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# **T**HE TOBACCO INDUSTRY DOCUMENTS: WHAT DO THEY TELL US ABOUT THE INDUSTRY IN BRAZIL?

***This work was commissioned by the Pan American Health Organization as part of a multi-phase project to analyze the tobacco industry and tobacco control in Brazil. This preliminary report represents Phase I of the project***

## **EXECUTIVE SUMMARY**

- This report builds on a previously published Pan American Health Organization report and presents preliminary results of a multi-phase project to map out the roles of the tobacco industry and of the tobacco control movement in Brazil.
- This initial phase was developed to document the strategies and operations of the tobacco industry in Brazil as it can be determined from the tobacco industry documents publicly available after the settlement of legal cases of 46 states and territories of the United States with the US-based tobacco companies.
- Brazil is an important tobacco market: its large, young, population appeal to tobacco companies searching to expand and it has a large tobacco growing, manufacturing and export business.
- Despite the role of tobacco in the Brazilian economy, Brazil has been a world leader in implementing a regulatory framework in which the tobacco

- industry operates. Overall adult smoking prevalence seems to be in decline, but youth smoking remains high in certain areas of the country.
- The main cigarette companies operating in the country are Souza Cruz, a subsidiary of British American Tobacco, with approximately 75% share of market; and Philip Morris Brazil, part of Philip Morris International, with approximately 15% of the market.
  - Preliminary results showed a few themes that appear to be of high level concern for tobacco companies: regulation, litigation and public acceptance of smoking. Tobacco companies always seem to anticipate, and prepare, for tobacco control measures, using arguments that are similar to the arguments used by tobacco companies worldwide: cigarettes are legal, adults have a choice, smokers and non-smokers can share the same environment.
  - It is apparent that the creation of the National Surveillance Agency (known by its Brazilian acronym, ANVISA), generated a high level of activity, as tobacco companies tried to develop the best strategies to operate in an increasingly regulated environment.
  - For decades the tobacco companies have been denying the health risk of exposure to tobacco smoke, funding scientists and consultants to question the overwhelming scientific evidence showing that second hand smoke is toxic.
  - In addition to consultants and scientists, the tobacco companies engaged in a campaign to promote “courtesy” and “harmony”, in partnership with

- hospitality associations. The intent was to convince the public and policymakers that there is no need to strengthen legislation promoting clean indoor air, that these voluntary accommodation strategies, which have no public health benefit, would suffice.
- Product liability litigation developments in Brazil seemed to be a matter managed both locally and at headquarters. Luminaries of the legal community were often hired by the companies to assist in the development of their defense. There are some indications that in some cases, Souza Cruz and Philip Morris developed joint strategies to ensure that litigation in Brazil remained unsuccessful to the plaintiff. The class action moved by ADESF on behalf of smokers seemed to have been of particular concern to the companies.
  - The industry courted the media through the promotion of special events and workshops in order to tell journalists their side of the “controversy” (when no controversy exists about the harmful effects of tobacco).
  - The International Tobacco Growers’ Association in Brazil, i.e. the Brazilian Tobacco Growers’ Association (AFUBRA), seemed to be a significant partner in the tobacco companies’ policy and legislative efforts. This was particularly significant during the discussion for the ratification of the WHO Framework Convention on Tobacco Control.
  - Partly in response to the increasingly regulatory environment, tobacco companies increasingly engaged in “corporate social responsibility” efforts

in order to promote a positive public perception of the industry and avoid additional regulations.

### **RECOMMENDATIONS**

- Develop and disseminate the additional phases of this project, updating the searches of the industry documents and triangulating the information with archival data (both from media outlets and other available sources) as well as interviews with key players. A final product will then offer an overview of the multiple stakeholders in the tobacco control movement in Brazil and offer suggestions for future developments.
- Tobacco control policy needs to continue to be based on scientific evidence and focus particularly in the areas that the companies see as bigger threats to profits: regulation, marketing restrictions, and smoke free environments
- With a context of comprehensive tobacco control and implementation of the WHO FCTC, ANVISA needs to continue and strengthen its tobacco regulatory efforts in order to maximize the translation of the benefits of its actions into better health of the population.
- When pursuing litigation, Brazilian lawyers need to be educated and aware of the existing public internal tobacco companies' documents, as well overseas judge's opinions, in order to more effectively counter the industry's strategies in the denial of liability. ADESF's arguments and judgment, as well as the industry's reaction to the case, could be publicized more widely.

- It is essential that in the debate to promote smoke free environment, public, advocates and policy makers be educated about the decades-long campaign the tobacco companies have waged to thwart the efforts to promote clean indoor air policies. The scientific evidence is uncontroversial in affirming that exposure to tobacco smoke is serious health hazard.
- Further, policy makers, the public and advocates need to be prepare to counter the claims of tobacco companies, and its front groups in the hospitality industry, that accommodation of smokers and non-smokers in the same environment is a safe alternative. Tobacco smoke can not be safely removed through existing ventilation technology. Furthermore, it is important to be cognizant that experience has shown that smoke free environments are enforceable and good for businesses.
- Last but not least, governmental and non-governmental agencies, as well as academia, should refrain from supporting or partnering with industry sponsored programs that are developed under the guise of Corporate Social Responsibility. These educational and philanthropic programs were create with the ultimate intent of preventing additional regulations in the tobacco business.

**Acronyms used in this report**

ADESF – Association for the Defense of Smokers' Health

AFUBRA – Brazilian Tobacco Growers Association

ANVISA – National Surveillance Agency

BAT - British American Tobacco

GYTS - Global Youth Tobacco Survey

INCA – National Cancer Institute of Brazil

PAHO - Pan American Health Organization

PMB - Philip Morris Brasil Industria e Comercio Ltda.

PMI – Philip Morris International

SC - Souza Cruz

WHO – World Health Organization

WHO FCTC – World Health Organization Framework Convention on Tobacco Control

## Introduction

Brazil is a world leader in tobacco leaf production and exports, and, increasingly, cigarette exports. Brazil is also one of the world's leaders in tobacco control through legislative and regulatory measures. The success of Brazil's tobacco control has been measured through a household surveys[1] demonstrating the fall in overall smoking prevalence in the country. [2] Nonetheless, the Global Youth Tobacco Survey in Brazil show a picture of concern, with many areas having high smoking prevalence among youth, mainly young women. [3]

This scenario of successful public health measures and economic importance given to tobacco by the political system often creates conflict between the health and the economic goals (although it is important to note that tobacco use has tremendous direct and indirect costs for the country). [2] A major participant in the tobacco scene in Brazil is the tobacco industry. The Brazilian market is dominated by British American Tobacco's subsidiary, Souza Cruz (SC), with approximately 75% of the market share<sup>i</sup>, followed by Philip Morris Brasil Industria e Comercio Ltda. (PMB), a part of Philip Morris International (which is, in turn, part of Altria), with 15%<sup>ii</sup> of the market. The rest of the market is shared by a variety of other local and international manufacturers. Industry sources, and research commissioned by tobacco companies, claim that about 1/3 of the Brazilian market belongs to illegal market (the illegal market comprise

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<sup>i</sup> Souza Cruz website:

[http://www.souzacruz.com.br/OneWeb/sites/SOU\\_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256D87004CC8D0?opendocument&SID=&DTC=](http://www.souzacruz.com.br/OneWeb/sites/SOU_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256D87004CC8D0?opendocument&SID=&DTC=)

<sup>ii</sup> Philip Morris International website: <http://www.pmicareers.com/country/bra/default.asp>

cigarettes that enter the country illegally, through contraband, counterfeit cigarettes that are sold in the country; and tax evasion, often cigarettes manufactured in the country but sold without payment of duties).<sup>iii</sup>

Several tobacco trade groups operate in Brazil, for example: Abifumo (Brazilian Tobacco Industry Association), Sindifumo (Tobacco Industry Union), Afubra (Brazilian Tobacco Growers Association) and there is evidence of a certain amount of synergy among them. [2]

This report is the first phase of a multi-phase project looking into the tobacco industry's influence in tobacco control in Brazil. This initial phase was developed in an attempt to document the strategies and operations of the tobacco industry in Brazil as it can be determined from the tobacco industry documents publicly available after the settlement of legal cases of 46 states and territories of the United States with the US-based tobacco companies.[4] Additional phases of this project will update the searches of the industry documents and triangulate the information with archival data (both from media outlets and other available sources) as well as interviews with key players. The final product will then offer an overview of the multiple stakeholders in the tobacco control movement in Brazil and offer suggestions for future developments.

A previous report published by the Pan American Health Organization about the tobacco industry activities in Latin America and the Caribbean[5] serves as the base for this report. Using similar methodology, the current report

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<sup>iii</sup> Souza Cruz website:

[http://www.souzacruz.com.br/OneWeb/sites/SOU\\_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256D870066C735?opendocument&SID=&DTC=](http://www.souzacruz.com.br/OneWeb/sites/SOU_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256D870066C735?opendocument&SID=&DTC=)



expands on the information provided by the Latin American report, but focus on Brazil.

### Methodology

During the period of February 10, 2003 to December 2003, with updates on May 2004 and December 2004<sup>iv</sup>, we searched the tobacco industry documents available on the Internet. The search was limited to documents dated from the 1995 to 2004 (latest document date varied by company from 2003 to 2004) as a priority, although older documents were included based on their relevance for the overall industry strategy in the country and as background, when appropriate. The search used mainly the Legacy Tobacco Documents Library (LTDL), which gathers and make available documents from the tobacco industry-maintained websites. Since the volume of documents from Philip Morris is larger than the other companies and updated more frequently, search on their website was conducted to supplement the LTDL search.

We also searched the British-America Tobacco company documents that are available through two Canadian sites: Health Canada and the British Columbia Ministry of Health, and through the University of California, San Francisco library, more recently at the British American Tobacco Documents Archive (BATDA). Additionally, we obtained hard copies of approximately 30 BAT/Souza Cruz documents from the documents depository in Minnesota where hard copies of all documents produced in litigation in the US are archived. The latter documents have been produced as part of the US Department of Justice

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<sup>iv</sup> An update of this search to include in the report relevant documents made publicly available since 2004 will be part of Phase II of this project.

legal case against several tobacco companies doing business in the US[6] and were not yet available online at the BATDA collection. The majority of documents cited come from Philip Morris collection.

The preferred search term used was “Brazil”; “Brazil\*”, Brasil\*, and search for name of individuals identified in the initial searches, using a snowballing technique. The search strategy used was “broad to narrow.” Using Brasil\* on the LTDL yielded 391 documents; Brazil\* yielded 4,827 documents.

At the beginning of the search, the Philip Morris site had 3,441 documents using the search term Brazil that were dated in the 1990s and 507 documents dated on or after the year 2000 (the most recent date was 2002). The Legacy library had 6,558 documents (all companies) from the 1990s, of which approximately 400 referred to crop specifications and 705 documents dated 2000 or later. We narrowed the search to 1995 or later for the initial selection. We did not go for a start date post-1995 in order to attempt to capture any discussion about the 1996 Brazilian tobacco control legislation.

We then scanned each one of those documents to select the ones that would be included in the writing of the report. This final report is then based on information from approximately 200 documents. Documents were selected based on content relevance and uniqueness (i.e. material available through other sources, such as articles from peer reviewed journals or newspapers were generally not selected. Also excluded were fax cover sheets, blank pages marking the beginning of file folders, general company announcements distributed to all managers, etc.) Duplicates were also eliminated.

The Health Canada site produced 222 documents with the key word Brazil\*, several of which were from the 1980s and were not included. The British Columbia site produced 26 documents with the key word Brazil, most were not included. (The inclusion and exclusion criteria used were the same for all sites searched.) The BATDA site yielded 2,571 documents.

A major limitation of the most recent documents is that they are only partially available. For example there would be an e-mail exchange between two or more Philip Morris employees, but the main content of the discussion will be in the form of attachments, which were not available. Therefore, for example, meetings are reported, although it is not possible to describe in details to meeting's discussions or conclusions, and sometimes, not even the agenda.

