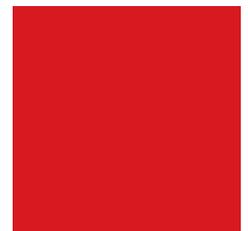
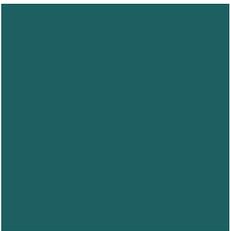




HEALTH IS NOT NEGOTIABLE

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

CASE STUDIES 2010-2012



**Fundación InterAmericana del Corazón -
Argentina (FIC Argentina)**

Scalabrini Ortiz 2470, CP C1425DBS. Ciudad Autónoma
de Buenos Aires, Argentina.

Tel/fax: +54 11 4831 2238

www.ficargentina.org / institucional@ficargentina.org

ACT | Aliança de Controle do Tabagismo

Rua Batataes, 602, cj 31, CEP 01423-010, São Paulo, SP,
Brasil.

Tel/fax: +55 11 3284 7778, 2548 5979

Av. N. Sa. Copacabana, 330/404, CEP 22020-001, Rio de
Janeiro, RJ, Brasil.

Tel/fax: +55 21 2255 0520 / 2255 0630

www.actbr.org.br / act@actbr.org.br

**Fundación InterAmericana del Corazón -
México A.C. (FIC México)**

Río Danubio 49, Col. Cuauhtémoc, Deleg. Cuauhtémoc,
México, D.F., C.P. 06500.

Tel: +52 55 5208 0020

www.ficmexico.org / ficmexico@ficmexico.org

Corporate Accountability International

10 Milk Street, Suite 610. Boston, MA 02108. USA

Oficina América Latina: Cra. 68A No. 22A-75 C.3 Bogotá,
Colombia

Tel: +57 3114426404

www.stopcorporateabuse.org

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Industry's Strategies in Latin America

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Written by

Mariela Alderete (FIC Argentina)
Patricia Gutkowski (FIC Argentina)
Cinthia Shammah (FIC Argentina)

Edited by

Patricia Gutkowski (FIC Argentina)

With the Cooperation for Case Development of

Mônica Andreis (ACT Brasil)
Erick Antonio Ochoa (FIC México)
Yahaira Ortiz Ochoa (FIC México)
Verónica Schoj (FIC Argentina)
Belén Rios (FIC Argentina)
Yul Francisco Dorado (CAI Colombia)
Jaime Arcila (CAI Colombia)

Graphic Design and Layout

Julietta Racket

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The devastating consequences of the global tobacco epidemic has long alarmed the international community. Each year, tobacco use causes millions of deaths worldwide, in addition to chronic negative health, social, economic and environmental impacts.

In recent years, the Latin American and the Caribbean region - a region including 33 countries and home to an estimated population of 558 million inhabitants - has made much headway in implementing effective tobacco control policies. The Framework Convention on Tobacco Control¹ (FCTC) and the collaborative work undertaken by governments and representatives of civil society organizations have been fundamental in addressing the tobacco epidemic. However, despite the progress made, the tobacco industry continues to deploy innovative strategies to reach out to new targets, undermine new health policies or bypass compliance.

In spite of efforts to position themselves as socially responsible corporations, transnational tobacco companies produce and sell a highly addictive product that causes alarming rates of disease and death. Since their main goal is to protect and increase profits, tobacco companies prey upon the life and health of the population.

Civil society organizations play a key role in

advocating health rights, hence they should have a solid understanding of tobacco industry tactics and strategies in order to detect and combat them as they work to attain their policy goals. If they can develop this understanding, transparency in governmental decision-making will more likely be guaranteed, and the image of the tobacco industry as a legitimate stakeholder participating in public health policy discussions will be de-normalized.

Driven by a commitment to expose the true face of tobacco corporations and encourage effective tobacco control policies, in 2010 four Latin American civil society organizations launched a regional project to monitor and counter tobacco industry actions in four countries: Argentina, Brazil, Colombia, and Mexico. This initiative was created after having recognized the need and value of responding jointly, at the regional level, to the tobacco industry strategies and tactics that cross national borders and often repeat themselves in similar ways in most countries. The regional initiative, led by the actors most experienced in the surveillance of the provisions of Article 5.3 of the WHO FCTC, contributed to drafting protocols and designing tools to monitor tobacco industry actions as well as devising response strategies to stop its interference with tobacco control policies. The criteria and courses of action established by consensus by the project team were implemented consistently in each participating

¹ The Framework Convention on Tobacco Control under the auspices of the World Health Organization (WHO FCTC) is the first international treaty on public health. It was adopted in 2003 and came into force in 2005. Its main objective, in accordance with its Article 3, is *"to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke."* **Framework Convention on Tobacco Control**, World Health Organization, 2003. Available at: <http://www.ops-oms.org/English/DD/PUB/tobacco.pdf> (accessed on October 23, 2012).

country in order to reduce tobacco industry interference and promote health policies.

This report was written within the framework of the regional tobacco industry monitoring project, and its objective is to explain the complex processes and disputes that arise during the discussion and implementation of tobacco control policies. The cases

presented in this report expose the tobacco industry's strategies for blocking effective tobacco control policies and seek to disseminate information about the efforts of civil society organizations to monitor and neutralize them and to protect health rights.

The FCTC proposes six tobacco control measures having an immediate impact, which form the acronym **MPOWER**²:

- M**ONITOR → Monitor the tobacco problem and assess the impact of policies aimed at reducing and preventing its use
- P**ROTECT → Provide full protection from smoke exposure by implementing 100% smoke-free environments
- O**FFER → Offer help to quit tobacco use
- W**ARN → Include pictorial health warnings on tobacco packaging
- E**NFORCE → Enforce a blanket ban on tobacco advertising, promotion and sponsorship
- R**AISE → Raise tobacco prices and taxes

² WHO Report on the Global Tobacco Epidemic, 2008 - The MPOWER Package. Available at: <http://www.who.int/tobacco/mpower/2008/en/index.html> (accessed on October 23, 2012).

Under Article 5.3 and its Guidelines³, the FCTC provides for a series of measures to prevent tobacco industry interference with the establishment and implementation of tobacco control policies, according to which the governments should:

- ▶ Not give preferential treatment to the tobacco industry;
- ▶ Raise awareness about the addictive and harmful nature of tobacco products and about the seriousness of tobacco industry interference with tobacco control policies;
- ▶ Establish measures to limit interactions with the tobacco industry and ensure transparency when interactions do occur;
- ▶ Reject partnerships and agreements with the tobacco industry to avoid conflicts of interest for government officials and employees;
- ▶ Require that information provided by the tobacco industry be transparent and accurate; and
- ▶ De-normalize, to the extent possible, the non-industrial activities by the tobacco industry that describe it as “socially responsible”



³ Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (decision FCTC/COP3). Available at: http://www.who.int/fctc/guidelines/article_5_3.pdf (accessed on October 23, 2012).

What is Tobacco Industry Interference?

By “interference” we mean the set of actions that the tobacco industry takes in order to obstruct the design and implementation of a health policy or promote policies or positions that uphold its commercial interests.

Although tobacco companies sell a lethal product, it is also true that their business is legal and that they have great economic and political power in most countries. Even though their interference tactics remain within the framework of legal rules, on many occasions they distort information, take advantage of “loopholes” or “weaknesses” in some laws and carry out actions that could be disputed from the ethical as well as the legal point of view.

Today, many internal tobacco industry documents are public⁴, providing fundamental evidence of their interference actions. However, despite this evidence, the tobacco industry in most countries still enjoys a

positive corporate image. This has spurred national and international agencies to warn governments of the need to reduce or eliminate such interference, and has encouraged tobacco control advocates to join efforts in de-normalizing the tobacco industry image of a “responsible, socially-conscious” industry by disseminating information about its interference actions and true objectives.

Tobacco companies are transnational corporations that repeatedly implement the same strategies to protect their business interests⁵ and interfere with the establishment and implementation of tobacco control measures. The following table shows the main tobacco industry actions that have been detected in several countries of the world⁶:

4 See Legacy Tobacco Documents Library: <http://legacy.library.ucsf.edu/> (accessed on October 23, 2012).

5 S. Aguinaga Bialous, S. Shatenstein. **Profits over People: Tobacco Industry Activities to Market Cigarettes and Undermine Public Health in Latin America and the Caribbean**. Pan American Health Organization, 2002. Available at: http://www.paho.org/English/DD/PUB/profits_over_people.pdf (accessed on October 23, 2012).

6 Table based on **Tobacco industry interference with tobacco control**, World Health Organization, 2009. Available at: http://whqlibdoc.who.int/publications/2008/9789241597340_eng.pdf (accessed on October 23, 2012).

Lobbying	<ul style="list-style-type: none"> - Interference with decision-making processes - Dissemination of model legislation that favors its business - Submission of proposals for law amendments - Promotion of inefficient regulations
Political pressure mechanisms	<ul style="list-style-type: none"> - Funding of electoral campaigns - Use of trade agreements or other instruments to thwart or challenge tobacco control laws - Funding of governmental initiatives to gain the favor or buy the silence of officials - Promotion of voluntary agreements with governments instead of effective tobacco control laws
Hiring of scientific consultants, and efforts to modify standards	<ul style="list-style-type: none"> - Dissemination of biased research that distorts scientific evidence on tobacco damages and the impact of tobacco control measures on the economy
Manipulation of information	<ul style="list-style-type: none"> - Spread of myths to undermine health policies through mass media campaigns - Open challenges to tobacco control measures that have proven effective - Building of a position for the tobacco industry that overestimates its role in the economy in order to discourage governments from adopting measures against its interests
Use of allies and front groups to uphold its interests	<ul style="list-style-type: none"> - Creation of strategic alliances with key sectors (such as restaurants, hotels, kiosks, gambling and gaming, advertising and tobacco producers) - Creation of groups (such as those defending “smokers’ rights”) to oppose the adoption of tobacco control measures
Litigation	<ul style="list-style-type: none"> - Use of legal channels to weaken tobacco control measures
Intimidation of political decision-makers and tobacco control leaders	<ul style="list-style-type: none"> - Launching personal attacks to discredit and cast doubts on their motives
Philanthropy and corporate social responsibility	<ul style="list-style-type: none"> - Support to arts, sports, cultural or humanitarian organizations and activities to gain respectability - Funding of projects that fight child labor and prevent children from smoking, and investment in infrastructure for tobacco-producing areas in order to set up the illusion that the tobacco industry is committed to the well-being of the community
Smuggling	<ul style="list-style-type: none"> - Actions aimed at undermining or weakening tax policies and marketing restrictions
Violation or evasion of restrictions imposed by law	<ul style="list-style-type: none"> - Actions aimed at thwarting laws in force by taking advantage of legal loopholes - Abuse of legal exceptions to continue promoting their products



Global Consensus: The Tobacco Industry Should Not Participate in Discussions and Decision-Making Processes Related to Tobacco Control Policies

- ▶ The **2001 World Health Assembly**, in its resolution 54.18, urges governments, with the support of the international community, to fight tobacco industry interference with health policies⁷.
- ▶ **Article 5.3 of the FCTC and its guidelines**⁸, adopted in 2008, state that public health policies related to tobacco control should be protected from the tobacco industry commercial or other interests.
- ▶ The **Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases**⁹ (United Nations General Assembly 2011 A/65/L.50), in its Article 38, recognizes the fundamental conflict of interest between the tobacco industry and public health.
- ▶ The **United Nations Global Compact**¹⁰, with the purpose of supporting the fight against tobacco, excludes tobacco companies from participation in the initiative and does not accept funding from the tobacco industry.

7 World Health Organization. "Resolution 54.18 of the World Health Assembly," Fifty-fourth World Health Assembly, May 22, 2001. Available at: http://www.who.int/tobacco/framework/wha_eb/wha54_18/en/index.html (accessed on October 23, 2012).

8 Guidelines for Implementation of Article 5.3 of the WHO FCTC (decision FCTC/COP3). Available at: http://www.who.int/fctc/guidelines/article_5_3.pdf (accessed on October 23, 2012).

9 Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases A/66/L.1 Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.1 (accessed October 23, 2012).

10 United Nations Global Compact: <http://www.unglobalcompact.org>

The Tobacco Industry in the Latin America and the Caribbean Region¹¹

The tobacco industry has good reasons to consolidate and expand its actions in Latin America and the Caribbean. This regional market offers great opportunities for business expansion: even though the volume of units sold dropped by 2% between 2003 and 2008, its retail selling price grew by 74%.¹² At the same time, in general the tobacco industry in the region is still perceived as socially responsible, having a positive image in the public eye. It should also be added that although most countries have ratified the FCTC, they have yet to demonstrate their commitment through the adoption and implementation of Convention recommendations.

Regarding tobacco farming activities, the tobacco industry has clear interests in the region. In Latin America and the Caribbean, tobacco production amounted to 1,118,000 tons in 2009, with a cultivated area estimated at approximately 602,000 hectares. Brazil is the leader in the region and ranks second at the international level, followed by Argentina, which is second in the region and eighth in the world. In both countries, the tobacco farming area has grown substantially from 2000 to 2009 (see Map 1).

Unlike other global regions where tobacco products are more diversified, in Latin America and the Caribbean manufactured cigarettes undoubtedly

take the lead among the tobacco products consumed. Almost all the countries have at least one tobacco plant within in their borders . Overall, cigarette production in all the countries of the region amounted to 315,680 million units in 2009 (see Map 2).

At present, the tobacco world market is controlled by five large companies: Philip Morris International (PMI), Altria/Philip Morris USA, Japan Tobacco International, British American Tobacco (BAT), and Imperial Tobacco. Added to them is the State-owned company known as the National Tobacco Corporation of China, which is the largest cigarette-producing company in the world. In the Latin America and the Caribbean region, the leading companies are PMI and BAT, two transnational corporations that have acquired most of the local industries, having divided nearly the whole market between themselves (see Map 3).

