

CONFRONTING ILLICIT TOBACCO TRADE:



A GLOBAL REVIEW OF COUNTRY EXPERIENCES

URUGUAY: TACKLING ILLICIT TOBACCO TRADE

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URUGUAY

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Tackling Illicit Tobacco Trade

Winston Abascal and Alejandro Ramos-Carbajales¹

Chapter Summary

Tobacco use has health, economic, and social consequences for populations. It is associated with Uruguay's two leading causes of death, cardiovascular diseases and cancer.

After ratifying the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) in September 2004, Uruguay put in place a strong national tobacco control policy implementing a comprehensive set of measures, including 100 percent smoke-free environments; pictorial health warnings; a ban on advertising, promotion, and sponsorship; and the inclusion of tobacco dependence treatment in all health care settings. Uruguay has achieved the highest levels of implementation of MPOWER, the WHO-recommended package of six key evidence-based measures proven to reduce tobacco use. Following the implementation of these measures in 2005, prevalence of tobacco use has significantly declined, both among young people and adults. Highest prevalence is observed in the poorest third of Uruguay's population.

¹ W. Abascal (Director of International Cooperation Centre for Tobacco Control, WHO FCTC Secretariat and Former Director of the National Program for Tobacco Control, Ministry of Public Health, Uruguay); A. Ramos-Carbajales (Former Planning and Research Director at CIET [Research Center for the Study of the Tobacco Epidemics] Uruguay).

There are several approaches to measuring the illicit cigarette trade in a country. The method adopted here uses data from the Global Adult Tobacco Survey (GATS) 2009 and 2017, which included questions on cigarette brands smoked. The size of the illicit market is estimated at 12 percent of total cigarette consumption in Uruguay.

In the last 15 years, illicit cigarettes entering the Uruguayan market are largely manufactured in Paraguay and transported across the Brazilian border by small trucks. Illicit traders often make multiple trips to the Brazilian border to pick up incoming cigarettes, and most seizures of cigarette cargo take place on Uruguay's network of National Routes. In addition, cigarettes are being brought by small boats via the Uruguay River from Argentina.

Although illicit trade legislation in general involves many different laws, Uruguay has passed specific legislation on tobacco with the Tobacco Control Act of 2008, which notably introduced a regulation mandating the Executive Branch to secure the human and material resources needed to proceed to the elimination of all forms of illicit tobacco trade. Nonetheless, analysis of Uruguay's legislation on illicit tobacco points to an important deficit in terms of compliance with FCTC Article 15 and the newly ratified Protocol for the Elimination of Illicit Tobacco Trade (the Protocol).

Tobacco control policies, and particularly tax policies, are undermined by illicit trade. GATS 2009 and 2017 data show that, while the proportion of Uruguay's smokers who consume illicit brands has not increased in the last eight years, the country's poorest smokers are the main consumers of illicit tobacco products. In this sense, controlling the illicit tobacco trade is a special priority, since the burden of health consequences falls mainly on the poor.

Ratification of the Protocol in 2014 spurred the creation of an Inter-Agency Commission for the Implementation of the Protocol. The Commission includes delegates from several ministries, Uruguay's customs and tax authorities, the judiciary, and two non-governmental organizations. Uruguay has the chance to develop a robust long-term fiscal policy on tobacco products, thanks to legislation giving the Executive Branch a wide mandate to set the tobacco tax base.

It is necessary to address illicit tobacco at a regional level through the MERCOSUR Inter-Governmental Commission on Tobacco Control. An important aspect of the Protocol (Part V) refers to the international exchange of information on law enforcement, technical assistance, and cooperation.

When Uruguay ratified the FCTC, it acquired obligations but also substantive support to apply the policy measures contained in the agreement. This has been fundamental in the evolution of tobacco control in the country. With the entry into force of the Protocol, Uruguay once again enjoys an opportunity to benefit from partnerships, implement necessary policy changes, and ultimately eliminate illicit tobacco trade.

1. Overview of Tobacco Control Policy in Uruguay

Given that tobacco use is associated with the two leading causes of death in Uruguay, cardiovascular diseases and cancer,² its control constitutes a public health measure of fundamental importance.

Tobacco use is a complex phenomenon and has consequences in the health, economic and social fields. Therefore, the response from public policy, as established by the WHO FCTC,³ must encompass a set of measures that involve multiple areas. For more than a decade in Uruguay, the prevalence of tobacco use remained almost constant, according to the four household surveys carried out between 1994 and 2006 by the National Board on Drugs (JND).^{4 5 6 7} Tobacco control policy as such began with the new Government in March 2005. Uruguay had ratified the FCTC in September 2004 and, from 2005 on, the country implemented a strong, FCTC-guided tobacco control policy that resulted in a comprehensive package of measures. The central axis was the implementation of smoke-free environments, a measure that determines a change in society's view of smoking, as it denormalizes smoking behavior. In addition, it discourages the beginning of consumption, decreases its magnitude, and stimulates quit attempts.

The implementation of other measures such as health warnings; the wide prohibition of advertising, promotion, and sponsorship; the increase of prices through tax hikes; and the incorporation of free treatment of tobacco dependence added to these regulations. Apart from their own impact, they contributed to a contextual change in the social perception of tobacco use and the risk of this behavior.⁸

In 2009, the size of graphic warnings was increased to 80 percent of both main faces of the cigarette package, and the existence of variants within the same brand was forbidden ("single presentation requirement"). In 2014, the ban on advertising and promotion became total by eliminating the exception that had existed at the point of sale and including the prohibition to display tobacco products. The Protocol for the Elimination of Illicit Trade in Tobacco Products was ratified in the same year.⁹ Box 1 presents a summary of relevant policies, including those approved before 2005. These measures include the main recommendations of the WHO FCTC.

² Ministerio de Desarrollo Social, Presidencia, Oficina de Planeamiento y Presupuesto, Report Uruguay 2015 - http://200.40.96.180/images/ReporteUruguay2015_OPP_web.pdf

³ World Health Organization. WHO Framework Convention on Tobacco Control. Geneva: WHO, 2005.

⁴ Junta Nacional de Drogas. Secretaría Nacional de Drogas. 2da. Encuesta Nacional de Prevalencia del Consumo de Drogas, 1994

⁵ Junta Nacional de Drogas. Secretaría Nacional de Drogas. 2da. Encuesta Nacional de Prevalencia del Consumo de Drogas, 1998

⁶ Junta Nacional de Drogas. Secretaría Nacional de Drogas. UNDP. 3ra. Encuesta Nacional de Prevalencia del Consumo de Drogas, 2001.

⁷ Junta Nacional de Drogas. Secretaría Nacional de Drogas, 4ta. Encuesta Nacional en Hogares sobre Consumo de Drogas. Uruguay, 2006.

⁸ Abascal W, Esteves E, Goja B, González F, Lorenzo A, Sica A. Impacto de las políticas de control de tabaco en Uruguay 2006-2009. Programa Nacional para Control del Tabaco. Archivos de Medicina Interna, 35(Supl.4),1-16

⁹ Ley 19259. Available at: http://archivo.presidencia.gub.uy/sci/leyes/2014/08/mrree_3855.pdf

Box 1. History of Key Tobacco Control Policies and Programs in Uruguay

POLICY	SUMMARY OF MEASURES
Earlier restrictions on smoking	<p>Bans in public workplaces and in retail food stores since 1996.</p> <p>Bans in public transportation since 1981; bans in hospitals and all health facilities since 2004.</p>
Tobacco control policy after March 2005	<p>Legislation prohibiting smoking in work and closed public places introduced in Uruguay in September 2005 by Decree, became effective on March 1, 2006, at national level. A comprehensive tobacco control law was passed in Parliament in 2008, including smoke-free environments (no change in 2006 bans).¹⁰</p>
Tobacco tax	<p>Used as a tool to decrease demand through tax hikes from March 2005 until 2010 and from March 2014 to the present. From 2010-2014, there were no tax increases.</p>
Illicit trade control	<p>A specific strategy to tackle illicit tobacco trade was applied to the operation of free-trade zones and other tax-free spaces in the early 1990s to prevent rerouting to the domestic market (see section 8.3).</p>
Mass media campaigns (MMCs)	<p>Large-scale MMCs were implemented at the time of Uruguay’s initial systematic tobacco control policies in 2005, in particular in connection with smoke-free environment legislation. Campaigns included “Un millón de gracias” (“A million thanks,” 2006) and “Uruguay Libre de Humo de Tabaco” (“Smoke-Free Uruguay”).</p> <p>Subsequently, additional mass media campaigns, in particular via the internet: “Me declaro ex” (“I’m a former smoker,” 2016) and now “Bienvenida independencia” (“Welcome independence”), a mass media and graphic campaign (www.msp.gub.uy)</p>
Health warnings	<p>Text warnings since 1982, mandated inclusion of text in TV advertising.</p> <p>Although text warnings became a legal requirement in Uruguay in 1982, a new and more direct text was implemented in 2003, encompassing warnings on cancer, respiratory and cardiovascular diseases, and risks for pregnant women.</p> <p>Since May 2005, health warnings included pictorials covering 50% of the pack.</p> <p>Since 2009, picture and text warnings covering at least 80% of the front and back of tobacco packaging.</p>
Advertising and promotion	<p>Television advertising for tobacco products banned, May 2005.</p> <p>Uruguayan Comprehensive Tobacco Control Law 18256 of 2008 banned all advertising, promotion, and sponsorship except for point of sale.¹¹</p> <p>Complete ban on advertising, promotion, and sponsorship, 2014, also prohibits point-of-sale advertising.</p> <p>A standardized tobacco packaging bill is before Parliament pending approval as of June 2018.</p>
Youth access	<p>Minimum age for tobacco sales set at 18 years since 1982.</p> <p>Vending machine ban implemented.</p>
Treatments to help smokers quit	<p>Extensive provision of free stop-smoking services providing counselling and access to pharmacotherapy from 2004 onwards.</p> <p>Nicotine replacement therapy (NRT), bupropion, and varenicline available on prescription.</p>

¹⁰ Ley 18.256 – Ley de Control del Tabaquismo. (Tobacco Control Act, 2008) - <https://parlamento.gub.uy/documentosleyes/leyes/ley/18256>

¹¹ http://archivo.presidencia.gub.uy/_web/leyes/2008/03/S405_19%2010%202007_00001.PDF

2. Regional Partners: Uruguay and the MERCOSUR Agreement¹²

The MERCOSUR countries created the “Comisión Inter-gubernamental para el Control del Tabaco” (Inter-Governmental Commission for Tobacco Control, CICT) in 2004. Two of the main topics of discussion at the Commission have been (i) the need to control illicit tobacco trade and (ii) tax harmonization.¹³ However, over the years, the Commission’s recommendations to the governments of MERCOSUR have not produced any policy changes. There is also the problem that the Commission is mostly the responsibility of health ministers, and finance and economic ministers have generally not shared health officials’ concern about the illicit tobacco trade.