## Results

### *Overview*

There are strategic plans for the region and a few specific for Brazil, such as Souza Cruz five-year plans.[7-9] These have been previously described in the PAHO's Latin America publication,[5] for the entire decade, up until 1999. These plans include industry's assessment of the economic and political situation and how it can impact the companies' business, some competitors' reports, and overall strategies to grow share of market (for example, what brands to emphasize). Clearly, the main areas of concerns for both PMB and SC as far as growth of business was to work towards maintaining the affordability of cigarettes, maintaining the social acceptability of public smoking and maintaining marketing freedom or working towards keeping communications with consumers

available. These plans assist in giving some sense of industry's priorities for the region and for Brazil.

We uncovered no additional information related to the companies' involvement with, or at least awareness of, the contraband of its products than what has been previously reported. A few additional documents confirmed that the routes of the contraband were known and that companies accounted, for share of market purposes, for its own brands being sold in contraband. It is possible that additional information will be uncovered in the future as on-going litigation in the United States may require the companies to produce additional documents.

We did find several documents related to litigation developments in Brazil, how the companies in some instances joined forces, and how the growth of litigation seemed to be a concern closely watched by the higher levels of the parent company of both SC and PMB. Thus, unique to this preliminary report is an overview of how the tobacco companies, individually and in cooperation, addressed some of the litigation threats in the country – through hiring well known names in the legal community, with connections at the high levels of the Judiciary system, and in at least one instance, planning a joint (PM/BAT) workshop to discuss the litigation issues and joint defenses. It is clear that the growth of court cases in Brazil were a “matter of considerable importance” according to a BAT official. There are several references to the case lead by Association for the Defense of the health of Smokers (known by its Brazilian acronym, ADESF), some of which summarized below.

Also unique to Brazil have been some of the initial documents found regarding the growers' organization, AFUBRA. The information available only confirms what is already known about the industry's involvement with Afubra and the synergy between the industry's interests and that of this growers' group. Again, when and if more BAT documents become available, additional information may be found about the relationship and strategies of tobacco companies and Afubra.

Additionally, with the creation of the National Surveillance Agency (known by its Brazilian acronym, Anvisa), there are documents and exchange of correspondence discussing compliance with several of the regulatory measures developed and implemented by the agency and of meetings between governmental representatives and companies' representatives. Some of the correspondence exchange among Philip Morris employees (both in the United States and Brazil) demonstrate that when dealing with Anvisa, there was involvement from those in the upper level of the company.

The recent documents also address, in a broader sense, some of the industry's Corporate Social Responsibility efforts, although these tend to be more generic than Brazil-specific.

### **Strategic plans**

An earlier document from BAT, a 1992 memo from BAT's Paul Bingham describing his trip to Brazil where he had meetings with top Souza Cruz executives to discuss a "global perspective of cigarette taxation and its impact

upon the strategic focus of BAT industries” and to understand the Brazilian “indirect tax situation”. [10]

In the summary of his discussion, Mr. Bingham states that

“... Souza Cruz has a sound understanding of the indirect taxation issue and its impact upon the cigarette business. Marketing and Finance work closely together to achieve this while links with Government in Brasilia are effective.” [10]

He also identified “three key threats” to Souza Cruz:

“ – a change of mind by Government upon price liberalization. This is considered most unlikely.

- Marlboro, either because of a repositioning to compete head on with Hollywood or, because of a narrowing of the current price range, which could reduce the gap between the two.

- Price competition, either from Philip Morris or another company, in segment I as real price move ahead as planned

Souza Cruz is well positioned to deal with the threat of low price competition and is confident that it can do so wither with existing power brands or with new brands.

The real long-term threat remains Marlboro...” [10]

The document then discusses the Marlboro issues and several tax scenarios and the impact for Souza Cruz and Marlboro. The meeting report states that there were three main conclusions:

“A specific tax either wholly or partly as an alternative to ad valorem, is inappropriate for Souza Cruz at the present time or in the foreseeable future, because of the Marlboro threat.

Souza Cruz should lobby Government for a reduction in overall tax incidence.

Souza Cruz should prepare a case, and lobby for a minimum specific tax within the *ad valorem* tax structure in order to minimize the low price threat...” [10]

Another document, of which the initial pages seem to be missing, provides in a presentation format an overview of the Brazilian cigarette market from 1979 to 1995 [11] – it addresses the market is related to the country’s political and economic aspects. It includes the DNP [Duty Not Paid, refer to the section on contraband for more details] share of market, indicating that there was a growth from 1992 to 1995 (when, according to this presentation, the DNP was responsible for 16.5% of the total market). It also shows an increase in smoking incidence in males and females from 1990 to 1995, and an overview of the cigarette industry in the country. When comparing the Souza Cruz with the Philip Morris share of the market, again the presentation shows that SC had 13% of the DNP market, compared to 5% of PM. There are also tables showing a decrease in the amount of machine-measured tar and nicotine in Brazilian cigarettes from 1986 to 1995. The presentation does include “anti-smoking pressure” as a key factor in the Brazilian market in 1995. [11]

When addressing market share among young adults, it is interesting that the table is divided between young adults and young adults starters – it is not defined what the company means, or what the age range is for starters. Other BAT-related company reports often refers to starters without providing an age range.[5]

While presenting price and taxation issues, the document states that reducing the tax burden is a key issue for the company, and continues the

discussion of how taxation affects the affordability of Marlboro, previously discussed as a major perceived threat. When discussing “anti-smoking pressure” the presentation states:

- “Defend smokers’ rights
- Stand of the industry/BAT Group
- Focus on USA
- Local Strategy
- Face restrictions
- Anticipate facts
- Institutional campaigns
- Monitor Anti-Smoking Lobby” [11]

The presentation describes several “main events” of 1995, including the proposed Murad legislation,<sup>v</sup> the ban of public smoking in Sao Paulo, the Health Ministry position in support of higher taxes, the Congress investigation of Y1 and some media reports about tobacco. [11] (Many of these issues are discussed separately below)

The presentation also describes the institutional campaign, labeled as an “anti-lobby strategy” where the issue of public smoking is equated with freedom. The campaign statement says “The issue is not whether you enjoy cigarettes or not. The issue is whether you enjoy freedom or not. Perhaps smokers and non-smokers don’t agree on cigarettes, but surely they agree about freedom.” [11]

Similarly, PMI’s “Five Year Plan, 1995-1999” [12] reviews “worldwide tobacco issues”, including standard business concerns such as sales volume, revenue, market share and pricing. But the Plan also discusses increased worldwide pressure for the implementation of clean indoor air policies and

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<sup>v</sup> Elias Murad was the Brazilian legislator who introduced tobacco control legislation in Congress. It was eventually approved as federal law 9294/96



advertising restrictions, and emphasizes the need to continue to lobby for a “favorable tax structure worldwide”. In one document these activities are framed as “protecting the industry and the smoker:”

- “• Prepare and execute pre-emptive accommodation campaigns-to deal with the issue surrounding Environmental Tobacco Smoke (ETS) - We stepped up our corporate affairs efforts to deal with the threat of the ever-increasing public smoking restrictions around the world. ...
- Public smoking - We will develop pre-emptive accommodation programs to secure a reasonable outcome of the increasing pressures to regulate public smoking.
- Advertising restrictions and warning labels - These issues will be dealt with on a country or regional basis. We will also develop a task force to deal with the new and increasing threat of plain packaging.
- Youth access - We will establish a task force that will be charged to develop campaigns and programs that clarify our position on this issue. The objective is to remind the trade of its responsibility to monitor and enforce existing local laws with respect to the legal age of smoking.
- Public advocacy - We will be prepared to publicly advocate and defend our position on all these issues. Our key executives in each market will be better trained to speak out when required as well as better inform our employees worldwide. ...” [12]

BAT’s Latin America Corporate Affairs/Public Affairs and Philip Morris Latin America documents demonstrate that BAT’s priorities for the region were consistent with those of PMI as well as throughout BAT’s operating companies in the region, and that plans were centrally developed for application at the country level.[5, 13, 14]

A 1999 BAT results for that year’s first quarter states that

“Total duty paid cigarette market increased some 4.8% when compared to Q3 1998. Souza Cruz cigarette sales volume to the domestic market for the period, increased by 4.7% in relation to 1998. With market share in line at 83%. However, the duty free market, based in our estimate, decreased 42.9% to 21.6 bn

cigarettes. Adding them up, total cigarette market declined 12%.”[15]

### *The WHO FCTC*

As has been previously reported, the tobacco companies did not welcome the development and, in late May of 2003, the approval of the WHO FCTC. [16, 17] As the WHO FCTC negotiations started, in 1999, tobacco companies and its representatives attempted to influence the process in order to minimize the restrictions that the FCTC could impose on the sales and marketing of tobacco products. In fact, there is evidence that in 1999/2000, BAT, PMI and Japan Tobacco International attempted to develop a joint project that would create an industry-wide self-regulatory system, therefore preempting the need for the FCTC, while at the same time giving the perception that the industry was open to dialogue with WHO and willing to accept some of WHO's demands.[18-21] There is no evidence that the three companies agreed with most of the terms and voluntary restrictions that such scheme would impose, and it seems that the only product of this effort was the joint industry voluntary marketing code, discussed below.

In the Fall of 2000, the WHO conducted public hearings on the FCTC. Several tobacco companies, including BAT and PMI submitted comments to WHO during the public hearing period. We were unable to locate specific documents about plans related to Brazil and the WHO FCTC.

An account of the hearing from PM's Mark Berlind (an attorney with Philip Morris Management Corporation) describes Afubra's statements as follows:

- “[Afubra] emphasized that converting to other crops is not realistic; pointed out that tobacco is much more profitable than, for example, black beans...
- Asserted that their members ‘don’t actually like tobacco’ but have no other viable choice.” [22]

However, Afubra is one of the founding members of the International Tobacco Growers Association, which was created and maintained by the tobacco companies.[23] And the ITGA seems to be integral to the industry’s efforts to counter the WHO FCTC. In a 1999 BAT First Quarter results report, when addressing the Tobacco Free Initiative, the report highlights the role of the ITGA in addressing the development of the WHO FCTC:

“... The International Tobacco Growers’ Association and many tobacco growing countries have taken exception to the initiative and is urging all tobacco growing countries to vote against the initiative or seek delay in implementation.”[15]

The situation in Brazil regarding the ratification of the WHO FCTC and the opposition of Afubra may have been an indication of the continuation of this delay and obstruction strategy. [24] The in depth analysis of the ratification process in Brazil will be covered in a subsequent phase of this project, an overview is provided below.

### **The ratification process in Brazil**

Although there was worldwide expectation that Brazil would be among the first 40 countries to ratify the WHO FCTC, given its leadership during the negotiations of the treaty, Brazil was the 100<sup>th</sup> country to ratify. This was due mainly because of the tortuous path the treat had in Congress thanks to the

opposing lobby organized by Souza Cruz and its allies (Afubra played a particularly strong opposition role).

An intensive misinformation campaign was waged using unfounded arguments that the Framework Convention will have severe negative economic impact. This generated fear, mainly among families and policy makers from tobacco growing regions. This also led to confusion among congressmen about the real positive public health impact of the treaty. Several governmental sectors as well as civil society, unlike many legislators, were supportive of ratification . [25]

The Senate Committees in charge of the ratification process conducted several public hearings in the tobacco growing regions in order to clarify the disinformation being circulated about its impact. These hearings were important to strengthen the congressional decision, eventually, to ratify, in November 2005.

### **Contraband**

It has been previously reported that there is documentary evidence demonstrating that Souza Cruz was involved, or at a minimum, knowledgeable, of how its products were being sold in the contraband (duty not paid) market.[5] No criminal or civil sanctions have been brought against the company.

