Tobacco industry success in Costa Rica: The importance of FCTC Article 5.3

Eric Crosbie, MA,[1] Ernesto M Sebrié, MD, MPH,[2] Stanton A Glantz, PhD.[1]

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Abstract

Objective. To analyze how the tobacco industry influenced tobacco control policymaking in Costa Rica. **Materials and Methods**. Review of tobacco industry documents, tobacco control legislation, newspaper articles, and interviewing of key informants. **Results**. During the mid-to-late 1980s, Health Ministry issued several advanced (for their time) smoking restriction decrees causing British American Tobacco (BAT) and Philip Morris International (PMI) to strengthen their political presence there, resulting in passage of a weak 1995 law, which, as of August 2011, remained in effect. Since 1995 the industry has used Costa Rica as a pilot site for Latin American programs and has dominated policymaking by influencing the Health Ministry, including direct private negotiations with the tobacco industry which violate Article 5.3's implementing guidelines of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). **Conclusions**. The Costa Rica experience demonstrates the importance of vigorous implementation of FCTC Article 5.3 which insulates public health policymaking from industry interference.

Key words: Latin America; public health law; tobacco smoke pollution; tobacco industry; public policy; tobacco control campaigns; Costa Rica

Crosbie E, Sebrié EM, Glantz SA. El éxito de la industria tabacalera en Costa Rica: La importancia del Artículo 5.3 del CMCT. Salud Publica Mex 2012;54:28-38.

Resumen

Objetivo. Analizar cómo la industria tabacalera influyó en la formulación de las políticas de control del tabaco en Costa Rica. **Materiales y métodos**. Revisión de documentos de la industria tabacalera, de la legislación costarricense de control del tabaco y de periódicos y entrevistas con informantes clave. **Resultados**. Durante los años ochenta, el Ministerio de Salud aprobó varios decretos para restringir el consumo de tabaco, lo que causó que British American Tobacco y Philip Morris International fortalecieran su presencia política, cuyo resultado fue la promulgación de una ley débil en 1995 todavía vigente. Desde 1995 la industria tabacalera ha utilizado a Costa Rica como piloto para los programas latinoamericanos y ha dominado la formulación de políticas influenciando al Ministerio de Salud, incluyendo negociaciones privadas con la industria tabacalera en violación de las directrices del Artículo 5.3 del Convenio Marco para el Control de Tabaco (CMCT) de la Organización Mundial de la Salud. **Conclusión**. La experiencia de Costa Rica demuestra la gran importancia que tiene la implementación del Artículo 5.3 del CMCT para proteger las políticas de la salud pública de la interferencia de la industria tabacalera.

Palabras clave: América Latina; leyes de salud pública; contaminación por humo de tabaco; industria tabacalera; política pública; campañas de control del tabaco; Costa Rica

(1) Center for Tobacco Control Research and Education, University of California San Francisco. San Francisco, CA, USA.
(2) Department of Health Behavior, Roswell Park Cancer Institute. Buffalo, New York, USA.

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Corresponding author: Stanton A. Glantz, PhD. Center for Tobacco Control Research and Education, Room 366 Library. 530 Parnassus, San Francisco, CA 94143-13990, USA.
E-mail: glantz@medicine.ucsf.edu

The United Nations recognizes Costa Rica, a stable and highly educated Latin American country,[1] with Central America's highest life expectancy, lowest infant mortality rate, and second lowest HIV/AIDS prevalence,[2] as a regional model.[3] During the mid-to late-1980s the Health Ministry issued several advanced smoking restriction decrees which helped Costa Rica establish one of the lowest smoking prevalences in the world in 1987 (22%).[4] In 1992, Legislator Enid Rodríguez Quesada introduced Bill 11.545, which created 100% smokefree workplaces and eliminated tobacco advertising, so Costa Rica seemed poised to emerge as a successful tobacco control model.