3. Trends in Tobacco Use in Uruguay

Following the implementation of the main measures established in the WHO FCTC, Uruguay has shown a sustained decrease in the prevalence of tobacco use, both among young people and adults.

3.1 Tobacco Prevalence Among Adults

Before the implementation of systematic tobacco control measures, beginning in 2005, Uruguay’s adult tobacco consumption prevalence stood between 32 and 33 percent, according to multiple surveys.^{14 15 16 17} In 2006, STEPS¹⁸ reported a prevalence of 32.7 percent for the population between 25 and 64 years of age. Three years later, however, GATS 2009¹⁹ found a substantially lower prevalence of 25.0 percent in the same age group.

¹² Since January 1995, MERCOSUR (Argentina, Brazil, Uruguay and Paraguay) is a trade area with free trade for all goods circulating in the region. It has also established a Customs Union, not full yet, with the existence of a Common External Tariff (AEC). Chile and Bolivia are associated members, while Venezuela is a full member but is currently suspended.

¹³ Paraguay has one of the lowest tobacco tax rates and tax shares of retail price in the world. Paraguay has been since the early 2000s the source of most illicit tobacco trade in the region.

¹⁴ Junta Nacional de Drogas. Secretaría Nacional de Drogas. 2da. Encuesta Nacional de Prevalencia del Consumo de Drogas, 1994

¹⁵ Junta Nacional de Drogas. Secretaría Nacional de Drogas. 2da. Encuesta Nacional de Prevalencia del Consumo de Drogas, 1998

¹⁶ Junta Nacional de Drogas. Secretaría Nacional de Drogas. UNDP. 3ra. Encuesta Nacional de Prevalencia del Consumo de Drogas, 2001.

¹⁷ Junta Nacional de Drogas. Secretaría Nacional de Drogas, 4ta. Encuesta Nacional en Hogares sobre Consumo de Drogas, 2006.

¹⁸ STEPS- Primera Encuesta Nacional de Factores de riesgo de enfermedades crónicas no transmisibles (First Survey of risk factors for Non-communicable diseases).2006 http://www.msp.gub.uy/sites/default/files/archivos_adjuntos/1er_enfrecnt_2006_1.pdf

¹⁹ Global Adult Tobacco Survey (GATS 2009) - World Health Organization, Pan American Health Organization, Centers for Disease Control and Prevention. Ministry of Health of Uruguay, National Institute of Statistics Uruguay. Uruguay, 2017 - https://paho.org/hq/index.php?option=com_content&view=article&id=1751&Itemid=1185&lang=en

The most recent tobacco survey at the national level (Uruguay GATS 2017 Fact Sheet)²⁰ points to a further decrease in male smoking prevalence since 2009, but no significant decline among women. Male smoking prevalence decreased from 30 percent to 25 percent, while female smoking prevalence slipped from 19.8 percent to 18 percent in the period 2009-2017.

Overall, the prevalence of tobacco smoking among adults aged 15 years and older decreased significantly, from 25.0 percent in 2009 to 21.6 percent in 2017 (Table 1). By age groups, the most important decrease was shown in the 15-24 group, with a drop from 24.7 percent in 2009 to 14.6 percent in 2017.

The greatest impact on the decrease in smoking prevalence was observed following implementation of the broad tobacco control measures introduced in 2005-2006.

Table 1. Evolution of Tobacco Smoking Prevalence, Uruguay, 2009-2017

	TOTAL	MEN	WOMEN
GATS 2009	25.0%	30.7%	19.8%
GATS 2017	21.6%	25.6%	18.0%

Source: Global Adult Tobacco Survey (GATS), Uruguay, 2009 and 2017. Prevalence figures include daily and non-daily smoking.

The main tobacco product smoked in 2017 was cigarettes, including manufactured (18.4 percent) and hand-rolled cigarettes (5.9 percent).

Using the distribution of wealth²¹ as a proxy for income, the 2017 results in Table 2 confirm that the lower income tercile has the highest smoking prevalence.²² We also note that the prevalence of roll-your-own (RYO) consumption is much higher (almost 10 times) in the poorest tercile, compared with the richest tercile.

In Table 3, 2017 GATS data show that adults who completed only elementary and early secondary schooling have the highest smoking prevalence.

Two other facts that point to a successful tobacco control policy are the decrease in tobacco smoke exposure at home and the percentage of smokers who want to quit. Regarding exposure to tobacco smoke at home, a significant decrease was registered, from 29.2 percent in 2009 to 20.0 percent in 2017. The percentage of smokers who state that they want to

²⁰ Global Adult Tobacco Survey (GATS). (Fact sheet) https://www.paho.org/uru/index.php?option=com_docman&view=document&alias=576-uru-gats-2017-core-factsheet&category_slug=publications&Itemid=307.

²¹ Ramos Carbajales, A; Clemente, A; Gonzalez Rozada, M. Impuestos al tabaco y políticas para el control del tabaco en Uruguay. Fundacion Interamericana del Corazón, México 2013 - http://tabaco.ficmexico.org/wp-content/uploads/2014/08/uruguay_web.pdf

²² In Uruguay, smoking hand-rolled tobacco is an established custom, and the use of this product increased after 2012.

Table 2. Prevalence of Tobacco Smoking by Income Level, 2017

	ALL SMOKED TOBACCO	RYO
Tercile 1 (richer)	17%	1.30%
Tercile 2	23%	4.55%
Tercile 3 (poorer)	26%	11.70%

Source: Author's calculations based on GATS 2017.

Table 3. Adult Tobacco Prevalence and Educational Attainment

PREVALENCE OF TOBACCO SMOKING BY EDUCATIONAL LEVEL (ALL TOBACCO PRODUCTS)	
Elementary school	24.1%
Secondary levels 7-9	27.1%
Secondary levels 10-12	23.6%
University	14.2%

Source: Authors' calculations, based on GATS 2017 data

quit smoking continues to be substantial: 10.9 percent of current smokers in 2009 and 10.3 percent in 2017 planned to or were thinking about quitting within the next month.

3.2 Tobacco Prevalence Among Youth

Regarding young people, the decline in prevalence has been even more pronounced. The National Survey on Drug Use among Secondary Education Students is performed by the National Board on Drugs (JND) among 13 to 17 year-olds.^{23 24 25 26 27 28} Results show a steady decrease in smoking prevalence from the year 2003 onward (Figure 1).

²³ Junta Nacional de Drogas. 1ra. Encuesta Nacional y 2da. en Montevideo sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OEA-SIDUC. October 2003.

²⁴ Junta Nacional de Drogas. Observatorio Uruguayo de Drogas. 2da. Encuesta Nacional sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OD. Abril 2006

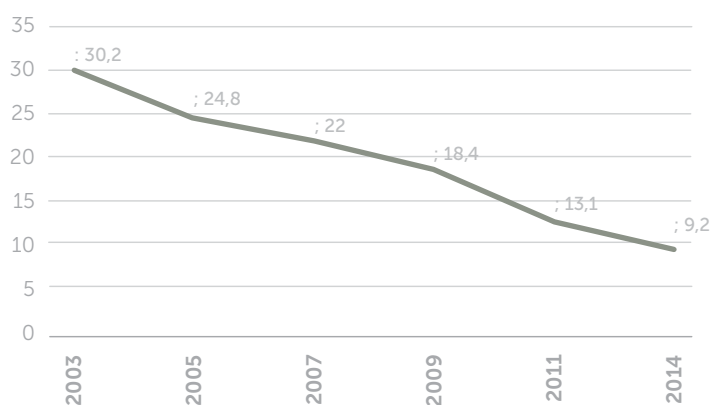
²⁵ Junta Nacional de Drogas. Observatorio Uruguayo de Drogas. 3ra. Encuesta Nacional sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OD/OEA-SIDUC. Abril 2007

²⁶ Junta Nacional de Drogas. Observatorio Uruguayo de Drogas. 4ta. Encuesta Nacional sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OD/United Nations-Office on Drugs and Crime. October 2010

²⁷ Junta Nacional de Drogas. Observatorio Uruguayo de Drogas. 5ta. Encuesta Nacional sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OD. October 2012

²⁸ Junta Nacional de Drogas. Observatorio Uruguayo de Drogas. 6ta. Encuesta Nacional sobre Consumo de Drogas en Estudiantes de Enseñanza Media. JND/OD. Uruguay, 2014

Figure 1. Trends in 30-Day Smoking Prevalence in Youth (%)



Source: National Survey on Drug Consumption among Secondary Students, JND. Population 13-17 years old.

The United States Surgeon General²⁹ notes that, "Almost all smokers start smoking during childhood and adolescence. 88 percent of adult smokers started before age 18." In 2017, according to GATS Uruguay, smoking initiation patterns in the country are similar to those described for the United States. In Uruguay, 89.0 percent of adult smokers started smoking before age 20. "This has strategic implications in the planning of [policy] measures, and it is crucial that, in deciding national tobacco-control policies, a line of work aimed at the younger population be established."³⁰

3.3 Impact of Tobacco Control Policy on Prevalence, Compared with Argentina

To better evaluate what has happened with tobacco consumption in Uruguay, Argentina was chosen as a comparator, "not only because of its geographical proximity and common language and culture, but also because Argentina did not enact comprehensive nationwide anti-tobacco legislation until June 2011."³¹

Between 2005 and 2011, per capita consumption of cigarettes in Uruguay decreased by 4.3 percent per year, while in Argentina it increased by 0.6 percent per year. Between 2003 and 2009, the prevalence of tobacco consumption in the previous 30 days among young people aged 13, 15, and 17 years fell by 8.0 percent annually in Uruguay, while in Argentina the figure decreased by just 2.5 percent annually. Among adults, current tobacco use (including daily and occasional smokers) decreased by 3.3 percent annually between 2005 and 2011 in Uruguay, while Argentina registered an annual decrease of 1.7 percent.

²⁹ US Department of Health and Human Services. Public Health Services. Preventing tobacco use among youth and young adults. A Report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012

³⁰ Abascal W, Lorenzo A. Impact of tobacco control policy on teenager population in Uruguay. *Salud Pública de Mex* 2017;59suppl 1:S40-S44. <http://doi.org/10.21149/8051>

³¹ Abascal W, Esteves E, Goja B, González F, Lorenzo A, Sica A, et al. Tobacco control campaign in Uruguay: a population-based trend analysis. *Lancet* 2012;380(9853):1575-1582. [https://doi.org/10.1016/S0140-6736\(12\)60826-5](https://doi.org/10.1016/S0140-6736(12)60826-5)

4. Evolution of the Price of Cigarettes and RYO and Smoking Prevalence

Tax and price increases have been one of the key factors in decreasing prevalence in the 2009-2018 period, as measured by the two GATS surveys. Tobacco smoking in the population age 15 and older was estimated at 25 percent in 2009 (GATS 2009). It had fallen to 20.4 percent by early 2018, a nearly 19 percent decrease over the period. The real price of cigarettes rose by 50 percent and the price of RYO tobacco by more than 160 percent between 2009-2018 (Table 4 and Figure 2). The impact of this tax and price increase has been substantial, even considering that there were no tax increases from March 2010 to November 2014. Another factor that limited the impact of tax and price increases was real income growth in the period (discussed below in Section 4.1).

