

THE POLITICAL ECONOMY OF THE 2016 TOBACCO AND PROPOSED SUGAR-SWEETENED BEVERAGE TAX INCREASES IN COLOMBIA

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Cover photos (clockwise from left): La Serrana, Colombia. Photo by Dan Gold via Unsplash. Cacao trees in San Jose de Orienta, Colombia. Photo by Dominic Chavez/World Bank. City view of Bogotá, Colombia. Photo by Dominic Chavez/World Bank. Students draw on chalkboard. Photo by Charlotte Kesl/World Bank.

EXECUTIVE SUMMARY

In 2008, Colombia joined the Framework Convention on Tobacco Control (FCTC),¹ which includes measures related to prices and taxes designed to reduce supply and demand. By 2015, the overall prevalence of smokers in the country had decreased slightly but still reached 17 percent. There was already considerable evidence showing that tobacco consumption in recent years had increased among the lowest socioeconomic strata, and among women, and that the average starting age was 12.4 years. The impact of tobacco on the mortality and quality of life of Colombians was estimated as a direct loss of more than 600,000 years of life and more than 26,000 deaths each year. The direct costs associated with diseases from smoking (cardiovascular, obstructive pulmonary disease (COPD) and lung cancer) at the time was estimated at more than Col\$4billion (~US\$1.36million), equivalent to 0.6 percent of GDP and 10.5 percent of annual health expenditure. The low level of revenue from and the high level of consumption of tobacco were attributable, in large part, to the low price of cigarettes in Colombia, reflected in a tax burden of less than 50 percent of the total price.

In mid-2015, the Minister of Health and Social Protection (MHSP) created an interdisciplinary team of epidemiologists, economists, attorneys and political scientists reporting to the Minister of Health and Social Protection with the objective of developing a proposal for tobacco and sugar-sweetened beverage taxes—so-called healthy taxes—to be included in the Tax Reform Project to be submitted to Congress. The team's objective was to put together an argumentatively sound proposal, backed by empirical evidence, in the face of the volatile legislation regarding tobacco prices and the powerful lobby representing the tobacco and beverage industries in the media and in Congress. In the end of 2015, the tobacco tax proposal prepared by the Ministry of Health and Social Protection was accepted by the commission of experts responsible for proposing changes in the country's tax structure. Meanwhile, civil society organizations, the academic press and activists advocating for health rights stepped up or launched new information and awareness campaigns concerning the harmful effects of tobacco and sugar-sweetened beverages, deploying medical and scientific evidence to counter the offensive launched by the industry and by businesses opposed to the announced new taxes on tobacco and soft drinks.

In August of 2016, the MHSP, the Universidad Nacional, the Universidad Javeriana (UJ) and the World Bank, organized the Latin American Tobacco Tax Forum with the presence of international experts and different stakeholders, including those from the tobacco industry, with the objective of sharing and learning from the experiences and evidence of other countries. The forum presented conclusive evidence of the tax's impact in terms of reducing smoking and boosting fiscal revenue, particularly in the Southern Cone countries.

¹ The World Health Organization (WHO) Framework Convention for Tobacco Control (FCTC WHO) was opened for signing from June 16 to 22, 2003, in Geneva, and from June 30, 2003, to June 29, 2004, at UN Headquarters, the treaty depository, in New York. As of February 2005, it had 168 signatories.

Following the strategy of evidence-led discussions in November of 2016, the president of the Colombian Association of Scientific Societies urged precision in the discussion and called on “opinion makers and those with political responsibilities to base their arguments on the studies of international organizations and institutions with high scientific credibility, not on simple speculations or little known data.”² In support of the strategy, the Johns Hopkins Bloomberg School of Public Health released a particularly relevant statement with over 20 references to studies and scientific evidence.

The health tax proposals resonated with industrialists and merchants, who formed a common front. More smuggling, less revenue, lower employment and crisis in retail stores were the usual arguments, amplified in well attended regional and national events, with broad media coverage. These arguments were confronted in public events such as the “Forum on Increasing Tobacco Taxes as a Public Health Strategy” and the “Forum on Cigarette Smuggling in Colombia: Monitoring Tools and Policy Recommendations” held in September and October of 2016, respectively, where empirical evidence was presented to refute the claims made by the industry.

The tax reform discussion unfolded in a difficult political environment for the government, as it was at the same time dealing with a campaign in support of the referendum on the peace agreement signed in Havana (Cuba) with the Revolutionary Armed Forces of Colombia (FARC) insurgents, who had taken up arms half a century earlier. It initially failed to pass,³ but after revisions, the so-called Teatro Colón Agreement was signed in November 2016.

The emphasis of public and behind-the-scenes efforts was on defeating the proposed tax on sugar-sweetened beverages, which is what in fact occurred, despite the efforts of the Minister of Health, national and international academics, civil society and some Colombian think tanks. So controversial was the debate on sugar-sweetened beverages that opposing sides of the ideological spectrum concurred in rejecting these taxes.

In the end, in a House plenary session that was extended from December 27 to December 28, 2016, for lack of a quorum, the tax reform, including an increase in the rate of excise tax of Col\$1400 (~US\$0.48) per pack of 20 cigarettes (or proportional to its contents) envisaged for 2017 (compared to the previous Col\$701 (~US\$0.24) tax), and followed by a Col\$2100 (~US\$0.71) tax in 2018, adjusted by the consumer price index plus 4 percentage points was ultimately approved with 96 votes in favor and 33 against. Finally, on February 3, 2017, in a joint Senate and House session, conciliation of the Structural Tax Reform was approved; Arti-

2 Colombian Association of Scientific Societies (November 2, 2016). Press release No. 12. Bogota. <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/carta-sociedades-cientificas-bebidas-azucaradas-2016.pdf>.

3 The referendum on the question: “Support the final accord on ending the conflict and building stable and lasting peace?” was held on October 2, 2016, with 6,422,316 “No” votes (50.23 percent) and 6,361,762 “Yes” votes, 37.43 percent of the electorate having come to the polls to vote. Following revision efforts in which opponents of the agreement participated, the final agreement was signed on November 24, 2016, in the Teatro Colón de Bogotá. Congress approved it on November 30, 2016.

cle 347 on page 138 of Congressional *Gaceta 41* established the rates of the tax on cigarettes and manufactured tobacco products, which took effect that year.⁴

The first press release issued by the Ministry of Health and Social Protection after the approval of the tobacco tax discussed the estimated revenue and its purpose: “The cigarette tax approved as part of the tax reform will bring an additional Col\$500,000 million (~US\$-170million) to the health sector and prevent some 2,300 deaths starting in 2018 (...) with the rate of Col\$ 1400 (~US\$0.48) per pack of 20 cigarettes (or proportional to its contents) envisaged for 2017, the country will collect additional revenue amounting to nearly Col\$300,000 million (~US\$102million). In 2018, when the rate will increase to Col\$2100 (~US\$0.71), the revenue will be Col\$500,000 million (~US\$170 million). These amounts will be in addition to the Col\$400,000 million (~US\$136 million) collected since before the reform. With the full rate of the tax, the average price of a pack of cigarettes will have risen from Col\$2,800 (~US\$0.95) to Col\$4,200 (~US\$1.43) in 2018. This increase will discourage use, which will help lower the proportion of smokers by 2 percent (from 12.9 percent at present to 11.2 percent in 2018).”⁵

The study carried out and supported by the Ministry of Health and Social Prosperity, the Ministry of Finance and Public Credit, the scientific community, academia and the NGOs bore fruit. Colombia is now a little closer to the regional average of tobacco prices, as recognized by the World Health Organization on the 2017 “World No Tobacco Day,” when it spotlighted the work done by the Colombian government entities and civil society.

The question remains of completing the work left undone by the tax reform. The then Technical Deputy Minister of Finance, Andrés Escobar, sees the need for an evaluation of the impact of the two adjustment in 2019 and another substantial adjustment in the tobacco tax within five years. “It is not good (for the price of cigarettes) to be below the Latin American average, which will start rising because other countries also take measures; the Latin American average is probably starting to leave us behind again, so we will need to surpass the regional average.”⁶ As for sugary drinks, he says a new strategy should be employed to get the legislature to approve the tax sooner rather than later. Escobar’s interest in further tobacco tax adjustments is in line with the recommendations of the Commission of Experts for Tax Equity and Competitiveness, which pointed out the advisability of the government “considering the possibility of raising the tax again” two years after the phased increase.⁷

4 For cigarettes, tobacco, cigars and cigarillos, the rate is Col\$1,400 (~US\$0.48) in 2017 and will be Col\$2100 (~US\$0.71) in 2018 for each pack of twenty (20) units or proportional to its contents. The rate per gram of cut tobacco, snuff or chimú (tobacco syrup) is Col\$90 (~US\$0.03) in 2017 and will be Col\$167 (~US\$0.06) in 2018. These rates will be adjusted annually, starting in 2019, by a percentage equal to the growth of the consumer price index certified by the National Administrative Department of Statistics (DANE), plus four points. The Fiscal Support Directorate of the Ministry of Finance and Public Credit will certify and publish the adjusted rates before January 1 of each year.