Threatened by this progress,[5,6] British American Tobacco (BAT) and Philip Morris International (PMI) strengthened their political presence in Costa Rica, weakening Bill 11.545 to enact a weak law in 1995 that allowed designated smoking areas in workplaces and public places and adopted the industry's weak language on advertising restrictions, which, as of August 2011, remained in effect. This success propelled the industry to use Costa Rica as a model to roll out successful programs throughout the region, including its Courtesy of Choice program (to protect smoking in hospitality venues), youth smoking prevention programs (to displace effective youth smoking prevention programs), and corporate social responsibility campaigns (to maintain the industry's political legitimacy) throughout the late 1990s and 2000s. While Panama, Guatemala, and Honduras in Central America enacted 100% smokefree laws between 2008 and 2010,[7] Costa Rica, other than ratifying the WHO Framework Convention on Tobacco Control (FCTC) made no progress since 1995 due to Health Ministry's willingness to cooperate with the industry. Rather than serving as an exemplar for tobacco control policies, it provides a model that tobacco control advocates in other Latin American countries can use to anticipate future industry moves.

Materials and Methods

Between April 2010 and March 2011 we reviewed tobacco control legislation (available at http://www.asamblea.go.cr/Legislacion/default.aspx), searched tobacco industry documents in the University of California San Francisco Legacy Tobacco Documents Library (http://legacy.library.ucsf.edu) using standard snowball search methods,[8,9] reviewed Costa Rican newspaper articles, and interviewed 16 Costa Rican tobacco control advocates, policymakers and lawyers in accordance with a protocol approved by the UCSF Committee on Human Research.

Results

Costa Rica's early success (1986-1992)

In 1986 Health Minister Edgar Villa Mohs began capitalizing on increased public awareness of secondhand smoke (SHS) by continuously discussing tobacco-induced diseases in the media.[10] Between 1986 and 1989, Mohs issued nine smoking restriction decrees, including Decree 18216 in 1988, which prohibited smoking in workplaces (although allowing designated smoking areas), and Decree 18248 in 1988, which prohibited smoking on buses, both significant advances in Latin America.[6]

Meanwhile the "Instituto sobre Alcoholismo y Farmacodepencia" (IAFA, Institute of Alcoholism and Drug Dependence), the "Asociación Costarricense de Salud Pública" (ACOSAP, Costa Rican Institute of Public Health), both departments in the Health Ministry, and the "Caja Costarricense de Seguro Social" (CCSS, Costa Rican Social Security Fund), another governmental health institution, promoted public awareness of SHS. ACOSAP and IAFA consistently promoted smoking's consequences in health conferences and printed educational materials,[11] while CCSS held events to educate the public on smoking's consequences and its economic impact on society.[12] These advocacy efforts helped Legislator Enid Rodríguez Quesada introduce Bill 11.545 in 1992 to completely prohibit smoking in workplaces and public places (except restaurants and bars, which allowed designated smoking areas) and completely prohibit tobacco advertising.[13]

Tobacco industry response to growing pressure (1988-1995)

In 1988, BAT expressed concern over Costa Rica's progress[6] and in 1992 recognized Bill 11.545 as an immediate threat because of its strong public support.[14] As a result the industry worked through third parties to stop Bill 11.545.

Attempts to block smoking restrictions: Latin Project and the Courtesy of Choice

In 1991, the industry initiated the "Latin Project" in anticipation of the SHS issue in Latin America to prevent smokefree workplace and public place legislation, including Bill 11.545.[15] The Latin Project, part of the industry's worldwide International Environmental Tobacco Smoke (ETS) Consultants Project,[16,17] included secretly recruiting medical and scientific consultants by

the tobacco industry's Washington, DC-based law firm Covington and Burling to avoid public appreciation of the industry's involvement.[15]

Covington and Burling hired Dr. María del Rosario Alfaro, Pollution Laboratory Director at the University of Costa Rica, to help conduct the "Central American Field Study" to measure indoor air quality (IAQ) in offices, hospitals and restaurants in Central America.[5,15] Consistent with the industry's position, Alfaro concluded that "smoking, as currently practiced in these sample buildings, did not appear to be having a significant impact on IAQ" and improving IAQ "begins with efforts to improve the quality of the outdoor air."[18] Covington & Burling distributed the Costa Rica pilot study results to BAT and PMI in February, 1994, who lobbied Congress for ventilation standards, arguing that "studies have shown that inadequate ventilation is the major contributor to poor indoor air quality, and not ETS".[19]