The size of the tobacco industry as well as its enormous economic power and political influence are leverage factors that serve, to a great extent, to hold back the implementation of effective tobacco control policies. Health rights advocates, either at the government or civil society level, are faced with the challenge of de-normalizing tobacco industry actions and exposing the industry's true interests, thus paving the way for the implementation of effective policies deemed legitimate by the population.

¹¹ The information and maps in this chapter are based on data from M. Eriksen, J. Mackay, H. Ross. **The Tobacco Atlas**, fourth edition, American Cancer Society, Inc., 2012. www.TobaccoAtlas.org

¹² Euromonitor International [database on the Internet]. Cigarettes: Latin America. Euromonitor International. 2009. Data taken from **Tobacco Industry Profile – Latin America**, Campaign for Tobacco-Free Kids, September 2009.

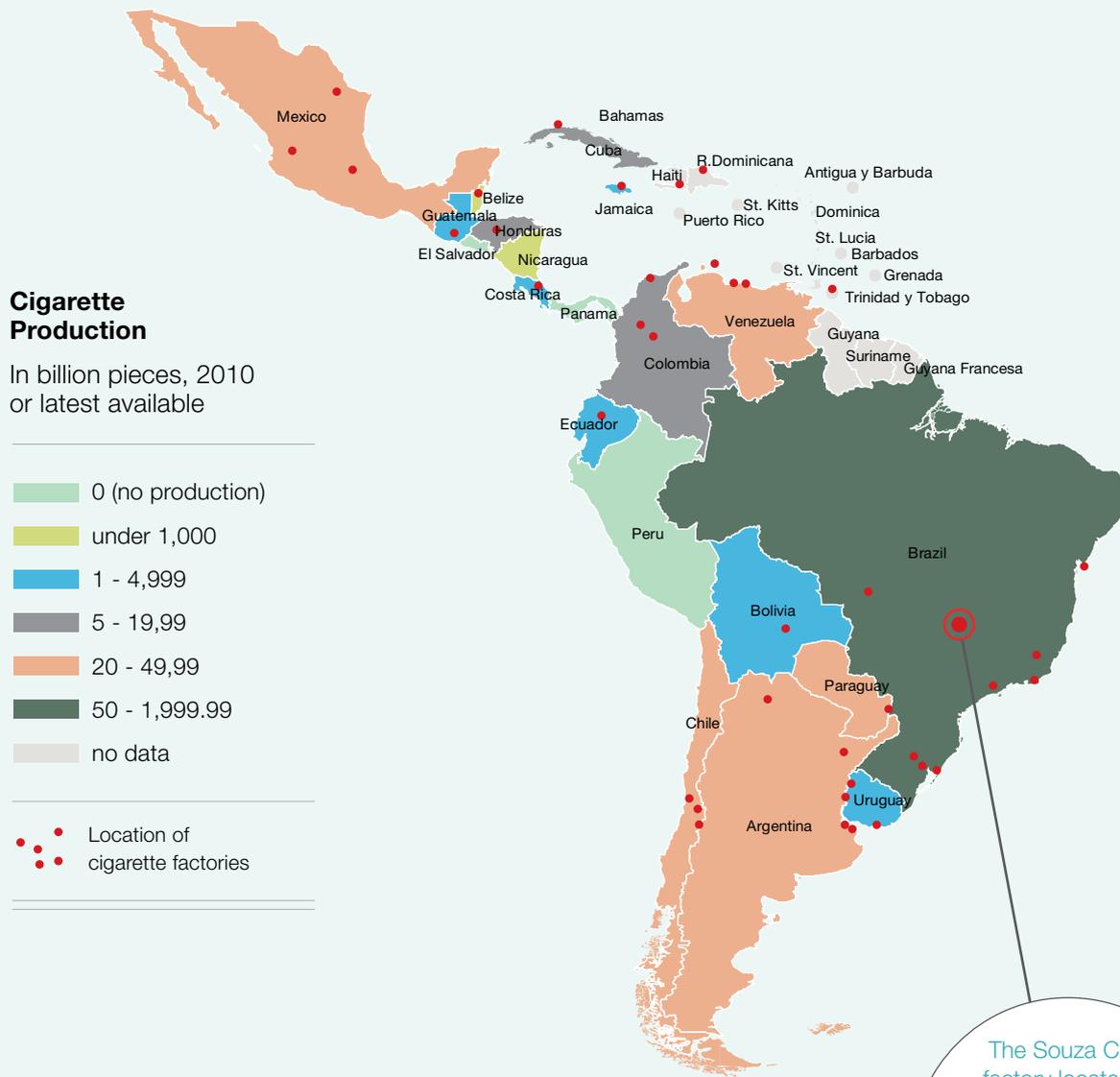
Map 1

Land Devoted to Growing Tobacco



Map 2

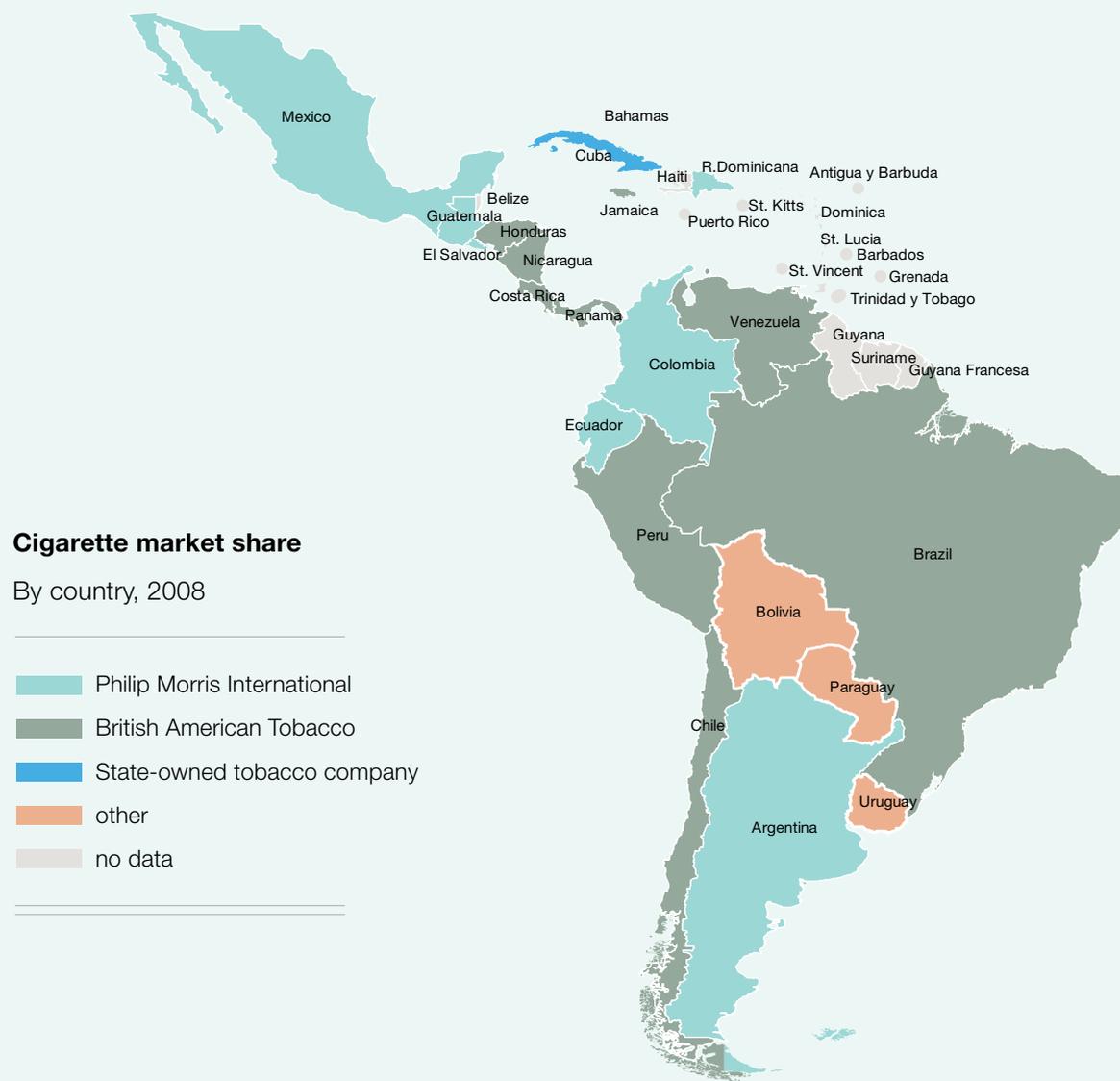
Cigarette Production



The Souza Cruz factory located in Uberlândia, Brazil, is the largest in Latin America. In 2009, it produced 30% of total BAT tobacco products in the region.

Map 3

Market Leading Companies, by Country



In 2010, the six leading tobacco companies in the world were estimated to have made profits of **35 billion dollars**.

Tobacco Control Advocacy in Latin America: Case Studies

In Latin America and the Caribbean, much is yet to be done by governments to adopt specific public policies aimed at restricting or regulating interactions between governments and the tobacco industry. Furthermore, most restrictions imposed on the tobacco industry participation in governmental actions or decisions have been so far rather circumstantial. Nevertheless, some events in the last years that were intended to limit tobacco industry interference with the passing of laws or the definition of health policies are worth mentioning.¹³ A case in point is Honduras, where a Special Law for Tobacco Control was passed in 2010 with a provision that explicitly bans “all interference from the commercial or other interests of the tobacco industry.” Or Panamá, which in the 2004 law ratifying the FCTC transcribed the provisions of Article 5.3, thus committing itself to restricting interactions between the government and the tobacco industry.

It is true that no substantial progress has been made by governments in restricting tobacco industry interference. However, the role of civil society advocacy groups in Latin America and the Caribbean should be emphasized, as they have strived to monitor tobacco industry activities and counteract interference with legislative processes or the implementation of public policies. The commitment and participation of the leaders of these regional organizations have been fundamental in de-normalizing and reporting actions

of interference, making headway for health protection.

Perhaps the most dramatic case is that of Uruguay¹⁴, which in 2009 issued an executive order demanding pictorial health warnings to be included at 80% of the pack size front and back, and introducing a ban on multiple brand presentations. This measure led Philip Morris International (PMI) to institute legal proceedings in 2010 to claim for USD \$2 billion in compensation in a dispute before the International Center for Settlement of Investment Disputes (ICSID), within the framework of the World Bank. PMI alleged a breach of a bilateral investment agreement between Switzerland and Uruguay. In light of this development, numerous Uruguayan civil society organizations publicly announced that the PMI strategy was to use this lawsuit as a way to force the government to negotiate the withdrawal of the measure. Through these denunciations, the Uruguayan organizations, supported by the international civil society, helped the government to stand firm and not yield to PMI pressure. Although the dispute has not been settled yet, this is an example of the coercion exerted by tobacco companies in defending their interests and discouraging the governments of the region from adopting measures like the ones taken by Uruguay, a pioneering country in the implementation of numerous tobacco control policies in Latin America.

¹³ Framework Convention on Tobacco Control: Challenges for Latin America and the Caribbean. Civil Society Report 2010, InterAmerican Heart Foundation, 2010. Available at: http://www.ficargentina.org/images/stories/Documentos/reporte_cmct_ingles_1.pdf (accessed on October 23, 2012).

¹⁴ 2010 Global Tobacco Treaty Action Guide, pp. 20-21, Corporate Accountability International NATT; 2010. Available at: <http://www.stopcorporateabuse.org/sites/default/files/resources/global-tobacco-treaty-action-guide-2010-english.pdf> (accessed on October 23, 2012).

▶ In 1998, millions of once secret documents from the most important cigarette manufacturers doing business in the USA became available to the public as a result of legal action. The information from these internal documents through the Legacy Tobacco Documents Library (LTDL)¹⁵ of the University of California, San Francisco has helped uncover the tobacco industry actions intended to interfere with and weaken public health policies throughout the world. A large number of studies have been published since then, reviewing these internal documents and bringing to light the companies' strategies to obstruct tobacco control measures in Latin America and the Caribbean¹⁶.

4.1 | MEXICO

Fighting for Tobacco Taxes

FILE

Population: 112,336,538¹⁷

Tobacco use prevalence: 16%¹⁸

Annual per capita consumption of tobacco cigarettes: 371 units¹⁹

Year of FCTC ratification: 2004

Main tobacco control measures implemented as of September 2012:

- 100% smoke-free environments at the subnational level (Mexico City, Tabasco, Veracruz, Morelos, Zacatecas, and Jalisco)
 - Pictorial health warnings: General Law for Tobacco Control, 2008
 - Important tobacco taxes: Special Tax on Production and Services Law, amendment of its Article 2, paragraph I, subparagraph C), which came into force on January 1, 2011; published in 2010
-

Leading tobacco companies:²⁰

- Philip Morris (PM): 72% market share
 - British American Tobacco (BAT): 27% market share
-

¹⁵ Legacy Tobacco Documents Library: <http://legacy.library.ucsf.edu/> (accessed on October 23, 2012).

¹⁶ These strategies have been widely documented. As an example, see **Profits over People: Tobacco Industry Activities to Market Cigarettes and Undermine Public Health in Latin America and the Caribbean**, Pan American Health Organization, 2002. Available at: http://www.paho.org/English/DD/PUB/profits_over_people.pdf (accessed on October 23, 2012).

¹⁷ National Institute of Statistic and Geography (Instituto Nacional de Estadística y Geografía [INEGI]).

¹⁸ **The Global Adult Tobacco Survey**, Mexico, 2009.

¹⁹ M. Eriksen, J. Mackay, H. Ross. **The Tobacco Atlas**, fourth edition; American Cancer Society Inc; 2012. www.TobaccoAtlas.org

²⁰ Maldonado, Mario. "Philip Morris to close a Mexican plant," **Milenio**, Mexico, July 16, 2012.