The additional revenue collected as a result of the increase in the rate of the cigarette consumption tax will be used to finance health insurance.

5 Ministry of Health and Social Protection. Impuesto al cigarrillo evitará 2.300 muertes al año [Cigarette tax will prevent 2,300 deaths per year], (January 2, 2017). Press Release 001. <https://www.minsalud.gov.co/Paginas/impuesto-al-cigarrillo-evitara-unas-2300-muertes-anuales.aspx>

6 Interview with Andrés Escobar, June 30, 2017

7 Commission of Experts for Tax Equity and Competitiveness, *op. cit.*, Paragraph 139.

“Tobacco is not just another consumer product. It is the only legal product that kills between a third and half of its consumers when used as recommended by its manufacturers.”

– Report on Tobacco Control for the Region of the Americas,
WHO/PAHO 2016

1

INTRODUCTION

In the interest of saving lives and reducing tobacco addiction, the World Bank began supporting tobacco tax increases on several continents in 2013 through impact studies, knowledge exchanges and support for political dialogue. The countries in which the World Bank promotes tobacco control initiatives include the Philippines, Botswana, Namibia, Vietnam, Georgia, Indonesia, Peru, Colombia, Moldavia, Ukraine, Nigeria, Ethiopia, Lesotho, Belarus, Turkey, Chile and the European Union. It has also begun working in Sierra Leone, China, Montenegro, Mozambique, Mexico and West Africa.

In Colombia in 2015 there was considerable evidence showing that tobacco consumption in recent years had increased in the lowest strata, and among women, and that the average starting age was 12.4 years. Although the overall prevalence of smokers in the country had reached 17 percent, there was earlier evidence demonstrating regional differences, with higher levels of consumption in Bogota and Antioquia. The available evidence showed that roughly half of the country's smokers consumed half a pack (10 cigarettes) or more every day.

Tobacco consumption in Colombia has reportedly caused cardiovascular diseases, chronic obstructive pulmonary disease (COPD) and lung cancer, among other illnesses, in many of the country's chronic smokers. The impact of tobacco on the mortality and quality of life of Colombians was estimated as a direct loss of more than 600,000 years of life and more than 26,000 deaths each year. The direct costs associated with these diseases at the time was estimated at more than Col\$4 billion (~US\$1.36million), equivalent to 0.6 percent of GDP and 10.5 percent of annual health expenditure. Although the estimated costs of smoking according to various academic studies were known to be very high, revenue from the tobacco tax at the time was approximately one-tenth of the direct costs of the epidemic, amounting to approximately Col\$450 million (~US\$153 thousand).⁸

The low level of revenue and the high level of consumption were attributable, in large part, to the low price of cigarettes in Colombia, reflected in a tax burden of less than 50 percent of the total price. The price of cigarettes in Colombia in 2015 was so low (approximately US\$2 per pack of 20 cigarettes), that it was higher than just one other country in Latin America and in the Caribbean. The available evidence also revealed a price elasticity of demand of -0.3 to -1.03 , depending on the methodology of the study.

⁸ Pichon-Riviere, A., et al. (2013). Carga de Enfermedad atribuible al tabaquismo en Colombia. Inf. téc. 09. Instituto de Efectividad Clínica y Sanitaria (IECS).

All the elasticity calculations available to date have shown that an increase in the price of cigarettes in Colombia should significantly reduce consumption.

The available evidence on smoking in Colombia, which national and international academic institutions and civil society have been compiling for several years, gained new significance in the wake of changes in the country's economic and tax priorities. At the time, Colombia was contending with shrinking oil revenue (owing to a sharp drop in oil prices) and constantly rising public expenditure. In the health sector cost pressures stemmed, among other factors, from a change in the government's responsibility for health coverage in the subsidized system that covers the cost of health services for the country's lowest population segments. It was in this context that the government, in early 2015, created a committee of experts responsible for proposing changes in the country's tax structure.

The tax structure proposed by the committee of experts included an increase in health taxes, including the tobacco tax, providing new scope for a discussion on raising taxes. Whereas the Ministry of Finance worked on the preparation of the tax reform proposal, the Ministry of Health and Social Protection, led by Minister Alejandro Gaviria and supported by the World Bank, immediately began preparing a technical document and a draft law to promote a tobacco tax increase for inclusion in the reform. The existing information sources were reviewed and estimates were made of elasticity, and the impact on consumption, health and revenue with a view to proposing an increase that would bring the price of cigarettes in Colombia closer to the regional average. With the support of the World Bank, national and international academic institutions and civil society, consolidated data were used to launch a national dialogue on raising tobacco taxes. The technical preparation and conversations with international experts in support of higher revenue, a reduction in tobacco consumption and, in the future, a decline in health system costs, helped initiate a dialogue, as well, with the Ministries of Health and Finance, aimed at increasing the tobacco tax.

Technical assistance took the form of studies, meetings, forums and consultations with domestic and international experts and researchers in the fields of medicine, economics and politics. Local realities were placed in context and the horizon was expanded to enable the country to catch up with global trends in anticipation of complying with the mandates of the Framework Convention on Tobacco Control, which Colombia signed.

This document describes the course of events that led to the phased adjustment of the tobacco tax approved by Congress in December 2016, with a view to aligning the price of cigarettes in Colombia with the Latin American average. Despite the failed attempt to introduce a tax on sugar-sweetened beverages, the discussion was framed and will most likely be renewed in the future.



Male smokers lose 6.6 years of life because of tobacco, female smokers lose 7.1 years of life; the direct cost to the Colombian health system attributable to smoking is Col\$4.23 billion (~US\$144 million).

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LIFE OR DEATH TAXES

Just after 7:00 P.M. on Wednesday, October 19, 2016, Alejandro Gaviria, Minister of Health and Social Protection, posted an article on his blog entitled “A healthy reform” in defense of new taxes on tobacco and sugar-sweetened beverages.

On that same day, the Minister of Finance and Public Credit, Mauricio Cárdenas, had introduced in the Third Committee of the House of Representatives (lower house) of Congress Law 178, “whereby a Structural Tax Reform is adopted, measures to combat tax evasion and elusion are strengthened, and other provisions are enacted.”⁹

The initial online reactions to Minister Gaviria’s blog post indicated interest, particularly among individuals in the academic environment who were closely following the issue. Around 11:30 P.M., the economic analysis researcher, Daniel Monroy, asked for sources corroborating the data in the blog and Gaviria responded with conclusive figures: 70 percent of all deaths from tracheal, bronchial and lung cancer, 62 percent of all COPD deaths and 25 percent of all deaths from ischemic heart diseases (35–64 age group) are attributable to smoking; male smokers lose 6.6 years of life because of tobacco, female smokers lose 7.1 years of life; the direct cost to the Colombian health system attributable to smoking is Col\$4.23 billion (~US\$1.46million); a 200 percent increase in the rate (from Col\$700 (~US\$0.24) to Col\$2,100 (~US\$0.71)) would increase the price of a pack of cigarettes from Col\$2,800 (~US\$0.95) to Col\$4,200 (~US\$1.43). This 50 percent increase in the price would prevent between 1,200 and 3,400 deaths each year and would save the system between Col\$550 billion (~US\$187 million) and Col\$930 billion (~US\$316million);¹⁰ in Colombia, sugar-sweetened beverages are responsible for 13 percent of all deaths due to diabetes, 5 percent of all deaths from cardiovascular diseases and 1 percent of all deaths from related malignancies. This adds up to a total of approximately 3,500 deaths per year.¹¹

The situation

The financing of the health systems of the 32 departments into which the country is administratively divided—apart from social security contributions—comes from taxes on liquor, cigarettes, beer and tobacco.

9 Gaceta del Congreso 894 of October 19, 2016.

10 The representative market exchange rate at the time was Col\$2,905.93 per U.S. dollar, according to Banco de la República (central bank)(Exchange rate of the Colombian peso (RMR). <http://www.banrep.gov.co/es/trm>).

11 Alejandro Gaviria (October 19, 2016). Healthy reform [blog post]. <http://agaviria.blogspot.com.co/2016/10/reforma-saludable.html>.