In October 1994, Philip Morris hired the New York public relations agency Spring O'Brien and the Miami public relations firm Rubin Barney & Birger to introduce the "Courtesy of Choice" program in Latin America, an extension of the US "accommodation" programs tobacco companies developed to promote designated smoking areas as the "reasonable alternative" to 100% smokefree laws.[20,21] Philip Morris selected Costa Rica as a priority market to rollout the program because of Bill 11.545's immediate threat.[14] The two US public relations firms worked with local public relations firm Central American Consulting Inc. which claimed it had good connections with the local hospitality associations.[22] They recruited the "Cámara Costarricense de Restaurantes Afines" (CA.CO.RE., Costa Rican Chamber of Restaurants) and "Cámara Costarricense de Hoteles" (CCH, Costa Rican Chamber of Hotels),[22] to promote Courtesy of Choice by distributing brochures in Costa Rica.[23] By June 1994, the industry had weakened Bill 11.545 to allow designated smoking areas in workplaces and public places (table I).[24]

Attempts to block advertising ban

After Bill 11.545 reached Congress' plenary session in June 1994, BAT and PMI pressured the Legislative Assembly to delay the bill, contesting the complete prohibition of tobacco advertising.[28] Although a majority of legislators favored prohibiting tobacco advertising in August 1994,[29] intensive industry efforts[30] delayed the process until February 1995, when a few legislators began to repeat the tobacco industry argument that the

Table I
Tobacco industry success in preventing strong tobacco control legislation (1992-2003)

Date	*Legislation*	*Tobacco industry actions in Costa Rica*	*Result*	*Programs expanded to Latin America and the Caribbean*
27 July 1992	Bill 11.545 to completely prohibit smoking in workplaces and completely prohibit tobacco advertising[13]	BAT and PMI secretly hired scientific consultants to promote the Latin Project (1991) and introduced the Courtesy of Choice program (1994)	Bill was weakened to allow DSAs in all workplaces and public places and the industry's language on tobacco advertising was adopted	Courtesy of Choice was expanded in 1995 (Puerto Rico, Chile, Venezuela), 1996 (Argentina, Brazil), and 1998 (Dominican Republic, Mexico, Nicaragua)
6 June 1998	Bill 13.200 to completely prohibit tobacco advertising[25]	BAT and PMI promoted YSP programs by promoting self-regulation through education and retailer programs (1997-1998)	Bill was killed in Congress	YSP program "On-Target" was expanded in 1998 to Colombia, Mexico, and Venezuela
24 Sept 1998	Bill 13.335 to make all workplaces and public places 100% smokefree[26]	BAT and PMI used CACORE to promote the Courtesy of Choice program (1998)	Bill was killed in Congress	Same as 1992
31 July 2002	Bill 14.844 completely prohibit smoking in workplaces, enforce stricter HWLs, prohibit tobacco advertising in television and newspapers, and increase penalties for noncompliance[27]	BAT and PMI made a verbal voluntary agreement with the Health Ministry (2000), lobbied Congress (2002-2003), and produced a CSR report to promote the voluntary agreement (2003)	Bill was displaced by Decree 31616, which only nominally increased tobacco advertising restrictions beyond the 1995 law	CSR Social Reports were expanded to Trinidad and Tobago (2004), Jamaica (2005), and Honduras (2007)

YSP: Youth Smoking Prevention
CSR: Corporate Social Responsibility
DSA: Designated Smoking Area
HWL: Health Warning Label

advertising restrictions in Article 9 "could trigger [constitutional] problems," and suggested modifying Article 9 to avoid constitutional challenges.[31] In February 1995, BAT and PMI produced an alternative much weaker text, which only extended the existing 1990 Decree 20196 tobacco advertising restriction on radio and television by one hour, from 6:00 am-8:00 pm to 6:00 am-9:00 pm, as well as prohibited advertisements in locations for minors,[31] a common strategy used by the industry around the world.[32] In May 1995, Congress approved Law 7501 "Regulation of Smoking" after dropping the smokefree workplace and public place provisions and with the industry's advertising language.