A 2000 BAT document labeled “privileged and confidential” drafts a briefing on the CPI about alleged contraband activities by BAT in Latin America. [26] This seems to have been prepared in response to the UK Health Select Committee that was investigating these allegations. As the Draft briefing document states:

“The paper begins with an overview of the themes which can be put forward in response to the allegations. It then turns to the three Latin American countries which the CPI report focuses (Colombia, Venezuela, Argentina)... [The paper] does highlight some potential problems which emerge from those documents and flags the points which need to be borne in mind when considering the answers which can be given to the questions posed by the Select Committee...” [26]

As the briefing draft reports, the “essential allegation is that, in the period 1990 to 1995... [BAT and its subsidiaries] sought to control and exploit smuggling as part of a world-wide marketing strategy to increase revenue”. [26]

The responses outlined in the briefing are similar to official position statements made by both BAT and Souza Cruz, that contraband is damaging to their business and that they are working with governments to combat the problem. The briefing then discusses each of the three countries. It is noteworthy that although in the overview the document states that

“The acronyms DNP and GT on which the CPI relies are not necessarily synonymous with smuggled goods. DNO [Duty Not Paid] can mean any goods on which duty is not paid, including where the non payment of the duty is entirely legitimate.” [26]

However, at the end of the discussion on Colombia, it is stated that “Although it is true that DNP can have different meaning, it would appear that in Colombia and other Latin American countries it does connote smuggled goods.” [26]

Of additional relevance to this report is a “cautionary note” when discussing the contraband issue in Argentina. It states

“The evidence suggests that the biggest threat to Nobleza Piccardo posed by smuggled cigarettes was the approach adopted by Souza

Cruz to increase its share of the Argentinian market via DNP. This approach was apparently endorsed by the Chairman of BAT Industries. It has not yet been possible to investigate this fully.” [26]

### **Legislation**

A 1996 document from Philip Morris outlines the “tobacco issues in Congress” – it provides an update of congressional activities that relate to tobacco, such as a request to the Social Issues Committee to clarify with both the Ministry of Health and the Presidents of Philip Morris and Souza Cruz accusation made by the weekly magazine *Veja*<sup>vi</sup> in May 1996 that tobacco companies added ammonia to cigarettes in order to “spike” their addictiveness. (Despite the denials at the time, current published studies show that ammonia added to tobacco increases the availability of free-base nicotine. [27, 28] ) The same document mentions the request by Congressman Murad of an inquiry into tobacco (a “CPI” – Parliamentary Inquiry Commission), although no strategies are outlined.[29] In fact, the *Veja* article apparently generated concern for both companies (SC and PMB), and prompted them to issue several press statements and companies’ defense statements. For example, Gilberto Galan, then at PMB Corporate Affairs, in a memo Cathy Leiber, at PMI wrote

“Our concern is that CONFEN and Congressman take the opportunity to increase their regulatory efforts from now on. ...” [30]

In response to the *Veja* report of the 1996 Federal legislation (Law 9294/96, of July 1996), PM lawyers drafted a letter to *Veja* correcting some of the information in the article and clarifying that the law does not ban smoking in

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<sup>vi</sup> *Veja* is a weekly news magazine widely circulated among opinion leaders in Brasil.

public places, but that in hospitality venues, such as restaurants and bars, smoking is permitted in designated smoking areas. The letter highlights the industry self-regulation code regarding marketing practices and emphasis on accommodation (“convivencia em harmonia” – or the Courtesy of Choice program, an international program supported by tobacco companies to delay or obstruct passage of smokefree legislation [31]). Part of this document has been redacted based on previous claim of attorney-client privilege<sup>vii</sup>. [32]

In a 1997 Philip Morris draft outlining issues for clarification regarding the Brazilian legislative proposal, the author states that among key allies of PM are Souza Cruz, Afubra (the growers association linked with the International Tobacco Growers’ Association), state government and Congress. It also provides an outline of a position paper for the company vis-à-vis the proposed legislation. [Cite]

### *Anvisa*

The National Health Surveillance Agency (Anvisa) was established by Law 9.782, of January 26, 1999. Anvisa is “ANVISA is an independently administered, financially-autonomous regulatory agency.”<sup>viii</sup> The creation of Anvisa seemed to have been of some concern to both SC and PM. A 2000 memo from SC’s Jose Paulo da Silva to Paul Case at BAT provides an overview of the situation:

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<sup>vii</sup> Several documents that are made available to the public following the US settlement are partly or completely redacted if the producing party, in this case, one of the tobacco companies, claim that the content of the document is protected under attorney-client confidentiality clauses.

<sup>viii</sup> <http://www.anvisa.gov.br/eng/institution/introduction.htm>

“... We had a very tough year in 1999 with a lot of work to do and I anticipate that this year is not going to be different! Let me try to summarise how things are developing in Brazil.

When we last met the Brazilian Regulatory Agency (ANVS) had published a few months earlier the Tobacco Regulation and at that point they were refusing to have discussions with the tobacco industries. After a number of attempts, we finally succeeded in holding a meeting with ANVS Board at which Souza Cruz, Philip Morris and the Brazilian Tobacco Industry Association (ABIFUMO) delegates were present. At that time, ANVS Board agreed to temporarily suspend the submission of tables of mainstream and sidestream smoke deliveries and tobacco contents. It was agreed that for purposes of registering all brands with the agency on Nov. 19, just the tables containing State sales and product composition data would be required.

At that meeting, the industry representatives requested that a technical committee under ANVS' coordination be formed with members from the industry, the agency and the National Cancer Institute (InCA). ANVS Board considered the proposal to be of interest and agreed to discuss it further with InCA. Unfortunately, no agreement upon the registration fee review was arrived at which caused the Brazilian tobacco companies to take this discussion to court.

On November 19 - the deadline for brand registration -, Souza Cruz submitted the product sales and product composition data together with a writ exempting Souza Cruz from the payment of the registration fee until the Brazilian Justice makes a final decision, and Souza Cruz could register its brands.

Later on InCA agreed with the idea of creating a technical committee and the first meeting of same was scheduled for December 1. As the outcome of this meeting the industries were required to submit to ANVS and InCA a timetable for the submission of the analytical data. The industries proposal was to submit a partial report on April 2000 and a full analytical report on September. Until now the Agency has not responded to this proposal but I think there is no other alternative as Philip Morris Brazil and the small Brazilian industries have no internal analytical capabilities, have to send the samples to be analysed at Labstat, and the results will only be available by September...

In relation to the other two questions you raised: a) We are beginning to move over onto the product size of the subject. There



are some product development projects just started which aim at reducing the levels of some substances, mainly TSNA's, in all Souza Cruz brands. b) The Brazilian Tobacco Regulation doesn't require the cigarettes to be smoked in any intense regime. The cigarettes should be smoked in ISO standard regime only..." [33]<sup>ix</sup>

It is apparent that from the beginning tobacco companies were interested in setting up a dialogue with Anvisa officials, as a group or separately. A series of exchange of e-mails found at Philip Morris archives documents the exchanges among PM employees in Brazil and the United States where a meeting and a presentation to Anvisa about the company is developed, and many expressions of frustration that Anvisa was ignoring PMB's multiple requests for a meeting.[35, 36] In fact, maintaining communications with Anvisa was part of the Worldwide Scientific Affairs plan for 2001.[37]

There is also a series of discussions about preparation of the tables that are part of the required reporting. Although most of the attachments are missing from the archives, there is indication that tables submitted to Anvisa by PMB went through a clearance process with Legal and Corporate Affairs at headquarters. In a 2000 e-mail from Daniel Rincon (at the time with Quality & Product Development, Philip Morris Management Corporation) to Bruce Davies (then Manager, Scientific Affairs, Philip Morris USA Inc.) and copied to several other PM employees, it is stated:

"Please find attached the tables we sent to our Legal and Corporate Affairs Departments regarding to what could happen with the Table 2 to 6 related to several alteration [sic] on our products... I would

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<sup>ix</sup> ISO standard regimen do not reflect the actual amount of substances that the smoke inhale when smoking. [34] Bialous S, Yach D. Whose standard is it, anyway? How the tobacco industry determines the International Organization for Standardization (ISO) standards for tobacco and tobacco products. Tobacco Control. 2001;10:96-104.

like to know your opinion on this matter, taking into account that we are considering ½ mgs TAR reduction through changes in engineering, ingredients and blend in some cases...” [38]

A 2001 exchange of e-mails discusses PMB response to Anvisa’s proposed regulations. [36, 39] The draft of the submission states that

“Philip Morris Brasil S.A. supports both the spirit and most of the key provisions of the proposed Regulation... Our comments show that we support the core of the regulations and advocate certain modifications that will provide the government, industry and consumers with meaningful, workable rules...” [40]

Essentially, while using the discourse that has become standard for the past several years, that PM wants to work together in support of reasonable regulations, and with ample references to the information available at PMI’s website, the company disagrees with the elimination of brand descriptors, and to some of the proposed ratios of carbon monoxide, tar and nicotine.

Eventually PMB was able to meet with Anvisa and other members of the government, on a discussion about changes in the proposed regulations. An account from PMB’s Sebastiao Celso Pereira states that the meeting with Anvisa and Inca (National Cancer Institute) was “very useful to improve and establish a better channel of communication with our government personnel”. Tony Synder (Director, International Market Projects, Philip Morris USA Inc.) deemed the changes from the original proposal to be “positive” – the changes related mostly to the tar, nicotine and CO ratios mandated by Anvisa regulations.[41]

In 2002 PM was also able to make presentations to Anvisa and several other government agencies representatives. Again, there is a series of documents showing the e-mail exchanges about this presentation as well as many drafts of the content presented. Presentations were reviewed by a series of PM personnel prior to the March 2002 meeting.[42] Despite a series of topics to be covered, such as harm reductions, exposure studies, PM External Research Program and benchmarking, to name a few, part of the meeting were to be dedicated to questions and dialogue.[43-45] As stated by Matt Winokur (Director Government Affairs, Corporate Affairs, Philip Morris International) when forwarding the letter requesting the meeting, to be hand-delivered to Anvisa,

“When you [Marita Aquino, PM Government Relations] speak with Dr. Oliva [Ricardo Oliva, then director of Anvisa] please stress to him that the most important thing for us is to have the right people at the meeting... is more important to have everyone from ANVISA who work on our issues attend and also key members from INCA to attend. If INCA cannot participate on the 16<sup>th</sup>, it would be better to change the date of the meeting...” [46] [Underline in original]

A PMB report of the meeting, by Walter Brunner,[47] states:

“... PMI, PM USA, and PMB had a meeting with ANVISA (Brazil Regulatory Agency), members of INCA (Brazil's National Cancer Institute), and FCTC committee members. The meeting was held on March 27, in Brasilia, and some important issues were discussed for almost 4 hours. In this opportunity the industry and regulatory agency had a chance to go through scientific and technical issues related to our business and raised by Resolution 105 filing. The objective was to open a scientific and technical communication channel with the audience, share our views on a variety of subjects (see Agenda below) and use the meeting to sustain a relationship among the parties. The meeting also provides PMB with an opportunity to explain its filing on Resolution 105, in particular those parts of the filing in which we took exception to the regulatory requirements... The presentations were technical and the audience was interested on the issues presented... When the

presentation and the event were over, some issues were raised among a small group:

Marcia Bernardo, from INCA, made some comments on Benchmarking saying that in 2000 the Benchmarking submission did not provide her too much scientific support on data, so, that's why they decided to prohibited it on Resolution 105.

... 3. We also had feedback from some members of FCTC committee on the importance in participate in this event when they definitely had a chance to see how open we are to dialogue and discuss our positions. They also mentioned that it also confirm our efforts in sustain PMI positions towards the convention...

The group suggested to send a copy of all presentations in an unique condensed document to Anvisa and Inca participants to use this opportunity to improve our future dialogue with the agency..."

[47]

We were unable to determine if a copy of the presentations was ever sent, but subsequent e-mails from meeting participants and others questioned whether or not some of the material presented should be confidential and if they could make sure that the government representatives would not leak the information to the press and "misinterpretation of the data presented". [47] There was a proposal to send a presentation only to top managers that were present at the meeting.

Resolution 105 mentioned above is a resolution by Anvisa, of May 31, 2001 that required all tobacco products manufacturers, importers, and exporters to register with Anvisa as well as to register all of its products and the products of companies that process tobacco. This was a new initiative and the industry's reaction as well as the government responses will be detailed in the next phase of this project, using archival data as well as additional documents from tobacco companies that might be now publicly available.

