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Tobacco Control Legislation in Costa Rica (1971-2012): After 40 Years of Tobacco Industry Dominance, Tobacco Control Advocacy Succeeds

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# **Tobacco Control Legislation in Costa Rica (1971-2012): After 40 Years of Tobacco Industry Dominance, Tobacco Control Advocacy Succeeds**

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May 2012



# **Tobacco Control Legislation in Costa Rica (1971-2012): After 40 Years of Tobacco Industry Dominance, Tobacco Control Advocacy Succeeds**

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## EXECUTIVE SUMMARY

Between 1971 and 1985, Philip Morris International (PMI), through its subsidiary Tabacalera Costarricense (TC), and British American Tobacco (BAT), through its subsidiary Republic Tobacco Company (RTC), successfully blocked several laws to restrict tobacco advertising and supported weak industry-inspired executive decrees, resulting in minimal advances for tobacco advertising restrictions.

During the mid-to-late 1980s and early 1990s, the Ministry of Health capitalized on the public's increased awareness of secondhand smoke (SHS) and issued nine advanced (for their time) smoking restriction decrees between 1986 and 1989, as well as assisted other Costa Rican health institutions to introduce Costa Rica's first bill to prohibit smoking in workplaces and public places and eliminate tobacco advertising in 1992.

By 1988, the industry internally expressed its concern over Costa Rica's progress and successfully blocked the 1992 bill by secretly hiring scientific consultants to counter the SHS threat, and implementing the pilot program of the Courtesy of Choice program for Latin America to promote smoking and nonsmoking areas as the "reasonable alternative" to 100% smokefree laws.

On May 5, 1995, the Legislative Assembly approved Law 7501 "Regulation of Smoking" without the smokefree workplace and public place provisions and with the industry's language on tobacco advertising, a major success for the industry.

During the mid-to-late 1990s and early 2000s, the industry extended the Courtesy of Choice program, promoted youth smoking prevention programs, and made a voluntary agreement with the Health Ministry to prevent strong tobacco control legislation. The industry then used Costa Rica as a pilot site to implement similar programs throughout Latin America.

During the 1990s early 2000s, the industry successfully lobbied Central American governments and the Central American Common Market (CACM) to eliminate tariffs (taxes on imported goods) within Central America. BAT capitalized on the reduction of trade barriers and implemented Project Rationalization in Central America, which consolidated Central American manufacturing and production in Honduras, allowing BAT to cut costs and produce Corporate Social Responsibility (CSR) Social Reports for the region.

In July 2003, Costa Rica signed the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) despite the tobacco industry's attempt to use Costa Rica to weaken the treaty during FCTC negotiations (2000-2003).

In August 2008, Costa Rica became the 165<sup>th</sup> country to ratify the FCTC despite the tobacco industry's efforts to block ratification.

In 2009, tobacco control advocates helped introduce Bill 17.371 to implement the FCTC. However the tobacco industry once again worked again with the Ministry of Health to weaken and delay the bill. In 2010, legislators shifted from supporting tobacco control to supporting the tobacco industry by stopping strong tobacco control legislation.

From 2010 through 2012, RENATA conducted a multi-pronged advocacy strategy including lobbying, coalition building, media advocacy and interventions at critical moments, and successfully informed legislators about the importance of the FCTC, which helped legislators reject weak tobacco industry-inspired initiatives and re-introduce strong tobacco control initiatives to implement the FCTC. As a result, in February 2012 the legislature passed a strong tobacco control law (Law 9028), which established 100% smokefree environments, increased advertising restrictions and tobacco taxes, and introduced graphic health warning labels, despite continued opposition by the tobacco industry.

As of May 2012, the law's implementing regulations had not been issued. Tobacco control advocates in Costa Rica must continue to push for strong regulations as other countries have demonstrated that the tobacco industry's relentless attacks never end.

Costa Rica's experience 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 continue to press government officials not to cooperate with the tobacco industry. The Costa Rican experience demonstrates the importance of vigorous implementation of FCTC Article 5.3 which insulates public health policymaking from industry interference.

International tobacco control advocates should be cautious of tobacco industry interference at the regional and international level, especially international trade agreements which include provisions such as intellectual property rights that attempt to undermine domestic public health policies.

## RESUMEN

-Entre 1971 y 1985, Philip Morris Internacional (PMI), a través de su subsidiaria Tabacalera Costarricense (TC), y British American Tobacco (BAT), a través de su subsidiaria Republic Tobacco Company (RTC), bloquearon exitosamente varias leyes para restringir la publicidad del tabaco y respaldaron decretos ejecutivos débiles inspirados en los argumentos de la industria resultando en mínimos avances en las restricciones de la publicidad del tabaco.

-Entre mediados de los años 1980s y principios de los años 1990s, el Ministerio de Salud capitalizó en el aumento de la concientización pública en relación al humo de tabaco ajeno (HTA) y dictó nueve decretos (avanzados para esa época) sobre restricciones al uso de tabaco entre 1986 y 1989. Además contribuyó con otras instituciones de salud de Costa Rica a introducir el primer proyecto de ley en Costa Rica para prohibir el uso de tabaco en los lugares de trabajo y lugares públicos y eliminar la publicidad del tabaco en 1992.

-Hacia 1988, la industria expresó internamente su preocupación sobre el progreso de Costa Rica y bloqueó exitosamente el proyecto de ley de 1992, contratando en forma secreta consultores científicos para contrarrestar la “amenaza del HTA”, e implementando un programa piloto de la Cortesía de Elegir para América Latina para promover áreas de fumadores y de no fumadores como la “alternativa razonable” a las leyes de ambientes 100% libres de humo de tabaco.

-El 5 de mayo de 1995, la Asamblea Legislativa aprobó la Ley 7501 “Regulación del Fumar” sin las disposiciones de lugares de trabajo y lugares públicos libres de humo de tabaco y con el lenguaje de la industria sobre publicidad del tabaco, un éxito importante para la industria.

-Entre mediados de los años 1990s y principios de los años 2000s, la industria extendió el programa Cortesía de Elegir, promovió programas de “prevención de uso de tabaco en jóvenes” e hizo un acuerdo voluntario con el Ministerio de Salud para prevenir legislación fuerte sobre control de tabaco. La industria utilizó luego a Costa Rica como un sitio piloto para implementar programas similares a través de América Latina.

-Entre los años 1990s y principios de los años 2000s, la industria cabildeó exitosamente los gobiernos de América Central y el Mercado Común de América Central (MCAC) para eliminar los aranceles aduaneros (impuestos a los productos importados) dentro de América Central. BAT sacó provecho en la reducción de las barreras comerciales e implementó el “Proyecto Racionalización” en América Central, el cual consolidó la fabricación y producción de América Central en Honduras, permitiendo a BAT recortar costos y producir Reportes Sociales de Responsabilidad Social Corporativa (RSC) para la región.

-En Julio de 2003, Costa Rica firmó el Convenio Marco para el Control del Tabaco (CMCT) de la Organización Mundial de la Salud (OMS) a pesar de los intentos de la industria del tabaco de utilizar a Costa Rica para debilitar el tratado durante las negociaciones del CMCT (2000-2003).



-En agosto de 2008, Costa Rica se convirtió en el país N° 165 en ratificar el CMCT a pesar de los esfuerzos de la industria del tabaco para bloquear la ratificación.

-En 2009, los activistas para el control del tabaco ayudaron a introducir el Proyecto de Ley 17.371 para implementar el CMCT. Sin embargo, la industria del tabaco una vez más actuó junto al Ministro de Salud para debilitar y retrasar la ley. En 2010, los legisladores cambiaron de posición de apoyar el control del tabaco a apoyar a la industria del tabaco frenando una legislación fuerte para el control del tabaco.

-Entre los años 2011 y 2012, RENATA informó exitosamente a los legisladores acerca de la importancia del CMCT, lo cual los ayudó a que rechazaran iniciativas débiles inspiradas en la industria del tabaco y a reintroducir iniciativas fuertes para el control tabaco para implementar el CMCT. Como resultado, en febrero de 2012 la Asamblea aprobó una ley fuerte para el control del tabaco (Ley 9028), la cual estableció ambientes públicos cerrados 100% libres de humo de tabaco, mayores restricciones a la publicidad del tabaco, aumento de los impuestos del tabaco y etiquetas de advertencias sanitarias con pictogramas en los paquetes de los productos del tabaco, a pesar de la continua oposición de la industria.

-Hacia mayo de 2012, las regulaciones para la implementación de la ley no habían sido dictadas. Los activistas para el control del tabaco en Costa Rica deben continuar presionando por regulaciones fuertes ya que otros países han demostrado que los ataques incesantes de la industria del tabaco nunca terminan.

-La experiencia de Costa Rica provee un modelo que los activistas para el control del tabaco en otros países de América Latina pueden usar para anticipar futuros movimientos de la industria tabacalera.

-Los activistas para el control del tabaco en Costa Rica y América Latina deben continuar presionando a los funcionarios gubernamentales para no cooperar con la industria tabacalera. La experiencia de Costa Rica demuestra la importancia de una enérgica implementación del Artículo 5.3 del CMCT, el cual aísla el diseño de políticas de salud pública de la interferencia de la industria.

-Los activistas para el control del tabaco internacionales deberían ser cautelosos de la interferencia de la industria tabacalera en los niveles regional e internacional, especialmente con los acuerdos comerciales internacionales, los cuales incluyen disposiciones tales como el derecho a la propiedad intelectual, que intentan minar las políticas domésticas de salud pública.

## *Table of Contents*

EXECUTIVE SUMMARY .....	1
RESUMEN .....	3
CHAPTER 1: INTRODUCTION .....	8
Statistics on health and tobacco .....	8
Political structure in Costa Rica.....	8
Legislative branch .....	9
Executive branch.....	9
Judicial branch .....	10
Political parties.....	10
Costa Rican health establishments and international assistance.....	10
Costa Rican governmental health institutions.....	10
Costa Rican non-governmental health organizations.....	11
International assistance .....	11
Costa Rican international agreements.....	13
Tobacco industry in Costa Rica .....	13
Cigarette market share in Costa Rica .....	13
British American Tobacco (BAT).....	14
Philip Morris International (PMI) .....	15
Cigarette market share in Costa Rica .....	15
Tobacco growing and manufacturing .....	15
METHODOLOGY .....	16
CHAPTER 2: TOBACCO INDUSTRY DOMINANCE PRIOR TO THE 1995 LAW (1971-1985).....	17
Tobacco industry’s early success (1970s) .....	17
Tobacco industry’s continued success (1980s).....	19
CHAPTER 3: COSTA RICAN HEALTH INSTITUTIONS PUSH BACK (1986-1992).....	21
Ministry of Health’s passage of several decrees.....	21
Health institutions continued efforts.....	22
CHAPTER 4: TOBACCO INDUSTRY’S RESPONSE AND MAJOR SUCCESS WEAKENING THE 1995 LAW (1988-1995) .....	23
Tobacco industry’s initial response (1988-1990).....	23
Tobacco industry’s success weakening the 1995 law (1992-1995) .....	25

Success in weakening smoking restrictions: Latin Project and Courtesy of Choice Program.....	25
Success in blocking advertising ban .....	30
Law 7501 “Regulation of Smoking” aka “the 1995 law” .....	31
CHAPTER 5: TOBACCO INDUSTRY CONTINUED SUCCESS IN COSTA RICA AND TEST PILOT FOR LATIN AMERICA (1996-2003) .....	32
Attempts to ban tobacco advertising .....	32
Tobacco industry “Youth Smoking Prevention” programs .....	32
Attempts to end smoking in workplaces and public places.....	36
Extension of the Courtesy of Choice Program (1997-2000) .....	37
More attempts to ban tobacco advertising .....	38
Lobbying efforts to block Supreme Court challenge .....	38
Attempts to completely reform the 1995 law .....	38
Tobacco industry’s “decision-makers” study.....	39
Tobacco industry and Health Ministry’s voluntary agreement .....	39
CHAPTER 6: TOBACCO INDUSTRY TACTICS AT THE REGIONAL LEVEL (1993-2000).....	45
Eliminating tariffs in Central America .....	45
BAT Project Rationalization.....	46
Selecting regional markets to promote CSR Social Reports .....	<b>Error! Bookmark not defined.</b>
Regional success translates into further tobacco industry dominance in Costa Rica .....	54
CHAPTER 7: THE WORLD HEALTH ORGANIZATION FRAMEWORK CONVENTION ON TOBACCO CONTROL (2000-2009).....	55
Costa Rica’s role during FCTC negotiations (2000-2003) .....	55
Tobacco industry usage of Costa Rica to weaken FCTC.....	55
Costa Rican delegation’s opposition to FCTC.....	55
The FCTC process in Costa Rica .....	56
ACSOAP pushes Costa Rica to sign FCTC.....	56
DR-CAFTA interference with the FCTC and implications for tobacco control .....	56
More attempts to delay FCTC ratification .....	57
RENATA pushes Costa Rica to ratify FCTC.....	61
Bill 17.371 to implement FCTC.....	61
CHAPTER 8: TOBACCO INDUSTRY CONTINUED SUCCESS (2008-2011).....	63
PMI lobbying efforts to block FCTC implementation.....	63

BAT's counter proposal.....	63
Tobacco industry interference with the Ministry of Health .....	63
CHAPTER 9: TOBACCO CONTROL AVOCACY SUCCESS (2010-2012) .....	64
Tobacco industry interference with 2010 elected legislators .....	64
RENATA's success preventing weak bills and helping re-introduce strong bills.....	64
CHAPTER 10: CONCLUSIONS AND RECOMMENDATIONS.....	70
REFERENCES.....	73
APPENDIXES .....	82
ACKNOWLEDEMENTS .....	87

## **CHAPTER 1: INTRODUCTION**

Costa Rica is one of the seven countries located in Central America (along with Belize, El Salvador, Guatemala, Honduras, Nicaragua, and Panamá), with an estimated population of 4,576,562 (as of July 2011).<sup>1</sup> Costa Rica is the 130<sup>th</sup> largest country in the world, as it covers 51,000 square km.<sup>1</sup>

### **Statistics on health and tobacco**

The United Nations recognizes Costa Rica as a model for Latin America, especially Central America,<sup>2</sup> because of its stability and highly educated population,<sup>3</sup> as well as containing Central America's highest life expectancy (77.54%), lowest infant mortality rate (9.72 deaths/1,000 births), and second lowest HIV/AIDS prevalence (0.3%).<sup>1</sup>

Despite relatively high health, Costa Rica's adult smoking prevalence (18 years and older) has remained between 15% and 22% between 1987 and 2011. In 1987 the smoking prevalence level reached 21.7%,<sup>4</sup> one of the lowest in the world at the time, and continued to drop to 19.4% in 2001 and then 15.2% by 2002.<sup>5</sup> The prevalence level increased to 16.8% in 2009,<sup>6</sup> but dropped again to 14.2% in 2011.

In 2010, 3,650 Costa Ricans died, 10 daily, from tobacco related diseases costing 139 million colones (US\$273,300) annually.<sup>7</sup>

### **Political structure in Costa Rica**

Costa Rica is a democratic republic that is divided into 7 provinces and 81 cantons. The provinces are: Alajuela, Cartago, Guanacaste, Heredia, Limón, Puntarenas, and San José (Figure 1). Similar to the United States, Costa Rica's government is divided into three branches: Legislative, executive, and judicial.

#### ***Legislative branch***

Costa Rica has a unicameral Legislative Assembly comprised of 57 legislators, which are elected every four years but cannot serve two consecutive terms. In the Assembly, bills are sent to the relevant congressional committee to be discussed and approved and then voted on the floor by the Legislative Assembly before becoming law. Under Costa Rican law the same bill and bill number can continue with a new the congressional session and can be motioned to be adopted by any new legislator. A bill only dies after 4 years of no action. (To become law, the president has to sign the bill within 10 business days or he/she can veto it.)

#### ***Executive branch***

The executive branch includes presidents, which are elected every four years and can be reelected but cannot serve two consecutive terms, and ministers of state, which are appointed

by the president and do not have term limits. Members of the executive branch can issue decrees without discussion in the Legislative Assembly. However decrees are subordinate to laws as they rarely contain enforcement mechanisms or implement penalties for noncompliance, and can be revoked by future presidents.<sup>8</sup>



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### ***Judicial branch***

The Supreme Court, which contains 22 judges, appointed by the president, interprets and issues rulings over Costa Rican laws. The Supreme Court is divided into four separate courts: Civil Court (five judges), Labor Court (five judges), Penal Court (five judges), and Constitutional Court (seven judges). Unlike the U.S. where the Supreme Court can overturn laws based on constitutional challenges, the Costa Rican Supreme Court does not have the power to replace a law, but can declare legislative bills unconstitutional before they are passed into law.

### ***Political parties***

From 1962 to 2006, Costa Rica operated under a two-party system consisting of the “Partido Liberacion Nacional” (PLN, National Liberation Party), a center left party that promotes traditional progressive values and liberty freedoms, and the “Partido de Unidad Socialcristiana” (PUSC, Social Christian Unity Party), formally known as the National Union Party, a center right party that is pro-business and supports fiscal discipline. However during the 1990s, new parties emerged to challenge the two-party system, including the “Partido Movimiento Libertario” (PML, Libertarian Movement Party), a far left party that promotes individual liberties, and the “Partido Fuerza Democratica” (PFD, Democratic Force Party), and the “Partido Accion Ciudadana” (PAC, Citizens Action Party), both center-left social democratic and progressive parties. By 2006, the country had become a multi-party system as the PLN lost majority control of the Legislative Assembly to the PAC. No direct evidence was found illustrating the industry’s interference with a particular party or a party’s stance to consistently support industry arguments.

## **Costa Rican health establishments and international assistance**

### ***Costa Rican governmental health institutions***

The Ministry of Health, created in 1927, is the longest running health institution in Costa Rica. While the Ministry of Health works directly to pass tobacco control legislation, it funds two institutions to promote tobacco control: The “Asociación Costarricense de Salud Pública” (ACOSAP, Costa Rican Public Health Association), and the “Instituto sobre Alcoholismo y Farmacodependencia” (IAFA, Institute of Alcoholism and Drug Dependence). ACOSAP, created on December 22, 1982,<sup>9</sup> advocates for improving public health and promoting scientific research. In 1991, ACOSAP created its own publication the “Revista Costarricense de Salud Pública” (Costa Rican Journal of Public Health) to publish scientific studies on public health. IAFA, created in 1986, develops programs for the prevention, treatment, and rehabilitation of

alcohol, tobacco, and other illicit drug addictions as well as programs to regulate alcohol and tobacco advertising (Table 1).

Other governmental health institutions include the “Caja Costarricense de Seguro Social” (CCSS, Costa Rican Social Security Fund), and institutes inside the “Universidad de Costa Rica” (UCR, University of Costa Rica). The CCSS, created on November 1, 1940, is primarily responsible for Costa Rica’s health and social welfare systems, but also develops and coordinates infrastructure projects that support public health, including prevention programs on tobacco. The UCR, established in 1940, contains three health institutions that promote tobacco control, the “Instituto de Investigaciones Psicológicas” (Institute of Psychological Research), which conducts research on the psychological impact of tobacco consumption on young Costa Ricans, the “Instituto de Investigaciones en Salud (INISA, Institute of Health Research), which provides information about health issues, and the “Oficina de Bienestar y Salud” (Office of Well-being/Welfare and Health), which works on educating university students about public health, including promoting a 100% smokefree campus.

### ***Costa Rican non-governmental health organizations***

There are several non-governmental health institutions working in Costa Rica, including the “Fundación Pro Derecho de los No Fumadores” (FUPRODENO, Foundation for Nonsmokers’ Rights), created in 2005, which fights to protect non-smokers’ rights to health and educates the public about the problems with tobacco and the effects of SHS. FUPRODENO has also developed a network on Facebook (<http://www.facebook.com/pages/Que-Prohiban-Fumar-en-Sitios-Publicos-en-Costa-Rica/101188123264037>) of more than 25,000 people that support 100% smokefree environments in Costa Rica. “Red Nacional Antitabaco Costa Rica” (RENATA, National Anti-Tobacco Network), created in July 2007, is a tobacco control advocacy group comprised of advocates from various governmental public health institutions and nongovernmental organizations that unifies efforts against tobacco, including lobbying the Legislative Assembly, developing tobacco control programs, and promoting tobacco control in the media.