Colombia, along with Indonesia, Bolivia, India and Argentina, is one of the countries with the lowest cigarette prices. Although Law 1393 (establishing revenue specifically earmarked for health) has, since 2010, governed a combination of taxes including ad valorem, excise and value added taxes (VATs), in 2016 taxes accounted for only 49.5 percent of the final price of a pack of cigarettes, and the actual revenue they generated was insufficient, as it only covered 12 percent of spending on diseases caused by smoking.¹²

Of a total population of 48.2 million, Colombia has 3 million smokers, defined as individuals between 12 and 65 years of age who have smoked at least one cigarette in the last month. According to the most recent National Survey on the Consumption of Psychoactive Substances, the smoking segment of the population consists primarily of young adult men, in strata 2 and 3, whose average consumption is 12 cigarettes per day.^{13, 14}

In 2008, Colombia joined the Framework Convention on Tobacco Control (FCTC),¹⁵ which includes measures related to prices and taxes designed to reduce supply and demand. In the middle of 2009, Law 1335 (known as the Anti-Tobacco Law) entered into force, with provisions to prevent “harm to the health of minors and the nonsmoking population and establish public policies to prevent tobacco use and end the dependency of smokers on tobacco and its derivatives.”¹⁶ By way of background, in 2003, the Bogota Police Code established smoke-free zones and restrictions on smoking in schools, colleges, universities, stadiums, restaurants, bars and cafés.¹⁷

At the Ministry of Health and Social Protection (MSPS), interest in raising the tobacco tax and in the resulting impact in terms of reducing smoking and augmenting health system financing was so strong that between 2011 and 2013, technical proposals were submitted to the Ministry of Finance and Public Credit (MFPC), and in 2011 a visit was requested of the FCTC secretariat, which took place from October 29 to November 2, 2012. The international mission then suggested “that the taxes be increased in a regular, progressive manner and above the consumer price index (...) the tax increase is a pending task in technical, evidentiary, constitutional and binding enforceable policy terms.”¹⁸

12 Ricardo Bonilla, member of the Committee of Tax Reform Experts, Latin American Tobacco Tax Forum, Pontificia Universidad Javeriana, Bogota, August 5, 2016.

13 Housing in Colombia is divided into six social strata. Strata 1, 2 and 3 are low strata, which receive subsidies for public housing services.

14 Blanca Llorente and Norman Maldonado (invs.) (2015). *Política de impuestos al cigarrillo en Colombia. Análisis y recomendaciones de la Veeduría ciudadana para el control del tabaco* [Cigarette tax policy in Colombia. Analysis and recommendations of the Citizens Coalition to Oversee Tobacco Control]. Fundación Anáas.

15 The World Health Organization (WHO) Framework Convention for Tobacco Control (FCTC WHO) was opened for signing from June 16 to 22, 2003, in Geneva, and from June 30, 2003, to June 29, 2004, at UN Headquarters, the treaty depository, in New York. It has 168 signatories.

16 On December 27, 2006, Congress approved the WHO Framework Convention for Tobacco Control Law (1109), declared binding by the Constitutional Court in Ruling C-665 of August 29, 2007. On April 10, 2008, Colombia joined the Framework Convention, which entered into force in the country on July 9 of that year. On July 21, 2009, Law 1335, the Anti-Tobacco Law, took effect.

17 Council of Bogota, D.C., Agreement 79 of 2003.

18 The mission was made up of delegates from the Secretariat of the Convention, WHO/PAHO, the local WHO office, the World Bank and the United Nations Development Programme (UNDP). Source: Ministry of Health and Social Protection (2016). Tobacco taxes. *Papeles en Salud*, No.1. Bogota, MSPS.

In February 2015, with the tax reform in view, the government established the Commission of Experts for Tax Equity and Competitiveness. The MSPS informed the Commission of its interest in raising the health taxes, with the proposal of a 200 percent increase for tobacco. Ten months later, the final report described the Colombian tax system as a low-revenue system, compared to its potential, and for tobacco explicitly recommended “increasing the total amount of the tax (specific plus ad valorem) by 150 percent over the course of three years and adjusting the total amount of the tax based on the change in the consumer price index.”¹⁹

Interdisciplinary team

With a view to submission of the Tax Reform Project to Congress, in mid-2015 an interdisciplinary team of epidemiologists, economists, attorneys and political scientists reporting to Minister Gaviria was formed and joined forces with the permanent technical team already working on the subject. The team’s objective was to put together an argumentatively sound proposal, backed by empirical evidence, to support the article pertaining to the taxes on tobacco and sugar-sweetened beverages, which it would present to the MFPC for inclusion in the reform project. Through its senior economist, Roberto lunes, the World Bank committed itself to the process, which was a decisive contribution, and then Manuela Villar, health specialist and World Bank Consultant, became involved. From the start, the Bank’s assistance was consistent with the caution expressed at the time by Patricio Márquez, its lead health specialist: “Cigarette consumption and its negative impact on health, in social and economic terms, is a global problem that is not simply going to disappear (...) If we want to avoid being passive spectators to the unbridled growth of this global health threat, political will must be encouraged, together with sustained support from civil society and international organizations (...) This is not a minor problem. Tobacco is the leading preventable cause of death, and yet it kills someone every six seconds.”²⁰

In the face of volatile legislation regarding tobacco prices and the powerful lobby representing the tobacco and beverage industries in the media and in Congress, working with scientific evidence going forward became a priority. “We identify the myths propagated by the industry, such as the fear of increased smuggling in the event of a rise in the price of cigarettes, in order to respond to each with scientific evidence,”²¹ recalls Pamela

19 Commission of Experts for Tax Equity and Competitiveness (2015). *Informe final presentado al Ministro de Hacienda y Crédito Público* [Final report presented to the Ministry of Finance and Public Credit]. Paragraph 138. <https://comisionreformatributaria.files.wordpress.com/2015/03/informe-final-de-la-comisioc81n-versioc81n-final2.pdf>.

20 World Bank (July 17, 2015). Los impuestos al tabaco pueden salvar una vida cada seis segundos [Tobacco taxes can prevent a death every six seconds]. <http://www.bancomundial.org/es/news/feature/2015/07/17/los-impuestos-al-tabaco-pueden-salvar-una-vida-cada-seis-segundos>.

21 Interview with Pamela Góngora, July 6, 2017.

Góngora, coordinator of the interdisciplinary team. She was referring to the preparation of an initial document that circulated among the team, which Minister Gaviria forwarded to his Finance Ministry peer and shared with the press, in the belief that the best way of countering the tobacco industry offensive was to provide the public with substantiated arguments and data. “The tobacco industry knew beforehand that an increase was coming and it lobbied to keep it as small as possible. We wanted an increase that would allow us, at the very least, to match the average price in Latin America as well as ensure a gradual increase in the years ahead.”²²

Camila Franco, economist and also a member of the team, commented: “It was the right time to pursue a tax focused on public health, from the central level, as an 8 percent reduction in deaths from preventable illnesses, such as cardiovascular disease, kidney disease, diabetes, and some types of cancer and pulmonary conditions which are related to lifestyle and difficult to change because they depend on personal decisions, had been adopted as a “mega-goal” for 2018.”²³ The strategy of pursuing a tax that would significantly raise the price at the outset and the rate of which would target quantity and not price, was the best recommendation for maximizing the deterrent effect, she added.

On March 19, 2016, the MSPS technical team held an initial meeting with the Technical Deputy Minister of Finance, Andrés Escobar, and presented its proposal, demonstrating the understanding and affinity of purpose shared by the two committees which had been working in parallel. In the future, the health team planned to structure the proposal around a number of agreed minimums, have representatives from the finance team, and at the appropriate time would join the overall reform project. Months of uninterrupted work followed, simulations and projections of an excise tax and revenue were made, and various scenarios were explored.

Inasmuch as Colombia has 13 departmental taxes, 20 municipal taxes and 24 other taxes, in addition to stamps for specific local or regional tax purposes, the territorial nature of the tobacco tax complicated things a bit for the finance team, as its top priority was the national structural reform as a whole. “Territorial tax reforms are very difficult in Congress because of the formidable network of interests involved; too many territorial taxes would spoil the national reform effort, and processing them would be complicated, so our approach was to include the smallest possible number of territorial taxes. Nevertheless, from the beginning, the Ministry of Health team was told: tobacco is one of the few territorial topics that will be included,” Escobar said.²⁴

22 *Ibid.*

23 Interview with Camila Franco, June 7, 2017.

24 Interview with Andrés Escobar, June 30, 2017.

25 In late May 2016, an internal MSPS document pointed out: “To further deter tobacco and cigarette consumption in the country, raising the rate of the tax from Col\$658.95 (~US\$0.22) to Col\$2,000 (~US\$0.68) is proposed. This would raise the price by 57.0 percent (in current prices, the average would be Col\$4,238 (~US\$1.44)) and the total tax would amount to 70.4 percent of the average reference price.”