Table 4. Evolution of Tobacco Prices and Adult Smoking Prevalence

	INDEX OF REAL PRICE OF 20-STICK CIGARETTE PACK	INDEX OF REAL PRICE OF 45G RYO TOBACCO PACK	ADULT SMOKING PREVALENCE
2009	73	41	25.0%
2011	87	61	23.9%
2014	86	80	22.2%
2017	100	100	21.6%
2018	109	105	20.4%

Source: Authors, using data from INE, GATS, and household surveys.

4.1 Evolution of Adult Smoking Prevalence and Real Income

Consumption is the result of prevalence and intensity of smoking. In Uruguay, some surveys do not report intensity.³² For this reason, analysis of prevalence and income is presented in Table 5, while Table 6 discusses consumption only at the beginning and end of the 2009-2017 period.

One of the reasons for the slow decrease in prevalence despite important increases in taxes and real tobacco product prices was the parallel increase in real income. Uruguay was recovering from the economic downturn of the early 2000s, and real income grew by about one-third between 2009 and 2017.

³² After INE participated in the GATS survey of 2009, it kept some questions on smoking prevalence in the Household Surveys (Encuesta Nacional de Hogares) of 2011 and 2014. Table 5 uses the same GATS definition of prevalence and the data is comparable. Unfortunately, intensity as measured in smoked cigarettes per day was not included in the Household Surveys, consequently consumption may only be measured in 2009 and 2017.

Given that, over the period, opposing forces affected the demand for cigarettes, there is a need to consider simultaneously the impact of the increase in real prices and the rise in real income. This involves the calculation of an index of affordability of tobacco products. A detailed analysis of affordability is beyond the scope of this chapter. However, a discussion of this important topic is provided in Annex B.

Table 5. Adult Smoking Prevalence and Real Income

YEAR	PREVALENCE	REAL PER CAPITA INCOME (INDEX 2009=100)
2009	25.00%	100
2011	23.90%	116.3
2014	22.20%	129.1
2017	21.60%	135.2

Source: ASource: GATS 2009 and 2017, Household Surveys of INE for 2011 and 2014. Central Bank of Uruguay for real income.

5. Evolution of Legal Sales of Tobacco Products

The retail price of RYO had always been lower than for finished cigarettes, and consumption traditionally was male and low-income. Women, particularly young women, increasingly started smoking RYO after 2002, and many kept smoking it after the economy and personal income and employment improved.

Figure 2. Trends in Legal Sales of Tobacco Products, Uruguay, 1999-2017

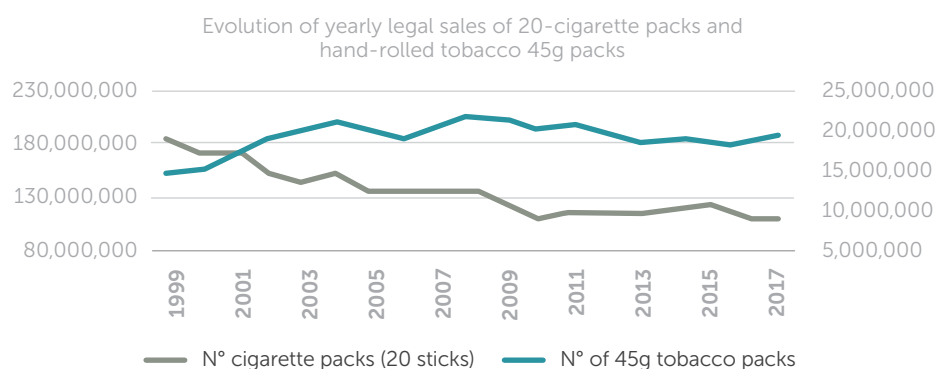


Figure 2 above shows that, after 2010, when there were no tax increases on tobacco products for almost four years, cigarette sales started to grow, but RYO stabilized. After 2015, with the advent of new tobacco-product tax increases, cigarette sales followed a renewed

downward trend, but RYO sales did not. Comparing the average cigarette and RYO sales in 1998-2004 with the 2005-2017 period (Table 6), cigarette sales fell 25 percent, but RYO sales went up 16 percent.

Table 6. Evolution of Legal Sales of Tobacco Products

	N° OF CIGARETTE PACKS (20 STICKS)	N° OF 45G RYO PACKS
Average 1998-2004	165,612,822	16,469,643
Average 2005-2017	124,937,199	19,179,720
% change	-25%	16%

Source: Authors, using data from DGI (tax authority)

6. Tax Legislation and Policy

Uruguay's present tobacco tax regime has been set since 2007, when a comprehensive tax reform was implemented through Law 18.083. (Annex B provides a complete description of successive changes in the country's tobacco excise tax legislation.) Even though cigarettes and RYO are both tobacco products, they have generally received a different tax treatment. The difference in tax rates between the two types of products began during the 1980s. Part of the strategy to fight contraband from Brazil was to keep lower taxes and prices on RYO. This strategy ultimately proved counterproductive, but was maintained for many years.

Early legislation (consolidated through the 1996 Texto Ordenado) had given the Executive Branch authority to set and update the tobacco excise tax base and the rate, stipulating that the base was the retail price or a proxy, and the rate was restricted to a maximum legal rate of 70 percent. Subsequently, the Uruguayan Tax Authority (Dirección General Impositiva, or DGI) and the Ministry of Economy and Finance (MEF) set by Government Decree a proxy for the retail price by means of a multiplier (a unique multiplier for cigarettes and another for RYO) for each brand.

In line with Law 18.803, Decree 232/79 of June 2007 provided a unique value for the tax base of cigarettes (though not yet RYO), which, when multiplied by the tax rate, produced a specific tax amount for all cigarette brands. The tax base is not related to any price. It simply reflects the decision of the Government to move at a certain speed in terms of tax and retail price, given that the tobacco industry normally passes through the tax to retail prices. This tax system continues to operate today, incorporating similar changes to RYO taxation, as well as additional tax rate increases (Annex C).

One of the main features of tobacco excise tax practice in Uruguay from 2001 to the present has been that policy changes were achieved without the need for new legislation, given

the ample authority assigned by Parliament to the Executive Branch. This system continues to function and is a distinctive framework that most countries do not share.

7. Background on Illicit Tobacco Trade in Uruguay

During the early 1980s and the 1990s, illicit cigarette trade from Brazil created a tax revenue problem in Uruguay. Meanwhile, retailers in some Uruguayan cities near the border with Brazil (Rivera, Chuy) were suffering extensive decreases in sales due to Brazil's cheaper prices for a range of goods. Buyers from other parts of Uruguay also travelled to these border cities to purchase goods. There were complaints by retailers (and also by local governments).

The government in power after 1985 passed legislation to strengthen retail trade by means of the creation of "tax-free shops." The preamble to the new legislation mentioned the need to promote economic activity in border towns using a new regional tourism promotion tool.³³ Legally, Uruguayan residents could not buy goods in the new shops. Instead, the tax-free shops fueled illicit cigarette trade. Very quickly, cigarettes of Uruguayan manufacture and some international brands became a key illicit trade item by being diverted from tax-free shops to the local market. Cigarettes intended for sale only to tourists and non-residents were rerouted and ended up in the hands of Uruguayan smokers by means of extensive illegal networks.³⁴

Cheaper prices for the same brands they usually smoked became popular among Uruguay smokers. The size of this illicit trade reached between 10 and 20 percent of the total domestic market.³⁵ In that period (the 1990s), no other major sources of illicit trade in cigarettes existed in Uruguay.

At the beginning of the 2000s, several government decrees were passed to strengthen control of cigarettes (and whisky) taken from free-trade zones to the tax-free shops. Decrees sought to hold every participant in the supply chain accountable and increased the excise tax charged on cigarette sales in duty-free shops. Later, authorities entirely eliminated the excise tax rate differential between cigarettes sold in duty-free shops and those sold legally in the domestic market. At this point, the only tax benefit of buying cigarettes in the special shops was VAT exemption.

In the late 1990s, a major change occurred in the source of illicit cigarettes in Uruguay. In Brazil, the Souza Cruz company (a BAT subsidiary) was accused by independent sources of using a "carousel"³⁶ tax evasion strategy: exporting cigarettes (free of taxes) to Paraguay, then

³³ Decree 222/86 (not available online)

³⁴ Ramos, A. "The illegal trade in tobacco in the Mercosur Countries". *Trends in Organized Crime* 2009;12:267-306. Another link in English: http://www.fctc.org/images/stories/INB-3/INB3_report_illegal_trade_in_MERCOSUR.pdf. A synthesis in: <http://www.fctc.org/media-and-publications-20/fact-sheets/illicit-trade/278-inb3-fact-sheet-illicit-trade-in-mercosur>

³⁵ Source: authors' estimate base on DGI (tax authority).

³⁶ FATF Illicit tobacco trade, 2012. <http://www.fatf-gafi.org/media/fatf/documents/reports/Illicit%20Tobacco%20Trade.pdf>

largely funneling them back into Brazil through illicit distribution channels. The Government of Brazil initially reacted with export bans and later with very high export taxes. Meanwhile, Paraguayan (and Brazilian) manufacturers seized the opportunity and started an enormous illicit cigarette business. Within a few years, manufacturers in Paraguay were producing and selling around 60 billion cigarette sticks per year, using their own brands (brands not sold in the domestic Paraguayan market and not registered as legal exports). Sales went to Brazil and other markets, including Uruguay.

In the last 15 years, illicit cigarettes entering the Uruguayan market are largely manufactured in Paraguay. Tobacco companies in Paraguay may pay the very low domestic tobacco and VAT taxes there, but these brands of cigarettes are not intended for Paraguayan domestic consumption. The products are thus classified as “illicit whites,” or “cheap whites,” cigarettes that have been described as manufactured by legitimate business enterprises in a given jurisdiction but sold usually outside the jurisdiction where they are produced, without payment of duties and taxes in the destination country.³⁷

Today, Paraguayan illicit whites destined for Uruguay are mostly transported by ground routes and brought into Uruguay after unloading in warehouses in the Uruguayan-Brazilian border zone. Small trucks are generally used to smuggle the products into Uruguay. Most cigarette cargo seizures are reported along Uruguay’s National Routes, with smugglers often making several trips from the Brazilian border to Montevideo (350-500 km, depending on the specific border town).