### ***International assistance***

In 1948, Costa Rica became a member of the Pan American Health Organization (PAHO), which is an international public health agency working to improve health and living standards in the Americas by providing technical support to its members. PAHO also serves as the Regional Office for the Americas of the World Health Organization (WHO). Costa Rica has received health assistance from PAHO since 1948 and tobacco control assistance since the 1980s. Costa Rica has also received assistance since 2007 from the Campaign for Tobacco Free Kids (CTFK), a U.S. nongovernmental organization that supports organizations in countries around the world to promote the implementation of tobacco control policies that are in compliance with WHO Framework Convention on Tobacco Control (details on this treaty are below), and educates the public through the media about the effects of tobacco and SHS, and the benefits of tobacco control policies.



Table 1: Costa Rican health establishments and international assistance		
Health Establishments	Year Established	Objectives
Ministry of Health  <a href="http://www.ministeriodesalud.go.cr/">http://www.ministeriodesalud.go.cr/</a>	1927	Works directly on advancing public health, including tobacco control by issuing smoking restriction decrees and working on tobacco control legislation
University of Costa Rica  <a href="http://www.ucr.ac.cr/">http://www.ucr.ac.cr/</a>	1940	Contains three health institutions, which educate and promote public health for young adults
Costa Rican Council of Social Security (CCSS)  <a href="http://portal.ccss.sa.cr/portal/page/portal/Portal">http://portal.ccss.sa.cr/portal/page/portal/Portal</a>	1941	Develops and coordinates infrastructure projects that support public health, including prevention programs but is primarily responsible for medical and hospital treatment
Pan American Health Association (PAHO)  <a href="http://new.paho.org/cor/">http://new.paho.org/cor/</a>	1948	Works to improve health and living standards of the people in the Americas by collaborating with Ministries of Health, government and nongovernment agencies, universities and others
Costa Rican Institute of Public Health (ACOSAP) 	1982	Advocates for improving public health and promoting scientific research by publishing scientific works on public health
Institute of Alcoholism and Drug Dependence (IAFA)  <a href="http://www.iafa.go.cr/">http://www.iafa.go.cr/</a>	1986	Develops programs for the prevention, treatment, and rehabilitation of alcohol, tobacco, and other illicit drug addictions as well as programs to regulate alcohol and tobacco publicity
Campaign for Tobacco Free Kids (CFTK)  <a href="http://www.tobaccofreekids.org/">http://www.tobaccofreekids.org/</a>	1995	Works to reduce tobacco consumption through the promotion of strong tobacco control policies
Foundation for the Rights of Nonsmokers (FUPRODENOF)  <a href="http://www.facebook.com/pages/Que-Prohiban-Fumar-en-Sitios-Publicos-en-Costa-Rica/101188123264037">http://www.facebook.com/pages/Que-Prohiban-Fumar-en-Sitios-Publicos-en-Costa-Rica/101188123264037</a>	2005	Fights to protect non-smokers' rights to health by educating and informing the public about the effects of SHS
National Anti-Tobacco Network (RENATA)  <a href="http://www.rednacionalantitabaco.com/">http://www.rednacionalantitabaco.com/</a>	2007	Unifies health institutions and civil society to develop tobacco control programs, lobby Assembly, and promote efforts in media

## **Costa Rican international agreements**

Costa Rica is a member of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), an extension of the Central American Common Market (CACM), which includes the United States, Dominican Republic, Guatemala, Honduras, El Salvador, and Nicaragua. DR-CAFTA is a free trade agreement that aims to reduce trade barriers between the participating countries. More specifically, DR-CAFTA aims to eliminate tariffs (taxes on imports or exports), quotas, and preferences on all goods and services for all participating countries within the agreement. As of May 2012, most of the tariffs on goods had been eliminated, including tobacco products. DR-CAFTA also contains a provision that protects intellectual property rights, exclusive individual or company rights such as copyrights, trademarks, or patents which protect against the piracy and manufacture of counterfeit goods.<sup>10</sup>

Costa Rica is also a member of the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC), an international treaty which protects populations around the world against the exposure of tobacco smoke through provisions that reduce tobacco advertisement, manufacturing, production, and consumption. Costa Rica signed the FCTC on July 3, 2003,<sup>11</sup> and ratified the agreement on August 14, 2008 as Law 8655.<sup>12</sup>

## **Tobacco industry in Costa Rica**

British American Tobacco (BAT), through its subsidiary Republic Tobacco Company (RTC), and Philip Morris International (PMI), through its subsidiary Tabacalera Costarricense (TC), have dominated tobacco control policymaking in Costa Rica since 1971. While BAT's and PMI's production and manufacturing in Costa Rica has declined since the early 1990s, both companies have maintained a strong presence in the country, including keeping their Central American regional headquarter offices in Costa Rica.

### ***Cigarette market share in Costa Rica***

The cigarette market share in Costa Rica has remained relatively the same since 1960. In 1960, Republic Tobacco Company (BAT's subsidiary) controlled 60% of the market while Tabacalera Costarricense (PMI's subsidiary by 1975) controlled the remaining 40%.<sup>13</sup> In 2010, BAT controlled 66% of the market, and PMI controlled 34% (Figure 2).<sup>14</sup>

### ***British American Tobacco (BAT)***

BAT has operated in Costa Rica since May 1913, when the company established an agreement with Jamaica Tobacco Company to sell cigars and cigarettes in Costa Rica. On July 30, 1920, BAT transferred the assets and business to a new registered company in Costa Rica called Republic Tobacco Company (RTC).<sup>15</sup> Between 1920 and 1999, BAT operated in Costa Rica through its subsidiary RTC until January 1, 2001 when BAT consolidated manufacturing and production in Central America and created a new regional group called British American Tobacco Central America (BATCA)<sup>16, 17</sup> made up of Republic Tobacco Company (Costa Rica),

Tabacalera Nicaragüense (Nicaragua), Tabacalera Hondureña (Honduras), Cigarrería Morazán (El Salvador), Tabacalera Nacional (Guatemala) and Tabacalera Istmeña (Panama). The Dominican Republic was later included as a new BAT branch. In 2003, BAT integrated BATCA with the BAT Caribbean Area, which includes West Indian Tobacco Limited (Trinidad & Tobago), Carreras Limited (Jamaica), Demerara Tobacco Company Limited (Guyana), and Carisma Marketing Services Limited, which covers the markets of Suriname, Barbados, and a group of 21 islands, among these the French overseas territories, to create a new regional group called British American Tobacco Caribbean & Central America (BATCCA).

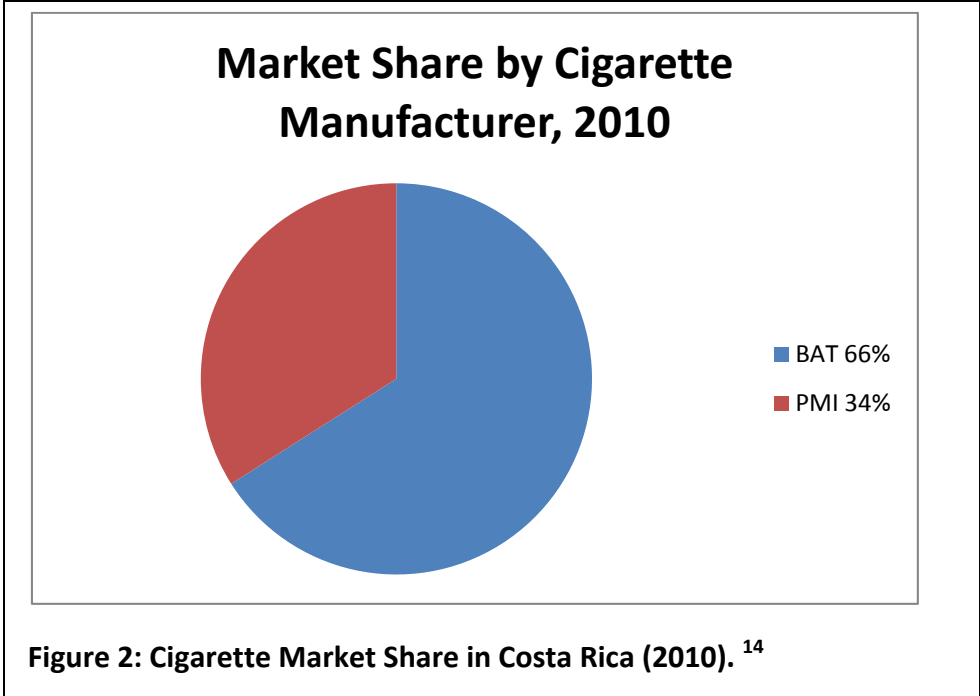


Figure 2: Cigarette Market Share in Costa Rica (2010).<sup>14</sup>

**British American Tobacco (BAT)**

BAT has operated in Costa Rica since May 1913, when the company established an agreement with Jamaica Tobacco Company to sell cigars and cigarettes in Costa Rica. On July 30, 1920, BAT transferred the assets and business to a new registered company in Costa Rica called Republic Tobacco Company (RTC).<sup>15</sup> Between 1920 and 1999, BAT operated in Costa Rica through its subsidiary RTC until January 1, 2001 when BAT consolidated manufacturing and production in Central America and created a new regional group called British American Tobacco Central America (BATCA)<sup>16, 17</sup> made up of Republic Tobacco Company (Costa Rica), Tabacalera Nicaragüense (Nicaragua), Tabacalera Hondureña (Honduras), Cigarrería Morazán (El Salvador), Tabacalera Nacional (Guatemala) and Tabacalera Istmeña (Panama). The Dominican Republic was later included as a new BAT branch. In 2003, BAT integrated BATCA with the BAT Caribbean Area, which includes West Indian Tobacco Limited (Trinidad & Tobago), Carreras Limited (Jamaica), Demerara Tobacco Company Limited (Guyana), and Carisma Marketing Services Limited, which covers the markets of Suriname, Barbados, and a group of 21

islands, among these the French overseas territories, to create a new regional group called British American Tobacco Caribbean & Central America (BATCCA).

As of May 2012, BAT’s main brands of cigarettes sold in Costa Rica include Belmont, Delta, Lucky Strike, Rex, and Royal (Figure 3).

**Philip Morris International (PMI)**

PMI has operated in Costa Rica since 1975, when the company acquired Tabacalera Costarricense (TC, Costa Rican Tobacco Company), a local tobacco manufacturing company that existed in Costa Rica since 1932.<sup>18</sup> Unlike BAT, which controlled 80% of RTC until 2000, PMI obtained 100% of TC in 1975, and as of May 2012, remained in 100% control.

As of May 2012, PMI’s main brands of cigarettes sold in Costa Rica include Derby, Lion, Marlboro, and Next (Figure 3).



**Figure 3: BAT and PMI cigarette brands in Costa Rica.**

**Cigarette market share in Costa Rica**

The cigarette market share in Costa Rica has remained relatively the same since 1960. In 1960, Republic Tobacco Company (BAT’s subsidiary) controlled 60% of the market while Tabacalera Costarricense (PMI’s subsidiary by 1975) controlled the remaining 40%.<sup>13</sup> In 2010, BAT controlled 66% of the market, and PMI controlled 34% (Figure 3).<sup>14</sup>

**Tobacco growing and manufacturing**

Unlike Brazil and Argentina, which are big producers of tobacco (862,000 tons, 170,000 tons respectively), Costa Rica is a small producer of tobacco (62 tons).<sup>19</sup> Costa Rica's tobacco production has significantly declined since the early 1990s from 2,050 tons in 1994 to 62 tons in 2009. In addition, BAT stopped producing tobacco in Costa Rica in 2000 when it closed its operations and shifted its production to Honduras. PMI still contains its production facility in the province of Heredia (Figure 1). As of May 2012, PMI employed 350 workers in Costa Rica, including over 100 in the Heredia factory.

## **METHODOLOGY**

We used four main sources of data in order to re-construct a chronology of events described in this report:

1. Internal tobacco industry documents:

Between April 2010 and March 2011 we 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.<sup>20, 21</sup> Initial search terms included (Costa Rica, Latin America, Central America, Philip Morris, British American Tobacco), specific dates, project names, and legislation numbers. A total of about 300 relevant documents were found.

2. Costa Rica tobacco control legislation:

We also reviewed Costa Rican tobacco control legislation (available at <http://www.asamblea.go.cr/Legislacion/default.aspx>) for complete texts of the laws, decrees, bills, and other tobacco control measures.

3. Costa Rica newspaper articles:

We reviewed articles from major Costa Rican newspapers (La Nación, La Prensa Libre, Costa Rica Hoy, etc) and internet resources (<http://www.google.com.co.cr>, <http://www.yahoo.com>, etc) for information about tobacco control in Costa Rica.

4. Interviews with key informants:

We conducted 17 face-to-face interviews with tobacco control advocates, policymakers and lawyers in Costa Rica during August 2010. Interviews were conducted in accordance with a protocol approved by the UCSF Committee on Human Research.

## **CHAPTER 2: TOBACCO INDUSTRY DOMINANCE PRIOR TO THE 1995 LAW (1971-1985)**

During the 1970s and 1980s, Costa Rica's presidents and legislators made several attempts to strengthen tobacco advertising restrictions and health warning labels. However the tobacco industry, mostly BAT, blocked these attempts using the front group "Instituto Costarricense del Tabaco" (INCOTAB, Costa Rican Tobacco Institute), a think tank similar to the U.S. Tobacco Institute, which closely monitored tobacco control groups. More importantly, the tobacco industry successfully displaced strong tobacco advertising legislation with weaker industry-inspired decrees. Even though decrees are subordinate to laws, the tobacco industry has favored decrees to displace potentially strong laws because they rarely contain enforcement policies and penalty provisions for noncompliance causing them to be ignored.<sup>8</sup>

### **Tobacco industry's early success (1970s)**

During September 1969, legislators in the Legislative Assembly proposed legislation to require a health warning label on all forms of tobacco advertising. Although the bill was never introduced and assigned a bill number, a May 1970 BAT summary of its worldwide situation on government regulations and voluntary restrictions reported concern that "In September 1969 the tobacco industry in Costa Rica was suddenly faced without warning with proposed legislation that would require a health warning on tobacco products and on all advertisements of them."<sup>22</sup> As a result, the tobacco industry lobbied the Legislative Assembly to block the bill,<sup>23</sup> and a February 1973 BAT worldwide report confirmed that the bill was "held up and was eventually replaced with an Executive Decree [1520],"<sup>24</sup> which President José Figueres Ferrer published on February 24, 1971. Decree 1520, instead of imposing a health warning label on all forms of tobacco advertisements, only required cigarette packs to contain the health warning label, "Advertencia: Fumar puede ser nocivo para la salud" (Warning: Smoking may be harmful to health) (Table 2).<sup>24</sup>

In September 1971, the Legislative Assembly discussed another bill to completely prohibit tobacco and alcohol advertising, which BAT observed was supported by President Figueres Ferrer.<sup>24</sup> In the same 1973 worldwide report, BAT described its plans to defeat the bill and the bill's eventual dismissal:

After having been advised by lawyers that this bill was not unconstitutional, the industry drew up a voluntary agreement which would be presented if the situation developed in such a way that this was the only course which would prevent legislation. This agreement included no radio or television advertising between 3 p.m. and 7.30 p.m. and no youth-oriented copy. However, after reaching the Committee stage, discussion about this bill quieted down (Table 2).<sup>24</sup>

Legislation (Date)	Description	Tobacco Industry actions	Result
Un-introduced bill <sup>22</sup> (June 1971)	Places HWLs on all tobacco advertisements	BAT lobbied the Legislative Assembly	Bill was displaced by Decree 1520, which only required HWL on cigarette packages
Un-introduced bill <sup>24</sup> (Sept 1971)	Completely prohibits tobacco and alcohol advertising	BAT drew up a voluntary agreement if situation worsened	Bill was dismissed in the Legislative Assembly
Un-introduced decree <sup>25</sup> (Dec 1979)	Completely prohibits tobacco advertising	BAT cooperated with the Health Ministry in drafting the decree	Decree 12069 was weakened and only restricted tobacco advertising on television and radio
Bill 9.366 <sup>26</sup> (28 July 82)	Completely prohibits tobacco and alcohol advertising	BAT used INCOTAB to block the bill and drew up a voluntary code if situation worsened	Bill 9.366 was displaced by Decree 15450, which only changed the HWL on cigarette packages
Bill 10.128 <sup>27</sup> (5 June 85)	Prohibits television and radio tobacco advertisements	BAT used INCOTAB to block the bill PMI mobilized sportsmen, journalists, & politicians to block bill	Bill was killed in the Legislative Assembly
Bill 10.282 <sup>28</sup> (28 May 86)	Completely prohibits tobacco advertising	BAT created voluntary tobacco advertising regulations	Bill 10.282 was displaced by Decree 20196, which only restricted tobacco advertising on television and radio
HWL: Health Warning Label Un-introduced bill: A bill that was discussed in the Legislative Assembly but was never officially submitted and introduced with a bill number			

Between 1973 and 1978, no tobacco control legislation was proposed until December 1979 when the Ministry of Health proposed a decree to completely prohibit tobacco advertising.<sup>25</sup> By September 1980, BAT announced in its internal “Public Affairs News” produced for executives around the world that it was “cooperating [with the Ministry] in the drafting of regulations pertaining to the Decree.”<sup>25</sup> On November 6, 1980, the Ministry of Health published Decree 12069, which ignored the decree’s original intent of completely prohibiting tobacco advertising and instead only prohibited tobacco advertising on television and radio on Sundays, holidays, and weekdays between 6:00 a.m. and 7:00 p.m., except during news programs (Table 2).<sup>29</sup>

## Tobacco industry's continued success (1980s)

On July 28, 1982, President Luis Monge Alvarez introduced Bill 9.366 to modify the Consumer Protection Law that defined basic consumer rights.<sup>26</sup> During the debate several legislators proposed to prohibit tobacco and alcohol advertising.<sup>30</sup> In 1978, the major tobacco companies formed the International Tobacco Information Center (INFOTAB), an international organization to anticipate tobacco control advocacy efforts worldwide. INFOTAB consisted of associated members, including the US Tobacco Institute and the Instituto Costarricense del Tabaco" (INCOTAB, Costa Rican Tobacco Institute). In 1982, BAT used INCOTAB to block Bill 9.366 by distributing information to the media and politicians, and closely monitoring tobacco control groups (Figure 4).<sup>31</sup>

On April 13, 1982, just prior to Bill 9.366's introduction in the Assembly, J.J. Mostyn, a BAT researcher sent a memorandum to other BAT employees discussing strategies to stop the approval of effective legislation on cigarette advertising restrictions:

R.T.Co. [Republic Tobacco Company, BAT's subsidiary] will modify this approach in future campaigns and should prepare, through INCOTAB, an updated industry voluntary code of advertisement/promotion practice which should be marginally stricter than the existing law on the subject. This can then be used to demonstrate the industry's responsibility, when required, to government and the media and thus pre-empt more restrictive legislation.<sup>32</sup>

On March 16, 1984 Edgar Cordero, BAT's public affairs director for Latin America, sent a memorandum to R. L. Ely, BAT's Head of Public Affairs in London, expressing his concern about Minister of Health Juan Jaramillo's attempt to regulate tobacco advertising. Cordero reported:

This aspect is being discussed directly with the Minister. Despite what has been stated, our lawyer recommended an agreement regarding regulations as preferable to an outright legal confrontation of lengthy duration and unknown outcome. Future action is pending discussion at a forthcoming INCOTAB meeting.<sup>33</sup>

Eventually, on May 22, 1984, Minister of Health Jaramillo issued Decree 15450 that only changed the health warning labels on cigarette packages from "Warning: Smoking *may be* [italic added] harmful to health" to "Warning: Smoking *is* [italic added] harmful to health," without further restricting tobacco advertising.<sup>34</sup> At its Second Latin American Workshop on July 29, 1985 BAT reported the defeat of Bill 9.366:

The tobacco industry and INCOTAB, throughout different ways of lobbying, were successful in achieving the elimination of any reference to advertising in the bill. This bill modifying the Consumer Protection Law project completed the two years of legislative procedures without a resulting resolution or action and was thus 'filed away.' (Table 2)<sup>30</sup>



On June 5, 1985, Legislator Oscar Aguilar Bulgarelli (PUNI) introduced Bill 10.128 to completely prohibit tobacco and alcohol advertisements on television and radio. BAT announced at its July 1985 workshop the company's plan to stop the bill, which included a public relations campaign in collaboration with advertising agencies, publicity services, and the media:

There is a bill pending which would impose restrictive measures on the activities of TV and radio stations ... At the opportune time, INCOTAB should initiate intense lobbying and encourage the advertising agencies, publicity services and the communications media to participate in an aggressive campaign to defeat the restraining objectives of these legislators.<sup>30</sup>

PMI also helped block Bill 10.128 (Table 2). In May 1984 PMI outlined in its three year plan (1986-1988) for Latin America, which included the plan to conduct a "Smokers' Self-Perception Study," which was:

An analysis of how smokers view themselves and their relation to the industry. This study is needed to implement the above point effectively and to plan for future active participation of smokers in the defense of their rights ... Continue and expand the mobilization of sportsmen, opposed to restrictions to the industry's sponsoring of sports activities. This project began in Costa Rica a year and a half ago and was responsible for the liberation of restrictive legislation.<sup>35</sup>

In response to the complete prohibition of television advertising in Venezuela and strong tobacco control advertising proposals in Ecuador, Peru, Venezuela, and Costa Rica between 1985 and 1986, PMI mobilized journalists, sportsmen, and politicians, which "made changes in the legislation (or its interpretation) in Venezuela and Costa Rica."<sup>35</sup> In a PMI February 26, 1986 memorandum, Benjamin Zadoff, PMI Director Financial Planning-Latin American Region, reported to other PMI employees about the company's strategies to stop tobacco control advertising legislation:

- Accelerate our present program of enlisting the support of the press in preventing anti-industry and anti-company measures. In 1986 the effective mobilization of the press helped us stop drastic anti-cigarette advertising legislation in Ecuador, Costa Rica, and Peru.
- Organize sportsmen to defend the right of cigarette companies to sponsor sports events and to broadcast them under this sponsorship. Their efforts would aim at retaining—regaining—access to television and other media. Such a program has been in places in Costa Rica for the last eighteen months and has been successful in its objective.<sup>36</sup>

The industry's efforts succeeded as Congress dropped Bill 10.128 from further consideration in February 1986.

