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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92025859
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
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EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 31</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

CIGARS

A GUIDE

A good cigar is more than one of life's consolations; it offers a window onto an entire world and insight into a fascinating culture, a culture that in some ways has changed little in centuries. From the heat of the Caribbean to the drawing rooms of Europe, the cigar has provided solace and an opportunity for worldly contemplation to generations of thinkers, businessmen, writers, entrepreneurs and connoisseurs.

Cigars explores the history, traditions, techniques, characters, tobacco and lands involved in creating this extraordinary cultural object. World-renowned expert Nicholas Foulkes guides you through the journey from the tobacco leaf to the smoking parlour, with guides to brands and shapes, and stories from a cast of fascinating characters along the way.

Part almanac, part guide, part personal account, *Cigars* serves as an introduction for the neophyte and as a reference for the connoisseur.

£25.00

CIGARS

NICHOLAS FOULKES

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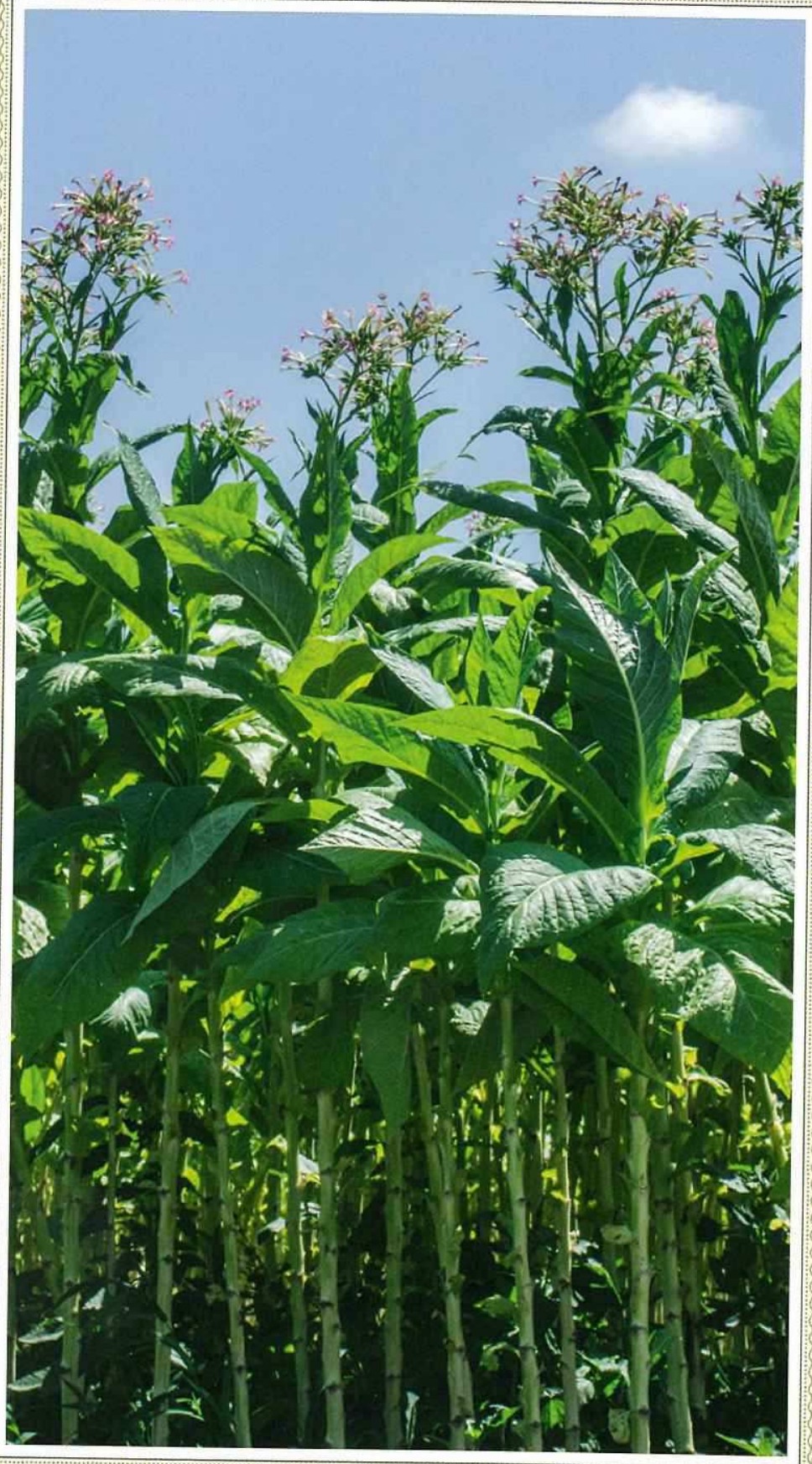


INTRODUCTION

A good cigar is more than one of life's consolations; it is the promise of a piece of heaven on earth. Too far-fetched? Certainly Mark Twain did not think so. A man who could never resist a truth wrapped in a witty apothegm, Twain once said, 'If smoking is not allowed in heaven I shall not go.'

It was my wife's stepfather who introduced me to what he identifies as 'the feeling of well-being' that accompanies a cigar. A cigar is about more than mere tobacco. There are many more effective and less expensive ways of delivering nicotine into the bloodstream. What the cigar offers is a window onto an entire world and insight into a fascinating culture, a culture that in some ways has changed little in centuries.

I certainly never imagined that the Montecristo No. 4 that my stepfather-in-law handed me over twenty-five years ago would take me on a journey, involving many visits to Cuba and the Dominican Republic, to the coveted Havana Man of the Year Award, but above all to what has become an abiding interest in the history, traditions, techniques, characters, tobacco and lands involved in creating the cultural object that is the cigar. I have written this book not so much as an expert, but rather as an amateur in the old sense, trying to convey my enthusiasm for the cigar and its remarkable world. Since my first visit to Cuba over twenty years ago, I have written the 'Bolívar' column in *Country Life*, a sporadically appearing collection of jottings on what I have encountered along this fascinating and unfinished journey and I have also contributed to the *Financial Times' How to Spend It*. Some of what follows is gleaned from those pages.

This book is part almanac, part guide, part personal account, and I hope it contains some information that is of use, or at least of mild interest, whether you have yet to fall under the spell of the cigar or whether you are already a seasoned collector.

And talking of magic and spells: 'It all started in the New World,' wrote G. Cabrera Infante, 'where smoking was not for gentlemen but for sorcerers – and for the incumbent Indian chief: he who wore the feathers.'[1] The inhabitants of the 'New World' discovered by Columbus consumed tobacco for, amongst other things, spiritual refreshment and enlightenment. The shaman entered a trance, in which state he would be imparted with whatever divine wisdom was available.

[1] G. Cabrera Infante, *Holy Smoke*, p.2

Of course, tobacco was one of the mysterious plants brought back to Europe by those first explorers of the lands across the ocean, and so commenced what Infante describes as 'the five-century-old relationship between the European gentleman and his smoke'.[2]

It is hard to identify what it is that accounts for the appeal of the cigar. Certainly its enthusiasts over the centuries have credited it with miraculous powers. For Victor Hugo, 'tobacco is the plant that converts thoughts into dreams'. P.J. O'Rourke, meanwhile, claimed in an interview with *Cigar Aficionado* magazine: 'I really think cigar smoking does make you smarter. Or maybe it just makes you sit still long enough to be smart.' As far as Thackeray was concerned, a cigar was an emotional Swiss Army knife: 'The cigar has been one of the greatest creature comforts of my life, a kind companion – a great stimulant – a cementer of friendships.' While for Evelyn Waugh it was a perfect panacea, gently caressing and restorative: 'the most futile and disastrous day seems well spent when it is reviewed through the blue fragrant smoke of a Havana cigar'.[3] And while it may not have provided European gentlemen with the hotline to the gods that the native inhabitants of the Americas enjoyed, Waugh's 'blue fragrant smoke' has proved adept at summoning inspiration. Calliope, the muse of epic poetry, was certainly in the room (smoke-filled, one hopes) with Lord Byron in 1823, when the mad, bad and dangerous-to-know poet was composing *The Island*, one of his multi-canto extravaganzas. At times I find

[2] Ibid.

[3] Quoted in promotional brochure *Havanas, a Unique Blend of Sun, Soil, and Skill* (Hunters & Frankau Ltd., South Africa, 1994).

Byron a little too rich for my taste, and I lack the breadth of knowledge of classical literature to get the most out of it without having to refer to endless footnotes, but the professional rebel's affection for a good cigar is clear even to me.

Sublime Tobacco, which from east to west
Cheers the tar's labour or the Turkman's rest;
Which on the Moslem's ottoman divides
His hours, and rivals opium and his brides:
Magnificent in Stamboul, but less grand,
Tho not less loved in Wapping and the Strand:
Divine in hookahs, glorious in a pipe,
When tipp'd with amber, mellow, rich, and ripe:
Like other charmers, wooing the caress
More dazzlingly when daring in full dress:
Yet thy true lovers more admire by far
The naked beauties – Give me a Cigar.

Rudyard Kipling went even further and articulated the views of many men of his age when he wrote what by today's standards is the misogynistic maxim: 'a woman is only a woman, but a good Cigar is a Smoke'. This observation comes in the penultimate couplet of 'The Betrothed' (subtitle: '"You must choose between me and your cigar" – Breach of Promise Case, circa 1885'), in which the narrator is forced to choose between his fiancée and his cigars:

Open the old cigar-box,
get me a Cuba stout,
For things are running crossways,
and Maggie and I are out.

We quarrelled about Havanas –
we fought o'er a good cheroot,
And I knew she is exacting,
and she says I am a brute.

After numerous couplets weighing the relative merits of cigar smoking and marriage, he comes to his conclusion

Open the old cigar-box –
let me consider anew –
Old friends, and who is Maggie
that I should abandon you?
A million surplus Maggies
are willing to bear the yoke;
And a woman is only a woman,
but a good Cigar is a Smoke.
Light me another Cuba –
I hold to my first-sworn vows.
If Maggie will have no rival,
I'll have no Maggie for Spouse!

It is a pity that this poem has been overshadowed by its downright sexist message, as it has another message too, not least about the beauty, charm and seductive power of 'that harem of dusky beauties, fifty tied in a string' (again I am sure that a critical early-twenty-first-century reader of this late-nineteenth-century line would find much to decry). It tells of the infinite variety of the world of the cigar, how each smouldering finger of tobacco, in transforming itself into fine powdery ash and fragrant smoke, transports the person enjoying it to another part of the world: the romantic

Spanish Main and of course sultry Havana, at the time Kipling was writing still the pearl of Spain's Latin American empire.

I am more uxorious than the narrator of this poem, but I can also identify with his feelings for the cigar. Much may have changed since the late nineteenth century, not least attitudes towards gender and smoking, but the lure of the cigar's harem, its siren song, is as compelling as ever. To call it a vice or an addiction is to demean the centuries of tradition and the work of the growers, blenders and rollers: this is not so much smoking as taking pleasure in life, slowing down to enjoy the way a cigar looks, its gentle aroma and its complex and lingering flavours. Each cigar enjoyed is a small victory, a gift from life, a moment crystallised, time rescued from the ceaseless momentum of the modern world. Above all it is an instrument of pleasure, a fact that no one has articulated more accurately than Prince Stepan Arkadyich Oblonsky, the good-humoured man of the world in Anna Karenina: 'A cigar – it's not so much a pleasure as the crown and hallmark of pleasure.'[4]

[4] Leo Tolstoy, *Anna Karenina*, p.162

HISTORY

The Indies. In the fifteenth century, these three syllables evoked a world beyond the imaginings of most Europeans. India, China, Japan, Arabia, the steppes of Asia Minor, the realm of Prester John, the legendary Christian king and descendant of one of the three Magi, monsters, gold mines, spices, silks ... all this and more fell under the heading of the Indies.

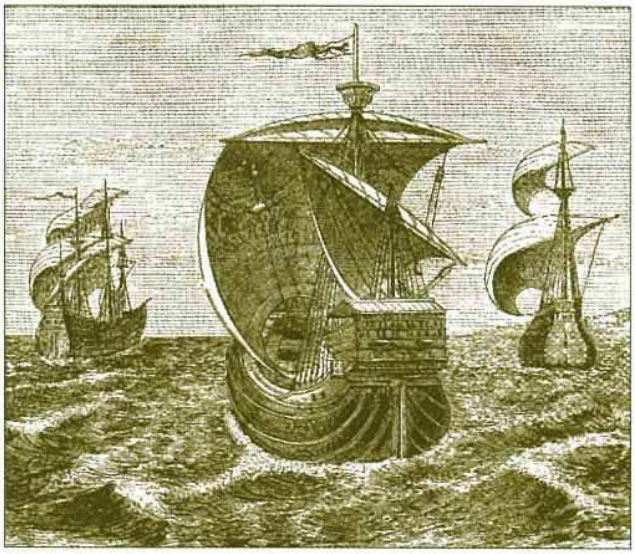
It was a place of perils but also of immense riches, and by the end of the century, a Genoese mariner called Cristóbal Colón [*above*] – also known as Christopher Columbus – had become obsessed with the idea of finding a western sea route there. Flushed with the recent routing of the Saracens from Andalusia, King Ferdinand and Queen Isabella were prepared to back him in his quest. And so on 3 August 1492, Colón set off with a crew of 87 and a flotilla of three ships: the 100-ton *Santa Maria*, the 60-ton *Pinta* and the 50-ton *Nina*. He had instructions to contact the local king on his arrival and conclude a gold-mining and spice-trading deal; his importance bolstered by a slew of grand titles bestowed upon him by his royal backers, among them 'Admiral of the Ocean Sea, Viceroy of the Indies', and for good measure, 'Governor of all the lands he might discover on his voyage'.[1]

A couple of months later, on 12 October, the lookout on the *Pinta* sighted land. Alas, it was neither Japan nor China, and certainly not the kingdom of Prester John; in fact Colón had arrived in the Bahamas, a picturesque place with naked

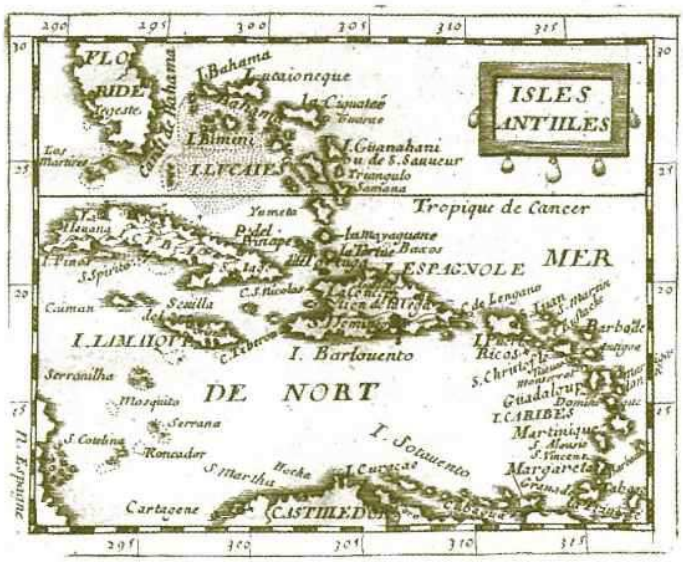
[1] Edwin Williamson, *The Penguin History of Latin America*, p.7

inhabitants but not much in the way of gold or spices. Instead the natives gave him gifts of fruit and dried leaves with a distinctive aroma. The Europeans ate the fruit and threw the leaves overboard; then, hearing of a large island to the south called Colba and deciding that this must be Japan, set sail again, making landfall at what would become the resort of Bariay in the country we know as Cuba. Again, there was precious little gold, but the crew were rewarded by the sight of the local inhabitants walking around with trumpet-sized bundles of burning leaves in their mouths, the same leaves that the Europeans had discarded in the Bahamas, twisted, said one observer, like paper muskets and giving off a fragrant smoke. The locals called these smouldering musket-like bundles *tabacos*, and the leaves with which they were made were known as *cohiba*, *cojiba* or *cohoba*.

Before returning to Spain and his royal patrons with tall tales of the abundant riches of the New World and natives carrying caged parrots, Colón sailed eastwards from Cuba but wrecked his flagship, the *Santa Maria*, on a coral



Cristóbal Colón's flotilla — the Santa Maria, *the* Pinta *and the* Nina



reef off an island that he named La Isla Española, shortened to Hispaniola, the greater part of which is today occupied by the Dominican Republic, the western portion forming Haiti. Using the wreckage of the *Santa Maria*, he built a settlement in what is now Haiti, returning the following year with 70 ships and 1,500 Spaniards only to find that the men he had left behind had been slaughtered. He then built a settlement further east near what today is the Dominican resort and port city of Puerto Plata.

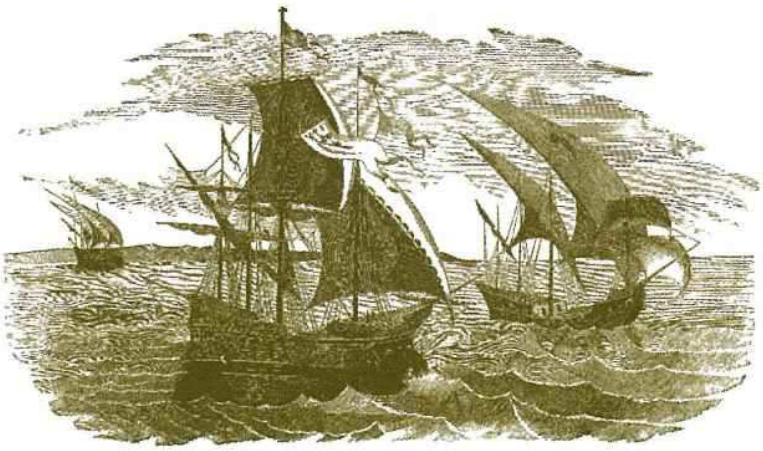
In all, Colón would make four visits to the West Indies, as they became known, touring what would later become the great cigar countries of the region; in addition to Cuba and Hispaniola, his travels took him to Venezuela, Colombia, Jamaica and Honduras. Even after his death he continued to travel to the Caribbean, his remains being shipped first to Santo Domingo on Hispaniola, then to Cuba, before being interred in Seville after Spain's empire shrank from a global concern to a few flyspecks of land in the Atlantic and a couple of tiny North African enclaves.

Columbus may have died, but the age of the cigar had been born. The first European to take up the habit was Rodrigo de Jerez, who apparently smoked a *tabaco* every day, and became so fond of them that he brought some back to Spain with him. However, citizens of his home town, Ayamonte, were so terrified by the sight of smoke issuing from his nostrils and mouth that, not unnaturally, they suspected the work of Satan, and the Inquisition imprisoned the unfortunate explorer for several years.

The fate of Jerez was representative of the mixed reception that greeted tobacco in the Old World, and its introduction across Europe was gradual, seeping rather than flooding out of the Iberian peninsula.

Once it had discovered the New World, Spain did not really know what to do with it other than ship out boatloads of adventurous fortune-hunters and rough, uneducated peasants to populate the islands of Hispaniola and Cuba – or die of disease trying. For two decades the mainland of the Americas remained more or less a mystery to the European settlers on the Caribbean islands, their only knowledge of it coming from raiding parties sent out to capture slaves as the indigenous populations of the islands of Cuba and Hispaniola declined.

It was Hernán Cortés, an ambitious soldier and colonial administrator originally from Extremadura, who, on learning that an official expedition was being equipped in Spain to explore and conquer the mainland, decided that he would like to claim the glory and riches for himself, and set off to topple the Aztecs and establish what he would call New Spain and we today know as Mexico. There is a tale that it was Cortés who in 1518 presented the Spanish king, Charles V, with the first tobacco seeds brought to Europe,



Cortes' fleet

introducing the plant to European agriculture. And as Europeans ventured further into the vast continent, they discovered that tobacco was widely used by the indigenous peoples. Two years later, Hernández de Toledo brought some seeds back to Portugal, and not to be left out, that other great nation of navigators and explorers, Holland, claimed Damien de Goes as the man who brought seeds from Florida to present to King Sebastian of Portugal.

At first tobacco was a curiosity, a strange plant to be pondered by natural philosophers – as scientists were then known – and enjoyed by kings and courtiers. But gradually it became part of European agriculture, and by the second half of the sixteenth century it was being cultivated in France. It is now accepted that it was introduced to French soil by an explorer-priest called André Thévet; however, it was Jean Nicot (whence 'nicotine'), France's ambassador to Portugal, who, returning from Lisbon with some tobacco plants in 1560, promoted its use in court circles as a medicine and a recreational drug. As it spread through Europe, it became increasingly fashionable, and by the time it reached England in the 1570s, the authors of the *Stirpium Adversaria Nova*

were ready to ascribe all manner of marvellous properties to the strange-looking plant.

> *It is usually larger than our comfrey, though found flourishing in the same well-watered spots of rich earth, exposed to the sun. It has very wide leaves, of oblong shape, hairy quality, wider, rounder, larger than those of comfrey ... The stalk grows three cubits high in France, Belgium and England, and very often four or five cubits when it is sown early enough in warmer parts of Aquitaine and Languedoc. It bears flower calyxes in August of a pale, somewhat reddish green ...*
>
> *For you will observe shipmasters* [sailors] *and all others who come back from out there* [i.e., America] *using little funnels, made of palm leaves or straw, in the extreme end of which they stuff* [crumbled dried leaves] *of this plant. This they light, and opening their mouths as much as they can, they suck in the smoke with their breath. By this they say their hunger and thirst are allayed, their strength restored, and their spirits refreshed ... Our age has discovered nothing from the New World which will be numbered among the remedies more valuable and efficacious than this plant for sores, wounds, affections of the throat and chest, and the fever of the plague.*[2]

[2] *Stirpium Adversaria Nova*, trans. Jerome Brooks, in *Tobacco: Its History* (Rosenbach, New York, 1937), Vol. 1, pp.239–40, cited in F. D. Hoeniger and J. F. M. Hoeniger, *The Development of Natural History in Tudor England* (Folger Books, 1969), p.74

Early tobacco cultivation in Cuba

The tobacco first smoked in England came from the British colonies in Virginia and was the harsher *Nicotiana rustica*, a variety that contained huge quantities of nicotine (such is the strength of *Nicotiana rustica* that it is cultivated by gardeners today as an organic pesticide). It was introduced to fashionable society by the adventurer Sir Walter Raleigh and the scientist Thomas Harriot, who is also credited with introducing the pipe in which the leaves were smoked, thus making Britain a pipe-smoking country.

But by the time Sir Walter was perfuming the court of the Virgin Queen with his pipes full of smouldering *Nicotiana rustica*; sophisticated methods of commercial cultivation of tobacco were already being practised in Cuba. According to one historian of Havana cigars, 'Selective plant breeding has been kept throughout history, ever since the first plants of *N. tabacum* were brought to Cuba from Yucatan in 1535 to

substitute *N. rustica*.'[3] *Nicotiana tabacum* has a much lower nicotine content than the overpowering variety that was first imported into Cuba.

The early introduction of a different type of tobacco is somewhat at odds with the proud claim in *The World of the Habano*, published by Cuba's Tobacco Research Institute, that 'Every leaf in a Habano is Tabaco Negro Cubano – native Cuban Black Tobacco – directly descended from plants that Columbus first discovered here more than five hundred years ago.'[4]

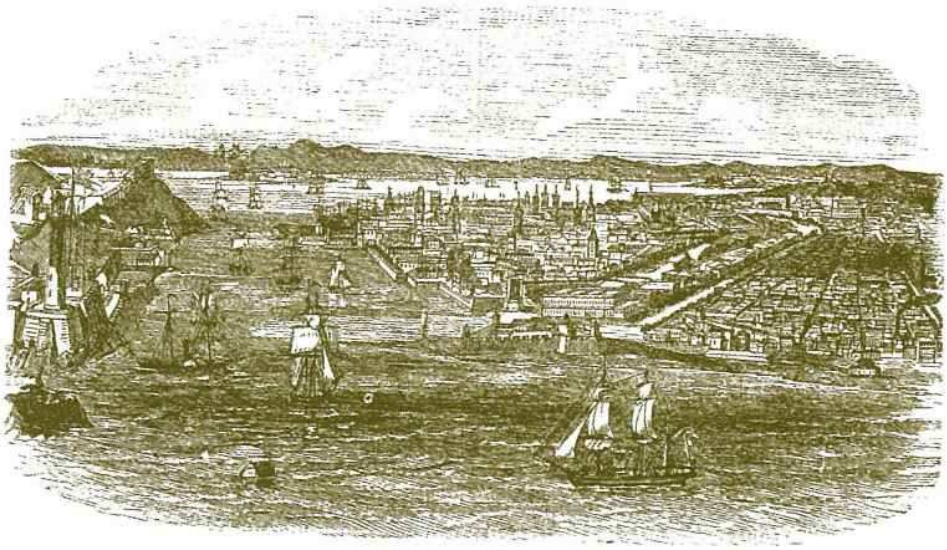
The truth is that the Europeans were doing what they did best: refining, improving and, as they did not say at the time, adding value to a naturally occurring resource. Although disapproving monarchs, including James I of England, did their best to suppress tobacco use; a little over a century after the sight of the shamanic smoke had perplexed those intrepid arrivals in the New World, it was well established in Europe as a pleasure, a panacea and a business.

'It was in the second half of the sixteenth century that tobacco acquired an economic standing in world commerce and in the agriculture of certain countries, both American and European,' writes Fernando Ortiz in his 1940 book *Cuban Counterpoint*, adding, 'The tobacco of Cuba was raised for the market and was much sought after.'[5] Ortiz argues that along with sugar, tobacco shaped the development of Columbian Cuba.

[3] Gaspar J. García Galló and Wilfredo Correa García, *The Story of Havana Cigars*, 1st English language translation (Editorial José Martí, Cuba, 2001), pp.32–3

[4] Mark Brutton, *The World of the Habano*, (Personnel Decisions International, Minneapolis, 2012), Minneapolis, p.18

[5] Fernando Ortiz, *Cuban Counterpoint*, p.286



Port of Havana, c.1890

The port of Havana became the center for the distribution of tobacco because of the circumstance that it was at its roadstead that the Spanish ships assembled with their crews of rowdy sailors and their rich passengers for the return trip to the Guadalquivir. For centuries Havana was of great importance as the center for the Spanish fleets from Cartagena, Nombre de Dios, Portobello, Vera Cruz, Campeche, and Santo Domingo, all of which gathered in its spacious bay, protected from hurricanes and pirates and situated at the mouth of the Bahama Channel, which was the return route they were obliged to take because of currents and winds. From there these fleets set out in convoy under the protection of the armadas on their way to Seville. [6]

Thus it is due to an accident of geography, the need to assemble sufficiently large convoys to repel the attentions of

[6] Ibid, p.167

British privateers, and the island's suitability for the cultivation of tobacco that Cuba and its capital Havana emerged as the hub of the global tobacco trade. By now the popularity of tobacco as a luxury product in the Old World was well established, and it was a lucrative source of income that the Spanish crown sought to protect from a well-organised and ingenious smuggling network.

This was no longer a matter of a sailor bringing back a few *tabacos* for himself and his friends; entire shiploads of contraband tobacco were being landed in Holland, France and England, where the habit had really taken off. What is more, the demand from smugglers stimulated the growth of a tobacco-processing industry in Cuba. Officially tobacco could only be exported in leaf form to Spain, where it would then be processed and turned into snuff.

However, illicit traffickers encouraged the construction of the first Cuban snuff mills in the early seventeenth century. As demand and potential profits soared, the illegal tobacco trade became a parallel industry, with entire plantations dedicated to producing tobacco to be smuggled into Europe. Writing of tobacco farming in Cuba during the 1600s, author Adriano Martínez Rius claimed that during the 'second half of the century, all of the tobacco grown in both the Eastern and Central regions was smuggled out of the country'.[7]

As a response to the growing threat from smugglers, Spain tightened its controls on the lucrative trade: anyone discovered trading with foreigners in the precious leaves

[7] Adriano Martínez Rius, *Habano the King* (Epicur, Barcelona, 1999), p.17

Royal Tobacco Factory, Seville

risked death or deportation. And once the tobacco arrived in Spain, the crown was able to exert further controls, with the Spanish government dictating that the raw material exported from the New World was unloaded on the banks of the Guadalquivir, in the docks of Seville.

In 1614, King Philip III had decreed that all tobacco grown in Spain's colonies in the New World should be shipped to Seville. The southern Spanish city was the location of the House of Trade, the government body that regulated relations between Spain and its growing empire overseas. The House of Trade licensed captains, granted permission for voyages of exploration and levied duties on imports such as tobacco. Small factories soon established themselves in the city to make snuff and prepare tobacco for use by Spanish aficionados, and it was in 1676[8] that cigars were first produced there. Even so, these were far from being the cigars with which we are familiar, with the leaf

[8] Bernard Le Roy and Maurice Szafran, *The Illustrated History of Cigars* (Harold Starke Publishing, 1998), p.4

from the tobacco-cultivating regions of the Caribbean rolled inside leaves taken from other plants that demonstrated the strength and size necessary to contain the precious blend.

Just how valuable the tobacco trade had become was made clear in the early 1700s, when work began on the truly palatial Royal Tobacco Factory in Seville, which was the largest commercial building in eighteenth-century Spain, second only in size to the royal palace of El Escorial. But Spanish prestige and hegemony of the tobacco trade was dented by the British when they occupied Havana between 1762 and 1763, during which time Cuban leaf and seeds found their way to Britain and its colonies, particularly Connecticut.

Before handing the island back to Spain, the British cleaned Cuba out of tobacco leaf, leading to shortages as the capacity of the island to produce was outstripped by the demand from the mother country. With more attractive terms offered by smugglers, this led to something of a crisis in the Spanish tobacco trade. Insufficient quantities and inferior-quality leaf were sent to the royal factory at Seville, and as the popularity of snuff began to wane in favour of cigars, complaints were heard about the quality of the product made in Spanish factories. 'Therefore, cigars coming directly from Cuba through smugglers were the ones preferred in Europe, especially in England,' explains Adriano Martínez Rius.

Cigars were poised on the brink of huge change, as it was also from this time that techniques in leaf handling had advanced sufficiently to enable cigars to be constructed along the modern lines we know today: filler leaves held together by a binder leaf, all clothed in the exquisite wrapper leaf.

The accusation of inferiority of Iberian cigars 'was that those made in Spain consisted of leaves of irregular quality. This was because the Monopoly officers in the Island used to accept any mix of different quality leaves as "first class", whilst the best ones used to be reserved for smugglers. In addition, these leaves of dubious quality fermented during the lengthy journey, acquiring an unpleasant taste. This was not helped by Spanish factories' inclusion of tobacco trimmings, cuttings and scraps in the finished product. These additions impeded the flow of smoke, making smoking less pleasurable.'[9]

And while the densely packed bales of leaves may have been subject to an uncontrolled fermentation over the course of several weeks at sea, it appears that 'the few cigars which arrived from Havana were in perfect condition'.[10] It is said that 'even the King himself was aware of this fact, and he also made his orders of cigars directly from the Island, thus acknowledging the unsurpassable quality of Cuban cigars'.[11]

In 1796, Francisco Cabañas opened the first recorded private cigar factory in Havana, and the closing years of the century saw small cigar manufacturers operating openly in and around the capital, with the official representatives of His Majesty looking on with a well-bribed sightless eye. The hegemony of the Spanish-made cigar was coming to an end, and the age of the Cuban cigar factory was dawning.

In 1817, just over two hundred years since King Philip had decreed that all raw tobacco from the New World be

[9] Martínez Rius, *Habano the King*, p.23

[10] Le Roy and Szafran, *The Illustrated History of Cigars*, p.48

[11] Martínez Rius, *Habano the King*, p.23

shipped to Seville, the Spanish tobacco monopoly was abolished. From now on the growers and workshops were free to sell to and make for whomever they liked, and, coinciding with a surge in demand, the Havana cigar business took off.

* * *

One of the few upsides of the generation-long struggle against Napoleon was that during the Peninsular War, Britain acquired a taste for cigars. Previously tobacco had been consumed in clay pipes or ground up into snuff and carried round in little jewelled caskets; the celebrated Georgian tea-drinking dandy Lord Petersham once observed with due solemnity that a light-blue Sèvres snuffbox may well have been 'a nice summer box, but would not do for winter wear'. However, soldiers returning from the continent brought cigars with them, and in order to meet the demand, cigars began to be made in factories in England.

Stripping leaves in a Victorian London cigar factory

Domestic production, duties levied on imports and of course smuggling meant that at first, numbers of officially imported cigars were small: in 1823, for instance, just 1,950 cigars were imported into the UK. It was also in 1823 that Byron wrote *The Island*; he was clearly a terrific ambassador for the cigar, as in the following year, an estimated 1,153,500 cigars were imported, while by 1830, the year William IV ascended the throne, that figure had risen to just over 19 million.[12]

The picture was more or less the same across the rest of Europe, and in North America too, where in 1800 the young nation had welcomed the new century by electing a tobacco farmer called Thomas Jefferson to the presidency, and where a later occupant of the White House, Ulysses S. Grant would consume 20 cigars a day.

The great nineteenth-century cigar boom was under way, and by the middle years of the century, the modern top-hatted Victorian gentleman was consuming his tobacco in tubular form. Isambard Kingdom Brunel, arguably the most forward-looking man of his day, daring to invent and build such contraptions as would have been unimaginable even in Byron's day, was one of the cigar's most powerful advocates.

The most remarkable expression of this modern age was the Great Exhibition of the Works of Industry of all Nations of 1851, which took place in a glittering palace of glass and cast iron that towered above the treeline of London's Hyde Park.

Conceived by His Royal Highness Prince Albert, Queen Victoria's husband and Prince Consort, the Great Exhibition

[12] Figures supplied by Hunters & Frankau

The Great Exhibition, London, 1851

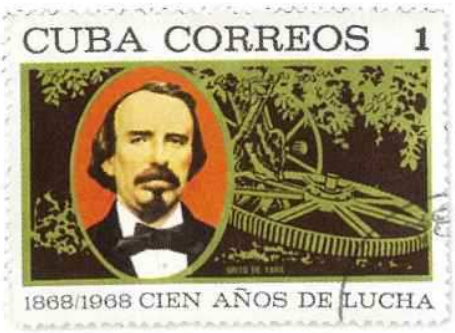
was a showcase for all that was modern and marvellous about the world in the middle of the nineteenth century. Among the exhibits that dazzled visitors were the fabled Koh-i-Noor diamond; a stuffed elephant carrying a maharajah's howdah; a folding piano; an expandable hearse; a floating church; a pulpit that used rubber tubes to connect the preacher to parishioners who were hard of hearing; Mr Colt's patented revolving cylinder firearm; Patek Philippe's keyless watch, and a glass casket of Cabañas cigars.

Cabañas, it will be remembered, was the name of the first recorded cigar factory owner, and the Cabañas brand, recorded at Havana's trademark office in 1810, had become extremely popular, especially in Britain. The importance of branding had been grasped rapidly by cigar makers in Cuba, and by the time of the Great Exhibition, many of the brands still known today were already in existence, among them Por Larrañaga (1834), Punch (1840), H. Upmann (1844), Partagás (1845), El Rey del Mundo (1848) and Romeo y

Julieta (1850). From humble beginnings in small rustic workshops or farmhouses near the plantations, the factories in which these cigars were made were increasingly impressive structures, the best-known surviving example of which is the Partagás factory, with the cheeky legend *Real Fábrica de Tabacos* emblazoned across its facade – a reminder that the crown of cigar making had passed from Seville to Havana. As the nineteenth century progressed, connoisseurs spoke increasingly of Havanas rather than Sevillas.

By the middle of the nineteenth century, Havana had emerged as the cigar capital of the world. In 1859, the city boasted a staggering 1,295 cigar factories and a further 38 factories making cigarettes, with the industry providing employment for 15,000 workers.[13] The second half of the century saw a consolidation and greater industrial concentration of the manufacturing of cigars; with the booming cigar industry, the later nineteenth century saw

[13] García Galló and Correa García, *The Story of Havana Cigars*, p.38



Stamp commemorating Manuel de Céspedes and the centenary of the Ten Years' War

a corresponding rise in aspirations for Cuban independence, as Spain's empire in the Americas disintegrated. On 10 October 1868, a disgruntled Creole landowner called Carlos Manuel de Céspedes issued a proclamation of independence, starting a struggle known as the Ten Years' War.

The war may have provided the heroic backstory for the dreams of Cuban independence, but it played havoc with agriculture, including tobacco cultivation in the east of the country. The ruin of farmers, particularly sugar farmers, enabled the American purchase of farmland, a process of financial colonisation described by one historian as an 'economic invasion', which accelerated at the end of the century when ever-simmering nationalist sentiment led and articulated by the revolutionary poet José Martí flared into a conflict that would engulf the entire country, alarming America to such an extent that it too went to war with Spain, delivering the *coup de grâce* that would push the creaking old colonial power from the world stage.

The war devastated the economy, and yet when hostilities ceased, Cuba had little to show for it. The peace treaty between Spain and the USA imposed a military government on the island in order to rebuild its shattered economy and infrastructure, meaning that in essence, Cuba was as

independent as the United States allowed it to be. When the American forces left in 1902, the USA retained a military base at Guantanamo and also the right to intervene in Cuban affairs should it feel it necessary for the 'maintenance of a government adequate for the protection of life, property and individual liberties'.[14]

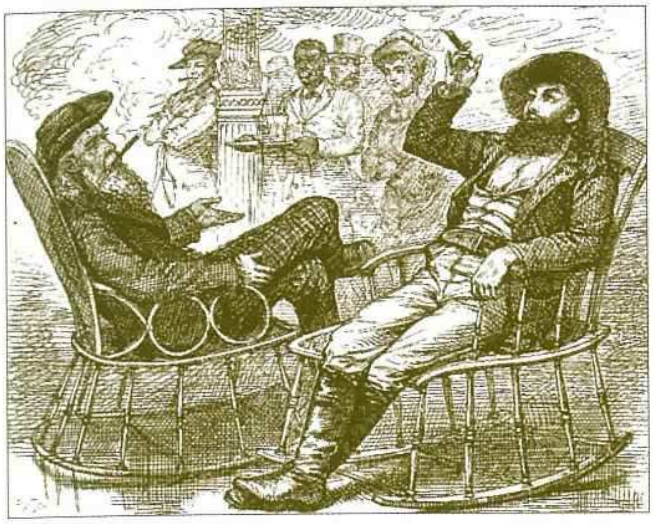
Increasingly the property needing protection was American. What was a calamity for many Cuban cigar makers was an opportunity for foreign interests to buy into Cuba. British investment had first begun in Havana in the late 1880s, and as the British consul stressed in 1890, the fact that his country's interest was strictly commercial was appreciated by local businesses. 'It would be regarded favorably by the Spanish and the Cubans,' he observed, 'because they understood that the interests of Great Britain are of a purely commercial character and the development can, therefore, tend only to the preservation of the social order and security of property.'[15]

At that time, the appetite for cigars in America was voracious. It is today a truism to talk of 'big tobacco', but then tobacco was huge. This was the era of J.B. Duke's Tobacco Trust. 'At the turn of the nineteenth century, America's favorite tobacco product was unquestionably the cigar, and consumers spent more money for cigars than for cigarettes, snuff, chewing and smoking leaf combined.'[16]

[14] Quoted in Williamson, *The Penguin History of Latin America*, p.439

[15] Quoted in Jean Stubbs, *Tobacco on the Periphery* (Cambridge University Press, 1985), p.22

[16] Maurice Duke and Daniel P. Jordan, *Tobacco Merchant: The Story of Universal Leaf Tobacco Company* (University Press of Kentucky, Kentucky, 2014), p.53



The expanding American market

Domestic production in thousands of factories across the nation rose from an already impressive four billion cigars in 1890 to a staggering seven billion by 1906. And as well as being grown domestically, one of the chief sources of leaf for these cigars was, of course, Cuba.

At the turn of the century, English company Henry Clay and Gustavo Bock took control of a number of Cuban factories and 35 cigar brands. At the same time, businesses from America, which was already Cuba's largest trading partner, acquired not just a dozen Cuban factories and 149 brands, but also plantations to supply leaf tobacco to the numerous cigar factories on the American mainland. Henry Clay and Bock would also become American-owned, with eponym Bock becoming tobacco tycoon Buck Duke's right-hand man in Havana. Local manufacturers were, understandably, concerned at this 'consolidation' and at the rising exports in leaf tobacco to the US.

In the early years of the twentieth century the tensions between the remaining independents and the mighty Trust turned to open hostility when Bock published

a book claiming that he had devoted his 46 years in Cuba to improving the manufacture of cigars, and that those cigars made in the factories under his direction 'cannot be equaled in Aroma, quality and manufacture by any other cigar in the world'.[17] Rather like the pamphlet wars of sixteenth- and seventeenth-century Britain, the following year the independents retaliated with a publication of their own, claiming that 'nobody considers Mr Bock to be an able manager of cigar factories'.

Given all the upheaval, cigar makers in Cuba can be forgiven for not paying a great deal of attention to the decision taken in 1903 by Eduardo León Jimenes, whose family had been farming tobacco since 1880, to open a small factory employing three rollers. It was not the size of the operation that was significant but rather its location. It was not in Havana; it was not even in Cuba: Jimenes' factory was in the rich and fertile tobacco-growing Cibao valley in the Dominican Republic.

As Hispaniola, the island had been first settled by Columbus, but its former grandeur, testified to by the splendid cathedral in Santo Domingo, was a long-distant memory. If anything, the Dominican Republic had had an even more violent nineteenth century than had Cuba. Sharing the island uneasily with the neighbouring nation of Haiti, it had only won its independence after fighting the Haitians, the French, the Spanish and factions within its own borders. It entered the twentieth century bankrupt, and economically reliant on the USA, which felt, as in Cuba, that its troops and its businesses could come and go as they

[17] Quoted in Stubbs, *Tobacco on the Periphery*, p.31

pleased. The Dominican Republic had long been a supplier of tobacco leaf for export, with the native Olor Dominicano producing an aromatic tobacco; but by the late nineteenth century the first factory had appeared in the town of Santiago de los Caballeros. A new phase in the commercial life of the country was beginning. Jimenes' little enterprise would in time prosper and grow to become a substantial business. Rather appropriately, Jimenes christened his factory La Aurora (the dawn).

In Havana, meanwhile, the dawn of Cuba as a self-determining sovereign state that had been promised by the election as president of Tomás Estrada Palma proved false. In 1906 the Americans once more imposed direct rule through a governor. Even though self-government was re-established in 1909, over the next dozen or so years, American troops continued to be sent to the island to protect life, liberty and the ever-increasing amount of American-owned property.

As the twentieth century progressed, the pace of American investment accelerated: in a single decade, between 1914 and 1923, 'US investment in the Cuban economy increased sixfold'.[18] And just as the American military government of the island had improved its infrastructure, so the tsunami of US investment brought new scientific methods of production, chief among which was the development of a disease-resistant strain of tobacco called Habanensis, which first appeared in 1907. In 1941 this was superseded by the improved Criollo, from which the Corojo strain was developed expressly for the growing of wrappers.

[18] Williamson, *The Penguin History of Latin America*, p.440

These have been adapted over time; Criollo 98 and Corojo 99, for example, have a higher yield and increased resistance to blue mould.

By the beginning of the 1920s, it was not just the cigars that were drawing Americans to Havana. Cuba became particularly attractive to those Americans keen to avoid the restrictions imposed upon them by Congressman Volstead's National Prohibition Act, which, officially at least, turned American into an alcohol-free nation from 1920 until 1933.

The lasting legacy of this unpopular piece of legislation was the establishment of organised crime in the United States, and when the source of income afforded by the sale

Prohibition

Prohibition-era speakeasy membership cards

of illegal liquor was withdrawn, this sophisticated criminal network was keen to explore new business opportunities. By fortunate coincidence, the year that Prohibition was repealed, Cuba underwent one of its periodic political convulsions with the so-called Sergeants' Revolt; and the end of 1933 saw an American accountant coming to visit a Cuban army typist in Havana. This, however, was no dull meeting of clerical staff.

At just over one and a half metres in height, Meyer Lansky was too short even to be dubbed the Napoleon of Crime. Instead he became known as the Mob's Accountant. His host was Sergeant Batista, a former military stenographer who would emerge as the strongman dictator of Cuba. In 1933, these two men forged an agreement that for the next quarter of a century would see them run the island less as a sovereign state and more as a private business. Lansky came away with the lucrative gambling rights. Money laundering, drug trafficking, prostitution and so forth would soon follow, and within a few years, he and his associates had turned Havana into what was variously known as 'the Paris of the Caribbean' and 'the most dazzling brothel in the Americas'.[19]

[19] Enrique Cirules, *The Empire of Havana* (Editorial José Martí, 2003), p.41

This is the period of Cuban history most mythologised in America: a time of large American cars, cigars, cabaret, sun, sex, roulette and rum. With easier air travel, Cuba seemed closer than ever to the USA. Evening flights from Palm Beach would disgorge planeloads of sybarites in evening dress who would carouse and gamble until the rays of the rising sun called them back to the airport for their return flight.

For those who wanted to stay on, there were thousands of rooms in luxury hotels that sprang up during the 1950s. Some – like the Capri, where George Raft used to hold court; the Havana Hilton, renamed the Habana Libre; and the Riviera, a monument to late-fifties luxury kitsch, frozen for half a century – remain to testify to the darkly glamorous decadence of the period.

Of course it did not last. By 1959, the jewelled women and dinner-jacketed men had disappeared from the streets of Havana to be replaced by battle dress and beards as Dr Castro's triumphant revolution swept Sergeant Batista and his mafia cronies off the island.

In the iconography of elitism, few symbols are as powerful as a flaunted cigar, and in the late 1950s the cigar industry in Havana symbolised the exploitation of working people by factory owners who in many cases were not even Cuban. In the eyes of the revolutionary government it was a

Castro, Sierra Mastre forest, 1958

wrong that needed righting, and '137 days after the revolutionary triumph of January 1st 1959', [20] or 17 May 1959, as it was known in the rest of the world, the first Agrarian Reform Law was passed, the initial step on the path to full nationalisation of foreign property in August of the following year.

[20] Martínez Rius, *Habano the King*, p.99

As it happened, the cigar factories were not nationalised; they were 'intervened'. Adriano Martínez Rius defines this process of intervention as meaning 'that the management of the factories was transferred to the State – thus appointing a comptroller who would be in charge of managing those factories, once most of them had been abandoned by their owners'.[21] However, as the experiences of some of those who had not yet fled the country would show, the line that divided intervened property from nationalised property was not particularly distinct. Interviewed for the magazine *Cigar Aficionado* in 1994, Manuel Quesada, a member of a dynasty that had been in the tobacco business in Cuba since the 1880s, recalled the way he and his family were forced to leave their home and their business:

> *Four guys in a jeep with machine guns came to the door, asked for the keys to the safe, sealed it and one said: 'This vault has been intervened by the government; nobody can touch it.'*
>
> *In August of 1960, my brother and I were sent to Miami, and* [the following month] *my mother and two sisters came. My father spent a year educating Castro's men on how to run his business. One day they told him: 'Go. Don't come back.'*

But Castro's men were not about to stop at merely redistributing land, nationalising businesses and 'intervening' cigar factories. There is a persistent and often-repeated rumour that the very concept of the Cuban cigar itself

[21] Ibid.

Fidel Castro, enjoying a cigar in 1974

was to be revolutionised. According to this story, brands were considered counter-revolutionary, all right for the bourgeoisie in a 'running-dog lackey of the capitalist imperialist system' sort of way, but hardly the stuff that dreams were made of in the brave new world being conjured up by the tropical Prospero Fidel Castro. Individual cigar brands, he announced, were 'a thing of the past'.[22]

With this rhetorical flourish the great orator consigned 140 years of Havana heritage to the dustbin of history: among the brands that died in 1959 was the historic Cabañas, the first Cuban cigar marque and the representative of Cuba's cigar industry at the Great Exhibition 108 years earlier.

In Batista's day, there had been almost a thousand different types of Havana cigar on the market. The revolution decreed that in future there would be just four sizes of one brand, called Siboney, which had hitherto only been available to the domestic market. In addition, these cigars would be stripped of their colourful raiment: there would be

[22] Le Roy and Szafran, *The Illustrated History of Cigars*, p.62

no bands and no brightly coloured images plastered over the boxes. Just as the drab olive colour of army fatigues filled the streets of Havana with a sartorial equality, so from now on all cigars would be indistinguishable from one another.

But history subsequently followed a different path, and if his biographer is to be believed, one of the men who played an important role in averting the implementation of this suicidal edict was Zino Davidoff, a Geneva cigar merchant.

Davidoff, who continued to have close ties with Cuba, warned about these developments. He urged the Cubans to abandon actions of this kind already underway and to retain the established brands. The brands' appeal and aura could be beneficial, such as attributes connected with names like Romeo y Julieta and Partagás, Hoyo de Monterrey and Bolívar.

Davidoff's advice gradually changed the minds of the new managers. In the end, the Caribbean island shelved the Siboney idea.[23]

[23] Dieter H. Wirtz, *Davidoff: Legend – Myth – Reality* (Econ Verlag, Berlin, 2006), p.160

Although the Siboney brand was revived in 1988, when the Austrian tobacco monopoly marketed a brand of cigarillo made from Cuban tobacco, the idea that Siboney was indeed going to replace all cigar brands is today regarded with scepticism. When directly questioned about the proposal in 1994, thirty or so years after the idea was supposed to have been thought up, Fidel Castro was adamant: 'That would have been insanity! That would have been crazy. I always wanted them to create new brands.'[24]

If the idea had ever been considered, it was never put into action; instead, a new product was created when the Cuban authorities honoured Davidoff by naming a brand of cigar after him:

> *Perhaps out of gratefulness, perhaps as a sign of respect, Cubatabaco proposed to the Geneva tobacco trader in 1967 that it produce a Havana brand under his name in Cuba, to his specification of course. One year later, in 1968, the first Havanas under the Davidoff label were launched on the market: the Davidoff No.1, the Davidoff No.2 and the Ambassadrice. A new era had begun.*[25]

And not just in Cuba. For a while, there were those who thought that Castro would stay in power for a year or two. The Bay of Pigs, Kennedy's trade embargo, the Cuban missile crisis and increased superpower tension in the Caribbean put an end to such hopes.

[24] Marvin R. Shanken, 'A Conversation with Fidel', *Cigar Aficionado*, Summer 1994

[25] Wirtz, *Davidoff*, p.160

As the embargo placed on trade with Cuba by President Kennedy began to hit the cigar business in the US, the popularity of cigars from other Central American and Caribbean tobacco-growing nations increased. Firms such as La Aurora in the Dominican Republic, now a well-established business, were ideally placed to capitalise on this blow to the Cuban cigar business. And it was not solely being denied access to what had been traditionally its largest market that affected the Cuban cigar industry: the early 1960s saw a brain drain of tobacco experts away from Havana, a diaspora that gave new vigour to cigar making elsewhere. It was at this time that the Dominican Republic acquired its second main tobacco variety, the Piloto Cubano, which began as Cuban seeds brought to the country by those fleeing the revolution.

Nor was the loss of many talented industry figures the only ill to afflict Cuba's post-revolution cigar business. Between 1959 and 1989, 'tobacco's share in total exports [from Cuba] shrank from 9 to 1·6 percent'.[26] And at the end of the 1970s, production crashed. 'One reason was the decline in tobacco leaf production (from 52,000 to 8,000 tons in 1976–80) due to blue mold [sic],' writes political and economic analyst Irving Louis Horowitz.[27]

Elsewhere in the region, the 1970s and 1980s saw the establishment of new cigar-making centres, and the renaissance of old ones. In Honduras, for example, the tradition of working with tobacco reached back to the late eighteenth century, when the Spanish state created a royal tobacco

[26] Irving Louis Horowitz (ed.), *Cuban Communism, 1959–1995* (8th edition, Transaction Publishers, New Brunswick, 1995), p.205

[27] Ibid.

factory there, in effect a more architecturally modest New World branch of the sprawling Seville site. Almost two hundred years later, in the 1970s, it was to Honduras that Davidoff turned to make a range of cigars to sell in the US.

Brazil, Ecuador, Nicaragua, Jamaica and Mexico were among the other nations to benefit from this shift in the balance of cigar power. However, the most dramatic effect was in the Dominican Republic, which as the neighbouring island to Cuba shared similar meteorological, geological and botanical characteristics. Dominican cigars began to be exported to Miami in the mid-1960s. This trickle became a tsunami in the 1970s when the Dominican government set up 'free zones' where the building of cigar factories was encouraged with tax incentives. The first free zone opened in 1969 in La Romana in the south-east of the island rather than in the traditional tobacco-cultivating country, and it was where Consolidated (Tabacalera de García) relocated from the Canary Islands. The arrival of such a major producer sent a strong message that the Dominican Republic was open for business.

Attracted by political stability, the benevolent financial climate and ideal tobacco-cultivating conditions, another large American cigar company, General Cigar, also opened facilities on the island, but this time in the free zone of Santiago. And it was in the Dominican Republic that American giants made non-Cuban versions of classic marques, including Partagás, Upmann and Montecristo.

After the devastation of the second half of the 1970s, the situation of the Cuban cigar industry improved, but the early 1990s saw it hit by a crisis every bit as worrying as blue mould. On the evening of 9 November 1989, remarkable

scenes appeared on television screens around the world as thousands of East Germans swarmed through checkpoints along the Berlin Wall and with primitive tools, or just their bare hands, began spontaneously to demolish the most concrete symbol, figuratively and physically, of the Cold War. Thereafter the pace of events quickened. It took barely 18 months for the once mighty Soviet Union to fragment.

This catastrophic loss of its chief sponsor affected every aspect of life in Cuba, and its effect on the cigar industry was magnified by an announcement the following year. 'In 1990, the international tobacco firm Davidoff et Cie ended its dealings with Cuba, alleging a deterioration in the quality of Cuba's products, and started manufacturing cigars with tobacco grown in other Caribbean countries. This was a serious blow to Cuba.'[28] But with or without Davidoff, the cigar continued to be a central pillar of the Cuban economy, as Castro confirmed in an interview in 1994.

> *It is one of our most important export items. It is also one of our main sources of revenue. It is also an important factor for us in the domestic market. In addition to that, we have the hard currency which comes from exporting cigars. Cigars are one of the four or five most important items of export that we have. First, it's sugar, then nickel, fish, tourism. These are the main items that provide revenues. Biotechnology is gaining ground as well as the pharmaceutical industry. And now cigars are more or less in fifth place. Historically it has been very important.*[29]

[28] Ibid.

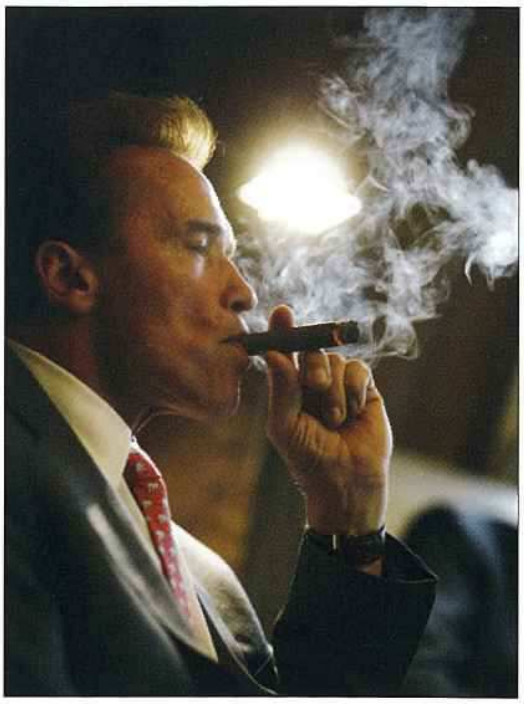
[29] Shanken, 'A Conversation with Fidel', *Cigar Aficionado*, Summer 1994

The departure of Davidoff, while a blow to Cuba, was to spark a bonanza in the Dominican Republic, which received the ultimate benediction when the business moved its production to the Cibao valley. Dr Ernst Schneider, who had bought Davidoff in the early 1970s, was adamant that only total control over every aspect of the cigars bearing the company's name would ensure the long-term stability of his business and the quality and consistency his customers demanded.

Zino Davidoff and Dr Ernst Schneider

As the brand's advertising of the time declared, Cuban Davidoffs had come to be regarded as *le summum* (the ultimate), a reputation that accounts for the astonishing prices vintage Havana Davidoffs continue to command over a quarter of a century after the last one was rolled. But in spite of, or maybe because of, this success, Cuba announced that El Laguito (known colloquially in Europe as the Davidoff factory) would be dedicated to the new Cohiba line that would soon become commercially available.

Cohiba of course became a magical name too, but in being forced to relocate its production elsewhere in

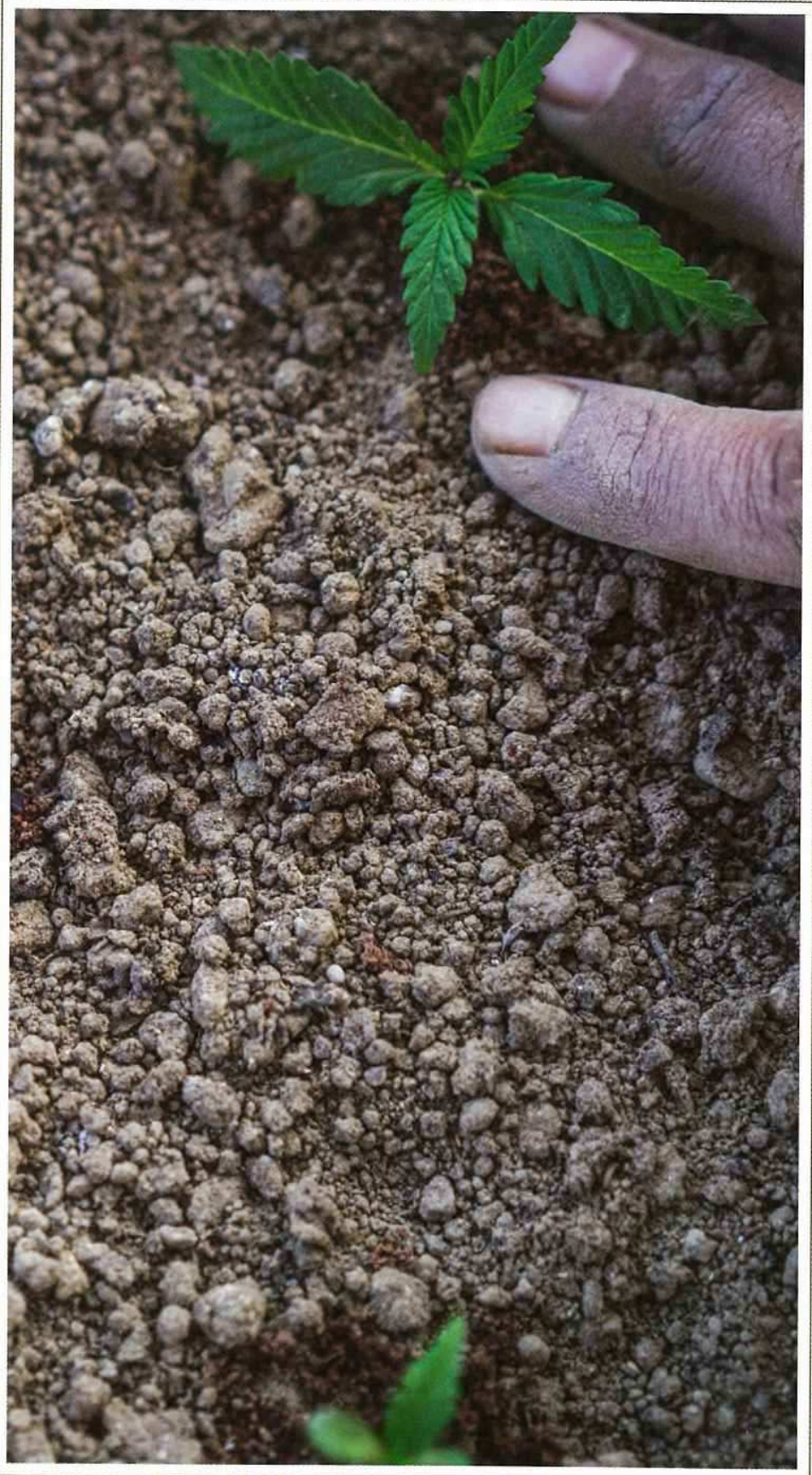


the Caribbean, Davidoff found itself in the right place at the right time as the cigar boom of the 1990s ignited. Smoking legislation was far less restrictive than today and a cigar became something of a fashion accessory, brandished by celebrities as diverse as Demi Moore, Sean Combs, Linda Evangelista, Arnold Schwarzenegger, Madonna, Jack Nicholson, Beyoncé, JLo and Jay Z. Demand soared, particularly in the United States, and non-Cuban cigars benefited worldwide from the troubles of the Cuban cigar industry as it adjusted to life after the Soviet Union, when both pests and shortages of such basic commodities as string badly affected harvests. By the end of the century the Dominican Republic was selling more than 200 million cigars a year, with the famous La Romana factory said to be working three shifts around the clock to meet demand.

Eventually, obeying the rules of all bubble markets since tulip mania gripped the Netherlands in the early

seventeenth century, cigar consumption plateaued and then dropped. But it did not collapse completely and has grown more sustainably during the early twenty-first century. The Dominican Republic remains the largest single producer of what I suppose are called premium cigars, but the most explosive growth in recent years has been in Nicaragua, which has pushed Cuba's annual production of around 85 million cigars into third place. These countries emerge as the leaders against a backdrop of growth in high-quality tobacco cultivation and cigar making across the region.

Now, with relations between Cuba and the United States entering a new phase, the cigar world stands poised on the brink of change once again.



GROWING & MAKING

Cigars are often likened to wines, not least for the ritual and snobbery around them, and like wines they begin life as a simple agricultural product like any other, a seed germinating in the soil – the rich soil found in the fertile areas of the Caribbean and Central American cigar-making nations: the Real and Cibao valleys of the Dominican Republic; Estelí and Jalapa in Nicaragua; and of course the legendary Vuelta Abajo of Cuba.

Pinar del Rio, Vuelta Abajo

These landscapes are dramatic, majestic and give the impression of having survived unchanged from the days of prehistory. To arrive in the Vuelta Abajo shortly after dawn, the mist still draping itself over a landscape punctured here and there by the serrated profile of palm fronds, while above rise the verdant hills, sparkling emerald-like in the morning light, is to experience this landscape much as it was not merely centuries ago, but in aeons past.

As has always been the case, cultivation of cigar tobacco remains a laborious business: a Cuban *veguero* (farmer) may have half a million plants in his care, each of which will need to be visited approximately 150 times through its life. The process begins with the preparation of the land during the steamy summer months. Fields are often tilled with bullock-drawn ploughs; the expense of intensive farming equipment aside, the weight of the animal-drawn plough is less likely to compact the soil.

Planting begins in September and lasts for several weeks. As the miracle of germination transforms seeds into plants, the tobacco seedlings are cosseted. In the old days, young plants were protected by a covering of straw; today, when they first poke their shoots through the loose rich soil, they find themselves in little seed trays in greenhouses, or sheltered under plastic tunnels in the fields.

Once the plants have grown to about a foot in height (this takes around 45 days), they are planted out in the fields. After 10 days or so, those plants destined to become wrappers have a translucent ceiling of cheesecloth placed high above them, which diffuses the powerful tropical sunlight as they grow. Entire tobacco fields resemble large marquees, the sun-bleached fabric contrasting with the lush green of the plump leaves sprouting beneath. This shade-grown plant is taller and produces larger leaves in greater numbers than the sun-grown tobacco that comprises the filler and contributes the majority of the flavour to the cigar.

Seedlings

With sufficient sunlight and water the plants grow rapidly, and as soon as there is the first sign of a flower, about 45 days after transplanting from tray to field [*see* page 81], the farmer snaps off the top bud and any side shoots to stimulate the leaf growth below. After another 15 days or so, harvesting can begin. This is not a single picking, but a process that can last a month from when the first leaf is picked, as, at intervals of several days, small numbers of leaves, no more than three or four at a time, are removed, working from the bottom up, leaving the smaller leaves at the top, the *ligero* – those closest to the sun, with the highest nicotine content and greatest amount of flavour – till last.

As they grow taller, reaching the height of a man, shade-grown plants require more pickings. Then, as the bullock carts burdened with piles of leaves secured under tarpaulins rumble slowly out of the fields, if the climate permits, a late crop is planted and the whole exhausting, back-breaking process begins again.

Cultivating sun-grown leaves for filler

The bullock carts bearing their precious cargo of flavoursome leaves do not have to travel far; their destination is the curing barn, hundreds of which punctuate the landscape. These used to be rudimentary thatched buildings with stamped-earth floors, and even now they tend towards simplicity: a tall, steeply pitched corrugated metal roof over crudely fashioned wooden walls.

The leaves are sorted according to plumpness and size, bound together and hung over poles that are hoisted into racks in the barn. As the leaves dry and the green begins to turn to an autumnal yellow-brown, they are moved higher up into the eaves of the barn while newer arrivals take their place on the lower rungs. Some leaves may stay here for six weeks until they are judged ready to continue their journey.

The sight of a curing barn is a memorable one. The visual image is of a church full of kippers that have been dip-dyed to achieve a perfect gradation of colour from green to brown, while the air is perfumed with the pungent aroma

Curing barn

of young tobacco. Air curing is a skilled business, with plenty of windows and shutters in the walls to guide the flow of air depending on the wind direction.

There is also the less bucolically romantic but rather more effective method of curing that I first encountered in Cuba around the turn of the century. Called the *calfrisa*, it creates a temperature-, ventilation- and humidity-controlled environment in which leaves can be cured predictably, more effectively and more rapidly than in a traditional barn, and given the expense and technical nature of the equipment, it is mostly used to prepare the valuable and delicate wrapper leaf. A crude analogy would be comparing the charm of cooking over an open fire with the convenience of using a fan-assisted oven.

From the curing barns, the tobacco is taken to the *escogida* (sorting house), where the leaves are sorted according to strength, and the *despalillo* (stripping house), where the thickest part of the central vein is removed.

Stripping

Sometimes a poorly made cigar is hard or impossible to draw upon; frequently such a 'plugged' cigar is the result of leaves that have been poorly stripped, allowing the remaining veins to harden until they resemble twigs and creating a blockage that no amount of energetic inhalation can overcome.

The *despalillo* is often just a simple brick building, characterised not so much by its architecture as by the biting tang of ammonia in the air and the tobacco piled in mounds on the floor, into which rapier-like thermometers are thrust. These thermometers are vital to controlling the fermentation procedure, and when the temperature at the core of the pile rises above 42 degrees, it is broken up and rebuilt in reverse.

In common with wine, a period of carefully managed fermentation is vital to achieving the character, consistency and flavour that the connoisseur expects; it may be an ugly term, but this part of the long journey from seed to ash is like a sauna in which the tobacco leaves sweat out impurities. It is during fermentation that the nicotine content is lowered.

Checking fermenting leaves

Again, due to its delicacy, wrapper leaf receives special treatment and is fermented just once, after which it is sorted, graded and then, after a period of resting, baled and allowed to age. The more robustly flavoured and textured sun-grown tobaccos are fermented twice, in the case of the lower and lighter-flavoured *volado* leaves; and thrice for the *seco* leaves from the middle of the plant and the *ligero*, with the final fermentation of the *ligero* and *medio tiempo* leaves (in Cuba, the two top and most powerful leaves of the tobacco plant) taking anything up to 90 days. Leaves from the upper part of the plant are thicker, burn more slowly, hold more flavour and require more fermentation.

'The top leaves are strong for two different reasons,' explains Davidoff's Henke Kelner. 'At the top of the plant they receive more sun, and there is more photosynthesis. Second, even though you have carried out the topping [removal of the flowers and buds] and harvested the other leaves the root is continuing to grow, so in the end you have a plant with just four leaves, with a big root, and all the nutrients go to those four leaves.'[1]

As they rest between fermentations, the leaves are repeatedly aired and moistened; it is the presence of water that catalyses the fermentation process, and if they are damp, the leaves are less likely to tear while being handled.

After their final fermentation, the filler leaves are baled in hessian and labelled to indicate year of baling, strength, size, type of leaf and the stripping and sorting house at which they were processed – all information that will be of use when it comes to blending the leaves to create

[1] Henke Kelner, interview with the author, June 2016

the specific character expected of the brand and size. They are then left to age, with the strongest leaves requiring the longest period of maturation: in Cuba, this is at least two years for *ligero* and *medio tiempo*.

* * *

I have visited a great many factories, manufacturing objects as diverse as watches and shotguns, but no matter what is being made, there is one characteristic that is shared by all good factory visits: if I depart with renewed respect for the product and come away wondering just how they manage to sell it so cheaply, then the day has not been wasted. Never mind how many cigar factories I visit, I am always left with this feeling.

Cigar rolling as it is practised at the highest level – i.e. the creation of hand-made long-filler cigars – has changed little since Byron's day. The air of a cigar factory does not echo to the clank of machinery, the clatter of the assembly line and the roar of the furnace. That does not mean that it is not noisy; for instance, when an important guest visits the *galera* (production floor) in which the *torcedores* (rollers) sit surrounded by their tools and piles of leaf, the workers will beat their *chavetas* (the distinctive handleless knife with the curved cutting edge) against their benches in a tattoo of welcome, and in some of the more traditional factories, rollers are read to as they work by a lector or reader: in the morning it is the newspaper, and in the afternoon a novel chosen by vote (whence perhaps the name Montecristo).

Arriving in their bales from the country, the leaves are unpacked and inspected. Wrapper leaves, which have not been

stripped of their stems, are moistened. In the old days in Cuba I have seen this done by a man in a string vest, his trousers tucked into rubber boots, directing a hosepipe at a handful of about four dozen leaves, after which he would theatrically shake off the excess moisture and move on to the next bunch. These days it is more likely that bundles of these precious caramel- and chocolate-coloured leaves will be hooked onto a rack and placed in a glass-walled moistening room, where they pass through a fine mist of water. They are then sent on to be stripped and graded by size and colour.

Bales of leaves being unpacked at the factory

Stripping and sorting

This task tends to be carried out by women, who sit like casino croupiers within a three-sided or horseshoe-shaped structure with piles of leaves on their laps.

The central stem is removed with a dexterous whip of the hand and the leaf, now in two halves, is placed among its fellows of differing sizes and gradations of colour fanned out around them. In the Dominican Republic, leaves are hand-fed into a machine with roughly the dimensions of an old-fashioned pedal-powered sewing machine, which removes the central stem.

Filler, meanwhile, is unpacked and allowed to rest before the *ligador* (blender) gets to work making up and

tasting the blend, and assigning each roller sufficient tobacco to make a day's production.

If the skill of the *ligador* resides in his brain and palate, that of the *torcedor* is in his fingertips. Using few tools – *chaveta*, guillotine, mould and pot of gum – the roller turns a handful of dead leaves into an exquisite instrument of pleasure. The leaves are arranged as they grow on the plant, with the stronger part of the leaf at the mouth (stalk) end, then folded like an accordion or made into little tubes (*entubado*) with the *ligero* at the centre. These tubed or concertinaed leaves are rolled into the binder, the first covering of the filler, and then placed in a mould and pressed for about an hour so that the shape holds while the wrapper is applied. Finally the head of the cigar, which will be clipped, is closed with a little cap of wrapper secured with a tiny dab of gum and just the tension of the wrapper leaf to hold everything in place. It is a miracle of manual dexterity that takes place numerous times throughout the day.

Rolling

Draw testing

The steps sound simple enough, but this is the crucial point in the construction process. Incorrectly stripped leaf can form blockages, as can overfilling, and then the cigar, however excellent the tobacco, is unsmokable. Underfilling is also a problem, and can be seen in the declivities on the side of the cigar. At its most extreme I have folded some cigars to almost 90 degrees, and these pockets of air lead to uneven burning once lit.

To combat these failings, draw machines are sometimes seen (and on occasion even used) in Cuba, and are almost universal in the better-resourced factories around the region. The bunch – i.e. the filler leaves, surrounded by binder – is removed from the mould and placed in a metal tube connected to a source of suction, and the amount of suction needed to draw air through is registered on a dial, on which the acceptable tolerances are marked. In Cuba, this

Ageing

has resulted in a noticeable reduction in problems with draw in recent years. Cigars are also measured to see that they are of the required length and ring gauge, and a representative sample is tasted in a small room lined with cubicles in which sit workers who job it is to assess and provide written ratings of the draw, the combustibility, the aroma, the flavour, the strength, the formation of the ash and the overall quality.

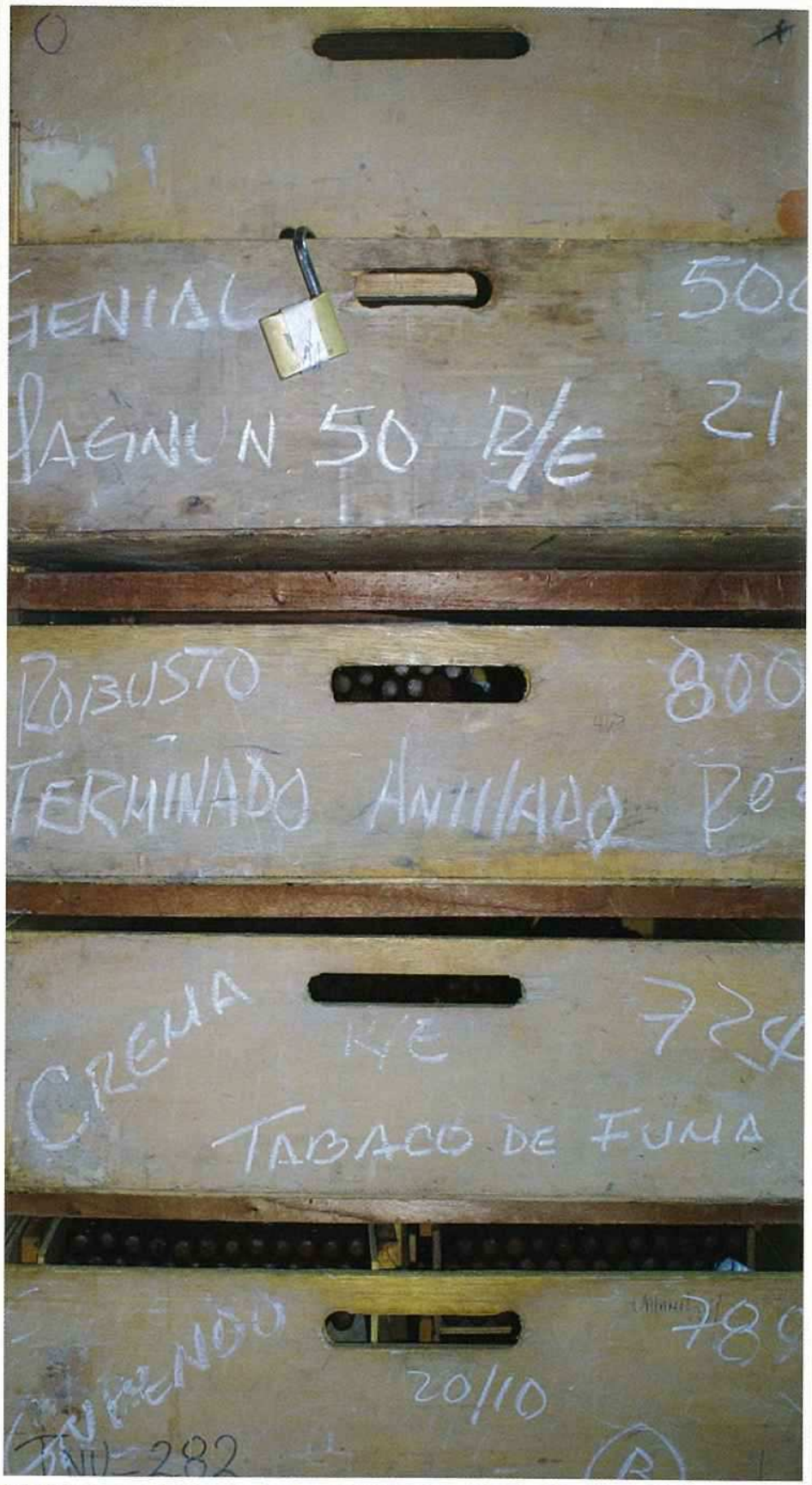
The cigars are then left to age. The champagne houses have their vast caverns hewn from the chalk subsoil; cognac houses have their historic *chaix*; and the great names of Burgundy and Bordeaux boast their atmospheric centuries-old cellars. Cigar factories have their *escaparates*: treasure rooms piled high with finished cigars stacked on cedar shelves and allowed to mature.

Having been introduced to each other on the roller's bench, the flavours of the different leaves take time to

Colour sorting

harmonise, and, kept between 16 and 18 degrees Celsius and at a controlled relative humidity of between 65 and 70 per cent, that is what now happens.

After a while, the cigars are roused from their slumber to be colour-graded, another fabulous piece of the theatre of cigar making. An *escogedor*, or sorter, stands at a vast table with hundreds of cigars in front of him; his job is to place them into similar colour groups, ranging from dark aubergine to honey. A second *escogedor* then arranges each group from dark to light and selects the face upon which the band should be read. The cigars are then banded and boxed, with the colour running from dark to light left to right, so that when the box is opened, the colour variations are almost imperceptible.


GENIAL
MAGNUN 50 R/E
ROBUSTO
TERMINADO ANILLADO
CREMA
TABACO DE FUMA
20/10

LEXICON

ACCORDION

[*See*: *BUNCHING*, page 74]

BANDS

I am rather nostalgic for the days when cabinet-quality cigars were shipped in bundles of 25 and 50, with the only clue to their identity being the yellow ribbon that bound them and the name of the marque hot-stamped onto the sliding lid of the

unvarnished cedar box. Back then, only the cigars in the colourful hinged lid boxes wore rings. Today, all Cuban cigars carry at least one ring, often more. And outside Cuba, bands tend to be even less restrained, increasingly colourful (or gaudy, depending on your view) and ever larger; the industry seems to be on a mission to cover the entire length of the cigar with a number of bands, until it resembles a polychromatic barber's pole. Some are brightly coloured, denoting the marque; others carry such useful information as the date of manufacture, the name of the cigar, the market for which it was made, the blend, the vintage, or indeed anything else that will provide an excuse to wind another little ring of paper around the glossy wrapper.

There is a theory that the cigar band was developed to stop gentlemen staining their gloves with the oils from the tobacco leaf. However, the accepted version is that it was a publicity stunt devised in 1850 by a German cigar merchant called Gustavo Bock who wanted to distinguish his cigars from others.

By the early twentieth century, whether you were an emperor, a king or a mere plutocrat, the personalised band was *le dernier cri*. Typically in Britain, a reaction against the trend decreed that it was infra dig in the extreme to leave the band on a cigar; however, in the last twenty years this has ceased to be of such importance, although the removal of bands is once more becoming a live issue as they cover ever more of the

cigar and need to be removed to actually smoke it. There is a risk that some of the glue that fastens the band to itself might become attached to the cigar, and that in removing the band, the wrapper will tear. The simple solution to this is to light the cigar and then, after a few minutes, once it has warmed up the glue, remove the band.

BLACK SHANK

A disease that rots the stalk of the tobacco plant, caused by the fungus *Phytophthora parasitica var. nicotianae*. Infection begins in the roots, often turning them as black as the rotted stem of the plant. It is easily spread by infected soil brought by machinery or the feet of workers and animals; and by excess water running off infected plants.

BLOOM

To the neophyte it looks unappealing, alarming even; however, to the aficionado this white deposit on the wrapper of an old cigar is a welcome sign that it has been aged correctly. It can be easily removed. British cigar expert Simon Chase has been known to keep a small brush about his person for this purpose, but I find that brief application of the silk Charvet *pochette* pulled from my outbreast pocket does the job equally effectively.

BLUE MOULD

Peronospora hyoscyami is a fungus that attacks tobacco plants during unusually wet, cold weather. It does not strike often, but when it takes hold the results can be devastating.

There was an outbreak of blue mould in Cuba in 1957, after which it disappeared for over 20 years. Then in 1979/1980 the disease wiped out almost all of Cuba's tobacco crop – Espino Morrero, a former director of Cuba's Tobacco Research Institute, puts the loss at 95 per cent. It returned to add to the country's woes during the early 1990s when Cuba was reeling after the surprise collapse of communism. There have also been serious outbreaks in Honduras and the Dominican Republic.

BN

Boite nature, a stouter, more upmarket take on the hinged-lid box; in plain cedar rather than plastered with colourful paper, with a clasp fastening and mitred corners and an inner

lip or 'collar'. The most elaborate ones approach humidor levels of finish.

BOX-PRESSED

Box-pressed cigars have straight sides and a square or rectangular cross-section. Originally this was a result of cigars being packed in a box that was slightly too small for them, the effect accentuated when the boxes were stacked on top of each other for shipping and storage. Today it is an increasingly popular and desirable final shape – for example, Davidoff's box-pressed Nicaraguan. These cigars are shaped by ruler-like wooden slats being placed between them; after pressure has been applied, the cigars are turned and the process is repeated, in effect using a straight-sided mould to finish them. This is known as trunk-pressing and delivers more angular sides than box-pressing, which tends to retain some slight curvature.

Davidoff Nicaraguan box-pressed Toros

BROADLEAF

A thick and, as the name suggests, broad-leafed tobacco; not the most refined of plants.

Rather than individual leaves being harvested and hung in the curing barn, the plant is hacked down as if it were a small tree and hung in its entirety.

BUNCHING

There is much debate about the way in which the filler leaves are prepared and packed into the body of the cigar. *Entubado* refers to the technique of rolling them into tubes and then bunching them together.

This is generally accepted as the most effective method. The aim is to ensure the best draw, and if performed by an expert roller, such as the fabled Hamlet – whom I serendipitously met when he worked at Havana's Romeo y Julieta factory, and who is now something of a rock-star roller with Rocky Patel – *entubado* will demonstrate spectacular results, with an even draw throughout the cigar. However, it is hard to perfect and demands more skill than the rival school of rolling, the accordion method, in which the leaves are pleated like a paper fan.

This method tends to be quicker, and while not as highly regarded by connoisseurs, it is more dependable in the hands of less talented rollers.

A third and inferior style of rolling is the book method, which as the name suggests, involves layering the filler leaves one on top of another and then folding the sides inwards like the pages of a book.

CABINET SELECTION

At the beginning of the twentieth century, large consignments of cigars were stored in elaborately finished cabinets, often the size of wardrobes or sideboards, each holding thousands of cigars, which were packed in bundles of 50 or 25 into boxes with sliding lids.

CAPA

Not to be confused with the cap of leaf that crowns the head of cigar, capa is the Spanish term for 'wrapper'.

CAPOTE

Not to be confused with the American author, or the Cuban artist, *capote* is the Spanish term for 'filler'.

CHAVETA

The flat semicircular blade used by cigar rollers.

CHURCHILL

The most famous cigar smoker ever to apply a match to the end of a tube of Vuelta Abajo tobacco, Britain's wartime leader kept up such a ferocious consumption of cigars that at the end of the war he was described by Lord Halifax, ambassador to the United States, as the cigar manufacturers' best customer in the Empire. Halifax said that the Prime Minister smoked three cigars each hour during the 18 hours a day that he was awake. 'What he doesn't smoke he eats,'[1] he added. Fifty-four cigars a day is some going, even for Churchill. But it must be noted that the two men had been rivals for the Prime Minister's job when Chamberlain had resigned,

[1] 'Halifax on the Churchill cigar', *New York Times*, 13 May 1945

and Halifax had advocated coming to terms with Nazi Germany in 1940, so perhaps he was not the most reliable or charitable commentator on Winston's tobacco intake.

Nevertheless his observations indicate the totemic power of Churchill's cigars. During the war, boxes of cigars donated by the Prime Minister had been among the most sought-after lots auctioned for the war effort, with one raising the then staggering sum of '$211 apiece'[2] (a total of $2,110 for a box of ten) to aid Russian relief when sold at Christie's in 1943.

Certainly Havana was not slow in realising the marketing potential of the British premier, and he was rapidly adopted as a mascot by the cigar industry. 'Cuban Town Honors Churchill' ran the headline in the *New York Times* on 7 November 1942. 'The Provincial Council of Pinar del Río Province voted today to make Winston Churchill an honorary citizen. The resolution pronounced the British Prime Minister "an eminent son" of Vuelto Abajo,

[2] 'Churchill's cigars', *New York Times*, 17 October 1943

the region that grows the tobacco used in his famous cigars.'[3] Ironically, it took the City of London until the following year to bestow a similar honour.

His heroic contribution to cigar smoking is of course celebrated with an eponymous cigar, the Churchill, which before he took it on had been named the Clemenceau, after the cigar-loving French politician who led France to victory in the Great War and hosted the peace negotiations. But by the 1950s, 'brand' Churchill was clearly stronger than 'brand' Clemenceau, and following his visit to Cuba in February 1946, Romeo y Julieta launched the Churchill. However the size was still sometimes referred to as the Clemenceau until the 1980s.

Intriguingly an excellent little book called *Churchill's Cigar* dates the appearance of the first Churchill-banded cigar back to 1941, when New Yorker Sam Kaplan asked Lord Halifax to get a box of Havanas to Churchill that had been made especially for him and which carried his name. As regards the Romeo y Julieta story, the book's author, Stephen McGinty, has some doubt about whether Churchill even visited the factory during his trip to the island the year after the war.

Although there is some evidence that he paid a visit to the Romeo y Julieta factory, it is far from convincing. There is no listing or mention in contemporary press reports, yet there is a surviving eyewitness who insisted it took place. Jorge was a young roller of fourteen when, as he asserts, Churchill visited the plant. As Jorge rolled

[3] 'Cuban Town Honors Churchill', *New York Times*, 7 November 1942

A selection of today's Romeo y Julieta Churchills

the longest cigars (those favoured by Winston) he was introduced to him, along with a group of other rollers. 'I could see him, but I was not so close.' A second point to support his recollection is that, following the visit, Romeo y Julieta became the first cigar company to brand this large cigar as 'Churchill's'.

However, 'Doubts over whether Churchill's visit to the factory ever took place grow when it is considered that there are no pictures of what would have been a considerable publicity coup. Perhaps Churchill forbade it, we do not know.'

When it comes to cigars and Churchill, fact and fiction are not always easy to separate. One particularly tall tale, alas apocryphal, is the claim by Gregorio Fuentes – 'the Cuban fisherman who, as captain of the *Pilar*, Ernest Hemingway's boat, became the inspiration for *The Old Man and the Sea* – to have hosted a cigar-smoking competition between Churchill and Hemingway'.[4] This is surely one of the greatest sporting

[4] Stephen McGinty, *Churchill's Cigar* (Macmillan, 2014), pp.138–9

contests that never was, but apparently Hemingway was not even in Cuba when Churchill visited in 1946.

According to McGinty, for many years Churchill was sent cigars by a Cuban brewer called Giraudier, who had befriended the former Prime Minister on his 1946 visit and allowed him the use of his private beach.

> *He began by sending, three times each year, a batch of 500 'Larrañaga' cigars, which Churchill had told him were unavailable in Britain. A cheque for £60 followed via the British Legation to cover duty charges. The ten packs of fifty cigars would arrive with the seasons in October, January and April, and when asked if the* vitola *was to his taste, Churchill replied: 'You wish to know if I like this brand. I do not think they could be bettered.' He thanked Giraudier for paying the duty, explaining that while he had the finances, he was unable to access the dollars due to restrictions in the currency exchange. He signed off: 'I wish I could spend a week of bathing on your beautiful beach.'*[5]

And while the regime change at the end of the 1950s did not favour businessmen such as Giraudier, Fidel Castro wanted to keep up the tradition and sent Sir Winston a box of cigars. To Churchill's chagrin, the British ambassador said it could not be accepted on account of Castro being a revolutionary with 'blood on his hands'.[6]

Even in the early twenty-first century, having made

[5] Ibid., p.145

[6] Ibid., p.163

cigars for Sir Winston was still a proud boast. During the early years of the century I met a sun-wizened septuagenarian called Rodolfo Leiva. Hot Rod, as he was known to his friends, was an infant prodigy who started rolling cigars at the age of 11, long before the revolution. He told me that at 15 years old he had rolled cigars for Sir Winston.

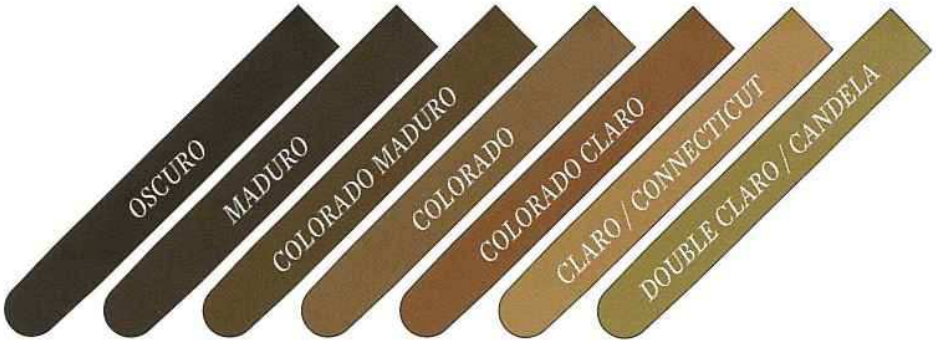
By the time I met him, his speciality was the *peludo*, or 'shaggy', a long Torpedo with an uncut end, for which he had gained quite a fan base. Sold unbanded, these cigars became legendary. Although it was generally illegal for US citizens to visit Cuba in those days, it was not unknown for American plutocrats to sail in on their yachts to visit Hot Rod and stock up on shaggies. Churchill would have approved, just as his family approved the use of the Winston Churchill name by Davidoff for a range of cigars using tobacco from Nicaragua, Mexico, Ecuador and the Dominican Republic.

CIBAO VALLEY

The tobacco-growing lands of the Dominican Republic.

COLOUR

One of my favourite things when visiting a cigar factory is seeing the *escogedores* (colour graders) at work. There are five principal colour groups, ranging from the pale caramel of Claro, via Colorado Claro, Colorado and Colorado Maduro to the almost black Oscuro. Within these five groups there are at least 60 recognised shades.



Wrapper-leaf colours, like so much else in life, are subject to fashion. In America during the 1950s and 1960s there was a trend for Candela wrappers, which were very pale and had a green tint to them that was achieved by careful heating in the curing barn to fix the chlorophyll.

By contrast today there is a marked trend to Maduro wrappers, which have a less glossy and elegant appearance. But visual appeal aside, dark Maduro wrappers make a definite contribution to the taste, imparting a sweetness or eucalyptus-like flavour. My personal inclination is towards Claro or Colorado Claro, with the sheen of the tobacco leaves' natural oils.

CONDEGA

Along with Jalapa and Estelí, one of the three most prominent growing regions of Nicaragua.

CUBA

The *locus classicus* of the cigar, occupying the same cultural position that France does among wine-making countries, Cuba remains the producing nation against which all others are judged; which is not the same as saying that all the cigars it makes are *ipso facto* better than those of other countries.

That said, the sheer variety of flavours and aromas that can be coaxed from Cuban leaf means that if I only had Cuban cigars to enjoy for the rest of what I hope will be a long life, I would not have too much to complain about.

CUTTER

Almost everyone has their own way of cutting a cigar, but Edward Sahakian of Davidoff of London has the best advice, given to him by Zino Davidoff himself: 'Zino used to tell me that if properly cut, the area of tobacco exposed at the head of the cigar should be the same or almost the same as the open end at the foot.'[7]

Of course such advice only works on a *Parejo* (straight-sided cigar). Each *Figurado* (shaped or pointed cigar) will differ, but around 4 mm from the point is a good place to start. With all cigars, try not to cut below the cap otherwise the wrapper will unravel.

Increasing ring gauges require ever-sharper guillotines with ever-bigger apertures, and the arrival of supersize cigars has led to the popularity of double-bladed guillotines that slice through the tobacco more readily and deliver a

[7] Edward Sahakian, interview with the author, April 2016

more even cut. The trouble with using the traditional single-blade guillotine on a larger ring gauge is that if there is the slightest hint of dullness, the blade will crush and mangle rather than cut (impairing enjoyment and in very extreme cases destroying the cigar, damaging the wrapper, crushing airways and so on).

So-called 'V' cutters that take a notch out of the end of the cigar were considered out of date until Xikar released a new-style one, sparking a mini revival. The advantage claimed for the V cut is that it is unlikely to remove the cap of the cigar, whereas the wrapper of an injudiciously guillotined cigar can, as previously mentioned, unravel.

Needle-like cigar piercers are perfectly all right to collect and admire as antiques but are generally held to be irrelevant in today's cigarscape.

DATE CODES

Since 1985, boxes of Havana cigars have been stamped with the date of manufacture. On boxes made during the twenty-first century, the code has been simple: three-letter abbreviations of the month in Spanish:

ENE	*FEB*	*MAR*
Enero/January	Febrero/February	Marzo/March
ABR	*MAY*	*JUN*
Abril/April	Mayo/May	Junio/June
JUL	*AGO*	*SEP*
Julio/July	Agosto/August	Septiembre/September
OCT	*NOV*	*DIC*
Octubre/October	Noviembre/November	Diciembre/December

These three letters are followed by two digits identifying the year; 'ENE 17', for example, indicates that the box in question was manufactured in January 2017.

However, before the twenty-first century, the date of manufacture of a box of cigars appeared to be regarded as a low-to-mid-level state secret and was indicated in code on the bottom of the box. Initially it was a simple substitution of the letters NIVELACUSO for the numbers 1234567890 ('nivel acuso' is an obscure shipping term roughly meaning 'changing level' so chosen because it has 10 letters). Thus a box stamped USA (897) indicates a date of August 1997, while NOUL (1085) indicates a date of October 1985.

At first I do not remember people being that interested in this code, but when the cigar boom of the mid-1990s took off, people thought themselves frightfully clever for being able to turn a box over and confidently read off the date of manufacture. However, these amateur cryptographers were in for a shock from 1998, when a new code word, CODIGUNETA, was introduced and the numbers were switched around too, to 9876501234; thus a box made in January 1999 would be stamped UNCC.

Of course, cigar lovers of a Bletchley Park disposition, among them London cigar merchant and auctioneer Mitchell Orchant, soon cracked it, and in May 1999, the Cuban cigar industry fired up its Enigma machine and came up with a new system. From May to December 1999 the date codes were:

EP00	*ES00*	*EU00*	*EA00*
May	June	July	August
E000	*LE00*	*LL00*	*LR00*
September	October	November	December

And then, having played codemaker to the cigar smoker's codebreaker, the Cuban cigar industry did one of those predictably unpredictable things that make the world of the Havana cigar so engrossing and dispensed with codes altogether, simply marking each box with the abbreviations of month and year that has simplified the business of laying down boxes for ageing.

EDICIÓN LIMITADA

[*See*: *LIMITED EDITIONS*, page 94]

EDICIÓN REGIONAL

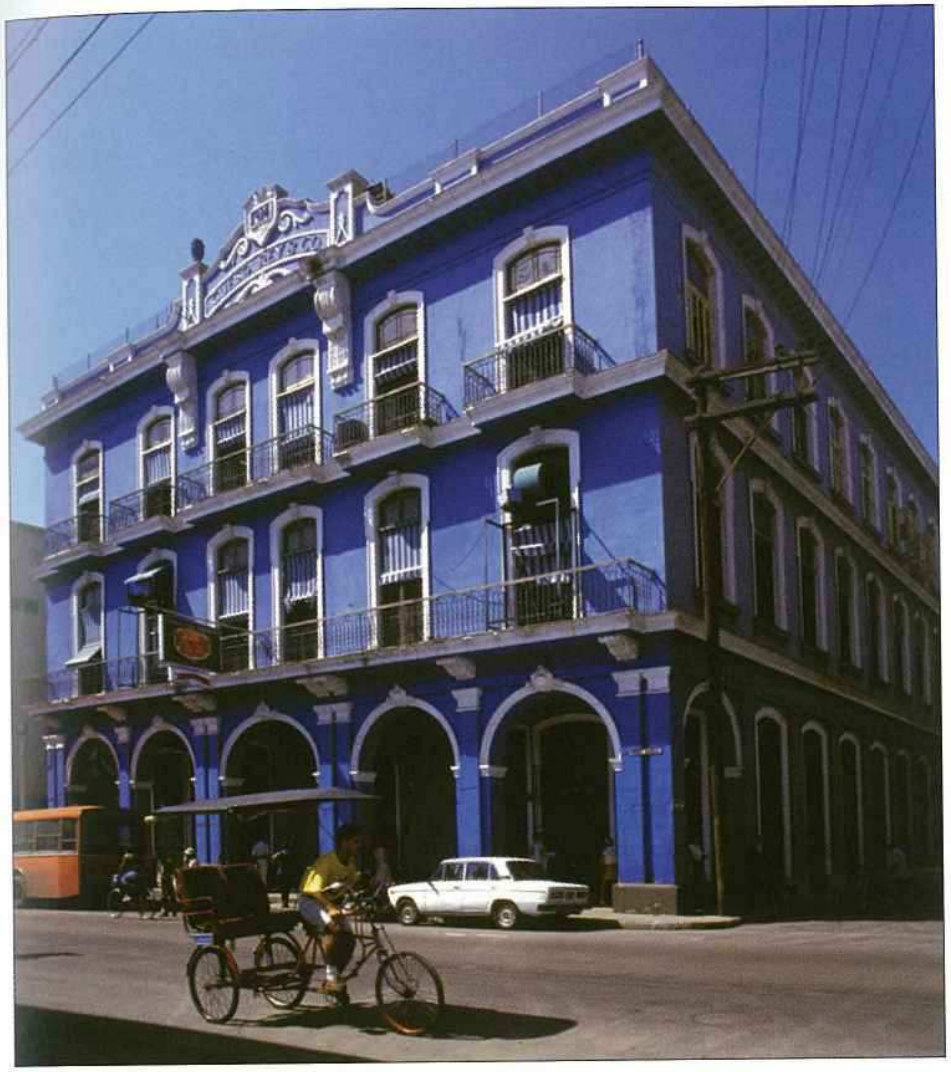
[*See*: *REGIONAL EDITIONS*, page 109]

ENTUBADO

[*See*: *BUNCHING*, page 74]

FACTORY CODES

As the Cuban economy is centralised and all the brands are the property of the state, no one factory produces a single marque. So while a cigar may have a home – Cohiba at El Laguito and so on – production for additional cigars is assigned to factories with spare capacity.



The Romeo y Julieta factory, now the home of the H. Upmann factory

The manufacturing process of Havana cigars is labyrinthine, and I suppose that in the spirit of a socialist centralised economy in which all factories were created equal, it makes no difference which factories manufacture which cigars. Instead production is distributed across the factories in Havana and beyond, with the blend being centrally determined and supplied. However, in practice some factories have proved more equal than others and, especially during the cigar boom of the 1990s, seasoned smokers scrutinised the base of boxes for the letters denoting the name of the factory.

Although the factories are known colloquially by their pre-revolutionary names (Partagás, El Rey del Mundo, etc.), the letters stamped on the boxes often refer to the heroes of the revolution after whom they were renamed following the ousting of Batista.

After the revolution, the Romeo y Julieta factory was named Briones Montoto (BM); Partagás was christened Francisco Pérez Germán (FPG); the Heroes of Moncada (HM) had José Piedra named in their honour; El Rey del Mundo became Carlos Balino (CB); Miguel Fernández Roig (FR) gave his name to La Corona; and José Martí (JM), the arch Cuban patriot, had his name assigned to the old H. Upmann factory.

This information was rapidly decoded by cigar lovers, who identified certain star factories and eschewed others. This approach was particularly relevant during the late 1990s, when demand soared and production in Cuba, beset with shortages and difficulties, was uneven. In order to discourage this tendency, between 1998 and 2003 factory codes were changed three times.

The current system, in place since 2003, is widely described as largely unbreakable, with each factory assigned a three-letter code that can be changed as frequently as once a month, creating a level of encryption that has so far frustrated any effort at wholesale decoding. Moreover, since demand has eased and quality improved, factory identification has proved less necessary than before.

FIGURADO

[*See*: *TORPEDO*, page 147]

HABANOS S.A.

The Havana-based commercial entity that distributes Cuban cigars worldwide.

HUNTERS & FRANKAU

When I first got to know Hunters & Frankau, the UK importer of Havana cigars, the company was just 200 years old, and Nick Freeman was chairman. Now his daughter Jemma runs the firm and in 2015 it celebrated its 225th anniversary with the Ramón Allones Hunters & Frankau Aniversario 225. This 50 ring gauge, 5½ in/140 mm *cabeza tumbada* (dropped-head, or sloping-shouldered cigar that lacks the defined point of a Pirámide) references just one of the fascinating episodes in the firm's history, when between 1911 and 1927, as John Hunter, Morris & Elkan Ltd, it owned Ramón Allones, which made a similar-looking cigar called the Petit Nacional.

At around the time that Hunters sold Ramon Allónes (to Alonso Menendez), the rival firm of Frankau, owned by D. G. Freeman, Jemma's great-grandfather, acquired H. Upmann. By the end of the war, the Freeman family controlled one of the largest cigar businesses in what was still the British Empire, and in 1947 it was bought by Gallaher.

There the story might have ended had not Robert Freeman, known as 'The Colonel', decided to leave the board of Gallaher in 1952 and buy back the name of J. Frankau, to which he added the venerable firm of Hunters. Once restrictions on the importation of Cuban cigars were lifted in 1953, the company specialised in the importation and distribution of fine Havanas, a tradition that has continued to this day.

KELNER TASTING SYSTEM

Davidoff's Hendrik 'Henke' Kelner has consecrated his life to analysing and understanding tobacco, and this enlightenment has resulted in the concept of total palate stimulation that is today the Davidoff leitmotif. The way Henke demonstrates this is to make three cigars – except technically they are not cigars; rather cylinders of tobacco – out of the three classic tobaccos cultivated in the Dominican Republic – Olor, San Vicente and Piloto Cubano – and then offer them to his audience to smoke one at a time.

The first is the Olor, which stimulates the front of the tongue with sweet and then salty flavours. Next is the San Vicente; this, says Henke, is the equivalent of the lemon juice we might add to simple grilled fish and is sensed at the side of the tongue, stimulating saliva. The Piloto Cubano delivers what Kelner refers to as a linear flavour that goes from the front to the back of the tongue, a characteristic of Cuban cigars. Finally he presents his audience with a cigar made from all three of the tobaccos that they have tasted separately, to see how they combine to illustrate his goal of total palate stimulation.

'Our philosophy, is that the cigar is a friend. And what do you expect from a good friend?' he asks rhetorically. 'To be loyal, balanced, and a pleasure to spend time with. This is a good friend. What you appreciate most in a friend is a consistent friend, always the same friend, no surprises. This is just as important with a cigar. You need to build a relationship with cigars, and every day, every week, every month, every year, you need to maintain the same type of stimulation,

for a consistent cigar is a consistent friend.'[8] Anyone, he says, can make a good cigar; the difficult thing is to make a consistently good cigar, and it begins with the leaf.

The way he describes it, cigar making is a cross between assembling a jigsaw puzzle, and a kaleidoscope in which the pieces are constantly changing: seed, soil, climate and position of the leaf on the plant are just four of the key variables.

> *When you combine the soil with a seed, that gives the typical type of stimulation. A particular seed in a particular soil has the genetic capacity to assimilate different nutrients, in different proportions, given the composition of the soil. The level and strength of that assimilation depends on the position of the leaf on the plant, and of course the weather. In the dry season the flavour is stronger. But in the rainy season, when you have less sun and more water, you have less photosynthesis, and more dilution of the nutrients when they are assimilated by the plant. Factor number five, the agricultural practice, can modify everything. For this reason we try to maintain the same type of agricultural practice; for example, how mazny plants per acre you're planting. If you're planting more, you will have smaller plants with the same nutrients.*[9]

To listen to Henke for any length of time is to have the mind opened to the near-limitless flavour possibilities and combinations that can be conjured from the tobacco leaf.

[8] Henrik Kelner, interview with the author, June 2016

[9] Ibid.

LA CORONA FACTORY

The old factory dated from the turn of the century and was reputedly the first metal-framed building to be built in Havana. I have a fondness for it because it was where, in the mid-1990s, I met Taboada, a legendary roller who used to make bundles of 50 Salomones that were among the finest cigars I ever enjoyed.

Alas the factory closed some years ago and Taboada is no longer among the living. Today La Corona is housed in a mid-twentieth-century building in Havana's Vedado district.

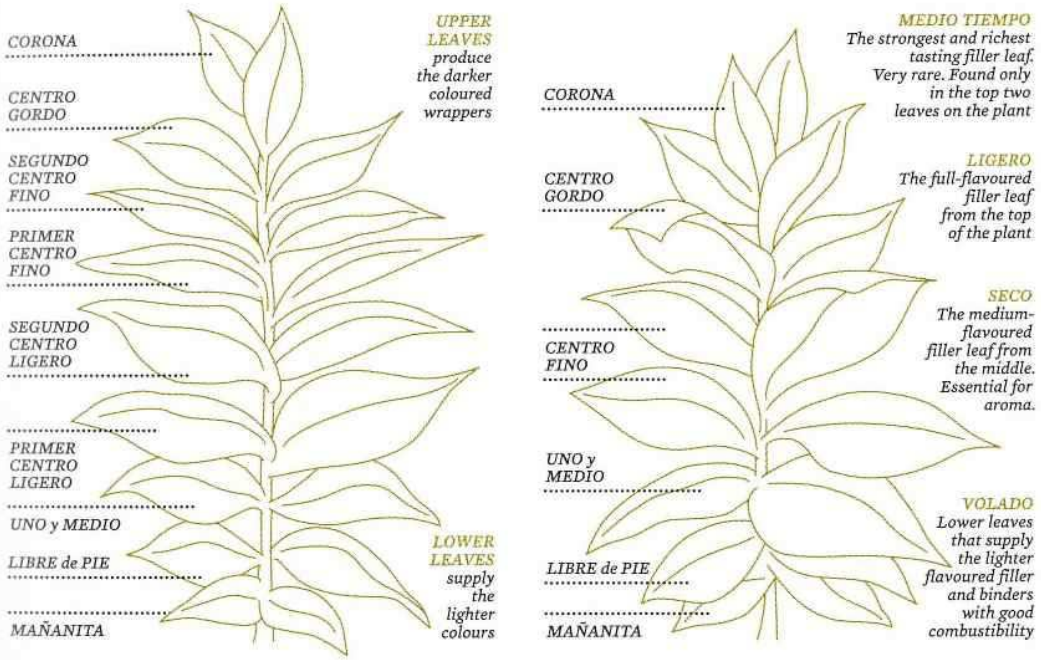
LEAF

Until a few years ago I was only aware of three classifications of filler leaf. In ascending order of strength these are: *volado*, from the bottom, for combustibility; *seco*, from the

middle, for aroma and some of the flavour; and further up the plant, the slower-burning *ligero*, which imparts strength and accounts for the steeple of ash that forms at the end of a lit cigar after the first ash has fallen.

Then, when the Cohiba Behike appeared, the world discovered (or rediscovered) a fourth leaf, *medio tiempo*, which comes from the very top of the sun-grown tobacco plant and was once used only in cigars destined for domestic consumption. But tastes have changed and what was once regarded as too powerful for export is, when properly treated and expertly blended, like the seasoning that raises a dish from tasty to exquisite. There are just two *medio tiempo* leaves per plant and they cannot be relied upon to appear every year. It is this secret ingredient that accounts for the rich, nuanced and surprisingly subtle flavour of the Cohiba Behike.

LEAF CLASSIFICATIONS



SHADE-GROWN (TAPADO)
for wrapper leaves

SUN-GROWN
for filler leaves and binders

Meanwhile outside Cuba, the more experimental farmers and makers have added a further classification, *visos*, that describes the four leaves between *seco* and *ligero*, the logic being that on a 16-leaf plant, the difference in flavour between the fifth and twelfth leaves is too great to be described by one category.

LIGADOR

Master blender.

LIGERO

[*See*: *LEAF*, page 92]

LIMITED EDITIONS

The twenty-first-century obsession with exclusivity is a marketing man's dream: to feel unique and special is the goal, and the limited edition is one of the tools for achieving it. Thus the cigars known in Havana as Edición Limitada have become an eagerly anticipated annual event. Of course, Cuba being Cuba, part of the entertainment resides in seeing whether the cigars actually arrive in the market within the year stated on their band. Edición Limitada cigars are characterised by dark, almost Maduro-coloured wrappers. The idea is to present a familiar brand in an unfamiliar *vitola* (size and shape) currently not in the brand line-up.

Since the programme's introduction in 2000, limited editions have become incredibly popular and have accounted for some truly outstanding cigars, including the best cigar of

the century thus far, the Cohiba Sublime [*above*]. However, as Simon Chase, British cigar expert and director of Havana cigar importers Hunters & Frankau explains, had it not been for a scarcity of wrappers for larger cigars at the beginning of the century, Havanaphiles would have been denied this annual excitement. Happily, necessity took on its traditional role as the parent of ingenuity, and the rest, as they say, was fragrant blue smoke and silvery ash.

'They were looking at anything,' recalls Chase, 'and discovered a load of leaf for wrappers taken from the top of the plant for domestic production. When I arrived in June of 2000 they showed me a box of these dark-wrappered creatures. They were having this huge debate as to whether they would release them and I explained that there are a lot of people who like a dark cigar in a richer blend.'[10]

At first the limited edition programme was agreeably haphazard. The debut batch appeared in November 2000, and their black and gold band only carried the words Edición Limitada, without any indication of a year. The limited edition cigars of 2001 did carry the year on their band but did not appear until halfway through 2002.

[10] Simon Chase, interview with the author, April 2016

Thereafter things settled down, as much as they can where Cuba is concerned, and after an uncertain start the cigars are now a cherished part of the cigar calendar. Particularly popular editions, such as H. Upmann Magnum 50 and Cohiba Pirámides, have been known to enter standard production at a later date.

At their launch, it was announced that Edición Limitada cigars would be clothed in wrappers that were a minimum of two years old, and in 2007 this age threshold was extended to cover all tobacco in the cigar.

[*See*: *APPENDIX A*, page 229,
for a detailed list of limited editions]

MATURATION

Ageing is one of the most fascinating and least understood aspects of the cigar. A cigar is more than just a smoke, as Kipling would have us believe; it is an ongoing biochemical process. As a natural product, it is changing all the time, and these changes can be exacerbated by external environmental

Davidoff Chateau Yquem

factors: heat, cold, moisture, dryness, etc. It is constantly altering in character, taste and strength, and it is this mutability that makes cigars so absorbing.

Recent years have seen cigars being released and smoked too young (at least in my opinion); this in turn has shaped tastes among some cigar smokers for the harsher, less harmonious flavours of youth. The telltale whiff of ammonia from a freshly opened box of cigars is a sure indicator that more time is required, and that if cut and lit the flavours are likely to be astringent and unbalanced – but if that is what your palate is used to, then that might be exactly what you are after. I regard it as infanticide.

For the real cigar snob there is nothing like an aged Havana cigar, preferably a Davidoff from the 1980s, or a Dunhill Cabinetta, a desirability reflected in the fact that prices for these and other rare cigars are only getting higher. Many vintage Davidoffs still taste exquisite, and continue to develop. Some aficionados swear that many pre-revolutionary cigars still show signs of life and can be enjoyed;

Dunhill Don Candido 506

in my limited experience, that pulse is sometimes faint and vital signs are hard to detect, as much of the flavour and strength has departed over the decades. However, if the cigar was good to begin with and has been impeccably maintained over generations (two very big ifs), the results can be stunning. Think of it like chasing ghosts of flavours across your palate and savouring aromas of a rare refinement and delicacy.

Anything dating back to before the 1940s will give an insight into the style of cigars before even the Criollo and Corojo were introduced. But the flavour and aroma are so time-tempered as to be fragile and evanescent, and of course there is a psychological effect to be considered. One respected cigar collector explained to me how he had observed that when he handed an old or rare cigar to friends, they held and smoked it differently. These are mainly bought by collectors who feel that they are acquiring a piece of history, who find the quality of the design and lithography appealing and who appreciate the exquisite care and ingenuity with which these cigars were packaged, but who aren't necessarily planning to set fire to them.

The concept of ageing cigars is not a new one but it is gaining in popularity. Obviously, given that cigars are an agricultural product with many of the same attendant snobberies and gastronomic pretensions, it is natural to draw parallels with the ageing of fine wine. The primary function of laying down wine was, at first, to make it drinkable. As vinification techniques improved, ageing in the bottle was not an absolute necessity but nonetheless improved the contents.

I no longer drink, but from what I can recall, the ageing of wine is a fairly well-documented business: after

a certain number of years the wine reaches a peak from which it gradually descends. In my experience, the ageing of cigars is not quite so predictable. Instead of progressing through an arc, it reminds me more of the pattern of waves moving across the screen of an oscilloscope, and where one catches the cigar on its undulating journey through time has a profound effect on the flavour and strength.

Sometimes a cigar when first tasted comes across as docile and mild, only to present completely differently a few years later. That happened to me with a batch of cigars rolled for the twenty-fifth anniversary of the Davidoff shop in London in 2005, which were initially mild with a crisp edge. I came across one six years later and lit it to discover a completely different cigar altogether, lively to the point of being almost combative.

Ageing of leaf is completely different to ageing in the box, and there are plenty of opportunities to taste mature leaves rolled into cigars. Since 2007, Edición Limitadas [*see*: *LIMITED EDITIONS*, page 94] have been made with tobacco that has been aged in bales for a minimum of two years. Reservas, launched in Cuba in 2003, are made with tobacco that has been aged in bales for a minimum of three years. Grand Reservas, which first appeared in 2009, are made with tobacco with a minimum of five years' bale age.

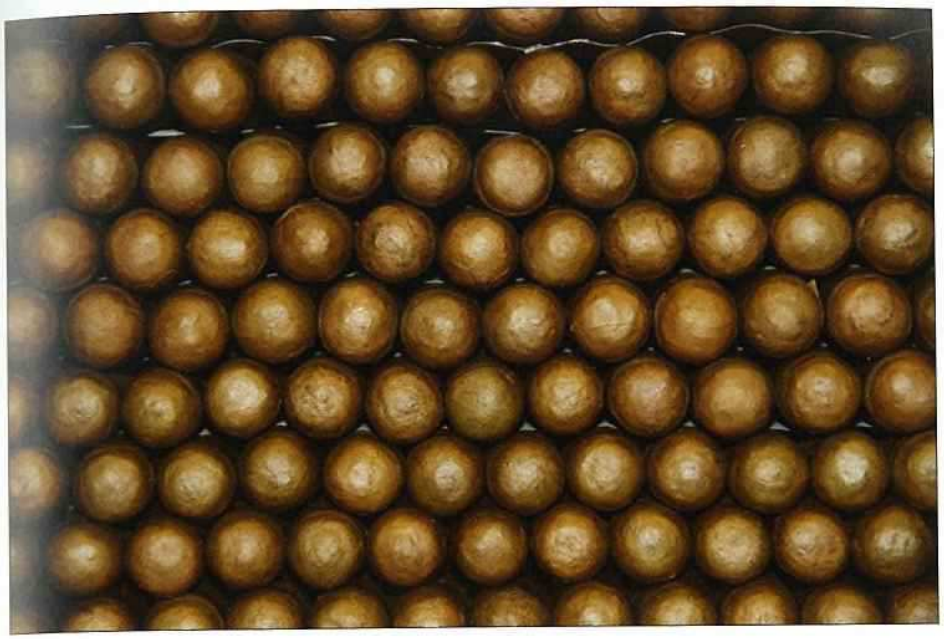
And of course boxes are date-stamped, giving a vintage of sorts. However, this is not to be confused with the vintage that appears on a bottle of wine. The latter indicates the year in which the grapes in a certain vineyard were harvested, while by its nature a cigar is a skilful blend of different tobaccos from different farms, different districts and, in the case of many non-Havanas, different countries,

which fulfil different purposes and take different lengths of time to reach their usefulness, making it harder to assign a vintage to a box of cigars in the way in which winemakers do.

However, the year and even the month in which the cigars are made can give vital clues if one has the knowledge [*see*: *DATE CODES*, page 84 and *STAMPS, SEALS & STICKERS*, page 137]. For instance, at around the turn of the century, wrappers on Cuban cigars were especially fine and delicate, with a tendency towards unravelling or splitting once the cigar was cut; this could be due to the use at the time of the Habano 2000 seed, which while high-yielding produced thinner wrappers.

Moreover, given that the quality and abundance of tobacco changes from year to year, blends that are intended to remain identical and true to the expectation of the smoker can never be entirely consistent. However, the maintenance of a large and carefully documented inventory of tobacco built up over many years, such as that held at Davidoff's facilities in the Dominican Republic, gives the blender greater scope for creating consistent cigars.

Ageing begins as the cigar is being rolled. Upon arrival at the factory, the leaves are moistened to make them pliable, and although this is a gentle misting rather than a total drenching, they still retain some of the moisture that triggers a small fermentation – not as powerful as those undergone at the sorting and stripping houses, but enough to require the cigars to be rested in the dark and cool of the *escaparate*. The *escaparate* is to a cigar factory what a vault is to a bank. To walk as I have done many times around the *escaparates* of Havana's legendary factories, seeing the oily wrappers glinting jewel-like in the penumbral light and



Cigars ageing in Davidoff's Dominican Republic escaparate

savouring the aroma that fills and thickens the air, is one of the great experiences that life has to offer. However, it is not always such a pleasure: at the height of the cigar boom, I recall visiting an *escaparate* in the Dominican Republic that smelt so chokingly strongly of ammonia that my eyes watered and I had to make my excuses and go outside to take some air.

Once the *escaparate* has worked its magic, the cigars are banded and boxed. It is at this time that they enter the 'sick' period (the name given to the time during which a cigar should not be smoked because the individual flavours of the tobacco are melding); there may even be lingering traces of ammonia, created by the final fermentation. Smoking a young and newly landed cigar can result in a mouthful of harsh, acidic, jagged and unformed flavour. Tasting it at this time is only of academic interest, as the experienced palate can usually detect whether the cigar has the potential and structure to age well; cigars during this period display the

characteristics of tannin associated with young Bordeaux and the acidity of the *vins clairs* of Champagne. At this stage the best you can do with a box of young cigars is to leave it with your cigar merchant, or put it in your cellar, as the dark, dampish, ventilated conditions and relatively stable temperature will suit them.

This is not to say that fresh cigars cannot be smoked quite happily, especially in their birthplace. I have often smoked cigars straight from the roller's bench in Cuba and the Dominican Republic. The tropics are blessed with a climate and humidity that makes them ideal not just for cultivating tobacco but for storing the finished product. Cuba is like one giant humidor; cigars can be left in the open without fear of them drying out, and the free circulation of air along with the heat can be counted upon to get rid of disagreeable ammonia smells.

After time, the nicotine level will decrease and the harsher, more bitter flavours abate. However, it is often these

Ramon Allónes Coronas de Lujo

bitter, tannic tastes that indicate the structure of the cigar; regard them as the skeleton on which the other flavours hang. Let them dissipate too much and the character of the cigar will begin to fade away. As always, the right time to enjoy an aged cigar (provided it has been looked after properly throughout its journey to maturity) is a matter of personal taste.

There are many variables beyond environmental conditions that influence ageing. The format of the cigar is an obvious one: the larger the cigar, the longer it takes for the various tobaccos to interact and the chemical processes to weld their different characters into one harmonious whole (similar to the way in which wine matures more slowly in magnums than in 75cl bottles). Size also brings into play the difference in proportion between wrapper and filler. Packaging too plays its part: the contents of a hinged-lid box matures more rapidly than a cabinet bundle of 25, which in turn matures more rapidly than a half-wheel of 50 cigars, while tubes or ceramic and glass jars mature entirely differently as they tend to be airtight.

As a rule of thumb so vague that it is really more of a subjective and empirical hunch, a mild cigar such as an H. Upmann or a Rey del Mundo will benefit from up to five years of ageing; a medium-strength cigar such as a Romeo or a Montecristo will benefit from up to 10 years of ageing; and the larger, more complex and fuller-flavoured cigars such as Bolívar, and particularly Partagás, as well as Cohiba, can take over a decade to reach their full potential. But even a couple of years will yield tangible results.

After they have reached their peak, different cigars will behave in different often unexpected ways, which is

where the oscilloscopic simile comes in. In general, stronger cigars with more pronounced characteristics have a good core of flavour and are sufficiently robust to warrant long-term ageing.

Oriental cigar author Min Ron Nee, whose *Illustrated Encyclopedia of Post-Revolution Havana Cigars* is essential if not particularly portable reading, has defined these stages further, calling them the second and third maturation periods, and has developed a scientific theory based on discussions with wine and whisky experts.

What Nee describes as the second maturation is, he says, 'the result of degradation of tannin and the interaction of its end products with the flavours generated by fermentation. All young cigars have a "tannic" taste, to a different degree. An excessive tannic taste is "dry" on the mouth, "green" and "harsh". It is believed to be, as its name suggests, the taste of tannin, a natural ingredient of plant structures. It can only be tasted by the tongue, as experiments have shown that the nose or the pharynx is incapable of "smelling" the tannic taste.'

His observations about the structure and behaviour of tannins are fascinating.

> *The chemical structure of tannin is long chained phenol polymers (in chemistry, a polymer is a long chain of similar organic molecules). They will break down with age into shorter chains or even single molecular phenol.*
>
> *Of phenol molecules in plants, most are called non-aromatic phenol, the simplest form of phenol molecule. The burning of this type of phenol with oxygen*

results in the familiar 'tobacco taste', the aroma which you smell when burning a wood fire.

Some are called aromatic phenols, if the simple phenol ring has an attached organic side chain (the chemical structure of phenol is a hexagonal ring). When these aromatic phenol polymers break down into much shorter chains or even single molecules, they are believed to account for the taste of toasted *tobacco. This is the most pleasant form of tobacco taste. As the name suggests, it smells of toasted bread.*

As time goes by, when tannin breaks down into simpler molecules, these molecules react with other chemicals to form more organic molecules. As a result a lot of different pleasant flavours are generated in addition. ***And it is at this point in the cigar's development that it may behave in a way that is 'uncharacteristic' of the blend as it is generally experienced in cigars that have yet to achieve great age*** [author's bold] *(which the majority do not).*

The smooth aromatic woody flavours are believed to be aromatic simple polymers of aromatic phenols, or aromatic compounds generated by the chemical reaction of the simple polymers with other organic substances.

Of particular interest is the 'woody sweetness' (actually wood sugars) formed by degradation of tannin. These wood sugars continue to replenish the loss of sweetness generated by the fermentation process, and they have a different taste.[11]

[11] Min Ron Nee, *An Illustrated Encyclopaedia of Post-Revolution Havana Cigars* (Interpro Business Corp, Hong Kong, 2003), pp 8–9

MEDIA RUEDA

Literally 'half-wheel' – a bundle of 50 cigars. Alas, in 2016 the Cuban cigar industry announced that it would no longer be selling cabinets of 50 cigars.

MEDIO TIEMPO

[*See*: *LEAF*, page 92]

MOULDS

Before the cigar is clothed in the wrapper, it is placed in a mould to ensure it is the correct shape. Originally cigars were rolled without moulds, a feat that needed to be accomplished with consistency, requiring strength and skill. Moulds were introduced from the second half of the nineteenth century.

Moulds in use during cigar rolling

PAREJO

A straight-sided cigar with a rounded head. All other shapes of cigars are known as Figurados [*q.v.*, page 147].

PARTAGÁS FACTORY

The parakeet-bright paintwork on the nineteenth-century facade of this building on a street behind the Capitol in Havana makes the world-famous Partagás factory unmistakable, as does the swarm of black-market vendors hovering in the street outside. Alas, it has not functioned as a working factory for a number of years. However, the shop and smoking room are a popular meeting point for overseas visitors.

Partagás factory

PLUME

A synonym for *BLOOM* [*q.v.*, page 72].

PROCIGAR

This association of cigar makers was founded in the Dominican Republic by Davidoff's Henke Kelner in 1992. The objectives of Procigar 'are to defend, protect and divulge the good name of the land of Cigar Country, number one exporter of Premium Cigars in the World'. Its aims are as much cultural as they are commercial: 'Preserving this heritage and maintaining the quality on which [it] is built – is the mission of the Association of Dominican Cigar Manufacturers, ensuring the Cigar Country's continued status as the world's number one premium cigar manufacturer.'[12]

The high point of the Procigar year is the festival that takes place in February, comprising factory visits, gala dinners and sundry other acts of merrymaking. In 2016, the membership stood at a dozen: General Cigar Dominicana, La Aurora, Quesada Cigars, Tabacalera de García, Tabadom Holdings (Davidoff), Tabaquisa, De Los Reyes Cigars, Tabacalera Fuente, Tabacalera La Alianza, La Flor Dominicana, Tabacalera Palma and PDR Cigars.

PURO

A *puro* is a cigar in which all tobacco – filler, binder and

[12] http://procigar.org/about-procigar, accessed 7 June 2016

wrapper – is the product of one country. The hand-made Havana cigars that are sold around the world are *puros*. However, production across much of the rest of the Caribbean and Central America has tended to be a mixture of tobaccos from different countries, giving blenders a broader palette of flavours to draw upon and allowing certain regions to specialise: for instance, Ecuador is known for its wrapper leaf. This is in part a legacy of the time when these nations were primarily exporters of leaf tobacco that was rolled into cigars in the USA and other countries.

REGIONAL EDITIONS

Regional editions, cigars made for one particular country or region, came into being in Havana in 2005. The criteria are a little complicated. The cigar must not be one of the internationally available brands; instead it has to be made in an unusual size in a brand chosen from a list of what are described as 'local' or 'multi-local' marques, some of which are famous – for instance Bolívar – others less so, such as Sancho Panza.

There were four regional editions in 2005 and six in 2006. It was the Por Larrañaga Magnifico, a subtle, floral, harmonious and aromatic cigar, released in Britain in 2007, that really captured the imagination of cigar smokers. Two years later, there were 23 regional editions.

As well as being a little-known brand in an unusual but desirable large size (50 × 6¾ in/170mm), the Magnifico established a pattern with its elaborate packaging. Regional editions tend towards what might be called cigar bling: as well as the regular band, they carry an extra paper ring

proclaiming their region. With the Magnifico [*above*], UK importers Hunters & Frankau went to extraordinary lengths to recreate the old Por Larrañaga band, using a specialist printer in Eindhoven with over a century of experience in printing for the cigar trade.

The following year saw another cult regional edition: the Phoenicios. Made for the Lebanese market in 2008, it adopted the then relatively new Sublimes format: a 54 ring gauge cigar around 6½ in/165mm in length. It is a highly regarded *vitola*; the best cigar so far of the twenty-first century is widely held to be the Cohiba Sublime, (a 2005 limited edition). Initial production was 6,000 boxes of 30 with a second run of 3,000 boxes of 15: scarce enough to stimulate interest, but nevertheless sufficiently available to create a market. Some, but by no means all, Regional Bolivians have risen in value.

Impressive on paper, the cigar is even better when one sets fire to it, as I had the pleasure of doing in 2015. The first half-inch is almost fresh and grassy, then it assumes the

familiar pepperiness, but nuanced with herbaceous notes and a slight cedar undertone to keep the palate interested and to stop the cigar becoming monotonously overpowering. A second batch of Phoenicios was made to celebrate the thirtieth anniversary of the Middle Eastern distributor.

In 2015 another celebratory regional edition, the Ramón Allones Aniversario 225, was produced to mark the 225th anniversary of Hunters & Frankau [*see* page 89]. This cigar enjoyed extra ageing in the Hunters warehouse. While it has the underlying strength typical of a powerful Havanas, there is also subtlety and complexity, with hints of dark-roasted coffee beans and even a salted sweetness,

A selection from the bewildering variety of regional editions

all underpinned by a piquancy that augurs well for ageing. The packaging is spectacular even by the standards of regional editions, consisting of four sliding-lid boxes of 25 cigars stored inside a replica of the cabinets in which cigars were shipped to the UK in the early twentieth century.

But of course not all regional editions are of the same quality, and it is perhaps the proliferation of such editions that has caused Habanos, the marketing arm of the Cuban cigar industry, to tighten up the rules from 2016, permitting only one regional edition per territory per year and allowing the repetition of a brand only after five consecutive regional editions, each from different brands. In addition, the sizes and shapes will be limited.

[*See*: *APPENDIX B*, page 232,
for a detailed list of regional editions]

RELATIVE HUMIDITY

Simply put, relative humidity is a measure of the quantity of water vapour in the air relative to the maximum the air can hold before it reaches saturation point, when the moisture condenses and turns into rain.

Of course, relative humidity is anything but simple: the same amount of moisture can give different relative humidity readings. Relative humidity varies according to air temperature: the warmer it is, the more humidity the air can hold; correspondingly, the capacity for moisture retention in the air is lower when it is cooler. Along with different air composition, this contributes to the observation that cigars

often taste different when smoked at sea level in the tropical heat and humidity of Cuba and the Dominican Republic rather than at several thousand metres above sea level in a ski resort in the middle of winter (although do not discount the power of the psychological effect of enjoying a cigar in the heart of cigar-making country or touring one of the great historical cigar factories).

If you like skiing and cigar smoking, choose to spend the winter in a resort such as Gstaad, which is not as high above sea level as St Moritz – snowfall may be less predictable, but in Gstaad (a little over 1,000 metres above sea level), cigars are still enjoyable.

RESERVA & GRAN RESERVA

During the 1999/2000 harvest in Cuba, it was decided to set aside select bales of tobacco leaves for an additional three years' maturation. The first of these Reserva cigars was a series of Cohibas in various sizes that was launched in 2003. They can still be found, but in my opinion they do not give the best idea of just how good these sensational Reservas can be.

After this trial run, the first 'real' Reserva was the Partagás Series D Reserva of 2005. As soon as I tasted it in the Partagás factory with the then director, I knew it was something special. I usually find Partagás a little on the powerful side, and this was certainly a full cigar, but there was a rich creaminess to it that really made the most of the Partagás characteristics; it was like a powerful Olympic

medal-winning athlete clothed in an impeccably tailored suit from Terry Haste, Huntsman or Rubinacci.

To use a vinous rather than a sartorial analogy, I have also described a Reserva as being like a wine with extra barrel age. While the maturation of finished cigars (not unlike wine ageing in a bottle) allows them to settle, and the flavours of the different tobaccos to come together; the extra maturation of the raw material used for Reservas radically improves the tobacco with which the cigar is made. They are in effect made with much better tobacco; in a way this should be like (another abstruse simile coming up) watching the director's cut of a movie: a cigar that is the best it can be.

The best got better with the arrival of the Gran Reserva in 2009, made using tobacco leaves with a minimum of five years of age on them. The results can be sublime, as shown by the Partagás Lusitania Gran Reserva, which made its appearance in 2012. The Lusitania is Partagás's Double Corona, arguably its most famous *vitola*; a broomstick of tobacco that tops seven and a half inches. This is an epic cigar, a triumph of the *torcedor*'s art, carrying within its succulent dark caramel-coloured wrapper all the rich complexity of a Partagás delivered with a refinement that is almost ethereal. Slightly smaller, and lighter in flavour, but almost as entrancing, is the Romeo y Julieta Churchill Reserva also released in 2012, made with tobacco from the 2008 harvest.

Partagás Gran Reserva 15 Lusitania

Of course, not all Reservas and Gran Reservas, all made with leaves harvested exclusively in the *vegas de primera* (top quality plantations) of the Vuelta Abajo, are as successful, and the idea is at its best when applied to brands with strength and character. For instance, the H. Upmann No.2 Reserva, made with tobacco from the 2010 harvest, while a very pleasant and pleasurable cigar indeed, failed – at least in my opinion – to scale the heights reached by the Partagás Reserva and Gran Reserva.

Consistency of manufacture is not perhaps always the strongest of the Cuban cigar industry's attributes; the quality of output varies from factory to factory. The most irritating problem is overfilling or poor de-stemming that leaves twigs inside a cigar, making it about as much pleasure to smoke as a pencil. Underfilling, which leads to a collapse in the side of the cigar, is far less irritating, but nonetheless disappointing. A batch of cigars hurried into production may assault the olfactory nerve with an ammoniac pungency. Or the problem may be purely aesthetic: the wrappers may be unduly harsh or spotted, for instance. Just as a restaurant prides itself on plating a dish with care and discrimination, so part of the pleasure of a cigar is beholding it before you set fire to it.

Such problems are highly unlikely with the Reserva and Gran Reservas. These cigars blur the line between craftsmanship and art; even the box is a thing of beauty, with its dark veneer and marquetry inlay.

If you can afford it, Reservas and Gran Reservas are what you should be smoking most of the time, but it takes more than mere money to lay your hands on them. They tend to be made in very, very small numbers. For instance, the worldwide supply of Gran Reserva Lusitanias was just 5,000

boxes of 15 cigars; and the Romeo y Julieta Reservas were barely more numerous; 5,000 boxes again, but this time with 20 cigars in a box.

It will be fascinating to see how the finished cigars mature with time (my hunch is that the best of them will improve for decades), but given that Reservas and Gran Reservas sell out almost as soon as they arrive, this is not a problem that most of us are likely to have to deal with.

RECENT RESERVAS

Cigar sizes are given as RING GAUGE × LENGTH

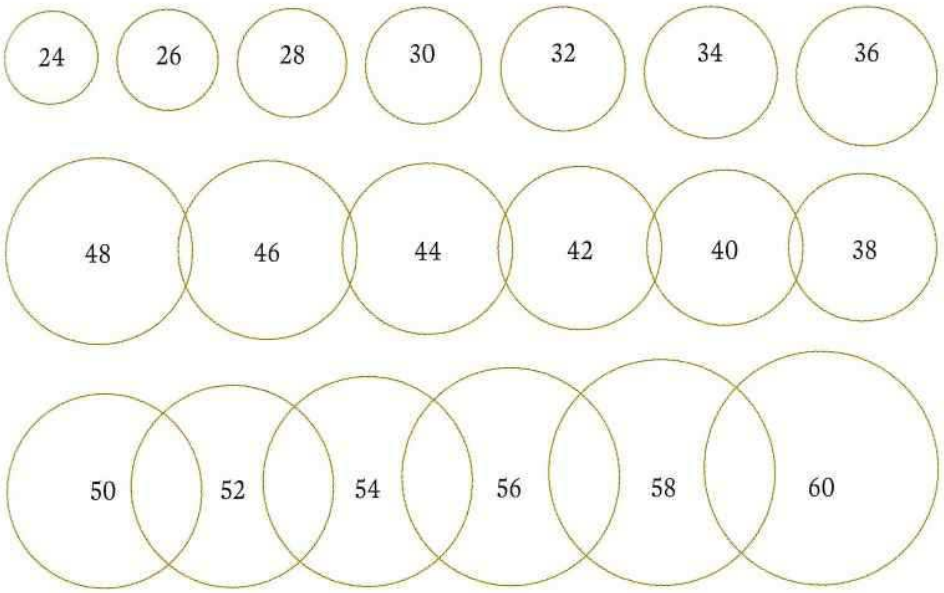
YEAR	BRAND	EDITION NAME	VITOLA	SIZE
2005	Partagás	Serie D No.4 Reserva Cosecha 2000	Robustos	50 × 4⅞ in/124 mm
2007	Montecristo	No.4 Reserva Cosecha 2002	Marevas	42 × 5⅛ in/130 mm
2012	Romeo y Julieta	Churchill Reserva Cosecha 2008	Julieta No.2	47 × 7 in/178 mm
2014	H. Upmann	No.2 Reserva Cosecha 2010	Pirámides	52 × 6⅛ in/155 mm
2016	Hoyo de Monterrey	Epicure No.2 Reserva Cosecha 2012	Robustos	50 × 4⅞ in/124 mm

RECENT GRAN RESERVAS

Cigar sizes are given as RING GAUGE × LENGTH

YEAR	BRAND	EDITION NAME	VITOLA	SIZE
2009	Cohiba	Siglo VI Gran Reserva Cosecha 2003	Canonazo	52 × 5⅞ in/150 mm
2011	Montecristo	No.2 Gran Reserva Cosecha 2005	Pirámides	52 × 6⅛ in/155 mm
2013	Partagás	Lusitanias Gran Reserva Cosecha 2007	Prominentes	49 × 7⅝ in/194 mm
2015	Romeo y Julieta	Wide Churchill Gran Reserva Cosecha 2009	Montesco	55 × 5⅛ in/130 mm

RING GAUGE



A measure of the diameter of a cigar; one ring gauge point is equivalent to 1/64th of an inch. Over the course of the twenty-first century, the trend has been towards ever girthier cigars, with ring gauges of 60 not uncommon, and some exceeding that. They are on the whole inelegant, and risk dislocation of the jaw, but they do let the smoker and, far more importantly, the blender show off. It is no accident that *medio tiempo* made its appearance in the Cohiba Behikes with ring gauges from 52 to 56.