In 2009, the National Congress of Mexico (known as the Congress of the Union) approved an increase of 2 Mexican pesos (approximately USD 0.17) per pack within the framework of the Special Tax on Production and Services (IEPS, its acronym in Spanish). Pursuant to this law, the tax was to be implemented gradually between 2010 and 2013. Civil society organizations publicly denounced the increase, noting that the tax reform adopted would amount to

an irrelevant annual increase having no actual impact on tobacco consumption. They pointed out that its contribution to lowering cigarette demand would fade away with the passing of time, thus protecting tobacco industry interests. For the civil society organizations concerned with the promotion of tobacco control policies, the 2009 reform required immediate action from them.

According to the report entitled “The Economics of Tobacco and Tobacco Taxation in Mexico,”²¹ had the cigarette excise tax been implemented gradually, as approved in 2009, the tax incidence on the retail price would have increased from 61.4% in 2009 to 64.3% in 2010, while the six cent increase per cigarette scheduled for 2011, 2012 and 2013 would have been offset by inflation, thus causing no impact at all.

Given this situation, the Mexican civil society organizations, such as Fundación InterAmericana del Corazón México (FIC México), Red México sin Tabaco, Alianza Contra el Tabaco (ACTA), Alianza Nacional para el Control del Tabaco (ALIENTO), and Comunicación, Diálogo y Conciencia (CÓDICE), started making huge efforts to promote a significant tax increase, in line with FCTC recommendations. In turn, legislators from different political parties committed to health rights submitted bills to revoke the 2009 law, and to different degrees, to raise the fixed rate and ad valorem taxes.²²

Despite the numerous bills submitted, circumstances were not yet conducive to tobacco tax adjustments, according to civil society representatives. Driven by the desire to introduce a tax increase as an effective measure to lower tobacco use, these organizations started to work jointly with legislators, government agencies, academic institutions -such as the National

Institute of Public Health and the Center for Economic Research and Education- and international organizations. This joint work contributed to putting this issue back on the public agenda by disseminating research works, holding discussion forums, meeting with political decision-makers, and acting in the media. Notwithstanding all these efforts, nothing seemed good enough. Neither the Congress of the Union nor the Ministry of Finance and Public Credit seemed in favor of introducing tobacco tax policies.

In this context, FIC México, ACTA, Red México sin Tabaco, ALIENTO and CÓDICE, with the international support of Campaign for Tobacco-Free Kids, decided to network together and join efforts in conducting a mass media campaign aimed at generating more visibility of the issue and pressuring legislators to account for their decisions. The “Vote for the Health of Mexicans” campaign consisted in creating images and mottos urging Congressional

21 H. Waters, B. Sáenz de Miera, H. Ross, L.M. Reynales Shigematsu. *The Economics of Tobacco and Tobacco Taxation in Mexico*, International Union Against Tuberculosis and Lung Disease (The Union), Paris, 2010.

22 For details about the legislative bills, see the article by Erick Antonio Ochoa, “Las OSC como actoras clave en el proceso de las políticas públicas. Estudio de caso: el aumento a los impuestos de tabaco en México”, in *Salud Pública y Tabaquismo*, Vol. I, Políticas para el Control del Tabaco en México, p. 146 (to be published).

representatives to vote for the tobacco tax increase. These mottos were placed on huge billboards in strategic locations throughout Mexico City and included in information brochures, uploaded to a website, and transmitted through the social networks.

activists, with anti-gas masks, demonstrated outside the Senate and House of Representatives and handed out informational material and marigold flowers which in Mexico are associated with honoring the dead.

The civil society groups' campaign was launched on October 7, 2010, in a press conference organized by representatives of the organizations, while a group of

"Vote for the Health of Mexicans" Campaign



"Meet your Representatives. Some of them don't care about your health"

"Our youths smoke and some Representatives make it easier. Support tobacco taxes for the health of our loved ones"



Demonstration in favor of tobacco excise tax, Mexico City, October 2010



Following the intense campaign and the strong leadership of some legislators, in October 2010 the Congress of the Union passed a cigarette tax increase of 6.20 Mexican pesos (USD 0.50) per 20-cigarette pack and 4.20 pesos (USD 0.34) per 14-cigarette pack. This measure, equal to a 25% increase in the final selling price of packs, was adopted by undisputed majorities. In the House of Representatives, 430 voted for the motion while 9 voted against, with 11 abstentions. In the Senate, there were 71 votes for the tax and only 10 votes against, with 3 abstentions.

▶ After the House of Representatives passed the tobacco tax increase in 2010, BAT and PM threatened to stop investing in the country.

Barriers against the Strengthening of Tobacco Tax Policy

The tobacco tax increase was a remarkable achievement, particularly because tax policies are proven to be the most effective actions to lower tobacco use and, therefore, the tobacco control measure most strongly resisted by tobacco companies throughout the world.

The industry did not take long to react, and some time after the tobacco tax increase, it started to implement interference strategies to thwart the adoption of the measure. Thus, while 2010 witnessed significant progress in the tax arena, in 2011 efforts aimed at strengthening effective tobacco control policies encountered more difficult challenges.

The tobacco industry mounted a vigorous campaign against the 2010 tax law. The leading companies in

the Mexican market, BAT and PMI -the former with a stronger presence in the media- coalesced in a strategy designed to discredit the tax policy among the public and, at the same time, press political decision-makers not to introduce further increases or index the 2010 tax. They were even determined to fight the measures adopted.

The main argument used by the tobacco industry was that the tax law had boosted the illegal trade of cigarettes, a statement almost impossible to prove as there is no official data on tobacco smuggling in Mexico. (The only information available comes from the tobacco industry.) Based on this argument, tobacco companies launched a campaign featuring huge billboards around Mexico City and employing a media strategy to discredit the effectiveness of the tax measures. Tobacco industry front groups were also mobilized, including chambers and associations of

small businesses, self-service stores, convenience stores, and kiosks. Moreover, tobacco industry representatives and their allied groups mounted a powerful lobby to urge legislators or members of the Ministry of Finance to repeal the law.

Even though some bills to strengthen the tobacco tax policy were put forward in 2011, strong tobacco industry lobbying managed to obstruct all initiatives. In fact, it convinced the Ministry of Finance to adopt a tax consolidation policy that kept taxes unchanged despite the increased tax revenue resulting from the IPES reform in 2010.²³ On the other hand, the efforts of civil society groups on behalf of health protection succeeded in counteracting the arguments voiced by the tobacco industry, keeping the issue on the public agenda, and stopping any attempt at withdrawing the tax policy.

“Legislators: as we predicted, over 100 illegal brands have appeared in the last 3 months due to the increase in tobacco taxes”. “Let’s make a common front against illegality”

Milenio, April 12, 2011



Milenio, February 27, 2012

El IEPS a los cigarros desploma el consumo y tumba la recaudación

Un dictamen de ingresos para el control del tabaco, afirman especialistas en salud

Resumen de Tabaco

Indicador	Valor
Consumo de cigarrillos (millones de unidades)	2,554
Recaudación de IEPS (millones de pesos)	28,464
Recaudación real (millones de pesos)	19,977
Recaudación por déficit (millones de pesos)	8,487

La captación queda en mil 698 mdp por debajo de lo estimado; el contrabando subió hasta 15%

Los legisladores y el público en general se anticiparon a lo que sucedería con el mercado de cigarrillos legales en México cuando se cumplió con la ley.

Los legisladores y el público en general se anticiparon a lo que sucedería con el mercado de cigarrillos legales en México cuando se cumplió con la ley.

“IEPS on cigarettes reduces consumption and tax income plummets”



BAT Campaign. Mexico City, March 2011

23 Red México sin Tabaco, InterAmerican Heart Foundation et al. 7° Informe de Sociedad Civil, Mexico, May 2012.

ARGUMENTS USED BY THE TOBACCO INDUSTRY
TO OBSTRUCT TAX INCREASES

GROWTH OF SMUGGLING:

"Cigarette smuggling in Mexico grew five times in the last eight months, from 40 million packs at the end of 2010 to 200 million now, as a result of the last tax increase imposed on the formal sector, stated British American Tobacco (BAT)."

SOURCE: "Fivefold growth of cigarette smuggling in eight months." **El Financiero**, Mexico, September 27, 2011.

"Carlos Humberto Suárez, Director of BAT Corporate Affairs, reported that '2012 is undoubtedly the worst year in the recent history of the legal industry as we are victims of this illegal practice that has grown as a result of the high tax increase.'"

SOURCE: "Tobacco tax encourages smuggling." **Sexenio**, Mexico, February 27, 2012.

RAISING TOBACCO TAXES IS NOT EFFECTIVE FOR GENERATING TAX REVENUE INCREASES:

"Even the executive branch, added British American Tobacco, recognized that the greater tobacco tax burden has triggered an increase in illegal trade, since with the 2012 tax bill, the Ministry of Finance expects to collect 33 billion, far less than the 42 billion estimated in 2011, which was the first downward adjustment in the last 15 years."

SOURCE: "Smuggling makes the most of tobacco taxes." **El Sol de México**, Mexico, November 27, 2011.

SMUGGLED PRODUCTS ARE MORE HARMFUL FOR THE HEALTH:

"Pirate cigarettes manufactured in China being smuggled into the city and sold openly on this border at a cheaper price than branded cigarettes are extremely more harmful as they are three times more likely to cause one of the 25 lethal diseases associated with the smoking habit."

SOURCE: "Illegal sales of dangerous Chinese cigarettes tolerated." **Norte Digital Mx**, Mexico, December 31, 2011.

ARGUMENTS USED
TO COUNTERACT TOBACCO INDUSTRY ACTIONS

SMUGGLING DOES NOT RESULT FROM TAX INCREASES:

"FIC México has reported that, according to information provided by the Office of the Mexican Attorney-General, confiscations of products of contraband and brand piracy declined significantly last year -from 23 million cigarettes in 2008 to 34 thousand units in 2011."

SOURCE: "IEPS on cigarettes slashes tobacco use and affects tax collection." **Milenio**, Mexico, February 27, 2012.

"Ernesto Saro, president of the Health Committee in the Senate, has accused tobacco companies of promoting the smuggling issue as a way of pressing for tax reduction."

SOURCE: "Tobacco tax encourages smuggling." **Sexenio**, Mexico, February 27, 2012.

RAISING TOBACCO TAXES INCREASES REVENUE COLLECTION, AND THE DECLINE IN TOBACCO USE LOWERS HEALTHCARE COSTS:

"These definitions related to tax policies -with no modifications and with threats of regression- were made without any economic foundation. Data from the Ministry of Finance and Public Credit show that following the reform to Article 2 of the Special Tax on Production and Services, as adopted in November 2010, tobacco excise taxes have grown consistently. For example, tax collection in the first quarter of 2012 rose by 10.2% in real terms compared to the first quarter of last year."

SOURCE: **Red México sin Tabaco**, InterAmerican Health Foundation et al. **7° Informe de Sociedad Civil**, Mexico, May 2012.

"Tobacco use causes health care costs related to its associated diseases that amount to 45 billion pesos per year, borne by the National System of Public Health Care."

SOURCE: "More tobacco taxes: COFEMER." **Vértigo Político**, Mexico, May 27, 2012.

ALL TOBACCO PRODUCTS ARE HARMFUL; TO PROTECT PEOPLE'S HEALTH, MEASURES TO DISCOURAGE TOBACCO USE SHOULD BE ADOPTED:

"In Mexico, there are no institutional mechanisms to prevent and eradicate cigarette sales to minors and sales by the unit, two crimes encouraging addiction in the young as well as tax evasion."

SOURCE: "Tobacco industry lies about tax measures." **Grilla en el Poder**, Mexico, September 29, 2011.

Another Battle: Changes to the General Law for Tobacco Control

As the dispute over the taxes played out, in October 2011 a bill was brought forward to introduce a comprehensive reform of the General Law for Tobacco Control to adjust it to the FCTC recommendations. Civil society organizations coordinated with allied senators and representatives to promote a bill that should meet international standards. As a result of this joint action, one hundred petition signatures were collected from legislators of all political parties to secure the legitimacy required for the bill to be discussed in Congress. Organization leaders were advised by off-the-record sources that some members of Congress, influenced by tobacco lobbyists, had been pressing forward to suspend the discussion of the bill on various occasions. They even learned that other bills had been brought forward that were not compliant with the minimum standards laid down in the FCTC and its Guidelines; bills that were then publicly denounced by civil society. It was also widely believed that some family members of senators were

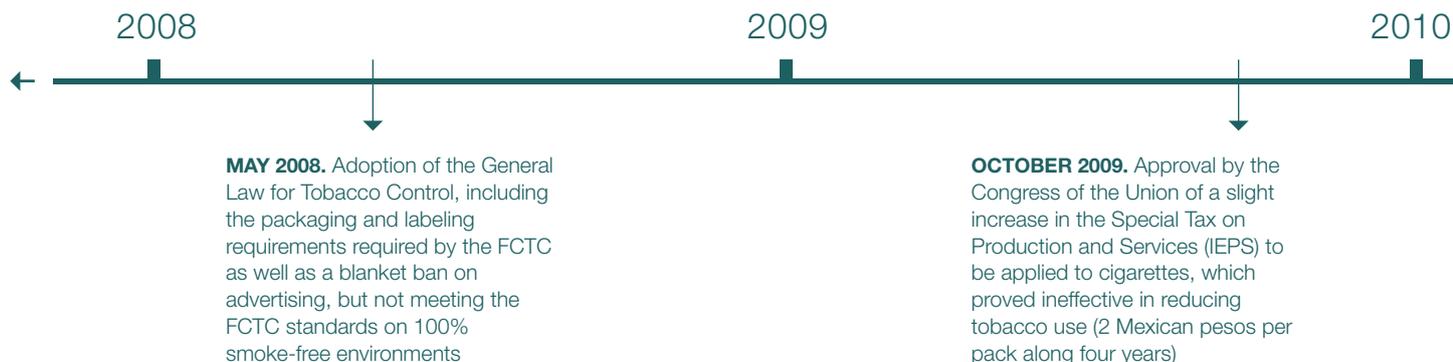
hired to fill key corporate positions to guarantee that its interests would be guarded and promoted. Against this backdrop and despite the efforts by civil society and a few committed legislators who denounced these wrongdoings and kept the bill before the public in the media, further discussion on the bill in Congress has not been possible.