Because it was considered the greatest deterrent to consumption, a robust, nongraduated tax was the proposal advocated by the health team.²⁵ At the same time, the Minister of Finance was leaning toward a phased-in excise tax in the first two years and thereafter, as an additional penalty, the increase in inflation plus three points. This proposal was consistent with the recommendation of the Commission of Experts.

Regional overview

With a view to sharing the experiences of other countries and discrediting the belief that revenue always shrinks as taxes increase, a meeting of experts was planned which, in addition to closed presentations to the finance team, included a forum open to the concerned sectors, including industry.

On August 5, 2016, at the Latin American Tobacco Tax Forum organized by the World Bank, the MSPS, Universidad Nacional and Universidad Javeriana (UJ), and held at UJ's headquarters, a regional tobacco tax overview was presented as well as conclusive evidence of the tax's impact in terms of reducing smoking and boosting fiscal revenue, particularly in the Southern Cone countries.

Dardo Curti of the Tobacco Epidemic Research Center explained Uruguay's situation, in which the legal and illegal markets, both subject to the country's tax policy, coexist and interact, but, contrary to the tobacco companies' statements, in 2015 the higher tax did not result in increased smuggling, which remained unchanged.

Marco Ugarte mentioned initiatives to reduce tobacco consumption in Peru, including regulations on advertising, sponsorships and taxes that led to a decline in consumption, which in 2014 caused 15,000 deaths according to a study conducted by Universidad Cayetano Heredia and the Institute for Clinical Effectiveness and Health Policy. He also said that smuggling had not increased significantly and that revenue grew.

Discussing the situation in Costa Rica, Román Navarro, a member of the Ibero-American Health Law Network, said that the distribution of the tax covers the manufacturer or processor and the importer, as applicable, and is increased annually based on the consumer price index (CPI); the tax burden is 60 percent of the final price of a pack of cigarettes, he explained.

Colombia's Deputy Minister of Health, Fernando Ruiz, pointed out the relationship between smoking, and morbidity and mortality in Colombia, and supported the goal of implementing a tax comparable to the increases introduced in Brazil, Costa Rica and Guatemala. For his part, Enrique Peñalosa, Director of the UJ Institute of Public Health, when explaining the health system deficit versus the taxes allocated to the sector, indicated that in Colombia

“the average cost of a year of lung cancer treatment is \$8,590, the mandatory health plan is \$4,200, and individual care for acute myocardial infarction is estimated at \$945.”

Professor Roberto Iglesias of Universidad Católica de Rio de Janeiro described the situation in Brazil, where the market, characterized by a high incidence of smuggling, was impacted by a tax reform implemented in 2011 that eliminated numerous exemptions and introduced gradual tobacco tax increases. He pointed out the discrepancies between the tobacco industry’s smuggling information and the figures provided by government institutions, and with regard to the impact of the illegal Paraguayan cigarette market, explained that the causes of smuggling were not only tax related and geographical, but also institutional.

According to Roberto Iunes of the World Bank, there is no international evidence arguing against raising the tobacco tax; the tax serves the dual purpose of improving public health—by reducing consumption and lowering the indices of morbidity and mortality associated with smoking—and boosting revenue for public finance purposes. He also indicated that the relationship between taxes and smuggling is not clear, although in most cases the tax reduces smuggling.

A column by Guillermo Paraje, of Universidad Adolfo Ibáñez in Chile, appeared in the August 7, 2016 issue of the Bogota newspaper, *El Tiempo*, reiterating the explanation given in the forum: in the last decade, the real price of tobacco in Chile rose 147 percent, with three increases in the tobacco tax between 2010 and 2014, raising the tax burden to 81 percent of the total price of cigarettes. As a result, the prevalence of monthly tobacco use in the general population fell from 42 percent in 2006 to 34 percent in 2014. Among young people, the prevalence of monthly tobacco use fell from 41 percent in 2005 to 27 percent in 2013. The expert advocated combating smuggling with traceability systems, as Ecuador and Brazil do, and ratifying the Protocol to Eliminate Illicit Trade in Tobacco Products.

The meeting of the international delegates and the finance technical team was deemed highly useful as it previewed scenarios that were presented during the reform project discussion. Brazil’s situation was revealing, as conditions there are similar to those of Colombia in terms of the market and the pressure and arguments employed by the tobacco companies, including dissembling threats of diminished foreign investment. It is expected that the results of the adjustment envisioned in the Colombia reform will also be similar: higher taxes, more smuggling, but lower incidence of tobacco use and increased revenue.

The campaign

To set the stage for a serious, wide-ranging discussion of health taxes, in late 2015 civil society organizations, the academic press and activists advocating for health rights stepped up or launched new information and awareness campaigns concerning the

harmful effects of tobacco and sugar-sweetened beverages, deploying medical and scientific evidence to counter the offensive launched by the industry and by businesses opposed to the announced new taxes on tobacco and soft drinks.

In mid-October, the Citizens Coalition to Oversee Tobacco Control,²⁶ made up of the Colombian League Against Cancer, Fundación Anáas, Educar Consumidores, Corporate Accountability International, and Colectivo Aquí y Ahora, published a policy document on cigarette taxes in Colombia written by the researchers Blanca Llorente and Norman Maldonado of Fundación Anáas. The document recommended “increasing the specific component by Col\$2,000 (~US\$0.68) and maintaining the ad valorem (10 percent) and VAT (16 percent) percentages, which would raise the price by 50 percent” with expected outcomes such as a 65 percent increase in the tax burden, an increase of 216 percent in tax revenue compared to 2014, a 31 percent decrease in per capita consumption, and 3,424 fewer premature smoking related deaths each year.

Cooperation among the anti-tobacco forces engaged in political advocacy actions was enhanced, and reflexes for responding promptly to industry attacks were sharpened. Llorente, a pioneer in the fight against tobacco in Colombia, recalls that one litmus test was Congress’s attempt to approve, swiftly and with little discussion, a law favorable to the e-cigarette market.²⁷ Blanca Llorente, economist at the Fundación Anaás, stated, “The tobacco companies wanted the most lenient e-cigarette legislation possible, and when that red flag went up and civil society’s involvement was requested to support the Ministry of Health and the National Institutes of Health and Oncology, we all responded quickly. Then, Red Papás, an NGO whose mission is to defend and protect the rights of children and adolescents and represent parents’ interest, joined the campaign.”²⁸

Educar Consumidores, which is also a member of the Alliance for Food Health, undertook political advocacy actions in parliament, in social networks and the mass media, and in social events featuring discussions of the fiscal reform project. He commented: “We were very supportive of the Ministry of Health, but we also work with Finance and advocate in Congress—which should not be confused with the industry’s lobbying efforts—in order to arm all the members with arguments, and we visit each of those we have identified as sympathetic to the proposal. In tobacco’s case, it was important to win an immediate,

26 The Bogota Ombudsman’s Office approved its registration on February 7, 2014, to oversee management of the smoking control plans, programs and campaigns of the MSPS, the Superintendency of Industry and Trade, Bogota City Hall and the District Secretariat of Health.

27 A draft law to regulate the marketing, distribution and advertising of e-cigarettes, authored by Senator Mauricio Lizcano of the governing National Unity Party, presented in 2014, was filed for forwarding to the legislature in June 2016, after four of the eight regulatory debates. In August 2016, House representatives Óscar Ospina of the Green Party and Mauricio Salazar of the Conservative Party, put forward another bill aimed at defending the tobacco control policy within the framework of the WHO’s TCFC.

28 Interview with Blanca Llorente, June 5, 2017.

29 Conversation with Martha Yaneth Sandoval, Juan Carlos Mira and Diana Vivas, June 12, 2016. They refer to the Organización Ardila Lulle, a business conglomerate that owns radio, TV and movie channels, sugar factories, sugared soft drink plants and a container and football equipment factory, among many others.

not a gradual increase in the tobacco tax. We work on all fronts. As for sugar-sweetened beverages, we are dealing with the reality that one of the biggest soft drink manufacturers has access to a media organization, which it also owns.”²⁹

The organizations’ spokespersons coordinate tasks in order to reach the largest possible audiences. “In Colombia, unfortunately, we have the cheapest cigarettes in Latin America, with some ridiculous taxes, and the associated costs to the health system because of the diseases they cause are high. For that reason we support the initiative of increasing the cigarette tax and other types of initiatives, always seeking the overall benefit and health of Colombians,” explained Edwin Barón, Education Coordinator of the League Against Cancer, on the *Revista de la mañana* program on the Universidad Distrital radio station.³⁰

In other areas, the discussion of health taxes is also attracting attention.