### CHAPTER 3: COSTA RICAN HEALTH INSTITUIONS PUSH BACK (1986-1992)

Since 1945 Costa Rica has developed a close relationship with the United States, assisting the US during regional conflicts, developing an attractive tourism sector for US travelers, and electing political leaders who graduated from US universities and returned to Costa Rica to implement similar US ideas and policies. By the mid-to late-1980s, this close relationship led to the penetration of US anti-smoking information in Costa Rica as the public became increasingly aware of the health risks of smoking and secondhand smoke (SHS). More importantly the Costa Rican health institutions capitalized on this increased awareness and finally helped put Costa Rica on path to become a model for tobacco control in the region.

#### Ministry of Health’s passage of several decrees

In 1986, Minister of Health Edgar Villa Mohs capitalized on the public’s increased awareness of smoking health risks by aggressively advocating for public health and continuously discussing the problems of chronic diseases, including tobacco-related diseases, in the media.<sup>37</sup> Between 1986 and 1989, Health Minister Villa Mohs issued nine smoking restriction decrees, including Decree 18216, which prohibited smoking in workplaces (but allowed designated smoking areas), and Decree 18248, which prohibited smoking on buses, both significant advances compared to other countries in Latin America during the late 1980s (Table 2).<sup>8</sup> In 1987, Costa Rica established one of the lowest smoking prevalence levels in the world, (22%).<sup>4</sup> On April 7, 1988, Minister of Health Villa Mohs held a press conference to discuss the recent success of the decrees, which he attributed to advancement of science and knowledge acquired from the US.<sup>38</sup>

Date	Legislation	Provisions
13 Jan 1987	Decree 17377 <sup>39</sup>	Mandates a health warning label printed on cigarette packages with the legend “Warning: Cigarette smoke contains carbon monoxide”
21 Jan 1987	Decree 17398 <sup>40</sup>	Employees are not allowed to smoke at work
3 Aug 1987	Decree 17964 <sup>41</sup>	Prohibits smoking in cinemas and theaters
4 Feb 1988	Decree 17967 <sup>42</sup>	Prohibits selling cigarettes to minors (younger than 18 years)
4 Feb 1988	Decree 17969 <sup>43</sup>	Prohibits smoking in workplaces and public places on April 7 <sup>th</sup> each year, which is declared “No Smoking Day” in Costa Rica
23 June 1988	Decree 18216 <sup>44</sup>	Restricts smoking in workplaces but allows designated smoking areas
23 June 1988	Decree 18248 <sup>45</sup>	Prohibits smoking on buses; Drivers are responsible for enforcement
16 Jan 1989	Decree 18771 <sup>46</sup>	Requires the director of a public institution to place no-smoking signs in visible places
19 Jan 1989	Decree 18780 <sup>47</sup>	Mandates health warning labels printed on cigarettes packages with the legends “Smoking during pregnancy is harmful to the fetus and may provoke premature birth” or “Smoking causes lung cancer, heart disease, and emphysema”

## Health institutions continued efforts

During the late 1980s and early 1990s, the “Instituto sobre Alcoholismo y Farmacodependencia” (IAFA, Institute of Alcoholism and Drug Dependence), the “Asociación Costarricense de Salud Pública (ACOSAP, Costa Rican Public Health Association), both departments agencies within the Health Ministry, and the “Caja Costarricense de Seguro Social” (CCSS, Costa Rican Social Security Fund), another health institution, consistently promoted public awareness of the dangers of smoking and SHS. ACOSAP and IAFA were constantly active in health conferences and printing educational material on the consequences of smoking, awareness of smoking decrees, and strategies to help quit smoking (Figure 4).<sup>5</sup> Meanwhile CCSS held events to educate the public on the consequences of smoking and its economic impact on society.<sup>48</sup> These tobacco control advocacy efforts prompted Legislator Carlos Luis Monge Sanabria (PLN) to introduce Bill 10.282 on November 28, 1986, which sought to completely prohibit tobacco advertising.

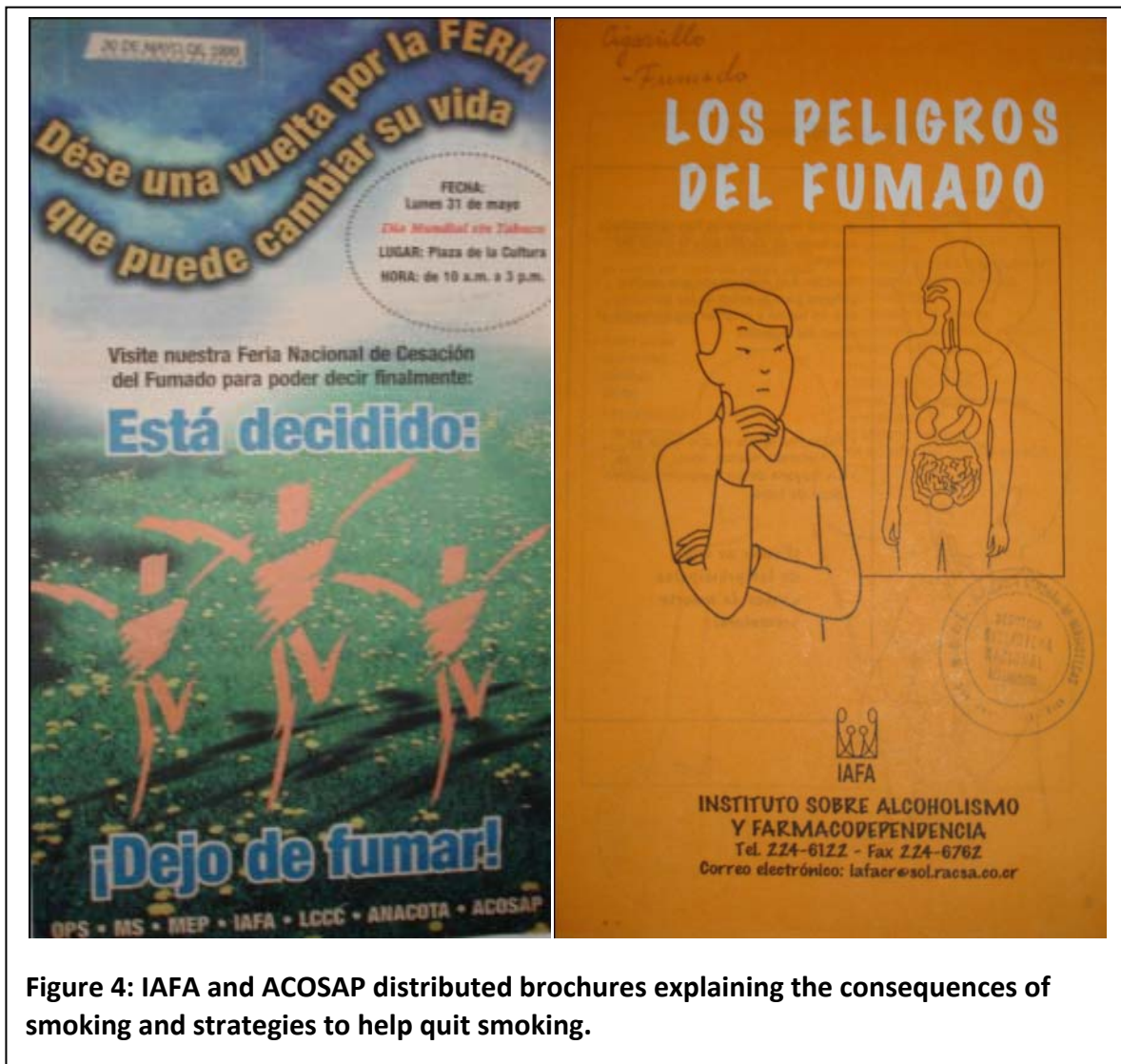


Figure 4: IAFA and ACOSAP distributed brochures explaining the consequences of smoking and strategies to help quit smoking.

## **CHAPTER 4: TOBACCO INDUSTRY'S RESPONSE AND MAJOR SUCCESS WEAKENING THE 1995 LAW (1988-1995)**

By 1988, BAT expressed concern over Costa Rica's recent progress in tobacco control, and responded by strengthening its efforts in the country. While the industry continued to displace strong tobacco advertising with weak industry inspired decrees, the industry began to address the SHS issue in Costa Rica by secretly hiring medical and scientific consultants to argue SHS was not a health threat and implementing the Courtesy of Choice Program to accommodate smokers and non-smokers in workplaces and public places.

### **Tobacco industry's initial response (1988-1990)**

Following a visit to Costa Rica, Kay Comer, BAT legal information manager, reported on April 26, 1988, to Edgar Cordero her concern over increased exposure of anti-smoking information from the US, observing, "Through cable TV from the USA Costa Rica continues to be exposed to American anti-smoking material. Anti-smoking booklets adapted from American Cancer Society material are being used in schools."<sup>8</sup> She also expressed concern over several recent decrees: "While some of the Decrees appear to be in line with those seen elsewhere, some are quite radical ... Since the latest decree [18216, prohibiting smoking in workplaces] is so far-reaching it is essential that the industry reacts firmly to try to have it revoked or at least modified."<sup>8</sup>

Comer also briefly addressed her concern over Bill 10.282, which sought to completely prohibit tobacco advertising. The industry responded by creating a voluntary regulation code designed to displace Bill 10.282. On May 23, 1990, Guillermo Estrada, Republic Tobacco Company (BAT) Marketing Director, sent a memorandum to Iain Hacking, BAT Marketing Executive, listing voluntary agreed tobacco advertising industry regulations, which only extended tobacco advertising restrictions on the radio beyond the existing Decree 12069 by one hour, from 6:00 am- 7:00 pm to 6:00 am-8:00 pm, and limited radio and television advertisements, which previously had no limits, each to 110 spots per week (Figure 5).<sup>49</sup>

On December 12, 1990, the Ministry of Health issued Decree 20196, which mirrored the BAT voluntary agreement;<sup>50</sup> with the implementation of Decree 20196, the Legislative Assembly dropped Bill 10.282 from further consideration in November 1990 (Table 3). The industry had once again successfully displaced strong tobacco control legislation with a weak industry-inspired decree.

### **Tobacco industry's success weakening the 1995 law (1992-1995)**

Increased exposure of U.S. anti-smoking information, and increased efforts by all of the health institutions to advance smoking restrictions prompted Legislator Enid Sonia Rodríguez Quesada (PLN) to introduce Bill 11.545 on July 27, 1992, which sought to completely prohibit smoking in workplaces and public places (except restaurants and bars, which could have designated smoking areas) and completely prohibit tobacco advertising.<sup>51</sup>

Dear Iain,

With reference to your fax of May 16, 1990, regarding Advertising Codes of Practice, current situation in Costa Rica is as follows:

- 1- Government Enforced Regulations
  - a) Cigarette advertising is not permitted:
    - When deceiving upon the product characteristics, their quality or manufacturing techniques.
    - When uses minors or is specifically directed to them.
    - When mentions or insinuates a stimulant effect of the cigarettes.
    - When uses sportspersons, scientists or professionals or models that depicts them.
    - When uses testimonials of celebrities.
  - b) Is not allowed to advertise in:
    - Press, radio and T.V. programs of sports nature or directed to minor audiences.
    - Sports establishments
    - Schools
    - Any media on Sundays or holidays.
    - Cinemas before 17:00 hours, radio and T.V. before 19:00 hours except in news programs.
  - c) In any case, is not allowed to advertise cigarettes through any media when the programs are specifically aimed at minors.
  - d) All advertising materials must be presented to the Ministry of Health for approval prior to production. Once the material is produced, it must be reviewed by the Ministry to ensure that no changes have been introduced to the advertising material approved.
- 2- Voluntarily Agreed Industry Regulations
  - a) No smoking scenes to be shown in advertising materials.
  - b) Only two product shots within T.V. commercials
  - c) T.V. airing time after 20:00, except the news programs at 18:00 hours.  
Radio airing time after 19:00 hours.
  - d) Total industry T.V. purchases limited to 110 spots per week, with a 55% share of voice for RTCo. This measure applies to commercial T.V. channels only.
  - e) No more than one spot per hour, per channel, per company.
  - f) Only spots of 60 seconds or less.

Figure 5: May 1990 BAT memorandum from Guillermo Estrada to Iain Hacking listing voluntary agreed tobacco advertising industry regulations.<sup>49</sup>

Recognizing Bill 11.545 as an immediate threat because of its strong public support,<sup>52</sup> the tobacco industry worked through third parties to stop it.

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### ***Success in weakening smoking restrictions: Latin Project and Courtesy of Choice Program***

In 1991, the tobacco industry initiated the "Latin Project" in anticipation of the SHS issue in Latin America to prevent smokefree workplace and public place legislation, including Costa Rica Bill 11.545.<sup>53</sup> The Latin Project, part of the industry's worldwide International Environmental Tobacco Smoke (ETS) Consultants Project,<sup>54, 55</sup> aimed at providing scientific data that concluded SHS was not a health threat or a significant problem when compared to other factors of indoor air pollution. The Latin Project included secretly recruiting medical and scientific consultants by the tobacco industry's Washington, DC-based law firm Covington and Burling to avoid public knowledge of the industry's involvement.<sup>53</sup>

Covington and Burling hired Dr. María del Rosario Alfaro, Director of the Pollution Laboratory at the University of Costa Rica, and Dr. Cesar Gonzalez, Faculty Member of Scientific Medicine at the University of San Carlos de Guatemala to conduct the "Central American Field Study" to measure indoor air quality (IAQ) in offices and restaurants in Central America<sup>53</sup> financed by \$60,000 from BAT, \$50,000 from PMI and \$26,000 from the International ETS Consultants Program central budget.<sup>56</sup> The industry funneled the money through the Center for Indoor Air Research (CIAR), which served as a device for "special projects" administered by industry lawyers rather than scientists (Figure 6).<sup>53</sup>

After meetings in San José, Costa Rica on November 16 and 17, 1992, John P. Rupp, lawyer from Covington & Burling, reported to BAT representatives that:

The plan in Costa Rica is to study ten offices (including the government offices identified on the attached list) and ten restaurants... Most of the Costa Rican sampling will be conducted in San José, with only limited sampling being conducted in Heredia (two buildings) and Alajuela (two buildings)... Ms. Alfaro indicated that she would like to submit the study results to a journal published in the United States, in part because such journals are widely regarded in Costa Rica as being preeminent sources of scientific information.<sup>56</sup>

## APPLICATION FOR RESEARCH CONTRACT

1. PRINCIPAL INVESTIGATOR. NAME, TITLE, TELEPHONE # AND MAILING ADDRESS.

(A) MARIA DEL ROSARIO ALFARO (B) DIRECTOR (C) 506-377032  
NAME TITLE TELEPHONE #/FAX #

(D) LABORATORIO DE CONTAMINANTES (E) UNIVERSIDAD NACIONAL DE COSTA RICA  
DEPARTMENT INSTITUTION

(F) H. GARCIA, COSTA RICA (G) 86-3080  
MAILING ADDRESS STATE/ZIP

2. PROJECT TITLE MEASUREMENT OF INDOOR AIR QUALITY IN SIX  
CENTRAL AMERICAN COUNTRIES

3. KEY WORDS. PLEASE PROVIDE THREE (3) KEY WORDS WHICH WILL BE USED AS REFERENCE HEADINGS. INDOOR AIR QUALITY,  
OFFICE ENVIRONMENT, CENTRAL AMERICA

4. INSTITUTION. NAME AND ADDRESS OF INSTITUTION RESPONSIBLE AND ACCOUNTABLE FOR DISPOSITION OF FUNDS AWARDED ON THE BASIS OF THIS APPLICATION.

(A) UNIVERSIDAD NACIONAL DE COSTA RICA (B) CALLE 10  
INSTITUTION STREET ADDRESS

(C) SAN CARLOS (D) GUATEMALA  
CITY STATE/ZIP

5. LOCATION. LIST LOCATION WHERE RESEARCH WILL BE CONDUCTED IF OTHER THAN INSTITUTION IDENTIFIED IN #4 ABOVE.

(A) AS ABOVE

(B) UNIVERSITY OF SAN CARLOS, GUATEMALA

Figure 6: 1992 BAT document displaying María del Rosario Alfaro's application for research contract to conduct the Central American Field Study.<sup>56</sup>

Rupp also reported that Alfaro made a presentation about the study in September 1992 to government officials and that, according to Alfaro, "all of the meetings concerning the study have been cordial and productive ... and smoking has not been raised as an issue."<sup>56</sup> Rupp also mentioned that the industry would provide Covington and Burling with a list of media representatives and government officials as "potential allies on public and workplace smoking who might benefit from a briefing on Ms. Alfaro's work."<sup>56</sup> Covington & Burling distributed the Costa Rica pilot study results from nine buildings (three offices, three hospitals, and three restaurants) to Edgar Cordero (BAT) and Gilberto Barrantes (PMI) on February 4, 1994. 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."<sup>57</sup> Alfaro eventually published an article in 1997 in "Indoor & Built Environment" discussing the results from the IAQ monitoring study in Central America.<sup>53</sup> Covington and Burling paid Alfaro \$25,000 for her work on top of the \$136,000 paid for the Central American Field Study (Figure 7).<sup>58</sup>

Using these results, Sharon Boyse, BAT's Smoking Issues Manager, sent a letter to BAT employees in Latin America, including Edgar Cordero in Costa Rica, on March 23, 1994 offering standard industry advice on how to alter legislators' opinions on SHS:

As you are aware, one of the ways that restrictions on smoking in public places and the workplace can be prevented is by lobbying for indoor air quality and ventilation standards, using the argument that studies have shown that inadequate ventilation is the major contributor to poor indoor air quality, and not ETS.<sup>59</sup>

PMI also used results from various ETS studies from Latin America and the US to oppose legislation. On June 24, 1994, Aurora Marina González, PMI Communications Manager, sent a letter to Gilberto Barrantes, Executive Director of Tabalera Costarricense (PMI's subsidiary), with materials addressing ETS "for use in opposing the pending legislation in Costa Rica."<sup>60</sup>

In October 1994, Philip Morris hired Procter Lippincott (senior vice president from the public relations agency Spring O'Brien, New York, USA) and Dan Murphy (senior marketing counselor from the Miami-based 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 smoking and nonsmoking areas as the "reasonable alternative" to 100% smokefree laws.<sup>61, 62</sup> Philip Morris selected Costa Rica, due to the immediate threat of Bill 11.545 pending in the Legislative Assembly, as a priority market to rollout the program.<sup>52</sup> Lippincott and Murphy worked with local consultant Carlos M. Echeverría, senior consultant for the commercial and social relations firm Central American Consulting Inc., who claimed he had good connections with the local hospitality associations.<sup>63</sup> They recruited the "Cámara Costarricense de Restaurantes Afines" (CA.CO.RE., Costa Rican Chamber of Restaurantes) and "Cámara Costarricense de Hoteles" (CCH, Costa Rican Chamber of Hotels),<sup>63</sup> to promote the Courtesy of Choice program by distributing brochures in Costa Rica (Figure 8).<sup>64</sup>



Latin American ETS Project:  
Strategy and Budget Proposal for 1994

(D) Costa Rica

(i) Retainer relationship with Dr. Alfaro. A retainer agreement is proposed for Dr. Maria Alfaro. Pursuant to the agreement, Dr. Alfaro would be expected to:

(a) Respond promptly to media articles misrepresenting the science of ETS or calling for smoking restrictions for scientifically unjustified reasons. Dr. Alfaro would rely on the results of the Central American field study as support for her arguments. She will be identified by industry representatives to local journalists as an indoor air quality expert. If such identification does not result in her being contacted by local journalists directly, Dr. Alfaro should be prepared to write letters to the editors of newspapers or magazines. A maximum of four letters per year would be expected.