In 1999, Philip Morris presented the Costa Rican law in an overview of "Constructive and Credible Management of ETS Issues" as a model for other Latin American countries who "faced similar unreasonable smoking restrictions".[33] BAT and PMI expanded the Courtesy of Choice program throughout Latin America between 1995-1999, which was successful in "preventing or modifying smoking restrictions" in Argentina, Brazil, Chile, Colombia, Dominican Republic, and Guatemala.[22,34]

Tobacco industry continued success in Costa Rica and was used as a test pilot for Latin America (1996-2003).

Attempts to ban tobacco advertising

Beginning in 1996, CCSS and IAFA argued in the media that tobacco advertising caused children to begin smoking and released a study that youth smoking had increased from 21.3% in 1990 to 26.2% in 1997.[35] CCSS and IAFA also released a study that Costa Rica had spent 740 million colones (US$1.5 million) from 1987 to 1997 treating tobacco-induced diseases,[35,36] which they demanded the tobacco industry pay. This push led to introducing Bill 13.200 in June 1998, to completely prohibit tobacco advertising.

"Youth smoking prevention" programs

As the industry had been doing for years in the US,[37,38] and elsewhere,[39,40] it decided to preempt the youth smoking issue in Costa Rica by promoting self-regulation through education and retailer programs.[41] In August 1997, BAT and PMI sponsored with the Costa Rican "Cámara Nacional de Comerciantes Detallistas" (National Chamber of Merchant Retailers) "Prohibido Vender Cigarrillos a Menores" (It is Prohibited to Sell Cigarettes to Minors), a program nominally to prevent selling cigarettes to minors, and educate merchants about the 1995 law.[42] The industry attempted to shift the focus to peer pressure and parental behavior and away from the fact that its advertising and marketing promotes smoking to youth and prevent or displace government-run public health campaigns that addressed the industry's behavior.[39] Similar to the U.S. "We Card,"[38] and "It's the Law,"[37,43] programs, it provided retailers with signs, stickers, and other print materials with the message "A Menores de 18, Tabaco No: Identificate" (Under 18 No Tobacco: We Card) (figure 1). Most important, the tobacco industry won the Health Ministry's endorsement in November 1997, which effectively prevented implementation of direct government action.[39]

FIGURE 1. SIGN DISTRIBUTED TO PROMOTE THE YOUTH PREVENTION PROGRAM "IT IS PROHIBITED TO SELL CIGARETTES TO MINORS" (AUGUST 1997) TO SUPPORT LAW 7501 (THE 1995 LAW) SPONSORED BY THE TOBACCO INDUSTRY AND THE NATIONAL CHAMBER OF MERCHANT RETAILERS.

In March 1998 PMI selected Costa Rica to launch the pilot for "En Punto-Socios en el Exito" (On Target-Partners in Success), a broader retailer education program that nominally reinforced campaigns to motivate the retail community to support other industry youth access programs.[44] PMI worked again with the National Chamber of Merchant Retailers to hold workshops and distribute informative brochures for retailers that communicated key messages on youth access.[44] ("On Target" was expanded to Colombia, Mexico, and Venezuela in November 1998, which helped the industry prevent or modify smoking restrictions).[39] The industry's youth smoking prevention programs succeeded in preventing effective government action to completely eliminate tobacco advertising when Congress dropped Bill 13.200 in January 2001.

Attempts to end smoking in workplaces and public places

Between 1997 and 1998 CCSS and IAFA used the media repeatedly to publicize SHS effects.[11,45] These efforts led to introducing Bill 13.335 in September 1998, which proposed to amend the 1995 law to make all workplaces and public places 100% smokefree.[26]

Courtesy of Choice program extension

PMI once again used the hospitality industry to promote the Courtesy of Choice program.[46] In October 1998, PMI's Communications and Corporate Affairs Director for Latin America sent a memorandum to other PMI executives revealing PMI's five-point strategy to counter Bill 13.335, which included having "a well-known hotelier or restaurateur speak up about Courtesy of Choice and how the program makes good business sense … to the President of Congress."[46]

The Costa Rican hospitality industry (CACORE and CCH) faithfully carried the tobacco industry's arguments into the public debate. During a June 2000 Congressional hearing the hospitality industry, as they had in 1994, promoted the Courtesy of Choice program to block Bill 13.335.[47]