Cigarettes are also being brought by small boats through the River Uruguay bordering Argentina, or using the bridge that links Salto (Uruguay) to Concordia (Argentina). Corrupt customs officers may facilitate this traffic in some cases. The Uruguayan Customs Authority (DNA) has initiated prosecutions to tackle such corruption.³⁸

8. Estimates of Illicit Trade

There are several approaches to measuring the illicit cigarette trade in a country.³⁹ The method used in this report takes advantage of the recent GATS 2017 survey, which included questions on cigarette brands smoked. This information provided a clear indication on illicit brands, since the total number of legal brands in Uruguay is small, and the illicit brands (Paraguayan) are very well known.⁴⁰

³⁷ Hana Ross et al. A closer look at ‘Cheap White’ cigarettes. <https://tobaccocontrol.bmj.com/content/early/2015/09/28/tobaccocontrol-2015-052540>

³⁸ Illicit trade via containers “in-transit” through the port of Montevideo was not cited as a problem in our interviews with judges, prosecutors, and DNA authorities, and there are no recorded seizures from this setting. On the other hand, the DNA only occasionally inspects transit containers: for example, when it has received specific alerts from other Customs agencies, when suspicious documentation is received, or when owners’ background appears to warrant special action.

³⁹ Ross, Hana. Understanding and Measuring Illicit tobacco trade. A methodological guide. *Tobacconomics* 2015. https://tobacconomics.org/wp-content/uploads/2015/03/Ross_Methods_to_Measure_Illicit-Trade_03-17-15.pdf

⁴⁰ By law, brands must register with the Ministry of Health. If registration is not updated yearly, then the brands become illegal.

In 2009, the size of the illicit cigarette market in Uruguay was estimated through that year's GATS at around 12 percent of cigarettes smoked. About 8.5 percent of smokers bought illicit cigarettes. The results of the new survey in 2017 were similar in terms of the proportion of smokers acknowledging consumption of illicit brands (7.8 percent) (Table 7).

The results summarized in Table 7 use microdata from GATS 2009 and 2017 on population, prevalence, and intensity of cigarette smoking.⁴¹ (There is currently no evidence concerning illicit RYO trade.)

Illicit cigarettes have been entering Uruguay from Paraguay. The brands involved (in fact, mainly one single brand, Eco), are perfectly identifiable. They belong to TABESA (the largest tobacco company in Paraguay). The brands that reach Uruguay are not sold in the Paraguayan market, and there are no legal cigarette exports from Paraguay to Uruguay (or most places). Thus, cigarettes of Paraguayan origin found in Uruguay are illicit goods by definition.

In Uruguay, there currently appear to be no illicit brands that originate from sources other than the Paraguayan connection. PMI and BAT in Uruguay import legally from Argentina; together they have a market share of around 15-20 percent. The company Montepaz S.A., Uruguay's only domestic tobacco manufacturer, holds the rest of the market (80 percent-85 percent).⁴² The Uruguayan market includes only a few legal brands. The two bestselling brands from Montepaz together comprise around 65-70 percent of the country's total legal cigarette market.

In Table 7, the population size is defined as in the two surveys, that is, people aged 15 and older. Prevalence is the number of smokers of cigarettes (daily and non-daily) over total population aged 15 and over. The number of smokers includes those who smoke only manufactured cigarettes and those who smoke both manufactured cigarettes and RYO. Intensity of smoking is measured as the average number of cigarettes smoked daily per smoker. In the case of smokers of both products, only the number of manufactured cigarettes was included.

YEARLY TOTAL CONSUMPTION OF CIGARETTES=INTENSITY X NUMBER OF SMOKERS X 365

Total consumption includes both legal and illicit cigarettes. From the prevalence data on of smokers of illicit brands, their number was calculated. The GATS data also provide the intensity of cigarette smoking in the total calculation. Finally, the number of illicit cigarettes smoked

⁴¹ For the analysis of microdata, the authors gratefully acknowledge the assistance of Alejandra Clemente (for GATS 2009) and Dr. Martin Gonzalez Rozada (for GATS 2017), both from the University Di Tella, Buenos Aires, Argentina. The GATS 2009 Report did not include data on illicit brands, and the GATS 2017 Report is still pending as of July 2018.

⁴² Source: Euromonitor International.

Table 7. Estimate of Illicit Trade in Cigarettes, Uruguay, 2009 and 2017

	2009	2017
Population aged 15 and older	2,580,349	2,762,798
Prevalence of total smokers (daily and non-daily) of manufactured cigarettes	20.58%	18.30%
N° of smokers of manufactured cigarettes (includes cigarette smokers who also smoke RYO)	531,036	505,592
Average intensity of smoking among daily and non-daily smokers of manufactured cigarettes	10.85	11.61
Yearly total consumption of cigarettes (number of sticks)	2,103,305,982	2,142,522,083
% of smokers of illicit brands/total population 15+	8.50%	7.77%
N° of daily smokers of illicit brands	45,138	39,285
Intensity of smoking illicit brands of cigarettes, all smokers	15.3	17.65
Yearly illicit consumption of cigarettes, all smokers (number of sticks)	252,073,413	253,080,577
Illicit trade as % of total cigarettes smoked	11.98%	11.81%

Source: Authors, using data from GATS 2009 and 2017

yearly was calculated, and the ratio with the previously calculated total yearly consumption provides estimates of the percentage of illicit cigarettes in the market in both years.

Findings:

As seen earlier, total prevalence of cigarette smoking has decreased 11 percent (18.30/20.58-1= -11 percent) in the 2009-2017 period and the number of cigarette smokers has also dropped by 5 percent (505.592/531.036-1= -5 percent). However, intensity increased in the period by 7 percent (11.61/10.85-1=7 percent). The resulting total yearly cigarette consumption remained almost unchanged.

Smokers of illicit cigarettes (measured by brand, as previously explained) were 7.7 percent in 2017 versus 8.5 percent in 2009, for a decline of 8.6 percent. However, the intensity of smoking increased 15.4 percent (17.62/15.3-1= 15.4 percent). This seems plausible, since remaining smokers are more addicted. Finally, the numbers of illicit sticks smoked in 2009 and 2017 are roughly the same, and the estimate of the illicit cigarette trade close to 12 percent in both years.

The conclusion is that the illicit market has not shown substantive changes in the period. Possibly, the decrease in the number of smokers who smoke illicit brands is compensated by the higher intensity of those who do not abandon smoking, the total illicit market remaining about the same.

Table 7 shows that the total number of smokers of illicit brands was 7.8 percent in this survey, and that they smoked a daily average of 17.65 cigarettes. Intensity was lower in 2009 (15.3 cigarettes). This might indicate that some of the heavy smokers who do not abandon tobacco are more inclined to switch to illicit brands of cigarettes.

In GATS 2009, the percentage of smokers of illicit brands was estimated at 8.5 percent of total cigarette smokers, accounting for 12 percent of the total cigarettes smoked. Given that the affordability of the legal market of tobacco products has not changed much in the 2009-2017 period, the size of the illicit market has seemingly not varied greatly. This could suggest that, even when legal cigarettes became more affordable, between 2010 and 2014 (See Annex B), the market for illicit cigarettes did not decrease. It seems, then, that this market could be stable.⁴³

To shed some light on the period of increased affordability, there is information from another survey taken during 2011-2012. The International Tobacco Control Policy Evaluation Project (ITC) has been performing a longitudinal study of smokers in Uruguay since 2006,⁴⁴ with a new wave every two years. Wave 3 in 2011-12 introduced a question regarding the health warnings included on the cigarette pack, to check for possible illicit brands (defined as those that did not show the standard warning).

As shown in Table 8, an estimated 13.1 percent of cigarette packs were not properly labelled with the health warnings that were standard at the time in Uruguay. The authors concluded that this could point at tax avoidance/evasion. These results are also consistent with those discussed above in relation to the size of the illicit cigarette market (Table 7).

Table 8. An Illicit-Trade Estimate Derived Through Improper Labelling of Cigarettes, 2010-2011

PROPERLY LABELED PACKS WITH HEALTH WARNINGS	NON-STANDARD LABELS	NO WARNING LABEL
86.90%	6.50%	6.60%

Source: ITC Uruguay Project. Figure 31. Percentage of smokers' cigarette packs showing evidence of possible tax avoidance/evasion, Wave 3 (2010-11).

Illicit trade, RYO, and Poverty

The GATS 2009 in Uruguay showed that poor smokers are those most likely to turn to illicit brands (Table 9). Smokers in the poorest third of the population are much more likely to smoke illicit cigarettes [$3.56 / (18.29 + 3.56) = 16$ percent] than are those in the middle tercile (7 percent), while among smokers belonging to the richest third of the population, practically

⁴³ This issue requires additional research.

⁴⁴ The International Tobacco Control Policy Evaluation Project ITC Uruguay National Report Findings From the Wave 1 to 3 surveys (2006-2011) August 2012

none (0.13 percent) reported smoking illicit brands. Table 9 shows that poor people’s strategy was, when continuing smoking, to buy relatively more illicit cigarettes and RYO than legal cigarettes, as compared with wealthier groups.⁴⁵ In light of these findings, illicit tobacco trade control in Uruguay takes on added priority, since the burden of health consequences falls predominantly on the poor. This is a substantial health equity problem.

Table 9. Prevalence of Smokers by Tercile of Wealth (2009)

TERCILE	CIGARETTES		RYO ONLY
	LEGAL	NOT LEGAL	
1 (Wealthiest)	18,33%	0,13%	0,55%
2 (Middle)	21,12%	1,70%	1,89%
3 (Poorer)	18,29%	3,56%	7,76%

Source: Authors, using GATS 2009 data.

9. Illicit Trade Control Legislation

9.1 Background

Article 15 of the FCTC, which Uruguay ratified in 2004 and is part of the country’s national legislation since then, has not yet brought substantial changes in the rules and controls applied to illicit tobacco trade. In 2014, Uruguay ratified the Protocol, but except for the creation of the Interagency Commission to eliminate illicit tobacco trade (See Annex D on illicit trade legislation), there have been no advances of significance following that ratification.

Article 15 of the FCTC⁴⁶ states that illicit tobacco trade includes “smuggling, illicit manufacturing, and counterfeiting.” There is as yet no specific legislation in Uruguay to deal with the illicit tobacco trade as such. Customs and penal legislation and regulations have not yet been affected by the country’s international commitments.

Legislation on smuggling in general has long existed in Uruguay, but very few regulations apply specifically to tobacco products. The recent Customs Code (2015) and Criminal Procedures Code (applicable since November 2017) have not addressed tobacco as a specific concern, and smuggling is still generally treated using the traditional approach emphasizing fiscal revenue loss. Illicit trade control legislation deals mostly with contraband in general terms and does not distinguish tobacco products from other types of goods. Only weapons, narcotics, and medicines have their own special crime legislation in Uruguay.

⁴⁵ Unfortunately, comparable results for 2017 were not available for this report.

⁴⁶ Cf. Protocol Part IV, “Measures Relating to the Reduction of the Supply of Tobacco,” as well as FCTC Article 15, “Illicit Trade in Tobacco Products.”