Bigger cigars can accommodate more leaves, and therefore heavier ring-gauge cigars are richer in flavour but cooler smoking than their slender counterparts, which concentrate their flavour on one part of the palate rather than filling the mouth and, if smoked too quickly or energetically, can heat up too rapidly, becoming harsh-tasting.

Thinner cigars are also a test of the blender, as the lower the ring gauge, the less easy it is to avoid blockages;

conversely, the heavier ring gauges can accommodate a little more in the way of debris blocking the airways, so a blockage that might ruin a 33 ring gauge Palma can be accommodated in a cigar with a ring gauge over 50. Of course in an ideal world no cigar would be plugged, but then in such a place we would have no corked bottles of wine, as well as world peace and goodwill to all men. That said, I cannot recall having to abandon a Davidoff because it was blocked, something to do, I daresay, with the fact that Davidoff is a Swiss company.

ROBUSTO

It is said that this size (50 × 4 in/102 mm) was first created for Leopold de Rothschild in the late nineteenth century (apparently it is still known by that name in parts of America), and like all things it has gone in and out of fashion ever since. There was a time in the 1980s when slim cigars were *le dernier cri* and the Robusto format was all but extinct. *Mirabile dictu,* in 1984 Cuba produced just 5,000 of its then most famous Robusto, the Partagás Serie D No. 4 For many years, the 50 ring gauge cigar (of which this is the classic example) was near the top end of the girth scale; now the Robusto is a standard cigar size offered by many brands. Classics include Romeo y Julieta's Short Churchill, Hoyo de Monterrey's Epicure No.2, Ramón Allones' Specially Selected, Bolívar's Royal Corona, Davidoff's Special R [*below*] and of course Cohiba's Robusto.

RURAL FACTORIES in CUBA

The José Manuel Seguí factory is located in a small county called Güira de Melena. This factory, and a few dozen more across the country, exists almost completely under the radar.

Although only 25 miles or so south of Havana, the ambience is entirely different. Güira de Melena is a place where horse and trap, bullock cart and bicycle are more commonly used than a car. By comparison Havana seems a cosmopolitan city of the future.

I first came to hear about the Seguí factory in 2007, when the Juan López Selección Suprema was launched in Britain. I had tasted some Juan López before and found them unmemorable; it was with low expectations that I clipped the end of this 52 × 6½ in/165 mm cigar. It was a revelation: smooth, flavoursome without being too strong, intensifying in strength incrementally rather than hitting the palate explosively. It was beautifully rolled; neither overfilled and hard to draw upon, nor with declivities indicating the underfilling that can lead to uneven burn. The wrapper was a marvel: silken, caramel in colour, with an inviting sheen.

I became curious to visit the factory where these had been made. I found a place of charming simplicity and Stakhanovite zeal. The director's office was a small room with nothing but a desk, paperless, computer free and without even a telephone. The *galera* where a hundred or so rollers worked was little more than a large barn. Floors were of stamped earth or corrugated metal. Air conditioning was unknown. Hospitality was warm and

similarly rudimentary: a shot glass of rum with a splash of TuKola.

In general, no Havana factory produces a single marque. However, small runs of cigars such as limited editions or regional specialities, where production is in the tens rather than hundreds of thousands, often come from a single factory. When I first visited the Seguí factory, it was stacked with boxes of a limited edition from 2009; the H. Upmann Magnum 48, one of the best balanced of what I call 'espresso cigars', a 15-minute burst of flavour tailored to the needs of the cigar lover who has to contend with increasingly restrictive smoking laws.

Seguí turned out to have been responsible for some extremely desirable cigars: the Juan López Maximo, made for Switzerland in 2008; the Juan López Short Torpedo, which appeared the same year in the Caribbean; the Juan López Selección No.3 and No. 4, made for Belgium & Luxemburg and Asia respectively; and the Fonseca No. 4, also sold in the Low Countries. It is the rise of the regional edition that has brought the excellent work in the Seguí factory to the fore.

As with many of the best things in Cuba, it seems to have happened entirely by accident. When I interviewed him, the only explanation that the late Oscar Basulto, former co-president of Habanos SA, advanced for this rural centre of excellence was that 'as might happen everywhere, people from small towns seem to be more sensitive and hardworking than people from the city. A cigar factory in a small town is the heart of the village and so is highly appreciated by all the inhabitants who devote dedication and love to the factory in general.'

SAHAKIAN

Originally from Iran, where his family was one of the nation's best known commercial dynasties, Edward Sahakian left Tehran for London at the end of the seventies. He did not think he would be gone long, so he travelled light: just his dinner jacket and a few kilos of caviar. Happily, his stay in England lasted longer than he envisaged, and since 1980 his Davidoff store on the corner of St James's and Jermyn Streets has been one of the great landmarks of the cigar world.

An expert in Cuban and non-Cuban cigars alike, Edward is everything a great cigar merchant should be: knowledgeable, discreet, stylish and excellent company; a legend in the cigar world, he is also far too modest to ever tell you as much. His experience of life and of cigars is unique. He is also a dear friend with whom it has been my pleasure to travel to both Havana and Santo Domingo and to play numerous games of backgammon. He has now been joined in the business by his son Eddie, and together they have opened a second venture: the Edward Sahakian Cigar Shop and Sampling Lounge at London's Bulgari Hotel. His company and his wisdom are both worth seeking out.

SAN JUAN y MARTINEZ

This small town in the Vuelta Abajo gives its name to a DOP (Denominación de Origen Protegida) and along with San Luis [*below*] is home to the finest *vegas de primera* in the Vuelta Abajo, including the historically significant Hoyo de Monterrey plantation. It is one of the two growing districts that supplies leaves for Cohiba.

SAN LUIS

This small town is to the Vuelta Abajo what Beaune is to Burgundy. It gives its name to a DOP and is home to famous plantations including El Corojo and Cuchillas de Barbacoa. Along with San Juan y Martinez, [*above*] it supplies leaves for Cohiba.

SBN

Semi boite nature – a hinged cedar-wood box with a clasp or stud fastening at the front. This is a less elegant and robust version of the BN (*boite nature*), and lacks the inner lip or collar. [*See also*: *SLB*, page 136 and *BN*, page 72].

SECO

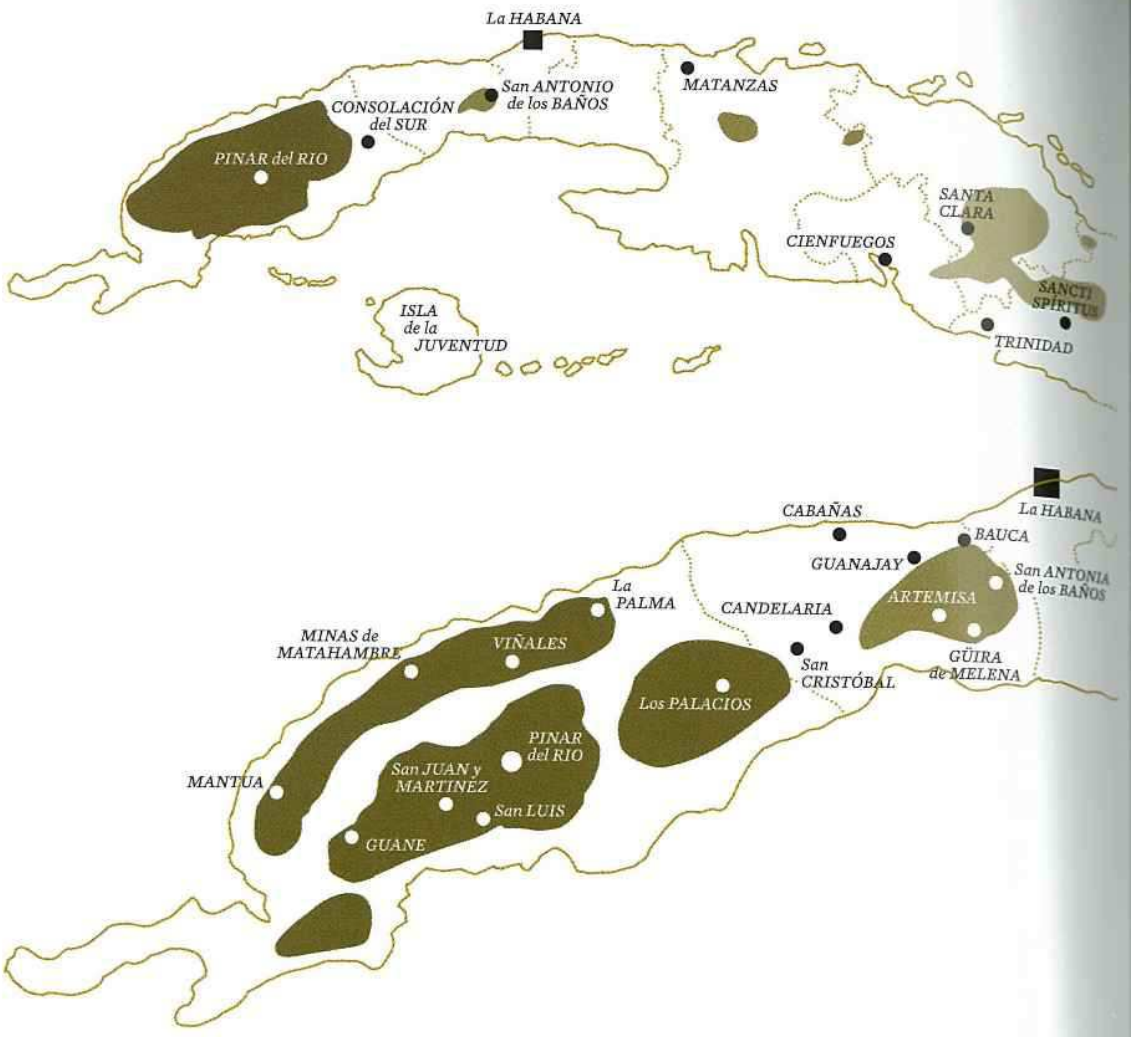
[*See*: *LEAF*, page 92]

SEED

In Cuba in the mid-twentieth century, one of the most popular seed varieties was Pelo de Oro. Although strong, sweet and flavourful, it was susceptible to disease, especially blue mould. Today it is barely used and in its stead a range of hybrids has been developed.

For Cuba, the second half of the twentieth century was dominated by two varieties: Criollo and Corojo. Early in the century, the country had lost most of its native seeds, and it was only in the late 1920s that agronomist Juan Tomás Roig managed to reproduce the famous black Cuban tobacco known simply as Criollo (one of the English translations of which is 'native'). By the late 1930s it was widely planted in Cuba's prime plantations.

Corojo, a legendary strain of tobacco, was developed from careful cross-pollination of Criollo with Sumatra seed (the latter gave the hybrid an elasticity perfectly suited for



growth under shade cloth).[13] According to *Cigar Aficionado* magazine, Corojo is 'considered by many connoisseurs to be the finest tobacco ever grown in Cuba',[14] and respected cigar and wine writer James Suckling described it as 'the greatest wrapper tobacco in the world'.[15] It was developed in the 1940s by Diego Rodriguez, the owner of the Santa Ines del Corojo plantation in San Luis. Rodriguez had rented the plantation from the Allones family in 1920, and then added to

[13] Gordon Mott, 'A Passion for Seeds', *Cigar Aficionado*, July/August 2015

[14] http://www.cigaraficionado.com/webfeatures/show/id/3487, accessed 3 July 2016

[15] James Suckling, 'Cuba's Best Wrapper', *Cigar Aficionado*, Summer 1995

TOBACCO GROWING REGIONS OF CUBA

VUELTA ABAJO *REMEDIOS*

PARTIDO *VUELTA ARRIBA*

it with purchases of neighbouring properties that shared the same soil characteristics and microclimate until it covered 400 acres. It remains about the same size today.

Corojo subsequently became a cult among cigar lovers, and is an example of a tobacco seed that has established an identity among cigar smokers, just as grape varieties such as Cabernet Sauvignon and Pinot Noir have with oenophiles (many non-Cuban brands promote the variety as a brand in itself; Camacho and La Aurora both sell popular lines called Corojo). The Rodriguez family were among the many growers and cigar makers who left the island in 1960, but the plantation continues to enjoy a mythical status.

The original Corojo seed has been succeeded by varieties less susceptible to disease, such as Corojo 99 and Habano 2000. The latter, bred to supply wrapper leaf, was somewhat controversial, and, according to the revered Alejandro Robaina, a celebrated tobacco farmer [see page 192], flawed. 'I was the first to plant Habano 2000 here in Cuba and the results were very good,' he said in an interview in October 2006, 'but nowadays Habano 2000 has lost quality to the point that I am not planting it any more. It's prone to blue mold and black shank. Plus, there are now other seeds that have much better quality.'[16]

The retirement of Corojo in the mid-1990s coincided with a change in the character of Havana cigars, although whether this was in response to changing tastes or as a result of new seed strains is far from certain. At the time of the changeover, James Suckling commented: 'Pre-hybrid smokes could one day be likened to the pre-phylloxera wines of Europe that have a legendary reputation among great wine collectors. These are wines that were made primarily before 1880 from old, gnarly vines whose roots were anchored deep in the soil to extract an amazing amount of nutrients. They produced concentrated wine grapes with character. Unfortunately, they had not been grafted or spliced to American rootstock to protect them from the ravenous root louse that destroyed most of Europe's vineyards during the latter part of the nineteenth century.'[17]

[16] James Suckling, 'Cigar Diary: Cuba's Cigar Legend', *Cigar Aficionado* website, posted 1 October 2006

[17] James Suckling, 'The Death of El Corojo', *Cigar Aficionado*, July/August 2000: http://www.cigaraficionado.com/webfeatures/show?id=7051, accessed 28 April 2016

By the second decade of the current century, Cuba had developed a range of seed varieties to combat specific climatic problems and diseases. Resistance to specific threats varies among seeds, and therefore they need to be selected very carefully in relation to the microclimate and historic susceptibility to disease of the growing area.

Other variables include the potential yield and leaf size. Thus there is no substitute for intimate knowledge of the land and the soil, as even different areas of the same plantation will demonstrate different characteristics, which may account for Robaina's insistence that small private farmers achieve better results than large state-owned farms, local knowledge and motivation being higher among private farmers, who in many cases grew up on the land they farm.

MAIN VARIETIES of CUBAN SEED [18]

Habano 2000

Originally developed as a replacement for original Corojo wrappers (although Robaina believed otherwise), Habano 2000 was designed to be resistant to black shank (*Phytophthora nicotianae Breda de Haan*), which rots roots and stems; brown spot (*Alternaria*), a fungal disease that covers leaves with brown spots; *Fusarium oxysporum*, a fungus that impedes water conduction to the leaves, leading to wilting and death; environmental necrosis; and blue mould, caused by the fungus *Peronospora tabacina*. However, it is susceptible to tobacco mosaic virus, which causes mottling and discoloration and stunts leaf growth; *Orobanche ramose*, a parasitic weed that 'steals' nutrients from tobacco plants; and tobacco budworm (*Heliothis virescens F.*), the larvae of which tunnel into blossoms and buds. Habano 2000 is used for shade-grown wrapper with much success outside Cuba.

[18] The section on Cuban seed draws upon various sources including the 2012 Tabacuba, Minsistry of Agriculture, Tobacco Research Institute paper 'Instructivo Tecnico para el Cultivo del Tabaco en Cuba,' Artemias 2012; and the Clemson University Extension Serivce, report *Tobacco Diseases: An Aid to Identification and Control*, 1997

Habano 92

Resistant to blue mould, black shank, environmental necrosis, fusarium and orobanche, this highly tolerant variety was developed as a hardy successor to the original Criollo and is characterised by leaves of an intense bright green. It is particularly resistant to drought: it can survive for long periods without water, and within 10 days can achieve the level of development of seed that has not been deprived of water. It is suitable for both sun and shade growing.

Criollo 98

Lower in height than other black tobacco plants while yielding the same number of leaves (16 per plant), Criollo 98 is resistant to blue mould and fusarium; moderately resistant to black shank and environmental necrosis; and susceptible to budworm. American cigar brand Alec Bradley launched a line of Criollo 98 cigars in 2001, followed by CAO's Criollo in 2002 also using this hybrid.

Corojo 99

Closely related to Criollo 98 but distinguished by larger, rounder leaves, Corojo 99 is a supremely versatile tobacco that flourishes both in and outside Cuba and can be sun- or shade-grown with equal success. It is resistant to blue mould, fusarium and tobacco mosaic and moderately resistant to black shank and environmental necrosis. However, it is susceptible to budworm and orobanche.

Sancti Spiritus 96

This rapidly growing high-yielding plant produces smooth leaves of a grey-green colour that grow at an acute angle from the stem. It is primarily grown in the central provinces of Cuba. It is resistant to blue mould and tobacco mosaic; moderately resistant to black shank and environmental necrosis; susceptible to budworm, orobanche and fusarium.

Corojo 2006

Resistant to blue mould, black shank, fusarium, tobacco mosaic and environmental necrosis, but susceptible to orobanche, with a potential yield of 2–6 tonnes per hectare, this variety is favoured in Cuba's eastern provinces, where sun-grown plants of up to 24 leaves are used for domestic production and cigarette manufacture. However, better quality is achieved with plants of around 18 leaves.

Criollo 2010

An androsterile hybrid variety that is resistant to blue mould, black shank, environmental necrosis, fusarium and tobacco mosaic, but susceptible to budworm and orobanche, Criollo 2010 is often used for wrapper, thanks to the large size of its leaves, the minimal veining when dry and the desirable colour range, but also makes filler and

binder. An 18-leaf plant will yield around 2·2 tonnes per hectare, and is considered superior to Habano 2000 on account of its enhanced blue mould resistance and its capacity to flourish in a wide range of soil types.

Sancti Spíritus 2006

Resistant to black shank, blue mould, tobacco mosaic and fusarium, suiting it to planting in central areas where there is no shortage of water, this sun-grown tobacco is however susceptible to budworm and orobanche.

Habana Burley 13

Resistant to black shank and tobacco mosaic, moderately resistant to blue mould and fusarium, susceptible to orobanche, Habana Burley has a yield potential of 2·3 tonnes per hectare. There are 20 to 22 usable leaves per plant, with the largest having an average width of 30–34 cm and a length of 60–64 cm.

Burley Pinar 2004

Only slightly resistant to black shank etc., this variety was developed to be planted in areas prone to potato virus Y and tobacco etch virus, which engraves leaves with lines and causes mottling.

Burley Pinar 2010

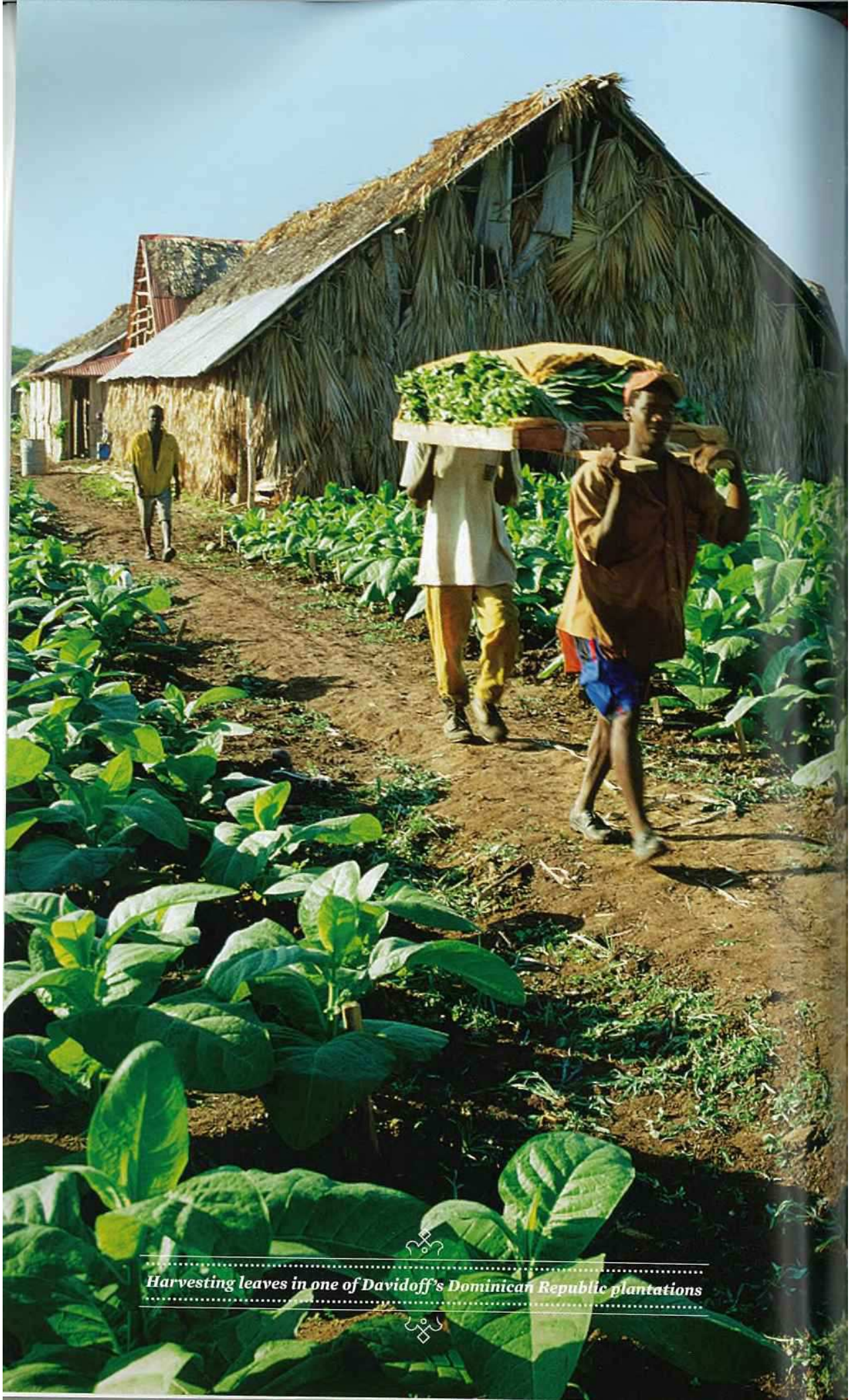
More compact than the Habana Burley 13, and flowering about 10 days later, this variety is resistant to black shank, blue mould and fusarium, moderately resistant to environmental necrosis, and susceptible to budworm and orobanche. Its leaves can be characterised by a marked hyponasty, and there is good yield potential (2·25 tonnes /ha).

San Luis 21

Resistant to black shank, blue mould, environmental necrosis and fusarium, but susceptible to tobacco mosaic, budworm and orobanche, this variety has a high number of usable leaves (up to 24 per plant), but commercially best results are obtained when pruned to 18 or 20 leaves per plant.

San Luis 22

Resistant to black shank and fusarium; moderately resistant to blue mould; and susceptible to environmental necrosis, tobacco mosaic, budworm and orobanche, it has fewer usable leaves than San Luis 21, but they are much larger. Because of its comparatively low resistance to blue mould, cultivation is recommended early in the growing season to minimise exposure to the cool damp conditions that favour the disease.



Harvesting leaves in one of Davidoff's Dominican Republic plantations

SEED OUTSIDE CUBA

Cuban seed has proliferated throughout the region since the revolution dispersed many cigar makers, farmers and leaf experts to other Caribbean and Central American countries. According to Davidoff's Henke Kelner, 10,000 seeds weigh one gramme, making them readily transportable. Knowing this, Davidoff breeds its seeds to be sterile so they cannot be pirated, and Henke, who runs arguably the best-resourced operation in the Dominican Republic, emphasises the importance of matching the right seed to the right soil. 'The most important thing is the combination of the seed with the soil. One seed and one soil yields one style of tobacco; but if you're growing that seed in another soil, the tobacco can be totally different. It depends on the condition and the composition of the soil.'[19]

Until the 1950s, the most common Dominican varieties were Quin Diaz, which has since fallen from use; and Olor, which often accounts for the characteristic salty or dry effect of Dominican cigars. Olor is blended with varieties that arrived in 1962, after the Cuban revolution: the Piloto Cubano, and a Piloto hybrid called San Vicente that was developed at the eponymous farm in the Vuelta Abajo. These are the three seeds that form the traditional foundations of Dominican cigar making. However, since the turn of the century, Davidoff has created numerous varieties, often with specific locations and soil compositions in mind, which are stored in a restricted area of the Jicomé facility in large, locked industrial fridges.

[19] Henke Kelner, interview with author, June 2016

Elsewhere in the region, Habano 2000 flourishes under the near-perpetual cloud cover of Ecuador, producing wrappers that are used all over the region; as does Connecticut seed. Criollo 98, Habano 2000, Habano 92, Corojo and Connecticut are planted in Nicaragua and Honduras, while on the other side of the Andes, protected by mountains from the pests that rendered it useless in its homeland, Pelo de Oro is grown in Peru.

SHADE-GROWN

[*See*: *TAPADO*, page 146]

SHAPES & SIZES

[*See also*: *VITOLA*, page 152, *RING GAUGE*, page 117, *ROBUSTO*, page 118 and *TORPEDO*, page 147]

Sizing of cigars is a nightmare. Just as you think you have mastered the hundreds of different sizes that make up the production of Cuba alone, some cigars will be discontinued, new ones added, and a new crop of *LIMITED EDITIONS* [*q.v.*, page 94] will mean that this mentally held information needs to be updated. There is no easy way round it.

Some of the classic sizes, by their popular rather than factory names, are listed below, with the approximate time it takes to enjoy one, but even this incredibly simplistic overview presents difficulties: for example, a Canonazo will take about as long to work through as a Lancero, and yet two more different cigars it would be hard to imagine, the first

a thick, chunky tube comprising up to four different filler leaves, rich in flavour, with which it saturates the palate; the second an elegant wand of tobacco to be smoked with grace and finesse. But then I suppose that this variety of experience is what accounts for the endless fascination of cigars.

Panetela

26 × 4½ in/115 mm · 10–15 minutes

Cohiba Panetela · Montecristo Joyita

Romeo y Julieta Petit Julieta

Perla

40 × 4 in/102 mm · 15–20 minutes

Montecristo No.5 · Cohiba Siglo I

Petit Robusto

50 × 4 in/102 mm · 20–25 minutes

Hoyo de Monterrey Petit Robusto

Romeo y Julieta Petit Churchill

Robusto

50 × 4⅞ in/124 mm · 40 minutes

Cohiba Robusto · Partágas Serie D No.4

Bolívar Royal Corona

Hoyo de Monterrey Epicure No.2

Montecristo Open Master

Ramón Allones Specially Selected

Davidoff Special R · Fuente Opus X Robusto

Alec Bradley Prensado

Camacho Connecticut Robusto

Petit Corona

42 × 5⅛ in/129 mm · 20–25 minutes

H. Upmann Petit Corona · Romeo y Julieta Cedros No.3

Montecristo No.4 · Cohiba Siglo II

Corona

42 × 5⅝ in/142 mm · 30 minutes

Montecristo No.3 · Romeo y Julieta Corona

Canonazo

52 × 5⅞ in/150 mm · 1 hour

Cohiba Siglo VI

Toro

a non-Cuban size that varies between brands but is typically 52/54 × 6 in/152 mm · 1 hour

Davidoff Winston Churchill Commander · Padrón No.45

Torpedo

52 × 6⅛ in/156 mm · 1 hour

H. Upmann No.2 · Montecristo No.2

Davidoff Yamasa Pirámides

Lancero

38 × 7½ in/190 mm · 1 hour

Cohiba Lanceros · Montecristo Especial

Churchill

47 × 7 in/178 mm · 1 hour 10 minutes

Cohiba Esplendido · Romeo y Julieta Churchill

Davidoff Winston Churchill Aristocrat

H. Upmann Sir Winston

Double Corona

49 × 7⅝ in/194 mm · 1 hour 20 minutes

Partagás Lusitania

Hoyo de Monterrey Double Corona

A

47 × 9¼ in/240 mm· 2 hours

Sancho Panza Sancho · Montecristo A

SICK PERIOD

[*See*: *MATURATION*, page 96]

SLB

Slide lid box. Reminiscent of the pencil cases of my youth, the 'cabinet selection' is my personal favourite packing method. Bundles of 25 cigars are bound with ribbon and packed in the box. Occasionally the cigars that have been on the outer layer of the bundle will bear a slight declivity left by the ribbon.

HABANOS MARKINGS & LABELS

The two ink stamps on the bottom of the box indicate the factory where the cigars were made (in encrypted code) and the month and year when the cigars were boxed

SOIL

The rich soil of the Caribbean and Central America is ideally suited to the cultivation of cigar tobacco, but there are significant differences, which result in different behaviours of cigars: for instance, an ash of snowy whiteness is evidence of high levels of magnesium in the soil, often seen in Dominican cigars, whereas the lightest a Cuban ash will achieve is a silvery hue or remain on the cigar demonstrating a striated grey.

STAMPS, SEALS & STICKERS

As well as the inevitable and increasingly obvious health warnings, a Cuban cigar box is plastered with all sorts of other colourful labels until it resembles a piece of vintage luggage covered with hotel, airline and cruise ship labels. The most famous of these is the green and white warranty label bearing the words 'Republica de Cuba', which appears to be doing its best to mimic a banknote in appearance.

The warranty seal pre-dates the existence of the republic and was first introduced in 1889 by royal decree of the King of Spain. Given that Alfonso XIII was just three years old at the time, His Majesty was clearly precocious in his taste for the better things life had to offer.

The current design, featuring palm trees and the arms of the Republic of Cuba, dates from 1912. It was first modified in 1931, and again in 1999, with the addition of a red serial number and a marking visible only under ultraviolet light. Ten years after that, in 2009, it was changed again to incorporate further technology: bar code and hologram. The Cuban

industry is particularly proud of its new seal; in its description of its powers, it makes it sound like it was developed by Q in a James Bond film, featuring among other things both self-destructive and, for good measure, auto-destructive capability.

> *This Seal has been developed through a base of synthetic paper with special characteristics such as an auto-destructive feature before any attempts at removal and with several maximum security techniques added:*
>
> - *NON-TRANSFERABLE LABEL*
> *Any attempt to remove it will cause invalidation of the seal by self destruction.*
> - *HIGH ADHERENCE OF THE PAPER (PLASTIC)*
> *Auto-destructive, Self-destructive.*
> - *SCAN- AND PHOTOCOPY-PROTECTED SYSTEM*
> *The holographic band will show a bicolor text in 2nd and 3rd dimension.*
> - *ELEMENTS WITH OPTICAL VARIATIONS ATTACHED*
> *Also it will enclose a micro dot only visible through laser scanner.'*[20]

However, if you have left your laser scanner at home and don't want to tamper with the self-destruct feature, then the position of the label on the box offers hints as to its authenticity: it is usually on the lower left-hand side, between 3 and 6 mm from the edge, and the Cuban Coat of Arms is usually placed over the opening of the box.

Since 1994, each box has also had to carry a rather

[20] http://www.habanos.com/en/verificacion-de-autenticidad/, accessed February 2016

gaudy black, white, yellow, red and gold Denominación de Origen Protegida sticker across the top right corner, emblazoned with the word 'Habanos'. This is the equivalent of the *appellation contrôlée* on a bottle of wine and no box is shipped from Cuba without it. Next to the DOP sticker there may also appear a further sticker if the box is a limited edition.

As well as information about the date and place of manufacture, the bottom of the box is hot-stamped with the Habanos SA logo (boxes made between 1985 and 1994 are stamped with its predecessor, Cubatabaco). 'HECHO EN CUBA' (made in Cuba) appears in a lozenge beneath which are the words 'Totalmente a Mano' (completely handmade); if these words are not there, the cigars inside will be machine-made.

STORAGE

The usual advice given on storing cigars is that the temperature should be between 16 and 18 degrees Celsius – any warmer and the risk of weevils [*q.v.*, page 153] increases – with

65–70 per cent relative humidity [*q.v.*, page 112] to stop the cigars drying out. Some noted connoisseurs prefer on occasion to smoke drier cigars stored at a lower relative humidity; however, I prefer to keep cigars at the 'correct' humidity, as I believe this maintains the aroma, assists with gentle ageing and maintains the natural oils that give the cigars their glossy sheen – dry a cigar too long or too much and the appearance, bouquet, flavour and aroma suffer.

There is no shortage of humidors on the market; even Dior, the couture, fashion and fragrance house, stocks some beautiful examples in its gifts and homeware department. When it comes to luxury humidors, Elie Bleu is the best-known maker, with a variety of exotic woods and decorative finishes. In 2016, the French marque reached a new summit of sophistication with the commemorative cabinet humidor created to house the 60 ring gauge Cohiba 50 Anniversario, crafted from a variety of exotic woods including macassar ebony, sycamore and scented guarea. The aesthetic highlight was the decoration of the doors with a marquetry technique 'in which carefully selected authentic ligero Vuelta Abajo leaves were coated with 24-carat gold leaf'.[21]

It was a far from straightforward job.

The work to create this marquetry was meticulous and highly complex: each leaf was carefully selected, not permitting any tears or other imperfections, as if it were being selected for the finest Habano in the world. After this, the best part of each leaf was chosen, which was then stuck to a wooden base to let it air dry for ten days, before cutting

[21] Cohiba 50 Aniversario, Habanos SA, 2016

into small squares. The requirements were so demanding that only one square per leaf was usually obtained.

Binding the gold leaf to the tobacco required unprecedented innovative solutions. The application, with silk brushes, demanded patience and meticulous care, with no margin for error. An insulation had to be applied over a period of three days in order to encapsulate and protect the golden leaves for the following phase of varnishing. Up to ten coats were applied to the doors and accessories before the final phase of polishing.[22]

As well as coming with a travel humidor, leather cigar case and matching ashtray, the humidor was equipped with some decidedly twenty-first-century gadgetry. 'This cabinet features a device that allows its owner to follow the temperature and humidity conditions in the humidor directly on their smartphone or tablet, thanks to an app that will be remotely connected to a sensor inside the humidor. The app will also be an exclusive communication channel for the brand's updates marking its 50th anniversary and will allow the owner to have a digital version of their certificate of ownership and authenticity.'[23]

I have yet to test this high-tech solution and I hope that it is an improvement on the majority of in-humidor hygrometers, which in my experience are erratic in their performance. In fact, for trouble-free storage of cigars I have found that I can rely on the minimally equipped clear plastic humidors made by Davidoff.

[22] Ibid.

[23] Ibid.

If you want to store cigars at home, there are special units that resemble wine fridges, and, like bottles of wine, you can also leave your cigars in the cellar too. However, for storing large numbers of boxes for extended periods, there is no substitute for long-term lodging with a respected and trusted cigar merchant.

At this point I must make mention of the highly sophisticated system that has been devised by the Birley Cigar Shop, attached to the fashionable London members' club 5 Hertford Street.

Although a relative newcomer to the London cigar scene, Birley have taken a highly scientific approach to long-term storage of cigars, developing what they call the Birley Technology for use in a secure vault located close to the Mayfair club. Traditionally cigars are aged at a lower temperature than the standard 16–18 degrees, but 5 Hertford Street believes that while this is successful at controlling weevil infestation, it places unnatural limits on the ageing process. As the system is new and includes machinery built especially for the ageing of cigars, these hypotheses will only be validated or otherwise over time. Nevertheless, the lengths to which Birley have gone to achieve what they regard as optimum conditions are highly impressive.

As relative humidity changes with air temperature, one of the system's most important features is:

> *an intelligent microprocessor that looks at both the Humidity and the Temperature simultaneously, constantly monitoring both functions. If the temperature starts to rise the unit will introduce cooling but only marginally by way of an inverter driven compressor,*

so rather than the compressor running at full speed it will run at a calculated percentage depending on the amount of required cooling. Before the space reaches the required set point the cooling will reduce and the unit will wait and assess the space conditions through 18 sensors positioned throughout the room.

This process stops the cooling function from 'overshooting' the desired amount which would then reduce the Relative Humidity percentage too far and cause the Humidifier to produce more humid air than it really needs to as would happen in the example of the traditional system. The Humidity function operates in the

Cigars ageing in the optimum conditions of the vault at Five Hertford Street

same way as the cooling function with the result being a 'precise' temperature and Relative Humidity condition.

The system's claimed control of relative humidity is to plus or minus 1 per cent and temperature to plus or minus 0·3°C. Such stability of temperature is remarkable and of course in turn makes the achievement of the correct relative humidity much easier. However, this was not sufficient for the company's maniacal attention to detail. Not unlike the tuck room I remember from my junior house at boarding school, the vault contains multiple lockers, or 'keeps', against the walls at different heights. However, unlike my school tuck room, they are beautifully finished by a skilled cabinetmaker and contain cigars rather than stale cake and chocolate. Within these lockers, collectors' boxes are stored; all at different levels and distances from the air supply. So 5 Hertford Street did what anyone would do in such a situation and constructed:

a 3D Airflow model to understand the journey of the air particles, which led us to build rotary air supply vents in the ceiling, allowing the air to be expelled in a vortex into the room. Now the challenge was getting this air into each locker at the required RH [relative humidity] *level.*

This was finally achieved by creating a microclimate within each locker at every level. So at the back of each locker are a slide vent, an electronic hygrometer, and motor fan. The electronic hygrometer measures the RH required for each specific locker and the motor draws in the RH to keep the lockers at the perfect RH and speed. The speed of the air following inside a locker is vital and must also be calculated, monitored and controlled, as

cigars do not like fast air flow, which can cause many issues to a cigar.

One last problem we had to tackle was the fresh air supply, which is a component of RH. We did not want a musty smell in our keeps room for those storing with us cigars of great value for many years, hence the introduction of various layers of filtered air to the unit was compulsory [apparently this required five different filters]. *This meant calculating the amount of air we needed to circulate in the room per hour as a component of density and volume, as well as purifying the air before it entered the machine to be cooled and humidified. The end result meant we achieved 98·8% clean surgical air.*[24]

According to 5 Hertford Street, this means that if the NHS ever wants to perform an operation in a centrally located secure cigar storage facility, then their air is of the required quality.

Those with cigars in storage can use a password to access the climatic readings of their locker and monitor both contents and microclimate. This data can be printed to provide provenance should the locker holder decide to sell the cigars – increasingly likely as cigar prices for certain rarities continue to rise.

Forget my cigars: from the sound of it I would benefit from long-term ageing in such perfectly controlled conditions; but alas, I cannot afford to provide this sort of wonderful environment for my cigars, let alone my family.

[24] Nadim Marrow, interview with the author, June 2016

STRING

In Cuba's so-called 'Special Period' after the collapse of the Soviet Union, shortages of basic commodities made life difficult, and during the early 1990s, harvests were adversely affected by a shortage of string. String is used to tie the tops of shade-grown tobacco plants to the cheesecloth canopy.

TAPADO

The Spanish term for 'shade-grown tobacco', cultivated under canopies of cheesecloth.

TORCEDOR

The Spanish word for 'cigar roller'. The chief difference between the Cuban and non-Cuban methods of rolling is that outside Cuba rollers tend to work in pairs, one using a bunching machine, a hand-operated device that prepares the filler, the other applying the wrapper leaf.

TORO

A term used to describe a longer Robusto [*q.v.*, page 118], usually applied to non-Cuban cigars.

TORPEDO

A colloquialism and a misnomer that refers to almost any Figurado (shaped cigar). The most common sorts of Torpedo are the Belicoso, which has a pointed head and slopes gradually towards the foot of the cigar, and the Pirámide, which is straighter for longer and narrows to its point much higher up. If there is such a thing as a cigar that looks like a torpedo, it is probably the double Figurado (pointed at both ends and bulging towards the foot), the only cigar type made by the Cuaba brand.

In its various sizes and guises the Figurado is also known as a Salomon, a Diadema, a Rodolfo, a Romeo, a Pirámide Extra, a Petit Pirámide, a Campana, a Taco, an Exquisito, a Petit Bouquet, a Generoso, a Favorito, a Forum, a President, a Chisel, a Petit Belicoso and a Petit No.2. The largest of these is the zeppelin-like giant Perfecto known as the Diadema [shown actual size *below*], a little under 9¼ in/235 mm in length with a ring gauge at its widest point of 55, but my favourite is the slightly girthier Salomon, which measures 7¼ in/184 mm with a 57 ring gauge.

I remember that when I got into cigars in the early 1990s, practically speaking there were just two Figurados that were widely available: the Montecristo No.2 and the H. Upmann No.2. Numerical nomenclature was not the only thing that linked them; they were identically dimensioned (52 × 6⅛ in/155 mm). Moreover, in those days the dusty

brown bands were almost identical too, and depending on when they were made (the blend does change slightly from year to year), it was sometimes difficult to tell the difference between the slightly fuller-flavoured Monte and the allegedly more delicate Upmann. As I remember, they were primarily smoked by the likes of Lew Grade and by those of who wanted to have the experience of a slightly fatter cigar. In those days the 50 ring gauge Robusto was at the limit of girth in a straight-sided cigar and there were relatively few marques that offered it.

But to see it as just another fat cigar is to miss the point. In fact the point of a Pirámide or Perfecto is not the girth; the point is ... well ... the point. The flavour delivery of the Pirámide is unique in that it offers the complexity and nuanced blending that is afforded by having more tobacco in a wider ring gauge, in particular the inclusion of the slower-burning, more powerful *ligero*; but if cut correctly (a straight cut between 3½ and 4 mm from the top), it delivers its flavour with the intensity of a slimmer cigar, concentrating the initial taste to a smaller area of the palate. This configuration completely alters the character of the cigar, even within the same brand.

It is often observed that the shape of the Pirámide allows for better combustibility; however, this may not be solely to do with the geometry of the shape. Figurados are much more difficult to make than Parejos, as Lázaro Collazo,

Romeo y Julieta Pirámide Añejado

head of quality control at the Habanero factory in Havana province explained to me. 'The main challenge is in the "head" or *cabeza* of the cigar. In a Parejo cigar you cut the binder/filler after you have rolled a cylinder of tobacco. This creates the flat end onto which the cap is placed. With a Pirámides you have to continue rolling the binder and filler tobacco into a Pirámide shape and then also add the cap at the end. This is a more complicated and difficult process.'

Looking at the needle-sharp point of a good Pirámide, it is hard not to marvel at the manual dexterity that enables a top roller to repeat this precise feature time after time, using only hand, eye and experience. Grade 9 is the highest level of skill to which a *torcedor* can aspire, and only Grade 9 rollers are permitted to make the larger Figurados, (including Rodolfos, Pirámides and Pirámides Extra). Even the smaller Figurados, those between 4¾ and 5½ inches (120 and 140 mm) in length (Campana, Forum, Petit Pirámide, Petit Belicoso and Petit No.2) can only be tackled by a Grade 8 or 9. And while Grade 9 is the highest official grade, I recall that in one factory I visited a couple of years ago, the rollers selected to work on special projects were designated as the Brigade Pirámide; demonstrating the high regard in which the Figurado is held by the industry.

The Pirámide reached its apotheosis when the Montecristo No.2 was made into a Gran Reserva, using tobacco from the 2005 harvest. The Montecristo Gran Reserva was a richly satisfying, almost majestic cigar; the aged tobaccos smoothing away the liveliness of youth with a carpet of harmonious flavours. The other classic Pirámide, the H. Upmann No.2, became a Reserva in 2013 using tobacco from 2010.

In 2012, the Cohiba Pirámides Extra (54 × 6¼ in/160 mm) was launched, the first addition to the fuller-flavoured Linea Classica of the super-premium cigar brand since 1989. Again this was a highly significant launch. The Linea Classica is the foundation of the Cohiba brand, and the introduction of a new format into such a hallowed and classic range is not a decision lightly taken. I tasted the Pirámides Extra shortly after it was launched and found it docile, smooth and subtle. Subsequently, however, I have found it getting a little stronger and developing into something not to be trifled with.

At Montecristo, the No.2 has been joined by a smaller sibling, the Montecristo Petit No.2, a cigar tailored to the requirement for short yet substantial cigars. It keeps the

Analysis of some Havana Torpedo (Figurado) Shapes

SIZE	ROLLER GRADE	VITOLAS DE SALIDA
54 × 7⅛ in/180 mm	9	San Cristóbal Muralla ('06–'11)
54 × 6¼ in/160 mm	9	Cohíba Pirámides Extra ('12)
52 × 6⅛ in/156 mm	9	Montecristo No.2 ('35)
		H. Upmann No.2 ('50s)
		Partágas P 2 ('05 & LE '00)
		Vegas Robaina Unicos ('97)
		Diplomáticos No.2 ('60s)
		Cohíba Pirámides LE ('01 & '06)
		Hoyo Pirámides (LE '03)
		Cuaba Pirámides (LE '08)
52 × 5½ in/140 mm	8	Romeo y Julieta Belicosos ('50s)
		San Cristóbal La Punta ('99)
		Bolívar Belicosos Finos ('50s)
		Sancho Panza Belicosos ('50s)
		Punch Serie d'Oro No.2 (LE '13)
46 × 5⅜ in/135 mm	8	Montecristo Open Regata ('09)
		Hoyo Short Hoyo Pirámides (LE '11)
50 × 5 in/127 mm	8	Romeo y Julieta Petit Pirámides (LE '05)
52 × 5 in/125 mm	8	Bolívar Petit Belicoso (LE '09)
52 × 4¾ in/120 mm	8	Montecristo Petit No.2 ('13)
46 × 4 in/100 mm	7	Vegueros Mañanitas ('13)

52 ring gauge of its big brother but is almost an inch and a half shorter at 4¾ in/120 mm.

These high-profile launches have been accompanied by some interesting special-edition Figurados; among them the Perfecto Bolívar Britanica Extra, and the Ramón Allones Petit Belicoso, both regional editions for the UK of 2011 and 2012 respectively. Other short-production-run Figurados include limited editions such as the Punch Serie d'Oro No.2 of 2013; and the Hoyo Short Pirámides of 2011.

TRIPA

Tripa Larga (long filler) cigars are made using whole leaves, arranged in the cigar as they are on the plant, with the tip of the leaf at one end and the stem at the end that is clipped.

Tripa Corta (short filler), made from chopped leaf and leftovers from Tripa Larga cigars, tend to be more rustic smokes, such as Vegueros and José L. Piedra. There has been a valiant attempt to compare them to hearty French country wines from obscure *appellations contrôlées* – which does not do French country wines any favours. Faced with a Tripa Corta or nothing, I would choose the latter. Unless you absolutely positively have to have a cigar and can find nothing else, I would avoid them, as they cannot be accused of acting as a showcase of Cuban excellence.

TUBES

In 1933, Waldo Braden invented the aluminium cigar tube (subsequently tubes were equipped with a screw top and now many adopt a sliding trombone-like system). In Braden's

original design, a tab-style opening rendered the tube unfit for reuse; apparently he was paranoid that unscrupulous individuals might replace the Upmann inside with an inferior cigar.

But even if he had not come up with a near-perfect method of maintaining a cigar in optimum condition, Braden would have entered cigar lore anyway as the man who pulled a gun in the boardroom. It was 1935, and J. Frankau & Co. [*see* *HUNTERS & FRANKAU*, page 89] had been bought from Braden & Stark by D. G. Freeman. Waldo was so opposed to the sale that he tried every means to stop it, and even went as far as stealing and hiding the company seal. When Freeman discovered that Waldo had been adding a hidden margin to the cigar tube sales, he sacked him.

VEGAS de PRIMERA

Tobacco plantations, which are confirmed as best cigar tobacco growing regions by the Cuban tobacco Institute.

VISO

[*See*: *LEAF*, page 92]

VITOLA

Vitola is the size and shape of a cigar; in Cuba, the *vitola de galera* refers to the generic factory name for a given size. The *vitola de salida* is the name on the box.

There is also what I feel should be called a *vitola popular*, by which the cigar will often be widely known. For example, a Partagás Lusitania (*vitola de salida*), is a

Prominente (*vitola de galera*) but most people know it as a Double Corona (49 × 7⁵⁄₈ in/194 mm).

VOLADO

[*See*: *LEAF*, page 92]

WEEVILS

Among the worst nightmares of the cigar lover is weevil infestation; these tiny little creatures hatch inside the cigar and burrow perfectly circular pin-like holes through the sides. Further evidence of their unwelcome presence comes if, on tapping the foot of the cigar, a fine dark powder falls out: weevil excrement ... eugh! However, beetles only hatch when temperature and relative humidity rise above 22°C and 72 per cent respectively.

I don't fancy smoking weevil dung, so if I find a pinhole in a cigar I discard it and examine those in the same box or humidor forensically. If they are free of holes, I place them in a bag in the freezer for three or four days and then move them into the fridge before returning them to room temperature. As a precaution, since 2005 all Havana cigars have been frozen before leaving the island.

HOYO
DE MONTERREY
HOYO
DE MONTERREY
PARTAGAS
PARTAGAS
25 SERIE D No.4
10 SERIE P No.2
25 SERIE P No.2
25 SIGLO VI
25 SIGLO IV
25 SIGLO V
25 SIGLO II
PARTAGAS
PARTAGAS
BOLIVAR FINOS
MAGNUM 46

BRANDS

BOLÍVAR

Simón Bolívar, the brand eponym, was a pretty vigorous chap, achieving mythical status as the man who threw off the yoke of imperial Spain. His record as a liberator is impressive: in 1821 he freed his native Venezuela; a year later he made it a hat-trick, liberating Colombia and Ecuador; he seems to have taken a year off in 1823, but 1824 saw him back on form bringing freedom to Peru, adding Upper Peru (today known as Bolivia – he had a country as a well as a cigar brand named in his honour) to his score-card a year later.

Thus he was an apposite choice of brand name for a cigar launched in 1902, after Cuba had kicked out the Spaniards, ending just over four centuries' rule of the island from Madrid; and doubtless the J. Rocha Company, which made such resolutely Hispanic brands as El Crepusculo, wanted to explore the possibilities of exporting cigars to markets other than Spain.

With its vast empire and its new, cigar-smoking king, Edward VII, England must have presented amazing opportunities to the astute cigar producer, but the right name had to be found. Happily, as well as being a liberator, Bolívar was something of an Anglophile: the inscription on his statue in Belgrave Square reads, 'I am convinced that England alone is capable of protecting the world's precious rights as she is great, glorious and wise.'

Like the man himself, the cigars have a powerful presence. I daresay this nineteenth-century Che Guevara was a macho character, and the cigars are similarly styled. Their flavour is robust and forceful. The names of the various sizes bristle with Latin machismo: Immensas, Belicosos Finos and the fabled Coronas Gigantes.

Bolívars tend to be rich, earthy and a bit too much of a test of one's masculinity for my liking; it is a cigar that needs to be wrestled into submission. If you have the cojones and the palate, try the Coronas Gigantes, the closest thing Cuba has produced to a weapon of mass destruction since the Missile Crisis of 1962. If you have ever seen one of those films about the Second World War in which, with a great clanking rumble, the wall of a house collapses like damp cardboard as a giant Tiger tank drives through the bricks and mortar without so much as a gear change, then you will

have an idea how some of the strongest Bolívars can taste. This is a subjective view: but the least successful Bolívars allow strength to triumph at the expense of flavour, delivering a crushing steamroller of strength without nuance that subdues rather than seduces the palate.

They tend not to be cigars for the neophyte. Of all Cuban marques it is fair to say that Bolívar is the most powerful, and it is therefore hardly surprising that since the 1950s Bolívar cigars have been made alongside Partagás, another fuller-flavoured Havana. The rich, unique flavour is not derived from a higher-than-usual proportion of *ligero* leaf; rather, more *seco* than *volado* is used in the blend than in the Partagás.

But the Cuban cigar industry is nothing if not full of apparent contradictions, so I suppose I should not have been surprised to find that Bolívar once made the smallest Havana, the Delgado (under 2 inches in length and with a slender 20 ring gauge), and that the wide Churchill format Bolívar Belgravia that was released as a regional edition in the UK in 2015 was uncharacteristically approachable and almost smooth, like a strong Romeo y Julieta. But in most cases, handle with care.

STRENGTH: Strong to overpowering, favouring presence over character

FLAVOUR: Earthy

CHARACTER: Like a wrecking ball, or a brick through a plate-glass window – hard to ignore

BEST ENJOYED: After a heavy meal (preferably a spicy curry) and before a long lie down

Packing Cohiba Behikes at Cohiba fatory

Today the black, white and egg-yolk yellow of the Cohiba is an axiom of modern good living that has taken its place alongside the Calatrava cross of Patek Philippe and the distinctive shadowed and serifed red lettering of Chateau Pétrus. I still remember my excitement at coming across it for the first time at the beginning of the 1990s. I was of course familiar with Montecristo and Davidoff, but this was something different; for a start, the band was straight-edged rather than swelling to a lozenge in the middle, and instead of the paper-covered box with the elaborate nineteenth-century-style illustrations of star-crossed lovers or South American liberators, this was a varnished box, either hinged or with a sliding lid, branded with distinctive block lettering and the Taino head.

The beginnings of the Cohiba story are wreathed in myth and cigar smoke. At one time the creation of this most celebrated Cuban marque was ascribed to Che Guevara himself. Today the cigar's exact origins have been traced back to 1963. The cloud of nuclear doom that had hovered over the Caribbean during the tense days of the Missile Crisis had cleared and the sunlit uplands of Cuban socialism beckoned. Once again a man could enjoy a cigar in peace without fear of being interrupted by nuclear Armageddon.

Thus Castro's driver and chief bodyguard, Bienvenido Pérez Salazar, or 'Chicho', was sitting in El Commandante's

Oldsmobile enjoying a cigar rolled for him by a friend. Long, thin, elegant and distinguished by a little twisted pigtail of tobacco leaf at the end, it tasted as good as it looked. Castro was so impressed by the lingering aroma that Chicho offered him one. El Commandante enjoyed it enough to have its roller, Eduardo Rivera, summoned from his *torcedor*'s bench and entrusted with the solemn responsibility of rolling the leader's cigars.

At the time, Rivera was working in the old La Corona factory. Had I known a little more about the history of the Cohiba when the old factory was still open, I might have been tempted to ask my *torcedor* friend Taboada if he had known Rivera, and if he had been at his bench that day when the announcement crackled over the loudspeaker instructing Rivera to make his way to the factory entrance, where a comrade in military fatigues was waiting to take him to a top-secret meeting.

At this meeting, Rivera's friend Chicho asked him to roll some more of the delicious cigars. At first he thought he was just making cigars for a friend, but soon these slender sticks of tobacco became an indispensable revolutionary accessory, as much of a part of the look as luxuriant facial hair, heavy boots and olive-green military fatigues.

Ernesto 'Che' Guevara, the poster boy of radical chic, the man who adorned thousands of student bedsits in the 1960s and 1970s, claimed never to have smoked a better cigar, and it is said that even after he left the island to export the revolution to Bolivia, he was sent supplies of his favourite Cohibas.

For security reasons Rivera was moved between factories and sometimes rolled cigars at home. When a factory

was established to make El Commandante's cigars, it was a high-security site. To this day an aura of secrecy still surrounds the brand: its home factory remains by far the most difficult cigar factory to visit.

The Cohiba was a genuine tool of the revolution. The cigar that we know today as the Lancero, a long Panetela of just over 7½ in/190 mm with a ring gauge of 38, became something of an ambassador for the country. An example of soft power, it was used as a diplomatic gift, presented with a personal band, with the likes of Marshal Tito of Yugoslavia and Colonel Nasser of Egypt among the lucky recipients.

In order to demonstrate the equality of the revolution, it was decreed that women would be trained as rollers to make these cigars. It was another woman, Celia Sánchez, the 'Flower of the Revolution', who took the Taino Indian word for the bunched leaves of tobacco that Columbus had seen being enjoyed by the island's inhabitants on his arrival and used it to name the new cigar Cohiba.

The cigar now had a name and a workforce, and in 1967 it moved into its current premises, in the former country club district of Havana: a sprawling mansion once belonging to a British treacle tycoon, a building that looks like it cannot quite make up its mind whether it wants to be Le Petit Trianon or just an oversized wedding cake. Called El Laguito, it has been immortalised in the name of the long, thin cigar that was the first Cohiba – Laguito No.1.

According to the official history, *We Shall Call them Cohiba* by Adargelio Garrido de la Grana, 'The first Cohiba brand design was used for a very short time.' Created in 1969, the design of the packaging, which used a stylised tobacco leaf motif repeated to create a semicircular fan that

recalled the arches of colonial-era architecture, was judged politically incorrect. 'It was considered as portraying a concept far removed from that desired, due to the prominence of the colonial over the indigenous.'[1] The second design therefore stressed modernity and authenticity, with a graphic representation of a Taino head in profile against a tobacco leaf. It was not until the 1980s, however, that Cohiba was finally distributed outside Cuba, under a new livery and in just three sizes: Lanceros, Coronas Especiales and Panetelas.

During the eighties, cigar tastes tended to the long and slender, of which the Lancero was the epitome. The invention of the Cohiba Robusto [*above*] was a landmark in the history of the modern cigar. Today it is arguably the most famous cigar of what would become known as the Linea Classica of Cohiba, although its introduction to the market at the time was sotto voce. However, when it launched in 1989, just 25,000 were made for the whole world. With its 50 ring gauge, I remember it seeming an unconscionably indulgent cigar; in a ribbon-bound bundle of 25 cigars, their oily toffee-coloured wrappers almost glowing, it was incredibly seductive. Even so, it took me some time to work up the courage to tackle one. I feared the strength, but I need not have done so, as the power

[1] Adargelio Garrido de la Grana, *We Shall Call them Cohiba* (Habanos SA, 1997), p.76

was like that delivered by the effortlessly turbocharged V8 of a Bentley: smooth and controlled thanks to the additional period of fermentation undergone by the *seco* and *ligero* leaves, lowering the nicotine and acidity. The quality and character of the Cohiba is further safeguarded by the fact that the tobacco used in the blend is harvested from what are considered the five best plantations in the Vuelta Abajo: La Perla and Santa Damiana in San Juan y Martinez; and Cuchillas de Barbacoa, La Fe and El Corojo in San Luis.

I was at the dinner at Claridge's in November 1993 where the Linea 1492 range of Cohibas was launched, the successor to the Cuban Davidoffs that had been made at El Laguito. The new range, Siglos I–V (one for each century since the arrival of Columbus in the New World), promised a slightly lighter style, and the Corona Gorda-sized Siglo IV (46 ring gauge × just over 5½ in/140 mm) became a rival to the Robusto in my affections.

Over time, the Cohiba has adapted to meet changing tastes. Today of course the taste is for ever girthier cigars, so a Siglo VI (52 ring gauge × just under 6 in/152 mm) was added to the Linea 1492. Reflecting the widespread acceptance of darker wrappers (viz. the popularity of the annual limited editions), 2007 saw the arrival of the Linea Maduro 5, the number referring to the five years' maturation of the dark, slightly sweet wrappers. In 2010 a new level of excellence was achieved with the arrival of the Linea Behike. It is the famous medio tiempo tobacco that gives the Behike range its unique potency.

But while these are rich and flavourful cigars, their large ring gauges, 52, 54 and the hard-to-manage 56, mean that the blenders have a bigger canvas on which to work

and balance the flavours to provide an experience that at best is close to sublime. I say close, because of course the best cigar so far of this century is actually sublime: the Cohiba Sublime, a highly sought-after limited edition from 2004, although the Cohiba 1966 limited edition of 2011 comes a very close second.

Of course not every Cohiba has been brilliant, but given that when you include the limited runs and special editions there are around three dozen different varieties where there used only to be three, it is little short of miraculous (given the difficulties that the Cuban cigar industry has to face) that they are as consistently enjoyable as they are.

Cohiba Linea Classica

STRENGTH: The strong end of medium, with the narrow ring gauges packing surprising intensity

FLAVOUR: Spicy

CHARACTER: Elegant and assured

BEST ENJOYED: Relaxing in the back seat of a classic Oldsmobile after the Cuban Missile Crisis

Cohiba La Linea 1492

STRENGTH: Offically billed as medium, I would argue that the Siglo VI leans towards punchy

FLAVOUR: Dark chocolate with creamy overtones

CHARACTER: Elegant and refined

BEST ENJOYED: As a gateway to the Cohiba family

Cohiba Linea Maduro 5

STRENGTH: Medium, but the dark wrapper makes it look stronger

FLAVOUR: Rich with a hint of eucalyptus

CHARACTER: Out of the strong comes forth sweetness

BEST ENJOYED: Instead of pudding

Cohiba Linea Behike

STRENGTH: If it were not so well balanced it would be a knockout

FLAVOUR: With these leaves and ring gauges it is like a kaleidoscope across the palate

CHARACTER: Hardly discreet but delicious

BEST ENJOYED: When you have plenty of time

CUABA

Back at the height of the first cigar boom in the nineteenth century, there was a craze for the Double Figurado – or what is colloquially known as a Double-Ended Torpedo. The end to be clipped widens gently into the main body of the cigar, which tapers to another pointed end that has a hole of a few millimetres diameter. Thanks to this construction, when the cigar is being lit, it produces a striking scimitar-shaped flame. A Double Figurado is one of the sternest tests of a roller's

capability, and is therefore made by the most experienced hands, so chances are better than average that your Double Figurado will be neither under- nor overfilled; it will be free of blockages and will burn easily and evenly.

Introduced in 1996, the Cuaba range comprises only Double Figurados. At the time of their launch, one of the accessories available for customers to buy was a special tasselled velvet smoking cap of the type that Victorian patriarchs used to wear with smoking jackets to avoid their hair smelling too strongly of tobacco. If the nineteenth-century-inspired *vitolas* strike you as retro, then the name has roots even further in the past: *cuaba* was the Taino word for a readily combustible bush that they used to light their *tabacos*.

STRENGTH: Strong to overpowering, sometimes favouring presence over character

FLAVOUR: Rich roasted coffee beans

CHARACTER: Eccentric

BEST ENJOYED: In a velvet smoking hat, reading the latest work by the popular novelist Mr Charles Dickens

EL REY del MUNDO

Calling your brand King of the World is hardly self-effacing, but when Antonio Allones, launched (or according to some sources relaunched) the brand in 1882, his aim was to give the world a cigar whose excellence was reflected in its price,

hence such similarly modest naming of the flagship cigar, Choix Supreme, a classic Hermoso No. 4 (or near Robusto). Allones was a towering figure in the nineteenth-century cigar trade, and even owned the fabled El Corojo plantation where the seed of the same name would be developed.

I have a real soft spot for El Rey del Mundo; it is arguably the perfect mild cigar, sophisticated, elegant and alas hard to find, as the range is much depleted from the days when it included the legendary Churchill-sized Taino.

STRENGTH: Mild
FLAVOUR: Delicate
CHARACTER: Distinguished
BEST ENJOYED: During the day (this is not a cigar that presents well after dinner)

H. UPMANN

Herman Upmann was a German banker who moved to Cuba in 1844 to found a bank and a cigar brand. The cigars proved more long-lived than the bank, which shut in the early 1920s.

In 1925, the brand and the factory passed into the hands of its UK distributor, J.Frankau & Co. Ltd. In 1935 it was bought by D. G. Freeman, great-grandfather of Jemma Freeman, owner of the UK Havana importers Hunters & Frankau [*see* page 89]. It remained in British ownership until 1937, when it was acquired for £100,000 by Menéndez, García y Cia, owners of the then recently launched Montecristo brand.

The circumstances of the sale were particularly colourful even by the standards of Havana in the thirties. An agreement was finally reached after 11 days of protracted, brandy-sodden negotiations, which commenced in a bar called the Reguladora opposite the H. Upmann factory, continued aboard an ocean liner that had been boarded inadvertently during the course of the deal-making, and concluded in New York.

H. Upmann is an ideal Havana brand for the neophyte cigar smoker, as it is widely regarded as one of the lightest; sometimes so light that for the more seasoned Havanaphile, smoking certain Upmanns seems merely like allowing warmed air to move across the palate. It was just such a cigar, the now discontinued Petit Upmann, that Kennedy famously asked his press secretary to buy in bulk before he signed the embargo on trade with Havana.

It is with the bigger cigars that the brand is best experienced, for instance the Churchill-sized Sir Winston. Recent years have seen some excellent arrivals: the Magnum 50, which was such a success as an Edición Limitada in 2005 that it was introduced to the main range in 2008; and the Connoisseur A, a longer (5½ in/140 mm), girthier (52 ring gauge) and more flavoursome counterpart to the 48 ring gauge 5 in/127 mm and reliably agreeable Connoisseur No.1.

STRENGTH: Mild

FLAVOUR: Generally smooth

CHARACTER: Sometimes delicate and docile; always accessible

BEST ENJOYED: After a light picnic lunch on a warm day

HOYO de MONTERREY

Its name is that of one of the great *vegas de primera* (first-class plantations) of the Vuelta Abajo, where there is a gateway inscribed with the words 'Hoyo de Monterrey José Gener 1860'.

Thirteen-year-old José Gener arrived from Spain in 1831 to work on an uncle's tobacco plantation. This was the beginning of what might be called the cigar rush, when great fortunes were to be made, and by the time he was in his thirties, Gener had his own factory and his own brand of cigars, La Escepción. By 1860 he had made enough money to consider acquiring his own plantation, and in buying what in Bordeaux would be one of the great classified growths, he entered the ranks of the major tobacco barons of the golden age of cigar making. Hoyo de Monterrey the brand first appeared in 1865, and by the turn of the century the Hoyo factory was the largest in Cuba, making a staggering 50 million cigars a year. In 1931, the brand passed into the hands of the owners of Punch [*q.v.*, page 179], and the two celebrated names have been stablemates ever since, complementing each other beautifully.

Hoyo used to be classed as a medium-strength cigar, but these days the tendency is to view it as light; indeed, a recent Petit Robusto [*overleaf*] came across as flirty with a hint of grassiness. Hoyo is most famous for its Double Coronas, one of the great cigars of all time: light, almost

sweet, certainly soft and yet complex and structured. It is one of the most approachable Cuban Double Coronas for the neophyte, and for the seasoned palate it is an excellent cigar with which to fill that gap between lunch and cocktails.

On the subject of seasoned palates, Hoyo de Monterrey has the honour of being the favoured marque of the second most famous British cigar smoker, Sir Terence Conran, who practically lives on a diet of black coffee and an endless supply of the Robusto-sized Hoyo de Monterrey Epicure No.2. Just as the Churchill has been shortened, widened and what-have-you at Romeo, so Hoyo has turned the Epicure name into a brand within a brand. Whereas once they used to appear unbanded in cabinets of 25, now Epicures Nos. 1 and 2 have two bands, one telling the world that the cigar is a Hoyo, and a second white band proclaiming its status as an Epicure. In 2008 they were joined by the Gordito-sized Epicure Especial (50 × 5½ in/140 mm).

Traditionally viewed as slightly stronger than the main range, the Le Hoyo series was created for a Swiss importer, A. Durr & Co. They are an interesting addition to the Hoyo range in that they are generally slender ring gauge cigars.

The slimmest, the Du Gourmet, is a superb example of what a long, slim (33 × 6¾ in/170 mm) cigar can be. It ages

Hoyo de Monterrey Petit Robusto

spectacularly, as I discovered when I ignited one from the late 1990s. It was a revelation. The time-smoothed flavours were apparent from the moment the flame licked the end of the cigar – instead of that initial burst of liveliness that may or may not settle down after a few puffs, I had this wonderful sense of toasted almonds, a warm, nutty character. It then developed a fullness that seemed almost out of place in such a slender cigar. A faint hint of cracked pepper crept across the palate, and there was body, structure and a characteristic that I can only describe imperfectly as the sort of biscuitiness that I used to experience with a good champagne. The last third developed a surprising richness, ending with a satisfying tang. It was not the strongest cigar I had ever smoked – think of a glass of *rosé* taken at lunch on the Côte d'Azur – but it was a complete cigar in that it developed, changed and revealed different facets of its character over the course of the half an hour I spent in its company.

The heaviest ring gauge in the Le Hoyo range was just 42 until 2014, when a Robusto Extra (54 × 5⁷⁄₈ in/150 mm) called Le Hoyo de San Juan was added. This is an interesting cigar in that it was to be made at a single factory rather than have its production spread across numerous locations, as well as because the *seco* and *ligero* in the blend come exclusively from the San Juan y Martínez DOP.

STRENGTH: Mild to medium

FLAVOUR: Smooth, nutty and grassy

CHARACTER: Sophisticated

BEST ENJOYED: In the company of Sir Terence Conran

JOSÉ L. PIEDRA

A brand of academic rather than epicurean interest – these rustic short filler cigars are made with tobacco grown exclusively in the Remedios region (once known as the Vuelta Arriba) – the perfunctory band and rustic nomenclature, i.e. Cazadores (hunter), suggest a bucolic nature that is duly delivered. It was once explained to me that this cigar was intended to be like a stout country wine; if so, it is one of those wines that taste good enough on holiday but do not travel well.

STRENGTH: Medium to full
FLAVOUR: Earthy and bitter
CHARACTER: Country yokel
BEST ENJOYED: By someone else

La FLOR de CANO

When I first became interested in cigars, the Flor de Cano Short Churchill was a cult. Robustos were rare, and this smooth and creamy cabinet selection cigar perfectly matched the tastes of the times, when cigars were not intended to deliver a blast of strength and youthful flavour and a 50 ring gauge was considered hefty. Of course, given the cigar's

incredible popularity and its excellence, the Cubans did the obvious thing and discontinued it in the early 1990s.

Recent attempts to revive the lustre of the name with regional editions for Britain and Canada have not been triumphant – hardly helped by the fact that Romeo y Julieta has pinched the Short Churchill name for itself.

La Flor de Cano has a bit of an identity crisis, as it is known for producing a great many machine-made cigars up until 2002, when they were phased out in favour of short filler cigars, albeit hand-made.

STRENGTH: Adequate
FLAVOUR: Nondescript
CHARACTER: Inoffensive
BEST ENJOYED: In the late 1980s and early 1990s when the legendary Short Churchill was being made

MONTECRISTO

Although there are older Havana brands, there is none better known. The origin of the name is said to derive from the fact that Dumas' nineteenth-century blockbuster novel was a favourite of the *torcedores* in the Particulares factory where this brand was first made in the summer of 1935. It is not that literacy was so widespread in pre-revolutionary Havana, but rather that rollers were traditionally entertained as they worked by being read to by a lector.

The Particulares factory belonged to Alonso Menendez, scion of a family that emigrated from Spain to Cuba in 1890. A leaf tobacco specialist, he had found success as a maker with his brands Particulares and Byron, which were particularly popular in Britain, the largest market in the world for Havana cigars at that time.

With Montecristo, Menendez wanted to create a new brand of exceptional quality. He went into partnership with José Manuel 'Pepé' García, formerly a senior commercial manager at the Partagás factory, and in 1936 they founded the legendary Menendez y García company.

Working closely with the British cigar importers John Hunter, Morris & Elkan Ltd, whose managing director, Jack Benham, is said to have come up with the design of the Montecristo box, a relationship was formed with Alfred Dunhill Ltd, which sold the brand at its London and New York stores. The guiding principles for Montecristo were that production would be low, prices high and quality the finest. Distribution was selective, and whereas contemporary trade price lists show other brands listed and priced in full, Montecristo was strictly 'Price on Application'.

In 1937, Menendez, García y Cia bought the H. Upmann factory in Havana from its British owner, D. G. Freeman, and that year production of Montecristo was moved to H. Upmann, where it has remained ever since, although the location of the factory has changed more than once. The similarity between the brands even extended to the bands: from the 1960s until

Montecristo No.2 Pirámides

2006, the H. Upmann bands were the same umber colour and discreet size and shape as Montecristo's.

After the Cuban revolution in 1959, Alonso and Pepé set up a cigar business in the Canary Islands, and during the 1960s, factory floor manager José Manuel González, known as 'Masinguila', was credited with maintaining the continuity and consistency of the brand in Havana. In 1971, four new sizes were introduced: the 9¼ inch Montecristo A, the slender Especial and Especial No.2, and the Panetela-sized Joyita. During the 1970s in the UK, the Montecristo A, a telegraph pole of a cigar was considered the *ne plus ultra* of Havanas.

Since then, Montecristo has been overtaken in terms of prestige by other marques, but its reputation for consistency remains. Today almost a quarter of the Havana cigars sold in the UK are Montecristos of some sort or another; the country's favourite Havana is the Montecristo No. 4, which while not the most exciting cigar is usually dependable.

Indeed, for many years the brand, with its famous fleur-de-lis and épée motif was more reliable than rip-roaringly exciting; the medium-strength bittersweet tang seemed to deliver what many cigar lovers wanted from a smoke, and as nothing was broken, Habanos SA felt no need to fix anything until 2004, when, taking the name of Edmundo Dantès, hero of Dumas' novel, the Edmundo became the first size to be added to Montecristo's standard range since 1971. Measuring 52 × 5⅜ in/135 mm, the Edmundo was an entirely new *vitola de galera* (factory size) and only the second new 52 ring gauge Parejo (straight-sided) size to be introduced, less than a year after the Cohiba Siglo VI launched in June 2003. The Edmundo put Montecristo into the vanguard of the early twenty-first-century taste for ever-heavier ring

gauges. It was soon joined by the stumpy Petit Edmundo, which packs a commendable amount of flavour into its 4⅜ in/110 mm, and in 2013 by the Double Edmundo.

Montecristo Open, a sub-brand with a lighter flavour apparently aimed at younger smokers, was added in 2009. It must be doing the right thing as I, an older man, do not much care for it.

STRENGTH: Medium; on occasion full

FLAVOUR: Tangy and agreeably astringent

CHARACTER: Dependable

BEST ENJOYED: Any time, any place, anywhere (local legislation permitting)

PARTAGÁS

Jaime Partagás was nothing if not precocious. The son of a Catalan tailor, he set sail for Cuba in the summer of 1831, aged just 14. He opened his eponymous factory in 1845.

Today the Partagás factory at 520 Industria (just behind the Cuban Capitol) is one of Havana's chief tourist attractions. Its lively cigar shop and smoking room, the latter equipped with the sort of large leather sofas that engulf the sitter, are meeting places for enthusiasts.

But just because this fine old building is on the tourist trail and you will have to fight your way through the heaving crowds in the shop to reach the almost-as-crowded smoking

divan, it does not necessarily follow that Partagás cigars are just for tourists who wouldn't be able to tell a decent smoke from a poke in the eye with a sharp stick.

The brand tends towards strength and spiciness, and has the sort of structure that lends itself to ageing well. If it were a wine, it would have something of the 'farmyard' quality of a good Burgundy.

Notable cigars include the Serie D No. 4, probably the first Robusto. The Lusitania is a classic Double Corona, and although the *vitola* is less fashionable than it was in the late twentieth-century, this is a cigar that warrants inclusion in any humidor that likes to consider itself well stocked. The espresso-like Partagás Short was a favourite of the late taste maven and *arbiter elegantiarum* Mark Birley, and it if it was good enough for Mark then it is more than good enough for the rest of us. More recently the Partagás Maduro, a 2015 launch, has been well received: a Robusto-sized take on the dark-wrapper look that is absolutely delicious, with the traditional Partagás strength mediated by the sweetness imparted by the wrapper. The cigar comes with a bit too much bling in the form of an extra band and slightly fancier packaging, but don't let that put you off.

The most eccentric Partagás is the Culebras [*above*]. More a souvenir than a cigar, these three cigars plaited together and bound with string used to be machine-made but for the last 10 years or so have been hand-made using long filler. This unusual format references the daily ration of three cigars that was issued to cigar rollers and which they received in plaited bundles to distinguish them from the commercial production; thus a worker caught smoking a cigar that was not shaped like a corkscrew had probably 'liberated' it from the bench. The move to hand-made is an improvement; even so, they look more interesting than they taste.

STRENGTH: Verging on the fiery
FLAVOUR: Paprika, chilli and other spice
CHARACTER: Feisty
BEST ENJOYED: On a full stomach

POR LARRAÑAGA

The Petit Corona with the gold band, described as 'the standard bearer'[2] of the Por Larrañaga brand, does not cover itself in glory. A slightly harsh little stub of a thing, this

[2] *UK Havana Cigar Portfolio*, second edn, p.66

is rather the little drummer boy attached to the regiment who does his best under the circumstances.

Far more interesting are the regional editions, among which the Por Larrañaga Magnifico (50 × 6¾ in/170 mm), released in 2007, is regarded as historically important. If there is a box to be ticked, the Magnifico ticks it, including a fancy old-style band. The cigar has aged very well and has a sweet flavour with a hint of liquorice, balanced, harmonious and satisfying. The Por Larrañaga Sobrasalientes of 2014 is almost as good and the brand has been chosen to make regional editions in many mainland European countries as well.

STRENGTH: Mild to medium

FLAVOUR: Smooth and creamy

CHARACTER: Harmonious

BEST ENJOYED: As a Regional Edition rather than the standard range

PUNCH

One of the great brands of Havana, founded in the mid nineteenth century and historically popular in England. The not unnatural assumption has tended to be that it was named to capitalise on the appeal of the satirical magazine launched at around the same time. Not so, says cigar professor Min Ron Nee, who believes that it was the wife-beating puppet who

inspired the marque. 'The brand was very likely named after the character Mr Punch of a very popular puppet show in the UK. Mr Punch still appears on the vista of Punch Semi Plain Boxes today,' says Nee. 'Many people say that the name came from the famous British comic magazine *Punch*. This was rather unlikely, as the *Punch* magazine was established in 1841, one year after the registration of the Punch brand.'[3]

STRENGTH: Medium

FLAVOUR: Woody and complex

CHARACTER: Balanced

BEST ENJOYED: As a Double Corona

Whatever the origin of the name, the brand was a success and with its stablemates Hoyo de Monterrey, Belinda and L'Escepcion accounted for 13 per cent of Havana cigar exports in 1958. Hoyo and Punch share a home in the La Corona factory to this day. Punch is a solid medium to occasionally fuller-bodied cigar.

The Punch Punch (so good they named it twice) is a classic Corona Gorda that delivers plenty of flavour. However, to my taste the Double Corona is one of the greats in this format. Almost as much of a legend as its Hoyo counterpart, it ages sensationally well and is a couple of hours well spent. However, if you do not have the time at your disposal, follow the example of noted cigar connoisseur Sir David Tang, who imports Havana cigars into Asia and set a

[3] Min Ron Nee, *An Illustrated Encyclopaedia of Post-Revolution Havana Cigars* (Interpro Business Corp, Hong Kong, 2003), p.326

trend for the sawn-off Punch Double Corona, chopping it in half to create, in effect, two short Robustos.

QUINTERO

The best that can be said of this brand of short filler cigars is that it is affordable.

STRENGTH: Medium

FLAVOUR: Not the most refined

CHARACTER: Cheap and moderately cheerful

BEST ENJOYED: On a tight budget

RAFAEL GONZÁLEZ

These refined cigars achieve mildness while avoiding blandness. I have an emotional attachment to the light and delicate flavours of Rafael González – I was particularly partial to the Corona Extra as a youngster and still remember with pleasure one that I enjoyed in 1991 after lunch at the Colombe d'Or in Saint-Paul-de-Vence. While it is not the strongest of cigars, it is pretty powerful when it comes to making lasting memories.

The brand is believed to date from the 1920s or 1930s, and each box carries the splendidly vague legend:

These cigars have been manufactured from a secret blend of pure Vuelta Abajo tobaccos selected by the Marquez Rafael González, Grandee of Spain. For more than 20 years this brand has existed. In order that the Connoisseur may fully appreciate the perfect fragrance they should be smoked either within one month of the date of shipment from Havana or should be carefully matured for about one year.

Quite how much of this elegantly scripted nonsense is true is debatable; I seem to remember hearing that it was cooked up by an early-twentieth-century cigar merchant visiting Havana who wanted a new brand and was written out on the spot by someone who had a neat hand.

Whatever the origin, my fondness for Rafael González was compounded when I used to eat lunch at Mark's Club. As soon as my pudding had been cleared away, the inimitable Costa would be at my side proffering a Rafael González Lonsdale: it is said that Rafael González was the first brand to name a cigar Lonsdale (the *vitola de galera* is Cervantes), and the box that Costa would bring to the table had a picture of the famous sporting earl on the inside of the lid; they were special stock from the seventies, and even though I only got round to them in the 1990s, they were a delight.

STRENGTH: Light

FLAVOUR: Wafts above its weight

CHARACTER: Fragrant

BEST ENJOYED: Mid-afternoon with a cup of Lapsang Souchong

RAMÓN ALLONES

A brand of which I am wary as on occasion it is too powerful for me, demonstrating a combination of the steamroller strength of Bolívar and the spiciness of Partagás. Another characteristic it shares with Partagás is that it was founded by an ambitious and resourceful Spanish émigré eponym, one of the most innovative cigar magnates of the nineteenth century.

My wariness notwithstanding, Ramón Allones is a hugely important Havana brand. Founded in 1837, it is credited with being the first brand to use colour lithography to decorate its boxes and differentiate them from competitors, a notion that rapidly became an inalienable aspect of the cigar experience. It is also said to have been the first to adopt the triple-decker 8-9-8 way of packing cigars, which, as the numbers suggest, involves a layer of eight cigars, then a layer of nine, and a further top layer of eight.

Sometimes attaining Bolívar levels of strength, the Ramón Allones marque is particularly appreciated in the United Kingdom, where its power and flavour are enjoyed by those who enjoy country pursuits such as fishing and shooting. A robust cigar is required for al fresco enjoyment in climatic conditions that are not always forgiving and that bear little resemblance to those of Havana.

Specially Selected is a Robusto by name and nature, while the Double Corona is called Gigantes, a name that says it all. Not to be tackled by the neophyte or those of

nervous disposition, it requires a strong constitution and a seasoned palate.

STRENGTH: Strong to overpowering

FLAVOUR: Power-packed, manly, fiery agreeably sour

CHARACTER: Muscular

BEST ENJOYED: On the final drive of the day after a stout shooting lunch

ROMEO y JULIETA

Havana may be a long way from Verona, but the story of the doomed lovers of Shakespeare's most famous tragedy took root in the fertile soil of Cuba and gave birth to one of its most versatile and appealing brands.

Though Romeo y Julieta is commonly believed to have been founded in the 1870s, cigar sleuth Min Ron Nee has traced its origins back to the 1850s. However, whatever the date of its foundation, the brand can really be said to have taken off in 1903, when it was bought by an enthusiastic and downright colourful plutocrat called Don 'Pepin' Rodriguez, whose talent for promotion was as limitless as his funds. Upon acquiring the brand, one of his first PR ploys was to try 'to buy the Capulet Hotel in Verona, as befitted the brand name. After lengthy discussions and protracted transactions, Pepin Rodriguez succeeded in obtaining the concession for a tobacconist's shop in the hotel foyer, but on one condition – each

new foreign visitor would be presented with a cigar.'[4] He also made use of Bock's invention of the cigar band like no one else before him; at one point during his stewardship of the marque, no fewer 'than 20,000 different bands were used in the production of cigars'.[5] From Gonzalez Byass to the Cienfuegos Yacht Club: if you wanted a personalised band wrapped around your cigar, then Romeo y Julieta would be happy to oblige.

Further PR came in the ample shape of British wartime leader Winston Churchill, who is said to have admired the brand. 'Following his visit to Havana in 1946, his name has not only been commemorated on a band, but it has also served to describe the marque's most famous size – Romeo y Julieta Churchills.'[6] Properly kept, a Romeo y Julieta Churchill can improve for decades.

However, it was not until the twenty-first century that the patronage of the greatest Briton and the world's most famous cigar smoker was further exploited with the arrival of the Robusto-sized Short Churchill in 2006 (a long-overdue Robusto Romeo); four years later, the Wide (55 ring gauge)

[4] Bernard Le Roy and Maurice Szafran, *The Illustrated History of Cigars* (Harold Starke Publishing, 1998), p.58

[5] Mark Brutton, *The World of the Habano* (Habanos, 2012), p.84

[6] Ibid.

Churchill (really a wide Robusto) was launched; and in 2012 the Petit Churchill (a 50 × 4in/102mm sawn-off Robusto) came along. All are rather good cigars: easy, dependable, fruity and spicy without being overpowering – their popularity with occasional cigar smokers is testified to by the wide range of tubed Romeo y Julietas.

Aside from a full range with ring gauges from 30 to 55, the brand has plenty of eccentricities. There is the Cazadores (Hunter), which comes wrapped in silver paper and has the pungent, earthy character that might find favour with the rugged outdoorsman but not with me. More to my liking is the trio of 42 ring gauge cigars in varying lengths known as the Cedros Deluxe (Nos. 1, 2 and 3), each wrapped in a small sheet of cedar wood to add a little extra elegance and aroma.

STRENGTH: Medium

FLAVOUR: Packed with it

CHARACTER: Versatile and approachable

BEST ENJOYED: Such is the range that there is almost always a Romeo y Julieta suitable for the occasion, whatever it is

SANCHO PANZA

A hidden gem among Havanas, the long-suffering supporting actor of *Don Quixote* finally got top billing in 1848 when his name was given to a cigar brand. The memory of Don Quixote's squire is done justice with these excellent cigars.

Sancho Panza is a grand example of why being unfashionable can be a very good thing indeed. As it is not a trendy brand, the blend has been left alone. Moreover, the line-up has not been expanded, thus the sizes are classic: Lonsdale, Petit Corona and Belicoso, the last a medium-strength Torpedo with real distinction.

Entertainingly, the Lonsdale's factory name is Cervantes and the name it is given in the Sancho Panza brand is Molino (Windmill). But the star of the line-up, when you can find it, is the Sancho Panza Sanchos. The same size as the Montecristo A, 9¼ in/235 mm in length, this is a fine and mellow cigar, or at least the ones I have are, because they have been knocking around since the mid-1990s. The passage of time has removed any sharper edges, making it well worth the effort it takes to find them.

STRENGTH: Medium

FLAVOUR: Well structured with some body but not overpowering

CHARACTER: As reliable as their eponym

BEST ENJOYED: While tilting at windmills

SAN CRISTÓBAL de la HABANA

This is an underrated brand making some excellent cigars that take their names from the fortresses that defended the city when it was the pearl of Spain's colonial possessions.

I remember being particularly taken with this brand of lighter- to medium-bodied cigars when they launched in 1999. At that time the line-up featured El Morro (49 × 7 in/178 mm), sadly now out of production; La Fuerza (50 × 5½ in/140 mm); La Punta (52 × 5½ in/140 mm); and El Principe (42 × 4⅜ in/110 mm). The cigars tend to be of medium strength, and given that they are often overlooked, they usually have a bit of age on them.

For a number of years I was very partial to La Fuerza, a *vitola* known as a Gordito; it was one of the very first long Robustos. It was delicious in a medium-bodied sort of way, but then as cigars became ever more generously proportioned, I rather lost sight of it among the forest of sequoia-sized smokes heading out of the factories of Havana. However, the real star of the brand is the pint-sized Principe, which is a brilliantly versatile cigar, elegant enough for the first coffee on a summer's morning and yet with just sufficient flavour to justify post-prandial use.

Subsequent to their appearance at the end of the last century, there have been a number of special editions of San Cristóbal carrying an inevitable second claret-coloured band indicating that they were once only available in Casas del Habano (the global network of Havana-only cigar stores). These tend to be a little girthier, richer and spicier than the original range, but have yielded some real gems, including the Torreon (54 × 6 in/152 mm), housed in a highly idiosyncratic porcelain jar, with a lid bearing fortress-like crenellations that also serves as an ashtray (the appearance is of a gaudy rook from an oversized chess set). The preposterous packaging conceals a cigar well worth seeking out, as whoever put it together clearly knew what they were doing.

It begins with a dry flavour and roast coffee bean aroma, and it is the flavour rather than the strength that develops. Early dried fruit flavours lead to a pleasing and lively spiciness, and the smoke is that perfect silvered blue.

San Cristóbal is not a widely appreciated marque, a state of affairs I hope will continue.

STRENGTH: Medium

FLAVOUR: Woody with various degrees of spice

CHARACTER: Mature

BEST ENJOYED: After lunch or a light supper

TRINIDAD

For years this cigar enjoyed almost mythical status. El Commandante's favourite diplomatic gift, the Cohiba, came onto the market in the early 1980s; while the Trinidad, although inaugurated a couple of years after the Cohiba in 1969,[7] retained its air of myth and mystery until well into the 1990s. It was not until Marvin R. Shanken's modest little supper party in 1994 in Paris, a $1,000-a-head cigar dinner nicknamed 'Dinner of the Century', that the existence of these cigars was proved beyond doubt. It was a major

[7] Adriano Martínez Rius, cited in Nee, *An Illustrated Encyclopaedia*, p.472

Arranging the contents of a box of cigars in order of colour in the Trinidad factory

moment in cigar history; imagine the Yeti being captured or the Loch Ness monster appearing in an aquarium.

It was still such a novelty a couple of years later that I remember attending a cigar dinner in about 1996 when one of the guests actually turned down a Trinidad, saying rather loftily that he only smoked Cuban cigars; he clearly believed these to be a product of the island of Trinidad, when in fact the name is derived from the Cuban city, a UNESCO heritage site and a favourite with visitors to the island on account of its colonial architecture.

Originally available only as a single size – the long (7½ in/192 mm), slender (38 ring gauge) Lanceros, complete with pigtail head – even the blend was similar to Cohiba, albeit without the additional fermentation. When it was made commercially available in 1998, in strictly limited quantities, the ring gauge was increased slightly to 40, a *vitola* known as the Laguito Especial, given the Trinidad name of Fundador, and boasted a blend devised by the legendary Raoul Valladares of El Laguito. It remained a single-size brand until 2003, when three further cigars were added to the range: the Robusto Extra (50 × 6⅛ in/156 mm); the Coloniales (44 × 5¼ in/132 mm); and the Reyes (40 × 4⅜ in/110 mm), again equipped with the pigtail head.

I remember visiting the Laguito factory, where all Trinidads were made at that time, and getting very excited about the Robusto Extra. Sure enough, along with its two new siblings, it proved so popular that Trinidad outgrew El Laguito and production was transferred to Pinar del Río. I remember one slightly embarrassing visit to the factory there, when I was given a cigar from which I kept pulling twig-like bits of stalk until it drew properly. However, occasional cavils about

quality aside, the cigars were delicious, light to medium in strength, but rounded and almost sweet; they age well.

With the introduction of the Robusto T in 2009 – a delicious cigar that one aficionado of my acquaintance told me was good enough to eat, let alone smoke – the brand seemed to have established itself firmly on the market and in the humidors of connoisseurs. So it should not have come as a surprise that in 2012 the Robusto T and Robusto Extra (in my view the stars of the range) were withdrawn; if you are fortunate enough to come across a box of either, do not hesitate to snap them up.

For a while there was uncertainty about Trinidad's prospects, but with the 2014 launch of the Vigia (54 × 4³/8 in/110 mm), a bulked-up, on-trend sawn-off Robusto offering a fuller, stronger and spicier take, it would seem that the brand has a future.

STRENGTH: Medium

FLAVOUR: Traditionally mellow but getting livelier

CHARACTER: Diplomatic

BEST ENJOYED: During the day, wasted after a heavy dinner

VEGAS ROBAINA

During the 1990s, one man emerged as the 'face' of Cuba's cigar industry: a face that would have given the pachydermally creased and fissured features of W. H. Auden a run

for their money. Alejandro Robaina was a hero of the revolution. During the Batista years he carried on cultivating tobacco while concealing rebels on his farm (including Fernández Roig, official eponym of the Partagás factory) and collecting money for the guerrillas. 'I continued, as always, on the plantations, seeing to my harvest. In that very same tobacco house where I dried my tobacco harvest of 1959, I had fourteen men hidden there, men that were in the Revolution,'[8] he would later recall.

Three decades on, he became a hero of the cigar industry, managing to produce high-quality wrapper leaf during the difficult 1989 harvest. His yield of usable leaf was known to top an impressive 80 per cent, and by the mid-1990s this considerable achievement was recognised with an award naming him Cuba's best tobacco farmer, presented by Fidel Castro in person. In one of his worst years he managed a yield of only 36 per cent, but to put that into context, some of the state farms that year only achieved 0·8 per cent.[9]

Farming land that had been cultivated by his family since 1845, Alejandro embarked on his working life as a child. If one regards one's first cigar as an act of maturity, he came of age at 10 years old, when he ignited his first home-grown and rolled cigar. In 1951, at the age of 32, he took over the running of the plantation on the death of his father, and built on its reputation for fine wrapper leaves, spending the rest of his life perfecting his art. Such was the

[8] J. L. Milán, *Alejandro Robaina, Tradition and Magnanimity* (Epicur Publicaciones SL, 2004), p.5

[9] James Suckling, 'Cigar Diary: Cuba's Cigar Legend', *Cigar Aficionado* website, posted 1 October 2006

quality of his wrappers that the Cuban government selected them for use on the original Trinidad cigars that were given as diplomatic gifts.

It was only well into his seventies that he became, in cigar terms, a rock star. The cigar boom taught a new generation to love the tobacco of the Vuelta Abajo, and the appeal of Cuba's cigars – their link with the *terroir*, their authenticity and their tradition –seemed to be summed up in Alejandro Robaina. He was honoured, as Davidoff had been before him, with an eponymous cigar; not one that he had made himself, but one that carried his picture. If anything, in style and delivery of flavour they can be described as having some similarities to the Montecristo range, but with a fuller, stronger, earthier taste.

Over the years, this unlikely pin-up of the industry became a globe-trotting ambassador. Nor did he get much respite when he returned to Cuba. His farm was a place of pilgrimage, with cigar fans desperate to catch a glimpse of, and share a few moments with, their idol. I have to admit that I was one of the groupies who made their way out to the plantation at Cuchillas de Barbacoa (literally 'ridges of the barbecue'). My recollection of him from a day spent primarily in rocking chairs smoking the home-rolled cigars that had sustained him since his tenth birthday is of a gentle and unassuming man, who talked much about the rhythms of the seasons and the changes in climate that he had noticed over the course of his long career in tobacco.

Of course Robaina, with his straw hat and sun-fissured features, embodied the ideal image of the tobacco farmer; but he also showed that when it comes to making cigars, men of character are just as important as tobacco leaves.

Alejandro Robaina on his farm at Pinar del Rio, Vuelta Abajo

The cigars that bear his name are like a punchy Montecristo or a less aggressive Ramón Allones with a sprinkling of spiciness. The standard range is compact, just five *vitolas*, the stars of which are the Famoso (a near Robusto) and the Unico (Pirámide). A recent Famoso with a beautiful glossy chestnut-coloured wrapper smelt wonderful even unlit – honeyed and pickled all at once. About half an inch in, it settled down to a woody, tangy, agreeably vegetal flavour that was lively enough to maintain interest and was delivered firmly but not overpoweringly to the palate. Not the most refined or elegant of blends, but, as a celebration of a man who made his life out of the Cuban soil, rather fitting.

STRENGTH: Full

FLAVOUR: Spicy and earthy

CHARACTER: Firm and rustic

BEST ENJOYED: In a rocking chair on your verandah after a hard day in the fields

NEW WORLD CIGARS

Although the countries of Central and South America were historically involved in the cultivation of tobacco, and in some cases the manufacture of finished cigars, the rise of modern cigar making in the region can be dated to the early 1960s. The Cuban revolution drove a great many cigar-making and tobacco-cultivating families into exile. Many settled in neighbouring countries, where the politics, climate and soil were similar to those of their pre-revolutionary homeland, and once President Kennedy imposed the trade embargo as a result of the Missile Crisis; Cuban cigars were no longer available in the United States, leaving the market open to competitor nations.

A second stimulus was given to non-Cuban manufacturers during the 1990s, when a cigar boom gripped the United States, which, unable to acquire (legally at least) Cuban cigars, had to turn elsewhere for its supplies.

It is incorrect to say that Havana cigars are better than other cigars, but they are different. Cigars demonstrate characteristics specific to their region, their maker and their market. And the chief difference between Cuban

and non-Cuban cigars is that while Havana cigars are *puros*, those made elsewhere in the region tend to draw freely on tobacco from other countries: a cigar made in the Dominican Republic may have an Ecuadorean wrapper and filler sourced from across the region as well as that grown in its own fields. Thus the palette of flavours upon which a skilful blender can draw is vast.

Although each country is capable of offering various styles of cigars, it is generally accepted that those from the Dominican Republic tend to be lighter, with a crisp saltiness, while those from Nicaragua are the most powerful and spicy. New World cigars have pioneered eye-catching packaging as extravagant and innovative as the dressed box must have appeared at the time of its introduction in the nineteenth century. Another innovation led by the New World makers has been the adoption of ever-larger ring gauges; whereas Cuba only got its first 60 ring gauge cigar in 2016, with the Cohiba 50 Aniversario, certain non-Cuban makers have been producing cigars of this girth since the early years of the twenty-first century, and sequoia-like ring gauges of up to 80 are known.

COSTA RICA

A relative newcomer to the cultivation of cigar tobacco, with topographical, climatic and geological similarities with other noted tobacco-producing countries in the region. Costa Rica benefits from rich volcanic soil and the cloud cover that means wrapper can be cultivated with no need to place it under cloth.

For almost 150 miles the Cibao valley runs like a vast trench across the north of the country, from Manzanilla Bay close to the border with Haiti in the west to Samana in the east. It is bounded to the north by the Septentrional mountains and to the south by the dramatic crags of the Central range, with the Caribbean's highest mountain, Pico Duarte. On the valley floor are rice paddies; in the mountains coffee is grown; and in between, tobacco is planted. During the second half of the nineteenth century much of its tobacco industry was controlled by Germany, establishing a bond between German-speaking countries and Dominican tobacco that endures to this day (Davidoff is headquartered in the Swiss-German city of Basel).

While leaf tobacco was exported to make cigars in Europe, nineteenth-century domestic consumption was characterised by the Andullo, a tightly bound covering of palm leaves around a length of tobacco so compressed as to become a block that could be transported to market and cut in lengths for sale. (The Andullo is still made today and enjoys considerable popularity with Dominican expatriates in the USA.) The local economy began to improve with the sugar cane boom of the 1880s, and small cigar factories began to appear: first was Matilde in the 1880s, then in 1901 La Habanera, followed in 1903 by the famous La Aurora.

After the end of the First World War and the collapse of Germany as an imperialist colonial power, the Dutch, a nationality with historic ties to the tobacco industry, took

a leading role; among them was Henke Kelner's family, who settled in Santiago in 1925. Unlike its Central American neighbours, the Dominican Republic did not benefit immediately from the exodus of tobacco and cigar expertise from Cuba in the wake of the revolution, as it was far from politically stable itself. In May 1961, the country's leader, another prototypical Latin American dictator, Rafael Leónidas Trujillo, was ambushed on a coast road and gunned down by a party of conspirators. An attempt by his son Ramfis to succeed him ended with the flight of the entire Trujillo family later that year. It was only after an American invasion in 1965 ended an incipient civil war and backed the robustly anti-communist rule of Joaquín Balaguer, under whose administration the first duty-free zones were established, that the country became attractive to large international companies and smaller makers fleeing instability elsewhere in the region.

Today in terms of output the fertile furrow of the Cibao valley is the heart of the cigar industry, not just in the Dominican Republic but in the region as a whole, with an estimated annual production of 210 million hand-made cigars. Second place is occupied by Nicaragua with 135 million, then Cuba with 85 million, just ahead of Honduras with 75 million. The country is home to some of the biggest and best-known brands, among them Davidoff and Fuente. During the nineteenth century the city of Santiago de los Caballeros in the middle of the valley was more populous than the capital, Santo Domingo, with as much as 70 per cent of the population living in the area. It may be the country's second city, but it is its cigar capital and is fiercely proud of its traditions, among them cockfighting.

ECUADOR

Known in particular for wrapper leaves, the Los Ríos province of Ecuador in the Andean foothills, inland from the city of Guayaquil, benefits from an interesting microclimate where nearly constant cloud coverage creates the perfect conditions for wrapper leaf without having to resort to the technique of shade growing under cloth. Moreover, dozens of active volcanoes provide a nutrient-rich soil. Connecticut seed that yields light toffee-coloured wrappers, Sumatra seed to make darker and oilier wrappers, and various Habano seed varieties are planted here.

The best-known growers in Ecuador are the Perez family, who supply top-quality makers across the region. The dynasty originated in Cuba, inevitably, where José Perez grew tobacco from the 1880s. After the revolution, his grandson Silvio left for Miami. During the 1960s, Silvio and his son Alfredo worked for the Cullman family, owners of General Cigar, superintending wrapper production in Connecticut. After a Nicaraguan wrapper-growing experiment, their purchase of an Ecuadorean farm in 1991 was perfectly timed to benefit from the cigar boom, and the business is now run by David and Joseph Perez.

HONDURAS

Filler is still grown in Copán, the original tobacco cultivation area of Honduras, where the Spanish government set up a branch of its Real Fábrica de Tabacos in the eighteenth century, and there is a local wild strain of tobacco called Copecan. However, today the cigar capital is Danlí,

and the Jamastran valley, a source of filler and wrapper, is seen as the Pinar del Río of Honduras. Given its proximity to the border with Nicaragua, the tobacco grown here shares characteristics of strength and richness with that cultivated by its southern neighbour. North-east of Danlí is the Olancho region, another source of filler and wrapper as well as the location of many clandestine airstrips used by drug runners, which have given the region an unwelcome reputation as the most violent part of the country. The Talanga valley, some of which is planted with Corojo, is celebrated for its wrappers.

MEXICO

The San Andrés valley in Mexico's Veracruz state is the centre of tobacco cultivation. And although like other countries in the region there is historical evidence of tobacco growing, the cigar industry in this large, populous nation is some way behind that of its southern neighbours in Central America. Local industry remains largely focused on the domestic market: in 2015, Mexico exported only around five million cigars, and until recently, legislation and high tariffs militated against the import of tobacco leaves from other nations, which restricted variety. Tabacalera Alberto Turrent, established in 1880, is the largest producer, maker of Mexico's most famous brand, Te-Amo, and also a significant grower of three types of tobacco: Sumatra (for wrappers), Habano Criollo and San Andrés Negro.

NICARAGUA

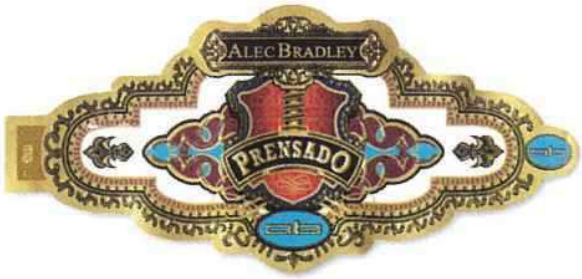
Cigar making in Nicaragua centres on the city of Estelí, to the north of which are the Condega valley growing region and the Jalapa valley, Nicaragua's Vuelta Abajo, where the steamy climate together with the rich soil give birth to some of the best tobacco currently being grown. Emigrés from Cuba, including the Padrón family, believed that Nicaragua offered conditions similar to Cuba and established themselves here. It was not only the soil and weather that were familiar and reassuring; the political climate was propitious, as the Somoza family which had run the country more as a family estate than a nation from the 1930s, enjoyed the backing of the United States (to the extent that Nicaragua produced the official cigars of Nixon's White House).[1]

By the 1970s, Nicaraguan tobacco had built itself a fine reputation. Anastasio Somoza, the last family member to rule the country, owned tobacco farms and appropriated the cigar company Joya de Nicaragua. However, the cigar industry was almost destroyed by the civil war, not least when the United States imposed a decade-long embargo on Nicaraguan products. Since then Nicaragua has made up for lost time and become the Klondike of the cigar world, with brands and fortunes being built with much the same rapidity as in Havana during the nineteenth century; and that is not the sole similarity with Cuba. Nicaragua is self-sufficient in

[1] http://joyacigars.com, accessed 6 June 2016

tobacco terms: in other words, it can make *puros* just as in Cuba. Moreover, many of the varieties of seed planted are of Cuban origin.

As Nicaraguan tobacco tends to be quite forceful and spicy, it is often used by makers of cigars elsewhere to enrich and energise otherwise unexciting blends. According to Henke Kelner, sometimes Nicaraguan growers strip a tobacco plant back to just 12 leaves (as opposed to the customary 16–18) to further concentrate the nutrients in a smaller number of thicker, more powerful leaves. He also adds that on occasion the strength of the Nicaraguan cigars is compounded by a harshness that comes from incompletely fermented tobacco, a commercial short cut that has since emerged as a cherished flavour characteristic. This sense of distinct regional character has helped make Nicaragua one of the most exciting and dynamic cigar-producing countries.



ALEC BRADLEY

If you were looking for a name that tells the story of the American cigar during the 20 years from the late 1990s, you could do worse than study Alec Bradley, a brand named after the children of former hardware supplier Alan Rubin, who used the proceeds of the sale of his successful business to start in the cigar industry in the late 1990s, and as such found himself perfectly placed to enter the trough after the

boom. Bad timing was compounded by even worse branding: the rather appallingly named Bogey's Stogies focused on the very tight market of cigar-smoking golfers, and were sold in golf shops under the motto 'The only bogey you'll ever enjoy on the golf course'.[2] To no one's surprise, except perhaps his own, the business was a disaster. 'I'm a Florida boy and I thought that people played golf 12 months out of the year in the entire country,' Rubin admitted to *Cigar Aficionado* in 2011, looking back on his youthful folly. 'It was kind of a faulty business plan.'[3]

By then, he was the proprietor of a successful boutique cigar brand. In 2000, many cigar makers had spare capacity; one of them was the legendary Henke Kelner, creator of the Dominican Davidoffs, who made cigars for Rubin, at Davidoff's private-label factory 'Occidental'. Alec Bradley's Occidental Reserve kept Rubin in the business, and demonstrating his flair for the novelty cigar, he also launched Trilogy, a pressed cigar with a triangular profile that appeared to have been inspired by a bar of Toblerone. His breakthrough cigar was the head-spinningly strong Tempus, made by a small Honduran factory called Raices Cubanas. Alec Bradley cigars are also made by Plasencia.

Today Alec Bradley has gone gourmet. The Nicaraguan Prensado is well regarded in America and demonstrates the slightly raw but nonetheless chocolatey and peppery characteristics of Nicaraguan cigars. There is also a following for the Fine and Rare series, whose cigars carry not so much a

[2] http://www.cigaraficionado.com/webfeatures/show/id/15886, accessed 7 June 2016

[3] Ibid.

band as a scroll detailing their date of rolling, date of release, weekly production, length, ring gauge, and names and signatures of roller, supervisor and the men who approved it. Cigars in this series tend to be complex and carefully studied – quite a journey from Bogey's Stogies. Happily, the brand has not lost its knack for silly names or novelty cigars, combining the two in the Black Market Filthy Hooligan, a blend of Honduran, Nicaraguan and Panamanian tobacco characterised by its unique barber's-pole wrapper that alternates Oscuro with light green Candela.

STRENGTH: Can be substantial

FLAVOUR: Expect punchy notes of Nicaraguan tobacco

CHARACTER: All-American

BEST ENJOYED: On the golf course in honour of the original Bogey's Stogie

ARTURO FUENTE

Among the first wave of Cuban emigrés who left the island at the beginning of the twentieth century following the devastating Spanish–American war was 14-year-old Arturo Fuente; ten years later, in 1912, he opened an eponymous cigar business in West Tampa, one of many dozen cigar-making factories importing Cuban tobacco and producing cigars. Fuente

prospered, and by 1924 he employed 500 people. However, a disastrous fire destroyed his factory building and it was not until the Great Depression and the Second World War had passed that he resumed production, and then only on a very local basis, installing a few rolling tables on his back porch.

A year before the Cuban revolution, Arturo's son Carlos Fuente took over and the fortunes of the family turned. With the US embargo in place, Carlos started buying tobacco from Puerto Rico and Colombia, experimenting with blends that would appeal to palates accustomed to Cuban leaf. The company prospered, and during the 1970s Carlos moved production to Estelí, but the decade ended badly when, 55 years after the Tampa building had been destroyed by fire, the Fuente factory was burned to the ground during the Nicaraguan revolution.

Mortgaging his house and scraping together what funds he could find, Carlos set out for the Dominican Republic, and in September 1980 Tabacalera A. Fuente opened a 12,000-square-foot factory in Santiago. With the launch in 1980 of the medium-bodied Hemingway line, the family re-established its reputation.

At the end of the 1980s, the company began to grow tobacco on a substantial scale and took on the challenge of developing its own wrapper leaf. The result of this period of investment and development can be tasted in the Fuente Opus X range, introduced in 1995 and characterised by the pinkish 'Rosado' wrapper. One of the first of the so-called power cigars to grab the attention of the American market (in the early 1990s most cigars sold in the US were mild, with pale wrappers), it became a cult during the cigar boom, with scarcity and high pricing only heightening the

frenzy. It is now an established classic, with strong, fruity flavours. I recently enjoyed an old Opus X that I had kept in my humidor for some years, and I can only describe the feeling as like being knocked out by a large, rich Dundee cake: the cigar was undeniably extremely well constructed and equally undeniably powerful, with a wall of rich flavours including nuts and dried fruit.

In 2010, Carlos Fuente and his son, Carlos Fuente Jr, produced 30 million cigars, and the Fuente fan base supports a range of other products, including a partnership with the Hublot watch brand.

STRENGTH: Punchy

FLAVOUR: Spicy, fruity, nutty

CHARACTER: Sophisticated yet strong

BEST ENJOYED: When you are rested, well fed and not intending to operate heavy machinery

AVO

Nonagenarian Avo Uvezian is an enigmatic character of Armenian descent and extravagant manner who dresses as does the man from Del Monte. In his dazzling white suit and broad-brimmed straw hat he would have looked entirely in keeping with the belle époque crowd in Monte Carlo, but it was in Puerto Rico that he segued from a career in music to

a second life as a cigar brand. After a picaresque and peripatetic career as a musician that had taken him from the Lebanon to the US via Damascus, Baghdad and the court of the Shah of Iran, he moved to Puerto Rico in 1971. Here he established himself as a piano player at the Palmas del Mar resort, dabbled in real estate and added cigar making to what today would be called a portfolio career.

He used to have a few cigars made for him, which he sold singly from a jar atop his piano. After a couple of years his cigars became so popular that he began selling them in boxes. By the 1980s, demand was such that he went to see Henke Kelner and his master blender Eladio Diaz in Santiago de los Caballeros in the Dominican Republic, where Henke had recently opened a small factory with six rollers making private label cigars. At the fuller-flavoured end of the Dominican range, Avo's cigars acquired such a following that he sent a batch to the then recently opened Davidoff store in New York: 125,000 were sold in the first year, and soon it became several hundred thousand per year. Now the Avo brand is owned by Oettinger Davidoff and made in the Oettinger Kelner factory located next to the Davidoff factory near Santiago.

Typically, Avo cigars have tended to be made with Dominican filler and binder, often well aged, with Ecuadorean wrappers grown from Connecticut or Cuban/Connecticut hybrid seeds. Recently, however, the marque has been exploring the possibilities offered by other Central American countries; for instance the Avo limited edition released for his birthday in March 2016 and housed in a box that looks like a record player features an Ecuadorean wrapper grown from Habano 2000 seed, and Mexican

Negro San Andrés with the Dominican filler. In line with the current interest in Nicaraguan tobacco, the Avo Syncro Nicaragua is a cigar with dark and oily Ecuadorean wrapper, and binder and filler from the Dominican Republic, Peru and the Nicaraguan island of Ometepe. The intense, peppery Nicaraguan tobacco is tempered by the creamy and aromatic Dominican leaves.

STRENGTH: Medium

FLAVOUR: Smooth, creamy

CHARACTER: Musical

BEST ENJOYED: With friends while wearing a white suit and playing the piano

CAMACHO

A brand that should really drop the first two letters of its name, Camacho, founded by Cuban émigré Simon Camacho, is now owned by Oettinger Davidoff. Based in Danlí in Honduras, it is most famous for its use of what it calls 'Original Corojo' – except of course that the original Corojo was grown on the Corojo plantation in Cuba. 'Loud'

and 'unapologetic' are the technical terms that best describe Camacho cigars. Typical is the Camacho Custom Built series, apparently what the 'Big Dogs' smoke, among them a Hall of Fame American football player and coach called Mike Ditka. Other gems include the Camacho Powerband, supposedly 'inspired by the power, performance and acceleration of the classic V-twin engine'.[4]

One of Camacho's greatest hits is the American Barrel Aged line, which is made with filler aged for five months in American bourbon barrels; an intriguing concept that has taken off like one of the muscle cars that I am sure every Camacho smoker drives. The Brotherhood series is 'a celebration of the bond between men who take action and never sit idly by'.[5] The copywriting may at times collapse into parody-defying hyperbole, but the cigars are not at all bad. Unlit, the basic Camacho Corojo has a lovely bouquet akin to that of a freshly opened bag of raisins; it is strong and to my palate a little harsh – an assessment that no doubt marks me out as insufficiently manly to pursue what Camacho proudly calls 'The Loud Life' and which I imagine is lived at full volume.

STRENGTH: Can be that of a champion arm wrestler

FLAVOUR: Rich and raisin-like

CHARACTER: In your face

BEST ENJOYED: While doing something manly

[4] http://camachocigars.com/cigars, accessed 3 July 2016

[5] http://www.cigaraficionado.com/webfeatures/show/id/15886, accessed 7 June 2016

DAVIDOFF

When Davidoff announced that it was moving its production from Cuba to the Dominican Republic, it was as if the respected Swiss marque had detonated a bomb. The cigar world went into shock. Zino Davidoff had first gone to Cuba in the 1920s. His counsel and his patronage had been sought by makers of Havana cigars before and after the revolution. During the years after the war he invented the Chateau series of cigars named after the great wines of Bordeaux. And he had been accorded the ultimate acclaim of having a cigar brand named in his honour. His name had become a synonym for the very best that the fields of the Vuelta Abajo could grow and the *torcedores* of Havana could roll ... and now, after a lifetime together, the two were parting. A mix of concerns about quality and the future of the brand if it remained in Cuba prompted Ernst Schneider, the shrewd leader of Oettinger Davidoff, as the company became known in 1970, to seek an alternative, and he placed the future of the Davidoff marque in the hands of a remarkable man.

Cigar Aficionado magazine has likened him to such towering gastronomic talents as Alain Ducasse and Joel Robuchon, and the comparison is an apt one, as Henke Kelner conjures a seemingly limitless range of flavours and aromas from his raw materials. The comparison with great chefs is particularly appropriate, as Henke believes in 'total palate stimulation', which he achieves by blending a range of leaves: different varieties of tobacco, cultivated in

different soils and different countries, taken from different positions on the plant.

It is a message that his key staff have learnt well. Instead of talking in vague flavour similes of leather, wood and so on (I cannot remember the last time I ate any leather, and aside from chewing pencils in school, my experiences of wood flavours is limited), when offering a cigar they ask what sort of palate stimulation one is seeking. (Another linguistic quirk of the Davidoff approach is that one is asked whether one would like to enjoy rather than smoke a cigar.) In addition, it is hard to imagine a more exactly made and dependable cigar. 'All that we do in our factories, all that our 1,300 people do, is only for the satisfaction of the cigar smoker. That is the goal,' says Henke[6].

Oettinger Davidoff manufactures somewhere in the region of 46 million cigars annually, more than some countries and more than half of the entire output of hand-made long-filler cigars from Cuba. The enormity of this achievement is even more impressive for those who have seen the factory in which it all started, little more than a barn with a stamped-earth floor.

Classic

Subtle and light, these slender ring gauge cigars pay homage to the original Cuban-made cigars to bear the Davidoff name, made with a light traditional blend of the classic tobaccos of the Dominican Republic: Olor, Piloto and San Vicente.

Escurio

The clue is in the last three letters of the name. With their

[6] Hendrik Kelner, interview with the author, June 2016

beautiful wrappers the colour of chocolate (maybe the colour suggested as much, but there is also a chocolatey hint to the cigar as it develops), and their black and silver banding, these sweet and spicy cigars are intended to evoke the spirit of a night in Rio de Janeiro. Having never been to Brazil, I am alas unable to confirm or deny that they achieve their stated aim; they are, however, intriguing cigars with a relatively approachable strength level, using dark Brazilian Mata Fina, Ecuadorean Habano seed wrapper and Cubra leaf, described by Davidoff as the fire of the Cuban Criollo refined; indeed, it is the refinement that is characteristically Davidoff. Sizes suit the modern trends and include a Gran Toro (58 × 5½ in/140 mm) and an espresso-like Petit Robusto (a sawn-off 50 × 3¼ in/83 mm).

Grand Cru

Numbered from 1 to 5, this range of relatively slender (the biggest is 43) classic ring gauges is an aromatic and slightly nutty cigar that is true to the lightness that Davidoff was aiming at when it launched its cigars from the Dominican Republic.

Millennium

As the name suggests, this line made its debut at around the turn of the century. It represents an evolution of the Special blend, with slightly bolder flavours, while still maintaining the Davidoff commitment to all-round palate stimulation.

Davidoff Millennium Toro

Nicaragua

Perhaps the most emblematic Davidoff cigar of the contemporary period, with the traditionally strong – dare one say harsh? – character of the Nicaraguan tobacco given the Davidoff touch. Imagine Tarzan leaving the jungle and swapping his loincloth for a dinner jacket: this cigar has enough of the strength, vitality, pepper, spice and fieriness you expect from a Nicaraguan cigar, and what Henke calls 'linear' stimulation tobacco; but is improved by a pleasingly civilised flavour delivery. Among the strongest of Davidoff cigars, it has caught the imagination of the cigar-smoking (sorry – cigar-enjoying) public. The box-pressed Nicaraguan is a joy and deservedly popular.

Special

This light yet satisfying blend was an early launch by Davidoff at the beginning of the Dominican years, and for the neophyte or occasional cigar smoker, something like the robusto-sized Special R is a good starting point. The range is predicated on classic sizes, including among others Double Corona, Perfecto and Culebras. Although it has since been joined by plenty of new lines, when it launched, the Special series was a revelation to me, combining excellent construction, light style and a slightly tangy, piquant flavour.

STRENGTH: Generally light to medium

FLAVOUR: Varied

CHARACTER: Civilised

BEST ENJOYED: When you have time that needs to be filled beautifully

Winston Churchill

Working with the family of the world's most famous cigar smoker and Britain's most celebrated twentieth-century statesman, Davidoff has created a line of cigars named after the various aspects of the great man's multifaceted personality. Thus the Churchill size is called the Aristocrat and the Statesman describes the Robusto, while other traits of this historic figure celebrated in fine tobacco are the Artist (Petit Corona), the Commander (Toro), the Raconteur (Petit Panetela) and the Traveller (Belicoso).

The cigars are as complex as their eponym, with tobaccos from multiple countries of origin blended to create what has become one of the Swiss brand's best-sellers.

STRENGTH: Medium

FLAVOUR: Peppery, leathery, earthy

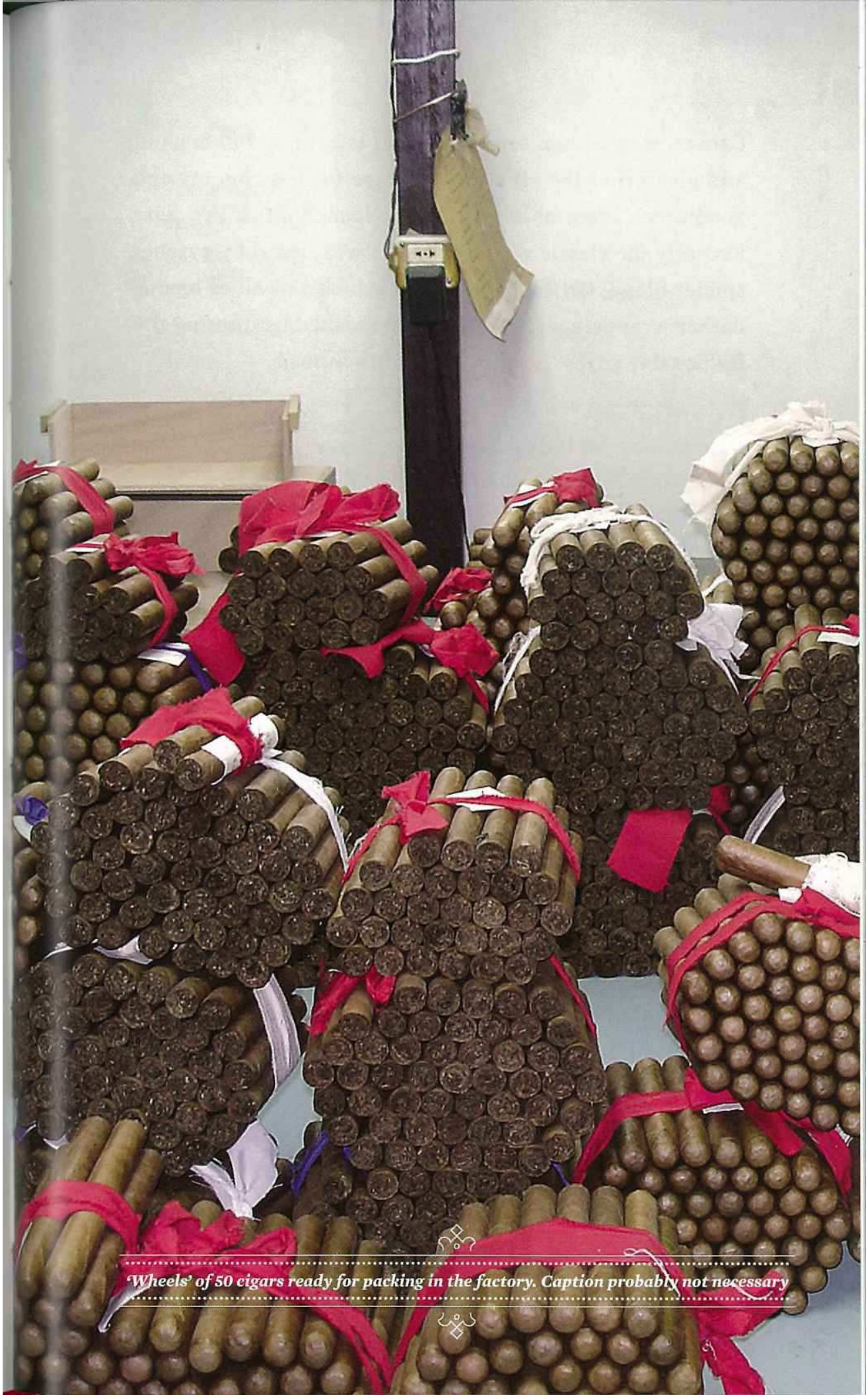
CHARACTER: Churchillian

BEST ENJOYED: If you are an artistocrat/statesman/commander/artist/raconteur/traveller

HECHO A MANO

THE GRIFFIN'S

This stablemate of Davidoff shares the classic white band of its more famous sibling, and celebrates another Geneva landmark, the Griffin's nightclub, back in its glory years during the 1960s, 1970s and 1980s. Griffin's founder, Bernard H.



'Wheels' of 50 cigars ready for packing in the factory. Caption probably not necessary

Grobet, was seldom seen without a long cigar in his hand, and given that the club was a centre for gastronomy and good times, it seems appropriate to launch a Griffin's cigar. Recently the classic white-label line was joined by a richer, spicier blend, Griffin's Nicaragua, which as well as having darker wrappers was further distinguished by offering the fashionably girthy Toro and Gran Toro formats.

STRENGTH: Mild (classic) to medium

FLAVOUR: Nicaragua is the fuller flavour, with regionally characteristic notes of spice and pepper

CHARACTER: Nocturnal

BEST ENJOYED: After dark

EL SEPTIMO

Distinguished by brightly coloured opaque plastic boxes and known for using aged tobacco, El Septimo produces tree-trunk-like cigars that make Robustos seem like anorexic toothpicks. The blend packs a flavoursome punch even in the smaller sizes – the little Amarillo provides a mouthful of flavour.

Wrappers are dark and oily and flavour develops and changes throughout the life of the cigar, but the chief talking point is the price, about twice that of the corresponding Cohiba.

STRENGTH: Potent

FLAVOUR: Feisty

CHARACTER: Pricey

BEST ENJOYED: If you have a lot of money and like cigars in bright plastic boxes

JOYA de NICARAGUA

Established in 1968, Joya de Nicaragua (Jewel of Nicaragua), located in the country's cigar capital Estelí, is the country's first premium hand-made cigar manufacturer. It was founded by Daniel Rodriguez, former owner of Cuba's fabled Corojo plantation, who was invited to Nicaragua by cigar-loving president Anastasio Somoza. For some years he successfully cultivated fields of tobacco in Jalapa, replicating as closely as he could the tobacco with which he had grown up in Cuba. However, revolution and political instability once more interrupted his career. The Joya de Nicaragua factory was burned down and Rodriguez's tobacco fields became battlefields – disillusioned, he turned his back on cigars.

Just as exports of Havana cigars to the USA were interrupted by the 35th President of the United States, so the 40th President, Ronald Reagan, imposed an embargo on Nicaraguan products, causing production of Joya de Nicaragua to move across the border to Honduras, where manufacture was continued at the Nestor Plasencia factory. Trademark difficulties added to the company's woes, but in 1994 the brand was purchased and revived by Dr Alejandro Ernesto Martínez Cuenca, who served as Minister of Foreign Trade for the

Sandinista government. The spicy Joya de Nicaragua Antaño 1970 restored the lustre of its reputation, and in recent years it has won plaudits for its Cuatro Cinco Reserve.

STRENGTH: Medium to strong
FLAVOUR: Woody and fruity
CHARACTER: Accomplished
BEST ENJOYED: If you like the taste of Nicaraguan history

PADRÓN

One of the legends of the non-Havana cigar world, and famous for the dark wrappers and box-pressed profile of its exquisitely made Nicaraguan cigars, the brand has an exciting rags-to-riches story. José Orlando Padrón, the scion of a poor but established tobacco-farming family from Piloto in Cuba, had joined the revolution, but soon grew disillusioned and left the island, going first to Spain and then America. He settled in Florida, where he found the quality of locally available, affordable cigars execrable, and in 1964 he set up a small factory making cigars for poor Cuban exiles using leaf from Brazil, Puerto Rico and Connecticut. In 1967, he made his first cigars using Nicaraguan tobacco, and by 1970 he had opened a factory in the Central American country.

During the seventies, his Miami headquarters was bombed by hard-line right-wing Cubans after Padrón was

photographed giving Fidel Castro a cigar during negotiations for the successful release of political prisoners from Cuban jails. Meanwhile, the troubles in Nicaragua hurt his business too: in May 1978, his factory in Estelí was burned down and the war forced him to relocate to a small factory across the border in Danlí, Honduras, dark days during which a plot to kidnap him was uncovered. He did not return to Nicaragua until 1990. In 1994, the brand hit the jackpot with the launch of the Padrón 1964 Anniversary series, a line that reintroduced the box-pressed shape and established a visual identity for the marque. The Family Reserve series is the top-of-the-range Padrón, made with tobacco that has been maturing for anything up to a decade.

STRENGTH: Can sometimes make a strong Havana seem docile

FLAVOUR: Rich with pronounced sweetness

CHARACTER: Mature

BEST ENJOYED: If you like dark wrappers

TATUAJE

Spanish for 'tattoo', Tatuaje is the creation of Pete Johnson, a failed bass guitarist turned cigar success story, whose heavily tattooed arms betray the origins of his brand name and that of his nickname in the industry, 'Tattoo Pete'. His appearance is pure Quentin Tarantino, as is his route into the cigar industry, as he told *Cigar Aficionado* magazine in 2012. 'I was working

as a bouncer in a strip club. I had no money. I was shopping at Gus's Smoke Shop. I loved the whole feel of the industry and I really loved cigars. This guy named Dennis Spike recommended me [to owner Jimmy Hurwitz] in late 1993. They needed a part-time guy for Sundays to help in the humidor and mix pipe tobacco. Sundays turned into a full-time job within six months, and I became their chief cigar buyer.'[7] His cigars were first made in Little Havana in Miami, but production has since expanded into Nicaragua. Even if you do not much care for body art, be prepared to suspend your prejudices, as Tattoo Pete has proved to be a far more talented cigar maker than he was bass guitarist and strip-club bouncer; his cigars are often highly rated in tastings.

STRENGTH: Champion arm wrestler

FLAVOUR: Earthy

CHARACTER: Surprisingly sophisticated

BEST ENJOYED: By those who like to mix tattoos and tobacco

[7] David Savona, 'Straight Talking with Pete Johnson', *Cigar Aficionado*, May/June 2012

NOTABLE NEW WORLD BRANDS IN BRIEF

GURKHA

In 1887, so the story told by Gurkha goes, British soldiers in the colonies began to smoke cigars made with local tobacco, and somehow these cigars got to bear the name of the legendary Nepalese fighters. The modern story is even more intriguing. In 1988, Kaizad Hansotia, an Indian man raised in Hong Kong and London and active in the luxury watch business, was relaxing on the beach in Goa when he met a man selling cigars under the brand name Gurkha. Hansotia enjoyed the cigars and, in Victor Kiam style, ended up buying the entire stock and the cigar brand for $143.

Since their launch in 1989, they have come to personify cigar bling, with extravagant packaging and ambitious pricing: His Majesty's Reserve costs $25,000 for a box of 20; steep, even though although an entire bottle of Louis XIII cognac is said to have been used to 'infuse' these cigars. Equally imaginative are the names, with *vitolas* called among other things Hedonism and Kraken, while the lines of cigars

bear names such as Gurkha Warlord, Gurkha Assassin, Gurkha Evil, Gurkha Genghis Khan, Gurkha Special Ops (including waterproof case and commando knife; tagline, 'Only Made For the Brave') and the pleasingly alliterative Gurkha Ghost. But even the relatively simply named cigars such as the Gurkha Heritage are lively and polyglot in the tobaccos they use, with leaf from Ecuador, Nicaragua, the Dominican Republic and Pennsylvania.

LA AURORA

The Domincan Republic's longest-established cigar brand, La Aurora was founded on 3 October 1903 by 18-year-old Eduardo León Jimenes, son and grandson of tobacco growers. Over a century later, the company's various brands – La Aurora, León Jimenes, Princes, Family Reserve and Imperiales – are sold in over 70 countries, and the workforce, originally half a dozen, now tops 1,000.

LA FLOR DOMINICANA

As the name suggests, La Flor Dominicana is based in the Dominican Republic. Founded in 1996 in Santiago, it prides itself on its vertical integration: the majority of the tobacco used – filler, binder and wrapper – is grown on its own farms and made into cigars in its own factory.

MY FATHER

The García family, who make Tatuaje Cigars [*q.v.*, page 221] for Pete Johnson, also have their own brand. José Pepin García emigrated from Cuba to the US in 2003 and set up a small factory in Miami's Little Havana; since then he has captured the palates of American cigar lovers. My Father cigars were born out of a secret project that Pepin's son Jaime had blended in Nicaragua as a tribute to his father. This exercise in filial devotion has now become a much-respected boutique brand in the US.

OLIVA

The Oliva Cigar Company can trace its origins back to nineteenth-century Cuba, where Melanio Oliva and his son Hipolito grew tobacco. Hipolito's son Gilberto entered tobacco broking, leaving Cuba in the 1960s first for Spain before eventually settling in Nicaragua, where he grew tobacco and made cigars (working at one time for Nestor Plasencia).

In 1996, Gilberto and his son Gilberto Jr formed their own business, and after some lean years have emerged as one of the great Central American cigar dynasties, with such commercial successes as Nubs – the fat, stumpy little time-optimised cigars that are a maximum four inches in length but boast ring gauges from the mid-50s to the mid-60s. Apparently the idea was to dispense with the foreplay of

flavour and aroma development that occurs during the cigar's first third, and instead join it at what many regard as the peak of its flavour. Another concept that has proved popular with the trend-hungry American market is the Cain, a powerhouse chainsaw of a cigar made of *ligero* leaf, the flagship cigar of which has been the Cain Daytona. Unsurprisingly, Nub and Cain have been combined in a sort of *Alien vs. Predator* ultimate powerhouse – the Cain Nub.

PLASENCIA

Nestor Plasencia Sr is a tobacco grower and cigar maker of Cuban descent, with farms and factories in Honduras and Nicaragua. His company produces over 35 million cigars a yearlxxiv (some estimates run as high as 38 million); in addition, his fields and factories supply a remarkable array of brands – La Invicta, Alec Bradley, Gurkha and Rocky Patel – making him one of the leading figures in Central American tobacco.

Plasencia farms over 3,000 acres of tobacco, half of which is worked on by small growers under contract to the company. The majority of the land is in Nicaragua, with some plantations in other countries around the region, including Panama and Costa Rica. Plasencia, also a pioneer in organically cultivated tobacco, enjoys a high reputation for quality.

ROCKY PATEL

One of the most colourful newcomers to the cigar market, during the mid-1990s Rocky Patel was a Los Angeles entertainment and product liability lawyer by profession, but

a cigar impressario by vocation. In 1996, he launched the Indian Tabac Cigar Co. and caught customers' eyes and imaginations with his polychromatic packaging. Hummingbird-bright livery aside, Patel's cigars tend to be blended across countries; his belief is that this delivers a more complex and intriguing cigar.

He made his name in 2003 with the low-volume Rocky Patel Vintage series, made with aged tobaccos, including some 'forgotten' bales of old Honduran and Ecuadorean leaf. More recently he pulled off a great coup when he hired crack Cuban cigar roller Hamlet Paredes, whom I first met at the Romeo y Julieta factory in Havana at the beginning of the century. The majority of the 14 million or so cigars that Patel makes every year are produced in the factories of Nestor Plasencia.