The First Governors’ Health Forum 2016 concluded on June 21 in Bogota with a pronouncement expressing concern about the fiscal deficit and health system financing and recommending the identification of new revenue, as well as “the inclusion of other possible sources of health taxes (tobacco, food, unhealthy beverages, etc.), as part of the structural tax reform project currently being discussed within the national government.” The president of the federation, Dilian Francisca Toro, governor of Valle del Cauca and a doctor by profession, who as senator authored the Anti-Tobacco Law promulgated in 2009, issued a message on the same subject on May 31, 2016, World No Tobacco Day: “There is one very important thing that we have to do now to further reduce cigarette consumption, and that is to increase the taxes, the only thing missing from our legislation, and we in the Federation of Departments are working to get the tobacco tax increase included in the tax reform.”³¹

On June 30, 2016, Minister Gaviria tweeted: “Technical document on tobacco taxes refutes with data many of the industry’s lies,” and attached a copy of Issue 01 of the *Papeles en Salud* series highlighting that subject, with articles by Ministry and World Bank officials and advisors supporting awareness forums and initiatives in the introduction and during the discussion of the tax reform.³² The document contained a proposal “to increase the final price of tobacco by 57 percent, based on an increment in the consumption tax rate. Adjusting the rate annually by a percentage equal to CPI growth, plus an additional 5 percent, until the regional average price is reached, is also proposed.”

30 Quoted in Mónica González (February 8, 2016). *Sociedad civil unida contra el tabaquismo* [Civil society united against smoking]. LAUD. <http://laud.udistrital.edu.co/noticias/sociedad-civil-unida-en-lucha-contra-el-tabaquismo>.

31 Agencia Nacional Colprensa (Colombian National Press Agency), May 31, 2016.

32 The authors of the document are Andrea Yanira Rodríguez, Alex Araque and Lorena Viviana Calderón, of the MSPS Subdirectorate of Noncommunicable Diseases; Camila Franco and Pamela Góngora, advisors in the office of the Minister of Health and Public Safety (MSPS); and Roberto Irujo, World Bank senior economist. A poster with the contents of the document won the prize for the best graphic medium for disseminating scientific information in the 2nd Latin American Public Health Conference, held in Cali, Colombia, in August 2016.

The XII International Congress of Hospitals and Clinics, held in Bogota June 29 and 30, 2016, gave Gaviria a good opportunity to promote health taxes before an audience of hospital managers, legal representatives and executives. “I didn’t want this to make the news, but, well (. . .) we have a proposal to gradually increase (the price of cigarettes) until it is 5 times what it is today, which would put us at half of the amount in Latin America,”³³ he said in suggesting an increase of 400 percent to 500 percent in the tobacco tax, including an annual adjustment equal to the CPI plus a percentage over the course of a decade; for sugar-sweetened beverages, a 20 percent tax. As it turned out, the announcement became a headline and was reported in the media repeatedly.³⁴

Among the contributions considered by the Minister and his team, the one offered by Dr. Diego Rosselli of the Clinical Epidemiology and Biostatistics Department of Universidad Javeriana attracted interest and was discussed at several events. Based on the existing studies and literature “we analyze how many years of life the average smoker in Colombia loses and we calculate how much he should pay for those years of life he is losing and distribute that amount over the smoker’s entire life, estimating how many packs he smokes and how much he has to pay for each pack of cigarettes.”³⁵ Thus, with a loss of life expectancy of six years, each smoker should contribute Col\$299,051.1 (US\$108.95) to the health system. If he smokes an average of 166 packs a year for 50 years, he should pay Col\$2,659,648 (US\$969) each year, and each pack of cigarettes should include a tax of Col\$16,220 (US\$5.91).³⁶

On November 11, 2016, the Colombian Association of Scientific Societies made a significant announcement, with nearly a hundred member organizations grouped by medical specialty; César Burgos, its president, urged precision in the discussion and called on “opinion makers and those with political responsibilities to base their arguments on the studies of international organizations and institutions with high scientific credibility, not on simple speculations or little known data.”³⁷

Around the same time, there was an increase of excitement in the Capitol. In parallel with the discussion of the reform in the Seventh House Committee, Green Party legislator

33 Address of the Minister of Health, Alejandro Gaviria, at the XII International Congress of Hospitals and Clinics, June 29, 2016. https://www.youtube.com/watch?v=iaW_Va2OXws.

34 Redacción Vivir (June 29, 2016). Más impuestos a los cigarrillos, la nueva propuesta del Ministerio de Salud [More cigarette taxes, the new Ministry of Health proposal]. *El Espectador*. <http://www.elespectador.com/noticias/salud/mas-impuestos-los-cigarrillos-nueva-propuesta-del-minis-articulo-640544>.

35 Interview with Diego Rosselli, June 15, 2017.

36 Diego Rosselli MD, Sebastián Gil-Tamayo; *Costo por años de vida perdidos: una propuesta para estimar el impuesto al tabaco* [Cost per years of life lost: a proposal for estimating the tobacco tax]. Three times per capita GDP (Col\$16,613,951) was applied to each year lost. The exchange rate used was Col\$2,743 per U.S. dollar.

37 Colombian Association of Scientific Societies (November 2, 2016). Press release No. 12. Bogota. <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/carta-sociedades-cientificas-bebidas-azucaradas-2016.pdf>.

Óscar Ospina, with the advice of Educar Consumidores, introduced a bill to increase by up to 80 percent the size of the warning picture on the cigarette package and the warning about the harmful effects of smoking, on each side of a pack of cigarettes.

Smuggling

The health tax announcements resonated with industrialists and merchants who formed a common front. More smuggling, less revenue, lower employment and crisis in retail stores were the usual arguments, amplified in well-attended regional and national events, with broad media coverage.

Juan Sebastián Arango, Director of Corporate Affairs of the National Federation of Merchants (Fenalco) affirmed: "It is our belief that the consumption taxes on certain goods are proportional to smuggling. When a consumption tax is levied on a given product, revenue will probably not increase nor will the deterrent to consumption. On the contrary, they are taken off the legal market and moved to the illegal market, putting at risk the income of some 25,000 families who grow tobacco (. . .). The smuggling networks in Colombia are sophisticated and are part of criminal organizations that fund both armed conflict and illicit urban structures. The smuggling we have is not like that of other countries; from a security standpoint, it's a time bomb."^{38a,b,c}

According to Fenalco's statements in the reform project discussion forums, the proposal to increase the cigarette consumption tax by 200 percent would mean that in the first year, the volume of smuggling would grow 136 percent, from 14 percent to 46 percent of the total market; by 2022, the illegal market would surpass the legal market, gaining a 55 percent total share. The 63 percent growth in illegal cigarettes in Colombia between 2010 and 2012 was explained by the disproportionate increase in the tax in 2010, in Fenalco's opinion.

On July 5 the financial newspaper *La República* reported the positions of the tobacco companies and the sugared beverages sector: Humberto Mora, Director of Corporate

38a Interview with Juan Sebastián Arango, Director, Diego Roselli MD, Sebastián Gil-Tamayo; *Costo por años de vida perdidos: una propuesta para estimar el impuesto al tabaco*. [Cost per years of life lost: a proposal for estimating the tobacco tax]. Three times per capita GDP (Col\$16,613,951) was applied to each year lost. The exchange rate used was Col\$2,743 per U.S. dollar.

38b Colombian Association of Scientific Societies (November 2, 2016). Press release No. 12. Bogota. <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/carta-sociedades-cientificas-bebidas-azucaradas-2016.pdf>

38c Interview with Juan Sebastián Arango, Fenalco Director of Corporate Affairs, June 6, 2017.

39 The Compañía Colombiana de Tabaco (Colombian Tobacco Company) was founded in 1919; in 2005 it was owned by the Grupo Empresarial Antioqueño, which sold it to the multinational company Philip Morris with brands such as Marlboro, Pielroja, American Gold, Boston, Caribe, Derby, Green and LM. It shares the local market with another multinational, British American Tobacco and its brands: Kool, Lucky Strike, Kent, Mustang, Belmont and Pall Mall.

40 Noelia Cigüenza (July 5, 2016). Colombia sería el sexto país en poner impuestos a las gaseosas [Colombia would be the sixth country to tax soft drinks]. *La República*. www.larepublica.co/globoeconomia/colombia-seria-el-sexto-pais-en-poner-impuestos-a-gaseosas-2396566.

Affairs of Compañía Colombiana de Tabaco (Coltabaco),³⁹ pointed out that “the legal product would be replaced by smuggling, which in 2014 grew from 1 percent to 19 percent (...) we are aware of the problem and therefore propose a gradual increase of 3 percent every six months (...). We want to tax tobacco in a sustainable manner. An increase of 400 percent per pack would destroy the country’s tobacco industry.”⁴⁰ Santiago López, Director of the Beverage Division of the National Association of Industrialists (ANDI), affirmed that “the tax on soft drinks in Mexico ended up subsidizing informality and punishing formal, taxpaying businesses.”