### **Ammonia/Benchmark**

It seems that the 1996 article on the weekly magazine *Veja*, with the headline about ammonia added to cigarettes generated some discussion within the companies and also seems to have prompted some joint responses from the tobacco companies. A memo from Philip Morris International's Jan Goodheart (Director, Worldwide Regulatory Affairs, Philip Morris Management Corporation) to Cathy Leiber (then Corporate Affairs Director, ANCAM Region, Philip Morris International), found in the BAT archives, states:

"The Health Minister has confirmed his participation in the Social Affairs Commission meeting... The main subject is Y1; however, it is expected that there will be questions resulting from the *Veja* article, including questions about ammonia.

The meeting is open and will attract media. In addition, PM Brazil will be represented by an outside consultant, Souza Cruz will have representations and we understand that someone from Pinheiro Neto-Brasilia [a law firm] will also be present.

I know that you have been working to put together a statement on ammonia. As you can see it is now urgent that we have something before Wednesday. Even with the statement, we will insist that PM Brazil clear all media inquiries with my office before they respond."  
[48]

There is evidence that at the same time Souza Cruz was working on similar response. A facsimile transmission from Souza Cruz's Corporate Affairs Director Walter Nori to BATCo's Chris Proctor refers to a statement by Souza Cruz related to the levels of tar and nicotine in Brazilian brands and attaches a table of ammonia in mainstream tobacco smoke in several brands (identified by numbers).[49] However, it seems that the ammonia table attached comes from a Souza Cruz commissioned analysis conducted by the Canadian laboratory

Labstat, and the higher level is apparently from the Marlboro international label.[50] The SC statement is dated June 27, 1996, anticipating in one day a Congressional Social Affairs Commission meeting. Souza Cruz announcement stated:

“I am pleased to inform you first-hand that Souza Cruz will disclose today to the Brazilian market the table of tar and nicotine levels present in all our cigarette brands. This action delineates an innovative posture that responds to our consumers’ new demands, detected in surveys carried out by the Company...

We therefore believe that the Brazilian consumers, well informed and being able to choose from a range of products of different nicotine levels, can freely exercise their right of choice and buy the product they like best...

I also take this opportunity to attach a document we prepared to clear up some equivocating aspects which have been unduly divulged with respect to our products...”[49]

Souza Cruz’s statements to the public discusses a study commissioned by Inca to Labstat, a Canadian laboratory, the same one used by Souza Cruz, to analyze the substances in Brazilian cigarette (a copy of Inca’s report of the Labstat findings can be found in the BAT files[51]) and essentially claim that INCa’s statements to the media about the tar and nicotine content in Brazilian cigarettes, and the addition of ammonia, is an interpretation of Inca about data provided by Labstat, not the actual data. SC also questions the methodology of the data collection. SC states that the tables provided by Inca and the numbers provided by SC are within a “methodologically accepted variations”.[49] SC position states that Inca’s comments that levels of nicotine on Brazilian cigarettes are higher than the 0.5 mg limit, as reported by Veja, is groundless.[49] It

makes a similar statement in regards to tar. Regarding carbon monoxide, it is interesting to note that SC claims that Inca's information is distorted in terms of how much CO is found in the air in areas with smokers' concentration and makes a reference to Indoor Air Quality studies that the industry itself funded (through the ETS Latin project [5]) in Brazil, but makes no mention of the funding source of this "evidence".

On ammonia, SC's announcement states that adding "ammonium salts" is a legal and common procedure, that the salts use by SC are those naturally existing in tobacco" and done with the purpose of creating fragrance and "softening of cigarette smoke" and that a comparison of Brazilian with Canadian cigarettes is a distortion because of the different types of raw tobacco used and that the ammonia content in SC cigarettes "are in an absolute normal level". This statement is to be followed by a table, not included in the document due to "unscannable characters". [49] There is no reference of the effect of ammonia in the level of free nicotine absorption. The statements claiming distortion are based on media reports of the Inca-commissioned study, not necessarily on the conclusions of the study per se.

A table in the document show that the average content of tar and nicotine in SC's cigarettes had been in decline, and a Table showing the tar and nicotine content of several brands based on ISO machine smoking methodology. The document also states that the Ministry of Health's comparison of nicotine addiction with cocaine and heroin addiction is a "politically-motivated distortion" and that it is not appropriate to compare the "smoking habit and its

consequences with the physical and psychological devastation seen in persons addicted to such drugs as heroine, cocaine and others. Someone may call addiction the consumption of cigarettes. Someone may also call addiction the consumption of heavy drugs. Words are ultimately nothing but conventions... There is no science here, only politics and prejudice.” [49] This statement negates all the scientific published literature establishing, by 1996, that nicotine was an addictive substance.

The announcement also addresses other issues, such as health effects of smoking and states that health effects of smoking is the subject “of one of the most world widely discussed controversies”, emphasizes the issue of smokers’ choice to smoke, and dismisses links between exposure to SHS and disease. [49]

These statements are similar to what became the information on SC’s website (since updated), as some of the statements general concepts have not changed, i.e. smokers’ choice, dismissal of SHS as a health hazard, promotion of Courtesy of Choice etc. [5]

Although no reference is made specifically to the Congressional inquiry referred to by PMI’s Goodheart, Nori’s facsimile was sent at approximately the same date (2 days later) that the Goodheart memo. In fact, Brazilian Congress, on June 27, 1996 (the day of the SC’s announcement and a few days after PMI’s memo) approved legislation proposal that addressed many aspects of tobacco control such as restrictions in advertisement and public smoking [it became the Federal law nº 9294, of 15 July 1996].



A few months prior to the release of the Inca-commissioned study, Labstat did a comprehensive study for Souza Cruz, looking at 10 brands, [50] with overlap in 4 of the 5 brands analyzed for Inca. Although some of the levels in the Souza Cruz and Inca's report are slightly different, it is not possible at this time to determine whether or not these differences are statistically significant without additional details.[50, 51]

### **Litigation**

There is evidence from the documents found that the tobacco companies, mainly Souza Cruz and Philip Morris Brasil and their headquarters, took the growing issue of product liability litigation in Brazil seriously. There are several translations of court papers from Portuguese to English. An undated document lists a series of points to be used in the industry defense, apparently for a case in Porto Alegre, RS. It appears to be questions to be asked a medical expert in regards to addiction and tobacco-related diseases. The document states:

“... It is requested that the Medical Expert clarifies:

1. If the plaintiff had to submit himself to any type of medical treatment to abandon the smoking habit.
2. If the plaintiff could have quit smoking before 1992 provided he would have motivated himself to do so...
5. If people, in general, is able to abandon the smoking habit, apart from going through any specialized medical treatment...
- ...
- II. In relation to Myocardial Infarction...
1. Is the myocardial infarction usually a disease caused by a sole factor? ...
4. Is it possible to affirm, with a scientific margin of certainty, which one of the aforementioned factors represented the specific caused for the occurrence of an acute myocardial infarction suffered by the Plaintiff?
6. Can pulmonary emphysema cause myocardial infarction?

9. Please give any other information you may consider necessary to unravel the controversy...
- III. In relation to chronic obstructive pulmonary disease ...  
Is correct to affirm that some people have a greater predisposition to develop chronic obstructive pulmonary diseases apart from external factors?...
7. Is it true that in the area of the city of Porto Alegre a great number of individuals suffer pulmonary infections resulting from the composition of micro-organisms and fungi due to the high rates of humidity in the air?..." [52]

A recent analysis of tobacco companies' witnesses testimonies in different court cases confirms that one strategy used by tobacco companies in product liability cases is to question causality as well as to emphasize that the plaintiff could have seek cessation treatment. [53]

In a 1996 facsimile from Souza Cruz' Nelson Diz to BAT's Neil Withington (BAT's Legal Services) Diz apparently tries to clarifies if there are concerns at the BAT HQ offices about Souza Cruz' choices of lawyers for defense in some product liability cases (the layers cited on this memo are the offices of Sergio Bermudes and Luis Roberto Barroso).[54] Diz goes on to clarify:

"From the very beginning, the policy established by Souza Cruz's defense of legal actions of such nature [individual product liability cases] has always considered the presence of two lawyers – Mr. Barroso (who has been prepared by such eventuality) and another well-known local lawyer, with prestige and influence on the Courts of Appeal, at least for the first actions, in which we should concentrate our best efforts to avoid encouraging precedents for filing other similar legal suits (in Brazil, the lawyer's prestige at the Court of Appeals is very important).

To give an example, the same policy was applied to the class action. The lawyers in charge of defense are Messrs. Barroso and Celio Borja. As this action is expected to go to the Supreme Court, Mr. Celio Borja, a former Minister of Justice and of the Supreme Court, was chosen.

For the legal suit in Rio de Janeiro (Neide Barros Simas Alves and Others versus Souza Cruz), Mr. Bermudes, who is the owner of one of the most respected offices on litigation matters, enjoying a tremendous prestige and influence within the Court of Justice of the State of Rio de Janeiro, was chosen.

Currently, I am contracting Mr. Athos Gusmao Carneiro, former judge of the Court of Appeals of the State of Rio Grande do Sul, and former Minister of the Higher Court of Justice, enjoying an outstanding reputation with the local Court, to defend the legal suit filed in Rio Grande do Sul (Jose da Silva Martins versus Souza Cruz).

In both cases – Mr. Bermudes in Rio and Mr. Athos in Rio Grande do Sul – not the policy alone (one local lawyer plus Mr. Barroso), but also the names contracted – have been discussed with Mr. Marcio Fernandes and agreed upon...

In due course, the above mentioned lawyers will participate in our meetings with Shook, Hardy & Bacon<sup>x</sup> and Mr. Gary Morriscone.”[54]

In response, Withington indicated that his questions were motivated by the fact that the development of such litigation in Brazil was closely monitored by the BAT Board, and coordinated at the central level, thus justifying Withington questions regarding the appointment of lawyers in Brazil to “deal with the current product liability litigation”. [55] (A note appended to the exchange was a translation of a court filing of the Martins case, [56] and of the Neide Barros et al. case.[57]) Withington further states that the litigation in Brazil “is a matter of considerable importance to the Group...” [55], and such interest from the parent corporation comes across in other documents as well.[58]

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<sup>x</sup> SH&B is a US-founded international law firm that has been working with tobacco companies for decades. ([http://pview.findlaw.com/view/2537892\\_1](http://pview.findlaw.com/view/2537892_1))

In fact, earlier communication from Withington indicates that there was a change in the reporting relationships in regards to litigation in Brazil.[59] In a memo to several lawyers and executives of both BAT and law firms working for BAT, Withington states:

“Given the increased product litigation we are facing in Brazil, and with the establishment of our Product Liability Litigation Group ... this is an appropriate time for me to confirm our role and the procedure for communications that we should employ going forward. ...

We are here to assist your efforts to successfully defend these cases and to ensure that management is kept advised of all developments. As you know, within our group, this is the responsibility of Gary Morriscoe. Gary will help co-ordinate defense efforts...please communicate all matters, routine or significant, to Gary...”[59]

Withington follow-up with additional letters to lawyers in Australia[60] and Hong Kong,[61] confirmed the “streamlining” of the communications process and thanked both lawyers for their previous involvement,<sup>xi</sup> which would no longer be necessary.

There are a few documents showing an exchange between lawyers at Chadbourne & Parke LLP and BAT lawyers in the UK and in Brazil addressing the hiring of a private investigator to provide assistance with civil litigation. It seems that some pages are missing from this document and we were not able to determine if an investigator was hired.

A 1997 e-mail from Souza Cruz's Paula Ferreira to several people of BATCo mentions a “Senior Lawyers Meeting” in December of that year in Rio de

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<sup>xi</sup> Incidentally, both Cannar and Foyle have been involved in litigation in Australia and the United States, where they have been requested to provide testimony about BAT's document destruction policies.

Janeiro. The attached documents indicate that participants were to include representatives of BAT, Souza Cruz, Nobleza Piccardo, Bigott, BAT Colombia, Chiletabacos, and Chadbourne & Parke. The meeting agenda includes an overview of product liability cases globally and regional, including the suits to recoup tax-payers' costs to treat tobacco-related diseases ("recoupment suits"). It has a "nuts and bolts" of a tobacco case session and the practical implications of smoking and health litigation.[62] We were unable to locate any reports of this meeting.