APPENDIX A

LIMITED EDITIONS of HAVANA CIGARS

Cigar sizes are given as
RING GAUGE × LENGTH

2000/01

BRAND	VITOLA DE GALERA	PACK	SIZE
Partagás	Pirámides	25	52 × 6⅛ in/156 mm
Montecristo	Robusto	25	50 × 4⅛ in/105 mm
Romeo y Julieta	Prominente (DC)	25	49 × 7⅝ in/194 mm
Hoyo	Particulares	5	47 × 9¼ in/235 mm

2001/02

BRAND	VITOLA DE GALERA	PACK	SIZE
Cohiba	Pirámides	25	52 × 6⅛ in/156 mm
Romeo y Julieta	Robustos	25	50 × 4⅞ in/124 mm
Partagás	D3 (dressed box)	25	46 × 5½ in/140 mm
Hoyo	Particulares	5	47 × 9¼ in/234 mm
Montecristo	Double Corones	25	49 × 7⅝ in/194 mm

2003

BRAND	VITOLA DE GALERA	PACK	SIZE
Hoyo	Pirámides	25	52 × 6⅛ in/156 mm
Partagás	D2	25	48 × 6⅝ in/168 mm
Romeo y Julieta	Hermosos No.1	25	48 × 6⅝ in/168 mm
Montecristo	C	25	46 × 5⅝ in/143 mm
Cohiba	Double Coronas	25	49 × 7⅝ in/194 mm

2004

BRAND	VITOLA DE GALERA	PACK	SIZE
Partagás	D1	25	50 × 6¾ in/171 mm
Romeo y Julieta	Hermosos No.2	25	48 × 6¼ in/159 mm
Cohiba	Sublimes	25	54 × 6½ in/165 mm
Hoyo	Epicure Especial	25	50 × 5½ in/140 mm

2005

BRAND	VITOLA DE GALERA	PACK	SIZE
H. Upmann	Magnum 50	25	50 × 6½ in/165 mm
Romeo y Julieta	Petit Pirámides	25	50 × 5 in/127 mm
Montecristo	D (3-4-3)	10	43 × 6¾ in/171 mm

2006

BRAND	VITOLA DE GALERA	PACK	SIZE
Partagás	D3 (SBN)	25	46 × 5½ in/140 mm
Cohiba	Pirámides	10	52 × 6⅛ in/156 mm
Montecristo	Robusto (SBN)	25	50 × 4⅞ in/124 mm

2007

BRAND	VITOLA DE GALERA	PACK	SIZE
Hoyo	Regalos	25	46 × 5⅜ in/137 mm
Romeo y Julieta	Escudos	25	50 × 5½ in/140 mm
Trinidad	Ingenios	12	42 × 6½ in/165 mm

2008

BRAND	VITOLA DE GALERA	PACK	SIZE
Montecristo	Sublimes	10	54 × 6½ in/165 mm
Cuaba	Pirámides	10	52 × 6⅛ in/156 mm
Partagás	Series D No.5	25	50 × 4⅜ in/110 mm

2009

BRAND	VITOLA DE GALERA	PACK	SIZE
Romeo	Dukes	10	54 × 5½ in/140 mm
H. Upmann	Magnum 48	25	48 × 4⅜ in/110 mm
Bolívar	Petit Belicosos	25	52 × 5 in/127 mm

2010

BRAND	VITOLA DE GALERA	PACK	SIZE
Montecristo	Grand Edmundo	10	50 × 5⅞ in/140 mm
Partagás	Serie D Especial	10	50 × 5½ in/140 mm
Trinidad	Short Robusto T	12	50 × 4 in/102 mm

2011

BRAND	VITOLA DE GALERA	PACK	SIZE
Cohiba	1966	10	52 × 6½ in/165 mm
Hoyo	Short Pirámides	10	46 × 5⅜ in/137 mm
Ramón Allones	Allones Extra	25	44 × 5⅝ in/143 mm

2012

BRAND	VITOLA DE GALERA	PACK	SIZE
H. Upmann	Robusto	25	50 × 4⅞ in/124 mm
Partagás	Serie C No.3	10	48 × 5½ in/140 mm
Montecristo	520	10	55 × 6⅛ in/156 mm

2013

BRAND	VITOLA DE GALERA	PACK	SIZE
Punch	Serie d'Oro No. 2	25	52 × 5½ in/140 mm
Hoyo	Grand Epicure	10	55 × 5¼ in/133 mm
Romeo y Julieta	Romeo Deluxe	10	52 × 6⅜ in/162 mm

2014

BRAND	VITOLA DE GALERA	PACK	SIZE
Bolívar	Super Coronas	25	48 × 5½ in/140 mm
Partagás	Selección Privada	10	50 × 6¼ in/159 mm
Cohiba	Robusto Supremos	10	58 × 5 in/127 mm

2015

BRAND	VITOLA DE GALERA	PACK	SIZE
H. Upmann	Magnum 56	25	56 × 5⅞ in/149 mm
Ramón Allones	Club Allones	10	47 × 5⅜ in/137 mm

2016

BRAND	VITOLA DE GALERA	PACK	SIZE
Trinidad	Topes	12	56 × 5 in/127 mm
Montecristo	Dantes	10	48 × 6½ in/165 mm
Romeo y Julieta	Verona	25	53 × 6½ in/165 mm

APPENDIX B

REGIONAL EDITIONS of HAVANA CIGARS

Cigar sizes are given as
RING GAUGE × LENGTH

2004

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Ramón Allones	Bellicosos Finos 2004	Campanas	52 × 5½ in/140 mm	UK

2005

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Gold Medal	Cervantes	42 × 6½ in/165 mm	Germany
Punch	Robustos	Robustos	50 × 4⅞ in/124 mm	Switzerland
Punch	Superfinos	Minutos	42 × 4⅜ in/110 mm	Italy
Ramón Allones	Eminencia	Franciscos	44 × 5⅝ in/143 mm	Italy
Ramón Allones	Selección Suprema	Coronas Gordas	46 × 5⅝ in/143 mm	Switzerland

2006

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Colosales	Dobles	50 × 6⅛ in/155 mm	Germany
Bolívar	Libertador	Sublimes	54 × 6½ in/165 mm	France
Juan López	Obus	Campanas	52 × 5½ in/140 mm	France
Por Larrañaga	Lonsdale	Cervantes	42 × 6½ in/165 mm	Germany
Punch	Super Robustos del Punch	Dobles	50 × 6⅛ in/155 mm	Asia-Pacific
Ramón Allones	Estupendos	Julieta No.2	47 × 7 in/178 mm	Asia-Pacific

2007

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Double Coronas	Prominentes	49 × 7⅝ in/194 mm	Middle East
Bolívar	Simones	Hermosos No.4	48 × 5 in/127 mm	Canada
Edmundo Dantes	El Conde 109	109	50 × 7¼ in/184 mm	Mexico
El Rey del Mundo	Vikingos	Gordito	50 × 5½ in/140 mm	Baltic
Por Larrañaga	Magnifico	Partagás 16	50 × 6¾ in/170 mm	UK
Por Larrañaga	Robustos de Larrañaga	Robustos	50 × 4⅞ in/124 mm	Asia-Pacific
Ramón Allones	Gran Robusto	Dobles	47 × 6⅛ in/155 mm	Belgium & Luxemburg
Vegas Robaina	Maestros	Gordito	50 × 5½ in/140 mm	Spain

2008

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Armonia	Salomon	57 × 7¼ in/184 mm	China
Bolívar	Legendarios	Dobles	50 × 6⅛ in/155 mm	Switzerland
Bolívar	Petit Libertador	Petit Robustos	50 × 4 in/102 mm	France
Bolívar	Short Bolívar	Petit Edmundo	52 × 4⅜ in/110 mm	Asia-Pacific
El Rey del Mundo	Torpedo	Campanas	52 × 5½ in/140 mm	Italy
Juan López	Maximo	Hermosos No.2	48 × 6⅛ in/155 mm	Switzerland
Juan López	Short Torpedo	Petit Pirámides	50 × 5 in/127 mm	Caribbean Sea
La Gloria Cubana	Gloriosos	Dobles	50 × 6⅛ in/155 mm	UK
Por Larrañaga	Belicosos Extra	Campanas	52 × 5½ in/140 mm	France
Punch	Robustos	Robustos	50 × 4⅞ in/124 mm	Arab Emirates
Punch	Serie d'Oro No.1	Pirámides	52 × 6⅛ in/155 mm	UK
Ramón Allones	Especial de Allones	Campanas	52 × 5½ in/140 mm	France
Ramón Allones	Grandes	Paco	49 × 7⅛ in/180 mm	Spain
Ramón Allones	Phoenicios	Sublimes	54 × 6½ in/165 mm	Middle East
Vegas Robaina	Marshall	Robustos	50 × 4⅞ in/124 mm	Adriatic Sea
Vegas Robaina	Petit Robustos	Petit Robustos	50 × 4 in/102 mm	Portugal

2009

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	5th. Avenida	109	50 × 7¼ in/184 mm	Germany
Bolívar	El Greco	Gordito	50 × 5½ in/140 mm	Greece & Cyprus
Bolívar	Especiales No.2	Delicados	38 × 7½ in/192 mm	Germany

2009

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Fabulosos	Edmundo	52 × 5¼ in/135 mm	Belgium & Luxemburg
El Rey del Mundo	Balthasar	Dobles	50 × 6⅛ in/155 mm	Baltic
El Rey del Mundo	Choix de l'Epoque	Petit Edmundo	52 × 4⅜ in/110 mm	UK
El Rey del Mundo	Petit Compañía	Petit Pirámides	50 × 5 in/127 mm	France
Juan López	Selección Suprema	Torre Iznaga	52 × 6⅝ in/170 mm	UK
Juan López	Short Robusto	Petit Robustos	50 × 4 in/102 mm	Andorra
Por Larrañaga	Los Andes	Petit Pirámides	50 × 5 in/127 mm	Peru, Chile & Bolivia
Por Larrañaga	Valiosos	Pirámides	52 × 6⅛ in/155 mm	Switzerland
Punch	Diamedas Extra	Diademas	55 × 9⅛ in/233 mm	Italy
Punch	Gran Robusto	Dobles	50 × 6⅛ in/155 mm	Spain
Punch	Northern Lights	Petit Edmundo	52 × 4⅜ in/110 mm	Nordic region
Punch	Platino	Prominentes	49 × 7⅝ in/194 mm	India
Punch	Poderosos	Sublimes	54 × 6½ in/164 mm	Switzerland
Punch	Punch Royal	Gordito	50 × 5½ in/140 mm	Belgium & Luxemburg
Punch	Small Club	Petit Robustos	50 × 4 in/102 mm	France
Ramón Allones	Beritus	Edmundo	52 × 5¼ in/135 mm	Libano
Ramón Allones	Celestiales Finos	Britanicas	46 × 5⅜ in/137 mm	Asia-Pacific
Ramón Allones	Petit Unicos	Petit Pirámides	50 × 5 in/127 mm	Canada
Saint Luis Rey	Pacificos	Pirámides	52 × 6⅛ in/155 mm	Asia-Pacific
Vegas Robaina	Petit Robaina	Petit Edmundo	52 × 4⅜ in/110 mm	Canada

2010

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	108	Coronas Gordas	46 × 5⅝ in/143 mm	Spain
Bolívar	Bolívar B-2	Pirámides	52 × 6⅛ in/155 mm	Canada
Bolívar	Distinguidos	Romeo	52 × 6⅜ in/162 mm	China
Bolívar	Emiratos	Sublimes	54 × 6½ in/165 mm	Arab Emirates
El Rey del Mundo	Elegantes	Gordito	50 × 5½ in/140 mm	Switzerland
Fonseca	Fonseca No.4	Hermosos No.4	48 × 5 in/127 mm	Belgium & Luxemburg
Juan López	Selección No.5	Perlas	50 × 4 in/102 mm	Andorra
Juan López	Selección No.3	Petit Edmundo	52 × 4⅜ in/110 mm	Belgium & Luxemburg
Juan López	Selección No.4	Pirámides	52 × 6⅛ in/155 mm	Asia-Pacific

2010

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
La Flor de Cano	Short Robusto	Petit Robustos	50 × 4 in/102 mm	UK
La Gloria Cubana	Triunfos	Magnum 50	50 × 6¼ in/160 mm	Switzerland
Por Larrañaga	Encantos	Dalias	43 × 6⅝ in/170 mm	Asia-Pacific
Por Larrañaga	Regalias de Londres	Gordito	50 × 5½ in/140 mm	UK
Por Larrañaga	Robustos	Robustos	50 × 4⅞ in/124 mm	Germany
Punch	Petit Pirámides	Petit Pirámides	50 × 5 in/127 mm	South Africa
Ramón Allones	Belicosos	Campanas	52 × 5½ in/140 mm	Germany
Ramón Allones	Gladiator	Torre Iznaga	52 × 6⅝ in/170 mm	Peru, Chile & Bolivia
Ramón Allones	Gordito de Allones	Gordito	50 × 5½ in/140 mm	Canada
Ramón Allones	Lusitanos	Petit Edmundo	52 × 4⅜ in/110 mm	Portugal
Ramón Allones	Phoenicios 32	Pirámides	52 × 6⅛ in/155 mm	Libano
Sancho Panza	Quijote	Prominentes	49 × 7⅝ in/194 mm	Spain
Vegas Robaina	Petit Robustos	Petit Robustos	50 × 4 in/102 mm	France

2011

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	681	Sobresalientes	53 × 6¼ in/153 mm	Bulgaria
Bolívar	Britanicas	Britanicas Extra	48 × 5⅜ in/137 mm	UK
Bolívar	Emperador	Hermosos No.2	48 × 6⅛ in/157 mm	Russia
Bolívar	Oryx	Edmundo	52 × 5¼ in/135 mm	Qatar
Edmundo Dantes	Conde 54	Sublimes	54 × 6½ in/165 mm	Mexico
El Rey del Mundo	NL No.1	Mágicos	52 × 4½ in/115 mm	Netherlands
Fonseca	Amateur	Gordito	50 × 5½ in/140 mm	France
Juan López	Distinguidos	Romeo	52 × 6⅜ in/162 mm	Germany
Juan López	Ideales	Petit Robustos	50 × 4 in/102 mm	Austria
Juan López	Supreme	Edmundo	52 × 5¼ in/135 mm	Canada
La Escepcion	Selectos Finos	Parejos	38 × 6½ in/165 mm	Italy
La Glora Cubana	Belux No.1	Genios	52 × 5½ in/140 mm	Belgium & Luxemburg
Por Larrañaga	Legendarios	Partagás 16	50 × 6⅝ in/170 mm	Spain
Punch	Descobridores	Robustos	50 × 4⅞ in/124 mm	Portugal
Punch	Sabrosos	Pirámides	52 × 6⅛ in/155 mm	Asia-Pacific
Punch	Clasicos	109	50 × 7½ in/184 mm	Switzerland
Quai d'Orsay	Superiores	Robustos	50 × 4⅞ in/124 mm	Asia-Pacific
Quai d'Orsay	Robusto Embajador	Mágicos	52 × 4½ in/115 mm	France
Ramón Allones	Especiales	Mágicos	52 × 4½ in/115 mm	Switzerland

2011

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Ramón Allones	Macedonian	Edmundo	52 × 5¼ in/135 mm	Greece & Cyprus
Ramón Allones	Petit Robusto	Petit Robustos	50 × 4 in/102 mm	Israel
Ramón Allones	Super Ramon	Rodolfo	54 × 7⅛ in/180 mm	Canada
Sancho Panza	Escuderos	Dobles	50 × 6⅛ in/155 mm	Germany

2012

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Diplomaticos	Colección Privada I	Petit Robustos	50 × 4 in/102 mm	Spain
Rey del Mundo	Aniversario	Geniales	54 × 5⅞ in/150 mm	Asia-Pacific
Por Larrañaga	Small Robustos	Petit Robustos	50 × 4 in/102 mm	Italy
Punch	Sir John	Hermosos No.4	48 × 5 in/127 mm	Germany
Ramón Allones	Petit Belicosos	Petit Belicosos	52 × 4⅞ in/124 mm	UK
Ramón Allones	Eshmoun	Sunlimes	54 × 6½ in/165 mm	Libano
Vegas Robaina	Petit Unicos	Petit Belicosos	52 × 4⅞ in/124 mm	Switzerland
Vegas Robaina	XV Anniversario	Sublimes	54 × 6½ in/165 mm	Canada

2013

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Poderosos	Rodolfo	54 × 7⅛ in/180 mm	Belgium & Luxemburg
Bolívar	Presidente	Geniales	54 × 5⅞ in/150 mm	Switzerland
Bolívar	Redentor	Mágicos	52 × 4½ in/115 mm	Brasil
El Rey del Mundo	Infantes	Robusto	50 × 4⅞ in/124 mm	Cuba
Juan López	Minutos	Minutos	42 × 4⅜ in/110 mm	France
La Flor de Cano	Grandiosos	Edmundo	52 × 4⅞ in/124 mm	Asia-Pacific
La Flor de Cano	Gran Cano	Gordito	50 × 6½ in/140 mm	UK
Por Larrañaga	Secretos	Secretos	40 × 4⅜ in/110 mm	Spain
Quai d'Orsay	Belicoso Royal	Petit Belicosos	52 × 5 in/127 mm	France
Rafael Gonzalez	Petit Pirámides	Petit Pirámides	50 × 5 in/127 mm	Germany
Ramón Allones	Sidon	Sobresalientes	53 × 6 in/152 mm	Libano
Ramón Allones	Petit Allones	Petit Edmundo	52 × 4⅜ in/110 mm	Andorra
Ramón Allones	Robusto Corto	Petit Robustos	50 × 4 in/102 mm	Netherlands

2014

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Bosphorus	Petit Edmundo	52 × 4⅜ in/110 mm	Turkey
Diplomaticos	Bushida	109	54 × 5⅞ in/150 mm	Asia-Pacific
Juan López	Chiado 1864	Petit Robustos	52 × 4½ in/115 mm	Portugal
Juan López	Don Juan	Edmundo	52 × 5¼ in/135 mm	Belgium & Luxemburg

2014

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
La Flor de Cano	Siboney	Minutos	42 × 4⅜ in/110 mm	Canada
La Gloria Cubana	Paraiso	Edmundo	52 × 5¼ in/135 mm	Caribbean Sea
Por Larrañaga	Sobresalientes	Sobresalientes	53 × 6 in/152 mm	UK
Ramón Allones	898	Dalias	43 × 6⅝ in/170 mm	Germany
Ramón Allones	Short Perfectos	Petit Pirámides	50 × 5 in/127 mm	Italy
Ramón Allones	Sur	Genios	52 × 5½ in/140 mm	Libano
Ramón Allones	Perfectos	Britanicas Extra	48 × 5⅜ in/137 mm	Switzerland
Ramón Allones	Caprichos	Mágicos	52 × 4½ in/115 mm	Spain
Saint Luis Rey	Inca	Petit Robustos	50 × 4 in/102 mm	Peru, Chile & Bolivia
Sancho Panza	Eslavo	109	50 × 7¼ in/184 mm	Serbia
Vegas Robaina	Short Robaina	Minutos	42 × 4⅜ in/110 mm	Andorra

2015

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Belgravia	Montesco	54 × 5⅛ in/130 mm	UK
Bolívar	Emarati	Edmundo	52 × 5¼ in/135 mm	Arab Emirates
Diplomaticos	El Embajador	Edmundo	52 × 5¼ in/135 mm	Canada
Diplomaticos	Excelencia	Robustos	50 × 4⅞ in/124 mm	Cuba
El Rey del Mundo	Petit Robustos	Petit Robustos	50 × 4 in/102 mm	Spain
Juan López	Malecon	Montesco	55 × 5⅛ in/130 mm	Andorra
La Escepción	Don José	Hermosos No.4	48 × 5 in/127 mm	Italy
La Gloria Cubana	Glorias	Rodolfo	54 × 7⅛ in/180 mm	Germany
La Gloria Cubana	Revolution	Montesco	55 × 5⅛ in/130 mm	Asia-Pacific
Por Larrañaga	Opera	Mágicos	48 × 5 in/127 mm	Cuba
Punch	Supremos	Sobresalientes	53 × 6 in/152 mm	Switzerland
Quai d'Orsay	Robusto Diplomatico	Hermosos No.4	48 × 5 in/127 mm	France
Ramón Allones	Phoenicios	Montesco	55 × 5⅛ in/130 mm	Libano
Ramón Allones	Anniversario 225	Gorditos	50 × 5⅝ in/141 mm	UK

2016

BRAND	VITOLA DE SALIDA	VIT. GALERA	SIZE	COUNTRY
Bolívar	Tesoro	Salomon	57 × 7¼ in/184 mm	Germany
Bolívar	Byblos	Mágicos	52 × 4½ in/115 mm	Libano
Edmundo Dantes	Conde Belicoso	Campanas	52 × 5½ in/140 mm	Mexico
El Rey del Mundo	Choix du Roi	Montesco	55 × 5⅛ in/130 mm	Belgium & Luxemburg
Juan López	Eminentes	Sublimes	54 × 6½ in/165 mm	Switzerland
Juan López	Selección Superba	Magnum 50	50 × 6¼ in/160 mm	UK
La Flor de Cano	Casanova	Demitasse	32 × 3⅞ in/100 mm	Italy
La Gloria Cubana	Platinum Edition	Duke	54 × 5½ in/140 mm	Netherlands
Quai d'Orsay	Secreto Cubano	Secretos	40 × 4⅜ in/110 mm	France
Rafael Gonzalez	88	Britanicas Extra	48 × 5⅜ in/137 mm	Asia-Pacific
Ramón Allones	Hexagone	Duke	54 × 5½ in/140 mm	France
Ramón Allones	Terra Magica	Dobles	50 × 6⅛ in/155 mm	Croatia & Slovenia
Ramón Allones	La Palmera	Sublimes	54 × 6½ in/165 mm	Arab Emirates
Ramón Allones	Patagon	Petit Edmundo	52 × 4⅜ in/110 mm	Argentina
Saint Luis Rey	Tesoros	Petit Edmundo	52 × 4⅜ in/110 mm	Spain
Sain Luis Rey	Marquez	Geniales	54 × 5⅞ in/150 mm	Cuba

APPENDIX C

WIDELY AVAILABLE STANDARD SIZES of HAVANA CIGARS

Cigar sizes are given as
RING GAUGE × LENGTH

Formats: DF = Double Figurado F = Figurado P = Parejo Pt = Pigtail

BRAND

BOLÍVAR

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Belicosos Finos	Campanas	F	52 × 5½ in/140 mm
Belicosos Finos	Campanas	F	52 × 5½ in/140 mm
Bolívar Tubos No.1	Coronas	P	42 × 5⅜ in/142 mm
Bolívar Tubos No.2	Marevas	P	42 × 5⅛ in/129 mm
Bolívar Tubos No.3	Placeras	P	34 × 4⅞ in/125 mm
Coronas Gigantes	Julieta No.2	P	47 × 7 in/178 mm
Coronas Junior	Minutos	P	42 × 4⅜ in/110 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm
Royal Coronas	Robustos	P	50 × 4⅞ in/124 mm
Royal Coronas	Robustos	P	50 × 4⅞ in/124 mm

BRAND

COHIBA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
BHK 56	Laguito No.6	Pt	56 × 6½ in/166 mm
BHK 54	Laguito No.5	Pt	54 × 5¾ in/144 mm
BHK 52	Laguito No.4	Pt	52 × 4⅝ in/119 mm
Coronas Especiales	Laguito No.2	Pt	38 × 6 in/152 mm
Coronas Especiales	Laguito No.2	Pt	38 × 6 in/152 mm
Esplendidos	Julieta No.2	P	47 × 7 in/178 mm

BRAND

COHIBA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Esplendidos	Julieta No.2	P	47 × 7 in/178 mm
Exquisitos	Seoane	P	33 × 5 in/126 mm
Exquisitos	Seoane	P	33 × 5 in/126 mm
Genios	Genios 5	P	52 × 5½ in/140 mm
Genios	Genios 5	P	52 × 5½ in/140 mm
Lanceros	Laguito No.1	Pt	38 × 7½ in/192 mm
Mágicos	Mágicos 5	P	52 × 4½ in/115 mm
Mágicos	Mágicos 5	P	52 × 4½ in/115 mm
Medio Siglo	Medio Siglo	P	52 × 4 in/102 mm
Medio Siglo	Medio Siglo	P	52 × 4 in/102 mm
Panetelas	Laguito No.3	P	26 × 4½ in/115 mm
Panetelas	Laguito No.3	P	26 × 4½ in/115 mm
Pirámides Extra	Pirámides Extra	F	54 × 6¼ in/160 mm
Pirámides Extra	Pirámides Extra	F	54 × 6¼ in/160 mm
Robustos	Robustos	P	50 × 4⅞ in/124 mm
Robustos	Robustos	P	50 × 4⅞ in/124 mm
Robustos	Robustos	P	50 × 4⅞ in/124 mm
Secretos	Secretos 5	P	40 × 4⅜ in/110 mm
Secretos	Secretos 5	P	40 × 4⅜ in/110 mm
Siglo I	Perlas	P	40 × 4 in/102 mm
Siglo I	Perlas	P	40 × 4 in/102 mm
Siglo I	Perlas	P	40 × 4 in/102 mm
Siglo II	Marevas	P	42 × 5⅛ in/129 mm
Siglo II	Marevas	P	42 × 5⅛ in/129 mm
Siglo II	Marevas	P	42 × 5⅛ in/129 mm
Siglo III	Coronas Grandes	P	42 × 6⅛ in/155 mm
Siglo III	Coronas Grandes	P	42 × 6⅛ in/155 mm
Siglo III	Coronas Grandes	P	42 × 6⅛ in/155 mm
Siglo IV	Coronas Gordas	P	46 × 5⅝ in/143 mm
Siglo IV	Coronas Gordas	P	46 × 5⅝ in/143 mm
Siglo IV	Coronas Gordas	P	46 × 5⅝ in/143 mm
Siglo V	Dalias	P	43 × 6¾ in/170 mm
Siglo V	Dalias	P	43 × 6¾ in/170 mm
Siglo V	Dalias	P	43 × 6¾ in/170 mm
Siglo VI	Cañonazo	P	52 × 5⅞ in/150 mm
Siglo VI	Cañonazo	P	52 × 5⅞ in/150 mm
Siglo VI	Cañonazo	P	52 × 5⅞ in/150 mm

BRAND

COMBINACIONES

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Selección Pirámides	Pirámides	F	52 × 6⅛ in/156 mm
Selección Robustos	Robustos	P	50 × 4⅞ in/124 mm
Selección Robustos	Robustos	P	50 × 4⅞ in/124 mm
Selección Pirámides	Pirámides	F	52 × 6⅛ in/156 mm
Selección Petit Robustos	Petit Robustos	P	50 × 4 in/102 mm

BRAND

CUABA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Distinguidos	Romeo	Df	52 × 6⅜ in/162 mm
Divinos	Petit Bouquet	Df	43 × 4 in/101 mm
Exclusivos	Exquisitos	Df	46 × 5¾ in 145 mm
Salomon	Salomon	Df	57 × 7¼ in/184 mm
Tradicionales	Favoritos	Df	42 × 4¾ in/120 mm

BRAND

DIPLOMATICOS

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Diplomaticos No.2	Pirámides	F	52 × 6⅛ in/156 mm

BRAND

EL REY del MUNDO

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Choix Supreme	Hermosos No.4	P	48 × 5 in/127 mm
Demi Tasse	Entreactos	P	30 × 3⅞ in/100 mm

BRAND

FONSECA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Cosaco	Cosacos	P	42 × 5⅜ in/135 mm
Delicias	Standard	P	40 × 4⅞ in/123 mm
Fonseca No.1	Cazadores	P	43 × 6⅜ in/162 mm
KDT Cadetes	Cadetes	P	36 × 4½ in/115 mm

BRAND

H. UPMANN

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Connoisseur No.1	Hermosos No.4	P	48 × 5 in/127 mm
Coronas Junior	Cadetes	P	36 × 4½ in/115 mm
Coronas Major	Eminentes	P	42 × 5¼ in/132 mm
Coronas Minor	Coronitas	P	40 × 4⅝ in/117 mm
Epicures	Epicures	P	35 × 4⅜ in/110 mm
Magnum 46	Coronas Gordas	P	46 × 5⅝ in/143 mm
Magnum 46	Coronas Gordas	P	46 × 5⅝ in/143 mm
Magnum 50	Magnum 50	P	50 × 6¼ in/160 mm
Magnum 50	Magnum 50	P	50 × 6¼ in/160 mm
Magnum 50	Magnum 50	P	50 × 6¼ in/160 mm
Magnum 54	Magnum 54	P	54 × 4¾ in/120 mm
Magnum 54	Magnum 54	P	54 × 4¾ in/120 mm
Magnum 54	Magnum 54	P	54 × 4¾ in/120 mm
Majestic	Cremas	P	40 × 5½ in/140 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm
Regalias	Petit Coronas	P	42 × 5⅛ in/129 mm
Sir Winston	Julieta No.2	P	47 × 7 in/178 mm
Upmann No.2	Pirámides	F	52 × 6⅛ in/156 mm
Half Corona	Half Corona	P	44 × 3½ in/90 mm
Half Corona	Half Corona	P	44 × 3½ in/90 mm

BRAND

HOYO de MONTERREY

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Coronations	Petit Coronas	P	42 × 5⅛ in/129 mm
Coronations	Petit Coronas	P	42 × 5⅛ in/129 mm
Double Coronas	Prominentes	P	49 × 7⅝ in/194 mm
Double Coronas	Prominentes	P	49 × 7⅝ in/194 mm
Epicure Especial	Gordito	P	50 × 5½ in/141 mm
Epicure Especial	Gordito	P	50 × 5½ in/141 mm
Epicure Especial	Gordito	P	50 × 5½ in/141 mm
Epicure No.1	Coronas Gordas	P	46 × 5⅝ in 143 mm
Epicure No.1	Coronas Gordas	P	46 × 5⅝ in 143 mm
Epicure No.2	Robustos	P	50 × 4⅞ in/124 mm
Epicure No.2	Robustos	P	50 × 4⅞ in/124 mm
Epicure No.2	Robustos	P	50 × 4⅞ in/124 mm
Epicure No.2	Robustos	P	50 × 4⅞ in/124 mm
Le Hoyo de San Juan	Geniales	P	54 × 5⅞ in/150 mm
Le Hoyo de San Juan	Geniales	P	54 × 5⅞ in/150 mm
Le Hoyo de San Juan	Geniales	P	54 × 5⅞ in/150 mm

BRAND

HOYO de MONTERREY

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Le Hoyo du Député	Trabucos	P	38 × 4 3/8 in/110 mm
Le Hoyo du Maire	Entreactos	P	30 × 3 7/8 in/100 mm
Le Hoyo du Prince	Almuerzos	P	40 × 5 1/8 in/130 mm
Palmas Extra	Cremas	P	40 × 5 1/2 in/140 mm
Petit Robustos	Petit Robustos	P	50 × 4 in/102 mm
Petit Robustos	Petit Robustos	P	50 × 4 in/102 mm

BRAND

JOSÉ L. PIEDRA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Brevas	Brevas JLP	P	42 × 5 1/4 in/133 mm
Brevas	Brevas JLP	P	42 × 5 1/4 in/133 mm
Cazadores	Cazadores JLP	P	43 × 6 in/152 mm
Cazadores	Cazadores JLP	P	43 × 6 in/152 mm
Conservas	Conservas JLP	P	44 × 5 1/2 in/140 mm
Conservas	Conservas JLP	P	44 × 5 1/2 in/140 mm
Cremas	Cremas JLP	P	40 × 5 3/8 in/136 mm
Cremas	Cremas JLP	P	40 × 5 3/8 in/136 mm
Petit Cazadores	Petit Cazadores	P	43 × 4 1/8 in/105 mm
Petit Cazadores	Petit Cazadores	P	43 × 4 1/8 in/105 mm
Petit Cetros	Petit Cetros JLP	P	38 × 5 in/127 mm
Petit Cetros	Petit Cetros JLP	P	38 × 5 in/127 mm

BRAND

JUAN LÓPEZ

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Selección No.1	Coronas Gordas	P	46 × 5 5/8 in/143 mm
Selección No.2	Robustos	P	50 × 4 7/8 in/124 mm

BRAND

LA FLOR de CANO

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Petit Coronas	Standard	P	40 × 4 7/8 in/123 mm
Selectos	Cristales	P	41 × 5 7/8 in/150 mm

BRAND

LA GLORIA CUBANA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Medaille D'or No.4	Palmitas	P	32 × 6 in/152 mm

BRAND

MONTECRISTO

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Double Edmundo	Dobles	P	50 × 6⅛ in/155 mm
Double Edmundo	Dobles	P	50 × 6⅛ in/155 mm
Double Edmundo	Dobles	P	50 × 6⅛ in/155 mm
Eagle	Geniales	P	54 × 5⅞ in/150 mm
Eagle	Geniales	P	54 × 5⅞ in/150 mm
Edmundo	Edmundo	P	52 × 5⅜ in/135 mm
Edmundo	Edmundo	P	52 × 5⅜ in/135 mm
Edmundo	Edmundo	P	52 × 5⅜ in/135 mm
Joyitas	Laguito No.3	P	26 × 4½ in/115 mm
Junior	Trabucos	P	38 × 4⅜ in/110 mm
Junior	Trabucos	P	38 × 4⅜ in/110 mm
Master	Robustos	P	50 × 4⅞ in/124 mm
Master	Robustos	P	50 × 4⅞ in/124 mm
Media Corona	Half Corona	P	44 × 3½ in/90 mm
Media Corona	Half Corona	P	44 × 3½ in/90 mm
Montecristo A	Gran Corona	P	47 × 9¼ in/235 mm
Especial	Laguito No.1	Pt	38 × 7½ in/192 mm
Especial No.2	Laguito No.2	Pt	38 × 6 in/152 mm
No.1	Cervantes	P	42 × 6½ in/165 mm
No.1	Cervantes	P	42 × 6½ in/165 mm
No.2	Pirámides	F	52 × 6⅛ in/156 mm
No.2	Pirámides	F	52 × 6⅛ in/156 mm
No.2	Pirámides	F	52 × 6⅛ in/156 mm
No.3	Coronas	P	42 × 5⅝ in/142 mm
No.3	Coronas	P	42 × 5⅝ in/142 mm
No.3	Coronas	P	42 × 5⅝ in/142 mm
No.4	Marevas	P	42 × 5⅛ in/129 mm
No.4	Marevas	P	42 × 5⅛ in/129 mm
No.4	Marevas	P	42 × 5⅛ in/129 mm
No.4	Marevas	P	42 × 5⅛ in/129 mm
No.5	Perlas	P	40 × 4 in/102 mm
No.5	Perlas	P	40 × 4 in/102 mm
No.5	Perlas	P	40 × 4 in/102 mm
Petit No.2	Petit No.2	F	52 × 4¾ in/120 mm
Petit No.2	Petit No.2	F	52 × 4¾ in/120 mm
Petit No.2	Petit No.2	F	52 × 4¾ in/120 mm
Petit No.2	Petit No.2	F	52 × 4¾ in/120 mm

BRAND

MONTECRISTO

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Petit No.2	Petit No.2	F	52 × 4¾ in/120 mm
Tubos	Coronas Grandes	P	42 × 6⅛ in/155 mm
Tubos	Coronas Grande	P	42 × 6⅛ in/155 mm
Petit Edmundo	Petit Edmundo	P	52 × 4⅜ in/110 mm
Petit Edmundo	Petit Edmundo	P	52 × 4⅜ in/110 mm
Petit Edmundo	Petit Edmundo	P	52 × 4⅜ in/110 mm
Petit Tubos	Marevas	P	42 × 5⅛ in/129 mm
Petit Tubos	Marevas	P	42 × 5⅛ in/129 mm
Petit Tubos	Marevas	P	42 × 5⅛ in/129 mm
Petit Tubos	Marevas	P	42 × 5⅛ in/129 mm
Regata	Forum	F	46 × 5⅜ in/135 mm
Regata	Forum	F	46 × 5⅜ in/135 mm
80 Aniversario 2015	80 Aniversario	P	55 × 6½ in/165 mm

BRAND

PARTAGÁS

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
8-9-8	Dalias	P	43 × 6¾ in/170 mm
Aristocrats	Petit Cetros	P	40 × 5⅛ in/129 mm
Capitols	Marevas	P	42 × 5⅛ in/129 mm
Coronas Junior	Coronitas	P	40 × 4⅝ in/117 mm
Coronas Senior	Eminentes	P	42 × 5¼ in/132 mm
Coronas Senior	Eminentes	P	42 × 5¼ in/132 mm
Habaneros	Belvederes	P	39 × 4⅞ in/125 mm
Lusitanias	Prominentes	P	49 × 7⅝ in/194 mm
Lusitanias	Prominentes	P	49 × 7⅝ in/194 mm
Lusitanias	Prominentes	P	49 × 7⅝ in/194 mm
Mille Fleurs	Petit Coronas	P	42 × 5⅛ in/129 mm
Mille Fleurs	Petit Coronas	P	42 × 5⅛ in/129 mm
Mille Fleurs	Petit Coronas	P	42 × 5⅛ in/129 mm
Partagás De Luxe	Cremas	P	40 × 5½ in/140 mm
Partagás De Luxe	Cremas	P	40 × 5½ in/140 mm
Petit Coronas Especiales	Eminentes	P	42 × 5¼ in/132 mm
Presidentes	Tacos	Df	47 × 6¼ in/158 mm
Serie D No.4	Robustos	P	50 × 4⅞ in/124 mm
Serie D No.4	Robustos	P	50 × 4⅞ in/124 mm
Serie D No.4	Robustos	P	50 × 4⅞ in/124 mm
Serie D No.6	D No.6	P	50 × 3½ in/90 mm
Serie D No.6	D No.6	P	50 × 3½ in/90 mm

BRAND

PARTAGÁS

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Serie P No.2	Pirámides	F	52 × 6⅛ in/156 mm
Serie P No.2	Pirámides	F	52 × 6⅛ in/156 mm
Serie P No.2	Pirámides	F	52 × 6⅛ in/156 mm
Serie D No.5	D No.5	P	50 × 4⅜ in/110 mm
Serie D No.5	D No.5	P	50 × 4⅜ in/110 mm
Serie D No.5	D No.5	P	50 × 4⅜ in/110 mm
Serie E No.2	Duke	P	54 × 5½ in/140 mm
Serie E No.2	Duke	P	54 × 5½ in/140 mm
Serie E No.2	Duke	P	54 × 5½ in/140 mm
Shorts	Minutos	P	42 × 4⅜ in/110 mm
Shorts	Minutos	P	42 × 4⅜ in/110 mm
Super Partagás	Cremas	P	40 × 5½ in/140 mm

BRAND

POR LARRAÑAGA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
8-9-8	Dalias	P	43 × 6¾ in/170 mm
Panetelas	Vegueritos	P	37 × 5 in/127 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm

BRAND

PUNCH

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	LONG
Coronations	Petit Coronas	P	42 × 5⅛ in/129 mm
Double Coronas	Prominentes	P	49 × 7⅝ in/194 mm
Double Coronas	Prominentes	P	49 × 7⅝ in/194 mm
Petit Coronations	Coronitas	P	40 × 4⅝ in/117 mm
Punch Punch	Coronas Gordas	P	46 × 5⅝ in/143 mm
Punch Punch	Coronas Gordas	P	46 × 5⅝ in/143 mm
Punch Punch	Coronas Gordas	P	46 × 5⅝ in/143 mm
Royal Coronations	Conservas	P	43 × 5¾ in 145 mm

BRAND

QUAI d'ORSAY

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Coronas Claro	Coronas	P	42 × 5⅝ in/142 mm

BRAND

QUINTERO

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Brevas	Nacionales	P	40 × 5½ in/140 mm
Favoritos	Conchas No.2	P	50 × 4½ in/115 mm
Favoritos	Conchas No.2	P	50 × 4½ in/115 mm
Londres Extra	Standard	P	40 × 4⅞ in/123 mm
Nacionales	Nacionales	P	40 × 5½ in/140 mm
Panetelas	Vegueritos	P	37 × 5 in/127 mm
Petit Quintero	Petit Cazadores	P	43 × 4 in/102 mm
Tubulares	Brevas JLP	P	42 × 5¼ in/133 mm

BRAND

RAFAEL GONZALEZ

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Panetelas Extra	Vegueritos	P	37 × 5 in/127 mm
Perlas	Perlas	P	40 × 4 in/102 mm
Perlas	Perlas	P	40 × 4 in/102 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm

BRAND

RAMÓN ALLONES

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Specially Selected	Robustos	P	50 × 4⅞ in/124 mm
Specially Selected	Robustos	P	50 × 4⅞ in/124 mm
Gigantes	Prominentes	P	49 × 7⅝ in/194 mm
Small Club Coronas	Minutos	P	42 × 4⅜ in/110 mm

BRAND

ROMEO y JULIETA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Belicosos	Campanas	F	52 × 5½ in/140 mm
Belvederes	Belvederes	P	39 × 4⅞ in/125 mm
Cazadores	Cazadores	P	43 × 6⅜ in/162 mm
Cedros De Luxe No.1	Cervantes	P	42 × 6½ in/165 mm
Cedros De Luxe No.2	Coronas	P	42 × 5⅝ in/142 mm
Cedros De Luxe No.3	Marevas	P	42 × 5⅛ in/129 mm
Churchills	Julieta No.2	P	47 × 7 in/178 mm
Churchills	Julieta No.2	P	47 × 7 in/178 mm
Churchills	Julieta No.2	P	47 × 7 in/178 mm
Churchills	Julieta No.2	P	47 × 7 in/178 mm
Club Kings	Marevas	P	42 × 5⅛ in/129 mm
Coronitas En Cedro	Petit Cetros	P	40 × 5⅛ in/129 mm

BRAND

ROMEO y JULIETA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Exhibicion No.4	Hermosos No.4	P	48 × 5 in/127 mm
Julieta	Julieta No.6	P	33 × 4¾ in/120 mm
Mille Fleurs	Petit Coronas	P	42 × 5⅛ in/129 mm
Mille Fleurs	Petit Coronas	P	42 × 5⅛ in/129 mm
Petit Churchills	Petit Robustos	P	50 × 4 in/102 mm
Petit Churchills	Petit Robustos	P	50 × 4 in/102 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm
Petit Coronas	Marevas	P	42 × 5⅛ in/129 mm
Petit Julietas	Entreactos	P	30 × 3⅞ in/100 mm
Petit Julietas	Entreactos	P	30 × 3⅞ in/100 mm
Regalias de Londres	Coronitas	P	40 × 4⅝ in/117 mm
Romeo No.1	Cremas	P	40 × 5½ in/140 mm
Romeo No.1	Cremas	P	40 × 5½ in/140 mm
Romeo No.1	Cremas	P	40 × 5½ in/140 mm
Romeo No.2	Petit Coronas	P	42 × 5⅛ in/129 mm
Romeo No.2	Petit Coronas	P	42 × 5⅛ in/129 mm
Romeo No.2	Petit Coronas	P	42 × 5⅛ in/129 mm
Romeo No.2	Petit Coronas	P	42 × 5⅛ in/129 mm
Romeo No.3	Coronitas	P	40 × 4⅝ in/117 mm
Romeo No.3	Coronitas	P	40 × 4⅝ in/117 mm
Romeo No.3	Coronitas	P	40 × 4⅝ in/117 mm
Short Churchills	Robustos	P	50 × 4⅞ in/124 mm
Short Churchills	Robustos	P	50 × 4⅞ in/124 mm
Short Churchills	Robustos	P	50 × 4⅞ in/124 mm
Sports Largos	Sports	P	35 × 4½ in/117 mm
Wide Churchills	Montesco	P	55 × 5⅛ in/130 mm
Wide Churchills	Montesco	P	55 × 5⅛ in/130 mm
Wide Churchills	Montesco	P	55 × 5⅛ in/130 mm

BRAND

SAINT LUIS REY

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Regios	Hermosos No.4	P	48 × 5 in/127 mm

BRAND

SANCHO PANZA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Belicosos	Campanas	F	52 × 5½ in/140 mm
Non Plus	Marevas	P	42 × 5⅛ in/129 mm

BRAND

SAN CRISTOBAL de la HABANA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
El Principe	Minutos	P	42 × 4⅜ in/110 mm
La Fuerza	Gordito	P	50 × 5½ in/140 mm
La Punta	Campanas	F	52 × 5½ in/140 mm

BRAND

TRINIDAD

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Coloniales	Coloniales	Pt	44 × 5¼ in/132 mm
Coloniales	Coloniales	Pt	44 × 5¼ in/132 mm
Fundadores	Laguito Especial	Pt	40 × 7½ in/192 mm
Reyes	Reyes	Pt	40 × 4⅜ in/110 mm
Reyes	Reyes	Pt	40 × 4⅜ in/110 mm
Reyes	Reyes	Pt	40 × 4⅜ in/110 mm
Vigia	Torres	P	54 × 4⅜ in/110 mm
Vigia	Torres	P	54 × 4⅜ in/110 mm

BRAND

VEGAS ROBAINA

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Don Alejandro	Prominentes	P	49 × 7⅝ in/194 mm
Famosos	Hermosos No.4	P	48 × 5 in/127 mm
Unicos	Pirámides	F	52 × 6⅛ in/156 mm

BRAND

VEGUEROS

VITOLA DE SALIDA	VITOLA DE GALERA	FORMAT	SIZE
Entretiempos	Petit Edmundo	P	52 × 4⅜ in/110 mm
Entretiempos	Petit Edmundo	P	52 × 4⅜ in/110 mm
Tapados	Mareva Gruesa	P	46 × 4¾ in/120 mm
Tapados	Mareva Gruesa	P	46 × 4¾ in/120 mm
Mañanitas	Mañanitas	F	46 × 3⅞ in/100 mm
Mañanitas	Mañanitas	F	46 × 3⅞ in/100 mm

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He contributes to a wide range of newspapers and magazines around the world. For over 20 years he has written the Bolivar cigar column for *Country Life*. He is a contributing editor to the *FT*'s *How To Spend It* magazine, a contributing editor to *Vanity Fair*; and luxury editor of British *GQ*. He launched and continues to edit *Vanity Fair*'s twice-yearly watch magazine *On Time*. In 2007 he was named Havana Man of the Year by the Cuban government, having been nominated for this award on four previous occasions. He is a graduate of Hertford College, Oxford, and lives in London with his wife and two sons.

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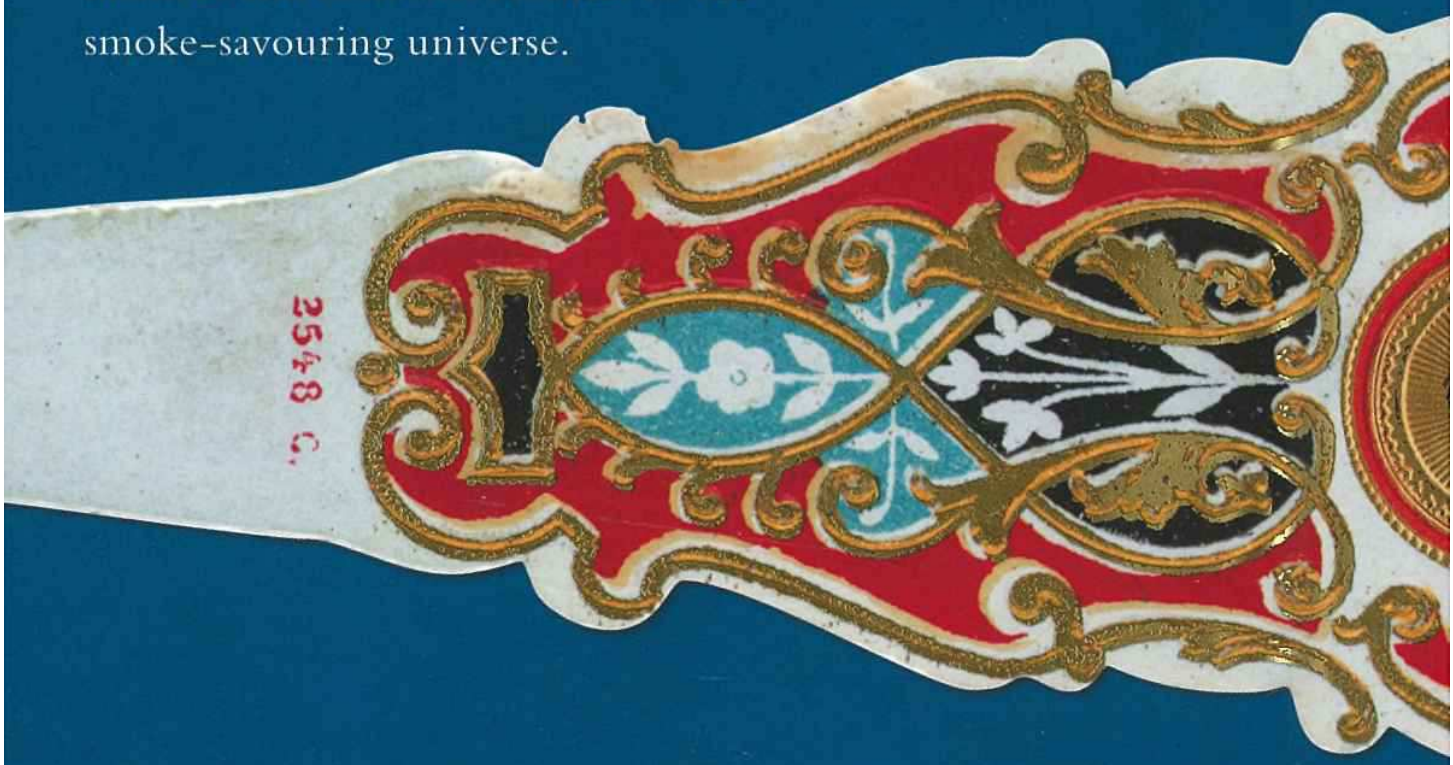
CIGARS

A GUIDE

NICHOLAS FOULKES

'A CIGAR – IT'S NOT SO MUCH A PLEASURE AS THE CROWN AND HALLMARK OF PLEASURE'
LEO TOLSTOY

The cigar provides a moment of pleasure; a slowing down, a time to pause and savour the gentle aroma and complex and lingering flavours. Whether you have yet to fall under the spell of the cigar or whether you are already a seasoned collector, *Cigars* is a guide to the myths, legends, nuances and delicious realities of the smoke-savouring universe.



CIGARS

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 32</u>

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Cigar Industry (/cigar-industry)

2019 Retailer Survey: The Best-selling Cigar Brands In America, Market Trends And More

Jul 11, 2019 | By David Clough (/author/david-clough)

Share (http://www.facebook.com/sharer.php?u=https%3A%2F%2Fwww.cigaraficionado.com/article/2019-retailer-survey-the-best-selling-cigar-brands-in-america-market-trends-and-more) (https://twitter.com/intent/tweet?url=https%3A%2F%2Fwww.cigaraficionado.com/article/2019-retailer-survey-the-best-selling-cigar-brands-in-america-market-trends-and-more&text=2019 Retailer Survey: The Best-selling Cigar Brands In America, Market Trends And More) (mailto:?More&body=https retailer-su

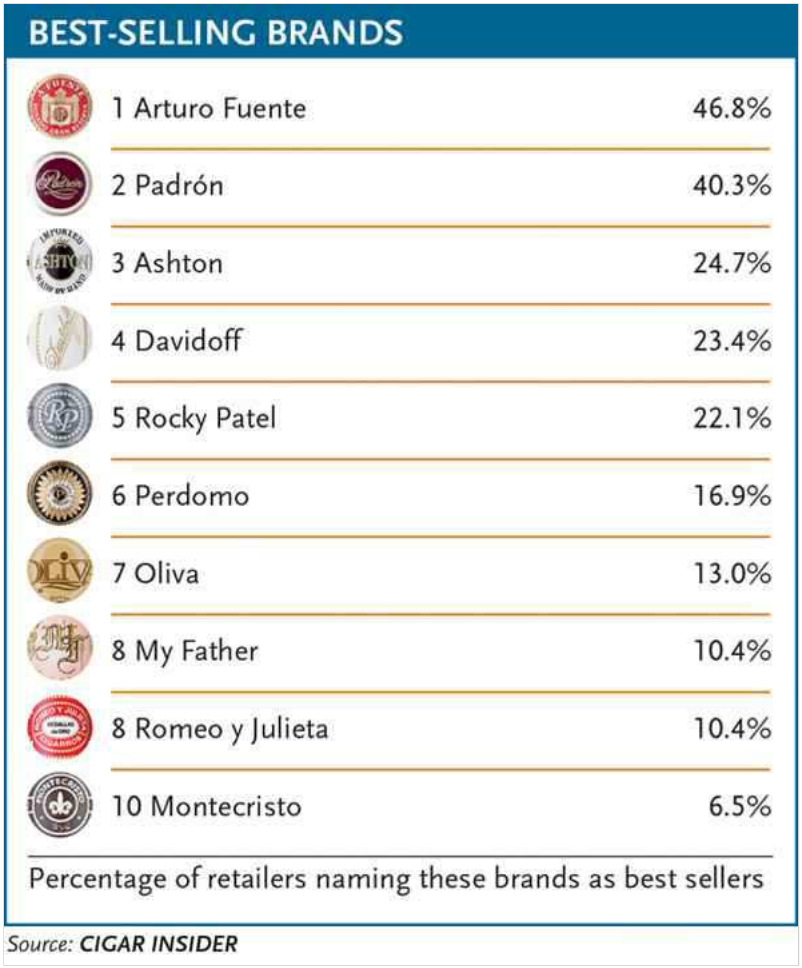
Arturo Fuente, Padrón, Ashton, Davidoff and Rocky Patel (left to right) are among the best-selling cigar brands in America.

Cigar shop owners from across the United States have spoken: cigar sales are up, Arturo Fuente (https://www.cigaraficionado.com/brand/arturo-fuente) is the best-selling handmade brand, and their customers are more discerning and educated about cigars than ever before. Despite concerns over higher taxes, FDA regulations (https://www.cigaraficionado.com/tags/fda) and

Internet sales taking business away from brick-and-mortar stores, most cigar retailers are having a good year—and they're optimistic about the future. These are the main takeaways from *Cigar Insider's* 24th annual poll of cigar shops across America.

Our results are gleaned from 173 brick-and-mortar cigar shops from small towns and major cities all over the United States—from New York to California, Texas to North Dakota and everywhere in between. Nearly 69 percent of the retailers who took our poll said they were selling more cigars this year compared to last year. People are buying more cigars, and in response, a wave of premium smokes are pouring into the U.S. (https://www.cigaraficionado.com/articles/cigar-shipments-best-in-20-years-despite-november-drop) from Nicaragua, the Dominican Republic and Honduras. According to data from the Cigar Association of America, 362 million handmade cigars (https://www.cigaraficionado.com/articles/best-year-for-handmade-cigar-imports-since-1997) were imported into the United States last year, the most since 1997. This information speaks to the general health of the industry, and shows that demand for premium cigars remain strong.

Our survey also revealed which cigar brands are moving best. In terms of volume, almost 47 percent of retailers named Arturo Fuente as one of their best-selling brands. This makes Fuente *Cigar Insider's* best-selling brand of 2019, overtaking Padrón (https://www.cigaraficionado.com/company/padron-cigars-inc), which held the title of best-selling brand last year.



(https://img.mshanken.com/d/cao/bolt/2019-07/bestselling2019.jpg)

Arturo Fuente is a family-run (https://www.cigaraficionado.com/articles/one-hundred-years-of-fuente-16342) operation headed by Carlos "Carlito" Fuente Jr. (https://www.cigaraficionado.com/articles/carlos-fuente-jr-and-the-cigar-factory), along with his sister Cynthia Fuente and his daughter Liana (https://www.cigaraficionado.com/video/hM2bc2dJ/from-the-lounge-being-a-woman-in-the-cigar-industry). The company is perhaps best known for its Fuente Fuente OpusX (https://www.cigaraficionado.com/ratings/search?brand=Fuente+Fuente+OpusX&main-search=main+search&submitted=Y) cigar line, heralded by cigar lovers for its powerful, sweet-and-spicy smoking characteristics and bemoaned for its rarity: Nearly 25 years after its initial release, the Dominican cigar still commands high prices at retail and

tends to sell out quickly. The company's OpusX Double Corona took home *Cigar Aficionado's* No. 1 Cigar of the Year (https://www.cigaraficionado.com/top25cigar/fuente-fuente-opusx-double-corona-2005) award in 2005.

Padrón, which ranked second in terms of sales, has earned a spot on *Cigar Aficionado's* Top 25 list every year (https://www.cigaraficionado.com/top25/2018) since its inception. The Padrón portfolio consists of high-end, Nicaraguan cigars such as Padrón 1964 Anniversary Series (https://www.cigaraficionado.com/ratings/search?brand=Padr%C3%B3n+1964+Anniversary+Series&main-search=main+search&submitted=Y), Padrón Family Reserve (https://www.cigaraficionado.com/ratings/search?brand=Padr%C3%B3n+Family+Reserve&main-search=main+search&submitted=Y) and Padrón Serie 1926 (https://www.cigaraficionado.com/ratings/search?brand=Padr%C3%B3n+Serie+1926&main-search=main+search&submitted=Y), as well as a more wallet-friendly core line (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&brands%5B%5D=Padr%C3%B3n&taste_date=&iss search=Search) that consumers commonly refer to as the company's "brown label." The company was started in 1964 by José Orlando Padrón, who passed in 2017 (https://www.cigaraficionado.com/articles/death-of-a-master-jose-orlando-padron). His son Jorge (https://www.cigaraficionado.com/video/search?q=Jorge+Padr%C3%B3n) now leads the organization.

U.S. retailers once again named Ashton (https://www.cigaraficionado.com/brand/ashton) as the No. 3 best-selling cigar brand, the same position it held last year. All of Ashton Distributors' (https://www.cigaraficionado.com/company/ashton-distributors-inc) Ashton-branded products are made at the Fuente factory in the Dominican Republic. Headquartered in Philadelphia, Ashton is run by Robert Levin (https://www.cigaraficionado.com/articles/an-interview-with-ashtons-robert-levin-6123), his son Sathya and daughter Meera. The company is known for its traditional cigar lines such as Ashton Classic (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&brands%5B%5D=Ashton&taste_date=&issue_date=&issue_year and Ashton Virgin Sun Grown (https://www.cigaraficionado.com/ratings/search?brand=Ashton+Virgin+Sun+Grown&submitted=Y). The latter came to market in 1999. Ashton's relevance and high sales numbers today are indicative of the brand's quality and consistency.

More than 23 percent of cigar retailers said Davidoff (https://www.cigaraficionado.com/brand/davidoff)was a best-selling brand. It took the fourth spot in our best-selling brands survey—a ranking it also secured last year. Davidoff positions itself as a luxury cigar company, and its portfolio of high-end products includes lines such as Davidoff Millennium (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=Davidoff+Millennium&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&taste_date=&issue_date=&issue_year=), Grand Cru (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Grand+Cru), Signature (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Signature) and Aniversario (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=Davidoff+Aniversario&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&taste_date=&issue_date=&issue_year=), cigars that fall under the company's "white label" series, so called because of the bands that adorn each cigar. Starting in 2013, the company expanded its offerings with a range of "black label" cigars, which has grown to include Davidoff Nicaragua (https://www.cigaraficionado.com/ratings/search?brand=Davidoff+Nicaragua&submitted=Y), Davidoff Yamasá (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Yamas%C3%A1) and Davidoff Escurio (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Escurio). The Swiss-company rolls all its Davidoff-branded products in the Dominican Republic.

SKIP TO NAVIGATION

Rocky Patel (https://www.cigaraficionado.com/company/rocky-patel-premium-cigars) ranked fifth, named by more than 22 percent of shop owners, up from 11.6 percent last year. The company's upward trajectory can be attributed to its wide range of quality products and the tireless promotional efforts of brand owner Rocky Patel (https://www.cigaraficionado.com/articles/controlling-interest-17598), his brother Nish and cousin Nimish. The Rocky Patel 15th Anniversary Toro (Tubo) (https://www.cigaraficionado.com/top25cigar/rocky-patel-15th-anniversary-toro-tubo-2018) was on *Cigar Aficionado's* Top 25 list last year. The company makes its cigars in both Honduras and Nicaragua.

Perdomo (https://www.cigaraficionado.com/ratings/search?brand=Perdomo&main-search=main+search&submitted=Y) cigars, which are made by brand owner Nick Perdomo (https://www.cigaraficionado.com/article/the-world-according-to-perdomo-6131) in Estelí, Nicaragua, moved up from the No. 8 spot in 2018 to No. 6 this year. Oliva Cigars (https://www.cigaraficionado.com/company/oliva-cigar-co), which held the No. 7 spot last year, has retained its position as the seventh best-selling brand. Oliva is rapidly expanding as the company recently opened up a second cigar factory (https://www.cigaraficionado.com/article/oliva-cigar-co-in-major-expansion-mode) in Estelí, Nicaragua, called Tabolisa II, to focus on production of lighter-hued cigars, such as Oliva Connecticut Reserve. The company is owned by Belgium cigarmaker J. Cortès Cigars N.V., which acquired Oliva in 2016 (https://www.cigaraficionado.com/article/oliva-cigar-acquired-by-european-cigar-company-18889).

My Father Cigars (https://www.cigaraficionado.com/company/my-father-cigars-inc) ranked No. 8, a drop from the No. 5 spot in 2018, and the non-Cuban versions of Romeo y Julieta (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=Romeo&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&countries%5B%5D=Non+Cuban&taste_date=&issue_date=&issu and Montecristo (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=Montecristo&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&countries%5B%5D=Non+Cuban&taste_date=&issue_date=&issu grabbed the final two best-seller positions: Romeo y Julieta tied with My Father at No. 8 and Montecristo closed out the best-seller list at No. 10. Both brands are owned by Altadis U.S.A. (https://www.cigaraficionado.com/company/altadis-u-s-a-inc) and come in a variety of different tobacco blends.

(https://img.mshanken.com/d/cao/bolt/2019-07/hottestbrands2019.jpg)

Our survey also covered the hottest brands of 2019—a separate list from the best sellers, where retailers are asked to identify the cigars that customers most often request (but can't necessarily obtain). In this category, Padrón and Arturo Fuente swapped places: Padrón is the No. 1 requested

cigar in the United States, followed by Arturo Fuente and its ultra-premium sub-brand, the elusive Fuente Fuente OpusX.

Liga Privada (https://www.cigaraficionado.com/brand/liga-privada) from Drew Estate (https://www.cigaraficionado.com/company/drew-estate) ranked No. 4, with 14.3 percent of retailers saying the brand is one of the hottest on the market. Drew Estate launched Liga Privada (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Liga+Privada+No.+9) in 2007 and the cigar quickly became a smash hit for the company. Based on its success, Drew Estate added subsequent lines such as Liga Privada T52 (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Liga+Privada+T52) and Liga Privada Único Serie (https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Liga+Privada+%C3%9Anico+Serie), a collection of limited-production Liga cigars rolled in special sizes and blends.

Rocky Patel remains in demand as the fifth most-requested cigar brand, followed by Oliva at No. 6, with Davidoff and La Flor Dominicana (https://www.cigaraficionado.com/company/la-flor-dominicana-cigars) both tied for 7th place.

La Flor Dominicana (https://www.cigaraficionado.com/brand/la-flor-dominicana), made in the Dominican Republic by brand owner Litto Gomez (https://www.cigaraficionado.com/articles/littos-twist-of-fate-6217), commanded the No. 3 hottest brand spot last year. At the time, the brand was buoyed by Andalusian Bull (https://www.cigaraficionado.com/ratings/detail/source/sitesearch/note_id/19447) taking *Cigar Aficionado's* Cigar of the Year award in 2016—but the current reigning Cigar of the Year winner, the E.P. Carrillo Encore Majestic (https://www.cigaraficionado.com/top25cigar/e-p-carrillo-encore-majestic-2018) may have taken some wind from its sails.

Encore (https://www.cigaraficionado.com/articles/epc-previews-new-encore-cigar-in-santiago) appears for the first time ever on our hottest brands list this year as the 9th most requested cigar. It's rolled from a blend of all Nicaraguan tobacco and made in the Dominican Republic at brand owner Ernesto Perez-Carrillo's factory (https://www.cigaraficionado.com/articles/the-journey-of-an-encore-cigar). The No. 10 spot on this year's hottest brands poll belongs to My Father Cigars, which also may have seen a halo effect from its strong Top 25 showing. The company had the No. 2 cigar on our Top 25 last year, the My Father La Opulencia Toro (https://www.cigaraficionado.com/top25cigar/my-father-la-opulencia-toro-2018), and has won Cigar of the Year two times.

When it comes to cigar sizes, our poll clearly shows that America still has an appetite for thicker ring gauge cigars (https://www.cigaraficionado.com/articles/supersize-my-cigar-19177). In line with last year's results, robustos (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Robusto&taste_date=&issue_search=Search) continue to be the best-selling size at retail. Toros (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Corona+Gorda&taste_date=&search=Search) (which are also called corona gordas), came in second with grandes (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&submit-search=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Grande&taste_date=&issue_date=&issue_y (very fat cigars with 60 ring gauge or higher) landing at third. The long and stately Churchill (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Churchill&taste_date=&issue_search=Search) came in at No. 4, with figurados (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Figurado&taste_date=&issue_search=Search) and coronas (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&text_search_flag=everything&fuzzy=no&submitted=Y&page=1&sort_dir=default&cigar_size%5B%5D=Corona&taste_date=&issue_d search=Search) tied at No. 5.

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President Trump Tightens Sanctions on Cuba–No Cigars, No Rum and No Hotel Lodging for Americans

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Nat Sherman New York City Townhouse Closes

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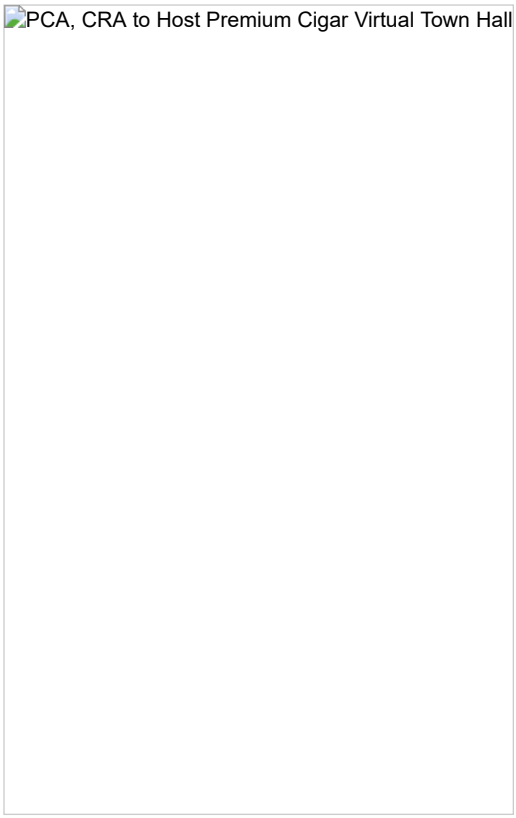

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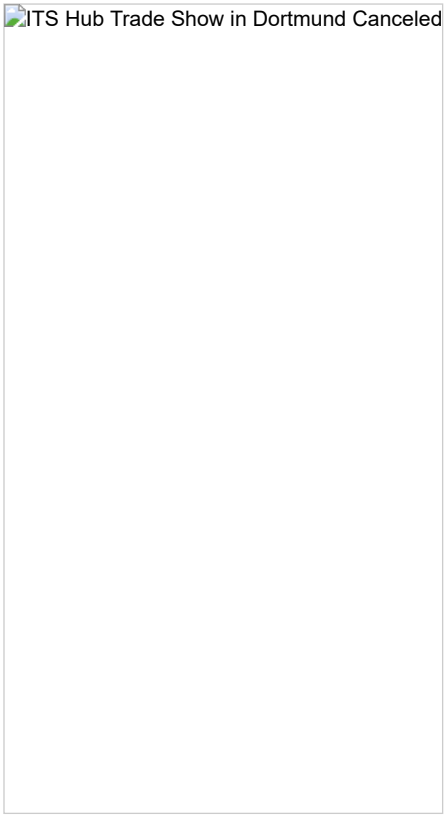

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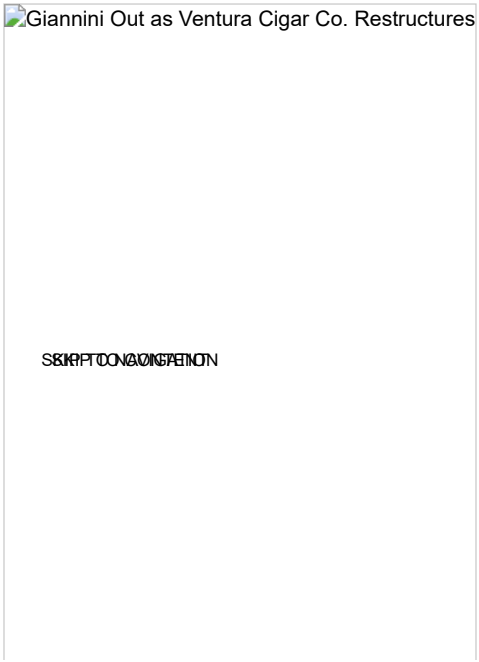

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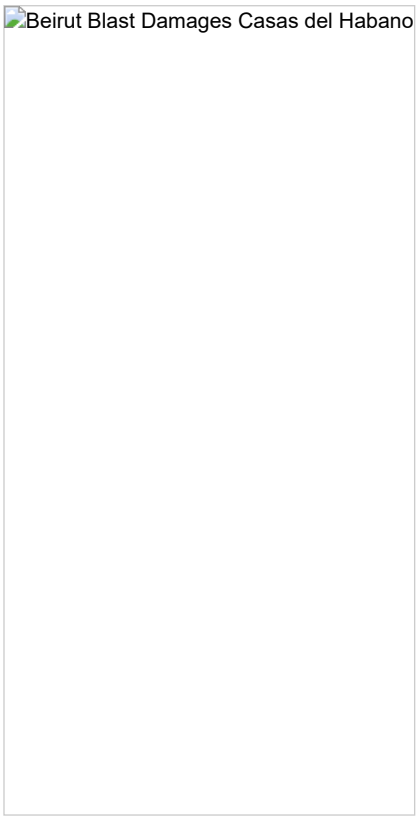

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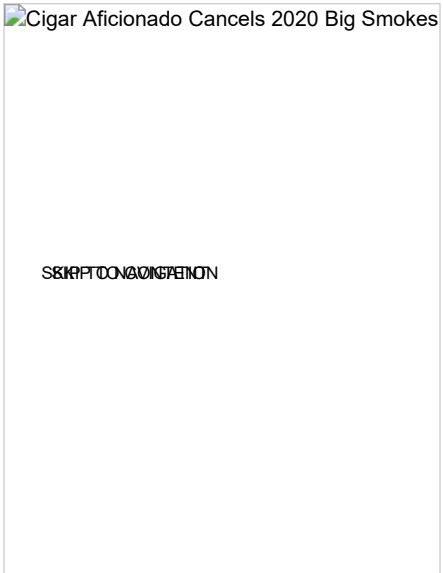

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BEST-SELLING SIZES	
1 Robusto	37.5%
2 Toro/Corona Gorda	26.3%
3 Grande (6x60)	21.5%
4 Churchill	7.5%
5 Figurado	2.5%
5 Corona	2.5%
Percentage of shops naming these sizes as their No. 1 seller	

Source: ***CIGAR INSIDER***

(https://img.mshanken.com/d/cao/bolt/2019-07/bestsizes2019.jpg)

Cigar retailers also gave their thoughts on the annual IPCPR trade show, which is being renamed the PCA (https://www.cigaraficionado.com/article/ipcpr-being-renamed-premium-cigar-association). More than 70 percent of the people who answered our survey told *Cigar Insider* that a cigar shop owner, or one of their representatives, planned on attending the show. Those who said they were not attending noted that the expense of the show was the biggest factor for missing out, followed by the timing. Last year's trade show took place in mid-July. This year, it starts at the end of June.

We also asked retailers if the FDA's regulation of premium cigars impacted their business. Most respondents have not yet seen a dramatic affect on their livelihood—but they're aware more changes are coming—and have noticed that a large amount of cigar manufacturers have increased prices to offset the higher cost of doing business.

Even with these hurdles, cigar retailers still find reasons to celebrate. Along with higher sales numbers this year, many retailers are pleased to report a variety of new, interested cigar smokers walking through their doors. "Lots of Millennials discovering and enjoying the cigar life," says Jeff Borysiewicz (https://www.cigaraficionado.com/articles/florida-s-grown), president of Corona Cigar Co., who owns four Florida locations in Orlando, Lake Mary and Tampa.

"There are a lot of new people just getting into cigars," says Russell Wilder, owner of Top Shelf Cigar & Tobacco Shoppe in Augusta, Georgia. He sees an expanding audience of new customers. Craig Cass, owner of four Tinder Box locations in North Carolina and one in South Carolina, says he has observed a broadening demographic of people enjoying cigars at his locations. "It is refreshing to see new faces," he says. "I find most consumers welcome education and are receptive to recommendations."

Our retailer poll indicates that today's cigar consumers have discerning tastes and are willing to spend more money on quality cigars—another good sign for tobacconists everywhere.

Besim Cukaj, owner of Besim's Fine Cigars in Southampton, New York, says that today's cigar customer is "looking for quality, and willing to spend more than they did during the past decade." Luis Molina, general manager at Habana Port Cigar Merchants, who oversees retail locations in both Metairie and Baton Rouge, Louisiana might agree with Mr. Cukaj. He says that the modern consumer is "looking for value. Price is not necessarily an issue but value is very relevant."

"Consumers are more educated than ever," says Michael Herklots, vice president of Nat Sherman International (https://www.cigaraficionado.com/company/nat-sherman-international-inc), who oversees the Nat Sherman Townhouse in Manhattan, New York. "They make decisions with tremendous discretion." He notes that today's customers want quality and refinement. "There is clearly continued and growing interest in cigars that are balanced. Flavor is more important than strength. The days of face-melting bombs are over."

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Brian Forrester • a year ago

A couple of hypothesis:
1. B&M are where people go to buy singles of smokes too expensive to purchase by the box, hence Padron, Ashton, and Davidoff on the list.
2. B&M tend to draw a larger crowd of the less sophisticated smokers and get steered towards a handful of brands by the tobacconist

When I go to the B&M, it's usually to try something new or something too pricey to get by the box. The vast majority of the cigars I purchase are boxes or bundles online. I know the traditional retailers hate to hear that, but when I can get a box of Melanio figurados for $75 vs. $17 for a single at my local shop, you'd better believe I'm buying online.

13 • Reply • Share ›

StogieDad → Brian Forrester • a year ago

Exactly my friend. This is accurate info, just kind of misleading. It wouldn't make sense that Davidoff was the 4th largest seller in the nation as lots of their cigars are very limited. However, the B&M is now the place for guys that want to show off for the bachelor party, needs smokes for vacation, or otherwise aren't regular cigar smokers. I rarely go at all, if I do it is for a couple singles to try something but even then a fiver online is a better investment to really try something for a minimal investment. I keep a huge collection at home and participate in online communities, and have friends that enjoy cigars. I spend probably thousands a year with online shops because with watching sales and such, I can 5-8X that cigars that I could have bought in a B&M. Plus most that I go in (not all) the guy knows less about cigars than me or talks down to me. There are one or two I would go hang out at in the Atlanta area. It's unfortunate because that is where a lot of the comradery of cigars comes from, but my porch and a beverage are quite enjoyable as well.

2 • Reply • Share ›

Tilo Colón → StogieDad • a year ago

The Perdomo 12yr double aged Conn. And the Sun Grown are excellent sticks in my humble opinion.

1 • Reply • Share ›

Rich Hudzinski → Brian Forrester • a year ago

Exactly. Cigar prices go up EVERY YEAR, YEAR AFTER YEAR! It's crazy! I see a cigar that cost $6 three years ago now at $8!

1 • 1 • Reply • Share ›

CleverUserName → Rich Hudzinski • a year ago

I guess you don't buy gas, or food, or clothing, or insurance, etc.....

2 • Reply • Share ›

Dennis Bedard → Brian Forrester • a year ago

Bingo! I smoke a lot of cigars and have my own personal favorites, none of which are on the above list. Cigar smoking is in large part a status symbol and the type of activity where anyone can live like a king (or pretend to) by spending $10 on a so called premium cigar. Ditto the wine business. But the serious smoker knows the game and buys accordingly.

• Reply • Share ›

Jay Em → Brian Forrester • a year ago

I think you nailed it, Perfesser!

• Reply • Share ›

SquelchQuelch • a year ago

So ignoring all the Perdomo chatter about its position in the list, I am surprised how high it is in the list. I spoke with my local retailer about Perdomo and he said it's his best seller. So I have a question for y'all. What is the best Perdomo blend? I've smoked 4 or 5 Perdomos and I didn't really like any of them. I'd like to know what I'm missing, if anything.

5 • Reply • Share ›

Roy Thompson → SquelchQuelch • a year ago

I like the Perdomo Lot 23 Connecticut. One of my favorite smokes.

2 • Reply • Share ›

David Katz → Roy Thompson • a year ago

I first came across this smoke in Bulgaria of all places on a European vacation. I had smoked Perdomo's before but never this one. It's become one of my go to favs. Comes in a variety of vitolas and is a very reasonably priced cigar. I prefer the Maduro. Try one, you'll like it.

• Reply • Share ›

Mark E. McIntyre → SquelchQuelch • a year ago

I have had three in my cigar life, two 10th anniversary champagnes—YUCK! And one 20th Anniversary Maduro and that's it the one I see in my local b& m spots all have dust on them

2 • Reply • Share ›

Nick Jones → SquelchQuelch • a year ago

The Perdomo Squared Churchill with the Habano wrapper used to be pretty good; as was the Perdomo Habano Petit Corona with the Habano wrapper (the Habano brand came in 3 different wrappers, one of which was billed as Habano), but both have been discontinued. These days they make mostly large ring-guage cigars (50+), none of which are remarkable, in my opinion.

1 • Reply • Share ›

John Groves • a year ago

I have like the worst luck with Arturo Fuente cigars. I find the wrapper is too easily loosened and comes apart way too often. At home and at the smoke shops.

3 • Reply • Share ›

preich → John Groves • a year ago

Me too. I don't smoke them often as I had many misses from poor rolls that had plugged draws to wrappers that were stuck to bands, bad burn, etc. Just too many misses for me.

1 • Reply • Share ›

Jamie Goebel Ketola • a year ago • edited
Funny how most of the comments are from consumers who have no idea what sells. Hello, Padron doesn't just make 1964's...My shops are in a tourist market (20+ years) and we get a pretty good snapshot of what the country is consuming. This list is spot on! Auction sites and trading with your cheap friends does not give you a basis on what is selling in America. Perdomo is a top 4 brand for us!
2 | • Reply • Share ›

Leo Margul • a year ago
Perdomo at No. 6? Not sure I believe that number.
3 | 1 • Reply • Share ›

Nick Jones ➦ Leo Margul • a year ago
You'd better believe it, sister!
Perdomos sell like crazy in my B&M, especially the Fresco line, which is a budget smoke.
12 | 1 • Reply • Share ›

Rich Hudzinski ➦ Nick Jones • a year ago
I can't see that. Perdomo makes some of the finest Connecticut wrapped cigars out there. And the 20th Anniversary Maduro is excellent.
3 | • Reply • Share ›

Jorge A. Ahued ➦ Leo Margul • a year ago • edited
I don't understand what it is that you don't believe? How do you know how many cigars Perdomo sells?
I know I can't keep it in stock in my store, it sells fantastically well, but apparently you're the expert.
And on top of that they don't advertise on CA.
3 | • Reply • Share ›

Leo Margul ➦ Jorge A. Ahued • a year ago
Lol. Maybe they only polled Florida guys.
3 | 1 • Reply • Share ›

Jorge A. Ahued ➦ Leo Margul • a year ago
I'm in Texas, we don't talk about stuff we don't know anything about, we listen and learn, use that as good advice, learn to keep your mouth shut and not make a fool of yourself.
5 | 1 • Reply • Share ›

Daniel Caldwell ➦ Jorge A. Ahued • a year ago • edited
Ha, thanks for saying what we're all thinking Jorge. I'm also a Texan!
1 | 2 • Reply • Share ›

Ana Cuenca ➦ Jorge A. Ahued • a year ago
Good! My respect Jorge!
| • Reply • Share ›

Brad Carter ➦ Leo Margul • a year ago
Perdomo is extremely popular. They do not push sticks like Arturo Fuente or Padron, but they have a big following. Rarely do I grab one, but to change it up I will. I never am overwhelmed with their flavor profile, but they make quality sticks. I'm not shocked Rocky Patel made the list, but I have always wondered why they have the following they do. Everything I have had(and I have given them more chances than most) is just ridiculous. Its always something with a RP for me anyway. When I can get a Fuente, a thousand series Padron, E.P.C., My Father or Oliva at the same price point in most offerings. One I have grown quite fond of the past year are the La Flor Dominicana sticks. The quality is top shelf..

for the life of me I can't understand why more people do not smoke them. Unbelievable quality and dang tasty. But the quality of their leaves and rollers are as good as anything in the world.

Reply • Share ›

trghudson . ➔ Leo Margul • a year ago

Too high or too low?

Reply • Share ›

Leo Margul ➔ trghudson . • a year ago

Lol. Wayyy high, unless you believe they're outselling the likes of Davidoff and Ashton and Fuente. The Perdomo name doesn't belong in that list. I smell a $ placement...

4 | 3 • Reply • Share ›

Jeff Mouttet ➔ Leo Margul • a year ago

They sell like hotcakes for me.

3 | • Reply • Share ›

Daniel Caldwell ➔ Jeff Mouttet • a year ago

Perdomo is really popular among a lot of new smokers.

| • Reply • Share ›

John Allen ➔ Leo Margul • a year ago

Perdomo is not listed above any of the brands you just named so you make a false argument. Plus, Perdomo does not advertise with CA, so what money placement are you implying?

2 | • Reply • Share ›

Avatar This comment was deleted.

John Allen ➔ Guest • a year ago

My father, a wise man, always told me not to engage in a battle of wits with an unarmed man. So, good day, sir.

2 | • Reply • Share ›

kkh ➔ John Allen • a year ago

Leo is REALLY into baseless attempts at insult. Like REALLY into them.

| • Reply • Share ›

Avatar This comment was deleted.

Leo Margul ➔ Guest • a year ago

Uhm are you even following this conversation?

1 | 1 • Reply • Share ›

Daniel Caldwell ➔ Leo Margul • a year ago

Obviously I am...

1 | • Reply • Share ›

SKIP TO CONVERSATION

Leo Margul ➔ Daniel Caldwell • a year ago

OK then go back up and re-read the question I was responding to, and reconsider your outrage.

| 1 • Reply • Share ›

Ken ➔ Leo Margul • a year ago

Leo, it is your post that does not make sense. Being number six means that Perdomo is selling LESS than the numbers 1 through 5 in this poll.

this poll.

3 | • Reply • Share ›

Avatar This comment was deleted.

Ken → Guest • a year ago

Leo, you are an idiot. Now everyone who read this thread knows it too.

1 | • Reply • Share ›

kkh → Ken • a year ago • edited

I've been in a few conversations involving this Leo person, and they are always the same; it seems Leo likes to throw baseless insults around in order to feel superior. It would be one thing if this was my first time seeing it. But it's virtually every conversation in which he involves himself. He can't win an argument with actual FACTS, so he quickly resorts to name calling like an angry child. Someone disagrees with him, and rather than backing up his argument, he starts the juvenile attempts at insult. The conversations end with everyone telling Leo what a jerk he is. I studied Psychology, but you don't need a Psych degree to see the arrogance being used to cover up glaring insecurity issues w this guy. Now I just sit back, watch, and reflect on how awesome it is to NOT be Leo.

1 | • Reply • Share ›

Avatar This comment was deleted.

Avatar This comment was deleted.

Daniel Caldwell → Guest • a year ago

Obviously you can’t have an adult conversation without insulting people. Have a little respect and decorum. This isn’t your Twitter feed.

1 | • Reply • Share ›

trghudson . → Leo Margul • a year ago • edited

I'm not a Perdomo fan either.

1 | • Reply • Share ›

Raul • a year ago • edited

Can anyone explain how Perdomo is so high on this list, supposedly the #6 best selling brand in the country, while I don't know a single person who smokes them, they're not in any of the B&Ms I go to, and all the comments here seem just as surprised and also nobody seems to really like the few they've smoked?

Most Popular

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
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EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

EXHIBIT 33

TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE

The Difference between a Cuban Cohiba Cigar and Dominican Cohiba Cigar

July 11, 2018

When thinking of Cuban cigars, there is one name that pops into the head of all seasoned Habanos cigar smokers. That name is Cohiba. For half a century, Cuban Cohibas have been among the highest rated and most revered Cuban cigar brands on the market. For being the most popular and well-known Cuban cigar in the world, Cohiba has a quite unique past.

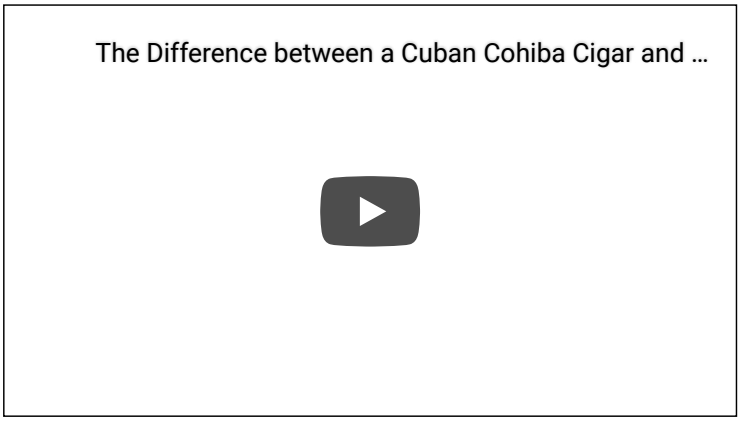
Unlike other Cuban cigar brands such as Romeo y Julieta or Partagas, the start of the Cuban Cohiba brand was relatively late. In fact, it is one of the first Cuban cigars created after the Cuban revolution. A local cigar roller was crafting hand-rolled Cuban cigars in his house and selling them to Fidel Castro's bodyguard. One day he gave one of these premium Cuban cigars to Fidel, who instantly fell in love with the blend. He turned this man's house into the El Laguito Factory, where Cohiba Cuban Cigars are still made today. For many years the Cuban Cohiba was made only for Fidel Castro and a few close friends who were also Habanos aficionados.

In 1968, the state sponsored Cubatobaco formerly launched the brand onto the world cigar market. Cohiba comes from the ancient Taino word for tobacco. These cigars were to be produced on a limited scale and to be of higher quality than any other Cuban cigar. In the early 1980s, Cuba really made a push to make the Cuban Cohiba a full production line, making it more readily available in the world's Cuban cigar stores.

With the Cuban Cohiba being completely under Cuban control with no immediate copyright or trademark problems, in 1978, the name was taken by General Cigar and registered for distribution in the United States. Calling them the Red Dot Cohibas and using exclusively Dominican tobacco, The Dominican Cohiba brand became immensely popular during the boom of the 1990s and remains a top of the line Dominican cigar even to this day.

The only real difference between the Cuban and Dominican Cohiba cigar is just where the tobacco is rolled. They are both high quality, premium cigars. If you live in the US, there are no Cuban Cigars near you, however, you can go to JR Cigars right now to enjoy the Dominican version of the legendary Cohiba Cigar. While you are there, check out the Nicaraguan Cohiba cigars too!

Hear from our cigar aficionado and his break down the differences of the two types origins:



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Name

Rob • 2 years ago

When I was in the D.R. a few years back, I bought a cigar from one of the peddlers roaming the beaches. I distinctly remember it having the yellowish-orange label. I remember the peddler bragging about it being a "real Cuban". Now, I don't know if it was truly a Cuban Cohiba, or it was a fraud. What I DO know is, it was one of the most amazing things I have ever tasted. At that point, I was convinced it was authentic. Fast forward to today. In just a few short weeks, I will be visiting Cuba. I hope to bring enough cash with me to bring home a variety of genuine Cuban cigars, since I am the only person I know who will have traveled to Cuba. I DO have a few cigar enthusiasts in my inner circle though, so most of what I bring home will be for them - not that they have asked. Great article! BTW - I'm a cigar rookie, but will be purchasing my first humidor before my trip 😎

• Reply • Share ›

Iroc Guns → Rob • a year ago

100% a fake if bought from a beach peddler in DR.
In Cuba, buy only from LCDH stores - almost anything else will be a fake.

Have a fantastic trip!

• Reply • Share ›

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 34</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

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Cigar Industry (/cigar-industry)

Cohiba V. Cohiba

Dec 27, 2016 | By Gregory Mottola (/author/gregory-mottola)

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It's the trademark case that refuses to die and it's still under litigation. Casually known as Cohiba v. Cohiba, the *Empresa Cubana del Tabaco v. Culbro Corp.* lawsuit started nearly 20 years ago when Cubatabaco, owners of the Cohiba trademark, sued General Cigar Co. for its use of the Cohiba name in the United States. General registered Cohiba in 1981 and then reregistered the trademark in 1995. In response, Cuba sought to cancel General's U.S. trademark. Since then, the case has gone arduously back and forth with numerous appeals and reappeals that showed victories and losses for both sides—and the issue remains unresolved.

The case raises an interesting question: Does a country have any trademark rights in the United States when it's under an embargo? In the case of Cohiba—the most high-profile premium cigar brand in the world—one court of law believes it does. Another disagrees. And the Supreme Court refuses to get involved.

The timeline here shows the highlights of the legal embroilment over the last 19 years. This case has outlived former Culbro Corp. chairman Edgar Cullman Sr., who passed away in 2011, and now Fidel Castro.

January 1997 Cubatabaco files suit with the United States Patent and Trademark Office (USPTO) to cancel General's use of the Cohiba trademark.

November 1997 Cubatabaco files suit with U.S. District Court, Southern District of New York for, among other things, trademark infringement.

March 2004 Judge Robert Sweet of the U.S. District Court, Southern District of New York, cancels General's trademark of Cohiba, ruling in favor of Cubatabaco. The judge rules that the trademark elapsed as a result of nonuse from the late '80s to early '90s. General appeals.

February 2005 General wins its appeal. The U.S. Court of Appeals Second Circuit, rules that the Cuban embargo prohibits Cuban companies from acquiring property rights in the U.S., which extends to trademark use. Cubatabaco appeals.

June 2005 The same Second Circuit Court of Appeals denies Cubatabaco's motion to rehear its case.

November 2008 The case is reopened in light of a new legal precedent (*ITC v. Punchgini*). Cubatabaco appeals to the U.S. District Court, Southern District of New York, citing a prior ruling as basis for its claim against General.

December 2009 Judge Sweet once again rules in favor of the Cuban cigar industry when it issues an injunction for General Cigar Co. to stop selling its Cohiba cigars in the United States. Furthermore, Sweet rules that Cubatabaco is entitled to monetary relief. General appeals.

July 2010 The Second Circuit Court of Appeals rules in favor of General Cigar Co. (http://www.cigaraficionado.com/webfeatures/show/id/Cohiba-v-Cohiba--US-Court-Rules-Against-Cubans_3941) Circuit judges Reena Raggi, Gerard E. Lynch and Denny Chin conclude that Cubatabaco's arguments are "without merit."

March 2013 General wins another round, this time before the USTPO's Trademark Trial and Appeal Board (TTAB), which dismisses a petition by Cubatabaco to cancel General's use of the Cohiba name.

June 2014 A U.S. Court of Appeals, Federal Circuit, reverses TTAB's decision citing misinterpretations of the embargo's rules and nullifying the 2005 decision of the Second Circuit. In other words, the Federal Circuit and Second Circuit don't agree on Cuba's legal right to cancel a U.S. trademark.

November 2014 General petitions for a *writ of certiorari* in hopes of a review by the Supreme Court and ultimately, an overturning of the lower court's decision.

February 2015 The writ is denied. Cubatabaco can once again seek to bar General's use of the Cohiba trademark. The case will now go back to the TTAB.

A previous version of this article first appeared in Cigar Aficionado's April 2016 issue as part of a retrospective on 50 Years Of Cohiba (http://www.cigaraficionado.com/webfeatures/show/id/50-years-of-cohiba-18681).

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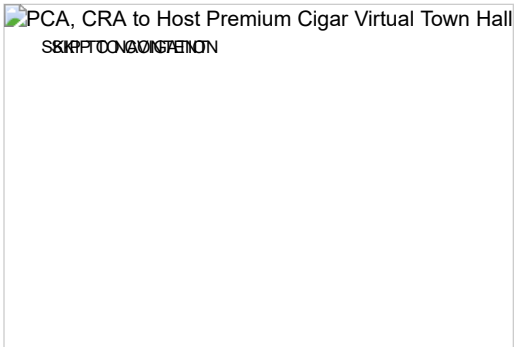

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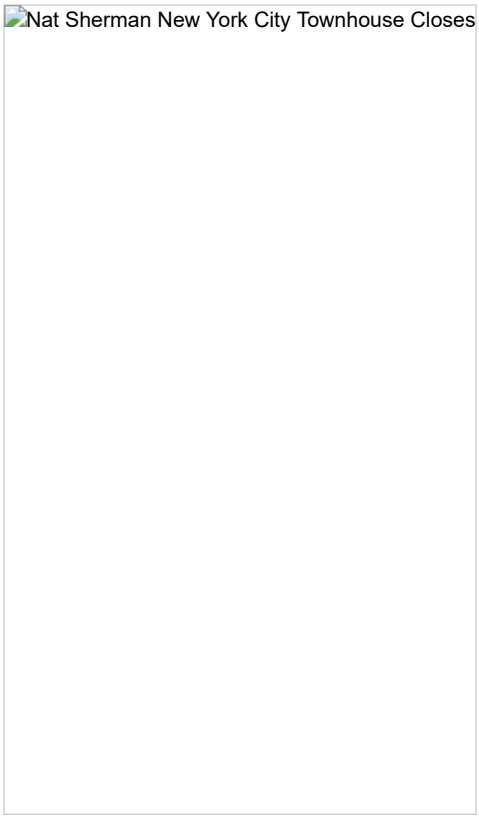

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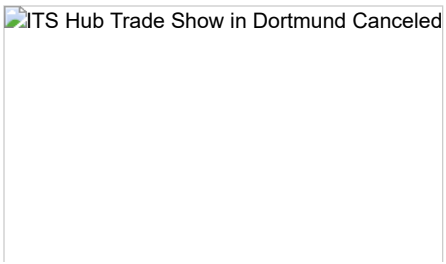

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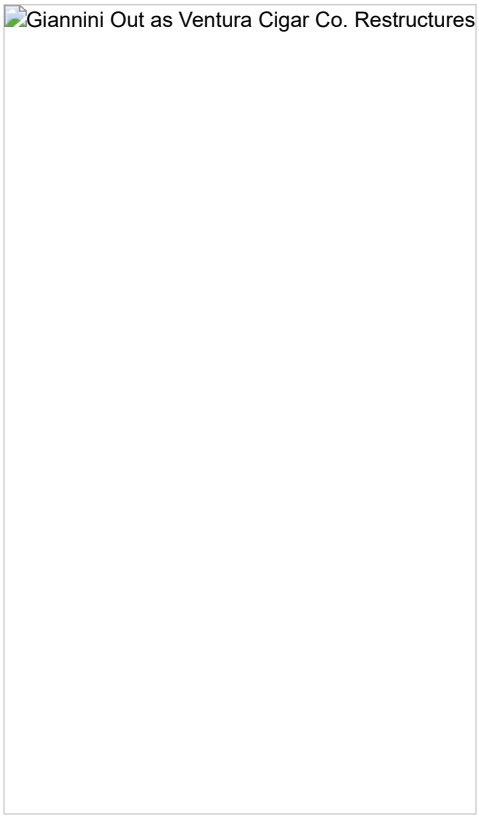

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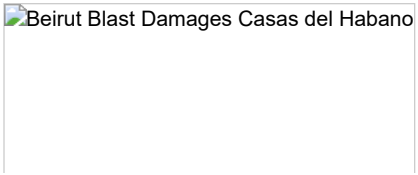

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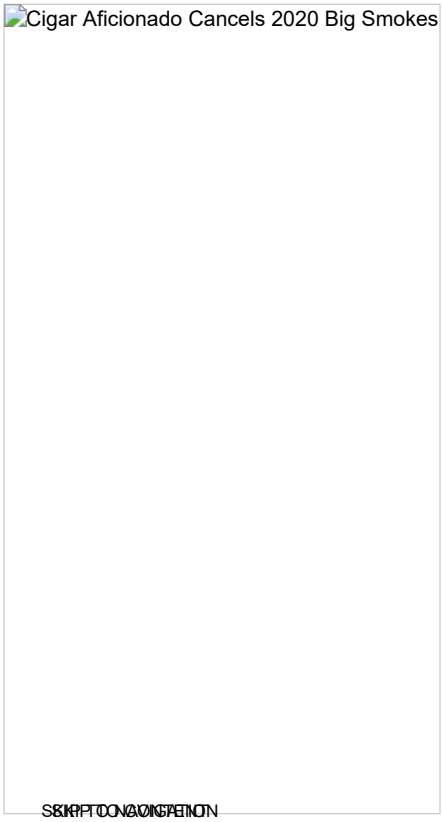

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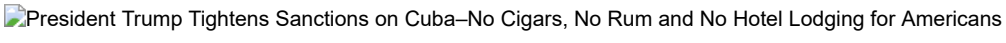

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Cohiba vs. Cohiba—General Wins Another Round

Mar 28, 2013 | By Gregory Mottola (/author/gregory-mottola)

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Cohiba vs. Cohiba—General Wins Another Round

General Cigar Co. has just won another battle in the contentious trademark war over the Cohiba brand.

After a nearly 16 year legal feud, the Cohiba case went before the United States Trademark Trial and Appeal Board (TTAB) on March 14. According to a press release issued by General Cigar, Cubatabaco (owner of the Cuban Cohiba trademark) petitioned the TTAB to cancel General's use of the Cohiba brand name in the United States. The petition was dismissed.

"The TTAB ruled that because the federal courts have held that Cubatabaco may not sell Cohiba cigars in the U.S. or acquire any interest in the Cohiba mark, Cubatabaco lacks any property interest in the Cohiba mark," the press release said.

The dismissal is another blow for Cubatabaco, which lost a previous judgment handed down by a Manhattan appeals court in 2010 (/webfeatures/show/id/3941). "This ruling once again affirms what we have believed all along: That Cubatabaco has no merit in challenging General's ownership of the Cohiba trademark in the United States," said General's president Dan Carr.

Cigar Aficionado spoke briefly to Cubatabaco's legal team and to Cuban cigar distributor Habanos S.A. for further remarks, but both declined comment.

Cohiba cigars were first created in Cuba after that country's revolution and the Cuban version has never been legally sold in the United States due to the U.S embargo on Cuba. General Cigar registered the trademark in the U.S. in 1981 and has been selling a Dominican-made version of Cohiba since the 1980s. The litigation started in 1997, however, when General Cigar began nationally marketing products with the Cohiba name. Cubatabaco and General Cigar have been embroiled in the fight over Cohiba ever since.

This is a developing story. Look for more coverage at www.cigaraficionado.com (http://www.cigaraficionado.com).

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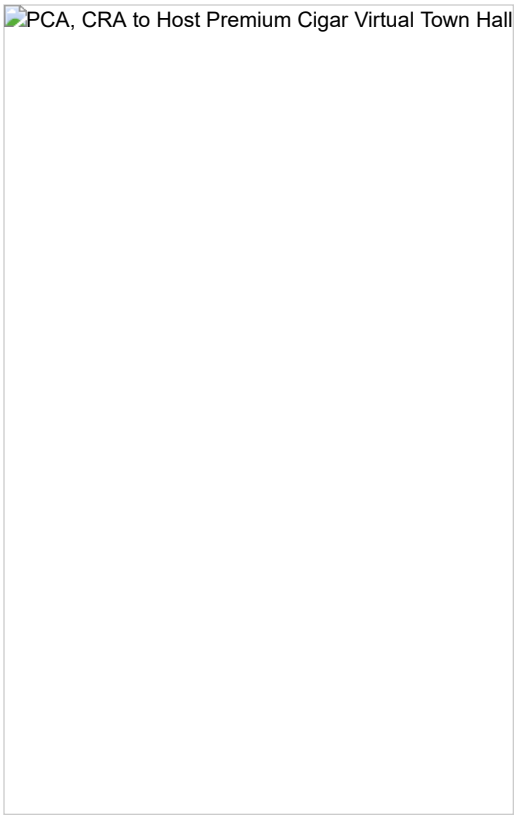

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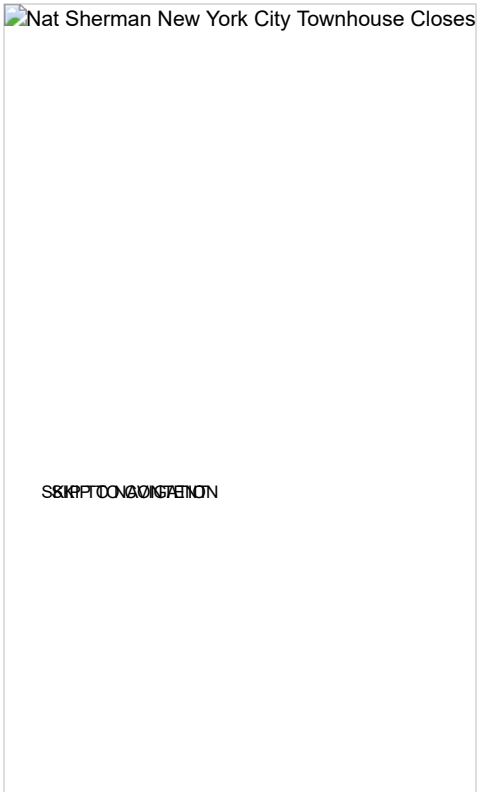

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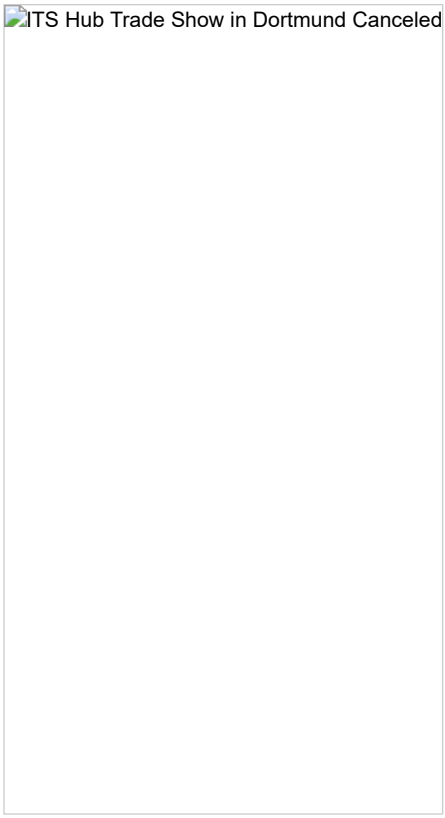

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 36</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

The Difference Between a Cuban Partagas Cigar and Dominican Partagas Cigar

March 4, 2019

Very few premium brands in the world today, have the mystique and allure of the famous Cuban Partagas cigar. A victim of the Cuban embargo of 1962, this legendary brand can easily be found in cigar stores throughout Europe and Central America, but unfortunately, they are still not legally sold here in the United States.

The original Cuban Partagas cigars are among the oldest brands of cigars still in existence. Still produced at No. 520 Industria Street, just behind the Capitol building, in the heart of the city, the factory was opened in 1845 by Don Jaime Partagas and it has been making the cigars that bear his name ever since. Not only is this landmark factory still thriving, but it has also become a top tourist destination for cigar smokers around the globe, as it still offers daily tours of the facility.

A Cuban Partagas cigar is immediately recognizable by its deep, earthy, and nutty tones, presented with a full-bodied strength profile that provides a creamy smooth texture on the palate. The character of its blend springs from a selection of 100% Cuban wrapper, binder, and filler tobaccos grown in the famous Vuelta Abajo region that has been carefully chosen for their unmistakable richness of flavor and unique sweet-smelling aroma.

Today, the name is used today by two independent and competing entities, one produced at this legendary factory mentioned above, and the other, containing no Cuban tobacco, produced in the Dominican Republic for the

prestigious General Cigar Company.

Following the Cuban Revolution, legendary cigarmaker Ramón Cifuentes opted to emigrate to the United States rather than work in this now state-owned factory. In 1974, the Cifuentes family made a deal with the General Cigar Co. to manufacture Partagas cigars in Jamaica, and the first non-Cuban Partagas cigars hit the US market in 1977. General later shifted production to its factory in the Dominican Republic, where they're still made with aged Dominican and Mexican filler tobaccos, Mexican binders, and savory wrappers grown in the Cameroon region of Africa.

The Dominican Partagas Cigar is steeped in Cuban tradition and offers the cigar aficionado a premium handmade smoke with a surprisingly similar taste to its heralded Cuban counterpart. Slightly mellower than the original blend, although hardly noticeable, the medium-bodied Dominican Partagas cigar is rife with mouthwatering layers of leather, sweet cocoa, nuts, some earthiness, and a toasty tobacco sweetness throughout.

Dominican Partagas cigars are among the best-selling premium cigars in the United States today, and General has added many line extensions to the storied brand, allowing you to find the perfect smoke that rivals the amazing taste of the Cuban Partagas Cigar without having to leave the country.

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Published Spring 1994

Inside Cuban Cigars

Cigar Aficionado interviews Cubatabaco's top official, Francisco Padron

Francisco Padron, the director of Cubatabaco, Cuba's cigar export sales group, didn't get much good news in 1993 A March storm severely damaged the tobacco crop and the cloth tarps used to grow shade wrappers. In combination with other factors, Padron was forced to cut back sharply on Cuba's cigar exports

Cigar Aficionado Editor and Publisher Marvin R Shanken interviewed Padron in Mexico City in early December. They discussed the current state of the Cuban cigar industry and what the future holds for the country's cigar exports.

Cigar Aficionado: There has been a lot of talk that [the 1993] hurricane severely damaged Cuba's tobacco crops, and that this has affected quality and quantity, particularly for wrappers. What is the situation for production of Havana handmade cigars for export? What can we look forward to in the next few years?

Francisco Padron. The hurricane caused a great deal of damage We lost about 60 percent of our crop It was only a quantity problem, however. The quality was very good, very good. It is a pity that in this past year we have been having very good quality crops, but the quantity has not been good. We are not delivering enough cigars to the world market because of this.

C A But the word was that the large leaf wrapper crop was annihilated, and that this was going to adversely affect the production of large-sized cigars--the double

DEFENDANT'S EXHIBIT D 73.1

coronas, Churchills and so forth?

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Padron: If you have a big crop, you deliver more large leaves and you have more room to produce more large cigars and to choose the best leaves. When you have a small crop, it's the inverse. Wrappers are a very delicate thing. So when the hurricane came, it hurt the wrapper crop It hurt all of the crop, but particularly the wrapper crop.

But even with that problem, we produced [in 1993] about 200 million cigars for the domestic market. But we are not delivering anything to the export market that does not have the right quality because quality is the first thing above all for us.

C A. In 1993, what were the total exports for Cuban cigars?

Padron· About 57 million cigars in 1993

C.A. What did you export in 1992?

Padron. 67 million

C A And in 1991?

Padron. 77 million.

C A.. And 1990?

Padron: More or less the same quantity, about 80 million

C A.: With the hurricane damage, what do you forecast your exports to be in 1994?

Padron: Let's first discuss how we are going to increase our production. Worse than the hurricane is the embargo, the double embargo. Right now, it's almost like there's an embargo from the other socialist countries. We used to buy from them, fertilizers and plenty of other things for our crops What is hurting us the most is that we can't buy right now, nor have we bought from the eastern socialist countries during the past three years what we used to buy from them for the cigar crop

C A · What are some of these things?

Padron Fertilizers and plenty of other things For example, all the covers or tents used for growing wrapper leaves came from the Soviet Union And now we can't get them We used to buy 20 million square meters Oil, gasoline and diesel That is very short, and this really hurts the crop

C.A.: What do you do if you don't have the tenting for the wrap-per crop?

Padron: We reduce the crop. It is as simple as that. You can reuse about 30 percent of the old tents, but the storm [in 1993] destroyed all of the tents.

C.A.: That means those losses will affect future harvests?

Padron· We think that this coming crop will be a little better, and those afterward should be very big ones. For the '94 crop and on, we have solved almost all of our problems, almost everything.

C.A So a year from now you should be back to the '90 and '91 levels?

Padron· Even bigger

C.A What is your target for 1995?

Padron. We think that in 1995, we should export 70 million cigars, and in 1996, we should have 80 million to 90 million.

C.A : But what do you forecast for 1994?

Padron· There will be no more than 50 million cigars

C.A · No more? Some people say much less.

Padron: No. No. That is more or less what we are going to do. Remember this. We never, never export cigars unless they are of the right quality Of course, you may not believe that we can choose or that we wouldn't take a lesser-quality wrapper from the domestic market production and use it for export. But that is not the case We have to be careful, very careful Besides, you know what decides the cigar is the shortest crop because we mix three crops. And if you have two short crops in a row, you have problems So, we have been taking more tobacco from our warehouses

C A.: Another comment is that because of the difficult economic situation in Cuba, you don't age the cigars in warehouses as long as you used to because of the shortages in supply and the need for dollars

Padron That is not true for cigars I have instructions directly from Fidel He has said that I mustn't deliver cigars that are not the best quality. He says that they represent the image of the best quality of Cuba So we never do anything else but deliver the best quality

C.A.: In the numbers that you have given me for 1990 to 1995, what percentage is handmade versus machine made?

Padron: Now we only have about 10 million or 15 million machine-made cigars. That's it.

C.A.: So that's pretty steady. You are not looking to increase or decrease the machine made?

Padron: That depends on the orders. This is a business. If anybody asks for the cheaper machine-made cigars, we are going to deliver. Our priority, however, is handmade, not machine-made cigars

C.A. You are delivering in the area of 50 or 60 million cigars, and let's say 40 to 45 million are handmade. With the increasing demand for Cuban cigars, do you have any idea what the total world demand would be for handmade Cuban cigars?

Padron· Without the United States, we estimate the market to be from 90 to 100 million cigars

C.A And with the United States?

Padron 20 million more and increasing in four years

C.A.. At the Cigar Aficionado seminar we held in New York, a panel discussed Cuba. It included Edgar Cullman, Nick Freeman, Theo Folz--top people in the cigar trade We asked them about the embargo. how long did they think it would continue, given the current political environment and the leadership of Clinton. They seemed to have a consensus feeling that the lifting of the embargo was another five to seven years away. They added that in order to revitalize Cuba's cigar production it would take another five years. So, it would be 10 or 12 years before there is any balance of supply and demand, if the United States could buy Havana cigars What would your response be to that?

Padron· I am not a politician Things are moving As Jose Martí [the legendary, 19th-century, Cuban political hero] said, "the most important thing in politics is what you don't see."

C A. A lot of people--cigar lovers--are disappointed that there has been no significant movement to bring things together between the two countries and that President Clinton has maintained the policy and given support to the Cuban-American Foundation of (Jorge) Mas Canosa Do you see anything happening from the Cuban side that might lead to an end to the embargo, or is it really up to

when the United States decides that it's enough already?

Padron: It is like a fight between Goliath and David And you don't know who must make the first move.

C.A.: If the embargo ended tomorrow or two or five years from now, have you thought through how it would happen and what the scenario would be? You would have problems with certain brands as far as trademark issues, and with other brands you do not have a problem. Have you thought how you would introduce your brands to the American market?

Padron: First, there is going to be a fight. We have not been able to have the brand name in the United States because of the embargo. It was forced by you [the United States]. It was not decided by our side Your side decided on this. So, maybe there is going to be a fight. But we are not going to fight in order to get our cigars into the United States. As we always say, a Habano [cigar] is a Habano [cigar]. With a name of Marvin or Padron or Meyer or whatever goes on the cigar, it is a Habano. So, we are going to let everybody know that we are here, and this is a Habano. We are not going to fight with somebody else because he owns the brand name of Cohiba or Montecristo in America. We have been living without that for a long time.

C A.· So if you cannot resolve the issue, you would introduce new brand names which are Habano, and there would not be a conflict unless the government said that this issue must be resolved. You know the issue is that the families who lost the brand names say that they are entitled to have those brand names back, which is more confusing because of certain problems in the international market such as what has happened with Spain's tobacco monopoly, Tabacalera. Could you explain briefly what is the situation there as far as Montecristo, H. Upmann, Partagas and other brands?

Padron: In general, we have solved our disagreement in a way so that it will not hurt or create any problems for Tabacalera. This will help us to keep delivering Montecristo, Upmann, Partagas and others to the Spanish market

C A So you are continuing to supply Spain, but who owns the brand names now? I thought that the worldwide rights, except for a few countries such as the United States, Cuba, the Dominican Republic and others, were sold to Tabacalera by Consolidated and General Cigar?

Padron Tabacalera owns the names But they do not own the name in all countries We own them in plenty of other key countries in the world

C.A.: In what countries do you still own the brand name Montecristo,as an example, since it is your biggest brand?

Padron: We own it in the United Kingdom, Germany, Holland, Belgium, Switzerland, Canada and plenty of other countries.

C.A : In what important countries does Tabacalera own the brand?

Padron: France and Spain are the most important. They are our two biggest markets.

C.A So you are supplying the brand to them, and you have worked it out to continue the flow. What about the situation with the French tobacco monopoly, Seita? There was a lawsuit regarding Montecristo and Partagas.. .

Padron. We are still in the courts.

C.A. But I thought that you lost one of the lawsuits?

Padron: Yes, but we are now in the upper courts.

C.A.. Have they decided what you have to pay in damages? I heard more than $10 million.

Padron: No. No. They are asking for the sky. The stars. Everything

C A.. What are they asking?

Padron: I don't remember exactly. I don't want to even think about it

C A.: What is the lawsuit about? Who owns the name?

Padron. They want to get money for the use of Montecristo and Partagas since we introduced those brand names in France. This is an incredible thing because I can show you the figures Montecristo and Partagas were nothing in the '60s and early '70s We made the reputation of Montecristo and Partagas

C A · As I remember, Montecristo was introduced into the French market around 1973, which is when it took off there?

Padron Yes Yes We created the brand name, not them

Let me tell you something. Because we lost that fight in the courts in France, and we are now in the higher courts on appeal, we took Montecristo, Partagas, Ramon Allones, La Gloria Cubana, Por Larrañaga and four others off the market.

C.A : You took those off the market in France?

Padron: Yes. Yes. So, as for our strategy for France, given the shortage in brands there, we decided to put there whatever they ask for in the other brands Let's see what will happen in that market

C A . What did you put in those markets?

Padron: No. No We just decided to increase the supply of the brands left in the market. What happened is that we are selling more cigars than the year before. It was incredible. This is not just a story, here are the figures. For example, El Rey del Mundo was up 200 percent Hoyo de Monterrey was increased 200 percent. All our other brands in the French market have had tremendous increases. People who know how to smoke cigars are not going to smoke something else if they can find another Havana cigar

So, I am very quiet. I took a chance in my second market, and it was all a success. I am not worried about the brand name. This is a different thing. When we started on this new direction in France, I forecasted that it would take us two years to get back our sales figures there, but to my surprise it happened on the very first year. And now we are selling more than the year before

C.A.. Did you have a similar experience in Spain?

Padron. We didn't have time to find out Do you know what has happened in Spain with the damn problem? The former president of Tabacalera thought that the most important thing for Montecristo was the name of the brand So, they thought that we would never withdraw the brand from their market, but when the contract was up, I withdrew the Montecristo It was a terrible political problem Everybody all over Spain was writing about how crazy this was So they realized the importance of Montecristo and Habano

C A So you withdrew the brand from the market?

Padron Yes

C A Is it back now?

Padron: Yes. It was back for Christmas.

C.A.: When did you withdraw it?

Padron: Last April, more or less

C.A.: So they had no Montecristos after that?

Padron: They had a little bit of stock left, but after that they didn't have any more. It was a terrible problem for them. So, they called us, and they signed a special contract for us to deliver

C A : The reason why Montecristo and Partagas are not in France is because of the lawsuit?

Padron: No We are putting Montecristo and Partagas back in the French market right now. Right now

C.A. Is mini-Montecristo coming back to France?

Padron: They are coming back to France from Spain.

C A But what will Seita, the French monopoly, do? They have a large factory that isn't being used to make the mini-Montecristo anymore?

Padron: We have made a new agreement for SEITA to make a new Cohiba, a mini-Cohiba.

C A When is that coming?

Padron: That will be soon. We are testing it now

C A What is the largest export market for handmade Cuban cigars today?

Padron. Spain

C A. No 2?

Padron France

C A. No 3?

Padron United Kingdom

C A No 4?

Padron Switzerland

C A No 5?

Padron: Middle East as a whole.

C.A.: No. 6?

Padron: In that range, there are plenty of other countries. Canada. Mexico. Brazil. There are plenty in that range. One million; 1.5 million, 2 million cigars. There are plenty

C.A.: In terms of brand priority, is Cohiba viewed as your No. 1 priority in the world today?

Padron: No It is the most expensive one. But the flagship is Montecristo

C.A.· What percent of your total handmade cigars today is Montecristo?

Padron. We don't make machine-made Montecristos. About 45 percent of our sales of handmade cigars are Montecristos.

C.A : What would be the No 2 brand?

Padron: Partagas.

C A What about No. 3?

Padron· There are plenty of brands at that level.

C.A.: So Montecristo may be 20 or 25 million cigars? And Partagas would be 8 or 9 million?

Padron. Then comes plenty of others such as Romeo y Julieta, Punch, Bolivar, Hoyo de Monterrey .

C.A . And those would be 3 million or 4 million cigars each?

Padron: More or less in this range

C A. But Cohiba is in the range more or less?

Padron No You have less than that now

C A. I thought it was 4 million cigars for Cohiba?

Padron No No That would be with a wonderful crop two wonderful crops in a row

C A So the 4 million cigars we have heard is really the limit when everything is working properly?

Padron: Yes. Yes.

C.A.· In this past year, what was the total production of Cohiba?

Padron: Half that. Two million, or a little more.

C.A.: But the Siglo series 1 through 5 was 1 million: 200,000 per new cigar?

Padron: That was the original plan.

C A.: But what was produced?

Padron· I launched the new Siglo range because I promised that I would do this, but I have already sold what we produced. It is an incredible thing.

C.A.: But give me some idea what you sold of Siglo, half a million, a quarter of a million?

Padron We did more or less half of what we planned, about a half million.

C.A So you only did about 4,000 boxes of each size When will you have some more Siglo cigars to send people?

Padron· We should have some Siglos available during the first quarter of 1994.

C A.: Is the production for 1994 of the five sizes of Siglo going to be a half a million or more?

Padron: More or less a half million.

C.A So what you are saying is that if you take away the half million of the Siglo series, then the rest of the Cohiba range is about 1 5 million cigars?

Padron: Yes. More or less

C A. That's terrible

Padron No No more

C A Production has really gone down

Padron Cohiba should be at about 2 5 to 3 million cigars a year in the right situation. Remember this Don't tie Cohiba to the rest of the crop because we select the tobacco from very few farms Maybe there is a disaster

in most places, but maybe in one of those small places the crop was wonderful. We take care of those special places.

C.A.. So when you have limited resources for the tobacco crop, you prioritize them to go to these top-quality farms first?

Padron: Yes. We try to maintain Cohiba first.

C A.: What do you recommend that consumers buy now considering the difficulty in supply of such fine cigars as Cohiba Siglo, Hoyo de Mon-terrey Double Corona and others?

Padron: It depends what you like

C.A.: That's not what I mean. For instance, we have given a great score to the Hoyo de Monterrey Double Corona (99 points), but nobody seems to have it. Are you increasing the production of the Hoyo Double Corona?

Padron. For all the fifth- and sixth-category cigars [the highest level in craftsmanship in Havana cigars], there is a definite problem because we did not have a good crop of big wrapper leaves

C.A Could you tell me the approximate production of the Hoyo de Monterrey Double Corona?

Padron: I don't have the figure in my head. It was more or less the same production as last year.

C A That one size· is it 50,000 or 20,0000? What is it?

Padron: Really, I don't have those figures in my head

C.A Let's go to another subject. Davidoff

Padron. That is history

C A I understand it's history, but the people at Davidoff have said to us in the past that if the situation changes they would like to come back to Cuba. .

Padron Forget about it As long as I am in Cubatabaco, forget about it. That is history We don't need Davidoff Life has proved that we don't need that name And that's the most important thing

C A So they have to hope that you will go so that they have a chance to deal with somebody else

Pâdron. Maybe if the next person in my position is a

fool; maybe they will have a chance. Why do we need Davidoff? What for? They killed their own chances!

C.A.: We did a story a year ago about the Trinidad cigar, Castro's personal cigar for gifts. This has started a great mystique. Everybody wants to see it. Everybody wants to hold it. Everybody wants to smoke it. Is there any possibility, on a limited basis, that you might take the Trinidad out of just being a private stock for Fidel and diplomatic friends?

Padron: I don't think so because he is going to tell us, "fellows, why don't you create your own brand? Whenever I come up with a brand name, you take it from me." He already told me that I should pay him a royalty for the Cohibas I sell (laughs). He is right, you know.

C.A.. Does Castro stay in touch with what is happening in the world market for Havana cigars, and how the demand and image are growing, and how they are a great asset in terms of image to his country?

Padron: I have already told you the instructions he has delivered to me. He said, "Padron. Quality first. Quality first " He says that if we have a short crop, then we must have a short production of exportable cigars It's quality first

C.A Is there any product from Cuba that is exported that has the importance in terms of top image like Havana cigars?

Padron. I think that our lobsters and our shrimps have a very high image. Of course, our rum is also very well known Also, our coffee is excellent

C A . A week ago in London, there was an auction to help raise money for medical relief in Cuba at which time boxes of pre-Castro cigars and others went for very high prices. There was one box of 50 Cohiba Lancero cigars that had Fidel Castro's signature on top That sold for a record £12,500, or about $18,750 (The money was raised for Cuban medical relief) Does Castro know about this, and what was his reaction?

Padron. He was surprised. He laughed and said, "well, if you need any more boxes to be signed, just let me know " He was just joking, but he was very, very proud

C A So you might do this again?

Padron That depends on him

C A . How did you get him to sign the box in the first place?

Padron: He decided to do it. That was up to him.

C.A.· Someone had to ask him?

Padron: I didn't do it. I am not sure how it happened.

C A.: Has Cubatabaco ever held back stocks of cigars, and, if so, do you have any stocks of Cuban cigars from before the Revolution?

Padron: We have a few stocks of these cigars (from 1959 and older). Not many. Just a few. We always keep some of them in stock.

C.A . They are not for sale?

Padron: No, they are not for sale.

C A.. Have you thought about producing vintage-style cigars where you note when they were produced or from which harvests?

Padron: No What we are going to do from [1994] on is that we are going to make tastings of next year's production all over the world. For example, in Spain we are going to make a tasting of the Montecristo for the relaunch of the brand there. We are deciding what we are going to do exactly at the moment. We might launch a Romeo y Julieta in England and Montecristo in Spain and so on. We are deciding on the size.

C A : Would it be marked on the box?

Padron. No. I don't think so. As you know, you can have the same blend every year It is always a little different, but you try to keep it almost the same.

C A . Are there any new brands you plan to bring out with in the near future?

Padron We were really ready to come out with a new brand, but then we had this agreement with Tabacalera

C A What were the names of the brands?

Padron· I am not going to tell you

C A Are there any new sizes of existing brands coming out?

Padron. No

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Cigar Profiles (/cigar-profiles)

Inside Cuban Cigars—A Talk With Cubatabaco Head Francisco Padron

Cigar Aficionado meets with Cubatabaco's top official, Francisco Padron, to discuss Cuba's cigar industry.

By Marvin R. Shanken (/author/marvin-r-shanken) | From Rush Limbaugh, Spring 94 (/issue/spring-94)

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Inside Cuban Cigars—A Talk With Cubatabaco Head Francisco Padron

Francisco Padron, the director of Cubatabaco, Cuba's cigar export sales group, didn't get much good news in 1993. A March storm severely damaged the tobacco crop and the cloth tarps used to grow shade wrappers. In combination with other factors, Padron was forced to cut back sharply on Cuba's cigar exports.

Cigar Aficionado Editor and Publisher Marvin R. Shanken interviewed Padron in Mexico City in early December. They discussed the current state of the Cuban cigar industry and what the future holds for the country's cigar exports.

Cigar Aficionado: There has been a lot of talk that [the 1993] hurricane severely damaged Cuba's tobacco crops, and that this has affected quality and quantity, particularly for wrappers. What is the situation for production of Havana handmade cigars for export? What can we look forward to in the next few years?

Francisco Padron: The hurricane caused a great deal of damage. We lost about 60 percent of our crop. It was only a quantity problem, however. The quality was very good, very good. It is a pity that in this past year we have been having very good quality crops, but the quantity has not been good. We are not delivering enough cigars to the world market because of this.

C.A.: But the word was that the large leaf wrapper crop was annihilated, and that this was going to adversely affect the production of large-sized cigars--the double coronas, Churchills and so forth?
Padron: If you have a big crop, you deliver more large leaves and you have more room to produce more large cigars and to choose the best leaves. When you have a small crop, it's the inverse. Wrappers are a very delicate thing. So when the hurricane came, it hurt the wrapper crop. It hurt all of the crop, but particularly the wrapper crop.

SKIP TO NAVIGATION

But even with that problem, we produced [in 1993] about 200 million cigars for the domestic market. But we are not delivering anything to the export market that does not have the right quality because quality is the first thing above all for us.

C.A.: In 1993, what were the total exports for Cuban cigars?
Padron: About 57 million cigars in 1993.

C.A.: What did you export in 1992?
Padron: 67 million.

C.A.: And in 1991?
Padron: 77 million.

C.A.: And 1990?
Padron: More or less the same quantity, about 80 million.

C.A.: With the hurricane damage, what do you forecast your exports to be in 1994?
Padron: Let's first discuss how we are going to increase our production. Worse than the hurricane is the embargo, the double embargo. Right now, it's almost like there's an embargo from the other socialist countries. We used to buy from them, fertilizers and plenty of other things for our crops. What is hurting us the most is that we can't buy right now, nor have we bought from the eastern socialist countries during the past three years what we used to buy from them for the cigar crop.

C.A.: What are some of these things?
Padron: Fertilizers and plenty of other things. For example, all the covers or tents used for growing wrapper leaves came from the Soviet Union. And now we can't get them. We used to buy 20 million square meters. Oil, gasoline and diesel. That is very short, and this really hurts the crop.

C.A.: What do you do if you don't have the tenting for the wrap-per crop?
Padron: We reduce the crop. It is as simple as that. You can reuse about 30 percent of the old tents, but the storm [in 1993] destroyed all of the tents.

C.A.: That means those losses will affect future harvests?
Padron: We think that this coming crop will be a little better, and those afterward should be very big ones. For the '94 crop and on, we have solved almost all of our problems, almost everything.

C.A.: So a year from now you should be back to the '90 and '91 levels?
Padron: Even bigger.

C.A.: What is your target for 1995?
Padron: We think that in 1995, we should export 70 million cigars, and in 1996, we should have 80 million to 90 million.

C.A.: But what do you forecast for 1994?
Padron: There will be no more than 50 million cigars.

C.A.: No more? Some people say much less.
Padron: No. No. That is more or less what we are going to do. Remember this. We never, never export cigars unless they are of the right quality. Of course, you may not believe that we can choose or that we wouldn't take a lesser-quality wrapper from the domestic market production and use it for export. But that is not the case. We have to be careful, very careful. Besides, you know what decides the cigar is the shortest crop because we mix three crops. And if you have two short crops in a row, you have problems. So, we have been taking more tobacco from our warehouses.

C.A.: Another comment is that because of the difficult economic situation in Cuba, you don't age the cigars in warehouses as long as you used to because of the shortages in supply and the need for dollars.
Padron: That is not true for cigars. I have instructions directly from Fidel. He has said that I mustn't deliver cigars that are not the best quality. He says that they represent the image of the best quality of Cuba. So we never do anything else but deliver the best quality.

SKIP TO NAVIGATION

C.A.: In the numbers that you have given me for 1990 to 1995, what percentage is handmade versus machine made?
Padron: Now we only have about 10 million or 15 million machine-made cigars. That's it.

C.A.: So that's pretty steady. You are not looking to increase or decrease the machine made?
Padron: That depends on the orders. This is a business. If anybody asks for the cheaper machine-made cigars, we are going to deliver. Our priority, however, is handmade, not machine-made cigars.

C.A.: You are delivering in the area of 50 or 60 million cigars, and let's say 40 to 45 million are handmade. With the increasing demand for Cuban cigars, do you have any idea what the total world demand would be for handmade Cuban cigars?
Padron: Without the United States, we estimate the market to be from 90 to 100 million cigars.

C.A.: And with the United States?
Padron: 20 million more and increasing in four years.

C.A.: At the Cigar Aficionado seminar we held in New York, a panel discussed Cuba. It included Edgar Cullman, Nick Freeman, Theo Folz--top people in the cigar trade. We asked them about the embargo: how long did they think it would continue, given the current political environment and the leadership of Clinton. They seemed to have a consensus feeling that the lifting of the embargo was another five to seven years away. They added that in order to revitalize Cuba's cigar production it would take another five years. So, it would be 10 or 12 years before there is any balance of supply and demand, if the United States could buy Havana cigars. What would your response be to that?
Padron: I am not a politician. Things are moving. As Jose Martí [the legendary, 19th-century, Cuban political hero] said, "the most important thing in politics is what you don't see."

C.A.: A lot of people--cigar lovers--are disappointed that there has been no significant movement to bring things together between the two countries and that President Clinton has maintained the policy and given support to the Cuban-American Foundation of (Jorge) Mas Canosa. Do you see anything happening from the Cuban side that might lead to an end to the embargo, or is it really up to when the United States decides that it's enough already?
Padron: It is like a fight between Goliath and David. And you don't know who must make the first move.

C.A.: If the embargo ended tomorrow or two or five years from now, have you thought through how it would happen and what the scenario would be? You would have problems with certain brands as far as trademark issues, and with other brands you do not have a problem. Have you thought how you would introduce your brands to the American market?
Padron: First, there is going to be a fight. We have not been able to have the brand name in the United States because of the embargo. It was forced by you [the United States]. It was not decided by our side. Your side decided on this. So, maybe there is going to be a fight. But we are not going to fight in order to get our cigars into the United States. As we always say, a Habano [cigar] is a Habano [cigar]. With a name of Marvin or Padron or Meyer or whatever goes on the cigar, it is a Habano. So, we are going to let everybody know that we are here, and this is a Habano. We are not going to fight with somebody else because he owns the brand name of Cohiba or Montecristo in America. We have been living without that for a long time.

C.A.: So if you cannot resolve the issue, you would introduce new brand names which are Habano, and there would not be a conflict unless the government said that this issue must be resolved. You know the issue is that the families who lost the brand names say that they are entitled to have those brand names back, which is more confusing because of certain problems in the international market such as what has happened with Spain's tobacco monopoly, Tabacalera. Could you explain briefly what is the situation there as far as Montecristo, H. Upmann, Partagas and other brands?
Padron: In general, we have solved our disagreement in a way so that it will not hurt or create any problems for Tabacalera. This will help us to keep delivering Montecristo, Upmann, Partagas and others to the Spanish market.

C.A.: So you are continuing to supply Spain, but who owns the brand names now? I thought that the worldwide rights, except for a few countries such as the United States, Cuba, the Dominican Republic and others, were sold to Tabacalera by Consolidated and General Cigar?
Padron: Tabacalera owns the names. But they do not own the name in all countries. We own them in plenty of other key countries in the world.

SCRIPT CONVERSION

C.A.: In what countries do you still own the brand name Montecristo,as an example, since it is your biggest brand?
Padron: We own it in the United Kingdom, Germany, Holland, Belgium, Switzerland, Canada and plenty of other countries.

C.A.: In what important countries does Tabacalera own the brand?
Padron: France and Spain are the most important. They are our two biggest markets.

C.A.: So you are supplying the brand to them, and you have worked it out to continue the flow. What about the situation with the French tobacco monopoly, Seita? There was a lawsuit regarding Montecristo and Partagas....
Padron: We are still in the courts.

C.A.: But I thought that you lost one of the lawsuits?
Padron: Yes, but we are now in the upper courts.

C.A.: Have they decided what you have to pay in damages? I heard more than $10 million....
Padron: No. No. They are asking for the sky. The stars. Everything.

C.A.: What are they asking?
Padron: I don't remember exactly. I don't want to even think about it.

C.A.: What is the lawsuit about? Who owns the name?
Padron: They want to get money for the use of Montecristo and Partagas since we introduced those brand names in France. This is an incredible thing because I can show you the figures. Montecristo and Partagas were nothing in the '60s and early '70s. We made the reputation of Montecristo and Partagas.

C.A.: As I remember, Montecristo was introduced into the French market around 1973, which is when it took off there?
Padron: Yes. Yes. We created the brand name, not them.

Let me tell you something. Because we lost that fight in the courts in France, and we are now in the higher courts on appeal, we took Montecristo, Partagas, Ramon Allones, La Gloria Cubana, Por Larrañaga and four others off the market.

C.A.: You took those off the market in France?
Padron: Yes. Yes. So, as for our strategy for France, given the shortage in brands there, we decided to put there whatever they ask for in the other brands. Let's see what will happen in that market.

C.A.: What did you put in those markets?
Padron: No. No. We just decided to increase the supply of the brands left in the market. What happened is that we are selling more cigars than the year before. It was incredible. This is not just a story, here are the figures. For example, El Rey del Mundo was up 200 percent. Hoyo de Monterrey was increased 200 percent. All our other brands in the French market have had tremendous increases. People who know how to smoke cigars are not going to smoke something else if they can find another Havana cigar.

So, I am very quiet. I took a chance in my second market, and it was all a success. I am not worried about the brand name. This is a different thing. When we started on this new direction in France, I forecasted that it would take us two years to get back our sales figures there, but to my surprise it happened on the very first year. And now we are selling more than the year before.

C.A.: Did you have a similar experience in Spain?
Padron: We didn't have time to find out. Do you know what has happened in Spain with the damn problem? The former president of Tabacalera thought that the most important thing for Montecristo was the name of the brand. So, they thought that we would never withdraw the brand from their market, but when the contract was up, I withdrew the Montecristo. It was a terrible political problem. Everybody all over Spain was writing about how crazy this was. So they realized the importance of Montecristo and Habano.

C.A.: So you withdrew the brand from the market?
Padron: Yes.

C.A.: Is it back now?
Padron: Yes. It was back for Christmas.

C.A.: When did you withdraw it?
Padron: Last April, more or less.

C.A.: So they had no Montecristos after that?
Padron: They had a little bit of stock left, but after that they didn't have any more. It was a terrible problem for them. So, they called us, and they signed a special contract for us to deliver.

C.A.: The reason why Montecristo and Partagas are not in France is because of the lawsuit?
Padron: No. We are putting Montecristo and Partagas back in the French market right now. Right now.

C.A.: Is mini-Montecristo coming back to France?
Padron: They are coming back to France from Spain.

C.A.: But what will Seita, the French monopoly, do? They have a large factory that isn't being used to make the mini-Montecristo anymore?
Padron: We have made a new agreement for SEITA to make a new Cohiba, a mini-Cohiba.

C.A.: When is that coming?
Padron: That will be soon. We are testing it now.