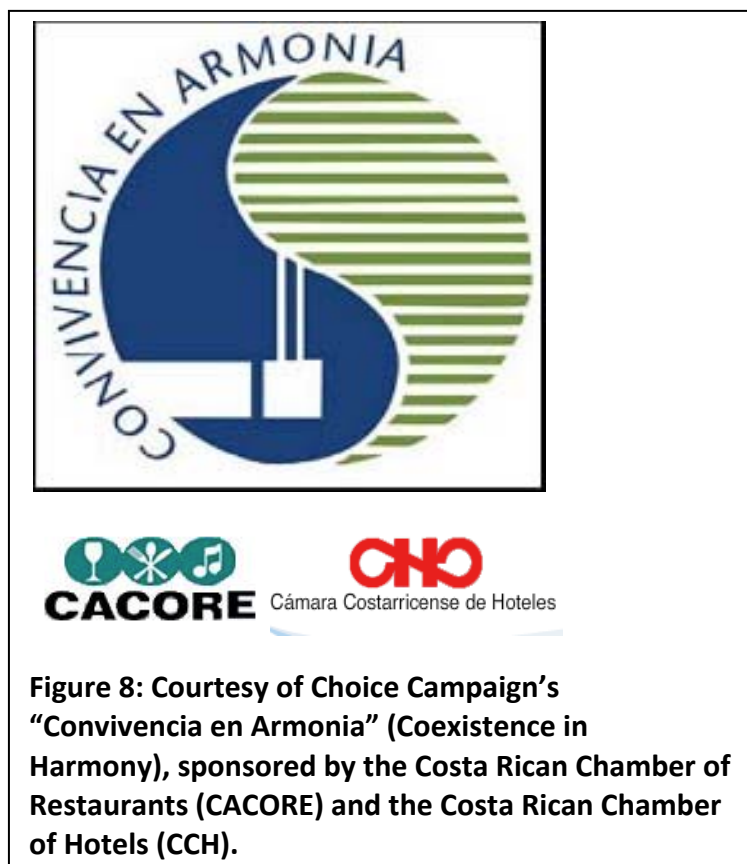
- 12 -

(b) Prepare and place three articles in popular magazines or newspapers. One of the articles would report on the Buenos Aires symposium. Another would propose priorities for Costa Rica and other Central American countries for addressing outdoor and indoor air quality problems. The third would address indoor air quality problems in homes.

(c) Make presentations to government officials in opposition to antismoking legislation if necessary.

Budget: \$ 25,000

Figure 7: 1994 BAT industry document explaining the Latin American ETS Project Budget to pay Alfaro \$25,000.<sup>58</sup>



In addition, the “Cámara Nacional de Medio de Comunicación” (CANAMEC, National Chamber of Media), which defends the rights and interests of media companies, opposed prohibiting smoking in public places or tobacco advertising, claiming that smokefree policies would lead to economic losses in the hospitality industry,<sup>65, 66</sup> and violated constitutional freedoms,<sup>67</sup> the standard arguments the tobacco industry and its allies use around the world.<sup>62, 63, 68</sup> According to PM Latin America Corporate Affairs, the original strong bill was eventually modified by June 1994 to “permit smoking in designated areas in venues where it is traditionally prohibited—cinemas, medical centers and museums, (Table 4)”<sup>69</sup> a big win for the industry.

### ***Success in blocking advertising ban***

After Bill 11.545 reached the plenary session of the Legislative Assembly in June 1994, BAT and PMI also pressured the Assembly to delay the bill, contesting the complete prohibition of tobacco advertising.<sup>70</sup> According to a June 1994 *La República* newspaper article, although a majority of legislators were in favor of a complete prohibition of tobacco advertising,<sup>71</sup> Legislators Roberto Olson (PLN) and Pablo Gutiérrez (PLN) observed that it had been “very difficult to pass cigarette advertising regulations mainly by the grand influence of the economics of the tobacco industry.”<sup>72</sup> In August 1994, intensive industry efforts to modify the bill continued,<sup>73</sup> successfully delaying the process until February 1995, when Legislators Bernal Aragón (PUSC), Gerardo Araya (PUSC) and Antonio Álvarez (PLN) began to argue that Article 9 (which contained the provisions for a complete prohibition of tobacco advertising) “could trigger [constitutional] problems” and Araya suggested modifying Article 9 to avoid constitutional challenges.<sup>74</sup> On February 20, 1995, BAT and PMI produced an alternative and much weaker text for the bill, which only extended tobacco advertising restrictions on radio and television beyond the existing Decree 20196 by one hour, from 6:00am-8:00 pm to 6:00 am-9:00 pm, as well as prohibited advertisements in locations for minors,<sup>74</sup> a common strategy used by the industry around the world.<sup>75</sup>

Table 4: Evolution of Law 7501 (1995 law)			
Provision	Original Bill 11.545	Tobacco industry's proposal	Law 7501
Workplaces and public places	100% smokefree (may have DSAs in restaurants and bars)	<b>Must have DSAs</b>	<b>Must have DSAs</b>
Transportation	100% smokefree	No comment	100% smokfree
Advertising	Completely prohibited	<b>Restricted to not allowing advertising in places for minors and in TV and radio on Sundays and holidays, and weekdays (6am-9pm)</b>	<b>Restricted to not allowing advertising in places for minors and in TV and radio on Sundays and holidays, and weekdays (6am-9pm)</b>
Health Warning Labels	Text only: 2 messages	<b>Text only: 2 messages</b>	<b>Text only: 2 messages</b>
Penalties	-¼ base salary-Transportation smoking -½ base salary-Smoking in workplaces -1 base salary-Owners smoking or selling cigarettes	No penalties	-¼ base salary-Transportation smoking -½ base salary-Smoking in workplaces -1 base salary-Owners smoking or selling cigarettes
DSAs: Designated Smoking Areas			

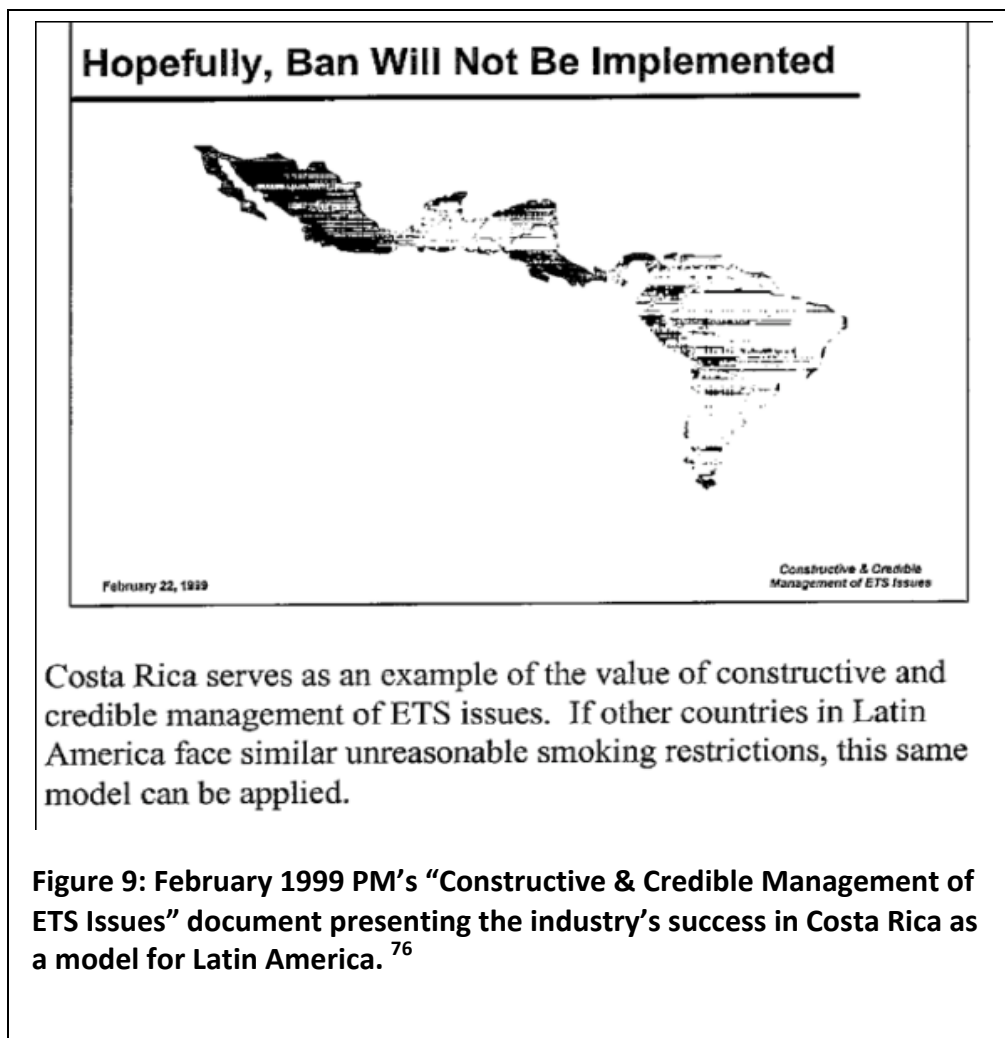
### ***Success in blocking advertising ban***

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am-9:00 pm, as well as prohibited advertisements in locations for minors,<sup>74</sup> a common strategy used by the industry around the world.<sup>75</sup>

**Law 7501 “Regulation of Smoking” aka “the 1995 law”**

On May 5, 1995, the Legislative Assembly finally approved Law 7501 “Regulation of Smoking,” which created penalties for noncompliance, established smokefree transportation provisions, reinforced health warning labels, and extended workplaces and public place and tobacco advertising restrictions. However Law 7501 (a much weaker version of the original Bill 11.545) did not include the smokefree workplace and public place provisions or the complete prohibition of tobacco advertising (Table 4), a major victory for the tobacco industry. This law remained in effect in Costa Rica for more than fifteen years. At a meeting of PM’s Worldwide Regulatory Affairs on “Constructive & Credible Management of ETS Issues” in February 1999, Mark Berling, Senior Assistant General Counsel, presented the industry’s success in Costa Rica as a model for other Latin American countries who “faced similar unreasonable smoking restrictions,”<sup>76</sup> (FIGURE 9). BAT and PMI expanded the Courtesy of Choice program throughout Latin America between 1995 and 1999 (Table 4).<sup>63</sup>



**Figure 9: February 1999 PM’s “Constructive & Credible Management of ETS Issues” document presenting the industry’s success in Costa Rica as a model for Latin America. <sup>76</sup>**

## **CHAPTER 5: TOBACCO INDUSTRY CONTINUED SUCCESS IN COSTA RICA AND TEST PILOT FOR LATIN AMERICA (1996-2003)**

The industry's success in weakening the 1995 law created a foundation to block future tobacco control proposals during the late 1990s and early 2000s. The industry extended the Courtesy of Choice program to avoid smoking bans and continued to argue for constitutional rights, as well as promoted youth smoking prevention programs, and a voluntary agreement to reject tobacco advertising bans. By the late 1990s, the industry also began to develop a cooperative relationship with the Ministry of Health, which prevented effective government action to implement strong tobacco control legislation. Furthermore the industry used Costa Rica as pilot site to implement similar programs throughout Latin America.

### **Attempts to ban tobacco advertising**

Despite the passage of a weakened law in 1995, the CCSS and IAFA continued to push for a complete prohibition of tobacco advertising. Beginning in 1996, the CCSS and IAFA argued in the media that tobacco advertising caused children to begin smoking and released a study showing youth smoking had increased from 21.3% in 1990 to 26.2% in 1997.<sup>77</sup> The CCSS and IAFA also publicized the health costs due to smoking and revealed that Costa Rica had spent 740 million colones (\$US 1.48 million) from 1987 to 1997 treating tobacco-induced diseases,<sup>77, 78</sup> which they demanded the tobacco industry pay. This push prompted Legislators José Manuel Nuñez González (PFD), Célamo Guido Cruz (PFD), and José Merino Del Río (PFD) to introduce Bill 13.200 on June 6, 1998, which again sought to completely prohibit tobacco advertising.

### ***Tobacco industry "Youth Smoking Prevention" programs***

During the 1980s in the United States, the tobacco industry decided to preempt the youth smoking issue by promoting self-regulation through retailer and education programs known as "youth smoking prevention" programs.<sup>79, 80</sup> The tobacco industry's youth smoking prevention programs attempted to shift the focus to peer pressure and parental behavior as reasons children start to smoke and away from the fact that its advertising and marketing promotes smoking to youth.<sup>81</sup> The industry also attempted to prevent or displace public health campaigns that address the industry's behavior, part of their wider Corporate Social Responsibility (CSR) Campaigns to illustrate themselves as responsible corporations.<sup>81</sup> By the early 1990s, the industry had expanded these programs to Latin America,<sup>81, 82</sup> and by 1997 in Costa Rica.<sup>83</sup>

#### ***Retailer programs***

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). Similar to the U.S. "We Card,"<sup>79</sup> and "It's the Law,"<sup>80, 84</sup> programs, "It is Prohibited to Sell Cigarettes to Minors"

distributed signs, stickers, and other print materials to over 18,500 retailers throughout Costa Rica (Figure 11)<sup>85, 86</sup>; Amadeo, 1997 #38} with the message “No Vendo Cigarrillos a Menores” (I Do Not Sell Cigarettes to Minors), which also supported the weak 1995 law (Figure 10).



**Figure 10: Distributed sign for 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.<sup>87</sup>**

In March 1998, PMI selected Costa Rica to launch the pilot program for “En Punto-Socios en el Exito” (On Target-Partners in Success), a broader retailer education program that reinforced the point-of-sale campaigns and aimed to motivate the retail community to support other industry youth access programs.<sup>88</sup> PMI worked again with the National Chamber of Merchant Retailers to advance business relationships with retailers and reinforce industry youth smoking prevention campaigns throughout Latin America,<sup>89</sup> which consisted of workshops and informative brochures for retailers that communicated key messages on youth access.<sup>88</sup> Most important, the tobacco industry won the Ministry of Health’s endorsement in April 1998, which effectively prevented implementation of direct government action.<sup>81</sup> (“On-Target” was expanded to Colombia, Mexico, and Venezuela in November 1998, which helped the industry prevent of modify smoking restrictions.)<sup>81</sup>

### *Educational programs*

In December 1997, BAT and PMI sponsored with the Costa Rican Ministry of Public Education “Yo Tengo P.O.D.E.R.” (I Have Power), abroad youth educational program nominally intended for educators to help children handle peer pressure of smoking.<sup>81</sup> Local PMI

management organized a print, radio and TV campaign to promote “I Have Power” and worked with the Ministry of Public Education to implement the program in educational facilities, beginning with 200 schools, 300 teachers and 10,000 students.<sup>90</sup> Through these efforts, PMI and BAT not only prevented effective intervention by the government, but reinforced the companies’ CSR campaigns.

In February 2000, PMI, again with the Ministry of Public Education, launched “Yo Tengo V.A.L.O.R.” (I Have Courage), an extension of the “I Have Power” program, which continued to educate children on handling peer pressure of smoking.<sup>81</sup> PMI’s goal included training over 300 teachers and reaching 20,000 students in 100 schools by the end of 2000.<sup>91,92</sup> By May 2000, 130 teachers had been trained to implement the program (Figure 11).<sup>92</sup>

**RETAILER PROGRAMS**  
*Latin America Youth Access Prevention and Education*

*Costa Rica*

La Cámara de Comerciantes Detallistas y la Industria Costarricense del Tabaco comunican que:

**ES PROHIBIDO VENDER CIGARRILLOS A MENORES**  
asi lo establece el Artículo Cuarto de la Ley Reguladora del Fumado

CAMARA NACIONAL DE COMERCIANTES DETALLISTAS  
Industria del Tabaco

By law in Costa Rica, the minimum age for purchase of cigarettes is 18. Our campaign, “Prohibido Vender Cigarrillos a Menores” (“It Is Prohibited To Sell Cigarettes To Minors”), was introduced in Costa Rica in August, 1997 (see fig. 4f).

This campaign is co-sponsored by the national retailer association (“Cámara Nacional de Comerciantes Detallistas”) and British-American Tobacco Co. Ltd.

700 members of the local industry sales forces have distributed sets of posters, stickers and letters to the retailer to over 18,500 establishments throughout the country.

In addition to these materials, local management has also organized a print, radio and TV campaign to support the program.

Figure 11: 1998 PMI industry documents describing youth smoking prevention merchant and educational programs in Costa Rica.<sup>90</sup>

## Costa Rica

In August 1997, the retailer program "It Is Prohibited To Sell Cigarettes To Minors" was introduced. This program is co-sponsored by British American Tobacco Co. Ltd. and the National Chamber of Retailers. 700 members of the local industry salesforces have distributed sets of posters, stickers and letters to retailers in over 18,500 establishments throughout the country.



In March 1998, we launched a retailers alliance program entitled "En Punto - Socios en el Exito" ("On Target - Partners in Success"). The objective is to foster strong business relationships with retailers. The program consists of workshops and informational materials that communicate not only on youth access prevention, but also on a number of business issues relevant to the small retailer.

## Costa Rica

"Yo Tengo V.A.L.O.R."

Endorsed by the Ministry of Education and the Office of the First Lady

"Yo Tengo V.A.L.O.R.," a variation of the "Yo Tengo P.O.D.E.R." education program, was launched in the capital city of San Jose in February 2000. 130 teachers were trained to implement the program during the initial phase.

"Every day, teachers touch the hearts of our children and help them to grow as students and people. They speak to them about their rights, their responsibilities, and they lead them to make the right decisions. Through the Yo Tengo V.A.L.O.R. program, we are strengthening this learning process."

Office of the First Lady

Plans are to reach approximately 330 teachers and 20,000 students in 100 schools across the country by the end of 2000.



Figure 11: (continued)



The industry's youth smoking prevention programs succeeded in reaching their political goal of preventing effective government action to completely eliminate tobacco advertising when the Legislative Assembly dropped Bill 13.200 from further consideration in January 2001 (Table 5).