Previously, Law 18.256, the Tobacco Control Act of 2008, included a provision that the Executive Branch should ensure the availability of necessary human and material resources to proceed to the elimination of all forms of illicit tobacco trade. Since it formulated a country-wide responsibility bestowed on the Executive, this law was never accompanied by a Decree regulating it. Such a Decree might, for example, have prescribed actions for the MEF and its agencies, particularly the DNA, as well as law enforcement. The legislation has a wide reach, including all customs special primary territories (such as free-trade zones, economic special zones, and free ports that do not have specific exemptions from customs surveillance). The law applies to all types of transportation and storage.

Main relevant features of Uruguay's illicit tobacco trade legislation include the following (See also Annex D).

- » Customs law in Uruguay, as in other countries, exists for the main purpose of facilitating and protecting legal trade operations, and it encompasses the smuggling of many types of products. There is no specific, systematic approach to dealing with illicit tobacco trade or even contraband in tobacco products.
- » The law stipulates fines and other penalties and mandatory referral to criminal courts, when illicit cargo reaches a defined value. The law's principal objective is historically to protect fiscal revenue from the loss of import duties and other applicable taxes.
- » DNA has no customs police functions, and customs officers cannot carry weapons.
- » DNA has preeminence in illicit trade control in Uruguay's primary customs territory (almost the whole national territory). The law allows DNA to request assistance from other state agencies and law enforcement (Police, Coast Guard), when needed.
- » The Customs Code and the Penal Code treat the crime of tobacco smuggling in different ways, but the approach is mainly that of a misdemeanor, and violators receive penalties accordingly (fines, confiscation of vehicles, etc.).
- » In March 2015, the new Customs Code came into effect, systematizing and unifying the various laws and previously approved regulations that apply across the entire Uruguayan territory, including free zones. All customs offenses are incorporated. The crime of contraband is maintained, and customs fraud is added as a new crime. Penalties do not increase but "aggravating circumstances" are included (Articles 258 and 260), such as a contraband committed by three or more people (meaning an organization), several similar crimes committed by the same offenders (recidivism), or smuggling goods whose value is over UI 5 million (UI are indexed units, presently UI 5 million is over US\$ 600,000). Interestingly, Article 260 Paragraph D establishes that, "When the goods of the contraband are weapons, ammunition, narcotics, or any substance potentially affecting peace or public health," the minimum penalty is mandated to be from two to six years of prison time. Even though tobacco products are not included as such, a relatively minor legal clarification to

explicitly include tobacco products among goods that threaten public health could make a difference in the criminalization of the illicit tobacco trade, in line with the Protocol.

- » There is no compliance with Article 12 of the Protocol. Even when DNA has the legal authority, traditionally "in-transit" goods are not inspected, given the judicial interpretation of the legal status of such a policy.

Other features of the legislation are discussed in detail in Annex D.

9.2 Cigarette Markings and Track-And-Trace Options

FCTC Article 15 established in its heading that each country "shall adopt and implement legislative, executive, administrative or other effective measures to make all packages or packaging of tobacco products and any external packaging of such products bear an indication to help the parties determine the origin of tobacco products." However, Uruguay has not complied with these provisions. The country has not established any markings or tracing mechanism for tobacco packs or boxes, such as a stamp, whether affixed or not. Only cigarettes to be sold in tax-free and duty-free shops are mandated to be marked with a legend authorizing "sale only" in those premises.

Given that the Paraguayan factory that produces the illicit cigarettes that reach Uruguay is very well known and it does not export any legal cigarettes to Uruguay, a traceability system would not have any effect on the present "illicit white" type of illicit trade.^{47 48} However, a traceability system in place would increase controls on the existing tobacco companies that manufacture tobacco products in Uruguay (Montepaz S.A) or import them legally (BAT and PMI affiliates), and on any other legal tobacco company in the future, by limiting their potential to divert non-duty or untaxed tobacco into the domestic Uruguayan market. We note, however, that this maneuver has not as yet been documented in Uruguay by DGI and DNA or other law enforcement agencies.

10. Lessons Learned

In Uruguay, the tax share in the retail price of cigarettes and RYO has yet to match the recommendations established by WHO⁴⁹ and anchored in the Guidelines for Implementation of Article 6 of the FCTC. These norms stipulate that excise taxes should constitute at least 70

⁴⁷ Brazil has the same "illicit white" cigarette problem as Uruguay, but on a larger scale. A traceability system for cigarettes (and alcoholic beverages) in operation in Brazil since 2007 has not stemmed the inflow of illicit cigarettes from Paraguay. In fact, evidence suggests that illicit trade represents a much larger share of the total cigarette market in Brazil than in Uruguay. See Szcklo A et al. Trends in Illicit Cigarette Use in Brazil Estimated from Legal Sales, 2012–2016. <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304117>

⁴⁸ The Paraguayan "illicit white" cigarette trade has similarities with the European Union experience with cigarettes from Belarus and other Eastern countries. See for instance: <https://www.euractiv.com/section/trade-society/news/minsk-under-pressure-to-take-action-against-illicit-whites/>

⁴⁹ WHO Tobacco Tax Administration Manual. WHO, 2011.

percent of sales price.⁵⁰ However, while its total tax share is below this target, Uruguay has one of the highest retail cigarette prices in the region, as confirmed in the most recent WHO Global Tobacco Control Report (GTCR VII, released in July 2016).⁵¹ The increase in affordability of tobacco products over the period 2010-2014 is quite inconsistent with the World Bank recommendation to raise tobacco taxes substantially: "Go big, go fast," and "attack affordability."⁵²

The increase in taxes and prices has produced an increase in Uruguay's total fiscal revenue during recent years (when the revenue from VAT since 2007 is included). This underscores that, as in most other countries, there is a double beneficial impact of tobacco tax and price increases. They reduce consumption and raise fiscal revenue. Nevertheless, economic authorities have not been in the frontline to raise taxes, and a whole-of-government approach to tobacco taxation and illicit trade control has not yet emerged.

Tobacco control policies, and particularly tax policies, are undermined by illicit trade. Uruguay has not passed legislation to focus on illicit tobacco trade or introduce more stringent penalties. Existing penal legislation sentences in customs and criminal courts tend to involve no jail time (illicit tobacco violations are essentially treated as misdemeanors). This contradicts a key provision of the Protocol.

The illicit tobacco trade is mostly fragmented through multiple small shipments to evade prison sentences if caught. Organized crime is not usually targeted via law enforcement on tobacco, even though illicit tobacco trade involves a substantial fiscal revenue loss and a serious health problem for Uruguay. The criminal courts and the General Prosecutor's office have not yet aligned their practices to deal with criminal groups involved in illicit tobacco trade and do not view this as a priority. Investigations are conducted by the economic section of the General Prosecutor's Office and do not usually end in criminal prosecution. The Customs Court has the approach that goods "in transit" need not be controlled, since they involve no fiscal revenue loss for Uruguay.

The tobacco industry and its proxies will continue to fight back against increases in tobacco taxes, but this strategy has lost force in view of companies' pricing policies since Uruguay's modern tobacco control tax policy began in 2005. The tobacco industry has tried to interfere with tobacco control policy in various ways, and with tax policy in particular.

- » Every time there has been an increase in taxes on cigarettes, industry spokespeople have launched press releases⁵³ and presentations in the media warning about a purported imminent increase in smuggling. Meanwhile, despite its concerns about higher taxes made public through the media, the tobacco industry has seized the opportunity of tax hikes to raise prices above the level of pass-through of the tax.

⁵⁰ WHO-FCTC Article 6 Guidelines. Available at: http://www.who.int/fctc/treaty_instruments/Guidelines_article_6.pdf

⁵¹ GTCR 2016

⁵² *Tobacco Tax Reform: At the Intersection of Health and Development*, World Bank, 2017.

⁵³ See for example: <https://www.elobservador.com.uy/consumo-tabaco-formal-crecio-pero-el-contrabando-gana-terreno-n271171>

- » In the period from March 2010 to December 2014, when no tax changes occurred, the tobacco industry also increased its profits per unit by raising product prices. The consequences of such aggressive pricing policies included a decrease in the tax share of cigarette retail prices.
- » The small retailers' association attempts to use the same arguments as the tobacco industry against Uruguay's tobacco tax policy.⁵⁴
- » Surveys and studies sponsored by the industry systematically report much higher levels of illicit cigarettes than independent, scientifically sound surveys. The industry's studies are not normally made public, but the results are disseminated in the media.

A whole-of-government approach to tobacco tax increases (and tobacco control generally) is lacking. During the period 2010 to 2014, the MEF was particularly concerned with tax hikes' potential impact on inflation. In Uruguay, the weight of cigarettes and RYO within the CPI is substantial. Prosecution and judicial decisions also signal a lack of whole-of-government integration in dealing with illicit tobacco trade.

11. The Road Ahead

Uruguay has taken steps to address its declining but still unacceptable smoking prevalence among men and the stagnant rate among women. An important policy issue is whether the country should be making more aggressive use of tax policy. The issue is urgent because, as we have shown, poorer citizens and women have not yet garnered the full benefits of tobacco tax hikes. Among other strategies, maximizing such benefits will require confronting the illicit tobacco trade.

There are several potential legal changes to deal more effectively with illicit tobacco. An ideal scenario would involve a new, tailored piece of legislation addressing all illicit trade control (contraband, counterfeit, and illicit manufacturing) in line with the Protocol.

Uruguay and the Implementation of the Protocol to Eliminate Illicit Trade of Tobacco Products

Uruguay's ratification of the Protocol in 2015 led to the creation of an Inter-Agency Commission for the Implementation of the Protocol.⁵⁵

Through periodic meetings, the different sectors of government have received information and exchanged views on the illicit tobacco trade and the best way to solve the problem. The

⁵⁴ <http://www.montevideo.com.uy/Noticias/Asociacion-de-Kioscos-del-Uruguay-ve-suba-del-precio-de-cigarrillos-como-campana-para-recaudar-uc297507>

⁵⁵ The Commission comprises a delegate from the MOH (who serves as chair), along with representatives of the Ministries of Foreign Affairs, Economics and Finance, Homeland Security (Interior), Defense, Agriculture, Industry, and Education. The Commission also includes representatives of the tax authority, DNA, and the judiciary. Two delegates represent non-governmental organizations.

Commission has received private suppliers dealing with track-and-trace technology. It has also collected information from national experts from countries with tracking and tracing systems currently in place.

The Inter-Agency Commission for the Implementation of the Protocol has also conducted analysis of current legislation and the changes that are necessary to make it more robust. One example is a draft law for establishing licensing, as set out in the Protocol. This would address the supply chain of tobacco products including manufacturing, distribution, and marketing equipment.

MERCOSUR as a Potential Lever

Among MERCOSUR countries, Paraguay is an FCTC Party, but is not expected to ratify the Protocol in the near future. Argentina would be interested in better control of illicit tobacco trade, even though it is not a Party to the FCTC. Brazil is also one of the countries in the region most affected by illicit tobacco and would be an important partner. For each Party, even those that have themselves ratified the relevant accords, it is important that the other countries in the region also ratify and implement the Protocol. Important features of the Protocol refer to the exchange of information on law enforcement, technical assistance and cooperation, training, research, and prosecution of infringements, along with reciprocal administrative assistance, reciprocal legal assistance, and extradition.⁵⁶

The drive to ratify the Protocol will surely be one of the most important issues on the agenda of MERCOSUR's Inter-Governmental Commission for Tobacco Control (CICT), in order to produce the results that government authorities are expecting in the immediate future.