In June, 2000, PMI reported Bill 13.335's defeat as a result of the Courtesy of Choice program.[48]

Attempts to promote smokefree spaces

Throughout 2000 and 2001, the Pan American Health Organization (PAHO), part of its Smoke Free Americas Initiative to promote smokefree spaces in the Americas,[49] worked with IAFA, CCSS, and the Health Ministry to implement a project aimed at voluntarily and legislatively creating smokefree workplaces and public places.[11] The project was nominally aimed at creating public awareness over the rights to breath clean air, encouraging citizens to quit smoking, and spreading knowledge over the 1995 law,[11] but had essentially been written by the tobacco companies. CCSS, IAFA, and the Health Ministry distributed 225 000 leaflets on the 1995 law, SHS effects, and guidance for a smokefree future to convince workplaces and public places to voluntarily become smokefree.[11] This program had little effect: By December 2001, only 37 businesses proclaimed themselves smokefree. These efforts did, however, help encourage introducing Bill 14.884 in July 2002, which completely prohibited smoking in workplaces, enforced stricter health warning labels, prohibited tobacco advertising in television and newspapers, and increased penalties for noncompliance.

Tobacco industry and Health Ministry's voluntary agreement

In May 2000 BAT and PMI drafted a voluntary agreement for self-regulating tobacco advertising that Health Minister Rogelio Pardo, who met with BAT three times in 2000,[50, 51] verbally agreed to in October 2000.[52-55] The voluntary agreement, part of the industry's Project Cerberus[56] to develop a worldwide voluntary regulatory code as an alternative to the FCTC, only eliminated radio and movie theater (but not television) commercials and tobacco billboards within 200 meters of schools.[52,57,58]

The agreement also committed the industry to adding the health warning message "Smoking is harmful to your health" at the bottom of all billboards, but did not affect the industry's use of appealing images. Furthermore the agreement, titled "De Palabra" (By Word) was never formally executed, relieving BAT and PMI's legal obligation to honor its terms. Pardo justified the lack of a formal agreement to the press, stating "It was not necessary to sign anything; we trust the word of the [tobacco] companies [translated by author]."[52] *De Palabra* went into effect January 1, 2001 when BAT and PMI eliminated the 575 billboards near schools.[55]

The voluntary agreement created the foundation to block future legislative proposals, including Bill 14.844. BAT lobbied against Bill 14.844 in Congress throughout 2002 and 2003, arguing that businesses had the right to self-regulate their products and assuring policymakers that "contents in published materials for adult smokers permit them to make fundamental decisions over the consumption of cigarettes."[59]

In 2003, BAT selected Costa Rica as a pilot site for Latin America to implement a 2002-2003 Social Report on its Corporate Social Responsibility (CSR) website, which highlighted the *De Palabra* agreement to promote

responsible marketing.[59] (CSR Social Reports were expanded to Honduras, Jamaica, and Trinidad and Tobago between 2005 and 2008.)[60] The CSR Social Report also helped block Bill 14.844 by arguing for "auto regulation" over prohibiting tobacco advertising and implementing smokefree policies, claiming that the 1995 law and the Courtesy of Choice program were so successful that no further legally-imposed restrictions were necessary.[59]

While Bill 14.844 languished in Congress, Health Minister Pardo issued Decree 31616 in May, 2003, which nominally increased tobacco advertising restrictions beyond the 1995 law, by extending tobacco advertising restrictions on television by one hour, from 6:00 am-9:00 pm to 6:00 am-10:00 pm.[61] While the tobacco industry's direct role in Decree 31616 is unclear, it mirrored the 2001 voluntary agreement, and ignored smokefree environments, stronger warning labels, and penalties for noncompliance. In response to Decree 31616, Congress dropped Bill 14.844 from further consideration in 2004.

