

INSIDE THIS ISSUE

Information sharing is critical	2
Unlawful manufacturing in China	3
Non-price factors behind smuggling	4
Nepal case study	4
US moves to ban cigs by post	4
Cellulose acetate tow	5
Don't free the free zones	5
Philippines: freeport haven for illicit trade	6

DEATH CLOCK

SINCE THE OPENING OF THE FIRST WORKING GROUP FOR THE FRAMEWORK CONVENTION ON TOBACCO CONTROL ON 29 OCTOBER 1999

47,396,231

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES (AS OF 09:00 ON 19 MARCH 2010)

DIGESTING THE THURSDAY NIGHT SURPRISE

Last night's session ended with a bang: Mexico's announcement that an informal group of Parties had reached consensus on two key articles of the protocol, Art. 6 and 7.

Not surprisingly, there were protests from several Parties about the process. Regions were not able to agree on splitting up into working groups earlier in the week, and so the INB began going through the entire text in plenary. Yet some Parties – a majority from AMRO, with two countries each from WPRO and EURO – had chosen to go off to a lengthy side meeting and emerged with new textual proposals on core elements of supply-chain controls.

The anger was predictable. Nobody likes to feel that important decisions are being taken behind their back, that a new proposal has been worked out in the absence of entire regions. Particularly given that in the past the negotiating process has often featured suspicion and mistrust between regional blocs.

But we now face a stark choice. Parties can stay angry about the process for a day or two, and go home with no agreement. Or they can register their displeasure and try to move on.

“Moving on” does not mean blindly accepting the text proposed by the informal group, of course. That proposal has no more official status in negotiations than any text proposed by any other *ad hoc* grouping of countries.

But Parties should read the new proposal carefully (something we at FCA will also be doing today). It appears to have the endorsement of Parties that had previously been very vocally at odds,

such as Brazil and the European Union. We hear it also includes Turkey, another Party that has made substantial investments in tracking and tracing, several Latin American countries (Panama, Nicaragua, and Uruguay) and some others. This alliance-building does of course need to broaden and be more inclusive.

We do not know what is in the text, or whether it responds to the very different needs of different countries and regions. As international as it is, illicit trade in tobacco products takes different forms: overwhelmingly cigarette-based in some regions, but not for example in South Asia; production from illegal factories in Canada; diversion from legal factories in many other places. Parties will obviously need to read the new proposal and see whether it meets their needs as well as the needs of those who negotiated it.

Today we have a packed agenda in plenary. On the side, in the breaks and in the corridors, trust and communication need to be re-established where they have broken down, and Parties should ask themselves what parts of the new proposal improve the existing negotiating text and will help the world better deal with the scourge of illicit trade. The Parties who worked out this new proposal have a special responsibility to explain their thinking and listen carefully and receptively to those who were not at the informal table.

No matter how the Thursday night surprise came about, Parties from all regions put several years of hard work into this Protocol and it is important we now move forward towards a text that works better for everybody.

INFORMATION SHARING CRITICAL TO FIGHTING ILLICIT TRADE

One of the most important ways in which this protocol can take the global fight against illicit trade forward is to establish clear, effective processes for the sharing of information among Parties. Information sharing is critical at all stages in combating illicit trade, including prevention, detection, investigation and prosecution.

The importance of information sharing has been recognised in the drafting of the negotiating text, which contains six draft provisions in Part V (International co-operation) dealing with information sharing, in addition to exchange of information under some of the draft supply chain control provisions in Part III. These Part V provisions, which are expected to be discussed in plenary today, are:

- Article 20 (Information sharing: statistical data)
- Article 21 (Information sharing: operational data)
- Article 22 (Information sharing: confidentiality and protection of information)
- Article 24 (Assistance and co-operation: investigation and prosecution of offences)
- Article 28 (Law enforcement cooperation)
- Article 29 (Mutual administrative assistance).