C.A.: What is the largest export market for handmade Cuban cigars today?
Padron: Spain.

C.A.: No. 2?
Padron: France

C.A.: No. 3?
Padron: United Kingdom.

C.A.: No. 4?
Padron: Switzerland.

C.A.: No. 5?
Padron: Middle East as a whole.

C.A.: No. 6?
Padron: In that range, there are plenty of other countries. Canada. Mexico. Brazil. There are plenty in that range. One million; 1.5 million, 2 million cigars. There are plenty.

C.A.: In terms of brand priority, is Cohiba viewed as your No. 1 priority in the world today?
Padron: No. It is the most expensive one. But the flagship is Montecristo.

C.A.: What percent of your total handmade cigars today is Montecristo?
Padron: We don't make machine-made Montecristos. About 45 percent of our sales of handmade cigars are Montecristos.

C.A.: What would be the No. 2 brand?
Padron: Partagas.

C.A.: What about No. 3?
Padron: There are plenty of brands at that level.

C.A.: So Montecristo may be 20 or 25 million cigars? And Partagas would be 8 or 9 million?
Padron: Then comes plenty of others such as Romeo y Julieta, Punch, Bolivar, Hoyo de Monterrey....

C.A.: And those would be 3 million or 4 million cigars each?
Padron: More or less in this range.

C.A.: But Cohiba is in the range more or less?
Padron: No. You have less than that now.

C.A.: I thought it was 4 million cigars for Cohiba?
Padron: No. No. That would be with a wonderful crop...two wonderful crops in a row.

C.A.: So the 4 million cigars we have heard is really the limit when everything is working properly?
Padron: Yes. Yes.

C.A.: In this past year, what was the total production of Cohiba?
Padron: Half that. Two million, or a little more.

C.A.: But the Siglo series 1 through 5 was 1 million: 200,000 per new cigar?
Padron: That was the original plan.

C.A.: But what was produced?
Padron: I launched the new Siglo range because I promised that I would do this, but I have already sold what we produced. It is an incredible thing.

C.A.: But give me some idea what you sold of Siglo, half a million, a quarter of a million?
Padron: We did more or less half of what we planned, about a half million.

C.A.: So you only did about 4,000 boxes of each size. When will you have some more Siglo cigars to send people?
Padron: We should have some Siglos available during the first quarter of 1994.

C.A.: Is the production for 1994 of the five sizes of Siglo going to be a half a million or more?
Padron: More or less a half million.

C.A.: So what you are saying is that if you take away the half million of the Siglo series, then the rest of the Cohiba range is about 1.5 million cigars?
Padron: Yes. More or less.

C.A.: That's terrible.
Padron: No. No more.

C.A.: Production has really gone down.
Padron: Cohiba should be at about 2.5 to 3 million cigars a year in the right situation. Remember this. Don't tie Cohiba to the rest of the crop because we select the tobacco from very few farms. Maybe there is a disaster in most places, but maybe in one of those small places the crop was wonderful. We take care of those special places.

C.A.: So when you have limited resources for the tobacco crop, you prioritize them to go to these top-quality farms first?
Padron: Yes. We try to maintain Cohiba first.

C.A.: What do you recommend that consumers buy now considering the difficulty in supply of such fine cigars as Cohiba Siglo, Hoyo de Mon-terrey Double Corona and others?
Padron: It depends what you like.

C.A.: That's not what I mean. For instance, we have given a great score to the Hoyo de Monterrey Double Corona (99 points), but nobody seems to have it. Are you increasing the production of the Hoyo Double Corona?
Padron: For all the fifth- and sixth-category cigars [the highest level in craftsmanship in Havana cigars], there is a definite problem because we did not have a good crop of big wrapper leaves.

C.A.: Could you tell me the approximate production of the Hoyo de Monterrey Double Corona?
Padron: I don't have the figure in my head. It was more or less the same production as last year.

C.A.: Is it 50,000 or 20,0000? What is it?
Padron: Really, I don't have those figures in my head.

C.A.: Let's go to another subject. Davidoff.
Padron: That is history.

C.A.: I understand it's history, but the people at Davidoff have said to us in the past that if the situation changes they would like to come back to Cuba....
Padron: Forget about it. As long as I am in Cubatabaco, forget about it. That is history. We don't need Davidoff. Life has proved that we don't need that name. And that's the most important thing.

C.A.: So they have to hope that you will go so that they have a chance to deal with somebody else.
Padron: Maybe if the next person in my position is a fool; maybe they will have a chance. Why do we need Davidoff? What for? They killed their own chances!

C.A.: We did a story a year ago about the Trinidad cigar, Castro's personal cigar for gifts. This has started a great mystique. Everybody wants to see it. Everybody wants to hold it. Everybody wants to smoke it. Is there any possibility, on a limited basis, that you might take the Trinidad out of just being a private stock for Fidel and diplomatic friends?
Padron: I don't think so because he is going to tell us, "fellows, why don't you create your own brand? Whenever I come up with a brand name, you take it from me." He already told me that I should pay him a royalty for the Cohibas I sell (laughs). He is right, you know.

C.A.: Does Castro stay in touch with what is happening in the world market for Havana cigars, and how the demand and image are growing, and how they are a great asset in terms of image to his country?
Padron: I have already told you the instructions he has delivered to me. He said, "Padron. Quality first. Quality first." He says that if we have a short crop, then we must have a short production of exportable cigars. It's quality first.

C.A.: Is there any product from Cuba that is exported that has the importance in terms of top image like Havana cigars?
Padron: I think that our lobsters and our shrimps have a very high image. Of course, our rum is also very well known. Also, our coffee is excellent.

C.A.: A week ago in London, there was an auction to help raise money for medical relief in Cuba at which time boxes of pre-Castro cigars and others went for very high prices. There was one box of 50 Cohiba Lancero cigars that had Fidel Castro's signature on top. That sold for a record £12,500, or about $18,750 (The money was raised for Cuban medical relief). Does Castro know about this, and what was his reaction?
Padron: He was surprised. He laughed and said, "well, if you need any more boxes to be signed, just let me know." He was just joking, but he was very, very proud.

C.A.: So you might do this again?
Padron: That depends on him.

C.A.: How did you get him to sign the box in the first place?
Padron: He decided to do it. That was up to him.

C.A.: Someone had to ask him?
Padron: I didn't do it. I am not sure how it happened.

C.A.: Has Cubatabaco ever held back stocks of cigars, and, if so, do you have any stocks of Cuban cigars from before the Revolution?
Padron: We have a few stocks of these cigars (from 1959 and older). Not many. Just a few. We always keep some of them in stock.

C.A.: They are not for sale?
Padron: No, they are not for sale.

C.A.: Have you thought about producing vintage-style cigars where you note when they were produced or from which harvests?
Padron: No. What we are going to do from [1994] on is that we are going to make tastings of next year's production all over the world. For example, in Spain we are going to make a tasting of the Montecristo for the relaunch of the brand there. We are deciding what we are going to do exactly at the moment. We might launch a Romeo y Julieta in England and Montecristo in Spain and so on. We are deciding on the size.

SUBMITTED CONTENT

C.A.: Would it be marked on the box?
Padron: No. I don't think so. As you know, you can have the same blend every year. It is always a little different, but you try to keep it almost the same.

President Trump Tightens Sanctions on Cuba–No Cigars, No Rum and No Hotel Lodging for Americans

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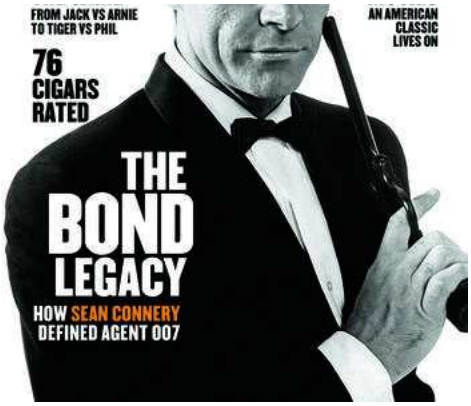

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The Pairings: Rum Meets Cigars

C.A.: Are there any new brands you plan to bring out with in the near future?
Padron: We were really ready to come out with a new brand, but then we had this agreement with Tabacalera.

C.A.: What were the names of the brands?
Padron: I am not going to tell you.

C.A.: Are there any new sizes of existing brands coming out?
Padron: No.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

EXHIBIT 39

TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Diaz v. Servicios de Franquicia Pardos S.A.C., Trademark Tr. & App. Bd., February 16, 2007

213 F.Supp.2d 247
United States District Court,
S.D. New York.

EMMPRESA CUBANA DEL
TABACO, d.b.a. Cubatabaco, Plaintiff,
v.
CULBRO CORPORATION and
General Cigar Co., Inc., Defendants.

No. 97 CIV. 8399(RWS).
|
June 26, 2002.

Synopsis

Cuban cigar manufacturer challenged American manufacturer's rights in "COHIBA" trademark. On cross motions for summary judgment, the District Court, Sweet, J., held that: (1) defendant abandoned mark for period of time; (2) fact issue existed as to whether defendant intentionally infringed upon plaintiff's mark; (3) plaintiff's suit was not barred by acquiescence, estoppel or laches; (4) plaintiff could not assert infringement claims under General Inter-American Convention for Trade Mark and Commercial Protection (IAC) or International Convention for the Protection of Industrial Property (Paris Convention); and (5) fact issue existed as to whether plaintiff's mark was well-known in United States at time defendant registered it.

Motions granted in part and denied in part.

Procedural Posture(s): Motion for Summary Judgment.

West Headnotes (38)

[1] **Trademarks** Defenses; time for proceedings

Party in court proceeding cannot assert equitable defenses, such as acquiescence, estoppel or laches, against cancellation claim asserted on ground trademark had been abandoned or was improperly obtained. Lanham Trade–Mark Act, § 14(3), 15 U.S.C.A. § 1064(3).

1 Cases that cite this headnote

[2] **Trademarks** Effect of loss, termination, or abandonment of rights

Determination that trademark has been abandoned defeats alleged owner's claim of priority.

[3] **Trademarks** Weight and sufficiency

Because it constitutes forfeiture of property right, abandonment of trademark must be proven by clear and convincing evidence, and statutory aid to such proof must be narrowly construed. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

3 Cases that cite this headnote

[4] **Trademarks** Retroactive operation

Amendment of statute governing determinations of trademark abandonment, increasing period of nonuse sufficient to constitute prima facie case of abandonment from two years to three years, was not retroactively applicable. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

[5] **Trademarks** Extent of Use; Discontinuance and Non-Use

Elements of claim for trademark abandonment are: (1) non-use and (2) intent not to resume use. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

7 Cases that cite this headnote

[6] **Trademarks** Presumptions and burden of proof

Where presumption of trademark abandonment has been established by nonuse for statutory period, trademark owner has burden of demonstrating that circumstances do not justify inference of intent not to resume use. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

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2 Cases that cite this headnote

[7] **Trademarks** Weight and sufficiency

Bare assertion of possible future use of trademark is not enough to prove intent to resume use, for purpose of rebutting presumption of abandonment arising from nonuse for statutory period; mark owner must come forward with objective, hard evidence of actual concrete plans to resume use in reasonably foreseeable future when conditions requiring suspension abate. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

11 Cases that cite this headnote

[8] **Trademarks** Particular cases

Cigar manufacturer's nonuse of trademark for five year period constituted abandonment, absent evidence to support manufacturer's claim that mark was withdrawn in order to plan for its future introduction on new product; resumption of mark's use was merely as new label for existing product. Lanham TradeMark Act, § 45, 15 U.S.C.A. § 1127.

1 Cases that cite this headnote

[9] **Trademarks** Presumptions and burden of proof

Cigar manufacturer's mere intent not to abandon trademark during five-year period of non-use was insufficient to rebut statutory presumption of abandonment; manufacturer had to show concrete plans to resume use in reasonably foreseeable future. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

9 Cases that cite this headnote

[10] **Trademarks** Future use; plan or intent to use

Trademark "warehousing," which is impermissible, occurs when one hoards mark for future use without concrete intent to use it in future. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

5 Cases that cite this headnote

[11] **Trademarks** Presumptions and burden of proof

Neither trademark owner's consideration of trade dress issues, nor its sending of cease and desist letter to potential infringer, were sufficient to rebut presumption of abandonment arising from nonuse of mark for statutory period; actions were minor activities that fail to establish any intent to resume use of mark in reasonably foreseeable future. Lanham Trade–Mark Act, § 45, 15 U.S.C.A. § 1127.

4 Cases that cite this headnote

[12] **Trademarks** Weight and sufficiency

To refute allegation of trademark abandonment, contesting party must proffer more than conclusory testimony or affidavits.

[13] **Equity** He Who Comes Into Equity Must Come with Clean Hands

Under doctrine of "unclean hands," court may decline to exercise its equitable powers in favor of party whose unconscionable act has immediate and necessary relation to matter he seeks in respect of matter in litigation.

[14] **Equity** He Who Comes Into Equity Must Come with Clean Hands

Although doctrine of "unclean hands" will prevent application of equitable defenses in trademark infringement case, any purposeful delay on part of plaintiff in order to take advantage of alleged infringer's use of mark will vitiate this rule.

1 Cases that cite this headnote

[15] **Trademarks** Delay in Assertion of Rights; Laches

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Intentional infringement acts as bar to assertion of laches defense against infringement suit seeking injunctive relief.

[16] **Federal Civil Procedure** Copyright, trademark, and unfair competition cases

Issue of material fact as to whether American cigar manufacturer intentionally infringed upon Cuban manufacturer's trademark precluded summary judgment on American manufacturer's assertion that Cuban manufacturer's infringement claim was barred by laches.

1 Cases that cite this headnote

[17] **Equity** He Who Comes Into Equity Must Come with Clean Hands

Cuban cigar manufacturer's three or four year delay in filing trademark infringement suit was not sufficiently significant or purposeful to preclude it from asserting that defendant's unclean hands precluded it from asserting laches defense; there was no evidence that suit was delayed in order to take advantage of defendant's marketing efforts.

1 Cases that cite this headnote

[18] **Trademarks** Delay in Assertion of Rights; Laches

Trademarks Acquiescence

Trademarks Defenses or Objections

Where trademark infringement plaintiff presents strong showing of likelihood of confusion, equitable defenses, such as laches or acquiescence, will not bar its claims for injunctive relief, although they may preclude recovery of damages.

[19] **Trademarks** Markets and territories; competition

Although existence of direct competition between brands is factor to be considered in determining whether there is likelihood of confusion, trademark infringement can be found even if plaintiff's mark is not registered in United States and its product is not sold in United States. Lanham Trade–Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

3 Cases that cite this headnote

[20] **Trademarks** Factors considered in general

Factors court considers when determining likelihood of confusion, and hence trademark infringement, are: (1) strength of plaintiff's mark; (2) similarity of plaintiff's and defendant's marks; (3) competitive proximity of services; (4) likelihood that plaintiff will bridge gap and offer service like defendant's; (5) actual confusion; (6) good faith on defendant's part; (7) quality of defendant's service; and (8) sophistication of buyers. Lanham Trade–Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[21] **Federal Civil Procedure** Copyright, trademark, and unfair competition cases

Issue of material fact as to whether American cigar manufacturer's trademark was likely to cause consumer confusion with Cuban manufacturer's mark precluded summary judgment on American manufacturer's assertion that Cuban manufacturer's infringement claim was barred by laches.

[22] **Trademarks** Acquiescence

Affirmative defense of acquiescence is available to trademark infringement defendant only when trademark owner, by affirmative word or deed, had previously conveyed its consent.

6 Cases that cite this headnote

[23] **Trademarks** Estoppel

To assert equitable estoppel, trademark infringement defendant must show that: (1) plaintiff's misleading communication, with plaintiff's knowledge of true facts, prompted defendant to infer that plaintiff would not enforce its rights against defendant; (2) defendant relied

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on that conduct; and (3) defendant would be prejudiced if plaintiff were allowed to bring suit.

3 Cases that cite this headnote

[24] **Trademarks** Acquiescence

Trademarks Estoppel

Cuban cigar manufacturer's trademark infringement claim against American manufacturer was not barred by acquiescence or estoppel; Cuban manufacturer's alleged failure to contest American manufacturer's ownership claims occurred prior to its learning that American manufacturer intended to make significant commercial use of mark.

[25] **Estoppel** Silence

Silence may constitute cause for equitable estoppel if duty to speak exists.

[26] **Trademarks** Delay in Assertion of Rights; Laches

Trademarks Knowledge of facts

To assert equitable defense of laches, trademark infringement defendant must show that plaintiff had knowledge of defendant's use of its marks and that plaintiff inexcusably delayed in taking action with respect thereto.

1 Cases that cite this headnote

[27] **Trademarks** Delay in Assertion of Rights; Laches

Presumption of laches arises in trademark action when plaintiff does not bring suit within statute of limitations period applicable to state-law fraud claims.

[28] **Trademarks** Length of delay

Cuban cigar manufacturer's delay of up to three years in bringing infringement claim against American manufacturer was excusable, and thus did not constitute laches; during period of delay, defendant was not advertising accused product and was only selling insignificant numbers of it through two retailers.

[29] **Trademarks** Treaties and international conventions

Cuban cigar manufacturer's unfair competition claim under General Inter-American Convention for Trade Mark and Commercial Protection (IAC) had to be pursued through suit under Lanham Act provision governing implementation of trademark treaties. Lanham Trade–Mark Act, § 44(b, h), 15 U.S.C.A. § 1126(b, h).

2 Cases that cite this headnote

[30] **Trademarks** Treaties and international conventions

Lanham Act's incorporation of unfair competition provisions of General Inter-American Convention for Trade Mark and Commercial Protection (IAC) did not include IAC provisions permitting refusal or cancellation of registrations of marks that are similar to well-known marks registered in other member countries. Lanham Trade–Mark Act, § 44(b, h), 15 U.S.C.A. § 1126(b, h).

[31] **Trademarks** Nature and form of remedy

Cuban cigar manufacturer's unfair competition claim under International Convention for the Protection of Industrial Property (Paris Convention) had to be pursued through suit under Lanham Act provision governing implementation of trademark treaties. Lanham Trade–Mark Act, § 44(b, h), 15 U.S.C.A. § 1126(b, h).

2 Cases that cite this headnote

[32] **Trademarks** Treaties and international conventions

Lanham Act's incorporation of unfair competition provisions of International Convention for the Protection of Industrial Property (Paris Convention) did not include

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Paris Convention provision permitting refusal or cancellation of registrations of marks that are similar to well-known marks registered in other member countries. Lanham Trade–Mark Act, § 44(b, h), 15 U.S.C.A. § 1126(b, h).

[33] **Antitrust and Trade Regulation** In general; what is unfair competition

New York common law unfair competition claim requires showing of: (1) likelihood of confusion and (2) bad faith.

3 Cases that cite this headnote

[34] **Federal Civil Procedure** Copyright, trademark, and unfair competition cases

Issue of material fact as to whether cigar manufacturer's Cuban trademark was well-known in United States at time competitor registered it precluded summary judgment on manufacturer's New York common law unfair competition claim.

1 Cases that cite this headnote

[35] **Trademarks** Nature and Elements in General

Elements of trademark dilution claim are: (1) senior mark must be famous; (2) it must be distinctive; (3) junior use must be commercial use in commerce; (4) it must begin after senior mark has become famous; and (5) it must cause dilution of distinctive quality of senior mark. Lanham Trade–Mark Act, § 43(c), 15 U.S.C.A. § 1125(c).

[36] **Trademarks** Defenses, Excuses, and Justifications

Federal registration is no defense to charge of dilution under federal Anti-Dilution Act. Lanham Trade–Mark Act, § 43(c), 15 U.S.C.A. § 1125(c).

[37] **Federal Civil Procedure** Copyright, trademark, and unfair competition cases

Issue of material fact as to whether Cuban cigar manufacturer's trademark was well-known, and thus "owned" by it in United States at time mark was registered by American manufacturer precluded summary judgment on Cuban manufacturer's dilution claim. Lanham Trade–Mark Act, § 43(c), 15 U.S.C.A. § 1125(c).

1 Cases that cite this headnote

[38] **Trademarks** Alphabetical listing

COHIBA.

Attorneys and Law Firms

***251** Rabinowitz, Boudin, Standard, Krinsky & Lieberman by Michael Krinsky, David B. Goldstein, New York City, Winston & Strawn by Kevin Walsh, Steve Young, New York City, for Plaintiff.

Latham & Watkins by John J. Kirby, Jr., Marcellus Williamson, Elena C. Norman, New York City, for Defendants.

OPINION

SWEET, District Judge.

Defendants General Cigar Holdings, Inc. (the legal successor in interest to named defendant Culbro Corporation) and General Cigar Co. Inc. (collectively "General Cigar") have moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment to dismiss the complaint of plaintiff Emmpresa Cubana del Tabaco d.b.a. Cubatabaco ("Cubatabaco") on the basis of estoppel, acquiescence, and laches due to Cubatabaco's alleged long delay in challenging General Cigar's use and registrations of the COHIBA trademark. Cubatabaco has moved (1) to strike General Cigar's affirmative defenses of estoppel, acquiescence, and laches; and (2) for partial summary judgment on its claims of abandonment and under Articles 7 and 8 of the General Inter–American Convention for Trademark and Commercial Protection ("IAC" or "Inter–American Convention"), Article

6bis of the Paris Convention for the Protection of Industrial Property ("Paris Convention"), New York common law, and the Trademark Dilution Act.

For the following reasons, these motions are denied in part and granted in part.

Parties

Cubatabaco is a company organized under the laws of Cuba with its principal place of business in Havana, Cuba. Directly, and through its licensee, Habanos, S.A., Cubatabaco exports tobacco products from Cuba throughout the world, excluding the United States because of the current trade embargo. It was established by the Cuban government as an independent entity with its own assets and administration and is subject to the jurisdiction of a Cuban ministry.

Culbro has been merged into and is survived by General Cigar Holdings, Inc. General Cigar Holdings is a Delaware corporation with its principal place of business in the county of New York and functions as a holding company for General Cigar Co. Inc.

***252** General Cigar Co. is a Delaware corporation with its principal place of business in Bloomfield, Connecticut. General Cigar Co. is in the business of manufacturing, marketing, advertising and distributing tobacco.

General Cigar and its predecessors in interest have been major U.S. manufacturers and distributors of cigars for more than a century.

Prior Proceedings

Cubatabaco filed its complaint on November 12, 1997, alleging that Cubatabaco possessed a COHIBA mark for its cigars that was "well-known" in the United States at the relevant time, and that General Cigar's efforts to exploit and trade upon Cubatabaco's COHIBA mark in order to generate profits on the sale of its own cigars entitled Cubatabaco to relief under the Paris Convention, Arts. 6bis and 10bis; the Inter–American Convention, Arts. 7, 8, 20 and 21; section 43(a) of the Lanham Act, 15 U.S.C. §§ 1125(c)(1) and 1125(a); and New York State law.

On December 11, 1997, the parties in settlement discussions entered into a written agreement that, *inter alia,* (1) the actions of both parties in this court and in the U.S. Patent and Trademark Office ("PTO") are "stopped"; (2) "the time spent during the negotiation will not be used by any of the parties to the detriment of the other, in case there is no [settlement] agreement;" and (3) "use of General Cigar's COHIBA trademark as from the signing of this Contract will not be used in detriment of Cubatabaco if agreement is not reached." The parties reported this agreement to the Court on December 16, 1997, and, at their request, all proceedings were stayed, including discovery, until litigation was renewed in February 2000.

By order dated December 5, 2000, Counts V (Article 22 of TRIPS), VI (Article 10 of the Paris Convention), VIII (false representation of origin in violation of Section 43(a) of the Lanham Act) and IX (deceptive advertising in violation of Section 43(a) of the Lanham Act) were dismissed with prejudice in light of the decision in *Havana Club Holding S.A. v. Galleon S.A.,* 203 F.3d 116, 124 (2d Cir.2000).

General Cigar filed the instant motion for summary judgment on the basis of its equitable defenses on November 29, 2001. On January 29, 2002, Cubatabaco filed its motions for summary judgment to dismiss General Cigar's equitable defenses and for summary judgment on its claims under Articles 7 and 8 of the IAC; Article 6bis of the Paris Convention; the Federal Trademark Dilution Act; and New York common law. The motions were heard on March 13, 2002, and were considered fully submitted at that time.

Facts

The following facts are taken from the parties' Rule 56.1 statements [1] and, as required, are construed in the light most favorable to the non-movant, as applicable. They do not constitute findings of fact by the Court.

1 General Cigar submitted one Rule 56.1 Statement and responses to Cubatabaco's two Rule 56.1 Statements; Cubatabaco submitted two Rule 56.1 Statements and one response to General Cigar's Rule 56.1 statement. The statements have been compiled due to the similarities in facts alleged and the interrelationship of the three motions to which they relate.

I. *The Cuban COHIBA*

In 1969, Cubatabaco filed an application to register the "COHIBA" mark in Cuba. By 1970, cigars branded with Cubatabaco's COHIBA trademark were being produced at the El Laguito factory in Havana. The ***253** cigar box and band

bore a distinctive design developed for the COHIBA cigar as well as the COHIBA trademark. The registration issued on May 31, 1972.

Throughout the 1970's, Cuban COHIBA cigars were commercially available and sold in Cuba at Havana's main hotels, upscale restaurants and two retail outlets. From 1970 to 1975, Cubatabaco claims that annual sales at the two retail outlets in Havana averaged approximately 100,000 cigars and increased to approximately 180,000 cigars per year by 1975. In addition, since at least 1970, COHIBA cigars had been sold to the Cuban Council of State, which includes the office of the Cuban President and to another Cuban state enterprise which in turn sold the cigars to Cuban Ministries and other government institutions. [2] Cubatabaco claims that the total volume of sales grew from approximately 350,000 to 375,000 per year from 1970 to 1975 to approximately 550,000 to 600,000 per year from 1975 to 1980. There are no records of these sales, however, as Cubatabaco has a policy of destroying its sales and production records after five years.

2 General Cigar contests the characterization that cigars obtained and given away by Fidel Castro, other governmental officials and entities were sales by Cubatabaco.

On November 15, 1977, *Forbes* magazine published an article on the impact of Cuban cigars on the U.S. industry that noted that Cubatabaco was developing a Cohiba cigar. General Cigar's principal executives read this article.

By January 1978, Cubatabaco had made application to register COHIBA in 17 countries, including most of the Western European countries. [3] The applied-for registrations issued in due course. Cubatabaco did not, however, sell COHIBA cigars outside of Cuba until 1982.

3 The countries were: Great Britain, Ireland, Belgium, the Netherlands, Luxembourg, Spain, France, Denmark, Portugal, Australia, Egypt, South Africa, Argentina, Mexico, Switzerland, Venezuela, Colombia, and Italy. Cubatabaco has by now registered the mark in more than 115 countries total.

On February 6, 1978, a *New York* magazine article featured Cubatabaco and COHIBA cigars. In the article, Cubatabaco commented that it would be commercially possible for Cubatabaco to sell cigars in the United States successfully under new brands if, as it appeared to be the case, it would not be able to sell under the historic trademarks it preferred as a result of the *Menendez* litigation, which is described *infra* in Part III. Cubatabaco stated, "We have the unassailable trademark ... the one which says 'Havana' or 'Made in Cuba,' and that is the only one we need."

The *Miami Herald's* Sunday magazine, *Tropic,* also reported on the COHIBA cigar on March 19, 1978.

In July 1981, Cubatabaco announced that it would soon begin commercial exports of COHIBA in *Cubatabaco International* (July–December 1981), published in English for the foreign cigar trade. The COHIBA cigar was on the issue's front cover. In this publication, Cubatabaco expressly positioned COHIBA as the pinnacle of Cuban cigars.

In January 1982, The Spanish trade publication, *Actualidad Tabguera* reported that Cuba would soon begin international sales of the "famous cigar Cohiba." In June 1982, *El Pais,* a general circulation paper, reported on the imminent arrival of COHIBA in Spain.

On June 30, 1982, Cubatabaco launched COHIBA's international commercial sales at an event in Madrid during the World Cup.

***254** In 1983, Cubatabaco sought to register the COHIBA mark in the United States for the first time. In August 1984, its United States attorneys (Lackenbach, Siegal, Marzullo, Pesa & Aronson ("Lackenbach")) informed Cubatabaco that General Cigar had already obtained the registration on February 17, 1981.

On February 22, 1985, Cubatabaco filed an application with the PTO to register in the United States the BEHIQUE mark with the same trade dress it used on COHIBA cigars. [4]

4 In July 1988, Cubatabaco filed an application in the United States to protect an updated version of the same trade dress in conjunction with the word BEHIKE. In 1996, Cubatabaco filed an application in the United States to protect another version of its trade dress by filing an application to register solely the trade dress. Cubatabaco registered the COHIBA trade dress in conjunction with BEHIQUE or other marks to protect the COHIBA trade dress in countries where other

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parties had previously registered the COHIBA mark.

In 1987, Cubatabaco sought and obtained an opinion from Lackenbach on whether to begin legal proceedings over the COHIBA registration. Thereafter, Cubatabaco learned that General Cigar had filed a Declaration of Use and Incontestability for its COHIBA registration under Sections 8 and 15 of the Lanham Act in 1986 in connection with its 1981 registration for COHIBA. Cubatabaco chose not to take any action against General Cigar.

In a November 1992 interview with Padron, published in the Spring 1993 *Cigar Aficionado,* Francisco Padron, director of Cubatabaco, replied to a question regarding the company's future strategy for Cuban cigars. The magazine included the following purported exchange:

CA: Many American smokers don't realize that there are two brands of Partagas, a Partagas in America from the Dominican Republic and a Partagas sold around the world from Cuba. Assuming that tomorrow the embargo was lifted, how would it work?

Padron: We are not going to have two brands over there. Not even in Europe. We decided to break off our deal with Davidoff because of that. So what would happen is that we would launch new things for the North American market, new brands. Or we could make an arrangement with the brand owners there.

CA: General Cigar, as an example, owns the brand names Partagas, Ramon Allones and Cohiba for the U.S. market, and it has tremendous distribution in the United States. I would imagine that they would love to sit down with you and work it out to represent those brands of Cuban cigars in America. Is this possible or a problem? You are shaking your head no.

Padron: The first condition is that they must pass the brand name to us. This is the first condition Immediately. If not, forget about it. Second condition, they must be our partner the same way that we have it with the rest of the world. There is no other way to make a deal with us. If not, forget about it.

Padron also stated:

> We want to have [a] Habano cigar, not a brand name. It doesn't matter if it is Bolivar, Montecristo or even Cohiba. For the last four years, we have been telling the connoisseur how to recognize a Havana. When we launched the smoke ad we just put Havana, no Habanos. We think the most important thing is the umbrella that can cover all brand names. We can create a brand name whenever we want.

***255** Cubatabaco challenges these statements as unreliable given the difficulties of translation (the interviewer spoke no Spanish) and complexity of legal issues. In response, General Cigar notes that Padron never corrected or disclaimed the statements attributed to him in the interviews.

II. *General Cigar's 1981 Registration*

General Cigar first learned of the name "COHIBA" in the late 1970's. General Cigar executives had read the *Forbes* article discussed above. In addition, a December 1977 internal memorandum refers to COHIBA as "sold in Cuba/brand in Cuba" and "Castro's brand cigars." [5]

[5] The words came from handwritten notations on an internal memoranda, and the handwriting was never identified. General Cigar claims that this writing cannot establish that it knew that Cubatabaco was using the COHIBA mark or selling COHIBA cigars prior to General Cigar's first use or application to register the COHIBA mark.

In February 1978, General Cigar employee Oscar Boruchin ("Boruchin") discussed the COHIBA brand with Edgar Cullman Jr. ("Cullman"), chairman of Culbro. Boruchin purportedly had learned of COHIBA from a friend who visited Cuba on behalf of the State Department during the Carter Administration and was given COHIBA cigars in Cuba by "the highest echelons of government."

On March 13, 1978, General Cigar filed an application to register "Cohiba," with a claimed first use date of on or before February 13, 1978. Before or after pursuing this application, General Cigar did not request counsel to conduct a trademark search in Cuba or internationally, which would have disclosed the Cuban registrations. There is evidence to suggest that

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such a search would not have been industry practice in these circumstances. [6]

6 While other U.S. law firms could and did conduct international trademark searches at the time, General Cigar cites the testimony of a U.S. trademark lawyer retained by Cubatabaco who stated that he has never conducted a trademark search in Cuba for a party who did not intend to use or register the mark in Cuba. Moreover, he stated that he generally does not conduct any foreign trademark searches for clients who want to use the mark in the United States only.

It is a disputed issue as to whether the COHIBA name was well-known at this time. Boruchin testified that he told Cullman that "[n]obody knew the brand," and it was "not on the market," "didn't mean anything to anybody," and was "just given to visitors, diplomats." Cubatabaco states, however, COHIBA cigars were well-known in the United States cigar industry and among the public because of the two magazine articles mentioning COHIBA. Further, numerous United States journalists, business executives, and others knew of the brand from seeing it on sale in retail outlets and hotels in Havana, from receiving it as gifts in Cuba and at receptions in the United States, and by word of mouth.

On July 25, 1978, the U.S. Patent and Trademark Office ("PTO") asked General Cigar "whether the term COHIBA has any meaning or significance in the relevant trade or industry." General Cigar answered in the negative.

On March 20, 1979, the PTO, in another Office Action, noted, "Cohiba is a geographical tobacco growing region of Cuba," and stated that the COHIBA application would be refused as either geographically descriptive or misdescriptive, depending on whether the goods were from Cohiba. In a September 14, 1979 response, General Cigar asserted that COHIBA was "wholly arbitrary" and "fanciful and arbitrary," which Cubatabaco claims General Cigar clearly knew to be false.

On November 4, 1980, General Cigar's COHIBA application was published in the ***256** Trademark Office Official Gazette for opposition purposes. Neither Cubatabaco nor any other entity opposed General Cigar's COHIBA application. General Cigar obtained United States registration for the COHIBA mark, Registration 1,147,309, on February 17, 1981. [7]

7 Whether the trademark was legitimately obtained is a matter of dispute. Cubatabaco claims that General Cigar's incomplete, misleading and false responses to the PTO's queries were certain to mislead the PTO from a full and proper consideration of the matter, including that the Cuban brand was protected from registration or use in the United States under the Inter–American Convention.

III. *The Growth of Parallel Brands as a Result of the Cuban Revolution and Cuban Embargo*

General Cigar alleges that COHIBA represents another example of a "parallel brand" that resulted from the Cuban Revolution and the subsequent embargo.

On January 1, 1959, Fidel Castro seized control of the Cuban government. The new government seized privately-owned cigar manufacturers on September 15, 1960. Some of the ousted Cuban cigar owners reestablished their businesses abroad using the trademarks their families had owned before the government seizure.

In 1963, the U.S. government imposed an embargo on trade with Cuba, prohibiting anyone subject to the jurisdiction of the U.S. from transporting, importing or otherwise dealing in or engaging in any transaction with respect to merchandise "of Cuban origin." 31 C.F.R. §§ 515.101 *et seq.* (1999) (the "Embargo").

Although the embargo prevented Cuban entities such as Cubatabaco from selling cigars and other Cuban products in the United States, it did not prevent them from registering or protecting trademarks, trade dress and other intellectual property in the United States. In fact, Cubatabaco has aggressively protected its intellectual property in the United States. [8]

8 Cubatabaco employed lawyers in the United States, filed U.S. trademark applications and arranged for specific investigations into filings in the U.S. Patent and Trademark Office. It also protected its trademarks around the world. In the 1990's, it had 8,000 registrations worldwide. It has registered COHIBA in approximately 115 countries.

In a series of cases in the 1960's and early 1970's (the "*Menendez* litigation"), U.S. courts upheld rights of the former owners of Cuban cigar trademarks in the United States

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against claims of the Cuban government and governmental entities. The courts determined that the owners of the expropriated Cuban cigar companies retained ownership of the pre-expropriation common law trademark rights obtained by their pre-expropriation sale of cigars in the United States under those trademarks and the appurtenant good will. The courts so ruled on the ground that the United States would not give extraterritorial effect to takings without compensation and hence would not give legal effect to the Cuban expropriations of the cigar companies as applied to trademark registrations and common law rights existing in the United States at that time. *F. Palicio y Compania, S.A. v. Brush & Bloch,* 256 F.Supp. 481 (S.D.N.Y.1966), *aff'd* 375 F.2d 1011 (2d Cir.1967); *Menendez v. Faber, Coe & Gregg,* 345 F.Supp. 527 (S.D.N.Y.1972), *aff'd in part and rev'd in part sub nom. Menendez v. Saks & Co.,* 485 F.2d 1355 (2d Cir.1973), *cert. granted as to certain questions,* 416 U.S. 981, 94 S.Ct. 2382, 40 L.Ed.2d 758 (May 13, 1974); *reargued* Jan. 19, 1975; *rev'd in part and cert. controverted in part sub. nom. Alfred Dunhill of London v. Republic of Cuba,* 425 U.S. 682, 96 S.Ct. 1854, 48 L.Ed.2d 301 (1976).

Over time, U.S. cigar manufacturers, including General Cigar, purchased some of ***257** the U.S. trademark registrations and rights from the families who fled Cuba. As a result of the upholding of the ousted Cuban owners' U.S. trademark rights, "parallel brands" developed, *i.e.,* the Cuban government sells a Cuban cigar in Cuba and other parts of the world under the same apparent trademark as an unrelated company that sells a non-Cuban cigar in the U.S. It is not the same trademark, however, as the U.S. cigars are sold under trademarks which the owners had registered and used in the United States for the sale of their cigars prior to the expropriation of the Cuban cigar companies.

COHIBA's situation is different from those of the brands in the *Menendez* litigation, as the COHIBA brand was not originally a privately owned company prior to the Revolution and embargo, nor was it sold in the United States prior to that time. COHIBA therefore did not involve an expropriated owner seeking to use its U.S. trademark while the Cuban government continued to use the Cuban and other trademarks. It is true, however, that the Cuban COHIBA is sold around the world and in Cuba, while cigars under the same apparent mark are sold in the United States by a different, unrelated entity.

1978: 650

1979: 600

IV. *Sales of General Cigar's COHIBA–Branded Cigars From 1978 to 1997*

From 1978 to 1997, General Cigar sold three different pre-existing cigars—the White Owl, the Canario D'Oro, and the Temple Hall—as a "COHIBA cigar" by placing a COHIBA label on the cigars.

A. *1978–1982: COHIBA–Branded "White Owl" Cigars*

Beginning in 1978, General Cigar shipped 1,000 or fewer COHIBA-branded cigars per year.[9] The cigars were White Owl "stock" machine-made cigars that were shipped along with other White Owl cigars (or other "seconds") labeled with as many as 32 other different brands as part of a "trademark maintenance program."

9 This figure is based on the invoices still in existence twenty years after the periodic shipments were made. General Cigar claims that more shipments were likely made, but the records thereof have not been located. General Cigar has not posited estimates of what it believes constitute the actual figures.

The cigars were irregularly and sporadically shipped to two retailers who, by pre-arrangement, were given a full credit back on the nominal payment they made to General Cigar. Two boxes of 50 cigars of each of the 33 brands were simultaneously shipped in identical cardboard boxes, with stick-on labels affixed to two boxes for each of the 33 different brands. These shipments were not sent out when "seconds" were not available.

The cardboard boxes with the different labels, including "COHIBA," were sold in the same cartons they were in with a sign stating the price per box. If the two boxes with the COHIBA label were at the bottom of the box, they would not have been visible to the consumer.

General Cigar sold the following amounts of COHIBA-branded White Owl cigars during this period:

1980:	1,000
1981:	700
1982:	200 (single shipment on April 15, 1982)

B. ***1982–1987: COHIBA–Branded "Canario D'Oro" Cigar***

Beginning in November 1982, General Cigar placed the COHIBA brand on its ***258** pre-existing Canario D'Oro premium cigar. The COHIBA-branded Canario D'Oro was packaged in a clear plastic canister with a price between that of a high-end premium cigar and a "bundled" cigar. General Cigar's sole promotion of the brand consisted of in-store advertising materials.

On June 23, 1986, General Cigar filed a sworn "Declaration Under Sections 8 and 15 of the Trademark Act of 1946" for its COHIBA registration, in which it attached a "specimen showing the mark as currently used" (the packaging in which the Canario D'Oro was sold as of November 1982). As part of the requirement to establish incontestability under Section 15, General Cigar declared that "the mark shown therein has been in continuous use in interstate commerce for five consecutive years from February 17, 1981 to the present."

On November 3, 1986, the PTO granted "incontestability status" to General Cigar's COHIBA mark.

Sales of the COHIBA-branded Canario D'Oro ceased sometime in 1987.

General Cigar sold the following amounts of COHIBA-branded Canario D'Oro cigars during this period:

1982:	90,000 (Nov. and Dec. only)
1983:	323,000
1984:	118,000
1985:	70,000
1986:	5,000
1987:	3,000 [10]

10 Cubatabaco disputes that figure but accepts it for purposes of the summary judgment motion.

C. ***Period of No Sales from 1987 to 1992***

General Cigar itself[11] made no sales under the COHIBA name for at least five years, from sometime in 1987 until November 20, 1992.

11 General Cigar claims that COHIBA cigars nonetheless stayed on store shelves and were sold during that time due to the shelf-life of cigars and the depressed cigar market of the late 1980's and early 1990's.

It is disputed whether during this time period General Cigar abandoned its earlier registration of COHIBA or merely stopped selling a lower-quality version in order to make plans for a higher priced, "super-premium"[12] version.

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12 "Super-premium" is a pricing range.

General Cigar claims that it decided to convert COHIBA from a "bundled" cigar into a premium cigar that would be sold in wooden boxes and used as one of General Cigar's principal brands, and that it stopped shipping the non-premium cigars from 1986 to 1992 to develop the premium brand of COHIBA. Cubatabaco alleges, however, that General Cigar did not begin working with an outside consultant to develop the premium COHIBA until September 1992, six years later.

It is undisputed that the following events occurred during this time period.

In April 1989, General Cigar sought to use the word mark "COHIBA" in conjunction with the identical copying of the Cuban COHIBA trade dress. Counsel advised in July 1989 that the trade dress was already registered, and based on this legal advice, General Cigar determined not to use the identical trade dress.

On November 9, 1990, General Cigar sent a cease and desist letter, asserting that the use of the name "COHOBA" for cigars infringed on General Cigar's "considerable rights in [its 1981 COHIBA] registration."

***259** In December 1991, General Cigar again considered using an element of the Cuban COHIBA trade dress, the so-called "Indian Head" design. Outside counsel advised against it, and in-house counsel informed the marketing department that "We are out of luck on the use of the Indian Head design." The outside counsel in April 1989 and December 1991, advised General Cigar that either non-use or mere token use of a mark was insufficient to sustain rights and would constitute abandonment.

D. *1992–1997: The COHIBA–Branded "Temple Hall" Cigar*

On September 1, 1992, the premiere issue of *Cigar Aficionado* was published, with a distribution of 115,000 copies [13] and display at 453 cigar outlets. The premier issue was introduced to the trade on August 27, 1992, at a breakfast held by *Cigar Aficionado* at the annual convention of the Retailer Tobacco Dealers of America ("RTDA"), the principal retailers' association. Complimentary copies of the premier issue were distributed to the 300 to 400 attendees.

13 That number is equal to 25% of all premium cigar smokers. The magazine was the first to be aimed at premium cigar smokers.

The issue featured the Cuban COHIBA in a six-page cover story about "Cuba's Best Cigar," entitled "The legend of Cohiba: Cigar Lovers Everywhere Dream of Cuba's Finest Cigar." [14] On September 21, 1992, *Newsweek* ran an article on *Cigar Aficionado's* launch, noting that COHIBA was the initial winner of the magazine's first "blind tastings" feature, and that the first issue had featured ads for premium products such as Glenlivet single-malt scotch, Louis Vuitton luggage "and, of course, COHIBA cigars." [15] Cubatabaco claims that General Cigar decided in the fall of 1992 to sell a new product under the COHIBA name "to somehow capitalize on the success of the Cuban brand and especially at this point in time the good ratings that it got, the notoriety that it got from *Cigar Aficionado*." General Cigar states that it had always intended to resume use of the COHIBA mark.

14 The article called the Cuban COHIBA, "perhaps the world's finest smoke," and "legendary to most cigar aficionados." In its rating of cigars, the magazine gave COHIBA Robusto and Esplendido scores of 96 and 98 out of a possible 100. The premier issue made other positive references to the Cuban COHIBA.

15 Prior to 1992, COHIBA was referenced 46 times in articles dating from as early as 1977 and stretching over the fifteen-year period.

In September 1992, defendants began to work with an outside graphic designer, Cliff Bachner ("Bachner") on the trade dress of the new COHIBA. John Rano, General Cigar's head of marketing, instructed Bachner to make "exactly same" copies of the Cuban COHIBA trade dress. Bachner did as instructed, but General Cigar states that it never used those prototypes in commerce. [16] Milstein, who was Assistant General Counsel for General Cigar at that time, testified in deposition that General Cigar wanted to use a label as near as possible to the Cuban COHIBA "for the same reason they wanted to use it in '89 and again in '91," that is "they wanted to somehow capitalize on the success of the Cuban brand, and especially at this point in time the good ratings that it got, the notoriety that it got from *Cigar Aficionado*." Milstein Dep. at 284.

16 Cubatabaco claims, however, that General Cigar utilized the same typeface as it and placed the mark

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in the same location on the cigar box (the lower right hand corner), beginning in November 1992. It claims that General Cigar did this in order to better exploit the Cuban COHIBA's name and to suggest strongly that the product was a variety of, and affiliated with, the Cuban COHIBA.

***260** In the first week of November 1992, Ron Milstein, General Cigar's then Assistant General Counsel ("Milstein"), and Alfons Mayer, General Cigar's Vice President for Tobacco ("Mayer"), traveled to Havana, Cuba, at the invitation of Cubatabaco to attend an international conference in Havana for the 500th anniversary of the European discovery of tobacco, which included the launch of a new line of COHIBA cigars, "Siglo (Century) 1492." In a private meeting, Mayer informed Padron of General Cigar's interest in entering into a broad and exclusive partnership with Cubatabaco for the United States territory upon the embargo's end, which would replicate the 51/49 partnership for distribution of Cuban cigars that Cubatabaco had created in the rest of the world. COHIBA was not mentioned during the meeting. Milstein wrote of the meeting:

> We met with Mr. Padron for 1 hour over breakfast. The talk was of the Consolidated sale rumor. We got no more information. Mr. Padron made it very clear that trademarks are not important. He said Havana will sell cigars no matter what name they have. Any companies that have marks (this was directed to G.C.) would have to sell (give) the marks back to Cubatabaco and get distributorship rights only, or else Cubatabaco will sell the cigars under a new name.

While at the conference, Milstein was introduced to Adargelio Garrido, a Cubatabaco attorney ("Garrido"). Milstein did not speak Spanish and Garrido, a native Spanish speaker, had not studied English at the time. General Cigar claims that a conversation took place between the two men. The evidence of this meeting is a memorandum Milstein wrote two weeks after the meeting. [17] Milstein wrote that Garrido "acknowledged that we owned the name in the U.S. and that we would be free to sell a cigar under that name there." Milstein's memorandum also indicated that Garrido stated that Cubatabaco would object to any use General Cigar made of the trade dress associated with Cubatabaco's COHIBA cigars. Cubatabaco raises several objections to this evidence. [18]

17 Milstein and Mayer both also testified in depositions as to the meeting and that Garrido indicated that General Cigar owned the COHIBA word mark in the United States.

18 First, it claims that the memorandum is inadmissible hearsay because Milstein has no independent recollection of the event and did not write the memorandum until two weeks after the alleged conversation took place. It also disputes that the conversation could have even or ever did take place. Garrido, a native Spanish speaker, testified that he "did not have a conversation, it was just an introduction." Further, Mayer testified that Milstein met with a Cubatabaco lawyer while walking down a corridor at the conference center, while Milstein testified that he thought he met Garrido at the Cohiba Siglo launch party. Finally, Cubatabaco also states that Garrido had not, and could not be reasonably viewed as having, the authority or apparent authority to make the statements attributable to him.

In November 1992, General Cigar began to sell a COHIBA cigar again by relabeling its pre-existing "Temple Hall" cigar. This COHIBA was a medium-priced cigar. General Cigar made no reference to its earlier "COHIBA" product, and the trade dress was completely different. The cigars were sold only at Alfred Dunhill of London, an upscale retailer ("Dunhill"), and Mike's Cigars, a Florida retailer, wholesaler, and mail-order distributor. In 1992, General Cigar sold through Dunhill only. General Cigar engaged in no advertising or promotion of the COHIBA-branded Temple Hall cigar from 1992 to 1997.

Prior to this time, General Cigar knew of the Cuban COHIBA's sale, use, registration and employment in Cuba.

In the fall of 1992, General Cigar requested that its outside counsel provide a ***261** legal opinion regarding its rights to the COHIBA name and use of the Cuban COHIBA trade dress. On December 2, 1992, Morgan & Finnegan advised General Cigar that Cubatabaco's registrations of the trade dress would probably not support an action by Cubatabaco against General Cigar for use of its trade dress. Instead, it

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warned that use of the Cubatabaco trade dress could increase the potential for Cubatabaco's being able to show likelihood of confusion regarding the COHIBA mark based upon its "prior existing reputation for the Cuban COHIBA mark." Further, use of the trade dress "would lend support to an argument that General Cigar was acting in bad faith, i.e. with an intention to mislead the public into confusing General Cigar's product with Cubatabaco's" and could expose General Cigar to liability. Morgan & Finnegan advised General Cigar to obtain Cubatabaco's written confirmation of General Cigar's right to use the COHIBA word mark and that it would be prudent not to launch the product even without the trade dress elements of Cubatabaco's product before obtaining that confirmation. It also advised General Cigar to file a new U.S. trademark application coinciding with the new launch of the COHIBA product. This new registration "would not be vulnerable to any claims of earlier abandonment [19] which may be asserted against the existing registration."

19 General Cigar states that counsel who prepared this opinion was unaware that General Cigar had sold hundreds of thousands of COHIBAs during the 1980's.

On December 30, 1992, General Cigar filed an application to register COHIBA, purportedly to protect the appearance of the mark in bold, capital letters. Cubatabaco claims that General Cigar filed the application because it had abandoned its 1981 registration.

In a January 13, 1993 memo to the top executives of General Cigar, the assistant general counsel Milstein laid out General Cigar's strategy "to exploit the popularity, familiarity, brand recognition and overall success of the Cuban Cohiba." Milstein also stated General Cigar's desire to use "the familiar trade dress of the Cuban Cohiba."

In the spring of 1993, General Cigar's advertising agency developed a campaign for the new, premium COHIBA. They first phase of the "strategy" was to "[e]xploit the Cohiba name, with its reputation as one of the world's finest cigars amongst cigar smokers, to build a brand image for the U.S. Product." [20] In mid–1993, General Cigar instructed the advertising agency to stop working on the COHIBA campaign, and no more work was done until March 1997.

20 General Cigar contests this to the extent it suggests that General Cigar sought to exploit the fame of the COHIBA *mark.*

Also in the spring of 1993, General Cigar's graphic designer developed trade dress designs similar, but not identical, to the Cuban trade dress, based on instructions for "further exploration," "in terms of color, typography and graphics," of the "original [Fall 1992] comps" which "came from the Cuban Cohiba." These plans, too, were put on hold from mid–1993 until March 1997. During the time period from mid–1993 to March 1997, General Cigar claims that it was in the process of developing the blend to use in the "super-premium" COHIBA. Cubatabaco contests this, stating that General Cigar's practice was to develop blends and then name them. [21]

21 It claims that the product given the COHIBA name was developed as part of a process of simultaneously developing and naming several different blends, and that General Cigar was always in the process of developing new and better cigars. General Cigar claims that it also selected brand names and then developed blends for use with the brand names, and that COHIBA is an example of where it did that.

***262** In a December 1993 interview with Padron, which appeared in the Spring 1994 edition of *Cigar Aficionado,* the following exchange purportedly took place:

CA: If the embargo ended tomorrow or two to five years from now, have you thought through how it would happen and what the scenario would be? You have problems with certain brands as far as trademark issues, and with other brands you do not have a problem. Have you thought how you would introduce your brands to the American market?

Pedron: First there is going to be a fight. We have not been able to have the brand name in the United States because of the embargo. It was forced by [the United States]. It was not decided on our side.... But we are not going to fight in order to get our cigars into the United States. As we always say, a Habano [cigar] is a Habano [cigar]. With a name of Marvin or Padron or Meyer or whatever goes on the cigar, it is a Habano. So, we are going to let everybody know that we are here, and this is a Habano. We are not going to fight with somebody else because he owns the brand name of Cohiba or Montecristo in

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America. We have been living without that for a long time.

Cubatabaco objects to this statement for the same reasons it objects to Padron's earlier interview excerpts.

In January 1994, Cubatabaco received a box of General Cigar's COHIBA-branded Temple Hall cigars. Along with the box, Cubatabaco received a note stating that the box was not sold as a "regular item" and that it was being produced by General Cigar only for purposes of its trademark registration. [22] At the time Cubatabaco believed that General Cigar was not making stable or continuous use of the COHIBA trademark in the United States. Cubatabaco's counsel did not learn of the box until some time later.

22 The note read in full: "This Box of Cohiba is produced by General Cigar for trademark registration purposes in the U.S.A. only. This is not to be sold as a regular item. That is why you only see the name Cohiba. The cigar is __ Tom." The back of the box bore a stamp, "Dunhill by Alfred Dunhill of London, Inc. Handmade in Santiago Republica Dominicana 42K Beverly Hills."

On April 12, 1994, General Cigar's application to register COHIBA in a block letter format was published for opposition. No entity challenged General Cigar's application to register COHIBA in block letter format at that time.

On June 2, 1994, Cubatabaco first learned of General Cigar's application to register COHIBA in block-letter format after the time to file an opposition had expired. Sometime after that, Cubatabaco engaged and communicated with its United States attorneys (plaintiff's counsel Rabinowitz, Boudin, Standard, Krinsky & Lieberman ("Rabinowitz, Boudin")) with respect to contesting General Cigar's rights to the COHIBA mark. [23]

23 Cubatabaco claims that it dropped the matter after the interview with Cullman, discussed below, was published.

The Autumn 1994 issue of *Cigar Aficionado* quoted Cullman as stating that General Cigar (1) was "sitting on" its COHIBA rights with "no big plans at the moment," despite, in the interviewer's words, the fact that COHIBA "is widely regarded as the No. 1 brand produced in Cuba"; and (2) would "like to work something out with" Cuba regarding COHIBA when the embargo was lifted.

In 1995, the PTO granted General Cigar's application to register the COHIBA mark.

***263** In the September 1996 issue of *Cigar Aficionado,* Cullman announced that General Cigar "had a plan to come out with Cohiba" "within the next two years."

Cubatabaco had decided in the summer of 1996 to commence proceedings against General Cigar and on November 19, 1996, Garrido instructed Rabinowitz, Boudin to do so.

General Cigar sold the following amounts of the COHIBA-branded Temple Hall cigars, constituting less than 0.05% of General Cigar's annual premium cigar sales, from 1992 to 1996:

1992:	5,600 (November and December only)
1993:	50,000
1994:	49,000
1995:	101,000
1996:	96,000

V. *Cubatabaco Submits Cancellation Petition*

On January 15, 1997, Cubatabaco applied to register the COHIBA mark and filed a Petition for Cancellation with

the PTO. On May 28, 1997, Cullman contacted Francisco Linares, president of Habanos, S.A., a marketing arm of Cubatabaco, to propose a settlement meeting. As noted earlier, the instant lawsuit was filed on November 12, 1998.

General Cigar claims that it has been prejudiced because Cubatabaco waited until 1997 to file this petition.

First, it claims it had taken a number of actions to protect its rights in the COHIBA mark. Cubatabaco alleges that the bulk occurred after Cubatabaco filed its cancellation petition in January 1997. General Cigar:

- filed two lawsuits for infringement of General Cigar's COHIBA trademark, both of which resulted favorably for General Cigar. *General Cigar Co. v. G.D.M. Inc.,* 988 F.Supp. 647 (S.D.N.Y.1997); Case No. 98 Civ. 8174 (S.D.N.Y.). [24]

24 The lawsuits were filed after January 1997.

- assisted the Customs service to prevent importation of counterfeit COHIBAs; [25] communicated with importers of detained or seized goods.

25 General Cigar presents as evidence five letters; four are dated after January 1997.

- participated in one action before the PTO to prevent the registration of a mark, "CAOBA," similar to its COHIBA registration. [26]

26 The action took place in 1997.

- obtained or supported actions by criminal law enforcement authorities against sellers of unauthorized COHIBA cigars and related products.

  - hired private investigators to investigate infringers and their activities, to submit related affidavits in support of search and seizure warrants and to review seized merchandise and related records bearing the COHIBA mark, all at General Cigar's expense.

  - sent at least two [27] "cease and desist" letters to infringing users of the COHIBA trademark.

27 It claims to have sent "numerous" of such letters, but the evidence presented reveals only two such letters. One was dated after Cubatabaco filed the cancellation petition.

- spent $1.5 million in enforcement activities.

General Cigar also alleges that it has been prejudiced by Cubatabaco's delay in bringing this suit because witnesses have died or are elderly and ill and unable to testify. These witnesses are:

***264** • Frank Fina, Sr., a General Cigar employee for 45 years and Vice President of Manufacturing, has died;

- John McLoughlin, a Sales Administrator at General Cigar's corporate offices, is hospitalized and cannot testify in this action;

- Gregory Atkinson, an attorney at Morgan & Finnegan who worked on the COHIBA matter for General Cigar, has died;

- James Siegel, the attorney who filed the U.S. BEHIQUE registration on behalf of Cubatabaco, has died;

- Henry Whitehall, Vice President and Secretary of Culbro Corporation from 1946 until 1987, who signed the 1978 registration and the Section 8 and 15 declaration, has died;

- Robert Lilienfield, a former Vice President of General Cigar until 1998 and who was in charge of premium cigars, is ill and cannot testify in this action;

- Nicholas Freeman, a go-between between General Cigar and Cubatabaco with regard to their respective trade rights in the COHIBA trade dress, has died;

- Amy Lineberger, Manager of Marketing Research at General Cigar from November 1996 until June 1998, has died.

According to Cubatabaco, General Cigar has not been prejudiced by the unavailability of these witnesses because General Cigar failed to identify the materiality of their testimony and failed to specify in many instances that the witnesses were unable for deposition after Cubatabaco filed the cancellation petition. Further, General Cigar has deposed more than 35 other persons, and Cubatabaco contends that they are more central to this matter than those witnesses identified by General Cigar. [28]

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28 General Cigar has deposed twenty-nine of its own present and former employees, including CEOs, Presidents, heads of marketing and sales, the trademark custodian, two in-house and four outside attorneys, numerous personnel directly involved in the 1982, 1992, and 1997 launches, and the graphic designer.

In addition, General Cigar claims that it has been prejudiced as many witnesses do not recall the events in question because they took place so many years ago. Cubatabaco argues, however, that General Cigar has failed to identify any material factual question affected by loss of memory.

General Cigar also notes that all files related to Cubatabaco maintained by Lackenbach Siegel were destroyed in a flood caused by Hurricane Floyd in 1999.

VI. ***General Cigar Introduces Super–Premium COHIBA***

In August 1997, General Cigar introduced the super-premium COHIBA cigar at the RTDA Convention. No sales were made to the public at this time.

In September 1997, General Cigar launched its new product with an "unprecedented" advertising and promotional campaign costing more than $2 million. The product was promoted nationwide through broad channels of premium retail trade. Cubatabaco claims that the product launched in September 1997 intentionally adopted a trade dress "as near as possible" to the Cuban COHIBA and that it is confusingly similar.

Cigar Aficionado and its affiliated publication, *Cigar Insider,* rate cigars. They typically give ratings of 90 or better to a few select brands in each category of cigars. The super-premium General Cigar COHIBA has received a 90 rating or better, but has not received it consistently.

The following sales of the super-premium COHIBA occurred:

1997:	509,000 (August to December only)
1998:	858,000
1999:	985,000

***265** The following summarizes the approximate annual sales of the various versions of the COHIBA-branded cigars:

White Owl

1978:	650
1979:	600
1980:	1,000
1981:	700
1982:	200 (single shipment on April 15, 1982)

Canario D'Oro

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1982: 90,000

1983: 323,000

1984: 118,000

1985: 70,000

1986: 5,000

1987: 3,000 [29]

1988: 0

1989: 0

1990: 0

1991: 0

Temple Hall

1992: 5,600 (Nov. and Dec. only)

1993: 50,000

1994: 49,000

1995: 101,000

1996: 96,000

Original COHIBA blend

1997: 509,000 (Aug. to Dec. only)

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1998:	858,000
1999:	985,000

29 As discussed earlier, Cubatabaco disputes the figure.

DISCUSSION

I. ***Jurisdiction***

This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), and 15 U.S.C. § 1121(a) for claims arising out of alleged violations of Sections 38, 43(a) and (c), and 44(b) and (h) of the Lanham Act, 15 U.S.C. §§ 1120, 1125(a) and (c) and 1126(b) and (h).

II. ***Venue***

Venue is appropriate in this district under 28 U.S.C. § 1391.

III. ***Standard for Summary Judgment***

Rule 56(e) of the Federal Rules of Civil Procedure provides that a court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits ... show that there is no genuine issue as to material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(e); *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Silver v. City Univ.,* 947 F.2d 1021, 1022 (2d Cir.1991). "The party seeking summary judgment bears the burden of establishing that no genuine issue of material fact exists and that the undisputed facts establish her right to judgment as a matter of law." *Rodriguez v. City of New York,* 72 F.3d 1051, 1060–61 (2d Cir.1995). In determining whether a genuine issue of material fact exists, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. ***266** *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Gibbs–Alfano v. Burton,* 281 F.3d 12, 18 (2d Cir.2002).

IV. ***Abandonment***

As part of its Count XI, Cubatabaco seeks the cancellation of General Cigar's 1981 COHIBA registration because of alleged abandonment. Cubatabaco has moved for summary judgment on this claim based on General Cigar's inaction from 1987 to 1992.

It is necessary to determine whether abandonment has occurred at the outset as this determination may affect the analysis of whether General Cigar's equitable defenses apply. Whether acquiescence, estoppel, and laches result from the period between 1984 and 1997 presents a much different question than whether they apply to the period between 1992 and 1997.

A. ***Equitable Defenses Do Not Apply to Claims of Abandonment***

[1] As an initial matter, General Cigar's equitable defenses do not apply to Cubatabaco's claims that the 1981 registration was abandoned. [30]

30 For the same reasons discussed herein, nor can they apply to Cubatabaco's claims that the 1981 registration and 1986 incontestability declaration were obtained fraudulently. These fraud claims are not addressed because of the determination, *infra,* that the mark was abandoned between 1987 and 1992.

There is no question that in actions before the PTO, equitable defenses such as the ones General Cigar asserts here are unavailing against cancellation claims based on abandonment. The only question is whether that rule also applies when the cancellation proceeding is brought before a court.

The Lanham Act provides that a petition to cancel a trademark registration may be filed "at any time" if, *inter alia,* the registered mark has been abandoned. 15 U.S.C. § 1064(3) [31]. Based on the "at any time" language, [32] the PTO's Trademark Trial and Appeal Board has ruled in cancellation hearings that equitable defenses are not available against claims of abandonment in cancellation of trademark registration cases. *Treadwell's Drifters Inc. v. Marshak,* 1990 WL 354600, 18 U.S.P.Q.2d 1318, 1320 (Trademark Tr. & App. Bd.1990) ("[E]quitable defenses are not available against the claims of abandonment ... because it is in the public ***267** interest

to remove abandoned registrations from the register....”); *Bausch & Lomb, Inc. v. Leupold & Stevens Inc.,* 1986 WL 83320, 1 U.S.P.Q.2d 1497, 1499 (Trademark Tr. & App. Bd.1986) (citing cases); *Southwire Co. v. Kaiser Aluminum & Chem. Corp.,* 1977 WL 22597, 196 U.S.P.Q. 566, 573 (Trademark Tr. & App. Bd.1977); *see also* McCarthy, *Trademarks and Unfair Competition,* § 20:11, 1045 (2d ed. 1984) [“McCarthy”].

31 That provision states, in pertinent part:

> A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged ...:
>
> (3)
>
> At any time if the registered mark becomes the generic name for the goods or services, or a portion therefore, ... or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 [15 U.S.C. § 1054] or of subsection (a), (b), or (c) or section 2 [15 U.S.C. § 1052] ... or contrary to similar prohibitory provisions of such prior Acts ... or if the registered mark is being used by or with the permission of the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

15 U.S.C. § 1064.

32 Two other subsections provide a narrow five-year window for filing a cancellation petition. § 1064(1) and (2). The “at any time” language is therefore a significant difference and suggests the legislative intent to provide a limitless opportunity to challenge registrations based on the provisions of § 1064(3).

Further, the fact that § 1069 permits the application of the equitable principles of laches, estoppel and acquiescence in *inter partes* proceedings does not alter this conclusion, as that section states that such principles may be considered and applied “where applicable.” The principles are not applicable where the Lanham Act specifically carves out an exception to them.

The Fourth Circuit has held that the limits placed on PTO cancellation proceedings also apply to court proceedings. *Shakespeare Co. v. Silstar Corp. of America, Inc.,* 9 F.3d 1091, 1098 (4th Cir.1993) (citing Siegrun D. Kane, *Trademark Law* 281 (2d ed.1991)). That means that the language in Section 1064 and its express license to file for cancellation on particular grounds “at any time” is applicable here. Therefore, parties in a court proceeding cannot assert equitable defenses against cancellation claims asserted on the basis of abandonment or other enumerated grounds in § 1064 that allow filing “at any time.” *Baniel v. Guild,* 2000 WL 1349254, at *5 (N.D.Ill. Sept. 19, 2000). As the *Baniel* court recognized, the policy reasons that the PTO bars equitable defenses against cancellation proceedings involving abandoned marks apply equally whether the case is before that body or a federal court. 2000 WL 1349254, at *5.

General Cigar posits that this rule contravenes the rationale behind equitable defenses, *i.e.* that parties should not sleep on their rights while a competitor develops good will in a disputed mark. Congress, in drafting the Lanham Act, clearly showed its preference between these two conflicting policies: keeping the registry clear of abandoned marks is more important than preventing entities from sleeping on their rights.

General Cigar cites a number of case that do not involve cancellation proceedings and Section 1064's statutory language permitting filing “at any time” and thus are not applicable. [33] General Cigar presents only two seemingly contradictory cases that involve a cancellation proceeding. In both *Oreck Corp. v. Thomson Consumer Elecs. Inc.,* 796 F.Supp. 1152, 1161 (S.D.Ind.1992) (dismissing trademark cancellation claim on the basis of fraudulent procurement [34] due to laches) and *Joint Stock Soc'y v. UDV N. America Inc.,* 53 F.Supp.2d 692, 721–22 (D.Del.1999) (granting defendant's motion for summary judgment dismissing, *inter alia,* a trademark cancellation claim on the basis of laches), however, the courts either ignored or refused to apply the language of Section 1064. Because it is held that this Court is bound by the language of that section, these cases are inapposite.

33 *E.g., Odetics Inc. v. Storage Tech. Corp.,* 14 F.Supp.2d 800 (E.D.Va.1998) (patent); *Hot Wax, Inc. v. Turtle Wax, Inc.,* 191 F.3d 813 (7th Cir.1999) (false advertising and false promotion); *M & T Chems. Inc. v. IBM Corp.,* 403 F.Supp. 1145, 1150 (S.D.N.Y.1975) (patent).

34 Section 1064 also includes registrations obtained by fraud in its umbrella.

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B. *General Cigar Abandoned the COHIBA Mark Between 1987 and 1992*

[2] **[3]** A determination that a mark has been abandoned defeats the alleged owner's claim of priority:

> Once abandoned, the mark reverts back to the public domain whereupon it may be appropriated by anyone who adopts the mark for his or her own use. Hence a party that is found to have abandoned its mark is deprived of any claim to priority in the mark before the date of abandonment and may regain rights in the mark only through subsequent use after the time of an abandonment.

***268** *General Cigar Co. v. G.D.M., Inc.,* 988 F.Supp. 647, 658 (S.D.N.Y.1997) ("*G.D.M.*") (*citing Dial–A–Mattress Operating Corp. v. Mattress Madness,* 841 F.Supp. 1339, 1355 (E.D.N.Y.1994) (*citing Manhattan Indus. Inc. v. Sweater Bee by Banff Ltd.,* 627 F.2d 628, 630 (2d Cir.1980)).) Because it constitutes a forfeiture of a property right, abandonment of a mark must be proven by clear and convincing evidence, and statutory aid to such proof must be narrowly construed. *Saratoga Vichy Spring Co. v. Lehman,* 625 F.2d 1037, 1044 (2d Cir.1980); *see also G.D.M.,* 988 F.Supp. at 658.

[4] The determination of abandonment is governed by Section 1127 of the Lanham act, which states, in pertinent part:

> A mark shall be deemed to be "abandoned"
>
> (1) when its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

15 U.S.C. § 1127 (1993). [35]

35 The statutory period of nonuse sufficient to constitute a prima facie case of abandonment was increased from two years to three years by the Uruguay Round Agreements Act, Pub.L. No. 103–465, § 521, 108 Stat. 4809, 4981–82 (1994). The amendment was effective January 1, 1996—after the conduct at issue occurred—and the amendment does not expressly call for retroactive application. Therefore, the statute as it was in effect from 1987 to 1992 controls. *Landgraf v. USI Film Products,* 511 U.S. 244, 280 (1994); *Bowen v. Georgetown Univ. Hosp.,* 488 U.S. 204, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988) ("Retroactivity is not favored by law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires the result."); *Kaiser Aluminum & Chem. Corp. v. Bonjorno,* 494 U.S. 827, 837, 110 S.Ct. 1570, 108 L.Ed.2d 842 (1990) ("[W]here the congressional intent is clear, it governs.").

[5] The Second Circuit has found two elements necessary to find abandonment: (1) non-use and (2) intent not to resume use. *Stetson v. Howard D. Wolf & Assoc.,* 955 F.2d 847, 850 (2d Cir.1992) (*citing Silverman v. CBS, Inc.,* 870 F.2d 40, 45 (2d Cir.1989)).

[6] The party claiming abandonment bears the burden of proof as to both elements. However, where the statutory presumption of abandonment has been established by nonuse for more than two consecutive years, the trademark owner must demonstrate that circumstances do not justify the inference of an intent not to resume use. *Exxon Corp. v. Humble Exploration Co.,* 695 F.2d 96, 99 (5th Cir.1983). This presumption "eliminates the challenger's burden to establish the intent element of abandonment as an initial part of its case." *Imperial Tobacco Ltd. v. Philip Morris, Inc.,* 899 F.2d 1575, 1579 (Fed.Cir.1990); *see Emergency One, Inc. v. American FireEagle, Ltd.,* 228 F.3d 531, 536 (4th Cir.2000) ("Once the presumption is triggered, the legal owner of the mark has the burden of producing evidence of either actual use during the relevant period or intent to resume use."). [36]

36 The presumption "is no more than a rebuttable presumption." *Saratoga Vichy Spring,* 625 F.2d at 1044. The presumption shifts the burden of production, but the ultimate burden of proof remains with the challenger. *On–Line Careline, Inc. v. America Online, Inc.,* 229 F.3d 1080, 1087 (Fed.Cir.2000).

[7] Defendants must come forward with objective, hard evidence of actual "concrete plans to resume use" in the "reasonably foreseeable future when the conditions requiring

suspension abate." *Silverman,* 870 F.2d at 46; *see also Rivard v. Linville,* 133 F.3d 1446, 1449 (Fed.Cir.1998) ("To prove excusable nonuse, the registrant must produce evidence showing that, under his particular circumstances, his activities are those that a reasonable ***269** businessman, who had a bona fide intent to use the mark in United States commerce, would have taken."). "A bare assertion of possible future use is not enough" to prove an intent to resume use. *Silverman,* 870 F.2d at 47; *see also Imperial Tobacco,* 899 F.2d at 1581 ("In every contested abandonment case, the respondent denies an intention to abandon its mark.... [O]ne must, however, proffer more than conclusory testimony or affidavits."); *Rivard,* 133 F.3d at 1449 ("A registrant's proclamations of his intent to resume or commence use in United States commerce during the period of nonuse are awarded little, if any weight.").

This is not the first time that this Court has addressed the issue of whether General Cigar abandoned its rights to the COHIBA mark. The issue was discussed at some length in a different case brought by General Cigar:

> General Cigar does not dispute that no sales of COHIBA cigars took place from 1988 through 1991. Instead, it explains this hiatus resulted from the "restaging" of its COHIBA cigars. The restaging consisted of the switch from the plastic cylindrical package to wooden box, the second registration of the trademark, and commencement of the tobacconist partnership with Dunhill and Mike's Cigars.
>
> Even if General Cigar had not come forward with evidence of an intent to resume use during the 1988 through 1991 hiatus, General Cigar established rights to the mark by filing the second trademark registration in 1992, and conducting sales from 1992 to the present.

G.D.M., 988 F.Supp. at 659 (granting preliminary injunction as General Cigar was likely to prevail on its claim of trademark infringement). Cubatabaco states that this holding is not determinative because the "restaging" cited is not supported by the record in this case. In any case, the issue facing the Court in *G.D.M.* was not whether General Cigar had proved that it had not abandoned its rights to the COHIBA mark, but whether it was likely to prevail on its claim of trademark infringement. This case is at a different procedural posture and more discovery has taken place. In addition, in *G.D.M.,* the determination of whether abandonment had occurred did not affect the ultimate resolution because of General Cigar's second registration.

[8] It is undisputed for the purposes of this motion that General Cigar did not have any commercial use of the COHIBA mark from sometime in 1987 to November 20, 1992—a period of five years. This establishes a presumption of abandonment that General Cigar may rebut by showing valid reasons for nonuse and by proving intent to resume use. The ultimate burden remains with Cubatabaco, however.

General Cigar places primary emphasis on its argument that it withdrew the mark from 1987 to 1992 because of the slump in the cigar market and used the time to plan for a new COHIBA cigar. These constitute reasonable business explanations. *E.g., Star–Kist Foods, Inc. v. P.J. Rhodes & Co.,* 769 F.2d 1393 (9th Cir.1985) (no abandonment where temporary cessation of use caused by changing or depressed market conditions); *Keebler Co. v. Nabisco Brands, Inc.* (N.D.Ill. May 19, 1992) (no abandonment where introduced evidence of tests, plans, and investments of funds in development of new products). However, the claims of "restaging" are belied by the fact that the "new" COHIBA cigar introduced in 1992 was nothing more than an existing General Cigar, the Temple Hall, with a COHIBA label on it. Even the new label was created in the fall of 1992, after the launch of *Cigar Aficionado* with its cover story on the Cuban COHIBA. If General Cigar truly spent five years engaged ***270** in ruminating over complex marketing strategies, it apparently did not implement the results. *E.g., Imperial Tobacco,* 899 F.2d at 1582 (development of "marketing strategy" for five years did not excuse non-use because "when Imperial finally made sales of [its] cigarettes, there was no implementation of a complex marketing strategy to introduce them").

[9] **[10]** In addition, a reasonable business explanation for stopping selling the cigar is insufficient in the absence of a showing of an intention to resume use in the "reasonably foreseeable future." *Silverman,* 870 F.2d at 47.[37] To demonstrate its intent to resume use, General Cigar points to the fact that during the period of nonuse—which coincided with a slump in the cigar market—it prepared a list of 29 marks that it intended to abandon, and that COHIBA was not on the list. The mere fact that General Cigar did not intend to abandon the brand is insufficient as a matter of law. *Silverman,* 870 F.2d at 46 (intent not to resume use is intent not to resume use in foreseeable future, rather than never to resume use at all); *Stetson,* 955 F.2d at 850 ("The 'intent to abandon' language [used by the district court] directly contradicts *Silverman's* specific rejection" of that standard). General Cigar must have intended to do more than merely

"warehouse" the mark until it was useful again.[38] It does not in its memorandum produce any other "concrete plans" to resume use.

37 General Cigar's cases do not in any way suggest that a reasonable business explanation—in the absence of an intent to resume use—is alone sufficient. For instance, in *Miller Brewing Co. v. Oland's Breweries Ltd.,* 548 F.2d 349, 352 (Cust. & Pat.App.1976), the court found the five years of non-use did not constitute abandonment where the plaintiff used the time to modernize equipment and address increased demands outside the United States. During that five-year period, however, Miller revealed its intention to resume use by continuing to advertise beer in the United States and by renewing its license in the United States. Similarly, in *Kardex Sys., Inc. v. Sistemco N.V.,* 583 F.Supp. 803, 814–15 (D.Me.1984), it was held that abandonment had not occurred despite more than three years' non-use, because the plaintiff produced the product on demand, rather than for inventory, continued to provide service for the units already sold, and carried an inventory of parts required for repair purposes. The continuing actions of the parties in these two cases evidence their intents to resume use.

38 Warehousing, which is impermissible, occurs when one hoards a mark for future use without concrete intent to use it in the future. *Exxon Corp. v. Humble Exploration Co.,* 592 F.Supp. 1226 (D.C.Tex.1984); *I.H.T. Corp. v. Saffir Pub. Corp.,* 444 F.Supp. 185, 189 (S.D.N.Y.1978) (twelve years of non-use coupled with no contemplated revival of the paper or future plans for use of the mark beyond an abstract desire to resume use at some indefinite time in the future, strongly suggested abandonment); *Procter & Gamble Co. v. Johnson & Johnson, Inc.,* 485 F.Supp. 1185, 1204–08 (S.D.N.Y.1979) (Leval, J.) (condemning voluntary "minor brands" warehousing program).

[11] The only other actions that General Cigar undertook with respect to the COHIBA mark from 1987 to 1992 can only be described as minor activities that fail to establish any intent to resume use of the mark in the reasonably foreseeable future. *Silverman,* 870 F.2d at 47 (intent to resume use could not be proven by "minor activities" such as "challenging infringing uses brought to its attention"); *Rivard,* 133 F.3d at 1449 (finding no intent to resume use where between 1986 and 1991, Rivard "made sporadic trips to the United States, cursory investigations of potential sites for salons, and half-hearted attempts to initiate the business relationships necessary to open a salon"). A minor activity is one that "do[es] not sufficiently rekindle the public's identification of the mark with the proprietor, which is the essential condition for trademark protection." *Silverman,* 870 F.2d at 48. In mid–1989 and the ***271** end of 1991, General Cigar discussed the use of trade dress similar or identical to the Cuban COHIBA trade dress. General Cigar decided not to follow through with this plan based on advice of counsel. These two activities are insufficient. *E.g., Imperial Tobacco,* 899 F.2d at 1582–83 (plaintiff's desire to use the "trade dress similar to that of [defendant]" and its concerns over possible litigation that would arise did not overcome presumption of abandonment). On November 9, 1990, General Cigar wrote a cease and desist letter, asserting that the name "COHOBA" for cigars "infringed on General Cigar's considerable rights in its registration." This single letter too is insufficient to raise a material issue of fact as to intent to resume use. *Silverman,* 870 F.2d at 47 (intent to resume use could not be proven by "minor activities" such as "challenging infringing uses brought to its attention").

[12] Finally, the testimony of Cullman and others that General Cigar intended to resume use of the COHIBA mark is insufficient in light of the lack of any supporting evidence. To refute an allegation of abandonment, the contesting party must "proffer more than conclusory testimony or affidavits." *Imperial Tobacco,* 899 F.2d at 1581; *see also Cerveceria Centroamericana, S.A. v. Cerveceria India Inc.,* 892 F.2d 1021, (Fed.Cir.1989) ("vague" testimony regarding intent to resume given "little to no weight").

For these reasons, Cubatabaco's motion for summary judgment on the ground of abandonment is granted. Therefore, the 1981 registration and 1986 incontestability declaration are cancelled due to abandonment. All claims relating to the 1981 registration and 1986 incontestability declaration are dismissed. The only outstanding claims are those addressing the 1992 new use and 1995 registration.

V. *General Cigar's Equitable Defenses*

General Cigar has moved for summary judgment on the basis of its equitable defenses of acquiescence, estoppel and laches. Cubatabaco has moved separately to dismiss these equitable defenses.

A. *Whether General Cigar is Barred From Raising Its Equitable Defenses*

As an initial matter, Cubatabaco alleges that General Cigar is barred from raising equitable affirmative defenses on a number of different grounds and moves to dismiss them on these grounds.[39] It claims that General Cigar may not take advantage of equitable defenses because it engaged in fraud in filings with the PTO and intentionally infringed upon the trademark. Further, it claims that equitable defenses may not apply because the potential for likelihood of confusion is great.

39 As discussed above in Part IV.A., General Cigar may not use the equitable defenses against Cubatabaco's cancellation claims based on abandonment and fraud.

1. *False and Fraudulent Filings*

[13] **[14]** Other courts in this district have applied the doctrine of "unclean hands"[40] to prevent the application of equitable defenses in trademark infringement cases. *Nat'l Baseball Hall of Fame and Museum, Inc. v. All Sports Promotions, Inc.,* 58 U.S.P.Q.2d 1114, 2001 WL 196755, at *11 (S.D.N.Y.2001) (evidence of unclean hands precluded summary judgment on acquiescence defense in ***272** trademark infringement case); *Aris–Isotoner Gloves, Inc. v. Berkshire Fashions, Inc.,* 792 F.Supp. 969, 972 (S.D.N.Y.1992) (unclean hands of defendant in trademark dispute prevented application of defense of laches); *see also AccuScan Inc. v. Xerox Corp.,* 1998 WL 60991, at *5 n. 4 (S.D.N.Y.1998) (disputed issues of material fact precluded summary judgment on the defense of laches in patent infringement case). As discussed below, however, any purposeful delay on the part of the plaintiff in order to take advantage of the alleged infringer's use of the mark will vitiate this rule.

40 Under the doctrine of "unclean hands," a court "may decline to exercise its equitable powers in favor of a party whose unconscionable act ... has immediate and necessary relation to the matter he seeks in respect of the matter in litigation." *Aris–Isotoner Gloves,* 792 F.Supp. at 972 (internal citations omitted).

Cubatabaco alleges that General Cigar made fraudulent statements to the PTO in its 1978 registration and in its 1986 incontestability declaration. Both of these occurred prior to General Cigar's new use in 1992, and therefore this claim is no longer applicable due to the determination that General Cigar abandoned its claims until that new use in 1992.

2. *Intentional Infringement*

[15] The Second Circuit has held that intentional infringement acts as a bar to the assertion of a laches defense against an infringement suit seeking injunctive relief. *Hermes Int'l v. Lederer de Paris Fifth Ave., Inc.,* 219 F.3d 104, 107 (2d Cir.2000) ("Intentional infringement is a dispositive, threshold inquiry that bars further consideration of the laches defense, not a mere factor to be weighed in the balancing of the equities...."); *see also Harlequin Ent., Ltd. v. Gulf & Western Corp.,* 644 F.2d 946, 950 (2d Cir.1981) (laches does not bar injunctive relief if intentional infringement); *Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons,* 523 F.2d 1331, 1344 (2d Cir.1975) (same); *but see Odetics Inc. v. Storage Technology Corp.,* 14 F.Supp.2d 800 (E.D.Va.1998) (concluding that infringer of patent could raise a laches claim even though it was found to have willfully infringed patent in question).

"While an infringer claiming laches need not be in total ignorance of another's mark, it must be able to demonstrate the absence of any intent to confuse and deceive the public." *Cuban Cigar Brands N.V. v. Upmann Intern.,* 457 F.Supp. 1090, 1098–99 (S.D.N.Y.1978). McCarthy has identified two reasons underlying this rule: "(1) Such intent proves a clear case of infringement. In such a clear case, the right of customers not to be confused prevails over plaintiff's slowness in suing. (2) A deliberate infringer cannot establish the traditional elements of estoppel: that is, good faith reliance on the plaintiff's failure to file suit promptly." McCarthy, *supra,* § 31:9, at 31–27.

[16] Cubatabaco alleges that General Cigar intentionally infringed upon its trademark. At the time of the 1995 registration (begun in 1992), Cubatabaco itself had not registered the COHIBA trademark in the United States. However, Cubatabaco might have had a right to the mark if COHIBA was a well-known mark in the United States prior to General Cigar's first new use of the mark in 1992. As discussed, *infra,* this question presents an issue of material fact.

Even if General Cigar knew that Cubatabaco planned someday to use and register the COHIBA mark in the United States, that is insufficient to support a finding of intentional infringement if Cubatabaco did not already have a right to the

COHIBA mark. *Zazu Designs v. L'Oreal, S.A.,* 979 F.2d 499, 504 (7th Cir.1992) (party may register mark it knows another entity intends to use because "intent to use a mark creates no rights a competitor is bound to respect"); *Reflange Inc. v. R–Con Int'l,* 1990 WL 354565, 17 U.S.P.Q.2d 1125, 1130–31 (Trademark Tr. & App. Bd.1990) ("the law pertaining to registration of trademarks does not regulate all aspects of business morality, and adopting ***273** of a mark with knowledge of another's intent to use does not give rise to cognizable equities").

[17] A few courts have held that equitable defenses may, nonetheless, bar a plaintiff's suit for intentional infringement where there is significant and purposeful delay. *E.g. Joint Stock Society,* 53 F.Supp.2d at 721–22 (citing cases). These cases stand for the proposition that where the infringee makes an unconscionable transgression—purposefully sitting by to take advantage of the infringer's work—it cannot seek the court's protection.[41] The question is not merely whether the infringee knew of the infringing mark, but whether it purposefully did not act in order to enjoy the fruits of the infringee's labor. First, the delay at issue here, as a result of General Cigar's abandonment, is a handful of years—hardly a significant delay. There is no evidence that Cubatabaco delayed bringing suit in order to somehow take advantage of General Cigar's efforts. Cubatabaco has consistently been selling and promoting its COHIBA cigars around the world since 1982, and in Cuba since the 1970's. Further, until the fall of 1997, months after the cancellation petition was filed, sales of General Cigar's COHIBA never rose above 0.05% of its annual sales and was not even in the same "super-premium" category as the Cuban COHIBA.

41 As Judge Learned Hand wrote:

> Even in 1930 when for the first time it really began to be injured, [plaintiff] did nothing: not a word of protest, or a gesture of complaint, escaped it for six years more; and still the milk business [of defendant] kept increasing. What equity it can have the hardihood now to assert; how can it expect us to stifle a competition which with complete complaisance, and even with active encouragement, it has allowed for years to grow like the mustard tree; why we should destroy a huge business built up with its connivance and consent; this we find it impossible to understand.

Dwinell–Wright Co. v. White House Milk Co., 132 F.2d 822 (2d Cir.1943).

Therefore, because a material issue of fact exists as to whether intentional infringement occurred, and because Cubatabaco did not unconscionably and purposefully use the delay, General Cigar may not prevail on its equitable defenses in summary judgment, because it may not be permitted to raise them at all.

3. *Likelihood of Confusion*

[18] Where a plaintiff presents a strong showing of likelihood of confusion, equitable defenses will not bar its claims. McCarthy, *supra,* § 31.10, at 31–332 (2001) ("A court will tolerate delay if plaintiff proves a strong case that customers are likely to be confused."); *id.* at § 31:41, at 31–86 ("[A] strong showing of likelihood of confusion can trump even a proven case of acquiescence....").

Unlike most other kinds of litigation between private parties, trademark litigation is profoundly affected by considerations of public interest. Thus, when the likelihood of confusion is not "reasonably in doubt," laches and acquiescence are not available to bar relief. *American Auto. Ass'n v. AAA Ins. Agency Inc.,* 618 F.Supp. 787 (D.C.Tex.1985). In such cases, even a lengthy delay in bringing suit will not bar injunctive relief to protect the public from confusion, although it may bar recovery of damages. *Id.* (*citing McLean v. Fleming,* 96 U.S. 245, 253, 6 Otto 245, 24 L.Ed. 828 (1877); *Menendez v. Holt,* 128 U.S. 514, 523–24, 9 S.Ct. 143, 32 L.Ed. 526 (1888)).

[19] General Cigar challenges the application of this doctrine where, as here, it is the senior user of the mark in the United States, and Cubatabaco is not even permitted to sell its COHIBA cigars in the United States. However, it is not necessary that Cubatabaco's mark be registered ***274** in the United States nor that its product be able to be sold in the United States for the doctrine of likelihood of confusion to apply. *E.g. The Sports Authority Inc. v. Prime Hospitality Corp.,* 89 F.3d 955, 963 (2d Cir.1996) ("direct competition between the products is not a prerequisite to relief") (quotations omitted); *Maison Prunier v. Prunier's Restaurant & Cafe Inc.,* 159 Misc. 551, 288 N.Y.S. 529, 532–33 (1936) ("actual competition" not essential); *Vaudable v. Montmartre Inc.,* 20 Misc.2d 757, 193 N.Y.S.2d 332, 335 (N.Y.Sup.Ct.1959) (no sales in United States); *Fund of Funds Ltd. v. First American Fund of Funds Inc.,* 274 F.Supp. 517, 524 (S.D.N.Y.1967) (mutual funds could not legally be sold in United States or to American citizens). Whether direct

competition exists between the two brands is, however, a factor to be considered in determining whether there is a likelihood of confusion, as discussed, *infra.*

[20] To determine the likelihood of confusion posed by a challenged use, courts in this Circuit are guided by the eight factors articulated by the Honorable Henry J. Friendly in *Polaroid Corp. v. Polarad Electronics Corp.,* 287 F.2d 492, 495 (2d Cir.1961). These factors are: (1) the strength of the plaintiff's mark; (2) the similarity of the plaintiff's and defendant's marks; (3) the competitive proximity of the services; (4) the likelihood that plaintiff will "bridge the gap" and offer a service like defendant's; (5) actual confusion; (6) good faith on the defendant's part; (7) the quality of defendant's service; and (8) the sophistication of buyers. *Id.; see also Estee Lauder Inc. v. The Gap Inc.,* 108 F.3d 1503, 1510 (2d Cir.1997); *The Sports Authority,* 89 F.3d at 960.

Cubatabaco primarily points to two of the factors, the similarity of the marks and actual consumer confusion. The two marks at issue are identical ("COHIBA") and are used for the same product, cigars. Consumer confusion in such a situation is "inevitable." *Pappan Ent. Inc. v. Hardee's Food Sys. Inc.,* 143 F.3d 800, 804 (3d Cir.1998) ("where the identical mark is used concurrently by unrelated entities, the likelihood of confusion is inevitable"); *Metro Traffic Control Inc. v. Shadow Network Inc.,* 104 F.3d 336, 339 (Fed.Cir.1997) ("confusion was 'so likely that it is virtually inevitable because the parties are using the identical marks for the identical services' " (citation omitted)); *Patsy's Brand, Inc. v. I.O.B. Realty Inc.,* 58 U.S.P.Q.2d 1048, 2001 WL 170672, at *12 (S.D.N.Y.2001) ("the use of the same name and very similar labels on the same product must invariably cause consumer confusion"); *Cullman Ventures Inc. v. Columbian Art Works Inc.,* 717 F.Supp. 96, 127 (S.D.N.Y.1989) ("the products are more than confusingly similar—they are virtually identical—and thus consumer confusion is inevitable") (*citing Mushroom Makers Inc. v. R.G. Barry Corp.,* 580 F.2d 44, 47–48 (2d Cir.1978)).

Cubatabaco cites several market research studies showing such confusion. In addition, Cubatabaco points out that General Cigar has launched the "Cohiba Extra Vigoroso" with a trade dress that eliminates what Cullman had claimed was one of the principal methods adopted by General Cigar to guard against consumer confusion—"clearly marking" the box and cigar to show that the cigar was made in the Dominican Republic.

The other factors raise material issues of fact. Whether General Cigar acted in good faith in adopting the mark is a genuine issue of material fact. Documents pre-dating the 1995 registration suggest that General Cigar did in fact intend to capitalize on the Cuban COHIBA's reputation. The timing of the new use and second registration of the COHIBA mark—shortly after the premier issue of *Cigar Aficionado* ***275** and its laudatory treatment of the Cuban COHIBA—also support this interpretation. Yet, General Cigar first applied to register the mark in 1978, prior to the Cuban COHIBA's launch on the international market. While it has now been determined that it abandoned its rights to the mark, General Cigar might not have recognized that.

In addition, it is a disputed issue as to the quality of General Cigar's COHIBA cigars. Although its latest incarnation of COHIBA has received several high evaluations from *Cigar Aficionado,* those rankings are not consistently as high as those of the Cuban COHIBA. The Cuban COHIBA has the reputation as the best cigar in Cuba and, perhaps, the world—a reputation that General Cigar's COHIBA has not surpassed according the evidence presented here.

The likelihood of Cubatabaco "bridging the gap" and entering the U.S. cigar market is dependent upon whether the political tide will shift to bring an end to the Cuban embargo. However, the end of the embargo appears more likely now than in the past, [42] and in such event, as the interviews with Padron reveal, Cubatabaco will almost definitely bridge the gap. Further, although at this time Cubatabaco may not itself sell its cigars in the United States, the embargo does not prevent a Cubatabaco-*sponsored* cigar from being sold in the United States under certain circumstances. [43]

42 The political tides appear to be turning, most recently with Former President Jimmy Carter's visit to Cuba. *E.g.,* Mike Williams et al., Carter trip's effect won't be overnight, Atlanta Journal–Const., at A14, 2002 WL 3723090 (May 19, 2002) ("Carter's visit could boost the growing movement in Congress to end the Cuban embargo...."); Rafael Lorente, Calls for Free Trade with Cuba Get Louder, Orlando Sentinel, at A1 (May 5, 2002) ("Momentum is building to end the United States' embargo against Cuba...."). *See also* Mark D. Nielsen, Cohiba: Not Just Another Name, Not Just Another Stoogie: Does General Cigar Own a Valid Trademark for the name "Cohiba" in the United

States?, 21 Loy.L.A. Int'l & Comp.L.J. 633, 637 (August 1999) (discussing why "the United States may soon reconsider the continued enforcement of the Cuban embargo").

43 Cubatabaco points out that a Dominican Republic company with 24% Cubatabaco ownership and with Cubatabaco providing quality control and technical advice could sell a "Cohiba" cigar made with non-Cuban ingredients in the United States. 31 C.F.R. §§ 515.204, 515.302–.303.

Finally, it is controverted as to whether purchasers of COHIBA cigars are sophisticated. While purchasers of fine cigars tend to be knowledgeable and would realize that Cuban COHIBAs are not legally available in this country, Cubatabaco has presented market research to suggest that buyers who would be influenced by the "Cuba mystique" are not sophisticated purchasers. Therefore, a person who would buy a COHIBA because of its "mystique" may not understand that the General Cigar COHIBA is not sponsored by or related to the Cuban COHIBA.

[21] Cubatabaco's claim of likelihood of confusion is therefore not brought into "reasonable doubt" for the purposes of this motion. This finding further supports the determination that General Cigar should not be able to employ its equitable defenses to dispose of Cubatabaco's claims on summary judgment until these factual issues are resolved.

Because there exists a genuine issue of material fact as to whether General Cigar may even raise its equitable defenses, its motion for summary judgment on those defenses must be denied. This ruling does not, however, forestall Cubatabaco's motion to dismiss these defenses.

276 B. *General Cigar Cannot Establish the Equitable Defenses as a Matter of Law

Cubatabaco claims that General Cigar has failed to establish the elements of acquiescence, estoppel, and laches.

1. *Acquiescence and Estoppel*

The affirmative defenses of acquiescence ("estoppel by acquiescence") and equitable estoppel are closely related.

[22] The defense of acquiescence "is available when a plaintiff has responded to a defendant's actions with implicit or explicit assurances upon which the defendant relied." *H.G. Shopping Centers, L.P. v. Birney,* 59 U.S.P.Q.2d 1109, 1115 (S.D.Tex.2000) (*citing Elvis Presley Enterprises Inc. v. Capece,* 141 F.3d 188, 206 (5th Cir.1998)). Acquiescence is used "only in those cases where the trademark owner, by affirmative word or deed" conveys its consent to another. McCarthy, *supra,* § 31.41, at 31–85; *see also Carl Zeiss Stiftung v. VEB Carl Zeiss Jena,* 433 F.2d 686, 704 (2d Cir.1970) ("As distinguished from laches, acquiescence constitutes a ground for denial of relief only upon a finding of conduct on the plaintiff's part that amounted to an assurance to the defendant, express or implied, that the plaintiff would not assert his trademark rights against the defendant."). Whether the claim of acquiescence is sufficient to bar relief "depends upon consideration of the circumstances of each particular case and a balancing of interests and equities of the parties." *Carl Zeiss,* 433 F.2d at 704; *Tri–Star Pictures Inc. v. Leisure Time Productions B.V.,* 17 F.3d 38, 44 (2d Cir.1994); *Saratoga Vichy Spring,* 625 F.2d at 1040; *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.,* 960 F.2d 1020, 1036, 1043 (Fed.Cir.1992) (en banc).

[23] Similarly, to assert equitable estoppel, a defendant must show that (1) plaintiff's misleading communication, with plaintiff's knowledge of the true facts, prompted the defendant to infer that the plaintiff would not enforce its rights against the defendant; (2) the defendant relied on that conduct; and (3) the defendant would be prejudiced if the plaintiff were allowed to bring suit. *H.G. Shopping Centers,* 2000 WL 33538621, 59 U.S.P.Q.2d at 1115.

Acquiescence focuses on the plaintiff's "response" to defendant's infringing actions. That means any "response" that would constitute acquiescence must come after Cubatabaco was aware of General Cigar's new use of the COHIBA mark. At the earliest, Cubatabaco learned in January 1994 that General Cigar was using the COHIBA mark when it received a delivery of COHIBA cigars that explicitly stated they were being sent only for the purposes of trademark registration.

Similarly, equitable estoppel requires a misleading communication with plaintiff's knowledge of the true facts. Therefore, the inquiry again must begin with Cubatabaco's awareness that General Cigar was intending to use and register the COHIBA mark. Cubatabaco suggests that it was only recently aware of the "true facts." It points to a 1994 interview with Cullman in which he said that General Cigar did not intend to use the COHIBA mark in the immediate future. However, at least for the purposes of this motion, Cubatabaco should have known, upon receiving the box of

cigars sent for the purposes of trademark registration, that General Cigar was pursuing the mark. Therefore, the inquiry begins with Cubatabaco's actions after January 1994.

[24] General Cigar cites (1) Cubatabaco's 1996 registration of the COHIBA trade dress in the United States; (2) statements made by Cubatabaco's director, Padron, in two articles in *Cigar Aficionado;* and (3) Cubatabaco's failure to contest ***277** General Cigar's apparent ownership of the COHIBA mark from 1994 to 1997.

General Cigar claims that Cubatabaco's registration of the COHIBA trade dress in 1996, without any challenge to General Cigar's existing registration of the COHIBA mark, communicated to the world at large and to General Cigar that Cubatabaco acknowledged General Cigar's U.S. ownership of the COHIBA mark. Cubatabaco is persuasive in arguing that its efforts to protect its designs from what it considered further attempts by General Cigar to misappropriate them may not as a matter of law constitute grounds for acquiescence or estoppel.

The two Padron interviews took place prior to January 1994. [44] The interviews were therefore not a "response" to General Cigar's actions and cannot constitute acquiescence. Further, the interviews were not made with the true knowledge of the facts—that General Cigar was pursuing a new registration for the COHIBA mark. Therefore, General Cigar may not rely on the interviews to show conduct supporting its acquiescence and estoppel claims.

44 The later interview took place in December 1993 and was printed in early 1994. The printing date does not change the fact that Padron was not responding to General Cigar's actions and did not have knowledge of the true facts. In any case, the quoted excerpt does not support a claim of acquiescence or estoppel. The very first line of the excerpt from Padron states: "[T]here is going to be a fight." That statement is later contradicted by Padron's almost immediate statement that "we are not going to fight in order to get our cigars into the United States." In light of this confusion, General Cigar could not have relied on the statement, "we are not going to fight...."

[25] Finally, silence may constitute cause for equitable estoppel if a duty to speak exists. *Kosakow v. New Rochelle Radiology Assoc.,* 274 F.3d 706, 725–26 (2d Cir.2001). A duty to speak may arise if the party's silence will mislead the infringer into believing that an infringement claim will not be asserted. *General Elec. Capital Corp. v. Eva Armadora, S.A.,* 37 F.3d 41, 45 (2d Cir.1994) ("Silence in the face of an explicit contrary assumption by an innocent party may constitute a concealment of facts or a false representation for estoppel purposes."); *Forest Laboratories Inc. v. Abbott Laboratories,* 96 Civ. 159–A, 1999 WL 33299123, at * 22 (W.D.N.Y. June 23, 1999) (holding party was estopped by silence).

Cubatabaco's silence lasted from January 1994 until, at the latest, January 1997, when Cubatabaco filed its cancellation petition. *Elvis Presley Enterprises Inc. v. Capece,* 141 F.3d 188, 205 (5th Cir.1998) ("Any acts after receiving a cease and desist letter are at defendant's own risk.") (*citing Conan Properties Inc. v. Conans Pizza Inc.,* 752 F.2d 145, 151–52 (5th Cir.1985)); *Piper Aircraft Corp. v. Wag–Aero Inc.,* 741 F.2d 925 (7th Cir.1984) (period of alleged laches ended when defendant received letter from plaintiff objecting to defendant's use of the Piper name in catalog). *See also* Restatement (Third) of Unfair Competition 31, at 320–21 (1995). Moreover, in January 1994, Cubatabaco received a box of the COHIBA-branded Temple Hall cigars with a note stating that the box was not sold as a regular item and that it was being produced by General Cigar solely for the purposes of its trademark registration. The COHIBA-branded Temple Hall cigars were not advertised and were only sold through two tobacconists. In light of these facts, Cubatabaco did not as a matter of law have a duty to speak. [45]

45 By contrast, it would be a different matter if Cubatabaco had remained silent for up to three years after the launch of General Cigar's super-premium COHIBA. In that case, General Cigar had spent millions of dollars in advertising and sold approximately 509,000 COHIBAs from August to December of 1997 alone, and close to one million COHIBAs per year in the following years. In such a situation a clear duty to speak would arise. That same duty is not present here, however.

***278** General Cigar has failed to establish evidence of any acts, conduct or omission on the part of Cubatabaco on which it could rely. Therefore, its affirmative defenses of acquiescence and estoppel are dismissed.

2. *Laches*

[26] Laches requires defendants to show "[t]hat plaintiff had knowledge of the defendant's use of its marks [and] that

plaintiff inexcusably delayed in taking action with respect thereto." *Cuban Cigar Brands,* 457 F.Supp. at 1096 (internal citations omitted); *see also Saratoga Vichy Spring,* 625 F.2d at 1040.

[27] A presumption of laches arises in a trademark action when the plaintiff does not bring suit within the six-year statute of limitations applicable to state-law fraud in New York. *Conopco Inc. v. Campbell Soup Co.,* 95 F.3d 187, 191–92 (2d Cir.1996); *see also Ameritech Inc. v. American Information Technologies Corp.,* 811 F.2d 960, 963 (6th Cir.1987) ("There is a strong presumption that plaintiff's delay ... is reasonable so long as the analogous statute of limitations has not elapsed."). Further, this six-year period does not run until plaintiffs discover or should have discovered the facts that create the cause of action. *Carell v. Shubert Org. Inc.,* 104 F.Supp.2d 236, 260 (S.D.N.Y.2000) (citing N.Y. CPLR § 213(8)); *see also Harley–Davidson, Inc. v. O'Connell,* 13 F.Supp.2d 271, 279 (N.D.N.Y.1998). Cubatabaco discovered the new use in January 1994 at the earliest. Further, it filed a cancellation petition three years later, in January 1997. Therefore, the presumption does not arise here because the period of delay is, at most, three years.

[28] Even if the statute of limitations has not run, the laches defense may still be applicable. *Peyser v. Searle Blatt & Co.,* 2000 WL 1071804, at *5 (S.D.N.Y. Aug. 2, 2000). In such a situation, however, there is no presumption of laches and the burden remains on the defendants to prove the defense. *Conopco,* 95 F.3d at 191. A delay of up to three years does not constitute the "inexcusable delay" in the particular circumstances presented here. As discussed earlier, from January 1994 to January 1997, General Cigar was selling an existing cigar with a COHIBA label attached to it. There was no advertising, and cigars were sold only through the two retailers. Sales constituted a mere half a percent of General Cigar's annual sales of premium cigars at that time. In light of these factors, it was not inexcusable that Cubatabaco did not act until up to three years after discovery of the new use.

Because Cubatabaco did not unreasonably delay, General Cigar's laches claim is dismissed.

VI. *Cubatabaco's Motion for Partial Summary Judgment*

Cubatabaco has moved for partial summary judgment on its Article 7 and 8 claims under the IAC, Article 6–bis claim under the Paris Convention, New York common law claim, and claim under the Federal Trademark Dilution Act ("FTDA"). General Cigar opposes summary judgment on these claims as well as others not addressed in Cubatabaco's motion for summary judgment. [46]

46 General Cigar also discusses the merits of Cubatabaco's claims regarding (1) Section 10–bis of the Paris Convention (Count II); (2) Article 20 of the IAC (Count IV); (3) trademark infringement under Section 43(a) of the Lanham Act (Count VII); and (4) state law dilution claims (Count XII). These arguments will not be addressed as they are not before the Court and should be the subject of a separate motion for summary judgment on the merits by General Cigar if it so chooses.

*279 A. *Cubatabaco's Treaty Claims*

As an initial matter, General Cigar argues that Cubatabaco cannot rely on the IAC and Paris Convention because the provisions on which it relies do not have the force of law in the United States. It asserts that the treaties are not self-executing and therefore must be executed by legislation, *i.e.* the Lanham Act, and that the Lanham Act does not encompass the substantive provisions on which Cubatabaco relies for this summary judgment motion.

1. *Inter–American Convention*

Both Cuba and the United States are parties to the IAC. The treaty remains in force between the United States and Cuba notwithstanding the embargo on trade between the two countries. U.S. Dep't of State, *Treaties in Force* 393 (2000). Thus, the IAC, along with the Paris Convention, governs trademark relations between the two countries.

This Circuit has recently addressed the issue of whether the Inter–American Convention provides additional substantive rights other than those available under the Lanham Act. *Havana Club Holding S.A. v. Galleon S.A.,* 203 F.3d 116, 124 (2d Cir.2000).

In *Havana Club,* a Cuban rum producer, Havana Club, brought an action against an American rum producer, Bacardi, alleging trademark infringement and false designation of origin. Before the Cuban revolution, Havana Club rum was produced by a private corporation owned principally by the Arechabala family and was shipped to the United States. After the revolution, the Cuban government seized the assets of the corporation. The resulting Cuban rum company registered the Havana Club trademark with Cuban authorities in 1974

and with the United States in 1976. The United States registration was revoked in 1997. Also in 1997, the Bacardi Rum company purchased the rights of the Arechabala family to, *inter alia,* the Havana Club trademark.

Looking to legislative history, the Court held that the IAC was self-executing, but that, regardless, Congress incorporated rights under the IAC into Section 44 of the Lanham Act. Therefore, Cubatabaco "must assert its rights under the IAC pursuant to section 44(b) of the Lanham Act." *Id.* at 128.

Section 44(b) provides:

> Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act.

15 U.S.C. § 1126(b). Cubatabaco is therefore "entitled to the benefits" of Section 44 "under the conditions expressed herein to the extent necessary to give effect to any provision of such convention...."

Havana Club filed a claim, *inter alia,* to enjoin Bacardi from selling rum labeled Havana Club under Section 44(b) and (h) of the Lanham Act and Chapter III of the IAC. The Court held that Section 44(h)[47] of the Lanham Act only reaches substantive ***280** provisions of the IAC that are "related to the repression of unfair competition." 203 F.3d at 135 n. 19. One of Havana Club's Section 44(h) claims sought to apply the substantive provisions of Article 23, concerning "Repression of False Indications of Geographical Origin or Source". The Court held that it could "not rely on this provision in asserting its section 44(h) claim, however, because the IAC does not treat rights under article 23 as rights related to the repression of unfair competition." 203 F.3d at 135 n. 19.

47 Section 44(h) provides:

> Any person designated in subsection (b) of this section is entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided by this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

[29] The Court did not clarify which sections of the IAC concern "rights related to the repression of unfair competition." However, Chapter IV of the IAC (Articles 20, 21 and 22) is explicitly labeled "Repression of Unfair Competition." Further, the Court appeared to accept that Section 44(h) at the very least embraces the substantive provisions of one of the articles in Chapter IV, Article 21(c).[48] From this, it may be surmised that Chapter IV concerns "rights related to the repression of unfair competition and that Section 44(h) incorporates the substantive provisions of Articles 20, 21, and 22."[49]

48 Havana Club also asserted a claim under Article 21(c). Article 21(c) expressly states that it will be enforceable only if the conduct it proscribes is not "effectively dealt with" in domestic law. The Court concluded that the plaintiff failed to state a viable claim as it "amounts to little more than the reassertion of its section 43(a) claim because article 21(c) of the IAC prohibits a subset of the conduct already effectively prohibited under American law by section 43(a)." *Id.* at 134–35. Therefore, the Court appeared to except that Section 44(h) encompassed the terms of Article 21(c).

49 Although Cubatabaco has not moved for summary judgment on these grounds, it has stated claims under Articles 20 and 21 of the IAC. These provisions therefore have the force of law under Section 44(h).

Cubatabaco has moved for summary judgment on its claims under Article 7[50] and 8[51] of the IAC. In order for Section ***281** 44(h) to reach these provisions, they must involve "rights related to the repression of unfair competition."

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Articles 7 and 8 may be found in Chapter II of the IAC, labeled "Trademark Protection." Cubatabaco argues that Articles 7 and 8 involve the repression of unfair competition and quotes a Second Circuit opinion from 1953 that states that "infringement is itself a form of 'unfair competition.' " *American Automobile Ass'n v. Spiegel,* 205 F.2d 771, 774 (2d Cir.1953) (Hand, J.); *see also* H.R.Rep. 79–1333, 79th Cong., 2d Sess., at 4 (1946) ("[T]here is no essential difference between trade-mark infringement and unfair competition. Unfair competition is the genus of which trade-mark infringement is one of the species.").

50 Article 7 provides:

> Any owner of mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark, or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

51 Article 8 provides, in pertinent part:

> When the owner of a mark seeks the registration or deposit of the mark in a Contracting States other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and [(b)]:
>
> (a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and
>
> (b) That the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration, or deposit in any of the Contracting States of the mark for the specific goods to which said interfering mark is applied, prior to adoption and use thereof or prior to the filing of the application or deposit of the mark.

Based on this logic, however, it would appear that all provisions of the IAC would be encompassed by Section 44(h). While a neat argument, it is undermined by the *Havana Club* ruling. Cubatabaco cites one portion of *Havana Club* to support this contention, noting that the Court held that the IAC's protection against a United States trademark infringing upon a foreign trade name—a provision it describes as "parallel" to Articles 7 and 8—was incorporated by Section 44. 203 F.3d at 128. It is true that it is incorporated by Section 44, but by subsection (g) of that section, rather than subsection (h), under which Cubatabaco has made its claims. *Id.* Section 44(g) provides that owners of foreign trade names may seek protection against infringement even in the absence of registration.[52] Therefore, the parallel provision required an explicit statement from Congress that no registration was required. Moreover, the *Havana Club* Court rejected claims that Section 44(h) encompassed Article 23 of the IAC, which involves the repression of false indications of geographical origin. That provision also generally protects against unfair competition in the form of persons falsely labeling their goods to the detriment of those who are actually selling goods from a particular location.

52 Section 44(g) provides: "Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks."

[30] In essence, Cubatabaco has invoked Articles 7 and 8 of the IAC to obtain the right of ownership of the COHIBA mark without registering its COHIBA trademark in the manner that United States law requires. As General Cigar points out, this result would directly undermine the Congressional purpose of encouraging registration in order to provide notice to other users who may have interest in the mark. *See In re Int'l Flavors & Fragrances,* 183 F.3d 1361, 1367 (Fed.Cir.1999)

("Entrepreneurs, for example, who plan to promote and to sell a new product under a fanciful mark, should be able to rely on a search of the trademark registry"); *Bongrain Int'l Corp. v. Delice de France,* 811 F.2d 1479, 1485 (Fed.Cir.1987) ("One of the policies sought to be implemented by the Act was to encourage the presence on the register of trademarks of as many as possible of the marks in actual use so that they are available for search purposes.").

Cubatabaco retorts to this policy argument that Articles 7 and 8 support the Congressional policy, as they both entail the eventual registration of the foreign mark and cancellation of the mark registered in the United States. This argument ignores the fact that for some variable number of years, the foreign mark has not been registered. It also ignores the fact that Congress has specifically carved out how owners of trademarks registered in other countries may obtain a U.S. registration. Under Section 44(d), a party that ***282** has applied for, but not yet received, a registration in a signatory nation may file a U.S. application within six months of filing its foreign application. If and when the foreign registration issues and if the trademark otherwise qualifies for registration under U.S. law, a U.S. registration will issue, with U.S. priority rights retroactive to the date upon which the foreign application was filed. Therefore, if the party fails to file within six months of its registration, or if someone else has used the mark in the United States prior to the foreign registration, the first U.S. user will have priority rights in the mark.

Under Section 44(e), a foreign party that has already registered its mark in a convention nation may submit a certified copy of that registration to the U.S. PTO at any time. A U.S. registration then will issue, if the mark otherwise qualifies for registration under U.S. law, but without special priority rights. Therefore, if someone else begins to use the mark in U.S. commerce before the foreign party submits a certified copy of the foreign registration to the U.S. PTO, the first U.S. user will have priority in the mark.

If Cubatabaco were correct, the claimant of a U.S. trademark right based on foreign registration would be better off not registering its mark, since it would not have to incur the expense of registration and maintenance fees, and would not have to maintain its registration through use in the United States or the filing of papers to establish excusable non-use. Further, the owner of the prior foreign registration could benefit by waiting until the owner of the United States mark had established a good reputation for the mark and taking advantage of these efforts. While it is true that owners of trademarks registered outside the United States are entitled to protection, Congress has decided in the Lanham Act that they are not entitled to the kind of sword/shield defense that Cubatabaco seeks.

Such result would also contradict provisions of the IAC which contemplate that foreign parties should act to secure and maintain their rights. *E.g.* IAC, Art. 2 (person who desires to obtain a trademark protection must apply for protection); Art. 3 (contemplating compliance with "formal provisions of domestic law" for registration); Art. 10 (period of registration shall be fixed by state).

In light of the foregoing, Articles 7 and 8 of the IAC are not "related to the repression of unfair competition" and are not within the ambit of Section 44(h). Therefore, Cubatabaco's claims under Articles 7 and 8 of the IAC are dismissed.

2. *The Paris Convention*

Both Cuba and the United States are parties to the Paris Convention. [53]

53 The United States first became a party on May 30, 1887, and Cuba on November 17, 1904. *See* World Intellectual Property Organization, Intellectual Property Protection Treaties, at http://www.wipo.org/treaties/ip/paris/ (last visited June 19, 2002).

There is a divergence in authority as to whether the Paris Convention is self-executing. *Compare Vanity Fair Mills, Inc. v. T. Eaton Co.,* 234 F.2d 633, 640–44 (2d Cir.1956) (in dictum: Paris Convention is self-executing), *cert. denied* 352 U.S. 871, 77 S.Ct. 96, 1 L.Ed.2d 76 (1956); *Davidoff Extension S.A. v. Davidoff Int'l Inc.,* 1983 WL 203, 221 U.S.P.Q. (BNA) 465, 467 (S.D.Fla.1983) (relying solely on *Vanity Fair* in holding that Paris Convention is self-executing) *with In re Compagnie Generale Maritime,* 993 F.2d 841, 856 & n. 18 (Fed.Cir.1993) (Nies, J., dissenting) (Paris Convention is not self-executing); *L'Aiglon Apparel, Inc. v. Lana Lobell Inc.,* 214 F.2d 649 (3d Cir.1954) (same) (cited approvingly in ***283** *BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp.,* 229 F.3d 254, 259 n. 1 (3d Cir.2000)); *Ortman v. Stanray Corp.,* 371 F.2d 154, 157 (7th Cir.1967) (same); *Int'l Cafe, S.A.L. v. Hard Rock Cafe (U.S.A.), Inc.,* 252 F.3d 1274, 1277 n. 5 (11th Cir.2001) (same). [54]

54 Most recently, an unpublished decision of the Trademark Trial and Appeal Board also concluded that the Paris Convention is not self-executing. *Int'l Finance Corp. v. Bravo Co.,* Opp. Nos. 111, 276; 111, 760 (T.T.A.B. June 5, 2002) (collecting cases); *see also Scotch Whisky Assoc. v. United States Distilled Products Co.,* 1989 WL 274412, 13 U.S.P.Q.2d 1711, 1713 (Trademark Tr. & App. Bd.1989) (concluding that Paris Convention is not self-executing).

[31] There is no need to determine whether *Vanity Fair* is still controlling as to this issue, however, because of the *Havana Club* ruling. As discussed above, the Second Circuit determined that the rights under the IAC, although self-executing, nonetheless could only be asserted through Section 44(b) of the Lanham Act. 203 F.3d at 128. The Court reached this conclusion because of the original text of Section 44(b), which specifically incorporated the treaty rights of

> [p]ersons who are nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in any foreign country, which is a party to (1) the International Convention for the Protection of Industrial Property [the Paris Convention] ... or (2) the General Inter–American Conventional for Trade Mark and Commercial Protection [the IAC] ... or (3) any other convention or treaty relating to trade-marks, trade or commercial names, or the repression of unfair competition to which the United States is a party....

Id. (citing Trademark Act of 1946, ch. 540, § 44(b), 60 Stat. 427, 442). The Court ruled that even though the IAC was self-executing, because of this language, the plaintiff must assert its rights under the IAC pursuant to Section 44(b) of the Lanham Act. *Id.* Similarly, because the Paris Convention is included in the original language, even if it were self-executing, Cubatabaco would have to assert its rights under the Paris Convention pursuant to Section 44(b) of the Lanham Act.

[32] Cubatabaco has asserted its Article 6–bis claim pursuant to Section 44(h). As discussed above, Section 44(h) will only encompass Article 6–bis if Article 6–bis concerns "rights related to the repression of unfair competition." *Havana Club,* 203 F.3d at 135 n. 19. Article 6–bis, similar to Articles 7 and 8 of the IAC, permits the refusal or cancellation of registrations of marks that are similar to well-known marks registered in other member countries. [55] A different provision, Article 10–bis, explicitly addresses the provision of "effective protective against unfair competition." Article 10–bis. [56] There is no ***284** such similar language in Article 6–bis. Therefore, for the reasons stated above, Cubatabaco cannot rely on Section 44(h) to encompass the substantive provisions of Article 6–bis and its claims based on this provision must be dismissed. [57]

55 Article 6–bis states:

> 1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.
>
> (2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
>
> (3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

56 Article 10–bis provides:

> (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes

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an act of unfair competition. (3) The following in particular shall be prohibited: 1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor; 2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; 3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

57 Cubatabaco has asserted a claim under Article 10–bis as well, which presumably would not face the same difficulty. However, Cubatabaco has not moved for summary judgment on its Article 10–bis claim and its merits—as well as General Cigar's arguments regarding it—will not be addressed at this time.

B. ***State Common Law Claim***

Cubatabaco seeks summary judgment under the "New York common law" in the same section in which it discusses Article 6–bis of the Paris Convention. Cubatabaco fails to assert whether it refers to one or both of its New York common law claims and further fails to explicate the elements of either claim. The complaint contains two such claims: (1) misappropriation and (2) unfair competition. Complaint, ¶¶ 72–74 (unfair competition under state and common law); 78–81 (common law misappropriation).

The first claim, misappropriation, has been called "the essence of unfair competition," *Forschner Group, Inc. v. Arrow Trading Co.,* 124 F.3d 402, 408 (2d Cir.1997). On the basis of this description, at least one district court has dismissed a common law misappropriation claim. *Something Old, Something New, Inc. v. QVC, Inc.,* 1999 WL 1125063, at *13 (S.D.N.Y. Dec. 8, 1999) (*citing Forschner* and dismissing misappropriation claim as it was considered part of unfair competition claim). Because the parties have not briefed the subject and because it is not even clear whether the misappropriation claim is at issue, the claim will not be dismissed at this time. However, Cubatabaco has failed to establish it should as a matter of law succeed on this claim.

[33] New York common law unfair competition requires a showing of (1) likelihood of confusion and (2) bad faith. *Saratoga Vichy Spring,* 625 F.2d at 1044; *see also Lane Capital Mgmt., Inc. v. Lane Capital Mgmt. Inc.,* 15 F.Supp.2d 389, 400 (S.D.N.Y.1998) (noting that record "does not establish with clarity that defendant acted in bad faith, an essential element of unfair competition"); *Genesee Brewing Co. v. Stroh Brewing Co.,* 124 F.3d 137, 149 (2d Cir.1997) ("Under New York law, common law unfair competition claims closely resemble Lanham Act claims except insofar as the state law claim may require an additional element of bad faith or intent."). In discussing its New York common law claim, Cubatabaco does not address either prong, nor refer to any section of its brief that does. As discussed earlier, however, Cubatabaco did raise the issue of likelihood of confusion in another section, and a question of fact remains as to whether likelihood of confusion will result.

General Cigar challenges this claim because it is the registered user of the COHIBA mark in the United States. A Central District of California court faced an analogous situation in ***285** *Grupo Gigante S.A. v. Dallo & Co.,* 119 F.Supp.2d 1083, 1089 (C.D.Cal.2000). The defendants, owners of a grocery store who had registered their mark with the state, claimed that the state registration made the common law well-known mark doctrine unavailable. The court rejected this argument, reasoning that a foreign mark must be protected if it was well-known in the United States prior to the party's obtaining rights to the mark through the state process. *Id.* at 1089–92 ("If a mark used only on products or services sold abroad is so famous that its reputation is known in the United States, then that mark should be legally recognized in the United States." (quoting McCarthy, *supra,* § 29:4, at 29–9)).

Although the *Grupo Gigante* case involved state rather than federal registration, the difference is not dispositive. After all, federal registration is only *prima facie* evidence of ownership, rather than a deed to the mark. Lanham Act, Section 33. Therefore, Cubatabaco might have prior rights to the COHIBA mark if it was well-known prior to General Cigar's first use of the mark in 1992.

[34] An issue of material fact exists as to whether the Cuban COHIBA was well-known by November 1992. The Cuban COHIBA was recognized in *Cigar Aficionado* to be "perhaps the world's finest smoke." It had been selling around the world for ten years, and had been mentioned in several different magazine articles in the United States. Moreover,

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within the particular niche market of the cigar industry, the Cuban COHIBA was renown.

General Cigar also recognized the renown of the Cuban COHIBA. Milstein testified that in 1989, 1991 and October 1992, General Cigar wanted to use a label as near as possible to the Cuban COHIBA "to somehow capitalize on the success of the Cuban brand, and especially [in October 1992] the good ratings that it got, the notoriety that it got from *Cigar Aficionado.*" Milstein Dep. at 284. Milstein wrote a memorandum echoing similar thoughts in January 1993, concerning General Cigar's strategy "to exploit the popularity, familiarity, brand recognition and overall success of the Cuban Cohiba." Further, in the spring of 1993, General Cigar's advertising agency developed a campaign, the first phase of which was to "[e]xploit the Cohiba name, with its reputation as one of the world's finest cigars amongst cigar smokers, to build a brand image for the U.S. Product."

Cubatabaco has thereby raised a material issue of fact as to whether the Cuban COHIBA was "so famous that its reputation [was] known in the United States" and thus "should be legally recognized in the United States." *Grupo Gigante,* 119 F.Supp.2d at 1089. Therefore, while summary judgment may not be granted on this count, nor can the unfair competition claim be dismissed.

C. *Federal Trademark Dilution Act*

Cubatabaco moves for partial summary judgment on Count XII,[58] alleging infringement of the Federal Trademark Dilution Act of 1995 ("FTDA"), 15 U.S.C. § 1125(c)(1).

58 Cubatabaco has not moved on the parallel state law claim in Count XII, N.Y.Gen.Bus.Law. § 360–1. However, in a footnote, General Cigar alleges that Section 43(c)(3) of the Lanham Act bars this claim because of General Cigar's valid registration of the COHIBA mark. Def.'s Opp.Mem. at 28 n. 21. This subject will not be addressed as that claim is not at issue and, in any case, one of Cubatabaco's claims is that the 1995 registration should be cancelled. Until the issue is raised as to whether the 1995 registration is valid, General Cigar cannot rely on Section 43(c)(3) to dismiss the state law claim.

The FTDA provides that the "owner of a famous mark shall be entitled, subject to the principles of equity ..., to an injunction against another person's commercial ***286** use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark." 15 U.S.C. § 1125(c)(1). "Dilution" for purposes of the FTDA is "the lessening of the capacity of a famous mark to identify and distinguish goods and services, regardless of the presence or absence of (1) competition between the owner of the famous mark and the other parties, or (2) likelihood of confusion, mistake, or deception." 15 U.S.C. § 1127.

[35] The Second Circuit has summarized the five elements needed to establish unlawful dilution under the FTDA: "(1) the senior mark must be famous; (2) it must be distinctive; (3) the junior use must be a commercial use in commerce; (4) it must begin after the senior mark has become famous; and (5) it must cause dilution of the distinctive quality of the senior mark." *Nabisco Inc. v. PF Brands, Inc.,* 191 F.3d 208, 215 (2d Cir.1999).

1. *General Cigar's Registration is Not a Defense*

[36] General Cigar's primary contention is that its ownership of the COHIBA mark in the United States provides a defense to this claim. However, "federal registration is no defense to a charge of dilution under the federal Anti-dilution Act." McCarthy, *supra,* at § 24:90, at 24–150. Such could not be the case, as dilution itself provides a ground for cancellation of a registration. 15 U.S.C. § 1052.

2. *There is a Material Issue of Fact as to Whether Cubatabaco Owns the COHIBA mark in the United States*

[37] The FTDA requires that the plaintiff be the "owner" of the mark. General Cigar argues that Cubatabaco is not the "owner" of the COHIBA mark in the United States because it did not register the mark with the PTO. This argument ignores that one need not have registered the mark to "own" it.[59]

59 General Cigar's argument is further undercut by the language of the FTDA, which states that a court may, but not shall, look to whether the mark was registered in determining whether it was distinctive or famous. 15 U.S.C. § 1125(c)(1)(H). The drafters could easily have required registration by using the replacing "may" with "shall."

As discussed above, under the "well-known marks" doctrine, a party with a well-known mark at the time another party starts

to use the mark has priority over the party using the mark. In *Gigante,* discussed above, the defendants argued that the plaintiff, who had not registered the mark in California or through the U.S.P.T.O., could not make a dilution claim under the FTDA "because they do not own the mark." *Gigante,* at 1098 n. 10. There was no question that plaintiff had registered and owned the mark in Mexico. However, the court did not look to the plaintiff's ownership in Mexico, but instead rejected the defendants' argument because the Court had determined that the Gigante mark was a well-known mark prior to defendants' first use, and therefore the plaintiffs owned the U.S. rights to the mark. *Id.* at 1089.

As discussed above, there is an issue of material fact as to whether Cubatabaco was the Cuban COHIBA was a "well-known" mark in 1992 and thus "owns" the rights to the COHIBA mark in the United States. Therefore, summary judgment may not be granted on this ground.

CONCLUSION

For the foregoing reasons, Cubatabaco's Count I (Article 6–bis of the Paris Convention) and III (Article 7 and 8 of the IAC) are dismissed. Cubatabaco's motions for summary judgment on its claim of abandonment (Count XI) and to dismiss General Cigar's equitable defenses are granted. ***287** General Cigar's motion for summary judgment on the basis of its equitable defenses are denied. In light of the December 5, 2000, Order and the above opinion, Cubatabaco's cause of action is now limited to (1) Count II (Article 10–bis of the Paris Convention); (2) Count IV (Articles 20 and 21 of the IAC); (3) Count VII (Trademark Infringement Under Section 43(a) of the Lanham Act); (4) Count X (state and common law unfair competition); (5) Count XI (cancellation of the 1995 registration); (6) Count XII (dilution under state and federal law); and (7) XIII (common law misappropriation).

A pretrial conference will be held in September 2002 on a date convenient to counsel to schedule any further proceedings.

It is so ordered.

All Citations

213 F.Supp.2d 247

End of Document

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 40</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

John Anderson, *President*
Greg Zimmerman, *Vice President*
Scott Regina, *Treasurer*
Todd Naifeh, *Secretary*
Ken Neumann, Ex-Officio

Scott Pearce, Executive Director
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Washington, DC 20002

July 17, 2019

SUBMITTED VIA REGULATIONS.GOV

Division of Dockets Management
HFA-305
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

Re: Comments of the International Premium Cigar and Pipe Retailers Association on Docket No. FDA-2016-N-3818: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports."

Dear Sir or Madam:

The International Premium Cigar and Pipe Retailers Association (IPCPR), which as of June 2019 is now known as the Premium Cigar Association, submits their comments to the Food and Drug Administration (FDA) on the Agency's proposed rule establishing requirements for the content and format of tobacco product substantial equivalence (SE) reports (Proposed Rule).[1] The IPCPR is an not-for-profit trade group representing premium cigar retail shops located throughout the United States and abroad. IPCPR members operate more than 2,500 retail stores and employ more than 14,000 people.

[1] U.S. Food & Drug Admin., Proposed Rule: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports," 84 Fed. Reg. 12,740 (April 2, 2019) (available at https://www.federalregister.gov/documents/2019/04/02/2019-05787/content-and-format-of-substantial-equivalence-reports-food-and-drug-administration-actions-on).

The IPCPR appreciates the opportunity to provide comments and data to the agency regarding whether and how the substantial equivalence process should apply to premium cigars. In this regard, IPCPR wholly endorses and incorporates as their own the comments submitted today by Cigar Rights of America (attached hereto as Exhibit A[2]) and Davidoff of Geneva USA, Inc., General Cigar Company, Nick's Cigar Company d/b/a Tabacalera Perdomo, SWI-DE, LLC d/b/a Drew Estate, Tabacalera Unidas, Inc. d/b/a C.L.E. Cigar Company, and Tabacalera USA Inc. (attached hereto as Exhibit B). Both comments demonstrate that the substantial equivalence system reflected in the Proposed Rule is wholly inappropriate for premium cigars. Indeed, applying that system to premium cigars will be detrimental to the agency's public health mission. That is because premium cigars are so varied—they are made by hand, from natural tobacco that depends on weather and growing conditions. As a result, there are nearly 51,000 separate types of premium cigars, as measured by so-called stock keeping units or "SKUs." At the same time, these products are used infrequently, with fewer than 0.5 percent of U.S. adults using premium cigars and those who do, use the product only 1.4 days per month. Naturally, the agency will be inundated with premium cigar applications for substantial equivalence and will need to evaluate tens of thousands of submissions for products used by only one-half a percent of the U.S. population. And because premium cigars are made by hand from natural tobacco, as they have been for centuries, the agency will be diverting scarce resources to evaluate premium cigar products that do not present unique or novel questions of public health distinct from the premium cigars that have been on the market for centuries.

The Family Smoking Prevention and Tobacco Control Act created a system that focused FDA review on tobacco products that are novel and present different questions of public health. *See* Act § 910(a)(3)(A). As a category, premium cigars are neither novel nor present different questions of public

[2] Exhibits to the Cigar Rights of America comment are being filed directly with the Cigar Rights of America comment and are incorporated by reference hereto.

health. The definition of premium cigars so ensures, making clear that premium cigars must be handmade from natural tobacco. The various definitions of premium cigars, which were the subject of extensive commentary and evidence in the premium cigar rulemaking docket that closed in July 2018[3], make clear that any premium cigar will be made as premium cigars have been for centuries. As such, new cigar products that meet the definition of premium cigars will not present different questions of public health from existing premium cigars. In addition, the requirement that premium cigars must be made by hand, from natural whole tobacco leaf, will guard against mass marketed cigars migrating into the category of premium cigars. These requirements make the construction of any cigar that would meet the premium cigar definition prohibitively expensive.

For the reasons set forth in the two comment letters that IPCPR adopts as their own, we believe that the substantial equivalence process set forth in the proposed rule is one geared for innovative e-cigarette and mass marketed tobacco products that people may use as nicotine delivery systems to feed an addiction. The Proposed Rule's substantial equivalence system, and the reams of data and layers of testing it requires, will threaten the very existence of premium cigar manufacturers and retailers, purveyors of artisan, small-batch products based on variations in natural tobacco leaf. And it will do so to no productive public health end.

The IPCPR represents thousands of brick-and-mortar, corner-store cigar shops. Our customers are life-long friends. They come to the store to see and to try new premium cigars that their favorite manufacturers have crafted from the best harvested tobacco of a particular year, at a particular plantation, or with a particular wrapper. The Proposed Rule's substantial equivalence process will inevitably shut off these natural variations, the reason our customers visit the store, as manufacturers will not be able to afford

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[3] *See* Regulation of Premium Cigars, 83 Fed. Reg. 12,901 (Mar. 26, 2018) (receiving comments until June 25, 2018).

pushing small-batch cigars through the process. Our customers will still smoke premium cigars, but they will turn to the products they already know, products they can have delivered to their doorstep with the click of a mouse, and have far less reason to visit our stores. If the Proposed Rule's substantial equivalence system were imposed on premium cigars, the way of life of our retail members is at stake. The Proposed Rule will effectively eliminate our members' neighborhood cigar stores, which promote public health by providing a fully age-verified, face-to-face channel for our sales. The agency should avoid the deleterious effects the Proposed Rule portends for premium cigar retail stores.

We also believe that the Proposed Rule provides the agency with an opportunity. As expressed in our comments submitted in response to the premium cigar docket, premium cigars as a category should be entirely exempt from FDA regulation so that the agency can focus its efforts on tobacco products that are used by youth and/or with a frequency that is consistent with feeding a nicotine addiction. As a corollary, we firmly believe premium cigars should not be subjected to the substantial equivalence process outlined in the Proposed Rule, at a minimum until the agency has resolved whether and how to regulate premium cigars pursuant to its premium cigar rulemaking docket. But the agency may also use this Proposed Rule, and its authority to craft procedures and standards for the substantial equivalence process, to limit premium cigar substantial equivalence submissions to demonstrating that a new product meets the definition of a premium cigar. In this special streamlined procedure, a manufacturer would submit evidence that a proposed premium cigar is handmade and consists of whole leaf tobacco, as well as complies with the other requirements for a premium cigar set forth in the definition the agency adopts. But the substantial equivalence process would end with demonstrating that a new product meets the agency's definition of a premium cigar. In so demonstrating, the manufacturer would necessarily show that the new product presents no different issues of public health, because it will by definition have been constructed as premium cigars have been for generations, including tens of thousands of products on the market prior to 2007. This

efficient process will ensure that the agency sees new tobacco products and has a chance to evaluate their compliance with the premium cigar definition. But it would spare the industry the pointless testing and onerous data collection that is required for substantial equivalence submissions in other settings. And it would allow the agency to focus on the truly novel tobacco products that are breaking the mold and presenting difficult and new questions of public health.

We are grateful for the opportunity to submit our comments on the Proposed Rule. Please do not hesitate to contact us with any questions.

