

Compliance with the ban on tobacco products display

Evidence from seven cities in Mexico
November 2024



A study in seven Mexican cities carried out between April 3 and 17, 2024 found that nearly half of points of sale (POS) (44.8%) did not comply with national laws prohibiting tobacco product display at POS.

Tobacco product display at POS is a form of indirect advertising that normalizes and promotes tobacco consumption. Young people are particularly susceptible to POS advertising, which can increase the likelihood of initiating and experimenting with tobacco use. For those attempting to quit smoking, the presence of tobacco products at POS serves as a constant reminder that can hinder their efforts.¹

In Mexico, the tobacco epidemic is responsible for the premature death of over 60,000 people each year (more than 170 people every day), in addition to substantial economic and social costs related to the treatment of tobacco-related diseases.²

In 2022, a ban on tobacco advertising was approved, positioning Mexico at the highest standard established by the World Health Organization (WHO)³. However, the ban's implementation has been hindered by legal actions from the tobacco industry—mainly through numerous *amparos**—and insufficient surveillance by various levels of government.

* An *ampliación* is a legal measure or protection against actions by authorities that may violate an individual's constitutional rights.



WHY BAN THE DISPLAY OF TOBACCO PRODUCTS AT POINTS OF SALE?

Worldwide, the tobacco industry uses product packaging as an advertising tool to promote product consumption. For this reason, Article 13 of the WHO Framework Convention on Tobacco Control (FCTC) recommends a total ban on advertising, promotion and sponsorship, including product display at POS.¹

Evidence shows that type of ban directly results in a reduction of experimentation and tobacco use prevalence among young people⁴⁻⁷, a decrease in impulsive purchases, and the creation of a more supportive environment for quitting—together helping denormalize the presence of tobacco.¹¹⁻¹³

On the other hand, the display of tobacco products has been shown to stimulate impulsive purchases, accounting for more than a quarter of cigarette purchases in countries like Australia,⁸ and has a deterrent effect on people trying to quit.⁸⁻¹⁰ In the U.S., tobacco product display contributes to increases in total sales between 12.0% to 28.0%.⁹

The strict regulation of POS advertising has earned significant public support in countries where it is implemented.^{9,14-15} In Mexico, a 2023 national survey found that 82.5% of the adult population supports banning all tobacco product advertising, and this support is only slightly lower for people who smoke (74.6%) than those who do not (83.9%).¹⁶



CURRENT REGULATION IN MEXICO

In early 2022, a reform to the General Law on Tobacco Control (LGCT) modified Articles 6 and 23 to define and prohibit, without exceptions, the sponsorship, promotion and advertising of tobacco and its products, including indirect advertising.¹⁷

Accordingly, the LGCT Regulations—amended at the end of that same year—establish that the display of tobacco products at POS is also advertising, banning their direct and indirect display (Art. 2 Fr. VI Bis and VI Ter, 40 and 50 Bis).¹⁸ Thus, marketing is permitted only through plain, text-only price lists, with no logos, seals, or brands allowed.

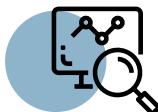
As for heated tobacco products (HTPs) and e-cigarettes, a decree from May 2022 altogether prohibits their marketing and sale/circulation in the country.¹⁹ However, the Supreme Court of Justice of the Nation (SCJN) has declared the prohibition on sales of these products unconstitutional for some complainants (e.g. the department store Sanborns), although compliance with the total ban on advertising is still required. In addition, the new Law on General Import and Export Taxes of June 2022 prohibits the import and export of e-cigarettes. There are *amparos* against these measures under review without final resolutions as of November 2024.



BARRIERS TO COMPLIANCE

From January 2022 to September 2024, the tobacco industry filed more than 2,500 *amparos* against the LGCT and its regulation. Of these, a total of 1,771 were registered in nine states: Mexico City, Coahuila, Estado de México, Guanajuato, Morelos, Nuevo León, Puebla, Querétaro, and Quintana Roo. About half of the *amparos* were not admitted due to non-compliance with certain provisions, and 30% of those admitted were related to product display. Of the *amparos* admitted, only 10% resulted in a provisional or definitive suspension, benefiting companies such as Oxxo and Seven Eleven, while companies such as Walmart did not secure this suspension.

In the monitored states, 356 appeals of review were filed against the resolutions of the district courts that accepted the *amparos*, with nearly 60% already resolved. Of the 39 injunctions related to product display, 17 have declared the provisions of the LGCT Regulations to be constitutional. Despite the lack of final resolutions from the SCJN, the major convenience chains continue to display products under provisional suspensions. The Federal Commission for the Protection against Sanitary Risks (COFEPRIS) has not carried out the required surveillance, enabling the display and advertising of prohibited products such as e-cigarettes and HTPs to persist.



MAIN FINDINGS FROM MONITORING ACROSS SEVEN CITIES

Cigarette Display

At the time of the study, 44.7% of POS were observed displaying cigarettes. Most of these (more than 70.0%) were supermarkets, liquor stores, and convenience stores. In department stores, there were no cigarette displays because few department stores sell tobacco. In tobacco stores, cigarette displays were also non-existent because these stores tend to focus on HTPs and e-cigarettes.

