

# Why Brazil should drop its vape prohibition proposal

written by Clive Bates | 8 February 2024



As proibições fazem mais mal do que bem.

I just responded to the latest (of many) Brazilian consultations on its plans to prohibit vapes and heated tobacco products, which its regulator wrongly refers to as “Electronic Smoking Devices. ” The consultation page is [here](#) (closes 9 Feb 2024), and the text of the proposed standard is [here](#). The key paragraph is:

*Art. 1º Esta Resolução dispõe sobre a proibição da fabricação, importação, comercialização, distribuição, armazenamento, transporte e propaganda de dispositivos eletrônicos para fumar (DEF).*

*Art. 1 This Resolution provides for the prohibition of the manufacture, import, commercialization, distribution, storage, transportation and advertising of electronic smoking devices (ESD).*

*Brazilian Health Regulatory Agency (ANVISA), Public Consultation No. 1,222, of December 4, 2023 D.O.U of 12/5/202*

My response follows:

## **Comment, from a private point of view**

I write as a former Director of the United Kingdom's leading anti-smoking organisation and as a former senior civil servant in the UK government. I now run a London-based sustainability and public health consultancy. I have no relevant competing interests, and no issues arise under Article 5.3 of the Framework Convention on Tobacco Control.

In summary, prohibiting the manufacture, import, commercialisation, distribution, storage, transportation, and advertising of electronic smoking devices would be a significant policy error and a failure of analysis. Prohibition would cause more harm than good, unethically deny millions of current and future consumers of nicotine safer legal options, nurture criminal networks and provide unjustified protection to the cigarette trade. The proposed prohibition should be withdrawn and replaced by regulation to govern a lawful market in nicotine products that are much safer than smoking. I would like to offer the following six observations. I have added links to evidence briefs with extensive bibliographic references.

First, it is beyond any reasonable scientific doubt that these products are far less risky to health than cigarette smoking. We know that smoking is a major driver of cancer, cardiovascular and respiratory disease, and multiple conditions that degrade health, well-being and life expectancy. The harm is caused almost entirely by the inhalation of toxic smoke particles and gases created during the combustion of tobacco. While there are residual uncertainties about a precise risk comparison over the longer term, based on what is known about toxicant exposure and health impacts on users, there are large benefits in switching from high-risk combustion products to low-risk smoke-free products. There is simply no justification for allowing the most dangerous nicotine products and banning the least dangerous, including on the basis of uncertainty. As the famous tobacco epidemiologist Austin Bradford Hill said in 1965:

*“All scientific work is incomplete - whether experimental or observational. All scientific work is liable to be upset or modified by advancing knowledge. That*

*does not confer upon us a freedom to ignore the knowledge we already have or to postpone the action that it appears to demand at a given time."*

Second, the argument against prohibition could end with the view that safer products are better than dangerous products, and governments should not prevent consumers from buying safer products if they want to. However, the proposed prohibition is worse than this. It obstructs a significant potential public health benefit. It is beyond doubt that these products also displace smoking. Multiple sources of evidence converge to support this conclusion: controlled trials, observational data, population trends, quasi-experimental economic studies, market assessments, and extensive user testimony. Even though official data shows Brazil has relatively low smoking rates, there are still around one in eight adults smoking and about 22 million smokers. In addition, there will be a flow of new smokers - typically adolescents growing up in households with parents who smoke - who could be diverted from smoking in future if they take up vaping now. There is no basis for a government to use its powers to sabotage this public health opportunity or to drive it underground.

Third, nicotine should be understood as a legal recreational drug that is popular and not especially harmful in itself. Nicotine users experience real or perceived hedonistic, functional and therapeutic benefits. Just as there is no reason to suppose that the demand for caffeine, alcohol or cannabis will disappear, there is also no reason to expect the demand for nicotine to disappear. It would be absurd for the Brazilian authorities to use the law to ensure that this demand for nicotine can only be met by the most dangerous nicotine products, cigarettes. It would be equally absurd and unethical to assume that the demand for a product can be suppressed by banning its safer forms so that only harmful forms remain to act as a deterrent to use. The key challenge for regulators is not prohibition but to ensure that the demand for nicotine is met by well-regulated products that are acceptably safe and supplied and marketed responsibly. A blanket prohibition of the form proposed is a way of avoiding this challenge and an abdication of responsibility.

Fourth, from experience, evidence and common sense, we know that all prohibitions have harmful unintended consequences. When a government bans something, its existing and potential users do not just become abstinent. A prohibition functions as a disturbance of a complex adaptive economic system,

and that system will respond in many ways. Three broad categories should be expected and should be assessed as these will do more harm than good:

1. Promote smoking. A prohibition of legal low-risk alternatives amounts to a promotion of high-risk smoking. It means fewer smokers will switch, more young people will smoke, and some existing vapers will relapse to smoking. No government should be intervening to protect the cigarette trade and promote smoking.
2. Nurture illicit trade and criminal networks. Significant profits will be made by supplying them illegally because the demand for these products is unlikely to diminish. This will mean the supply is unregulated and criminalised, likely to engage young people as suppliers and users. Criminal suppliers will also supply other illegal substances, products, and services, adding nicotine to their portfolio.
3. Stimulate workarounds. As with illicit trade, users and suppliers will try to meet demand through legal workarounds and loopholes, such as mixing their own liquids or purchasing products legally outside Brazil.

Fifth, it is essential to properly understand the use of these products by young people. In countries where this is measured carefully, most youth use is infrequent, experimental and likely temporary. For this group, there is little public health risk, given that vaping is much less risky than smoking. The other group consists of those making more frequent or intensive use of smoke-free alternatives. This group disproportionately consists of those who are current or former smokers or those with risk factors that suggest they would be likely to become smokers. For this group, vaping is beneficial - an alternative to smoking, diverting them from a more dangerous form of nicotine use. Instead of seeing young people as a reason to ban safer products, concern for the young people most at risk is a reason to permit and regulate much safer nicotine products.

Sixth, a regulator should do its job and regulate. It should not be distorting the market for nicotine products to favour the most dangerous products at the expense of the much safer alternatives. A regulator should aim to change the market to transform the overall population risks, not protecting the incumbent cigarette trade by eliminating its competitors. A regulator should not default on its responsibilities and handing control to criminal networks. The appropriate

framework for the control of tobacco and nicotine is “risk proportionate regulation”. The most severe and restrictive measures would be applied to the most dangerous products, cigarettes. The regulation of the much safer products would be focussed on consumer protection and safety, responsible supply and retailing with properly enforced age restrictions, and controls on marketing to reduce youth appeal and branding with child-orientated images and language. ANVISA should be working out how to define a working regulatory regime, not turning its back on the challenge and leaving the market to the cigarette trade and criminals.

## **Describe the negative impacts**

- The proposal will deny current smokers and future nicotine users access to much safer products
- The proposal will increase smoking through reduced switching, increased relapse and more smoking initiation
- The proposal will hurt young people by removing a lawful diversion from smoking uptake
- The proposal will protect the cigarette trade and nurture criminal networks
- The proposal represents an abdication of responsibility to regulate this marketplace in the public interest
- The proposal will create more problems than it solves and do more harm than good

## **Provide bibliographic references**

For further supporting information, I have prepared four evidence briefs with extensive bibliographic references.

- [Resumo de evidências 1: o vaporizador é muito menos prejudicial do que o cigarro](#)
- [Resumo de evidências 2: O uso de ENDS reduz o tabagismo](#)
- [Resumo de evidências 3: Uso de ENDS e jovens](#)
- [Resumo de evidências 4: Políticas para produtos novos e emergentes](#)