Legislation (Date)	Description	Tobacco Industry actions	Result	Programs expanded to Latin America and the Caribbean
*Bill 11.545 <sup>51</sup> (27 July 92)	Prohibits smoking in workplaces and public places and prohibits tobacco advertising	BAT and PMI secretly hired scientific consultants to stop the SHS threat, used the hospitality industry to implement the Courtesy of Choice, and lobbied the Legislative Assembly for constitutional rights	Bill was weakened to allow DSAs in workplaces and public places and tobacco advertising restrictions were only nominally advanced	Courtesy of Choice was expanded to Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Nicaragua, Peru, Puerto Rico, Uruguay, and Venezuela
Bill 13.200 <sup>93</sup> (6 June 98)	Completely prohibits tobacco advertising	BAT and PMI worked with the Chamber of Merchants to sponsor youth smoking prevention programs	Bill was rejected by the Legislative Assembly	YSP program "On-Target" was expanded to Colombia, Mexico, and Venezuela
Bill 13.335 <sup>94</sup> (24 Sept 98)	Reforms Article 2 of the 1995 law and makes workplaces and public places 100% smokefree	BAT and PMI once again used the hospitality industry to promote the Courtesy of Choice Program	Bill was rejected by the Legislative Assembly	Same as 1992
Bill 13.680 <sup>95</sup> (29 July 99)	Completely prohibits tobacco advertising	BAT and PMI filed briefs in the Supreme Court and used the success from ruling 4804 to lobby against the bill	Bill was rejected by the Legislative Assembly	Not applicable
Bill 14.844 <sup>96</sup> (31 July 02)	Completely prohibits smoking in workplaces, enforces stricter HWLs, prohibits tobacco advertising on TV and newspapers, and increases penalties for noncompliance	BAT and PMI made a verbal voluntary agreement with the Health Ministry, lobbied the Legislative Assembly, and produced a CSR report to promote the voluntary agreement	Bill was displaced by Decree 31616, which only nominally increased tobacco advertising restrictions beyond the 1995 law	CSR Social Reports were expanded to Honduras, Jamaica, and Trinidad and Tobago
<p>*Bill 11.545 became Law 7501 (the weak 1995 law)            YSP: Youth Smoking Prevention            CSR: Corporate Social Responsibility            DSA: Designated Smoking Area            HWL: Health Warning Label</p>				

### Attempts to end smoking in workplaces and public places

Between 1997 and 1998 the CCSS, IAFA, and ACOSAP used the media repeatedly to publicize the effects of smoking and SHS.<sup>5, 97</sup> The CCSS, IAFA, and ACOSAP also promoted cessation programs to assist smokers to quit smoking (Figure 13). This push, along with increasing international evidence about the dangers of smoking and SHS, prompted Legislator

Luis Fishman Zonzinski (PUSC) to introduce Bill 13.335 on September 24, 1998, which proposed to reform Article 2 of the 1995 law to make all workplaces and public places (including restaurants and bars) 100% smokefree.<sup>94</sup>

### ***Extension of the Courtesy of Choice Program (1997-2000)***

In 1997, PMI once again used the hospitality industry and local engineers to promote the Courtesy of Choice accommodation program.<sup>98</sup> PMI selected Costa Rica, due to its “relatively difficult climate for the industry,”<sup>99</sup> along with Argentina as the two pilot markets for the program as an “opportunity to evaluate and revise plan before extending to other markets.”<sup>100</sup> On October 6, 1998, Aurora González, PMI’s Director of Communications and Corporate Affairs for Latin America, sent a memorandum to other PMI executives revealing PMI’s five-point strategy to counter Bill 13.335. Some of the strategies included:

- Have a well-known hotelier or restaurateur speak up about Courtesy of Choice and how the program makes good business sense.
- Juan Carlos Bermudez and the local engineer will brief the appropriate Congressional Committee/s on the ventilation requirements in Courtesy of Choice.
- Research in Costa Rica shows that the majority of people prefer accommodation over bans. This information can be used strategically in a presentation to the President of Congress by the Hospitality Association.<sup>98</sup>

On February 22, 1999, PMI presented another five-point strategy at its Worldwide Regulatory Affairs “Constructive & Credible Management of ETS Issues” meeting to counter Bill 13.335. Some of the strategies included:

- We brief the Hospitality sector on the proposal, and they agree to meet members of Congress and Opinion Leaders.
- Local engineers who have been actively supporting the program are preparing to brief the appropriate congressional committee on the benefits of ventilation.<sup>76</sup>

The Costa Rican hospitality industry faithfully carried the tobacco industry’s arguments into the public debate. During a congressional hearing on June 7, 2000, the hospitality industry, as they had in 1994, promoted the Courtesy of Choice program to block Bill 13.335. William Jauregui of CCH, argued that smoking rooms in hotels accounted for 46% average occupation at the national level and that Costa Rica set an example for the world with self-regulation through the Courtesy of Choice program.<sup>101</sup> Jauregui argued that 50 hotels had already been enlisted, with more than 3,500 employees and restaurant employees being trained.<sup>101</sup> Vicente Bruno Salazar, Executive Director of CACORE, reiterated similar remarks and showed a video to the committee about how to implement the Courtesy of Choice program and familiarize themselves with the content of the symbols of the Courtesy of Choice program.<sup>101</sup>

On June 12, 2000, PMI reported the defeat of bill 13.335 in its Weekly Highlights, a new summary PMI prepared for briefing its management:

The Costa Rican Congress rejected a proposal to ban smoking in all public venues, based on the fact that the courtesy of choice program, backed by the industry and the Hotel and Restaurant Association, has been addressing the public smoking issue effectively for almost 5 years. As a result, Congress concluded that government intervention was not appropriate.<sup>102</sup>

### **More attempts to ban tobacco advertising**

On October 27, 1998, pro-tobacco control individuals Julio Jurado del Barco and Ronaldo Avalos Monge filed a claim to Article 9 (tobacco advertising) of the 1995 law before the Supreme Court alleging that the government violated the constitutional rights of life, health and a healthy environment by regulating tobacco advertising instead of forbidding it.<sup>103</sup> This constitutional challenge, along with continued pressure by the health institutions in the media prompted Legislator Rodolfo Salas (PLN) to introduce Bill 13.680 on July 29, 1999, which sought to completely prohibit tobacco advertising.

### ***Lobbying efforts to block Supreme Court challenge***

On February 3, 1999, Shook, Hardy, and Bacon, a US law firm which represents the tobacco industry, sent its annual report on recent international developments to PMI, which discussed the tobacco industry's efforts to fight the constitutional claim:

Tabacalera Costarricense S.A. (Philip Morris' subsidiary) and Republic Tobacco Co's (BAT's subsidiary), as interested third parties, filed briefs on December 8 and 9, 1998 respectively before the Constitutional Section of the Supreme Court. In their briefs, the companies allege that manufacturing and selling tobacco products is a regulated legal activity and that Congress did not omit any legislative intent with Act 7501. It stresses the rights to trade and to choose, public awareness of the risks of smoking, and the weakness of petitioner's argument about the violation of the right to health.<sup>103</sup>

On June 18, 1999 the Supreme Court issued Ruling 4804, which dismissed the constitutional challenge on the grounds that the Supreme Court did not have the power to replace a law, the regulation of constitutional rights is an attribution of the legislative branch, the Constitution does not mandate that the legislature prohibit cigarette advertising, and cigarette marketing and consumption are legal activities.<sup>104</sup> The tobacco industry used this ruling to lobby against Bill 13.680 (Table 5). As a result, the Legislative Assembly dropped Bill 13.680 from further consideration by 2001.

### **Attempts to completely reform the 1995 law**

Throughout 2000 and 2001, the Pan American Health Organization (PAHO), part of its Smoke Free Americas Initiative to promote smokefree spaces in the Americas,<sup>105</sup> worked with IAFA, CCSS, and the Ministry of Health to implement a project aimed at voluntarily and

legislatively creating smokefree workplaces and public places.<sup>5</sup> The project was nominally aimed at creating public awareness over the rights to breathe clean air, encouraging citizens to quit smoking, and spreading information about the 1995 law,<sup>5</sup> which had essentially been written by the tobacco companies. During this time, CCSS, and the Ministry of Health distributed 225,000 leaflets, including 75,000 promoting the weak 1995 law, in an attempt to convince workplaces and public places to voluntarily become smokefree.<sup>5</sup> This program had little effect: By the end of 2001, only 37 businesses proclaimed themselves smokefree. These efforts did, however, help encourage Legislators Ricardo Jaime Toledo Carranza (PUSC) and Edgar Mohs Villalta (PUSC) to introduce Bill 14.884 on July 31, 2002, which sought to completely prohibit smoking in workplaces, implement stricter health warning labels, prohibit tobacco advertising in television and newspapers, and increase penalties for noncompliance.

### ***Tobacco industry's "decision-makers" study***

In February 2000, BAT again selected Costa Rica as a pilot study for Latin America to improve the effectiveness of their lobbying activities by identifying "the decision-making process and the key decision-shapers and decision-makers in important markets in which they operate."<sup>106</sup> BAT asked Business Decisions Limited (BDL), to perform the study outlined below:

BAT has asked Business Decisions (BDL) to undertake an 'experiment' to ascertain how much information (or how little) can be obtained from desk research about the decision-making process and the key decision-shapers and decision-makers in the tobacco market of Costa Rica.<sup>106</sup>

The study, titled "Regulation of Tobacco and the Smoking Debate in Costa Rica," produced mixed results. BAT obtained important information about decision makers, including identifying President Miguel Rodríguez Echeverría and Health Minister Rogelio Pardo as the two principal decision makers in Costa Rica that influence the smoking debate, but were "unable to judge the relative importance of specific, political, economic, or social forces."<sup>106</sup> Despite mixed results, BAT recommended that parts of the study "could be replicated for other Central and Latin American countries."<sup>106</sup>

### ***Tobacco industry and Health Ministry's voluntary agreement***

After identifying Minister of Health Rogelio Pardo as a principal decision maker in Costa Rica, BAT met with him three times in 2000, twice in February, and once in September.<sup>107, 108</sup> By October 2000, Health Minister Pardo verbally agreed to a voluntary agreement that BAT and PMI drafted in May 2000 for the self-regulation of tobacco advertising (Figure 12).<sup>109-112</sup>

**Costa Rica  
Code of Ethics**

**Rules and Regulations for self-regulation in the advertising and promotion of cigarettes**

**Whereas:**

1. The promotion, advertising and marketing of cigarettes must be carried out in a responsible manner.
2. Cigarettes must be consumed by adults and not by minors.
3. Cigarette promotional campaigns must be aimed at adult smokers and not at minors.
4. It is necessary to unify policies so that the promotion of cigarettes is carried out in a responsible manner, by complying at all times with the rules of free competition and the rights of the consumer.

We have agreed to adopt this SELF-REGULATION CODE in order to limit our own advertising and promotion of cigarettes, which will be strictly observed by both companies and by their employees.

**CODE**

**Chapter I**

**Terms and Conditions governing the advertising and promotion of  
cigarettes**

2081376070

**Article 1. Cigarettes, a product for adults**

Cigarettes must be consumed only by adults; no type of advertising, promotion or marketing shall be aimed at minors.

In the cases in which any of the signatory companies sponsors or supports any event for advertising purposes, said event cannot be aimed at minors.

The term "minor" must be understood to refer to persons who are under 18 years of age.

**Article 2. Outdoor Advertising**

**Figure 12: De Palabra Agreement between the Tobacco Industry and Health Ministry. <sup>113</sup>**

Posters or billboards shall not be placed within 200 meters from the perimeter of schools, colleges and sports centers frequented exclusively or predominantly by minors.

### **Article 3. Means of Communication**

a) No advertising of any kind regarding cigarettes shall be made between the hours of 6 a.m. and 9 p.m. Established codes for newspapers, radio and TV shall be adhered to on Sundays and holidays.

b) Cigarette advertisements shall not be made on programs or sections aimed at minors.

c) Advertisements shall not be made on television programs directed essentially at minors, even if they are broadcast after the hour established in the paragraph of this Article.

e) Cigarette advertisements shall not be made in written advertising media for publication in sections aimed at minors. For the insertion of such advertisements, the precaution of leaving a margin of two pages before and two pages after these sections shall be taken.

f) There shall be no payment, either directly or indirectly, for cigarettes or cigarette advertisements to be seen as a part of the films shown.

g) Advertisements that are used in movie theaters shall be restricted to films aimed at adults.

### **Article 4. Truthfulness of advertising**

a) The information provided in the advertising of cigarettes must be true so as not to lead to any deception regarding the characteristics of the products, their quality or preparation techniques.

b) Advertising must not induce anyone to believe that success in sports or sexual prowess is attributable to smoking.

### **Article 5.- Advertising aimed at the general adult population**

a) Although advertising will be aimed at smokers, the impression must not be given that all people are smokers. Therefore, if more than three persons of legal age appear in an advertisement, at least half of them shall be portrayed as non-smokers.

b) No direct smoking scenes shall be permitted.

c) No images or scenes that contain obvious morbid acts or acts that are very erotic shall be used.

Figure 12: (continued)

b) The models used in advertising must be over 25 years of age.

All restrictions established in Law No. 7501- Law Regulating Smoking shall be complied with.

### Chapter III

#### Compliance

This code must be strictly complied with by tobacco companies, their personnel and all those suppliers contracted directly by such companies in the areas of market research, advertising and promotion.

The campaigns and promotions carried out shall be reviewed by the Corporate Affairs managers in order to ensure that the legislation in effect and this agreement are complied with.

### Chapter IV

#### Interpretation

1. These rules and regulations do not attempt to replace or to be imposed on any provision governing the subject matter discussed herein and which is in force. All the provisions of this agreement shall be interpreted in a manner supplementary to said rules and regulations.

By virtue of the foregoing and being fully and completely in agreement with each and every one of the foregoing provisions, we hereby sign as follows:

[Illegible signature]

Edgar Cordero Ortiz  
Regional Corporate  
Affairs Manager  
British American Tobacco

[Illegible signature]

Gilberto Barrantes Rodriguez  
Director of Corporate Affairs  
Philip Morris

[Illegible signature]

Edgar Vargas  
Country Manager  
Republic Tobacco Co.

[Illegible signature]

Ramiro Ceballos  
General Manager  
Tabacalera Costarricense S . A.

2081376073

Figure 12: (continued)

The voluntary agreement, part of the industry's Project Cerberus<sup>114</sup> to develop a worldwide voluntary regulatory code as an alternative to the WHO FCTC, only eliminated radio and movie theater (but not television) commercials and tobacco billboards within 200 meters of schools.<sup>109, 115, 116</sup>

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 appealing images (Figure 13).



Figure 13: Tobacco industry billboards and advertisements following the voluntary agreement with the Ministry of Health (January 2001), which required the health warning message "Smoking is harmful to your health."



Furthermore the agreement, titled “De Palabra” (By Word) was never formally executed, relieving BAT and PMI of any legal obligation to honor its terms. Pardo justified the lack of a formal agreement to the press and to the public:

The tobacco companies and the Health Ministry arrived at the agreement three weeks ago and we are all in agreement with the cited points. It was not necessary to sign anything; we trust the word of the [tobacco] companies.<sup>109</sup> [translated by author]

The verbal agreement “De Palabra” did not go into effect until January 1, 2001 when BAT and PMI eliminated the 575 billboards near schools.<sup>112</sup>

The voluntary verbal agreement created the foundation to block future legislative proposals, including Bill 14.844, which sought to completely reform the 1995 law (Table 5). BAT lobbied against Bill 14.844 in the Legislative Assembly 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.”<sup>87</sup>

While Bill 14.844 stagnated in the Legislative Assembly, Minister of Health Pardo and President Abel Pacheco issued Decree 31616 on May 20, 2003, which nominally increased tobacco advertising restrictions beyond the 1995 law. In fact, the decree extended tobacco advertising restrictions on television by one hour, from 6:00 am-9:00 pm to 6:00 am-10:00 pm.<sup>117</sup> 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, the Legislative Assembly dropped Bill 14.844 from further consideration in September 2004.

## CHAPTER 6: TOBACCO INDUSTRY TACTICS AT THE REGIONAL LEVEL (1993-2000)

In 1986, member nations of the General Agreement on Tariffs and Trade (GATT), an international agreement between 123 nations aimed at reducing tariff trade barriers (taxes paid on imported and exported goods), began negotiations to further reduce agricultural tariffs (including tobacco). The tobacco industry, recognizing lower trade barriers resulted in less taxes paid on imported and exported tobacco products, began lobbying governments, and more importantly regional trade agreements, to adopt GATT tariff reductions on tobacco products. Meanwhile during the 1980s, BAT, recognizing the emergence of new trade blocs (regional trade agreements) and the reduction of tariff barriers, implemented Project Rationalization, a worldwide project to consolidate production and management into a few regional facilities to minimize company expenses.<sup>118</sup> By the late 1990s, these regional tactics enabled BAT to expand their Corporate Social Responsibility (CSR) Campaign across regional areas, which included a 2002-2003 Costa Rican CSR Social Report used in opposing legislation to advance the weak 1995 law.

### Eliminating tariffs in Central America

The Central American Common Market (CACM), a regional trade agreement between Central American countries, created in 1960, was revitalized during the 1990s to improve external trade and implement GATT tariff reduction measures.<sup>119</sup> While the CACM established a zero tariff rate for goods traded within Central America, a preferential tariff rate (which includes surtaxes and quotas on raw tobacco leaf) still remained. Following a visit to Costa Rica J.R. Patrick, BAT regional sales coordinator, outlined for Norman Davis, BAT Production, Planning, & Development Director, on August 15, 1991 the requirements of these surtaxes and quotas in Costa Rica:

- Permit from government authorities
- A tax amounting to the price differential between any lower imported price and the local price
- 12% surtax
- If re-dried tobacco is imported from Honduras or Panama then the full external tariff [60%] would apply<sup>120</sup>

Recognizing the GATT's shift to lower trade barriers, BAT and PMI began negotiating and lobbying each government in Central America and the "Secretaría de Integración de Economía de América Central" (SIECA, Secretariat for Central American Economic Integration), a technical advisory group to the CACM, to eliminate the preferential tariff rate on tobacco and cigarettes within Central America.<sup>121</sup> On November 26, 1992, Roberto Freire, RTC General Manager, and Federico Garcia, TC General Manager, sent a letter to Gonzalo Fajardo Salas, Costa Rican Minister of Economy, Industry, and Commerce, requesting the complete elimination of tobacco and cigarette tariffs in Central America (Figure 16).<sup>122</sup> In an April 1994 managers' monthly review, BAT stated "There should be free trade of tobacco and cigarettes within the CACM to gain economies of scale"<sup>123</sup> referring to the cost advantages BAT would obtain from eliminating

the preferential tariff rate in Central America. In an April 1996 BAT tobacco taxation/excise document, discussing strategies for reduced tobacco tariffs in the European Union, BAT stated that the “Central American Common Market was able to obtain a nil [zero] preferential rate for all members.”<sup>124</sup>

### **BAT Project Rationalization**

In response to the shift toward reduced trade barriers in the world during the late 1980s, BAT also embarked on Project Rationalization, a worldwide project which sought to close tobacco plants in several countries and consolidate production and management into a few regional facilities to minimize transportation and currency conversion costs and to focus local efforts on marketing and distribution (Figure 14).<sup>118</sup> An August 1995 BAT company review report discussed BAT’s rationale for Project Rationalization and its link with reduced tariff barriers:

The emergence of new trade blocks and the consequent reduction in tariff barriers should provide opportunities to improve efficiencies by concentrating production in fewer, larger plants... The more trade barriers come down the easier it will be to coordinate not only production but also marketing and distribution across wider areas.<sup>125</sup>

BAT began Project Rationalization originally in Europe during the mid 1980s,<sup>126</sup> and then in Central America in 1993 under the name “Project A,” by closing production plants in Guatemala, followed by El Salvador in 1996, Nicaragua in 1998, and Costa Rica in 2000,<sup>17</sup> to centralize Central American manufacturing and production in Honduras because of its lowest cost of living and labor costs<sup>118</sup> and BAT’s monopoly position there (with a 100% market share)<sup>127</sup> (Figure 14). (BAT continued growing tobacco in Guatemala.)<sup>128</sup> A May 1997 report of BAT Holdings Ltd Standing Committee, a high level management committee, discussed the importance of the project:

The proposed investment in Honduras plant and the subsequent closure of the other four plants in Central America allowing the individual company management teams to focus entirely on marketing and distribution, produces a positive financial return as well as the opportunity to strengthen British American Tobacco’s position in Central America and take advantage of the available economies of scale through the concentration of production at one facility.<sup>118</sup>

The standing committee also discussed the cost benefits of the project:

As the closures are implemented, certain staff and machinery (estimated at US\$3.9mn) will be transferred to Honduras where volumes are projected to increase from 2.3bn in 1996 to 8.1bn in the year 2001 with conversion costs reducing from US\$1.25 per mile to US\$0.75 per mile in the same period.<sup>118</sup>

On December 28, 1999, Benjamin Kemball, BAT’s Asia Pacific Regional Manager, issued a memorandum to BAT’s Tobacco Management Board, further explaining the benefits of Project Rationalization in Central America. Kemball reported that Project A would continue under the name Project ROCA and BAT would save approximately \$800,000 per year in Central America beginning in 2001.<sup>129</sup> Approximately half of the total, \$400,000, would come from transferring assets and ownership of local brands to an offshore account in Panama, which would not be subject to a withholding tax to create a new company called British American Tobacco Central America (BATCA), which opened on January 1, 2001.<sup>16, 17</sup>

**Selecting regional markets to promote CSR Social Reports**

The elimination of trade barriers and Project Rationalization helped facilitate BAT’s global plan of advancing the company’s Corporate Social Responsibility (CSR) Campaign by allowing BAT to coordinate marketing and distribution freely across regional areas. While the industry has traditionally used CSR campaigns to promote itself as a responsible company, especially with youth smoking prevention programs, by February 1999, BAT began integrating tobacco production into its CSR campaign,<sup>130</sup> and by July 2000, BAT realized the business benefits of CSR policies and practices.<sup>131</sup> As a result, BAT initiated a “scope study” in November 2000 to produce CSR Social Reports, which focused on promoting youth smoking prevention, consumer information, responsible marketing, and sensible regulation (Figure 15).<sup>132</sup> During its first cycle (2000-2001), BAT selected thirteen countries from each of its six designated regions in the world based on economic prosperity, and operational influence over its selected region (Table 6).<sup>133</sup> (BAT selected Costa Rica, along with Argentina and Brazil to represent the Latin America region.) Each of the thirteen countries represented “centers” of best practice through the ability of transferring skills and building capacity for other countries within their particular region.<sup>132</sup> (Example: Costa Rica was selected to transfer skills to other countries in Central America and the Caribbean.)