"The states lack comprehensive laws. **Delays in the anti-tobacco struggle.** Although Edomex leads the tobacco use ranking, the local Congress freezes the Tobacco Prevention Law bill"

Vértigo magazine, April 15, 2012

▶ In 2011, Mexican civil society organizations reported that the National Ministry of Finance had sent a letter to the Australian Parliament to express its opposition to a bill requiring plain cigarette packaging (i.e., with no logos or brands) that was about to be adopted in Australia. The document reiterates common tobacco industry assertions, arguing that the bill was inconsistent with some trade agreements and demonstrating that tobacco industry interference works at several levels, including across international borders.





One of the most widely used tobacco industry strategies is to mobilize front groups to protect industry interests. Mexico is no exception, as the following call for a demonstration by BAT and PMI clearly shows:

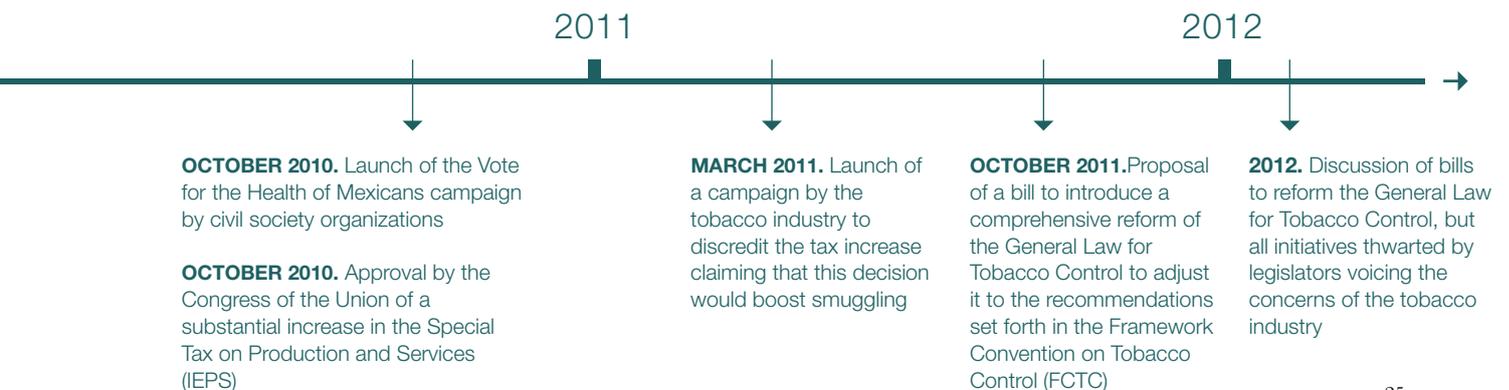
“Private sector organizations will take to the streets on Monday to shout ‘Stop it!’ against smuggling and to inform estimates of the damages caused by this scourge to the formal sector of the economy. This initiative is supported by the National Association of Self-Service Stores, the National Chamber of Retailers of Mexico City, the National Association of Wholesalers of Convenience Stores, the National Alliance of Small Businesses and the Mexican Institute for the Promotion of Convenience and Other Stores. All organizations have been called for and organized by British American Tobacco and Philip Morris, with the main purpose of spurring the public to oppose the tobacco tax (IEPS) increase that is being considered by legislators.”

SOURCE: **Excélsior**, Mexico, October 2, 2012, p. 2.

Reflecting over the Case

There have been both progress and setbacks in Mexico with regard to tobacco control policies in the last few years. The campaign led by civil society in 2010 gave much visibility to the need to adopt stronger measures to fight against tobacco use and forced political decision-makers to take a public position on the issue. At the same time, the tobacco industry, as a result of this campaign, started to show and openly express its interests, no longer only surreptitiously through their lobbyists but also by employing a farther-

reaching media strategy. Disputes are expected to continue just as the tobacco industry is expected to deploy increasingly aggressive strategies to block the implementation of effective policies. Nevertheless, the actions taken by organized civil society, which proved successful in promoting team work and bringing together efforts from different sectors, have been fundamental to stopping tobacco industry harassment and forcing the industry to show its cards. At the same time, this process has contributed to de-normalizing the tobacco industry, gradually pushing forward the idea that the protection of health rights has to prevail over the economic interests of the industry.



For case analysis purposes

- ▶ What tobacco industry strategies in this case do you consider more relevant?
- ▶ Were any of the actions taken by the tobacco industry unknown to you?
- ▶ Do the tobacco industry actions taken in this country have anything in common with the actions taken by the tobacco industry in your country?
- ▶ What progress has been made by your country as far as tobacco taxes are concerned?
- ▶ In your opinion, what were the best moves made by the Mexican civil society to defend anti-tobacco policies?
- ▶ What other actions could have been taken?
- ▶ What do you think about this case?

4.2 | COLOMBIA

Tobacco Industry Strategies to Dodge Blanket Ban on Advertising, Promotion, and Sponsorship

FILE

Population: 46,736,659²⁴

Tobacco use prevalence: 17.06%²⁵

Annual per capita consumption of tobacco cigarettes: 412 units²⁶

Year of FCTC ratification: Signed in 2006; in force in 2008

Main tobacco control measures implemented as of September 2012:

- 100% smoke-free environments in all indoor public spaces and workplaces (Law No. 1335)
 - Pictorial health warnings (Law No. 1335)
 - A blanket ban on tobacco advertising, promotion and sponsorship (Law No. 1335)
-

Leading tobacco companies:²⁷

- Coltabaco (Philip Morris International): approximately 50% market share
- Protabaco (British American Tobacco): approximately 50% market share

Colombia has one of the most comprehensive tobacco control laws of Latin America. Law No. 1335, adopted in 2009, provides for some of the most effective measures recommended by the FCTC, such as the implementation of 100% smoke-free environments in all indoor public spaces and workplaces, the inclusion of pictorial health warnings on cigarette packs, the prohibition on selling cigarettes by the unit, and a blanket ban on tobacco advertising, promotion and sponsorship, among other provisions. The enactment

of this law was possible, to a great extent, thanks to the joint work of legislators and civil society organizations, supported by the then Vice-Minister of Health. In view of the commitments assumed by Colombia following the FCTC ratification, Congress excluded the tobacco industry representatives from the processes of negotiation of the law, under Article 5.3 of the FCTC that precludes such government interactions with the tobacco industry.²⁸

²⁴ National Administrative Department of Statistics (Departamento Administrativo Nacional de Estadística [DANE]), October 11, 2012. Available at http://www.dane.gov.co/reloj/reloj_animado.php (accessed on October 23, 2012).

²⁵ Source: Parties' Report. Second implementation Report; May 1, 2012. Available at: http://www.who.int/fctc/reporting/party_reports/colombia_2012_report_final.pdf (accessed on October 23, 2012).

²⁶ M. Eriksen, J. Mackay, H. Ross, **The Tobacco Atlas**, fourth edition, American Cancer Society, Inc., 2012. www.TobaccoAtlas.org

²⁷ "La Fusión BAT\Protabaco: Efectos Unilaterales, Colusión y Oligopolios Multimercados," 2011. Available at: <http://focoeconomico.org/2011/06/07/la-fusion-batprotabaco-efectos-unilaterales-colusion-y-oligopolios-multimercados/> (accessed on October 23, 2012).

²⁸ **2010 Global Tobacco Treaty Action Guide**, Corporate Accountability International NATT, 2010. Available at: http://www.stopcorporateabuse.org/sites/default/files/GTTAG_english_web.pdf (accessed on October 23, 2012).

Once the law was passed, two lawsuits were filed to declare some of its articles unconstitutional, such as the prohibition on sales by the unit and the ban on tobacco advertising, promotion and sponsorship. These lawsuits basically claimed that Law No. 1335 was contrary to the right to work, to free speech, and to commerce. Even though the lawsuits were not filed directly by the tobacco industry, the arguments did not differ from the ones historically employed by it in most countries. Fortunately, the Constitutional Court of Colombia decided the articles to be consistent with the law, thus ensuring their enforcement. Below is part of the Court's rationale (Decision C-830 of 2010: Enforceability of Articles 14, 15, 16 and 17, Law No. 1335 of 2009):

- “These measures are consistent with the right to commerce and to free enterprise, since the legislature is empowered to impose restrictions, even prohibitions, on advertising when there are compelling reasons to deem such measures proportionate. (...) In the case under analysis, there is global consensus over the intrinsically harmful nature of tobacco products and byproducts, given the actual, objective, and verifiable

harm done to the health of smokers and passive smokers, as well as to the environment.”

- “Such a ban is an expression of solidarity and of its priority social goals, which include the protection of public health and the environment.”
- “In the case of the ban on tobacco advertising, promotion and sponsorship, there is a substantive interest on the part of the State in pursuing the highest protection possible of public health and environmental sanitation, as well as a link between the goal pursued and the measure imposed.”

The blanket ban on tobacco advertising, promotion and sponsorship came into force on July 21, 2011, creating great expectations, since in the Latin America and the Caribbean region only Panama had adopted a similar policy. In this context, civil society started to monitor tobacco industry actions in relation to this policy, thus contributing to its enforcement.

▶ In Colombia, the blanket ban on tobacco advertising, promotion and sponsorship did not prevent the tobacco industry from making investments in it. This became evident with an important advertising agency, which three days before the law came into force, announced on its website that it had been awarded two new contracts:

“In the case of the first contract, awarded to us after working very hard in understanding the dynamics of our target public, in view of the new restrictions imposed on the tobacco market in Colombia, a robust creative proposal was worked out, as a result of which Coltabaco will be identified and associated with the Storekeeper's Day, a Fenalco initiative. Our second contract was awarded to us following a risky and innovative proposal involving modular furniture to sell cigarette packs in different places in conformity with the new legislation. The proposal focused on designing durable, resistant, versatile, and easy-to-carry modules in an attempt to approach the tobacco user and facilitate his/her buying experience.”

SOURCE: Website of the Leo Burnett Advertising Agency, July 18, 2011. <http://www.b-leo.com/?cat=138&paged=4> (accessed in October 2011).

New Strategies for Points of Sale

Unable to advertise, the tobacco industry directed its efforts towards making the most of product display at points of sale and strengthening its ties with owners and managers of supermarkets, self-service stores, and other cigarette outlets.

Before the ban on tobacco advertising, promotion and sponsorship came into force, civil society organizations detected that the leading tobacco companies had launched a campaign in 46,000 cigarette points of sale across the country to instruct, according to their own words, on the correct way to remove advertisements and comply with Law No. 1335²⁹. In this regard, the law leaves no room for interpretation, since it clearly states that all advertisements are to be removed. Therefore, this information raised suspicions about whether the tobacco industry could be implementing a strategy to win the loyalty of store owners and, somehow, deploy an advertising strategy to dodge the ban.



Flyer from National Federation of Storekeepers (FENALCO)
"AVOID SANCTIONS. You can show your tobacco products. Follow these recommendations"

PMI campaigns to promote its brands through contests and incentives to storekeepers



Once the law came into force, civil society organizations such as Corporate Accountability International Colombia (CAI Colombia) and Fundación para la Educación y el Desarrollo Social (FES) started to monitor tobacco industry activities. As expected, tobacco companies were found to be implementing strategies to take advantage of provisions in the law that were not very specific and, in some cases, they even carried out actions in violation of the law.

One of the main strategies used by tobacco companies was to carry out actions intended to increase brand loyalty of store owners and managers. Protabaco and Coltabaco sponsored an event organized by the National Federation of Storekeepers (FENALCO) in Bogotá and in 20 other cities to celebrate the National Storekeeper's Day. In addition to openly challenging the ban, the action revealed the tobacco

industry's special interest in strengthening its ties with the storekeepers' sector. As part of the same strategy, tobacco companies launched promotional campaigns targeted at storekeepers, such as contests, discounts, prizes and other incentives to promote certain brands. Protabaco even developed an online sales system for points-of-sale owners and managers, where discounts and benefits were offered to those who registered, in flagrant violation of Law No. 1335.

In addition to the campaign to increase brand loyalty of sellers, the tobacco industry developed some techniques to advertise its products by displaying them at the points of sale. To this end, large, well lit, and nicely designed vending machines or display cases containing a wide variety of packs started to spread. These display cases advertised to passersby a particular product by exhibiting numerous packs of the same brand and, sometimes, by hiding the pictorial health warnings from view.

29 "Coltabaco helps remove tobacco advertisements." La República, April 13, 2011.