The FCTC in Costa Rica (2003-2008)

ACOSAP pushes Costa Rica to sign FCTC

In 2003, ACOSAP promoted signing the FCTC by sending copies of the FCTC to legislators, and college professors explaining its significance for public health.[62] ACOSAP collected and sent 10 000 signatures supporting the FCTC and delivered them to Congress, which contributed to Costa Rica signing the treaty in July 2003.[62] Throughout 2004, ACOSAP advocated in the media for the FCTC's ratification, which led to introducing Bill 15.687 in August 2004 to ratify the FCTC.[63]

Tobacco industry opposition

In 2006, BAT posted another Social Report on its CSR website, part of its global strategy to delay and block the FCTC's ratification by implementing voluntary initiatives to preempt the treaty's guidelines,[64] including preempting health warning labels (HWLs) in Central America.[65] The Social Report praised BAT's voluntary action in November 2005 to increase non-pictorial HWLs to occupy 30% of cigarette packages in Central America,[65] part of its effort to argue that national legislation was not necessary to implement FCTC Article 11, which states "tobacco product packaging and labeling should be 50% or more, but no less than 30%" and suggests pictures or pictograms are "far more effective than those that are text-only."[66]

RENATA pushes Costa Rica to ratify FCTC

In 2007, led by IAFA, leaders from other health institutions formed "Red Nacional Antitabaco" (RENATA, National Anti-Tobacco Network), to press for FCTC's ratification because nothing had happened since Costa Rica signed the agreement in 2004. In addition to IAFA, RENATA included advocates from "Fundación Pro Derecho de los No Fumadores" (FUPRODENOF, Foundation for Nonsmokers' Rights), University of Costa Rica, and CCSS. RENATA also invited the Health Ministry to support their efforts, which it did by sending a representative to the group. RENATA constantly held conferences on the FCTC's importance and urged legislators to ratify the FCTC by presenting data that revealed 10 Costa Ricans died each day from tobacco related diseases, costing 139 million colones (US$273 300) annually.[67] RENATA's pressure combined with Legislator Orlando Hernández Murillo's lobbying efforts, succeeded in making Costa Rica the 165th country to ratify the FCTC in August 2008.[68]

Attempts to implement FCTC

In October 2008 Legislator Hernández Murillo expressed his intent to introduce a bill to implement all the FCTC provisions. RENATA supported him by conducting a survey in Costa Rica, financed by the US-based Campaign for Tobacco Free Kids, which revealed 93% of the public supported a 100% smokefree law.[69,70] RENATA made the survey results public in April 2009 and Legislator Hernández Murillo introduced Bill 17.371 in May 2009 to create 100% smokefree environments, completely eliminate tobacco advertising, include pictorial health warning labels on cigarette packages, and increase cigarette taxes and penalties for noncompliance (table II).[71]

Tobacco industry continued success in Costa Rica (2008-2011)

Tobacco industry lobbying against Bill 17.371

On October 22, 2008, the day after Legislator Hernández Murillo's original proposal, PMI's Leaf Agronomy Director assured legislators that further smoking restrictions were unnecessary, citing PMI's corporate social responsibility of voluntarily supporting smoking prohibitions in schools and voluntarily not advertising to minors, while continuing to object to any law that kept them from "being able to communicate directly to its adult customers."[74] He also presented the standard industry argument that increasing taxes would generate

Table II
The 1995 law* and the weakening of Bill 17.371

Legislation	*The 1995 law* (5 May 95)*[72]	*Hernández Murillo's original proposal of Bill 17.371 (5 May 09)*[71]	*BAT's counter proposal to Bill 17.371 (7 December 09)*[73]	*Health Ministry's weakened version of Bill 17.371 (12 March 10)*	*2010 elected Congress's introduction of Bill 17.317 (30 Nov 10)*
Workplaces & Public Places	Must have DSAs	100% smokefree	Must have DSAs	100% smokefree	100% smokefree (exception: restaurants and bars must have DSAs)
Advertising	Restricted to not allowing advertising in places for minors and in TV and radio on Sundays and holidays, and weekdays (6am-9pm)	100% prohibited	Restricts advertising to only point of sale places, places that only permit adult access, and media directed at adults	-Restricts advertising to only point of sale places, places that only permit adult access, and media directed at adults -All advertising must have a 30% HWL	Restricts advertising to only point of sale places, places that only permit adult access, and media directed at adults
Health Warning Labels on cigarette packages	Text only: 2 messages	Pictorial: No less than 70% on front (graphic), and 100% on back (text only)	Pictorial: 30% on front (text only) and 40% on back (graphic)	Pictorial: No less than 30% on front (graphic), and 100% on back (text only)	Pictorial: Up to 50% on front (graphic), and 100% on back (text only)
Penalties and sanctions	-¼ base salary-Transportation smoking -½ base salary-Smoking in workplaces -1 base salary-Owners smoking -1 base salary-Owners selling cigarettes	-Verbal or written warning -1-10 base salary-Suspension and possible closure for smoking in public places or advertising	No comment	-Verbal or written warning -1-10 base salary-Suspension and possible closure for smoking in public places or advertising	-No warning -1-10 base salary-Suspension and possible closure for smoking in public places or advertising
Taxes (per cigarette package)	16.67 colones ($0.03)	100 colones ($0.20)	16.67 colones ($0.03)	25 colones ($0.05)	20 colones ($0.04)