Respectfully Submitted,

/s/ John Anderson

_____

John Anderson, President

EXHIBIT A

July 17, 2019

SUBMITTED VIA REGULATIONS.GOV
Division of Dockets Management
HFA-305
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

Re: Comments of Cigar Rights of America on Docket No. FDA-2016-N-3818: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports."

Dear Sir or Madam:

Cigar Rights of America (CRA) submit its Comment to the Food and Drug Administration (FDA) on the Agency's proposed rule establishing requirements for the content and format of tobacco product substantial equivalence (SE) reports (Proposed Rule).[1] The Boutique Cigar Association (BCA), an organization that represents small, boutique manufacturers of premium cigars in the United States and abroad, also endorses this Comment.[2] CRA's membership comprises 47 companies, and combined with our sister organizations, Boutique Cigar Association of America and Coalition of American Cigar Rollers, we have over 108 supporting member companies. As a preeminent organization with substantial industry and consumer engagement and experience in the premium cigar[3] sector, CRA appreciates the opportunity to offer our collective analyses and data on key issues impacting the Proposed Rule, as outlined below. We hope that this information will help inform the Agency's rulemaking.

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[1] U.S. Food & Drug Admin., Proposed Rule: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports," 84 FR 12740 (April 2, 2019) (available at https://www.federalregister.gov/documents/2019/04/02/2019-05787/content-and-format-of-substantial-equivalence-reports-food-and-drug-administration-actions-on).

[2] Boutique Cigar Association, Comments of the Cigar Rights of America on Docket No. FDA-2016-N-3818: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports," (July 17, 2019), attached hereto as Exhibit 1.

[3] For purposes of these Comments, we use the definition of "premium cigar" consistent with CRA and IPCPR's July 2018 joint comments to Docket ID: FDA-2017-N-6107: Regulation of Premium Cigars (ID: FDA-2017-N-6107-8796) (available at https://www.regulations.gov/document?D=FDA-2017-N-6107-8796).

As a leading, consumer-based public advocacy group dedicated to protecting the rights of premium cigar manufacturers, retailers, and consumers, CRA is currently the world's largest coalition of premium cigar manufacturers, with a membership that spans all fifty states and has the support of over 108 diverse artisan producers of handmade premium cigars. CRA's members include four of the five best-selling manufacturers of premium cigars sold in the United States.[4] Members of CRA include family-owned, small businesses, the single proprietorship craftsman, firms who conduct business on an international scale, along with others in the supply chain (*e.g.*, distributors, growers, logistics, *etc.*).

Our organization contests the use of a one-size-fits-all approach to tobacco product regulation, given the wide range of products, uses, and public health considerations. We submit these comments to outline our shared concerns with the challenges of subjecting premium cigars -- which are starkly different from all other tobacco products -- to FDA premarket review and regulation under the under the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act (Family Smoking Prevention Act).[5] We believe that any rules covering premium cigars must be tailored to match the unique characteristics and public health profile of these unique, occasional-use, artisan products, as outlined below.

The Proposed Rule sets forth standards for the form and content of substantial equivalence submissions. It sets these standards across all tobacco products -- cigarettes, e-cigarettes, cigars, and others -- despite the profound differences between those products. This is manifestly the

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[4] Cigar Insider has published lists of the best-selling, leading cigar brands, based on a 2019 retailer survey. CRA member companies comprise a majority of these lists, and four out of the top five listed companies are CRA members. *See* 2019 Retailer Survey: The Best-selling Cigar Brands in America, Market Trends and More (July 11, 2019) (available at https://www.cigaraficionado.com/article/2019-retailer-survey-the-best-selling-cigar-brands-in-america-market-trends-and-more). *See also* CRA members and supporters list, attached hereto as Exhibit 2.

[5] U.S Food & Drug Admin., Proposed Rule: "Regulation of Premium Cigars," 83 FR 12901 (March 26, 2018) (available at https://www.federalregister.gov/documents/2018/03/26/2018-06047/regulation-of-premium-cigars).

wrong approach and leads to a substantial equivalence system that is entirely inappropriate for premium cigars. In our view, premium cigars should be entirely exempt from regulation (*see* Section 2 below), and the interaction between the Proposed Rule and premium cigars is another example of why that is true. It would impose on the premium cigar industry devastating costs, all directed at running each new premium cigar through an arduous and expensive process to show it presents no different issues of public health than those tobacco products already on the market. But those costs are entirely unnecessary. Any product that meets the definition of a premium cigar will not present different issues of public health than those long available. That is because each premium cigar, by definition, is constructed as cigars have been for centuries: Entirely by hand, from whole leaf natural tobacco, with *no additives*. The substantial equivalence process, certainly as conceived by the Proposed Rule, simply will not advance the public health. It will waste time and money to reach a conclusion that is already manifest, in the meantime driving manufacturers out of business and destroying the artisan, small batch character of the premium cigar industry.

Running premium cigars through the substantial equivalence process contemplated by the Proposed Rule will hamper the agency's public health mission. As demonstrated below, there are more than 51,000 different premium cigar products on the market today, as measured by the Stock Keeping Units or "SKUs" that manufacturers and retailers use to track their inventory. The vast number of different premium cigar products is not a result of their heavy use: Premium cigars comprise only a fraction of a percent of all tobacco products. Fewer than 0.5 percent of American adults use premium cigars. Of those, the median premium cigar consumer uses the product 1.4 days per month. This sweeping variety, rather, is a function of the character of premium cigars. They are made by the hands of artisans, in small batches, trying to capture the best qualities in

natural tobacco during a particular growing season or region. In addition, it is common for premium cigar companies to offer rare, limited, and special edition product releases.

Many premium cigar manufacturers are small businesses, leagues away from the international conglomerates that dominate cigarette and mass-produced cigar manufacturing. But all of the painstaking creations of premium cigar artisans are within the tight band of the premium cigar definition: Handmade, from natural tobacco, with no additives. None of them presents different questions of public health, but tens of thousands of them will need to pass through the agency's process to survive. Applying the Proposed Rule's substantial equivalence system to premium cigars threatens to overwhelm the agency in needless applications and distract it from evaluating the truly novel tobacco products that are attractive to youth or are feeding nicotine addictions. The public health will suffer if premium cigars are subject to the substantial equivalence system. None of this is consistent with the President's objectives to remove wasteful and inefficient regulations from the administrative state.

Nor must the agency run premium cigars through the substantial equivalence process to combat some threat that non-premium cigars will seek to avoid regulation and migrate into the premium cigar category. The definition of premium cigars raises insurmountable barriers to entry for those products being used as a nicotine delivery system or to attract youth. Premium cigars must be handmade, from all-natural tobacco. These requirements are simply too expensive for any mass market product to comply with and reach their target audience in the quantity and at the cost desired. Moreover, the definition CRA proposes to the agency forecloses any additives, excluding an entire category of mass marketed products from potential migration.

As explained in Section I below, the Proposed Rule's particular requirements will impose devastating cost on the premium cigar industry, without any corresponding public health benefits.

Some of the requirements—including constituent testing—make absolutely no sense for premium cigars, which within one box will have significant variations due to their handmade construction. As demonstrated below, the Proposed Rule's requirements are tailor made for mass produced tobacco products, rolling off machines with hundreds of thousands if not millions of tobacco products. A manufacturer of such a product will invest millions to seek FDA approval and pursue billions in revenue. A manufacturer of a small batch premium cigar product is more likely to throw the keys back on his business, never being able to bear the massive costs of the process just to market a small number of cigars once approved. Even if the manufacturer chose to endure the process set forth in the Proposed Rule, the testing and data required would be meaningless to the agency, given the variations arising through handmade construction.

We respectfully submit that the agency should exempt premium cigars from its regulatory ambit. For purposes of the present Proposed Rule, it should use this opportunity to stagger compliance with the substantial equivalence process, deferring any submissions from premium cigar products until the agency resolves the important questions presented in its premium cigar docket and decides whether to exempt premium cigars from regulation. That will preserve the agency's existing rulemaking streams and allow it to focus on the most novel and least traditional products first: E-cigarettes and those seeking to modify mass market products potentially to make them more addictive or attractive to youth.

Second, the agency may use its substantial equivalence authority to decide through this rulemaking any every cigar that meets the definition of premium cigars is substantially equivalent to a pre-2007 product. After all, the definition ensures that each premium cigar product has been made as premium cigars have for centuries. This would be a significant step—removing the

burden of product-by-product premium cigar substantial equivalence applications—in relieving the intolerable burdens of the Deeming Rule on the premium cigar industry.

At a minimum, the agency should use the Proposed Rule to create a streamlined substantial equivalence process for premium cigars. Premium cigar applicants should be required to do no more than provide evidence that the new product meets the definition of a premium cigar: Declarations that the product is made by hand and ingredient listings showing its construction solely from natural whole leaf tobacco with no additives. That should be the end of the substantial equivalence process for premium cigars. And appropriately so, as demonstrating compliance with the definition would itself show that the product presents no different issues of public health than the premium cigars on the market for centuries. At the same time, the proposal would allow the agency to track new tobacco products and provide an opportunity to check that a new product truly meets the premium cigar definition.

1. The Agency Should Adjust the Proposed Rule to Remove Premium Cigars from FDA Premarket Review and Substantial Equivalence Process Designed for Other Tobacco Products.

CRA has no view on whether the substantial equivalence regime detailed in the Proposed Rule makes any sense for cigarettes, e-cigarettes, or mass-marketed cigars. But CRA firmly believes that the Proposed Rule's regime is entirely inappropriate for premium cigars. The agency must use this rulemaking to alleviate the devastating effects the Proposed Rule's regime would have on premium cigars, which are not even remotely offset by any public health benefit.

The right course is to use the current rulemaking to spare the category of premium cigars from the premarket review and substantial equivalence process. We are aware that the agency has opened a separate rulemaking docket directed specifically at premium cigars, and we have urged exemption from regulation in response to the agency's call for comments therein. But the agency may, should, and must use the current rulemaking to conclude that products falling within the

definition of premium cigars—a definition set forth in our comments in response to the premium cigar rulemaking docket—are substantially equivalent to products on the market prior to 2007. And the agency may make that general conclusion through the current rulemaking, in a manner perfectly consistent with the agency's statutory authority under sections 910(a)(3) and 905(j) of the Family Smoking Prevention Act. A premium cigar is made by hand from whole tobacco leaf, has no non-tobacco tip or mouthpiece, and no additives. As such, a cigar meeting the definition of a premium cigar "has the same characteristics" of other handmade premium cigars on the market for centuries before 2007. Family Smoking Prevention Act § 910(a)(3)(A)(i). After all, they are made of the same "materials and ingredients," as they are by definition "wrapped in whole tobacco leaf," contain "a 100 percent of leaf tobacco binder" and "primarily long filler tobacco." *Id.* § 910(a)(3)(A) (defining "characteristics" as "materials" and "ingredients"). They have the same "design and composition," as they are made by hand and lack any "filter, tip, or non-tobacco mouthpiece." *Id.* (further defining characteristics as "design" and "composition"). Such a conclusion—that cigars meeting the definition of premium cigars have "the same characteristics" as pre-2007 premium cigars—is directly responsive to the agency's request for comment "on the terms 'same characteristics' and 'different characteristics,'" the agency's examples of what would constitute "same characteristics and different characteristics," and "any alternative approaches." 84 Fed. Reg. at 12745.

In any event and as explained further below, cigars meeting the definition of premium cigar categorically do not "raise different questions of public health" from premium cigars long on the marketplace. *Id.* § 910(a)(3)(A)(ii). Nothing prevents the agency from embedding the general conclusion that products meeting the definition of a premium cigar are substantially equivalent to premium cigars on the marketplace prior to 2007. And doing so would *enhance the public health*,

as it would free the agency to focus its scarce resources on truly novel tobacco products that may be attracting youth or feeding an addiction to tobacco, harms the data demonstrate that premium cigars do not present.

At most, the agency should use any final rule arising from this docket to establish a streamlined substantial equivalence approval track for premium cigars. Rather than providing reams of data and expensive testing results, manufacturers submitting substantial equivalence reports for a premium cigar product should be required only to supply evidence that the product meets the definition of a premium cigar. The submission should demonstrate that the cigar is "wrapped in whole tobacco leaf," "contains primarily long filler tobacco," and lacks any disqualifying "additives" by submitting an ingredient list. The submission should demonstrate, through declaration or other means, that the product was made "by combining manually the wrapper, filler, and binder," lacks "a filter, tip, or non-tobacco mouthpiece," and was capped by hand. The submission should show it meets the minimum weight requirement of 6 pounds per 1,000 units. But no more should be required. No testing results. No studies. And the submission should not be required to identify a particular predicate, as the definition itself would provide the guidepost for the paradigmatic premium cigar on the market prior to 2007.

By establishing this process where substantial equivalence applications are a pathway to demonstrate compliance with the definition of premium cigar, the agency would be able to monitor new tobacco products to ensure that those not subject to the enhanced processes in the Proposed Rule fall within the category of premium cigars. Such a streamlined process would be a substantial step in relieving the otherwise crushing burdens of the premarket review process that will uniquely befall the premium cigar segment due to their artisanal variety.

CRA firmly believes that the agency should ultimately entirely exempt premium cigars from FDA regulation, so as to save the small businesses that typify premium cigar manufacturers and retailers and to focus the agency's review on the tobacco products that present true risks youth initiation and feeding tobacco addictions. These interim steps, wholly within the ambit of the current rulemaking docket that is setting more precise procedures for the substantial equivalence process, will assist in reducing the burdens on premium cigars while the agency considers full exemption. And they are required as sensible alternatives to the breathtaking costs and lack of benefits that would accompany subjecting premium cigars to the full substantial equivalence process outlined in the Proposed Rule.

At the very least, the agency should use any Final Rule arising from the Proposed Rule to stagger submission dates for the substantial equivalence process, having e-cigarettes and mass-marketed cigars go through the process first and deferring premium cigar submissions until a substantially later date. That later date for premium cigar substantial equivalence submissions should accommodate the final resolution of the existing premium cigar rulemaking docket, wherein the agency is actively considering the exemption of premium cigars from FDA regulation. Put a different way, the agency should not enforce the substantial equivalence process against premium cigars until it has concluded its consideration of whether premium cigars should be exempted from FDA regulation through the premium cigar rulemaking docket. The right answer would be to exempt premium cigars from regulation entirely, making compliance with the substantial equivalence process unnecessary for those products. For purposes of finalizing this Proposed Rule, however, any staggered and delayed substantial equivalence compliance date for premium cigars to accommodate the decision on exemption should also build in additional time for the premium cigar industry (of no less than 12 months) to prepare for any regulatory

requirements that remain after the docket is resolved. The substantial equivalence process, as explained below, will be massively costly for premium cigars. Requiring these substantial equivalence submissions for premium cigars before the premium cigar rulemaking docket considering exemption of premium cigars from this scheme is resolved would be "a grossly unfair exercise of agency authority" that the agency should avoid and that would otherwise be subject to judicial challenge.[6]

In support of these proposals, we explain below why the substantial equivalence process specified in the Proposed Rule is wholly inappropriate for premium cigars and, if applied to them, would *threaten*, not enhance, the agency's public health mission.

a. It is premature to subject premium cigars to premarket authorization until the FDA determines its regulatory approach to this category.

Just last summer, FDA issued an ANPRM seeking information related to the regulation of premium cigars under the Family Smoking Prevention Act.[7] Through the ANPRM, FDA stated it is gathering additional input and scientific data on patterns of use and the public health impact of premium cigars. Specifically, FDA requested new comments, data, research results, and information on, among other things, the following:

- the definition of premium cigars,
- use patterns of premium cigars generally and among youth and young adults specifically,
- public health considerations associated with premium cigars including the health risks, and
- consumer perceptions of the health risks of premium cigars.[8]

FDA's reconsideration of the overall regulatory framework for premium cigars demonstrates that: (1) it is apparent that FDA recognizes the challenges in regulating premium

[6] *Cigar Association of Am. v. Food and Drug Admin.*, 315 F. Supp. 3d 143, 175 (D.D.C. 2018).
[7] U.S Food & Drug Admin., Proposed Rule: "Regulation of Premium Cigars," 83 FR 12901 (March 26, 2018) (available at https://www.federalregister.gov/documents/2018/03/26/2018-06047/regulation-of-premium-cigars).
[8] *Id.*

cigar products within a one-size-fits-all approach; and (2) there are many regulatory factors and considerations that the Agency still needs to address for premium cigars.

As discussed throughout these Comments, the regulatory framework for premium cigars should be distinguished from other, mass-produced tobacco products such as combusted cigarettes, given the artisanal, hand-crafted nature of these products. Premium cigars are inherently subject to various factors that are not readily standardized (*e.g.*, the soil in which they were grown, the length of time they were aged, workmanship, *etc.*). Unique product characteristics and public health impact considerations should arguably require individualized, distinct product regulation.

FDA would be proceeding out-of-order if it subjects premium cigars to premarket review without first determining appropriate regulatory framework for these products. Until FDA finalizes the regulatory requirements for these products, it is unreasonable to expect industry to adequately prepare and provide data to pursue premarket review of premium cigars. Until the FDA completes the undertakings contemplated by the ANPRM, premium cigars should not be subject to premarket review.

It is similarly illogical for FDA to subject premium cigars to premarket authorization until the Agency determines HPHC requirements for this category, including whether they even apply to this category. As discussed below, constituent testing is not appropriate for premium cigars. However, given the Proposed Rule's indication that HPHC testing will be a factor in the SE analysis for tobacco products, it would be premature to implement an SE regime for premium cigars until the Agency ascertains whether (and if so how) HPHC requirements apply to this category.

In the preamble to the Deeming Regulations, FDA indicated that it would issue guidance (and eventually regulations) regarding HPHC reporting for newly-deemed products. However,

FDA has not yet issued such guidance and there is no indication when it will. FDA recently extended the deadline for manufacturers of deemed tobacco products to report HPHCs in their products.[9] Under FDA's updated guidance, the HPHC reporting deadline is now six months[10] after the FDA's publication of final guidance regarding HPHC reporting. FDA's new policy appears to be in response to the fact that manufacturers cannot be expected to test when FDA has not outlined the information it wants or how the products should be tested. These variables can add significant time and expense to the HPHC testing process. Given the apparent lack of laboratory capacity for all of the products that must be tested, it was difficult to understand how the necessary testing can be accomplished if FDA does not issue timely guidance.

In the Proposed Rule, FDA places considerable emphasis on HPHC testing as a means of supporting SE between a "new" tobacco product and a predicate product. To date, FDA has not outlined its expectations for HPHC testing, or addressed the lack of standardized test methods covering the range of premium cigars. We are not aware of any available cigar reference product(s) or standardized smoke methods specific to premium cigars. Further complicating the issue is the fact that premium cigars are sold in hundreds of shapes and sizes. Given FDA's indication that HPHC testing is integral to the SE process, FDA should not subject industry to the SE process until FDA issues the HPHC regulations or guidance.

b. Application of SE requirements to premium cigars is disproportionately costly for this category, with no corresponding public health benefit.

Overall, the premium cigar industry offers more than 51,000 separate products. But the costs of the review process rise in direct proportion to the number of products. On top of that, the existing scheme sweeps in all premium cigars introduced over the last twelve years. The

[9] *See* March 2019 update to FDA guidance on "Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule" (available at https://www.fda.gov/regulatory-information/search-fda-guidance-documents/extension-certain-tobacco-product-compliance-deadlines-related-final-deeming-rule).

[10] For small tobacco product manufacturers, the reporting deadline is nine months after the publication of the final guidance.

result: A regulatory scheme that places more burdens and costs on a class of products that 0.48% of American adults consume barely once a month than on cigarettes, smoked by almost 34 million Americans every day.[11] And it is not just the costs on private business that are grossly out of proportion. FDA staff will also need to spend hundreds of hours reviewing each substantial equivalence or premarket review application from the premium cigar industry. And those are hours that could have been spent on addressing the real public health concerns posed by other tobacco products. The review process is not just wasteful, it is a dangerous distraction from real public health problems.

The costs of premium cigar substantial equivalence and premarket review having been established, the inquiry turns to what benefits the review process will achieve. The answer is few to none. Substantial equivalence review is entirely unnecessary for a premium cigar, because the proposed definition of premium cigars ensures that each will be made as cigars have been for centuries and will present no innovative or new issue of public health. Premium cigars are exactly the type of product that Congress wished to spare a drug-like premarket review process: It sought to preserve the tobacco products currently on the market and allow in nominally new products that shared core features with existing products.[12] If a cigar meets the proposed definition of a premium cigar, it will share eight core features with handmade cigars on the market in 2007—and 1907, for that matter. The cigars will be made by hand, from all-natural tobacco, and *with no additives*. A premium cigar will never present the agency with the questions

[11] NERA Report at tbl.2 and tbls.4a–c, attached hereto as Exhibit 3.

[12] *See* FD&C Act § 910(a)(3)(A), 21 U.S.C. § 387j(a)(3)(A) (defining a "substantially equivalent" tobacco product exempted from premarket review as a product that (i) "has the same characteristics as the predicate [i.e., pre-February 2007] tobacco product"; or (ii) "has different characteristics," but the information and/or data submitted to the FDA "demonstrates that it is not appropriate to regulate the product [through the premarket review process] because the product does not raise different questions of public health").

of how a novel artificial ingredient interacts with the tobacco or performs when combusted.[13] When it comes to premium cigars, the substantial equivalence process serves no purpose other than to drive premium cigar manufacturers out of business.

And the agency need not worry about new non-premium cigar products running for cover under the umbrella of premium cigars if they are exempted from regulation generally and the premarket review process in particular. The definition erects insuperable barriers to entry, including requirements that the products be made by hand and from expensive tobacco, such as long filler and natural wrappers. A non-premium cigar product simply cannot bear those costs and retain their customers. Non-premium cigar products rely on mechanization to deliver high-volume products at a palatable price; they cannot leap the fence into the premium cigar category.

c. Processing thousands of substantial equivalence submissions for premium cigars would divert resources from review of cigarettes, e-cigarettes, and mass-marketed cigars that may present issues of youth initiation and feeding a nicotine addiction.

The effects of this regulatory scheme are far more severe on premium cigars, even though the predominantly small business manufacturers of premium cigars are much less capable of bearing those burdens than international cigarette conglomerates. Rather than having only a few dozen main brands and only hundreds total like the cigarette industry, the premium cigar industry has intense variety and tens of thousands of separate products. This is a direct function of their manner of production: They are painstakingly made *by hand* and under the supervision of skilled artisans who select the best tobacco available to blend into a premium cigar satisfying the tastes of infrequent, but very discerning customers. As a result, a typical premium cigar manufacturer will have hundreds of offerings. For example, Ashton Cigars offers 665 unique SKUs, while

[13] Nor is there any history of product manipulation to make premium cigars more addictive that premarket review is needed to detect. Even if there had been, it would have been an abject failure, given the striking infrequency of use among premium cigar consumers.

Rocky Patel Premium Cigars offers 3,600 SKUs. Further, the four leading premium cigar manufacturers currently have more than 6,000 active SKUs for their premium cigars, and the five online retailers examined in the Econsult Report each offered an average of approximately 10,000 unique premium cigar SKUs in 2017 alone, and one online retailer has 24,000 SKUs.[14] In 2019, CRA members alone have almost 20,000 SKUs. And, as mentioned throughout this Comment, there are well over 51,000 different premium cigar products on the market today.

As described above, substantial equivalence reports are massive, exhaustive and costly documents that require not only enormous amounts of time for applicants to prepare but also substantial amounts of time for the agency to process. FDA will have to dedicate tremendous agency resources to review the thousands of substantial equivalence reports for premium cigars. Mitchell Zeller, Director of the Center for Tobacco Products, has stated that he "expect[s] that FDA will receive roughly 5,424 to 6,764 applications for three different authorization pathways. This will undoubtedly put a strain on the agency."[15]

Given that premium cigars comprise a fraction of a percent of the tobacco industry, are not used by minors, and are smoked infrequently, it does not make sense for FDA to devote a massive amount of agency resources to substantial equivalence reports for premium cigars – particularly when those resources could much better be used to further FDA's ambitious regulatory agenda.

d. Constituent testing is inappropriate and unnecessary for premium cigars, and its costs would drastically outweigh any benefits.

As part of the analysis attendant to substantial equivalence review, FDA requires the manufacturers of covered tobacco products to test for and report to the FDA HPHCs in their products. These requirements are a product of Congress' overriding concern with the history of

[14] Econsult Report at 21 & tbl.3, attached hereto as Exhibit 4.
[15] Declaration of Mitchell Zeller at ¶ 19 (Case 8:18-cv-00883-PWG; Document 120-1; June 12, 2019), attached hereto as Exhibit 5.

alleged consumer deception and product manipulation in the cigarette and smokeless tobacco industries. None of these concerns is present in premium cigars. Moreover, no methodology currently exists to identify HPHCs in premium cigars. Mechanically applying HPHC testing to premium cigars would destroy businesses and drive product consolidation, with no discernible public health benefit.

At the outset, HPHC testing makes absolutely no sense for premium cigars. As emphasized throughout this comment, premium cigars are handmade, with endless variations in construction, and contain only three natural ingredients: tobacco leaf, water, and plant-based adhesive. Unlike cigarettes, smokeless tobacco, or e-liquids, premium cigars *by definition* contain no synthetic chemicals or additives—the substances at the heart of the HPHC mandate. The agency has never expressed what results it hopes testing of such natural tobacco combustion will yield.

Even then, the manual construction of premium cigars, and the vast differentiation among brands and blends from box to box and year to year, make HPHC testing wholly ineffective. Whereas a single cigarette is indistinguishable from every other cigarette in a pack (or a production line for that brand), it is no exaggeration to say that *every* premium cigar can be different. Weather, humidity, daily curing conditions, and the practice of each individual human cigar roller ensures this variation even within the same box of cigars. As such, running a single premium cigar through a battery of laboratory tests will convey little information about any other cigar, even one found in the same box.

To the extent the agency intends HPHC testing to reach nicotine delivery, its efforts are better directed at other tobacco products. Again, unlike cigarettes and smokeless tobacco, all reliable evidence indicates that premium cigars are not used in a manner consistent with feeding nicotine addiction. As explained previously, the PATH data reveal that nearly all premium

cigar consumers (from 93.1% in Wave 1 to 96.5% in Wave 3) use premium cigars less frequently than daily.[16] By Wave 3, the median adult consumer of premium cigars used those products on only 1.3 days out of 30.[17] Likewise, the median dual user of premium cigars and cigarettes consumes premium cigars if anything less frequently than the median consumer of premium cigars—only 0.7–1.1 days per month, as compared to 1.5–1.9 days per month for premium cigar users who are not current cigarette smokers.[18] And of those who also smoke cigarettes, only 4.4–5.3% consume premium cigars daily.[19] Simply put, these are not use patterns indicative of using premium cigars for nicotine delivery.

Even if there were some scientific basis for mandating HPHC testing in premium cigars as part of the SE process, the agency still would be confronted with a fundamental problem: No testing methodology currently exists for testing all HPHCs in handmade premium cigars.[20] Existing methods, processes, and procedures for HPHC testing are designed for cigarettes and smokeless tobacco, not cigars, as CORESTA itself acknowledges:

> The methods for the machine smoking of cigars are a technical convention, only to be used for comparison between different cigar brands; and it is in no case a measure of human exposure or risks.[21]
>
> The improvement of operation in the participating labs and the continuation of their participation in the collaborative studies should help in improving the r&R results. However, the production and product related reasons mentioned before in addition to the lower number of cigars smoked per result and the smoking technology available will make it difficult to reach the same reproducibility levels obtained for cigarettes.[22]

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[16] NERA Report at tbls.4a–c; *see also* Corey et al., *supra* note 11, at 5 tbl.2; Kasza et al., *supra* note 33, at supp. app. tbl.S4.
[17] NERA Report at tbls.4a–c.
[18] NERA Report at tbls.10a–c.
[19] NERA Report at tbl.10a–c.
[20] The natural variation of premium cigars has made it difficult to develop a standard testing method. *See, e.g.*, Cooperation Centre for Scientific Research Relative to Tobacco (CORESTA), Recommended Methods (available at https://www.coresta.org/documents/search/?f%5B0%5D=im_field_technical_document_type%3A36190).
[21] *See, e.g.,* https://www.coresta.org/groups/cigar-smoking-methods.
[22] *Id.*

No equipment currently exists that is generally accepted for large cigar testing, to account for the inherent variability in cigars, the varied shapes and sizes of cigars, and the length of time it takes for a cigar to burn to completion. Based on our investigation, no laboratory has a validated system for measuring smoke HPHCs for the full range of handmade, premium cigars. The recommended test methods, as they exist today, are only for a small fraction of the HPHCs on FDA's list.

Nor has the FDA issued promised guidance on HPHC testing *generally*. While the agency announced in 2016 that it intended to publish a regulation addressing the "requirements for the testing and reporting of tobacco product constituents, ingredients, and additives," its original deadline of April 2018 came and went,[23] and the regulation was conspicuously absent from the agency's current regulatory agenda.[24] Only recently has FDA announced that the HPHC reporting deadline is now six months after the FDA's publication of final guidance on HPHC reporting. The agency should adjust the Proposed Rule to ensure that any compliance for cigars with the substantial equivalence process, which under the Proposed Rule appears to rely on HPHC testing, must come well after the publication of the HPHC testing guidance.

While the industry cannot accurately predict the costs of HPHC testing premium cigars, given the absence of appropriate technology and the lack of necessary guidance from FDA, the nature of the tests apparently contemplated by the industry make clear that the expenses will be considerable.[25] Coupled with the variety of premium cigars and the associated scope of testing,

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[23] *See View Rule: Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives (RIN 0910-AH59)*, Office of Info. & Regulatory Affairs, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=0910-AG59.

[24] *See Agency Rule List – Spring 2018: Department of Health and Human Services*, Office of Info & Regulatory Affairs, https://reginfo.gov/public/do/eAgendaMain.

[25] *See* SE Letter at 4–5, attached hereto as Exhibit 6 (describing required HPHC testing). In fact, the agency itself declined to estimate the costs of HPHC testing in its original Regulatory Impact Analysis, as it expected to address that issue when it released the long-promised HPHC regulations. Office of the Comm'r, U.S. Food & Drug Admin., *Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act: Final Regulatory Impact Analysis* 101–02 (2016) ("FRIA").

the costs of HPHC testing in the SE process will devastate the premium cigar industry. Indeed, the costs will be directly proportional to the variety of premium cigars—and to no public health end. Far from advancing the agency's asserted interest in protecting the public from potentially dangerous products, the result will be product consolidation and market exit, as only the manufacturers capable of bearing the costs of government regulation will survive. The premium cigars that have been made the same way for generations will be replaced by inexpensive, homogenized products that lack natural ingredients but are amenable to laboratory testing. And the small family businesses that populate the premium cigar industry and continue the tradition of handcrafting fine cigars from whole tobacco leaf will die out.

Variation in artisanal, hand-made premium cigars will render the testing results required in the Proposed Rule useless. The biggest misfit of the FDA's regulation of premium cigars is the premarket review and substantial equivalence scheme, as further clarified in the Proposed Rule. Congress enacted the Family Smoking Prevention Act against a backdrop of legislative findings that cigarette companies had manipulated ingredients in their products to make them more addictive and had marketed cigarettes in a way that led consumers incorrectly to believe that some cigarettes were safer than others.[26] The cigarette industry was controlled by a handful of multi-billion-dollar companies, each with a few main product lines, so Congress required each cigarette and smokeless tobacco product to be reviewed and approved by the agency.[27] Importantly, however, the FDA applied this requirement only to new cigarette products, exempting any product marketed just two years before the Act's passage.[28]

As discussed elsewhere in these comments, there is significant natural and inherent

[26] Family Smoking Prevention Act § 2(38)–(39), (47)–(49), 123 Stat. at 1778-81.
[27] 21 U.S.C. § 387j(a).
[28] *Id.* § 387j(a)(1).

variability in handmade premium cigar products -- even when made with the same "formula" in the same factory or when produced by the same artisan hand roller. A study funded by the FDA demonstrates the variation of premium cigars.[29] One of the cigars studied was a Romeo y Julieta 1875 Churchill, and the researchers found "considerable within-brand variance in nicotine content and concentration between the first and second analyses." The researchers concluded that data from this study suggested wide variability in nicotine content and some physical properties in the domestic cigar market.[30] All of this suggests that these products cannot be manufactured by hand consistently enough to permit manufacturers to "fully characterize" them in any meaningful way to permit a traditional SE comparison. For example, few premium cigar manufacturers set and confirm conformance with specifications for several "key design features" currently identified by FDA as necessary for characterization purposes:

1. Cigar length (mm)
2. Cigar minimum diameter (mm)
3. Cigar maximum diameter (mm)
4. Tobacco filler mass (mg)
5. Tobacco rod density (g/cm3)
6. Tobacco moisture (%)
7. Cigar wrapper porosity (CU)
8. Cigar binder porosity (CU)
9. Cigar binder length (mm)

Testing data used to provide a value for the sake of an SE comparison would prove meaningless in many cases since the values for a particular sample would not necessarily reflect the values for another cigar from the same or other batches due to this variability.

[29] Koszowski, B, *et al*., "Nicotine Content and Physical Properties of Large Cigars and Cigarillos in the United States," Nicotine Tob. Res. 20(3):393-398 (2018).
[30] *Id.*

e. The Proposed Rule seeks information that premium cigar manufacturers generally do not have and may be unable to generate.

It is worth noting that the substantial equivalence process, in its current form, is no answer to the disproportionate burdens of the regulatory scheme on premium cigars. In the initial stages of substantial equivalence review for cigars, the agency strayed far afield from the statute, which would have regarded a cigar as "substantially equivalent" if it has the same "characteristics" (i.e., "materials, ingredients, design, composition, heating source, or other features") as a pre-February 2007 cigar.[31]

According to correspondence between one cigar manufacturer and FDA regarding a substantial equivalence application for a premium cigar (redacted and attached hereto as Exhibit 6), the agency expects scientific testing and towering amounts of detailed data, regardless of expense or feasibility. The Agency directed the company to respond with data about the product's "draw resistance," the mass of the tobacco filler, its density and moisture, and the porosity of the binder and wrapper.[32] These are data that cigar manufacturers have not traditionally compiled and that appear to require extremely sophisticated testing to determine. The Agency also required the manufacturer to study how its product is used, including how many "puffs" (again undefined) a user might take off the cigar.[33] To the extent the length and width (gauge) of the cigar had changed, the agency wanted longitudinal studies about how those changes will not cause any greater incidence of disease.[34] Even though testing results for harmful and potentially harmful constituents ("HPHCs") were not due until 2019,[35] the agency demanded

[31] *Id.* § 387j(a)(3).
[32] *See* Ex. 6 at 2.
[33] *See id.* at 3.
[34] *See id.*
[35] The HPHC reporting deadline is now six months after the FDA's publication of final guidance on HPHC reporting.

HPHC testing results of both the applicant and the predicate cigars.[36] The Agency sought extensive data about how they were stored and studies of how storage conditions may affect product stability.[37] The Agency wanted ingredient listings *for the box in which they would be stored and the plastic wrappers in which they would be packaged*, because "[i]ngredients in cellophane are expected to differ from [those in a] wooden box."[38] Most incredibly, the FDA requested "ingredient and material information for cigar bands," that is, the slender pieces of paper that identify the cigar brand.[39]

All of this information must be provided not only for the premium cigar applying for approval, but also for the pre-2007 predicate product.[40] But, unlike for cigarettes, only predicate products from a more than a decade ago can be used—forcing manufacturers to find the necessary information and data from, and *physically to test*, products from long ago. This could be an impossible task, as most such products likely have already been consumed. The agency's requirements also make it difficult to use another manufacturer's premium cigar as a predicate, because the agency requires detailed information about the manufacturing process for the predicate cigar—fermentation, aging methods and storage conditions—that would not be available to a competing manufacturer.

There is a simple and elegant solution for this profound mismatch: Exempt a class of premium cigars, as defined in this comment, from FDA regulation. Once the FDA confirms that a product has each of the defining features of a premium cigar, it necessarily follows that the product is substantially equivalent to every other premium cigar and presents no different questions

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[36] *See id.* at 4-5.
[37] *See id.* at 5-6.
[38] *Id.* at 8 (emphasis added).
[39] *Id.*
[40] As if providing the information were not burden enough, the FDA instructed the manufacturer to "submit all the information identified above so that it is received by us no later than 60 days from the date of this letter." *Id.* at 9 (emphasis in original).

of public health. This approach is entirely consistent with the text of the Family Smoking Prevention Act and with congressional intent, it presents no risks of migration or uptake in light of the demographics and use patterns of premium cigar consumers, and it avoids the counterintuitive result—long predicted by CRA—of driving truly premium products from the marketplace and consolidating cigar production in the hands of multi-national conglomerates.

2. Premium cigars should not be subject to FDA regulation.

As we have stated previously, premium cigars are starkly different from other tobacco products, as demonstrated by their unique usage patterns (including factors such as initiation and progression, frequency and intensity, symptoms of dependence, and abuse liability, among others) and public health considerations. The data surrounding premium cigars demonstrate that youth do not use premium cigars. The few adults who do use premium cigars, do so very infrequently—the median premium cigar consumer uses the product 1.4 days per month—in a manner that is flatly inconsistent with the use of premium cigars to feed a nicotine addiction. The premium, handmade cigars should not be subject to a regulatory scheme geared toward reducing youth usage and preventing the addictive effect of tobacco products, as the Family Smoking Prevention Act is. Exempting premium cigars from regulation, particularly the agency's premarket review and substantial equivalence process, would allow the agency to focus on those products that are being used by youth and in a manner consistent with nicotine addiction. Moreover, exempting premium cigars from regulation would further the Administration's goals of reducing or eliminating unnecessary and burdensome regulations, while ensuring that regulatory requirements are consistent with the corresponding public health benefit.

Premium cigars are handmade, from whole tobacco leaf, and with no additives. *By definition*, each premium cigar is constructed as cigars have been for centuries. To the extent Congress contemplated premarket review for innovative products that would raise new public

health problems, that scheme has absolutely no relevance to premium cigars. Moreover, there are no non-tobacco flavoring additives that need to be evaluated with each separate premium cigar, as the proposed definition firmly excludes such additives.

Premium cigars can be clearly defined as a separate class of tobacco products because they significantly differ from non-premium cigars and other tobacco products. Because they are handcrafted, premium cigars are more expensive than other types of cigars. Each premium cigar continues to be made by hand, as it has been for centuries, before the age of automation, artificial additives, and chemical engineering. When premium cigars are properly defined, casting premium cigars into a painstaking, product-by-product premarket or substantial equivalence review process to identify dangerous innovations in tobacco products makes no sense. In terms of product characteristics, premium cigars contain "primarily long filler tobacco." In addition, the 100 percent whole leaf tobacco used in premium cigars is fermented naturally and slowly, which is markedly different than the process used for fermenting tobacco found in other products. Unlike in other combustible tobacco products, the natural fermentation process for premium cigar tobacco is a process that relies only upon the naturally occurring heat caused by the moisture and pressure of the tobacco leaves themselves. During the natural fermentation process, the tobacco is stacked by hand in piles, actively monitored, and then repeatedly disassembled, rotated, and restacked, and often has additional water applied to control the temperature and rate of fermentation. Premium cigar makers do not use any chemicals to adjust the fermentation process.

In addition, premium cigars are wrapped in whole tobacco leaf and contain a 100 percent leaf tobacco binder. They are made from all-natural, 100 percent tobacco leaf, both wrapper and binder, and contain no additives. The requirement that a premium cigar be

wrapped in whole tobacco leaf specifically excludes products with a reconstituted tobacco or homogenized tobacco wrapper.

With regard to growing practices, there is no history in the premium cigar industry of manufacturers manipulating their growing practices to affect the nicotine content of their cigars. Instead, the selection of tobacco leaf for any given premium cigar is based entirely on artisan factors (*e.g.*, taste and aroma), grower relationships, and supply chain considerations. Premium cigars have "no filter, tip, or non-tobacco mouthpiece and [are] capped by hand." Filters, tips and non-tobacco mouthpieces are used by manufacturers of mass-marketed cigars and appeal to consumers who are looking for an inexpensive product similar to cigarettes. Filters also can result in higher smoke inhalation rates and are therefore excluded from premium cigars.

Finally, hand-crafting is the essence of a premium cigar. Premium cigars are assembled by the hand of skilled artisans. By definition, the entire manufacturing and assembly process for premium cigars is a non-standardized process requiring the uninterrupted involvement of experienced tradesman throughout. This long and painstaking process takes two to five years or more, from the planting of the tobacco seed, to the harvest, to the cultivation of the natural wrapper, to the rolling of the cigar. During this time, there can be as many as 300 separate manual steps. The manufacturing and assembly process for premium cigars is a slow, manual process requiring continuous expert input. As a result, the rate of production of premium cigars is drastically lower than the production rate for mass-marketed products that roll off assembly lines. In sum, premium cigars consist only of natural tobacco leaf, water, and a small amount of plant- based adhesive. Unlike other tobacco products, premium cigars contain no additives like ammonia, freon, or other chemicals. We have provided evidence that premium cigar usage patterns shows that they are not being used as a nicotine delivery system. In addition, the

premium cigar industry has no history of manipulating its product to deliver a particular amount of nicotine. To do so would be entirely contrary to the process of constructing a premium cigar, which involves crafting the product by hand, from natural tobacco, to a particular taste profile. None of this occurs in a laboratory, as might have been part of the history of cigarettes.

a. The text and legislative history of the Family Smoking Prevention Act show that Congress did not intend for premium cigars to be regulated under the Family Smoking Prevention Act.

In 2009, Congress enacted the Family Smoking Prevention Act, which gave the Food and Drug Administration initial authority to regulate only cigarettes, roll-your-own tobacco, and smokeless tobacco. A key objective of the Family Smoking Prevention Act was to ensure that the FDA "has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco," while at the same time continuing to permit the lawful sale of tobacco products to adults. Consistent with that purpose, the Family Smoking Prevention Act prohibits the FDA from banning particular tobacco products.

Federal regulations define "cigar" to mean any "roll of tobacco that is wrapped in leaf tobacco or any substance containing tobacco" that is "not a cigarette."[41] The cigar category encompasses a diverse spectrum of products.[42] On one end are premium cigars that are hand-rolled by craftsmen; the rest of the category consists of machine-made, mass-produced cigarillos, little cigars and filtered cigars, sold in packs of various quantities.[43] Although "premium cigars" are a sub-category of traditional cigars, the term "premium cigar" is not defined by federal statute or regulation. FDA previously recognized that cigars are different from cigarettes and other tobacco

[41] 21 C.F.R. § 1143.1.
[42] *See* Brad Rodu, Prepared Testimony, U.S. Senate Committee on Small Business & Entrepreneurship (April 5, 2019).
[43] *Id.*

products. In 1996, FDA issued a rule asserting authority to regulate cigarettes and smokeless tobacco. FDA did not attempt to regulate cigars. The preamble to the 1996 proposed rule stated that, "[T]he proposed rule would not apply to pipe tobacco or to cigars." The preamble also stated that the "FDA has focused its investigation of its authority over tobacco products on cigarettes and smokeless tobacco products, and not on pipe tobacco or cigars, because young people predominantly use cigarettes and smokeless tobacco products." In rejecting comments that urged FDA to regulate cigars, FDA stated, "there is insufficient evidence of cigar or pipe tobacco use by children and adolescents to support the inclusion of cigar[s]… within the scope of the final rule." Nothing has changed since 1996. FDA's own data shows that there is no significant youth usage of premium cigars. In particular, a recent paper in the *New England Journal of Medicine* found that only 2.3% of youth had ever used a "traditional cigar"—the category in which that paper grouped premium and non-premium cigars – and a statistically insignificant number of youth used a "traditional cigar" on a "daily" or "frequent" basis.[44] Thus, it is clear that the congressional intent of the Family Smoking Prevention Act was designed to address two primary issues of public health concern – youth access and the disease risk associated with certain tobacco products. The premium hand-made cigar sector does not meet this test of legislative or regulatory concern, and hence should be afforded exemption from regulatory requirements.

Past congressional activities also point to this same conclusion. On April 15, 2011 the premium cigar industry initiated its first ever legislative effort to protect itself from onerous regulations. It was on that day that Congresswoman Kathy Castor (D-FL) and Congressman Bill

[44] Karin A. Kasza et al., *Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014*, 376 N. Eng. J. Med. 342 (2017), supp. app. tbls.S3 and S4.

Posey (R-FL), joined together in a bi-partisan fashion, and introduced legislation to exempt premium handmade cigars from federal regulation.

Throughout the course of the 112th, 113th, 114th, 115th, and through the beginning of the 116th Congress, 331 current and former members of the House of Representatives and 33 current and former members of the Senate have co-sponsored *The Traditional Cigar Manufacturing and Small Business Jobs Preservation Act.* Notably, Vice President Mike Pence and Acting White House Chief of Staff Mick Mulvaney co-sponsored the legislation when they served in Congress.

Of these 364 Congressional co-sponsors, over twenty have served as Committee Chairman and Chairwomen, and it includes numerous physicians and nurses. More importantly, however, of those 361, seventy-three voted in favor of the original *Family Smoking Prevention and Tobacco Control Act*, meaning there was recognition as to premium cigars being in a distinctive class, not warranting such regulatory scrutiny.

These 331 members of the House of Representatives and 33 members of the Senate hail from 45 states. Many of these supporters have either individually or in joint letters with their colleagues, written both President Obama's and President Trump's Administration in defense of premium cigars. To be precise, as of today 31 unique letters have been written and signed by 102 individual members of congress.

These legislators have carried the message to key committees within the Congress. Consistently since 2011, the House Committees on Appropriations, Foreign Affairs, Energy & Commerce, Oversight & Government Reform as well as Small Business, have been briefed on our issue. In addition, the U.S. Senate Committee on Foreign Relations, Appropriations and Health, Education, Labor & Pensions, and Small Business Committee have received briefings and

information on why cigars simply do not deserve this type of regulatory treatment, as proposed by FDA.

Premium cigars are not a partisan issue. The support for a premium cigar exemption from FDA rules includes 280 Republicans and 84 Democrats in both the House of Representatives and Senate, which in the current political climate, represents a bi-partisan consensus. The Proposed Rule can potentially devastate the industry, at minimum forcing manufacturers to cease popular "special releases," curtailing their product offerings, and forcing adult consumers to pay dramatically higher prices for the products they choose to enjoy. The SE standards set forth in the proposed regulations would shutter the limited release, special edition and collector segment of the premium cigar market, given that such product releases occur on an annualized basis and represent a significant portion of the annual economic benefit and consumer enjoyment for retailers and manufacturers alike. Our concerns are not limited, of course, to special release products. The nature of premium cigars is such that applying a scientific process like SE would not yield any reliable or meaningful data. Premium cigar tobacco is subject to natural variation based on uncontrollable factors such as the year, amount of sunlight, rain, wind, *etc*., and would vary from year to year due to natural growing conditions. This would make it difficult to compare – on any meaningful level – a new premium cigar rolled today to one that was rolled over a decade ago. Further adding to this complexity is the fact that different premium cigar makers roll cigars in different ways, an inherent part of these handmade, artisan products. Ultimately, SE is a scientific process that simply does not work for the unscientific nature of premium cigars.

b. The usage patterns of premium cigars demonstrate that premium cigars are different from other cigars and cigarettes.

The premium cigar industry is populated by small businesses, often family enterprises that have practiced the craft for generations. The products, in fact, look much the same as they did

centuries ago, consist of the same essential ingredients, and are made the same way. Premium cigars are used overwhelmingly by older, better-resourced, and more educated adults who have full knowledge of the potential risks to their health from overuse. Premium cigars are used not for nicotine delivery but for an occasional indulgence.

FDA had requested studies and information related to the use patterns of premium cigars generally, and among youth and young adults specifically, that were unavailable during the Deeming Rule's comment period. Through the several expert reports attached to our prior comments, we have compiled that evidence. The data clearly show that youth simply do not use premium cigars, that the small segment of adults who are premium cigar consumers use the products very infrequently, and that premium cigar consumers are older, higher-income, and better-educated than other tobacco product consumers. This evidence and data is explained at length in our comments responding to the premium cigar rulemaking docket; they are attached hereto and we incorporate them into this comment letter in their entirety. We reference our prior comments for this data and information.[45] Please also reference our prior comments to FDA's ANPRM on the regulation of premium cigars for data regarding: (1) tobacco initiation and progression; (2) dual use, frequency and intensity; (4) symptoms of dependence; (5) abuse liability; (6) the impact of labeling, advertising, and marketing efforts; and (7) the extent to which users of other tobacco products might switch to premium cigars if the FDA were to exempt or differently regulate premium cigars.

In the 2018 ANPRM to obtain information related to the regulation of premium cigars,[46] the agency cited as the model example of data needed a study conducted by the FDA's own

[45] *See* CRA and IPCPR's July 2018 joint comments to Docket ID: FDA-2017-N-6107: Regulation of Premium Cigars (ID: FDA-2017-N-6107-8796) (available at https://www.regulations.gov/document?D=FDA-2017-N-6107-8796), attached hereto as Exhibit 7.

[46] U.S Food & Drug Admin., Proposed Rule: "Regulation of Premium Cigars," 83 FR 12901 (March 26, 2018) (available at https://www.federalregister.gov/documents/2018/03/26/2018-06047/regulation-of-premium-cigars).

staff and led by Catherine Corey.[47] That paper, as FDA explained, found that "cigar smoking patterns and tobacco use behaviors varied by cigar type," and that there are "clear distinctions between premium and non-premium smoker characteristics, use patterns and purchasing behaviors."[48] The paper analyzed the Wave 1 of data collected in 2013–2014 from the FDA Center for Tobacco Products' Population Assessment of Tobacco and Health ("PATH") Study; Wave I consisted of a "nationally representative, longitudinal cohort study of 45,971 adults and youth in the United States."[49] Among other things, the PATH Study collects information about the types of cigars and brands used, allowing comparisons to be drawn between premium cigars and other tobacco products.[50] Tobacco Initiation and Progression

NERA Economic Consulting ("NERA") has analyzed the data from PATH Wave 1 and available data from PATH Wave 2 (2014–15) and PATH Wave 3 (2015–16), and sets forth its conclusions in a report submitted with this comment (the "NERA Report," attached hereto as Exhibit 3). In addition, submitted with this comment is a report from Econsult Solutions (the "Econsult Report," attached hereto as Exhibit 4) analyzing data collected from premium cigar retailers who together sell approximately 36% of the premium cigars sold in the United States, which complement NERA's analysis of the PATH data and are indicative, for example, of the low frequency and intensity of premium cigar use.[51]

NERA's analysis confirms that premium cigars do not play a meaningful role in tobacco initiation among youth. The overall youth prevalence of premium cigar use was almost

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[47] Corey, C.G., *et al.* "U.S. Adult Cigar Smoking Patterns, Purchasing Behaviors, and Reasons for Use According to Cigar Type: Findings From the Population Assessment of Tobacco and Health (PATH) Study, 2013-2014," *Nicotine & Tobacco Research* at 7 (September 15, 2017) (available at *https://academic.oup.com/ntr/article/4159211/U-S-adult-cigar-smoking-patterns-purchasing*).
[48] *Id.*
[49] U.S. Food & Drug Admin., FDA and NIH Study: Population Assessment of Tobacco and Health (available at https://www.fda.gov/tobacco-products/research/fda-and-nih-study-population-assessment-tobacco-and-health).
[50] *Id.*
[51] Econsult Report (describing scope of work and methodology).

imperceptible for all three PATH Study waves and declined over time from 0.08% in Wave 1 to 0.02% in Wave 3,[52] as detailed in Table 1 from the NERA Report[53].

NERA confirms that premium cigars are used by older, better-educated, and higher-income adults. Among adults, the overall prevalence of premium cigar use hovers around one-half of one percent, starting at 0.51% in Wave 1 and dropping to 0.48% in Wave 3.[54] The median age of current established premium cigar users has increased over the 3 years covered by PATH's three waves, from 38.1 in Wave 1 to 46.0 in Wave 3.[55] In Wave 1, 57.9% of premium cigar consumers were older than 35; in Wave 3 that number was 65.7%.[56]

A far higher percentage of premium cigar users age 25 and older has completed college or beyond—46.4% in Wave 1 and 56.0% in Wave 3—than users of any other cigar type (*e.g.*, 10.6–11.7% for cigarillo users) or cigarettes (11.9–12.3%).[57] That percentage for premium cigar consumers is also substantially higher than the 32.5% of all adult Americans aged 25 and older who have graduated from college.[58] Premium cigar users are likewise financially better-off, especially in comparison to users of other tobacco products. In Wave 1, approximately 66.2% of

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[52] NERA Report at ¶ 25–26, tbl.1.

[53] NERA used the same definition of "premium cigar" as used by Dr. Corey. Implementing that definition, Dr. Corey classified specific brands as premium from the list of brands used, as identified by the PATH Study participants. NERA discovered several brands that Dr. Corey had misclassified as premium cigars and other brands that had been identified in the PATH Study data that were clearly premium cigars, but had not been treated by Dr. Corey as such. This resulted in reclassifying nine cigar brands as non-premium that Dr. Corey had erroneously classified as premium and classifying 36 brands as premium that Dr. Corey had omitted from the premium category. NERA Report at ¶¶ 18–22. Importantly, Dr. Corey included several brands as premium cigars that have additives imparting a characterizing flavor and that, as a result, would be inconsistent with the FDA's proposed definition of premium cigars and the definition proposed in this comment. NERA thus ran a parallel series of calculations excluding those brands with flavor-imparting additives and reported those results in the tables, under the title "unflavored premium traditional cigars." We use those statistics in this comment to align with our proposed definition of premium cigars, while noting that they do not differ in any statistically meaningful way from the overall premium cigar results in the NERA analysis.

[54] NERA Report at ¶ 28, tbl.2.

[55] NERA Report at tbls.5a–c.

[56] NERA Report at tbls.3a–c; *see also* Econsult Report at 9 (average age of premium cigar customer is 55 years old, with 88% of premium cigar customers over age 35).

[57] NERA Report at tbls.3a–c. We use the 25 and older statistic to allow participants the normal time necessary to complete college and to be consistent with the age cohort other scientists use to measure educational attainment in the United States.

[58] *See* Camille L. Ryan & Kurt Bauman, U.S. Census Bureau, *Educational Attainment in the United States: 2015* (Mar. 2016), *available at* https://www.census.gov/content/dam/Census/ library/publications/2016/demo/p20-578.pdf (data from 2015 Current Population Report) (attached hereto as Exhibit 7).

adult premium cigar consumers had a household income exceeding 200% of the federal poverty level, significantly higher than the approximate percentages for users of non-premium traditional cigars (29.7%), cigarillos (22.6%), filtered cigars (18.4%), or cigarettes (32.3%).[59] Between more than a third and nearly one-half of premium cigar users (36.9–45.4%) have an annual household income in excess of $100,000, compared to only 8.8–13.4% of non-premium traditional cigar users, 5.8–9.5% of cigarillo users, and 7.5–7.7% of cigarette users.[60] That is more than double the 19.9% of U.S. households reporting annual income in excess of $100,000.[61] The pattern is reversed at the bottom of the income scale, with 40.6% of non-premium traditional cigar users, 47.1% of cigarillo users, 44.9% of filtered cigar users, and 34.2% of cigarette users falling below the poverty line, as compared to approximately just 12.7% of premium cigar users.[62]

The PATH Study data also demonstrate that premium cigar use does not lead to cigarette use, or what the Agency refers to as "progression" to cigarette use. NERA found that only 2.3% of the adult premium cigar users who were not everyday cigarette smokers at the end of Wave 1 in 2014 had become everyday cigarette smokers by the end of Wave 3 in 2016, which compared with 9.1% for users of non-premium cigars, 11.5% for cigarillo users, and 26.4% for filtered cigar users.[63] That 2.3% figure for premium cigar users is not statistically different from the 1.1% of adult study participants who were not users of *any* combustible tobacco product at the end of Wave 1 but became everyday cigarette smokers by the end of Wave 3, indicating that

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[59] NERA Report at tbls.3a–c. Results reported for Wave 1. Household poverty status is not available from the PATH Study data Waves 2 and 3.
[60] NERA Report at tbls.3a–c.
[61] *See* Lam Thuy Vo, *What Americans Earn*, NPR (July 16, 2012), https://www.npr.org/sections/money/2012/07/16/156688596/what-americans-earn (calculating figure with 2010 Census data).
[62] NERA Report at tbls.3a–c. Results reported for Wave 1. Household poverty status is not available from the PATH Study data Waves 2 and 3.
[63] NERA Report at ¶ 51, tbl.6.

premium cigar use results in negligible, if any, progression to everyday cigarette use as compared to the non-smoking population.[64] Similar results are obtained if progression into some day cigarette smoking is considered.[65]

i. *Frequency and Intensity*[66]

NERA's analysis confirms that premium cigars are used very infrequently and in a manner consistent with being an occasional luxury, rather than as vehicles for nicotine delivery. Nearly all premium cigar consumers (from 93.1% in Wave 1 to 96.5% in Wave 3) use premium cigars less frequently than daily, and generally much less.[67] As explained below, studies cannot link negative health outcomes to non-daily use by exclusive cigar consumers. Any evaluation of regulatory options for premium cigars will have to weigh the expense of regulation against the projected benefits for, including the chance regulation will change the behavior of, 0.0168% of American adults. As stated in the Mangum Economics Report, "There can be no public health benefit of implementing the rule for handmade cigars, because consumers of handmade cigars will not smoke significantly fewer cigars."[68]

The conclusion that the typical premium cigar consumer uses them only sporadically, as an indulgence or on special occasions, is reinforced by the actual sales data collected by retailers and analyzed in the Econsult Report. Among other things, these data show that 86% of consumers of premium cigars order them on fewer than ten occasions over a four-year period.[69] Even the

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[64] NERA Report at ¶ 51, tbl.6.

[65] NERA Report at ¶ 52, tbl.7. Only 9 out of 138 premium cigar consumers who were not someday cigarette users as of Wave 1 (6.4%) became someday cigarette users by Wave 3, compared with 13.2% of non-premium cigar users, 17.3% of cigarillo users, and 29.5% of filtered cigar users. *Id.* Again, the figure for premium cigar consumers was statistically indistinguishable from the 2.5% of non-tobacco users at Wave 1 who became someday cigarette users by Wave 3. *Id.*

[66] We discuss NERA's analysis of the frequency of premium cigar use before discussing dual use of premium cigars and cigarettes because the frequency data inform the dual use data. We have structured the comment this way in the interest of avoiding repetition.

[67] NERA Report at tbls. 4a–c; *see also* Corey et al., *supra* note 15, at 5 tbl.2; Kasza et al., *supra* note 33, at supp. app. tbl.S4.

[68] *See* Mangum Economics, The Public Health, Financial and Employment Impacts of Excluding Handmade Cigars from Coverage by FDA's Final Rule: Economic Information for FDA'S Center for Tobacco Products Implementation of Executive Orders 13771 and 13777 at 13 (hereafter, "Mangum Report"), attached hereto as Exhibit 8.

[69] Econsult Report at 12.

most frequent purchasers purchase premium cigars on average 6.9 times per year.[70] Reflective of premium cigars' status as special occasion items and gifts, premium cigar orders are clustered during limited times of year, including in and around Father's Day, Christmas and Hanukkah, and summer vacation periods.[71]

ii. *Dual Use of Premium Cigars and Other Tobacco Products*

NERA's analysis of the PATH data also demonstrates that premium cigars consumers are significantly less likely to use cigarettes than consumers of non-premium cigars.

As for the current practices of dual users of cigarettes and premium cigars, the PATH data conclusively show that cigarette consumers are not coming to premium cigars as a nicotine delivery system to feed any nicotine addiction they might have. As explained further below, the median dual user of premium cigars and cigarettes consumes premium cigars less frequently than the median consumer of premium cigars who does not also use cigarettes—only 0.7–1.1 days per month as compared to 1.5–1.9 days per month for premium cigar users who are not current cigarette smokers.[72] Of those premium cigar consumers who also smoke cigarettes, only 4.5–5.8% consume premium cigars daily.[73] These data cannot be squared with use of premium cigars to supplement the delivery of nicotine otherwise obtained from cigarettes. If nicotine is driving frequent use and if consumers use a tobacco product frequently to feed nicotine addiction, the data show that dual users are not using premium cigars to obtain nicotine.

iii. *Symptoms of Dependence & Abuse Liability*

The foregoing evidence demonstrates that premium cigars are not driving or being abused to satisfy a nicotine addiction. Indeed, that the median consumer of premium cigars uses them

[70] Econsult Report at 12.
[71] Econsult Report at 10.
[72] NERA Report at ¶¶ 60–62, tbl.10a–c.
[73] NERA Report at ¶¶ 60–62, tbl.10a–c.

far less than daily—in Wave 3 just 1.3 days out of 30—is the best possible evidence that those consumers are not using them to feed a nicotine addiction.[74] Premium cigars are simply not used with a frequency to make them an effective nicotine delivery system or in a manner consistent with addiction to the product. If used to feed a nicotine addiction, we would expect patterns of use closer to cigarettes, with the products being used every day (29.4 days out of 30 for the median consumer of cigarettes) or on most days.[75]

The dual use data only reinforce this conclusion. Those premium cigar consumers who also smoke cigarettes use premium cigars *less frequently* than premium cigar consumers who do not smoke cigarettes. The median dual user uses premium cigars 0.7–1.1 days per thirty. A 2017 *Drug and Alcohol Dependence* study partially funded by the FDA and co-authored by FDA staff found, based on PATH data, that cigar-only users showed the lowest mean indicators of tobacco dependence among users of all tobacco products—more than a full standard deviation below the baseline for the cigarette-only reference group.[76] And this calculation included non-premium cigars. Had the methodology of this study been applied solely to premium cigars, we would reasonably expect several more standard downward deviations from the baseline of the cigarette-only group.

iv. *Potential for consumers to switch to premium cigars if they are exempted from regulation.*

There is no evidence that users of other tobacco products might switch to premium cigars if the FDA were to exempt premium cigars from regulation, as we urge herein. As an initial matter, by defining premium cigars to require time-consuming and expensive manufacturing by

[74] NERA Report at ¶¶ 60–62, tbl.10a–c.
[75] NERA Report at ¶¶ 60–62, tbl.10a–c.
[76] David R. Strong et al., *Indicators of Dependence for Different Types of Tobacco Product Users: Descriptive Findings from Wave 1 (2013–2014) of the Population Assessment of Tobacco and Health (PATH) Study*, 178 Drug & Alcohol Dependence 257, 257, 260 (2017).

hand from whole leaf tobacco, together with an enhanced weight requirement, the FDA would erect an insuperable barrier to any mass-market manufacturer attempting to transition its products into "premium cigars." Those same defining characteristics ensure a high price for premium cigars, which would keep them inaccessible and unattractive to any user of a tobacco product searching for a substitute means of nicotine delivery.

As detailed above, the existing entrenched use patterns and demographics of consumers of premium cigars should give the FDA further comfort that carving premium cigars out of these new regulations will not result in a significant defection to premium cigars by users of cigarillos, filtered cigars, or other covered tobacco products. Unlike other types of cigars, premium cigars are a niche product used by a small sliver of the adult population (with youth usage hardly distinguishable from zero) on a highly infrequent basis that is inconsistent with use for nicotine delivery or to satisfy an addiction.[77] Users of other cigar types are generally younger, less educated, and of lower income than consumers of premium cigars.[78] Unlike premium cigar consumers, non-premium cigar consumers are far more likely to engage in daily cigar use and dual use of cigarettes.[79] Nothing about the regulations would make premium cigars more attractive to those users were premium cigars to be excused from them. After all, even if premarket review were applied aggressively by the agency, there are hundreds of fully grandfathered non-premium cigar products on the market. All available evidence indicates that, if exempted from these new rules, premium cigars will continue to be used only by the same small cohort of cigar aficionados who now use them as occasional indulgences.

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[77] NERA Report at tbls. 1–2 and 4a–c; *see also* Corey et al., *supra* note 15, at 5 tbl.2; Kasza et al., *supra* note 33, at supp. app. tbls.S3, S4.
[78] NERA Report at tbls.3a–c.
[79] NERA Report at tbls.4a–c and 9a–c.

c. Premium Cigars Are Not Used by Youth and Are Used Infrequently by the Adults Who Do Use the Product.

Premium cigars are luxury goods that are purchased and used by adults with higher education levels and household incomes than consumers of other tobacco products. There is no measurable problem of youth usage of premium cigar products. Premium cigars also are not used in a manner that gives rise to increased mortality risks—or that even is indicative of nicotine addiction.

Against this backdrop, the regulatory scheme designed by Congress for cigarettes and recently applied by the agency to all cigars is manifestly ill-suited for premium cigars. The right answer is to exempt a properly defined category of premium cigars from regulation. Most importantly, the crushing and entirely unnecessary expense of the premarket review and testing schemes makes no sense for premium cigars. Thus, FDA's premarket review requirement should not apply to premium cigars.

The view that the Family Smoking Prevention Act should not apply to premium cigars also flows from the way premium cigars are used. As demonstrated above, premium cigars are not being used with a frequency that suggests their use as a nicotine delivery system. Again, in the latest wave of the PATH Study, premium cigar consumers used the products 1.3 days per month and just 3.5% used the product daily.[80] To the extent that the agency envisions premarket review as a mechanism to render tobacco products less addictive, its attention is better directed at other tobacco products.

Finally, premium cigars present few to none of the serious problems of tobacco products but will consume *most* of the agency's resources. That is because of the intense variety in

[80] NERA Report at tbls.4a–c.

premium cigars: There are more than 50,000 separate premium cigar products, a result of the hand crafting and small manufacturers at the core of the industry. Many of those manufacturers will throw in the towel when faced with the daunting costs of premarket review and testing, causing random product exit with no benefit for public health. But thousands of premium cigar products will be presented for premarket or substantial equivalence review, and processing those applications will bury the agency in unnecessary work. More ominously, the volume of reviewing premium cigar products—all of which are made, by definition, as cigars have been for centuries—will divert the agency's focus from other tobacco products with innovative additives, unknown public health effects, and presenting serious problems of abuse and addiction. As stated by one oral and maxillofacial pathologist, "Low prevalence, infrequent use, and reduced exposure translates into minimal harm at the population level."[81] Epidemiologic analysis from FDA staff indicate that consumption of up to two cigars per day, while not completely safe, is neither associated with significantly increased risks for death from all causes, nor smoking-related cancers.[82] Regulating premium cigars will set back the public health, not advance it.

In a recent wave of the PATH Study, the median consumer of premium cigars uses them 1.3 days per month.[83] No wave of the PATH Study showed median usage more than 1.7 days per month.[84] In the last wave, only 3.5% of premium cigar consumers (which themselves comprise 0.48% of adults)—that is, 0.0168% of American adults or about 40,000 Americans—use premium cigars daily.[85]

Given these usage patterns, it is clear that premium cigars present qualitatively different health risks than other tobacco products, including other cigars. A recent FDA-funded study

[81] *See* Brad Rodu, Prepared Testimony, U.S. Senate Committee on Small Business & Entrepreneurship (April 5, 2019).
[82] *Id.*
[83] NERA Report at tbls.4a–c.
[84] NERA Report at tbls.4a–c.
[85] NERA Report at tbl.2 and tbls.4a–c.

published in the *Journal of the American Medical Association* ("JAMA") has concluded that non-daily, exclusive cigar usage characteristic of 96.5% of premium cigar consumers—does not lead to any statistically significant increase in mortality.[86] This study examined data from the Tobacco Use Supplement to the Current Population Survey linked to the National Longitudinal Mortality Study (NLMS), a nationally representative sample of the civilian, noninstitutionalized population dating back to 1973.[87] This study followed 357,420 Americans for 26 years, drawn from a pool of 640,726 NMLS participants who provided tobacco use information in surveys administered between 1985 and 2011.[88] The researchers estimated mortality risks stemming from daily and non-daily use of various tobacco products using "Cox proportional hazards models with age as the underlying time variable," with multivariable adjustments for sex, race/ethnicity, and other factors.[89] For each studied cause of death (all cause, all tobacco-related cancer, lung cancer, oral cancer, circulatory, cardiovascular, cerebrovascular, respiratory, COPD, and diabetes), the researchers calculated multivariable hazard ratios at 95% confidence intervals for non-daily exclusive cigar use—*and each confidence interval included the baseline of 1.0 for never tobacco users*.[90] The study, notwithstanding the hundreds of thousands participants, could not show a statistically significant increase in mortality or tobacco related diseases for persons smoking cigars less frequently than daily over the non-smoking population. Put another way, *if individuals use premium cigars as more than 97% of consumers do (i.e., less frequently than daily), the evidence shows no statistically significant increased risk of mortality or other tobacco related diseases*.[91]

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[86] *See* Carol H. Christensen et al., *Association of Cigarette, Cigar, and Pipe Use with Mortality Risk in the US Population*, JAMA Internal Med., Feb. 19, 2018, at E1, E6 tbl.3 (attached hereto as Exhibit 11).
[87] *Id.* at E2
[88] *Id.*
[89] *Id.* at E3
[90] *Id.* at E6 tbl.3
[91] Indeed, only 36 out of 608 non-daily exclusive cigar consumers studied—that is, 6%—died of diseases sometimes associated with tobacco use between 1985 and 2011. *Id.* To generate even this small group, the study needed to track the health outcomes of 357,420 Americans over 26 years, a massive undertaking. *Id.* at E2.

This comports with an epidemiological truism: That the dose of any product affects health outcomes.

Epidemiologist Dr. Geoffrey Kabat independently has analyzed the results of the JAMA Study and of other studies that together represent the latest research on the association of cigar use with health outcomes. Dr. Kabat's report (the "Kabat Report," attached hereto as Exhibit 9) sets out his clear conclusion as to the import of those studies: Non-daily premium cigar smokers have no increased health risks compared to nonsmokers.[92] As nearly all premium cigar consumers use them less than daily, this is compelling evidence that premium cigars need not be subject to the same regulatory scheme as other tobacco products with far different use patterns and associated health concerns.

The question again becomes whether the costs of imposing this regulatory scheme on the premium cigar industry, including the shuttering of small businesses and the dramatic loss of jobs, is worth the benefits to the 0.0168% of American adults who use premium cigars daily and in a manner associated with negative health effects. To make this case, a regulator would have to show that its regulations will materially change the behavior of this small sliver of consumers. Every public policy expert would say that it is nearly impossible to use regulatory intervention to materially affect a number that is so low. And these regulations are very unlikely to affect the behavior of this small group. Premarket and substantial equivalence review will close businesses and drive premium cigar products off the market, but there will still be grandfathered premium cigars on the market for their use. The usage pattern and epidemiological data show that the costs far outweigh any benefits from regulating premium cigars.[93]

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[92] Kabat Report at 5–6.

[93] In fact, the new data cast such doubt on the FDA's original cost–benefit analysis that the agency must conduct a new, more detailed cost–benefit analysis to comply with Executive Orders 12,866 and 13,771. That analysis is all but certain to confirm that the costs are so great, and the benefits so small and speculative, that the deeming rule is a prime candidate for regulatory withdrawal pursuant to Executive Orders 13,771 and 13,777.

d. Exempting premium cigars from regulation would advance the Agency's obligation to carry out the President's deregulatory program.

Exempting premium cigars from regulation would carry out the President's unambiguous instructions to federal agencies to engage in rigorous cost–benefit analysis and eliminate regulations failing that test.[94] Indeed, the Administration has unequivocally instructed agencies to "assess and consider both the benefits and costs of regulatory actions, including deregulatory actions, when making regulatory decisions, and issue regulations *only upon a reasoned determination that benefits justify costs*."[95] And, consistent with that objective, the President issued Executive Order 13771, barring departments and agencies from promulgating regulation of business without pulling down two regulations and requiring them to eliminate regulatory costs of $1 on the business community for every $1 in additional costs that a new regulation would impose.[96] Running premium cigars through a regulatory gauntlet – one that is self-evidently designed for mass-produced, synthetic goods produced by billion-dollar corporations – will impose detrimentally high costs on premium cigar manufacturers.

FDA predicted as much when it issued the Deeming Rule: It acknowledged that 90% of the entities affected by the Deeming Rule were small businesses, up to half of the handmade cigars currently available could be forced out of the market, and the estimated costs to small cigar manufacturers or importers would be between $277,750 and $397,350 upfront and no less than $235,060 annually thereafter, culminating in its blunt observation that "some firms may exit

[94] *See* Executive Order 13,771 § 1 (Jan. 30, 2017) ("It is the purpose of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations."); Executive Order 13,777 § 3(d)(iii) (Feb. 24, 2017) (directing Regulatory Reform Task Forces to evaluate and identify regulations that "impose costs that exceed benefits").
[95] Guidance Implementing Executive Order 13,771 (Apr. 5, 2017) (emphasis added).
[96] *See* Executive Order 13,771 § 2(c).

the market."[97] Industry estimates place the cost of regulation even higher. Based on our estimate of more than 51,000 different SKUs, even applying a conservative estimate of $18,000 per SKU for HPHC testing, based on FDA's lowest estimates, would yield a cost of about $1 billion. This staggering number would just cover HPHC testing. Of course, as part of the SE process, firms do not only submit HPHC testing, but also must marshal detailed product data, factor in personnel costs and costs associated third-party consultants. Therefore, expected costs are much higher, easily reaching more than a billion dollars.

It is little surprise, then, that when the FDA proposed the Deeming Rule in 2014, the federal Small Business Administration's Office of Advocacy admonished the agency for failing to adequately examine the effect of the rule on small businesses and neglecting to give serious consideration to less burdensome regulatory alternatives.[98] Meanwhile, experience since the inception of regulations confirms that these costs are not outweighed by benefits to the public health. The exorbitant and wide-ranging costs of regulating premium cigars would far exceed any associated public health benefits. In sum, not only would the costs of regulation dramatically outweigh any benefits, but costs of that magnitude could not easily be recouped by the agency.

By contrast, if the agency were to begin the process of exempting premium cigars from the most parts of the agency's regulatory regime, it would then have a significant deregulatory credit to apply towards another regulation of business on a topic of its choosing. As explained further above, the Proposed Rule regarding the format and content of substantial equivalence applications provides the agency with an opportunity to remove or streamline one of the most

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[97] Office of the Comm'r, U.S. Food & Drug Admin., *Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act: Final Regulatory Impact Analysis* 22, 78–80, 132, 133 (2016).

[98] Comment from SBA Office of Advocacy at 3–6, ID No. FDA-2014-N-0189-43271 (June 11, 2014), *available at* https://www.regulations.gov/document?D=FDA-2014-N-0189-43271.

significant regulatory burdens on premium cigars. The effect of the premarket review process, and the companion substantial equivalence pathway, is especially severe on premium cigars—as compared to other types of tobacco products—because there are so many variations of premium cigars. By recent estimates, there are more than 51,000 SKUs corresponding to premium cigar products, and the costs of the substantial equivalence process duplicate per product that must be submitted for review. While potentially survivable for a cigarette or mass marketed cigar product made by machines and sold to millions, the costs of the substantial equivalence process will crush premium cigar manufacturers, who will pare back their product offerings or close entirely. Thus, using the process initiated by the Proposed Rule to relieve the pressure of the substantial equivalence process on premium cigars will generate a significant deregulatory credit for the agency's use, potentially with other tobacco products presenting a far greater and novel threat to public health. This deregulatory credit can be applied to offset a new FDA regulatory action, or a regulatory action issued by a different component within HHS. These are important considerations for the Agency, notwithstanding adherence to the Administration's deregulatory program.

The current Administration's deregulatory program, by all accounts, is paying dividends. By the end of the President's first year in office, the Administration had cut regulatory costs by $8.1 billion and has repealed, withdrawn, or delayed hundreds of unnecessary and burdensome regulations that had once made it more difficult for hard-working Americans to make a living and that were smothering the Nation's economy. This slowdown and reversal of previous Administrations' regulatory activity is a welcome relief to American small businesses and the U.S. economy as a whole. Since announcing the Administration's regulation rollback, the economy has improved dramatically and unemployment levels have plummeted. The agency

should not impede that growth by rubberstamping an ill-conceived regulation issued by the last Administration—precisely the kind of job-killing, overbearing government action this President vowed to end.

e. In choosing to regulate premium cigars under the Family Smoking Prevention Act, FDA applied the wrong standards.

On May 5, 2016, FDA announced the release of its final rule on the deeming of tobacco products as subject to the Agency's authority. FDA opted in the rule to extend its authority over premium cigars and to apply the same regulatory standards to those products as to all other deemed tobacco products. Namely, premium cigars are to be subject to all aspects of the Family Smoking Prevention Act including premarket review (including testing for "Harmful and Potentially Harmful Constituents," or HPHCs), a ban on samples, even in adult-only establishments as previous regulations have permitted for smokeless tobacco, revised health warnings, and various other regulatory provisions.

At the time, CRA was heartened to see that FDA was considering an exemption for premium cigars in its proposed rule, and that it was explicitly doing so on the grounds that premium cigars might pose a lower threshold of risk than some other tobacco products and are enjoyed only by adult consumers in moderation. FDA requested comment from the public about this continuum of risk, and CRA was happy to provide detailed evidence to support it. Since that time, CRA has provided comments on a number of requests including the advance notice of proposed rulemaking (ANPRM) on nicotine and cigars. We believed that such an exemption was fully justified by the science and the evidence, and indeed, was required by the cost-benefit provisions of Executive Orders 12866 and 13563. It was, thus, surprising to see FDA opt in the final rule not to provide any exemption, significant flexibility, or meaningful regulatory relief. The Agency did not apply the correct evidentiary standard in the final rule and, rather than proving its case that premium

cigars should be regulated (as required by the Executive Orders and the Administrative Procedures Act), shifted the burden of evidence to commenters to prove that premium products should not be regulated.

i. FDA applied the incorrect evidentiary standard.

FDA failed to meet the basic standard of rulemaking: it did not provide a coherent rationale for regulating premium cigars, and it did not demonstrate that the likely benefits of regulation will justify the costs. Instead it adopted a precautionary principle and effectively declared that ***any*** hazard justifies full regulation, regardless of the impact on manufacturers. FDA admits that the studies upon which it relies to justify regulations do not differentiate between premium cigars and other products within the broad cigar category.

Moreover, since that time, there have been compelling FDA-financed studies based upon the PATH study that further demonstrate that premium cigars do not possess a youth access, initiation, or usage risk, which was a major public policy driver in establishing the Family Smoking Prevention Act in the first place. We firmly maintain that were a population risk evidentiary standard applied, economic impact and cost benefit analysis accurately performed, and the science considered within the context of epidemiological flaws that mischaracterize the data on premium cigars (including the conflation of premium hand-made cigars with mass market products as well as differences in dose response, sample size, pH levels, inhalation patterns, and frequency of use), the Agency would fully realize the rationale for premium cigar exclusion from the regulatory framework.

In sum, FDA has not shown a compelling public need for regulating premium cigars. Further, FDA does not adequately assess the costs, benefits, and distributional effects of regulating. First, FDA has not demonstrated a compelling public need for regulation of premium cigars as

tobacco products based on general public health considerations or on youth access issues. These issues are discussed in greater detail in our previous comments.

In his report to CRA, "A Review of the Possible Health Effects of Cigar Smoking," Dr. Coggins shows that the scientific data and literature refute the FDA's contention that smoking premium cigars poses health risks comparable to other tobacco products. He summarizes the evidence on health risks from cigars: "…lifelong smokers of cigars tend to have risks for smoking-related disease very close to those reported for non-smokers."[99] Further, FDA also recognizes that state regulations prohibit the sale of tobacco products to minors, although the definition of tobacco products varies across states.[100] To further this point, an analysis of FDA's compliance check inspections shows that the current compliance rate at the retail level, as it relates to violations involving minors, on currently regulated tobacco products is equal to 95.7 percent compliance with federal laws and regulations. Clearly, this high level of compliance demonstrates that retailers of currently regulated tobacco products take seriously their role in preventing the usage of tobacco products by underage individuals. Therefore, given the unique nature of premium cigars, coupled with the fact that premium cigars are not consumed by minors since age restrictions are already successfully imposed at the state and federal level, there is no compelling public need or reason for extending FDA's regulatory authority to premium cigars.

ii. An appropriate cost-benefit analysis requires the agency to relax of or eliminate the premarket review and substantial equivalence procedures for premium cigars.

A robust regulatory impact analysis should consider the impact of the regulation on profitability, industry structure, and long-term survival. As the agency finalizes its Proposed Rule,

[99] C.R.E. Coggins, Ph.D., APPENDIX: Coggins Report on Health Effects of Cigar Smoking: A review of the possible health effects of cigar smoking at 2 (August 7, 2014) (attached hereto as Exhibit 10).
[100] RIA at 13.

it must perform a serious cost-benefit analysis about the effect of its fully conceived substantial review process on the premium cigar industry. Any such analysis would demonstrate that the premarket review / substantial equivalence process, especially as contemplated by the Proposed Rule and undifferentiated for premium cigars, would be particularly onerous for premium cigar manufacturers. Premium cigars are frequently adjusted to address natural agricultural variations from year to year, and the dynamic nature of the industry requires frequent product introductions so premarket applications will be common. A leading manufacturer of premium cigars calculated that even using FDA's understated cost estimates, the cost of a premarket application for a highly successful product launch last year would have consumed more than the total of their first year's profits on this product. Using more realistic costs, they calculated that the costs would consume more than three years profits. Not surprisingly, with these costs, product launches requiring premarket applications would stop.

A complete cost analysis should include estimates of the cost of businesses reading, understanding, and studying the regulations; deciding whether they will exit the market or remain market participants; and developing implementation and compliance plans and approaches if they remain in the market. There is considerable cost associated with these activities – they will take a fair amount of time and those performing them are likely to be well compensated. It is also important to note that this cost is likely to be relatively fixed with respect to the size of the establishment meaning that smaller businesses will incur a larger per-unit costs than larger ones; this disproportionate impact on smaller business will have implications on the distributive effects of the regulations. As discussed elsewhere in this Comment, even applying a conservative estimate of $18,000 per SKU for HPHC testing, based on FDA's lowest estimates, would yield a cost of about $1 billion for HPHC testing of premium cigars alone. Factoring in the

SE process-related costs, this estimate would be much higher, easily reaching several billion dollars.

There is also industry concern that even if companies could somehow reduce the costs of the premarket applications or SE reports so they were less expensive than FDA estimates, FDA would not be able to process them in a timely fashion, which will also hamper the ability to introduce new products. Without new products, the industry would certainly consolidate, and in the long term, its viability would be questionable. While costs will be imposed on manufacturers and retailers, the distributional effects of those costs, often referred to as impacts, will be felt not only by these industry participants, but also up and down the entire supply chain of premium cigars. Thus, there are potential impacts on tobacco growers both foreign and domestic and their work force, on importers of foreign leaf and manufactured product, on distributors, on suppliers to the industry, on towns and cities and locations where the industry is located, on State and Federal governments, and to consumers. FDA's cost-benefit analysis appears to be silent on these impacts.

One study further highlights the devastating economic impact that could ensue should FDA regulate premium cigars. A report, entitled "The Public Health, Financial and Employment Impacts of Excluding Handmade Cigars from Coverage by FDA's Final Rule," and prepared by Mangum Economics, a Virginia-based firm that specializes in producing objective economic analysis of government policies, echoes many of the costs outlined above, and adds an estimated 85% to 90% of domestic cigar manufacturers and importers (320-338 small businesses) to go out of business, leading to the loss of over 3,500 U.S. manufacturing jobs and almost 1,800 jobs at U.S. importers.[101] The author of the report, Dr. David Zorn, in part relied on data from the FDA's own Final Regulatory Impact Analysis released in May 2016. Before working with Mangum

[101] *See* Mangum Report at 1, attached hereto as Exhibit 8.

Economics, Dr. Zorn was an economist with FDA. The Zorn study is current, and is the first of its kind to quantify the domestic economic consequences of premium cigar regulation by using FDA or other standard government-issued statistics to document that total compliance costs equals all corporate profits, and includes specific job loss projections, in addition to costs of compliance.

While some may argue that employment losses in the tobacco industry as a result of new regulation may simply produce employment gains in other industries as consumers shift some of their spending on tobacco products to other goods and services in response to these regulations, it is indisputable that jobs will be lost in tobacco products industry. Further, any newly created jobs in other industries will not materialize instantaneously if at all: adjustments take time. And the putative new jobs will likely be in different geographic locations than those that are lost in the tobacco products industry and more diffuse with respect to industry. It is far easier to recognize the losers than to identify any winners.

The FDA must also consider the on the substantial impact of the Proposed Rule's substantial equivalence regime on localities, an impact that could be consequential. For example, Florida would be hard hit if the regulations were promulgated as proposed. There are 112 manufacturers of premium cigars based in Florida. There are also over 45 cigar corporate headquarters operations in the state and over 300 retail establishments. The industry imports leaf through the Ports of Miami, Tampa, and Fort Lauderdale and there are distribution and support services throughout the state. All will suffer the dislocations of job losses in the cigar industry and the impacts will ripple through the local economies and the state.

Pennsylvania is another hub of the industry: industry experts report that over half of all premium cigars are distributed through the state. As another example, there would also be impacts on Las Vegas, which hosts the national cigar trade show on a rotating basis. For example, officials

from Las Vegas estimate that over 17,000 people attend the various trade shows, conventions, and special events associated with premium cigars and these events provide the city with $20.7 million in non-gaming revenue. Regulations on premium cigars would certainly put these at risk. New Orleans would also suffer a direct impact on the production facility of The Cigar Factory, a manufacturer of boutique cigars in the French Quarter District, and also a tourism impact.

Further, there has been detrimental economic impact on at least one of the two communities outside Florida which have cigar factories in the United States: National Cigar Company in Frankfort, Indiana, and Avanti Cigar Company in Dunmore, Pennsylvania. Since implementation of FDA's Deeming Rule, National Cigar Company has closed permanently. It is also important to note that the threat of regulation contributed to the closure of the Finck factory in Texas.

Additionally, there will be economic impact on three boutique cigar production companies located in Louisville, Lawrenceburg and Pikeville, Kentucky; and four boutique cigar production companies located in New Jersey (La Hoja Cigars, Reinado Cigars, Moya Ruiz Cigars, and Tony Santana Cigar Rolling Co.) New Jersey is also the corporate headquarters for Nat Sherman and JR's Cigars, two of the largest companies in the premium cigar sector.

There would inevitably be a devastating impact on the 50 or so remaining cigar rolling facilities in America in the newly-organized Coalition of American Cigar Rollers. The roughly 50 entities in the U.S. that are still sourcing tobacco and rolling their own smokes by hand range from small, modest operations with only one or two rollers making a house brand for locals to nationally distributed brands, such as the well-known J.C. Newman Cigar Co., El Rey de Los Habanos, Aganorsa Leaf and El Titan de Bronze.

There will also be impacts on tobacco growers and their workers. There are hundreds of small tobacco farms, and the Proposed Rule will certainly impose a significant economic impact

on a substantial number of small entities (as addressed by the Regulatory Flexibility Act), even though FDA did not even make mention of small tobacco farms on its Small Entity Analysis as required by the Regulatory Flexibility Act. For example, approximately 100 family farms in the Connecticut River Valley of Massachusetts and Connecticut employ over 5,000 seasonal workers, and produce a crop with an estimated value of $100 million. These farms are solely dependent on the premium cigar market and any impact on them has associated implications for the farm machinery, farm credit, fertilizer, fuel, farm supply and repair enterprises in the Connecticut River Valley.

In addition to the domestic impacts, there are also overseas impacts. As the FDA has historically acknowledged:

> The increase in cost, and corresponding reduction in profits, for participating in the US market would encourage foregoing manufacturers and U.S. importers to cease selling relatively low-volume products in the U.S. or consolidate products. Exit from the U.S. market could result […]. RIA at 55.

Market exit would create heavy economic impact on the primary production nations of Honduras, Nicaragua and the Dominican Republic, where the premium cigar industry alone accounts for over 350,000 estimated jobs in the agricultural, craftsman, production, support services and distribution sectors. Factoring in the economic multiplier effect yields one million lives who are dependent on these 350,000 jobs that are disproportionately women. Implications for import/export relations, impact on foreign debt commitments due to the reliance on premium cigar production, and associated international trade implications, are not assessed in the RIA. The industry provides families with living wages, health care and education. If one considers the families reliant on the premium cigar industry for income, the number of people who would be impacted by FDA regulation of premium cigars explodes to over a million people (including thousands of jobs employing Haitian farm workers in the Dominican Republic). The negative

impact and unintended consequences of this regulation could contribute to the type of economic instability the region has experienced in recent history. These effects will only exacerbate our Nation's border crisis, driven by Hondurans and Nicaraguans fleeing their otherwise failing economies.

Not only would there be impacts in the Caribbean, but there would also be impact on leaf providers in Ecuador, Brazil, Costa Rica, Panama and Mexico, as well as production facilities in Mexico. And impacts would also occur in Indonesia, which exports leaf and in Africa on leaf providers of Cameroon and the Central Africa Republic, which produce prized cigar wrapper leaf, with an estimated 3,000 agricultural jobs in each of these African nations.

FDA has not demonstrated a compelling need for applying these regulations to premium cigars. The economic analysis supporting the proposed regulation understates the costs of the regulations and cannot quantify any benefits. As these comments show, on a regulatory economics, public policy, and public health basis, premium cigars pose relatively little risk. With a regulation involving high costs, high impacts, and speculative benefits, society's and FDA's limited resources should be focused on more significant public health issues. Premium cigars should not be subjected to these proposed regulations.

3. Specific critiques of the Proposed Rule.

a. The Proposed Rule gives inadequate guidance for the premium cigar category, underscoring the fact that the Agency is not equipped to regulate this category.

FDA states that it has issued the proposed rule to provide more clarity to applicants regarding the SE pathway for new tobacco products. However, the Proposed Rule provides no clarity on this process applies to premium cigars. For instance, the Proposed Rule does not contain guidance on the specific SE Report content required for premium cigars, even though cigars differ

materially from other tobacco products. Rather, the Proposed Rule raises more questions than it answers.

FDA appears to acknowledge this lack of guidance, when it states in the Proposed Rule: "For tobacco products ***not specifically identified*** *(e.g.*, ENDS, ***cigars***) FDA invites comments and information on the parameters that may be needed to support an SE Report."[102] In addition, while the Proposed Rule talks about *processes* and *how* to generate the SE submission in the Proposed Rule, there is no information regarding the ultimate regulatory standard or what criteria the data will be measured against (other than the opaque public health standard). Regulated industry needs to know rules of the road that FDA is applying to premium cigar products.

Further, there is a noticeable lack of guidance on premium cigars as compared to other tobacco products, such as electronic nicotine device systems (ENDS) and combusted cigarettes. This lack of clarity makes it difficult for industry to adequately comply. On the same day that the final Deeming Regulation was issued, FDA issued a number of guidance documents intended to help ENDS suppliers understand and comply with the final Deeming Rule, including a detailed guidance on premarket tobacco applications for ENDS. FDA has also issued more detailed guidance explaining the regulatory requirements for combusted cigarette products. Indeed, the Proposed Rule provides a much higher level of detail regarding the regulatory requirements for combusted cigarettes and other statutory products versus deemed products. These guidance documents cover in relatively much greater detail the different supporting documents and data for the regulatory processes for these products. In contrast to these tobacco products, there is a noticeable lack of guidance for premium cigars. Because of this delay, the premium cigar industry has been left in the dark, interfering with FDA's own goals of promoting a predictable and

[102] Proposed SE Rule, supra note 1, at 12762 (emphasis added).

transparent regulatory process for new tobacco products. It is irresponsible to mandate a process when no one knows how it should be applied, including FDA. Doing so undermines FDA's goals of providing greater predictability and transparency of its processes to regulated industry.

b. Certain product changes in premium cigars should not be subject to premarket review.

i. **Label changes** - FDA should clarify in the Proposed Rule that a modification to an existing tobacco product's label does not result in a new tobacco product subject to premarket review, consistent with a federal court decision.[103] FDA should further clarify that changes to the band of a premium cigar, which are similarly part of the product's label, similarly do not trigger premarket review.

ii. **Changes to the box or other container closure system**[104] - Changes in container-closure systems for non-moist products such as premium cigars do not raise different questions of public health. If premium cigars are wrapped in cellophane inside the box, this constitutes the container-closure system. The outer box or outer packaging does not have an impact on premium cigar product characteristics. Certain container-closure system changes are intended merely to preserve the characteristics of the product at the time of manufacture. In any event, there is absolutely no evidence that the box in which premium cigars are kept affects the public health characteristics of a premium cigar, whether they are wrapped in cellophane or not. Given the variety of premium cigar products, requiring submissions based on changes to the "box or other container closure

[103] *See Philip Morris USA Inc. v. United States Food and Drug Administration*, No. 15-cv1590 (APM), 2016 WL 4378970 (D.D.C. Aug. 16, 2016)).
[104] *See* Proposed SE Rule, supra note 1, at 12744.

system" will simply further distract the agency from evaluating truly new products.

iii. **Quantity changes** - The proposed SE process should take into account consumers' actual purchasing habits and use patterns with respect to premium cigar products. We agree that product quantity changes for premium cigars should be considered "same characteristics" and therefore not subject to premarket review. With premium cigars, for example, consumers often create sampler packs by entering a humidor and selecting cigars of different types. Also, distinguishable from other tobacco products like cigarettes, retailers commonly sell individual cigars removed from manufacturer packaging (and FDA has acquiesced to this in its warning regulation), which makes the quantity in a box or bundle shipped to the retailer even less relevant. This is the only tobacco product category where consumers are permitted -- and, in fact, accustomed -- to picking out single product units out-of-the-box. This practice is already common in the premium cigar industry, where consumers are permitted to buy different quantities, including single units. In addition, as noted above, premium cigars are consumed leisurely, so any additional scrutiny around product quantity would not make sense these products. In other words, changes to product quantity make no difference in terms of public health impact.

c. The discussion of "test marketing" in the Proposed Rule does not account for the unique marketing considerations of premium cigars.

In the Proposed Rule, FDA seeks input on the following definition of test marketing: "Distributing or offering for sale (which may be shown by advertisements, *etc.*) a tobacco product

in the United States for the purpose of determining consumer response or other consumer reaction to the tobacco product, with or without the user knowing it is a test product, in which any of the following criteria apply:

- Offered in a limited number of regions;
- Offered for a limited time; or
- Offered to a chosen set of the population or specific demographic group."[105]

These criteria cannot be meaningfully applied to premium cigars. Premium cigars are different from other, mass-produced tobacco products such as combusted cigarettes. It is long-standing industry practice to market a limited edition, limited shop-exclusive, or regional release. We are confident that all premium cigar companies currently engage in this type of marketing. In fact, the natural, agricultural variation in tobacco that is an inherent part of premium cigar production makes this product category particularly suitable to this type of marketing. For example, a premium manufacturer may offer a tobacco product as a "limited release" -- but without the sole intent of determining consumer response to the product. Accordingly, we believe these criteria are not relevant for determining whether a tobacco product is sold exclusively in a test market.

4. The economic consequences of premarket authorization to the premium cigar industry

FDA has substantially underestimated the burden for premium cigars to comply with premarket authorization requirements. FDA has estimated that it expects to receive just 683 standalone substantial equivalence reports and 456 bundled reports per year, and that it will take each applicant 300 hours to prepare each standalone report and 90 hours to prepare each bundled report. These numbers are very low.

[105] U.S. Food & Drug Admin., Proposed Rule: "Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports," 84 FR 12740 at 12744 (April 2, 2019) (available at https://www.federalregister.gov/documents/2019/04/02/2019-05787/content-and-format-of-substantial-equivalence-reports-food-and-drug-administration-actions-on).

The agency goes on to project the annual average of 979 SE's will increase to 1,570. There are estimated to be more than 51,000 separate premium cigar products (as defined by Stock Keeping Units ((SKU's)) on the market today. It has been estimated that 60 percent of SKUs will not be grandfathered. The estimated 30,600 reports that would result would undoubtedly inundate the agency. Roughly 15-20% of the market turns over each year due to new products, limited editions, *etc*., thus upwards of 10,000 products per year can be expected. This figure is well above the estimated 1,570 reflected in the Federal Register figure (Vol. 83, No. 173/Thursday, September 6 Docket No. FDA-2011-D- 0147).

FDA estimated the "costs" for completing the applications above in hours, rather than in dollar figures. That's because FDA is basing its assumptions on extrapolation from their experience regulating large cigarette companies. Those large companies have in-house teams of regulatory compliance specialists and scientists who complete these applications; thus, their primary cost is time. Clearly, the economics of the premium cigar industry are quite different. Cigar manufacturers typically do not have in-house teams of scientists to conduct testing on HPHCs and will, at minimum, be expected to contract that work out to independent labs. FDA's narrow interpretation of the criteria for an SE exemption means that essentially all new cigar products will be required to file a full SE report. The costs for the HPHC testing along with the legal fees required for those reports, is likely to be at least $50,000 per product.

First, the premium cigar industry expects to submit thousands of substantial equivalence reports for premium cigars prior to the August 8, 2021 deadline. This is in addition to all of the other applications filed by manufacturers of other newly deemed products.

Second, FDA estimated that each respondent would submit only a single application per year. One of our mid-sized manufacturers expects to submit 166 substantial equivalence reports

for premium cigars alone, and another mid-sized brand owner estimates that it alone anticipates the need to file approximately 300 substantial equivalence reports for review.

Third, the agency's estimate of 300 per hours per substantial equivalence application seems quite low, given the volume of information that FDA is requesting, and based on estimates provided by outside consultants. This number also does not account for the costs of the required HPHC testing and the detailed environmental analyses needed for the environmental assessment. Instead, given the information presently available, stakeholders expect that it will take upwards of 1,000 hours to prepare a substantial equivalence report for premium cigars.

* * *

CRA thanks FDA for the opportunity to submit comments in response to the Proposed Rule. We believe that premium cigars should not be subject to the same premarket review process as other, mass-produced tobacco products such as combusted cigarettes or ENDS. Accordingly, CRA believes that FDA's final regulations should refrain from adopting a one-size-fits-all approach to the regulation of a diverse suite of tobacco products, and should instead impose regulatory requirements for premium cigars consistent with recognized public health differences. We agree with FDA's recognition of the risk continuum and believe that FDA should establish a regulatory structure that distinguishes between products on different points of the continuum, and this would be best accomplished by exempting premium cigars from regulation. Should FDA choose to establish some form of regulation, we request that any regulatory requirements for premium cigars be tailored to match the unique characteristics and public health profile of these unique, occasional-use, artisan products. Specifically, we have outlined above a pathway where the agency would conclude, as a general matter, that products meeting the definition of a "premium cigar" have the "same characteristics" and thus are "substantially equivalent" to pre-2007 products. This conclusion would limit the burden of the substantial equivalence process for premium cigars

solely to providing evidence that a product meets the definition of premium cigars and begin to alleviate the regulatory burdens that threaten to crush the premium cigar industry.

EXHIBIT B

July 17, 2019

Submitted via www.regulations.gov

Division of Dockets Management
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Docket No. FDA–2016-N-3818; Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports; Proposed Rule

Dear Sir or Madam:

Davidoff of Geneva USA, Inc. ("Davidoff USA"), General Cigar Company ("General"), Nick's Cigar Company d/b/a Tabacalera Perdomo ("Perdomo"), SWI-DE, LLC d/b/a Drew Estate ("Drew Estate"), Tabacalera Unidas, Inc. d/b/a C.L.E. Cigar Company ("CLE Cigars") and Tabacalera USA Inc. ("TUSA") (collectively "Premium Cigar Manufacturers") are the six of the largest premium cigar companies in the United States and sell most of the iconic and acclaimed brands of premium cigars on the market today.

I. Background on the Premium Cigar Manufacturers

Davidoff USA is the exclusive U.S. importer and distributor of the portfolio of premium cigar products of the Swiss company, Oettinger Davidoff AG ("ODAG") based in Basel, Switzerland. Davidoff USA is based in Pinellas Park, Florida and is a wholly-owned subsidiary of ODAG. Davidoff USA's acclaimed premium cigar brands include Davidoff, AVO, Baccarat, Camacho, Cusano, The Griffin's, La Fontana, Legendario, National Brands, Winston Churchill, Zino and Zino Platinum.

General Cigar Co. is one of the world's foremost manufacturers and marketers of premium cigars. The company was started in 1907 by German immigrants and is now a subsidiary of

Scandinavian Tobacco Group. General Cigar is known primarily for producing brands like Macanudo, Cohiba, CAO, Hoyo de Monterrey, Punch, La Gloria Cubana and Partagas. General Cigar operates facilities in the United States, Honduras, the Dominican Republic and Nicaragua. General Cigar also operates the brick and mortar cigar lounge Club Macanudo in New York City, and its sister companies Meier & Dutch and Cigars International are respectively two of the largest wholesalers and online retailers of premium cigars in the country. General Cigar provides employment to approximately 125 people in the United States and 3000 people abroad.

Perdomo is a Miami, Florida based company with over 2,000 employees in Florida and Nicaragua. Perdomo is a family run business founded by third-generation cigar maker Nicholas Perdomo, Jr. Perdomo has its origins with Silvio Perdomo who was a leading cigar maker in Cuba prior to the Cuban revolution, and after years in a Cuban jail emigrated to the United States in 1974. Silvio taught his son Nicholas Perdomo Sr. his craft, and Nicholas Sr. also eventually emigrated to the United States with the assistance of close friends. Nicholas Jr. was determined to follow in the footsteps of his father and grandfather and founded Perdomo in his garage in Miami in 1992. Today, Perdomo runs an 88,000 sq. foot state of the art factory, which is one of the largest cigar factories in Nicaragua, and produces the Perdomo brand including the Perdomo 20th Anniversary, Perdomo Estate Seleccion Vintage, Perdomo Habano, Perdomo Reserve Champagne, Perdomo 12 Year Double Aged Vintage, Perdomo Lot 23, Perdomo Small Batch and Perdomo Factory Tour Blend, amongst other brands.

Drew Estate is a leading manufacturer of some of the most iconic brands in the premium cigar category, including ACID, Liga Privada, Tabak Especial, Undercrown, Herrera Esteli,

Larutan, Nica Rustica, Deadwood, La Vieja Habana and others. As the owner of one of the largest hand-rolled premium cigar factories in the world, Drew Estate employs more than 1,700 people at its manufacturing facility, La Gran Fabrica Drew Estate, in Esteli, Nicaragua, as well as more than 75 employees in its U.S. operations, based out of Miami, Florida. Drew Estate is also the exclusive U.S. distributor for Joya de Nicaragua, the original and oldest premium cigar company in Nicaragua. Guided by its stated mission, "The Rebirth of Cigars," Drew Estate has always remained boutique at heart and committed to delivering a wide array of beautifully crafted handmade cigars that meet the diverse needs of the Mom & Pop specialty retail shops in which premium cigar brands are built. Drew Estate is renowned for its unparalleled ability to engage consumers, including through innovations such as Barn Smoker and Cigar Safari that educate adult smokers about the joyous artisanal traditions of handmade premium cigars.

CLE Cigars is based in Miami, Florida and employs over 700 people in Nicaragua, Honduras and the United States. CLE Cigars was founded in 2012 by third-generation premium cigar maker Christian Eiroa. Christian grew up in Honduras, but his cigar making roots trace to his grandfather Generoso Eiroa a Cuban cigar maker. The Eiroa Family Farm is one of the most technologically advanced tobacco farms in the world, and CLE cigars takes utmost pride in every aspect of creating each handmade, premium cigar from seed to smoke. CLE Cigars manufacturers and distributes the brands CLE, Asylum, Eiroa, and Wynwood Hills.

TUSA, based in Ft. Lauderdale, Florida, is a wholly-owned subsidiary of Imperial Brands PLC, and is a leader in the United States premium cigar space. TUSA has three main businesses that operate within its portfolio: Altadis U.S.A. Inc., JR Cigar, and Casa de Montecristo. Altadis U.S.A. Inc. Premium Cigar Division ("AUSA PCD") is a distributor of fine premium cigars; its

brands include Montecristo, Romeo y Julieta and H. Upmann. JR Cigar has a wholesale arm within its portfolio and is one of the premier cigar retailers in the United States, selling cigars to adult consumers through e-commerce and catalog retail mediums. Casa de Montecristo offers premier modern cigar stores, at 20 locations in eight states, featuring walk-in humidors and lounges for adults seeking an extraordinary and relaxing cigar smoking venue. In addition, TUSA works with various cigar manufacturers located outside the United States. TUSA companies are involved in every aspect of distributing and selling premium cigars.

II. Introduction

The Premium Cigar Manufacturers are key stakeholders in the implementation of any regulation of cigars as these regulations significantly affect their ability to conduct business. The Premium Cigar Manufacturers submit this comment to FDA's Proposed Rule on the Format and Content of Substantial Equivalence Reports.[1] These comments will be organized into three main sections: (i) the scientific and legal reasons premium cigars should be exempt from regulation; (ii) the Proposed SE Rule as written is unworkable for premium cigars and does not account for the unique aspects of premium cigars; and (iii) the economic impact of the Proposed SE Rule would result in a ban on much of the premium cigar category.

[1] Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports, 84 Fed. Reg. 12,740 (proposed Apr. 2, 2019) (to be codified at 21 C.F.R. pt. 16, 1107) [hereinafter Proposed SE Rule].

III. Premium Cigars Should be Exempt from FDA Regulation

a. Definition of Premium Cigars

The Premium Cigar Manufacturers are all members of the Cigar Association of America, Inc. ("CAA"), and contributed extensively to comments submitted by CAA to FDA's Advanced Notice of Proposed Rulemaking on the Regulation of Premium Cigars, which outlined the scientific and legal reasons why premium cigars should be exempt from FDA regulation.[2] The Premium Cigar ANPRM specifically asked for a proposed definition of Premium Cigar. The CAA Premium Cigar Comments proposed the following definition of premium cigar, which the Premium Cigar Manufacturers all adopt and endorse:

> … a premium cigar (i) is wrapped in whole leaf tobacco; (ii) contains a 100% leaf tobacco binder; (iii) is made by manually combining the wrapper, filler, and binder; (iv) has no filter, tip, or non-tobacco mouthpiece and is capped by hand; and (v) weighs more than 6 pounds per 1000 units.[3]

b. FDA's History with Premium Cigars

i. Proposed and Final Deeming Rule

Since FDA first considered cigar regulation, it has recognized that premium cigars are unique, with construction, usage patterns, and potential health effects much different from any other tobacco product. The agency also understands that premium cigars are but a very small

[2] Regulation of Premium Cigars, 83 Fed. Reg. 12,901 (proposed Mar. 26, 2018) (to be codified at 21 C.F.R. pt. 1100, 1140, 1143) [hereinafter Premium Cigar ANPRM]. CAA's comments on the Premium Cigar ANPRM are incorporated by reference and attached as Exhibit 1 [hereinafter CAA Premium Cigar Comments].

[3] Whenever the term "premium cigar" is used through this Comment, the Premium Cigar Manufacturers use this definition in reference to that term.

fraction of the overall tobacco space. These are, perhaps, among the reasons FDA has continually vacillated on the appropriate regulatory status of premium cigars.

First, in the Proposed Deeming Rule, FDA proposed "Option 1," which did not distinguish among various types of cigars, and "Option 2," which would have exempted premium cigars from regulation.[4] FDA proposed to define a "premium" cigar as one that:

> (1) Is wrapped in whole tobacco leaf; (2) contains a 100 percent leaf tobacco binder; (3) contains primarily long filler tobacco; (4) is made by combining manually the wrapper, filler, and binder; (5) has no filter, tip, or non-tobacco mouthpiece and is capped by hand; (6) has a retail price (after any discounts or coupons) of no less than $10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment); (7) does not have a characterizing flavor other than tobacco; and (8) weighs more than 6 pounds per 1000 units.[5]

FDA explained it was considering Option 2 because:

> …it has been suggested that different kinds of cigars (e.g., small cigars, cigarillos, large cigars, premium cigars) may have the potential for varying effects on public health, if there are differences in their effects on youth initiation, the frequency of their use by youth and young adults, and other factors. In addition, the proportion of cigar smokers showing clear signs of dependence remains unknown, and usage patterns indicate that cigar only use beginning in adulthood is less likely to produce addiction than the use of cigarettes.[6]

The Premium Cigar Manufacturers all submitted comments, whether independently or through CAA, outlining the legal, factual, and scientific reasons why FDA should adopt

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[4] Deeming Tobacco Products to be Subject to the Food, Drug and Cosmetic Act, as Amended by the Family Smoking and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 79 Fed. Reg. 23,141, 23,150 (proposed April 25, 2014) [hereinafter Proposed Deeming Rule].

[5] *Id.*

[6] *Id.*

proposed Option 2 (with a slightly revised definition).[7] Among other concerns, those comments outlined problems with the Substantial Equivalence ("SE") process as a premarket pathway for premium cigars.[8]

FDA rejected the comments of these and other manufacturers and trade associations, as well as retailers and consumers, and instead chose Option 1 – to regulate all cigars under the Final Rule.[9] FDA stated:

> After thorough review of the comments and the scientific evidence, FDA has concluded that deeming all cigars, rather than a subset, more completely protects the public health and therefore has adopted Option 1 in the final rule. FDA has concluded that: (1) All cigars pose serious negative health risks, (2) the available evidence does not provide a basis for FDA to conclude that the patterns of premium cigar use sufficiently reduce the health risks to warrant exclusion, and (3) premium cigars are used by youth and young adults. The fact that some premium cigar smokers might smoke such products infrequently or report that they do not inhale does not negate the adverse health effects of tobacco smoke or demonstrate that cigars do not cause secondhand smoke-related disease in others.[10]

The data at the time belied these conclusions; however, the body of data submitted to FDA since, including research performed or sponsored by FDA itself, demonstrates unequivocally that

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[7] *See* CAA comments on Proposed Rule https://www.regulations.gov/document?D=FDA-2014-N-0189-76530; AUSA PCD comments on Proposed Rule https://www.regulations.gov/document?D=FDA-2014-N-0189-76595 ; Davidoff USA comments on Proposed Rule https://www.regulations.gov/document?D=FDA-2014-N-0189-75922 ; General Cigar Company comments on Proposed Rule https://www.regulations.gov/document?D=FDA-2014-N-0189-76755 ; CLE Cigars comments on the Proposed Rule https://www.regulations.gov/document?D=FDA-2014-N-0189-81752

[8] The SE process, as currently proposed by FDA and as explained further throughout this comment, would, if applied to premium cigars, do little to benefit public health, but would come at enormous cost to industry, including countless small businesses.

[9] Deeming Tobacco Products To Be Subject to the Federal Food, Drug and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28,974 (May 10, 2016) (to be codified at 21 C.F.R. pt. 1100, 1140, 1143) [hereinafter Final Rule].

[10] *Id.* at 29,020.

regulating premium cigars in the same manner as other tobacco products is not based on sound science, and will impose enormous costs on industry without a discernable public health benefit.

ii. *FDA's Scientific Research on Premium Cigars Since the Final Rule*

Since promulgation of the Final Rule, FDA itself has undertaken scientific research on different categories of cigars. For a variety of reasons, including different usage patterns, premium cigars present much lower health risks than other products. Indeed, FDA's own research shows that (i) youth do not use premium cigars; (ii) adult premium cigar users represent less than 1% of the population; (iii) and the vast majority (over 95%) of premium cigar smokers face no increased health risk as compared to non-smokers.[11]

Two pieces of research are of particular importance. The first examined PATH[12] data regarding cigar use. The PATH study stratifies cigar use separately for filtered cigars, cigarillos, and "traditional cigars." Participants were asked about the categories of cigars, certain brands of cigars, and also to identify brands they smoke. These brands are recorded in the datasets available to researchers. "Traditional cigars" were defined as "…tightly rolled tobacco that is wrapped in a tobacco leaf. Some common brands of cigars include Macanudo, Romeo y Julieta, and Arturo Fuente, but there are many others."[13] Corey, et al. (2017) ("Corey et al.") specifically

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[11] *See infra* notes 26, 32-46.

[12] The Population Assessment of Tobacco and Health (PATH) study is a national longitudinal study of tobacco use and how it affects the health of people in the United States. People from all over the country take part in this study. In October 2011, the National Institutes of Health (NIH) and the U.S. Food and Drug Administration (FDA) announced a new study called the Population Assessment of Tobacco and Health (PATH) study. The PATH study was one of the first projects that NIH and FDA have worked on together since Congress gave FDA authority to regulate tobacco products. The study will look at tobacco use and how it affects the health of Americans. About 49,000 people ages 12 years and older are participating in the PATH study. Some of them use tobacco; others do not. Interviewers meet with each person once a year or every other year. Each year the study will invite some participants to take part in additional study activities. *See* https://pathstudyinfo.nih.gov/UI/HomeMobile.aspx

[13] Kasza, K. et al., *Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014*, 276 N. Eng J. Med. 376:342-353 (Jan. 26, 2017) available at

examined the cigar data available in Wave 1 of the PATH study, examined all of the data available relating to "traditional" cigars, and segregated brands in that category into "premium" and "non-premium" cigars. The result was an FDA research paper on cigar use patterns, including premium cigar use patterns, based on FDA's PATH data.[14]

In the adult population, Corey et al. found that the overall prevalence of premium cigar use was 0.7% and that the median age of first use of a premium cigar was 24.5 years old.[15] Additionally, Corey et al. confirmed what industry has long known -- that "…cigar smoking patterns and tobacco use behaviors varied by cigar type . . . ."[16] Finally, Corey et al. reported that the median consumer of premium cigars in Wave 1 of PATH smoked 1.7 days per month, dramatically less than consumers of other combustible products.[17]

In the second, Kasza et al. (2017) ("Kasza et al.") reported on the categories exactly as listed in the PATH study, rather than doing a stratification of the traditional cigar group into "premium" and "non-premium" categories. Only 0.7% of youth reported using "traditional cigars" in the past 30 days.[18] Finally, the results show that for "traditional cigars," (which

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https://www.nejm.org/doi/10.1056/NEJMsa1607538?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dwww.ncbi.nlm.nih.gov.

[14] Corey C, et al. *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*; Nicotine and Tob. Res. (Nov. 15, 2018) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Kasza, K. et al., *supra* note 13, at Table S18.

encompasses some non-premium cigars as well as premium cigars) there was so little data on "current use" of these products by youth that it could not be reliably measured.[19]

FDA's own data and research confirm that premium cigars are not being used by youth and that the average premium cigar consumer is older and uses the product infrequently.

iii. ANPRM on Regulation of Premium Cigars

On July 28, 2017, then FDA Commissioner Gottlieb announced that FDA was undertaking a new Comprehensive Approach to Nicotine and Tobacco.[20] In that announcement, the agency took three actions relevant to these comments. The first was:

> Among other things, we will advance rules that will lay out … whether and how we would exempt premium cigars from regulation…. I'm also asking the Tobacco Center leadership to explore a process by which it could ask for new information related to the patterns of use and resulting public health impacts from so-called premium cigars. The final deeming rule covers all cigars. But I want the Center to consider opportunities it could provide to interested parties to develop and submit new information or data on this issue. This will take the form of a new Advance Notice of Proposed Rulemaking, to develop a new administrative record to explore these questions. We will explore any new and different questions raised, and seriously consider any additional data submitted relevant to the appropriate regulatory status of premium cigars.[21]

Second was: "…we will advance rules that will lay out what needs to be in applications for Substantial Equivalence . . . ."[22] Third was that FDA would reconsider the compliance deadlines for premarket review and the so-called "sunset policy" so "that existing products under review

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[19] Kasza, K. et al., *supra* note 13, at Table S4.

[20] Scott Gottlieb, M.D., Comm'r, U.S. Food & Drug Admin., *Remarks on Protecting American Families: Comprehensive Approach to Nicotine and Tobacco* (July 27, 2017) available at https://www.fda.gov/news-events/speeches-fda-officials/protecting-american-families-comprehensive-approach-nicotine-and-tobacco-06282017

[21] *Id.*

[22] *Id.*

remain on the market" as opposed to "[t]he current policy [that] could have forced existing products off the market."[23]

On March 26, 2018, FDA published the ANPRM on the Regulation of Premium Cigars. FDA stated:

> [T]he regulatory considerations with respect to premium cigars, their use, and related public health issues continue to be of significant interest to some stakeholders, as well as a topic of ongoing and emerging research. Given the ongoing interest from many parties and sectors, such as industry and Members of Congress, in the regulatory status of premium cigars, FDA is issuing this ANPRM to request relevant new and different information, data, and analysis not submitted in response to FDA's proposed determining rule [] that could inform FDA's regulation of premium cigars. . . .[24]

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[23] *Id.* In addition, after reviewing the Final Rule, the Premium Cigar Manufacturers, as well as CAA and others in the industry, sued FDA over many provisions of the Final Rule including the selection of Option 1 and the SE Pathway for cigars. (Complaint, *Cigar Association of America, Inc. et al. v. U.S. Food and Drug Admin. et al.*, (D.D.C. July 15, 2016) (No. 16-cv-1460 (APM)), ECF No. 1; Motion for Summary Judgment by Cigar Association of America, et al., *Cigar Association of America, Inc. et al. v. U.S. Food and Drug Admin. et al.*, (D.D.C. Feb. 13, 2017) (No. 16-cv-1460 (APM)), ECF No. 22.) Plaintiffs filed their Complaint in July 2016, and filed a first motion for summary judgment in February 2017. Due to the change in administration, FDA asked for extensions to respond to plaintiffs' motion and correspondingly extended compliance deadlines. (Motion for Extension of Time to File Response/Reply, *Cigar Association of America, Inc. et al. v. U.S. Food and Drug Admin. et al.*, (D.D.C. Mar. 17, 2017) (No. 16-cv-1460 (APM)), ECF No. 26; Joint Motion to Amend/Correct Scheduling Order, *Cigar Association of America, Inc. et al. v. U.S. Food and Drug Admin. et al.*, (D.D.C. May 1, 2017) (No. 16-cv-1460 (APM)), ECF No. 34; Order granting parties' Joint Motion to amend Scheduling Order, *Cigar Association of America, Inc. et al. v. U.S. Food and Drug Admin. et al.*, (D.D.C. May 2, 2017) (No. 16-cv-1460 (APM)), ECF No. 35; *see* U.S. FOOD & DRUG ADMIN., Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule, Guidance for Industry (May 2017), U.S. FOOD & DRUG ADMIN., Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule, Guidance for Industry (August 2017)). In light of FDA's July 2017 announcement and August 2017 Guidance, the parties agreed to defer action on the parts of Plaintiffs' Complaint relating to the regulation of premium cigars and the SE process. To date, those claims have not been litigated. The parties have agreed to stay those claims pending further FDA actions on policies relating to these issues.

In a case brought by certain public health groups, Judge Grimm of the District of Maryland vacated the August 2017 Guidance extending the premarket review deadline for newly deemed products. Judge Grimm issued an order requiring that all "new products" submit premarket review reports or applications within 10 months of his July 12, 2019 Order. (*American Academy of Pediatrics, et al. v. U.S. Food and Drug Admin., et al.*, (D.D.C. June 12, 2019) (18-cv-883 (PWG)), ECF No. 127). On July 2, 2019, CAA and the other trade associations filed a motion to amend the complaint, and a motion for partial summary judgement in the cigar industry litigation to seek a declaration from Judge Mehta that the August 2021 date for the filing of SE Reports is still in effect for cigars. (*Cigar Association of America, et al. v. U.S. Food and Drug Admin., et al.* (D.D.C. July 2, 2019) (No. 16-cv-1460 (APM)), ECF No. 135, 136.) The briefing on those motions is ongoing at the filing of this comment.

[24] Premium Cigar ANPRM, *supra* note 2, at 12,902.

It requested comments, data and information on (i) a definition of premium cigar; (ii) use patterns of premium cigars; and (iii) the public health considerations with premium cigars.[25] As noted above, CAA submitted extensive comments, accompanied by three expert reports, on usage patterns and public health consequences of premium cigars. These expert reports, as well as the independent research done by FDA, demonstrate unequivocally that the usage patterns of premium cigars are such that there are few to no adverse health consequences resulting from their use.[26] FDA received exactly what it requested – "…comments, evidence, information, data, and analysis that were not submitted in response to the proposed deeming rule…" in relation to premium cigars.[27] This evidence, along with the work done subsequently, contradicts every basis FDA relied upon in rejecting Option 2, and demonstrates clearly that due to absence

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[25] *See* Premium Cigar ANPRM, *supra* note 2.

[26] *See* Exhibit 1, Exs. A, B, and C. Since that work was done an additional independent scientific expert, Professor Brad Rodu, has reviewed the relevant literature and data available on premium cigars and has testified in a Congressional Hearing that

> The following facts are indisputable with respect to cigars: (1) the prevalence of cigar use in the U.S. is extremely small, especially for premium cigars; (2) these products, especially premium category, are used infrequently and in small numbers; (3) they are puffed, rather than inhaled. The agency's unsupported position has led to needlessly subjecting cigar and pipe smokers, and the manufacturers of those products, to the same onerous and burdensome regulatory regime as much more hazardous cigarettes. Low prevalence, infrequent use and reduced exposure translates into minimal harm at the population level. Epidemiologic analysis from FDA staff indicate that **consumption of up to two cigars per day, while not completely safe, is neither associated with significantly increased risks for death from all causes, nor smoking-related cancers.**

Keeping Small, Premium Cigar Businesses Rolling, 116th Cong. (Apr. 5, 2019) (statement of Brad Rodu, DDS professor, Dept. of Medicine Endowed Chair Endowed Chair, Tobacco Harm Reduction Research School of Medicine University of Louisville) (emphasis in original) [hereinafter Rodu Testimony]. Prof. Rodu's testimony is attached as Exhibit 2.

[27] Premium Cigar ANPRM, *supra* note 2, at 12,902.

of youth usage or discernible public health impact premium cigars should be exempt from regulation under the TCA, and therefore not be subject to premarket review.

IV. The Proposed SE Rule Cannot Work for Premium Cigars

The Proposed SE Rule is based on FDA's experience with cigarettes, smokeless tobacco and roll-your-own tobacco. Those products, which are all manufactured using highly mechanized processes and are consumed differently, bear no relation to the construction or usage patterns of premium cigars. Therefore, with respect to premium cigars, the Proposed SE Rule clearly violates the TCA.[28]

The TCA grants FDA "flexible enforcement authority" and intends for FDA to regulate each tobacco product differently, in order to address the unique questions of public health raised by different classes and types of tobacco products.[29] The Proposed SE Rule entirely ignores this principle, and certainly ignores the established science regarding premium cigars (as well as the intent of the TCA and FDA's public health mission). The Proposed SE Rule does not distinguish between the information necessary for cigarettes, as opposed to cigars, and fails to recognize that premium cigars do not raise questions of public health as other tobacco products might.[30] Premium cigars are unique among all tobacco products in that they have the widest scope of variability in terms of size, shape, tobaccos used and subtle distinctions inherent in a handmade

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[28] Family Smoking Prevention and Tobacco Control Act (2009) [hereinafter Tobacco Control Act or TCA].

[29] *See* Tobacco Control Act § 3(4). *See also e,g*. Tobacco Control Act §§ 906, 907, 909, 102.

[30] The Premium Cigar Manufacturers note there is but one reference to "premium" in the Proposed SE Rule: "The applicant would be required to include any additional properties needed to uniquely identify the tobacco product, if applicable (*e.g*. use of product descriptors such as "premium" would be required to be identified.)" Proposed SE Rule, *supra* note 1, at 12,755. It is not clear whether the Proposed SE Rule contemplates a different SE pathway for products designated as "premium," but this distinction does not appear anywhere else in the Proposed SE Rule.

process, while at the same time having the most limited patterns of use and potential health impacts.[31] The strain on Agency and industry resources to have premium cigars undergo premarket review is not warranted based on these indisputable differences, and also based on the scientific and economic considerations that differentiate this category.[32]

a. Premium Cigars Do Not Raise Questions of Public Health Similar to Other Tobacco Products

The extensive comments on the Premium Cigar ANPRM filed by CAA outlined in detail the usage patterns of premium cigar users. Among other things, the comments demonstrated: (i) youth do not use premium cigars; (ii) the population using premium cigars is older adults; and (iii) this population uses premium cigars infrequently.[33] The Premium Cigar Manufacturers refer FDA to those comments for a full analysis of the data, but present a few particularly relevant facts below.

- Across all three waves of the PATH study prevalence of usage of any premium cigar (including those that could be considered "flavored") among ages 12-14 was 0.00%.[34]
- Youth usage of premium cigars (including those that could be considered "flavored") continued to drop across waves of the PATH study from 0.08% to 0.04% to 0.02% in Wave 3.[35]

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[31] Further, as will be discussed below in in Section V, while there is great variety in the premium cigar market, many of these products have extremely low production volumes and would therefore be needlessly driven off the market by the unjustifiable economic burden of the Proposed SE Rule.

[32] CAA submitted a report of Econsult Solutions that analyzed sales of premium cigars carried by the largest internet retailers. This work showed that in 2017 there were 51,000 premium cigar SKUs, due to the huge variety of premium cigars. Exhibit 1, Ex. B. at 8, Table 3. There are thousands of additional SKUs not carried by these five retailers.

[33] The expert reports attached to the CAA Premium Cigar Comments relied on both the restricted and unrestricted use files from the first three Waves of the PATH Study.

[34] Exhibit 1, Ex. A. at Table 1.

[35] *Id.*

- Median age of first use of premium cigars (including those that could be considered "flavored") is age 30.[36]

- The median age of premium cigar purchasers through internet retailers for all premium cigars is 57 years old, and for "flavored" premium cigars is 53 years old.[37]

- Approximately 96.1% of premium cigar users (including those that could be considered "flavored") smoke premium cigars less than daily.[38]

- Median monthly use of premium cigars (including those that could be considered "flavored") was 1.3 days in Wave 3 of the PATH study.[39]

The data is unequivocal – premium cigars are not used by youth, and usage patterns for adult cigar smokers are very different from those of other tobacco products. Further, two experts reviewed the available scientific literature and data on this subject and independently came to the same conclusion – use of premium cigars does not increase health risks. Dr. Geoffrey Kabat, a renowned epidemiologist, determined that "…there is no association between non-daily premium cigar smoking -- which applies to the overwhelming majority of premium cigar smokers – and increased health risks compared to non-smokers."[40] Similarly, Dr. Brad Rodu, a noted tobacco harm reduction researcher, relying heavily on research sponsored or conducted by FDA, found:

> The following facts are indisputable with respect to cigars: (1) the prevalence of cigar use in the U.S. is extremely small, especially for premium cigars; (2) these products, especially premium category, are used infrequently and in small numbers; (3) they are puffed, rather than inhaled. The agency's unsupported position [regulating premium cigars] has led to needlessly subjecting cigar and pipe smokers, and the manufacturers of those products, to

[36] Exhibit 1, Ex. A. at Table 5c.

[37] Exhibit 1, Ex. B. at 9.

[38] Exhibit 1, Ex. A. at Table 4c.

[39] *Id.*

[40] Exhibit 1, Ex. C. at 7.

> the same onerous and burdensome regulatory regime as much more hazardous cigarettes. **Low prevalence, infrequent use and reduced exposure translates into minimal harm at the population level.** Epidemiologic analysis from FDA staff indicate that consumption of up to two cigars per day, while not completely safe, is neither associated with significantly increased risks for death from all causes, nor smoking-related cancers.[41]

Research published by FDA, or supported by FDA, confirms this. As discussed above in Section III.b, premium cigars are used infrequently by adults. Further, CTP researchers published a paper showing that non-daily users of cigars – which includes 96.1% of premium cigar smokers – have no statistically significant increase in mortality compared to non-smokers.[42] Christensen et al. examined results from the National Longitudinal Mortality Study, a longitudinal population-based, nationally representative health survey, with mortality follow-up with other information from the Current Population Survey and Tobacco Use Supplement, and mortality data from the National Death Index. The participants provided tobacco use information at baseline, in surveys beginning in 1985 and were followed for mortality through 2011. Tobacco use was categorized as "cigarettes," "any cigar," or "pipe tobacco." Responses were analyzed for exclusive use of each product. Even without stratifying by type of cigar, there was no statistically significant increase in mortality for non-daily cigar smokers compared to non-smokers.[43]

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[41] Exhibit 2, Rodu Testimony, *supra* note 26, at 5-6 (emphasis added).

[42] Christensen C. et al., *Association of Cigarette, Cigar, and Pipe Use with Mortality Risk in the US Population*, 178 JAMA Internal Medicine 14, 469-76, E-6 at table 3 (Apr. 2018) available at https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2672576.

[43] *Id.*

Finally, an FDA-funded study authored by CTP employees examined biomarkers of adult cigar smokers in Wave 1 of the PATH study.[44] This study found that "[d]ifferences in use patterns across different types of established cigar smokers … were observed … [and] traditional cigar smokers were less likely to be every day smokers of the product…."[45] In examining the biomarker data, the researchers found that exclusive "some day" traditional cigar smokers had biomarkers of exposure to certain HPHCs more similar to never tobacco users than any of the other studied types of tobacco users (exclusive cigarillo user, exclusive filtered cigar smoker, and exclusive cigarette smoker).[46] In this analysis "some day" smokers were those who had smoked a cigar or cigarette in the past 30 days, but were not everyday smokers. This study again demonstrates that use of premium cigars (included in the broader category of "traditional cigars"), due to their unique usage patterns, do not raise questions of public health.

The Proposed SE Rule should not be applied to premium cigars as they do not raise questions of public health similar to other tobacco products.

b. Characterization and Design Parameters

i. Basic design parameters

FDA suggests that, in order to "characterize" a "leaf wrapped cigar," the "wrapper material" must be defined.[47] For premium cigars, however, the "wrapper material" is part of the definition. In order to be a "premium cigar" the cigar must be wrapped in "whole leaf tobacco." As

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[44] Chang et al., *Biomarkers of Exposure among U.S. adult Cigar smokers: Population Assessment of Tobacco and Health Study Wave 1* (2013-2014) Caner Epidemiol Biomarkers Prev.; 28(5), 943-953 (May 2019).

[45] *Id.* at 943.

[46] *Id.* at Table 4.

[47] Proposed SE Rule, *supra* note 1, at 12,754.

explained below, it is therefore inappropriate to require the wrapper material as part of FDA's mandatory "product properties information." By definition, a premium cigar is a roll of tobacco wrapped in whole leaf tobacco. It is this simple design that defines premium cigars.[48]

ii. Packaging and Product Quantity are not relevant inquiries in any context, especially for premium cigars

As discussed in depth in the CAA SE Comments, there are legal reasons why both packaging and product quantity changes are not relevant for cigars in general; for premium cigars, these concerns are even more compelling.[49] For one, there is no consistent standard for premium cigars in terms of product quantities or packaging. By comparison, cigarettes are sold in individual packs of either a hard pack or soft pack configuration each containing 20 or 25 cigarettes and/or in a carton containing 10 individual packs. These are generally the only two packaging and product quantities that exist for this product. In contrast, every premium cigar is intended to be sold as a single cigar, regardless of how it is originally packaged by the manufacturer. Tobacconists have been selling cigars this way for decades – having open boxes in a walk-in humidor for customers to select an individual cigar, or to have cigars on trays outside of boxes for customers to view and select a cigar. Premium cigars can be sold in their boxes (which come in a variety of product counts commonly including 10, 16, 20, 22, 24, and 25) and can be sold in countless other combinations.[50] There is no standard product quantity for premium cigars, and there is no basis to require premium cigars to file SE Reports for product

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[48] While premium cigars are sometimes rubbed or otherwise treated, this is done simply and solely for aesthetic or technical purposes, not to change the consumer experience.

[49] *See* CAA Comments on Proposed SE Rule at Section V.e.,VI.a.[hereinafter CAA SE Comments].

[50] *See* Exhibit 1, Ex. B. at 15, Table 11 and 12.

quantity changes when at the most basic level consumers can always choose to buy one or multiple premium cigars at any given time. For premium cigars, "product quantity" is truly a misnomer. Moreover, inasmuch as premium cigars have been available for decades in essentially every count size, both large and small, it seems illogical to suggest that product quantity has any association with premium cigar usage, which has been shown as of Wave 3 of the PATH study to have a median monthly usage rate of 1.3 premium cigars *per month*. It is, therefore, no surprise that FDA itself has "determined that…changes in tobacco product quantity do not cause the new tobacco products to raise different questions of public health."[51]

In addition to the wide variety of package quantities, premium cigars come in a wide variety of packaging options, for example, wooden boxes, acrylic boxes, cardboard boxes, jars, bags, foil packages and cellophane. As outlined in the CAA SE Comments, there are numerous legal reasons why neither packaging nor FDA's self-defined term of "container closure system" should be part of any premarket review.[52] This especially holds true for premium cigars. Certain premium cigars are individually wrapped in food-grade cellophane, simply to preserve freshness

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[51] Memorandum from David B. Portnoy and Joanna C. Randazzo on Product Quantity Changes in Substantial Equivalence Reports for statutorily regulated products (Dec. 7, 2017), available at https://www.fda.gov/media/124674/download. [hereinafter FDA Memo on Product Quantity Change]. Further, even if FDA were to continue to argue that product quantity was in some manner a relevant consideration, recently published work by FDA shows that this is unfounded. ("….we found few associations between package quantity and cigar smoking behaviors.") Persokie A., O'Brien EK, Donaldson EA, et al. *Cigar package quantity and smoking behavior*. BMC Public Health (2019) 19:868 at 6.

[52] *See* CAA SE Comments Section V.e. FDA proposes to define "container closure system" as any packaging materials that are a component or part of a tobacco product. Although the FD&C Act does not define "component" or "part," FDA promulgated definitions for these terms in the Deeming final rule. According to 21 CFR 1100.3, "component or part" means any…assembly of materials intended or reasonably expected: (1) To alter or affect the tobacco product's performance, composition, constituents, or characteristics or (2) to be used with or for the human consumption of a tobacco product. Component or part excludes anything that is an accessory. FDA examples of a container closure system include the blister pack around a dissolvable tablet, the can containing a moist snuff product, and the plastic-wrapped hard pack or soft pack containing cigarettes. Proposed SE Rule, *supra* note 1 at 12,746.

and protect the cigar from damage. In addition, even for those premium cigars not individually wrapped in cellophane, the containers they are placed in -- be it, for instance, an acrylic box, a glass tube or a ceramic jar – are not "container closure systems" as they do not "have the potential to alter or affect the performance, composition, constituents, or other physical characteristics of the product."[53]

iii. Comparative Testing would not produce any meaningful results because premium cigars are all handmade and subject to natural variation

By the Premium Cigar Manufactuer's proposed definition, a premium cigar is "handmade," as it "is made by manually combining the wrapper, filler, and binder . . . ." Premium cigars, therefore, are going to be inherently variable – as no handmade process can produce exact replicas. There will always be the roller who rolls a premium cigar slightly tighter than another, or a cigar with a ring gauge slightly larger than the one next to it in the same box.[54] While all premium cigar manufacturers have quality controls to produce the most uniform product possible, with a handmade process there are simply limits to what can be controlled. Further, for premium cigars, "specifications" generally look and read more like recipe cards than any traditional technical specification document.[55]

The Proposed SE Rule states that FDA requires "comparative design testing" including "test protocols, quantitative acceptance criteria, and test results (including means and variances, data

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[53] Proposed SE Rule, *supra* note 1, at 12,746.