There are also a few documents referring to a meeting of BAT and PM International counsel in Rio de Janeiro, a few days prior to the meeting described above. This meeting apparently addressed the coordination between the legal teams of the two companies, including their external lawyers. Also in the agenda of this meeting are items such as "witness development (joint and each company)" and possible shared costs and media efforts. The agenda included discussions on "position on causation and addiction," lessons learned from the Alves and Dos Santos case, including

"1.preemption/Government regulation 2. Judicial Activism and Forum Shopping 3. Options for limiting Judicial Discretion". [63]

It also included a discussion of the Adesf case, discussed below. In a memorandum about this meeting, Timothy Lindon, of Philip Morris Management Corporation states that "I understand that Souza Cruz's appeal on the bias issue has been denied, making the class action strategy discussion particularly important..." [64]

There are several documents offering updates on various cases in Brazil.[65] [66] In fact, a 37-page 1997 document provide an overview of 14 product liability cases and all the courts steps up to that date (It includes details on the Adesf case, below).[67]

On another example, a February 1998 memo from David Wallace, of Chadbourne & Parke law firm, to Garyowen Morrisroe, now apparently with BAT,[68] enclosed a translation of the testimony of Souza Cruz counsel, Marcio Eduardo Tenorio da Costa Fernandes in front of DECON (State Department of Consumer Police) of São Paulo, a testimony apparently related to the case of Perin v. Souza Cruz, and Decon's opinion that no warnings about nicotine and "alleged dependency" were required by Brazilian legislation and that this is a matter for civil case and not police work. Mr. Fernandes declaration, according to the translation, said:

"... that the manufacture, sales and advertising of cigarettes are legal activities fully regulated by legislation currently in effect; that Souza Cruz S/A complies strictly with the norms currently in effect; ... that specifically with regard to advertising and the warning clauses referring to the harm associated with cigarette smoking, the subject has been widely and rigorously regulated by the Federal Government for a decade; ...that in consideration with the principles of legality, Souza Cruz does not publish warning clauses other than those determined by law; that there is no legislation in effect that imposes any warning clauses other than those determined by law; that there is no legislation in effect that imposes any warning clause regarding nicotine and nicotine dependency; ...[that a proposal for a warning clause related to nicotine had been eliminated] that the lawmakers considered it to be much more relevant and effective to warn the consumer of the health risks potentially resulting from the use of the product, ... That with regard to the matter pertaining to indemnification and other subjects mentioned in the criminal notice, these should obviously be discussed by those who are entitled to same, in a proper venue, which is obviously not the investigative procedure contained in the

proceedings of this inquest, as well as questions of a scientific nature...”[68]

The Delegate of Police issued an opinion that was in agreement with the testimony of Mr. Fernandes.

These are but a few examples, but essentially, one can find copies of most of the filings and cases that have been presented to the courts in Brazil in the companies’ archives. [69]

There are several mentions of a case against Philip Morris use of the term “suave” (Mild) but all of these documents were under attorney-client confidentiality privileges, meaning they were not publicly available. An in depth exploration of this case, using archival data, will be conducted at a subsequent phase of this project.

#### *Adesf*

The Association for the Defense of Smokers’ Health (Adesf) is a non-governmental organization that was founded in 1995. According to its website, it is based on the premise that the smoker is addicted to cigarettes and a victim of misleading marketing by tobacco companies. Its mission is to defend the smokers, representing their interests against tobacco companies. In order to achieve its goals, it filed a class action suit against the main tobacco companies in Brazil alleging infringement of the Brazilian Code for Consumers’ Rights, since tobacco companies engaged in misleading marketing campaigns.

A 1995 translation from a filing from Philip Morris’ representatives from the law firm Pinheiro Neto on the class action suit filed by Adesf with the 19<sup>th</sup> Lower

Civil Court of Sao Paulo, and distributed to executive level personnel at Philip Morris International, [70] offers an overview of what would be the company's defense argument in the years to come.

This 43-page document provides many legal precedents to prove the case that the filing is without merit, and that there is no class interest involved. It reminds the Judge that Philip Morris activities are legal and that the company complies with all existing regulations. It also highlights the obligations of the Ministry of Health in regards to public health.

It starts with an overview of the importance of tobacco for Brazilian economy and culture, bringing, from the beginning the claim of individual rights. It highlights that in addition to taxes, tobacco companies contribute to Brazilian welfare in many other ways, such as projects with public schools and sponsorships of arts and sports events. It describes Adesf's claim as a belief that

“... there is damage, caused by the compulsive and daily purchase of the product, as a result of the addiction to which smokers are led...” [70]

It also claims that Adesf's assertion of the existence of an urgent epidemic is “ridiculous”, as tobacco has been in the Americas prior to the arrival of Christopher Columbus, and that tobacco advertising has existed in Brazil for decades, therefore “... nothing changed in tobacco scenery which might suggest the existence of an epidemic situation nowadays...” When discussing the merits of the case, again the lawyers mentioned that tobacco has been in the Americas prior to the Europeans' arrival, despite the “controversy generated in the latter half of this century and the repeated discourse that developing countries are



being oppressed by the powerful and influential tobacco industry...” It then provides its perspective on how smoking and nicotine came to be labeled as addictive, and eventually claim that “smoking does not correspond to the scientific meaning of addiction...” [70]

The document then offers a brief history of the case. It then lays out the company’s arguments: that Adesf can not legitimate represent the class, as it was recently formed, and that “there is no manifest social interest by the action filed by Adesf that might justify the waiving of the requirements of the association previous formation...” [70]

The document ends with a request to the Judge to dismiss the case. [70]  
(The case was not dismissed)

Subsequently, there are a series of translations of various court filings, including a 1995 rejection of a Souza Cruz’s plea of bias in the case.[71]

In a exchange of correspondence in 1996, this time addressing the Adesf Class action suit, lawyers from the Sao Paulo law firm Pinheiro Neto (Ubiratan Mattos and Sergio Pinheiro Marçal) [72] sent an update, copied to Luis Roberto Barroso, of the case to Michael Adams (Philip Morris International), Roger Whidden (Philip Morris Companies Inc.), Clodoaldo Celentano (Philip Morris Marketing SA) and Jim Newson (Shook, Hardy & Bacon). They stated that:

“... As informed, the adjudication session took place this afternoon at the State Court, and our interlocutory appeal was denied. ... The reporting judge said that the lower court had decided in agreement with the law. According to his vote, the tobacco industry has the duty to prove that the product brought to consumers (cigarettes) caused no dependence. According to him, more than an obligation, it is in the companies’ best interest to prove this. ... We are expecting the decision to be written and published in one month.

Thereafter, we can file a special appeal to the Federal Superior Court in Brasilia...” [72]

A Philip Morris’ preliminary assessment of a 1997 Congressional Hearing, which had been called by Congressman Cunha Bueno and where the industry was not participating (by did send written comments), shows concern with Adesf.[73] It states:

“5. Some points mentioned by the representative of ADESF (Mr. Monaco) deserve careful attention:

- a) Yesterday, the head of ADESF was unable to attend the hearing because he had scheduled for the same day a meeting with OAB (Ordem dos Advogados do Brasil) and 8 municipalities to study/request the creation of a fund in Brazil in the same format of the supposed US\$ 300 BI fund in the U.S.<sup>xii</sup>
- b) Two “branches” of ADESF were formed in Brasilia and in Ceara State, 3 more are being formed in other states. The objective is to have nationwide representation.
- c) Another individual action will be placed against Souza Cruz, in the Northeast, this week...” [73]

Adesf case proceeded, despite the tobacco companies’ utilization of all possible means to stop it. In April of 2004, Judge Halpern, of Sao Paulo, found in favor of Adesf accepting the claim that Souza Cruz and Philip Morris Brasil omitted from the public information about the harmful effects of smoking and engaged in misleading advertisement campaigns. The Judge ordered the companies to pay smokers and ex-smokers a total of R\$52 billion. According to one of Adesf’s lawyers, the amount was based on R\$1,500 per year that the person smoked since 1990, year when the Consumers’ Defense Code was

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<sup>xii</sup> This likely refers to the now-defunct 1997 settlement discussion between tobacco companies and attorney generals in the United States. The June 1997 did not come to fruition and was eventually replaced, in a different format, by the 1998 Master Settlement Agreement.

approved. However, individuals have to go to court to request their indemnification.<sup>xiii</sup>

Souza Cruz's website states that of 479 cases against the company in Brazil, 287 have been decided and of those 277 have found in favor of the company and 10 are under appeal. Further, it states that the Judiciary, through its decisions, has endorsed the company's position that cigarettes are legal; health risks are well-known to the public for decades; advertising is not misleading; smokers have the choice to smoke or not; the diseases attributed to tobacco are multi-factorial.<sup>xiv</sup>

It is not clear if any changes in the Judiciary's position will take place subsequently to the US Federal Court findings, in 2006, that the tobacco companies have engaged in fraud and deception of the public.<sup>xv</sup> Since the initial research for this report, there have been many other developments in the Brazilian courts [74] that will be addressed in subsequent phases of this project.

### **Public Affairs**

A 1996 letter from Garyowen Morrisroe, a lawyer with the Chadbourne & Parke law firm (one of the law firms working for BAT) to Nelson Diz, of Souza Cruz, offers a BAT position paper that was jointly developed by lawyers and members of BAT's Corporate & Regulatory Affairs (CORA) as of possible assistance in case Souza Cruz needs to address a published article about

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<sup>xiii</sup> Interview for the magazine Isto E, February 25, 2004.  
<http://www.terra.com.br/istoedinheiro/338/entrevista/index.htm>

<sup>xiv</sup> Souza Cruz website:  
[http://www.souzacruz.com.br/OneWeb/sites/SOU\\_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256DA50040C9EC?opendocument&SID=&DTC=](http://www.souzacruz.com.br/OneWeb/sites/SOU_5RRP92.nsf/vwPagesWebLive/80256DAD006376DD80256DA50040C9EC?opendocument&SID=&DTC=)

<sup>xv</sup> <http://www.library.ucsf.edu/tobacco/litigation/uspm.html>

allegations that BAT uses ammonia in cigarettes, previously discussed above.[58]

As discussed in the report for industry activities in Latin America, [5] BAT headquarters apparently was well-informed of the impact that news from the United States and Europe would have in its subsidiaries' markets. Media coverage of studies, reports and litigation were followed, and apparently, BAT would assist the subsidiaries with responding to media inquiries in these reports. For example, coverage of the tentative 1997 deal between the US based tobacco companies and the state attorneys general.[75]

It seems that BAT's responses to media reports are coordinated. There are a series of communications exchanges between Souza Cruz and BAT related to another Veja article, apparently relating the findings of research from the French cancer institute, Gustave Roussy, showing that over 90% of the cases of lung cancer were in smokers generated a request from Souza Cruz for additional information. [76, 77]

We can also find statements prepared by Souza Cruz related to tar, nicotine, carbon monoxide and the addition of ammonia in Brazilian cigarettes and as reported in the media, following information from Inca provided by the Canadian laboratory Labstat (as discussed previously). In these statements, Souza Cruz claims that Inca misinterpreted and misreported the findings of Labstat, and that it is uncertain that the data collection method was adequate. The statement also describes how Souza Cruz brands have been having a decrease in the yields of tar and nicotine and that the company is committed to

quality. The statement, which may eventually have guided some of the current website language of the company, questions some of the causal relationships between smoking and health and denies any harmful health impact of passive smoking.[78]

### *Media Seminars*

We uncovered additional documents referring to media seminars conducted in the region [79-81] (Media seminars have been discussed in the Latin America report as well. [5]) These seminars gave BAT and its subsidiaries an opportunity to present their views on “British American Tobacco World, active smoking, ETS, freedoms, advertising, addiction”, [79] among other topics, to media representatives.[79] As in the words of Eugenio Rengifo, from Chiletabacos, the II Latin American and Caribbean Media Seminar, in 1997, was “an excellent opportunity for positioning the Corporate Image of British American Tobacco in the Region”, as supported by BAT’s CORA. [79] This August 1997 Miami seminar was attended by journalists from several Latin America countries. Apparently, representatives from major news outlets in Brazil were invited, but it is not clear how many attended.[80] A memo from BAT’s A.A. Napier to BAT’s David Bacon apparently is forwarding a presentation of the Miami media seminar and states that

“Herewith... the presentation which Jorge Basso Dastugue gave at the Latin America media seminar in Miami. It deals with the economic impact of the tobacco industry in Latin America not specifically British-American Tobacco, despite the cover. The presentation was well received by journalists and some of the aspects and ways the concepts are presented are very interesting.” [82]

We were unable at the time of the documents search to locate a copy of this presentation.