Display cases at points of sale in Colombia



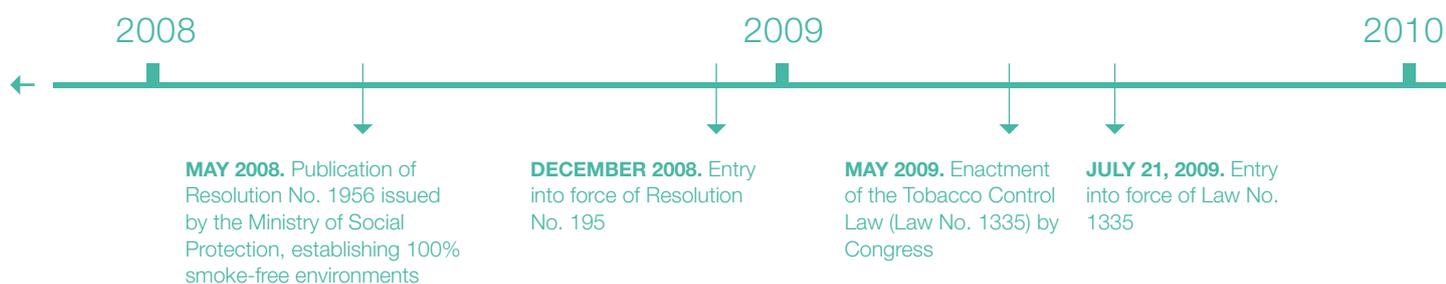
Tobacco product showcases after resolutions issued by the Superintendency of Industry and Trade in 2012

Thus, advertisements placed at points of sale before the enactment of the law were replaced by large posters with suggested price lists and images of cigarette packs, following “recommendations” of FENALCO, in alliance with the tobacco industry.

Given this scenario, civil society organizations started to press for information, based on the legal right to petition, and to file proceedings against such display of cigarette packs with the Department of Industry and Trade, the agency in charge of overseeing the tobacco ban on advertising, promotion and sponsorship.

At the beginning of 2012, the Department issued resolutions 05 and 11³⁰, regulating the display of tobacco products at points of sale. These resolutions established that only one type of pack could be displayed as a reference, health warnings could not

be hidden, and tobacco products were not to be available or visible to the buyer, except through the seller. Although at first reading these resolutions seem to restrict tobacco industry actions, it could be argued that they are contrary to the law, since Article 13 of the FCTC states that display of tobacco products in itself constitutes advertising and promotion³¹. Law No. 1335 does not explicitly mention the product display issue, but according to the definitions in the FCTC guidelines, it is understood to be prohibited. As the tobacco industry displayed cigarette packs despite the ban, the resolutions only contributed to validating or strengthening such actions. In other words, the display of tobacco products, understood as a tobacco promotion practice banned by the law, was endorsed by these resolutions. In this regard, tobacco



³⁰ Resolutions are available at the website of the Colombian Department of Industry and Trade. www.sic.gov.co (accessed on October 23, 2012).

³¹ Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control. Available at: http://www.who.int/fctc/guidelines/article_13.pdf (accessed on October 23, 2012).

industry interference with the restrictions resulting in product displays provided legitimacy to actions that violated the intent of the law, circumventing the ban on advertising, promotion and sponsorship. The tobacco industry strategy of displaying cigarettes at points of sale, although within the legal framework of

resolutions, allows the use of impressive and attractive showcases with many cigarette packs on show (one per presentation). This becomes even worse because the tobacco industry has designed immense packs to be placed at points of sale where advertisements used to be (see images on page 30).

La República, June 15, 2012

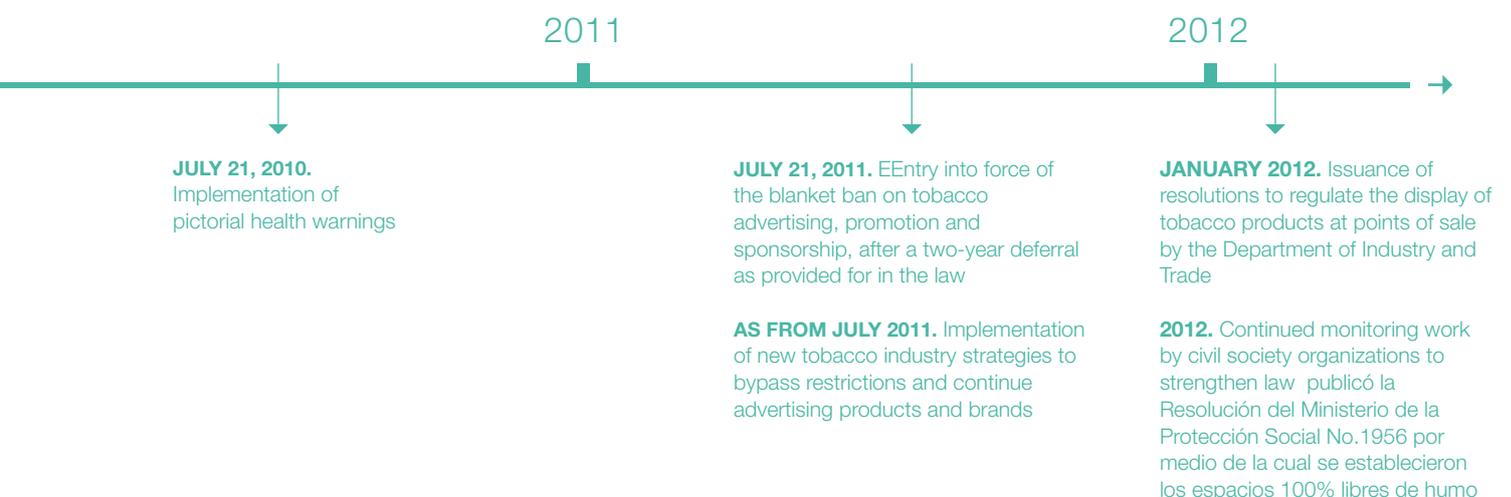
In addition to the strategies intended to dodge the advertising restrictions imposed by Law No. 1335 regarding advertising, Colombian tobacco companies launched a media campaign to weaken its enforcement. This campaign was based on the idea that Law No. 1335 encouraged illegal tobacco trade. This argument has been used often by the tobacco industry in countries where FCTC-compliant regulations have been adopted, particularly those related to prices and taxes. Colombia was no exception.

"Smuggled cigarettes account for 14% of the market"

Corporate Social Responsibility, Philanthropic Activities, Event Sponsorship: The Tobacco Industry Strengthens Ties with Governmental Bodies, NGOs and Cooperation Agencies

storekeepers, the tobacco industry devised other strategies to continue gaining public visibility and weaken the Colombian law. One of its most striking strategies was to develop and widely disseminate programs or activities that may fall within what is known as "corporate social responsibility" (CSR). Both BAT-Protabaco and PMI-Coltabaco launched intense information campaigns in the media to let the public know their CSR activities, in violation of the ban on advertising, promotion and sponsorship.

In addition to the innovative tobacco displays at points of sale and the efforts to win the loyalty of



Throughout 2011 and 2012, BAT — through the BAT Foundation (which uses the same logo and name as the company) — made its programs and activities known through its website and the mass media. Among them are the loan program for small farmers, the III and IV editions of the BAT Exhibition of Popular Arts —an seven-city travelling exhibition— and the creative workshops for children and adolescents within the framework of such events. What is most striking is that these activities took place with the participation of government agencies and other organizations, which ignored the conflicts of interest and the recommendations of Article 5.3 of the FCTC. Moreover, the absence of obstacles to the announcement of these programs demonstrated that they were not perceived as advertising strategies. Attention was not even been paid to the fact that the BAT Foundation is a platform used by the British American Tobacco to advertise its corporate name, logo and business activities.

In 2011 and 2012, PMI-Coltabaco also announced its CSR actions, carried out on many occasions in partnership with business associations, government bodies, and cooperation agencies. Perhaps one of the most representative activities of this strategy was a reintegration project for former members of the armed services and their families (i.e., programs designed to reintegrate former members of the military into civil society). The Agencia Colombiana para la Reintegración (Colombian Agency for Reintegration), Coltabaco, FENALCO Atlántico, the U.S. Agency for International Development (USAID),

Dissemination of the BAT Foundation cultural events in Colombia, with the support of the Colombian Ministry of Culture

“Regional identity: tribute to Alfredo Piñeros Herrera”



“IV BAT Expo of Popular Art”

“1650 works were chosen from across the country. Several expo’s will be initiated to chose the finalists.”

and the International Organization for Migration (IOM) participated in the project. In addition to this, Coltabaco mounted a massive press campaign to increase the visibility of other initiatives, usually implemented together with the government or allied groups, such as the programs to reduce child labor or provide incentives to tobacco farmers. It should be recognized that under the law, CSR actions do not necessarily amount to a violation, but related media outreach resulting in companies conducting a business marketing campaign does as it bypasses the blanket ban on advertising.

“Coltabaco’s social programs have benefited 13,500 former members of the armed forces since 2008”

“Tobacco growers receive training in business administration to manage their crops”

La República, September 20, 2012



Vanguardia, April 28, 2012



RCN, December 13, 2011



“Coltabaco has received over 375 former members of the armed forces”

In Colombia, non-governmental organizations have carried out actions to de-normalize and denounce the activities that the tobacco industry describes as socially responsible. In this regard, CAI Colombia has played a key role in denouncing tobacco industry activities

in Latin America and the Caribbean by publishing case studies of interference actions in the region and the world, in cooperation with The Network for Accountability of Tobacco Transnationals (NATT).



▶ For twenty years, Protabaco sponsored the national first division soccer championship through its brand Mustang. Thus, the championship became associated with the cigarette brand to the point that it came to be known as the “Mustang Cup.” In a country where soccer is the most popular sport, the tobacco industry used this promotion as an argument for encouraging resistance to the possible adoption of a law banning tobacco advertising and sponsorship. The tobacco industry tried to frame the blanket ban for the public as an unfair restriction on companies whose CSR activities were only intended to support sports. Fortunately, the tobacco industry did not manage to prevent Law No. 1335 from being enacted, although its influence led representatives of the Colombian Sports Institute (COLDEPORTES) to ask for a two-year deferral of the advertising and sponsorship measures, a request that was granted.

Reflecting on the Case

Colombian Law No. 1335 is, no doubt, one of the most comprehensive laws in Latin America and the Caribbean, triggering a strong reaction from the tobacco industry. First, they tried to obstruct its enactment; once enacted, they tried a legal strategy set out to have it declared as unconstitutional; and, finally, once enforced, they started to work out strategies to weaken its impact. Most of the strategies devised are based on the assumption that legislation is subject to interpretation, thus taking an abusive advantage of any loophole or ambiguity to escape restrictions. Additionally, the tobacco industry has endeavored to

build a positive public image and be seen as a socially responsible corporate citizen.

Civil society organizations committed to tobacco control have served an important role in countering tobacco industry interference and bringing to light the contradictions between the industry's goals and health policy goals. However, the de-normalization of the positive image of the tobacco industry is a long-term, ongoing process. The Colombian law is certainly an important accomplishment in an important task; needed, but not yet sufficient. A stronger commitment as well as a redoubling of monitoring and reporting efforts will be required from the government and civil society, respectively, to ensure that the health of the Colombian population will be effectively protected and to expose the true interests behind tobacco industry CSR activities.

For case analysis purposes

- ▶ What tobacco industry strategies in this case do you consider more relevant?
- ▶ Were any of the actions taken by the tobacco industry unknown to you?
- ▶ Do the tobacco industry actions taken in this country have anything in common with the actions taken by the tobacco industry in your country?
- ▶ What are the main corporate social responsibility actions carried out by the tobacco industry in your country? Are some of these actions supported by any government body?
- ▶ What progress has been made by your country as far as bans on advertising, promotion and sponsorship are concerned?
- ▶ In your opinion, what were the best moves made by the Colombian civil society to defend anti-tobacco policies?
- ▶ What other actions could have been taken?
- ▶ What do you think about this case?

4.3 | ARGENTINA

The Tobacco Industry behind the Front Groups

FILE

Population: 40,117,096³²

Tobacco use prevalence: 30% of the adult population³³

Annual per capita consumption of tobacco cigarettes: 1014 cigarettes per year per person older than 15³⁴

Year of FCTC ratification: Signed in 2003; ratification still pending as of September 2012

Main tobacco control measures implemented as of September 2012:

- Pictorial health warnings (Law No. 26,687)
 - 100% smoke-free environments (Law No. 26,687)
 - Comprehensive ban on advertising, promotion and sponsorship (excluding point of sale and direct advertising targeted for persons older than 18) (Law No. 26,687)
-

Leading tobacco companies³⁵:

- Philip Morris International (PMI) – Massalin Particulares: 73.2% market share
- British American Tobacco (BAT) – Nobleza Piccardo: 23.5% market share

During the last 40 years in Argentina, all tobacco control bills providing for effective measures to reduce the tobacco epidemic have been systematically halted in Congress by the tobacco industry interference³⁶. Only one law that included a package of effective measures to reduce tobacco use managed to be passed in 1992, but it was vetoed two weeks after its enactment as a result of the tobacco industry lobbying, a process duly documented and reported³⁷. Similarly, the great influence and power of tobacco companies in the

country have turned Argentina into the only South American country—and one of the few in the world—that has not ratified the FCTC yet.

In this context, in January 2010 -almost one year before the Fourth Conference of the Parties to the WHO FCTC (COP4), held in Uruguay- Argentine civil society organizations committed to the protection of health rights created the Coalition for FCTC Ratification by Argentina with the purpose of urging

³² 2010 National Census Data. http://www.argentina.ar/_es/pais/C3002-censo-2010.php

³³ Data from the National Ministry of Health. **Information on epidemiologic surveillance:** http://www.msal.gov.ar/htm/site_tabaco/vigilancia.asp. **Information by province:** http://www.msal.gov.ar/htm/site_tabaco/info_x_provincia.asp (accessed on October 23, 2012).

³⁴ M. Eriksen, J. Mackay, H. Ross. **The Tobacco Atlas**, fourth edition, American Cancer Society, Inc., 2012. www.TobaccoAtlas.org

³⁵ Data from the National Ministry of Agriculture. http://64.76.123.202/site/agricultura/tabaco/_cadena/cadena_valor_tabaco.pdf (accessed on October 23, 2012).

³⁶ E. Sebríé, J. Barnoya, E. Pérez-Stable, S. Glantz. **Tobacco industry successfully prevented tobacco control legislation in Argentina**. *Tobacco Control*, October 2005, 14:e2. Available at: <http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1748093&blobtype=pdf> (accessed on October 23, 2012).