[54] Additionally, most premium cigars makers use "molds" to shape the bunch of tobacco before it is rolled. There is a great variety in these molds across manufacturers.

[55] Natural variance within the composition will require blenders to use different tobaccos to achieve the same flavor. Similar to the process with spirits, master blenders mixing various ages and barrels to get back to the original experience, not the same recipe. The goal of the blender will always be to achieve consistency through working with raw materials that are always variable due to nature.

sets, and a summary of the results)."[56] For premium cigars, none of this mechanized, routine testing is done. Instead, much as the process of making a premium cigar is manual, quality control is also manual. Any quality control generally consists of a manual physical inspection of the cigars to look for imperfections, and checks to determine if widths, lengths and weights are within a given range for the product. All of this is done by hand, and the procedures used (other than general measuring with a ruler) will vary from factory to factory. There is no "testing," or "test protocols," that can be used in this process. It is a manual process that has been performed this way for decades. Any comparative testing is simply meaningless for premium cigars.

Recent work published by CTP, and other researchers, confirms the variability in any testing, both within the cigar category as a whole and the premium cigar category in particular, and between cigars of like brands and sizes. This work did not attempt smoke testing; rather, it examined only product size, dry nicotine content, and tobacco pH (similar to the comparative testing FDA is attempting to mandate in the Proposed SE Rule), and found a "…wide variation in product size and nicotine content within the domestic cigar market."[57] Further, the study found that "…cigar size does not necessarily correlate with nicotine or free nicotine content."[58] Critically, the study found it was not possible to replicate results, noting "…in the two large cigar

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[56] Proposed SE Rule, *supra* note 1, at 12,757.

[57] Koszowski et al., *Nicotine Content and Physical Properties of Large Cigars and Cigarillos in the United States,* Nicotine and Tob. Res. 20(3) 393-398 (Feb. 7, 2018) available at https://www.ncbi.nlm.nih.gov/pubmed/28340022.

[58] *Id.* This is yet another reason why "size" of the cigar should not be a component of the definition of premium cigars.

and cigarillo brands analyzed a second time, there was considerable within-brand variance in nicotine content and concentration between the first and second analyses."[59]

iv. Any premarket review requirements for co-packaged premium cigars are entirely unnecessary

FDA has stated that "[c]o-packaging two or more legally marketed tobacco products, where there are no changes, including no change to the container closure system(s), does not result in a new tobacco product…[however,] co-packaging two or more tobacco products within the same container closure system results in a new tobacco product . . . ."[60] For premium cigars, this is completely illogical and unnecessary. Assuming for the sake of this example, a retailer places five cellophane wrapped cigars into a bag and sells these cigars as "sampler 1." Under FDA's analysis, no premarket review is needed. If, however, the retailer places three cellophane wrapped premium cigars and two premium cigars that are not wrapped in cellophane into a bag, this product would require premarket review.

There is no basis for FDA to require premarket review for co-packaged, finished tobacco products under the TCA. There has been no "modification" to the "physical elements" of the product. Further, for premium cigars, based on the usage patterns, and consequentially low health risk, there is no possible public health justification for pre-market review of co-packaged premium cigars.[61]

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[59] *Id.*

[60] Proposed SE Rule, *supra* note 1, at 12,744.

[61] Further, as discussed above, FDA has stated there "are not different questions of public health" raised by product quantity changes. *See* FDA Memo re Product Quantity Change, *supra* note 51. Additionally, every premium cigar may be sold individually at retail, making the idea of "co-packaged" premium cigars illogical.

c. Premium Cigar Tobacco

Premium cigars are made almost exclusively of "dark, air-cured tobacco." CTP researchers who have studied "large cigars" stated that "…our data suggest there is wide variability in nicotine content and some physical properties in the domestic cigar market."[62] These same researchers stated their study "…reveals some of the challenges to experimental cigar research . . . ."[63] Premium cigars are constructed almost exclusively of tobacco, an agricultural product. Just as no two bottles of wine are identical, no matter where the grapes are grown, or in what year they are grown, neither can two premium cigars be identical. The quality of tobacco, and its chemical properties, are highly dependent on things such as rainfall, sun exposure, ambient temperature, and the availability of nutrients in the soil.[64] All of these things will be pre-determined at the time of harvest of the leaf. For instance, work has been done to examine premium cigar tobaccos of the exact same leaf (seed, country, area, farmer, texture and color) but from different crop years, and these results show very different levels of chemicals in the leaf itself.[65] Similar variety was shown when the same year of crop was examined and the only difference was the farm that grew the tobacco.[66] This shows that there is significant natural variation in the tobacco leaf itself.

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[62] Koszowski et al., *supra* note 57. The Premium Cigar Manufacturers note that not all of the large cigars used in this study would qualify as "premium cigars", but since some would the study is still useful to see the variability in cigars.

[63] *Id.*

[64] While the vast majority of cigar tobacco is grown internationally, it is worth noting that FDA does not have authority over the "growing, cultivation, or curing of raw tobacco." Tobacco Control Act § 4(b).

[65] Lindegaard, Thomas, Scandinavian Tobacco Group Lane, Ltd., Tobacco Science Research Conference, September 18, 2018.

[66] *Id.*

These are all natural variations due to the agricultural nature of the product. FDA has stated that it will not enforce premarket review provisions against manufacturers for "…tobacco blending changes to address the natural variation of tobacco (*e.g*. tobacco blending changes due to variation in growing conditions) . . . ."[67] As demonstrated above, nearly all blending in premium cigars is done to account for the natural variations in tobacco. The blending, however, is not done based on the chemical content of the leaf, but instead on the taste and flavor profile of the tobaccos in combination with one another. The Premium Cigar Manufacturers seek to maintain a consistent product so a consumer who enjoys a Montecristo No.1 can continue to purchase that cigar year after year and realize the same experience. This is the goal, even if the manufacturer has had to slightly change the blend to try to account for year-over-year differences, which may occur for a variety of reasons.[68]

In addition, FDA has stated that for the listing of ingredients in an SE Report, it wants information on "[t]he type of tobacco, including grade and variety."[69] As noted above, premium cigars are constructed almost entirely of "dark, air-cured tobacco." As most cigar tobacco is grown in foreign countries, using the USDA typing system would generally allow for three "types" of tobacco, which could be useful for classifying different tobacco in cigars – Type 81 (foreign grown cigar wrapper), Type 82 (foreign grown cigar filler) and Type 83 (foreign grown

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[67] Final Rule, *supra* note 9, at 28,996.

[68] As discussed in the CAA SE Comments, the February 15, 2007 grandfather date is unworkable for all cigars, but creates specific challenges for premium cigars. A grandfathered cigar, that blenders have meticulously maintained the consistency of, may have a very different blend profile in 2019 than it did in 2007. Yet, despite what on paper may look like a change, it will be the entirely same cigar, and any differences will be only to account for natural variation.

[69] Proposed SE Rule, *supra* note 1, at 12,763.

cigar binder).[70] While the USDA typing system may be useful for classification, the USDA grading system would not be useful as applied to premium cigar tobacco, as these grades are not uniformly used by premium cigar farmers and manufacturers. Instead, nearly every farmer and manufacturer use their own unique grading system for tobacco. For certain farmers and manufacturers there may not even be a written record of this system, it may just be passed down orally to each new generation. Requiring any grading system for premium cigars will not further any meaningful comparisons between products as there is no standard terminology or methodology used to grade cigar tobacco across the premium cigar industry.

d. HPHCs

The Proposed SE Rule as written requires Harmful and Potentially Harmful Constituent ("HPHC") testing data to be submitted with **all SE Reports**, regardless of product category or type of SE Report.[71] For premium cigars this is unnecessary and unproductive, given the unique nature of cigar tobacco and each handmade premium cigar product. More importantly, at present, smoke testing methodologies for premium cigars do not exist that can yield reliable, reproducible, scientifically valid results for any HPHCs. Finally, and equally important, FDA has not yet stated which HPHCs will be required for reporting on any cigar, let alone a premium cigar.[72]

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[70] 7 C.F.R §30.43 (1991).

[71] Proposed SE Rule, *supra* note 1, at 12,763. The TCA itself does not state anywhere that HPHC testing must be part of any SE Report. *See* Tobacco Control Act §§ 905(j), 910(a)(3).

[72] The Premium Cigar Manufacturers note that FDA has stated that no HPHC testing will be required for any Newly Deemed Product until FDA releases Final Guidance on HPHC testing for these products. *See* U.S. FOOD & DRUG ADMIN., Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule (Revised)*, Guidance for Industry (Mar. 2019), at 12. As of the date of the filing of this comment, Draft Guidance on this issue had not yet been released. Further, if the decision by Judge Grimm referenced in footnote 23 stands,

First, there is no generally recognized and accepted methodology to perform smoke testing on premium cigars. While there is a working group within CORESTA dedicated to trying to understand the many complicating factors inherent in smoke testing for premium cigars,[73] there is no guarantee that any resulting smoke testing methodology will be able to overcome the inherent natural variations and challenges presented by premium cigars.[74] Unlike for cigarettes, where there are two internationally recognized methods that generate reproducible and repeatable smoke testing results both within and between laboratories, there is currently no method where repeatability and reproducibility has been established through collaborative studies of multiple laboratories for premium cigar smoke testing. This ensures that if FDA were to require premium cigars to submit any sort of HPHC testing the results would be inherently variable, not only due to the inherent variation in cigar tobacco and handmade cigar production as detailed above, but also due to the lack of smoke testing methodology.

Second, FDA has not yet established a list of HPHCs to be tested for in any cigar, let alone a premium cigar. Section 904 of the Tobacco Control Act requires a "…listing of all constituents, including smoke constituents as applicable…identified by the Secretary as harmful or potentially harmful to health in each tobacco product . . . ." (emphasis added).[75] FDA has only established

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there is again the possibility that premium cigars may have to submit SE Reports (i) prior to FDA determining whether they are to be exempt from regulation; and (ii) before FDA releases Final Guidance on HPHC reporting.

[73] CORESTA, Project No. 148, "Smoke Collection of Handmade Long Filler Cigars", Cigar Smoking Methods (last visited on July 16, 2019), https://www.coresta.org/study-groups/active-projects

[74] The Premium Cigar Manufacturers are aware that certain independent laboratories state that they have methods to test premium cigars. Any such tests are not internationally recognized, validated methodologies and there is no way to know if they would be reproducible or repeatable in different laboratories.

[75] Tobacco Control Act. Sec. 904(a)(3).

lists for HPHC testing for originally regulated products.[76] Even if there were an established list of HPHCs for cigars, given the handmade nature of the product, and the inherent variability of cigar tobacco, there is a question whether test results, whether smoke testing results or dry leaf test results, would provide any meaningful data for FDA to make a comparison between a new and predicate product.[77]

It is inappropriate to subject any product to a testing requirement for which no guiding structure has been implemented, and for which no generally accepted scientific methodology yet exists. Even if basic methodologies did exist, the application by FDA of a testing requirement intended for cigarettes, which are an incredibly uniform product with an established testing protocol, to premium cigars, is fundamentally flawed given the inherent agricultural and production variations of these products. As a result of agricultural changes due to local growing conditions, the inherent natural variation present in cigar tobacco, and the unique nature of each hand-crafted cigar product, there is an almost infinite number of variables that impact the validity and usefulness of testing any set of HPHC's in premium cigars under any methodology.

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[76] U.S. FOOD & DRUG ADMIN., Draft Guidance for Industry, Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under Section 904(a)(3) of the Federal Food, Drug, and Cosmetic Act (March 2012).

[77] As noted, any test results would most likely show large, inconsistent variations between premium cigars. Therefore, while using HPHC test data as a standard for substantial equivalence for other products may be justified, for premium cigars it could have unintended consequences. For example, in the context of cigarettes, if there is one difference between a predicate and a new product, but the HPHC testing between the two products is substantially equivalent, then the products must be substantially equivalent. With premium cigars however, two "identical" cigars could be tested and yield different results, and yet a new and a predicate cigar could be tested and have similar results – all simply due to the variability in the leaf and the construction. This would undermine FDA's premise for basing SE decisions on HPHC levels. *See* CAA SE Comments at Section VI.c.ii.3. Further, as noted in note 55 above, to maintain a consistent product, master blenders adjust the blends as necessary, this could create products that although intended to replicate a 2007 product, will not be able to do so entirely and will therefore not yield meaningful comparisons through HPHC testing.

e. Stability Testing

The Proposed SE Rule "…would require stability information for smokeless tobacco products and any tobacco product that contains fermented tobacco."[78] All premium cigars contain tobacco that could be considered fermented; however, as discussed below, stability is not an issue for premium cigars. Based on the general curing and fermentation processes for premium cigar tobacco set, stability testing is not relevant or appropriate for premium cigars and should not be required.

Nearly all cigar tobacco is hung post-harvest in a barn or other structure to naturally cure. At the start of the curing process, the tobacco leaves contain a high percentage of water; however, by the end of the curing process the water content is significantly reduced. The process can take from a few weeks to a few months depending on the conditions present both in the structure and the natural environments (e.g. amount of rainfall). Artificial heat may be added, and the windows or doors of the curing structure can be opened and closed as needed to adapt to changes in weather to control temperature and humidity during the curing process.

Additionally, while premium cigar tobacco generally has gone through a "fermentation" process, this process is entirely different from the one FDA is familiar with in the context of moist snuff.[79] "Fermentation," can mean different things, both colloquially and in the tobacco industry. It is not the same for every product, or even every type of tobacco, or every farm or

[78] Proposed SE Rule, *supra* note 1, at 12,764 (emphasis added).

[79] The Premium Cigar Manufacturers note that while FDA proposes stability testing is required for "any tobacco product that contains fermented tobacco" it does not define "fermented" or "fermentation." Proposed SE Rule, *supra* note 1, at 12,764.

producer of cigar tobacco.[80] For cigar tobacco, the term "fermentation" refers generally to the aging, maturing, and preservation processes for cigar leaves. Cigar fermentation is generally accomplished by stacking whole tobacco leaves into bales and stacking the bales together. The pressure of the tobacco itself, along with added moisture, will generate heat that "ferments" the tobacco.

The stacks of tobacco bales are constantly monitored for heat and moisture and, generally, the tobacco bales are rotated within the stacks to ensure equal treatment. The process usually takes a few months with exact timing depending on the farm, type of tobacco, intended use of the tobacco (binder, wrapper, filler) and amount of tobacco in the bales and stacks. Ammonia and CO2 are emitted during this process. This process results in cigar tobacco having lower pH values and lower content of natural sugar than existed at the beginning of the process; however,

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[80] The Premium Cigar Manufacturers have found at least three different definitions of "fermentation" none of which apply to the process used for cigar tobacco:

> (i) Fermentation, chemical process by which molecules such as glucose are broken down anaerobically. More broadly, fermentation is the foaming that occurs during the manufacture of wine and beer, a process at least 10,000 years old. The frothing results from the evolution of carbon dioxide gas, though this was not recognized until the 17th century. French chemist and microbiologist Louis Pasteur in the 19th century used the term fermentation in a narrow sense to describe the changes brought about by yeasts and other microorganisms growing in the absence of air (anaerobically); he also recognized that ethyl alcohol and carbon dioxide are not the only products of fermentation. Encyclopedia Britannica, *Fermentation*, (published Dec. 28, 2017), https://www.britannica.com/science/fermentation;
>
> (ii)1a : a chemical change with effervescence
> b : an enzymatically controlled anaerobic breakdown of an energy-rich compound (such as a carbohydrate to carbon dioxide and alcohol or to an organic acid) broadly : an enzymatically controlled transformation of an organic compound Merriam-Webster, *fermentation* (last visited July 16, 2019), https://www.merriam-webster.com/dictionary/fermentation;
>
> (iii)A chemical change induced in a complex organic compound by the action of an enzyme, whereby the substance is split into simpler compounds.
> 2. In bacteriology, the anaerobic dissimilation of substrates with the production of energy and reduced compounds; the mechanism of fermentation does not involve a respiratory chain or cytochrome, hence oxygen is not the final electron acceptor as it is in oxidation. Medical Dictionary for the Health Professions and Nursing, *fermentation* (2012), https://medical-dictionary.thefreedictionary.com/fermentation.

the chemical changes through this process are small compared to the chemical processes outlined above that occur during the actual growing and maturation of the plant. Further, certain cigar tobaccos (depending on type of cigar, producer of the tobacco, etc.) may then be aged in warehouses or barns for additional time post-fermentation. These fermentation processes have been in place for decades, if not hundreds of years.

Premium cigar tobacco is grown in countless farms all over the world all of which typically use slightly different curing and fermentation processes. FDA has stated that it will require stability testing for fermented tobacco products because

> …the fermentation process can result in different degrees of change in the constituents of the tobacco … and affect the microorganisms in the final product, thereby affecting the stability of the product, which could change the characteristics of the new tobacco product, which may cause the new tobacco product to raise different questions of public health.[81]

FDA misinterprets the TCA with this requirement, and shows a lack of understanding of product differences, especially in relation to premium cigars. Moist smokeless tobacco products contain a use-by date, and therefore shelf life may arguably be a consideration for these products. For premium cigars, however, requiring this testing is wholly inappropriate based on the characteristics of the product. In a high moisture product (such as moist snuff) concerns regarding shelf-life and micro-organisms may be applicable, again only depending on the nature of the change to the product; however, in a low-moisture product these concerns are not valid. Premium cigars, and cigar tobaccos, can be held in stable form for an extended period of time (e.g. many years) without risk of damage or change to the leaf. Further, there has been no

[81] Proposed SE Rule, *supra* note 1.

indication that the fermentation process used for cigar tobaccos leads to any nitrite or nitrosamine formation. With premium cigars, the true concern is the opposite of that with smokeless tobacco: a premium cigar will only become stale if it sits on a shelf too long without any humidification. The tobacco will simply dry out and crumble. There is absolutely no scientific basis to require stability testing for premium cigars.

V. The Proposed SE Rule Will Be an Economic Ban on Much of the Premium Cigar Category

The Preliminary Regulatory Impact Analysis ("PRIA") looks at the entire cigar category as a whole, but does not recognize that application of the Proposed SE Rule to premium cigars would impose an incredible cost on premium cigar manufacturers with very little, if any, benefit to the public health. The Premium Cigar Manufacturers submit the following analysis of the PRIA to demonstrate (i) FDA's flawed reasoning in the PRIA; and (ii) the potential for the Proposed SE Rule to end up as a *de facto* ban on the premium cigar industry because of the onerous costs associated with it.

The PRIA examines the potential economic consequences of the Proposed SE Rule as required by Presidential Executive Orders 12,866 and 13,563, the Regulatory Flexibility Act and the Unfunded Mandates Reform Act of 1995. The provisions of those Executive Orders and Acts most relevant to the Proposed SE Rule require that FDA (i) conduct an assessment of the costs and benefits of the Proposed SE Rule and propose or adopt it only upon a "reasoned determination" that the benefits of the Proposed SE Rule justify its costs, and (ii) minimize any significant economic impact of the Proposed SE Rule on small entities. FDA has failed to meet both requirements with the Proposed SE Rule. FDA states that:

> We believe that this [Proposed SE Rule] is not an economically significant regulatory action as defined by Executive Order 12866….Because we have determined that the compliance costs are less than 0.1 percent of revenues, we propose to certify that the rule would not have a significant economic impact on a substantial number of small entities.[82]

The Premium Cigar Manufacturers disagree with FDA's assessment because complying with the Proposed SE Rule will have a significant impact on numerous small entities.[83] Indeed, FDA has incorrectly speculated for years that premarket review would not be onerous to the cigar industry.[84]

a. <u>FDA's Assumptions Regarding Costs for Each SE Report Are Flawed</u>

FDA states that:

> This [Proposed SE Rule] would impose compliance costs on affected entities to read and understand the rule, establish or revise internal procedures, and fill out a form for SE Reports….The costs range from around $200 to around $800 per affected entity per year, with a primary estimate of around $500 per entity per year.[85]

This is, right from the start, a significant error. As drafted, the Proposed SE Rule does not simply require affected entities to "fill out a form for SE Reports." It also requires comparative

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[82] Content and Format of Substantial Equivalence Reports; Food and Drug Administration Actions on Substantial Equivalence Reports, Preliminary Regulatory Impact Analysis, April 2019 [hereinafter PRIA]; Proposed SE Rule, *supra* note 1, at 12,773.

[83] According to the International Premium Cigar and Pipe Tobacco Retailers Association ("IPCPR") approximately 83% of their membership of retailers (or 2,900 businesses) are single store operations. *See* IPCPR, Comment on Modification to Compliance Policy for Certain Deemed Tobacco Products (Mar. 14, 2019), Dkt, No. 2019- D-0661.

[84] Deeming Tobacco Products To Be Subject to the Federal Food, Drug and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Final Regulatory Impact Analysis, May 2016; ("the costs of undergoing premarket review are expected to be relatively low for cigar products that seek marketing authorization through the substantial equivalence or exemption from substantial equivalence pathways.") *Id.* at 76.

[85] PRIA, *supra* note 82, at 4.

design testing, HPHC testing, and potentially stability testing.[86] Nowhere does the PRIA address the costs of these tests. While cigar manufacturers have only begun to estimate what these costs would be (assuming that an internationally recognized, validated method for them can be finalized), realistic estimates from companies who have done similar testing for cigarettes and smokeless tobacco estimate the testing costs alone to average $80,000 - $100,000 per product. This does not take into account additional costs of gathering information, purchase of scientific literature, analysis of test results, and required additional toxicological work, preparing an environmental assessment, or any consumer perception studies.[87] Some manufacturers estimate that the cost for a SE Report for one product could be between $250,000 and $2,000,000 depending on the testing and type of product.

FDA's statement that the sole requirement is to "fill out a form" becomes even more misleading when looking at FDA's estimates for the amount of hours it will take to prepare an SE Report. FDA estimates a low estimate of 87 hours and high estimate of 300 hours to complete a SE Report.[88] One CAA member company, who has submitted numerous SE Reports for other products, estimates that a SE Report for one product will take approximately 900 hours to prepare, based on the current experience with FDA.[89] A different CAA member company, which has also submitted numerous SE Reports, has estimated this in months instead, estimating

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[86] *See* Proposed SE Rule, *supra* note 1, at 12,757, 12,759, 12763-64.

[87] It is the position of the Premium Cigar Manufacturers that premium cigars should be exempt from FDA regulation. This list of costs is simply illustrating the greater flaws with the Proposed SE Rule as applied to premium cigars.

[88] PRIA, *supra* note 82, at 23.

[89] *See* CAA SE Comments *supra* note 49, at 66.

it can take 15-28 months to prepare a SE Report for one product depending on the scientific testing required.[90] FDA's estimate of 87-300 hours is rebutted by real world experience. This is especially true since FDA's estimate includes a range of 52-80 hours for the environmental assessment alone.

b. FDA's Estimates Regarding the Number of Affected Cigar Entities and Products Are Based on Incorrect Assumptions

Regarding cigars specifically, FDA's estimate of the number of affected products and entities lacks any reasonable method of accounting for the size of the industry. FDA has chosen to rely on the domestic establishment registration and product listing data to estimate the number of cigar products. While certain cigar manufacturers chose to register their establishments and list their products even though the products were manufactured primarily at foreign facilities, not all companies did so.[91] Given the fact that the vast majority of cigars are manufactured overseas, using this list as a baseline for this product category starts from a flawed premise. For premium cigars this analysis is even more flawed. First, many premium cigar manufacturers did not list their foreign manufactured products on FDA's product list. Second, there are hundreds, if not thousands, of premium cigars that will be grandfathered that have not submitted standalone grandfather requests. FDA's product counts for "cigars" are therefore inherently flawed.

FDA estimates there are 52,934 - 61,130 product-package label combinations of cigars at baseline. FDA then assumes a 67% proportion product-package combinations to product package label combinations, and comes to an estimate of 35,289 to 40,753 product-package

[90] *Id.*

[91] FDA admits it does not have this information stating "we do not have enough information to count foreign manufacturers." *Id.*

combinations for cigars.[92] FDA then makes the astounding and unsupported statement, given the 2007 grandfather date, "we assume the majority of cigar products on the market as of the effective date for the Final Deeming Rule would be grandfathered."[93]

In order to determine how many "initial SE Reports" there will be for the cigar category, FDA:

> analyze[d] the relationship between SE Reports for originally regulated products…and the number of grandfathered products established through requests for standalone grandfathered determinations….We use this relationship, in addition to FDA's past experience with SE Reports for originally regulated products and subject matter expertise on cigar manufacturing and the amount of variation in cigar products, and estimate that the number of SE Reports received for cigar products during the initial submission period will be an average of two to five times the number of cigar products that have been established as grandfathered through a standalone grandfather submission.[94]

This analysis led FDA to the assumption that a lower bound estimate would be that two SE Reports would be submitted for each established grandfathered product and an upper bound estimate of five SE Reports per established grandfathered product, for a total of 2,100 - 5,200 initial cigar SE Reports.[95] This estimate is already incorrect. FDA made this estimate based on information as of August 31, 2018 when there were 1,042 established grandfathered cigars. As of May 30, 2019, there are 1,442 established grandfathered cigars.[96] This alone shows the flaws

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[92] *Id.* at 17, Table 4. The Premium Cigar Manufacturers assume for this analysis FDA has included premium cigars in this "cigar" calculation.

[93] *Id.* at 18.

[94] *Id.* at 18.

[95] *Id.*

[96] U.S. FOOD & DRUG ADMIN., Standalone Grandfathered Determinations database, (last visited July 16, 2019) https://www.accessdata.fda.gov/scripts/ctpgnd/ It is worth noting that many of the cigars in the established

in FDA's reasoning on this point. FDA looked to the established grandfather product database. This database, however, does not present a current or accurate picture of the number of grandfathered products. First, submitting a grandfather request outside of an SE Report is a voluntary process. While many cigar companies have chosen to make these submissions, many have not. Additionally, SE Reports for cigars on the market as of August 8, 2016 are not due to be filed until August 8, 2021.[97] Manufacturers may not have yet submitted grandfather requests for their products. Finally, the list may not be accurate as it can take FDA over a year at times to review a grandfather request.

c. The Premium Cigar Market – Large Variety with Low Volume

As was outlined in the CAA Premium Comment there is a huge variety in the premium cigar space – in fact, the largest online retailers report that in 2017, combined amongst these companies there were approximately 51,000 SKUs of premium cigars.[98] In line with the reasons for the great variety of premium cigar products on the market, Corey et al. showed that premium cigar smokers were much less likely to have a "regular tobacco brand" than other cigar smokers and cigarette smokers (49.7% v 77.1% v 93.1%).[99] The Econsult Report further demonstrates this. Econsult found that for premium cigar purchasers who purchased at least twice, 36% of the orders contained only one or two brands, meaning 64% contained three or more brands, and that

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grandfather database are premium cigars. As FDA is still evaluating "whether and how to exempt premium cigars from regulation" this PRIA is further flawed for not discussing this issue and the difference in cigar categories.

[97] *See* footnote 23 above regarding the date for submission of initial SE Reports.

[98] CAA Premium Cigar Comments, Ex. 1, Ex. B at Table 3.

[99] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014,* Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

for more frequent purchasers, only 13% of the orders contained one or two brands, meaning that 87% of the orders contained three brands or more.[100]

This data reflects both the artisanal nature of product category, and the customers desire for diverse product offerings. Unlike cigarettes where smokers are using the product frequently to receive nicotine, premium cigar users smoke premium cigars infrequently, and when they do they seek an "experience." That experience is typically steeped in the nuance of each cigar, and the uniqueness of varying lengths, shapes, ring gauges, and other characteristics that define these truly "specialty" products. Unlike commodity products, the premium cigar consumer seeks out that which is different and rare, and thus limited editions, special editions, single production runs, and small runs of interesting sizes are a hallmark of the industry. This is exemplified by the product portfolio of one large premium cigar manufacturer for whom over half the SKUs sold in 2018 generated less than $25,000 of annual sales per SKU. This typifies the boutique nature of the premium cigar industry. If the Proposed SE Rule was put into effect for premium cigars, this manufacturer would be forced to abandon upwards of 50% of the products it currently manufactures, without any seeming public health benefit.

The product portfolio referenced above is for a sizeable manufacturer. If FDA requires extensive testing and SE Reports for every new premium cigar, it will completely wipe out these smaller selling brands, and would potentially eliminate the entire product portfolio for smaller manufacturers – serving as a de facto ban on the category. As the Econsult report noted, premium cigar users are not brand loyal, and "frequent customers purchase a variety of cigars,

[100] Ex. 1, Ex B, at 15-16, Figure 2.

more so than less frequent customers."[101] In addition, CAA commissioned a report by Policy Navigation Group to examine the overall costs of the Final Rule itself.[102] In this Report, Policy Navigation Group concluded that:

> The premium market, the last row in Table 12, shows a much more significant effect. There are assumed to be 6,000 SKUs in a market with sales of approximately $175 million. On average, average prices must rise by 46 percent to offset the regulatory costs. This sharp price rise saps consumer demand; consumer demand is estimated to fall from $175 million per year to around $22 million per year. With this sharp fall in demand, very few existing firms could remain in business….The market impacts in the premium market are even more severe. Based on the reported elasticities, consumers would almost completely shift away from premium cigars to other cigars or other luxury goods.[103]

As discussed above, FDA's analysis of the number of cigars that could be affected by the Proposed SE Rule is flawed in relation to all cigars, but is especially flawed in relation to premium cigars. Again, however, this pales in comparison to FDA's incorrect assessment of the cost of SE Reports – an estimate that does not contemplate any testing as part of the SE Report. For the Premium Cigar Manufacturers, if these testing provisions were required, the costs would be astronomical. The sheer volume of product variety and offerings would require millions of dollars of testing, and testing that would have little benefit in FDA's mission to protect the public health. FDA's purpose in regulating tobacco products is to *regulate* them, not abolish product categories. In fact, Congress prohibited FDA from banning any category of tobacco products – FDA should not be able to undermine this provision by using its authority over premarket review

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[101] *See* Ex. 1, Ex. B, at 15-16, Figure 2.

[102] *See* Exhibit 3, Report of Policy Navigation Group (originally submitted under Docket 2017-N-5095).

[103] Ex. 3 at 32.

to eliminate a category of products from the market.[104] As has been demonstrated through sound scientific research, premium cigars (i) are not used by youth; (ii) are used by an older adult population; and (iii) are used infrequently by these adults. Based on their usage pattern they have little to no potential health risks. As applied to premium cigars, there is no public health benefit that would justify the extreme costs of the Proposed SE Rule, or that is worth putting countless companies out of business.[105] By insisting on applying the Proposed SE Rule, and regulation more broadly, to premium cigars, FDA is circumventing the provisions of the Tobacco Control Act and imposing an economic ban on premium cigars.

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[104] Tobacco Control Act, sec. 907 (c)(3)(A).

[105] This point was made succinctly by Charles Maresca, of the Office of Small Business Administration, at a field hearing conducted by Sen. Marco Rubio on April 5, 2019. Mr. Maresca noted that:

> Advocacy believes that small businesses dominate the premium cigar industry. There are at least 50 manufacturers of premium cigars across 19 states or more, all small businesses. Indeed, over 20 of those manufacturers are in Florida alone. Additionally, there are over 3,000 retailers of premium cigars located in all 50 states, some of which also roll their own cigars and are considered manufacturers under FDA's Deeming Rule.
>
> According to FDA's own estimates, the Deeming Rule's compliance costs will have significant impacts on small businesses. Specifically, FDA states that some "low-volume cigar" manufacturers may end their domestic operations entirely. Premium cigar manufacturers are the very definition of "low-volume" cigar manufacturers. Their cigars are handmade and labor intensive, manufactured by the hundreds per day as opposed to the thousands an hour for mass-marketed, machine-made cigars.
>
> For a small business cigar manufacturer, FDA estimates compliance costs to be $278,000 to $397,000 in the first year, $292,000 to $411,000 in the second year, and $235,000 to $257,000 in the third year. Although many small businesses have argued that the costs will be much higher than FDA's estimates, the agency's own numbers will prove to be too much for most small businesses to pay to continue to manufacture premium cigars. Included in those costs would be applying for premarket approval or completing an SE Report…. For manufacturers who cannot afford the Deeming Rule's compliance costs and are forced to shutter their factories, there will be thousands of employees who will no longer be employed.

Charles Maresca, Director of Interagency Affairs, Office of Advocacy, U.S. Small Business Administration, *U.S. Senate Committee on Small Business and Entrepreneurship*, April 5, 2019 Testimony: Keeping Small Premium Cigar Businesses Rolling https://advocacy.sba.gov/2019/04/05/april-5-2019-testimony-keeping-small-premium-cigar-businesses-rolling/

VI. Conclusion

For the reasons set forth above, the Proposed SE Rule is wholly inappropriate as applied to premium cigars, and the Premium Cigar Manufacturers request FDA define "premium cigar" as outlined in Section II, and exempt premium cigars from regulation.

Respectfully Submitted,

/s/ Dylan Austin

Dylan Austin, President
Davidoff USA

/s/ Glenn Wolfson

Glenn Wolfson, Chief Executive Officer
Drew Estate

/s/ Regis Broesrma

Regis Broesrma, President
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/s/ Christian Eiroa

Christian Eiroa, President
Tabacalera Unidas

/s/ Nick Perdomo Jr.

Nick Perdomo, Jr., President
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Exhibit 1

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July 25, 2018

Submitted via www.regulations.gov

Division of Dockets Management
HFA-305
Food and Drug Administration
5630 Fishers Lane Rm. 1061
Rockville, MD 20852

Re: Regulation of Premium Cigars Docket No. FDA-2017-N-6107

Dear Sir or Madam:

Cigar Association of America, Inc. ("CAA") is a leading national trade organization representing the interests of cigar manufacturers, importers, distributors, and major suppliers of the industry. CAA was founded in 1937 as a non-profit trade organization. Today, its 44 member companies come from all sectors of the industry, from major manufacturers of handmade premium cigars to producers of machine-made cigars. CAA members manufacture a significant share of the large, premium, little, and filtered cigars sold in the United States. Its members also include internet retailers of cigars, as well as leaf, and other suppliers to the cigar industry. CAA is a key stakeholder in the implementation of any regulation of cigars, as these regulations significantly affect its members' ability to conduct business.

CAA submits the following in response to the request by the Food and Drug Administration ("FDA") for Comment on the Advanced Notice of Proposed Rulemaking ("ANPRM") entitled "Regulation of Premium Cigars."[1]

[1] Regulation of Premium Cigars, 83 Fed. Reg. 12,901 (Mar. 26, 2018) ("Premium Cigar ANPRM").

I. Introduction

On July 28, 2017, FDA Commissioner Dr. Scott Gottlieb announced that, as part of the "new comprehensive plan for tobacco and nicotine regulation," FDA would examine "whether and how we would exempt premium cigars from regulation."[2] Dr. Gottlieb stated:

> I'm also asking the Tobacco Center leadership to explore a process by which it could ask for new information related to the patterns of use and resulting public health impacts from so-called premium cigars. The final deeming rule covers all cigars. But I want the Center to consider opportunities it could provide to interested parties to develop and submit new information or data on this issue. This will take the form of a new Advance Notice of Proposed Rulemaking, to develop a new administrative record to explore these questions. **We will explore any new and different questions raised, and seriously consider any additional data submitted relevant to the appropriate regulatory status of premium cigars** (emphasis added).[3]

The Premium Cigar ANPRM, released on March 26, 2018, seeks "comments, data, research results, or other information that may inform regulatory actions FDA might take with respect to premium cigars."[4] Specifically, FDA has asked for comments in three broad areas: (i) the definition of premium cigars; (ii) use patterns of premium cigars; and (iii) public health considerations associated with premium cigars.

CAA has structured its Comment to the ANPRM in the following seven sections: (i) executive summary; (ii) background of the premium cigar industry; (iii) definition of "premium cigar"; (iv) use patterns of premium cigars; (v) public health considerations associated with premium cigars; (vi) why the existing regulations are fundamentally flawed as applied to premium cigars; and (vii) why premium cigars should be exempt from regulation.

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[2] Dr. Scott Gottlieb, *Protecting Families: Comprehensive Approach to Nicotine and Tobacco*, U.S. FOOD & DRUG ADMINISTRATION (July 28, 2017), https://www.fda.gov/NewsEvents/Speeches/ucm569024.htm.

[3] *Id.*

[4] 83 Fed. Reg. at 12,901.

This Comment is supported by three expert reports that analyze and discuss scientific and demographic issues confirming these indisputable conclusions. First, NERA Economic Consulting's report, *Consumption Patterns of Premium Cigars,* reviewed and analyzed cigar smoking data contained in all three currently released Waves of the PATH Study (cited in the ANPRM).[5] Second, Econsult Solutions's report, *Purchasing Patterns and Demographics of Online Premium Cigar Customers,* analyzed over 12 million orders from over 2.3 million customers who purchased premium cigars from five leading internet/catalogue retailers, whose sales comprise a significant portion of the premium cigars category, during the 2014-2018 time period. [6] Third, Dr. Geoffrey Kabat, a noted epidemiologist, analyzed recently-published scientific literature relating to cigar smoking and health.[7] These expert reports provide the type of "evidence, information, data, and analysis" requested in the ANPRM.[8]

II. Executive Summary

Dr. Gottlieb's request, and the resulting ANPRM, seek new information to support a conclusion that premium cigars (as ultimately defined) should not be subject to the same regulatory treatment as other tobacco products, including non-premium cigars. To properly evaluate such new information, which establishes conclusively that premium cigars should not be subject to regulatory treatment, it is important to first go back to the stated reasoning upon which FDA initially concluded that premium cigars should be so regulated.

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[5] Exhibit A, Report of NERA Economic Consulting Group analyzing Waves I, II and III of the PATH data relating to Premium Cigar Use (hereinafter the "NERA Report").

[6] Exhibit B, Report of Econsult Solutions, Inc. (hereinafter the "Econsult Report"). This report was created using premium cigar purchasing data from 800-JR Cigar, Inc., Cigars International, Thompson & Co., Famous Smoke Shop and Best Cigar Prices.

[7] Exhibit C, Report of Dr. Geoffrey Kabat (hereinafter the "Kabat Report").

[8] See attached Appendix A for a chart summarizing the areas of concentration of each expert report.

In support of its determination not to exempt premium cigars from the Final Rule, FDA "concluded that deeming all cigars, rather than a subset, more completely protects the public health."[9] FDA specifically based this conclusion on the following: "(1) All cigars pose serious negative health risks, (2) the available evidence does not provide a basis for FDA to conclude that the patterns of premium cigar use sufficiently reduce the health risks to warrant exclusion, and (3) premium cigars are used by youth and young adults."[10]

Since FDA reviewed comments submitted in 2014 to the Proposed Deeming Rule, new research data has become available showing overwhelmingly that (1) "premium cigars" (as defined by Center for Tobacco Products ("CTP") researchers) do not pose the same health risks as other tobacco products, including non-premium cigars, (2) patterns of premium cigar use differ substantially from patterns of other tobacco products, including non-premium cigars, in a manner that definitively reduces comparative health risks, and (3) use of premium cigars by youth is virtually non-existent.

The studies and the findings are discussed more fully in this Comment. FDA's current request for comment in connection with its ANPRM is both proper and valuable, as the data made available since consideration of Option 2 in the Proposed Deeming Rule contradicts FDA's conventional beliefs (shown in the summary table below) and as such the fundamental pillars upon which FDA's original conclusions with respect to premium cigars were built.

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[9] Final Rule: Deeming Tobacco Products To Be Subject to the Federal Food, Drug and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81. Fed. Reg. 28,974 at 29,020 (May 10, 2016) ("Final Rule").

[10] *Id.*

FDA Conventional Beliefs	The Facts
Youth Usage Premium cigars are used by youth and young adults.	***Youth usage of premium cigars is virtually non-existent***. • Youth premium cigar prevalence (aged 12-17) decreased from 0.08% in Wave 1 and 0.04% in Wave 2 to 0.02% in Wave 3 (NERA). • Across all three waves prevalence among ages 12-14 was 0.00% (NERA).
Initiation and Progression Premium cigars are a pathway of tobacco initiation for youth.	***Premium cigars are not a pathway of initiation at an early age for use of other tobacco products***. • Median age at first regular use of premium cigars is 24.8 years in Wave 1, 27.6 years in Wave 2, and 30.0 in Wave 3 (NERA). • Progression of premium cigar smokers to everyday cigarette smokers is statistically indistinquishable from non-smokers. (NERA)
Demographics Tobacco products are used by those that are young, less educated, and less economically affluent and evidence does not support that premium cigar users are differently situated.	***Premium cigars are used by those who are older, better educated, and more economically affluent non-minorities (based on Wave 3 NERA data)***. • 67% were 35 years or older (NERA) (and 89% of internet/mail-order retail purchases of premium cigars were made by adults of the same age group (EConsult)). • 52.7% of premium cigar smokers had completed college (NERA). • 44% of premium cigar smokers had a household income of $100,000 or more (NERA).
Usage Patterns and Frequency of Use The available evidence does not provide a basis for FDA to conclude that the patterns of premium cigar use sufficiently reduce the health risks to warrant exclusion.	***Premium cigar smokers are unlikely to also use cigarettes and for those cigarette smokers who use premium cigars they do so no more frequently than non-cigarette smokers.*** • Percentage of premium cigar smokers, of any age, that progress from never smoking cigarettes or smoking cigarettes some days in Wave 1 to everyday cigarette smoking in Wave 3 is about 2.2% (NERA). • Wave 3 premium cigar smokers who are also current cigarette smokers do not smoke more premium cigars than those who are not current cigarette smokers (NERA). ***Patterns of premium cigar use materially reduce health risks in comparison to other tobacco products.*** • Wave 3 prevalence of premium cigar usage is 0.53% (NERA). • Median monthly use of premium cigars in Wave 3 was 1.3 days per month and this compares to 29.4 days per month for cigarette smokers (NERA). • About 96.1% of premium cigar smokers smoke premium cigars less than daily (NERA).
Health Impacts Insufficient evidence that difference in use patterns for premium cigars substantially impact health analysis of premium cigar use.	***Difference in use patterns for premium cigars substantially impacts the health analysis of premium cigar use.*** • Cigar smokers (premium or otherwise) who smoke cigars less than daily (which includes 96.1% of premium cigar smokers) have no statistical difference in mortality rates as compared to non-smokers (Kabat). • Non-daily, exclusive smokers of cigars (of any kind) do not have an increased risk for smoking-related cancers, or an increased risk of death from all causes and certain specific causes (Kabat). • Non-daily premium cigar smokers have no increased health risks compared to non-smokers (Kabat).

The data refutes the premises upon which FDA concluded that premium cigars should be subject to the Deeming Rule, and makes clear that the existing regulations cannot be rationally applied to premium cigars. As the above table demonstrates and is set forth more fully below, it is beyond dispute – scientific, factual, and legal – that premium cigars are a unique product. **Premium cigars are simply different**. Premium cigars are manufactured, marketed, sold, and consumed differently than any other tobacco product and, as a result, do not raise the same questions of public health as any other tobacco product. Furthermore, and as discussed in Section VII, central parts of the current regulatory structure – HPHC Testing, Pre-Market Review, and Health Warnings – are disproportionately burdensome and fundamentally flawed as applied to the premium cigar industry. Therefore, premium cigars should be exempt from FDA regulation.

III. Background of the Premium Cigar Industry

As discussed in detail in this Comment, CAA believes it is important to appreciate that premium cigars are a unique product, particularly with respect to what they are made of, how they are made, and how they are consumed.

The premium cigar industry is a very small, niche industry within the overall cigar industry, and is but a fraction of the broader tobacco industry. It is defined by a hand-crafted, centuries-old product. The entire cigar industry is only about 11% the size of the cigarette industry,[11] and more cigarettes are sold in about two weeks than cigars are sold in a full year. The premium cigar industry

[11] This percentage is based on the user fees paid by each category of products. *See Tobacco Product User Fee Assessment Formulation by Product Class*, U.S. FOOD & DRUG ADMINISTRATION, https://www.fda.gov/tobaccoproducts/guidancecompliianceregulatoryinformation/manufacturing/ucm521052.htm (last visited July 23, 2018).

is roughly 3% (by volume) of the overall cigar industry.[12] These percentages do not account for the declining percentage the cigar category occupies within the broader tobacco industry, now that e-cigarettes have entered the marketplace; percentages that are likely to decrease as the e-cigarette category continues to grow and represent a larger percentage of the tobacco space. One recent study stated that e-cigarette sales increased 16% between 2015 and 2016 ($775 million to $896 million) and 47% between 2016 and 2017 ($896 million to $1318 million).[13] It has been estimated that the e-cigarette industry will continue to grow and, by 2025, reach a total market value of $50 billion.[14] The market share accounted for by cigars in total, as well as the premium cigar industry, will only decline with this rapid increase in sales of e-cigarettes.

Among the many reasons that the premium cigar category is so small is that premium cigars are truly a handmade, artisan product. Unlike the incredibly mechanized, high-speed cigarette manufacturing process, where machines can produce nearly 1,000,000 units an hour, a premium cigar is crafted, by hand, by skilled and highly trained artisans who spend a significant amount of time perfecting their craft. Premium cigar manufacturing is a manual and time-consuming process, with very low volume. In addition, there can be as many as 300 separate manual steps in the production of a premium cigar, and the entire premium cigar manufacturing process – covering the period from when the seeds are planted to when the cigar is packaged and ready to ship to customers

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[12] *Alcohol and Tobacco Tax Bureau, Statistical Report – Tobacco*, Report TTB S 5210-12-2017, DEPARTMENT OF TREASURY (July 20, 2018), https://www.ttb.gov/statistics/2017/201712tobacco.pdf.

[13] Huang J. et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*. Tob. Control, 0: 1-6 (2018) available at https://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382

[14] *See Electronic Cigarettes and E-Vapor Market Research Reports*, BIS RESEARCH REPORT (2016), Abstract Available at https://bisresearch.com/industry-report/electronic-cigarette-market-size-forecast.html.

– can take over a year. Even for the few premium cigars that use a mechanized process, those cigars are generally produced at a rate of less than 25 per minute or 1500 per hour.

Variety of offerings is critically important in the premium cigar category. For this reason, the cigar category has a much greater variety of products than any other segment in the tobacco industry. In fact, the variety of products, as measured by Stock Keeping Units ("SKUs"), is greater for cigars than for other tobacco industry segments. For example, the four leading premium cigar manufacturers currently have over 6,000 active SKUs for their premium cigars. The data collected from the five online retailers shows that each retailer can, at times, have approximately 14,000 SKUs from the overall premium cigar category.[15] This stands in stark contrast to the cigarette industry, where – despite its enormous volume – approximately 100 brands comprise almost the entire category.[16]

Moreover, in contrast to the homogenous nature of cigarettes, the natural variation in cigar tobacco has historically required premium cigar manufacturers to procure tobacco from various regions. Doing so is necessary to maintain consistent products, and to develop new products by blending different types of tobacco, or to create new sizes or shapes of premium cigars. In contrast to other tobacco consumers, the data shows premium cigar smokers frequently try new cigars or cigar styles, and typically have less brand loyalty than consumers of other types of tobacco products.[17] In addition, the same cigar (i.e. Brand Family and Brand) may be offered in as many as ten different sizes (length and ring gauge), as many adult consumers will select a cigar size based on

[15] Ex. B, Econsult Report at 8.

[16] *See, e.g.,* Oregon Brand List, Directory of Cigarette Brands Approved for Stamping and Sale (last updated July 17, 2018) https://www.doj.state.or.us/wp-content/uploads/2017/06/branddirectory.pdf.

[17] *See* Ex. B, Econsult Report at 15-16, Figure 2 (demonstrating that purchasers of premium cigars exhibit little brand loyalty).

the circumstances, occasion, and time available to enjoy it. There are eight generic vitolas (sizes) for premium cigars,[18] but many brands come in vitolas outside of these generic staples. Each premium cigar has a unique length and a unique ring gauge allowing for an infinite variety of cigars, even for those with the exact same blend of tobaccos.

Further, each cigar size may be sold in a box, as a single, or broken down by a wholesaler or retailer into a five pack or ten pack configuration to be sold by retailers. Additionally, premium cigars come in many different shapes. For instance, cigars come in a generic cylindrical shape, box-pressed shape (square), torpedo shape (which possesses graduated thickness throughout the cigar), or even as two or more cigars twisted together into one, just to name a few. While the premium cigar industry actually represents only a tiny fraction of the tobacco industry by sales, as mentioned previously, it may be the largest segment in terms of SKU count (even though all the products are nearly identical).

The variety in the premium cigar market stems from the simplicity of the product. This simplicity allows for nuances in size, shape, and tobacco to make a variety of choices for premium cigar consumers. Premium cigars are generally composed of only three ingredients – tobacco leaves, water and a *de minimis* amount of vegetable-based adhesive. Therefore, all premium cigars are heavily dependent on the natural influence of the agricultural product from which they are made. Premium cigars typically use dark, air-cured tobacco, irrespective of seed type or the country in which the tobacco is grown. The tobaccos that comprise the different parts of a premium cigar – the wrapper, binder, and filler – determine the uniqueness of each "blend" of cigar. In this way, premium

[18] Short Panatela (35-39 ring gauge; 4 ½" - 5 5/8" length); Robusto (50-56 ring gauge; 4 ½"- 5 ½" length); Corona (42-44 ring gauge; 5 1/16" – 5 ¾" length); Toro (48-56 ring gauge; 5 ¾" – 6 ½" length); Belicoso (50-54 ring gauge; 6"- 6 ¼" length); Pyramid (50-52 ring gauge; 6" – 6 1/8" length); Churchill (48-58 ring gauge; 6 5/8" – 8" length); and Gordo (58-80 ring gauge: 5 7/8" – 6" length).

cigars are similar to fine wines – each is a simply made product, yet with numerous offerings, reflecting the subtle variations that exist in agricultural products.

A significant portion of cigars sold in the U.S. are manufactured outside the U.S. and imported for sale, with a far lesser amount manufactured in the U.S. using imported tobacco. Growing and producing cigar tobacco is a lengthy and involved process, the success of which can be affected by a number of factors, including weather and local growing conditions that can result in natural variations in cigar tobacco. These crop and product variations present challenges for cigar manufacturers because they are often required to blend tobaccos to maintain the consistency of a cigar's identity and taste from the prior year. Compared to cigarettes that have over 100 components, cigars have a limited number of components, amplifying the effect of each "natural variation" by making it significant and noticeable to the consumer. As a result, and as FDA has acknowledged in its guidance, blends often change from one year to the next to maintain consistent appearance and taste.[19]

Even with the subtle differences due to different tobaccos, the basic use of natural tobacco leaf as wrapper, binder, and filler has remained consistent over time. Because premium cigars are constructed so simply, a product that was on the market in 1990 is essentially the same as the one on the market in 2007, which from a public health perspective is essentially the same as the one on the market today. Therefore, as set forth below in greater detail, since the essential elements of premium cigars themselves, and the manner in which they are used, are consistent, various premium cigars with the same or very similar physical characteristics are unlikely to raise different questions of public health.

[19] *See* 81 Fed. Reg. at 28,995 ("FDA generally expects that cigars with blending changes (***other than blending changes to address the natural variation of tobacco . . .***) will be able to successfully use the SE pathway. . . .")

IV. Definition of Premium Cigar

The ANPRM requests comments on the "definition of premium cigar" and asks stakeholders to "[e]xplain what you believe to be the particular defining characteristics of premium cigars."[20] CAA first outlines the "defining characteristics" that are appropriate to include in a definition of premium cigar, then addresses other "characteristics" suggested by FDA and details why these should not be part of any definition of premium cigar.

CAA proposes to define a "premium cigar" as a product that (i) is wrapped in whole leaf tobacco; (ii) contains a 100% leaf tobacco binder; (iii) is made by manually combining the wrapper, filler, and binder; (iv) has no filter, tip, or non-tobacco mouthpiece and is capped by hand; and (v) weighs more than 6 pounds per 1000 units.[21] This definition is objective and avoids other possible definitional components that are subjective and not relevant to an evaluation of premium cigars.

A. Retail Price Should Not Be a Component of the Definition

In both the Proposed Deeming Rule[22], and in the Premium Cigar ANPRM, FDA has raised retail price as a possible criteria to consider as part of the definition of premium cigar.[23] While FDA may have suggested this because a hallmark of premium cigars is indeed that they are a higher-priced luxury item, retail price is simply and clearly not a relevant or reliable component to include

[20] 83 Fed. Reg. at 12,903.

[21] Whenever the term "premium cigar" is used through this Comment, CAA uses this definition in reference to that term.

[22] Proposed Rule: Deeming Tobacco Products to be Subject to the Food, Drug and Cosmetic Act, as Amended by the Family Smoking and Tobacco Control Act; Regulations Restricting the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Product Packages and Advertisements. ("Proposed Deeming Rule"), 79 Fed. Reg. 23141 at 23,150 (April 25, 2014); 83 Fed. Reg. at 12,903.

[23] 79 Fed. Reg. at 23,150.

in the definition of premium cigar. Further, the final retail price is always in the hands of the retailer.

There are many reasons why retail price should not be included in the definition of premium cigars.

- First, different retailers within a state apply state taxes differently. Specifically, some include it on the shelf (retail) price, while others add it with sales tax at checkout. The same cigar treated differently by retailers in a single state could end up being regulated differently.

- Second, state tax rates vary greatly from state to state and can result in a tax anywhere from zero to $3.50 per cigar. For this reason, the same cigar in different states could be regulated differently. Further, certain localities now impose taxes on premium cigars. For instance, in New York City, as of June 1, 2018, premium cigars have an additional NYC tax. Therefore, even within the same state, prices can differ simply based on taxes and how they are imposed.

- Third, a single cigar brand may be offered in several different sizes (length and ring gauge), most often seven to ten, with larger ones being more expensive. Premium cigars that use the same combination of wrapper, binder, and filler tobaccos, but differ in length, ring gauge and/or weight (and thus price) should not be regulated differently.

- Fourth, retail price is impacted by geography. The same cigar is more expensive in high cost cities than in low cost cities. The same cigar should not be regulated differently based solely on geography.

- Fifth, retail price is impacted by channel of distribution. The same cigar is often priced very differently when sold by a retail tobacconist than when sold through mail order or e-commerce, which generally have lower overhead costs. The same cigar should not be regulated differently based solely on channel of distribution.

- Sixth, retail price is largely beyond the control of the manufacturers. A cigar intended by the manufacturer to be premium could end up outside the category based on the price set by the retailer. The reverse is true as well.

- Seventh, retail price could be dependent on the manufacturing year. For instance, if there is a drought, the price of tobacco could increase requiring manufacturers to increase price, this ultimately would affect the retail price of the cigars. Additionally, if a certain tobacco is not available for a manufacturer to make more cigars one year, retailers may raise the price of that cigar due to the decreased supply of the cigar. Regulatory decisions should not be made based on retail price, which is not always a stable, set price for any particular cigar year to year.

B. Packaging Quantity and Size Should Not Be a Component of the Definition

Premium cigars are luxury, artisan products, consumed occasionally, generally over a long period of time. They are not a high consumption product, such as cigarettes. Therefore, regardless of how a manufacturer packages the cigar, the intent is that all premium cigars can be sold individually. This way a consumer may choose to purchase just one premium cigar, five of the same cigar, or five different cigars. Nearly all retail tobacconists have walk-in humidors or trays of premium cigars so consumers can choose individual premium cigars. This known fact of cigar purchasing patterns was even referenced in the Final Rule:

> [a]ffording adult consumers the opportunity to handle the product will give them the ability to feel the resistance of the cigar's structure, and allow them to clearly see the color of the product, which is an indication of the fermentation period of the tobacco. It also will allow the users to capture the aroma of the cigar and the box (if the cigar is sold in a package).
>
> ….
>
> The same warning statement requirements will apply to cigars sold individually and not in product packages. However, instead of being required to place warnings directly on these product packages, retailers will be required to post signage at the point of sale….[24]

Premium cigars are sold in boxes of twenty-five, boxes of sixteen, jars of twenty, bundles of ten, packs of five, packs of two, and many other combinations. None of these variations, however, changes the indisputable fact that, ultimately, many premium cigars are both offered and purchased as single cigars.[25] Packaging quantity should not be part of the definition of a premium cigar, as there are no objective benchmarks for how these products are packaged or sold.

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[24] 81. Fed. Reg. 28,974 at 29,026, 29,061.

[25] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res., ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423 (finding that 79% of in person premium cigar purchases were of single cigars).

Further, other than the objective weight criteria of more than six pounds per 1000, size of the cigar should also not be part of the definition of premium cigar. As noted above, there are eight generic vitolas for premium cigars. They are generic for a reason – there are many that differ from this. Using size as part of the definition of premium cigar would place limitations on the category without any showing that different sizes of cigars were likely to raise different questions of public health.

C. Actions Directed Towards Consumers Should Not Be a Component of the Definition

FDA has asked if "action[s] directed to consumers, by a retailer or manufacturer, such as through labeling, advertising, or marketing, which would reasonably be expected to result in consumers believing that the tobacco product is a premium cigar", should be included in the definition of premium cigar.[26] CAA believes they should not. If a cigar meets the definitional requirements outlined above, CAA does not view otherwise permissible labeling, advertising, or marketing actions to be an appropriate or objective benchmark to include in the definition of premium cigar. Additionally, while manufacturers can control all advertising and marketing they create for their products, similar to retail price, they do not control the advertising that individual retailers or distributors may do for their products. It would be inappropriate, therefore, to incorporate into any definition of premium cigar a component that the manufacturers cannot fully control.

Regardless of who creates marketing materials, premium cigar marketing is only directed at adults. As set forth in greater detail below, however, youth usage of premium cigars is already below measurable levels. Indeed, CAA and its member companies are adamantly opposed to youth usage of cigars, or any other tobacco product, and actively discourage such usage where it exists, and any

[26] 83 Fed. Reg. at 12,903.

advertising and marketing of premium cigars reflects this. It is CAA's strongly-held view that the consumption of cigars is, and should be, reserved for adults. CAA member companies direct their advertising to only target adult premium cigar consumers.

Further, CAA members include the largest online retailers of cigars in the United States. All of these companies use sophisticated third-party age-verification technology to ensure youth are not purchasing cigars. In fact, many members also voluntarily restrict access to their company and brand websites to people over the age of 21.[27] CAA and its member companies are steadfast in the position that cigars are only intended for adult consumers, and take seriously the obligation to prevent cigar use by youth.

CAA does not believe labeling, advertising, or marketing should be part of the definition of premium cigar because it is unnecessary; all premium cigar advertising is targeted at adults, and, much like retail price, there is no way for manufacturers to control all the advertising that may be done for their products by retailers.

D. Other Considerations in the ANPRM that Should Not Be a Component of the Definition

FDA has raised a number of other considerations as potential elements of a definition of a premium cigar. CAA does not believe that any of these are appropriate to include in the definition of premium cigar.

[27] *See, e.g.*, MONTECRISTO, https://montecristo.com/age-gate (last visited July 24, 2018); MACANUDO http://www.macanudo.com/age-gate/ (last visited July 24, 2018); PERDOMO CIGARS, https://perdomocigars.com/ (last visited July 24, 2018); DREW ESTATE, www.drewestate.com (last visited July 24, 2018).

First, FDA has asked about whether flavor should be part of the definition of premium cigar.[28] CAA does not believe the presence or absence of a flavor should be a definitional characteristic of a "premium cigar." Flavoring cigars is a centuries-old tradition and, now as then, many premium cigars may be considered to have a flavor.

As discussed above, and throughout this Comment, premium cigars are both a product different from other cigars and have usage patterns different from other cigars. These distinct usage patterns are there whether the premium cigar is flavored or unflavored. The NERA Report has shown that usage of premium cigars, flavored or unflavored, was zero percent (0.00%) by those aged 12-14 (all three Waves) and usage by those aged 15-17 was virtually non-existent – from 0.08% in Wave 1, down to 0.02% by Wave 3.[29] The relevant question is whether a cigar is premium, according to the criteria set forth above; accordingly, whether a cigar is flavored should not be a factor in defining what a premium cigar is. In this regard, CAA urges FDA to analyze the data, information, and comments submitted in response to the ANPRM regarding flavors in tobacco products.[30]

Second, FDA has asked whether the "(f)requency with which price changes are initiated by particular levels in the distribution chain" could be incorporated into any definition of premium cigar.[31] The premium cigar industry has no uniform distribution chain. Certain companies are vertically integrated and control nearly all processes of distribution. Other manufacturers rely on

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[28] FDA has issued a separate ANPRM to specifically address the use of flavors in cigars, and in response thereto CAA has submitted a more complete and specific response with respect to the use of flavors in cigars generally.

[29] Ex. A., NERA Report at ¶¶ 25, 26, Table 1. Further, regarding flavored premium cigar use NERA reports that "we do not report results for this flavored premium cigar smokers as there were too few flavored premium cigar smokers to produce reliable estimates." *Id.* at ¶17.

[30] Regulation of Flavors in Tobacco Products, 83 Fed. Reg. 12,294 (Mar. 21, 2018).

[31] 83 Fed. Reg. at 12,903.

third party distributors who then sell to retailers. Yet others sell directly to retailers. Additionally, depending on tax levels in different states, state specific channels of distribution may be used. Accordingly, for many of the same reasons outlined above regarding retail prices, CAA fails to see how this is or could be relevant, or how any objective criteria could be created to incorporate it into a definition of a premium cigar.

Third, FDA inquires as to whether the country in which the tobacco used in the wrapper or filler is grown should be included in the definition, and whether growing practices in different areas could create different health impacts. CAA sees no relevance in country of origin of the tobacco from a definitional standpoint, or in analyzing whether one premium cigar is likely to raise questions of public health different from those raised by another premium cigar. A premium cigar is still generally made of its simple ingredients of tobacco and water and where the tobacco is grown does not impact the "blend." A cigar should not be regulated based on whether Nicaragua had a rainy year or the Dominican Republic had a dry year. This is another area where premium cigars have many parallels with fine wine. Wine raises no different questions of public health whether it uses grapes from California, France, Spain, Italy or Canada. In fact, FDA acknowledged this in the Final Rule by stating that "FDA does not intend to enforce the premarket review requirements against cigar manufacturers that make tobacco blending changes to address the natural variation of tobacco (*e.g.* tobacco blending changes due to variation in growing conditions) in order to maintain a consistent product."[32] Including the country of origin as a definitional element of a premium cigar undermines the reason FDA has articulated for enforcement discretion for natural variation in tobacco not creating a "new" cigar.

[32] 81 Fed. Reg. at 29,026.

Finally, the Premium Cigar ANPRM raises the issue whether "nicotine content . . . [and] tar delivery amounts (and how this should be defined and measured) . . . [and] carbon monoxide delivery amounts (and how this should be defined and measured) should be included in any definition of premium cigar."[33] CAA is encouraged by FDA's apparent recognition that there is currently no available methodology or definitional structure for smoke testing of premium cigars. Currently, no methodology, or even machinery, exists to allow for the smoke testing of all premium cigars.[34] A CORESTA working group is currently seeking to create a methodology for testing premium cigars, but this work is not expected to be completed for as much as another 24 months. At this point, the preliminary findings of this group raise questions as to whether it will be possible to create a reliable, reproducible methodology for smoke testing of premium cigars. As discussed above, premium cigars are a simple product dependent on tobacco leaves, which vary greatly. Additionally, these are hand-made products, which are essentially unique in each creation, and therefore will vary slightly from cigar to cigar making reliable results of testing near impossible. Therefore, any testing suffers from both variability within labs on testing repetitions and variability between labs due to the undefined methodology and product variability.

Recent work published by CTP, as well as from other researchers, confirms the variability in any testing, both within the cigar category as a whole and the premium cigar category in particular, and between cigars of like brands and sizes themselves. This work did not attempt smoke testing; rather, it examined only product size, dry nicotine content, and tobacco pH, and found a "wide

[33] 83 Fed. Reg. at 12,903.

[34] Machinery does exist that could potentially test cigars with a maximum diameter of 22.5 millimeters, however, many, if not most premium cigars are larger than this. Further, premium cigars come in "shapes" such as box pressed and torpedo which are challenging with current smoking machinery.

variation in product size and nicotine content within the domestic cigar market."[35] Further, the study found that "cigar size does not necessarily correlate with nicotine or free nicotine content."[36] In trying to replicate results, the study found this was not possible, noting "in the two large cigar and cigarillo brands analyzed a second time, there was considerable within-brand variance in nicotine content and concentration between the first and second analyses."[37] This study underscores the importance of two critical issues – (i) that any testing or comparison of constituents of cigars will be highly variable due to the natural variation of tobacco, and (ii) that testing should not be required for premium cigars, or even more critically, be used to define premium cigars.

V. Use Patterns of Premium Cigars

FDA has asked for information on the use patterns of premium cigars in the Premium Cigar ANPRM. In the Final Rule, FDA stated that "there [was] no data provided to support the premise that there are different patterns of use of premium cigars and that these patterns result in lower health risks."[38] While CAA disagrees with FDA's characterization of the data provided in connection with the Proposed Deeming Rule, the scientific evidence now available (some published by CTP personnel) makes clear both that premium cigar usage patterns differ from those of other cigars and that those usage patterns result in lower health risks. Among other critical points, there is virtually no youth usage of premium cigars, and dual usage of premium cigars and other tobacco products is much lower than is dual usage of two other tobacco products. Stated differently, premium cigar

[35] Koszowski et al., *Nicotine Content and Physical Properties of Large Cigars and Cigarillos in the United States,* Nicotine and Tob. Res. 20(3) 393-398 (2018) available at https://www.ncbi.nlm.nih.gov/pubmed/28340022.

[36] *Id.* This is yet another reason why "size" of the cigar should not be a component of the definition of premium cigars.

[37] *Id.*

[38] 81 Fed. Reg. at 29,020.

smokers are less likely than those who use other tobacco products to also smoke cigarettes. Additionally, as discussed above, CAA provides reports of three experts addressing these issues with this Comment.[39]

It has long been known that premium cigars are an adult product, used and enjoyed by adults. Youth usage of these products is so low as to be unquantifiable. Until recently, however, survey data was not targeted to track the differences in the use of premium cigars, as opposed to little cigars or cigarillos, by youth. The PATH[40] study, however, asked both youth and adults questions specifically regarding cigar use, which can be examined with reference to premium cigars specifically, and that data strongly and clearly demonstrates that premium cigars are used almost exclusively by adults.[41]

The PATH study stratified cigar use separately for filtered cigars, cigarillos, and "traditional cigars." Participants were asked about the categories of cigars, certain brands of cigars, and also could identify brands they smoke. These brands are recorded in the datasets available to researchers. "Traditional cigars" were defined as "tightly rolled tobacco that is wrapped in a tobacco leaf. Some common brands of cigars include Macanudo, Romeo y Julieta, and Arturo Fuente, but there are many

[39] *See* Ex. A, The NERA Report; Ex. B, Econsult Report; Ex. C, Kabat Report.

[40] The Population Assessment of Tobacco and Health (PATH) study is a national longitudinal study of tobacco use and how it affects the health of people in the United States. People from all over the country take part in this study. In October 2011, the National Institutes of Health (NIH) and the U.S. Food and Drug Administration (FDA) announced a new study called the Population Assessment of Tobacco and Health (PATH) study. The PATH study was one of the first projects that NIH and FDA have worked on together since Congress gave FDA authority to regulate tobacco products. The study will look at tobacco use and how it affects the health of Americans. About 49,000 people ages 12 years and older are participating in the PATH study. Some of them use tobacco; others do not. Interviewers meet with each person once a year or every other year. Each year the study will invite some participants to take part in additional study activities. *See* https://pathstudyinfo.nih.gov/UI/HomeMobile.aspx (last visited July 24, 2018).

[41] *See* Ex. A, NERA Report at ¶¶ 4, 7.

others."[42] Corey, et al. (2017) ("Corey et al.") specifically examined the cigar data available in Wave 1 of the PATH study, examined all of the data available relating to "traditional" cigars, and segregated brands in that category into "premium" and "non-premium" cigars in order to author a paper on cigar use patterns, including premium cigar use patterns, based on the PATH data.[43] Using the designations from that paper of cigars as premium and non-premium, the NERA Report was able to both replicate Corey et al.'s analysis, and to perform a similar analysis on Waves 2 and 3 of the PATH data.[44] That data strongly and clearly demonstrates that premium cigars are used almost exclusively by adults.[45]

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[42] Kasza, K. et al., *Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014*, 276 N. Eng J. Med. 376 (2017) available at https://www.nejm.org/doi/10.1056/NEJMsa1607538?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dwww.ncbi.nlm.nih.gov.

[43] Corey C, et al. *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*; Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[44] The NERA Report outlines in detail the exact methodology used to classify cigars as "premium." *See* NERA Report at ¶¶ 17-22. Corey et al. examined the data provided by respondents who responded they used "traditional cigars" and provided a brand of cigars they use. Corey et al. then analyzed those brands and created a group of "premium" and "non-premium brands." The NERA Report used the Corey et al. criteria, with some adjustments to analyze the three Waves of PATH data. The Econsult Report also looked at how Corey et al. characterized brands as premium versus non- premium and used the same criteria to distinguish premium from non-premium brands in the sales data that report is based on. The PATH study is a representative survey of usage patterns of different types of tobacco products – it is by definition a sub-section of the entire population of premium cigar smokers, and therefore, premium cigar brands. The Econsult Report, on the other hand, collected transaction data from five of the largest online retailers of premium cigars, and recorded SKU level data regardless of the amount of times the individual SKUs were purchased. By definition, therefore, this data set contains a much larger number of brands than Corey et al. and NERA reviewed in the PATH data. The brand list and purchase data in the Econsult Report do not address prevalence of use of premium cigars. Similarly, the prevalence data in the NERA report does not address purchasing patterns of premium cigar consumers.

[45] Ex. A, NERA Report at Table 1. The NERA Report examines data from all three Waves of the PATH data and demonstrates that in Wave 1, only 8 observations were made of youth reporting use of a premium cigar, only 6 observations were made in Wave 2 and in Wave 3 only 1 observation was made.

In examining all cigar data, Kasza et al. reported that 7.5% of youths had "ever used cigars."[46] Examining past thirty days, use shrinks to 2.5% of youths using any cigar and only 0.7% using "traditional cigars."[47] Finally, the results show that for "traditional cigars," there was so little data on "current use" of these products that it could not be reliably measured.[48] Even solely based on the results of Wave 1 of the PATH study, the available, published scientific evidence does not support FDA's position that "premium cigars are used by youth and young adults," as stated in the Final Rule.[49] While Corey et al. and Kasza et al. examined only Wave 1 PATH results, the NERA Report has examined data from all three Waves of the PATH study currently available and confirmed that there is nearly zero use of premium cigars by youth.[50] In fact, in Wave 3, prevalence of youth usage was at 0.02%, based on only one observation.[51] Youth usage of premium cigars is simply not occurring.

In the adult population, Corey et al. found that the overall prevalence of premium cigar use was 0.7%.[52] The NERA Report shows that in Wave 3 of the PATH study the overall prevalence of premium cigar use in the adult population is 0.53%.[53] For comparison, prevalence of adult cigarette

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[46] Kasza, K. et al., *Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014*, 276 N. Eng J. Med. 376 (2017) available at https://www.nejm.org/doi/10.1056/NEJMsa1607538?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dwww.ncbi.nlm.nih.gov.

[47] Supplement to: Kasza KA, Ambrose BK, Conway KP, et al., *Tobacco-product use by adults and youths in the United States in 2013 and 2014*, N. Eng. J. Med. 376, 342-53 (2017). DOI: 10.1056/NEJMsa1607538; Table S18.

[48] *Id.* at Table S4.

[49] 81 Fed. Reg. 29,020.

[50] Ex. A, NERA Report at ¶¶ 25, 26, Table 1.

[51] *Id.*

[52] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423

[53] Ex. A, NERA Report at ¶28, Table 2.

us is 18.7%. Premium cigars are used almost exclusively by adults, and even within the adult population, premium cigar smokers are in older cohorts. The NERA report shows that in Wave 3 of the PATH study, 67% of adults using premium cigars were over age 35.[54] Further, the Econsult Report shows that the average age of an online premium cigar purchaser is 55, the median age is 57, and that approximately 88% of purchasers are over age 35.[55] Additionally, the older adults using and purchasing premium cigars are better-educated and wealthier. The NERA Report shows that in Wave 3 of PATH over 52.7% of premium cigar smokers had completed college, and 44% had household incomes over $100,000, as compared to 13% of non-premium traditional cigar, 10% of cigarillo, 4% of filtered cigar and 8% of cigarette smokers.[56] The Econsult Report shows that 15% of the online purchasers of premium cigars lived in census tracts with median household incomes over $100,000 compared to 10% of the general population, and that 20% of online premium cigar purchasers live in census tracts where over 50% of the population has a bachelor's degree compared with 15% of the general population.[57]

As discussed above, the Corey et al. study, and the NERA report examined PATH data specifically for premium cigars. Further, Econsult examined data from five of the largest online retailers, relating exclusively to premium cigar purchasers. Corey et al. confirmed the well-known concept that "cigar smoking patterns and tobacco use behaviors varied by cigar type."[58] The data

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[54] *Id.*

[55] Ex. B, Econsult Report at 9, Table 4.

[56] Ex. A, NERA Report at ¶¶ 37, 38, Table 3c.

[57] Ex. B, Econsult Report at 19-21, Table 14, Figures 4, 5.

[58] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014,* Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

provided in Corey et al., the NERA Report, and the Econsult Report all strongly support this statement and, specifically, show that premium cigars have usage and purchase patterns distinct from other tobacco products.

First, Corey et al, reported that in Wave 1 of the PATH study, the median age of first use of a premium cigar was 24.5 years old.[59] The NERA Report shows that in Wave 3 of the PATH study, the median age of first use of a premium cigar was 30.0 years old.[60] In contrast, the median age of first use of cigarettes was 16.6 years in Wave 1 and 16.7 years in Wave 3.[61]

Second, in line with the reasons for the great variety of premium cigar products on the market, Corey et al. showed that premium cigar smokers were much less likely to have a "regular tobacco brand" than other cigar smokers and cigarette smokers (49.7% v 77.1% v 93.1%).[62] The Econsult Report further demonstrates this. Econsult found that for premium cigar purchasers who purchased at least twice, 36% of the orders contained only one or two brands, meaning 64% contained three or more brands, and that for more frequent purchasers, only 13% of the orders contained one or two brands, meaning that 87% of the orders contained three brands or more.[63]

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[59] *Id.*

[60] Ex. A, NERA Report at ¶49, Table 5c.

[61] *Id.* at ¶¶ 47, 49, Tables 5a and 5c.

[62] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014,* Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[63] Ex. B, Econsult Report, at 15-16, Figure 2.

Third, according to the PATH study, approximately 25% of premium cigars were purchased online or by mail order.[64] According to government and industry estimates, however, there are approximately 300 million premium cigars sold in the US each year.[65] The Econsult Report encompassed approximately 125 million premium cigars sold in 2017.[66] For premium cigars purchased in person, 46.8% were purchased in specialty tobacco shops and 29.9% were purchased in cigar bars.[67] This stands in stark contrast with other cigar types and cigarettes, which were nearly all purchased in person (95.5-97.2%) and were mostly purchased at convenience stores/gas stations (75.4% - 86.8%).[68]

Fourth, Corey et al. reported that the median price paid was $7.49 per premium cigar. In contrast, the median price was $1.00 for non-premium cigars and cigarillos. [69]

Fifth, for people who purchased premium cigars in person, 79.1% purchased single premium cigars, as opposed to a box or pack.[70] This number is even more important when compared to the

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[64] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[65] TTB data shows that in 2017, approximately 351 million premium cigars were imported into the United States. *See Alcohol and Tobacco Tax Bureau, Statistical Report – Tobacco*, Report TTB S 5210-12-2017, DEPARTMENT OF TREASURY (July 20, 2018), https://www.ttb.gov/statistics/2017/201712tobacco.pdf. This number is not an accurate representation of the premium cigar market as (i) tariff classifications are solely based on price; and (ii) there are many cigars that would fall into these tariff categories that would be not considered premium under CAA's definition. Therefore industry puts estimates closer to 300 million.

[66] Ex. B, Econsult Report at 8.

[67] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423

[68] *Id.*

[69] *Id.*

[70] *Id.* at Table 3.

1.8% of people who purchased single cigarettes and the 13.8% who purchased single filtered cigars.[71] The Econsult Report shows that for online premium cigar purchases, consumers purchase a variety of product quantities, but most often purchase five packs of cigars.[72]

Sixth, Corey et al. reported that the median consumer of premium cigars in Wave 1 of the PATH smokes 1.7 days per month, as opposed to cigarette smokers who smoke on a near daily basis.[73] The NERA Report shows that in Wave 3 of the PATH study this number has decreased to 1.3 days per month, and that on the days premium cigar smokers smoke, they smoke 0.6 cigars per day.[74] Further, Econsult shows that 86% of online premium cigar purchasers ordered premium cigars 10 or fewer times.[75]

Finally, 76.6% of respondents stated that "I like socializing while smoking them" applied to their premium cigar smoking experience. This again highlights that premium cigars are used in a very different manner from cigarettes, or even filtered cigars, where only 49.9% of respondents replied similarly to that question.[76] All of these factors illustrate that those who enjoy premium cigars are different from users of other tobacco products. They are older, they appreciate and enjoy

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[71] *Id.* It should be noted that there is a federal prohibition on the sale of single cigarettes.

[72] Ex. B, Econsult Report at 15, Table 12.

[73] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[74] Ex, A, NERA Report at ¶44, Table 4c.

[75] Ex. B, Econsult Report at 12, Table 7.

[76] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017), Supplementary Table B available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

variety in their products, and they purchase premium cigars in patterns very different from consumers of other tobacco products.

The PATH study is not the only data available regarding adult use patterns of premium cigars. The Adult Tobacco Survey also analyzed adult premium cigar use patterns. The Adult Tobacco Survey asked questions regarding use of "little filtered cigars," "cigarillos/other mass market cigars," and "premium cigars."[77] "Premium cigar smoker" was defined as "reporting their usual cigar did not have a filter or tip and the name of their usual brand was a brand name of a hand-rolled cigar or a cigar described by the manufacturer or merchant as containing high-grade tobaccos in the filler, binder, or wrapper."[78] The survey found that among adults who smoke cigars, only 19.9% smoke premium cigars. For premium cigar smokers, only 3.3% reported "every day" use, 25.6% reported "some day" use, and 71.2% reported using premium cigars "rarely."[79]

The ANPRM also asks about dual use of "premium cigars and other tobacco products." Here again, it is clear that premium cigar users are different. Specifically, premium cigar smokers are less likely than other cigar smokers to also smoke cigarettes. The results from the Adult Tobacco Survey showed that premium cigar smokers had the lowest dual use of cigarettes among cigar smokers –

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[77] Corey C. et al., *Little Filtered Cigar, Cigarillo and Premium Cigar Smoking Among Adults – United States 2012-2013*, Morbidity and Mortality Weekly Report (Aug. 1, 2014) available at https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6330a2.htm. ("It should be noted that nearly 47% of current cigar smokers could not be assigned a usual cigar type because of insufficient information about the cigar smoked.").

[78] *Id.*

[79] *Id.* While this study did not precisely define "rarely," it would be reasonable to assume the amount of cigars smoked by the population would be similar to the "occasional" smokers detailed in NCI Monograph 9. In 1998, when Monograph 9 was published, it found "as many as three-quarters of cigar smokers smoke only occasionally, and some may only smoke a few cigars per year." National Cancer Institute. Monograph 9: Cigars: Health Effects and Trends. 1998 at iii.

35.1% of usual premium cigar smokers also smoked cigarettes, as opposed to 58.3% of usual cigarillos/machine made smokers and 75.2% of usual filtered little cigar smokers.[80]

Corey et al. reported that Wave 1 of the PATH study had similar results, showing that only 29.9% of premium cigar smokers reported cigarette smoking; in contrast, approximately twice as many smokers of non-premium cigars, cigarillos and filtered cigars (58.0%-66.0%) reported cigarette smoking.[81] By Wave 3 this dropped to 23.8% for premium cigar users reporting cigarette smoking.[82] Further, in Wave 3, for current premium cigar smokers, "the median number of cigarette smoking days and the number of cigarettes smoked per day on days when they smoked are zero."[83] Additionally, NERA finds that in Wave 3 PATH data, among current premium cigar smokers, those who are also current cigarette smokers, smoke premium cigars 0.7 days per month, as compared to 1.5 days per month for those that are not current cigarette smokers.[84]

The NERA Report also examines whether premium cigar smokers progress to become cigarette smokers – they do not. NERA reports that the percentage of premium cigar smokers that progress from never smoking cigarettes or smoking cigarettes on some days in Wave 1 to everyday cigarette smoking in Wave 3 is about 2%.[85] NERA also reports that "[n]ot only was the everyday

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[80] Corey C. et al., *Little Filtered Cigar, Cigarillo and Premium Cigar Smoking Among Adults – United States 2012-2013*, Morbidity and Mortality Weekly Report (Aug. 1, 2014) available at https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6330a2.htm.

[81] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423

[82] Ex. A., NERA Report at ¶59, Table 9c.

[83] *Id.* at ¶7(iv)

[84] *Id.* at Table 10c.

[85] *Id.* at ¶51, Table 6.

cigarette smoking progression for current users of premium cigars significantly lower than those of non-premium cigars, it was also **statistically indistinguishable from the transition into everyday smoking for respondents who were not current users of any tobacco product as of Wave 1**."[86]

The usage and purchasing patterns of premium cigar smokers show unequivocally that premium cigar smokers are a unique population who use premium cigars in a distinct manner. They are older, more educated and wealthier than the rest of the population. They begin smoking premium cigars as adults. They are much less likely to be brand loyal than other tobacco consumers. They are less likely to smoke cigarettes than others, and even when they do smoke cigarettes they smoke much less than other tobacco consumers. Finally, use of premium cigars does not progress to use of cigarettes.

VI. Public Health Considerations Associated with Premium Cigars

The Premium Cigar ANPRM asks for information, comments and data regarding "public health considerations" surrounding premium cigars. CAA refers FDA to the CAA Comment submitted in connection with the Proposed Deeming Rule for comments on relevant information and data published prior to August 2014. Since 2014, there has been limited work done looking at premium cigars as an individual category; however, the work that has been done further demonstrates that public health questions relating to premium cigars are not the same as those raised by cigarettes, or other tobacco products.

First, as detailed above, and contrary to the conclusion in the Final Rule, youth do not smoke premium cigars in numbers that are even measurable. The PATH data shows that there is such small

[86] *Id.* at ¶51 (emphasis added).

current use of these products by youth that it cannot even be reliably measured.[87] The NERA Report has confirmed the virtually non-existent youth usage of these products.[88] The NERA Report also demonstrates that the average first regular use of a premium cigar is at 30.0 years old.[89] In contrast, the average first regular use of cigarettes is 16.7 years old.[90] Additionally, according to Wave 3 PATH data, 52.7% of users of premium cigars have completed college or more, as opposed 11% of cigarette users.[91] By definition, in order to have completed college or additional education, this population has to be older. The PATH study reliably demonstrates that youth and young adults are not using premium cigars in more than a *de minimis* way, and that premium cigar smokers are an older, more educated population, even at the youngest end of the spectrum.

Second, this older population smokes less than users of other categories of cigars and cigarettes. Corey el at. reported that premium cigar smokers smoke a premium cigar on average only 1.7 out of every thirty days.[92] The NERA Report shows that in Wave 3, this number drops to 1.3 days.[93] This is drastically different from smokers of cigarettes, or smokers of filtered cigars,

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[87] Kasza, K. et al, *Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014*, 276 N. Eng J. Med. 376, at Supplement Table 4 (2017) available at https://www.nejm.org/doi/10.1056/NEJMsa1607538?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dwww.ncbi.nlm.nih.gov.

[88] Ex. A, NERA Report at Table 1.

[89] *Id.* at ¶49, Table 5c.

[90] *Id.*

[91] Ex. A, NERA Report at ¶37, Table 3.

[92] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423.

[93] Ex. A, NERA Report at ¶44, Table 4c.

where the median days smoked was 29.4 days, and 14 days out of 30 days respectively.[94] Additionally, premium cigar smokers on average smoke only 0.1 cigars per day, as opposed to cigarette smokers who smoke 10.1 cigarettes per day, or filtered cigar smokers who smoke 1.6 cigars per day.[95] In fact, Corey et al. (2014) demonstrate that 96.7% of premium cigar smokers smoke less than one cigar per day.[96] The NERA Report analyzing the PATH study data confirms this, showing that 96.1% of premium cigar smokers are non-daily smokers.[97] Again, the available data reliably demonstrate that premium cigar smokers do not smoke as often, or with the same intensity (i.e., smoking fewer cigars per day, and smoking fewer days per month), as users of other tobacco products.

Third, non-daily users of cigars – the overwhelming majority of premium cigar smokers – have no statistically significant increase in mortality.[98] Christensen et al. examined results from the National Longitudinal Mortality Study, a longitudinal population-based, nationally representative health survey, with mortality follow-up. with other information from the Current Population Survey and Tobacco Use Supplement, and mortality data from the National Death Index. The participants provided tobacco use information at baseline, in surveys beginning in 1985 and were followed for

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[94]Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017 https://www.ncbi.nlm.nih.gov/pubmed/29059423 at Table 2.

[95] *Id.*

[96] Corey C. et al., *Little Filtered Cigar, Cigarillo and Premium Cigar Smoking Among Adults – United States 2012-2013*, Morbidity and Mortality Weekly Report (Aug. 1, 2014) https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6330a2.htm .

[97] Ex. A, NERA Report at ¶44, Table 4c.

[98] Christensen C. et al., *Association of Cigarette, Cigar, and Pipe Use with Mortality Risk in the US Population*, 178 JAMA Internal Medicine 14, 469-76, E-6 at table 3 (2018) available at https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2672576.

mortality through 2011. Tobacco use was categorized as "cigarettes," "any cigar," or "pipe tobacco." Participants were analyzed for exclusive use of each product. Even without stratifying by type of cigar, there was no statistically significant increase in mortality for non-daily cigar smokers. As stated in the introduction, Dr. Geoffrey Kabat, a noted epidemiologist, reviewed the published literature on premium cigar usage patterns, and the epidemiologic data published since 2014, including the Christensen et al. study.[99] Upon reviewing this data, Dr. Kabat concludes:

> Taken together, the epidemiologic studies described above show that there is no association between non-daily, exclusive smoking of cigars and an increased risk for smoking-related cancers, or an increased risk of death from all causes and certain specific causes.[100]

In looking at the entirety of the published literature, Dr. Kabat concludes "that these studies lead to the conclusion that there is no association between non-daily cigar smoking – which applies to the overwhelming majority of premium cigar smokers – and increased health risks compared to non-smokers."[101]

This directly contradicts the findings in the Final Rule that the patterns of use of premium cigars do not sufficiently reduce health risks. Dr. Kabat's Report, relying on work performed in part by authors from CTP, conclusively shows that there are no increased health risks for non-daily cigar smokers (which includes nearly all premium cigar smokers).

In the Final Rule, FDA decided to regulate premium cigars in the same blunderbuss manner in which it regulated all other cigars, and all other tobacco products, based on the conclusion that:

> (1) All cigars pose serious negative health risks, (2) the available evidence does not provide a basis for FDA to conclude that the patterns of premium cigar use

[99] *See*, Ex. C, Kabat Report.

[100] Ex. C, Kabat Report at 6.

[101] *Id.* at 7.

> sufficiently reduce the health risks to warrant exclusion, and (3) premium cigars are used by youth and young adults.[102]

FDA's historical use of a one-size-fits-all approach to the regulation of tobacco products does not account for the diversity that exists between, and within, the various tobacco product categories. The above data shows that (i) premium cigars are not used by youth and young adults; and (ii) that patterns of premium cigar use among the overwhelming majority of those who enjoy premium cigars show no increased health risk. Accordingly, premium cigars should be exempt from regulation.

VII. The Existing Regulations are Fundamentally Flawed as Applied to Premium Cigars

As set forth above, the scientific data now available belies the fundamental factual and scientific bases upon which FDA originally determined to include premium cigars within the current regulatory structure. In the section below, CAA highlights but a few provisions of the existing regulations that are most egregious with respect to premium cigars in light of the scientific data now available. CAA offers these examples in order to demonstrate the current regulatory structure is fundamentally flawed and untenable in its application to the artisan premium cigar industry. These examples further underscore why premium cigars should be exempt from FDA regulation.

A. HPHC Testing is Fundamentally Flawed as Applied to Premium Cigars

Harmful and Potentially Harmful Constituent ("HPHC") testing for premium cigars is unnecessary and extraordinarily cost-prohibitive, given the unique nature of each hand made cigar product. More importantly, the application of existing HPHC testing requirements to premium cigars is fundamentally flawed because, at present, testing methodologies do not exist (let alone an

[102] 81 Fed. Reg. at 29,020.

understood definition of HPHC's for any cigar product) that can yield reliable, scientifically valid results.

First, as discussed above in Section IV.D, there is no generally recognized and accepted methodology to perform smoke testing on premium cigars. Additionally, there is currently no smoking machine that can accommodate the vast array of premium cigars, whether due to ring gauge, length or shape of the cigar. There is a CORESTA working group dedicated to trying to understand the many complications inherent in testing premium cigars, but that work remains up to two or more years away from completion, with no guarantee that any resulting testing methodology will be able to overcome the inherent natural variations and challenges presented by premium cigars. Simply stated, the FDA opted to blindly apply a testing requirement that was intended for an entirely different category of highly processed, commoditized, machine-made goods, with complete disregard to the absence of any scientifically valid methodology to comply with such requirements in the context of premium cigars. This decision was arbitrary and capricious from its inception, and in view of the now available data regarding usage patterns of premium cigar smokers, cannot be justified.

Second, FDA has not yet established a list of HPHCs to be tested for in any cigar, let alone a premium cigar. Section 904 of the Tobacco Control Act requires a "listing of *all constituents, including smoke constituents as applicable*…identified by the Secretary as harmful and potentially harmful to health in <u>each</u> tobacco product" (emphasis added).[103] FDA, through Guidance, with little notice to industry, has only established lists for HPHC testing for originally regulated products.

[103] Tobacco Control Act § 904.

Third, the Final Rule states that "FDA intends to issue a guidance regarding HPHC reporting, and later a testing and reporting regulation required by Section 915 **with enough time for manufacturers to report given the three year compliance period for HPHC reporting**."[104] FDA has released neither for newly deemed products, and at the time of filing this Comment, the HPHC reporting deadline is just over fifteen months away. It is also worth noting that the testing rule required by Section 915 of the Tobacco Control Act was supposed to be promulgated "not later than 36 months" after the date of enactment of the Tobacco Control Act.[105]

Fourth, even if valid methodologies existed, as FDA has recognized, the primary components of all premium cigars – wrapper, binder, and filler – are simple agricultural products subject to the common vagaries of any naturally grown crop, which requires manufacturers to make adjustments to account for natural variations in tobacco in order to retain the character of any given cigar. Even if such adjustments are not made, the exact same crop will be different from year to year based on local growing conditions. As a result of agricultural changes due to local growing conditions, the inherent natural variation present in tobacco, and the unique nature of each hand-crafted cigar product, there is an almost infinite number of variables that impact the validity and usefulness of testing any set of HPHC's under any methodology.

It is inappropriate to subject any product to a testing requirement for which no guiding structure has been implemented, and for which no generally accepted scientific methodology yet exists. Even if basic methodologies did exist, the application by FDA of a testing requirement intended for cigarettes, which are an incredibly uniform product with an established testing protocol,

[104] 81 Fed. Reg. at 29,052(emphasis added).

[105] Tobacco Control Act § 915(a).

to premium cigars, is fundamentally flawed given the inherent agricultural and production variations of these products. The extraordinary burden and cost necessary to try to create a practical solution to these complex problems is shown to be categorically misplaced based on the usage patterns of premium cigar smokers. There is simply no basis upon which the HPHC testing requirements under the Deeming Regulations can be rationally applied to premium cigars.

B. Pre-Market Review is Fundamentally Flawed as Applied to Premium Cigars

The substantial equivalence process, as it is currently implemented, would neither efficiently utilize FDA resources, nor be appropriate to protect the public health as applied to premium cigars.

FDA has had authority to regulate cigarettes, smokeless tobacco and roll-your-own tobacco since 2009. CTP is only now beginning to grasp the breadth of resources necessary to regulate those tobacco products that were originally made subject to its jurisdiction in *2009*, and it is certainly not prepared to take on the pre-market review challenges of the newly deemed products. It is still reviewing regular Substantial Equivalence ("SE") reports submitted for those products, and still has approximately 1000 Provisional SE reports to review for products in those categories introduced into the market between February 15, 2007 and March 22, 2011.[106] For instance, for Pre-Market Tobacco Product Applications ("PMTA"), since inception, CTP has received 383 applications. Of these, it has issued only eight marketing orders, three have been withdrawn, five have been resolved by a "Refuse to file" and CTP has refused to accept 367 of these applications.[107] Come 2021 and

[106] FDA Update on Provisional Substation Equivalence (SE) Process, U.S. FOOD & DRUG ADMINISTRATION (Apr. 5, 2018) https://www.fda.gov/TobaccoProducts/NewsEvents/ucm583226.htm. Further, CTP has not yet imposed graphic warnings on cigarettes, and has been sued by the public health industry for delaying in such action.

[107] Tobacco Product Marketing Orders, U.S. FOOD & DRUG ADMINISTRATION https://www.fda.gov/TobaccoProducts/Labeling/TobaccoProductReviewEvaluation/ucm339928.htm (last visited July 24, 2018).

2022, CTP will drown in the deluge of SE reports from cigar and pipe tobacco companies, and PMTA applications by the e-cigarette companies.[108]

To illustrate the strain on FDA resources that would result from subjecting premium cigars to the current pre-market review process, CAA notes that FDA recently made a major announcement with respect to Provisional SE Reports,[109] which were submitted by March 22, 2011, for products that had been on the market from February 15, 2007 until March 22, 2011.[110] FDA received nearly 3,600 provisional SE applications. Seven years later, however, in 2018, FDA still had not finished the review process for approximately 70% (2,500) of these applications. Therefore, FDA announced that "[t]he agency will continue to review the approximately 1,000 pending provisional SE Reports that were determined to have the greatest potential to raise different questions of public health and will remove from review the approximately 1,500 provisional SE Reports that were determined less likely to do so."[111] In a speech later that month, the Director of the Office of Science, Dr. Matt Holman, stated that reasons a provisional SE Report would continue to be reviewed might be: (i) non-conventional new product; (ii) new or predicate product inadequately characterized, (iii) new product category different from predicate product category, (iv) less than 5% increase in total alkaloids or bases, (v) design changes that may increase HPHC quantities, (vi) increase in HPHCs,

[108] *See* Guidance for Industry: Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule (November 2017).

[109] *FDA Update on the Provision Substantial Equivalence (SE) Report Review Process*, U.S. Food & Drug Administration (April 5, 2018), https://www.fda.gov/TobaccoProducts/NewsEvents/ucm583226.htm.

[110] Tobacco Control Act § 910((a)(2)(B).

[111] *FDA Update on the Provision Substantial Equivalence (SE) Report Review Process*, U.S. Food & Drug Administration (April 5, 2018), https://www.fda.gov/TobaccoProducts/NewsEvents/ucm583226.htm.

and (vii) >30% blend change.[112] He stated that removing provisional SE Reports from review "allows FDA to focus on provisional SE reports most likely to impact the public health."[113] It is obvious that CTP needs to be "strategic" in how it uses its resources.

A primary failing of the current substantial equivalence process, and a major reason it cannot work for premium cigars, is that there are no unique requirements for each category of tobacco products. The Tobacco Control Act grants FDA "flexible enforcement authority" and intends for FDA to regulate each tobacco product differently, in order to address the unique questions of public health raised by different classes and types of tobacco products.[114] The current blunderbuss approach ignores the limited public health issues raised by premium cigars, as well as the intent of the Tobacco Control Act and FDA's public health mission. FDA has refused to acknowledge that premium cigars raise questions of public health different than other tobacco products including, as outlined above in Sections V and VI, other types of cigars. Further, as the Econsult Report shows, there are currently approximately 10,000 SKUs per large, online retailer of premium cigars.[115] Premium cigars are unique among all tobacco products in that they have the widest scope of variability in terms of size, shape, tobacco blends and subtle distinctions inherent in a handmade process, while at the same time having the most limited patterns of use and health impacts. The strain on Agency resources to have premium cigars undergo premarket review is not warranted based on the different health effects of premium cigars.

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[112] Dr. Matt Holman, "TMA 2018 Annual Meeting," slide 16, April 11, 2018. CAA understands Dr. Holman's presentation was not an official statement by FDA, but uses this information simply as guidance and background for preparation of the positions outlined in this Comment.

[113] *Id.* at slide 17.

[114] *See* Tobacco Control Act § 3(4). *See also e,g.* Tobacco Control Act §§ 906, 907, 909, 102.

[115] Ex. B, Econsult Report, at 8, Table 3.

i. The SE Process is Fundamentally Flawed As To Premium Cigars

Premium cigars are not a new, novel product, and in fact, they are historically the most stable and consistent tobacco product due to their simplicity. Premium cigars are for the most part made of tobacco, water and a bit of vegetable-based adhesive; as such, premium cigars will rarely undergo changes that are likely to raise different questions of public health or otherwise substantially impact the public health. FDA failed to consider whether subtle distinctions in combinations of what is effectively a natural crop even merit such a review. In fact, the data shows that such an exercise is not warranted. First, almost the entire population of premium cigar smokers has no statistically significant increase in mortality rate versus non-smokers. Second, premium cigar smokers switch frequently between brands and vitolas. The endless combinations of tobacco leaves (including year to year natural variations in tobacco crops) used to make premium cigars, the usage patterns of premium cigar smokers, and the fact that premium cigars have no statistically significant impact on the health of most premium cigar smokers, raise the question of whether there is a justification to require premium cigars to go through such an extraordinarily burdensome process. The question has, in effect, already been answered in the negative.

Given the data on usage patterns and health outcomes, there is no need for an SE process for premium cigars, and under any circumstances the SE process as currently implemented by FDA is fundamentally flawed as applied to them. Given the great number of premium cigars typical at any time in the marketplace, the natural variations and agricultural vagaries that occur, and the inherent, subtle distinctions between cigars in a handmade, artisanal process, the SE process adopted by FDA is fundamentally untenable as applied to premium cigars. FDA's decision to simply apply a process created for highly processed, commoditized, machine-made products on premium cigars is not only arbitrary and capricious, but unjustifiable given's FDA's history of implementation of more refined

systems in other circumstances. An example is the highly regarded medical device modification flowchart FDA promulgated as part of the 501(k) program, where FDA created logical categories of exempt changes for modifications that did not create "new" devices.

In this case, FDA could have employed a similar notice-based process, and could have considered the negligible impact of any host of changes to premium cigars. FDA could have recognized that a centuries-old history of tobacco blend changes and yearly agricultural variations do not result in a "new" premium cigar, and could have exempted blend changes from the SE process. FDA could have recognized that, given the endless variations of packaging that are ubiquitous in the premium cigar space, changes in packaging and ingredients used in premium cigar packaging and other components should not be subject to reporting under Section 905(j) and Section 910. FDA chose not to take any of these sensible steps.

Similarly, FDA could have looked at available data or simply walked into any cigar shop to recognize that, notwithstanding the quantity count of premium cigars in any finished goods packaging, premium cigars are primarily purchased and sold individually, rendering quantity counts essentially irrelevant. FDA could have looked to these and other characteristics that have little impact on how premium cigars are manufactured, purchased or consumed to develop a minor modification exemption system, rather than subject this artisanal niche industry to crushing governmental regulation, with no apparent benefit to the public health. Again, FDA chose not to.

These decisions, viewed even more clearly in light of the data now available, cannot be defined as anything less than arbitrary, capricious, and wholly unjustified. The data makes clear that an SE process is not necessary for premium cigars and that, under any circumstances, the SE process as currently implemented is fundamentally flawed as to premium cigars.

ii. Existing Product Quantity Change Regulations are Fundamentally Flawed as Applied to Premium Cigars

FDA has taken the position that changes to the product quantity in a tobacco product's package renders that product a "new tobacco product," even if all other product characteristics remain constant. As such, FDA's "current thinking" regarding product quantity changes requires a manufacturer to file a Product Quantity Change Substantial Equivalence Report ("Product Quantity Change SE") anytime there is a change from a February 15, 2007 configuration of that exact product.[116] FDA states this Product Quantity Change SE is necessary because:

> [c]hanges in product quantity can affect initiation and cessation, such as by affecting consumer harm perceptions, use intentions and use behavior. The information in these Product Quantity Change SE Applications would allow for FDA to fully evaluate the potential of such changes in product quantity to determine whether the new product raises different questions of public health….[117]

Previously available data on the public health impact of product quantity changes, without any corresponding change to a tobacco product itself, was inconclusive.[118] Newly available data, however, regarding purchasing and usage patterns demonstrates that such product quantity changes should not be subject to pre-market review for premium cigars.[119] As previously stated, the data presented in the expert reports accompanying this Comment demonstrate that package quantity of premium cigars is not relevant to usage patterns. Indeed, the hypothesis that product quantity affects

[116] *See* Guidance for Industry: Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions (Edition 3)*, pp. 7, 8, 13 (December 2016).

[117] *Id.* at 7.

[118] *See*, *e.g.*, Joachim Marti & Jody Sindelar, *Smaller Cigarette Pack as a Commitment to Smoke Less? Insights from Behavioral Economics*, Plos One, p. 11 (Sep. 10, 2015) available at http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0137520. ("there is little to no empirical evidence to confirm or reject" the hypothesis that quantity changes in tobacco product packages impact consumer behavior).

[119] *See* Section V, above.

consumer behavior misses a fundamental point of the premium cigar category – premium cigars are never sold in "new" product quantities in the typical sense. In fact, regardless of how they may be packaged at any one moment in time, these cigars are always available for sale as single cigars.

Manufacturers may create luxury, beautiful boxes for distribution to retailers, generally containing twenty or twenty-five premium cigars in each box. Retailers purchase these boxes and sell some full boxes to consumers, but also offer single premium cigars from open boxes on trays, and from open boxes inside humidors, so consumers can buy only a few cigars of one brand, or one premium cigar of a few different brands. Online retailers mimic this experience by selling "five packs" of one premium cigar brand or "sampler packs" of different premium cigar brands that they create.[120] The underlying concept is that premium cigars are intended to be sold individually, as well as in boxes. Additionally, recent data has shown that 79% of premium cigars bought in person are purchased as single cigars.[121] Moreover, the available data conclusively establishes that despite the endless array of quantity counts available in the marketplace, over 96% of premium cigar smokers smoke premium cigars on a less than daily basis, and at the median at a rate of only 1.3 cigars per month.[122] The purchasing patterns and usage rates of premium cigar smokers illustrate that the notion of product quantity impacting premium cigar usage patterns is misplaced.

Further, subjecting so-called product quantity changes in the context of premium cigars to pre-market review, as called for under the existing regulations, would result in the unintended

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[120] *See* Ex. B, Econsult Report at 14-15, Tables 9, 10, 12. Sampler packs represent 25% of overall online premium cigar orders. Similarly 5-packs and a 10-packs are two of the most commonly purchased quantities by online premium cigar consumers.

[121] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*, Nicotine and Tob. Res. ntx209 (2017) available at https://www.ncbi.nlm.nih.gov/pubmed/29059423

[122] Ex. A, NERA Report at ¶44, Table 4c.

consequence of subjecting nearly all wholesalers and retailers to regulation as tobacco product manufacturers, as the definition of manufacturing includes repackaging. Not only does this approach subject nearly all wholesalers and retailers to the pre-market review process, and inundate FDA with Product Quantity Change SE Reports, but it will also subject these wholesalers and retailers to registration and listing requirements and other requirements only meant for true manufacturers. The vast majority of product quantity changes are those made by the wholesalers, most of whom have currently had to register as domestic manufacturers because they "repackage or relabel" cigars.

As an example of what can happen in the tobacco distribution chain, a cigar distributor buys boxes of twenty-five cigars from the foreign manufacturer. The distributor then distributes those boxes to other wholesalers and retailers across the country, some of whom will take the box of twenty-five cigar and break it down into smaller quantities such as into packs of ten or five. These wholesalers and retailers then sell to their customers both the box of twenty-five as received from the distributor, and the cigars repackaged into packs of ten and five. A consumer can then purchase either the box twenty-five, the packages of ten, the package of five, or a single cigar. The data from the online sellers of premium cigars demonstrates this exact point. Sales of samplers, five packs and ten packs represent a great percentage of all cigar sales.[123]

The basis for the conclusion that product quantity change SEs might be necessary for high consumption, standardized quantity products is based on the potential effect on the usage patterns of consumers of those products. For premium cigars smokers, however, all available data demonstrate conclusively that these products are used differently, and therefore the same conclusions are not

[123] Ex. B, Econsult Report at 14-15, Tables, 9-12.

valid. Given the purchasing and use patterns of premium cigar smokers, pre-market review for product quantity changes is irrelevant in terms of consumer usage, safety and health, and the existing regulation is unjustifiable as applied to premium cigars.

iii. The Requirement of Environmental Impact Statements is Fundamentally Flawed as Applied to Premium Cigars

The existing regulations require Environmental Assessments ("EA") or an Environmental Impact Statement ("EIS") for SE Reports for all tobacco products, which as currently stands, includes premium cigars. In one circumstance, FDA appropriately created a categorical exception to this requirement – for Provisional SE Reports.[124] Categorical exceptions can be made for a "category of actions that have been found not to individually or cumulatively have a significant effect on the quality of the human environment and which do not normally require the preparation of an EA or EIS."[125] FDA determined that "certain classes of tobacco products normally do not cause significant environmental effects" and "certain actions on tobacco-related applications do not result in significant environmental impacts to the quality of the human environment." [126]

FDA justified providing a categorical exclusion for Provisional SE Reports because "[a]ctions on provisional SEs reports, by contrast will relate only to product already on the market."[127] The current grandfather date for ALL tobacco products is February 15, 2007 and, as explained above, given their simple construction, premium cigars made in 2007, premium cigars made today, and premium cigars made at any time in between or before this period, are essentially

[124] National Environmental Policy Act; Environmental Assessments for Tobacco Products; Categorical Exceptions, 80 Fed. Reg. 57,531 (Sept. 24, 2015).

[125] 80 Fed. Reg. at 57,532

[126] *Id.*

[127] *Id.*

the same from a public health perspective. The requirement for an EIS or EA for any substantial equivalence application for a newly deemed product is misplaced, based on the reasoning for the categorical exception for Provisional SE Reports. This provision is egregious when considering premium cigars. Not only are there no "new" products coming to market, even if there were, they would be identical in their impact on the environment.

C. The Health Warning Requirements are Unjustifiable

The Final Rule requires that cigar packages and advertisements carry six rotating warning statements.[128] These warnings must occupy 30% of two principal display panels of all cigar packages, and 20% of the upper portion of all cigar advertisements.[129] As of the date of filing of this Comment, a federal district court in Washington, D.C. has issued an injunction prohibiting FDA from enforcing the health warning provisions of the Final Rule for all cigars and pipe tobacco pending resolution of the plaintiffs' appeal in the case. Judge Mehta, in his ruling granting plaintiffs' motion for an injunction pending appeal, stated with respect to plaintiffs' First Amendment claims that:

> The issues appealed by Plaintiffs present "serious legal questions" as to the constitutionality of FDA's warnings regime, a conclusion only reinforced by the Supreme Court's recent decision in *National Institute of Family and Life Advocates v. Becerra*, No. 16-1140, 2018 WL 3116336 (U.S. June 26, 2018). Additionally, Plaintiffs likely will suffer irreparable harm absent injunctive relief: they will have to communicate purely factual government speech in a form and size to which they object; will have their own commercial speech diminished; and will have to incur millions of dollars in compliance costs, which they will not be able to recover if the warnings regime is determined to be unconstitutional.

[128] 21 C.F.R. §1143.5.

[129] FDA has declined to define the term "advertisement" but has stated that "it should be interpreted broadly." 81 Fed. Reg. at 29062. FDA, however, has yet to release promised guidance on "how to comply with the health warning requirements on unique types of media." 81 Fed. Reg. at 29064. Industry is simply left to conjecture as to what FDA will interpret as complying with the advertising requirements, and what FDA interprets as "unique media."

> Finally, both the balance of equities and the public interest favor an injunction pending appeal.
>
> In the end, this court believes that Plaintiffs are entitled to a full hearing before an appellate court without the specter of a warnings regime going into effect that might ultimately be found to run afoul of the First Amendment. [130]

Even in the absence of the pending litigation, however, the data now available makes clear that the overbearing, extraordinarily expensive warning scheme imposed upon the premium cigar industry under the existing regulations is, and at all times has been, wholly unjustified. As with other portions of the Final Rule, the FDA provided no substantive evidence to support its actions related to cigars, stating, "reliable evidence on the impact of warning labels . . . on users of cigars . . . does not, to our knowledge, exist."[131]

Similar to the SE Process, FDA could have easily looked to an existing example of a warning scheme, but, without any apparent justification FDA chose not to, once again choosing a one-size-fits-all approach without consideration of the individual product.

The seven largest cigar manufacturers have been putting five rotating warnings on their cigar packages and advertisements since signing the FTC Consent Decree in 2001.[132] The Consent Decree warning size flexed off the surface area of a package, requiring only a limited number of warning sizes for companies to apply to packages, and much like the system in the European Union, had a

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[130] *See Cigar Ass'n of America, et al. v. FDA et al*, Case No: 1:16-cv-1460(APM), Memorandum Opinion and Order of Judge Amit Mehta, Dkt. No. 106, 107 at 2.

[131] 81 Fed. Reg. at 29,026, 29061; Final Regulatory Impact Analysis at 62.

[132] *See e.g., In the Matter of Consolidated Cigar Corp.*, Docket No. C- 3966 (F.T.C. Aug. 18, 2000). The "FTC Consent Decree" was the resolution reached by the seven major cigar companies and the FTC that required the companies to place five rotating Surgeon General warnings on all cigar packages and advertisements.

maximum size for the warning.[133] This ensured that package warnings only had to be produced in a limited number of sizes, and that there were detailed instructions for the size of warnings on advertisements, including warnings on "unique media" such as video and radio ads. FDA, for reasons unknown, ignored all available information about how a warning scheme can be implemented, and the Final Rule has none of this specificity regarding the size of the warnings or applications in non-packaging contexts.

Additionally, premium cigars come in boxes, canisters, jars, cellophane wrapped bundles and other packaging types. Further complicating the matter for the premium cigar industry is the shape of the cigar box, perhaps the most frequently used type of cigar packaging, means that a package will typically require two different sized health warning in order to meet the FDA's requirement of warnings on "*two* principal display panels." Given the foregoing, premium cigars manufacturers are faced with the prospect of having to use hundreds of different sized warning labels to comply with the existing regulations. Further, this warning scheme requires adding a significant amount of complexity to the manufacturing process to ensure the right labels are placed on the right panel of the right packages; keeping in mind that placement of the labels is generally done by hand. The scientific data now available shows that the warning scheme called for by the FDA is unwarranted as applied to premium cigars.

In imposing the Final Rule, FDA did not make any scientific findings as to whether the FTC Consent Decree warnings were ineffective, thereby justifying the larger and less specifically-sized FDA warnings. In fact, FDA found the content of the FTC warnings completely acceptable,

[133] This is similar to the system in place in the European Union for cigars. The regulation in the European Union outlines that if "the health warnings referred in 1 & 2 are to appear on a surface exceeding 150 cm2, the warnings shall cover an area of 45 cm2." Directive 2014/40/EU, Art. 11(4).

adopting those warnings nearly wholesale.[134] Further, there has still not been any work done regarding this issue in relation to cigars generally, or premium cigars in particular.[135]

In addition, as noted above in Section V, premium cigars are used by an adult, educated population. For over seventeen years, the largest manufacturers of premium cigars have used the Consent Decree health warnings to provide consumers with the same information required under the Final Rule. The Federal Trade Commission determined these warnings were "clear and conspicuous" and FDA has not provided any evidence determining them not to be so.

As noted above, the question of whether FDA's proposed cigar health warnings are constitutional is currently before a federal appellate court. CAA believes this court will find the FDA warnings violate the First Amendment rights of cigar manufacturers and retailers. FDA should withdraw its proposed warnings regulations for premium cigars.

VIII. Premium Cigars Should be Exempt from Regulation

Based on the available data on usage patterns and health effects of premium cigars, premium cigars should be exempt from regulation. As Dr. Gottlieb noted in his July 28, 2017 speech, CTP must use its resources "efficiently" and "must be strategic about how it uses its tobacco and drug

[134] In fact, while FDA offered an optional reproductive harm warning that was cigar specific (WARNING: Cigar use while pregnant can harm you and your baby") as opposed to the FTC reproductive harm warning, the California Attorney General has stated that the industry must use the FTC reproductive harm warning in order to satisfy California's Proposition 65, thereby ensuring very few cigar companies, if any, will choose use the FDA drafted warning. *See* Letter from California Attorney General Xavier Becerra to James Jack dated April 11, 2018.

[135] *See* Jarman KL. Et al. *Are Some of the Cigar Warnings Mandated in the U.S. More Believable Than Others?* 14 Int'l J. of Res. And Envir. Health 1370, at 2 (2017) available at http://www.mdpi.com/1660-4601/14/11/1370 ("To date no experimental studies have addressed the impact of cigar warnings among adults; the extant literature focuses on cigarette warnings or involves qualitative designs….This review found no relevant studies on cigar warnings, and called for more research on tobacco products other than cigarettes….Thus, we know little about effective messaging, including for warnings, for cigars.").

authorities."[136] Due to the different questions of public health raised by premium cigars, regulation of premium cigars is not an efficient or necessary use of CTP funds. President Trump has emphasized that it is the policy of the executive branch "to be prudent and financially responsible in the expenditure of funds, from both public and private resources" and "it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations."[137] Further, "it is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people."[138] To that end, in order to preserve precious government and industry resources, FDA must exempt premium cigars from regulation.

Moreover, as set forth in Section II, the stated reasons why FDA did not in the first instance exempt premium cigars were:

> (1) All cigars pose serious negative health risks, (2) the available evidence does not provide a basis for FDA to conclude that the patterns of premium cigar use sufficiently reduce the health risks to warrant exclusion, and (3) premium cigars are used by youth and young adults."[139]

In ordering this ANPRM, Dr. Gottlieb requested new information to re-evaluate FDA's original conclusions in this regard. New data is available, and the new data categorically contradicts the premises upon which FDA based its initial determination to subject premium cigars to the Final Rule.

As noted above in Section III, premium cigars represent a small portion of the cigar industry and a tiny fraction of the tobacco industry as a whole. The premium cigar industry has the largest

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[136] Dr. Scott Gottlieb, *Protecting Families: Comprehensive Approach to Nicotine and Tobacco*, U.S. Food & Drug Administration (July 28, 2017), https://www.fda.gov/NewsEvents/Speeches/ucm569024.htm.

[137] Executive Order 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017).

[138] Executive Order 13,777, 82 Fed. Reg. 12,285, sec. 1. (Feb. 24, 2017).

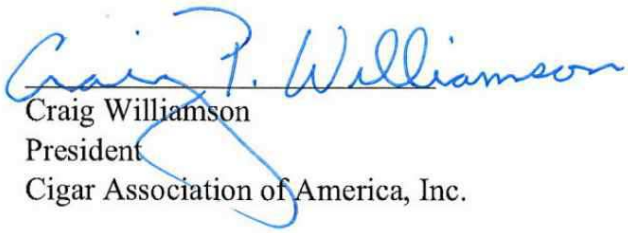
[139] 81 Fed. Reg. 29,020.

assortment of sizes, shapes, and tobacco blends in the tobacco industry. Estimates of the total SKU count vary, but seeing as how each of the online retailers currently have an average of 10,000 SKUs, the volume of products is enormous.[140] Neither CTP nor public health is served by devoting substantial resources to products that have usage patterns distinct from other tobacco products and that as a result present no increased health risks. Both because virtually all premium cigar smokers face no increased risk of mortality and agency resources are much better used elsewhere, premium cigars must be exempt.

IX. Conclusion

For the reasons set forth above, CAA requests FDA define "premium cigar" as outlined in Section IV, and exempt premium cigars from regulation.

Respectfully Submitted,



Craig Williamson
President
Cigar Association of America, Inc.

[140] Ex. B, Econsult Report at 8.

Appendix A

Expert Report	Topic	• Major Findings
NERA Economic Consulting	Prevalence of cigar usage	• Prevalence of youth cigar usage • Prevalence of adult cigar usage • Demographic characteristics of cigar and cigarette users, Wave 1-Wave 3 of the PATH Study
	Frequency and intensity of premium cigar use	• Prevalence of smoking • Days smoked in past 30 days • Number of sticks per day in days smoked • Number of sticks smoked per day in past 30 days
	Initiation of use and progression to use other tobacco products	• Age at initiation • Progression from cigar smoking to cigarette smoking • Current cigar smokers transition to cigarette smoking
	Dual usage of premium cigars and cigarettes	• Cigarette smoking status – current, former, never • Prevalence of now smoke cigarettes every day • Number of cigarette smoking days in past 30 days • Number of cigarettes per day on days smoked • Number of cigarettes per day in past 30 days
EConsult Solutions	Market size and share	• Share of cigar market defined by Catherine Corey • Percent of premium cigar market defined by Corey
	Total premium cigar transactions	• Summary statistics of total premium cigar transactions – orders, unique customers, cigars sold, SKUs, cigar revenue
	Customer age	• Stratified age cohorts of online premium cigar purchasers • Comparison of premium cigar purchasers to overall US population by cohort
	Purchasing patterns	• Unique customers, orders, unique SKUs sold, number of cigars sold, total revenue, price per cigar, average spend • Cigar units and expenditures by month • Frequency of repeat purchasing over a four-year period • Average cigars per order and average spending per order • Order characteristics
	Demographics	• Percent of urban population purchasing premium cigars • Median household income of the census tract of premium cigar purchasers • Education level of premium cigar purchasers compared to US population
Dr. Geoffrey Kabat	Epidemiology	• Review of three studies examining prevalence data on the use of premium cigars – youth usage, age of initiation, frequency of smoking, number of days smoked in past 30 days • Review of three mortality studies plus a pooled analysis of five cohort studies `examining the association of cigar use with health outcomes • Review of one study and one abstract which examined biomarkers of tobacco smoke exposure among cigar smokers

Cigar Association of America, Inc.
Comment to Docket No. FDA-2017-N-6107
Regulation of Premium Cigars

EXHIBIT A

RE: DOCKET NO. FDA-2017-N-6107 REGARDING THE REGULATION OF PREMIUM CIGARS

REPORT REGARDING CONSUMPTION PATTERNS OF PREMIUM CIGARS

FATEN SABRY, PH.D.
IGNACIO FRANCESCHELLI, PH.D.
DREW CLAXTON

July 25, 2018

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I. INTRODUCTION

A. Assignment

1. The Food and Drug Administration ("Agency" or "FDA") published a proposed rule in the Federal Register of April 25, 2014, seeking to deem additional products meeting the statutory definition of "tobacco product" to be subject to chapter IX of the Federal Food, Drug, and Cosmetic Act ("FD&C Act"). After considering the public comments on the rule, the Agency concluded that there was no appropriate public health justification to exclude premium traditional cigars ("premium cigars") from regulation. The Agency stated that "comments against regulation provided little data to support the opinions expressed and, where studies were submitted, provided little information about the studies cited." Consequently, premium cigars were included in the scope of the final deeming rule published on May 10, 2016.

2. On July 28, 2017, the FDA announced a "new comprehensive plan for tobacco and nicotine regulation," and stated that it would seek additional comments and scientific data that were not submitted in response to the 2014 proposed deeming rule that could further inform the Agency's thinking about the regulatory status of premium cigars.[1] The Agency is now seeking comments, data, research results, and other information related to the definition of premium cigars, the use patterns of premium cigars and the public health considerations associated with premium cigars. The Agency has requested comments on the use patterns of premium cigars, both generally and among youth and young adults, and as compared to and contrasted against that of non-premium traditional cigars, filtered cigars and cigarillos (together "non-premium cigars").

3. I have been asked by Cigar Rights of America, the Cigar Association of America, and the International Premium Cigar and Pipe Retailers Association to provide a statistical analysis of four aspects of consumption behavior that is related to premium cigar usage: i) the prevalence of use and the demographic characteristics of premium cigar users as compared to users of non-premium cigars and cigarettes; ii) the frequency and intensity of premium cigar use as compared to that of non-premium cigars and cigarettes; iii) the initiation of premium cigar use and the progression from premium cigar use to cigarette use as compared to that of non-premium

[1] Federal Register, Vol. 83, No. 58, p.12902. Monday, March 26, 2018 Proposed Rules.

cigar; and iv) the dual usage of premium cigars and cigarettes, as compared to that of non-premium cigars.

B. Population Assessment of Tobacco and Health Study

4. The Population Assessment of Tobacco and Health Study ("PATH" or "Study") is a large, nationally representative, longitudinal cohort study of adults and youth selected between September 2013 and December 2014. The Study's design allows for the longitudinal assessment of tobacco use behavior, attitudes and beliefs, and tobacco-related health outcomes for individuals nine years old or older in the U.S.[2] The sampling rates were designed to achieve sufficiently large sample sizes for young adults, Black or African American adults and adult tobacco users of all ages. According to the Inter-University Consortium for Political and Social Research (ICPSR), the PATH data provide "an empirical evidence base for developing, implementing, and evaluating regulations governing tobacco products by measuring the behavioral and health effects associated with changes in such regulations."[3] These data were not available during the public comment period for the proposed rule published on April 25, 2014.

5. The PATH data follows 45,971 respondents (32,320 adults, and 13,651 youth) over time and consists of repeated observations on the same cross section of individuals, so for example, one can determine whether an 18-year-old e-cigarette user at time 1 is still using the product at time 2. The first wave of data collection began in September 2013, was completed in December 2014 ("Wave 1") and included an adult questionnaire with 2,011 variables and 32,320 cases in the database and a youth (and parent) questionnaire with 1,431 variables and 13,651 cases in the database. The second wave of data collection began in October 2014, was completed in October 2015 ("Wave 2") and included a follow-up on individuals that had already completed the first wave questionnaire. Similarly, the third wave of data collection took place from October 2015 through October 2016 ("Wave 3") and was released on May 1, 2018.

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[2] United States Department of Health and Human Services. National Institutes of Health. National Institute on Drug Abuse, and United States Department of Health and Human Services. Food and Drug Administration. Center for Tobacco Products. Population Assessment of Tobacco and Health (PATH) Study [United States] Restricted-Use Files. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2018-05-01. https://doi.org/10.3886/ICPSR36231, v14.

[3] PATH Restricted-Use Data User Guide, p. 2.

6. The target population for Wave 1 is the civilian household population 9 years of age or older in the United States.[4] The PATH data include information for adults, ages 18 and older, youth ages 12 to 17, and "shadow youth" ages 9 to 11. Shadow youth will "age-up" to the youth category and be interviewed as youth upon reaching 12 years of age.[5] Similarly, those classified as youth in Wave 1, will "age-up" to be classified and interviewed as adults if they become 18 years of age in subsequent waves.[6]

C. Summary of Opinions

7. Based on my statistical analysis of the PATH data, my opinions are summarized as follows:

i. The prevalence of premium cigar usage and the demographic characteristics of premium cigar consumers differ from that of non-premium cigar products and cigarette users. For example, in Waves 1, 2 and 3, among youth, the prevalence of non-premium cigar use is 16.5 to 25 times that of premium cigars. Similarly, among adults, the prevalence of non-premium cigar use is more than 3.7 to 4.5 times that of premium cigars. Prevalence is the estimated weighted percentage of respondents who are identified as current cigar or cigarette users.

a. Among the 11,814 respondents aged 12 to 17 in the recently released Wave 3, there is only one current premium cigar user, or a 0.02% prevalence. In Wave 3, the premium cigar prevalence for respondents aged 12 to 17 remains lower than that of any single non-premium cigar—in the 0.05% to 0.35% range—and cigarettes with a 1.77% rate. No respondents aged 12-14 reported using premium cigars. Similar results are obtained for the first and second waves of data collection. The prevalence of premium

[4] PATH Restricted-Use Data User Guide, pp. 17 and 21. Wave 1 respondents continued to be eligible for interview in Wave 2 and Wave 3 as long as they continued to live in the U.S. and were not incarcerated.

[5] PATH Restricted-Use Data User Guide, p. 8.

[6] PATH Restricted-Use Data User Guide, p. 18.

cigar uses among youth respondents decreased from 0.08% in Wave 1 and 0.04% in Wave 2 to 0.02% in Wave 3. See Table 1.

b. Among adults, the prevalence of premium cigar use is statistically significantly less than that of non-premium cigars and cigarettes across all three waves of PATH data. Overall, in Wave 1, the prevalence of premium cigar use is 0.56% as compared to 2.51% for non-premium cigars. In Wave 2, the prevalence of premium cigar use increased slightly to 0.58%, but remains statistically significantly less than the 2.16% for non-premium cigars. In Wave 3, the prevalence of premium cigar use drops to 0.53%, and again, is statistically significantly less than the 1.94% for non-premium cigars. As compared to the detailed non-premium cigar types, the prevalence of premium cigars is statistically significantly less than cigarillos and filtered cigars in all three Waves, and statistically significantly less than non-premium traditional cigars in Wave 1. See Table 2.

c. Premium cigar users are typically white males, 35 years or older, who have higher levels of education and higher incomes than consumers of non-premium cigar or cigarettes. In Wave 3, 81% of adult premium cigar users were white, 98% were male, and 67% were 35 years or older. In addition, 83% of premium cigar users aged 25 and up have higher-level education, and 53% completed college. In comparison, 17% of non-premium cigar users, 11% of cigarillo smokers, 5% of filtered cigar smokers, and 12% of cigarette smokers age 25 and older completed college. Finally, 44% of premium cigar users have a household income of $100,000 or more, as compared to 13% of non-premium traditional cigars, 10% of cigarillo, 4% of filtered cigar, and 8% of cigarette smokers. Similar results are obtained for the first and second waves of data collection. See Table 3a, Table 3b, and Table 3c.

ii. Among adult current users, premium cigar consumers were less likely to use them daily, used them on fewer days and consumed fewer cigars per day than users of non-premium cigar or cigarette users. In Wave 3, the most current PATH data, about 3.9% of premium cigar consumers smoked them daily. Premium cigar users typically used them 1.3 days out of 30, as reported by the median and smoked 0.1 cigars per day in past 30 days. In comparison, 20.7% to 40.9% of non-premium cigar consumers smoked them every day, used them on 4.4 to 14.5 days out of 30 and smoked 0.2 to 0.9 non-premium cigars per day in past 30 days. For cigarette smokers, 77.0% smoked cigarettes every day. The median cigarette smoker smoked on 29.4 of the past 30 days, and smoked 9.9 cigarettes per day in past 30 days. Similar results are obtained for the first and second waves of data collection. See Table 4a, Table 4b, and Table 4c.

iii. Most cigarette smokers experiment and progress to becoming established smokers between the ages of 12 and 24.[7] Using the most recent PATH data, we find that the median age at first regular use is 30.0 years for premium cigar users, older than that of cigarillo and cigarette users. We also find that premium cigar users are as likely to become cigarette users as those who do not use any tobacco product and are less likely than users of non-premium cigar.

a. In Wave 1, the median age at first regular use reported by premium cigar users is 24.8 years. In comparison, the median age at first regular use is 19.4 years for non-premium traditional cigars, 18.0 years for cigarillo users and 16.6 years for cigarette users. Filtered cigar users, like premium cigar users, were generally older at initiation, with a median age at first regular use of 26.8 years. In Wave 3, the median age at first regular use increased to 30.0 years for premium cigar users. The median age at first regular use for non-premium cigar ranged from 24.2 years for cigarillos to

[7] Trinidad, D. R., Pierce, J. P., Sargent, J. D., et al. (2017), "Susceptibility to Tobacco Product Use Among Youth in Wave 1 of the Population Assessment of Tobacco and Health (PATH) Study", *Preventive Medicine,* 101, 8-14.

34.2 years for filtered cigars. The median age at first regular use remained unchanged at 16.7 years for cigarette smokers. See Table 5a, Table 5b, and Table 5c.

b. The percentage of premium cigar users that progress from never smoking cigarettes or smoking cigarettes some days in Wave 1 to everyday cigarette smoking in Wave 3 is 2.2%. In comparison, 9.1% of non-premium traditional cigar users, 11.5% of cigarillo users, 26.4% of filtered cigar users and 1.1% of not tobacco users transition to smoking cigarettes everyday by Wave 3. The difference between the 2.2% transition rate for premium cigar users and the 1.1% for respondents that did not use tobacco products is not statistically significant. Similar results are obtained for transition into some day cigarette smoking. See Table 6 and Table 7.

c. Of adults who are current established premium cigar users and are also current established cigarette users, 78.8% smoked cigarettes first before they started smoking traditional cigars—premium or not-premium, 10.1% started smoking traditional cigars before they started to smoke cigarettes and 11.0% started smoking traditional cigars and cigarettes at the same age. See Table 8.

iv. The prevalence and intensity of dual usage of cigars and cigarettes is less for premium cigar users than for non-premium cigar users.

a. In Wave 3, for current premium cigar users, the median number of cigarette smoking days and the number of cigarettes smoked per day in past 30 days are zero (0). In comparison, the non-premium traditional cigar user typically smoked cigarettes on 1.6 days in past 30 days and smoked 0.1 cigarettes per day in past 30 days. The cigarillo smoker typically smoked cigarettes on 8.0 days in past 30 days and smoked 1.0 cigarettes per day in past 30 days. The filtered cigar smoker typically smoked cigarettes on 28.3 days in past 30 days and smoked 5.9 cigarettes per day in past 30 days. See Table 9c.

b. Also in Wave 3, non-premium traditional cigar users were more than twice as likely to smoke cigarettes when compared to premium cigar users. These differences increase when compared to cigarillos and filtered cigars. For example, in Wave 3, 23.8% of premium cigar users also smoked cigarettes as compared to 51.3% of non-premium traditional cigar users, 56.3% of cigarillo users and 69.8% of filtered cigar users. Similar results are obtained for the first and second waves of data collection. See Table 9a, Table 9b, and Table 9c.

c. Among current premium cigar users in Wave 3, those who are also current cigarette users do not use more premium cigars. They use premium cigars 0.7 days per month as compared to 1.5 days per month for those who are not current cigarette smokers. Premium cigars smoked, per day in past 30 days, among these two groups, is less than 0.1 cigars per day for current cigarette smokers and also for those who are not current cigarette smokers. Similar results are obtained for the first and second waves of data collection. See Table 10a, Table 10b, and Table 10c.

D. Qualifications

8. I am an economist and a Managing Director in the Securities Practice and the Product Liability and Mass Torts Practice of NERA Economic Consulting. I provide economic consulting services and testimony in cases involving product liability, mass torts, complex damages disputes and securities. This work includes both advisory consulting engagements and litigation support in cases that have culminated in trials, bankruptcy hearings, or regulatory proceedings. My case work includes: estimating the future personal injury claims likely to be brought against defendants involved in asbestos, silica, medical products, and construction products litigation; analyzing liabilities related to environmental contamination for the Met-Coil bankruptcy Trust and the future silica and asbestos liabilities for the Tyler Pipe/Swan Transportation bankruptcy Trust; assessing recall costs of automobile and construction products; analyzing insurance allocation; applying statistical and content analyses to examine product

identification; and analyzing class certification and allegations of diminution of value in consumer class actions, including actions related to automobile recalls.

9. I have testified at trial in state and federal courts and am the author of various articles on the econometric analysis of claiming behavior, impact of tort reforms and regulatory changes, and determinants of anti-dumping protection. I have testified before the U.S. Department of Labor on an economic and statistical analysis of the methodology used to quantify the expected benefits of the proposed rule regarding silica.[8] I have also recently submitted comments regarding the CFPB's request for changing the Bureau's public reporting practices of consumer complaint information. I have worked for opponents of tobacco companies on consulting and litigation projects, estimating tobacco-related liabilities and, consulted on the tobacco Master Settlement Agreement with a NERA team that worked with the Special Master. In addition, I have conducted a study for a municipality on the economic impact of smoking bans.[9] My research has been published in the *Journal of Investment Compliance*, *Journal of Alternative Investments*, *Business Economics, International Trade Journal* and others. I was a Post-Doctoral Fellow at the International Food Policy Research Institute and an assistant professor of economics at the American University in Cairo. I received my Ph.D. from Stanford University.

II. PATH DATA AND IDENTIFICATION OF PREMIUM CIGARS

10. To identify relevant academic studies on patterns of premium cigar usage, we followed the procedures set out in Chang et al. (2015), and conducted a systematic literature review of tobacco studies published after the FDA's 2014 request for comments. We then excluded any study cited in the FDA's 2016 rule on the regulation of tobacco products.

11. To identify relevant academic studies, we specified search terms to search through three databases—PubMed, Embase, and ISI Web of Science—that record academic studies. We

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[8] *See*, "Re: Docket No. OSHA-2010-0034 Occupational Exposure to Respirable Crystalline Silica – Comments of Dr. Faten Sabry, Ph.D. of NERA Economic Consulting for the US Chamber of Commerce," January 27, 2014, available at: https://www.regulations.gov/document?D=OSHA-2010-0034-2263.

[9] *See*, "Re: Docket Number CFPB-2018-0006 Regarding the Consumer Financial Protection Bureau's ("CFPB") Reporting Practices of Consumer Complaint Information," April 19, 2018, available at: https://www.regulations.gov/document?D=CFPB-2018-0006-0017. *See* also, Faten Sabry and Robert Patton, "Village of Tinley Park - Study of Impact of Smoking Bans Final," *NERA Economic Consulting,* March 12, 2007.

used the terms "Cigar" or "Cigars" in combination with the terms "PATH" or "NATS" or "NYTS" to identify potentially relevant articles.[10] Appendix A provides a summary of the process used to identify and select relevant academic studies of tobacco usage. We identified only one study - "U.S. Adult Cigar Smoking Patterns, Purchasing Behaviors and Reasons for Use According to Cigar Type: Findings from the Population Assessment of Tobacco and Health (PATH) Study, 2013-2014" by Corey et al.– that analyzed tobacco use in the U.S. by cigar type and distinguished between premium and non-premium traditional cigars.[11]

A. Corey et al. (2017) Distinguishes between Premium and Non-Premium Traditional Cigars

12. In 2017, Corey et al. published the results of their analysis of "U.S. Adult Cigar Smoking Patterns, Purchasing Behaviors and Reasons for Use According to Cigar Type: Findings from the Population Assessment of Tobacco and Health (PATH) Study, 2013-2014" (the "Corey Study") and noted that "despite the diversity in the cigar market place," most tobacco studies treated cigars as a single product type. In their study, they distinguished between traditional cigars, cigarillos and filtered cigars, and further divided traditional cigars into premium and non-premium. They found that user characteristics, cigar smoking patterns and dual smoking with cigarettes varied by cigar type, and that sufficient descriptions of cigar types, as well as distinguishing between premium and non-premium traditional cigars, is important to "enhance tobacco regulatory science."