When Uruguay ratified the FCTC in 2004, it acquired obligations but also support to apply the policy measures contained in the agreement. This has been fundamental in the evolution of tobacco control in the country. The text of the treaty served as the basis for the 2008 Tobacco Control Act that gave the necessary legal foundation to tobacco control policy in Uruguay. Now, with the entry into force of the Protocol, there is once again an opportunity to advance comprehensive approaches and implement needed tax and legislative changes. The country may be poised to make fresh advances towards the goal of eliminating the illicit trade in tobacco products.

12. Final Suggestions and Recommendations

- » Priority should be given to illicit tobacco trade by the Prosecutor's Office. Criminal procedures are currently placed within the "economic crime" unit and do not constitute a priority. Appropriate changes will require additional resources for the Prosecutor's Office, including a larger and more specialized staff. A percentage of tobacco fiscal revenue could be earmarked and directed to this objective.

⁵⁶ Part V of the Protocol to Eliminate the Illicit Trade in Tobacco Products.

- » DNA has all the tools and connections to coordinate relevant transport surveillance at the regional level with neighboring and other countries. However, there may be a need for a political perspective on these activities, with governments agreeing to cooperate and promote a higher level of tobacco control efforts in the region.
- » Uruguay has the opportunity to develop a long-term fiscal policy for tobacco products, thanks to the IMESI tax legislation endowing the Executive Branch with a wide mandate to set the tobacco tax base. This is unusual, since in most other countries, legislation fixes the tax base and rate, and changes require a new law.
- » A system for tracking and tracing tobacco products should be established, even though presently the bulk of illicit trade comes from illicit manufacturing (Paraguayan illicit whites). Uruguay as a ratifying Party to the Protocol will have to comply with Article 8 and acquire a traceability system within the next five years. This will be part of a regional and global effort to improve control and share information, and as such a key policy.
- » The situation of the illicit whites entering from Paraguay should receive attention and become a MERCOSUR priority. Without a political focus, the solution to this form of illicit tobacco trade will prove extremely difficult. The Brazilian and Uruguayan experiences offer an example to consider, as does the European Union's experience with the illicit cigarette trade from Belarus.⁵⁷
- » A full risk analysis of illicit trade in Uruguay should be undertaken to evaluate the strengths and weakness of DNA and other participating agencies, as well as the key legislation that requires modification. Changes may include provisions for greater coordination and sharing of information among agencies including law enforcement and others, with the designation of a focal point to gather data and lead the new policy. Overall, changes will aim at a more efficient illicit tobacco control policy.

The main areas where changes in legislation would be required are as follows:

- » New legislation on licensing and due diligence regarding the supply chain of tobacco products. This would allow for better control of tobacco companies, importers, distributors, and retailers. At present, surveys show that many formal retailers sell both legal and illicit cigarettes.
- » Better legislation is needed for criminalization of illicit tobacco trade and to ensure appropriate sanctions against perpetrators, in line with the Protocol. This could be done in several ways, such as changes in legislation to penalize tobacco smuggling and other forms of illicit tobacco trade. Legislative changes could be similar to those in place for intellectual property rights and counterfeit, or the illicit trade of weapons and narcotics. This would allow seizures of illicit tobacco cargo by DNA and other law enforcement agencies to be submitted directly to criminal courts without first being submitted to the Customs Court.

⁵⁷ <https://www.euractiv.com/section/trade-society/news/minsk-under-pressure-to-take-action-against-illicit-whites>

- » There is a clear need for a whole-of-government approach to deal with illicit cigarette trade in Uruguay. The Inter-Agency Commission created to deal with the implementation of the Protocol could be upgraded and given more coordinating capabilities with participating agencies, in addition to its present mainly advisory role. With new legislation, agencies could in turn receive a mandate to prioritize illicit tobacco trade, since the country will have ratified a Protocol that has entered the stage of full implementation.

Annexes

ANNEX A – Calculations on the Evolution of Retail Prices, Taxes, and Tax Share of Tobacco Products.

Table A1. Uruguay: Evolution of tax and retail price of best selling brand of manufactured cigarettes (in current UR\$ and %)

	APR-04	DEC-04	MAY-05	NOV-06	JUN-07	JUN-09	MAR-10	NOV-11	JUN-14	DEC-14	JUN-15	FEB-16	DEC-16	DEC-17
wholesale price	5,22	5,60	5,50	6,17	6,8	6,80	6,80	9,15	11,0	12,3	14,5	16,9	18,5	20,7
tobacco tax (IMESI)	16,48	17,68	20,79	23,32	21,50	28,00	38,00	38,00	38,00	41,10	45,21	52,22	60,05	67,26
COFIS (VAT after 29 June 2007)	0,68	0,73	0,80	0,93	7,72	9,45	12,01	12,87	13,38	14,59	16,30	18,88	21,45	24,02
distribution margin	1,4	1,5	1,4	1,9	2,3	2,8	3,0	3,8	3,9	4,3	4,8	5,5	6,3	7,0
retail margin	4,2	4,5	4,5	5,7	6,8	8,3	10,2	11,3	11,7	12,8	14,3	16,5	18,8	21,0
TOTAL RETAIL PRICE	28,0	30,0	33,0	38,0	45,0	55	70,0	75,0	78,0	85,0	95,0	110,0	125,0	140,0
Tobacco tax/retail price	58,9%	58,9%	63,0%	61,4%	47,8%	50,8%	54,3%	50,7%	48,7%	48,3%	47,6%	47,5%	48,0%	48,0%
Overall tax burden	61,3%	61,4%	65,4%	63,8%	64,9%	68,0%	71,5%	67,8%	65,9%	65,5%	64,8%	64,6%	65,2%	65,2%
Nominal tobacco tax rate	68,5%	68,5%	70%	70%	70%	70%	70%	70%	70%	70%	70%	70%	70%	70%
tax coefficient	4,61	4,61	5,4	5,4	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Tax base (wholesale price x multiplier)	24,06	25,82	29,70	33,32	30,72	40	54,29	54,29	54,29	58,71	64,59	74,6	85,79	96,08

Note: The tax base was calculated as a multiplier set periodically by decree multiplied by the wholesale price of each brand before June 2007. Afterwards it was fixed value in UR\$, unique for all brands, COFIS was a general consumption tax levied on all goods and services since 2003, in addition to VAT. Tobacco VAT rate was zero until the Tax Reform of 2007.

Table A2. Evolution of tax and retail price per 20 cigarette pack in constant UR\$ of December 2017

	RETAIL PRICE	IMESI	VAT (OR COFIS)	TOBACCO WHOLESALE, DISTRIBUTION AND RETAIL
Apr-04	76,1	44,8	1,9	29,5
Dec-04	79,4	46,8	1,9	30,7
May-05	85,9	54,1	2,1	29,7
Dec-06	89,0	54,6	2,2	32,2
Jul-07	100,7	48,1	17,3	35,3
Jun-09	106,6	54,2	18,3	34,1
Mar-10	129,5	70,3	22,2	37,0
Nov-11	122,6	62,1	21,0	39,4
Jun-14	103,0	50,2	17,7	35,1
Dec-14	107,6	52,0	18,5	37,1
Jun-15	115,0	54,7	19,7	40,5
Feb-16	125,0	59,3	21,5	44,2
Dec-16	133,3	64,0	22,9	46,4
Dec-17	140,0	67,3	24,0	48,7

Source: Author with data from Table A1.

Table A3. Evolution of manufactured cigarettes retail prices, taxes and tobacco industry shares in current and in constant December 2017 prices

	RETAIL PRICE RYO IN UR\$	IMESI TAX PER 20 CIGARETTE PACK	TAX SHARE INCLUDING VAT IN UR\$	IMESI SHARE OF RETAIL PRICE, %	TOTAL TAX SHARE (IMESI + VAT) OF RETAIL PRICE, %	TOBACCO INDUSTRY AND RETAIL SHARE, %	CPI BASE JANUARY 2017 = 100	RETAIL PRICE CIGARETTES IN CONSTANT UR\$	TOTAL TAXES (IMESI+VAT) IN DECEMBER 2017 UR\$	TOBACCO INDUSTRY AND RETAIL SHARE IN CONSTANT UR\$
Apr-04	28,0	16,48	17,2	58,9%	61,3%	38,7%	36,8	76,1	46,7	29,5
Dec-04	30,0	17,68	18,4	58,9%	61,4%	38,6%	37,8	79,4	48,8	30,7
May-05	33,0	20,79	21,6	63,0%	65,4	34,6%	38,4	85,9	56,2	29,7
Dec-06	38,0	23,32	24,2	61,4%	63,8%	36,2%	42,7	89,0	56,7	32,2
Jul-07	45,0	21,50	29,2	47,8%	64,9%	35,1%	44,7	100,7	65,4	35,3
Jun-09	55	28,00	37,5	50,8%	68,0%	32,0%	51,7	106,6	72,5	34,1
Mar-10	70,0	38,00	50,0	54,3%	71,5%	28,6%	54,1	129,5	92,5	37,0
Nov-11	75,0	38,00	50,9	50,7%	67,8%	32,2%	61,2%	122,6	83,2	39,4
Jun-14	78,0	38,00	51,4	48,7%	65,9%	34,1%	75,8	103,0	67,8	35,1
Dec-14	85,0	41,10	55,7	48,3%	65,5%	34,5%	79,0	107,6	70,5	37,1
Jun-15	95,0	45,21	61,5	47,6%	64,8%	35,2%	82,6	115,0	74,5	40,5
Feb-16	110,0	52,22	71,1	47,5%	64,6%	35,4%	88,0	125,0	80,8	44,2
Dec-16	125,0	60,05	81,5	48,0%	65,2%	34,8%	93,8	133,3	86,9	46,4
Dec-17	140,0	67,26	91,3	48,0%	65,2%	34,8%	100,0	140,0	91,3	48,7

Source: Author's calculations based on Table A1, INE for the CPI and market prices

TABLE A4. Uruguay: Evolution of Tax and Retail Price for the Best-Selling Brand of Roll-Your-Own Tobacco (RYO)

	APR-04	DEC-04	MAY-05	NOV-06	JUN-07	JUN-09	MAR-10	NOV-11	JUN-14	DEC-14	JUN-15	FEB-16	DEC-16	DEC-17
wholesale price	11,99	12,99	13,04	16,02	18,98	25,03	39,97	42,01	45,03	47,06	55,02	60,01	69,96	79,99
tobacco tax (IMESI)	6,6	7,15	6,8	8,35	7,6	7,95	8,10	9,40	11,30	11,30	14,45	14,45	17,20	20,30
COFIS (VAT after 29 June 2007)	2,69	2,92	3,31	4,07	4,32	7,79	17,00	17,00	17,00	18,30	20,13	23,26	26,75	29,96
distribution margin	0,30	0,33	0,33	0,40	3,26	4,29	6,86	7,21	7,72	8,07	9,44	10,30	12,01	13,73
retail margin	0,6	0,65	0,65	0,80	0,95	1,25	2,00	2,10	2,25	2,35	2,75	3,00	3,50	4,00
retail margin	1,8	1,95	1,95	2,4	2,85	3,75	6	6,3	6,75	7,05	8,25	9	10,5	12
TOTAL RETAIL PRICE	12	13	13	16	19	25	40	42	45,00	47	55	60	70	80
Tobacco tax/retail price	22,9%	22,9%	27,4%	26,6%	22,4%	31,6%	42,5%	40,5%	37,8%	38,9%	36,6%	38,8%	38,2%	37,5%
Overall tax burden	25,3%	25,3%	29,9%	29,0%	40,4%	49,7%	60,5%	58,5%	55,8%	57,0%	54,6%	56,8%	56,2%	55,5%
Nominal tobacco tax rate	27%	27%	28%	28%	29%	50%	70%	70%	70%	70%	70%	70%	70%	70%
Tax base	9,97	10,80	11,83	14,53	14,90	15,58	24,29	24,29	24,29	26,14	28,76	33,23	38,21	42,80

Source: Author with data from DGI and markets.