As reported elsewhere, these seminars usually had the desired effect of producing media accounts that were favorable to the tobacco companies, or that emphasized the companies' position over the tobacco and health "controversy".[83]

A 1999 series of e-mail exchanges refers to the "fourth in a series of seminars for journalists" in Latin America.[84] The 1999 seminar was held in Easter Island in September 1999 and according to a report from Eugenio Rengifo (of Chiletobacos) the seminar was evaluated by CORA Managers as of high quality and successful:

"Each CORA Manager expressed his opinion and stressed the high quality of this last Seminar, and the positive results on the media, with special emphasis in those who, at the time of joining the seminar, had strong anti-tobacco positions. The objectives and concepts of the industry and BAT were transmitted and well perceived by the journalists. It was important for us to realize that most of the media representatives were very enthusiastic about the variety and diversity of issues, a new focus that made us look as an open-minded industry..." [84]

There is an indication at the end of the summary that the next seminar would be held in "Brazil/Matto Grosso (there we can work the harmony concept)" and that Brazil [i.e. Souza Cruz] would be in charge of logistics (Note: harmony is another way to refer to courtesy and accommodation, tobacco companies' alternatives to public health policies promoting clean indoor air). Another e-mail in this document, from BAT's Chris Proctor, suggests that the Latin American seminar for journalists have been successful and other regions should look into

replicating this experience.[84] The e-mails exchange makes reference to a series of attachments that we were unable to locate.

In addition to media seminars, the companies also organized visits of Brazilian journalists to the companies' facilities. [85, 86] In a description of a 1996 visit of several Brazilian journalists to Philip Morris, the briefing summary states:

“The media trip visit has one clear purpose and objective. Brazil has become a region of Philip Morris International and is one of the biggest markets PM has outside the United States. To have satisfactory relationship with the media in Brazil, an unsurpassed policy of information based on mutual confidence and accurate information is our main purpose. Journalists tend to write better about what is known, and the journalists invited represent the main publications in Brazil. It is our goal to constantly disseminate and multiply accurate information on Philip Morris businesses.” [85]

Shortly after the trip, one of the journalists listed as guests, Jose Mitchell, of Jornal do Brasil, wrote an article about being a smoker under siege while visiting the United States, where smokers were becoming social pariahs.[87]

### **Advertising/marketing**

These are documents that address marketing issues, marketing meetings, marketing research, strategies and plans to improve marketing and advertisement, and to deal with the threat of growing marketing restrictions. There are not as many documents dated post-implementation of Brazilian's legislation restricting marketing.

A document found in the Minnesota documents depository is of interest as it describes in detail the marketing success of the Souza Cruz's brand Free.[88]

As previously discussed, [5] some of the marketing documents cover issues such as the industry's efforts in creating youth access campaigns and other public relations strategies, which lately have been incorporated under corporate social responsibility efforts (described below).

Philip Morris also created opportunities to invite selected guests to its promotions, such as VIP boxes at Formula Indy and Formula 1 races. [89, 90]

A 1995 Souza Cruz's "Informativo", [91] apparently an internal publication, highlights many marketing strategies, such as the sponsorship of Formula Indy races, and how, in anticipation of a growing popularity of the sport in Brazil, Hollywood brand sponsored the PacWest team and Brazilian driver Mauricio Gugelmin. Brand manager Luiz Carlos Franco is quoted as saying that the sponsorship generated an extremely favorable balance for the brand. The Informativo also includes a message from Gugelmin especially for the fans who are company employees. [91] The issue also highlights another related event – at the end of the Formula Indy season, Souza Cruz invited members of the specialized media to drive some of the cars. It mentions that the following journalists were invited: Alberto Ludovig (Estado de Sao Paulo), Mair Pena Neto (Jornal do Brasil), Mauro Tagliaferri (Folha de Sao Paulo) and Teo Jose (SBT) and that the event generated "grandes materias" in the press.[91] We were unable to confirm who attended and additional archival research may be able to confirm any press coverage of the event.

Other marketing events highlighted included sponsorship of motorcycle races, and the now extinct Free Jazz Festival. [91]



We found one document discussing the possibility of creating a website for Lucky Strike as part of the brand campaign in Latin America.[92] The Internet would supplement the TV and print campaign, giving the campaign concept of Lucky Strike as an international and “globally connected” brand “credibility”.

However, one of the issues that this position paper addresses is a discussion on “how to marry the positioning of BAT’s as a responsible company in a controversial industry with the need to promote our brand in innovative ways.”

[92] It then discusses how to restrict access to adults and how to restrict access depending on the country/territory, as access were to be limited to people in Latin America. It was proposed that the site be managed by Brazil and Souza Cruz’s legal department would provide analysis and approval, based on existing legislation, although the costs associated with dealing with appropriate health warnings and other issues was considered a “con”.[92] We were unable to locate a Lucky Strike site in Brazil. A Hollywood site

(<http://www.hollywood.com.br/>) currently tells the visitor that the site is being re-structured to comply with Brazilian legislation restricting cigarette advertisement.

We also found a 1994 document describing the 10 years of the brand Free in Brazil and how Free became, at the time, the 4<sup>th</sup> most sold brand in the country. [88] Free, a “low tar” brand launched in 1984 is the leading brand in the “lights” segment. Its marketing campaign more recently used the approach to recommend “smoking in moderation”. However, such advertisement is not allowed under Brazilian legislation.

The case study discusses how Free's target is the Independent Young Adult segment, and describe them as the "absolute opposites of Marlboro smokers and values" [88]. The document states that this segment is

- “ . Respecting other people's values, views; not self-imposing; liberal
  - . Informal; young at heart; irreverent; friendly
  - . Spontaneous; intimate; natural
  - . Objective; questioning, well-informed
  - . Concerned about and involved with modern, intelligent, human topics”
- [88]

It also states that the way to “win their heart and minds” is to:

- “. Be one of them, reflecting their language and mood
- . Talk openly about the subjects important to them
- . Avoid trying to sell or advertise at them as they hate being talked at or down to
- . Balance heavy topics with light style
- . Avoid use of status symbols, over sumptuous settings, too handsome actors” [88][underline in original]

This extensive case study has a discussion of the political developments in the country from the early 1980s and the role of the “independents” in these events and how Free's campaign change to continue to “communicate with its target”. [88] The document also states that the Independent Young Adult segment is growing around the world and how Free is well positioned, as a brand, to meet the needs of this segment. It states that

“problems with the FREE trademark in many countries could be easily resolved through adoption of another brand name. The name FREE is not crucial to the overall brand proposition”. [88]

There are tables demonstrating how Free was able to take share of market from the then existing PM low tar brand Galaxy and become a leader of

the segment in only 8 months, and how Free was launched with this exact goal – to “take LT [low tar] segment leadership from Galaxy” by presenting Free as modern and Galaxy as out of date. [88] Free's initial communication strategy was to place emphasis on its modernity and less emphasis on its LT status and make no reference to the fact that it was cheaper than Galaxy. The intent was to make sure the brand concept was not conflicting with its lower price.[88] Post-1985, once Free has been established as a leader in the LT segment, this leadership was to become more visible in the marketing communications strategies. It is noteworthy that the communication strategy post 1985 highlights the importance of maintaining the brand's slogans, one of which was “‘good sense’ which continues to allude to the smoking of FREE as LT product.” It is now well established that smoking LT products do not bring any health benefits and that such LT readings were achieved, largely, through manipulation of cigarette design and machine measurement of tar and nicotine yields. [34]

It was, apparently, also when discussion about sponsoring a “major, impactful image event” started.[88] The Free Jazz Festival did become an important cultural event in the country. And according to Souza Cruz's website, Free continues to be a market leader, with 38% share of market. Also according to the site, the company's moderation campaign is based on the success of Free. Although the campaign has a caveat that the only way to avoid the risks associated with cigarettes is to not smoke, the main point of the campaign is to urge smokers to smoke in moderation, which is never defined and which scientific evidence show, is not a health-related or health-beneficial concept.

### **Crop-related**

Not surprising, there are hundreds of documents that discuss details about tobacco growth in Brazil. Most of these documents are extremely technical in nature and we were unable to determine their value from a policy and public health perspective, although it would be of interest if someone with a background in chemistry or phytopathology examined them. There are many documents related to the widely discussed issue of the Y1 tobacco, mostly press clipping and prepared statements from Souza Cruz. The most recent information related to the growth and export of Y1 in Brazil was obtained via expert witnesses' depositions in court cases, as well as journalistic reports. There are documents related to genetically-modified organisms in Brazil, and its regulation, as well.

A June 1999 Philip Morris Brasil audit report of leaf procurement summarizes the PM involvement with leaf operations in Brazil. At the time, Brazil was the second largest tobacco procurement market for the company, after the United States. It also confirms that prices are set for the different tobacco grades by Sindifumo, but the bulk of the report address how the purchasing transactions between PMB and Universal Leaf Tobacco can be improved, such as prevention of tampering of the scales. [93]

A 2000 report from Dimon about the leaf situation in Brazil provides a description of the leaf buying system. It also describes the high yield of the crops in 1999, which, according to the report, did not lead to higher storage because of exchange rates differences that led to higher exports that year. It also provides

an overview of the cigarette consumption in the country, imports and exports, highlighting that imports of non-manufactured tobacco are negligible. [94]

Y1

The news, in 1996, that Brazil grew a genetically modified form of tobacco, Y1, created a lot of attention from the tobacco companies. However, we were unable to uncover any documents that provided additional information to what has been publicly reported.

In a 1996 filing with the Secretary of Economy, which was consulting an investigation in the matter, with the Department of Consumer Protection and Defense (Departamento de Protecao e Defesa do Consumidor), which is translated into English, Souza Cruz affirms that it had never used Y1 in cigarettes in Brazil.[95]

As late as 1998 there were still reports in newspapers in Argentina about “supertobacco” being grown in Brazil and possibly in Argentina, and in a memo from Argentina’s Luis Gonzalez Esteves to Cathy Leiber he asks that given the status of lawsuits against the industry, if PMI had any official position on the issue. [96, 97]

Souza Cruz, according to press reports, denied that at the time it was still growing Y1 tobacco.[98]

Several court depositions in the United States address the issue of Y1, with some BAT executives being, at best, vague about its nicotine content, and some former employees of Bat admitting that it was a genetically engineered

tobacco with higher nicotine levels.<sup>xvi</sup> For example, the testimony of Roger Black, Director of Leaf Blending (plant physiology) in a case in New York in 1998 he stated that he started his involvement Y1 in 1983, the year in which Brown & Williamson (the US subsidiary of BAT), the year in which B&W signed a contract with the firm DNA Plant Technology Corporation. At the time, Y1 was experimentally grown in North Carolina. In his testimony he agrees that Y1 is a tobacco with higher levels of nicotine. He also agrees that in 1998 Y1 was used in cigarettes sold in the United States. Still according to his testimony, B&W started to use Y1 in cigarettes sold in the US in 1993, with the exception of the May 1994 (when the company declared that it had stopped using Y1 in the US market) until the third quarter of 1995 (with no public statement about the re-introduction of Y1). He claims that Brazil held Y1 in stock in 1994, estimated by him in approximately 2.5 and 3 million pounds but that in 1998 Souza Cruz did not hold any Y1 in its warehouses. Testimonies by other company employees however affirm that Y1 was used at least until 1999.