Regions	Africa	America Pacific	Asia Pacific	Europe	Latin America	Mesca (Middle East and Central Asia)
Selected countries	South Africa, Uganda, Zimbabwe	U.S.	Australia, Japan, Malaysia	Germany	Argentina, Brazil, Costa Rica	Russia, Sri Lanka

## EXPANSION OF THE TABACALERA HONDUREÑA S.A. FACTORY - HONDURAS

### 1. Objectives

- 1.1 This note details the next stages in the Manufacturing Rationalisation Project for Central America in line with the formal note to the BEC in October 1993 and initiated with the closure of the Guatemala factory in 1994.
- 1.2 The document includes the information required to make a formal proposal to the Tobacco Management Board for their :
- (1) confirmation/agreement to the consolidation of production for Central America in the Honduras plant.
  - (2) approval for the investment of US\$ 16.5 mn, of which US\$ 3.9 mn represents transfers within the Group, in the Honduras plant over the next 3 years.
  - (3) agreement in principle to the closure of four of the five plants currently operating in the region. Separate notes will be submitted for approval of each factory closure.

### 2. Background

2.1 Following the BEC note of October 1993 and the closure of the Guatemala plant in 1994, the 1997-1999 Company Plan reflected the next stages of factory rationalisation within Central America under the concept of "Project A".

2.2 Project A considers.

- \* the concentration of regional production in Honduras
- \* the closure of the remaining four plants by the year 2000

1997	Panama	(Q3 1997)	420 mn cigarettes
1997	El Salvador	(end 1997)	995 mn cigarettes
1998	Nicaragua	(end 1998)	1580 mn cigarettes
1999	Costa Rica	(end 1999)	1520 mn cigarettes

- \* the investment of US\$ 16.5 mn (vs. US\$ 8.9 mn in the Company Plan) in the Honduras plant
- \* the sale of the closed sites (US\$ 14.6 mn proceeds), construction of new TM&D facilities in El Salvador (US\$ 1.3 mn) and rental of offices in the other countries
- \* the effect of changes to working capital, expenses and labour
- \* the external environment regarding legislation, taxes, fiscal conditions and concessions
- \* the treatment of shareholders and government bodies
- \* market research to assess consumer reaction to a switch in product sourcing
- \* an analysis of the optimum legal entities and shareholdings

Figure 14: BAT's plans for Project Rationalization in Central America.<sup>129</sup>

- 4.7 The total manning in manufacturing and the support functions in the region and the total reduction over the period is as follows:

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>Variance</u> <u>1997 vs 2001</u>
<b>Manufacturing:</b>							
Management	39	41	32	22	16	16	25
Operational	<u>336</u>	<u>339</u>	<u>267</u>	<u>228</u>	<u>172</u>	<u>175</u>	<u>164</u>
Total Manufg	375	380	299	250	188	191	189
<b>Administration</b>	200	197	183	147	136	137	60
Marketing	587	510	484	461	443	432	78
Leaf	45	45	40	40	40	40	5
<b>Total Manning</b>	1207	1132	1006	898	807	800	332

The reduction in marketing establishment is primarily attributable to improvements in operational efficiencies and is not related to this proposal

- 4.8 From a marketing and distribution perspective, the proposed changes will allow management teams in the individual markets to focus entirely on the needs of the market with expertise concentrated on achieving marketing objectives and seeking out competitive advantage.
- 4.9 Market research has been carried out to assess consumer reaction to a switch in product sourcing, comparative sources and reaction to a potential competitor attack using the platform of imported versus local product.

#### **NOTE TO THE TOBACCO MANAGEMENT BOARD**

The following Directors support this proposal:  
Mr. Antonio Monteiro de Castro

*New file*



#### **RESTRUCTURING OF LEGAL ENTITIES – CENTRAL AMERICA**

##### **1. Purpose**

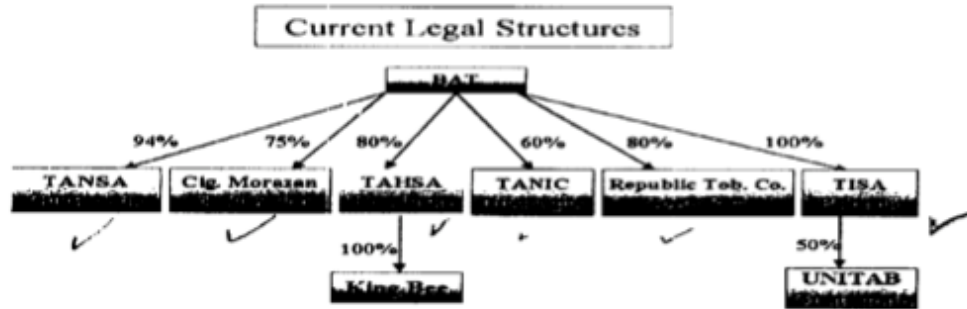
The TMB is requested to note the proposal to redesign the legal structure of the operating companies in Central America (Project ROCA). The proposal is a continuation of the integration of the strategies, operations and management structure within the Central American cluster. As part of this vision, strategic decisions have been taken to increase the effectiveness and efficiency of the business and add the maximum possible value to the resources contributed by the shareholders. Examples of these significant changes include the redefinition of organisational structures, rationalisation of the brand portfolio, centralisation of tobacco growing and cigarette manufacturing, and the sale of non-productive assets.

Due to the strong legal nature of the project, a thorough analysis has been carried out with Baker & McKenzie (B&M), who have validated the reorganisation proposal (due diligence) with their correspondents throughout Central America and have concluded that the project is feasible. To ensure feasibility from a tax point of view, John Dando, Senior Tax Manager at the Centre, has provided support on the proposal. Additionally, Business Development Department (BDD) has confirmed that the project is advantageous from a business perspective and that the economic study supporting the project is built on fair and sound financial practices.

##### **2. Summary Proposal**

BAT's interests in Central America comprise six operating companies, which have become increasingly integrated in terms of their strategies, portfolio, operations and management structure. Minority shareholders exist in five of the companies, with TISA (Panama) being the only exception. The current legal structures are as follows:

Figure 14: (continued)



The legal reorganisation project in Central America would consist of the creation of a regional distribution company based in Panama operating as an offshore company with branches in each of the remaining five countries. Existing companies would transfer their commercialisation assets and ownership of local brands to the branches of the new company in exchange for shares in the new company. They would then be liquidated, with the exception of Honduras and Panama. Production would remain in TAUSA (Honduras) and would be marketed through TISA (Panama), who would also hold BAT's shares in the regional company. TISA would absorb area expenses and transfer them to the branches through the price of finished goods, thus reducing the tax burden of the operation.

The following diagram represents graphically the proposed structure:

### 3. Financial Appraisal

#### 3.1 Economic Model Results

An economic study has been carried out in order to determine the relative shareholdings in the new company. The study was based on a NPV analysis of expected future cash flows generated by the brand portfolio of each company over a 15 year period, including a terminal value, based on the approved Co Plan for Central America. The reasonableness of these assumptions as well as the methodology used were analysed and validated by PricewaterhouseCoopers. The results of the economic study may vary slightly following the review that BDD will carry out by early January 2000.

The results of the economic model indicate that the shareholding interest in the new company would be 76.94% for BAT and 23.06% for minority shareholders, as shown in the following diagram:

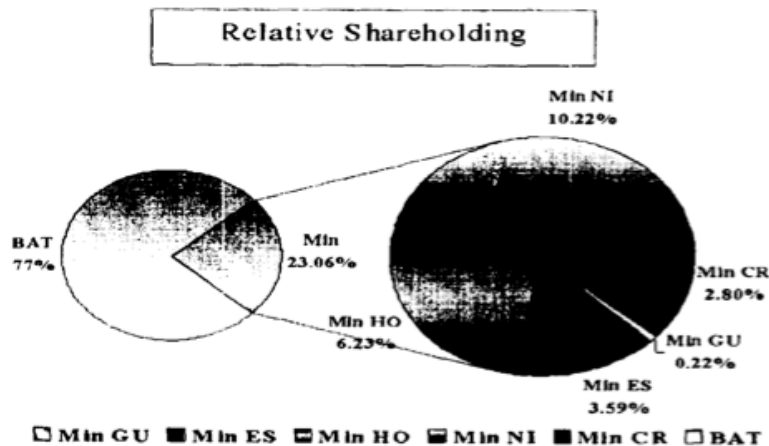


Figure 14: (continued)

## Scope

Area	First Cycle (2000 / 2001 )	Subsequent cycles
Corporate Structure	Core businesses only within the BAT plc structure.	Possibly expand to include peripheral subsidiaries
Business activities	All activities which may have a social (rather than just a financial) impact.	Review periodically. No intent to widen scope unless social impact discovered via dialogue
Issues Scope	Focus around the six key corporate "hot" issues. <ol style="list-style-type: none"> <li>1. Consumer information</li> <li>2. 'Safer' products</li> <li>3. Youth smoking prevention</li> <li>4. Responsible marketing</li> <li>5. Sensible regulation</li> <li>6. Business conduct and accountability</li> </ol>	Seek to expand issues scope based on feedback.
	Allow markets to develop local issues policy derived from local dialogue / concerns, especially issues derived from stakeholders who are currently poorly represented.	Ongoing expansion and exploration by markets of local issues.
Geographical Scope	Markets selected for their ability to become centres of best practice in terms of implementing AA1000. <ul style="list-style-type: none"> <li>• Argentina</li> <li>• Australia</li> <li>• Brazil</li> <li>• Costa Rica</li> <li>• Germany</li> <li>• Japan</li> <li>• Malaysia</li> <li>• Russia</li> <li>• South Africa</li> <li>• Sri Lanka</li> <li>• Uganda</li> <li>• USA</li> <li>• Zimbabwe</li> </ul>	Centres of excellence will be involved in building capacity within the region during first cycle. Intention is to expand the scope each year by approx 20 markets.
Stakeholder Scope	Derived in the first cycle from the stakeholder mapping and classification process within markets and also at corporate level. Will focus on stakeholders associated with the six key issues plus any stakeholders who are impacted upon but who have low levels of influence or representation	Expand stakeholder scope with time such that all stakeholders are included. Markets to produce a plan / timetable for stakeholder inclusion.

## Social Reporting Structure

The corporate brand will be considered as one of the markets' major stakeholders, the requirements of which will be defined by a set of policy statements, standards (i.e. marketing code), indicators and targets. These will be universally derived in each market and will form the basis of the BAT plc global social report.

Markets will report back to the "centre" via regions on this core information.

In turn, the "centre" will provide markets with the results of corporate performance to enable this to be included in the market report and to be commented upon by market-specific stakeholders.

<sup>1</sup> Attempts will be made to engage with all key stakeholders either directly or through suitable intermediaries. The social auditing process will recognise and report on such attempts but, where dialogue is not practical or possible within the timescale and resources of the project, efforts will be channelled towards more participatory groups i.e. the process will not become hung up on the need to engage with hostile or unco-operative stakeholders. It is hoped that, as the company is seen to respond to dialogue, opinion will shift over a period of time in recognition of the benefits and opportunities in participating and that hitherto external stakeholders will choose to participate.

**Figure 15: February 2000 BAT industry document describing the company's Scope Study objectives.**<sup>132</sup>



## Social Accounting Cycle

First cycle to commence in the second quarter of 2001 with annual reporting thereafter in all markets and at corporate level, timing to coincide with the publication of the BATplc financial report in March / April.

### Ownership

#### The "Centre"

- Development of processes to meet the corporate strategy
- Improvement / revision of the process in response to global standards / expectations / best practices.
- Provision of resources, and tools to the markets
- Dialogue with global stakeholders and exerting global leverage where needed
- Implementation of initiatives at global level in response to stakeholder or market needs.
- Definition of global issues, indicators and targets
- Change management

#### The Regions

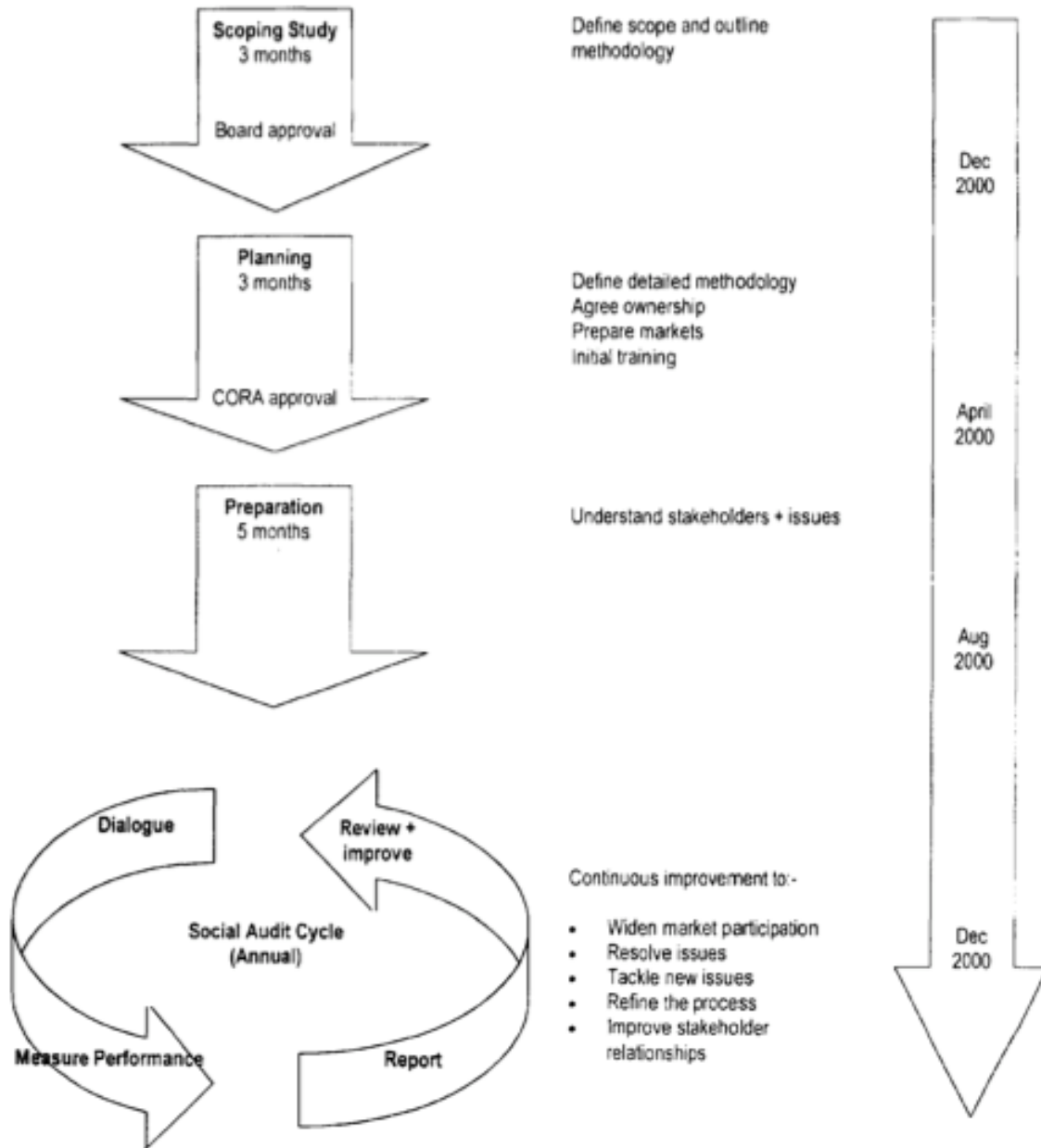
- Approval of regional targets
- Setting of market targets
- Dialogue with regional stakeholders and exerting global leverage where needed
- Co-ordination of communications, data and reports to and from the "centre"
- Auditing of processes
- Building capacity, transfer of skills and the development of regional best practice
- Change management

#### The Markets

- Implementing the stakeholder mapping and classification + reputation tracker protocols
- Designing and carrying out additional specific stakeholder dialogue and exploring local issues
- Defining local indicators
- Reporting corporate and market data
- Communication to local stakeholders, design and publication of market report
- Skills transfer and capacity building
- Change management

**Figure 15: (continued)**

**Process Summary**



**Figure 15: (continued)**

## **Regional success translates into further tobacco industry dominance in Costa Rica**

In 2003, BAT placed a 2002-2003 CSR Social Report on its CSR website, which included extended studies on youth prevention programs paid for and completed by BAT to promote responsible marketing,<sup>87</sup> strengthening its already powerful position in Costa Rica. The CSR Social Report also helped block Bill 14.844, which sought to completely reform the 1995 law (Table 5), by arguing for “self 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 restrictions were necessary,<sup>87</sup> even though the law permitted smoking in workplaces and public places and included weak restrictions on tobacco advertising. BAT also promoted the De Palabra verbal agreement in the CSR Social Report as part of its effort to block Bill 14.844. BAT extended the Costa Rican Social Report model in Central America and the Caribbean to Trinidad and Tobago (2004-2005), Honduras (2007), and Jamaica (2008).

## **CHAPTER 7: THE WORLD HEALTH ORGANIZATION FRAMEWORK CONVENTION ON TOBACCO CONTROL (2000-2009)**

On May 21, 2003, the United Nations ratified the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), an international health treaty which attempts “to protect present and future generations from devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.”<sup>134</sup> Despite facing tobacco industry interference during the FCTC negotiations (2000-2003) and attempts by the industry to delay the treaty in Costa Rica (2004-2008), Costa Rica signed the FCTC in July 2004 and ratified the treaty in August 2008. As of May 2012, the FCTC comprised of 172 parties (countries who have signed and ratified the treaty.) Eleven more countries have signed the treaty but have not ratified (Argentina, Cuba, Czech Republic, El Salvador, Ethiopia, Haiti, Morocco, Mozambique, Saint Kitts and Nevis, Switzerland, and the U.S.)