³⁷ Glantz, S.; Barnoya, J. **Tobacco industry success in preventing regulation of secondhand smoke in Latin America: the “Latin Project”**; *Tobacco Control* 2002, 11:305-314.

the country to ratify the convention. The coalition, led by organizations such as Alianza Libre de Humo de Tabaco Argentina (ALIAR), Fundación Interamericana del Corazón Argentina (FIC Argentina), Unión Antitabáquica Argentina (UATA), Asociación Argentina de Tabacología (AsAT), Liga Argentina de Lucha contra el Cáncer (LALCEC) and Asociación Argentina de Oncología Clínica (AAOC), among others, has mobilized and won the endorsement and support of more than 80 organizations throughout the country.

The coalition implemented an action plan to confer visibility to the ratification issue and promote its discussion at the House of Representatives and the Senate. The action plan included several activities, such as developing technical information material, providing legal and economic advice, disseminating press releases, conducting letter-writing campaigns addressed to national legislators, and organizing demonstrations at the door of Congress. At the same time, the actions of the coalition were supported by international organizations and leaders, which joined the request for the FCTC ratification.

This movement triggered a response from the tobacco industry, which started to deploy an obstruction strategy based primarily on a strong alliance with large tobacco producers and legislators from tobacco-producing provinces.

In April 2010, national legislators met in plenary session to discuss the FCTC ratification. In order to encourage the discussion, the health and foreign relations committees of the Senate organized two public audiences with the purpose of listening to the parties involved.

"Stop deaths by tobacco. Immediate ratification of the Framework Convention for Tobacco Control"



Demonstrations by the Coalition for the FCTC Ratification in March 2010

These meetings took place on April 22 and 29, 2010, and were attended by the member organizations of the coalition and some representatives of the National Ministry of Health and of the Pan American Health Organization. In addition, large numbers of tobacco producers, accompanied by tobacco industry representatives, attended both meetings.

The main argument advanced by opponents to FCTC ratification by Argentina was that its entry into force would involve the revocation of a law imposing a tax on cigarette packs that goes back to producers as per a production percentage -the Special Tobacco Fund (FET)³⁸- and that this would directly damage farmers from tobacco-producing provinces. This reasoning is misleading as none of the FCTC articles regulates tobacco production and, on the contrary, the convention proposes that economically feasible alternatives should be sought for workers and farmers, and recognizes the importance of providing technical and financial aid in this field. Nonetheless, the strong influence of the tobacco sector succeeded in preventing the treaty from being ratified based on the misleading argument about effects on production.

Despite this fact, the debate on the FCTC ratification gained such relevance and encountered such resistance in certain parliamentary sectors (particularly among legislators from tobacco-producing provinces) that

³⁸ The Special Tobacco Fund (FET) was created in 1972 following Executive Order 19,800. It is supported with an excise tax on tobacco consumption (approximately 7% of the retail price of the cigarette pack). The money collected by the Fund is allotted to the tobacco-producing provinces according to tobacco production costs, thus serving as a subsidy to tobacco production.

it opened up political space to make headway with a negotiating measure to unblock the discussion. Thus, the way was paved for designing and discussing a national tobacco control law as an alternative to the once again deferred FCTC ratification. In this context, over several months of 2010, different bills were submitted and discussed at the parliamentary committee level, some of them in favor of the tobacco industry interests -mostly put forward by legislators from tobacco-producing provinces- and others consistent with public health objectives. During the debates, in order to counteract tobacco industry interference, civil society organizations provided technical advice and continued with their press campaign to impel the passing of a law that would comply with tobacco control international standards.

This strenuous process eventually concluded on June 1, 2011, when the National Congress of Argentina enacted the Tobacco Control Law (Law No. 26,687). In line with international recommendations, this law

includes as its main measures the implementation of 100% smoke-free environments in all indoor public spaces and workplaces, a comprehensive restriction on tobacco advertising, promotion and sponsorship (with the exception of points of sale and direct advertising targeted for persons over the age of 18), and the inclusion of pictorial health warnings on cigarette packs.

"Smoking: only at home and outdoors. Representatives passed the antitobacco law by unanimous vote"

Clarín, June 2, 2011



Página 12, June 2, 2011



"Put out your cigarette. How the new antitobacco law will be implemented"

To prevent the FCTC ratification, the tobacco industry resorted to front groups, such as large tobacco producers and officials from tobacco-producing provinces. The arguments used during the public audiences coincide with those used by the tobacco industry in the entire world³⁹, among which the following can be mentioned⁴⁰:

- ▶ **The FCTC will irreparably damage tobacco production and destroy regional economies:**
"What role is reserved for us, as provincial and national legislators, if we cannot enact a law and have to accept something imposed by the World Health Organization? (...) We absolutely admit that tobacco is harmful for the health, but we also have to recognize that this is a source of employment for many people. (...) Tobacco puts more bread on the table than corpses in the graveyard."
 J. Mazzone, Representative of the General Güemes district at the Provincial Congress of Salta, and tobacco producer
- ▶ **Tobacco farming is irreplaceable:**
"If the Framework Convention is ratified, we will disappear altogether and this will bring about serious consequences. In other words, we, our workers, our families will be living in ghost towns."
 P. Pascuttini, Tobacco Workers Union from Jujuy

39 **Economics of Tobacco: Myths and Facts**, World Bank. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTHEALTHNUTRITIONANDPOPULATION/EXTETC/0,,contentMDK:20365226~menuPK:478891~pagePK:148956~piPK:216618~theSitePK:376601,00.html> (accessed on October 23, 2012).

40 All the quotations were taken from the stenographic version of the public audience held on April 22, 2010, within the framework of the Committee on Foreign Relations and Worship of the National Senate.



▶ **Tobacco production is an irreplaceable source of employment in the tobacco-producing area of the country**

“The possible ratification of the convention wounds not only our potential for growth but, more importantly, the mere survival of one of the most traditional production sectors of the north-eastern and north-western regions of Argentina. What is at stake is not our chances to grow but basically that we will regress, and therefore directly affect the development indexes of our population.”

R. Villada, Movimiento Productivo del Norte (Northern Association of Producers)

▶ **If the FCTC is ratified, smuggling is bound to increase:**

“One of the first definitions in the framework convention is that of illegal trade, a major concern shared by all stakeholders. Unfortunately, this philosophy is turning upside down: illegal trade is resulting from regulations that, in this regulatory context, are carried to an extreme, taking us to adopt positions contrary to a legally constituted industry and affording illegal traders ample freedom of maneuver.”

F. Etchebehre, representative of BAT-Nobleza Piccardo and the Tobacco Industry Chamber

In Argentina, tobacco exports doubled between 1993 and 2008, presently accounting for about 80% of total tobacco production. For this reason, the arguments stating that the FCTC ratification would have a significant or immediate impact on tobacco production, the regional economies or the industry are false. Should Argentina implement the FCTC measures, domestic use of tobacco would gradually decline, but this would not affect the tobacco producers' income, as domestic consumption accounts for less than 20% of production.

Enforcement of Laws: The New Target of Tobacco Industry Interference

Even though the passage of laws falls within the powers of the legislative branch, and laws come into force when promulgated and published in the Official Gazette, the National Constitution of Argentina empowers the National Executive to issue regulations that create the conditions for effective implementation and enforcement of the laws passed. Regulations are required to facilitate the application of laws, but under no circumstances can they contradict or go beyond the provisions of the law to which they refer. In the case of the Argentine tobacco control law, there are some aspects that cannot be enforced without issuing a regulation. Among others, the following stand out: the appointment of the bodies in charge of monitoring compliance with the measures provided for in the law, and the description of the exceptions listed in the

article related to the ban on advertising, promotion and sponsorship.

Law No. 26,687 established a 180-day term for the National Ministry of Health to issue its regulations. During this period, the Ministry of Health failed to communicate any action taken in this regard and to formally invite civil society representatives to draft the document concerned. Nevertheless, FIC Argentina and ALIAR, among other organizations, offered their technical advice and carried out an ongoing monitoring of the process. Simultaneously, the organizations tried to monitor the activities of the tobacco industry and its allied groups in order to detect any potential interference. Thus, some days prior to the expiration of the term granted for the drafting of the regulation, the organizations learned from off-the-record government sources that some actors (who were not identified) were exerting pressure to defer the issuance of the regulation. The information was vague, and the source demanded absolute confidentiality. However, this sounded an alarm for civil society.

The term granted by the law for its regulation expired in December 2011 and, thanks to the information obtained, the leaders of the organizations asked several times to hold a meeting with the Health Minister to offer technical support, confirm actions of interference, and influence the process. As these requests were dismissed, they decided to redefine the strategy to counteract any possible interference. Within this framework, the organizations, with the support of national and international figures, conducted a letter-writing campaign addressing the Health Minister and other officials of the same department to urge them to regulate the law. Parallel to this, a press strategy was launched to force discussion on the matter and compel authorities to take the relevant measures.

Although these actions had ample press coverage, the organizations were still not received by the Health Minister, were not given access to the file, and were not summoned to participate in the process.

In June 2012, FIC Argentina and ALIAR, exerting their right to access to public information, as established in Executive Order No. 1172/2003⁴¹, filed a formal request with the National Health Ministry to access the draft regulation file. As a result, it was confirmed that there was a draft regulation complying

with the maximum health standards, but there was also a report submitted by the State-run National Lottery⁴² (LNSE) asking to introduce exceptions to the law and a permission to smoke in the gambling halls within its scope of responsibility, openly violating the provisions laid down in the law, under the alleged argument that it had to avoid potential lawsuits from gambling hall operators. In addition, the report proposed that smoking areas be authorized and ventilation fans be installed, thus discriminating against gambling hall workers who, if exceptions were admitted, would still be exposed to tobacco smoke. The main argument of such requests is the same used by the tobacco industry throughout the world, namely that 100% smoke-free environments will cause economic damage to gambling casinos. At the same time, as can be observed, the LNSE report contains exactly the same proposals as the ones in the tobacco industry program known as “Convivencia en armonía” (Coexistence in Harmony)⁴³. Furthermore, the strategy to forge an alliance with the gambling sector is not new at all, since it has been detected and duly documented⁴⁴ in many countries, being instrumental to the tobacco industry interests.

41 Executive Order No. 1172/2003 empowers citizens to request information from any body under the purview of the National Executive Power. Under this order, information shall be understood as “any proof in writing, picture, recording, magnetic, digital or any other format, either created or obtained by the persons mentioned (...) or under their control or in their hands, or having been totally or partially financed with public funds, or deemed necessary as background information to make an administrative decision, including official meeting minutes.” The requested persons are obliged to respond to the request and do so with true data. Likewise, the executive order provides for legal remedies should the body concerned fail to respond in due time and manner.

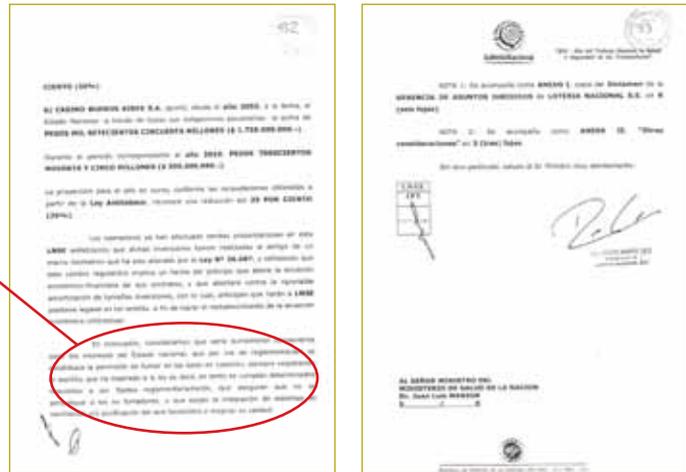
42 The National Lottery (Lotería Nacional Sociedad del Estado [LNSE]) is a State-run entity in charge of managing and regulating the activities related to games of chance in Argentina. It operates indirectly, i.e. through concessionaires, the gaming halls under national jurisdiction, such as the Floating Casino Río de la Plata, many bingo halls and the Hipódromo Argentino (a horse racing venue), which in addition to the races, has slot machines and other games of chance. See <http://www.loteria-nacional.gov.ar>

43 E. Sebríé, S. Glantz. “‘Accommodating’ smoke-free policies: tobacco industry’s Courtesy of Choice programme in Latin America,” *Tob Control*, October 2007, 16(5):e6. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/17897975> (accessed in October 2012).

44 L. L. Mandel, S. A. Glantz. “Hedging their bets: tobacco and gambling industries work against smoke-free policies.” *Tob Control* 2004, 13:268-276 doi:10.1136/tc.2004.007484. Available at: <http://tobaccocontrol.bmj.com/content/13/3/268.short> (accessed in October 2012).

“In conclusion, we consider that the allowance of smoking sectors in these venues via law regulation would be consistent with the interests of the federal State.”

National Lottery Report attached to the draft Law No. 26,687 regulation file requesting a permission to smoke in the gambling halls



To offset this interference, FIC Argentina made these facts public at a seminar for journalists and through a press release, achieving huge media coverage. At the same time, the organization submitted its opinion about the regulation, and asked that it be attached to the file. The opinion drafted by FIC Argentina was mainly based on the effectiveness of smoke-free environment regulations, and included scientific evidence against the fallacious reasoning espoused by LNSE. Furthermore, it made clear that, if the exceptions requested by LNSE were admitted, the principles laid down in the national tobacco control law would be violated, rendering the regulation illegal and prone to challenge.



Seminar for journalists, Buenos Aires. August 29, 2012

▶ The tobacco industry leaves no flank undefended

In Argentina, tobacco industry interference with the application of tobacco control laws was not only detected at the national but also at the provincial level. An example of this interference is the event that took place in the province of San Luis, when in 2010, prior to the enactment of the national law, the province established a 100% smoke-free environment law and a blanket ban on tobacco advertising, promotion and sponsorship.