British American Tobacco (BAT) released information claiming that when the tobacco tax was raised to 50 percent, domestic smuggling increased from 1.8 percent to 19 percent without any reduction in consumption. Moreover, in regions such as the Atlantic coast, smuggling grew up to 60 percent. In all, the 2010 tax rate adjustment led to a 500 percent increase in the sale of illicit cigarettes, amounting to 3 billion illegal cigarettes, which at the time, represented 20 percent of the total share of the Colombian market.

No one in government or academia disputed that smuggling was a foreseeable side effect of adjusting the tax. The Committee of Experts addressed it explicitly in its recommendations: “To obtain results in the areas of public health and revenue, the adoption of measures coordinated between the national and subnational governments to combat smuggling is essential. We emphasize the importance of investment in technologies (traceability) by DIAN as well as the closing of channels for imports through free trade and customs areas, as is the case in Maicao,”⁴¹ referring to the city on the Guajira Peninsula, the northern border with Venezuela, the traditional point of entry for smuggled cigarettes.

In late September, Rajeev Cherukupalli, public finance expert from the Institute for Global Tobacco Control at Johns Hopkins University in the United States, was in Bogota for the Forum on Increasing Tobacco Taxes as a Public Health Strategy, sponsored by Universidad de los Andes, and was interviewed by *Portafolio*. “I believe it is up to the public to pressure lawmakers to do the right thing, that which is morally correct, and that is not only to increase the cost of smoking for current smokers, but more importantly, to increase the cost of starting to smoke for those who aren’t yet smoking, young people (. . .). In most OECD countries, it is above 60 percent and in some above 70 percent. At first glance that may seem like a lot, but countries that have had successful policies have taken similar steps,” so that the MSPS proposal of a drastic increase in the tobacco tax “makes sense,” he said.⁴²

If there were any serious discrepancies, they were in the figures. In October, in the Forum on Cigarette Smuggling in Colombia: Monitoring tools and policy recommendations,

41 Commission of Experts for Tax Equity and Competitiveness, *op. cit.*, Paragraph 140.

42 Rajeev Cherukupalli (October 4, 2016). Aumentar el impuesto al tabaco es el camino a seguir [Increasing the tobacco tax is the way to go] *Portafolio*. <http://www.portafolio.co/negocios/impuesto-al-tabaco-en-colombia-500793>.

Blanca Llorente of Fundación Anáas spoke about the results of a study on cigarette smuggling in Bogota, Medellín, Cartagena, Cali and Cúcuta, cities that account for 60 percent of the country's cigarette market. According to the study, smuggling stands at 3.5 percent, compared to the 14 percent reported in a 2015 study of 14 regions carried out by the firm Invamer for the National Federation of Departments, using a smaller sample.⁴³ In the researcher's opinion, this reveals the tobacco industry's measurement bias, "which has created the myth that smuggling in Colombia is very different from smuggling anywhere else in the world. Part of its strategy, which has been successful, is to characterize the issue of tobacco taxes and policy as a local matter, and for that reason no international comparisons are made, as they would reveal the inconsistency." Consequently, a 300 percent increase in tobacco taxes still does not place Colombia within the regional average. That may sound high, but in absolute values it is a small amount, she affirms.⁴⁴

For some time, tempers in the tobacco companies had been heating up, and the tax increase discussion inflamed them. Educar Consumidores, Corporate Accountability International, the Citizens Coalition to Oversee Tobacco Control and the Foundation for Education and Social Development had petitioned the Council of State about Superintendency of Industry and Trade resolutions that had, since 2012, determined how cigarettes were to be displayed to end consumers in stores, mini-markets, liquor stores, department stores and small shops.⁴⁵ The Council of State decree suspending the display of cigarettes and establishing fines for noncompliance was issued in late August 2016: "Any method of displaying tobacco products is in itself a form of consumer advertising, as it gives the impression that using the product is acceptable and makes it difficult for consumers to quit the habit," the court stated, echoing the Anti-Tobacco Law.

The reactions were swift. One challenger, Guillermo Botero, Fenalco president, told the economic publication *Portafolio*: "This is a provisional decision, i.e., the effective dates and the nature of the new sales regulation are vague. Therefore, we give each merchant free rein to decide for himself whether he wants to comply or not." Jorge Cabrera, BAT Vice President for Legal and Corporate Affairs, described the decree as "a legal broadside" and said that "display is not the same as advertising," and asked: "How are they going to get the 200,000 people who handle the product to hide it?"⁴⁶

43 The Finac survey for Anáas was conducted in person and involved 1,732,316 smokers, both male and female, over 12 years of age, in all socioeconomic levels. The Invamer survey for the Federation of Municipalities involved 1,648 males and females from urban and rural areas, over the age of 18, using mobile devices.

The forum was held on October 14 and was organized by the Faculty of Economics of Universidad del Rosario, Fundación Anáas, the Colombian League Against Cancer, the World Bank and the American Cancer Society.

44 Interview with Blanca Llorente, June 5, 2017.

45 External Circulars 005 of 2012 (January 27) and 011 of 2012 (March 23) issued by the Superintendency of Industry and Trade. <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=46700>.

46 Redacción Vivir (August 29, 2016). No más cigarrillos exhibidos en tiendas [No more cigarettes displayed in stores]. *El Espectador*. <http://www.elespectador.com/noticias/salud/no-mas-cigarrillos-exhibidos-tiendas-articulo-651845>.

Sugar-sweetened beverages

The tax reform discussion unfolded in a difficult political environment for the government, as it was at the same time dealing with the campaign in support of the referendum on the peace agreement signed in Havana (Cuba) with the Revolutionary Armed Forces of Colombia (FARC) insurgents, who had taken up arms half a century earlier. After an initial loss⁴⁷ a revision, in the so-called Teatro Colón Agreement, was signed.

The energy in Congress was obvious, and political struggles and deals to win support for the peace agreement and the tax reform bills were the order of the day. In fact, the timetable for the peace talks, which initially set a signing deadline of March 23, 2016, was postponed and the presentation and discussion of the tax reform in the legislature was moved.

This forced NGO and industry lobbyists to step up their efforts in Congress. Some 100 “influencers” were mentioned, although the Congressional register of lobbyists for the 2014–2018 period only includes 25. The emphasis of public and behind-the-scenes efforts was on defeating the proposed tax on sugar-sweetened beverages, which is what in fact occurred. The bill that Finance and Public Credit Minister Cárdenas submitted on December 6, 2016, to the joint Senate and House economic committees did not include the tax on sugar-sweetened beverages.

Health and Social Protection Minister Gaviria gave his version: “The battle is very difficult, almost impossible, for many reasons. Perhaps I’ll get myself in trouble, but I’m going to mention one of many: in Colombia, there is an alliance between economic groups and the media⁴⁸ that can be intimidating and that can even block certain discussions and affect our democracy (...). This week there were a lot of lobbyists in Congress. A ministry colleague told me upon leaving a debate: “You seemed to be talking more to the lobbyists than to the members.”⁴⁹

In a failed attempt to revive the tax on sugared products, Representatives Óscar Ospina, Víctor Javier Correa and Jaime Serrano of the Green, Polo Democrático and Liberal parties, respectively, presented an addendum to the tax reform project, aiming to revive the tax on “sugar-sweetened beverages, carbonated soft drinks, energy drinks, sports drinks, teas, juice drinks, juices, fruit pulps and concentrates, nectars or fruit drinks, flavored drinks and, in general, all beverages that have added sugars or sweeteners.”

47 The referendum on the question: “Support the final accord on ending the conflict and building stable and lasting peace?” was held on October 2, 2016, with 6,422,316 “No” votes (50.23 percent) and 6,361,762 “Yes” votes, 37.43 percent of the electorate having come to the polls to vote. Following revision efforts in which opponents of the agreement participated, the final agreement was signed on November 24, 2016 in the Teatro Colón de Bogotá. Congress approved it on November 30, 2016.

48 He is probably alluding to the Ardila Lülle conglomerate, which owns sugar refineries; soft drink manufacturers; radio, television and movie channels; and sponsors all soccer, cycling and skating competitions.

49 Interview with Cecilia Orozco, published November 26, 2016, in *El Espectador*.

The blows rained down from both sides of the playing field. At the request of the beverage company Postobón, in September the Superintendency of Industry and Trade ordered the withdrawal from circulation of an Educar Consumidores audiovisual campaign warning of the harmful effects of sugar-sweetened beverages. One of the arguments put forward was that it referred to vague measurements such as “teaspoons of sugar.”⁵⁰

So controversial was the debate on sugar-sweetened beverages that two lawmakers with different ideologies and opposing views, Jorge Enrique Robledo, of the left-leaning Polo Democrático, and Iván Duque, of the right-leaning Centro Democrático, concurred in rejecting the taxes on these beverages because of the effects on agroindustry and employment.