Table A5. Evolution of RYO retail prices, taxes and tobacco industry shares in current and in constant December 2017 prices

	RETAIL PRICE RYO IN UR\$	IMESI TAX PER 20 CIGARETTE PACK	TAX SHARE INCLUDING VAT IN UR\$	IMESI SHARE OF RETAIL PRICE, %	TOTAL TAX SHARE (IMESI + VAT) OF RETAIL PRICE, %	TOBACCO INDUSTRY AND RETAIL SHARE, %	CPI BASE JANUARY 2017 = 100	RETAIL PRICE CIGARETTES IN CONSTANT UR\$	TOTAL TAXES (IMESI+VAT) IN DECEMBER 2017 UR\$	TOBACCO INDUSTRY AND RETAIL SHARE IN CONSTANT UR\$
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Apr-04	12	2,7	3,0	22,4%	24,9%	75,1%	36,8	32,6	8,1	24,5
Dec-04	13	2,9	3,2	22,4%	24,9%	75,1%	37,8	34,4	8,6	25,8
May-05	13	3,3	3,6	25,5%	28,0%	72,0%	38,4	33,8	9,5	24,4
Dec-06	16	4,1	4,5	25,4%	27,9%	72,1%	42,7	37,4	10,5	27,0
Jul-07	19	4,3	7,6	22,7%	39,9%	60,1%	44,7	42,5	17,0	25,6
Jun-09	25	7,8	12,1	31,2%	48,3%	51,7%	51,7	48,4	23,4	25,0
Mar-10	40	17,0	23,9	42,5%	59,7%	40,3%	54,1	74,0	44,1	29,8
Nov-11	42	17,0	24,2	40,5%	57,6%	42,4%	61,2	68,7	39,6	29,1
Jun-14	45	17,0	24,7	37,8%	54,9%	45,1%	75,8	59,4	32,6	26,8
Dec-14	47	18,3	26,4	38,9%	56,1%	43,9%	79,0	59,5	33,4	26,1
Jun-15	55	20,1	29,6	36,6%	53,8%	46,2%	82,6	66,6	35,8	30,8
Feb-16	60	23,3	33,6	38,8%	55,9%	44,1%	88,0	68,2	38,1	30,1
Dec-16	70	26,7	38,8	38,2%	55,4%	44,6%	93,8	74,7	41,3	33,3
Dec-17	80	30,0	43,7	37,5%	54,6%	45,5%	100,0	80,0	43,7	36,3

Source: Author's calculations based on Table A5, INE and market prices

Annex B: Affordability of Cigarettes and RYO in Uruguay⁵⁸

» A measure commonly used to define affordability⁵⁹ is the relative income price (RIP), which measures the percentage of real income (a proxy is GDP per capita) needed to

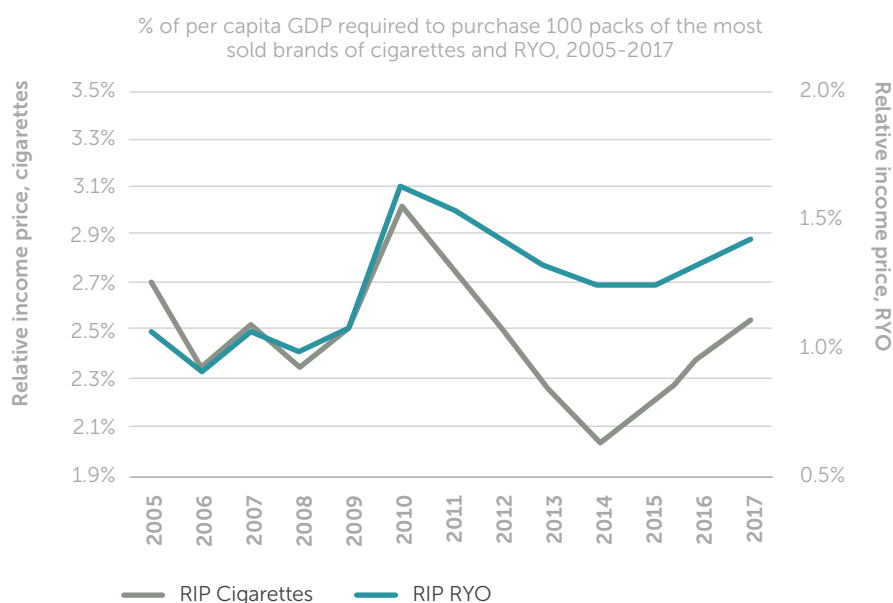
⁵⁸ The measure used was the share of GDP per capita needed to purchase one hundred 20-cigarette packs or one hundred 45g packs of RYO tobacco.

⁵⁹ Blecher, E. and Van Walbeck, C. An analysis of cigarette affordability. https://www.tobaccofreekids.org/assets/global/pdfs/en/TAX_Cigarette_affordability_report_en.pdf

buy given amounts of tobacco products. Figure B1 shows trends in RIP. It indicates that tobacco tax policy after 2008 was successful in reducing affordability until March 2010, when in the case of cigarettes RIP reached a maximum. At that time, 3 percent of GDP was needed to buy 100 packs of the most-sold brand of cigarette, while 1.6 percent of GDP was needed to buy a 45g pack of RYO tobacco.

- » During the following period (March 2010 to December 2014), real taxes and retail prices decreased. Since GDP increased over the same period, tobacco products became increasingly affordable. The maximum level of affordability was reached at the end of 2014, when just 2.1 percent of GDP was needed to buy 100 packs of cigarettes.
- » Tobacco tax policy regained momentum after the new government took office on March 1, 2015. It continued the previously abandoned policy until March 2010 and then began increasing the tax base at levels higher than inflation and real income change. This has resulted in periodic decreases in affordability from early 2015 to the present, however at a slower pace than in the 2008-2010 period.

Figure B1 – Affordability of Tobacco Products, 2005-2017 (Higher RIP values indicate lower affordability)



Source: Authors, using data from INE and the Central Bank of Uruguay.

ANNEX C – Tobacco Tax Legislation in Uruguay

Table A5. Evolution of RYO retail prices, taxes and tobacco industry shares in current and in constant December 2017 prices

LEGISLATION ON TOBACCO TAXATION IN URUGUAY							
LAW OR DECREE	DATE	CONCEPT	APPLICABLE TAX RATE		OBSERVATIONS	TAX STRUCTURE	
			CIGARETTES	RYO		CIGARETTES	RYO
Title 11 Texto Ordenado (Comprehensive tax legislation restated and updated), Dec. 338/96	08/28/96	Title 11 is excise taxes. Art. 1. Structure. The "Impuesto Especifico Interno" (IMESI) will be levied at the first sale of a list of goods sold by the producer or importer; rate for all tobacco products had a maximum of 70% rate on retail sale (art. 9) or a proxy. At the time the MEF set the cigarette rate at 66.5% and RYO at 28%.	66.5%	27%	A proxy of the retail price was legally allowed and traditionally used by DGI by means of setting (by Government Decree) a multiplier of the factory price. Until 2001 the proxy used was equal to: factory price x 4.6 (the multiplier), and the tax rate 66.5% for cigarettes, 27% for RYO	ad valorem	ad-valorem
Law 17296, art. 562	02/21/2001	Traditionally the excise tax had been an ad-valorem, but since this law of 2001 was passed the Executive Power was allowed to change the structure to a specific system or a mixed specific ad-valorem system in the case of tobacco products (art.9 of the 1996 Texto Ordenado). No change in tax rates by Decree in the previous 5 years.	66.5%	27%	The tax system had been ad-valorem until this law was passed. Even when the law allowed for a different tax structure, changes were not done until later with Decree 142/03 in 2003	ad valorem	ad-valorem
Law 17345	05/31/2001	VAT had been traditionally (since the seventies) set at 0% rate for tobacco products. This law of 2001 introduced the COFIS (Cofinanciamiento de la Seguridad Social) as a general consumption taxes and tobacco products were not exempt.	66.5%	27%	COFIS rate was set at 2.5% of retail price (without COFIS tax)	ad valorem	ad-valorem
Decree 245/002	6/28/2002	Art. 4 increased the tax rate of cigarettes to 68.5%	68.5%	27%		ad valorem	ad-valorem

Table A5. Evolution of RYO retail prices, taxes and tobacco industry shares in current and in constant December 2017 prices, Cont.

LEGISLATION ON TOBACCO TAXATION IN URUGUAY							
LAW OR DECREE	DATE	CONCEPT	APPLICABLE TAX RATE		OBSERVATIONS	TAX STRUCTURE	
			CIGARETTES	RYO		CIGARETTES	RYO
Decree 142/03	11/04/03	First time and for the next four years the DGI used the legal authorization given by law 17.296 and establishes a mixed tax system. There was a minimum tax base (not a minimum tax) periodically adjusted by the Government taking into account inflation (but it was not indexed). The new system applied only to cigarettes and not RYO. For lower priced brands the system became specific, but soon there were no brands with retail prices below the minimum.	68,5%	27%	If the tax base (calculated by means of the multiplier and the factory price as before) was found a value below the minimum tax base for any given brand, the latter would be used as the base. The tax system would be specific. However, if the tax base was found to be higher than the minimum, then the base would be the sum of the minimum with the addition of the difference with the retail price. Then, it would be an ad-valorem system since it took account of a price (in this case, the retail price) of each brand.	mixed	ad-valorem
Decree 164/05	05/30/05	The tax rate for cigarettes is increased to the maximum and the rate for RYO increased to 28%	70,00%	28%			
Law 18.083 (Comprehensive Tax Reform)	12/27/2006	The tax base for cigarettes changed to a specific amount provided by the tax authority (to be approved and updated by Decree the following years), the system for RYO continue to be ad-valorem. Another main change was that VAT at 22% rate applied to all tobacco products. COFIS was abandoned. The tax reform was effective July 2007.	70,00%	28%	The cigarette tax system became fully specific, since it was calculated as the base value provided by the tax authority multiplied by the tax rate. This calculation was independent of any price; the tax was the same for all 20 cigarettes pack. RYO taxation continued as previously.	specific	ad-valorem

Table A5. Evolution of RYO retail prices, taxes and tobacco industry shares in current and in constant December 2017 prices, Cont.