13. In particular, Corey et al. found that, among adults ages 18 years and older, the prevalence of premium cigar smoking was 0.7% as compared to 0.8% for non-premium traditional cigars, 1.7% for cigarillos, 0.9% for filtered cigars and 18.1% for cigarettes.

[10] NYTS is the acronym for the National Youth Tobacco Survey conducted by the U.S. Centers for Disease Control and Prevention (DCP). NATS is the acronym for the National Adult Tobacco Survey conducted by the U.S. Centers for Disease Control and Prevention (DCP).

[11] Corey, C. G., Holder-Hayes, E., Nguyen, A. B., et al. (2017), "US Adult Cigar Smoking Patterns, Purchasing Behaviors, and Reasons for Use According to Cigar Type: Findings from the Population Assessment of Tobacco and Health (PATH) Study, 2013-2014", *Nicotine & Tobacco Research.*

Prevalence is the estimated weighted percentage of adult respondents who are identified as adults who are current cigar or cigarette smokers.[12]

14. They also found that the percentage of daily cigar smoking and the number of cigars smoked per day in past month were higher for filtered cigars than all non-premium cigars, daily smoking of cigars per day were similar for non-premium traditional cigars and cigarillos, and cigarette smoking was twice as common among users of non-premium traditional cigars, cigarillos and filtered cigars than among users of premium cigars.

15. In addition, they found that demographic characteristics of users varied by cigar type and cigarettes. Young adults (aged 18 to 34 years) accounted for 64.5% of cigarillo users, as compared to 34% to 47% of users of non-premium cigars. More than half of users of non-premium traditional cigars, cigarillos, filtered cigars and cigarettes had a high school diploma/GED or less, whereas 26% of premium cigar users had a high school diploma/GED or less. In addition, Corey et al. found that "those smoking premium cigars tended to differ from those smoking non-premium cigars, cigarillos, and [filtered cigars] including having users with higher socioeconomic status." For example, they found that 41% to 47% of non-premium traditional cigar, cigarillo and filtered cigar users, as compared to 14% of premium cigar users, lived below the federal poverty level.

16. In the Advanced Notice of Proposed Rulemaking ("ANPRM") published in the Federal Register in March 2018, the FDA cited the Corey Study as an example of the type of information that would be responsive to its request, noting that it "assessed use patterns and related behaviors of users of 'premium' and other cigar types."[13] The Agency also notes that in its conclusion, the Corey Study "highlighted the importance of adequately describing the cigar type studied and, where appropriate, differentiating results by cigar type."[14]

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[12] "Current smokers" are "current established smokers" defined in PATH. According to PATH, current established cigar smokers are defined as those who have ever smoked the cigar type, ever smoked the cigar type "fairly regularly," and now smoke the cigar type every day or some days; current established cigarette smokers are defined as those who have smoked at least 100 cigarettes in their lifetime and now smoke cigarettes every day or some days.

[13] Federal Register, Vol. 83, No. 58, March 26, 2018. Proposed Rules, p. 12902.

[14] Federal Register, Vol. 83, No. 58, March 26, 2018. Proposed Rules, p. 12903.

B. Identification of Premium Cigars

17. The PATH Study is a large, nationally representative, longitudinal cohort study of tobacco use behavior, attitudes and beliefs, and tobacco-related health outcomes for individuals 12 years old or older in the U.S.[15] The data collected also include detailed information on cigar characteristics such as cigar type (traditional cigars, cigarillos, or filtered cigars), brand and product name. With this level of detail, one can further distinguish traditional cigars as premium and non-premium. These data were not available during the public comment period for the proposed rule published on April 25, 2014.

18. To identify premium cigars, we used the definition of "premium cigar" adopted in the Corey Study, and made certain limited adjustments where necessary to correct the designation of a premium cigar type. Corey et al. acknowledged that "regulatory definitions of premium cigars do not exist." Using information obtained through research about the brand's tobacco blends, components (e.g., long filler, whole leaf wrapper), and manufacturing process (e.g., handmade), they used the brand and product information collected by the PATH study to distinguish premium from non-premium traditional cigars. The Corey Study used the Restricted Use files for Wave 1 of the PATH Study in which respondents identified the usual brand of "traditional cigar" that they smoked. Using this list of brands, Corey et al. determined, through research, whether a brand qualified as "premium" based on three criteria: (1) tobacco blends, (2) components (e.g., long filler, whole leaf wrapper), and (3) manufacturing process (e.g., handmade).[16] For brands that could not be classified as premium or non-premium traditional cigars based on the above criteria, the study's authors considered the usual price paid per cigar and set a cut-off of $2 per cigar for premium brands. Corey et al. acknowledged that "[a]lthough the results illustrate clear distinctions between premium and nonpremium smoker characteristics,

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[15] United States Department of Health and Human Services. National Institutes of Health. National Institute on Drug Abuse, and United States Department of Health and Human Services. Food and Drug Administration. Center for Tobacco Products. Population Assessment of Tobacco and Health (PATH) Study [United States] Restricted-Use Files. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2018-05-01. https://doi.org/10.3886/ICPSR36231 v14. Sampling rates were designed to achieve sufficiently large sample sizes for young adults, Black or African American adults and adult tobacco users of all ages.

[16] The PATH survey asked respondents to provide information on each of the tobacco products that they used, including cigarettes, cigarillos, filtered cigars and traditional cigars. If a respondent answered that they used traditional cigars, they were provided a list of traditional cigar brands/products so that they could specify which brand/product they used. If the respondents did not find the brand/product of traditional cigar on the PATH list, they could select "Other" and write in the specific brand/product of traditional cigar that they used.

use patterns and purchasing behaviors, some traditional cigar smokers may have been misclassified using this approach."[17] The full methodology used by Corey et al. to produce a list of premium and non-premium traditional cigars (the "Corey List") is laid out in Supplemental Table A to the study.

19. We compiled traditional cigar brands and products specified by respondents and reported in the PATH Restricted Use data files for Waves 1. We then cross-referenced those brands/products with the Corey List of premium cigars. Having replicated the Corey List using the PATH data, we then replicated Corey et al.'s statistical results, as published. We replicated their results on the prevalence of smoking, demographic characteristics of smokers, age at first regular use, dual use of cigars and cigarettes, and the frequency and intensity of use by cigar types and cigarettes.

20. Next, we made certain limited adjustments where necessary to the Corey List. We reclassified certain brands using Corey et al.'s own study criteria (without any reference to usual retail price) and criteria provided by the Cigar Rights of America, the Cigar Association of America, and the International Premium Cigar and Pipe Retailers Association. Based on these criteria, we reclassified nine brands reported in Wave 1 that were identified as premium cigars in the Corey Study: (1) Optimo, which is a brand of cigarillos; (2) Ben-Bay, which makes only cigar accessories and little cigars; (3) Chubb, which makes "wooden stogie cigar pipes"; (4) Cuban, which is not a cigar brand; (5) Durango, which is a brand of cigars made with pipe tobacco; (6) El Pita, which is not a cigar brand; (7) El Verso, which is a brand of machine-made cigars and fails the handmade requirement; (8) Indio, which is not a cigar brand; and (9) Marsh Wheeling, which is a brand of machine-made cigars and fails the handmade requirement. Similarly, we reclassified two brands reported in the Wave 1 data and that were not identified as premium cigars in the Corey Study: (1) Thompson and (2) JR. Thus, where Corey et al. analyze 377 premium cigar users in Wave 1, we analyzed 315. We follow the same approach to identify premium cigars in Wave 2 and 3. For example, we added premium brands from the PATH

[17] Corey et al. (2017), p. 8.

Restricted Use data set that were identified by respondents in Wave 2 and 3, but were not in Wave 1.[18]

21. A number of brands identified in the PATH Restricted Use data set produce cigars that meet the Corey Study's criteria but contain non-tobacco flavoring. As one of the FDA's questions addresses the use of flavors in premium cigars, we further divided the brands in the PATH Restricted Use data set into unflavored premium cigars and flavored premium cigars and conducted separate analyses for each category and for the overall premium cigar category.[19] In the narrative discussion in this report, we refer to the results for overall premium cigars, but we separately list the results for unflavored premium cigars in each of the tables. We do not report results for flavored premium cigar users as there were too few observations to produce reliable estimates.

22. Finally, we find no indication that the refinements made to the Corey List substantially change the findings of the Corey Study. As discussed in Section II-A above, Corey et al. found that, among adults, the prevalence of premium cigar use was 0.7% as compared to 0.8% for non-premium traditional cigars. Using the adjusted list of premium cigar brands, we find that, among adults, the prevalence of premium cigar use was 0.6% as compared to 0.8% for non-premium traditional cigars.

III. PREVALENCE AND USE PATTERNS OF CIGAR USAGE

23. Using the PATH data (Wave 1, Wave 2 and Wave 3), we estimate the prevalence and patterns of cigar use by cigar type—premium cigars, non-premium traditional cigars, cigarillos and filtered cigars.

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[18] The added brands include Aldino, Asylum, Avo, Bohemia, Camacho, Carrillo, Cromagnon, DAS, Diesel, Don Diego, Don Lucas, Don Simon, Field of Gold, Gispert, Graycliff, Habanos, Illusione, Kauai Cigar, Liga Privada, Mr. B, Nostalgia, Omar Ortez, Pinar Del Rio (PDR), Penamil, Playboy, Por Larranaga, Quorum, Rancho Real, San Cristobal, Santiago, Sosa, Topstone.

[19] Based on information provided by the Cigar Rights of America, the Cigar Association of America, and the International Premium Cigar and Pipe Retailers Association, we identified unflavored premium cigar brands/products, as premium cigars brands that are not "Acid", "Makers Mark", "Java", "Tabak" and Trader Jack"; and not CAO brand where the product is specified as "Bella Vanilla", "Caramelo Joe", "Cherry Bomb", "Earth Nectar", "Eileen's Dream", "Gold Honey" and "Moontrance"; and not "Cohiba" brand where the product is "Vanilla", and not Don Tomas where the product is "Acid' or "Ambrosia".

A. Prevalence of Cigar Usage

24. Using the PATH data, we estimated the prevalence of cigar usage for youth and adults. Youth are persons ages 12 to 17. Adults include persons 18 years and older.

1. Prevalence of Youth Cigar Usage[20]

25. As shown in Table 1, among youth aged 12-17, the prevalence of premium cigar use is close to zero and, overall, is statistically significantly lower than that of non-premium cigars, as well as that of cigarettes. The prevalence of youth premium cigar use is less than 0.1% and decreased over time—from 0.08% in Wave 1 to 0.04% in Wave 2, and to 0.02% in Wave 3. No respondents aged 12-14 reported using premium cigars. In Waves 1, 2 and 3, the prevalence of non-premium cigars use is 16.5 to 25 times that of premium cigars. Prevalence for cigarettes is 40.6 to 88.5 times that of premium cigars.

26. Among the 11,814 respondents aged 12-17 in the recently released Wave 3 there is only one current premium cigar user, or a 0.02% prevalence. The premium cigar prevalence in Wave 3 for respondents aged 12-17 remains lower than that of non-premium traditional cigars (0.05%), cigarillos (0.35%), filtered cigars (0.18%) and cigarettes (1.77%).

[20] "Youth current smokers" of cigars or cigarettes are Past 30 Day "Not-Light" Cigar or Cigarette Smokers defined by PATH Study Youth/Parent Questionnaires. Past 30 Day "Not-Light" Cigar or Cigarette Smokers are youth respondents who have smoked more than 10 of the respective cigar or cigarette categories (traditional cigars, cigarillos, filtered cigars, or cigarettes) in their lifetime and smoked a product of the respective cigar or cigarette categories within the past 30 days. For example, Past 30 Day "Not-Light" cigarillo smokers are youth respondents who have smoked more than 10 cigarillos in their lifetimes and smoked a cigarillo within the past 30 days. "Not-Light" smokers are identified for this analysis because in PATH Study Restricted-Use Files for youth, only "Not-Light" smokers of traditional cigars are asked about the brand and product of traditional cigars they smoked. Brand and product variables are used to identify premium and non-premium traditional cigar smokers. Unlike the database for adults, there are no variables that identify "Current Established Smokers" of cigars or cigarettes in the youth database.

Table 1. *Prevalence of Cigar Usage Among Youth Aged 12-17, Wave 1 to Wave 3*

	Premium Cigars		Non-Premium Cigars				
	Overall	Unflavored	Overall[1]	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Wave 1 (13,651 youth respondents)							
Overall youth prevalence[2]							
Percentage	0.08%	0.08%	1.38%	0.22%	1.17%	0.22%	3.25%
Confidence interval	(0.02-0.14%)	(0.02-0.14%)	(1.17-1.58%)	(0.12-0.32%)	(0.98-1.36%)	(0.12-0.33%)	(2.91-3.59%)
Number of users	8	8	195	29	165	30	450
Wave 2 (12,172 youth respondents)							
Overall youth prevalence[2]							
Percentage	0.04%	0.04%	0.66%	0.14%	0.44%	0.22%	2.73%
Confidence interval	(0.00-0.08%)	(0.00-0.08%)	(0.51-0.82%)	(0.08-0.20%)	(0.32-0.56%)	(0.12-0.33%)	(2.39-3.08%)
Number of users	4	4	82	18	54	26	333
Wave 3 (11,814 youth respondents)							
Overall youth prevalence[2]							
Percentage	0.02%	0.02%	0.50%	0.05%	0.35%	0.18%	1.77%
Confidence interval	(0.00-0.05%)	(0.00-0.05%)	(0.39-0.61%)	(0.01-0.10%)	(0.26-0.45%)	(0.10-0.26%)	(1.50-2.05%)
Number of users	1	1	61	7	42	20	198

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for youth.

[1] Respondents can be current smokers of multiple non-premium cigar types, including non-premium traditional cigars, cigarillos, and filtered cigars. The prevalence for each non-premium cigar type may not add up to the prevalence for overall non-premium cigars.

[2] Prevalence is the estimated weighted percentage of youth respondents who are identified as current users of cigars or cigarettes.

27. The youth population varies between waves. Youth in Wave 1 who become 18 in Wave 2 or Wave 3 age up and their responses are then captured in the adult PATH data. Similarly, "shadow youth", who were ages 9-11 in Wave 1, also age up as they become 12 years of age in Wave 2 or Wave 3. The shadow youth who age up and are interviewed and their responses are newly included in the youth PATH data.[21]

2. Prevalence of Adult Cigar Usage[22]

28. As shown in Table 2, among adults ages 18 years and older, the prevalence of premium cigar use is statistically significantly less than that of non-premium cigar and cigarette

[21] PATH Restricted-Use Data User Guide, pp. 17 and 21. Youth who have relocated outside of the U.S. or have become incarcerated by Wave 2 or Wave 3 will not be interviewed and are not replaced in the sample data.

[22] Prevalence is the estimated weighted percentage of adult respondents who are identified as adults who are current cigar or cigarette smokers.

use across all three Waves of PATH data. Overall, in Wave 1, the prevalence of premium cigar use is 0.56% as compared to 2.51% for non-premium cigars. In Wave 2, the prevalence of premium cigar use increased slightly to 0.58%, but remains significantly less than the 2.16% for non-premium cigars. In Wave 3, the prevalence of premium cigar use drops to 0.53%, and again, is significantly less than the 1.94% for non-premium cigars. As compared to detailed non-premium cigar types, the prevalence of premium cigars is significantly less than cigarillos and filtered cigars in all three Waves, and significantly less than non-premium traditional cigars in Wave 1. Finally, as shown in Table 2, the prevalence of cigar use decreased from Wave 1 to Wave 3 for all cigar types. The prevalence of cigarette use increased, from 18.08% in Wave 1 to 18.27% in Wave 3.[23]

Table 2. *Prevalence of Cigar Usage among Adults, Aged 18 Years and Older, Wave 1 to Wave 3*

	Premium Cigars		Non-Premium Cigars				
	Overall	**Unflavored**	**Overall[1]**	**Traditional Cigars**	**Cigarillos**	**Filtered Cigars**	**Cigarettes**
	(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
Wave 1 (32,320 adult respondents)							
Overall adult prevalence[2]							
Percentage	0.56%	0.51%	2.51%	0.78%	1.59%	0.85%	18.08%
Confidence interval	(0.49-0.63%)	(0.45-0.58%)	(2.35-2.67%)	(0.70-0.85%)	(1.46-1.72%)	(0.77-0.94%)	(17.55-18.61%)
Number of users	315	289	1,760	506	1,186	551	11,402
Wave 2 (28,362 adult respondents)							
Overall adult prevalence[2]							
Percentage	0.58%	0.53%	2.16%	0.44%	1.32%	0.86%	18.60%
Confidence interval	(0.49-0.67%)	(0.45-0.61%)	(1.99-2.32%)	(0.38-0.51%)	(1.21-1.43%)	(0.74-0.98%)	(18.08-19.12%)
Number of users	270	248	1,237	243	790	473	9,694
Wave 3 (28,148 adult respondents)							
Overall adult prevalence[2]							
Percentage	0.53%	0.48%	1.94%	0.36%	1.20%	0.79%	18.27%
Confidence interval	(0.44-0.62%)	(0.39-0.56%)	(1.78-2.11%)	(0.30-0.42%)	(1.09-1.31%)	(0.67-0.91%)	(17.68-18.87%)
Number of users	215	193	1,055	179	682	424	9,013

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.

[1] Respondents can be current users of multiple non-premium cigar types, including non-premium traditional cigars, cigarillos, and filtered cigars. The prevalence for each non-premium cigar type may not add up to the prevalence for overall non-premium cigars.

[2] Prevalence is the estimated weighted percentage of adult respondents who are identified as current users of cigars or cigarettes.

[23] As discussed above, Corey's list of premium cigars included 135 traditional cigar brands/products. After adjusting Corey's list of premium cigars, based on advice from counsel, we include 124 traditional cigar brands/products as premium cigars.

3. Demographic Characteristics of Cigar and Cigarette Users, Wave 1 Wave 3

29. Premium cigar users are typically white males, who are 35 years or older, and are relatively more educated and have higher incomes than non-premium traditional cigar, cigarillo, filtered cigar and cigarette smokers.

30. In Wave 1, of current premium cigar users 76% are white, 96% are male, and 57% are 35 years or older. In contrast, consumers of non-premium cigar products are 42-66% are white and 69-84% are male. Cigarillo users are generally younger, with only 36% being 35 years or older. See Table 3a.

31. Premium cigar users are also more educated than non-premium cigar or cigarette users. Similar to Corey et al., we report educational attainment data for respondents aged 18 and up, but we also compute statistics for those age 25 and older which allows for a better comparison to census data. We found that, in Wave 1, 78.1% of premium cigar users aged 25 and up had some higher-level education, and 44.9% had completed college. In contrast, among the same age group approximately 44.7% of non-premium traditional cigar users, 46.4% of cigarillo users, 40.0% of filtered cigar users and 45.0% of cigarette smokers respectively had at least some college experience. Of non-premium traditional cigar users age 25 and older, 9.4% had completed college, with a similar percentage observed for cigarillo users (10.6%), filtered cigar users (9.2%) and cigarette smokers (12.0%).

32. Finally, premium cigar users have higher incomes than non-premium cigar users or cigarette smokers. Of current users, 35.5% of premium cigar users had a household income of $100,000 or more, as compared to 8.8% of non-premium traditional cigar, 5.8% of cigarillo, 4.8% of filtered cigar, and 7.5% of cigarette smokers.

Table 3a. *Demographic Characteristics of Adults, Aged 18 Years and Older, Current Smokers, Wave 1*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age group (%)[1]						
18-24	16.2%	16.0%	22.5%	35.9%	18.0%	14.1%
25-34	26.6	26.1	24.3	28.6	16.0	24.3
35-54	34.8	35.3	32.8	27.1	39.8	39.0
55+	22.4	22.6	20.5	8.5	26.3	22.7
Sex (%)						
Male	96.0%	96.5%	84.0%	72.7%	68.6%	55.3%
Female	4.0	3.5	16.0	27.3	31.4	44.7
Race/ethnicity (%)						
White, non-Hispanic	76.4%	75.1%	59.2%	41.7%	66.2%	69.8%
Black/AA, non-Hispanic	5.6	5.8	23.0	35.7	15.7	12.9
Other or multi-race, non-Hispanic	6.9	7.3	6.0	6.6	6.6	6.0
Hispanic	11.1	11.9	11.7	16.0	11.5	11.2
Education for adults aged 18+ (%)						
Less than high school diploma	4.7%	5.0%	14.4%	16.0%	17.7%	15.9%
GED	3.9	3.3	12.2	11.7	11.7	10.8
High school diploma	15.7	13.4	28.1	26.3	29.8	28.1
Some college/associate degree	36.2	37.4	37.7	38.2	33.0	33.8
Completed college or more	39.5	41.0	7.6	7.8	7.8	11.3
Education for adults aged 25+ (%)						
Less than high school diploma	3.7%	4.0%	13.4%	15.9%	18.3%	16.1%
GED	4.3	3.7	12.8	12.4	11.9	10.9
High school diploma	13.9	11.8	29.0	25.3	29.9	28.0
Some college/associate degree	33.2	34.1	35.3	35.8	30.8	33.0
Completed college or more	44.9	46.4	9.4	10.6	9.2	12.0
Household poverty (%)[2]						
<100% FPL	13.6%	12.7%	40.6%	47.1%	44.9%	34.2%
100-<200% FPL	14.7	13.7	22.5	23.6	27.4	25.1
>200% FPL	64.8	66.2	29.7	22.6	18.4	32.3
Missing FPL	6.9	7.4	7.2	6.8	9.2	8.5
Household income (%)						
Less than $10,000	7.4%	7.4%	27.2%	30.4%	29.1%	21.0%
$10,000-$24,999	14.1	12.6	26.2	30.1	35.3	27.6
$25,000-$49,999	14.1	13.1	23.6	21.5	21.8	25.6
$50,000-$99,999	28.9	30	14.2	12.2	9.1	18.3
$100,000-$199,999	24.5	25.2	6.9	4.6	4.1	6.4
$200,000 or more	11.0	11.7	1.9	1.2	0.7	1.1
Number of users	315	289	506	1,186	551	11,402

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.

[1] When respondent age was missing, imputed values for age were used as described in the PATH Study Restricted Use Files U Guide (United States Department of Health and Human Services, 2017).

[2] Household poverty is from field "3 level poverty status based on annual household income and HHS poverty guidelines." Th field is only available in Wave 1, not Wave 2 or Wave 3.

33. In Wave 2, of current premium cigar users 85% are white, 98% are male, and 62% are 35 years or older. In contrast, consumers of non-premium cigar products are 47-62% white and 64-85% male. See Table 3b.

34. Again, premium cigar users are more educated than non-premium cigar or cigarette users. In Wave 2, 80.5% of premium cigar users aged 25 and up had some higher-level education. This percentage for premium cigar users is larger than the ones for non-traditional cigar users (48.3%), cigarillo users (49.5%), filtered cigar users (40.0%) and cigarette users (44.9%). The fraction of college completion of premium cigar users among those age 25 and older also compares favorably to non-premium cigar or cigarette users with percentages of 13.9% for non-premium traditional cigar users, 11.7% for cigarillo users, 8.8% for filtered cigar users and 12.3% for cigarette users.

35. Finally, in Wave 2, 35.6% of premium cigar users had a household income of $100,000 or more, as compared to 10.8% of non-premium traditional cigar, 8.6% of cigarillo, 3.8% of filtered cigar, and 7.5% of cigarette smokers.

Table 3b. *Demographic Characteristics of Adults, Aged 18 Years and Older, Current Smokers, Wave 2.*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age group (%)						
18-24	12.4%	11.4%	15.5%	27.5%	15.5%	12.5%
25-34	25.7	25.1	23.5	28.1	20.1	23.6
35-54	35.1	35.4	36.1	31.1	35.9	39.1
55+	26.8	28.1	25.0	13.3	28.4	24.7
Sex (%)						
Male	97.5%	97.7%	85.1%	75.0%	64.2%	54.8%
Female	2.5	2.3	14.9	25.0	35.8	45.2
Race/ethnicity (%)						
White, non-Hispanic	84.5%	84.1%	58.8%	47.4%	61.8%	68.4%
Black/AA, non-Hispanic	4.5	4.3	24.4	32.5	19.4	13.7
Other or multi-race, non-Hispanic	3.9	4.0	3.8	5.8	4.6	5.9
Hispanic	7.2	7.7	13.0	14.3	14.2	12.0
Education for adults aged 18+ (%)						
Less than high school diploma	3.5%	3.8%	15.7%	17.1%	21.3%	16.5%
GED	4.1	4.4	15.0	10.6	9.1	11.3
High school diploma	14.2	11.3	22.8	24.4	27.9	27.5
Some college/associate degree	33.0	33.5	34.4	38.0	33.7	33.2
Completed college or more	45.2	46.9	12.1	9.9	8.1	11.5
Education for adults aged 25+ (%)						
Less than high school diploma	3.1%	3.4%	15.1%	17.2%	22.2%	16.6%
GED	4.1	4.4	14.6	10.9	9.6	11.3
High school diploma	12.2	9.1	22.1	22.5	28.3	27.1
Some college/associate degree	31.4	32.3	34.4	37.8	31.2	32.6
Completed college or more	49.1	50.8	13.9	11.7	8.8	12.3
Household income (%)						
Less than $10,000	4.4%	4.5%	27.5%	29.6%	39.6%	21.5%
$10,000-$24,999	9.3	7.6	25.5	27.0	28.3	27.4
$25,000-$49,999	18.8	18.1	22.0	17.5	17.4	24.2
$50,000-$99,999	32.0	32.1	14.2	17.2	10.8	19.4
$100,000-$199,999	25.4	27.0	9.8	7.1	2.8	6.3
$200,000 or more	10.2	10.8	1.0	1.5	1.0	1.2
Number of users	270	248	243	790	473	9,694

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.

36. In Wave 3, among adults, 81% of premium cigar users are white, as compared to 57% of non-premium traditional cigar smokers, 49% of cigarillo smokers and 57% of filtered cigar smokers. In addition, 98% of premium cigar users are male, as compared to 65%-83% for other cigar smokers and 54% of cigarette smokers. Premium cigar users are also older. Almost

no youth, aged 12-17, smoke premium cigars and, among adults, 67% of premium cigar users in Wave 3 were 35 years or older. See Table 3c.

37. Premium cigar smokers are also more educated and have higher incomes than those using non-premium cigar products or cigarette smokers. In Wave 3, 83.3% of premium cigar users aged 25 and up had some higher-level education, and 52.7% had completed college. In contrast, among the same age group approximately 43.6% of non-premium traditional cigar users, 51.5% of cigarillo users, 38.6% of filtered cigar users and 44.8% of cigarette smokers respectively had at least some college experience. Of non-premium traditional cigar users age 25 and older, 16.5% had completed college, with lower percentages observed for cigarillo users (11.1%), filtered cigar users (4.9%) and cigarette smokers (11.9%).

38. Finally, 44% of premium cigar users had a household income of $100,000 or more, as compared to 13% of non-premium traditional cigar, 10% of cigarillo, 4% of filtered cigar, and 8% of cigarette smokers.

Table 3c. *Demographic Characteristics of Adults, Aged 18 Years and Older, Current Smokers, Wave 3.*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age group (%)						
18-24	9.4%	9.1%	10.8%	23.9%	14.9%	11.2%
25-34	23.6	25.2	17.6	30.8	21.3	23.2
35-54	31.1	28.0	32.8	29.1	34.5	39.0
55+	35.9	37.8	38.9	16.2	29.3	26.6
Sex (%)						
Male	97.5%	98.5%	82.9%	73.2%	65.2%	53.7%
Female	2.5	1.5	17.1	26.8	34.8	46.3
Race/ethnicity (%)						
White, non-Hispanic	80.7%	80.5%	56.6%	49.4%	56.9%	68.5%
Black/AA, non-Hispanic	7.4	6.8	27.1	33.4	22.0	13.8
Other or multi-race, non-Hispanic	6.5	7.3	5.4	5.4	6.1	5.7
Hispanic	5.3	5.3	10.9	11.8	15.0	12.0
Education for adults aged 18+ (%)						
Less than high school diploma	3.2%	3.2%	13.7%	13.8%	23.0%	17.2%
GED	2.2	1.5	11.3	10.2	7.9	11.0
High school diploma	12.4	8.3	32.9	26.9	31.1	27.4
Some college/associate degree	32.1	33.8	26.9	39.7	32.9	33.1
Completed college or more	50.1	53.2	15.2	9.4	5.0	11.3
Education for adults aged 25+ (%)						
Less than high school diploma	3.4%	3.3%	13.2%	13.0%	24.0%	17.3%
GED	1.9	1.3	12.0	10.8	8.1	11.1
High school diploma	11.5	7.6	31.1	24.7	29.3	26.8
Some college/associate degree	30.6	31.8	27.1	40.4	33.7	32.9
Completed college or more	52.7	56.0	16.5	11.1	4.9	11.9
Household income (%)						
Less than $10,000	6.0%	5.2%	29.4%	28.6%	39.1%	21.0%
$10,000-$24,999	9.2	8.9	22.3	24.6	30.6	27.1
$25,000-$49,999	12.0	10.4	22.4	20.5	15.7	24.6
$50,000-$99,999	28.9	30.2	12.5	16.7	10.3	19.7
$100,000-$199,999	28.9	29.5	11.5	8.6	3.1	6.7
$200,000 or more	15.0	15.9	1.9	0.9	1.2	1.0
Number of users	215	193	179	682	424	9,013

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.

B. Frequency and Intensity of Premium Cigar Use

39. Using the PATH data, we analyzed the frequency and intensity of tobacco use by cigar type and cigarettes. We found that of current users, premium cigar users are far less likely to smoke every day, smoke on substantially fewer days, and smoke fewer numbers of cigars per day than non-premium cigar or cigarette users. Again, as the prevalence of premium cigar smoking among youth was 0.08% or less, we focused our analysis on persons aged 18 and older. See Table 4a-Table 4c.

40. Premium cigar users are less likely to smoke every day. Of current users in Wave 1, 6.5% of premium cigar consumers used them daily. In comparison, 24.0% of non-premium traditional cigar smokers, 22.0% of cigarillo smokers, 37.3% of filtered cigar smokers, and 79.5% of cigarette smokers smoke every day. See Table 4a.

41. Premium cigar users smoke on fewer days than non-premium cigar or cigarette users. The median number of days smoked in past 30 days ranged from 1.7 days for premium cigar users, to 8.1 for non-premium traditional cigar users, 7.5 for cigarillo users, 14.0 days for filtered cigar users, and 29.4 days for cigarette users, in Wave 1.

42. Premium cigar users also use fewer cigars on each day in past 30 days than those using non-premium cigars or cigarettes. The median number of cigars per day in past 30 days ranged from 0.1 cigars for premium cigar users to 0.3 for non-premium cigar users, 0.3 for cigarillo users and 1.6 for filtered cigar users.[24] Cigarette smokers smoked a median of 10.1 cigarettes per day in past 30 days, in Wave 1.

[24] Using Corey et al.'s methodology, if a PATH respondent replied that they smoked less than one cigar per day, we coded them as having smoked 0.50 cigars per day.

Table 4a. *Frequency and Intensity of Tobacco Use by Cigar Type and Cigarettes, Wave 1*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Now smoke product every day						
Percentage	6.5%	6.9%	24.0%	22.0%	37.3%	79.5%
Confidence interval	(3.9-9.2%)	(4.1-9.6%)	(20.1-27.8%)	(19.7-24.2%)	(31.9-42.7%)	(78.5-80.6%)
Days smoked in past 30 days [1]						
Median	1.7	1.7	8.1	7.5	14.0	29.4
Interquartile range	(0.0-4.8)	(0.0-4.8)	(1.4-28.4)	(1.3-29.1)	(0.8-28.8)	(29.1-29.7)
Number of cigars or cigarettes per day on days smoked [2]						
Median	0.6	0.6	1.0	1.0	3.4	11.0
Interquartile range	(0.0-0.9)	(0.0-0.9)	(0.5-2.5)	(0.3-2.4)	(0.3-10.2)	(5.4-19.4)
Number of cigars or cigarettes per day in past 30 days [2]						
Median	0.1	0.1	0.3	0.3	1.6	10.1
Interquartile range	(0.0-0.2)	(0.0-0.2)	(0.1-1.9)	(0.1-2.0)	(0.1-9.5)	(5.0-19.6)
Number of users	315	289	506	1,186	551	11,402

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

43. In Wave 2, 7.5% of current premium cigar users smoke every day. In comparison, 14.4% of non-premium traditional cigar, 15.6% of cigarillo, 37.4% of filtered cigar, and 76.0% of cigarette users smoke every day. The median number of days smoked in the past 30 days was 1.4 days for premium cigar users and 2.6 days for non-premium traditional cigar users, 4.1 days for cigarillo users, 12.8 for filtered cigar users and 29.4 days for cigarette users. The median number of cigars per day smoked in past 30 days is 0.1 cigars for premium cigar users and 0.1 for non-premium traditional cigar users, 0.2 for cigarillo users and 0.9 for filtered cigar users.[25] Cigarette smokers smoked a median of 9.8 cigarettes per day in past 30 days, in Wave 2. See Table 4b.

[25] Using Corey et al.'s methodology, if a PATH respondent replied that they smoked less than one cigar per day on days smoked, we coded them as having smoked 0.50 cigars per day.

Table 4b. *Frequency and Intensity of Tobacco Use by Cigar Type and Cigarettes, Wave 2*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Now smoke product every day						
Percentage	7.5%	7.3%	14.4%	15.6%	37.4%	76.0%
Confidence interval	(3.5-11.4%)	(3.1-11.6%)	(9.5-19.3%)	(12.9-18.2%)	(32.8-42.0%)	(74.7-77.3%)
Days smoked in past 30 days [1]						
Median	1.4	1.4	2.6	4.1	12.8	29.4
Interquartile range	(0.0-4.0)	(0.0-4.1)	(0.3-11.4)	(0.8-16.5)	(1.5-29.4)	(29.0-29.7)
Number of cigars or cigarettes per day on days smoked [2]						
Median	0.6	0.6	0.6	0.8	2.6	9.7
Interquartile range	(0.0-0.8)	(0.0-0.8)	(0.1-1.4)	(0.2-1.7)	(0.5-9.1)	(4.6-19.3)
Number of cigars or cigarettes per day in past 30 days [2]						
Median	0.1	0.1	0.1	0.2	0.9	9.8
Interquartile range	(0.0-0.1)	(0.0-0.2)	(0.0-0.5)	(0.0-1.0)	(0.0-7.1)	(4.9-19.2)
Number of users	270	248	243	790	473	9,694

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

44. The frequency and intensity of smoking decreased between Wave 1 and Wave 3 for all cigar types except for filtered cigars. The daily use of premium cigars decreased from 6.5% in Wave 1 to 3.9% in Wave 3, and was lower than that of all non-premium cigars in Wave 3 —21.9% for non-premium traditional cigars, 20.7% for cigarillos, and 40.9% for filtered cigars. In Wave 3, the median number of days smoked in the past 30 days was a low of 1.3 days for premium cigars and 4.7 days for non-premium traditional cigars, 4.4 for cigarillos, 14.5 for filtered cigars and 29.4 days for cigarette smokers. The median number of cigars per day smoked in past 30 days is 0.1 cigars for premium cigar users and 0.2 for non-premium traditional cigar users, 0.2 for cigarillo users and 0.9 for filtered cigar users.[26] Cigarette smokers smoked a median of 9.9 cigarettes per day in past 30 days, in Wave 3. See Table 4c.

[26] Using Corey et al.'s methodology, if a PATH respondent replied that they smoked less than one cigar per day, we coded them as having smoked 0.50 cigars per day.

Table 4c. *Frequency and Intensity of Tobacco Use by Cigar Type and Cigarettes, Wave 3*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Now smoke product every day						
Percentage	3.9%	3.5%	21.9%	20.7%	40.9%	77.0%
Confidence interval	(1.4-6.3%)	(1.0-6.1%)	(13.8-29.9%)	(16.9-24.4%)	(33.8-47.9%)	(75.9-78.2%)
Days smoked in past 30 days [1]						
Median	1.3	1.3	4.7	4.4	14.5	29.4
Interquartile range	(0.0-4.2)	(0.0-4.3)	(0.8-24.3)	(0.7-22.6)	(1.6-29.4)	(29.0-29.7)
Number of cigars or cigarettes per day on days smoked [2]						
Median	0.6	0.6	0.8	0.8	2.7	9.7
Interquartile range	(0.0-0.8)	(0.0-0.8)	(0.2-1.8)	(0.2-1.8)	(0.5-9.3)	(4.5-19.3)
Number of cigars or cigarettes per day in past 30 days [2]						
Median	0.1	0.1	0.2	0.2	0.9	9.9
Interquartile range	(0.0-0.1)	(0.0-0.1)	(0.0-1.2)	(0.0-1.0)	(0.1-8.4)	(4.1-19.5)
Number of users	215	193	179	682	424	9,013

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

C. Premium Cigars, Tobacco Initiation and Progression to Use of Other Tobacco Products.

45. Using the PATH data, we analyzed tobacco initiation and the progression from non-regular to regular cigarette use. We analyzed the age at first regular use, the transition of cigar users to cigarette smoking between Wave 1 and Wave 3, and the percent of dual users of premium cigar and cigarette who started smoking traditional cigars before they started smoking cigarettes.

1. Age at Initiation

46. Most cigarette smokers experiment and progress to becoming established users during an "initiation window" between the ages of 12 and 24.[27] Using the PATH data, we analyzed the age at first regular use by cigar type and cigarettes, for current smokers in Wave 1, Wave 2 and Wave 3. See Table 5a, Table 5b, and Table 5c.

47. In Wave 1, premium cigar users were typically older at first regular use as compared to non-premium traditional cigar users, cigarillo users and cigarette users. For premium cigars, the median age at first regular use was 24.8 years, as compared to 19.4 years for non-premium traditional cigar users, 18.0 years for cigarillo users and 16.6 years for cigarette users. Filtered cigar smokers were generally older at initiation, with a median age at first regular use of 26.8 years. See Table 5a.

Table 5a. *Initiation, Median Age at First Regular use by Cigar Type and Cigarettes, Wave 1*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age at first regular use[1]						
Median	24.8	24.8	19.4	18.0	26.8	16.6
Interquartile range	(19.2-33.1)	(19.4-33.1)	(16.5-29.5)	(15.9-23.3)	(17.8-44.3)	(14.7-18.7)
Current age[2]						
Median	37.7	38.1	35.5	28.1	42.5	40.1
Interquartile range	(28.0-53.4)	(28.1-53.5)	(24.8-51.5)	(22.0-40.2)	(27.6-54.5)	(28.3-52.9)
Number of users	315	289	506	1,186	551	11,402

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Respondents reporting age at first regular use <6 years old were assigned a value of 6 years old.

[2] When respondent age was missing, imputed values for age were used as described in the PATH Study Restricted Use Files User Guide (United States Department of Health and Human Services, 2017).

[27] Trinidad, D. R., Pierce, J. P., Sargent, J. D., et al. (2017), "Susceptibility to Tobacco Product Use Among Youth in Wave 1 of the Population Assessment of Tobacco and Health (PATH) Study", *Preventive Medicine,* 101, 8-14.

48. In Wave 2, the median age at first regular use was more similar for premium and non-premium traditional cigars, 27.6 years and 27.3 years respectively. For cigarillos, the median age at first regular use is 21.7 and for cigarettes, is 16.6. Filtered cigar users were 35.1 years old at first regular use, as measured by the median. See Table 5b.

Table 5b. *Initiation, Median Age at First Regular use by Cigar Type and Cigarettes, Wave 2*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age at first regular use[1]						
Median	27.6	27.8	27.3	21.7	35.1	16.6
Interquartile range	(20.6-39.1)	(21.4-39.4)	(17.9-43.6)	(17.5-34.0)	(20.6-49.7)	(14.7-18.9)
Current age						
Median	39.6	41.0	42.6	31.3	45.1	41.2
Interquartile range	(29.6-54.7)	(30.0-55.6)	(27.2-54.0)	(23.4-46.2)	(26.6-55.1)	(29.1-53.9)
Number of users	270	248	243	790	473	9,694

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Respondents reporting age at first regular use <6 years old were assigned a value of 6 years old.

49. The median age at first regular use increased between Wave 1 and Wave 3 for each cigar type. In Wave 3, the median age at first regular use was 30.0 for premium cigars, 29.8 for non-premium traditional cigars, 24.2 for cigarillos, and 34.2 for filtered cigars. The median age at first regular use for cigarettes remained essentially unchanged at 16.7. See Table 5c.

Table 5c. *Initiation, Median Age at First Regular Use by Cigar Type and Cigarettes, Wave 3*

	Premium Cigars		Non-Premium Cigars			
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Cigarettes
	(1)	(2)	(3)	(4)	(5)	(6)
Age at first regular use[1]						
Median	30.0	29.8	29.8	24.2	34.2	16.7
Interquartile range	(24.0-48.6)	(24.0-49.5)	(19.4-48.6)	(17.9-38.2)	(22.0-50.6)	(14.7-19.1)
Current age						
Median	44.5	46.0	49.0	31.9	43.3	42
Interquartile range	(30.7-58.2)	(30.5-58.6)	(31.8-62.1)	(24.2-47.1)	(27.4-56.3)	(29.6-54.8)
Number of users	215	193	179	682	424	9,013

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Respondents reporting age at first regular use <6 years old were assigned a value of 6 years old.

2. Progression to Everyday Cigarette Smoking

50. Using the PATH data, we analyzed the cigar users' progression from non-regular cigarette smoking to regular cigarette smoking in two ways. In the first case, we analyzed the number of adult current smokers, by cigar type, that did not smoke cigarettes regularly in Wave 1, but became regular cigarette smokers by Wave 3. In the second case, we took all respondents that were current cigar smokers and current cigarette smokers, and determined what percentage of this group reported an age of first use for cigars that was lower than that of cigarettes.

a. Current Cigar Smokers Transition to Regular Cigarette Smoking

51. In Table 6, we report the number of survey respondents that are current cigar smokers and that are also not everyday cigarette smokers, in Wave 1. For example, in Wave 1, 173 survey respondents were current premium cigar users and did not smoke cigarettes every day. Next, we report the number of these respondents who become everyday cigarette smokers as of Wave 3. For example, 5 of the 173 premium cigar and not-everyday cigarette smokers in Wave 1 became everyday cigarette smokers by Wave 3. In the bottom panel of the table, we convert these counts to percentages. Our results show that 2% of premium cigar and not-

everyday-cigarette smokers in Wave 1 became everyday cigarette smokers between Wave 1 and Wave 3. The percentage for premium cigar users is lower than the 9% for non-premium traditional cigar users, the 12% for cigarillo users, and the 26% for filtered cigar users that became everyday cigarette smokers between Wave 1 and Wave 3. Not only was the everyday cigarette smoking progression for current users of premium cigars statistically significantly lower than those of non-premium cigars, it was also statistically indistinguishable from the transition into everyday smoking for respondents who were not current users of any tobacco product as of Wave 1.

Table 6. *Progression from Current Cigar Smoker to Everyday Cigarette Smoker, 2013-2016*

	Current Users of					
	Premium Cigars		Non-Premium Cigars			Not Current
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Tobacco Users
	(1)	(2)	(3)	(4)	(5)	(6)
Number of Respondents						
Not Everyday Cigarette Users as of Wave 1	173	161	170	469	148	12,584
Progress to Everyday Cigarette Users in Wave 3	5	5	20	56	38	302
Remain as Not Everyday Cigarette Users in Wave 3	168	156	150	413	110	12,282
Weighted Percentage						
Not Everyday Cigarette Users as of Wave 1	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Progress to Everyday Cigarette Users in Wave 3						
Percentage	2.2%	2.3%	9.1%	11.5%	26.4%	1.1%
Confidence Interval	(0.1-4.3%)	(0.1-4.6%)	(5.6-12.6%)	(8.3-14.8%)	(19.0-33.7%)	(1.0-1.3%)
Remain as Not Everyday Cigarette Users in Wave 3						
Percentage	97.8%	97.7%	90.9%	88.5%	73.6%	98.9%
Confidence Interval	(95.7-99.9%)	(95.4-99.9%)	(87.4-94.4%)	(85.2-91.7%)	(66.3-81.0%)	(98.7-99.0%)

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- Respondents who are defined as "Not Current Tobacco Users" are adult respondents who are not defined by PATH data as any of the following in Wave 1: Current Established Cigarette User, Current Established Dissolvable User, Current Established E-Cigarette user, Current Established Filtered Cigar User, Current Established Cigarillo User, Current Established Traditional Cigar User, Current Established Hookah User, Current Established Pipe User, Current Established Smokeless Tobacco User, or Current Established Snus User.
- Not Everyday Cigarette Users are respondents who chose "No" when asked "Have you ever smoked a cigarette, even one or two puffs?" or chose "Not at all" or "Some day" when asked "Do you now smoke cigarettes . . ." The respondents must be in both Wave 1 and Wave 3.
- Everyday Cigarette Users are respondents who chose "Every day" when asked "Do you now smoke cigarettes . . ." The respondents must be in both Wave 1 and Wave 3.

52. Similar results are obtained for transition into some day cigarette smoking. Our results show that 5.9% of premium cigar users who did not smoke cigarettes in Wave 1 became some day or everyday cigarette smokers in Wave 3. The percentage for premium cigar users is lower than the 13.2% for non-premium traditional cigar users, the 17.3% for cigarillo users, and the 29.5% for filtered cigar users that became cigarette smokers between Wave 1 and Wave 3.

Not only was the someday cigarette smoking progression for current users of premium cigars statistically significantly lower than those of non-premium cigars, it was also statistically indistinguishable from the transition into someday smoking for respondents who were not current users of any tobacco product as of Wave 1.

Table 7. *Progression from Current Cigar Smoker to Someday Cigarette Smoker, 2013-2016*

	Current Users of					
	Premium Cigars		Non-Premium Cigars			Not Current
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars	Tobacco Users
	(1)	(2)	(3)	(4)	(5)	(6)
Number of Respondents						
Not Someday Cigarette Users as of Wave 1	149	138	101	252	77	11,993
Progress to Someday Cigarette Users in Wave 3	9	9	15	48	20	596
Remain as Not Someday Cigarette Users in Wave 3	140	129	86	204	57	11,397
Weighted Percentage						
Not Someday Cigarette Users as of Wave 1	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Progress to Someday Cigarette Users in Wave 3						
Percentage	5.9%	6.4%	13.2%	17.3%	29.5%	2.5%
Confidence Interval	(1.7-10.0%)	(1.8-10.9%)	(5.8-20.6%)	(13.1-21.4%)	(19.3-39.7%)	(2.2-2.8%)
Remain as Not Someday Cigarette Users in Wave 3						
Percentage	94.1%	93.6%	86.8%	82.7%	70.5%	97.5%
Confidence Interval	(90.0-98.3%)	(89.1-98.2%)	(79.4-94.2%)	(78.6-86.9%)	(60.3-80.7%)	(97.2-97.8%)

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- Respondents who are defined as "Not Current Tobacco Users" are adult respondents who are not defined by PATH data as any of the following in Wave 1: Current Established Cigarette User, Current Established Dissolvable User, Current Established E-Cigarette user, Current Established Filtered Cigar User, Current Established Cigarillo User, Current Established Traditional Cigar User, Current Established Hookah User, Current Established Pipe User, Current Established Smokeless Tobacco User, or Current Established Snus User.
- Not Someday Cigarette Users are respondents who chose "No" when asked "Have you ever smoked a cigarette. even one or two puffs?" or chose "Not at all" when asked "Do you now smoke cigarettes . . ." The respondent must be in both Wave 1 and Wave 3.
- Someday Cigarette Users are respondents who chose "Some day" or "Every day" when asked "Do you now smoke cigarettes . . ." The respondent must be in both Wave 1 and Wave 3.

b. Which Tobacco Product Was Used First: Premium Cigars or Cigarettes?

53. To determine whether premium cigar use progressed to cigarette use, we identified those respondents who currently used both premium cigars and cigarettes and determined the percentage of those who started smoking traditional cigars first. I relied on the following PATH study questions to conduct this analysis:

- How old were you the first time you smoked part or all of a traditional cigar, even one or two puffs?
- How old were you the first time you smoked part or all of a cigarette?

54. Note that the first question does not specify whether the traditional cigar was premium or not. In addition, no brand or product information was collected as a follow-up to this question. Hence we are not able to identify whether it was a premium or non-premium traditional cigar.

55. Table 8 shows that of adults who are current established premium cigar users and also current established cigarette smokers, 78.8% smoked cigarettes first before they started smoking traditional cigars—premium or non-premium, 10.1% started smoking traditional cigars before they started to smoke cigarettes and 11.0% started smoking traditional cigars and cigarettes at the same age.

Table 8. *First Traditional Cigar or Cigarette Use Among Current Premium Cigar and Cigarette Smokers*

	Started Smoking
	(1)
Cigarette first	
Percentage	78.8%
Confidence Interval	(71.1% - 86.5%)
Traditional cigars first	
Percentage	10.1%
Confidence Interval	(3.6% - 16.7%)
Both at the same age	
Percentage	11.0%
Confidence Interval	(4.7% - 17.3%)
Number of users	101

Notes and Source:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adult.
- Age when started smoking is identified by the following questions: "How old were you the first time you smoked part or all of a traditional cigar, even one or two puffs?" "How old were you the first time you smoked part or all of a cigarette?" These questions are only available in Wave 1, not Wave 2 or Wave 3.

D. Dual Use of Premium Cigars and Other Tobacco Products

56. As the prevalence of premium cigar use among youth is close to zero, we focused our analysis of the dual use of cigars and cigarettes on PATH respondents age 18 years and older. We found that, in Wave 1, the dual use of cigarettes and premium cigars was substantially lower than that of non-premium cigar products. We also found that the current premium cigar smoker typically did not smoke any cigarettes on any day in the past 30 days. See Table 9a-Table 9c.

57. Of current smokers in Wave 1, non-premium cigar users were more than twice as likely to be dual users than premium cigar users. Of current users, 29.0% of premium cigar users were also current cigarette users, as compared to 58.3% of non-premium traditional cigar users, 58.0% of cigarillo users and 66.0% of filtered cigar users. The median premium cigar user had not smoked any cigarettes on any day in the past 30 days – the median number of cigarette smoking days and the number of cigarettes smoked per day in past 30 days are both zero (0). In contrast, the median non-premium traditional cigar user smoked cigarettes on 29.0 days of the past 30-day period, and typically smoked 4.7 cigarettes per day in the past 30 days. The median cigarillo smoker smoked cigarettes on 19.9 days of the past 30-day period and smoked 3.0 cigarettes per day in the past 30 days. The median filtered cigar smoker smoked cigarettes on 29.2 days of the past 30-day period and smoked 7.8 cigarettes per day in the past 30 days.

Table 9a. *Dual Use of Cigars and Cigarettes, Wave 1*

	Premium Cigars		Non-Premium Cigars		
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars
	(1)	(2)	(3)	(4)	(5)
Cigarette smoking status[1]					
Current smoker					
Percentage	29.0%	27.5%	58.3%	58.0%	66.0%
Confidence interval	(24.2-33.7%)	(22.5-32.6%)	(53.6-63.0%)	(54.4-61.6%)	(61.3-70.7%)
Former smoker					
Percentage	30.2%	32.0%	15.4%	10.6%	10.6%
Confidence interval	(24.3-36.1%)	(25.9-38.2%)	(11.8-19.0%)	(8.4-12.8%)	(7.5-13.8%)
Never smoker					
Percentage	40.9%	40.4%	26.3%	31.4%	23.4%
Confidence interval	(35.4-46.4%)	(34.5-46.3%)	(22.4-30.2%)	(28.2-34.6%)	(18.9-27.8%)
Now smoke cigarettes every day					
Percentage	24.8	23.5	54.5	50.3	65.2
Confidence interval	(20.3-29.3%)	(18.6-28.4%)	(49.1-59.9%)	(47.2-53.4%)	(60.6-69.9%)
Number of cigarette smoking days in past 30 days[2]					
Median	0.0	0.0	29.0	19.9	29.2
Interquartile range	(0.0-24.3)	(0.0-14.5)	(0.0-29.5)	(0.0-29.5)	(1.4-29.6)
Number of cigarettes per day on days smoked					
Median	0.0	0.0	5.1	4.2	9.2
Interquartile range	(0.0-3.2)	(0.0-2.6)	(0.0-18.6)	(0.0-14.7)	(0.0-18.9)
Number of cigarettes per day in past 30 days					
Median	0.0	0.0	4.7	3.0	7.8
Interquartile range	(0.0-1.4)	(0.0-1.2)	(0.0-18.5)	(0.0-14.8)	(0.0-18.8)
Number of users	315	289	506	1,186	551

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Former cigarette smokers are those who have smoked at least 100 cigarettes in their lifetime and do not smoke cigarettes now. Never cigarette smokers are those who have smoked less than 100 cigarettes in their lifetime.

[2] Everyday smokers are assumed to smoke on all 30 days. Respondents who have never smoked are assumed to not have smoked on any days.

58. Of current users in Wave 2, 31.6% of premium cigar users were also current cigarette users, as compared to 55.9% of non-premium traditional cigar users, 61.4% of cigarillo users and 73.2% of filtered cigar users. The median number of cigarette smoking days and the number of cigarettes smoked per day remain at zero (0). In contrast, the median non-premium traditional cigar user smoked cigarettes on 14.0 days of the past 30-day period, and typically smoked 1.0 cigarettes per day in past 30 days. The median cigarillo smoker smoked cigarettes on 14.7 days of the past 30-day period and smoked 1.4 cigarettes per day in the past 30 days. The

median filtered cigar smoker smoked cigarettes on 28.3 days of the past 30-day period and smoked 4.8 cigarettes per day in past 30 days. See Table 9b.

Table 9b. *Dual Use of Cigars and Cigarettes, Wave 2*

	Premium Cigars		Non-Premium Cigars		
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars
	(1)	(2)	(3)	(4)	(5)
Cigarette smoking status [1]					
Current smoker					
Percentage	31.6%	30.1%	55.9%	61.4%	73.2%
Confidence interval	(25.2-38.0%)	(23.5-36.7%)	(48.6-63.3%)	(57.4-65.3%)	(68.9-77.5%)
Former smoker					
Percentage	30.5%	33.0%	18.1%	15.9%	9.4%
Confidence interval	(23.6-37.3%)	(25.6-40.4%)	(13.1-23.1%)	(13.1-18.7%)	(6.2-12.5%)
Never smoker					
Percentage	37.9%	36.9%	26.0%	22.8%	17.4%
Confidence interval	(31.5-44.3%)	(30.1-43.6%)	(19.2-32.7%)	(19.6-26.0%)	(13.5-21.3%)
Now smoke cigarettes every day					
Percentage	18.3	16.2	45.9	45.2	59.4
Confidence interval	(12.7-23.9%)	(10.8-21.7%)	(38.6-53.3%)	(41.0-49.3%)	(55.0-63.8%)
Number of cigarette smoking days in past 30 days [2]					
Median	0.0	0.0	14.0	14.7	28.3
Interquartile range	(0.0-6.8)	(0.0-3.6)	(0.0-28.9)	(0.0-28.9)	(2.7-29.1)
Number of cigarettes per day on days smoked					
Median	0.0	0.0	2.3	3.0	6.6
Interquartile range	(0.0-2.0)	(0.0-1.7)	(0.0-14.0)	(0.0-11.3)	(0.6-18.3)
Number of cigarettes per day in past 30 days					
Median	0.0	0.0	1.0	1.4	4.8
Interquartile range	(0.0-0.8)	(0.0-0.2)	(0.0-13.1)	(0.0-9.8)	(0.1-14.9)
Number of users	270	248	243	790	473

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Former cigarette smokers are those who have smoked at least 100 cigarettes in their lifetime and do not smoke cigarettes now. Never cigarette smokers are those who have smoked less than 100 cigarettes in their lifetime.

[2] Everyday smokers are assumed to smoke on all 30 days. Respondents who have never smoked are assumed to not have smoked on any days.

59. By Wave 3, the percentage of dual usage dropped to 23.8% for premium cigar users, still far below the 51.3% for non-premium traditional cigar users, 56.3% for cigarillos users, and 69.8% for filtered cigars. See Table 9c.

Table 9c. *Dual Use of Cigars and Cigarettes, Wave 3*

	Premium Cigars		Non-Premium Cigars		
	Overall	Unflavored	Traditional Cigars	Cigarillos	Filtered Cigars
	(1)	(2)	(3)	(4)	(5)
Cigarette smoking status[1]					
Current smoker					
Percentage	23.8%	24.0%	51.3%	56.3%	69.8%
Confidence interval	(17.1-30.5%)	(17.0-31.1%)	(41.5-61.1%)	(51.8-60.7%)	(64.4-75.3%)
Former smoker					
Percentage	40.1%	41.2%	28.6%	19.1%	11.0%
Confidence interval	(31.5-48.8%)	(31.7-50.8%)	(18.1-39.1%)	(15.7-22.5%)	(8.0-14.1%)
Never smoker					
Percentage	36.1%	34.7%	20.1%	24.6%	19.1%
Confidence interval	(27.4-44.8%)	(24.8-44.6%)	(11.4-28.8%)	(20.7-28.4%)	(13.2-25.0%)
Now smoke cigarettes every day					
Percentage	15.0	14.6	38.0	40.6	59.6
Confidence interval	(9.4-20.7%)	(8.7-20.4%)	(29.2-46.7%)	(36.1-45.0%)	(53.8-65.4%)
Number of cigarette smoking days in past 30 days[2]					
Median	0.0	0.0	1.6	8.0	28.3
Interquartile range	(0.0-0.5)	(0.0-0.6)	(0.0-28.6)	(0.0-27.5)	(2.2-29.2)
Number of cigarettes per day on days smoked					
Median	0.0	0.0	0.6	2.5	6.8
Interquartile range	(0.0-0.5)	(0.0-0.6)	(0.0-13.0)	(0.0-9.9)	(0.4-16.2)
Number of cigarettes per day in past 30 days					
Median	0.0	0.0	0.1	1.0	5.9
Interquartile range	(0.0-0.0)	(0.0-0.0)	(0.0-11.3)	(0.0-10.0)	(0.1-15.9)
Number of users	215	193	179	682	424

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations.

[1] Former cigarette smokers are those who have smoked at least 100 cigarettes in their lifetime and do not smoke cigarettes now. Never cigarette smokers are those who have smoked less than 100 cigarettes in their lifetime.

[2] Everyday smokers are assumed to smoke on all 30 days. Respondents who have never smoked are assumed to not have smoked on any days.

60. Among current premium cigar users in Wave 1, those who are also current cigarette smokers do not smoke more premium cigars. They smoke premium cigars 1.1 days per month as compared to 1.9 days per month for those who are not current cigarette smokers. The median number of premium cigars used a day in the past 30 days was 0 for current cigarette smokers and 0.1 for non-cigarette smokers.

Table 10a. *Premium Cigar Smoking by Cigarette Smoking Status, Wave 1.*

	Current Cigarette Smokers?	
	Yes	**No**
	(1)	**(2)**
Now smoke premium cigars every day		
Percentage	4.5%	7.3%
Confidence interval	(0.2-8.7%)	(3.8-10.9%)
Days smoked premium cigars in past 30 days [1]		
Median	1.1	1.9
Interquartile range	(0.0-4.4)	(0.2-4.9)
Number of premium cigars per day on days smoked [2]		
Median	0.6	0.6
Interquartile range	(0.0-0.9)	(0.1-0.9)
Number of premium cigars per day in past 30 days [2]		
Median	0.0	0.1
Interquartile range	(0.0-0.2)	(0.0-0.2)
Number of users	101	214

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

61. In Wave 2, as in Wave 1, there is no statistically significant difference in premium cigar usage between those who currently smoke cigarettes and those who do not. See Table 10b.

Table 10b. *Premium Cigar Smoking by Cigarette Smoking Status, Wave 2.*

	Current Cigarette Smokers?	
	Yes	**No**
	(1)	**(2)**
Now smoke premium cigars every day		
Percentage	5.8%	8.2%
Confidence interval	(1.5-10.1%)	(3.4-13.0%)
Days smoked premium cigars in past 30 days [1]		
Median	0.9	1.7
Interquartile range	(0.0-2.7)	(0.0-4.4)
Number of premium cigars per day on days smoked [2]		
Median	0.6	0.6
Interquartile range	(0.0-0.8)	(0.0-0.8)
Number of premium cigars per day in past 30 days [2]		
Median	0.0	0.1
Interquartile range	(0.0-0.1)	(0.0-0.2)
Number of users	84	186

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

62. As in Waves 1 and 2, in Wave 3, there is no statistically significant difference in smoking premium cigar every day between those who currently smoke cigarettes and those who do not. See Table 10c.

Table 10c. *Premium Cigar Smoking by Cigarette Smoking Status, Wave 3.*

	Current Cigarette Smokers?	
	Yes	**No**
	(1)	**(2)**
Now smoke premium cigars every day		
Percentage	5.8%	3.3%
Confidence interval	(0.0-12.3%)	(0.7-5.9%)
Days smoked premium cigars in past 30 days [1]		
Median	0.7	1.5
Interquartile range	(0.0-2.7)	(0.2-5.4)
Number of premium cigars per day on days smoked [2]		
Median	0.5	0.7
Interquartile range	(0.0-0.8)	(0.1-0.9)
Number of premium cigars per day in past 30 days [2]		
Median	0.0	0.0
Interquartile range	(0.0-0.1)	(0.0-0.2)
Number of users	56	159

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day were assigned as smoking 0.5 cigars per day.

IV. MISCELLANEOUS

63. My work is ongoing and my opinions are subject to revision based on additional economic and statistical analyses.

July 25, 2018

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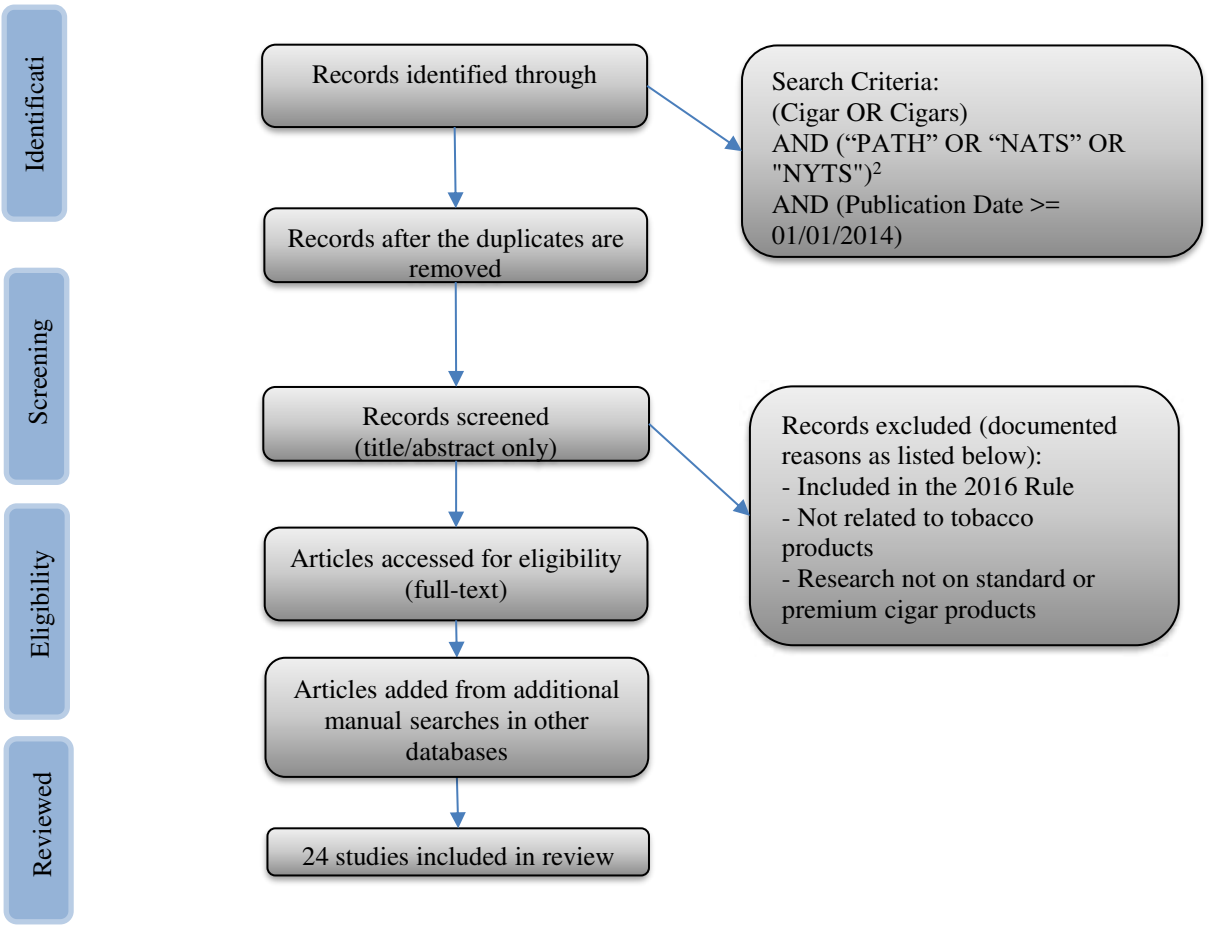
APPENDIX A

Table 11. *Literature Review*

Process of Selecting Relevant Academic Studies



Notes and Sources:

[1] The databases searched are: PubMed, ISI Web of Science, and Embase.

[2] PATH: Population Assessment of Tobacco and Health; NATS: National Adult Tobacco Survey; NYTS: National Youth Tobacco Survey.

Summary of Recent Studies on Traditional Cigar Smoking Patterns

No. (1)	Study Authors (2)	Title (3)	Types of Tobacco Products Analyzed (4)	Data Source (5)	Population (6)	Use Patterns of Tobacco Products Analyzed[1] (7)	Conclusion (8)
1.	Corey, et al. (2017)	US Adult Cigar Smoking Patterns, Purchasing Behaviors, and Reasons for Use According to Cigar Type: Findings from the Population Assessment of Tobacco and Health (PATH) Study, 2013-2014	Premium cigars, non-premium cigars, cigarillos, filtered cigars, and cigarettes. Premium cigars are defined by a brand's tobacco blends, components (e.g. long filler, whole leaf wrapper), and manufacturing process. Where brand information was unavailable, usual price paid per stick of ≥$2 was applied to identify premium brands	PATH	Adult smokers and non-smokers (n = 32,320 participants aged 18 years and older; weighted response rate = 74.0%)	Initiation/Progression; Dual Use; Frequency of Use; Impact of Labelling/Advertising	Those smoking premium cigars tended to differ from those smoking non-premium cigars, cigarillos, and FCs (filtered cigars) including having users with higher socioeconomic status, lower smoking frequency, different purchasing behaviors (e.g., where and for how much cigars were bought) and reasons for use. Age at first regular use was higher for FCs (median: 26.8 years) and premium cigars (24.5 years) compared with non-premium cigars, cigarillos, and cigarettes (16.6–19.5 years; all $p < .05$). Currently smoking one or more of the other cigar products ranged from 64.0% for non-premium cigars to 16.8% for premium cigars. Prevalence of daily smoking was higher for FCs (37.3%), compared with all other cigar types (6.7%–25.3%; all $p < .01$); daily smoking was similar for non-premium cigars and cigarillos ($p = 0.11$). Endorsing advertising as a reason for smoking ranged from 9.7% for premium cigars to 15.1% for non-premium cigars. "That public figures smoke them" as a reason for smoking ranged from 12.1% for premium cigars to 21.0% for non-premium cigars. In terms of metrics - flavor, affordability, alternative to quitting tobacco altogether, similarity to the feeling of smoking a regular cigarette, tool to help quit/cut down cigarettes as reasons of smoking, premium cigars have the lowest percentage among all tobacco products listed in the analysis.
2.	Ambrose, et al. (2015)	Flavored Tobacco Product Use among US Youth Aged 12-17 Years, 2013-2014	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, pipe tobacco, hookah, snus pouches, and other smokeless tobacco	PATH	13,651 youths aged 12-17 years old	Initiation/Progression	The majority of youth ever-users reported that the first tobacco product they used was flavored, including 88.7% of hookah users, 81% of e-cigarette users, 65.4% of ever-users of any cigar type, and 50.1% of ever cigarette smokers. For past 30-day youth tobacco users, 71.7% of cigars used were flavored. In addition, youth consistently reported product flavoring as a reason for use across all product types, including e-cigarettes (81.5%), hookahs (78.9%), cigars (73.8%), smokeless tobacco (69.3%), and snus patches (67.2%).
3.	California Medical Association (CMA)White Paper (2016)	Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users	Cigars (including traditional cigars, little cigars, and cigarillos), smokeless tobacco, hookah tobacco, liquid nicotine solution, and menthol cigarettes	N/A	N/A	Initiation/Progression; Dependence; Labelling/Advertising	Tobacco use remains the chief risk factor for the leading causes of death in the state, and evidence shows that the tobacco industry continues to engage in efforts to entice a new generation of users by adding specific flavors to mask the harsh taste of tobacco, which does not reduce the negative health impacts of tobacco use. Flavors and menthol tobacco products skew user preferences to the younger users. These products are usually the "starter" products that lead to dependence and addiction to tobacco products and even increase use of multiple tobacco products concurrently.

4.	Conway, et al. (2018)	Co-occurrence of Tobacco Product Use, Substance Use, and Mental Health Problems among Youth: Findings from Wave 1 (2013-2014) of the Population Assessment of Tobacco and Health (PATH) Study	Cigarettes, e-cigarettes, traditional cigars, cigarillos, filtered cigars, pipe tobacco, hookah, smokeless tobacco (i.e. loose snus, moist snuff, dip, spit, or chewing tobacco), snus pouches, kreteks, bidis, and dissolvable tobacco	PATH	13,617 youth, aged 12-17 years old, participants of PATH Wave 1	Association between tobacco use and substance use and mental health problems	In multivariable regression analyses, use of each tobacco product was associated with substance use, particularly cigarillos and marijuana. Cigarette and cigarillo use were strongly associated with substance use problems and tobacco users were more likely to report internalizing and externalizing problems. Female tobacco users were more likely to have internalizing problems than male tobacco users. Poly-tobacco users were more likely than exclusive users to use substances and have mental health and substance use problems. In terms of cigars, users of any cigar had relatively higher severity of substance use problems and a relatively high ever-substance use compared to other tobacco products analyzed.
5.	Conway, et al. (2017)	Co-occurrence of tobacco product use, substance use, and mental health problems among adults: Findings from Wave 1 (2013-2014) of the Population Assessment of Tobacco and Health (PATH) Study	Cigarettes, e-cigarettes, traditional cigars, cigarillos, filtered cigars, pipe tobacco, hookah, smokeless tobacco (i.e. loose snus, moist snuff, dip, spit, or chewing tobacco), snus pouches, kreteks, bidis, and dissolvable tobacco	PATH	32,202 Adult (18+ years) participants of PATH Wave 1	Association between tobacco use and substance use and mental health problems	In multivariable regression analyses, tobacco users were more likely to use substances and experience mental health problems. This result was more pronounced among female subjects. Cigarette users were found to be more likely to have problematic alcohol and other drug use, while cigarillo users had the highest likelihood of a combination of marijuana and alcohol use. Hookah use was strongly associated with the use of alcohol, marijuana, and Ritalin.
6.	Dickinson, et al. (2016)	The Language of Cigar Use: Focus Group Findings on Cigar Product Terminology	Traditional cigars, cigarillos, and little cigars	Self conducted research on 16 focus groups	123 participants who were current cigar users in the U.S.	Labelling/Advertising	Participants used a variety of terms for each product subtype. Brand names were often used, as well as slang terms, including terms describing cigars modified for marijuana use. Some subtypes were less likely than others to be considered “cigars.” Participants had mixed opinions about whether users of cigar products are “smokers.” In terms of cigars, participants saw little cigars and cigarillos as being more common, daily-use, products than large/traditional cigars, which were viewed as something to smoke during leisure time or special occasions. Participants were less likely to view users of large/ traditional cigars as “smokers.”
7.	Hinds, et al. (2018)	Flavored Cigars Appeal to Younger, Female, and Racial/Ethnic Minority College Students	Cigars (including traditional cigars, filtered cigars, and cigarillos)	Marketing and Promotions across Colleges in Texas project (M-PACT)	523 18-29 year old college students who reported current (past 30-day) cigar use	Prevalence and correlates of flavored and non-flavored cigar use	68.3% of those smoking flavored cigars smoked cigarillos, as compared to 20.4% who smoked traditional cigars. 64.5% of those who smoked non-flavored cigars smoked traditional cigars as compared to 25.5% that were cigarillo smokers. Younger participants (18-24) had 2.17 greater odds of choosing flavored cigars as compared to older participants (25-29). The number of days of cigar use in the past 30 days was not associated with flavored cigar use.

8.	Kasza, et al. (2017)	Tobacco-Product Use by Adults and Youths in the United States in 2013 and 2014	Traditional cigars, cigarillos, filtered cigars, pipe tobacco, hookah, snus pouches, other smokeless tobacco, dissolvable tobacco, bidis, kreteks, cigarettes, and e-cigarettes	PATH	32,320 adults (18+) and 13,651 youths (12-17)	Dual Use; Frequency of Use; Prevalence	The prevalence of tobacco use (%) for youth aged 12-17 who had "ever used" a tobacco product was 21.8 for any tobacco product as compared to 2.3 for traditional cigars. For youth who had used a tobacco product in the past 30 days, prevalence was 8.9 for any tobacco product as compared to 0.7 for traditional cigars. The prevalence for youth using a tobacco product daily was 1.6 for any tobacco product, and was unable to be reliably estimated for traditional cigars. The prevalence of tobacco use for adults age 18 or older who had used a tobacco product in the past 30 days was 29.7 for any tobacco product as compared to 3.6 for traditional cigars. The prevalence for adults using a tobacco product daily was 19.7 for any tobacco product as compared to 0.3 for traditional cigars. (Approximately 40% of tobacco users, adults and youths used multiple tobacco products, in which cigarettes+e-cigarettes was the most common combination.)
9.	Kong, et al. (2017)	Adolescent and Young Adult Perceptions on Cigar Packaging: A Qualitative Study	Traditional cigars and cigarillos	Focus groups conducted in Connecticut in 2016	Study participants were Connecticut Adolescent (up to 17 years old) and Adults (18-25 years old) in New Haven County who had ever used a cigar (N=47)	Labelling/Advertising	Findings showed that adolescents and young adults identified many features of cigar packaging as attractive, such as flavors, price promotions, branding, and marketing claims. Participants were shown packaging for cigars (mostly cigarillos, with a few traditional cigars) and asked to identify characteristics that they found appealing. The appealing components identified were flavors (46.8%), price promotions (28.8%), branding (21.2%), marketing claims (e.g., "natural", 17.2%), product features (e.g., the word "cigarillos", 15.2%), number of cigars (8.0%), color (4.4%), re-sealable features (2.8%), and other (6.0%).
10.	Kurti, et al. (2017)	Tobacco and Nicotine Delivery Product Use in a National Sample of Pregnant Women	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, pipe tobacco, hookah, snus pouches, other smokeless tobacco, and dissolvable tobacco	PATH	388 pregnant women 18 years or older	Prevalence and correlates of using tobacco products; Frequency of Use	13.8% maternal smoking prevalence among women whose average gestational age was 20.9 weeks (5-6 months) is consistent with an earlier study using 2002-2009 NSDUH data. Overall prevalence was highest for cigarettes (13.8%), followed by e-cigarettes (4.9%), hookah (2.5%) and cigars (2.3%), and below 1% for all other products. Prevalence of using other tobacco products is much higher among current smokers than the general population, with e-cigarettes (28.5%) most prevalent followed by cigars (14.0%), hookah (12.4%), smokeless (4.7%), snus (4.6%), and pipes (2.1%).

11.	Lopez, et al. (2018)	Tobacco and Nicotine Delivery Product Use in a U.S. National Sample of Women of Reproductive Age	Tobacco cigarettes, e-cigarettes, any cigar (traditional cigars, filtered cigars, and/or cigarillo), hookah, smokeless tobacco and snus, pipe tobacco, and dissolvable tobacco	PATH	12,848 women aged 15–44 who were not currently pregnant in the first wave of the PATH data, 2013–2014	Prevalence and correlates of using tobacco products; Dual Use	Cigarette smoking prevalence remains relatively high among women of reproductive age and strongly correlated with use of other tobacco products. Current cigarette smoking was the strongest correlate of current e-cigarette use (OR=65.7, 95% CI=44.8–96.5), cigar smoking (OR=19.2, 95% CI=14.1–26.1), and hookah use (OR=6.6, 95% CI=5.1–8.5). Use of other tobacco and nicotine delivery product was low among those who never smoked tobacco cigarettes. In terms of cigars, cigarette smoking was the strongest predictor of cigar smoking. Current and former cigarette smokers had 19.2 and 3.8 times greater odds of smoking cigars relative to never smokers, respectively. Those who were younger, non-White, had less than high school or some college education, or had used alcohol or illicit drugs in the past year were more likely to report any current cigar use.
12.	Miller, et al. (2015)	"You're made to feel like a dirty filthy smoker when you're not, cigar smoking is another thing all together." Responses of Australian Cigar and Cigarillo Smokers to Plain Packaging	Premium cigars, premium cigarillos, non-premium cigarillos, and other cigars	Self conducted interviews and surveys in Australia	Interviewed premium cigar smokers (n=10); occasional premium cigar smokers and/or premium cigarillo smokers (n=14); non-premium cigarillo smokers (n=28); 268 respondents to the online survey of current cigar and cigarillo smokers in March 2014	Dual Use; Labelling/Advertising; Impact of Regulation	Premium cigar smokers had limited exposure to Plain Packaging (PP), with many purchasing fully branded cigars in boxes duty free or online, and singles in non-compliant packaging. Those who were exposed were concerned by the warnings, and felt more like "dirty smokers." Premium cigar smokers perceived minimal changes in taste, harm, and value. Occasional premium cigar and premium cigarillo smokers with higher PP exposure perceived cigar/package appeal and value had declined and noticed the Graphic Health Warnings (GHW). Online survey participants reported increased noticeability of GHWs (33%), decreased appeal of packaging (53%), and reduced consumption of cigars (42%) and cigarillos (44%) since PP implementation.
13.	Neff, et al. (2015)	Frequency of Tobacco Use Among Middle and High School Students - United States, 2014	Cigars (including traditional cigars, filtered cigars, and cigarillos), cigarettes, e-cigarettes, and smokeless tobacco	NYTS	22,007 U.S. students from public and private schools, grade 6-12. A nationally representative sample (response rate = 73.3%)	Dual Use; Frequency of Use; Dependence	An estimated 480,000 middle school and high school students smoked cigarettes, 390,000 used smokeless tobacco, 340,000 used e-cigarettes, and 170,000 smoked cigars on 20 or more days of the preceding 30 days. Among high school students who were current users, cigar smokers were least likely to have smoked 20 or more days in the past 30 days -- 42.0% of smokeless tobacco users, 31.6% of cigarette smokers, 15.5% of e-cigarettes users, and 13.1% of cigar smokers were frequent users. In turn, of current users, cigar smokers were most likely to have only smoked 1-2 days in the past 30 days (52.0 % for cigar smokers as compared to 26.6% for smokeless tobacco users). Similarly, for middle school students, cigar smokers were less likely to be frequent smokers (20 or more days in the past 30 days), and more likely to be occasional smokers, smoking 1-2 days in the preceding 30 days.
14.	Pierce, et al. (2017)	Receptivity to Tobacco Advertising and Susceptibility to Tobacco Products	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, and smokeless tobacco	PATH	10,751 adolescents (12-17 years old) who had never used a tobacco product	Initiation/Progression; Labelling/Advertising	For youth aged 12-13 years old, 7.9% were receptive to ads for cigars as compared to 27.8% for e-cigarettes, 21.5% for cigarettes, and 14.8% for smokeless tobacco. For youth aged 16-17 years old, 12.6% were receptive to cigar ads as compared to 32.7% for e-cigarettes, 25% for cigarettes, and 20.5% for smokeless tobacco. 14-15 year olds had similar numbers as 16-17 year olds. In a multivariate logistic regression controlling for potential covariates, moderate to high receptivity to cigarettes, e-cigarettes, and smokeless tobacco was significantly associated with concurrent susceptibility to smoke cigarettes, which was not the case for moderate to high receptivity to cigar advertising.

15.	Pierce, et al. (2018)	Association Between Receptivity to Tobacco Advertising and Progression to Tobacco Use in Youth and Young Adults in the PATH Study	Cigars (including traditional cigars, cigarillos, and filtered cigars), electronic cigarettes, cigarettes, and smokeless tobacco products	PATH	10,989 respondents aged 12-24 who had no tobacco product use in Wave 1	Initiation/Progression; Labelling/Advertising	Receptivity to tobacco product advertising is substantial among US youth who are below the minimum required age to purchase tobacco products. Among young committed never users, receptivity is significantly associated with progression toward use within a 1-year period. In general, receptivity to cigar ads is lowest for all age groups, whereas receptivity to e-cigarette ads is highest.
16.	Protano, et al. (2017)	Second-hand Smoke Generated by Combustion and Electronic Smoking Devices Used in Real Scenarios: Ultrafine Particle Pollution and Age-Related Dose Assessment	Combustion (conventional and hand-rolled cigarettes, a cigar and tobacco pipe) and non-combustion (e-cigarette and IQOS®) devices	N/A	4 volunteer smokers (three male and one female of 60, 58, 53, and 37 years old), all of whom were employees of the Sapienza University of Rome	Characterization of smoke dispersal and second-hand smoke transmission	Aerosol measurements were carried out in a model room where both combustion and non-combustion devices were smoked. Regardless of the smoking device, the highest doses were received by infants, which reached 9.88×108 particles/kg bw during a cigar smoking session. Moreover, 60% to 80% of the particles deposited in the head region of a 3-month-old infant were smaller than 100nm and could be translocated to the brain via the olfactory bulb. The doses due to second-hand smoke from electronic devices were significantly lower, below 1.60×108 particles/kg bw, than those due to combustion devices. Dosimetry estimates were 50% to 110% higher for IQOS® than for e-cigarettes.
17.	Roberts, et al. (2017)	Rural versus Urban Use of Traditional and Emerging Tobacco Products in the United States, 2013-2014	Cigars, cigarillos, pipes, smokeless tobacco, e-cigarettes, cigarettes, and hookah	PATH	32,320 adults (18+)	Dual Use; Difference between Urban and Rural populations	No non-rural difference in the use of cigars, although the daily use of cigarettes and smokeless tobacco were higher in Rural populations, and the use of Cigarillos and Hookah were higher in Urban than Rural populations, at the $P < .001$ level.
18.	Rostron, et al. (2016)	Dependence Symptoms and Cessation Intentions among US Adult Daily Cigarette, Cigar, and E-cigarette Users, 2012-2013	Cigarettes, cigars (including large cigars, cigarillos, and little filtered cigars), and e-cigarettes	NATS	5,617 daily tobacco users that used a combination of cigars, cigarettes, and e-cigarettes (who either reported using a single product type every day or being a multi-product user and using at least one tobacco product every day)	Dual Use; Frequency of Use; Dependence	1) Among daily tobacco users, dual cigarette and cigar users show evidence of greater dependence symptoms -- they smoked more cigarettes per day (17.3 vs.15.8), had shorter times to first tobacco use after waking (21.4 min vs. 25.9 min), and were more likely to report dependence symptoms (withdrawal and craving) than exclusive cigarette smokers. 2) Dual cigarette and e-cigarette users were more likely than exclusive cigarette smokers to report withdrawal and craving symptoms and cessation intentions. 3) Exclusive cigar and e-cigarette users were less likely to report dependence symptoms than users of other products, but more than a third of exclusive cigar users reported strong cravings for tobacco in the past 30 days.

19.	Singh, et al. (2016)	Tobacco Use Among Middle and High School Students--United States, 2011-2015	Cigarettes, cigars, smokeless tobacco, electronic cigarettes , hookahs, pipe tobacco, and bidis	NYTS	U.S. students in grades 6-12. Sample sizes and overall response rates were 2011: 18,866 (72.7%); 2012: 24,658 (73.6%); 2013: 18,406 (67.8%); 2014: 22,007 (73.3%); and 2015: 17,711 (63.4%)	Prevalence, Frequency of Use	In 2015, e-cigarettes were the most commonly used tobacco product among middle (5.3%) and high (16.0%) school students. During 2011-2015, current use of e-cigarettes and hookahs significantly increased for both middle school and high school students, whereas current use of conventional tobacco products, such as cigarettes and cigars decreased. During 2014-2015, current use of e-cigarettes increased among middle school students, whereas current use of hookahs decreased among high school students; in contrast, no change was observed in use of hookahs among middle school students, use of e-cigarettes among high school students, or use of cigarettes, cigars, smokeless tobacco, pipe tobacco, or bidis among middle and high school students. In 2015, an estimated 4.7 million middle and high school students were current tobacco product users.
20.	Soneji, et al. (2017)	Engagement with Online Tobacco Marketing and Associations with Tobacco Product Use among U.S. Youth	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, pipe tobacco, hookah, snus ouches, dissolvable tobacco, bidis, kreteks, and smokeless tobacco	PATH	13,651 youths aged 12-17 years old	Initiation/Progression; Labelling/Advertising	12% of youth engaged in one or more forms of online tobacco marketing. Compared to no engagement, the odds of susceptibility to the use of any tobacco product among never-tobacco users was independently associated with the level of online engagement. Similarly, higher levels of receptivity to tobacco marketing in traditional media venues were also associated with these tobacco-related outcomes, independent of on-line engagement. The prevalence of susceptibility was lower for cigars than for cigarettes, and e-cigarettes despite the level of online engagement for both ever smokers and smokers that have used tobacco for the past 30 days. For example, for those who have ever smoked tobacco, the prevalence of susceptibility for cigars ranged from 6.7 (no tobacco product online engagement) to 26.0 (two or more types of tobacco product online engagement) as compared to 12.5 to 39.2 for cigarettes.
21.	Strong, et al. (2017)	Indicators of Dependence for Different Types of Tobacco Product Users: Descriptive Findings from Wave 1 (2013-2014) of the Population Assessment of Tobacco and Health (PATH) Study	Cigars (including traditional cigars, filtered cigars, and cigarillos), cigarettes, e-cigarettes, hookah, and smokeless tobacco products	PATH	14,287 current established users of tobacco products	Nicotine Dependence	The PATH study questionnaire included 24 tobacco dependence ("TD") symptoms derived from four primary instruments used to represent multiple domains of TD. With levels of TD anchored at 0 (SD=1.0) for cigarette only users, the mean TD were more than a full standard deviation lower for cigar only users (mean= -1.92, SD=2.11). The lowest levels of TD relative to cigarette smokers were seen in e-cigarette users only, cigar only users (lowest, TD=-1.92), and hookah only users.
22.	Strong, et al. (2018)	Marijuana Use among US Tobacco Users: Findings from Wave 1 of the Population Assessment of Tobacco Health (PATH) Study	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, pipe tobacco, hookah, and smokeless tobacco	PATH	32,212 respondents from Wave 1 of the PATH Study	Correlation between tobacco use and marijuana use	1) When compared to non-current tobacco users, each tobacco user group except smokeless only users had higher odds of reporting current marijuana use. 2) Among current tobacco users, higher levels of tobacco dependence did not explain the relationship between tobacco use and marijuana use. 3) Concurrent marijuana use was associated with lower odds of attempts to quit tobacco (OR=0.86, 95% CI=0.79, 0.94, $p < 0.001$) and a higher probability (OR=1.35, 95%CI=1.21, 1.51, $p < 0.01$) of reporting a history of respiratory disease. 4) Marijuana use may represent an additive risk for respiratory harm among concurrent users of tobacco and marijuana. In terms of cigars, current cigar-only users had significantly higher odds of reporting current marijuana use than all other types of tobacco analyzed, but lower than the multiple product users.

23.	Trinidad, et al. (2017)	Susceptibility to Tobacco Product Use among Youth in Wave 1 of the Population Assessment of Tobacco and Health (PATH) Study	Cigars (including traditional cigars, cigarillos, and filtered cigars), cigarettes, e-cigarettes, pipe tobacco, hookah, smokeless tobacco, snus, dissolvable tobacco, bidis, and kreteks	PATH	13,651 adolescents, 13,589 parents, and 9,112 18-24 year old young adults	Initiation/Progression; Dual Use; Frequency of Use	The purpose of the study was to investigate susceptibility and ever use of tobacco products among adolescents and young adults in the U.S. Susceptibility is reflected by the number of "susceptible never users", which is defined by the authors who created a questionnaire and conducted a tobacco product uptake continuum from it. They found that susceptibility levels were lower for cigars (15.2%) as compared to cigarettes (28.6%). The reported ever use of cigars among adolescents ages 12-17 was approximately half that of cigarettes (7.4% for cigars as compared to 13.4% for cigarettes). The authors considered susceptible never users, non-current ever users and current users to be at risk for future established tobacco use in adulthood, and the proportion at risk for cigars is relatively low (22.9%) as compared to cigarettes (42.0%).
24.	Villanti, et al. (2017)	Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study (2013-2014)	Traditional cigars, cigarillos, filtered cigars, pipe tobacco, hookah, snus pouches, other smokeless tobacco, dissolvable tobacco, cigarettes, e-cigarettes, kreteks, and bidis	PATH	32,320 adults (18+) and 13,651 youths (12-17)	Initiation/Progression	The prevalence of any current flavored cigar use among current tobacco users was higher in youth (20.6%) and young adults (18.4%) than adults (6.9%). Flavor was found to be a primary reason for using a given tobacco product, especially among youth.

Notes and Sources:

[1] Aspects of user patterns analyzed include initiation/progression, dual use, frequency of use, dependence, impact of labelling/advertising, impact of regulation, and other specific smoking patterns.

APPENDIX B

Table 12a. *Unflavored Premium Cigar Smoking by Cigarette Smoking Status, Wave 1*

	Current Cigarette Users?	
	Yes	**No**
	(1)	**(2)**
Now smoke unflavored premium cigars every day		
Percentage	5.1%	7.5%
Confidence interval	(0.2-10.0%)	(3.9-11.2%)
Days smoked unflavored premium cigars in past 30 days[1]		
Median	1.0	1.9
Interquartile range	(0.0-4.2)	(0.2-4.9)
Number of unflavored premium cigars per day on days smoked[2]		
Median	0.6	0.6
Interquartile range	(0.0-0.9)	(0.1-0.9)
Number of unflavored premium cigars per day in past 30 days[2]		
Median	0.0	0.1
Interquartile range	(0.0-0.2)	(0.0-0.2)
Number of users	90	199

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day on days smoked were assigned as smoking 0.5 cigars per day.

Table 12b. *Unflavored Premium Cigar Smoking by Cigarette Smoking Status, Wave 2*

	Current Cigarette Users?	
	Yes	**No**
	(1)	**(2)**
Now smoke unflavored premium cigars every day		
Percentage	4.4%	8.5%
Confidence interval	(0.0-9.3%)	(3.4-13.7%)
Days smoked unflavored premium cigars in past 30 days[1]		
Median	1.0	1.8
Interquartile range	(0.0-2.6)	(0.0-4.5)
Number of unflavored premium cigars per day on days smoked[2]		
Median	0.6	0.6
Interquartile range	(0.0-0.9)	(0.0-0.8)
Number of unflavored premium cigars per day in past 30 days[2]		
Median	0.0	0.1
Interquartile range	(0.0-0.1)	(0.0-0.2)
Number of users	74	174

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day on days smoked were assigned as smoking 0.5 cigars per day.

Table 12c. *Unflavored Premium Cigar Smoking by Cigarette Smoking Status, Wave 3*

	Current Cigarette Users?	
	Yes	**No**
	(1)	**(2)**
Now smoke unflavored premium cigars every day		
Percentage	5.3%	3.0%
Confidence interval	(0.0-12.3%)	(0.4-5.5%)
Days smoked unflavored premium cigars in past 30 days[1]		
Median	0.5	1.5
Interquartile range	(0.0-2.4)	(0.1-5.8)
Number of unflavored premium cigars per day on days smoked[2]		
Median	0.5	0.6
Interquartile range	(0.0-0.8)	(0.1-0.8)
Number of unflavored premium cigars per day in past 30 days[2]		
Median	0.0	0.0
Interquartile range	(0.0-0.1)	(0.0-0.2)
Number of users	50	143

Notes and Sources:

- Data are from Population Assessment of Tobacco and Health (PATH) Study Restricted-Use Files for adults.
- The median is the weighted middle value in a sequence of observations. The interquartile range represents the weighted 25th and 75th percentiles.

[1] Number of days smoked in the past 30 days is available for someday users. Everyday users are assumed to smoke on all 30 days.

[2] Respondents reporting smoking less than one cigar per day on days smoked were assigned as smoking 0.5 cigars per day.

Cigar Association of America, Inc.
Comment to Docket No. FDA-2017-N-6107
Regulation of Premium Cigars

EXHIBIT B

PURCHASING PATTERNS AND DEMOGRAPHICS OF ONLINE PREMIUM CIGAR CUSTOMERS

Expert Report Prepared For:

Cigar Association of America, Inc.
Cigar Rights of America
International Premium Cigar and Pipe Retailers Association

Prepared By:

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Econsult Solutions, Inc.
Philadelphia, Pennsylvania

July 25, 2018

1.0 Econsult Solutions, Inc.

Econsult Solutions, Inc. is a Philadelphia-based economic consulting firm that provides businesses and public policy makers with economic consulting services in urban economics, real estate economics, transportation, public infrastructure, development, public policy and finance, community and neighborhood development, planning, as well as expert witness services for litigation support. Its principals are nationally recognized experts in urban development, real estate, government and public policy, planning, transportation, non-profit management, business strategy and administration, as well as litigation and commercial damages. Staff members have outstanding professional and academic credentials, including active positions at the university level, wide experience at the highest levels of the public policy process and extensive consulting experience.

President and Principal Dr. Richard Voith is a well-known expert in real estate economics, transportation, and applied microeconomics. Prior to joining Econsult Solutions, Dr. Voith held the position of Economic Advisor at the Federal Reserve Bank of Philadelphia. Dr. Voith has taught courses at the Wharton School of the University of Pennsylvania and continues as a Faculty Fellow at the University of Pennsylvania's Institute for Urban Research.

Dr. Peter Angelides, Senior Vice President and Principal, is an experienced economist concentrating in real estate, transportation, and economic development. Dr. Angelides also serves as a lecturer at the University of Pennsylvania, teaching courses in Urban Economics, Project Finance, and Infrastructure Investment in the Department of City and Regional Planning in the Fels School of Government. In addition to these positions, Dr. Angelides is a member of the American Economics Association, the American Institute of Certified Planners, and the Urban Land Institute.

Both Dr. Voith and Dr. Angelides have extensive experience providing analysis and testimony in support of litigation matters. The bios of Dr. Voith and Dr. Angelides are attached as Appendix A and B.

2.0 Scope of Work

On March 26, 2018, the Food and Drug Administration ("FDA") issued an Advance Notice of Proposed Rulemaking ("ANPRM") regarding the regulatory status of Premium Cigars. In the ANPRM, FDA requested "comments, evidence, information, data, and analysis that were not submitted in response to the proposed deeming rule, or that may have become available since then, that could further inform FDA's thinking about the regulation of premium cigars." (83 Fed. Reg. at 12,902).

Data on the purchasing and use patterns of premium cigars has, up until now, been very limited. The dearth of information is in part a result of the fact that premium cigars are not defined as a class by the federal government, and are not routinely included in survey data or more general consumption data. Moreover, premium cigars are not sold in traditional mass-market channels. This stands in contrast to other types of cigars and cigarettes, where data is available from usage surveys and from scanner data as these products are sold in retail channels that are easily traceable. In order to examine purchasing patterns, therefore, it is necessary to conduct surveys of premium cigar consumers or to collect data from individual premium cigar retailers. To date, this has not been done using a verifiable analytical methodology. This analysis has taken data from five of the largest internet/mail-order retailers of premium cigars in order to analyze purchasing patterns of premium cigar consumers, and provides a new,

much more comprehensive window on the purchasing, and by implication, use patterns of premium cigars.

3.0 Executive Summary

Using a definition of "premium" cigar developed by a researcher at FDA's Center for Tobacco Products (CTP), this report analyzes sales data for approximately 125 million premium cigars in 2017. The data provided by the companies allows for analysis of premium cigar purchasing patterns that has never before been undertaken.

The data from these companies provide important demographic information about premium cigar purchasers. For example, it shows the average premium cigar purchaser is 55 years old, with a median age of 57, and that 89% of these consumers are over age 35. Further, premium cigar purchasers reside in communities with higher levels of education and higher incomes than the rest of the US population, and reside predominantly in urban environments. In addition, the data show no youth purchases, because all of these companies use third party age-verification to ensure that all consumers are of at least legal minimum age of purchase.

The data also shed light on the distinct purchasing patterns of premium cigar consumers. For the most part, these consumers purchase infrequently, and approximately 44% of the purchasers in this dataset made only a single purchase, and only 17% of premium cigar consumers average more than 2 purchases per year. In addition, premium cigar consumers do not display great brand loyalty, preferring instead to purchase a variety of brands. This differs from what is typically assumed of consumers of tobacco products. Additionally, and unlike purchases of other tobacco products, premium cigar purchases are not spread evenly throughout the year; rather they peak before the December holidays, around Father's Day, and in the summer.

Regarding how premium cigars are sold, the data shows that in 2017, these retailers on average had approximately 10,000 individual Stock Keeping Units ("SKUs"), reflecting the great diversity of products in the premium cigar market. Reflecting the desire for variety among premium cigar consumers, nearly a quarter of orders for premium cigars contain "sample packs," meaning different combinations of cigars, generally created by the retailers themselves. These sample packs are sold so that premium cigar consumers can (as the name implies) sample a variety of different cigars. Further, premium cigars are most often sold in package quantities of five, 10, 20 and 25.

Overall, the purchasing and sale patterns of premium cigars show that consumers (i) are older; (ii) seek variety in their products; and (iii) purchase only occasionally, in limited quantities, and in seasonal patterns.

4.0 Data Sources and Methodology

Approach

The main purpose of this report is to analyze the purchasing patterns of premium cigar consumers and demographic information relating to the communities where premium cigar consumers live. This type of

analysis requires a data set that is broad and deep enough to generate reliable results. We have combined data from multiple online retailers to create a consistent, merged master data set. The data are linked to Census data to bring in information on demographics and the geographic pattern of purchasers.

Cigar Retailers

We collected transaction level data from five major online retailers: Best Cigar Prices, Cigars International, Famous Smoke Shop, JR Cigar, and Thompson Cigar. Four of the retailers provided data for 2014-2016, inclusive, and all five provided data for 2017. In addition, two retailers provided partial year data for 2018.

SKUs

Each retailer provided detailed information on sales. They reported each transaction, broken down by SKU. A record consists of a SKU, the quantity ordered, the customer number, the order number, the date of the order, date of birth, and geographic information about the customer. An order that consists of three SKUs would have three rows, each with the same order number and customer number. A customer who ordered twice in one year would have two order numbers, but one customer number. Each retailer also provided information on the SKU, including brand, brand family, and other identifying information on the product.

Some retailers identified SKUs as premium brands. Some identified which cigars were "hand rolled," which were also identified as "premium" brands.

Each retailer uses a different system for identifying SKUs, so it is not possible to match a specific SKU from one retailer to a SKU from another retailer. Said another way, a specific package of cigars from one retailer that is exactly the same as a package from another retailer will not have the same SKU and cannot be matched from one retailer to another. Brands, on the other hand, are consistent from one retailer to another, except for house or retailer-specific brands.

We note that using manufacturer's Universal Product Codes (UPC), or barcodes, to match cigars across retailers is not feasible because of two retailer practices. First, it is common for retailers to create new package combinations, for example by packaging smaller quantities, such as one to five cigars that are otherwise identical, or the creation of "sampler" packs that combine different types of cigars, either all from the same brand or from different brands, into a new package. None of these configurations has a manufacturer's UPC code. Second, retailers have "house" brands of cigars that only they sell. These house brands also generally do not have UPC codes.

Customers

Each retailer has a unique customer identification system, which allows us to analyze multiple transactions by a single customer. The identifiers are not common across retailers. It is therefore not possible to perfectly identify customers across retailers, so a customer who purchases from two retailers would be counted as two separate customers in this dataset.

To estimate the potential overlap in customers, we used a combination of location and age. The retailers provided zip codes, in most cases nine-digit zip codes, and date of birth (DOB) for most customers.[1] Using customers' nine-digit zip code and date of birth, we measured how many customers with identical dates of birth shared a nine-digit zip code. Because there are relatively few people in a given nine-digit zip code compared to the number of potential birthdays, this combination is likely to be unique, or close to unique, within a nine-digit zip code. Therefore, any overlap in a nine-digit zip code/DOB combination between retailers is likely to indicate the same customer. In our analysis, approximately 4% of nine-digit zip code/DOB combinations appear in more than one retailer's sales information. This percentage indicates that there is relatively little overlap between customers in the data.

Basic Data Facts

The retailers sell premium and non-premium cigars. In total, the data contain information on more than 12 million orders from more than 2.3 million customers. Importantly, the data illustrate the breadth and depth of the cigar industry, containing over 74,000 SKUs, and an average of approximately 15,000 unique SKUs per retailer. In 2017, over 4 million orders were made by 1.2 million unique customers.

Table 1 - Dataset Summary Statistics, All Years and 2017

Item	Quantity (all years)	Quantity 2017
Total Orders	12,753,862	4,062,002
Total Unique Customers	2,312,552	1,223,926
Total number of SKUs	74,339	54,554
Average Unique SKUs per retailer	14,868	10,911

5.0 Premium Cigars

5.1 Definition of "Premium" Cigar

There are many types of cigars on the market, including both premium and non-premium. Our analysis focuses on premium cigars, which means we need to identify which cigars in the data are premium. As noted above, while there is no federal definition of "premium" cigars, CTP researcher Catherine Corey, in her analysis of data relating to cigar use as reported in Wave 1 of the Population Assessment and Tobacco and Health ("PATH") study, provided guidance on classifying premium cigars that can be adopted and

[1] Because nine-digit zip codes are not required by the postal service, some addresses did not include full zip codes. We used the address verification service from SmartyStreets to standardize addresses to USPS specifications, including full nine-digit zip codes.

adapted to the analysis here.[2] Corey developed criteria for determining what constitutes a "premium" cigar and then applied it to brands included in her analysis. The criteria used is as follows:

> "In general, premium cigars, also referred to as "stogies", consist of more expensive tobacco varieties and components, such as whole tobacco leaf wrapper and binder, and may be assembled by hand."[3]

and

> "…information about the brand's tobacco blends, components (e.g., long filler, whole leaf wrapper), and manufacturing process (e.g., handmade), obtained through online searches (conducted fall/winter 2015), was used to distinguish premium cigar brands from non-premium brands."[4]

In our analysis, brands that Corey identified as premium were treated as premium, and brands she considered non-premium were treated as non-premium.[5] Corey's designation of premium versus non-premium cigars nearly perfectly matches industry designations in the data from the retailers who provided such information.

For brands sold by the retailers that Corey did not identify, we followed her approach, as described in the quotes above. For example, we designated hand-rolled cigars as premium. We also conducted internet research on brand descriptions to help determine which were premium.

In total, the brands analyzed by Corey accounted for 30,667 of the SKUs sold by the retailers, leaving 43,672 SKUs to be categorized as premium or non-premium. Of the 30,667 SKUs accounted for in Corey's research, 28,883 SKUs were from brands categorized as premium by Corey, which translates to 149 million cigars. We deemed an additional 41,022 SKUs, out of the 43,672 not addressed by Corey, as premium using the Corey definition and, where necessary, additional research. The brands Corey categorized as non-premium encompassed 1,784 SKUs in our dataset, and we identified an additional

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[2] "The Population Assessment of Tobacco and Health (PATH) Study is a national longitudinal study of tobacco use and how it affects the health of people in the United States. People from all over the country take part in this study." https://pathstudyinfo.nih.gov/UI/HomeMobile.aspx. The PATH study has over 40,000 participants in the youth and adult cohorts.

[3] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*; Nicotine and Tob. Res. ntx209 (2017).

[4] Corey C, et al., *U.S. adult cigar smoking patterns, purchasing behaviors, and reasons for use according to cigar type: findings from the Population Assessment of Tobacco and health (PATH) Study, 2013-2014*; Nicotine and Tob. Res. ntx209 (2017) Supplemental Table A.

[5] Two brands, Marsh Wheeling and Optimo, were treated as non-premium even though Corey designated them as premium because their characteristics, including being machine-made, are more similar to non-premium cigars.

2,650 SKUs as non-premium which Corey did not comment on. While the vast majority of SKUs sold by the retailers are premium, nearly half of the cigars sold are non-premium.[6]

Table 2 – Share of Cigar Market Defined by Corey, All Years

	Number of SKUs	Number of Cigars
Premium		
Identified by Corey	28,883	149,195,309
Not identified by Corey	41,022	239,780,128
Total Premium	69,905	388,975,437
Non-Premium		
Identified by Corey	1,784	172,909,021
Not identified by Corey	2,650	178,954,944
Total Non-Premium	4,434	351,863,965
Total		
Identified by Corey	30,667	322,104,330
Not identified by Corey	43,672	418,735,072
Total	**74,339**	**740,839,402**

Once the non-premium SKUs were identified, we excluded non-premium cigar purchases from the analysis. If a transaction contained premium and non-premium SKUs, the non-premium SKUs were dropped, leaving only the premium portion of the order. As such, customers who purchased non-premium cigars exclusively are not analyzed. After accounting for non-premium cigars, our dataset has 11.2 million premium cigar orders, including 3.6 million in 2017. The dataset includes 2.1 million customers, over half of whom made a purchase in 2017. In total, 389 million cigar purchases are represented and almost 70,000 SKUs. Premium cigar purchases for all data received from 2014-2018 totaled $1.1 billion, including $376.6 million in 2017.

[6] Corey et al. classified the brands available in the PATH study, which is a survey, and by definition the brands included would represent only a subsection of premium cigars. The brand data from the five companies includes all brands sold, which is the entire market of brands sold, but with no reference to consumer use of these brands.

Table 3 – Summary Statistics of Premium Cigar Transactions, All Years and 2017

Premium Cigars	All Years	2017
Total Premium Cigar Orders	11,196,240	3,619,014
Total Unique Premium Cigar Customers [7]	2,129,018	1,123,994
Total Premium Cigars Sold	388,975,437	125,314,590
Total Number of Premium Cigar SKUs	69,905	51,123
Average Premium SKUs per Retailer	13,981	10,225
Total Premium Cigar Revenue	$1,142,980,082	$376,556,960

5.2 Share of the Premium Market

As noted, there is no regulatory or other federal government definition of a "premium" cigar and, therefore, no precise way to determine the true size of the premium cigar market. There is, however, a way to approximate the size, by volume, of the premium cigar category. Premium cigars are nearly all imported. Premium cigars are taxed according to weight, and the harmonized tariff codes are assigned to cigars by price. Therefore, analyzing tax and tariff data can approximate the volume of premium cigars sold in the United States. According to this data, as compiled by the Alcohol Tobacco Tax and Trade Bureau, in 2017, there were 351,011,000 cigars imported into the United States that fall into the two highest Harmonized Tariff Categories (HTS) for large cigars.[8] This number is approximate both due to the imprecise nature of using the HTS classifications for premium cigars, and because this number represents premium cigars imported into the US in 2017, not necessarily premium cigars sold in 2017. The data provided by the five online retailers indicated that they sold 125,314,590 premium cigars in 2017.

[7] This number includes customers who purchases both premium cigars and non-premium cigars in the same order, and only excludes those customers who **only** purchased non-premium cigars.

[8] Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Statistical Report Tobacco, TTB-S-5210-12-2017, Mar. 5, 2018. This number is most likely artificially inflated as a reference point for premium cigars, however, as the HTS classification is based on price at import and does not discriminate based on cigar characteristics. The 351,011,000 number includes cigars included in the highest two tariff classes, but would likely not be considered premium cigars. It follows that this number can be considered only an approximation of the premium cigar market, and the actual volume of the market is lower than this number.

6.0 Customer Age

Retailers record the birthdate of purchasers, allowing us to calculate the purchaser's age at the date of sale.[9] The data indicate that premium cigar customers of the online retailers are older than the general population. The average age of a cigar customer is 55.3 years and the median age is 57 years. A full 88% were over 35 years old, with almost 55% being over 55 years at the time of purchase, and over 34% being between 35 and 54 years old; approximately 11% were under 34. This distribution skews considerably older than the country as a whole.

Table 4 – Age of Online Premium Cigar Purchasers, 2017[10]

Age Cohort	Customers	Percent	US Population	Percent
18-20	3,928	0.4%	12,774,579	5%
21-24	16,120	1.8%	17,841,890	7%
25-34	84,127	9.4%	45,342,672	18%
35-54	305,443	34.3%	83,250,322	33%
>55	480,814	54.0%	92,854,337	37%
Total	**890,432**	**100.0%**	**252,063,800**	**100%**
Average Age	55.3			
Median Age	57.0		38.0	

A subset of the premium cigar market includes flavored premium cigars. We analyzed the average purchaser age of flavored premium cigars and found that the average age was 52 years old and the median is 53.[11]

7.0 Purchasing Patterns

The dataset of premium cigar transactions allowed for a rich analysis of purchasing patterns. These trends include overall market trends, such as seasonal purchasing patterns and the geographic dispersion of customers, as well as how often customers order and what they order when they purchase premium cigars.

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[9] Retailer data provided date of birth for 83% of the orders, and the age analysis performed here is based on these numbers. We understand that the retailers all now use independent third-party age verification software, ensuring there are no underage sales even if a date of birth is not currently recorded for the customer.

[10] While there were 883,779 premium cigar purchasers in 2017 with age information, there were slightly more, 890,432, ages recorded. This is because a single customer could make multiple purchases in a calendar year before and after their birthdate, resulting in two age entries for that individual.

[11] We undertook a limited study of flavored premium cigars in order to compare the average age of flavored premium cigar purchasers to the whole universe of premium cigar purchasers. In order to identify the flavored premium cigars we started with the brands analyzed in the PATH study and did additional keyword searches in the product name for flavors including "Java", "Vanilla", and "Rum."

7.1 Basic Results

Our dataset captured 11.2 million orders by 2.1 million unique customers, who purchased 389 million cigars. The average price per premium cigar was $2.94, and the average number of premium cigars sold per order was 34.7.

Table 5 – Basic Premium Cigar Purchasing Results

Premium Cigars	All Years	2017
Unique Customers	2,129,018	1,123,994
Orders	11,196,240	3,619,014
Total valid rows (Order-SKU)	18,172,016	6,146,470
Unique SKUs Sold	69,905	51,123
Number of Cigars Sold	388,975,437	125,314,590
Average Number of Cigars per Order	34.7	34.6
	18,172,016	
Avg Price per Cigar	$2.94	$3.00
Avg Amount Spend per Order-SKU Purchase	$62.90	$61.26

7.2 Market Purchasing Patterns

Seasonality

Cigar purchases exhibit significant seasonality. Cigar purchases are lowest in January and February, increase through the spring as Father's Day approaches, and peak in the summer before declining throughout the fall. The only exception to this pattern is a sales surge in November/December in advance of the holiday season. In the peak month, the number of cigars purchased is between 41% and 53% greater than in the month of lowest purchases.

Figure 1 - Cigar Units and Expenditures by Month, 2014-2017

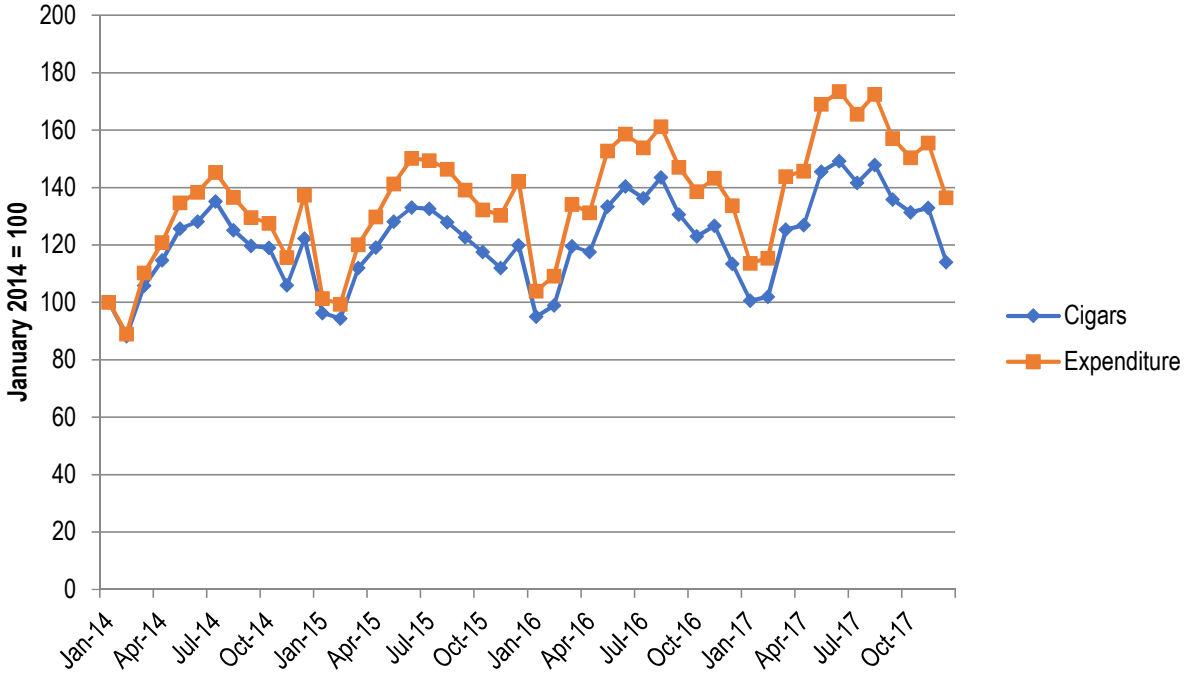


Table 6 – Seasonality of the Number of Cigars Purchased

Year	Peak month	Lowest Month	Ratio
2014	135.15	88.25	1.53
2015	132.99	94.42	1.41
2016	143.47	95.02	1.51
2017	149.17	100.60	1.48

7.3 Frequency

The data cover four full years (2014-2017) of sales for four of the retailers. We examined repeat purchasing patterns over these four years by summing how many times each customer placed an order in that period. A customer who ordered eight times would have eight order numbers in the data assigned to a single customer number. We also measured the number of cigars that each customer purchased. For this analysis we considered only customers who placed orders 240 or fewer times over the four year

period, or approximately once per week.[12] More frequent purchasers were viewed as more likely to be retail stores or other reseller restocking as opposed to end purchasers buying cigars.

For the four retailers over the four years, there were 1,469,334 unique customers and 304,119,528 cigars purchased. Approximately 44% (648,824 out of 1,469,334) customers purchased only once, and accounted for 5% of the cigars ordered. A significant majority of customers, 86 %, ordered 10 or fewer times, but account for only 29% of cigars. In contrast, the 14 % of customers who ordered at least 11 times account for 71% of cigars purchased.

Table 7 – Frequency of Premium Cigar Purchases, All Years

Number of Orders (2014-2017)	Number of Customers	% of Total Customers	Total Cigars Purchased	% of Total Cigars Purchased
1	648,824	44%	14,774,926	5%
2	216,525	15%	11,321,694	4%
3	119,620	8%	9,931,874	3%
4	79,295	5%	9,180,555	3%
5	56,932	4%	8,456,268	3%
6	43,265	3%	7,908,170	3%
7	34,254	2%	7,480,944	2%
8	27,676	2%	6,979,435	2%
9	22,844	2%	6,662,368	2%
10	19,304	1%	6,466,243	2%
Sub-Total – 10 or fewer orders	1,268,539	86%	89,162,477	29%
Tri-Monthly (11-20)	101,427	7%	52,468,590	17%
Bi-Monthly (21-36)	56,717	4%	61,263,292	20%
Monthly (37-60)	28,253	2%	54,970,487	18%
Bi-Weekly (61-120)	13,128	1%	39,736,035	13%
Weekly (121-240)	1,270	0%	6,518,647	2%
Sub-Total – 11-240 orders	200,795	14%	214,957,051	71%
Total 1-240 orders	**1,469,334**	**100%**	**304,119,528**	**100%**

We also analyzed the average order size based on frequency. In general, the more frequently a customer orders cigars, the more cigars, *per order*, the customer purchases. For example, customers who ordered only once in the data purchased 23 cigars on average. Customers who ordered ten times in the data ordered 33 cigars per order on average. The maximum average order size is for customers who purchase

[12] Customers who ordered more than 240 times over the period represent less than 1% of the customers and purchased 1.14% of the total cigars sold.

monthly, and customers who ordered bi-weekly or more frequently ordered fewer cigars, per order, than the monthly purchasers.

Table 8 – Average Number of Premium Cigars Ordered and Order Amount by Order Frequency, All Years

Number of Orders (2014-2017)	Average Cigars per Order	Average Spending per Order
1	23	$75.42
2	26	$85.27
3	28	$89.47
4	29	$92.62
5	30	$94.16
6	30	$96.22
7	31	$97.44
8	32	$99.15
9	32	$100.00
10	33	$101.17
Tri-Monthly (11-20)	35	$105.08
Bi-Monthly (21-36)	40	$111.43
Monthly (37-60)	42	$116.39
Bi-Weekly (61-120)	39	$108.95
Weekly (121-240)	34	$98.63

Most Frequent Purchasers

Approximately 1.1% of cigars were purchased by customers who placed more than 240 orders over four years. Forty-one customers placed a total of 12,144 orders in the period, or an average of 74 orders per customer per year.[13] The average number of cigars per order is 31.9 and the average amount spent per order is $94.85. The average age of these purchasers is 60.9, and the median age is 60.0.

[13] Five customer IDs were dropped from this analysis. Two IDs, "NA" and "00000" appear to include incomplete data entries and do not reflect actual customers. The remaining three IDs place orders with dramatically higher frequency and are removed as outliers. These IDs placed over 3,000 orders over the four years. These five IDs account for 1.02% of the total cigar purchases captured in this dataset.

7.4 Product Quantity

We have analyzed the product quantity of the cigars purchased. There are three main methods by which these retailers sell premium cigars: as single cigars, as sample packs, and as boxes.[14]

Samplers

A sampler is a single SKU that contains more than one type of cigar, and in their product descriptions the retailers identified those SKUs that are samplers. Approximately 25% of orders include at least one sampler SKU. Samplers are a smaller portion of the overall sales, as approximately 13% of premium cigars sold are in samplers, and the other 87% are non-sampler cigars.

Table 9 – Sampler and All Other Orders, All Years and 2017

	All Years		2017	
Type	**Number**	**Percent**	**Number**	**Percent**
Orders Including Samplers	2,775,109	25%	816,016	23%
Orders Not Including Samplers	8,421,131	75%	2,802,998	77%
Total	**11,196,240**	**100%**	**3,619,014**	**100%**

Table 10 – Premium Cigars Sold in Samplers, All Years and 2017

	All Years		2017	
Type	**Number**	**Percent**	**Number**	**Percent**
Cigars Sold In Samplers	50,424,486	13%	16,043,731	13%
Cigars Not Sold In Samplers	338,550,951	87%	109,270,859	87%
Total	**388,975,437**	**100%**	**125,314,590**	**100%**

Single Cigars or Boxes

We analyzed the sales with respect to product quantity. Cigars are often thought of as coming in "boxes" of 20 or 25, though box sizes vary widely. For our purposes, a single cigar is a SKU with a single cigar, and multi-pack is a SKU with a quantity of 2 - 4 cigars, and a box is a SKU of 5 or more cigars.

Most orders are focused on boxes as opposed to individual cigars or multi-packs. More than 90% of orders consist only of boxes, as we have defined them. Relatively few orders contain single cigars or multi-packs.[15]

[14] In this report "box" will refer to any product quantity above 5 cigars. A "multipack" refers to packages of 2-4 cigars.

Table 11 – Orders by Mix of Individual Cigars and Boxes, All Years

	# Orders	% Orders of Total	# Cigars	% Cigars of Total
Single Cigar Only	130,275	1.2%	766,671	0.2%
Mulit-Packs and Single Cigar Only	82,545	0.7%	519,107	0.1%
One Box Only, No Single or Multi	7,416,110	66.2%	211,836,839	54.5%
Multiple Boxes, No Single or Multi	3,193,946	28.5%	157,932,618	40.6%
Mix of 1+ Boxes and 1+ Single or Multi	373,364	3.3%	17,920,202	4.6%
Total	**11,196,240**	**100%**	**388,975,437**	**100%**

Table 12 – Order Characteristics by Box Size, All Years

Box Size	Number of Boxes Ordered	Total Number of Cigars	Number of Sampler Cigars	Sampler Cigars as % of Box Size	Total Spent	Avg Price per Box	Avg Price per Cigar
5	6,372,667	31,863,335	5,286,950	16.6%	$141,537,070	$22.21	$4.44
6-9	783,321	5,673,414	2,904,611	51.2%	$23,700,473	$30.26	$4.18
10	2,482,261	24,822,610	6,651,520	26.8%	$108,548,916	$43.73	$4.37
11-19	1,491,336	21,339,045	8,395,120	39.3%	$75,593,806	$50.69	$3.54
20	5,950,477	119,009,540	8,975,660	7.5%	$321,021,901	$53.95	$2.70
21-24	601,098	14,135,911	1,529,362	10.8%	$75,255,014	$125.20	$5.32
25	2,301,634	57,540,850	668,725	1.2%	$201,609,329	$87.59	$3.50

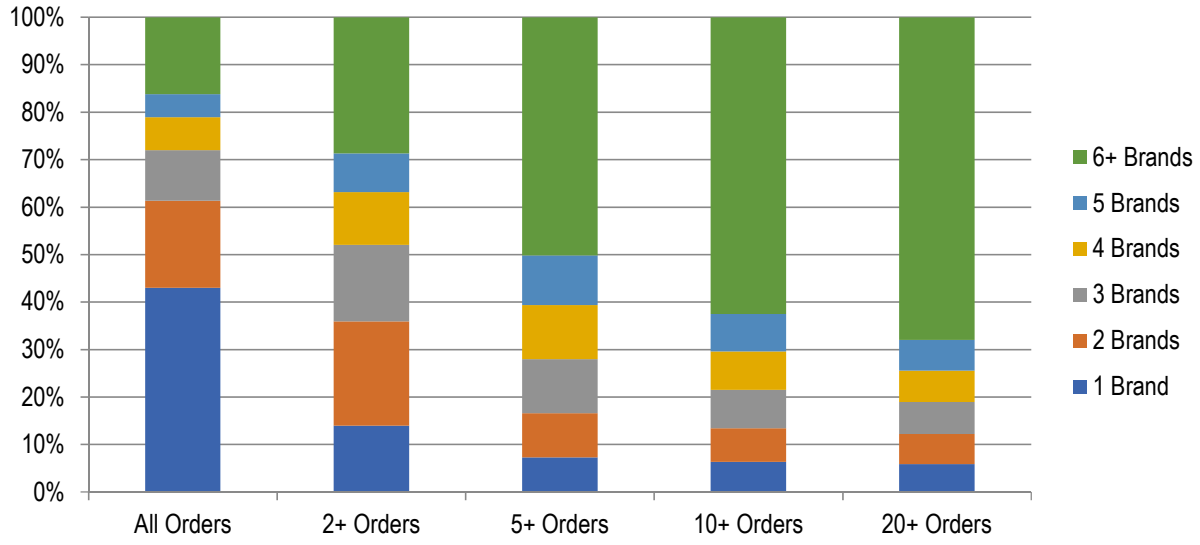
7.5 Brand Variety

We investigated the variety of brands purchased by customers by summing the total number of brands an individual customer purchased. For all customers, more than 60% purchase one or two brands. However, this statistic disguises the behavior of more frequent cigar purchasers. For customers who order at least twice, approximately 36% order one or two brands. For customers who order at least 10 times, only 13% order one or two brands. As indicated in Figure 2, the more frequently a customer purchases, the more brands the customer purchases in total. Put another way, frequent customers purchase a variety of cigars, more so than less frequent customers.

[15] The most popular product quantity configurations, based on number boxes ordered, are (i) a five cigar "box," (ii) a twenty cigar box, (iii) a 10 cigar "box," and (iv) a twenty-five cigar "box." We understand that many of the five and ten cigar configurations contained in the data are actually "packs" of five or ten that generally have been created by the retailers from the original boxes of 20 or 25. For ease of analysis we have included these "packs" in the "box" category.

The majority of the time, sampler packs are created by the retailer and listed in our dataset under a single SKU. As such, they are considered one "brand" in this chart, even though the SKU contains multiple brands of premium cigars.

Figure 2 – Number of Brands Ordered by Order Frequency



8.0 Geocoding and Geographic Information

8.1 Geographic Data from Retailers

The retailers provided geographic information on the shipping address for each order. The type of information provided varied by retailer. Some retailers provided a mailing address, while others disclosed the nine-digit zip code associated with the order.

Where address data was available, the addresses were geocoded to give the precise longitude and latitude (XY coordinates) of the location. In order to geocode the data, we tested a sample set of addresses using two geocoding services, and observed the accuracy scores of each.

There are many providers that offer geocoding services. To find the best service for our analysis, we selected two providers, Geocodio and Texas A&M GeoServices (an affiliate of Texas A&M University Department of Geography), to geocode sample datasets. When the sample data set was analyzed, Geocodio located 93% of the addresses with an accuracy score above 90%, whereas Texas A&M GeoServices matched 86% of addresses with an accuracy score above 90%. On the basis of this analysis, we used Geocodio to geocode all the addresses in our dataset, of which 90% were geolocated with an accuracy score above 90%.

In instances where nine-digit zip code data was provided, we matched zip codes to geographic coordinates using a database purchased from GreatData.com.[16] With this database, we were able to assign coordinates to the provided nine-digit zip codes.

The full data set of all premium cigar purchases includes 2,234,584 customer addresses and nine-digit zip codes, which includes instances where multiple addresses and/or nine-digit zip codes are associated with a single customer ID. Of these, 85% are valid addresses or nine-digit zip codes, and 95% of the valid addresses or nine-digit zip codes were successfully geocoded to a Census Tract.

Table 13 –Premium Cigar Customers Successfully Matched to Census Tracts

Total Addresses or 9-Digit Zip Codes Associated with Premium Purchases	2,234,584
Valid Addresses or 9-Digit Zip Codes	1,899,527
Valid Addresses or 9-Digit Zip Codes as Percent of Total	85%
Addresses or 9-Digit Zip Codes Geocoded to a Census Tract	1,796,341
Percent of Valid Addresses or 9-Digit Zip Codes Geocoded	95%

Linking to Community Data

We used the geographic data provided by the retailers to understand the geographic distribution of cigar purchasers and to identify the community characteristics of the Census Tract of the purchaser. This geographic information provides insight into the distribution of cigar purchasers throughout the country, including the weighting of purchasers by state and in rural or urban areas. Further, by geocoding the addresses, we were able to identify the Census Tract of the purchaser. With the Census Tract, we were able to link a purchaser to community data, such as median household income and education.

With the geographic coordinates of consumers, we were able to identify the Census Tract of the location, providing demographic information from the US Census about the socioeconomic status of their community.

8.2 Geography

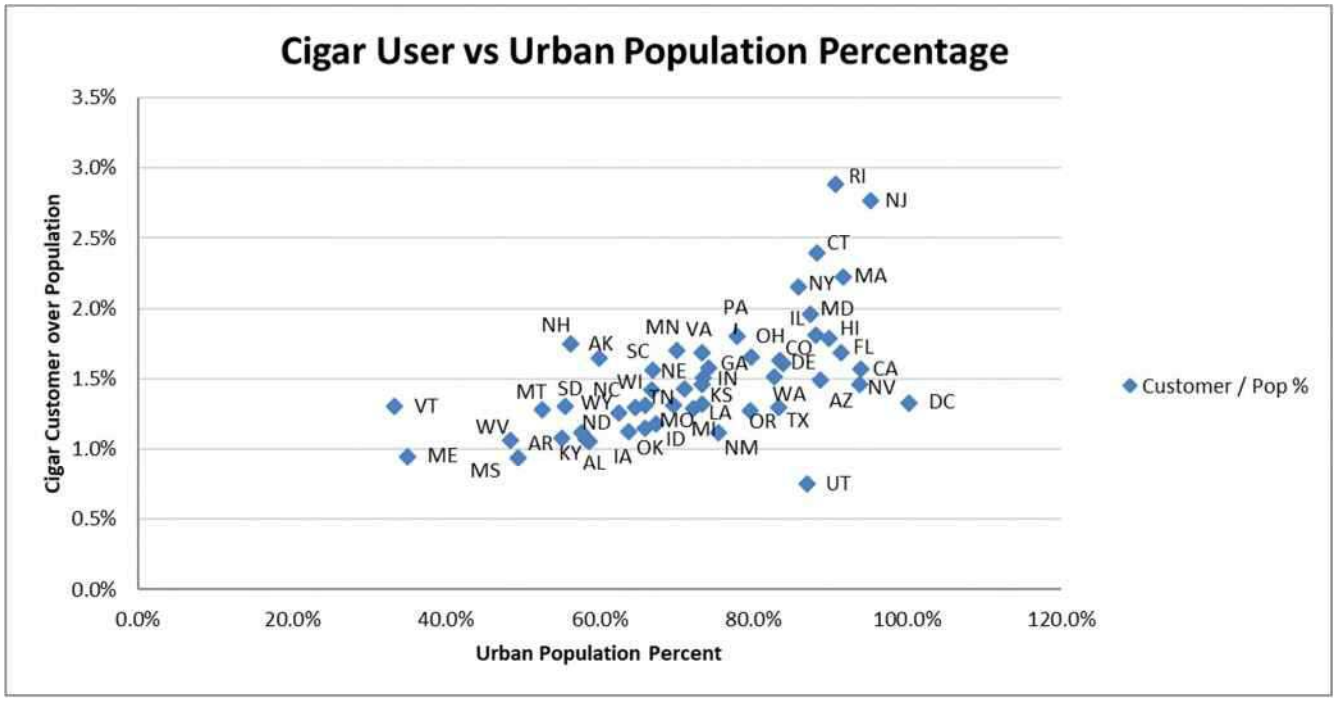
Cigar purchases are correlated with geography as well. More urbanized states have more cigar purchasers, relative to population, than more rural states. Figure 3 plots penetration of cigar purchasers against the urban population. Each dot is a state. States in which most of the population lives in urban

[16] GreatData.com uses the latest United States Postal Service database to match nine-digit zip codes to their latitude and longitude coordinates. A nine-digit zip code usually refers to a segment of one side of a street and can contain multiple addresses, but it can also be assigned to a single building or cluster of buildings. As such, they cannot be used to find an exact location, but they do provide a good approximation of an address's location. https://greatdata.com/product/51/zip4-geo

areas, as defined by the Census, are on the right side of the figure, and more rural states are on the left side of the figure. States with many cigar purchasers relative to population are on the top of the figure, and states with few purchasers relative to population are lower on the figure. For example, Washington DC is 100% urban, so it is on the far right side of the figure.[17]

The dots in the figure generally slope up, which means that the more urban states, in general, have higher percentages of cigar purchasers than states that are less urban. The one obvious outlier is Utah, which is nearly 90% urban but has relatively few cigar purchasers. The skew towards urban sales is somewhat unexpected, given the fact that urban customers have access to competing bricks and mortar cigar retailers. However, as is seen in the next section, premium cigar purchasers tend to live in higher income communities, which also skew urban.

Figure 3 – Percent of Population Purchasing Premium Cigars by State's Urban Population



[17] The customer list includes all customers. There may be some overlap, as an individual who orders from multiple retailers will be included in the calculation twice. Because this overlap can occur in any state, and is relatively minor to begin with, the overall pattern will be the same had it been possible to de-duplicate the customer list. As discussed above in Section 4, there is only an approximate 4% overlap of customers between the retailers.

8.3 Demographics

Retailers do not collect personal data about customers, preventing us from commenting directly on characteristics of purchasers beyond age and geographic location. By identifying the Census Tract in which a consumer resides, however, we can analyze the community they live in. By design, Census Tracts contain a small number of people, with an optimum population of 4,000.[18] As such, Census Tracts serve as a useful measure of the characteristics of premium cigar purchasers. In this section we look at the median income and education attainment in the Census Tracts of premium cigar purchasers.

8.4 Income

Overall, the Census Tracts of premium cigar purchasers have higher incomes than the general population. The median household income in the Census Tracts of premium cigar purchasers is $65,573. By comparison, nationally, median household income is $57,617. Over 15% of customers live in tracts with median household income above $100,000, whereas 10% of households nationally are in that bracket.

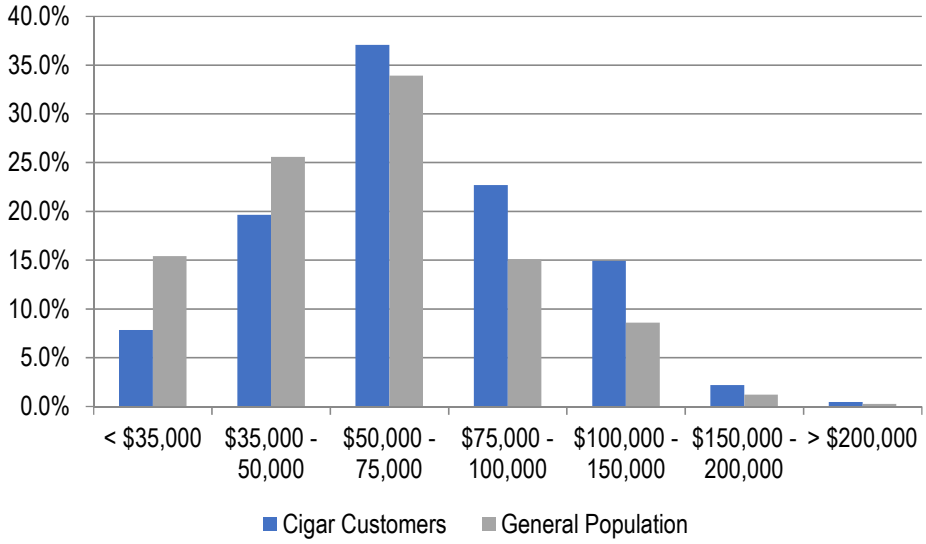
Table 14 – Median Household Income of the Census Tract of Premium Cigar Purchasers

Income Category	# Customers	Percentage	Total Population in these CT	% of US Pop Census Tracts
< 35,000	140,443	7.8%	38,154,387	15.4%
35,000 - 50,000	352,466	19.6%	63,370,525	25.6%
50,000 - 75,000	665,660	37.1%	83,951,957	33.9%
75,000 - 100,000	407,767	22.7%	37,317,707	15.1%
100,000 - 150,000	267,903	14.9%	21,300,987	8.6%
150,000 - 200,000	39,382	2.2%	2,993,843	1.2%
> 200,000	7,832	0.4%	618,297	0.2%
Median HH Income	$65,573			
Mean HH Income	$71,633			
US Median HH Income	$57,617			

Source: US Census Bureau, American Community Survey 2016 5-year Estimates

[18] US Census Bureau, 2010 Geographic Terms and Concepts, https://www.census.gov/geo/reference/gtc/gtc_ct.html

Figure 4 –Distribution of Median Income of the Census Tracts of Premium Cigar Purchasers and the US Population

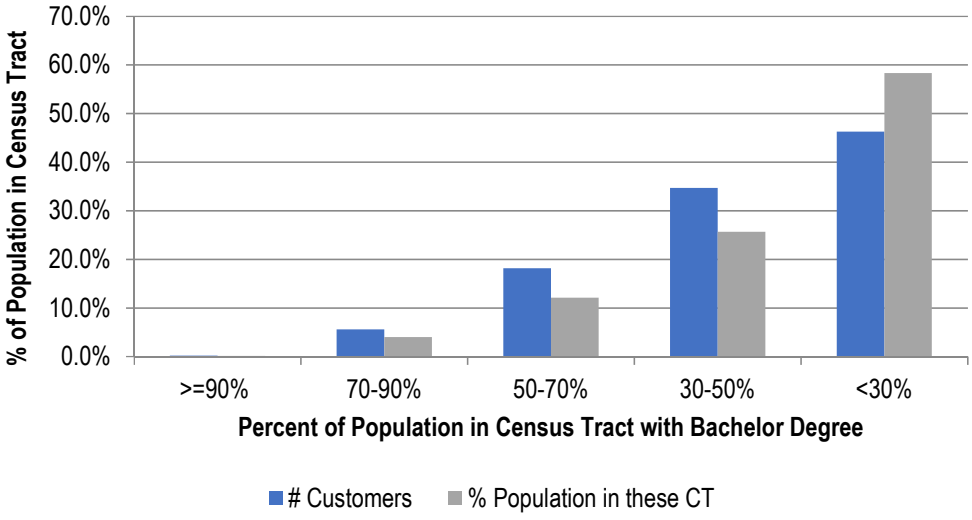


Source: US Census Bureau, American Community Survey 2016 5-year Estimates

8.5 Education

Premium cigar purchasers live in more educated Census Tracts than the general population. Nearly 60% of the general population lives in Census Tracts where less than 30% of the population has a bachelor degree. In contrast, approximately 45% of premium cigar purchasers live in similar tracts. Over 20% of premium cigar purchasers live in tracts where over 50% of the population has a bachelor degree, compared to approximately 15% of the general population.