Storekeepers opposed to both taxes, tobacco and sugar-sweetened beverages, were invariably represented in regional forums, frequently citing the situation in Mexico as an example. The Fenalco campaign included a manifesto signed by *20,000 storekeepers opposed to the taxes*, and an advertisement in the daily newspaper with the largest national circulation, *El Tiempo*, claiming: “The tax on sugar-sweetened beverages is not the end of obesity; it is the end of neighborhood stores that provide income for the thousands of families who tend them. In Mexico, 30,000 storekeepers went out of business because of the tax, and the reduction in caloric intake was only about 6 calories per day.”⁵¹

However, the academic debate added many strong arguments to the discussion.

On October 21, the Forum “Sugar-sweetened beverage taxes: myths and realities”—convened by the Faculty of Medicine, the Governor Alberto Lleras School, the Environmental and Public Health Clinic of the Faculty of Law of Universidad de los Andes, and the Fundación Santa Fe de Bogotá—tried to bring all concerned sectors to the table. At the last minute, however, the industry and business representatives and some members of parliament canceled their participation to the bewilderment of the organizers, including the economist and physician, Andrés Vecino, who said: “I believe we have to work with the industry in all cases. On no account does this mean fighting with the industry.”

The event was also attended by Minister Gaviria who, in his remarks, focused on the distributive equity and fairness of health taxes and pointed out that although individuals are free to consume harmful foods or products, if they fall ill the costs of treating them are borne by the entire population because of the way the Colombian health system is organized. He drew attention again to the “enormous effort to influence behaviors” that the sugar-sweetened beverage industry and the media have made.

50 “We have a bottle of juice in the morning, an iced tea at noon, a soda with dinner and a couple more in the evening. It seems rather harmless, but all these sugary drinks in one day add up to a lot of added sugar that can cause serious health problems, including obesity, which causes diabetes, heart ailments and some types of cancer,” said the message.

51 *El Tiempo*, print edition of Monday, October 7, 2016.

52 See Andrés Vecino and Manuela Villar (August 2, 2016). Los beneficios sociales de los impuestos a los productos dañinos [The social benefits of taxes on harmful products]. <http://lasillavacia.com/silla-llena/red-social/historia/los-beneficios-sociales-de-los-impuestos-los-productos-daninos-57312>

In that connection, Andrés Vecino said that the logic of creating taxes for “harmful products” is that “the price sends signals concerning the costs associated with the consumption of these products, attempting to offset the social costs of the harm they cause”⁵² and, looking back over the ground covered in the discussion of health taxes, he added: “I believe that the efforts of civil society put the topic on the agenda, and although the tax did not pass this time, people are more aware today than they were a year ago; the work that was done focused not only the legislation to establish the tax, but on civil society as well, and it was very important. In high-income countries where chronic illnesses are a more serious problem than they are in Colombia, and where there are stronger social norms about physical activity and a healthy diet, consumers are the ones who have pressured the industry to produce healthier or less harmful products.”⁵³

A statement issued on November 22, 2016, by the Johns Hopkins Bloomberg School of Public Health was especially relevant, with 20 references to studies and scientific evidence: “Raising the relative prices of unhealthy products has a direct, demonstrable and immediate impact on the adoption of healthy behavioral patterns” and it refuted the effects on unemployment: “The small merchants who sell sugar-sweetened beverages would adapt quickly, as consumers would buy other products that they could offer more easily.”⁵⁴

These views were seconded by Joshua Sharfstein, on W Radio: “We believe that sugar-sweetened beverages already carry a hidden tax that can be measured in terms of health. They contribute to obesity, and obesity can cause diabetes, strokes and other health problems. We don’t see the tax, but it’s there and it’s affecting people in Colombia.” Asked if he knew any place where health had won out over lobbyists in Congress, he replied, “Yes, in the United States recently there were some reservations, but the tax on these types of drinks was successful because of evidence, which is key.”⁵⁵

On December 1, 2016, when it was a fact that the sugary drinks tax was defeated, César Rodríguez, Director of Dejusticia, pointed out: “(. . .) In all this, the producers of sugar and sugary drinks followed the tobacco industry strategy, which for decades concealed the link between cigarettes and cancer, as shown by Professor Marion Nestlé in her book *Soda Politics*. “Today, cigarette taxes are common around the world because they reduce consumption and help cover the costs of diseases caused by smoking. The tax on sugary drinks has the same objective. Hopefully it won’t take decades and hundreds of thousands of cases of diabetes, obesity and preventable deaths for Congress to come to the same conclusion.”⁵⁶

53 Interview with Andrés Vecino, June 15, 2017.

54 Johns Hopkins Bloomberg School of Public Health (2016). Apoyo al esfuerzo innovador de introducir un impuesto a las bebidas azucaradas en Colombia [Support for innovative efforts to introduce a tax on sugar-sweetened beverages in Colombia]. <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/apoyo-bebidas-azucaradas-asosalud-johns-hopkins-bloomberg.pdf>.

55 Evidencia demuestra que bebidas azucaradas tienen una conexión con la obesidad [Evidence shows that sugar-sweetened beverages are linked to obesity]: Sharfstein (November 24, 2016). The W. <http://play.wradio.com.co/play/audio/3312638/>.

56 César Rodríguez Garavito (December 1, 2016). Los impuestos en la república azucarera [Taxes in the sugar republic]. *El Espectador*. http://www.elespectador.com/jscroll_view_entity/node/668406/full/p695478shown.

The outcome

On December 20, 2016, in the corridors of the Capitol the tension was palpable. With the government agreeing to a phased-in tobacco tax and the tax on sugary drinks scrapped, it seemed that every effort would be needed to support the new taxes. Then a letter that the Director of the Pan American Health Organization (PAHO) for the Americas, Carissa F. Etienne, sent to the presidents of the Senate and the House, Mauricio Lizcano and Miguel Ángel Pinto, respectively, was made public: "(...) evidence shows that high prices encourage users to give up tobacco, keep young people from starting to smoke at an early age, reduce the number of relapses among those who have stopped smoking, and reduce consumption among those who continue to smoke." Concerning sugary drinks, she pointed out: "Ample international evidence and studies conducted in Colombia show that taxes on sugary drinks reduce consumption and help prevent overweight and obesity." "We are confident that the Honorable Congress will take the opportunity to approve the aforementioned measures in the comprehensive initiative under discussion and thereby continue promoting, through legislation, the most cost-effective measures being adopted worldwide to prevent the risk factors that cause noncommunicable diseases, in furtherance of the health protection the government of Colombia has been constructing during this century."

Until now, the peace and fiscal adjustment discussions in Congress have overlapped; the amnesty law for FARC guerrilla fighters who surrendered their weapons was approved in a House plenary session, immediately before the debate on the final text of the reform in a session that was extended from December 27 to December 28, 2016, for lack of a quorum. It was ultimately approved with 96 votes in favor and 33 against. Most of the full text of 258 pages remained unchanged from the Senate version.

The reform and the resulting taxes were a fact. Regulation was all that remained. Then, once more, the struggle was renewed by the industry when its representatives appeared at the Ministry of Finance and Public Credit in mid-January, 2017, as they had done in late November 2016.

Finally, on February 3, 2017, in a joint Senate and House session, conciliation of the Structural Tax Reform was approved; Article 347 on page 138 of Congressional *Gaceta 41* establishes the rates of the tax on cigarettes and manufactured tobacco products, which took effect that year.⁵⁷

57 For cigarettes, tobacco, cigars and cigarillos, Col\$1,400 (~US\$0.48) in 2017 and Col\$2100 (~US\$0.71) in 2018 for each pack of twenty (20) units or proportional to its contents. The rate per gram of cut tobacco, snuff or chimú (tobacco syrup) will be Col\$90 (~US\$0.03) in 2017 and Col\$167 (~US\$0.06) in 2018. These rates will be adjusted annually, starting in 2019, by a percentage equal to the growth of the consumer price index certified by the National Administrative Department of Statistics (DANE), plus four points. The Fiscal Support Directorate of the Ministry of Finance and Public Credit will certify and publish the adjusted rates before January 1 of each year. The additional revenue collected as a result of the increase in the rate of the cigarette consumption tax will be used to finance health insurance.