### **Costa Rica’s role during FCTC negotiations (2000-2003)**

#### ***Tobacco industry usage of Costa Rica to weaken FCTC***

During WHO FCTC negotiations between 2000 and 2002, PMI used the weak 1995 law in Costa Rica in an attempt to weaken the treaty. In a 2001 PMI/PM USA report titled, “Philip Morris Discusses WHO’s Proposed Framework Convention,” PM explained its support for “reasonable smoking restrictions” citing the 1995 law: “In Costa Rica, an accommodation law which requires establishments to designate smoking and nonsmoking areas has been in place for the last 5 years.”<sup>135</sup>

#### ***Costa Rican delegation’s opposition to FCTC***

The Costa Rican delegation opposed the FCTC’s provision for a complete prohibition of tobacco advertising throughout the treaty negotiations (2000-2003). During the second meeting of the working group on the WHO FCTC on February 29, 2000, the Costa Rican delegation, which included Nora Ruiz de Angulo (Ambassador of Costa Rica to the United Nations), Franz Chaves Sell (Vice Minister of Health), Jorge Vilalobos (Associate from the Ministry of Health), and Christian Guillermet-Fernandez (Executive Minister of Costa Rica to the United Nations) stated their opposition to Article 13 of the FCTC (comprehensive prohibition of tobacco advertising, sponsorship, and promotion):

We are against an absolute ban on advertising despite the fact that we are fully in favor of very stringent restrictions on advertising. We cannot go along with a total ban because our constitution prohibits it absolutely. It is impossible for us fully to ban tobacco advertising. We can regulate but we cannot ban.<sup>116</sup>

In November 2000, the Costa Rican delegation, headed by Health Minister Rogelio Pardo (who verbally agreed to the industry’s De Palabra voluntary agreement), continued to

oppose the FCTC's provision for a complete prohibition of tobacco advertising.<sup>116</sup> (PM met with Pardo in March 2002 to "discuss his position on the FCTC".<sup>136</sup>) On November 23, 2001, the Network for Accountability of Tobacco Transnationals (NATT), an international nongovernmental organization that opposes smoking, presented Costa Rica with the "Marlboro Man Award," which was awarded to countries who were "espousing treaty positions that benefit the tobacco industry at the expense of public health."<sup>137</sup>

## **The FCTC process in Costa Rica**

### ***ACSOAP pushes Costa Rica to sign FCTC***

Despite Costa Rica's opposition to the FCTC during the negotiations, ACOSAP promoted the signing of the treaty in 2003 by sending copies of the agreement to legislators and college professors explaining its significance for tobacco control.<sup>11</sup> ACOSAP collected and sent 10,000 signatures supporting the FCTC to the Legislative Assembly, which contributed to Costa Rica signing the FCTC on July 3, 2003.<sup>11</sup> During the remainder of 2003 and throughout 2004, ACOSAP advocated in the media for the ratification of the FCTC, which led President Abel Pacheco to introduce Bill 15.687 to ratify the FCTC on August 25, 2004.<sup>138</sup>

### ***DR-CAFTA interference with the FCTC and implications for tobacco control***

Between 2004 and 2007, the importance of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), an extension of the Central American Common Market that included the Dominican Republic and the US, displaced discussions of the FCTC and delayed its ratification.<sup>139-141</sup> DR-CAFTA began in 2002 under the Bush Administration and aimed to eliminate tariffs on most goods and services, explicitly including cigarettes and tobacco. (Members of the Bush Administration and the Republican Party had close ties with the tobacco industry, including Karl Rove, Bush's senior advisor who was a PM lobbyist (1991-1996),<sup>142</sup> and Haley Barbour, the chairman of the Republican Party who was also a PM lobbyist.<sup>143</sup> Philip Morris also gave \$2.8 million to the Republican Party during the 2000 elections.)<sup>144</sup> While the CACM already eliminated tariffs on cigarettes and tobacco within Central America, goods imported from the Dominican Republic and the US were subject to a 20% tariff. (The U.S. was interested in eliminating tariffs on high volume traded products with the Dominican Republic such as apparel, jewelry, and textiles, but also machinery, oil products, and plastic.)

DR-CAFTA also contains a provision that protects intellectual property rights, exclusive individual or company rights such as copyrights, trademarks, or patents which protect against the piracy and manufacture of counterfeit goods.<sup>10</sup> Although no evidence was found illustrating the industry's direct role in pushing for this provision, tobacco companies have favored intellectual property rights to promote business freedoms, which ultimately undermine public health. (For example: In 1994, PMI opposed Canada's proposal for plain packaging of cigarettes by arguing the proposal violated the company's intellectual property rights as brand variations should be protected against plain packaging to distinguish the difference between their products.)

PMI advocated for the adoption of DR-CAFTA in Costa Rica using an earlier 1994-1996 Strategic Plan to lower tariffs:

**OBJECTIVE:** To take advantage of the emerging regional trade blocs in order to increase productivity and maximize profitability.

**STRATEGY/ACTION PLAN:** To develop and negotiate policies with Latin American governments which lower taxes, reduce tariffs and otherwise improve the productivity of our food and tobacco businesses. Coordinate regional task forces, provide taxation/tariff expertise; and hire trade consultants in order to develop regional positions on key issues (on-going)... Develop argumentation & economic studies against barrier to free trade.<sup>145</sup>

Using these strategies, PMI sponsored “Academia de Centroamérica” (Central America Academy School), a conservative think tank that conducts social and economic analysis on individual liberties and the market economy,<sup>146</sup> to influence the adoption of DR-CAFTA. (We do not know when this sponsorship began; when we contacted Academia de Centroamérica, the Administrative Director told me that she could not release that information because the Academia is private.<sup>147</sup>)

Between 2002 and 2006 Academia de Centroamérica produced a series of articles on DR-CAFTA advocating for free trade and the reduction of trade barriers that were presented before the Legislative Assembly, including a 2006 article by Alberto Trejos, an “associate” of the Academia who had been Costa Rican Minister of Trade from 2002-2004 and strong proponent of DR-CAFTA, which argued for DR-CAFTA’s approval.<sup>148</sup> Furthermore PM met with Trejos in March 2002 “to discuss foreign trade and investment.”<sup>136</sup>

In 2006, newly elected President Oscar Arias, whose girlfriend Geovanna Mendiola’s father, Francisco Mendiola, was a former partial owner of Tabacalera Costarricense,<sup>149</sup> made DR-CAFTA his administration’s top priority.<sup>150</sup> Public sector workers, unions, farmers, and indigenous people created massive protests over agricultural subsidies and farmers’ rights (but not tobacco), forcing a public referendum to decide DR-CAFTA’s fate;<sup>150</sup> 51.6% of voters approved the agreement in an October 2007 election, and on November 25, 2007 President Arias signed the agreement.

### ***More attempts to delay FCTC ratification***

In 2006, BAT posted another CSR 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,<sup>151</sup> including preempting health warning labels in Central America.<sup>152</sup> The 2006 CSR Social Report praised a voluntary measure made in November 2005 to increase non-pictorial health warning labels to occupy 30% of cigarette packages in Central America (Figure 16),<sup>152</sup> in an 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 the usage of pictures or pictograms are "far more effective than those that are text-only."<sup>153</sup> BAT made similar voluntary measures in Colombia, Honduras, Argentina and Trinidad and Tobago to preempt FTC guidelines.<sup>154</sup>





Figure 16: (continued)



The 2006 CSR Social Report also promoted a voluntary measure made by BAT in 2007 to eliminate tobacco advertising in domestic and foreign newspapers by December 2007 (gradually from August 1<sup>st</sup> to December 31<sup>st</sup>) and replace the advertising with youth smoking prevention methods.<sup>152</sup> BAT announced in the 2006 CSR report that it eliminated all advertisements in newspapers by the end of 2007.<sup>152</sup>

The BAT Social Report also promoted the separation of smoking and nonsmoking areas with “Respetamos Su Elección” (We Respect Your Decision), a continuation of the Courtesy of Choice campaign. Similar to the “Red Light/Green Light” accommodation program in the US,<sup>62, 155</sup> “We Respect Your Decision” promoted the creation of smoking and nonsmoking areas in restaurants, hotels, and other affiliated places, in which BAT provided external signs (table and wall labels) and technical assistance for the appropriate location of these spaces.<sup>152</sup> These signs were also placed in the entrance of these locations to communicate to smokers and nonsmokers. By December 2007, at least 100 places had placed these signs in their establishments.<sup>152</sup> More importantly, BAT used the color “green”(traditionally a positive and safe color used to indicate something acceptable) to specify “smoking” sections and the color “red” (traditionally a negative and danger color used to indicate something forbidden) to specify “nonsmoking” sections (Figure 17).



Figure 17: BAT signs used to promote the company's program “We Respect Your Decision.”<sup>152</sup>

## **RENATA pushes Costa Rica to ratify FCTC**

Beginning in 2007, “Red Nacional Antitabaco” (RENATA, National Anti-Tobacco Network), a tobacco control advocacy group comprised of advocates from governmental health institutions and nongovernmental tobacco control associations (Figure 18), emerged and sparked new efforts to ratify the FCTC. Members of 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.<sup>156</sup> RENATA’s pressure combined with negotiating efforts by Legislator Orlando Hernández Murillo (PAC), a major proponent of tobacco control and collaborator with RENATA, succeeded in making Costa Rica become the 165<sup>th</sup> country to ratify the FCTC on August 14, 2008 by Law 8655.<sup>12</sup>



## **Bill 17.371 to implement FCTC**

On October 21, 2008, with the support of RENATA, whose members consulted with international experts, Legislator Hernández Murillo (PAC) proposed a bill to implement all the FCTC provisions. RENATA, with technical and financial support from the Campaign for Tobacco Free Kids, supported this proposal by conducting a smoking survey in Costa Rica, which revealed 93% of the public supported a 100% smokefree law.<sup>158, 159</sup> RENATA’s presentation of the survey results in April 2009 led Legislator Orlando Hernández Murillo to introduce Bill 17.371 on May 5, 2009, which proposed 100% smokefree environments, the complete elimination of tobacco advertising, inclusion of pictorial health warning labels on cigarette packages, and increased cigarette taxes and penalties for noncompliance (Table 7).<sup>6</sup>

Legislation	Hernández Murillo's original proposal of Bill 17.371 (5 May 09) <sup>6</sup>	Health Ministry's weakened version of Bill 17.371 (12 March 10)	2010 elected Legislators' introduction of Bill 17.317 (30 Nov 10)	PAC version (14 Feb 11)	PLN version (22 March 11)	Aiza version (24 Aug 11)	Social Issues committee version (30 Aug 11)	Law 9028 (27 Feb 11)
Workplaces & Public Places	100% smokefree	100% smokefree	100% smokefree (exception: restaurants and bars must have DSAs)	100% smokefree (hotels not included)	100% smokefree (exception: restaurants and bars must have DSAs)	100% smokefree (hotels not included)	100% smokefree (hotels not included)	100% smokefree (hotels not included)
Advertising	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	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	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	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	Pictorial: No less than 70% on front (graphic), and 100% on back (text only)	Pictorial: No less than 30% on front (graphic), and 100% on back (text only)	Text only: Up to 50% on front, and 100% on back	Pictorial: No less than 50% on front (graphic), and 100% on back (text only)	Text only: No less than 50% on front, and 100% on back	Pictorial: Up to 50% on front (graphic), and 100% on back (text only)	Pictorial: 50% on front (graphic), and 100% on back	Pictorial: 50% on front (graphic), and 100% on back
Penalties and Sanctions	-Verbal or written warning -1-10 base salary- Suspension and possible closure for smoking in public places or advertising	-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	-No warning -1-10 base salary- Suspension and possible closure for smoking in public places or advertising	-Verbal or written warning -25% of base salary- Suspension and possible closure for smoking in public places	-Verbal or written warning -5% of base salary- Suspension and possible closure for smoking in public places	-No warning -10% of base salary- Suspension and possible closure for smoking in public places or advertising	-No warning -15% of base salary- Suspension and possible closure for smoking in public places or advertising
Taxes (per cigarette package)	100 colones (\$0.20)	25 colones (\$0.05)	20 colones (\$0.04)	20 colones (\$0.04)	15 colones (\$0.03)	15 colones (\$0.03)	20 colones (\$0.04)	20 colones (\$0.04)

DSAs: Designated Smoking Areas

## **CHAPTER 8: TOBACCO INDUSTRY CONTINUED SUCCESS (2008-2011)**

### **PMI lobbying efforts to block FCTC implementation**

On October 22, 2008, a day after Legislator Hernández Murillo's original proposal, Nicolas Denis, PMI Director of Leaf Agronomy, lobbied the Legislative Assembly to assure legislators that further smoking restrictions were unnecessary. Denis cited PMI's corporate social responsibility policies of voluntarily supporting prohibition of smoking 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."<sup>160</sup> Denis also presented the standard industry argument that increasing taxes would generate contraband,<sup>160</sup> ignoring the industry's important role in smuggling.<sup>161-163</sup>

### **BAT's counter proposal**

On December 7, 2009, BAT presented an economic, legal, and social analysis of the bill to the Legislative Assembly as part of its opposition campaign. Following standard industry arguments, the economic analysis claimed that smokefree laws resulted in economic losses for the hospitality industry,<sup>164</sup> the legal analysis rejected the complete prohibition of tobacco advertising citing Constitutional Court Ruling 4804,<sup>165</sup> and the social analysis rejected the proposed pictorial health warning labels, stating "health warning labels would oppose the obligations of international treaties,"<sup>166</sup> such as DR-CAFTA, which contains intellectual property rights that protect a company's trademark rights to advertise.<sup>10</sup> The social analysis also rejected smoking bans in favor of designated smoking areas with ventilation systems and again asserted an individual's right to smoke,<sup>166</sup> a position CACORE once again supported (Figure 24).<sup>167</sup> As of May 2012, CACORE also continues to support the Courtesy of Choice campaign and youth smoking prevention programs (Figure 25).

### **Tobacco industry interference with the Ministry of Health**

On March 24, 2010, Legislators Hernández Murillo and Lesvia Villalobos (PAC) reported that the tobacco industry met with the Health Ministry where the text of Bill 17.371 was weakened.<sup>168</sup> The text reduced the size of pictorial health warning labels, 70% to 30% of the pack, and lowered the tax 100 to 25 colones (\$0.20 to \$0.05) per pack (Table 7).<sup>168, 169</sup> Health Minister María Luisa Ávila originally denied Hernández Murillo's claim that she met with the tobacco industry in March 2010, but after strong pressure from advocate groups, including RENATA, Minister Ávila admitted two weeks later that "she met with the tobacco companies to listen to their approach but the meeting did not imply agreeing to their demands and requests."<sup>169</sup> Minister Ávila's meeting with the tobacco industry delayed consideration of Bill 17.371 between March and May 2010. Furthermore, because legislators cannot serve two consecutive terms, the complete turnover of legislators in the May 2010 election required tobacco control advocates to brief new legislators on the importance of the original Bill 17.371, further delaying its consideration.<sup>170-175</sup>

## **CHAPTER 9: TOBACCO CONTROL AVOCACY SUCCESS (2010-2012)**

Between 2010 and 2012, RENATA made a committed effort to relentlessly inform and alert the media, and expand and mobilize a coalition of international health groups and experts to effectively inform lawmakers on a day to day basis about the importance of the FCTC. Furthermore, RENATA lobbied legislators about the importance of FCTC Article 5.3, which protects public health policymaking from tobacco industry interference. This effort helped legislators reject private meetings with the tobacco industry in August 2011. These combined efforts helped legislators focus and pass a strong tobacco control law.

### **Tobacco industry interference with 2010 elected legislators**

As soon as the new Assembly convened, RENATA was able to establish relationships with Members of the Social Issues committee, which has jurisdiction over tobacco legislation. Despite RENATA providing volumes of information to legislators on the most effective policies for implementing the FCTC, in November 2010, Legislators Luis Antonio Aiza (PLN, the head of the Health Committee), Damaris Quintana (PML, who had publicly argued against high tobacco taxes on the grounds that they would increase contraband, a common industry argument), and Victor Hernández (PAC) reintroduced Bill 17.371 after including an exemption for designated smoking areas in restaurants and bars (Table 7). (Under Costa Rican law the same bill and bill number can continue with a new the congressional session and can be motioned to be adopted by any new legislator. A bill only dies after 4 years of no action.) Legislator Alicia Fournier, who in August 2010 supported 100% smokefree environments and implementing the FCTC,<sup>176</sup> stated in January 2011 that the bill “has to create special rooms for smokers in public places. This is a process, these things cannot happen in one big blow,”<sup>177</sup> illustrating the industry’s continued dominance to influence tobacco control policies in Costa Rica.

### **RENATA’s success preventing weak bills and helping re-introduce strong bills**

In January 2011, RENATA met continuously with legislators, informing them about the weakness of the November 2010 version of Bill 17.371 and the importance of the FCTC. RENATA urged legislators not to submit the weak bill for a vote because it did not establish 100% smokefree environments.<sup>178</sup> Recognizing the industry’s dominance in Costa Rica, RENATA sought the financial and technical support of the international community and received a grant from the Bloomberg Initiative through the Campaign for Tobacco-Free Kids. This support allowed RENATA to launch a series of media events to bring attention to the issue. For example, in January 2011, RENATA placed 50 1.5 meter cylinders with faces and stories of victims of tobacco related diseases in front of the Legislative Assembly (Figure 19).<sup>179</sup> The Mayor of San Jose, Gonzalez Ramirez, also placed the same stories as posters in 100 bus terminals throughout San José, the capital of Costa Rica.<sup>179</sup> RENATA used the media opportunity created by these events to urge legislators to approve a bill that would meet FCTC standards. As a result of RENATA’s lobbying efforts and media advocacy, the legislators dropped consideration for the bill in January 2011.



**Figure 20: In January 2011, RENATA placed 50 1.5 meter cylinders with faces and stories of victims of tobacco related diseases in front of the Legislative Assembly.**

157

In February 2011, RENATA worked with legislators to introduce a new version of Bill 17.371 that would effectively implement the FCTC. On February 14, 2011, members of the PAC party introduced a new bill that established 100% smokefree environments, higher taxes and stronger tobacco advertising restrictions (Table 7). In addition, on February 23, 2011, RENATA coordinated a press conference in the Legislative Assembly, which included five out of the nine members of the Social Issues Committee, representatives from PAHO, and lawyers from the seven Central American countries.<sup>180</sup> All of the speakers at the press conference supported the passage of the new bill.

Despite the intense lobbying and media pressure by RENATA, on March 22, 2011, the PLN party introduced a counter version of Bill 17.371, which mirrored the weak November 2010 version of Bill 17.371 that RENATA helped defeat in January 2011. The PLN March 2011 version of Bill 17.371 again allowed designated smoking areas and lowered tobacco taxes (Table 7). RENATA immediately opposed the PLN March 2011 version in the media and argued it protected the tobacco industry not the health of Costa Ricans.<sup>181</sup>

In April 2011, the PLN lost control of the leadership in the Legislative Assembly, which allowed Rita Chaves (PASE), a strong supporter of tobacco control, to become president of the Social Issues Committee. In May 2011, Chaves held public hearings on the two versions of bill 17.371. Between May and August 2011, RENATA consistently met with legislators to inform them about the importance of the FCTC and the tobacco industry's consistent behavior around the world fighting tobacco control measures. For example, in May 2012, RENATA recruited Dr. Reina Roa, a member of Panama's Health Ministry, to explain to legislators that Panamá had increased their tobacco taxes in 2009 and, contrary to predictions by the tobacco industry and its allies, contraband had not increased.<sup>182</sup> Dr. Roa confirmed that the industry's rhetoric in the media that Panamá was facing problems of increased contraband was extremely exaggerated.<sup>178</sup>

Between May and August 2011, RENATA also educated legislators about the importance of FCTC Article 5.3, which insulates public health policymaking from tobacco industry interference.<sup>178</sup> RENATA informed legislators about the problems from the previous year when government officials privately met with the tobacco industry to weaken and delay the bill. Members of RENATA also made signs discussing the importance of the law and Article 5.3, which they placed on the outside windows of the Social Issues committee room during congressional meetings (Figure 20).

Meanwhile, in August 2011, legislators reported to the *La Nacion* newspaper that Susana Salas, Tabacalera Costarricense's (PMI) Corporate Manager, sent multiple emails to various legislators requesting private meetings to discuss tobacco taxes and smokefree spaces.<sup>183</sup> Legislators Victor Emilio Granados and Patricia Perez told reporters Salas stated in the email that taxes were excessive and Tabacalera Costarricense was willing to negotiate a compromise on the tax amount.<sup>183</sup> Significantly, the legislators publically stated that they knew full well that the FCTC did not allow meetings with the tobacco industry.<sup>183</sup>



Figure 20: Signs made by RENATA discussing the importance of the law and Article 5.3, which were placed on the outside windows of the Social Issues committee room during congressional meetings between May and August 2011. Top left poster reads “We want a LAW that protects the health of all Costa Ricans and not the interests of the tobacco companies.” Top right poster reads “Health is a PRIORITY of political action, NOT A MATTER OF: Party, your ideology, or your belief.” [translated by author] <sup>157</sup>



These statements reflected RENATA's persistence to continuously inform legislators about the importance of FCTC Article 5.3 and marked a significant change from the previous year when public officials privately met with the tobacco industry. Members of RENATA admitted that the tobacco industry also requested a meeting with RENATA in August 2011, which RENATA refused.<sup>178</sup> RENATA's success in convincing the majority of legislators about the importance of the FCTC resulted in the legislators approving the PAC February 2011 version (which established 100% smokefree environments and higher tobacco taxes) in the Social Issues Committee on August 30, 2011.

