguay after Philip Morris' complaint

The case Philip Morris vs. Uruguay was the first of its kind: it was the first time a tobacco company had filed an action against a State on the basis of an investment bilateral treaty⁷. This is a significant fact, since after the PMI claim initiated in 2010 the country showed no progress regarding the adoption of new tobacco control policies.

The only attempt to move forward was in May 2012, when the Ministry of Public Health publicly stated its decision to adopt a complete ban on tobacco advertising, promotion and sponsorship. By that time, it submitted a bill supported by civil society organizations during a Congress act for the celebration of the World No-Tobacco

Day. However, the project was not discussed and it was not until one year later, in June 2013, that it entered the Senate's Health Commission, although its debate in the chambers is still pending.

According to the representatives of the local tobacco control organizations, the complaint filed by PMI against the Uruguayan State at the beginning of 2010 has put a hold on the implementation of other policies recommended by the FCTC. It is possible to claim that the intention of the tobacco company was to use the legal strategy to intimidate the country and force it to ease its decisions. In that sense, it is valid to consider that the reason for the legal action was

not the alleged economic loss suffered by the company for the policies implemented by Uruguay (the Uruguayan market is very small in comparison with the global income of PMI, and the company has only a 10% market share in this country); but it was only an excuse to render a message and intimidate other countries, especially developing countries, and thus stopping the advance of the tobacco control policies implementation. The international community committed to tobacco control is focused on the case of Philip Morris International vs. Uruguay. A ruling in favor of the tobacco control measures will certainly set a very important precedent for the advocacy of public health worldwide.



**March
2014**

▶ PMI submits its arguments before the ICSID.

▶ An arbitration court decides to admit PMI claim against Uruguay.

**July
2012**

**November
2010**

▶ The Fourth Conference of the Parties to the FCTC is held in Uruguay.

▶ The Minister of Health announces that despite PMI's claim, Uruguay will not go back on the measures.

▶ The former president of the Republic, Tabaré Vázquez, claims that the current government is bowing to the pressures exerted by PMI. The civil society denounces a negotiation between the tobacco industry and the government to drop the dispute before the ICSID.

**July
2010**

▶ The Minister of Health announces that Uruguay will back on its tobacco control policies: it will reduce the health warnings covering 80% of the package to 65% and will allow more than one presentation per brand.

**February
2010**

▶ Philip Morris files a complaint against Uruguay before the World Bank's International Center for Settlement of Investment Disputes (ICSID).

NOTES

- 1** - Source: National Center of Statistics (Centro Nacional de Estadística, CNE), 2011 Census. Available at: <http://www.ine.gub.uy/censos2011/index.html> (Accessed in June 2014) [Available in Spanish].
 - 2** - Source: Global Adult Tobacco Survey, Pan American Health Organization, 2009. Available at: <http://www2.paho.org/hq/dmdocuments/2010/GATS-URU-factsheet--ENGLISH-3.pdf> (Accessed in June 2014).
 - 3** - Source: Conti, Dardo, "Economy and Development: tobacco consumption and poverty" (CIET submission), 2012. Available at: http://cieturuguay.org/wp-content/uploads/2012/10/Econom%C3%ADa-y-desarrollo_abril-2012.pdf (Accessed in June 2014) [Available in Spanish]
 - 4** - See "Intentions to reduce anti-tobacco publicity", 180.com.uy, 24/07/10. Available at: <http://www.180.com.uy/articulo/Reduciran-publicidad-anti-tabaco> (Accessed in June 2014) [Available in Spanish].
 - 5** - "According to Vázquez, Mujica showed 'weakness'" El País, 26/07/10. Available at: <http://historico.elpais.com.uy/100726/pnacio-504193/nacional/Para-Vazquez-Mujica-mostro-debilidad-/> (Accessed in June 2014) [Available in Spanish].
 - 6** - According to the World Health Organization, "The Conference of the Parties (COP) is the governing body of the WHO FCTC and is comprised of all the Parties to the Convention. It keeps under regular review the implementation of the Convention and takes the decisions necessary to promote its effective implementation, and may also adopt protocols, annexes and amendments to the Convention. See: <http://www.who.int/fctc/cop/en/> (Accessed in June 2014).
 - 7** - After the Uruguayan case, Australia and Honduras were also sued by the tobacco industry for the implementation of tobacco control policies.
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CLOSING WORDS

By Mariela Alderete

VICE-DIRECTOR OF FUNDACIÓN INTERAMERICANA DEL CORAZÓN, ARGENTINA
COORDINATOR OF THE REGIONAL INITIATIVE TO MONITOR AND COUNTER THE
TOBACCO INDUSTRY

The Regional Initiative to Monitor and Counter the Tobacco Industry is a great opportunity to acquire a deep understanding on the strategies used by said industry to hinder tobacco control policies in Latin America. Besides, it has been extremely useful to share the experiences of the civil society organizations committed to the promotion of health policies.

The work performed since 2010 within the scope of this initiative enabled capacity building in the region to act jointly and anticipate tobacco industry's strategies. It was also a key factor to promote information sharing, to strengthen the relationship among the organizations of the region and to get acquainted with the interference processes conducted by the tobacco industry in our countries.