LEGISLATION ON TOBACCO TAXATION IN URUGUAY							
LAW OR DECREE	DATE	CONCEPT	APPLICABLE TAX RATE		OBSERVATIONS	TAX STRUCTURE	
			CIGARETTES	RYO		CIGARETTES	RYO
Decree 268/09	03/06/09	Main change was increasing the RYO tax rate to 50%	70,00%	50%	Specific tax base for all cigarettes was updated and also the multiplier of the tax base of RYO, same ad-valorem system as before.	specific	ad-valorem
Decree 069/10	02/20/20	RYO tax structure also went specific. The DGI set the base for all RYO brands at a specific amount and also raised the tax rate to 70%. This Decree also raised the tax rate to free-shop cigarette sales at 70% (after this Decree the only tax exemption of free-shops is VAT).	70%	70%	This was the last increase of President Vazquez first presidential period. During the following years there were no changes in the tax base.	specific	specific
Decree 375/014	12/19/2014	An update of the tax base was approved at the end of this government period.	70%	70%	There were two tobacco industry price increases in the period, in November of 2011 and June 2014	specific	specific
Decrees 064/2015, 04/2016, 380/2017		New Vazquez government in power since March 1, 2015 updated periodically tax bases of all tobacco products;	70%	70%	Since 2017 there is a yearly update of the tax base over the inflation rate and real income, but the Government has not set any targets.	specific	specific

Source:
Author
with data
from
DGI and
IMPO.

Annex D - Illicit Trade Legislation

The new Criminal Procedure Code (CPP) and a major change in criminal law

The “Codigo de Proceso Penal” (Criminal Procedure Code) is a major change in criminal law in Uruguay. It was approved in 2015, and its implementation began in November 2017. It fundamentally reshapes the procedural approach to dealing with criminal investigation and prosecution. Previously, the responsibility was part of the judge’s functions; prosecutors were not on the frontline during the investigation phase and participated only when evidence of a crime had been gathered by the judiciary. The new Code transfers to prosecutors the main responsibility for the investigative process, gathering of evidence, and formulation of charges.

The new law also includes other provisions, such as the option for prosecutors to negotiate a reduced sentence with the accused (“plea bargaining”). Another important feature of the new Code is the possibility for the Prosecutors Office to organize itself in a more specialized fashion, in the interest of faster and more efficient proceedings. Thus, in November 2017, the General Prosecutors Office was reorganized in six areas. One corresponds to economic crime and involves contraband, asset laundering, and tax fraud.

The Office of the Prosecutor, according to the new functions attributed to it by the CPP, has fresh options for improving the control of organized crime. For example, as noted, the new rules give prosecutors the power to negotiate reduced penalties for accused persons in exchange for cooperation.

The Code has faced several problems during initial implementation and may require minor adjustments. Overall, however, it will be a valuable mechanism to strengthen Uruguay’s judicial procedures.

A summary of legislation applicable to contraband is shown below.

SUMMARY OF URUGUAYAN ILLICIT TOBACCO TRADE LEGISLATION

	DESCRIPTION	RATIONALE
Overview of applicable legislation	Customs Code, Penal Code, Criminal Procedures Code, anti-asset laundering, intellectual property rights protection law (counterfeiting), Tax Code (other illicit trade such as illicit manufacturing. The tobacco control Act, Law 18.256 and Decree 284 are also applicable)	There is no systematic approach to dealing with illicit tobacco trade. Customs law in Uruguay, as in other countries, exists primarily to facilitate and protect legal trading operations. However, penalties and mandatory referral to criminal courts exist to respond to violations. The country has a single Customs Court with limited territorial responsibility. In addition to the Penal Code, some provisions of other laws are also applicable, such as the recent Criminal Procedural Code (CPP), the Anti-Asset Laundering Law (Ley N° 19574 of 2017). Counterfeit and illicit manufacturing have their own crime legislation.
Main illicit trade control agencies	DNA (Customs Authority) since contraband is the main crime related to cigarette illicit trade. The Ministry of Interior (police, national and local forces), the Prefectura Nacional Naval (Coastguard), the Tax Authority	DNA's main functions include control, inspection, intelligence gathering and tax collection. DNA has no customs police functions, and customs officers cannot carry weapons. However, DNA has been assigned leadership in fighting illicit trade in Uruguay's primary customs territory (almost the whole national territory). The law allows DNA to enlist other state authorities and law enforcement agencies (Police, Coast Guard) for help when needed.
Intelligence and contraband control operations	There are border control and other divisions in charge of contraband control.	DNA has an intelligence unit (RILO) that is normally in contact with similar units in regional Customs agencies and elsewhere. DNA has also been allowed to engage an outsourced group of law enforcers (Grupo de Respuesta e Inteligencia Aduanera, GRIA). GRIA has a robust record of seizures of illicit goods, including tobacco. GRIA's human resources are mainly retired and active policemen (who may carry guns) on commission work from the Ministry of the Interior (Homeland Security).
DNA authority and reach	DNA has full authority in the primary customs zone and may require the use of police at any time.	Principal enforcer within the main customs zone of Uruguay, defined as all the national territory except for areas specially designated by law. Article 11 of the Customs Code establishes the preeminence of DNA's responsibility with respect to any other public agency or body (except the judiciary) in the primary customs zone, and then empowers it to ask for the help of any public security force (e.g., the police) to successfully discharge its functions (Article 12). This article also establishes that DNA can perform seizure procedures without police support if it so determines.
DNA and other special customs zones (FTZ, free ports, etc.)	Except free trade zones, free ports, and other economic zones so declared by law	DNA's authority excludes customs "exclaves" (special customs zones that are part of foreign customs responsibility). However, almost no such special zones are currently operative.
Legislation on penalties	Misdemeanor or felony, depending on aggravating circumstances	The Customs Code and the Penal Code treat the crime of tobacco smuggling in different ways, but the approach is mainly that of a misdemeanor and receives penalties accordingly. A criminal court sentence could be for misdemeanor (less than two years in jail, eligible for parole) or for a felony (from two to six years, always involving jail time, but parole may be requested after one-half of the assigned jail time has been served).

SUMMARY OF URUGUAYAN ILLICIT TOBACCO TRADE LEGISLATION

	DESCRIPTION	RATIONALE
Additional penalties	Organized crime, association to commit a crime	Article 150 of the Penal code criminalizes the act of "association for criminal offence" with a sentence of six months to five years. If the association is to commit the crime of smuggling, the penalty increases from 18 months to eight years in prison.
Judicial proceedings	Customs Court of Montevideo and Canelones, penal courts, organized crime courts	Most confiscation procedures end in the Customs Court (with authority only in Montevideo and a neighboring Department), but if the judge considers that a felony may have been committed, the case is transferred to criminal court. In the remainder of the country, proceedings are held in regular judicial courts. Here again, if a felony is suspected, the judge may send the case to criminal court. The trial should be held in a special organized crime court, if the value of the contraband exceeds USD 20,000 (according to the Anti-Asset Laundering Law).
DNA's customs authority in other special customs zones	DNA has authority over incoming and outgoing merchandise. The information systems available and the obligation to report all movements have improved surveillance and control. There is also full authority during transportation of goods through the primary territory.	There is no compliance with article 12 of the Protocol. Traditionally, "in-transit" goods are not inspected, not because DNA lacks relevant authority, but due to judicial interpretation. The Customs Court has held that seized illicit "in-transit" cargo (tobacco or other products) should be allowed to go free, given that this form of illicit trade implies no fiscal revenue loss for Uruguay.
How seized cigarettes are disposed of	Destruction (not auction), but not by means of burning.	Auction is the general rule after customs confiscation of illicit goods in Uruguay. However, seized cigarettes are not auctioned; confiscation implies destruction (following Article 12 of Law 18,256).

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ⁱⁱ World Health Organization Press Release, July 19, 2017.
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ⁱⁱⁱ Combatting illicit trade in tobacco products: Commissioner Andriukaitis' Statement on the EU's adoption of an EU-wide track and trace system. European Commission Press Release, December 15, 2017.
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^{iv} How to design and enforce tobacco excises? International Monetary Fund, October 2016
<https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2016/12/31/How-to-Design-and-Enforce-Tobacco-Excises-44352>

^v World Bank Group: "Global Tobacco Control: A Development Priority for the World Bank Group", Preface of WHO Global Tobacco Report 2015.
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“To tackle illicit trade is to tackle accessibility and affordability of tobacco products, to be more effective on the control of the packaging and to reduce funding of transnational criminal activities whilst protecting the governmental revenues from tobacco taxation.”ⁱ

– **Dr. Vera Luiza da Costa e Silva**
Head of the Secretariat of the WHO Framework Convention on Tobacco Control

“Governments around the world must waste no time in incorporating all the provisions of the WHO Framework Convention on Tobacco Control into their national tobacco control programmes and policies. They must also clamp down on the illicit tobacco trade, which is exacerbating the global tobacco epidemic and its related health and socio-economic consequences.”ⁱⁱ

– **Dr. Tedros Adhanom Ghebreyesus, Director-General**
World Health Organization

“Tobacco still remains the biggest avoidable cause of premature death in the EU, and the illicit trade in tobacco facilitates access to cigarettes and other tobacco products, including for children and young adults. In addition, millions of euros in tax revenues are lost every year as a result of the illicit trade.”ⁱⁱⁱ

– **Commissioner Vytenis Andriukaitis**
Health and Food Safety / European Commission

“Given their light weight, small size, and high value, tobacco products are susceptible to fraud through illegal trade, production, and cultivation. . . . Illegal trade is a context-specific activity that has various modus operandi and therefore requires multi-dimensional context-specific solutions.”^{vi}

– **Patrick Petit (Senior Economist) & Janos Nagy (Senior Economist)**
Fiscal Affairs Department / International Monetary Fund

“Effective tobacco tax regimens that make tobacco products unaffordable represent a 21st century intervention to tackle the growing burden of noncommunicable diseases. We are convinced that, working together with WHO and other partners in support of countries, we will be able to prevent the human tragedy of tobacco-related illness and death, and save countless lives each year.”^v

–**Dr. Tim Evans (Senior Director) & Patricio V Márquez (Lead Public Health Specialist)**
Health, Nutrition and Population Global Practice / World Bank Group