The first press release issued by the Ministry of Health and Social Protection in 2017 discussed the estimated revenue and its purpose: “The cigarette tax approved as part of the tax reform will bring an additional Col\$500,000 million (~US\$170 million) to the health sector and prevent some 2,300 deaths starting in 2018 (...) with the rate of Col\$1,400 (~US\$0.48) per pack of 20 cigarettes (or proportional to its contents) envisaged for 2017, the country will collect additional revenue amounting to nearly Col\$300,000 million (~US\$102 million). In 2018, when the rate will increase to Col\$2,100 (~US\$0.71), the revenue will be Col\$500,000 million (~US\$170 million). These amounts will be in addition to the Col\$400,000 million (~US\$136 million) collected since before the reform. With the full rate of the tax, the average price of a pack of cigarettes will have risen from Col\$2,800 (~US\$0.95) to Col\$4,200 (~US\$1.43) in 2018. This increase will discourage use, which will help lower the proportion of smokers by 2 percent (from 12.9 percent at present to 11.2 percent in 2018).”⁵⁸

The study carried out and supported by the Ministry of Health and Social Prosperity, the Ministry of Finance and Public Credit, the scientific community, academia and the NGOs bore fruit. Although the initial proposal of a single, substantial tobacco tax became a gradual tax, which some believe will lose its effectiveness if not increased in the near future, and the tax on sugary drinks was not included in the Structural Tax Reform, the wall around smokers keeps closing in. Colombia is a little closer to the regional average of tobacco prices, as recognized by World Health Organization (WHO) on the occasion of the 2017 World No Tobacco Day, when it spotlighted the work done by government entities and civil society.

The question remains of completing the work left undone by the tax reform. The Technical Deputy Minister of Finance, Andrés Escobar, sees the need for an evaluation of the impact of the two adjustments, in 2019, and another substantial adjustment in the tobacco tax within five years. “It is not good (for the price of cigarettes) to be below the Latin American average, which will start rising because other countries also take measures; the Latin American average is probably starting to leave us behind again, so we will need to surpass the regional average.”⁵⁹ As for sugary drinks, he says a new strategy should be employed to get the legislature to approve the tax sooner rather than later. Escobar’s interest in further tobacco tax adjustments is in line with the recommendations of the Commission of Experts for Tax Equity and Competitiveness, which pointed out the advisability of the government “considering the possibility of raising the tax again” two years after the phased increase.⁶⁰

58 Ministry of Health and Social Protection. Impuesto al cigarrillo evitará 2.300 muertes al año [Cigarette tax will prevent 2,300 deaths per year], (January 2, 2017). Press Release 001. <https://www.minsalud.gov.co/Paginas/impuesto-al-cigarrillo-emitara-unas-2300-muertes-anuales.aspx>

59 Interview with Andrés Escobar, June 30, 2017.

60 Commission of Experts for Tax Equity and Competitiveness, *op. cit.*, Paragraph 139.

One of the most important lessons learned in this process of approving the tobacco tax in Colombia is that the use of evidence is essential to inform public opinion, to counter arguments of interest groups, and is particularly important to assure the decision makers of the soundness of their measures.

3

RECOMMENDATIONS

The process of increasing the tobacco tax in Colombia has generated lessons learned and recommendations relevant to various actors, areas of action and even other countries in Latin America and other parts of the world. The process generated lessons learned about the importance of generating and using evidence that justifies and monitors policy decisions. Lessons were generated regarding the importance of creating commitment and aligning different public entities relevant to the tax adjustment process. We learned strategies for and the importance of building alliances between public entities, academia and civil society. All these lessons have come to be understood within a context of the importance of the continuing education of actors and the population in general around the effects of tobacco and, in parallel, the benefits of a tax increase for all.

Evidence

One of the most important lessons learned in this process of approving the tobacco tax in Colombia is that the use of evidence is essential to inform public opinion, to counter arguments of interest groups, and is particularly important to assure the decision makers of the soundness of their measures. In Colombia, in the process of increasing the tax on tobacco, the lack of systematic information on smoking and a mechanism to centralize it, was identified. This has suggested that the country needs evidence building exercises, including systematic and regular generation of information, monitoring, estimation of relationships between variables, and policy evaluation that does not depend on external resources to be part of the work objectives of government agents and civil society who are involved in the issue. In the case of a commitment to the systematic creation of information on smoking, the Ministry of Health could play an active role in centralizing and disseminating the evidence that is being constructed

The generation of systematic evidence on smoking, of course, must be accompanied by a mechanism for monitoring the consumption tax collection that is transparent, offers timely information, and is protected from industry interference. The information must incorporate data on the volume and value of revenue. In addition, it must incorporate a procedure for cross-referencing this information with other sources, such as import records and data reported to determine the VAT. The Ministry of Finance could proceed to lead efforts in generating this information, in a systematic way.

In addition to a system for collecting information related to smoking and related tax revenues, it is suggested governments consider the adoption of affordability as a reference

indicator to define the tax level. This is already partly reflected in the current policy but should be formalized with the definition of a comprehensive system of indicators for tobacco control policy that is institutionally recognized and incorporates the sources of information available in the National Statistics System.

It has come to be understood that the follow-up evaluation of tobacco tax policy must adopt an integrated approach supported by a set of indicators that appropriately reflect the defined duties of each of the sectors responsible for implementation. The leadership of a public entity such as the Department of National Planning in Colombia that defined a multi-sectoral monitoring and reporting scheme could help achieve this.

Policy and public action

Lessons learned have led us to reflect on the importance of continuing efforts in the control of smoking through public policies. The importance of establishing a dialogue (formal and informal) between state agencies responsible for health at the central and regional levels has been demonstrated to help align efforts and strengthen policy implementation.

Similarly, it has been understood that strengthening the commitment of responsible entities to ensure transparency in public policies—which has an effect on the improvement in the administration of taxes at the departmental level—is essential to strengthen arguments that support increases to the tobacco tax. Having said that, it is equally important to promote recommendations of transparency from the Framework Convention on Tobacco Control to prevent the tobacco industry from interfering in future debates of taxes on tobacco products.

Given the previous difficulties to achieve an increase and the international evidence that supports the importance of a continuous increase in the tobacco tax, it has become clear that a body such as the Interagency Commission for the Implementation of Agenda 2030 in Colombia must explicitly incorporate the commitment to periodically adjust taxes and take other measures that mitigate undesirable effects on the consumption of tobacco products.

The Attorney General's role in the culture of accountability with an inter-institutional approach is essential to ensure that the co-responsibility of different levels of government regarding the implementation of the cigarette tax policy is made visible. The strengthening of this or a similar instance/entity should be a priority among efforts that reinforce public policies in tobacco control. In the specific case of Colombia, fiscal measures must be accompanied by a strengthening of the tax administration of the Territorial Entities, since these are the institutions responsible for carrying out the increase in the collection boosted by the tax increase.

Lastly, given the challenges that are expected to have an impact on the tobacco tax that could stem from illicit trade in tobacco, it is recommended to ratify the protocol to

eliminate illicit trade in the Framework Convention on Tobacco Control and to formulate a plan of action to implement it. The Ministry of Finance could lead measures to ensure the implementation of this commitment and ensure that it is not subject to the interests of the tobacco industry. Consultation of recent experiences of implementation in other countries in the region to take advantage of opportunities for harmonization in information systems is indispensable.

Alliances

Another important lesson learned is the importance of creating strategic alliances to help push the proposed policy from various perspectives. The continuous effort to generate actions that articulate efforts between academia and civil society in the construction of long-term alliances, or those that include pacts among NGOs for the development of campaigns of mass communication and lobbying before the Congress, are essential to ensure the implementation of measures against smoking, including a future increase in tobacco tax or other healthy taxes.

Strategic alliances can help to bridge interests in the field of research and the construction of evidence, nationally and internationally, as well as generate demand for it. In the same way, strategic alliances that seek to strengthen coordination and harmonization actions in the region are also key to the generation of information and demand for it. This coordination of actors at the regional level can also lead to efforts to harmonize tax regimes for tobacco and other products that are harmful to health.

An important aspect to maintain strong alliances is to manage and ensure availability of economic resources and technical support between entities and related organizations to strengthen coordination among the entities responsible for the control and implementation of the actions that ensure compliance with measures on the marketing of tobacco products. These entities include the customs authorities; the Superintendency of Industry and Commerce; the police and the authorities with inspection functions, monitoring, and control in the health sector.

Education

The continuing education of actors related to the implementation of measures to reduce tobacco consumption, with different perspectives, is essential to promote public policies related to tobacco. Increasing efforts to raise public awareness about the relationship between smoking and cardiovascular diseases, and not only risk associated with lung diseases, is essential to increase public awareness of the negative effects of smoking and generate support from the population against measures of tobacco control. In addition, ongoing efforts to update educators and health workers about tobacco control policies

and other unhealthy products are important for the proper implementation of healthy tax increase policies. Equally important, working together to provide rigorous information to public and private media, helps strengthen messages about the benefits of implementing tobacco control policies.

To increase efforts to educate actors in legislative and executive areas, it is important to consolidate strategies to disseminate international and local scientific evidence as a basis for advocacy. Similarly, it is important to encourage efforts by the public sector and civil society to sensitize sectors of industry about their social responsibility in the face of an imminent reduction in smoking. These sensitization debates benefit by linking independent academics as they help to gain credibility in the arguments.