Off-the-record sources warned civil society organizations of a meeting involving tobacco industry representatives and high-ranking government officials of the province, at which the former asked the latter to introduce exceptions to the provincial law regulation concerning the ban on tobacco advertising. Moreover, the sources confirmed that the San Luis Ministry of Health had drafted a regulation taking into account the “suggestions” made by the tobacco industry, in clear violation of the law.



Thanks to the immediate reaction of the organizations -which demanded a meeting with government officials, sent letters, and gave the issue visibility in the local media- the tobacco industry interference was successfully counteracted. Once the issue was made known to the public, and after receiving the support of some political decision-makers, the province adopted, at the beginning of 2011, a regulation abiding by the spirit of the law. Thus, San Luis became the ninth Argentine 100% smoke-free province and the third one to introduce a blanket ban on tobacco advertising, promotion and sponsorship.

Once again, the key factors for success were the networking of civil society actors across the country as well as the strong alliances forged between the organizations and governmental officials committed to tobacco control policies.

The Tobacco Industry and Its Front Groups in Argentina

In Argentina, actions to oppose tobacco control policies have been carried out primarily by allied sectors or front groups.

Clarín, December 30, 2011



Associations of hotel and restaurant owners

"Bars and restaurants' owners against the anti-tobacco law"

→ obstructing the enactment of 100% smoke-free environment laws at the subnational level since the beginning of the process in Argentina

Clarín, May 03, 2010



Tobacco producers

"Warning: the law will take tobacco growers' breath away"

→ obstructing FCTC ratification

May newspaper, October 16, 2012



Gambling sector

"Report by National Lottery: less income due to smoking ban"

→ obstructing the application of the national tobacco control law

El Libertario, June 29, 2010



Political decision-makers (most of them representing tobacco-producing provinces)

"Urtubey and the smokefree law: 'I believe it's a neo-fascist measure'"

→ obstructing any tobacco control measure

Reflecting over the Case

As of September 2012, the Argentine tobacco control law was not yet regulated. The request for including exceptions not provided for in the text of the law has served not only as an interference with the smoke-free environment policy but also as an excuse for deferring the whole process, thus precluding the implementation of multiple measures provided for in the law, in particular the restrictions on advertising, promotion and sponsorship. This has given the tobacco industry time to redesign and implement new marketing strategies by expanding its actions at the points of sale as well as its relational marketing activities. As no regulation has been issued, there is no surveillance body to oversee the industry activities concerning tobacco advertising, promotion and sponsorship (see box “Advertising at Points of Sale: History Repeats Itself”); nor are there mechanisms to denounce any violation or impose any fines. Moreover, the lack of political will to work on the application of the law by national bodies has delayed its enforcement and the surveillance of compliance with 100% smoke-free environment policies at the provincial and local levels.

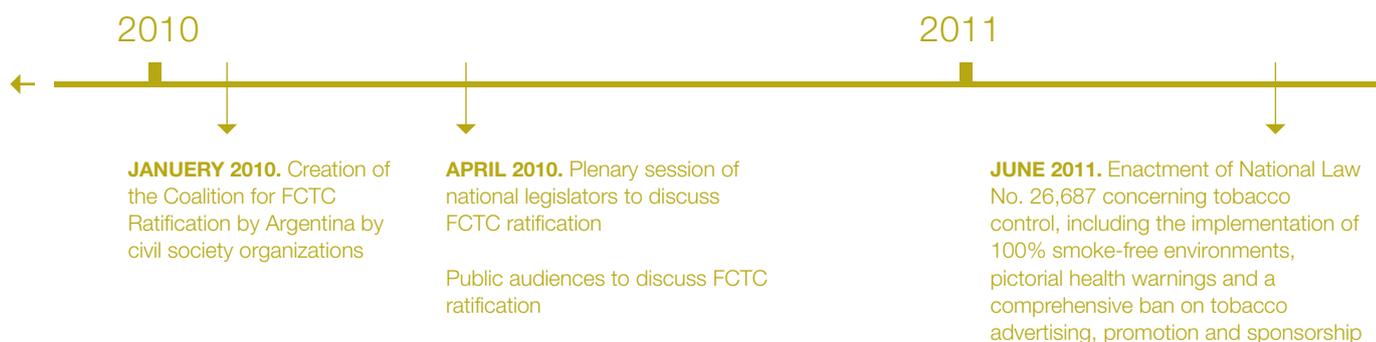


Advertising in a nightclub in Buenos Aires, December 2011 (after the adoption of Law No. 26,687)



Smoking area at the gambling room of the Hipódromo de Palermo horse racing facilities, Buenos Aires, January 2012 (after the adoption of Law No. 26,687)

The case of Argentina confirms that the enactment of a tobacco control law is a starting point to protect the health of the population, but once this goal is attained, the huge challenge ahead is to work towards the effective enforcement of the law. In this regard, civil society organizations advocating for tobacco control policies keep on working to grant visibility to the need for regulating and enforcing the law as well as to influence this arduous process. The case reported also shows that the tobacco industry, unlike what happens in other countries, has found a way to obstruct tobacco control policies without the need to expose itself openly. In Argentina, the tobacco industry has rarely appeared before the public eye to oppose these measures; instead, it has acted through allies or front groups, such as large tobacco producers, political decision-makers from tobacco-producing provinces, associations of hotel and restaurant owners and managers, and gaming hall representatives, among others.





Advertising at Points of Sale: History Repeats Itself

Fortuna Magazine, September 29, 2012



"How to sell without advertising"

*distribution more efficient, we need to add value through contact with the client. As we do not sell directly, our clients are the kiosks or convenience stores, so we know our relationship with them is crucial."*⁴⁵

These strategic lines of action are the same as the ones employed in other countries of the world to make the most of exceptions and escape restrictions (see the cases of Brazil and Colombia in this report).

As the tobacco control national law is not regulated yet, the tobacco industry is not wasting its time and is redirecting its investments towards advertising, promotion and sponsorship according to the new strategies designed to attract new clients. In this regard, in an article published by a well-known magazine, a high-ranking executive of BAT-Nobleza Piccardo stated that now that tobacco advertising in traditional channels is forbidden, "we have three main channels available. One is the point of sale, where the retailer plays a key role; another one is the Internet, where we establish direct and unipersonal communication; and the other channel is made up of bars and nightclubs. (...) To make

For case analysis purposes

- ▶ What strategies used by the tobacco industry in this case do you consider more relevant?
- ▶ Were any of the actions taken by the tobacco industry unknown to you?
- ▶ Do the tobacco industry actions taken in this country have anything in common with the actions taken by the tobacco industry in your country?
- ▶ What progress has been made by your country as far as 100% smoke-free environments are concerned?
- ▶ Does the tobacco industry in your country act through front groups or does it act openly?
- ▶ In your opinion, what were the best moves made by Argentine civil society to defend anti-tobacco policies?
- ▶ What other actions could have been taken?
- ▶ What do you think about this case?

4.4 | BRAZIL

The Tobacco Industry Shows its Cards

FILE

Population: 190,732,694⁴⁶

Tobacco use prevalence: 17.2%⁴⁷

Annual per capita consumption of tobacco cigarettes: 504 units⁴⁸

Year of FCTC ratification: 2005

Main tobacco control measures implemented as of September 2012:

- Federal Law No. 12,546 of 2011 (Article 49) establishing:
 - A ban on tobacco advertising at points of sale. Only cigarette packs display is authorized (until 2010, Federal Law No. 10,167, banning advertising except at points of sale, was in force in Brazil.)
 - 100% smoke-free environments in all indoor public spaces and workplaces
 - Pictorial health warnings on 100% of one of the pack sides. As from 2016, 30% of the other pack side will include such warning
 - Increase in cigarette excise taxes and determination of a minimum retail price. With such measures, the cigarette price will rise by 20% in 2012, reaching a 55% price increase by 2015.
 - National Health Surveillance Agency (ANVISA) regulation banning the use of additives (flavorings) (RDC No. 14), except sugar with the exclusive purpose of replacing what was lost in the tobacco leaf drying process
-

Leading tobacco companies:

- BAT-Souza Cruz: 60% market share⁴⁹
- PMI: 11% market share⁵⁰

In 2000, Brazilian Federal Law No. 10,167 banned tobacco advertising except indoor points of sale. From the enactment of the law onwards, tobacco companies operating in the country started to develop new advertising strategies to avoid complying with the law and to make the most of exceptions. Thus, between 2000 and 2010, a remarkable spread and diversification of points of sale was observed; bakeries, supermarkets, news stands, nightclubs and discos,

and even street vendors were added to the traditional places to buy cigarettes -such as kiosks and filling stations. In fact, one of the tactics most widely used by the tobacco industry was to transform events such as concerts, parties and parades into “provisional points of sale,” decorating the site with a massive display of eye-catching ads.

⁴⁶ IBGE, 2010 Population Census.

⁴⁷ Instituto Nacional de Câncer. Ministério da Saúde. OPS. Pesquisa Especial de Tabagismo PETab: relatório Brasil. Rio de Janeiro, RJ, 2011

⁴⁸ M. Eriksen, J. Mackay, H. Ross. **The Tobacco Atlas**, fourth edition; American Cancer Society, Inc., 2012. www.TobaccoAtlas.org

⁴⁹ Source: Souza Cruz-BAT http://www.souzacruz.com.br/group/sites/SOU_7UVF24.nsf/vwPagesWebLive/DO7V4L37?opendocument&SKN=1 (accessed in October 2012).

⁵⁰ Brazilian Federal Revenue Department, 2012.

Furthermore, tobacco companies devised new strategies to enlarge their market share, by investing heavily in promotions and in the design of point-of-sale ads, which, as already stated, expanded quickly during this period. Thus, lighted billboards and screens began appearing at points of sale, and cigarette packs were strategically placed in shop windows and display cases beside products targeted to children, such as candies, chocolates and toys.

In addition, tobacco companies launched sales promotions especially targeted to youngsters, who could get cigarettes when receiving certain products such as backpacks, hats, earphones or headphones, MP3 players, and other type of merchandising. They also started to use cigarette packs as a vehicle for advertising, for instance by including cards inviting tobacco users to complete and return to the company to receive information. Tobacco companies also began designing more attractive packages to hide health warnings.



In this period, civil society organizations dedicated to tobacco control, such as Aliança de Controle do Tabagismo (ACT), undertook many actions to make tobacco industry strategies known to the public and to de-normalize its practices. The following ones are worth mentioning: mass media campaigns, reporting tobacco industry violations of the law, and actions designed to promote the adoption of effective measures to fight the tobacco epidemic through collaborative work with political decision-makers and governmental agencies.

The Tobacco Industry's Response to the Inquiries by ANVISA

By late 2010, the National Health Surveillance Agency (ANVISA)⁵¹ requested public comments on two proposals to implement tobacco control measures. In November 2010, ANVISA launched public consultation 112 with the purpose of assessing the

⁵¹ ANVISA is a financially-autonomous public agency responsible for overseeing products subject to health surveillance, such as pharmaceutical drugs and food, and having the power to issue regulations concerning the manufacture, sale and distribution of such products within the framework of the laws in force. On numerous occasions, ANVISA requested public comments on certain policies so that stakeholders could express their opinion and make suggestions. Even though these consultations are not binding, this practice contributes to conferring ANVISA measures a high degree of legitimacy. For further information, visit <http://www.anvisa.gov.br/esp/index.htm> (accessed in October 2012).

degree of acceptance of a ban on the use of additives (flavorings) in cigarettes as an effective way to prevent tobacco use among the young. The measure was proposed in line with the FCTC Articles 9 and 10 guidelines⁵², discussed during the Fourth Conference of the Parties held in Uruguay that year. Public consultation 117, on the other hand, involved revising the proposal to limit tobacco display at commercial establishments, launch a blanket ban on tobacco advertising, promotion and sponsorship, and increase the size of health warnings.

These ANVISA public consultations triggered multiple reactions. Civil society organizations and other figures concerned with health issues expressed their support to the measures; ACT even contributed technical suggestions to be introduced into the proposals and encouraged the members of the public to express their support. However, the tobacco industry deployed an aggressive campaign in the media against the tobacco control proposals. It also mobilized stakeholders to voice their opposition to them, in an attempt to mislead policymakers and the public by asserting that the ANVISA proposals would have a negative impact on the Brazilian economy, as they would cause huge economic losses to farmers and encourage smuggling. Furthermore, they used the argument -so often repeated throughout the world- that the ban on advertising amounted to a restriction on the freedom of speech.

Given the reactions generated by the ANVISA consultations, once the term for submitting written opinions expired, it was deemed relevant to hold a public hearing on the matter. Thus, by the end of 2011, ANVISA held a public hearing to discuss the ban on the use of additives in cigarettes. Hundreds of farmers voicing tobacco industry interests attended the event. The sector demanded that the measures be dismissed on the grounds that their livelihood would be adversely affected. However, although health policy advocates



O estado de S. Paulo, March 31, 2011

Ad against the ANVISA proposals. "Today it is tobacco, but tomorrow it may be you."

Ad against the ANVISA proposals. "The farmers' future is at stake."



were only a minority, they succeeded in stating their counter-arguments, explaining that as 85% of Brazilian tobacco is for export, no national health policy would have any impact on production⁵³. With these data, the organizations alerted farmers to the need to implement health policies to fight tobacco use.



Public audience in Brasilia to discuss the ANVISA proposals, December 2011

52 Partial guidelines for implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control. Available at: <http://www.who.int/fctc/guidelines/Decisions9and10.pdf> (accessed in October 2012).