*Current tobacco control law in Costa Rica as of August 2011
DSAs: Designated Smoking Areas
HWL: Health Warning Label

contraband,[74] ignoring the industry's important role in smuggling.[75-77]

In December 2009 BAT presented an economic and social analysis of Bill 17.371 to Congress (table II). Following standard industry arguments, the economic analysis claimed that smokefree laws resulted in economic losses for the hospitality industry,[78] and the social analysis rejected 100% smokefree legislation in favor of designated smoking areas with ventilation systems and again asserted an individual's right to smoke,[73] again supported by CACORE.[79]

Tobacco industry influence over Health Ministry and 2010 elected legislators

In March 2010, Legislators Hernández Murillo and Lesvia Villalobos reported to *La Nacion* newspaper that the tobacco industry met with the Health Ministry where the Ministry weakened Bill 17.371's text.[80] The text reduced pictorial cigarette package HWLs from 70% to 30% and lowered the tax 100 to 25 colones (US$0.20 to US$0.05) per pack (table II).[80, 81] Health Minister María Luisa Ávila originally denied that she met with the

tobacco industry, but after RENATA's strong pressure, she admitted that "she met with the tobacco companies to listen to their approach but the meeting did not imply agreeing to their demands and requests."[81] Minister Ávila's meeting with the tobacco industry delayed Bill 17.371's consideration from March to May 2010, when Congress adjourned.

Because legislators cannot serve two consecutive terms, there was a complete turnover in the May 2010 election, requiring tobacco control advocates to brief new legislators on the original Bill 17.371's importance, further delaying its consideration.*

In November 2010, Legislators Luis Antonio Aiza (head of the Health Committee), Damaris Quintana, who had publicly argued against high tobacco taxes on the grounds that they would increase contraband, a common industry argument, and Victor Hernández reintroduced Bill 17.371 after further weakening it by allowing designated smoking areas in restaurants and bars (table II). (Under Costa Rican law the same bill and bill number can continue in a new congressional session and can be adopted by any new legislator. A bill only dies after 4 years without action.) Legislator Alicia Fournier, who in August 2010 had supported 100% smokefree environments and implementing the FCTC,* supported in January 2011 designated smoking areas in public places.[82] As of August 2011, Bill 17.371 was still pending.

Discussion

Strong efforts by the Costa Rican Health Ministry during the mid-to-late 1980s led to advanced smoking restriction decrees for their time and a strong tobacco control bill in 1992. The industry responded by strengthening its presence in Costa Rica and successfully weakened the 1992 proposed law to win the weak 1995 law by secretly hiring scientific consultants to counter the SHS threat and using the hospitality industry to rollout the Courtesy of Choice program in Costa Rica (then Latin America). The industry continued its dominance in Costa Rica during the 2000s by developing a cooperative relationship with the Health Ministry. Although tobacco control advocates generated enough public pressure to ratify the FCTC in 2008 and secure Bill 17.371's introduction in 2009 to implement the treaty, the industry once again worked through the Health Ministry to prevent the bill's passage, which as of August 2011 remained pending in Congress in a substantially weakened form.