Despite the majority of legislators supporting the bill, a few legislators continued to promote pro-tobacco industry positions. During the debates in August 2011, Legislator Victor Hugo Viquez openly stated that he supported the tobacco industry,<sup>184</sup> and argued the industry position that increased tobacco taxes would result in contraband.<sup>185</sup> Also on August 24, 2011, one week before the bill was approved in the Social Issues committee, Legislator Luis Antonio Aiza, who submitted the weakened November 2010 version of Bill 17.371, attempted to once again delay the strong bill by introducing another counter version of the bill that allowed the selling loose cigarettes, lowered penalties for non-compliance, and contained weaker tobacco advertising restrictions (Table 7). Legislators in the Social Issues committee publicly stated that RENATA warned them of a such a last minute move to delay the bill, and, as a result, legislators rejected Aiza's counter version of the bill.<sup>186</sup> Legislator José Maria Villalta told reporters that Aiza "came to defend the interests of the tobacco companies."<sup>186</sup> RENATA also produced a press conference together with legislators to denounce Aiza's last minute move.<sup>187</sup>

RENATA continuously applied pressure on the Congress to bring the bill for a vote. In September 2011, RENATA, with financial and technical assistance from CFTK, placed a large clock in front of and inside the Legislative Assembly to show lawmakers that every 2 hours 40 minutes a Costa Rican died from tobacco (Figure 21).<sup>188</sup>

Although the tobacco industry and CACORE continued to complain in the media about contraband and smoker's rights to oppose increased tobacco taxes and 100% smokefree environments, the strong version of the bill was finally summoned for a vote of the full Legislative Assembly, which overwhelmingly passed it 45-2 on February 27, 2012.<sup>189, 190</sup> The law established 100% smokefree environments in workplaces and public places (except hotels), required restrictions on tobacco advertising in , increased tobacco taxes and penalties for non-compliance with law, and required large graphic cigarette health warning labels (Table 7).

Ten legislators, Luis Antonio Aiza and Victor Hugo Viquez, who had openly stated that he supported the tobacco industry in August 2011, challenged the bill by sending it to the Constitutional Court (Sala IV) to determine the bill's constitutionality. Although the petition was not received in time to prevent the vote, the Constitutional Court accepted the petition four days later.<sup>191</sup> In response to this challenge, the Constitutional Court ordered the President to suspend signing and publishing the new law for 30 days to allow the Constitutional Court to determine if the bill was unconstitutional.<sup>191</sup>



**Figure 21: Large clock placed by RENATA in front of and inside the Legislative Assembly to show lawmakers that every 2 hours 40 minutes a Costa Rican died from tobacco. The caption reads “Judges, you have in your hands a Costa Rican tobacco control law that protects the life and health of the population.” [translated by author] <sup>157</sup>**

On March 20, 2012, the Constitutional Court declared the bill constitutional, stating that there was no proof the bill’s tax increase would encourage contraband, and that the bill did not infringe on smokers’ rights.<sup>192</sup> The same day the Court ruled, President Laura Chinchilla said on her twitter account “I celebrate that the Sala IV gave the green light to the anti-tobacco bill. Nothing will stop us from signing it, and we will do it as soon as possible.”<sup>192</sup> Two days later she signed the law and published it as Law 9028.

As of May 2012, the regulations to enforce the law were still pending.

## CHAPTER 10: CONCLUSIONS AND RECOMMENDATIONS

The tobacco industry successfully blocked or displaced strong tobacco control legislation in Costa Rica for nearly 40 years using similar strategies used in the US and the rest of the world,<sup>62, 68, 193-195</sup> until the country successfully passed a strong tobacco control law in March 2012. During the 1970s and 1980s, the tobacco companies displaced strong tobacco control legislation on tobacco advertising by endorsing weaker executive decrees. In response to increased tobacco control pressure, the industry successfully weakened the 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 Ministry of Health. 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 Ministry of Health to delay the bill's passage. However strong and consistent pressure from RENATA throughout 2011 and 2012 helped pass a strong tobacco control law in March 2012.

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. As in other parts of the world,<sup>75, 196-198</sup> the tobacco industry created voluntary codes to prevent the enactment of stronger tobacco control legislation. As elsewhere,<sup>68, 193, 194</sup> 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,<sup>53, 195</sup> 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 presentation of such data has been manipulated to downplay the exposure to SHS<sup>199-201</sup> when in fact only smokefree environments effectively control SHS exposure.<sup>134, 202</sup> As in Argentina and Spain,<sup>68, 75</sup> the industry presented the 1995 law in Costa Rica as a model to prevent strong tobacco control legislation in other countries.

The industry's dominance in Costa Rica has been further strengthened by its interference at the regional level to maximize production, manufacturing, and consumption. BAT's implementation of Project Rationalization allowed the company to focus more resources on tobacco advertising in Costa Rica (and other Central American countries), which increases tobacco consumption.<sup>203</sup> Project Rationalization helped BAT produce two CSR Social Reports, which not only helped block Bill 14.844 and delay the ratification of the FCTC in Costa Rica, but became the foundation for future CSR Social Reports in Trinidad and Tobago, Honduras, and Jamaica. BAT and PMI's success in lobbying national governments and the CACM contributed to the complete elimination of tariffs on tobacco products in Central America, which also

increases tobacco consumption because “the greater competition results in lower prices, more advertising and promotion, and other activities that stimulate demand, particularly in low- and middle-income countries.”<sup>204</sup> International tobacco control advocates should be cautious of tobacco industry interference at the regional and international level, especially international trade agreements, which include provisions such as intellectual property rights that attempt to undermine domestic public health policies.

While tobacco control advocates failed to advance the 1995 law due to repeating failed strategies and implementing weak unsuccessful programs (such as the 2000 smokefree spaces project), the key to the industry’s success in Costa Rica has been the Ministry of Health’s willingness to cooperate with the industry. Since 1995, the Ministry of Health only supported tobacco control efforts in 2007 and 2008, which resulted in ratifying the FCTC. In contrast to Guatemala, Honduras, and Panamá, which all passed 100% smokefree laws between 2008 and 2010, Costa Rica’s Ministry of Health returned to support industry positions. In contrast to Mexico City, where the City Health Minister strongly championed a 100% smokefree law,<sup>194</sup> Costa Rican Health Minister Ávila met with the industry in March 2010, which delayed Bill 17.371’s consideration. This meeting violated FCTC Article 5.3 because it did not represent a transparent interaction with the tobacco industry or rejection of an industry partnership agreement.<sup>205</sup> (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.<sup>170-175</sup>

Despite these challenges in an extremely difficult environment that had been dominated by the tobacco industry for 40 years, RENATA was able to help Costa Rica adopt a strong tobacco control law in February 2012. The key to RENATA’s success was the group’s relentless and committed effort to inform and alert the media, and expand and mobilize the coalition to effectively inform lawmakers on the importance of the FCTC and Article 5.3. An example of this success can be illustrated in the change of attitude from 2010 when government officials met privately with the tobacco industry to 2011 when legislators openly admitted to rejecting meetings with the tobacco industry due to FCTC Article 5.3.

Although legislators passed a strong tobacco control law in February 2012, as of May 2012, the law’s implementing regulations had not been issued. Tobacco control advocates in Costa Rica must continue to push for strong regulations as other countries have demonstrated that the tobacco industry’s relentless attacks never end.<sup>194, 206, 207</sup>

Costa Rica 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 continue to 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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## APPENDIXES

### Appendix 1: Acronyms

ACOSAP:	Asociación Costarricense de Salud Pública (Costa Rican Institute of Public Health)
BAT:	British American Tobacco
BATCA:	British American Tobacco Central America
BATCCA:	British American Tobacco Caribbean and Central America
BDL:	Business Decisions Limited
CACM:	Central American Common Market
CACORE:	Cámara Costarricense de Restaurantes Afines (Costa Rican Chamber of Restaurants)
CANAMEC:	Cámara Nacional de Medio de Comunicación (National Chamber of Media)
CCH:	Cámara Costarricense de Hoteles (Costa Rican Chamber of Hotels)
CCSS:	Caja Costarricense de Seguro Social (Costa Rican Council of Social Security)
CSR:	Corporate Social Responsibility
CTFK:	Campaign for Tobacco Free Kids
DR-CAFTA:	Dominican Republic-Central American Free Trade Agreement
FCTC:	Framework Convention on Tobacco Control
HWL:	Health Warning Labels
IAFA:	Instituto sobre Alcoholismo y Farmacodependencia (Institute of Alcoholism and Drug Dependence)
IAQ:	Indoor Air Quality
INCOTAB:	Instituto Costarricense del Tabaco (Costa Rican Tobacco Institute)
MEP:	Ministerio de Educación Pública (Ministry of Public Education)
NATT:	Network for Accountability of Tobacco Transnationals
PAC:	Partido Acción Ciudadana (Citizens Action Party)
PAHO:	Pan American Health Organization
PFD:	Partido Fuerza Democrática (Democratic Force Party)
PLN:	Partido Liberación Nacional (National Liberation Party)
PM:	Philip Morris
PMI:	Philip Morris International
PML:	Partido Movimiento Libertario (Libertarian Movement Party)
PUSC:	Partido de Unidad Social Cristiana (Social Christian Unity Party)
RENATA:	Red Nacional Antitabaco Costa Rica (Costa Rican National Anti-Tobacco Network)
RTC:	Republic Tobacco Company
SHS:	Second hand smoke
SIECA:	Secretaría de Integración de Economía de América Central (Secretariat for Central American Economic Integration)
TC:	Tabacalera Costarricense
UCR:	Universidad de Costa Rica (University of Costa Rica)
WHO:	World Health Organization
WTO:	World Trade Organization

## Appendix 2: Selection of People Cited in the Report

### Tobacco Industry:

J.J. Mostyn:	BAT employee for fundamental research reports (1979-1991)
Edgar Cordero:	BAT's public affairs director for Latin America
R. L. Ely:	BAT's Head of Public Affairs in London
Benjamin Zadoff:	PMI Director Financial Planning-Latin American Region
Kay Comer:	BAT legal information manager
Guillermo Estrada:	Republic Tobacco Company (BAT) Marketing Director
Iaín Hacking:	BAT Marketing Executive
Sharon Boyse:	BAT's Smoking Issues Manager
Aurora Marina González:	PMI Communications Manager
Gilberto Barrantes:	Executive Director of TabaleraCostarricense (PMI's subsidiary)
Mark Berlind:	PMI Senior Assistant General Counsel
J.R. Patrick:	BAT regional sales coordinator
Norman Davis:	BAT Production, Planning, & Development Director
Roberto Freire:	RTC General Manager
Federico García:	TC General Manager
Nicolás Denis:	PMI Director of Leaf Agronomy

### Tobacco Industry Allies:

María Rosario Alfaro:	Director of the Pollution Laboratory at the University of Costa Rica
Haley Barbour:	Chairman of the Republican Party and PM lobbyist
Carlos M. Echeverría:	Senior consultant for the commercial and social relations firm Central American Consulting Inc.
William Jauregui:	Director of CCH
Procter Lippincott:	Senior vice president from the public relations agency Spring O'Brien, New York, USA
Dan Murphy:	Senior marketing counselor from the Miami-based public relations firm Rubin Barney & Birger
Karl Rove:	Bush's senior advisor and PM lobbyist (1991-1996)
John P. Rupp:	Lawyer from Covington & Burling
Vicente Bruno Salazar:	Executive Director of CACORE
Alberto Trejos:	Associate of Academia de Centroamérica and Costa Rican Minister of Trade (2002-2004)



## Costa Rican Public Officials and Politicians:

Oscar Bulgarelli:	(PUNI) Legislator (1982-1986)
Carlos Monge Sanabria:	(PLN) Legislator (1986-1990)
Enid Rodríguez Quesada:	(PLN) Legislator (1990-1992)
Roberto Olson:	(PLN) Legislator (1994-1998)
Pablo Gutiérrez:	(PLN) Legislator (1994-1998)
Bernal Aragón:	(PUSC) Legislator (1994-1998)
Gerardo Araya:	(PUSC) Legislator (1994-1998)
Antonio Álvarez:	(PLN) Legislator (1994-1998)
José Núñez González:	(PFD) Legislator (1998-2002)
Célimo Guido Cruz:	(PFD) Legislator (1998-2002)
José Merino Del Río:	(PFD) Legislator (1998-2002)
Luis Fishman Zonzinski:	(PUSC) Legislator (1998-2002)
Ricardo Toledo Carranza:	(PUSC) Legislator (2002-2006)
Edgar Mohs Villalta:	(PUSC) Legislator (2002-2006)
Hernández Murillo:	(PAC) Legislator (2006-2010)
Lesvia Villalobos:	(PAC) Legislator (2006-2010)
Luis Antonio Aiza:	(PLN) Legislator (2010-2014)
Damaris Quintana:	(PML) Legislator (2010-2014)
Victor Hernández:	(PAC) Legislator (2010-2014)
Luis Monge Alvarez:	President of Costa Rica (1982-1986)
Abel Pacheco:	President of Costa Rica (2002-2006)
Oscar Arias:	President of Costa Rica (2006-2010)
Juan Jaramillo:	Minister of Health (1982-1986)
Edgar Villa Mohs:	Minister of Health (1986-1990)
Rogelio Pardo:	Minister of Health (2000-2004)
Franz Chaves Sell:	Vice Minister of Health (2000-2004)
Jorge Vilalobos:	Employee of the Ministry of Health (2000-2004)
María Luisa Ávila:	Minister of Health (2008-2011)
Nora Ruiz de Angulo:	Ambassador of Costa Rica to the United Nations (2000-2004)
Christian Fernández:	Executive Minister of Costa Rica to the United Nations (2000-2004)
Gonzalo Fajardo Salas:	Minister of Economy, Industry, and Commerce (1990-1994)

### Appendix 3: Tobacco control legislation in Costa Rica (1971-2012)

Appendix 3: Tobacco control legislation in Costa Rica (1971-2012)		
Legislation (Date)	Description	Result
Un-introduced bill <sup>22</sup> (June 1971)	Places HWLs on all tobacco advertisements	Bill was displaced by Decree 1520, which only required HWL on cigarette packages
Un-introduced bill <sup>24</sup> (Sept 1971)	Completely prohibits tobacco and alcohol advertising	Bill was dismissed in the Legislative Assembly
Un-introduced decree <sup>25</sup> (Dec 1979)	Completely prohibits tobacco advertising	Decree 12069 was weakened and only restricted tobacco advertising on television and radio
Bill 9.366 <sup>26</sup> (28 July 82)	Completely prohibits tobacco and alcohol advertising	Bill 9.366 was displaced by Decree 15450, which only changed the HWL on cigarette packages
Bill 10.128 <sup>27</sup> (5 June 85)	Completely prohibits television and radio tobacco advertisements	Bill was killed in the Legislative Assembly
Bill 10.282 <sup>28</sup> (28 May 86)	Completely prohibits tobacco advertising	Bill 10.282 was displaced by Decree 20196, which only restricted tobacco advertising on television and radio
*Bill 11.545 <sup>51</sup> (27 July 92)	Prohibits smoking in workplaces and public places and prohibits tobacco advertising	Bill became Law 7501, but was weakened to allow DSAs in workplaces and public places and tobacco advertising restrictions were only nominally advanced
Bill 13.200 <sup>93</sup> (6 June 98)	Completely prohibits tobacco advertising	Bill was rejected by the Legislative Assembly
Bill 13.335 <sup>94</sup> (24 Sept 98)	Reforms Article 2 of the 1995 law and makes workplaces and public places 100% smokefree	Bill was rejected by the Legislative Assembly
Bill 13.680 <sup>95</sup> (29 July 99)	Completely prohibits tobacco advertising	Bill was rejected by the Legislative Assembly
Bill 14.844 <sup>96</sup> (31 July 02)	Completely prohibits smoking in workplaces, enforces stricter HWLs, prohibits tobacco advertising on TV and newspapers, and increases penalties for noncompliance	Bill was displaced by Decree 31616, which only nominally increased tobacco advertising restrictions beyond the 1995 law
Bill 17.371 <sup>6</sup> (5 May 09)	Prohibits smoking in workplaces and public places, completely prohibits tobacco advertising, requires pictorial HWLs on cigarette packages, and increases cigarette taxes and penalties for noncompliance	Bill was eventually approved in February 2012 as Law 9028.
<p>*Bill 11.545 became Law 7501 (the weak 1995 law)            DSA: Designated Smoking Area            HWL: Health Warning Label            Un-introduced bill: A bill that was discussed in the Legislative Assembly but was never officially submitted and introduced with a bill number</p>		

#### Appendix 4: Tobacco industry strategies in Costa Rica

Appendix 4: Tobacco industry strategies in Costa Rica to undermine tobacco control	
Strategies	Examples
Creating voluntary self-regulated agreements to preempt stronger tobacco control legislation	-Voluntary agreements to restrict tobacco advertising (un-introduced bill in 1971, Bill 10.282 in 1990, and Bill 14.844 in 2000)
Using INCOTAB front group as authorized spokesman to lobby for industry interests	-Bill 9.366 (1982-1984) -Bill 10.128 (1985-1986)
Recruiting medical and scientific consultants to combat threat of SHS and prevent smokefree workplace and public place legislation	-Recruiting Dr. Maria del Rosario Alfaro to conduct the Central American Field Study (1992-1994)
Sponsoring accommodation programs through the hospitality industry to prevent smokefree workplace and public place legislation	-Courtesy of Choice Program promoted by CACORE and CCH (1994-2011)
Sponsoring youth smoking prevention programs to preempt the youth smoking issue and prevent bans on tobacco advertising legislation	Retailer programs: -“It is Prohibited to Sell Cigarettes to Minors” (August 1997) -“On Target-Partners in Success” (March 1998) Educational programs: -“I Have Power” (December 1997) -“I Have Courage” (February 2000)
Using Costa Rica as a pilot site to implement similar programs throughout Latin America	-Courtesy of Choice Program -“On Target” YSP Program -CSR Social Reports
Consolidating production and management regionally	-BAT Rationalization in Central America (1993-2000)
Influencing regional trade agreements to lower trade barriers	-CACM (1990s) -DR-CAFTA (2002-2007)
Promoting Corporate Social Responsibility	-BAT CSR Social Reports (2002-2003, 2006)

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We thank all of the interviewees for their help in conducting this report:

Interviewees:	Affiliation:
-*Teresita Arrieta	Instituto sobre Alcoholismo y Farmacodependencia
-*Olga Barrantes	Ministerio de Salud
-*Magally Bautista	Assistant to Legislator to Evita Arguedas (2006-2010)
-*Shirely Carmona	Universidad de Costa Rica “Oficina de Bienestar y Salud”
-*Dr. Roberto Castro Córdoba	Ministerio de Salud, Caja Costarricense de Seguro Social
-Alicia Fournier	Legislator (2010-2014)
-Jorge Guerra	
-Carlos Guterrez	Legislator (2006-2010)
-Victor Hernandez	Legislator (2010-2014)
-Dr. Orlando Hernandez Murillo	Legislator (2006-2010)
-Elida Narvaez	Grupo ICE
-Federico Paredes	Ministerio de Salud
-Cecilia Rodriguez	Assistant to Legislator Hernandez Murillo (2006-2010)
-Daniel Salas	Ministerio de Salud
-*David Sancho	Universidad de Costa Rica
-*Vivian Vilchez	Universidad de Costa Rica “Oficina de Bienestar y Salud”
-Federico Wust	Fundación Pro Derecho de los No Fumadores

\*Members of Red Nacional Antitabaco (RENATA).

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Name:	Affiliation:
-Ch’uya Lane	Campaign for Tobacco-Free Kids
-Jose Francisco Monge Masis	
-Dora Marina Oliva	Guatemala Nat. Council for Tobacco & Prevention Control
-Patricia Sosa	Campaign for Tobacco-Free Kids

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