53 Information provided by ACTbr (2011), drawn from the Municipal Agricultural Research (PAM, in Portuguese), the Systematic Survey on Agricultural Production (LSPA, in Portuguese) (available at: www.aliceweb.desenvolvimento.gov.br) and from the Brazilian Federal Income Department: Produção de tabaco no Brasil (available at: www.receita.fazenda.gov.br).

▶ ANVISA planned to organize the public hearing to discuss the proposed regulation in Rio de Janeiro. The tobacco industry was dissatisfied with the location, as most farmers are located in the southern regions of the country and Rio de Janeiro is home to INCA (the National Cancer Institute), ACT, and other associations and organizations committed to tobacco control policies. In view of this, the tobacco industry, through its trade union SINDITABACO, secured a court injunction on the hearing on the grounds that the venue where it would take place would be too small to accommodate all the people willing to participate. This move forced ANVISA to reschedule the audience. However, it was not held in the south of the country, as the tobacco industry wanted, but in a huge gymnasium in Brasilia, in the north. The tobacco industry took hundreds of farmers to the city to exert pressure, but tobacco control advocates made their voices heard and firmly stood by the need to adopt the measures proposed.

▶ To counter the proposed policy to ban tobacco advertising, promotion and sponsorship, the tobacco industry conducted an intense campaign stating that the policy was a form of censorship and an attack on freedom of speech.

This argument has been used regularly in countries where such a policy has been proposed, but it is inaccurate since the advertising of goods does not fall within the scope of freedom of speech, but within the scope of freedom of trade. This is because advertising is driven by desire for profit and intended to encourage consumption of a given good. In addition, it should be noted that there are several precedents for bans or restrictions on the advertising of hazardous or potentially hazardous products, even though legally traded, as is the case of firearms, fireworks, and pharmaceutical drugs.



Seminar promoted by the tobacco industry to analyze "how excessive regulation can affect the freedom of speech, the citizens' life and the economy".

A major achievement for health rights advocates

While ANVISA proposals were being discussed, the President of the Nation, Ms. Dilma Rousseff, issued Provisional Order No. 540/2011 (MP540) to boost the economy, which included, among other items, an increase in cigarette excise taxes. By law, this order needed to be subsequently approved by the National Congress. The tobacco industry took this as an opportunity to exert its influence on the discussion of the order and pressure legislators to take action to thwart ANVISA's ability to proceed with the proposed advertising and additive-related measures. The tobacco industry designed a lobbying strategy to propose policies that would not challenge its interests. The proposal included, among other items, the prohibition of some flavorings, but not menthol and sugar, as well as prohibition of trademark advertising. However, the proposal did not explicitly ban institutional advertising introduced exceptions to smoke-free environments, and increased the size of health warnings by a percentage lower than the one proposed by ANVISA. The tobacco industry managed to incorporate these amendments to the original project through an allied Lower Chamber legislator.

"Law banning smoking in indoor public spaces in the whole country enforced."



G1, December 15, 2011

Veja, September 29, 2011



"Minister backs down and says he is against smoker-friendly restaurants."

"The government analyzes the return of smoking to bars."



O Estado de S. Paulo, September 23, 2011

The discussions around the tobacco-industry-friendly amendments did not become publicly known until ACT learned about them at a meeting with the Health Minister, at which time it asked to have access to the draft. ACT's reading of the draft confirmed that the new proposed measures contradicted FCTC recommendations and, if passed would amount to a step backwards in the fight against tobacco use in Brazil. This pushed tobacco control organizations and medical associations to conduct a press campaign to make the matter known to the public and encourage the enactment of an effective law. Congress eventually voted on a very different Law No. 12,546/11, which, among other provisions, increased cigarette excise taxes, established 100% smoke-free environments in the entire country and introduced a ban on advertising at the point of sale.

The lengthy process ended on December 14, when President Rousseff promulgated the law and, thanks to the work of the civil society in counteracting the tobacco industry activity, vetoed an article that authorized corporate advertising. Some time later, in March 2012, the ANVISA proposal related to flavorings was also approved, though sugars added to replace those lost during the curing process were excluded.



The tobacco industry attacks civil society organizations

Even though the tobacco industry resorts to litigation as a strategy to thwart tobacco control policies, only in few cases are legal proceedings instituted against civil society organizations. However, the magnitude of the discussion over tobacco control measures in Brazil led the most important tobacco company in the country to implement this strategy to protect its interests.

In September 2012, Souza Cruz, the Brazilian subsidiary of BAT, filed a judicial complaint against ACT to withdraw the TV spot for its “Limite Tabaco” (Restrict Tobacco) campaign. The Brazilian organization launched this campaign to raise awareness over the need to restrict tobacco advertising at points of sale and prevent cigarettes from being displayed together with products for children and adolescents. The campaign gained visibility as it was broadcast by TV Globo (the most important TV channel in the country) both for free and in prime time.

Souza Cruz initiated legal proceedings to request an injunction to stop the broadcast of this campaign. The main argument for this injunction request was that the TV spot stated that the company used strategies to encourage cigarette smoking among under-18 year-olds, thus violating the prohibition to sell to minors.

The court dismissed the request filed by Souza Cruz, on the basis that the campaign did not make any reference to the corporate name nor did it accuse it of selling its products to children and adolescents; instead, the court considered that the spot was seeking to protect health rights, as established by the National Constitution. An appellate court confirmed the lower courts provisional dismissal.

Even though judicial decisions favored ACT on two occasions, the tobacco industry may appeal the decision once again and continue with its legal actions.

2012

OCTOBER 2011. Civil society organizations acquainted with the contents of the bill

DECEMBER 2011. Public hearing regarding the ANVISA consultations
Enactment of Law No. 12,546/11

MARCH 2012. Adoption of the ban on the use of additives (flavorings) in cigarettes (RDC No. 14)

Promulgation of the law and use of a veto on an article authorizing corporate advertising

O Estado de S. Paulo, February 27, 2011



- A campaign to make people believe that these measures will boost smuggling activities

"Grow of illicit trade. Decline in sales."

- Resorting to opinion-makers

Folha de S. Paulo, February 28, 2011

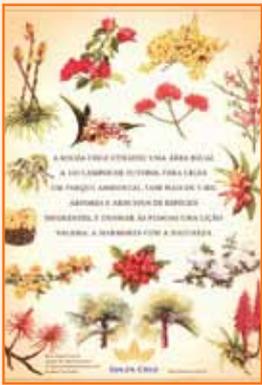


- A campaign to make people believe that a ban on advertising is a restriction to the freedom of speech

"When information is lacking, many doubts arise in the consumer's mind."

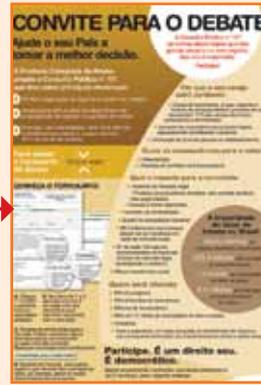
Tobacco industry actions designed to obstruct the ANVISA proposals

- Corporate social responsibility actions



"Souza Cruz used an area equal to 100 soccer fields to create an environmental park."

- Resorting to front groups



Event of the Brazilian Association of Bars and Restaurants (ABRASEL) to fight the ANVISA proposals

- Research works to back up their interests



"A study on the socioeconomic effects of the ANVISA proposals."

- Corporate sponsorship of cultural, legal, educational and other events

Diálogo Magazine 62, 2011



- Forging alliances with national authorities

"War against illegal trade. Development, Industry and Foreign Trade Minister on the Souza Cruz-BAT magazine."



- Campaigns to promote tobacco control policies

ACT's "Restrict Tobacco" Campaign

- Technical proposals to implement effective policies



- Press campaigns

"85% of youngsters oppose smoking in indoor spaces."

- Creating alliances with organizations, scientific circles and political decision-makers concerned with tobacco control policies

Civil society actions to counteract tobacco industry actions and to support tobacco control policies

- Events involving young people in promoting critical reflection on the tobacco industry strategies

- Public denunciations

- Seeking regional and international support

- Disseminating polls and studies providing evidence of consensus on and effectiveness of these policies



Demonstration outside Congress to condemn the tobacco industry strategies



Results of the ACT research.

Reflecting over the Case

The Brazilian tobacco industry resorted to many strategies to block or dodge tobacco control measures: until 2010, it abused exceptions to advertising bans and made the most of “legal loopholes” to implement new marketing techniques; then, it openly fought against the draft regulations and mobilized front groups to defend its business, and finally took advantage of political circumstances to promote a law in accordance with its interests. This last strategy, the objective of which was to introduce amendments to the provisional policy issued by the President, turned out to be a double-edged sword, since tobacco control advocacy groups

identified it as an opportunity to act and promote the incorporation of effective health protection measures.

To date, the regulations for this federal law, which are to guarantee effective enforcement of the law, are still pending; therefore, the great challenge for tobacco control advocacy groups is to ensure that headway is made in this regard. The tobacco industry reaction to the law is soon to come, and it is likely that the industry will continue developing strategies to protect its business. Regardless, the passage of this law in Brazil represents significant progress for tobacco control, as it stands as a model for the region. The civil society organizations’ commitment and their efforts to monitor and de-normalize tobacco industry actions and interests have been fundamental to accomplish these goals.

For case analysis purposes

- ▶ What strategies used by the tobacco industry in this case do you consider more relevant?
- ▶ Were any of the actions taken by the tobacco industry unknown to you?
- ▶ Do the tobacco industry actions taken in this country have anything in common with the actions taken by the tobacco industry in your country?
- ▶ What progress has been made by your country as far as bans on additives are concerned?
- ▶ Has the tobacco industry filed any complaint against the State over tobacco control policies in your country? Are there any lawsuits opened against organizations advocating tobacco control policies?
- ▶ In your opinion, what were the best moves made by the Brazilian civil society to defend anti-tobacco policies?
- ▶ What other actions could have been taken?
- ▶ What do you think about this case?

Despite the nature of its deadly products, the tobacco industry is a legal business concentrating enough economic power to enable it to implement a wide range of strategies to greatly influence public debates. As analyzed in the above-described cases, most interference actions taken by the tobacco industry do not actually violate legal restrictions. However, on numerous occasions the industry resorts to questionable strategies, such as disseminating biased information, abusing exceptions, interpreting laws for its benefit in order to escape restrictions, or using its influence in the highest political decision-making bodies to have laws passed and agreements signed that are instrumental to its interests.

In the cases described, it is evident that the tobacco industry has a common objective in all the countries: thwart or defer the implementation of any effective tobacco control policy and, where this is not possible, undertake actions to weaken its the impact on tobacco use. This becomes even more serious because in most countries of the region there is a lack of coordination between different sectors such as Finance departments and health policymakers, making it more difficult to adopt comprehensive and truly effective policies.

In the event that a law or policy regulation contrary to its interests was bound to be adopted, tobacco companies would implement a series of strategies that -although they may appear highly specific to local circumstances- are entirely consistent with a global plan conducted throughout the world. This becomes clear in the above cases, which bring a series of common strategies out into the open: the use of arguments such as the rise of smuggling due to tax and price increases, alleged violation of the freedom of speech, actions intended to exploit advertising at

the point of sale when these are not part of the bans, the use of front groups to guard industry interests, the development of corporate social responsible actions to get public support, and lobby at different political decision-making levels, among others. Furthermore, another point in common lies in the fact that the tobacco industry in all the countries makes important efforts to build a closer relationship with political decision-makers by creating forums for promoting dialogue, performing philanthropic actions, and participating in public events.

The monitoring of the tobacco industry actions carried out by civil society organizations has been vital to exposing these strategies. In addition, collaborative work at the regional level has made it possible to document numerous points of commonality across tobacco industry actions in each country. However, it is important to highlight that not all these strategies are openly implemented by the tobacco industry. Very often off-the-record sources of information or channels of communication play a key role in detecting and counteracting interference actions that would otherwise pass unnoticed. Although there are not enough resources to assess whether having access to off-the-record sources of information is equally important throughout the world, these cases enable us to infer that having access to off-the-record sources would likely be an important element of monitoring the tobacco industry in the countries of the Latin American region. In this regard, it is necessary to underline how significant it is to forge alliances with tobacco control policy advocates: legislators, government officials, other social organizations and the mass media. These alliances help gain access to key information about tobacco industry activities and facilitate knowing of any action of interference with

the process of designing or implementing a public policy.

The regional initiative to monitor and act against tobacco industry interference in Latin America has enabled civil society organizations to strengthen their communication and exchange of information regarding the actions performed by the tobacco industry at the local and regional levels, has facilitated the transfer of know-how, and has encouraged joint work to give a regional response. Furthermore, the cases described in this report reveal that the governments of Latin American countries have not made enough progress yet in adopting measures to prevent tobacco industry interference and ensure transparent interaction with the sector. In this regard, the challenge that tobacco control advocacy

groups have ahead of them is to strengthen the monitoring and de-normalizing of tobacco industry actions and to warn governments and the general public against tobacco industry strategies, as well as to encourage the implementation of policies that seek to prevent industry interference and to work jointly with the governments to guarantee political process transparency in order to protect citizens' constitutionally guaranteed rights to health.

Recommendations for Civil Society Organizations

- ▶ Promote the implementation of Article 5.3 of the WHO FCTC in the countries that have signed the treaty
- ▶ Regularly monitor tobacco industry activities
- ▶ Report to the relevant authorities any tobacco industry interference as well as any breach of the laws in force
- ▶ Counteract the tobacco industry actions by exposing them through the mass media
- ▶ Work in coordination, using the mechanisms already in place in the region, to warn of tobacco industry actions
- ▶ Create alliances with political decision-makers who advocate for tobacco control and work in coordination with them
- ▶ Forge alliances at the regional level to exchange information and act jointly
- ▶ Demand transparent interactions between governmental bodies and the tobacco industry
- ▶ Raise awareness about any conflict of interest between public health and tobacco industry objectives in order to prevent the tobacco industry from participating in health policy negotiations

Alderete, Mariela

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