A key issue is whether or not Souza Cruz had absolute control of the Y1 seeds and its growth, with many believing it is possible that Y1 spread beyond Souza Cruz's control to any farmer who wanted it.[99] Nonetheless, Souza Cruz denies that possibility, stating that the Y1 variety, as a hybrid, can't reproduce.[100] According to a Philip Morris memo summarizing Souza Cruz's press statements, the tobacco that Brazilian farmers call "fumo louco" "has nothing to do with the Y1 variety. These are K 326 NF (no flowering) and K326

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<sup>xvi</sup> These can be searched at the Legacy tobacco Documents Library DATTA collection: <http://legacy.library.ucsf.edu/index.html>

LT (late flowering), originated from the original US variety, through natural cross-breeding...” and not genetic manipulation. [100]

It is also possible that there are other forms of genetically modified tobacco that have origins on Y1 but that are a variant with a different name.

Another press account declares that in 2000 over 3 tons of genetically modified tobacco was found in Argentina (where GMO are not permitted). According to the press account, this type of tobacco was called Burley 21.<sup>xvii</sup>

We were not able to determine if there are additional plans to grow any variant of Y1 in Brazil from the documents found.

### **Second Hand Smoke or ETS**

As discussed in the PAHO report,[5] the ETS “Latin Project” started in 1988/1989 and it was a joint BAT/PM effort to delay any development in the area of restrictions of public smoking in the region (as one document states, it was anticipatory and preemptive rather than reactive). Several new documents have been made public since the publication of the PAHO report and confirm that at least until 2000 the program remained active in Brazil.

As previously reported, Brazil has been part of the joint PMI-BAT ETS consultancy program.[5, 101-103] Some of the Brazilian scientists associated with the project were Antonio Miguel, formerly from USP and currently living in the United States; and Francisco Radler de Aquino Neto and Jari Nobrega Cardoso from the Chemistry Institute, Federal University of Rio de Janeiro.[5]

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<sup>xvii</sup> (Transgenic Tobacco Seized in Argentina [Source: Xinhua News Agency] Publication date: 2000-09-16)

Miguel was instrumental in the organization of an Indoor Air Quality Seminar in Sao Paulo in 1995. [5, 104] We found additional documents addressing the vast press coverage of this event.[105] None of the press clips provided mention that the meeting is sponsored by the tobacco companies and that many of the international guests are tobacco industry consultants.[5, 105] At the end of this document there is a text, it is unclear if it is one of the meeting's presentations, where well known scientific statement about smoking and health as well as passive smoking and health are countered. That includes the utilization of the tobacco companies' argument about the unproven link between exposure to second hand smoke and diseases and dismissing the World Health Organization (WHO)'s claims of the number of deaths caused by smoking: "The WHO claim that 3 million die each year because they smoke is merely a extrapolation from statistical studies, with little or no information coming from Brazil. The simple fact is that we do not understand the mechanisms of the diseases that have been associated with smoking, and therefore is not feasible to attribute a specific number of deaths to smoking." [105] The countering arguments contain inaccurate assertions and interpretations of scientific findings. [105] Furthermore, it is now well-established that the tobacco companies were aware of the health effects of smoking and exposure to SHS many years prior to 1995. [106]

Of additional interest, is that in September 2000 a federal prosecutor from Sao Paulo, Adriana Fernandes, wrote a letter to Philip Morris' Clodoaldo Celentano requesting information about the Center for Indoor Air Research



(CIAR - the industry group that funded external research and that has been dissolved since the Master Settlement Agreement between several states in the United States and the tobacco companies in that country) and the research it sponsored in Brazil, citing specifically the Brazilian consultants involved in the program, Antonio Miguel, Francisco Radler de Aquino Neto and Jair Nobrega Cardoso.[107] In its response, which involved lawyers both in Brazil and US, [108] Philip Morris claimed that the company needed more time to look into this matter, as the questions referred to occurrences and documents that were more than 10 years old and for which there might be no records in Brazil.[109, 110] The extension was granted to the company,[108] but what this response letter neglects to say is that as of 1999 and 2000, Philip Morris plans included continued funding for these investigators,[111-114] or that much of that information was available online and was compiled as part of the final CIAR report.[115] Although there are indications that a final response was sent in November, [116, 117] we were unable to find a copy of it.

Also previously reported [5] was evidence of plans of the Brazilian Air Force to “conduct a study of occupational health and passenger comfort in commercial aircraft ... of Brazilian air carriers” in partnership with scientists of the Federal University of Rio de Janeiro, some of whom were industry consultants. Christopher Proctor, now Head of Science and Regulation at BAT but then with the law firm Covington & Burling, was in favor of providing the scientists support, as he believed that this development earned the consultants recognition as

indoor air quality experts.[118, 119] We were not able to find any follow-up on this plan.

Equally reported previously are the results of a 1993 Philip Morris survey on issues related to second-hand smoke in Latin America. [5] Brazil was one of the countries included in the survey. The results of the survey indicated public support for government regulations of both indoor and outdoor indoor air quality, including regulation of public smoking. Opinion leaders, at the time, did not seem as supportive of regulations as the public, according to the survey.[5]

In a 1993 memo to several Latin America BAT-subsidary managers, BAT's Sharon Boyse mentioned how the industry's law firm, Covington & Burling had "put together a proposal to lobby for the adoption of such ventilation standards in appropriate countries in Latin America ... similar to a programme that has been successfully carried out in the USA". [120] This is similar to the industry's strategies in other regions and emphasis on indoor air quality in general and away from focusing on SHS as a source of indoor air contaminant. [5]

In 1995, BAT sent an "ETS Questionnaire" to several of its Latin America subsidiaries. The questionnaire was sent at about the same time BAT was preparing itself for the release of the IARC multi-center study on passive smoking and lung cancer. The questionnaire were to be used in the development of a group wide plan to address the secondhand smoke issue, a plan that "truly reflects the need of all our markets around the world..."[121] At approximately the same time, a fax from Souza Cruz's Walter Nori to BAT's Keith Gretton

described the situation in Sao Paulo, where then Mayor Paulo Maluf had issued a decree banning smoking in restaurants. (There was opposition to the Mayoral decree in Sao Paulo banning smoking in bars and restaurants. One such opposition came from court filings against the decree by owners of hospitality establishments in that city. [122])

Nori attached media coverage of the decree as well as Souza Cruz's media campaign, developed in reaction. The campaign focus was smokers' courtesy and freedom, with one of the ads reading "The question is whether or not you like freedom". Interesting is that among the articles attached is a copy of a survey published in the newspaper Estado de Sao Paulo showing that the majority of people, both smokers and non-smokers, approved the ban. [123] Nori also sent Gretton an "overview of ETS in Brazil" [124], where in addition to the Sao Paulo situation, he describes legislative initiatives:

"The cigarette sector is being forced by the Brazilian Government to comply with the norms and standards of a Ministerial Edict that imposes the inclusion of warning clauses in brand advertisements and on cigarette packs...

A series of initiatives are currently under way in the Federal Congress, the State Legislative Assemblies and City and Town Councils, attempting to impose constraints on cigarette advertising and consumption...

Additionally, there is an application currently before National Congress to set up a Parliamentary Commission on Inquiry with extremely broad-ranging powers to investigate – among other topics – the alleged manipulation of nicotine content levels (Y1)...

The company [Souza Cruz] has adopted the practice and policy of publicly defending its activities, its operating sector and its consumers. It has firmed up this stance through public declarations in institutional publicity campaigns as well as actions carried out with common-interest partners, acting jointly with governments

authorities and legislators, and supporting initiatives such as the Accommodation Program implemented by the international Hotels and Restaurants Association in various countries...” [124]

A company booklet, “Informativo Souza Cruz”, [91] from 1995, highlights many of the companies’ community and social initiatives, and also has material on Souza Cruz’s program “Convivencia em Harmonia”, known in English as the Courtesy of Choice. This “accommodation program”, supported by the tobacco companies to delay or oppose clean indoor legislation in the hospitality sector, [31] claims that smokers and non-smokers can be side by side, in “harmony”. It makes absolutely no mention of health effects of second hand smoke and the issue is framed as freedom, rights and acceptance of people’s difference. It states:

“Para a Souza Cruz, porem, o que nao e natural e que se pretenda eliminar divergencias de crenças, de posicoes politicas ou de opcoes pessoais pela simples negacao do direito alheio...” [91]

The statement roughly translates as saying that for Souza Cruz it is not natural to eliminate the differences in beliefs, political positions or personal choices simply through negating the rights of others.

This position is supported by promotional material where “convivencia e liberdade” are the central themes. The “Informativo” also describes the launch of the Courtesy of Choice in Sao Paulo, and makes no mention of the role the tobacco companies played in the development and dissemination of the program.

[91]

Another set of documents have examples of the promotional material.[125] The material makes parallels of many social issues with the issue of smoker and non-smoker. For example, addresses religious differences with a photo of a “mae-de-santo” (Afro-Brazilian religion high level authority) receiving communion from a Catholic priest and it states:

Compreensao. A menor distancia entre dois pontos de vista.  
Pensamentos opostos que se completam, atitudes contrarias que  
se harmonizam, santos e orixas, fumantes e nao-fumantes.” [125]

This roughly translates into comprehension: the shortest distance between two points of view. Opposing thoughts that complement each other, opposing attitudes that get into harmony, saints and orixas, smokers and non-smokers. Other ads using the contrasts theme include erudite and popular (as in music), modern and classic, Whites and Blacks, etc. [125]

The documents also make reference to a 1995 ETS pilot project for BAT [126]. The project was supposed to last from September to December 1995. [127] Part if this company wide initiative was to “develop groupwide plan for tackling ETS” and “assess the value of cooperation with allies” [128]. The outline of the initial plan for this pilot project indicates that in addition to doing an inventory of information related to ETS already available, including “anti-smoking group activities”, the project would also work within the company in order to win “support within BAT” and to get regional buy-in, considered “vital”. [128]. A draft letter from Ulrich Herter, then Managing Director of Tobacco for BAT Industries, which was apparently part of the plan to garner company wide support, states

that part of the project goals is to “support consumers’ freedom of choice to smoke” [129] and that:

“If proper scientific standards are applied, the case for ETS causing disease is unconvincing. However, public debate has generally reflected the views propagated by anti-smoking groups. The aim of the ETS Pilot Study is to devise a credible and effective response to these views by ‘getting science back into the debate’.

The Pilot Study will develop a Group-wide plan for tackling the ETS issue.

Clearly this is a tremendous challenge as any worldwide ETS programme must acknowledge and accommodate vastly different operating environments. But ETS is now a global issue, and I am convinced that we must adopt a single, coordinated and flexible approach throughout our group if we are to challenge seriously the arguments of the anti-smoking organizations.

This is an urgent matter. Next year, we expect the International Agency for Research into Cancer [sic] to publish a major international study on the allegedly harmful effects of ETS... It is vital that we have a proactive strategy to address the results of this research.

The ETS Pilot Study reports directly to me and is led by Chris Proctor, manager of Smoking Issues at BATCo...

The success of this Pilot Study depends on the commitment of the whole BAT Group to its objectives. ...” [129]

We were unable to locate a final report on the Pilot Study, although actions that seemed related to its results have been reported elsewhere. To date, BAT and Souza Cruz continue to deny that there is a causal relationship between exposure to second-hand smoke and harmful health effects, saying that health claims are exaggerated. This discussion gains importance when Brazil is going through the process of re-evaluating legislative language addressing regulation of smoking indoors.

There is some indication that in 1996 BAT conducted “ETS training and media events” throughout the world, including a training session in Rio de Janeiro that was part of an “ETS strategy session with senior management” of Souza Cruz.[130]

In the Philip Morris archives we find a translation of a 1996 article that appeared in the *Ciencia Hoje* publication and questioning the wisdom of promoting smoke free legislation when there remains so much controversy over the actual health effects of passive smoking. The article’s author is Carlos Csillag. [131] In the past Csillag has been listed as a participant in one of the tobacco companies-sponsored media seminars. [5]

We also found that a 1996 study sponsored by the tobacco companies in Europe (BAT, PM and Rothmans) which claimed that there was no scientific proof of the harms of passive smoking receive wide media coverage, with some of Brasil’s largest papers reporting on the results.[132-134] Even if industry sponsorship was openly acknowledged, it is not clear that it generated any response from health authorities to question the integrity of the industry-funded study.

