Regulation of electronic cigarettes in México

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Things before ECigs: Tobacco Control “lost paradise”

Mexico is not a heavily smoking country

Prevalence decreased from 34% in 1970’s to 16% in 2010

Slightly increased from 16% to 17% between 2011 and 2016

- Only 48% of smokers smoke daily (8 cigarettes per day average)
- Smoking is predominantly a male habit (8% of women smoke)
- Stigma from smoking is much less than (for example) the USA
- Obesity & diabetes are much more pressing health problems
The General Tobacco Control Law (LGCT) was enacted in May 2008.

It applies only to “tobacco products”, following the definition by the FCTC of the WHO as combustible and smokeless products. It did not contemplate ECigs because they were unknown at the time the FCTC was signed (2003).
Suddenly in 2009 ...

Regulators & tobacco controllers caught with their pants down

ECigs enter into the market unexpectedly !!!

Regulators & tobacco controllers caught with their pants down
What was the reaction?

Tobacco controllers and the Federal Regulatory Agency (COFEPRIS) went on PANNIC and wanted to prohibit ECigs (following recommendations from the WHO)

But the General Tobacco Control Law did not cover this type of devices. To prohibit them they had to modify the existing law (politically difficult in Mexico)

Prohibition of marketing, distribution and manufacture (but not import) of Ecigs was finally decreed in October 2012. COFEPRIS did this as a decree without parliamentary support
What was the legal basis for the prohibition?

It is difficult to find an article of the General Tobacco Control Law that can be used to justify a marketing prohibition of ECigs.

The only article of the LGCT that COFEPRIS and its parliamentary allies could find was:

**Article 16.IV of the LGCT states that**

“It is forbidden ... (VI) To trade, sell, distribute, exhibit, promote or produce any object not being a tobacco product, that contains any of the elements of the brand or any type of design or auditory signal that identifies it with tobacco products”

**NOTICE: E-Cigs are NOT considered a “tobacco product”**
Weak legal & technical basis of the prohibition

• The whole legal basis of the marketing prohibition of ECigs rests entirely on a single article of the General Tobacco Control Law (article 16.IV)

This article was PROBABLY conceived for a different purpose: to prohibit promotional clothing, hats & trumpets used in events sponsored by the tobacco industry, as well as toy cigarettes and cigarette-like candies.

COFEPRIS Never provided a “technical” justification for the marketing prohibition. It was forced to do it after a vaping vendor invoked the Law of Transparency that binds all Mexican institutions to justify rulings affecting citizens. The justification is simply a clumsy parroting the resolutions of the COP 6 of the WHO in 2014

• This extremely sloppiness facilitated legal challenges (AMPARO trials)
The AMPARO trial (Juicio de Amparo)

The Mexican legal system contains a Habeas Corpus like resource called JUCIO DE AMPARO, which allows individuals to prevent the enforcement of a law that violates their human or civil rights.

The right to an AMPARO Trial cannot be used preventively. It can only be invoked *in situ* when an authority is actually enforcing a law. AMPARO trials are usually complicated and involve expensive legal fees.
All AMPARO trials vs COFEPRIS have been won (partly thanks to a competent vaping lawyer). Proliferation of AMPARO trials generates precedents & new jurisprudence, something which is very problematic for COFEPRIS and its prohibitionist tobacco control allies.

By 2015 several vendors had successfully invoked AMPARO trials to prevent COFEPRIS enforcing the marketing prohibition (closing their shops and confiscating merchandise).

To prevent precedents COFEPRIS interventions have reduced to a minimum. Vaping expos and shows largely go on without problems.
In 2015 a minor vendor in the informal sector lost an AMPARO trial and appealed to a higher jury. Somehow, this appeal went up the hierarchy and landed in the Supreme Court.

In resolving this AMPARO trial the Supreme Court declared the marketing prohibition by COFEPRIS to be unconstitutional. This is contained in the AMPARO trial revision number 513/2015.
The Supreme Court justified the ruling on these terms

The prohibition is disproportionate and discriminatory. It bans the marketing of a “non-tobacco product” (ECigs), while allowing marketing rights (albeit restricted by the LGCT) to the tobacco product (cigarettes) it purposes to compete with and substitute.

