PROHIBITION
DOES NOT WORK

8 April 2026
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Committee on Technical Barriers to Trade Enquiry Point
Ministry of Economy, Industry and Commerce
Government of Costa Rica

Re: Comments on Draft Technical Regulation RTCR-525:2025

To whom it may concern,

We are writing on behalf of Prohibition Does Not Work, an international network of think tanks, policy institutes, and consumer advocacy organizations dedicated to advancing evidence-based public health and regulatory approaches to nicotine and tobacco. The network focuses on reducing smoking-related harm by promoting policies that support adult smokers in switching to significantly lower risk alternatives, while addressing the unintended consequences of prohibitionist regulation, including illicit trade, reduced consumer safety, and economic distortion.

We respectfully submit the following comments regarding Costa Rica's draft Technical Regulation RTCR-525:2025, which proposes a comprehensive prohibition on the registration, importation, exportation, manufacture, distribution, and sale of non-therapeutic oral nicotine products, including nicotine pouches.

We fully recognize and support the Government's objective of protecting public health and reducing smoking-related harm, particularly among young people. However, the proposed measure will not achieve these objectives. Instead, it undermines public health, fuels illicit markets, and creates significant and unnecessary barriers to trade.

Costa Rica has made meaningful progress in reducing smoking, with prevalence now in the single digits. That progress is important but incomplete. Smoking remains a leading cause of preventable death worldwide, and continued reductions depend on giving adult smokers access to safer alternatives. Removing those alternatives risks slowing or reversing that progress.

The central problem with prohibition is that it does not eliminate demand. Across multiple jurisdictions, bans on reduced risk nicotine products have consistently failed and have instead displaced consumption into unregulated markets. In Brazil, a nationwide prohibition has resulted in millions of users sourcing products illegally, with evidence of contamination and safety risks. In Mexico, prohibition has fueled a large illicit market now dominated by organized criminal groups, accompanied by violence, extortion, and cross-border trafficking. In Australia, a de facto ban has created a billion-dollar illicit market, with the vast majority of users purchasing products outside the legal system. In the Netherlands, product restrictions have driven widespread illicit sourcing and cross-border purchasing while undermining progress in reducing smoking.

The same pattern applies to nicotine pouches. In Germany, where nicotine pouches have been effectively banned through regulatory classification, the result has not been reduced demand but displacement into illicit and cross-border markets, alongside stagnation in smoking reduction.

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Millions of smokers who might otherwise have switched to lower risk products continue to smoke, while illicit supply chains expand beyond regulatory oversight. By removing the legal market, the regulation effectively hands control of supply to unregulated and potentially criminal actors.

By contrast, international evidence shows that access to safer alternatives is one of the most effective ways to reduce smoking. Sweden provides the clearest example. Smoking prevalence has fallen to around 5 percent, the lowest in Europe, driven by the widespread availability of smoke-free nicotine products such as snus and nicotine pouches. This has translated into substantially lower rates of smoking-related disease and mortality compared to other European countries. Sweden demonstrates that when safer alternatives are available and allowed to compete with cigarettes, smoking declines rapidly and public health improves.

Nicotine pouches sit at the lowest end of the risk continuum for nicotine products. They contain no tobacco, involve no combustion, and expose users to minimal levels of the toxicants responsible for smoking-related disease. Importantly, nicotine itself is not the primary cause of smoking-related illness. This is widely recognized in public health. Nicotine replacement therapies such as gums, patches, and lozenges have been used for decades and are included on the World Health Organization's list of essential medicines. It is therefore inconsistent to allow nicotine in pharmaceutical form while banning functionally similar or lower risk consumer products that provide an alternative pathway away from smoking.

A comprehensive prohibition would also eliminate the ability to regulate the market effectively. Legal markets allow governments to set product standards, enforce age restrictions, and ensure accountability. Illicit markets do not. Evidence from multiple countries shows that prohibition often results in greater youth access, not less, because informal sellers do not verify age and operate outside the law. It also exposes consumers to products of unknown composition and quality, including those containing contaminants or excessive nicotine levels.

The proposed regulation also raises serious concerns from a trade and economic perspective. It constitutes a total prohibition on importation, exportation, and commercialization of a product category, effectively foreclosing market access. This is a clear non-tariff barrier to trade, which appears to be at odds with obligations under WTO Agreements and under DR-CAFTA commitments. The proposed measure would prohibit lower-risk nicotine products while allowing the continued sale of combustible cigarettes, which are far more harmful.

Open and rules-based trade is a cornerstone of economic development, innovation, and consumer welfare. It allows countries to access higher quality products, encourages competition, and supports the spread of new technologies. Barriers to trade, particularly blanket prohibitions, restrict lawful commerce and often produce worse outcomes by incentivizing illicit activity and reducing regulatory control.

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There are also direct fiscal and economic consequences. By eliminating the legal market, the regulation would reduce or eliminate tax revenues associated with the sale of oral nicotine products, while simultaneously increasing costs for law enforcement and regulatory agencies tasked with combating illicit trade. Experience from other jurisdictions shows that enforcement alone is insufficient to suppress demand, meaning governments face rising enforcement expenditures without corresponding reductions in use. At the same time, illicit markets operate outside the tax system entirely, depriving governments of revenue while funding unregulated and potentially criminal supply chains.

More broadly, the measure imposes economic costs through lost sales, reduced legitimate business activity, and foregone investment. Lawful retailers, distributors, and manufacturers are excluded from the market, while illicit operators expand to fill the gap. This creates a net loss to the formal economy, distorts competition, and shifts economic activity into channels that are less productive, less transparent, and more difficult to regulate.

Under the World Trade Organization Technical Barriers to Trade Agreement, technical regulations must not be more trade restrictive than necessary to achieve a legitimate objective and should be grounded in scientific evidence. Less trade-restrictive measures are clearly available and have proven more effective in achieving public health objectives. A blanket ban that eliminates an entire category of lower risk products, while allowing more harmful products to remain on the market, raises serious questions as to whether it meets this standard.

The proposed measure also risks inconsistency with Costa Rica's commitments under the Dominican Republic Central America United States Free Trade Agreement. A comprehensive ban would deny market access to United States manufacturers and prohibit the sale of products that have undergone rigorous scientific review and authorization by the United States Food and Drug Administration. This type of blanket prohibition risks denying market access in a manner inconsistent with the spirit and commitments of the agreement.

Costa Rica has previously demonstrated openness to recognizing regulatory decisions by trusted authorities such as the United States Food and Drug Administration. The proposed regulation would reverse that approach by banning products that meet those standards. This creates regulatory inconsistency and sends a negative signal to international partners and investors who rely on predictable and science-based regulatory frameworks.

The evidence from around the world is clear. Prohibition does not eliminate use. It shifts it into the shadows. It removes safeguards, strengthens illicit markets, and undermines public health objectives. A regulatory approach that allows controlled access to reduced risk products, while enforcing strong youth protections and product standards, is more effective and more consistent with both public health goals and international trade principles.

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For these reasons, we respectfully urge the Government of Costa Rica to reconsider the proposed prohibition and to adopt a regulatory framework that protects public health while maintaining access to safer alternatives and preserving open and fair trade.

We appreciate the opportunity to provide comments on this important matter and remain available for further engagement.

Sincerely,

Tim Andrews
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