Another media opportunity was at the time of approval of the “Murad Law” implementing smokefree spaces in the country. The *Associacao Brasileira de Bares, Hoteis, Restaurantes e Similares* (Abresi - Brazilian Association of Bars, Hotels, Restaurants and Similar establishments), in full page ads, congratulated the approval of the legislation and highlighted the importance of its correct interpretation, allowing for the creation of designated smoking areas in hospitality

venues without the need for the creation of separate areas, therefore enforcing the principle of accommodation promoted by the tobacco industry. [135]

Abresi was, at the time, very closely related to the tobacco industry and its public relations companies, as it was in charge of implementing the industry courtesy program.[136, 137] The PR comply employees, in fact, used Abresi's business cards in their efforts to expand the Courtesy of Choice program in Brazil. This is similar to the situation of the International Hotel and Restaurant Association. The industry, however, worked to maintain a distance so, when promoting accommodation, only the hospitality groups would appear, and not the industry backing. On a report of activities by the PR firm Correa & Conde, which apparently managed the program in Brazil, there is a discussion of seeking credit card companies' sponsorship for the accommodation program. The author of the report states "If I may repeat, I know that it might be some sensitive aspects on this, but the aspect of how much money the credit card company could bring to the program is not so important but his official support and symbol are..."[136]

At the 1996 meeting of the ABAV (Associacao Brasileira de Agentes de Viagem – Brazilian Travel Agents Association), the results for the Brazilian survey of tourism trade professionals were presented. This was a survey sponsored by Philip Morris Management Corporation in 6 countries to assess tourism trade professionals' perception of the increase in public smoking restrictions in a number of countries. The presentation of the Brazilian results states that the majority of respondents support accommodation of smokers and non-smokers in public transportation, public places and hospitality venues.



Based on this report, the survey did not mention anything about health effects of passive smoking. Interestingly enough, the most popular destination for the group was the United States, which at the time, already had restrictions on public smoking implemented in many states and localities. [138]

The issue of indoor air quality was also closely followed, even more in the wake of the 1996 legislation. Souza Cruz and Philip Morris' PR company, Correa & Conde, organized for industry consultants from Healthy Buildings International to meet with legislators, and organizations such as Infraero (which would be responsible for implement smoke free airports) and the Central Bank to discuss how the industry consultants could assist in the implementation of accommodation strategies and technology that would make unnecessary the building of separated smoking areas. [136, 139]

For example, the report of the July 1997 meeting with Infraero, at time when the organization was allegedly considering banning smoking in all airports, and when tobacco companies were promoting the installation of ventilations systems to avoid the creation even of separated smoking rooms, indicates that Infraero agreed to let the tobacco industry run a pilot test of a ventilation system at the Congonhas airport in Sao Paulo. [140] The author of the report, however, questions whether or not the industry will be paying for any needed structural changes that might be needed for the pilot of this ventilation system. [140]

We uncovered some additional material of the indoor air study conducted in the Federal House of Representatives, in Brasilia, and previously discussed by Barnoya & Glantz.[102] Essentially, the Healthy Buildings International appraisal

report of the quality of indoor air in the building recommended that better air distribution would improve the quality, regardless of the presence of smoke, and recommended the installation of displacement ventilation systems. [141] (Such systems are not effective in removing hazardous second hand smoke from indoor environments. [142])

We also found an exchange of e-mails about presentations of a workshop on ETS that Philip Morris supposedly conducted for its Brazilian and Argentinean employees. However, none of the attachments to these e-mails were available.

There have been many developments in the area of protection against tobacco smoke exposure in Brazil. For example, Brasilia has developed and implemented clean indoor air policies, a model that has been recognized internationally. The tobacco companies continue to install smoking areas, claiming to use technology that eliminates the toxic effect of second hand tobacco smoke, some of which have been contested in court. And recently, Anvisa issued a call for comments on a proposal to amend the language about smoking areas in the 1996 legislation, in order to strengthen the protection against tobacco smoke exposure. The industry, public, policy makers and media reaction to these developments will be addressed in depth in the next phase of this project.

### **Corporate Social Responsibility**

The issue of “corporate social responsibility” has been one of great importance and concern in the world and has received different names, such as social responsibility, corporate citizenship, sustainable development and

corporate ethics. The tobacco industry embarked in the Corporate Social Responsibility (CSR) effort and has been criticized given that CSR principles are seen by many as incompatible with marketing and growth of the tobacco companies. [143] In fact, WHO has said the tobacco companies and CSR are an “inherent contradiction.” [144]

In Brazil the industry has engaged in these efforts, and tobacco control both within government and with non-government organizations continue to work to educate the public and policy makers that these CSR efforts could have negative effects for public health. [145]

Industry programs have, in general, involved communication with the public of the industry’s views (and the revamping of several companies’ websites), youth smoking prevention program that have no impact on the number of young people that start smoking, [5] program such as the Courtesy of Choice promoting the accommodation of smokers and non-smokers in shared environments (and ignoring the health risks of exposure to tobacco smoke) and philanthropy, that may take the form of scholarship programs for young people in tobacco growing areas, supporting of social and educational initiatives, reforestation and other environmentally friendly initiatives. The long term impact of these programs, besides promoting the tobacco companies in a positive light with the public, remains to be seen. A detailed report of Souza Cruz’s CSR efforts have been produced by the Brazilian Tobacco Control Alliance, a NGO engaged in tobacco control.<sup>xviii</sup>

*Abifumo*

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<sup>xviii</sup> <http://www.actbr.org.br/>

The 1997 report about the tobacco industry in Brazil published by Abifumo (Brazilian Association of Tobacco Industry) highlights many of the industry-sponsored programs, including the Courtesy of Choice (Convivencia em Harmonia) described above. It states that:

“Following its tradition, the tobacco industry sponsored cultural and sports events, increased the assistance given to schools, and developed projects of research and protection of the environment... Activities related to the preservation of the environment are shared by experts of Afubra and of the tobacco industry...”

In the report introduction, Abifumo’s president, Nestor Jost, notes how the rise of tobacco to the top of Brazil’s economic agenda is due, largely, to the “coordinated policy” of all industry-related groups: Abifumo, Sindifumo, Afubra, and Tobacco Trade Union of Bahia.

#### *Instituto Souza Cruz*

In a 2000 letter from Souza Cruz’s Constantino Mendonça to BAT’s CORA Michael Prideaux,[146] Mendonça introduces the Instituto Souza Cruz, a “non-profit, non-governmental organization, whose purpose is to promote education for sustainable human development.”[146] The Institute is presented as an organization that “will assume a position of co-responsibility for government policies as well as a commitment with the development of Brazil”, mainly in matters of the environment. Mendonça further states that the Instituto is “the outcome of the mature ethical and political vision of the company” and that it will “bring to the social area principles, vision and values of Souza Cruz industry.” Attached to the letter is a 6 page document describing the launch and the

mission of the Institute, as well as its educational and social development activities. [146]

It is interesting that while these more recent publications from Souza Cruz, as well as current statement on its website, tout the environmental work of the company, earlier documents discuss afforestation as a mean for BAT to become more fuel self-sufficient [147] and how in many countries, including Brazil, these were “PR [public relations] afforestation programmes” Specifically for Brazil, one documents states that “tree clubs in schools”; “Supply of Reforestation kits in Southern Brazil” and “River bank plantations to protect course of Rio Pardo” were PR efforts. [148]

A March 2000 draft letter, signed by then Souza Cruz’ president, Flavio de Andrade, introduces Souza Cruz’s marketing code. It states:

“As a leader of the Brazilian cigarette market, Souza Cruz believes that part of this success is due to one word: Responsibility... [The company] does not campaign to non-smokers to start the habit as well as making it difficult for those under the age of 18 years of age to access cigarettes...”

The code itself is not very different to other, similar, industry voluntary codes, where the company pledges to not place cigarette advertisements in “publications targeting persons under 18 years of age”, on billboards “less than 200 metres from the main entrance at primary and secondary schools”, and in general claim that its promotions do not glamorize tobacco or associates smoking with sports, etc. [149] In December of 2000 Federal legislation restricted advertisement and promotion to point of sale (Lei nº 10167, December 27, 2000)

### *Youth Smoking Prevention Program*

The industry, through Abifumo and in partnership with hospitality association groups, developed a model of its worldwide youth access prevention programs in Brazil – these programs have no proven impact on youth smoking rates. In this particular 1996 campaign the tag line read “Para comprar cigarros, tem que ter 18 anos. Isto e legal.” [To buy cigarette you must be 18. It’s the law – however, the word used for “law”, legal, was also, at the time, slang, roughly translated as ‘cool.’ [150]

In fact, when legislation was submitted at the city council in Rio de Janeiro, Philip Morris wrote a letter of support, emphasizing that as a responsible company, it was engaged in the implementation of programs to prevent youth from smoking based on its own ethics code. As examples, it stated that the company did not allow those under 18 in its hospitality suites in sports events. [151] Several other documents highlight Philip Morris and Abifumo’s roles in promoting the industry campaigns, and how some legislative proposals, even by pro-tobacco control individuals, could favor the industry programs in this area. [152, 153]

A May 2000 document discusses Souza Cruz’ Youth Smoking Prevention program, the “Care Project”. The document states that the company wants to contribute to building a society “based on the respect of Human Rights”. The program seems to focus on the “development of the independent, responsible and competent youth”. The document makes references to well known educators and UN programs, such as Unesco. This 6-page document doesn’t

mention until the last paragraph, within the context of many other issues. It doesn't mention smoking, addiction and health once. In the end, it states:

“If we believe that the youths, even in relative terms, are capable of self-determination, assimilating sound criteria for evaluation and decision, why then do we approach them with campaigns against one thing and another? Why do we teachers believe so much in the power of no and disbelieve in the power of yes?

In our view, the factor most responsible for dissemination of drugs, alcohol, tobacco. Premature pregnancy, sexually transmitted diseases and violence among youths is hunger. Not hunger of the physical nutrients, but the moral nutrients. The hunger of feeling, which can only be satiated by a fundamental and authentic education for values.” [154]

As previously reported, the tobacco companies Youth Smoking Prevention campaigns have no impact on youth smoking prevalence, but serves to promote these companies as socially responsible. [155]

The area of industry involvement in CSR is of growing concern and will be addressed in depth in subsequent phases of this project. For example, NGOs in Brazil have taken the leadership in denouncing these CSR efforts as no more than a public relations campaign and their archival and media data will be incorporated to determine the extent and the impact of these efforts in Brazil.

### [Concluding remarks and suggested next steps](#)

From the sample of documents discussed here, it is clear that both major tobacco companies operating in Brazil, SC and PMB, pay close attention to the country's developments, including the perceived threats of additional regulation and litigation. Brazil is also a country where tobacco companies continue to invest in their courtesy of choice and corporate social responsibility programs.

The former in an attempt to stay the progress of smoke free environments in the country and enforcement of Law 9.294/96 and the latter, possibly, to prevent additional regulatory measures and to use in litigation defense. [156]

This preliminary report but skims the surface of the tobacco industry documents that relate to Brazil. Almost any one of the topics covered here can be expanded, both historically (searching older documents) and in more depth within this 10-year time frame. Additionally, and as it is now becoming the acceptable norm in tobacco documents research, the report would have much to gain by triangulation of the data through examination of public records and interviews with those involved in the events described here – this triangulation will be achieved in the subsequent phases of this project, presenting a more complete and accurate picture of the situation in Brazil. A more complete picture will serve to better inform policy makers, public health professionals and advocates as to what effective policies need to be implemented and what types of opposing arguments are expected. It will also provide tools to counter these arguments. This report is limited to the documents that were publicly available at the time of the search and often are incomplete. As documents continue to be posted, an updates is necessary and may provide additional directions to be pursued.



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