The provisions propose a number of different processes for information sharing. In

some cases, the same or similar kinds of information are dealt with through different processes or through more than one process. To take a few specific examples: trends

in illicit trade are proposed to be communicated by Parties to a “secure, central, automated database” (Article 20), and to be exchanged between Parties, either on request or on their own initiative (Article 29); information regarding import, export, and duty-free sales is proposed to be exchanged between Parties “on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purposes of detection or investigation of illicit trade” (Article 21), and to be communicated by Parties to a “secure, central, automated database” (Article 20); and it is proposed that Parties adopt “effective measures to exchange information” regarding “means and methods” of committing offences (Article 28) as well as provide each other with this information on request or on their own initiative (Article 29).

There are two draft provisions dealing with the designation of a central authority for information sharing (Articles 22 and 24), two dealing with communication between relevant agencies and authorities (Articles 24 and 28), and three dealing with confidentiality and protection of information exchanged (Articles 20, 22 and 29).

Left as they are, the information sharing provisions will be difficult to apply and may cause confusion. They will not establish the clear, strong processes needed to fight illicit trade effectively. To address this problem, FCA urges Parties to streamline Articles 20, 21, 22, 24, 28, 29 into one article clearly setting out the information to be shared and the processes and mechanisms to be used. The article should provide that Parties will:

- adopt effective measures to enhance and, where necessary, establish channels of communication between competent authorities and agencies to facilitate the secure and rapid exchange of information for prevention, detection, investigation and prosecution
- provide certain information – including relevant licence suspensions or cancellations, and suspicious transaction notifications – to all other Parties concerned, either directly or through the Secretariat
- exchange a range of information with other Parties, either on request or on their own initiative, to the greatest extent possible in accordance with domestic law
- designate or establish an authority to serve as a national centre for the collection, analysis and dissemination of relevant information, and notify other Parties of such establishment or designation through the Secretariat.

“STREAMLINING AND CLARIFYING INFORMATION SHARING PROVISIONS – A FUNDAMENTAL TOOL IN FIGHTING ILLICIT TRADE – CAN AND SHOULD BE TAKEN TODAY.”

Clarification will be required as to the “secure, central automated database” proposed in Article 20. At INB-3, it was suggested that either the Convention Secretariat or the World Customs Organization might perform this function. Before provisions dealing with a central

information sharing database can be concluded, clarification will be required as to who will manage it (and if it is not to be managed by the Secretariat, what arrangements will be made and provisions included to allow for this), how and by whom information will be placed on the database, and how and to whom the information will be accessible. Once the operation of the proposed database has been clarified, it will be possible to clearly identify which information should be shared through the database and which only between Parties directly, either on their own initiative or on request.

Only three days of INB-4 remain, and the critical international co-operation provisions in Part V of the negotiating text have not yet been considered. Streamlining and clarifying the information sharing provisions, which should provide a fundamental tool in the fight against illicit trade, is one effective measure that can and should be taken today.

Madeleine Heyward, FCA

UNLAWFUL MANUFACTURING IN CHINA



Phenomenal economic growth and rapid expansion of manufacturing can bring problems in their wake, like the unlawful manufacturing of cigarettes.

An important research article has cast new light on the extent of the illicit tobacco trade in China. *The Dragon Breathes Smoke: Cigarette Counterfeiting in the People's Republic of China* by Anqi Shen, Georgios Antonopoulos and Klaus von Lampe (British Journal of Criminology: 11 November 2009) (<http://bjc.oxfordjournals.org/cgi/content/abstract/azp069v1>) gives a detailed account of unlawful manufacturing in the country, which the authors estimate produces as many as 400 billion cigarettes a year.

The article is based on published Chinese sources including newspapers and websites, and China's tobacco authority website.

China is the biggest tobacco producer in the world, and one of the largest exporters of cigarettes. The tobacco industry is also a state monopoly, producing an estimated 7.6 per cent of central government revenue in 2005. Local government receives revenue from taxes on tobacco leaf, giving it an incentive to encourage leaf growing over set quotas, which in turn creates the raw material for unlawful production. More than four million rural households are involved in the cultivation of tobacco, and there are five million tobacco-selling points. However, in 2006 there were only an estimated 215,000 people involved in the legal production of cigarettes.

Tobacco production is regulated through the State Tobacco Monopoly Administration, and the state-owned China National Tobacco Corporation and other smaller companies are subject to this authority. "A Permit of Exclusive Sale of Tobacco" is required before a legal tobacco selling business can be opened,

and this process is lengthy, difficult and affected by corruption.