The highest prevalence of cigarette displays was found in La Paz (70.9%) and Monterrey (66.5%). In other cities, the prevalence of cigarette displays ranged between 34.6% and 44.4%. The presence of product displays was statistically lower ($p<0.05$) in Toluca (40.0%) and Tuxtla Gutiérrez (34.6%), compared to La Paz.

Of POS that allowed self-serve access to cigarettes (i.e., rather than being displayed behind a counter), packs were frequently placed in the cashier zone (69.6%) and near candy (43.0%). 11.7% of POS allowed cigarettes to be taken without assistance, with many displays located at the eye level of young children (less than one meter off the ground).

Less than 1.0% of POS used price lists compliant with the LGCT Regulations. Of the price lists observed, 91.2% included logos and were almost always accompanied by product displays.

Other Advertising and Promotion

POS advertising other than product display was low. Specifically, signage was observed in 2.7% of POS, mainly printed as part of the display of cigarettes. Cigarette promotion was observed in only 1.1% of POS and consisted mainly of metallic boxes as gifts.

Loose Cigarettes and Signage Prohibiting Sale to Minors

Almost one-third of the POS (29.4%) had evidence of loose cigarette sales (e.g., open packs or lighters hanging in full view of buyers), despite being prohibited. Only one out of every three POS with product displays (33.4%) had signs prohibiting the sale of any tobacco or nicotine product to minors, as mandated by the LGCT and its Regulation.

Cigarette display at points of sale by type of point of sale



Cigarette display at points of sale per city



HTPs and E-cigarette Display

Despite being prohibited, HTPs were displayed in 3.0% of POS, mainly in Guadalajara (5.0%) and Mexico City (3.6%), with a greater presence in tobacco stores (100.0%) and convenience stores (32.1%). Similarly, 1.1% of POS displayed e-cigarettes, concentrated in Guadalajara (3.6%) and Mexico City (1.0%)—also in tobacco stores (100.0%) and convenience stores (11.3%).



RECOMMENDATIONS

COFEPRIS must fulfill its obligation to conduct surveillance and ensure that the POS product display ban is enforced, as outlined in the LGCT and its regulations. It is concerning that almost 50.0% of points of sale observed during this study were non-compliant with the Law and have not been sanctioned by COFEPRIS or its equivalent institutions at the state level.

On the other hand, the Ministry of Health, especially the Office of its Attorney General and the Legal Counsel of the Presidency of the Republic, must defend the constitutionality of the reforms to the LGCT and its Regulations—especially in the face of litigation by the tobacco industry and its allies who seek to allow the display of tobacco products in public view, in clear violation of the FCTC and the Guidelines for the Implementation of Article 13 of the FCTC.

Methodological note

The study was conducted in seven Mexican cities (Cancun, Mexico City, Guadalajara, La Paz, Monterrey, Toluca and Tuxtla Gutiérrez) located in different regions of the country, in order to reflect the smoking behavior, the health surveillance of the authorities, and the responses of the tobacco industry.

The sampling frame was the National Statistical Directory of Economic Units (DENU) of the National Institute of Statistics and Geography (INEGI), from which 553 POS (67–86 per city) were selected across 84 basic geostatistical areas (AGEB), stratified by socioeconomic level (low, medium, and high). The POS included fixed establishments that can sell tobacco products—such as grocery stores, convenience stores, supermarkets, and pharmacies—and were sampled to ensure that the results are representative for each city and for each type of POS.

The data collection was digital and supervised, with prior training provided for data collectors.

This study was supported by the Institute for Global Tobacco Control at the Johns Hopkins Bloomberg School of Public Health with funding from the Bloomberg Philanthropies' Bloomberg Initiative to Reduce Tobacco Use (Bloomberg.org).

Given Mexico's role as both a signatory and ratifier of this international treaty in 2004, the SCJN should not defy the sovereign decisions of the Congress of the Union and the Presidency of the Republic regarding the total ban on advertising, including the display of products at POS—a core pillar of the FCTC.

The resolutions are approaching review by the Second Chamber of the SCJN, which will determine whether it values the right to health, the right to a healthy environment, and the protection of children's and adolescents' rights, over the economic profits of the tobacco industry.

References:

1. OMS (2013) 2. Pichon-Riviere et al. (2023), 3. OMS (2023) 4. Robertson et al., (2016), 5. Shang et al. (2015), 6. Shang et al. (2016), 7. Edwards et al. (2016), 8. Wakefield et al. (2008), 9. Carter et al. (2009), 10. Germain et al. (2010), 11. Paynter et al. (2009), 12. Robertson et al. (2015), 13. Li et al. (2013), 14. Scheffels et al. (2013), 15. McNeill et al. (2011), 16. INSP (2023), 17. Secretaría de Salud (2022a), 18. Secretaría de Salud (2022b).

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