Figure 5 - Percent of Population 25 and Above with a Bachelor Degree, Census Tracts of Premium Cigar Purchasers and the US Population



Source: US Census Bureau, American Community Survey 2016 5-year Estimates

9.0 Conclusion

The data from these five retailers show consistent trends and data about both premium cigar purchasers themselves, and their purchasing patterns.

- First, premium cigar purchasers are an older population, with an average age of 55 and a median age of 57.
- Second, premium cigar purchasers reside in areas with higher levels of education and higher incomes than the rest of the US population.
- Third, premium cigar purchasers are, for the most part, infrequent purchasers of premium cigars. Only 17% of purchasers place more than, on average, two orders per year.
- Fourth, premium cigar purchasers reliably purchase orders containing sample packs or five packs of cigars.
- Fifth, repeat purchasers of premium cigars show little brand loyalty.
- Sixth, premium cigars purchases spike at certain times of the year, rather than being spread evenly over the year.
- Finally, the premium cigar market has incredible diversity, with a current average of approximately 10,000 SKUs per retailer.

Overall, premium cigar purchasers are older, live in communities that are wealthier and better educated than the average population, and are not purchasing premium cigars on a regular and consistent basis.

Appendix A

ESI ECONSULT SOLUTIONS INC.

economics | policy | strategy

Richard P. Voith, Ph.D.

President and Principal

Dr. Voith is a well-known expert in real estate economics, transportation, and applied microeconomics. As president and founding principal of Econsult Solutions, Dr. Richard Voith oversees a wide variety of projects in the realm of housing, labor markets, transportation, and economic development. Just as importantly, Dr. Voith is involved in setting the strategic direction of organizations both large and small. Also, he regularly provides analysis and testimony in support of litigation in real estate and transportation matters.

Experience

Prior to joining Econsult Solutions, Dr. Voith held the position of Economic Advisor at the Federal Reserve Bank of Philadelphia.

Dr. Voith has worked frequently in the public policy arena. In 2013, he was a principal author of *Understanding SEPTA's Statewide Economic Value* which demonstrated the importance of transportation investment for the state. In 2006, Dr. Voith was appointed by Governor Rendell to the newly created Transportation Funding and Reform Commission charged with recommending appropriate levels of funding for transit systems, roads and bridges. Dr. Voith is also a member of the SEPTA Board of Directors, serving as Vice Chairman of SEPTA from 1996 to 1998.

Professional, Corporate, Civic Leadership

Dr. Voith is a founding board member of Pentrans, an organization dedicated to balanced, multimodal transportation and mobility alternatives in Pennsylvania. Dr. Voith is active in Philadelphia area organizations, including Philadelphia Youth Basketball, an organization which is focused on the holistic development of Philadelphia youth.

Additional Experience

Dr. Voith has taught *Cost Benefit Analysis* at the Wharton School's Business and Public Policy Department, and *Urban Real Estate Economics* through the Wharton's Real Estate Department. Dr. Voith continues as a Faculty Fellow at the University of Pennsylvania's Institute for Urban Research.

Over the last 15 years, Dr. Voith has served on several National Academy of Science Foundation Advisory Panels addressing topics such as the interrelationships between highway and transit investment and land use, valuing the costs and benefits of transit investments, and the relationships between land use and public health. He has been a guest speaker at numerous forums, including those sponsored by the Lincoln Land Institute, the Brookings Institution, Urban Land Institute, and the Department of Housing and Urban Development. Until 2007, Dr. Voith served on the editorial board of Real Estate Economics.

Areas of Expertise

Real Estate Economics

Transportation

Applied Microeconomics

Funding for Transit Systems

Energy

Metropolitan Development

Education

PhD in Economics
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Appendix B

ESI ECONSULT SOLUTIONS INC.

economics | policy | strategy

Peter A. Angelides, Ph.D., AICP

Principal

Dr. Peter Angelides is principal of Econsult Solutions, Inc. (ESI) and a member of the teaching faculty at the University of Pennsylvania. Dr. Angelides has high-level expertise in both economics and city planning, applying critical economic thinking to projects in real estate, economic development, transportation, tax policy, valuation and litigation. He assists clients in many industries, including real estate development, transportation, local and regional government, affordable housing, gaming, utilities, health care, and insurance.

Experience

When he joined ESI, Dr. Angelides brought a wealth of experience in both economics and planning. Prior to joining ESI, he practiced economics in the private sector having worked for large and small firms including:

- Econsult Corporation, Vice President and Director;
- PricewaterhouseCoopers, Philadelphia PA, Director;
- Charles River Associates, Washington, DC, Economist;
- Putnam Hayes & Bartlett, Washington, DC, Economist.

In these roles he evaluated market competitiveness in merger and rate-setting proceedings before several federal regulatory agencies, estimated the economic impacts from private investment, set prices for intellectual property, evaluated the impact of technology licensing agreements and calculated damages in numerous commercial disputes.

Dr. Angelides practiced planning in the public and private sectors having worked for:

- Wallace Roberts and Todd;
- The Central Philadelphia Development Corporation;
- Philadelphia City Planning Commission.

Professional, Corporate, Civic Leadership

Dr. Angelides serves as a board member or in other contributing roles for several civic and professional organizations, including:

- Design Advocacy Group;
- Philadelphia Historic Preservation Task Force;
- PenTrans;
- Urban Land Institute;
- The Transportation Research Board;
- American Institute of Certified Planners (AICP);
- Racquet Club of Philadelphia.

Additional Experience

Dr. Angelides teaches courses in the areas of urban economics, public finance, and infrastructure investment at the University of Pennsylvania in both the Department of City and Regional Planning, and at the Fels Institute of Government.

Areas of Expertise

Real Estate

Transportation

Economic Development

Tax Policy

Gaming

Litigation

Education

BA in Urban Studies
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Cigar Association of America, Inc.
Comment to Docket No. FDA-2017-N-6107
Regulation of Premium Cigars

EXHIBIT C

July 24, 2018

Premium Cigars:

What is known about patterns of use and about health effects?

Geoffrey Kabat, Ph.D. M.S.[1]

Introduction

On March 26, 2018, the Food and Drug Administration ("FDA") issued an Advance Notice of Proposed Rulemaking ("ANPRM") regarding the regulatory status of premium cigars. In the ANPRM, FDA requested data regarding the "use patterns of premium cigars" and data and information regarding "public health considerations associated with premium cigars." (83 Fed. Reg. at 12,903).

The purpose of this review is two-fold: (i) to describe what is known about prevalence of use of premium cigars, and (ii) to describe what is known about the health effects of cigar smoking generally and, particularly, of premium cigars.

Prevalence of Use of Premium Cigars

Little work has been done to specifically study users of premium cigars. There are, however, three recent studies analyzing recent tobacco usage data that contain relevant information regarding premium cigar usage prevalence (1-3). These three studies are analyzed below.

The most recent data analyzing use patterns of tobacco products is the Population Assessment of Tobacco and Health (PATH) study, a national longitudinal study of tobacco use and health. Started in 2013, the PATH study is the first large research effort undertaken by the National Institutes of Health and the Food and Drug Administration. As such, it uses data acquired by the government.

Kasza, Ambrose, Conway et al. looked at Wave 1 of the PATH study to examine tobacco product use by youth and young adults (1). While "premium cigar" itself was not defined in the PATH dataset, the survey collected data and information regarding "traditional cigars." "Traditional cigars" were defined as "contain[ing] tightly rolled tobacco that is wrapped in a tobacco leaf. Some common brands of cigars include Macanudo, Romeo y Julieta and Arturo Fuente, but there are many others." All of the brands specified are premium cigars. Thus, the "traditional cigar" category in this survey has a large degree of overlap with premium cigars. **This**

[1] My CV is attached as Exhibit A.

study showed that only 0.4% of the adult population used traditional cigars "frequently" (Supp. Table S4). "Frequent use" was defined as "at least 20 of the past 30 days." For youth, no frequent use of traditional cigars could be reliably reported (Supp. Table S4). This indicates that youth are not using premium cigars.

One of the first studies to report data on usage of premium cigars in particular was the National Adult Tobacco Survey (NATS) in 2012-2013 (2). In this study, premium cigar smokers were defined as "those reporting their usual cigar did not have a filter or tip and the name of their usual brand was a brand name of a hand-rolled cigar or a cigar described by the manufacturer or merchant as containing high-grade tobaccos in the filler, binder or wrapper" (2). Among usual premium cigar smokers, 3.3% reported "every day" use, 25.6% reported "some day" use, and 71.2% reported "rarely." **This means that 96.7% of premium cigar smokers smoke premium cigars on less than a daily basis.** Regarding dual use of cigars with cigarettes, 75.2% of little filtered cigar smokers also smoked cigarettes, 58.3% of usual cigarillo/mass market cigar smokers also smoked cigarettes, whereas only 35.1% of premium cigar smokers also smoked cigarettes. Overall, premium cigar *smokers were much less likely to smoke cigarettes compared to smokers of other* types of cigars. Finally, it is clear that premium cigar smokers are older -- only 15.1% of cigar smokers aged 18 to 29 years old smoked premium cigars.

Corey, Holder-Hayes, Nyugen, et al. (3) also presented information from Wave I of the PATH study on smoking patterns among adult current established smokers of different cigar types and cigarettes. In addition to cigarillos and filtered cigars, "traditional cigars" were divided into "premium" and non-premium" cigars. Since there are no regulatory definitions of premium cigars, the authors used information about the brand's tobacco blends, components (e.g., long filler, whole leaf wrapper), and manufacturing process (e.g., handmade) to identify premium cigars. Premium cigar smokers were substantially older at first regular use of a tobacco product than other smokers (24.5 years compared to 16.6 -19.5 years for cigarettes, cigarillos and non-premium cigars). **Overall, 0.7% of adults smoked premium cigars.** Although smokers of premium cigars had comparable lifetime consumption compared to smokers of other tobacco products (Table 2), they differed markedly from smokers of other products on four important smoking parameters: (i) whether they smoked every day, (ii) median number of days smoked in the past 30 days, (iii) number of cigars smoked per day, and (iv) whether they currently smoked cigarettes. These differences were all in the direction of lower consumption. For example, **only 6.7% of premium cigar smokers reported smoking every day,** compared to 25.3% of non-premium cigar smokers, 22.0% of cigarillo smokers, 37.3% of filtered cigar smokers, and 79.5% of cigarette smokers. **The median number of days smoked in the past 30 days was 1.7 among premium cigar smokers**, 9.2 among non-premium cigar smokers, 7.5 among cigarillo smokers, 14.0 among filtered cigar smokers, and 29.4 among cigarette smokers. **The median number of premium cigars smoked per day was 0.1**, compared to 0.4 for non-premium cigars, 0.3 for cigarillos, 1.6 for filtered cigars, and 10.0 cigarettes per day for cigarette smokers. **Dual use of cigarettes was markedly lower among**

premium cigar smokers compared to smokers of other types of cigars and other non-cigarette tobacco products (Table 4).

The three papers that present prevalence data on the use of premium cigars are consistent in indicating that:

- there is no measurable use of premium cigars by youth;
- users of premium cigars tend to be older at first regular use;
- the overwhelming majority of premium cigar smokers do so on a non-daily basis -- 93.3% according to PATH, and 96.7% according to NATS;
- frequency of use is extremely low – the median number of days smoked in past 30 days is 1.7, and the median amount smoked is 0.1 cigars per day.

Association of cigar smoking with disease mortality and incidence.

Four studies since 2014 have examined the association of cigar use with health outcomes (4-7). These studies differ in the level of detail regarding smoking behavior. For example, none of these studies differentiate between types of cigars. Further, most studies do not provide information regarding specific frequency of cigar smoking, or the amount smoked per day on days smoked. Three of the studies examined the association of cigar use and mortality (4-6), and one examined the association of cigar use with cancer incidence (7).

Christensen et al. (4) is the most probative of this group of studies due to its examination of cigar only users, and its division of this population into non-daily and daily smokers. Christensen et al. used data from the National Longitudinal Mortality Study to examine the mortality risk associated with cigarette, cigar, and pipe smoking among 357,420 participants who reported exclusively using cigars, pipes, or cigarettes or reported never using any type of tobacco product. Participants provided tobacco use information at baseline in surveys beginning in 1985 and were followed for mortality through the end of 2011. A total of 51,150 deaths were recorded during follow-up**. Among non-daily cigar users there were no increased risks for mortality from tobacco-related cancers (tobacco related cancers HR 1.08, 95% CI 0.45-2.61) and there was no increased risk for lung cancer (HR 0.74, 95% CI 0.08-7.26). Further, for non-daily cigar smoking, no increased health risks were reported for oral cancer, cerebrovascular disease, respiratory or COPD. Additionally, no deaths were reported for any cigar smoking, daily or non-daily, for oral cancer** (Table 3). Compared to never users of tobacco, exclusive, daily cigar smokers as a group had higher total mortality (HR 1.20, 95% CI 1.03-1.38) and higher mortality from tobacco-related cancers (including oral cavity, esophagus, larynx, lung, bladder, and pancreas). Among daily cigar users, mortality risks (hazard ratios [HR]) from tobacco-related cancer (HR 1.80, 95% CI 1.20-2.69), lung cancer (HR 4.18, 95% CI 2.34-7.46), and COPD (HR 3.29, 95% CI 1.33-8.17) were elevated and statistically significant (Table 3).

As mentioned, limitations of this study include: lack of detailed information on specific frequency of cigar use (only daily/non-daily and exclusive/non-exclusive), no information on amount smoked per day, no inhalation information, and the fact that the type of cigar smoked was not distinguished. The age range of the study population was 35-80. The main strength of this study is that it provides information on the mortality risk associated with both daily and non-daily exclusive cigar smoking. As nearly all premium cigar smokers are non-daily smokers, this study is of particular relevance.

Chang et al. (5) conducted a systematic review of studies of cigar smoking and all-cause and smoking-related mortality. They included 22 studies from prospective cohorts. These cohort studies were initiated in the twentieth century, when smoking habits were very different from what they are today. The study populations included in this systematic review were mainly white middle-aged men in North America and Europe who smoked cigars in the 1960s or earlier. At that time, the predominant cigar type studied was the "large cigar," whereas today the U.S. cigar market consists of products manufactured with various shapes, sizes, tips, filters and packaging. The focus was on current cigar smoking at baseline. "Primary cigar" smokers (i.e., current exclusive cigar smokers with no previous history of cigarette or pipe smoking) were distinguished from "secondary cigar" smokers (i.e., current exclusive cigar smokers with a previous history of cigarette or pipe smoking).

Although the systematic review included data from 22 studies, only two studies provided information on mortality risks by amount smoked and by inhalation. In the Dorn study, the lowest level of cigar use listed was less than five cigars per day. At this level of cigar smoking, there was no suggestion of increased risk of all-cause mortality 1.04 (95% CI 0.98-1.11) (Table 3). In CPS-I, the lowest level of cigar smoking was 1-2 cigars per day. The hazard ratio for this category was 1.02 (95% CI 0.97- 1.07), again showing no increased risk. The CPS-1 study also presented data on risk estimates for inhalation levels in relation to all-cause mortality in primary cigar smokers. For the "no inhalation" category among daily primary cigar smokers, the risk estimate was 1.04 (95% CI 1.00-1.08) suggesting little increased risk. While these two studies did report on mortality risks by amount smoked and by inhalation, they did not present any data for cigar smokers smoking less than one cigar per day. The other 20 studies similarly did not provide this data.

A large number of results are reported in this paper for the different studies, the different outcomes, and exclusive cigar smoking versus non-exclusive cigar smoking. Owing to different categories of exposure reported in the 22 studies, it was not possible to perform a meta-analysis by level of exposure, which would have provided more precise estimates of the risk associated with different usage patterns. As noted above, the review did not present any results regarding "occasional" or "rare" cigar smoking, or smoking less than one cigar per day.

Nonnemaker et al. (6) estimated mortality from regular cigar use, using data from that National Adult Tobacco Survey, relative risks from the American Cancer Society's Cancer Prevention Studies I and II, and annual U.S. deaths from the National Vital Statistics System. They estimated that regular cigar smoking was responsible for approximately 9,000 premature deaths among U.S. adults aged 35 years or older in 2010. The goal of this analysis was to estimate the impact of cigar smoking on mortality and economic costs (years of potential life lost, etc.). The main analysis focused on current cigar smokers who reported smoking cigars on at least 15 of the past 30 days. The rationale for using this figure given by Nonnemaker et al. is that this is the level of smoking that corresponds to the RRs [relative risks] used in their analysis. Importantly, however, no breakdowns were provided by type of cigar or specific frequency of use, and the threshold used by the authors – smoking cigars on at least 15 of the past 30 days -- is not applicable to use of premium cigars, since, as noted above, premium cigar smokers are overwhelmingly non-daily smokers; in the PATH study, premium cigar smokers smoked on average 1.7 days out of 30. **Thus, the mortality estimates derived in the Nonnemaker et al. paper are not pertinent to the use of premium cigars.**

In addition to the three mortality studies described above, Malhotra et al. (7) carried out a pooled analysis of five cohort studies (one from the Netherlands, one from Australia, and three from the U.S.) to examine the association of exclusive cigar use and predominant lifetime cigar use with risk of smoking-related cancers. Participants enrolled in the five cohort studies were in their late fifties and early sixties. "Ever cigar smokers only" (i.e., smoked cigars currently or in the past, but not cigarettes) had increased risks for all smoking–related cancer (HR 1.47, 95% CI 1.34-1.61), head and neck cancer (HR 1.40, 95% CI 0.98-2.00), and lung cancer (2.73, 95% CI 2.06-3.60), as well as for all cancers (HR 1.07, 95% CI 1.02-1.16). Both exclusive and predominant cigar smokers had increased risks of head and neck cancer, lung cancer, gastric cancer, and kidney cancer, as well as all cancers. These results as reported, however, cannot – for several reasons -- be applied to premium cigars. First, none of the five underlying studies had data on frequency of cigar smoking, therefore the pooled analysis could not present data stratified by frequency of cigar smoking. Second, this analysis does not include any information on the type of cigar smoked. Third, it does not provide any data on the number of cigars smoked per day. Fourth, it provides no age breakdown of the subjects, including age at initiation and (if applicable) cessation, Given these limitations, the Malhotra et al. paper is of questionable use in assessing the risks associated with premium cigars.

There has been one study, and one abstract, published regarding biomarkers of tobacco smoke exposure among cigar smokers. Chen et al. (8) looked at biomarker data in participants in the National Health and Nutrition Examination Survey (NHANES) 1999-2012. They examined biomarkers of tobacco smoke exposure among cigar smokers, smokers of other tobacco products and non-tobacco users in over 25,000 participants. Cigar smokers were classified as either primary cigar smokers or cigar-only smokers, and were further classified as daily or non-daily

cigar smokers. Among both non-daily and daily smokers, both primary cigar smokers and cigar-only smokers had elevated concentrations of serum cotinine and urinary NNAL compared to non-tobacco users. The concentrations were lower, however, than those seen in secondary cigar smokers (i.e. those also using cigarettes) and cigarette smokers. Studies on biomarker data are subject to limitations including that a biomarker measurement obtained at one point in time cannot necessarily be used to characterize a person's habitual level. Further, biomarker data tell us nothing about long-term exposure. Additionally, this study had no information on the type of cigar smoked or on levels of inhalation, which further limits its usefulness. The abstract by Chang et al. (9) reported on biomarkers of urinary metabolites and tobacco-specific nitrosamines in adult cigar smokers in the PATH study (all cigars, and separately for traditional cigars, cigarillos, filtered cigars, cigarettes and non-smokers). This study had very small number of smokers of different types of cigars.

Taken together, the epidemiologic studies described above show that there is no association between non-daily, exclusive smoking of cigars and an increased risk for smoking-related cancers, or an increased risk of death from all causes and certain specific causes. The results from different studies show a fair degree of consistency.

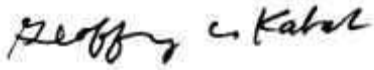
Conclusion

In 1998, NCI Monograph 9 (10) concluded that in relation to all cigars "as many as three-quarters of cigar smokers smoke only occasionally, and some may only smoke a few cigars per year. This difference in frequency of exposure translates into lower disease risks." (p. iii). The present report has addressed new literature both on use patterns and health risks specific to premium cigars, and comes to similar conclusions based on better and more recent data.

The pattern of use of premium cigars is distinct from that of other types of cigars and far removed from use patterns of cigarettes. Adult prevalence of premium cigar use is extremely low (0.7% in the PATH study), and users are overwhelmingly non-daily users (93% in PATH and 97% in NATS). In addition, compared to other tobacco users, premium cigar smokers smoked fewer days in the past 30 days (1.7 days), smoked few cigars per day on the few days they smoke (0.1 cigars), and were less likely to be current cigarette smokers. Furthermore, these cigars tend to be used by an older population. All of these features point to the risk from premium cigar use being substantially lower than that associated with other types of cigars.

No information is available bearing directly on the health risks of smoking premium cigars. When we examine the most informative prospective studies providing information on current cigar use and mortality (4,5), we see that there is no indication of an increased risk for daily smokers of all types of cigars combined in the lowest category of amount smoked (1-2 cigars per day or less than five cigars per day)(5). Furthermore, in the study by Christensen et al. (4), there is no

indication of an increased risk among non-daily cigar smokers for tobacco related cancer or lung cancer (Table 3). **Taken together, these studies lead to the conclusion that there is no association between non-daily premium cigar smoking -- which applies to the overwhelming majority of premium cigar smokers -- and increased health risks compared to non-smokers.**



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10. National Cancer Institute. Monograph 9: Cigars: Health Effects and Trends. 1998.

EXHIBIT A

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PROFESSIONAL AND RESEARCH EXPERIENCE:

7/2018-present	Independent scientist; author.
2006 – 6/2018	Senior Epidemiologist, Department of Epidemiology and Population Health, Albert Einstein College of Medicine, Bronx, NY 10461-1602.
2001 - 2006	Independent consultant in epidemiology; consultant to UCLA School of Public Health.
1996 - 2001	Associate Professor, Department of Preventive Medicine, School of Medicine, State University of New York at Stony Brook, Stony Brook, NY 11794-8036.
1993 - 1996	Cancer Investigator, Cancer Research Center, Albert Einstein College of Medicine, Bronx, NY.
1992 - 1996	Associate Professor, Department of Epidemiology and Social Medicine, Albert Einstein College of Medicine, Bronx, New York, 10461-1602.
1982 - 1992	Senior Epidemiologist, American Health Foundation, New York, New York 10017.
1984 - 1986	Senior Staff Associate, Division of Epidemiology, School of Public Health, Columbia University, New York.
1982 - 1984	Senior Staff Associate, Comprehensive Cancer Center, Columbia University, New York.
1978 - 1981	Associate Epidemiologist, American Health Foundation.
1977 - 1978	Technical Writer, American Health Foundation.

EDUCATION:

1984 Columbia University, New York, NY M.S. Epidemiology

1976 Columbia University, New York, NY Ph.D. Slavic Languages and Literatures

1970 Columbia University, New York, NY M.A. Slavic Languages and Literatures

1967 Haverford College, Haverford, PA B.A. French, Classics

HONORS AND FELLOWSHIPS:

2009	*Choice* Outstanding Academic Title (*Hyping Health Risks*)
1971 - 1972	International Research and Exchange (IREX) Graduate Fellowship for study in the Soviet Union (Leningrad).
1968 - 1971	Faculty Fellowship, Columbia University
1967 - 1968	Woodrow Wilson Fellow, Stanford University
1967	Phi Beta Kappa, High Honors in French, Haverford College

CONSULTANTSHIPS:

Consultant to distilled alcoholic beverages trade association group, DISCUS. Prepared report titled “Assessment of the carcinogenicity of alcoholic beverages under two sets of guidelines: OSHA and American Council of Industrial Hygienists (ACIH),” 1979.

Consultant to Bristol-Myers on cancer statistics, 1982.

Extensive discussions with statisticians at Warner-Lambert concerning results of American Health Foundation epidemiologic studies of the association of mouthwash use and oral cavity cancer (1982-83).

Independent consultant to Weinberg Group, Inc., Washington, D.C. Researched and wrote report entitled: “A Critical Appraisal of Epidemiologic Studies of Alcohol Use in Relation to Cancer Risk” (1991-92).

Served as consultant to the Environmental Protection Agency's Science Advisory Board Committee on the Health Effects of Environmental Tobacco Smoke (December 4-5, 1990 and July 21-22, 1992).

Senior Consulting Investigator to "Environmental Tobacco Smoke and Mortality among CPS I," P.I. Dr. James Enstrom, UCLA, 1997-2006.

Consultant in nutritional epidemiology on “Pubertal development in a multi-ethnic population of nine-year-old girls,” Dr. Mary S. Wolff, Mount Sinai School of Medicine, NY, 2001-2002.

Consultant in nutritional epidemiology on “Intake of folate and other B-vitamins and risk of breast cancer,” Dr. Jia Chen, Mount Sinai School of Medicine, NY, 2002.

REVIEWER FOR JOURNALS:

American Journal Epidemiology

Annals of Epidemiology

BMJ

BMC Cancer

Cancer

Cancer Causes and Control

Cancer Epidemiology

Cancer Epidemiology Biomarkers Prevention

Cancer Research

Epidemiology

European Journal of Cancer and Clinical Oncology

International Journal of Cancer

International Journal of Epidemiology

International Journal of Environmental Research and Public Health

Journal of the American Medical Association

Journal of the National Cancer Institute

Journal of the South Carolina Medical Association

Lung Cancer

New England Journal of Medicine

Nicotine and Tobacco Research

Nutrition and Cancer

Preventive Medicine

Regulatory Toxicology and Pharmacology

LANGUAGES:

Fluent in French and Russian; working knowledge of Japanese and German.

PUBLICATIONS:

Total publications: >150; total citations: 8,879; H-index: 54.

Peer-Reviewed Feature Length Articles:

1. Wynder EL, **Kabat GC**. Opportunities for prevention of cancer in blacks. *Prog Clin Biol Res* 1981;53:237-252.

2. Wynder EL, **Kabat G**, Rosenberg S, Levenstein M. Oral cancer and mouthwash use. *J Natl Cancer Inst* 1983;70:255-60.

3. **Kabat G**. The Columbia University Cancer Center Tumor Registry Network. *Prog Clin Biol Res* 1983;121:205-206.

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JOURNALISTIC ARTICLES:

Since 2011, I have written approximately 80 articles for the general reader. These focus on the frequent misperception of risks in everyday life and what the science has to say. Other pieces include book and film reviews and commentaries on politics and health-related issues. Many of these articles have appeared in Forbes and Slate.

https://www.forbes.com/sites/geoffreykabat/#e36e4036d80b

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HIGHLIGHTS/INTERVIEWS:

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Advisory Role:

Genetic Literacy Project – Board of Directors

https://www.geneticliteracyproject.org/our-team/

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7/19/2018

Exhibit 2

U.S. SENATE
COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

Friday April 5, 2019

1:00 p.m.

Performing Arts Building
Ybor City Campus, Hillsborough Community College
Tampa, FL

Hearing: Keeping Small Premium Cigar Businesses Rolling

Prepared Testimony By:
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Endowed Chair, Tobacco Harm Reduction Research
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Summary

- Cigarette smoking is associated with high risks for cancers, circulatory diseases and emphysema. Every year, nearly 500,000 adults die from smoking-related diseases. For the past 50 years, the American cancer "epidemic" has primarily consisted of one disease, cancer of the lung, owing to one dominant lifestyle factor – cigarette smoking.

- Compared with cigarette smoking, prevalence of cigar use is much lower; in 2014 0.7% of Americans smoked premium cigars and 3.4% smoked machine-made products.

- Compared with cigarettes, other tobacco products are associated with considerably lower health risks. Smoke-free tobacco products are vastly less hazardous than combustible products. Among combustible products, epidemiologic studies document that cigar smoking is much less hazardous than cigarette smoking.

- A recent FDA study found that consumption of up to two cigars per day, while not completely safe, is neither associated with significantly increased risks for death from all causes, smoking-related cancers, coronary heart disease, stroke, or emphysema.

- With low prevalence and minimal to no adverse health effects, regulation of cigars will have negligible impact on public health.

- FDA's unscientific conflation of cigarette smoking with smokeless tobacco use, vaping, cigar and pipe smoking falsely informs consumers that all tobacco products are equally deadly. This posture wastes government resources, undermines public health and does nothing to address the deaths caused by cigarette smoking.

I was trained as an oral and maxillofacial pathologist 40 years ago. By the early 1990's, I had been on the staff of the Comprehensive Cancer Center at the University of Alabama at Birmingham for 10 years. At this large academic medical center, I watched countless patients succumb to cancers and other diseases caused by cigarette smoking. I had been educated to believe that all tobacco products were equally hazardous. However, my experience providing pathologic diagnoses for hundreds of mouth cancers did not sync with what I had been taught. The vast majority of the patients I diagnosed were cigarette smokers and/or heavy drinkers. Virtually none of them had used moist snuff or chewing tobacco, despite the fact that these products were commonly used in the deep South.

I resolved the discrepancy by conducting research, resulting in the publication of 70 articles in peer-reviewed medical journals (1). I documented that, compared with cigarette smoking, smokeless tobacco use is 98% less hazardous, even for mouth cancer. In fact, a large recent study from federal and federally-funded investigators found that men who dipped or chewed tobacco had no excess risk for that disease (2). In addition, an American Cancer Society report on the top causes of 660,000 cases of cancer in the U.S. (3) ranked cigarette smoking #1, while smokeless tobacco did not even make the list.

The principal takeaway here is that all tobacco products do not have the same health risks. This also applies to combustible products like cigars, according to research from FDA officials (4).

Cigar Smokers

The cigar category encompasses a diverse spectrum of products. On one end are premium cigars that are hand-rolled by craftsmen; the rest of the category consists of machine-made, mass-produced cigarillos, little cigars and filtered cigars, sold in packs of various quantities.

Using nationally representative survey data, FDA investigators have distinguished between premium cigar smokers and those smoking mass-produced products (5,6). They estimated that 0.7% of Americans smoked premium cigars and 3.4% smoked machine-made cigars in 2014 (5). Smokers of premium products make up only 14-20% of all cigar users (5,6). Furthermore, only 7% of premium cigar smokers are daily users, compared with daily use by 22-37% of smokers of mass-produced products. Premium cigar smokers light up less than 2 days per month, and only 30% also smoke cigarettes. In contrast, mass-produced cigar smokers light up 1-2 weeks each month, and 58-66% smoke cigarettes. (5)

In another study FDA staff differentiated primary cigar smokers, who never smoked cigarettes, from two other groups: secondary cigar smokers who are former smokers, and dual users of both cigars and cigarettes (7). In that study, primary cigar smokers made up just over 40% of the 462 cigar smokers, while the other two groups comprised almost 60%. This is important because extensive cigarette use by the latter two groups, compounded by the likelihood that they smoke more and inhale more, likely raises their

health risks. Although this FDA study did not precisely describe smoking patterns, primary cigar smokers use fewer products (average 1.5 cigars on days smoked) and smoked fewer days, compared with secondary and dual users.

Health Effects of Cigar Smoking

The vast majority of cigar smokers are men (5), so it is best to focus only on men when discussing epidemiologic studies.

Usage patterns are important as we look at the health effects of cigar smoking. First, some basic principles. When you burn tobacco and inhale smoke, you consume nicotine and about 7,000 other chemicals. A 20- to 30-year career involving 10 deep puffs per cigarette and 20 to 40 cigarettes per day builds high risks for cancers, circulatory diseases and emphysema. The risks of cigarette smoking are proportional to the amount of smoke inhaled and the duration (years, decades) of exposure, and the death toll from cigarette smoking is high. Every year, 440,000 adults die from smoking-related diseases. For the past 50 years, the American cancer "epidemic" has primarily consisted of one disease, cancer of the lung, owing to one dominant lifestyle factor – cigarette smoking.

While cigar use involves burning tobacco, puffing on one or two cigars occasionally or even daily is not the same as deeply inhaling smoke from 20 or 30 cigarettes per day. One would therefore expect that cigar smokers, especially the primary group, would have lower health risks than cigarette smokers. That is in fact documented in a 2015 study authored by FDA staff (4).

For that report, FDA staff reviewed 22 epidemiologic studies on cigars and health outcomes, and they documented all causes of death and many smoking-related diseases. I will focus on the results for **men who are primary cigar smokers, that is, cigar smokers who had no history of cigarette use**. I will use the term relative risk (RR), which you can view as a multiplier. If a group of men who are cigar smokers has an RR=2 for a particular disease, it means they have twice the risk as the referent group of nonusers. An RR=1 is no risk at all. All RRs are accompanied by a 95% confidence interval, which is the generally accepted measure of statistical significance for epidemiologic results. If that range includes 1.0, the result is considered not statistically significant.

To start, let's look at mortality for all causes of death. The first column of Table 1 shows that cigar smokers generally have elevated risks. While most studies do not report the number of daily cigars consumed, two studies (Kahn and Shanks) do. Those results are seen in the second column. Smoking one to two cigars per day had minimal to no risks.

Similar results are seen in the FDA study for various diseases related to smoking, including cancers, heart and circulatory diseases and emphysema. Table 2 shows risks for cancer among smokers of one to two daily cigars. For stomach, pancreas and bladder, elevated risks are minimal and/or based on very limited data. While some risk estimates are elevated, especially for parts of the body in contact with smoke, such as mouth/throat,

esophagus, larynx and lung, none are statistically significant. The risks for larynx cancer are based on only two deaths in the Shanks study and one death in the Shapiro study, which is why the confidence interval indicates that they are not reliable.

Table 3 contains the FDA results regarding cigar-related circulatory disease and emphysema for men who smoke one or two cigars a day. **There were no significantly elevated risks for death from coronary heart disease, stroke or emphysema, which are three big killers of cigarette smokers.** Aortic aneurysm – a bulge in the heart's main artery – was the only disease that was elevated in men who smoke 1-2 daily cigars. It is a serious disorder but a distinctly uncommon cause of death; the mortality rate due to aortic aneurysm among those 45 and older dropped precipitously from 16 deaths per 100,000 in 2000 to 7.4 in 2014.

A follow-up mortality study of 1,139 current cigar smokers, as well as 1,177 pipe smokers, identified in U.S. Census Bureau surveys in 1985 and 1992-2011 was published by FDA staff last year (8). They divided cigar and pipe smokers into daily and non-daily groups. The results, summarized in Table 4, show that some diseases were elevated in daily cigar smokers. However, the Census Bureau surveys did not collect information on number of cigars smoked, so it is likely that the higher risks were among secondary cigar smokers and dual users who are more likely to smoke little cigars and cigarettes in higher quantities. Importantly, nondaily cigar users, who are more likely to smoke premium cigars, had no elevated risks.

The Takeaway Message for Cigar Smokers

Puffing or inhaling the smoke of burning tobacco is not without risk.

The FDA, which now regulates tobacco products, seems inclined to treat cigars the same as cigarettes. FDA staff wrote in their cigar study that "...cigar smoking carries many of the same health risks as cigarette smoking...We have observed that some risks associated with cigar smoking can be as high or higher than those associated with cigarette smoking, especially at the highest doses and levels of inhalation for cigar smoking."

All tobacco consumers in the U.S. deserve truthful information and guidance. The sweeping FDA indictment ignores scientific evidence and misleads cigar smokers. It also ignores the important epidemiology principle that the level of risk is related to the level of exposure. In other words, harm is based on (1) how many people smoke; (2) how frequently and how many products are smoked; (3) the degree to which smoke is puffed and/or deeply inhaled. The following facts are indisputable with respect to cigars: (1) the prevalence of cigar use in the U.S. is extremely small, especially for premium cigars; (2) these products, especially premium category, are used infrequently and in small numbers; (3) they are puffed, rather than inhaled.

The agency's unsupported position has led to needlessly subjecting cigar and pipe smokers, and the manufacturers of those products, to the same onerous and burdensome regulatory regime as much more hazardous cigarettes. Low prevalence, infrequent use

and reduced exposure translates into minimal harm at the population level. Epidemiologic analysis from FDA staff indicate that **consumption of up to two cigars per day, while not completely safe, is neither associated with significantly increased risks for death from all causes, nor smoking-related cancers.**

When Congress gave the FDA regulatory authority over tobacco products in 2009, it did not require that the agency treat all tobacco products as equally hazardous. Unfortunately, the FDA's regulatory actions have done just that, despite numerous scientific studies demonstrating that the risks from smoke-free tobacco (smokeless tobacco and e-cigarettes) are a tiny fraction of the risks of cigarette smoking, and despite the FDA's own study demonstrating that the risks of moderate cigar smoking are significantly lower than cigarette smoking.

The FDA's unscientific conflation of cigarette smoking with smokeless tobacco use, vaping, cigar and pipe smoking falsely informs consumers that all tobacco products are equally deadly. For all products other than cigarettes, the number of users is low, the adverse health effects are uncommon, rare or nonexistent. Thus, the impact of strict FDA regulation of these products will be inconsequential. The FDA's current posture wastes government resources, undermines public health and does nothing to address the 500,000 annual deaths caused by cigarette smoking.

Table 1. Relative Risk, RR (95% Confidence Interval) For All-Cause Mortality Among Men Primary Cigar Smokers

Study, year	All Cigar Smokers	Cigars per day	
Best, 1966	1.06 (0.92 – 1.22)		
Kahn, 1966	**1.10 (1.05 – 1.16)**	<5	1.04 (0.98 – 1.11)
		5-8	**1.17 (1.06 – 1.29)**
		8+	**1.49 (1.24 – 1.77)**
Cole, 1974	1.15 (0.70 – 1.90)		
Carstensen, 1987	**1.39 (1.16 – 1.65)**		
Lange, 1992	**1.60 (1.30 – 2.00)**		
Ben-Schlomo, 1994	0.48 (0.25 – 0.93)		
Shanks, 1998	**1.08 (1.05 – 1.12)**	1-2	1.02 (0.97 – 1.07)
		3-4	**1.08 (1.02 – 1.15)**
		5+	**1.17 (1.10 – 1.24)**

Bold indicates statistically significant elevation compared to never smokers.

Table 2. Relative Risks (95% CI) for Mortality From Cancers Among Men Smoking 1 or 2 Cigars Per Day

Cancer	Shanks, 1998	Shapiro, 2000	Other Studies
Mouth/throat	2.12 (0.43 – 6.18)	0	
Esophagus	2.28 (0.74 – 5.33)	1.80 (0.60 – 5.00)	
Stomach			1.68 (0.95 – 2.97)[1]
Pancreas	1.18 (0.69 – 1.89)	0.60 (0.30 – 1.40)	
Larynx	6.45 (0.72 – 23.3)	6.00 (0.70 – 53.5)	
Lung	0.90 (0.54 – 1.66)	1.30 (0.70 – 2.40)	1.14 (0.59 – 2.00)[2]
Bladder	0.78 (0.29 – 1.71)	0	

[1] Jacobs 1999, 1 cigar per day.
[2] Kahn 1966, fewer than 5 cigars per day.

Table 3. Relative Risks for Mortality From Circulatory Diseases and Emphysema Among Men Who Smoke 1 or 2 Cigars Per Day

Disease	Shanks, 1998	Other Studies
Coronary heart disease	0.98 (0.91 – 1.07)	1.00 (0.90 – 1.10)[1] 1.18 (0.76 – 1.82)[2]
Stroke	1.01 (0.88 – 1.17)	
Aortic aneurysm	**1.82 (1.11 – 2.81)**	
Emphysema	1.39 (0.74 – 2.38)	

[1]Kahn 1966, fewer than 5 cigars per day.
[2]Jacobs 1999, 1 cigar per day.
Bold indicates statistically significant elevation compared to never smokers.

Table 4. Relative Risks for Mortality Among Daily and Nondaily Exclusive Cigar Smokers[1]

Disease	Daily	Nondaily
All Causes	**1.22 (1.04 – 1.44)**	1.12 (0.82 – 1.53)
Smoking-related cancers	**1.80 (1.20 – 2.69)**	1.08 (0.45 – 2.61)
Lung cancer	**4.18 (2.34 – 7.46)**	0.74 (0.08 – 7.26)
Cardiovascular diseases	1.12 (0.83 – 1.52)	1.20 (0.67 – 2.15)*
Respiratory diseases	1.86 (0.94 – 3.68)*	0
Emphysema	**3.29 (1.33 – 8.17)***	0

[1] Christensen, 2018.
* Based in fewer than 10 deaths.
Bold indicates statistically significant elevation compared to never smokers.

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Exhibit 3

Exhibit A

Evaluation of the Burden Reduction Opportunities In the Food and Drug Administration's Final Rule: Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act

Prepared on Behalf of the
Cigar Association of America

Submitted by:

January 2018

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Evaluation of the Burden Reduction Opportunities In the Food and Drug Administration's Final Deeming Rule

1. EXECUTIVE SUMMARY

Policy Navigation Group (PNG) prepared this review of the final Regulatory Impact Analysis (RIA) for U.S. Food and Drug Administration (FDA) rule entitled *Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act*.[1] We evaluate the RIA to evaluate the impact on the cigar industry and to identify available opportunities to reduce the burden of the rulemaking.

Since FDA promulgated the rule, the Administration has issued two Executive orders that have launched new regulatory review processes under Executive Orders (E.O.) 13771 and 13777.[2,3] Through E.O. 13771, the Administration established a regulatory budget and required that regulatory agencies submit a proposed regulatory budget for along with its fiscal budget proposals to the Office of Management and Budget (OMB). For Fiscal Year 2017, E.O. 13771 established a regulatory budget of zero, meaning that the regulatory burden caused by new final rules had to be offset by changes that at least offset this new regulatory cost.

To implement E.O. 13771, Executive Order 13777 charges FDA with identifying existing regulations that:

(i) Eliminate jobs, or inhibit job creation;
(ii) Are outdated, unnecessary or ineffective;
(iii) Impose costs that exceed benefits;
(iv) Create serious inconsistencies or otherwise interfere with regulatory reform initiatives and policies;
(v) Rely in whole or in part on data, information or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or,
(vi) Derive from or implement Executive Orders of other Presidential directives that have been subsequently rescinded or substantially modified.

The rules FDA identifies using these criteria under E.O. 13777 are required to be considered for repeal or modification under the agency's regulatory budget (allocation) under E.O. 13771. FDA has

[1] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

[2] 82 FR 9339

[3] 82 FR 12285

issued a notice requesting ideas from the public for candidate regulations and guidance documents for regulatory revaluation and burden reduction.

In addition, in December 2017, OMB released each agency's regulatory allocation for Fiscal Year 2018. The Department of Human Health Services (HHS) is required to reduce annualized net burden by $28.7 million by September 30th, leading to a present value reduction in regulatory compliance costs of $410 million. To meet its allocation, HHS, and its component agencies like FDA, must identify opportunities for regulatory burden reduction over this year.

To determine whether the Deeming Rule offers such opportunities, we examine FDA's RIA and to evaluate whether it meets the E.O. 13777 criteria. We limit our review to the provisions of the rule that have not yet gone into force and therefore present opportunities for avoid pending regulatory burden. First, we find that the RIA substantially underestimated the likely regulatory burden on the cigar industry and on consumers. Second, the RIA has deficiencies that preclude accounting for the full regulatory burden. The principal deficiencies include the following:

- FDA's description of the future market structure and future products is based largely on assumptions. Inconsistent with HHS and OMB guidance, the RIA fails to consider important consumer costs from likely post-regulation market adjustments.[4]
- The substantial cost on certain segments of the cigar market is likely to lead to substantial reduction in the variety of products on the market. FDA underestimated the consumers' loss from the reduction in variety.
- Although the rule prompts a mandatory duty to report harmful and potentially harmful constituents, the RIA excludes the cost of composition testing. FDA's refusal to estimate costs when promulgating a standard – even when the final form of the requirement is uncertain – is inconsistent with federal economic analysis requirements and the practice of other agencies.[5]
- In assuming all new products will automatically qualify for Substantial Equivalence Demonstration, FDA likely underestimates the cigar industry's compliance cost by not providing adequate justification or breakdown for its burden estimates.

The RIA provided by FDA quantifies only cigar producers' compliance costs, omitting the additional social costs affecting consumers as well as small businesses via market adjustments.

This report discusses the major issues with the RIA in more detail, proposes some alternative approaches for the rule's social costs, and recommends approaches to more accurately characterize the regulatory burden. A partial re-estimate of the regulatory burden is presented in Table ES-1.

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[4]See White House, Office of Management and Budget, "Circular A-4: Regulatory Analysis"; Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, "Guidelines for Regulatory Impact Analyses."

[5] White House, Office of Management and Budget, "Circular A-4: Regulatory Analysis"; U.S. Environmental Protection Agency, "Guidelines for Preparing Economic Analyses."

The regulatory compliance costs for the non-premium market is about $50-$100 million for this initial compliance period. This value underestimates the full costs for this market since the ongoing costs are omitted as well as the loss of consumer surplus.

The regulatory costs for the premium market depend on the market choices of firms and of consumers. If firms reduce product offerings from 6,000 to 1,000, the combined consumer surplus loss is between $3.5 million (see Table 16) and 2,300 million per year (see Table 1). The initial compliance costs are $25 million (See Table 15).

Table 1: Summary of the Rule's Initial Compliance Costs and Consumer Surplus Loss

Cigar Category	Initial Regulatory Compliance Costs (million)	Consumer Surplus Loss
Non-Premium	$50-$100	Not estimated
Premium	$150-$300	$3.5 to $2,300 million per year[6]

With well over $100 million in likely costs on the premium cigar industry and its consumers alone the rulemaking imposes an economically significant burden. The rulemaking has a significant effect many businesses, likely lead to substantial employment impacts. It also has a significant effect on a substantial number of small businesses. Since the rulemaking's effect meet some of the E.O. 13777's criteria, the rulemaking provides a substantial opportunity for FDA to reduce regulatory burden.

[6] Assuming a reduction of 5,000 SKUs

2. INTRODUCTION

Under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), the Food and Drug Administration (FDA) is granted authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.[7] The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Tobacco Control Act, allows FDA to "deem" other tobacco products subject to the FD&C Act. Consequentially, the final rule, promulgated on May 10, 2016, deems cigars as meeting the statutory definition of "tobacco product" and now subject to the FD&C Act and its implementing regulations.

Requirements that now apply to the cigar industry include establishment registration and product listing, ingredient listing, labeling requirements, prohibition of free samples, product testing and warning statements for packages and advertisements.[8] FDA quantifies the total costs over 20 years for all new deemed products at approximately $988 million at a three percent discount rate and $817 million at a seven percent discount rate. However, FDA admits to excluding unquantified costs attributable to the final rule, including the following: consumer costs due to loss of product variety or potentially higher prices; costs for testing for harmful and potentially harmful constituents; costs for clinical testing to support substantial equivalence reports; market adjustment and exit; and more.[9]

The following table summarizes FDA's estimated costs for cigars for the major provisions:

[7] Food and Drug Administration, "21 CFR Parts 1100, 1140, and 1143 Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Final Rule."

[8] Food and Drug Administration, "Certain Tobacco Product Compliance; Deadlines Related to the Final Deeming Rule; Guidance for Industry."

[9] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

Table 2: Present Value of Quantified (Private Sector and Government) Costs

Provision	Upper Bound (3%) 2016 $	Average Costs per Cigar SKU 2016 $
New Product Submission Requirements	$93,100,000	$12,000
Label Changes	$176,400,000	$22,000
Subtotal	$269,500,000	$34,000
Other Costs	$30,200,000	$4,000
Total Costs	$299,700,000	$37,000

For each item in Table 2, we then divide the cost by the 8,000 cigar SKUs that are estimated to have been on the market in a typical pre-regulatory year.[10] Table 3 shows FDA's estimated compliance costs for cigars by the major provisions during the initial compliance period and, thereafter, annually:

- Premarket requirements reflect the cost of obtaining marketing authorizations based on FDA's count of 2,625 newly deemed cigar products applying for marketing authorization (of the 7,500 cigar products at baseline, 60 percent are expected to be grandfathered) and a weighted average cost per product of $6,560 for cigars.[11]
- Annual registration and product listing includes the estimated costs – first for years one through two, then for years three through twenty - incurred by owners and operators of establishments to register their establishments and submit product listings.
- Ingredient listing reflects the cost for tobacco product manufacturers and importers required to submit listings of all product ingredients by brand and by quantity for each brand and sub-brand.
- Labeling presents the estimated cost of changing cigar labels to six versions of every new label are required and warning statement provisions: the first year includes major labeling changes such as printing plates and prepress activities for adding or enlarging warning statements; after the first year, continued operation of equal random point-of-display will result in incremental ongoing yearly administrative and recordkeeping costs.

[10] Cigar Association of America, Inc., "Comment on the Food and Drug Administration (FDA) Proposed Rule: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Extension of Comment Period. Docket No. FDA-2014-N-0189-75911." The CAA estimate was made in 2014, however, in 2016, after the Final Rule was enacted a large number of SKUs entered the market, which increased the total cumulative number of SKUs well above 8,000. In 2016, prior to the regulation, companies placed an additional number of SKUs on to the marketplace. This marketing positioning increased the total cumulative number of SKUs well above FDA's estimate of 8,000.

[11] In 2016, in FDA's RIA, the baseline number of cigar products (SKUs) was estimated in 7,500.

Table 3: Total Initial Compliance Costs by Provision for Cigars Market Segment

Provision	Total Cost during Initial Compliance Period	Annual Cost After Initial Compliance cost
Premarket Requirements	$17,220,000	$4,420,000 - $5,907,000
Annual Registration and Product Listing	$22,000 – $65,000	$4,000 - $13,000
Ingredient Listing	$1,139,000	$47,000- $94,000
Labeling	$30,202,000- $101,400,000[12]	$520,000 - $3,600,000[13]

Values may not sum due to rounding

Project Scope

This report systematically reviews FDA's final Regulatory Impact Analysis (RIA) and documents the principal ways in which the analysis falls short of White House's Office of Management and Budget (OMB), U.S. Department of Health and Human Services (HHS), and other regulatory analysis guidance. As part of this process, each flaw is reviewed and compared with the best practice recommended by these authoritative guidance documents.

In addition to identifying the flaws, two quantitative analyses are conducted. First, for some of the major methodological flaws or omissions, we develop more accurate values to estimate the regulatory costs for the cigar industry. We identify the key issues that can be revised quantitatively and develop partial re-estimates for them. The partial re-estimate demonstrates that the final RIA substantially underestimates the rulemaking's cost for the cigar industry and for consumers.

Second, we gather publicly-available revenue data for small business in the cigar manufacturing and distribution system. We use both the FDA compliance cost estimate and PNG's partial re-estimate to calculate the economic impact using the metrics in HHS's guidance and metrics commonly used by other federal agencies. Presenting the economic impact of the rule in comparable terms will more clearly demonstrate the rule's substantial impact on small businesses.

Structure of This Analysis

The data, assumptions, and conclusions presented in this report are those of Policy Navigation Group and do not necessarily reflect the opinions of the Cigar Association of America (CAA). The purpose of this report is to evaluate whether FDA's economic assessment reflects the best available principles for economic analysis. Our estimates do not evaluate the social benefits of the regulation, do not offer commentary on the medical evidence concerning tobacco use, or do not comment upon potential health impacts associated with cigar smoking.

The report is structured as follows:

[12] Cost of changing cigar labels when six versions of every new label are needed.

[13] Incremental annual costs of equal random display.

1. We provide an overview of the rule's universe and the key baseline assumptions for the analysis.
2. We discuss FDA's failure to quantify how the future post-regulation market structures will be impacted by product withdrawals and likely consumer surplus loss.
3. We highlight how FDA assumes no cost imposed by the requirement of companies to conduct testing in compliance with harmful and potentially harmful constituents (HPHC) reporting.
4. We examine how FDA's cost estimates for new products to complete Substantial Equivalence (SE) Demonstration reports is based on assumptions that lack justification and clarity. Namely, we look at FDA's assumptions that most new products will qualify under SE and that companies will not have to conduct laboratory testing to fulfill SE demonstration requirements.
5. We offer an analysis of the market adjustment, the lost consumer surplus, and the economic impact resulting from the regulation.

3. THE PRE-REGULATION CIGAR MARKET AND GENERAL BASELINE ASSUMPTIONS

We rely on the estimates provided by the FDA in its RIA for the following data and assumptions about the pre-regulation cigar market:[14]

- Number of cigar brands;
- Number of cigar manufacturers;
- Number of cigar importers;
- Typical number of products per brand; and,
- Typical number of packaging variations by brand.

To estimate the size of the cigar industry in terms of revenue and how revenue is subdivided into premium and non-premium products, we use Cigar Association of America (CAA) and MarketLine data and model different scenarios.[15] For the number of cigar products (Stock Keeping Units, or, SKUs), including how they are broken down into premium and non-premium cigars, we use publicly available estimates provided by the CAA.

New SKUs are regularly created by cigar brands to be used in future products. It is customary in the cigar industry to have multiple product presentations and formulations for one single brand. The number of this type of SKUs can exceed over 1,000 units (SKUs) per brand.[16] In addition, there are dormant SKUs, such as those related to limited editions of cigars that are no longer being produced, that are still in the market. In response to this rulemaking, cigar producers introduced a significant number of SKUs in 2016. As a result, there is substantial uncertainty as to the number of SKUs that companies will bring to compliance with the regulation. For this analysis, we will assume a range of 8,000 to 16,000 SKUs in the cigar marketplace.

To calculate the number of product combinations per brand, we use FDA's estimate that each brand has 4.4 products and each product has 1.5 packaging variations.[17] Thus, on the assumption that there are 8,000 -16,000 cigar SKUs in the market and 1,100 brands, each brand will have on average 7.3-14.6 product combinations (e.g., 8,000/1,100).

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[14] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

[15] MarketLine, "Tobacco in the United States"; Cigar Association of America, Inc., "Comment on the Food and Drug Administration (FDA) Proposed Rule: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Extension of Comment Period. Docket No. FDA-2014-N-0189-75911."

[16] Minato, "Six Things: What FDA's 2021 Delay Means for Cigars."

[17] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

The cigar market is segmented, broadly speaking, into premium and non-premium segments. In terms of products, we assume that there are 8,000 -16,000 SKUs in the market prior to regulation.[18] As discussed in Section 8, to obtain a better estimate of the regulatory cost by including the consumers' lost benefits, we examine in more detail the premium cigar market. We therefore require an estimate of the number of premium cigars sold and the number of premium cigar SKUs.

From a revenue perspective, the total size of the cigar industry in the United States represents approximately $7 billion in 2016.[19] From this total, approximately 2.5 percent of the market is premium ($175 million) and the remainder 97.5 percent is non-premium ($6.8 billion).[20]

Since cigars have different price points, we divide cigars sold into four price categories: $2-$4, $4-$6, $6-$10, over $10. These price categories are based on data from the International Premium Cigar and Pipe Retailers Association (IPCPR).[21] For each of these categories, IPCPR provides percentages of the best-selling range (i.e. $2-$4=5 percent, $4-$6=78 percent, $6-$10=15 percent, over $10=2 percent), based on information reported by its members.

The next step is to estimate the number of cigars sold in each price category. The U.S. Treasury collects data on cigar domestic and production and imports. Cigar imports are further subdivided into categories based on their declared value. Specifically, there are five trade codes for large cigars (USTSA2402.10.3030 to USTSA 2402.10.8080). The U.S. Treasury groups these five categories of large cigars into two values reported each month. One category is almost 15-20 times larger than the other category. We assume that the smaller category contains the premium cigar imports.

The smaller Treasury category constitutes imports of large cigars in trade categories USTSA 2402.10.8050 and USTSA 2402.10.8080. Trade category USTSA 2402.10.8050 is defined as large cigars with an import price of between $0.23 and $0.76; category USTSA 2402.10.8080 are cigars with imported value greater than $0.76. We obtained monthly declared imported value in each trade category for December 2016-December 2017.

We assume that all cigars in these trade codes have a more expensive retail price. We then can estimate the retail price of premium cigars imported that have a value greater than $0.76. We first subtract the number of estimated for the $6-$10 category from the total imports in the Treasury category. Using the two price ranges, to bring the annual total to $175 million, the mean retail prices for these two categories is assumed to be $6 and $10.

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[18] Cigar Association of America, Inc., "Comment on the Food and Drug Administration (FDA) Proposed Rule: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Extension of Comment Period. Docket No. FDA-2014-N-0189-75911."

[19] MarketLine, "Tobacco in the United States."

[20] Cigar Association of America, Inc., "Comment on the Food and Drug Administration (FDA) Proposed Rule: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Extension of Comment Period. Docket No. FDA-2014-N-0189-75911."

[21] International Premium Cigar & Pipe Retailers Association, "Premium Tobacconist Member Profile."

Table 3 provides an overview of the main pre-regulation values we use in this analysis:

Table 4: Major Pre-Regulation Market Values

Pre-Regulation Market Description	Estimate
Number of Cigar Brands	1,100
Number of Cigar Manufacturers	113
Number of Cigar Importers	216
Number of Cigar Products (SKUs)	8,000 – 16,000
Number of Products by Brand	4.4
Number of Product Combinations (SKUs) per Brand	7.3 – 14.6
Total Revenue of the Cigar Industry	$7 billion
New Product Rate	15%
Number of New Products by Brand	1.10

For the number of new cigar products that would have been introduced without FDA's regulation, we employ data from Rueda Media.[22] From this publicly available database we extract the total number of cigar brands that were released, planned to be released, or scheduled to be released in the market during 2016. The total number of new products was 800, which corresponds to 1,200 product variations or SKUs (800 * 1.5). The baseline new product rate is estimated to be 15 percent (1,200/8,000).

In addition, we calculate the number of new cigars by brand by multiplying the range of current SKUs (8,000 – 16,000), multiplying it by the new product rate (15 percent), and dividing the result by the current number of brands (1,100). Table 4 presents the number of new cigars by brand:

[22] Rueda Media, LLC, "2016 Cigar Release List - Halfwheel."

Table 5: Estimate of New Cigar Products

Post-Regulation Market Description	Estimate
New Product Rate	15%
Number of New Products by Brand	1.1 -2.2

4. FUTURE MARKET STRUCTURE AND PRODUCT AVAILABILITY

a. SUMMARY OF FDA APPROACH

The FDA deeming rule changes the market for cigars, causing shifts in cigar supply and demand. FDA simply posits the future market structure. FDA assumes that five percent of existing products will cease being sold eventually due to regulation. With regard to the rate of new tobacco products, In the final RIA, FDA estimated that new products seeking authorization annually will be approximately five to ten percent of the number of products estimated to remain on the market.

b. ERRORS WITH FDA APPROACH

FDA makes the flawed assumption that market exit is exogenous to the regulation's cost. In the RIA, FDA assumes that five percent of products will be withdrawn from the market. FDA should instead note a regulated market in the baseline generally meets adjusted consumer preference. The current market is not "free" due to state regulation, federal and state taxes, and other constraints on product use. However, current purchasing patterns are the most readily-available measures of consumer willingness-to-pay for cigars. The diversity of products, rates of new product introduction, and consumer experience have arisen to meet consumer demand.

FDA's regulation will raise cigar manufacturers' operating costs. In a competitive market, firms then try to raise their prices to offset some of these increased production costs. Consumers, in turn, react to the price increases and reduce their purchases of cigars according to the price elasticity of demand. Lower consumer purchases then in turn reduce producers' revenue, causing them to either stop selling money-losing products or cease operations. Once producers decide on their compliance strategy, the social costs and economic impact of the rule are known. This dynamic response to regulation predicts producer/product exit.

FDA does not consider that, as companies ultimately change their products, consumers will no longer see their preferred options, and many will likely switch. As a result, consumers overall will suffer from no longer seeing their preferred brands. Thus, product withdrawal causes consumer welfare loss. FDA should compute the cost per product or cost per company to compare it to actual companies' revenues in order to quantify the impact of company closure, brand consolidation, and product withdrawals from the market.

c. ALTERNATIVE APPROACH

We adopt dynamic modeling of consumer and producer response to regulation in this analysis. To do so, we calculate the costs of complying with each individual requirement of the rule, simulate consumer response to price increases, and the combined effect of lower demand and of higher operating costs on cigar manufacturers. See Section 8.

5. HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS

a. SUMMARY OF FDA APPROACH

Under the FD&C Act, manufacturers or importers are required to submit a listing of constituents in each tobacco product, and the smoke if possible, that are identified by the FDA as harmful or potentially harmful (HPHC) by brand and quantity. FDA intends to enforce the required HPHC testing and reporting requirements three years after the effective date of the final rule for cigars and other newly-deemed products.

FDA states that it plans to issue additional guidance on HPHC reporting, as well as a separate testing and reporting regulation, but does not provide details on how they will approach HPHC reporting.[23] The final RIA does not estimate any costs for this regulatory requirement. The effective date of compliance for this provision is November 8, 2019 or, for products entering the market after November 8, 2019, 90 days prior to marketing.[24]

b. ERRORS WITH FDA APPROACH

FDA's rule sets the requirement for companies to submit listings of HPHC imposes the costs of conducting product constituent and smoke tests. While future FDA actions will shape the magnitude and timing of these costs, social costs are triggered by the final rule.

FDA's approach of ignoring these costs is inconsistent with other agencies. For example, the U.S. Environmental Protection Agency (EPA) under the Clean Air Act sets National Ambient Air Quality Standards (NAAQS). These NAAQS air quality concentrations are not direct regulatory standards; states develop state implemental plans that contain the state's strategy of emission limits on specific industries, transportation projects, and other programs to meet the NAAQS in their area. EPA estimates the potential social costs when it sets NAAQS standards, even though the specific requirements are set later by states.[25] EPA does so because the NAAQS establishes a regulatory obligation; it is inconsistent with OMB guidance and other agency practice for FDA to ignore the regulatory costs simply because they are uncertain.

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[23] Food and Drug Administration, "21 CFR Parts 1100, 1140, and 1143 Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Final Rule."

[24] Food and Drug Administration, "Certain Tobacco Product Compliance; Deadlines Related to the Final Deeming Rule; Guidance for Industry."

[25] U.S Environmental Protection Agency, Office of Air and Radiation, "The Benefits and Costs of the Clean Air Act from 1990 to 2020."

In addition, the rule does not include organization costs to respond to FDA inquiries about the HPHC submission. FDA does not present any evidence that this extreme assumption is the most likely outcome. Given that an international standard and testing protocol for large cigar testing has not been developed, development of data may need to wait until this protocol is approved. Since the method will be very new, it is likely that problems could arise. There may be limited number of laboratories ready to conduct the test. Laboratory personnel may need training, leading to greater risk of error. Reproducibility concerns may arise as different laboratories conduct the tests. Finally, FDA staff must evaluate and understand the new testing protocol, the minimal quality standards, the limits of detection, and other testing parameters.

All of these factors increase the probability that FDA may at least initially require multiple resubmissions and testing to fulfill this requirement. A more reasonable assumption is that FDA requires more information on a certain percentage of submissions. The RIA should have included these costs.

c. ALTERNATIVE APPROACH

It is difficult to adequately quantify the costs to industry of cigar testing. This is for two specific reasons. First, there are not established International Organization for Standardization (ISO) methods for cigar smoke testing, nor are there established third party methods for cigar smoke testing for all cigar products. Second, FDA has yet to identify what HPHCs will be required for cigar testing.

While there are established methods and ISO standards for testing cigarette smoke, no such methods or standards exist for cigar smoke. The two products are very different both in composition, shape and size and use, and therefore any methodologies or standards available for cigarette smoke testing cannot be used for cigar smoke testing. CORESTA (Cooperation Center for Scientific Research Relative to Tobacco) is the leading scientific body relating to tobacco science issues. CORESTA has various working groups that work on establishing testing protocols for tobacco products. While there are CORESTA methodologies relating to some cigar products, even these are currently undergoing review and update by CORESTA working groups.[26] Further, CORESTA has three other ongoing projects, in addition to this review and update, to try to establish protocols and testing methodologies for larger, and especially premium cigar, products.[27] None of these methodologies has been completed, none have received ISO certification, and none have been accepted by FDA.

FDA originally published a list of 93 HPHCs.[28] It then published a Guidance document which outlined the required HPHC testing for cigarettes, smokeless tobacco, and roll-your-own tobacco. Table 5 below lists the different HPHC testing required for the three different products.

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[26] Cooperation Centre for Scientific Research Relative to Tobacco, “Active Projects | CORESTA.”

[27] Ibid .

[28] U.S. Food and Drug Administration, “Compliance, Enforcement & Training > Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke: Established List.”

Table 6: Potentially Required Tests Under the Rule's HPHC Provision[29]

Cigarette Smoke	Smokeless Tobacco	Roll-your-own Tobacco and Cigarette Filler
Acetaldehyde	Acetaldehyde	Ammonia
Acrolein	Arsenic	Arsenic
Acrylonitrile	Benzo[a]pyrene	Cadmium
4-Aminobiphenyl	Cadmium	Nicotine (total)
1-Aminonapthalene	Crotonaldehyde	NNK
2-Aminonapthalene	Formaldehyde	NNN
Ammonia	Nicotine (total and free)	
Benzene	NNK	
Benzo[a]pyrene	NNN	
1,3 Butadiene		
Carbon Monoxide		
Crotonaldehyde		
Formaldehyde		
Isoprene		
Nicotine (total)		
NNK		

[29] U.S. Food and Drug Administration, "Compliance, Enforcement & Training > Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke: Established List."

NNN		
Toluene		

FDA creates product specific lists for HPHC testing. To date, no list has been provided for cigars, so it is impossible to determine which HPHCs will be required to be tested in cigars. Companies have received costs estimates from independent testing laboratories of $5,000- $20,000 per product for HPHC testing, depending on the protocols required and the number of HPHCs to be tested.

With regard to HPHC testing costs, given the uncertainty in the potential requirements, it is only possible to use a hypothetical value to assess the potential costs of this provision. For this analysis, we hypothetically assume that HPHC testing costs will be $9,700. However, actual testing costs are likely to be significantly higher.

To estimate the other potential costs of HPHC, one can calculate the technical, management and clerical staff time to prepare, review and submit HPHC reports. For the purposes of this analysis, we assume that HPHC reports will require 50 percent less time than the modified costs for a substantial equivalence (SE). FDA assumed 220 hours for the SE application.

For the preparation and review of the submission, FDA's analysis fails to consider that multiple company staff will be involved in the application process, not only to prepare the submission, but also to review and record the submission. For our alternative analysis, we assume that three different labor categories are needed, one technical, one managerial, and one administrative/legal assistant. The unloaded rates we use are based on data from the Bureau of Labor Statistics for tobacco manufacturing.[30] To account for overhead, general and administrative costs, we multiply each unloaded rate by two, the same approach FDA uses.

For the HPHC report, we allocate our estimate of 110 hours between two staff members (55 hours each). Companies must contract for laboratory services, verify laboratory performance, review the results, and assemble the report. We assume that other members of the company require an additional 20 percent of the 110 hours to prepare the draft submission. Also, we assume that an administrative/legal assistant will be needed to assist in the preparation, review and recordkeeping of the submission (10 percent of the time spent by the technical staff).

The following table (Table 6) presents the rates and categories we use to estimate the labor costs of the HPHC provision:

[30] U.S. Department of Labor, Bureau of Labor Statistics, "Tobacco Manufacturing - National Industry-Specific Occupational Employment and Wage Estimates; NAICS 312200 - Tobacco Manufacturing."

Table 7: HPHC Labor Costs

Labor Category	Unloaded Hourly Rate	Fully Loaded Rate	Number of Hours
Industrial Production Manager	$53.26	$106.52	55
Chemists and Materials Manager	$30.21	$60.42	55
Administrative/Legal Assistant	$19.92	$39.84	11

To estimate the costs of this provision, we multiply the number of tests required by its unit cost. Then, we sum the corresponding labor costs by multiplying the number of hours in each category by the fully loaded rates.

Furthermore, our estimate assumes that 10 percent of applications submitted to FDA will need to be resubmitted due to rejection. Firms have a strong financial incentive to submit complete applications to sell their products. Application reconsideration would require 10 percent of the initial application labor and testing costs in case the initial application is rejected by the FDA. These assumptions may understate or overstate the actual costs. This estimate assumes that tests and harmful and potentially harmful constituents substance reports are conducted by brand and that multiple packaging combinations with the same product composition are covered in the same report.

6. PREMARKET AUTHORIZATION

a. SUMMARY OF FDA APPROACH

Deemed products must provide justification to remain on the market after the FD&C and the deeming regulation occurred. Companies may only sell grandfathered products or products that have FDA premarket authorization. To obtain premarket authorization, firms may demonstrate that their new or existing, non-grandfathered product is substantially equivalent (SE) to an authorized product. If there is not an equivalent product, companies must submit premarket authorization (PMA) application.[31]

In the RIA, FDA asserts that 60 percent of cigar products will be grandfathered and thus will not require market authorization. FDA also states that all other existing cigar products are eligible to make a SE demonstration. Manufacturers must provide information that allows FDA to determine whether a new tobacco product is substantially equivalent to that of a predicate product or an existing product on which to base comparisons. There must be a comparison of all ingredients, materials, heating sources, design feature compositions, constituents, and other features that are identified with the predicate product. Changing the number of cigars sold in a package or changing an ingredient requires to SE demonstration.[32]

FDA estimates that, on average, it will take 220 hours to complete the task of preparing and submitting a complete substantial equivalence report. The time estimated to complete the Initial Quantity Change SE Report is 185 hours and the Bundled Quantity Change SE Report is 210 hours.

b. ERRORS WITH FDA APPROACH

The RIA contains assumptions with little verifiable justification. FDA does not provide any justification that 60 percent of products qualify as grandfathered and thus do not require premarket authorization. FDA's burden estimate for an SE application does not include a breakdown of the component cost or does not have citations for its SE cost estimates.

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[31] Food and Drug Administration, "21 CFR Parts 1100, 1140, and 1143 Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Final Rule."

[32] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

It also appears FDA assumes no costs for physical testing and laboratory analyses, which it appears companies are likely to be required to conduct to demonstrate a candidate product has the characteristics of predicate products. Many situations could lead to physical testing, but do not need to. For example, FDA may reasonably inquire as to whether different ingredients contain, or form when combusted, potentially hazardous constituents.

FDA's assumption is that no new cigar products will require premarket approval and will qualify under SE. However, FDA does not provide justification for this assumption. The rise of vapor technologies and non-combustion delivery systems are examples of innovation in the broader industry. By assuming that no similar innovation will occur in cigar markets, FDA likely underestimates the cigar industry's future compliance costs.

It is also unclear whether the total hours per application incorporate the time involved in communicating back-and-forth with FDA. FDA may have questions or require additional data after a company submits an SE application. Since the requirements for an SE are not known and may change over time, some fraction of SE applications will likely require multiple submissions before receiving a final FDA decision.

As previously shown in other parts of the RIA, FDA assumes that five percent of existing products drop out of the market and do not submit an SE application. As stated earlier, we use market data to estimate this percentage in this report. FDA also repeats its assumption that only one person is required to complete a submission; FDA should assume and account for more than one person, including legal and managerial staff, to write, review, and approve each submission. Lastly, FDA does not clarify what the environmental assessment entails or on what basis it estimates that it will require 80 hours per product.

c. ALTERNATIVE APPROACH

We estimate the SE application cost by assuming it has three components per application. First, companies may conduct physical product and use testing to demonstrate that a non-grandfathered product is chemically similar to authorized products. Second, the physical data is supplemented by literature reviews and other analyses. Third, managerial and legal staff review a company's draft SE submission package prior to sending it to FDA.

As discussed in the last section, firms must test every cigar product – even grandfathered products – for HPHCs. Some of this physical testing can be used to support a SE application. Therefore, companies may try to conduct just one set of constituent characterization to satisfy both requirements. In addition, some SE applications will be required when companies change package quantity. These SE applications are not likely to change the constituent composition. For these reasons, not all SE applications will require physical testing.

On the other hand, the scope of the SE application is potentially greater than the HPHC reporting. While the HPHC reporting is based on a discrete list, FDA requires companies to demonstrate that non-grandfathered products have multiple attributes equivalent to existing product. Since FDA has not issued guidance, the number of points of comparison are unknown.

We assume that 10 percent of non-grandfathered products will require the same battery of tests required for the HPHC demonstration. Firms have a strong financial incentive to develop products for which they can develop a relatively straightforward SE demonstration. The 10 percent assumption may understate or overstate the actual costs.

For the preparation and review of the submission and for the preparation of the environmental assessment (220 hours for SE application and 80 hours for environmental assessment and), FDA's analysis fails to justify the fact that various staff members will need to be involved in the application process, not only to prepare the submission, but also for review and recordkeeping purposes.

For our alternative analysis, we assume that three different labor categories are needed, one technical, one managerial, and one administrative/legal assistant. The fully-loaded labor rates for these categories is extracted from BLS data.[33]

For the environmental assessment, FDA arbitrarily indicates that 80 hours of labor time would be required to complete that process. However, FDA's analysis does not mention how this estimate is derived and does not discuss specifics on the information that needs to be provided in the assessment. Since we cannot evaluate FDA's assumptions, we allocate the 80 hours stated by the FDA into managerial and technical staff time.

For the SE application, we allocate FDA's estimate of 220 hours between two staff members (110 hours each). In its estimate, FDA does not include any time to review the submission. We assume that other members of the company require an additional time equal to 20 percent of the 220 hours to review the submission. Also, we assume that an administrative/legal assistant will be needed to assist in the preparation, review and recordkeeping of the submission (10 percent of the time spent by the technical staff).

Table 7 presents the labor categories and rates and categories used to quantify the labor-related costs of the SE provision of the rule:

[33] U.S. Department of Labor, Bureau of Labor Statistics, "Tobacco Manufacturing - National Industry-Specific Occupational Employment and Wage Estimates; NAICS 312200 - Tobacco Manufacturing."

Table 8: Estimated Labor Costs for SE Applications

Labor Category	Unloaded Hourly Rate	Fully Loaded Rate	Total Hours Needed	Environmental Assessment	SE Application Category		
					Preparation	Review	Recordkeeping
Industrial Production Manager	$53.26	$106.52	172	40	110	22	
Chemists and Materials Manager	$30.21	$60.42	172	40	110	22	
Administrative / Legal Assistant	$19.92	$39.84	17		12	4	1

To estimate the costs of this provision, we multiply the number of tests required by its unit cost. Then, we sum the corresponding labor costs by multiplying the number of hours in each category by the fully loaded rates.

Furthermore, our estimate assumes that 10 percent of applications submitted to FDA will need to be resubmitted due to rejection. Firms have a strong financial incentive to submit complete applications to sell their products. Application reconsideration would require 10 percent of the initial application labor and testing costs in case the initial application is rejected by the FDA. These assumptions may understate or overstate the actual costs. This estimate assumes that tests and reports are conducted by brand and that multiple packaging combinations with the same product composition are covered in the same report.

7. CONSUMER SURPLUS ESTIMATE

a. WHITE PAPER METHODOLOGY

In the previous sections, we have examined the increased costs to cigar producers to comply with the regulation to stay in the market. However, the social cost of the rulemaking is not only the additional costs paid by producers, but the combination of the lost producer and lost consumer surplus when market prices rise to cover the regulatory compliance costs. This fundamental principle of economics in described in more detail in both OMB's Circular A-4 and HHS Guidance on conducting a regulatory impact analysis.[34] In particular, consumers have a surplus if their value – their willingness to pay (WTP) – is greater than the market price. When prices rise due to regulation, the new price will exceed some consumers' WTP. These consumers that are not willing to pay the higher prices and instead turn to other substitute goods that they value less. This lost consumer surplus is part of the social cost of the rulemaking.

The final RIA ignores lost consumer surplus and instead estimates the size of producer costs to comply with the regulatory requirements. While many federal economic analyses also do not estimate lost consumer surplus, lost consumer surplus is more important in this rulemaking than in others for several reasons. First, the rule restricts widely-used consumer goods that have established markets, prices, and consumer demand. Lost consumer demand is much more easily measured when regulated goods are bought and sold in transparent, relatively unrestricted markets. Second, certain parts of the cigar market are comparable to markets for luxury goods. For luxury goods, the consumer's WTP can far exceed the real resource cost to make the product.[35] Using the additional cost of real resources needed for regulatory compliance will underestimate a regulation's social costs when consumers value intangibles such as the experience, the emotion, and other, non-tangible product attributes. Third, since the regulation applies to all domestic and all imported products sold in the United States, market prices must rise. Consumers cannot easily turn to unregulated imports. When regulation raises all prices in a market, lost consumer surplus becomes more important.

By estimating only the additional cost to producers, FDA's RIA underestimates social cost. In the proposed RIA, FDA deserves credit for confronting this issue and considering lost consumer surplus.[36] FDA did not carry that analysis forward in the final RIA. In the Final RIA, FDA responded the following, with regard to estimating lost consumer surplus:

> *FDA agrees that application of the concept of lost utility is complicated for products that are addictive or habitually consumed, and accepts that the approach taken in the PRIA*

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[34] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Guidelines for Regulatory Impact Analysis" See Appendix B.

[35] Hennigs et al., "Consumer Desire for Luxury Brands."

[36] Food and Drug Administration, "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations Restricting the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Product Packages and Advertisements. Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis. Docket No. FDA-2014-N-0189."

> *warrants reconsideration…FDA disagrees with the view that lost utility is not an appropriate concept for analyzing regulations addressing addictive goods. Consumer surplus is central to the welfare economics framework that FDA and numerous outside experts (including many commenters) believe serves as a useful guide to assessing efficiency of policy. The Office of Management and Budget's Circular A - 4 on regulatory impact analysis includes gains and losses in consumer surplus among the issues that agencies should evaluate when relevant…In the case of the deeming rule, lack of data on usage patterns and health risks for deemed products means the empirical approach used in the White Paper cannot be used to quantify utility offsets that may be associated with the deeming rule…*[37]

In summary, FDA's response is cursory and, even if accurate, lumps all deemed products together. FDA's arguments rest upon the assumption that rule would not have to save many quality-adjusted life-years (QALYs) to break even from a public health perspective. However, if FDA's regulation could lead to a severe contraction of the cigar market, the breakeven analysis is less favorable. More fundamentally, however, FDA's approach masks the variations in lost consumer surplus across different market segments. FDA's sweeping dismissal of utility concerns precludes the opportunity to examine if less burdensome approaches would be more cost-effective for different deemed products and product segments.

FDA has sufficient information to estimate the potential loss of consumer surplus due to the regulation of cigars. The HHS put forth a methodology in its 2015 White Paper on *Valuing Utility Offsets to Regulations Affecting Addictive or Habitual Goods*.[38] The White Paper gives an overview of the issue and starts by affirming certain economic principles. First, not all consumers using an addictive good are irrational, in the economic sense. Some consumers are fully informed of the potential risks and addictive qualities of a good or service and decide that the benefit to them exceed the costs. Second, FDA regulations that increase production costs and restrict access to tobacco product effectively raise the price of the good to the consumer.

From these principles, the White Paper divides consumers into two categories and considers their response to a regulation that creates an effective price increase:

> Figure 1 shows a graphical version of this model that underlies the framework for valuing benefits and costs of regulations. As is the norm, we include the monetary price and health and longevity costs as costs, and the consumption benefits net of withdrawal as the value to the individual, though no practical difference in results depends on whether a health harm is termed a cost or a negative benefit. The demand curve thus reflects the first two terms on the left-hand side of equation (2), and the remaining two terms are built into the cost. Because withdrawal costs vary with past consumption, so too will the value of current

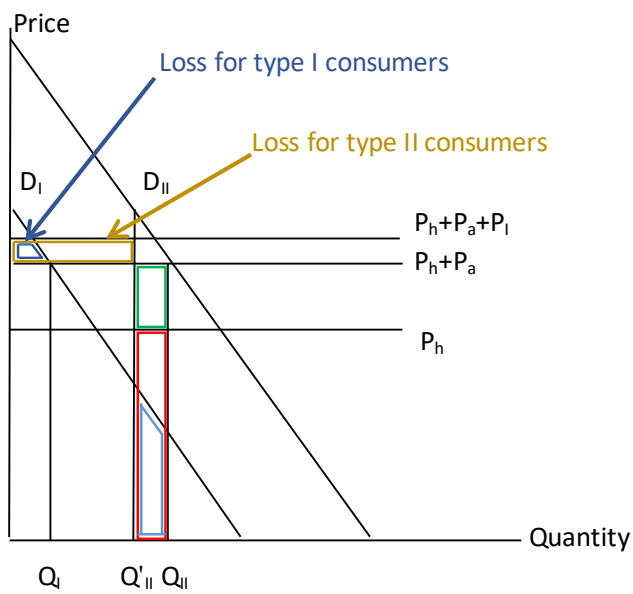
[37] U.S. Department of Health and Human Services, Food and Drug Administration, Office of Policy, Planning, Legislation and Analysis, Office of the Commissioner., "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products and Advertisements. Final Regulatory Impact Analysis."

[38] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Policy and Evaluation, *Valuing Utility Offsets to Regulations Affecting Addictive or Habitual Goods,* August 3, 2015.

> consumption. We start by assuming the individual has some addictive stock and draw the demand curve corresponding to that addictive stock. We return to the dynamics below.
>
> The model can be applied for both existing users of the good and for potential initiators, although the implementation differs between the two cases. Considering existing users first, we delineate two types of individuals with otherwise similar characteristics (age, gender, etc.): type I consumers who make smoking decisions in a way that is fully rational and fully informed …; and type II consumers who have time inconsistent preferences … or misperceive how their current actions will affect their future choices and health risks ….[39]

For non-addicted consumers who are knowledgeable of the health risks and potential consequences, HHS found that conventional economic theory applied.[40] These consumers' purchases can be assumed to be rational decisions about trade-offs. In other words, agencies can estimate the social cost of a regulation in the same manner as other goods. In Figure 1, regulation increases the direct and indirect price consumers pay, rising from P_h+P_3 to $P_h+P_3+P_l$. Type I consumers respond along demand curve D_1 and reduce their consumption to below Q_1. The consumer surplus loss is shown in Figure 1.

Figure 1. Consumer Surplus Losses for Type I and Type II Consumers Due to Regulation



Source: Cutler et al[41]

[39] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Policy and Evaluation, *Valuing Utility Offsets to Regulations Affecting Addictive or Habitual Goods,* August 3, 2015, pg. 17.

[40] Cutler, Kenkel, and Starr, "Valuing Utility Offsets to Regulations Affecting Addictive or Habitual Goods."

[41] Cutler, Kenkel, and Starr.

To sort consumers into the Type I or Type II category, the White Paper applies several tests. By dividing cigarette smokers by whether they smoked within the first 30 min of being awake, HHS found that 56 percent of current smokers do not and are thus defined as Type I consumers. These Type I consumers are younger, have more educational achievement, and greater family annual income than Type II consumers.

The premium segment of the cigar market has consumers that are comparable to the Type I HHS criteria for cigarette smokers. Using the 2012 National Adult Tobacco Survey data, only 3.3 percent of premium cigar smokers smoked cigars daily; over 70 percent smoked these cigars only "rarely." More than 40 percent of regular premium cigar smokers report having never smoked cigarettes.[42][43] In terms of educational attainment, more than 50 percent of premium cigar smokers have a college degree or a higher degree. Approximately only nine percent of cigarette smokers have the same level of educational attainment. Sixty-seven percent of cigar smokers have annual family income of $50,000 per year (2012$); more than 40 percent have family income of $100,000 per year or greater.

The NATS data indicates that there is a consumer segment of the premium cigars that fits the characteristics of Type I consumers according to the HHS classification. They do not smoke cigars or tobacco products frequently enough to exhibit addictive behaviors. Their educational and income achievements suggest that they are capable of rational decisions concerning health risks and that they have sufficient disposable income to choose among available discretionary, luxury products that maximize their utility.

In this analysis, we create a quantified estimate of the lost consumer surplus for these Type I consumers -- occasional smokers who purchase premium cigars. The principle – and FDA's obligation under Circular A-4 – to estimate lost consumer surplus extends to every component of the cigar market. In fact, the HHS 2014 approach provides a clear methodology that FDA should use for all Type I and Type II cigar consumers. In this analysis, we consider the Type I consumer in the premium market to illustrate the importance of lost consumer surplus to show how much FDA underestimated the social cost of its rulemaking.

b. PREMIUM CIGAR WILLINGNESS-TO-PAY ESTIMATE

Available information about how most consumers acquire and consume premium cigars suggest that consumers' willingness-to-pay is far greater than the cigar's price. The attributes of premium cigar marketing are like other luxury goods. A multinational study of luxury good marketing and consumer preferences found consistent consumer values for luxury goods:

> *Vigneron and Johnson (2004) proposed that a consumer's decision-making process can be explained by five main factors: personal perceptions in terms of the perceived extended self,*

[42] Corey et al., "Little Filtered Cigar, Cigarillo, and Premium Cigar Smoking Among Adults — United States, 2012–2013."

[43] While no data is presented in the survey for cigarette smoking history for cigar smokers who only smoke "rarely," it is reasonable to assume that this proportion is greater than 40 percent.

perceived hedonism and nonpersonal perceptions referring to perceived conspicuousness, perceived uniqueness, and perceived quality. To acquire information regarding consumer motives and value perceptions, Wiedmann, Hennigs, and Siebels (2007) developed a four-dimensional model that explains luxury consumption through consumer perceptions of the social, individual, functional, and financial value dimensions of luxury and thus draws on and extends Bourdieu's capital theory (1986) and existing luxury research literature (Vigneron & Johnson, 2004).[44]

A consumer assesses the value of a luxury good by combining the financial, use, individual, and social value of the product and experience to the individual. The premium cigar market is structured to offer these values to consumers. Companies appeal to a consumer's financial values through price. Cigar shops, on-line resources, and public health campaigns offer functional values through information about the smoking experience and its hazards. Cigar firms, trade magazines, cigar shops and cigar bars appeal to individual values through the education process of the cigar's quality and uniqueness, via its origins and fabrication. Since premium cigars are often smoked with others, the marketing appeals to social values through opportunities to interact with others at cigar shops or cigar bars and to fulfil values of perceived conspicuousness. It is these individual and social values that are the most intangible and require the consumer to gather information about the cigar to select the one that has the best attributes for the consumer.

Consumer pay to obtain these values separately from the price of the premium cigar. To have the social experience, they pay the travel and admission costs to attend cigar events. To gain the education about the quality and unique features, they spend time and resources to be educated, whether at a cigar shop, on-line, or in discussions with others. The costs to obtain these values are part of the consumers' willingness to pay for the premium cigar luxury experience. The same behavior and WTP attributes are found for certain liquors, wines, handbags, scarves, jewelry, automobiles, and other items.[45]

Therefore, when consumers drop out of the premium cigar market due to the direct and indirect price increase due to the regulation, the consumer will shift the value of all time and resources spend on the premium cigar experience to other items or luxury goods. The lost consumer surplus likely includes the following components:

- *Value of Time to Travel to a Store*. In a small marketing survey, most infrequent consumers purchased their premium cigars at a physical location such as a tobacco store, cigar club, or other location.[46] Like other goods whose attributes are not known until they are consumed, a significant proportion of cigars are sold in traditional retail shops. As with books or wines, consumers seek out information on the different options so that they can maximize the utility of their budget. The internet has created the opportunity for consumers to gain this information and to order products with less transaction costs. However, consumers still frequent retail cigar stores to learn from other consumers and from proprietors. They spend time and funds to travel to these locations. For this estimate, we assume consumers spend ½

[44] Strehlau et al., "Consumer Value Perception of Luxury Goods."

[45] See for example, SIlverstein, M.J., Fiske, N. *Luxury for the Masses*, Harvard Business Review, April 2003.

[46] Response Marketing, "Insights into Cigar Smokers and What That Means for Cigar Brand Marketers."

hour and travel a total of 15 miles per trip per cigar purchase. For the travel cost, we use the 2017 Internal Revenue Service allowable cost for business travel.[47]

- *Value of Time to Acquire Knowledge of a Preferred Cigar*. The retail and online purchasing experience is designed to give consumers knowledge of the flavor, the brand, the production history, and other elements. The analogy is to consumers' approaches to wine choices and to restaurant meal choices. Consumers will spend some time gathering information before spending that money and time. For this estimate, we assume that infrequent consumers spend one hour per purchase to gather information, to discuss options with others, and other educational activities.
- *Value of Relaxation*. From surveys, consumers smoke premium cigars alone roughly 43 percent of the time.[48] Otherwise, consumers report smoking together with friends. We assume that preparing the cigar to smoke and preparing the location at home requires ½ hour. The cigar smoking experience lasts one hour, leading to a total leisure activity of 1 ½ hours for smoking alone.
- *Value of Smoking with Others*. In the survey, respondents reported smoking with friends on golf courses, in cigar bars, at cigar shops, and in other social events. We assume that consumers must travel 15 miles to a specific event, pay an admission fee of $100, and spend on average four hours at the event. We recognize that consumers would still gain utility from these events (e.g., golf) even if they did not smoke a cigar. However, consumers have these choices today; if the quality of these activities is reduced due to the regulation, this loss of value is a cost of the rule.
- *Value of Leisure Time*. For the value of leisure time, we use the U.S. Department of Transportation (DOT)'s value for leisure time.[49] US DOT establishes a value so that it can estimate the value of transportation projects that reduce congestion and travel times. In general, for many years, DOT has found that ½ hour of a person's hourly cash wage equivalent is its best estimate for the value of leisure time. Based on a majority of occasional premium cigar consumers having household income of $50,000 per year or greater, we use a value of $25 per hour as the value of leisure time. We calculate this value as ½ of an hourly cash wage of $50 per hour, equivalent to a household income of $100,000 per year.

c. SUBSTITUTES TO CIGAR CONSUMPTION

If consumers chose not to pay the increased price for the premium cigar experience after the regulation, they will turn to substitutes. They may join whisky clubs, join fantasy sports organizations, or engage in yoga or exercise to relax at home. In particular, the regulation does not take away the consumer's time; it just shifts that time to a less-valued activity for that consumer. The loss in consumer surplus is the difference in WTP between the cigar experience and the closest substitute activity. We assume that consumers suffer a $2 loss per hour when they shift to a lower-valued activity due the regulatory-induced price increase.

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[47] Internal Revenue Service, "2017 Standard Mileage Rates for Business and Medical and Moving Announced."

[48] Response Marketing, "Insights into Cigar Smokers and What That Means for Cigar Brand Marketers."

[49] U.S. Department of Transportation, Office of the Secretary of Transportation, "2016 Value of Travel Time Guidance."

d. SUBSTITUTES IN THE CIGAR MARKET

One of FDA's arguments in the RIA is that consumers will not miss the predicted loss of current market variety due to FDA's claim that different cigar products are close substitutes for each other. FDA's claim does not fully capture consumers' value calculation for luxury goods. The social values – e.g., conspicuous consumption – and the individual values – e.g., of uniqueness -- are diminished when the consumer has less products to match to their values. The market today has many, many varieties of wine and handbags with similar prices and functional value; however, consumers support product diversity and multiple vendors in these markets because of their differences in other consumer values – individual and social. Therefore, the loss of diversity is an implicit price increase that will cause additional current customers to drop out of the premium cigar market.

e. ANALYTICAL APPROACH

Using the assumptions above, we derive a representative estimate of an infrequent, Type I premium cigar smoker's WTP for the experience. We say "representative" because the purpose is to explore the magnitude of FDA's underestimation. The consumer smokes 57 percent of the time alone for the stated benefits of relaxation. The other 43 percent of the type the cigar consumer travels to smoke the cigar socially at an event that has a $100 admission fee. In each scenario, consumers spend some time learning about their cigar choices. Table 8 gives the detailed information of the two scenarios. Weighting these two scenarios by their frequency, this consumer's WTP is approximately $180 per cigar.

However, if this consumer drops out of this premium cigar market due to the regulation increasing the cigar's direct cost or the indirect cost of finding an alternative cigar that meets the consumers' values, the consumer will shift to a substitute activity. Using the assumption above that the consumer values the substitute activity $2 per hour less than cigar smoking, the net loss of consumer surplus per cigar is $70.

Table 9: Willingness-to-Pay (WTP) of Infrequent Cigar Consumers

Characteristics of Infrequent Cigar Consumers	Value and Unit
Number of Cigars Purchased Annually	4 cigars per year
Value of Leisure time	$25.00 per hour
Weighted WTP	$181.3 per cigar
Value of Leisure Time of Substitutes	$23.00 per hour
Weighted WTP of Substitutes	$110.29
Net WTP Loss	**$70 per cigar**
Cigar Smoking as Relaxation	
Pre-Regulation Price of Cigar	$10 per cigar
Time Spent Searching for Cigar	1 hour per cigar
Travel Cost to Obtain Cigar	$21 per cigar
Miles to Cigar Store	15 miles per trip
Travel Cost per Mile	$0.54 per mile
Internet Shipment Cost	$10 per cigar
Cigar Smoking Preparation	0.5 hours
Smoking Cigar	1 hour
Total	**$70**
Total Time	**4 hours**
Cigar Smoking During Social Event	
Pre-Regulation Price of Cigar	$10 per cigar
Time Spent Searching for Cigar	1 hour per cigar
Travel Cost to Event	$16.2 per cigar
Miles Traveled to Event	30 miles per trip
Travel Cost per Mile	$0.54 miles per trip
Admission fee to Event	$100 per event
Event Duration	4 hours per event
Total	**$280**
Total Time	**5.5 hours**

8. RESULTS

a. FUTURE MARKET ESTIMATE

In Section 3, we give our description of the pre-regulatory baseline market conditions. In Table 9, we summarize the cigar market segments and their estimated revenue. We use the sale percentages provided by IPCPR.[50] We multiply these percentages by the total size of the cigar industry ($7 billion). Since sales data is proprietary, our assumptions may not reflect actual sales volumes in these price categories.

Table 10: Cigar Industry Revenue Allocation Across Different Price Segments

Price Range	Price ($)	Sales Percentage	Equivalent Revenue (billions)
$2-$4	$3	5	$0.35
$4-$6	$5	78	$5.46
$6-$10	$6	15	$1.05
Over $10	$10	2	$0.14

To estimate the total number of SKUs for non-premium cigars for each price segment, we multiply the corresponding sales percentage by 2,000 to 4,000. For premium cigars, we assume that the total number of SKUs is 6,000 – 12,000, based on CAA comments.

To be able to understand how price increases due to the regulation will lower cigar demand, we compile reported price elasticity values from the literature. An elasticity of -1.42 means that for a 10 percent price increase, the demand for that cigar will fall in 14 percent. For $2 to $4 cigars, we use the elasticity for small cigars (-1.42). For $4-$6 and $6-$10 cigars we assume that the elasticity corresponds to those of large cigars (-1.50). Both values are based on the estimates quantified by Zheng et al.[51] For premium cigars, we use the elasticity for Cuban cigars (-1.90), estimated by Fetzer.[52]

[50] International Premium Cigar & Pipe Retailers Association, "Premium Tobacconist Member Profile."

[51] Zheng et al., "U.S. Demand for Tobacco Products in a System Framework."

[52] Fetzer, "Partial Equilibrium Modeling of Trade Zeros."

Table 10 summarizes the estimated number of SKUs and price elasticity values for these price ranges:

Table 11: SKU Allocation and Corresponding Price Elasticity Values of Different Cigar Price Ranges

Price Range	Price ($)	SKU Allocation	Elasticity
$2-$4	$3	102 - 204	-1.42
$4-$6	$5	1,592 – 3,184	-1.50
$6-$10	$6	306 – 712	-1.50
Over $10	$10	6,000 – 12,000	-1.90

Using the regulatory cost per SKU, we quantify the total regulatory cost of the rule for each price segment by multiplying the per product cost by the number of SKUs in each category. We then estimate how much the total costs for each category represent in terms of revenue (i.e. divide the total regulatory cost by equivalent revenue).

We compute the total revenue needed in each price segment by adding the total regulatory cost to the equivalent revenue. Then, we divide total revenue needed by the number of SKUs in the price segment to obtain the revenue needed per SKU. We assume that cigar prices will increase to cover the total regulatory cost. We divide both values to obtain the potential price increase (in percentage).

To calculate the decrease in demand, we use the elasticity values and the price increases to quantify the percentage of demand decrease for each price category. Then, we multiply this percentage by the equivalent revenue. Next, we calculate the lost revenue per SKU by dividing the decreased demand value by the number of SKUs in the price category.

Table 11 summarizes the current cost per product and per brand for the rule provisions for which we provided alternative quantified cost estimates:

Table 12: Per-Product and Per-Brand Re-Estimated Costs of Key Rule Provisions

Rule Provision	Current Cost by Brand	Current Cost per Product
Harmful and Potentially Harmful Constituents	$31,352	$4,311
Substantial Equivalence Demonstration	$1,720	$237
Labeling Costs	$139,631	$19,199
Total	$172,703	$23,747

We combine FDA's and the alternative cost estimates for the different requirements for the cigar industry to develop the total compliance cost. These costs are nearly $24,000 per SKU. In a competitive market, firm then try to raise their prices to offset some of these increased production costs. Consumers, in turn, reduce their purchases of the higher-priced cigars according to the price elasticity of demand. Lower consumer purchases then in turn reduced producers' revenue, causing them to either stop selling money-losing products or cease operations. Once producers decide on their compliance strategy, the social costs and economic impact of the rule are known.

Table 12 shows the results of this market dynamic assuming 8,000 SKUs on the market. The lowest-priced cigar market segment has approximately five percent of total sales, or $350 million per year. On average, each of the estimated 100 products would need a price increase of 0.7 percent or $0.02 to adsorb the initial regulatory costs. Consumer demand falls slightly due to this price increase.

The premium market, the last row in Table 12, shows a much more significant effect. There are assumed to be 6,000 SKUs in a market with sales of approximately $175 million. On average, average prices must rise by 46 percent to offset the regulatory costs. This sharp price rise saps consumer demand; consumer demand is estimated to fall from $175 million per year to around $22 million per year. With this sharp fall in demand, very few existing firms could remain in business.

Table 13 presents the same market analysis assuming a market with 16,000 SKUs. Overall compliance costs roughly double. The market impacts in the premium market are even more severe. Based on the reported elasticities, consumers would almost completely shift away from premium cigars to other cigars or other luxury goods.

Therefore, in the premium market, companies would reduce products offered to reduce the compliance costs to identify HPHCs and to seek SE approvals. Table 14 maps out possible scenarios that correspond to different decisions by cigar manufacturers.

The first row in Table 14 gives an important scenario. In this scenario, producers sharply limit the number of cigar products to limit their average revenue losses to three percent. This three percent threshold is the one federal agencies use as a guide to determine if a rulemaking will have a significant effect on small businesses. Federal agencies generally assume that if a regulation costs more than three percent of a small business' revenue, the firm is at high risk of failure. Many cigar

firms meet the U.S. Small Business Administration's classifications as small businesses. Therefore, if premium cigar firms sought to limit their revenue losses to three percent, they would have to lower the number of potential premium cigar products from 6,000 to 130.

If cigar firms maintain a product range of 1,000 SKUs, consumers would decrease purchases so that firms would receive 24 percent less revenue than prior to the regulation. This loss would likely lead to many smaller cigar firms leaving the market and consolidation of the remaining market in a few producers able to manage regulatory costs more efficiently. This type of market consolidation in heavily-regulated industries is apparent in nuclear power plant operators, pharmaceutical firms, and other sectors.

As producers withdraw products from the market, the apparent regulatory compliance costs go down. For example, in the scenario when firms limit their revenue loss on average to three percent, this regulatory compliance strategy reduces the apparent regulatory costs of the rule for premium cigars substantially -- from $149 million in Table 13 to $2 million in Table 14. However, the rulemaking costs only appear to be reduced because the lost consumer surplus is omitted.

Table 13: Total Regulatory Cost for Cigar Market Assuming 8,000 SKUs

Price Range	Mid-Point Price (Range values/2)	Sales Percentage	Equivalent Revenue (From 7 Billion) in million	SKU Allocation (Number of Products)	Adjusted Elasticity Based on Actual Price Increase	Regulatory Cost Per Product (i.e. SKU)	Total Regulatory Cost - in million	Total Revenue Needed to Cover Additional Regulatory Costs - in million	Revenue Needed Per SKU - in million	Cigar Price Increase (%)	Revenue Decrease Due to Lower Demand - in millions	New (Reduced) Demand - in millions	New Producer Revenue - in millions	New Price per SKU
$2-$4	3	5%	$350	102	-0.01	$24,768	$2	$352	$3.52	1%	$3	$350	$350	$3.02
$4-$6	5	78%	$5,432	1,592	-0.01	$24,768	$38	$5,470	$3.52	1%	$57	$5,380	$5,431	$5.04
$6-$8	6	15%	$1,043	306	-0.01	$24,768	$7	$1,050	$3.52	1%	$11	$1,030	$1,043	$6.04
Over $10 (Premium)	10	3%	$175	6,000	-0.87	$24,768	$149	$324	$0.05	46%	$153	$22	$42	$14.60
						Total Regulatory Cost	**$197**			**Total Revenue Decrease**	**$224**			

Table 14: Total Regulatory Cost for Cigar Market Assuming 16,000 SKUs

Price Range	Mid-Point Price (Range values/2)	Sales Percentage	Equivalent Revenue (From 7 Billion) in million	SKU Allocation (Number of Products)	Adjusted Elasticity Based on Actual Price Increase	Regulatory Cost Per Product (i.e. SKU)	Total Regulatory Cost - in million	Total Revenue Needed to Cover Additional Regulatory Costs - in million	Revenue Needed Per SKU - in million	Cigar Price Increase (%)	Revenue Decrease Due to Lower Demand - in millions	New (Reduced) Demand - in millions	New Producer Revenue - in millions	New Price per SKU
$2-$4	3	5%	$350	204	-0.01	$24,768	$5	$355	$1.7	1%	$5	$340	$350	$3.04
$4-$6	5	78%	$5,432	3,184	-0.01	$24,768	$79	$5,510	$1.7	1%	$79	$5,320	$5,430	$5.07
$6-$8	6	15%	$1,043	612	-0.01	$24,768	$15	$1,060	$1.7	1%	$15	$1,020	$1,043	$6.09
Over $10 (Premium)	10	3%	$175	12,000	-0.87	$24,768	$300	$470	$0.04	63%	$300	$0	$0	$16.30
						Total Regulatory Cost	**$400**			**Total Revenue Decrease**	**$400**			

Table 15: Potential Future Market Size for Premium Cigars

SKUs	Initial Price	Initial Revenue (million)	Regulatory Costs per SKU	Total Regulatory Costs (million)	New Total Revenue Needed (million)	New Revenue Needed per SKU	Price Increase	New Price per Cigar	Reduced Demand Elasticity	New Reduced Demand (million)	Decreased Revenue (million)	Revenue Decrease
130	$10	$175	$24,768	$3	$180	$1,370,000	2%	$10.18	-0.008	$174	-$6.0	-3%
1,000	$10	$175	$24,768	$25	$200	$200,000	12%	$11.24	-0.024	$171	-$41	-24%
2,000	$10	$175	$24,768	$50	$220	$110,000	22%	$12.21	-0.042	$168	-$73	-42%
3,000	$10	$175	$24,768	$74	$250	$80,000	30%	$12.98	-0.057	$165	-$99	-57%
4,000	$10	$175	$24,768	$99	$270	$70,000	36%	$13.61	-0.069	$163	-$120	-69%
5,000	$10	$175	$24,768	$120	$300	$60,000	41%	$14.14	-0.079	$161	-$140	-79%
6,000	$10	$175	$24,768	$150	$320	$54,000	46%	$14.59	-0.087	$160	-$150	-87%

b. ESTIMATES OF CONSUMER WELFARE LOSSES

The possible future markets described in Table 12-13 offer the consumer very different choices than the pre-regulatory market. If producers limit their compliance costs, consumers have much fewer choices of actual and potential products. Based on the pre-regulatory market, consumers value a variety of products and enjoy gaining and sharing information about these products. They will lose a great deal of variety and thus their enjoyment if producers dramatically cut back the number of SKUs. On other hand, if producers raise prices substantially to support more products, our best price elasticity estimate suggests many consumers will turn to non-cigar products. Cigar consumption will fall substantially.

In each of these cases, the social cost of the rule includes consumer utility not directly traded in the cigar market. As discussed above, the price consumers are willing to pay for the experience is much larger than the price of the cigar itself. When prices rise in a relatively free market due to regulation, the social cost is both the real resources necessary for compliance as well as the deadweight loss, the loss in consumer utility as they drop out of the market in response to the price increase.

We could estimate how much consumers value variety by estimating the cross-elasticities of price and of substitutions between different premium cigar products. We did not find readily-available estimates of product cross-elasticities in the publicly-available literature. Estimating these elasticities from market sales data is beyond the scope of this analysis.

In the absence of market data, we consider several approaches to estimate consumer welfare loss that will arise once the regulation is fully effective. First, we consider the traditional scenario where the cigar's market price fully includes all of the consumer's utility for the product. In free markets, the market's supply and price reflect the maximization of consumer utility subject to the production costs to produce it. Consumers will pay more for the product if the production cost is less than the cost of the physical resources needed to make the product; the cigar market is a good example where retail prices are substantially above production costs. However, if consumers bundle spending together as part of the cigar experience, just using the cigar price will underestimate the consumer's welfare to overcome this limitation, we also use the estimated consumer surplus loss of $70 per cigar from Section 7.

Second, we will assume that consumers' utility is spread equally across all of the pre-regulation SKUs. This scenario represents a situation where consumers put a high value on the discovery of different products as a key part of their cigar experience. If actual or potential products are removed from the market, consumer lose utility each time a product is withdrawn. As with wine markets, some consumers enjoy exploring the thousands and thousands of different vintages, bottlers, and regions. However, some consumers value the social interaction as part of the cigar experience; they may value that more than the specific cigar they consume.

For the traditional scenario, we first estimate the change in the number of cigars sold under some of the future market descriptions given above. In Table 15, we estimate the number of cigars sold based on different product offering decisions by cigar firms. If firms only seek FDA approval to offer 3,000 of the current number of varieties of premium cigars, consumer demand falls to $76 million per year. Using the average, post-regulation premium cigar price of $12.98, the number of cigars sold

each year is more than 5.8 million. If producers curtail product choice more dramatically to 1,000 SKUs, nearly 12 million cigars will be sold.[53]

Table 16: Assumed Number of Premium Cigar SKUs Remaining in the Market

Category	Assumed Number of Premium Cigar SKUs Remaining in Market		
	3,000 SKUs	2,000 SKUs	1,000 SKUs
Regulatory Compliance Costs (million)	$74	$50	$25
Price Increase	$2.98	$3.53	$1.98
New Cigar Price	$12.98	$12.21	$11.24
New Reduced Demand (million)	$76	$102	$134
Number of Cigars Sold	5,800,000	8,300,000	11,900,000

Assuming the demand curve is linear, we can estimate the deadweight loss from the increases in price and decrease in quantity of cigars sold from the regulation. Table 16 gives this estimate for three post-regulation scenarios of 1,000, 2,000, and 3,000 SKUs remaining on the market.

Table 17: Social Cost from Consumer Welfare Losses in Premium Cigar Market

Assuming Welfare Loss in Price

Consumer Welfare Loss ($ millions)	Assumed Number of Premium Cigar SKUs Remaining in Market		
	3,000 SKUs	2,000 SKUs	1,000 SKUs
Cigar Price Only	17	10	3.5
WTP Estimate	410	320	200

[53] In the 1,000 SKU scenario, the regulatory compliance costs are $25 million. Since FDA approval is only sought for 1,000 SKUs, lower compliance costs lead to lower price increases. As a result, the demand in this scenario ($134 million) and the number of cigars sold ($11.9 million) are higher than for other scenarios shown in Table 15.

These social costs likely underestimate the actual social costs for the reasons discussed above. The linear demand curve assumption also likely underestimates the social cost. The demand curve may not be linear for such a substantial increase in price and reduction in quantity. If it has a traditional convex shape to the origin, the consumer welfare loss would be greater than this linear estimate.

For the second scenario, we estimate the total consumer welfare for premium cigars. It is the average willingness to pay ($158) multiplied by the number of cigars sold (assumed to be 17.5 million per year) in the pre-regulation market. We then divide this total welfare by the assumed number of premium cigar SKUs in the pre-regulation market, 6,000 or 12,000. We then have the average welfare value consumers gain from each unique product in the marketplace.

In Table 17, the estimated lost consumer surplus for each post-market product volume is shown. If producers sharply curtail the number of products to minimize their compliance cost to three percent of revenue, almost all consumer welfare is eliminated. With only 130 products, the premium market would more resemble the other mass market segments of the market. It would be much harder to distinguish the remaining products as premium, luxury brands that can satisfy consumers' values for luxury goods. Consumers who gain enjoyment from exploring new products may quickly become bored with only 130 varieties. Due to this significant loss, consumers costs for having 130 cigar varieties in the market would be $2,700 million. This consumer loss exceeds significantly the size of the $175 million premium cigar market. At the other end of the spectrum, if producer pay the compliance costs to maintain 6,000 SKUs, consumers suffer no welfare loss due to the regulation.

The second scenario (Table 17 – Lost WTP for market of 12,000 premium SKUs) --- where consumers value product diversity – gives much higher estimates of consumer welfare loss. We expect that the likely loss in consumer welfare will be in between these estimates but is likely greater than $100 million per year.

Table 18: Consumer Costs of the Rule

SKUs	Lost WTP For Market of 6,000 Premium SKUs ($ million)	Lost WTP For Market of 12,000 Premium SKUs ($ million)
130	2,700	2,700
1,000	2,300	2,500
2,000	1,800	2,300
3,000	1,400	2,100
4,000	900	1,800
5,000	500	1,600

SKUs	Lost WTP For Market of 6,000 Premium SKUs ($ million)	Lost WTP For Market of 12,000 Premium SKUs ($ million)
6,000	0[54]	1,400

[54] Lost WTP for 6,000 SKUs in this scenario is zero, as producers pay the compliance costs to maintain the 6,000 SKUs in the market. In this scenario, consumers are unaffected.

9. CONCLUSION

The regulatory compliance costs for the non-premium market is about $50-$100 million for this initial compliance period. This value underestimates the full costs for this market since the ongoing costs are omitted as well as the loss of consumer surplus.

The regulatory costs for the premium market depend on the market choices of firms and of consumers. If firms reduce product offerings from 6,000 to 1,000, the combined consumer surplus loss is between $3.5 million (see Table 16) and 2,300 million per year (see Table 17). The initial compliance costs are $25 million (See Table 15).

Table 19: Summary of the Rule's Initial Compliance Costs and Consumer Surplus Loss

Cigar Category	Initial Regulatory Compliance Costs (million)	Consumer Surplus Loss
Non-Premium	$50-$100	Not estimated
Premium	$150-$300	$3.5 to $2,300 million per year[55]

These values are not directly comparable to FDA's cost estimates. FDA presented its values as present value estimates at different discount rates over a 20-year time horizon. The estimates presented in this analysis have different time periods. The direct regulatory compliance costs producers must spend over the next few years up to the final compliance deadlines. Some costs such as the registration, substantial equivalence, and other product-related requirements are on-going. The lost consumer surplus is an annual loss. As described in the HHS guidance, there is some evidence that this consumer loss will decline over time as other substitutes become available and consumers "forget" their past enjoyment of the experience.

Therefore, to convert these estimates to present value numbers equivalent to FDA's metrics, we would need to make additional assumptions. However, it is clear that for the range of likely future market scenarios for the premium cigar market and given the estimated consumer welfare loss in the other cigar market segments, the likely social costs of this rulemaking are much larger than FDA's estimate. In addition, the likely scenarios for the future premium cigar market all are likely to have a significant effect on a substantial number of small entities.

[55] Assuming a reduction of 5,000 SKUs

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 41</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

(b) Except as otherwise provided in paragraph (c) of this section, TVA may seek significance determinations from OIRA for guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, TVA will generally provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of ''significant'' or ''economically significant'' under Executive Order 13891.

(c) Guidance documents that do not otherwise present novel issues, significant risks, interagency considerations, unusual circumstances, or other unique issues that could reasonably be considered as significant or economically significant, within the meanings of Executive Order 13891, will not typically require a designation by OIRA.

G1301.76 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed TVA guidance documents determined to be a ''significant guidance document'' shall be subject to the following informal notice-and-comment procedures. TVA shall publish a document in the **Federal Register** announcing that a draft of the proposed significant guidance document is publicly available, shall post the draft significant guidance document on the TVA guidance portal site, shall invite public comment on the draft document for at least 30 days, and shall prepare and post a public response to significant concerns raised in the comments, as appropriate, on the TVA guidance portal site, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OGC finds, in consultation with OIRA, and the vice president of the proposing TVA BU, good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefor in the guidance issued).

(c) Where appropriate, OGC and the vice president of the proposing TVA BU may recommend to the TVA Chief Executive Officer (CEO) that a particular guidance document that is otherwise of importance to TVA's interests shall also be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

G1301.77 Petitions.

Any person may petition the TVA Board of Directors to withdraw or modify a particular guidance document by submitting a written petition, addressed to the TVA Board of Directors, to OGC. TVA will endeavor to respond to all requests in a timely manner, and no later than 90 days after receipt of the request.

G1301.78 Rescinded guidance.

No TVA BU may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

G1301.79 Emergency situations, exigent circumstances, and legal requirement.

In emergency situations or exigent circumstances, or when TVA is required by statutory deadline or court order to act more quickly than normal review procedures allow, TVA shall notify OIRA of the circumstances that foreclose compliance with these procedures, and shall comply with the requirements of this subpart, to the extent practicable, at the earliest opportunity after the exigent circumstances have ceased. Wherever practicable, TVA should schedule its guidance document review proceedings to permit sufficient time to comply with the procedures set forth in this subpart, given the nature and extent of the exigent circumstances.

G1301.80 No judicial review or enforceable rights.

The regulations in this subpart are intended to improve TVA's issuance of guidance documents and processes and procedures that govern TVA's guidance documents. As such, this subpart is for the use of TVA personnel and contractors only, and is not intended to, and Does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, TVA, its agencies, agents, contractors, or other entities, officers, employees, or any other person.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement portions of the President's foreign policy toward Cuba to deny the Cuban regime sources of revenue. Specifically, this rule: Adds a new prohibition for persons subject to U.S. jurisdiction regarding lodging and related transactions at certain properties in Cuba identified on a new list maintained by the State Department, and amends an interpretive provision and several general licenses to incorporate this new prohibition; amends four general licenses to restrict the importation into the United States of Cuban-origin alcohol and tobacco products; amends a general license to remove the authorization for persons subject to U.S. jurisdiction to attend or organize professional meetings or conferences in Cuba; and removes a general license that authorizes persons subject to U.S. jurisdiction to participate in or organize certain public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions, and replaces it with a specific licensing policy. OFAC is also making a number of technical and conforming changes.

DATES: This rule is effective September 24, 2020.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480, Assistant Director for Regulatory Affairs, 202–622–4855, or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under various authorities, including the Trading With the Enemy Act (50 U.S.C. 4301–41). OFAC has amended the Regulations on numerous occasions, including to implement National Security Presidential Memorandum–5, ''Strengthening the Policy of the United States Toward Cuba,'' signed by the President on June 16, 2017, and the President's foreign policy toward Cuba.

Today, OFAC, in consultation with the State Department, is taking

additional action to implement the Administration's foreign policy toward Cuba, as set forth in more detail below.

Restrictions on Lodging, Paying for Lodging, or Making Reservations for Lodging, at Certain Properties in Cuba

OFAC is incorporating a new prohibition at § 515.210 of the Regulations to prohibit any person subject to U.S. jurisdiction from lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property in Cuba that the Secretary of State has identified as a property that is owned or controlled by the Cuban government, a prohibited official of the Government of Cuba, as defined in § 515.337, a prohibited member of the Cuban Communist Party, as defined in § 515.338, a close relative, as defined in § 515.339, of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party. Concurrent with this regulatory amendment, the State Department is creating a new list, the Cuba Prohibited Accommodations List (CPA List), to publish the names, addresses, or other identifying details, as relevant, of properties identified as meeting such criteria, as well as the basis for the listing. The CPA List will be maintained by the State Department and published in the **Federal Register**. It will also be accessible through the following page on the State Department's website: *www.state.gov/cuba-sanctions/cuba-prohibited-accommodations.*

OFAC is making conforming edits to § 515.421, which provides interpretive guidance with respect to transactions ordinarily incident to a licensed transaction, to incorporate the new prohibition in § 515.210. This interpretive provision provides that any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized except in certain scenarios. OFAC is adding a provision at § 515.421(a)(6) to exclude from the scope of the interpretative provision lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the CPA List to the extent prohibited by § 515.210, where the terms of the applicable general or specific license expressly exclude such transactions.

OFAC is also amending several general licenses in Subpart E of the Regulations to exclude from the scope of such authorizations the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the CPA List to the extent prohibited by § 515.210. More specifically, OFAC is amending the following sections to incorporate the exclusion related to § 515.210: (i) In § 515.533, which relates to exportations from the United States to Cuba, reexportations to Cuba, and the importation and servicing or repair of certain items previously exported or reexported to Cuba; (ii) in § 515.545, which relates to transactions involving information and informational materials; (iii) in § 515.559, which relates to certain export and import transactions by U.S.-owned or -controlled foreign firms; (iv) in § 515.560, which relates to travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction; (v) in § 515.561, which relates to family visits; (vi) in § 515.563, which relates to journalistic activity in Cuba; (vii) in § 515.564, which relates to professional research and professional meetings in Cuba; (viii) in § 515.565, which relates to educational activities; (ix) in § 515.566, which relates to religious activities in Cuba; (x) in § 515.567, which relates to certain public performances, clinics, workshops, competitions, and exhibitions in Cuba; (xi) in § 515.572, which relates to the provision of travel, carrier, and other transportation-related, and remittance forwarding services; (xii) in § 515.574, which relates to support for the Cuban people; (xiii) in § 515.575, which relates to humanitarian projects in Cuba; and (xiv) in § 515.576, which relates to activities of private foundations or research or educational institutes. In addition, OFAC is making technical and conforming changes related to these amendments in a number of the above sections.

Restrictions on Importation Into the United States of Cuban-Origin Alcohol and Tobacco Products

OFAC is amending four provisions of the Regulations to restrict the importation into the United States of Cuban-origin alcohol and tobacco products. More specifically, OFAC is amending the following authorizations to exclude the importation into the United States of Cuban-origin alcohol and tobacco products: (i) § 515.560(c)(3), which authorizes the purchase or other acquisition in Cuba and importation as accompanied baggage into the United States of Cuban-origin merchandise for personal use; (ii) § 515.569, which authorizes the importation of merchandise by any person arriving in the United States other than a citizen or resident of the United States, provided the importation is not in commercial quantities and are not imported for resale; (iii) § 515.571(a)(1), which authorizes the importation into the United States of accompanied baggage for personal use by or on behalf of a Cuban national who is present in the United States; and (iv) § 515.585(d), which authorizes the importation into the United States as accompanied baggage certain Cuban-origin goods that are purchased or acquired in a third country for personal use. OFAC is also making technical and conforming changes to § 515.571(a).

Professional Research and Professional Meetings in Cuba

OFAC is eliminating the authorization in § 515.564(a)(2) of the Regulations related to attendance at, or organization of, professional meetings or conferences in Cuba. Persons subject to U.S. jurisdiction are no longer authorized via general license to attend or organize professional meetings or conferences in Cuba pursuant to this section. OFAC is also amending § 515.564 to clarify that specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions in § 515.560(c) and other transactions that are related to (i) professional research in Cuba that does not qualify for the general license under § 515.564(a) or (ii) professional meetings or conferences in Cuba that are not authorized under other travel-related authorizations and that relate to activities otherwise authorized pursuant to the Regulations. Finally, to reflect this change, OFAC is making technical and conforming edits in this section, as well as conforming edits in §§ 515.534, 515.542, 515.547, 515.560, 515.572, 515.577, and 515.591.

Public Performances, Clinics, Workshops, Athletic and Other Competitions, and Exhibitions

OFAC is removing the authorization in § 515.567(b) of the Regulations related to public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions; however, OFAC may issue specific licenses, on a case-by-case basis, for transactions that are directly incident to participation in, or organization of, a public performance, clinic, workshop, athletic competition not covered by § 515.567(a), non-athletic competition, or exhibition in Cuba, subject to certain conditions. Upon this rule taking effect, the only athletic-related travel transactions authorized via general license in § 515.567 will be in connection with athletic competitions that qualify for the authorization in § 515.567(a).

Other Technical and Conforming Changes

Finally, OFAC is making a number of other technical and conforming changes as follows: (i) In § 515.101, OFAC is updating an outdated citation to the Trading With the Enemy Act; (ii) in §§ 515.209 and 515.582, OFAC is updating links to certain pages on the State Department's website that are out of date; (iii) in § 515.560, OFAC is removing the second occurrence of paragraph (e), which was previously included in error; and (iv) in § 515.570, OFAC is adjusting two cross-references to § 515.565 that previously referred to the wrong paragraphs of that section.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–12) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and § 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Alcohol, Athletics, Banks, Banking, Blocking of assets, Conferences, Cuba, Export, Financial transactions, Import, Remittances, Reporting and recordkeeping requirements, Tobacco, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as follows:

PART 515 CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 6021–6091; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart A7 Relation of This Part to Other Laws and Regulations

G515.101 [Amended]

2. In § 515.101 paragraph (b), remove ''50 U.S.C. App. 5(b), as amended'' and add in its place ''50 U.S.C. 4301–4341''.

Subpart B7 Prohibitions

G515.209 [Amended]

3. In § 515.209, in the note to paragraph (a), remove ''website: *http://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm*'' and add in its place ''website: *https://www.state.gov/cuba-sanctions/cuba-restricted-list/*''.

4. Add § 515.210 to read as follows:

G515.210 Restrictions on lodging, paying for lodging, or making reservations at certain properties in Cuba.

(a) Except as otherwise authorized pursuant to this part, no person subject to U.S. jurisdiction may lodge, pay for lodging, or otherwise make any reservation for or on behalf of a third party to lodge, at any property in Cuba that the Secretary of State has identified as a property that is owned or controlled by the Cuban government, a prohibited official of the Government of Cuba, as defined in § 515.337, a prohibited member of the Cuban Communist Party, as defined in § 515.338, a close relative, as defined in § 515.339, of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party. Such properties are identified on the State Department's Cuba Prohibited Accommodations List (CPA List). This prohibition does not apply to certain transactions set forth in paragraph (b) of this section.

Note 1 to paragraph (a): The names, addresses, or other identifying details, as relevant, of properties that the Secretary of State has identified as meeting the criteria set forth in this section are incorporated in the CPA List as published in the **Federal Register**. The CPA List is also accessible through the following page on the State Department's website: *www.state.gov/cuba-sanctions/cuba-prohibited-accommodations.*

(b) The prohibition in paragraph (a) of this section does not apply to lodging-related transactions initiated prior to the date that the property was added to the CPA List as published in the **Federal Register**.

Subpart D7 Interpretations

5. Amend § 515.421 as follows:

a. In paragraph (a)(4), remove ''or'' at the end of the paragraph.

b. In paragraph (a)(5), remove the period at the end of the paragraph and add in its place ''; or''.

c. Add paragraph (a)(6).

The addition reads as follows:

G515.421 Transactions ordinarily incident to a licensed transaction.

(a) * * *

(6) Lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210, where the terms of the applicable general or specific license expressly exclude such a transaction.

* * * * *

Subpart E7 Licenses, Authorizations, and Statements of Licensing Policy

6. Amend § 515.533 as follows:

a. Redesignate paragraph (d) as paragraph (e).

b. Add new paragraph (d).

The addition reads as follows:

G515.533 Exportations from the United States to Cuba; reexportations to Cuba; importation and servicing or repair of certain items previously exported or reexported to Cuba.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (c) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

G515.534 [Amended]

7. In Note to § 515.534, remove '', and § 515.564(a)(2) for a general license authorizing travel-related and other transactions incident to attending or organizing professional meetings in Cuba, which include professional meetings relating to the negotiation of contingent contracts authorized by this section''.

G515.542 [Amended]

8. In note 1 to § 515.542, remove the last sentence.

9. Amend § 515.545 as follows:

a. Redesignate paragraph (d) as paragraph (e).

b. Add new paragraph (d).

The addition reads as follows:

G515.545 Transactions related to information and informational materials.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (b) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

G515.547 [Amended]

10. In note 2 to paragraph (a), in the second sentence, remove ''and professional meetings''.

11. Amend § 515.559 as follows:

a. Redesignate paragraph (e) as paragraph (f).

b. Add new paragraph (e).

The addition reads as follows:

G515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.

* * * * *

(e) *Certain travel-related transactions restricted.* Nothing in paragraph (d) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

12. Amend § 515.560 as follows:

a. In paragraph (c)(3), add a new second sentence.

b. In paragraph (d), add '', and nothing in paragraph (c)(2) of this section authorizes the lodging, paying for lodging, or otherwise making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210, in each case'' after ''§ 515.209''.

c. Remove the reserved paragraph (e).

The addition reads as follows:

G515.560 Travel-related transactions to, from, and within Cuba and by persons subject to U.S. jurisdiction.

* * * * *

(c) * * *

(3) * * * This paragraph does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products. * * *

* * * * *

G515.561 [Amended]

13. Amend § 515.561, in paragraph (a) by adding '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210'' after ''§ 515.209''.

14. Amend § 515.563 as follows:

a. Redesignate paragraph (c) as paragraph (d).

b. Add new paragraph (c).

The addition reads as follows:

G515.563 Journalistic activities in Cuba.

* * * * *

(c) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

15. Amend § 515.564 as follows:

a. Revise paragraph (a).

b. Redesignate paragraph (d) as paragraph (e).

c. Add new paragraph (d).

d. Revise newly redesignated paragraph (e).

The revisions and addition read as follows:

G515.564 Professional research and professional meetings in Cuba.

(a) *General license for professional research.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to professional research are authorized, provided that:

(1) The purpose of the research directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study; and

(2) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of professional research.

Example to G515.564(a): The making of a documentary film in Cuba would qualify for the general license in this section if it is a vehicle for presentation of the research conducted pursuant to this section.

Note 1 to paragraph (a): A person does not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

Note 2 to paragraph (a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

(e) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to either: professional research in Cuba that does not qualify for the general license under paragraph (a) of this section, or professional meetings or conferences in Cuba that are not otherwise authorized pursuant to other travel-related authorizations and relate to activities otherwise authorized pursuant to this part.

16. Amend § 515.565 as follows:

a. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h).

b. Add new paragraph (f).

The addition reads as follows:

G515.565 Educational activities.

* * * * *

(f) *Certain travel-related transactions restricted.* Nothing in paragraph (a), (b), (d), or (e) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

G515.566 [Amended]

17. Amend § 515.566, in paragraph (a) introductory text by adding '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210'' after ''§ 515.209''.

18. Amend § 515.567 as follows:

a. Add notes 1 and 2 to paragraph (a).

b. Revise paragraph (b).

b. Remove examples 1 and 2 to § 515.567(a) and (b).

c. Remove notes 1 and 2 to § 515.567(a) and (b).

d. In paragraph (c), remove ''or (b)''.

e. In paragraph (d), remove ''or (b)''.

f. Revise paragraph (e).

The additions and revisions read as follows:

G515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) * * *

Note 1 to paragraph (a): Each person relying on the general license described in paragraph (a) must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

Note 2 to paragraph (a): Transactions incident to the organization of amateur and semi-professional international sports federation competitions described in paragraph (a) include marketing related to such events in Cuba.

(b) *Public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions.* Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to participation in or organization of a public performance, clinic, workshop, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in or organizers of such activities, provided that the event is open for attendance, and in relevant situations, participation, by the Cuban public.

* * * * *

(e) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

19. In § 515.569, add a sentence to the end to read as follows:

G515.569 Foreign passengers2baggage.

* * * This authorization does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

G515.570 [Amended]

20. Amend § 515.570, in paragraph (d), by removing ''§ 515.565(d)'' in both places it appears and adding in its place ''§ 515.565(h)''.

21. Amend § 515.571 as follows:

a. In paragraph (a)(1), add a sentence to the end.

b. In paragraph (a)(3), remove ''and'' after ''accompanied baggage''.

c. In paragraph (a)(4), remove the period and add in its place ''; and''.

The addition reads as follows:

G515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) * * *

(1) * * * This paragraph (a)(1) does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

* * * * *

G515.572 [Amended]

22. Amend § 515.572 as follows:

a. In paragraph (a)(1), add '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210,'' after ''§ 515.209''.

b. Remove Note to § 515.572(a).

23. Amend § 515.574 as follows:

a. Redesignate paragraph (d) as paragraph (e).

b. Add new paragraph (d).

c. In Example 1 to § 515.574, add a new third sentence.

d. In Example 2 to § 515.574, add a new third sentence.

e. In Example 3 to § 515.574, add '', and will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210'' after ''(see § 515.209)''.

The additions read as follows:

G515.574 Support for the Cuban people.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List (CPA List) to the extent prohibited by § 515.210.

* * * * *

Example 1 to G515.574: * * * The traveler will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210. * * *

Example 2 to G515.574: * * * The travelers will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210. * * *

* * * * *

24. Amend § 515.575 as follows:

a. Redesignate paragraph (d) as paragraph (e).

b. Add new paragraph (d).

The addition reads as follows:

G515.575 Humanitarian projects.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

25. Amend § 515.576 as follows:

a. Redesignate paragraph (d) as paragraph (e).

b. Add new paragraph (d).

The addition reads as follows:

G515.576 Activities of private foundations or research or educational institutes.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

G515.577 [Amended]

26. Amend § 515.577 by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

G515.582 [Amended]

27. Amend § 515.582 by removing ''*http://www.state.gov/e/eb/tfs/spi/*'' and adding in its place ''*https://www.state.gov/the-state-departments-section-515-582-list/*''.

28. Amend § 515.585, in paragraph (d), by adding a sentence at the end.'''' after ''personal use only.''.

G515.585 Certain transactions in third countries.

* * * * *

(d) * * * This paragraph does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

* * * * *

G515.591 [Amended]

29. In Note 2 to § 515.591, remove ''and professional meetings'' after ''professional research''.

Dated: September 21, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–21084 Filed 9–23–20; 8:45 am]

BILLING CODE 48106AL6P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309
For the mark COHIBA
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273
For the mark COHIBA
Date registered: June 6, 1995

EMPRESA CUBANA DEL TABACO, d.b.a. CUBATABACO, Petitioner, v. GENERAL CIGAR CO., INC., Respondent.	Cancellation No. 92025859

<u>EXHIBIT 42</u>

<u>TO RESPONDENT GENERAL CIGAR CO., INC.'S NOTICE OF RELIANCE</u>

U.S. DEPARTMENT OF THE TREASURY

Treasury Amends Regulations to Restrict Revenue Sources to the Cuban Regime

September 23, 2020

WASHINGTON – Today, the Department of the Treasury's Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations (CACR) to further implement the President's foreign policy to deny the Cuban regime sources of revenue. The changes restrict lodging at certain properties in Cuba; importing Cuban-origin alcohol and tobacco products; attending or organizing professional meetings or conferences in Cuba; and participating in and organizing certain public performances, clinics, workshops, competitions, and exhibitions in Cuba. These regulatory amendments will become effective upon publication in the Federal Register.

"The Cuban regime has been redirecting revenue from authorized U.S. travel for its own benefit, often at the expense of the Cuban people," said Treasury Secretary Steven T. Mnuchin. "This Administration is committed to denying Cuba's oppressive regime access to revenues used to fund their malign activities, both at home and abroad."

For the latest changes to the CACR, which can be found at 31 Code of Federal Regulations (CFR) part 515, see here. Major elements of the changes in the revised Treasury regulations include:

CUBA PROHIBITED ACCOMMODATIONS LIST

OFAC is incorporating a new provision into the CACR that prohibits any person subject to U.S. jurisdiction from lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge at any property that the Secretary of State has identified as owned or controlled by the Cuban government, a prohibited official of the Government of Cuba, a prohibited member of the Cuban Communist Party, a close relative of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party.

Concurrent with this change, the State Department is creating a new list, the Cuba Prohibited Accommodations List, to identify the names, addresses, or other identifying details, as relevant, of properties subject to this prohibition.

CUBAN ORIGIN ALCOHOL AND TOBACCO

OFAC is amending the CACR to exclude the importation into the United States of Cuban-origin alcohol and tobacco products from several general authorizations. Previously, the importation of Cuban-origin alcohol and tobacco products as accompanied baggage was authorized for non-commercial use under certain circumstances.

PROFESSIONAL MEETINGS AND CONFERENCES

OFAC is eliminating the general authorization related to attendance at, or organization of, professional meetings or conferences in Cuba. These activities may be authorized via specific license on a case-by-case basis to the extent not authorized under other travel-related authorizations.

PUBLIC PERFORMANCES CLINICS WORKSHOPS COMPETITIONS AND E HIBITIONS

OFAC is eliminating the general authorization related to public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions. These activities may be authorized via specific license on a case-by-case basis. As a result of this amendment, the only remaining general license for participation in and organization of athletic competitions in Cuba will be the general license for athletic competitions by amateur or semi-professional athletes or athletic teams.

View more information on Cuba sanctions.