In this context, the report entitled "Health is not negotiable. 2nd Edition. Civil society against the tobacco industry's strategies in Latin America. Case Studies 2014" represents a milestone for our region since it documents the interference processes displayed by the tobacco industry in seven countries (Argentina, Brazil, Chile, Colombia, Mexico, Peru and Uruguay) and the set of actions and strategies conducted by civil society organizations to face the interference and defend tobacco control policies. Based on the reports submitted by the participating organizations, it is possible to give an account of the increasingly aggressive and assertive profile of the tobacco industry in the region over the last few years and of the greater public visibility it has gained with the advance of the laws against tobacco consumption.

The report has revealed a whole range of strategies used by tobacco companies to oppose to the passing of legislation or to block its implementation, such as the establishment of alliances with different stakeholders to hinder tobacco tax increases; the innovative strategies to bypass advertising bans, especially at the point-of-sale; the express

opposition to the prohibition of additives and flavors using tobacco producers as front groups and the legal actions filed against governments as well as civil society organizations aimed at intimidating and preventing the implementation of policies. Upon the advance of these situations, social organizations have proved to be crucial players in the monitoring and identification of the industry's strategies, their documentation and in the development of actions and campaigns for publicly denouncing and discrediting them.

Case studies enable us to observe this process, find the existing commonalities among the different countries, standardize the industry's strategies, get to know the civil society actions to stop their advance, strengthen networking between tobacco control advocates, learn from regional experiences and anticipate future actions.

Despite the individual characteristics of each country, the tobacco industry's strategies and the actions to counteract them are processes that are replicated along the region. For instance, the Mexican case study highlights the multiple actions performed by the civil society (such as press releases, conferences and public complaints) to counter a deceitful campaign of the tobacco industry in violation of the law and used to disseminate the deceitful argument widely spread by the industry that tobacco tax increases would boost cigarette smuggling. The actions of the civil society illustrated in the case study of Mexico are replicated in the case studies of the organizations in the different countries that often carry out strategies at multiple levels (legal, political and communicational) to defend public policies. In this sense, in the case study of Argentina we can observe the way in which the civil society uses the petitions for access to public information as a legal tool to monitor the decision-making processes taking place in the National Tobacco Control Law regulation debate, for the purposes of detecting potential interferences from the tobacco industry in said processes and take precautionary measures. The petitions for access to public information have also been a resource used in Colombia to counter the tobacco industry's actions in violation to complete bans on tobacco advertising, promotion and sponsorship. Furthermore, these two countries worked in the monitoring of tobacco points of sale and documented and denounced before the authorities the industry breaches to the above measure: in Colombia, through promotional games encouraging the sale of certain brands among retailers, and in Argentina, through eye-catching advertisements that fail to comply with the regulations of the Tobacco Control Act. In both cases, documenting these breaches has been extremely useful for strengthening the implementation of the legislation.

The Brazilian report is, in turn, of great interest to know the strategies to counter the legal action filed by the tobacco industry to thwart the decision prohibiting additives and flavors: social organizations appeared as *amicus curiae* before the Supreme Court of Justice to defend the measure, and backed up the legal action filed with a public campaign showing how

tobacco industries use additives to promote the early initiation in cigarette consumption among the youth as well as its continuation.

As with Brazil, the Peruvian report is another example of the use of a legal action by the industry to block tobacco control policies (this time against a law to implement 100% smoke-free environments in all indoor public spaces and workplaces) and of how the civil society and government officers committed to the defense of the right to health can work together to counteract it.

In line with the previous countries, Uruguay is perhaps the most emblematic case in which the civil society, government authorities and the international community concentrated efforts to act against a lawsuit filed by the tobacco industry. The Uruguayan report illustrates the process through which one of the most powerful tobacco companies in the world tried to intimidate the State through a million dollar lawsuit for the alleged infringement to a bilateral commercial treaty.

As well as exposing the legal strategies displayed by the industry and its veiled actions to breach the legislation in several countries, civil society organizations' work has also allowed us to denounce the connections between the tobacco industry and the political power. This is evident in the Peruvian report, which shows the connections between tobacco companies and a political party, and also in Chile, where civil society had to face the scandalous lobby performed by the industry in the National Congress through public denunciations of great impact. This last case is also characterized by the progress of the country in the implementation of transparency and accountability mechanisms compelling the tobacco companies to state their expenses in promotion, lobbying and social responsibility. This innovative measure is an example to follow in order to strengthen the implementation of Article 5.3 of the Framework Convention on Tobacco Control on behalf of the member States.

The overview of the different case studies included in this publication enable us to see how civil society organizations are crucial for unveiling and publicly denouncing the tobacco industry's attempts to hinder the implementation of the effective measures against tobacco epidemic. However, it should not be forgotten that governments are the ones that bear the primary responsibility on health protection. They are in charge of preventing or overriding the interference of the tobacco industry in the discussion and implementation of public policies. The commitment of the civil society is to keep working to denounce tobacco companies that undermine health policies and to strengthen the relationship with the government authorities, since this will allow us to guarantee a greater improvement in tobacco control and make progress in the protection of Latin American population's right to health.

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