Costa Rica's experience shows that, despite language, cultural and economic differences from the U.S. and other developed nations, the tobacco industry uses the same arguments and strategies in smaller developing countries.[21,83-86] As elsewhere,[83-85] the tobacco industry used the hospitality industry to oppose clean indoor air legislation, including by jointly promoting its Courtesy of Choice "accommodation" program as the "reasonable alternative" to 100% smokefree laws, and unenforced "youth smoking prevention" programs to co-opt the youth smoking issue.

As elsewhere,[15,86] the industry secretly hired scientific and medical consultants to counter the SHS threat and avoid smokefree legislation. The industry once again generated studies to convince policy makers that inadequate ventilation was the major contributor to poor indoor air quality, and not SHS, despite evidence that the data's presentation has been manipulated to downplay SHS exposure[87-89] when in fact only smokefree environments effectively control SHS exposure.[90,91]

While tobacco control advocates failed to advance the 1995 law due to repeating failed strategies, including the promotion of the weak 1995 law in the 2001 smokefree spaces project, the key to the industry's success in Costa Rica has been the Health Ministry's willingness to cooperate with the industry. The Health Ministry's co-sponsorship of industry "youth smoking prevention" programs in the late 1990s, and its verbal voluntary agreement with the industry in 2001 not only helped block legislation to advance tobacco control, but also helped delay the FCTC's ratification. Since 1995, the Health Ministry only supported tobacco control efforts in 2007 and 2008 which resulted in ratifying the FCTC. In contrast to Guatemala, Honduras, Panamá, which all passed 100% smokefree laws between 2008 and 2010 due in part to strong support from key governmental officials, Costa Rica's Health Ministry returned to support industry positions. In contrast to Mexico City, where the City Health Minister strongly championed a 100% smokefree law,[85] Costa Rican Health Minister Ávila met with the industry in March 2010, which delayed Bill 17.371's consideration. This meeting violated the implementing guidelines of FCTC Article 5.3 because

* Crosbie E, (Center for Tobacco Control Research and Education). Interview with: David Sanchez. 2010 Aug 10/Crosbie E, (Center for Tobacco Control Research and Education). Interview with: Magally Batista. 2010 Aug 10/Crosbie E, (Center for Tobacco Control Research and Education). Interview with: Federico Paredes (Ministerio de Salud de Costa Rica). 2010 Aug 11/Crosbie E, (Center for Tobacco Control Research and Education). Interview with: Federico Wust. 2010 Aug 11/Crosbie E, (Center for Tobacco Control Research and Education). Interview with Roberto Castro (Caja Costarricense de Seguro Social). 2010 Aug 12/Crosbie E, (Center for Tobacco Control Research and Education). Interview with: Teresita Arrieta (Instituto sobre Alcoholismo y Farmacodependencia). 2010 Aug 14/Crosbie E, (Center for Tobacco Control Research and Education). Interview with: Alicia Fournier (Partido Liberación Nacional). 2010 Aug 18.

it did not represent a transparent interaction with the tobacco industry or rejection of an industry partnership agreement[92] (Health Minister Ávila declined repeated requests for an interview for this study.) The turnover of legislators in May 2010 due to Minister Ávila's delay hurt the bill's momentum because health advocates have had to brief new legislators about the importance of passing it.*

Unlike other areas, Costa Rica is not a model for exemplary tobacco control policies. Quite the contrary, it provides a model that tobacco control advocates in other Latin American countries can use to anticipate future moves by the industry. Tobacco control advocates in Costa Rica and Latin America must implement the guidelines of FCTC Article 5.3, which include three important measures: 1) Implement a code of conduct for public officials requiring them to reject industry partnerships or agreements, 2) raise awareness among the government and the public of the industry's interference in public health policy making, and 3) require information provided to government by the industry to be transparent and accurate. In addition, advocates in Costa Rica should alert the media and inform law makers of the specific industry tactics discussed here, including the industry's past history of manipulating science, its development of favorable voluntary agreements, its relationship with hospitality industries such as CACORE, and its recent influence over governmental officials to press the government to pass the original strong bill from 2009. The Costa Rican experience demonstrates the importance of vigorous implementation of FCTC Article 5.3 which insulates public health policymaking from industry interference.

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