Marketing of e-cigs cannot be forbidden if allowed for tobacco cigarettes. A reasoning that COFEPRIS & its allies mistakenly interpret as a license to regulate both as tobacco products.
Law initiatives

• The following 3 law amendment initiatives in 2017 recognised the potential for health improvement of ECigs (all were “frozen”)

Hernández Alcalá: ECigs not to be regulated as tobacco products. Modify General Health Law to subject e-liquids to strict sanitary control.

Álvarez Maynez and Torres Corzo: ECigs to be regulated as tobacco products, but in a special sub-category without draconian usage restrictions.
• Prohibitionist & anti-THR initiatives

• For COFEPRIS and its tobacco control allies the Supreme Court ruling marks the transition from attempting outright prohibition to demanding strict regulation as a tobacco product under an “upgraded” General Tobacco Control law.

Senator Dolores Padierna: launched in 2014 an obscurantist initiative with the purpose of prohibiting e-cigs. It was voted down

Senator Marcela Guerra: launched in 2016 an initiative to regulate ECigs as cigarettes in the framework of a new Tobacco Law that was much harder and intrusive than the existing Law. She was directly sponsored by Bloomberg funded NGO’s. It was frozen
The stakeholders

**ECig is threat to PH: regulate strictly as tobacco cigarettes**

**The Regulator**
- COFEPRIS

**Bloomberg funded Tobacco Control**
- InterAmerican Hearth Foundation (Bloomberg)

**Government Tobacco Control**
- National Institute of Public Health
- Tobacco Studies, Faculty of Medicine, National University
- National Institute of Respiratory disease
- National Council against Addicitions

**ECig is a PH opportunity: proportionate regulation as non-tobacco consumer product**

**Vaping associations**
- Mexico y el Mundo Vapeando. Consumers + vendors exchanging practical info
- Pro-Vapeo México (only consumers, technical info + lobbying)

**Industry**
- BAT
- PMI
- Vaping vendors

**Others**
- Medical community that is not related to Tobacco Control
- Health Commissions in Lower & Upper Houses of Congress
The current situation: **NO REGULATION**

- All marketing, distribution & publicity is still illegal

- Frontal & concerted opposition from regulators, official tobacco control and public health bodies (they follow WHO directives)

- Virulent misinformation campaigns by official tobacco control & Bloomberg funded NGO’s. It now involves also official bodies

- Medical officialdom NOW demands regulation “exactly as cigarettes”, but this is easier said than done
Yet, in spite of all this….

- Vaping is legal (and socially accepted). It is allowed in many indoor spaces.

- Marketing prohibitions are largely ignored or sidetracked. Sale is tolerated but subjected to intermittent harassment by authorities.

- Vaping is booming (1 million vapers, probably 300,000 vaping regularly). It is the most popular stop smoking method.
The future depends on the political context

- Peña Nieto Administration
- Difficult Legislation
- Favorable Legislation
- Difficult Legislation
- Favorable Legislation
- General Tobacco Law
- Marketing ban
- Supreme Court Ruling
- Law initiatives
- THR forum
- Pro-Vapeo México
- ECig Market entrance
- Vaping associations
- TODA JUNE 2018
- INTENSE LOBBYING
Can we hope for a pro-THR future

YES WE CAN !!!!     SI SE PUEDE !!!!

How come?

- Mexican society is relatively tolerant on nicotine usage. Diabetes & obesity are perceived as much more pressing health issues than smoking.
- The outgoing president ruled over one of the most corrupt and unpopular administrations ever.
- Orthodox Tobacco Control is much weaker, has much less influence and clout, and has less funding than (for example) in the USA.
- The new administration is likely to distance itself from the old one. We can identify nicotine prohibitionists as part of the outgoing corrupt regime.
- People tend to mistrust official institutions (including health institutions).
- Consumer & vaping associations are getting organised and acting more assertively.
- PMI is getting involved trying to market IQOS. We can make an alliance with them.
Thanks for listening