Reports from official sources, including the National Tobacco Exclusive Sale Bureau, indicate that between 2002 and 2008 almost one and a half million instances involving unlawful production became known to the Chinese authorities. More than 22,000 production sites for illicit cigarettes were discovered, and almost 9,000 rolling machines were seized. Almost 31,000 individuals were arrested and 10,700 were sentenced. One government official has commented that these cases are "only the tip of the iceberg".

Raw materials for illicit production are easy to obtain, from raw tobacco leaf, to secondhand tobacco and even waste. In one reported case, counterfeiters in Shenyang (Liaonin province) posed as professional recyclers and bought damaged packaging, wrapping paper and unsellable cigarettes, and even employed people to collect cigarette butts from rubbish bins.

Machinery for cigarette production has also dropped in price, with the price of cigarette rolling machines falling from at least 600,000 Yuan (about US\$88,000) down to 200,000 (about US\$29,000). Estimates from 2009 suggest 90 per cent of machines involved in unlawful production are automatic.

Unlawfully produced cigarettes are packaged in variety of ingenious ways, including mixing with state-produced cigarettes in each pack, packing in genuine packs either unused or recycled, and into counterfeit packs with genuine brand names. There is increasing use of printers to produce fake bar codes, trademarks and even fiscal marks. The cigarettes are sold in shopping centres, department stores, hotel luxury shops, groceries and kiosks across China. The tourist market is particularly targeted.

The authors report that "the role of corruption and violence in the cigarette counterfeiting business is not to be

underestimated. Corruption is ... at least a facilitating factor of a large part of the business". Corrupt officials can be actively engaged in the trade, as revealed in a 2005 case in Inner Mongolia, where the four owners of an illicit cigarette manufacturing site were officials of the local Bureau of Industry and Commerce. They can also provide "baohusan" or a protective umbrella for the illicit trade, or simply turn a blind eye. Since local governments in China are frequently assessed as enterprises by central government, and therefore tested for economic performance and success, they have a strong incentive to maximise the tax take from tobacco leaf even if this is routinely diverted into illicit channels. Increasing efforts by central government to tackle illicit trade have sometimes led to violent confrontations, including the murder of informants and even violence directed at police officers and other officials.

The authors conclude that the problem of illicit trade in China has grown as the country liberalises its economy, while at the same time maintaining state control of the tobacco industry. According to the authors, "a comparative advantage has been created for unauthorised manufacturers". The authors conclude that the illicit trade in tobacco products in China is "a result of an uneasy symbiosis between state planning, local government competition emphasising profit...as well as market dynamics that are exacerbated by the forces of globalisation".

FCA believes that there is a clear need for China and its international partners to agree on co-operative action to fight illicit trade. There should be a strong incentive for China and other countries at INB-4 to agree on a strong protocol.

Ian Willmore, FCA

NON-PRICE FACTORS BEHIND SMUGGLING

Increasing tobacco tax and price is recognised as the single most effective tool for decreasing tobacco consumption, especially among young people and the poor. Tobacco companies often argue that high tobacco taxes lead to increased tobacco smuggling and that governments should lower taxes to decrease smuggling.

In Vietnam, however, most smuggled brands of cigarettes appear to be more expensive than legal domestic brands, according to a rapid survey of prices conducted last year by the Vietnam

National Committee on Smoking and Health (VINACOSH). Investigation of the prices of available tobacco brands in three cities (Ha Noi, Da Nang and Ho Chi Minh) found the average price per pack of 67 legal brands was US\$0.60 (ranging from US\$0.20 to 1.20). The average price per pack of 39 smuggled brands was US\$1.60 (ranging from US\$0.60 to 4.20).

The findings illustrate that tobacco smuggling depends on many factors in addition to price. These include social acceptability of smuggled products,

strength and effectiveness of smuggling controls, the level of transparency and corruption in a country, the level of government control over the tobacco supply chain, and the extent of tobacco companies' complicity in smuggling.

*Le Thi Thu Hien
HealthBridge Canada (Vietnam Office)
E. Ulysses Dorotheo
Southeast Asia Tobacco Control Alliance*

TOBACCO CONTROL: NEPAL CASE STUDY

Nepal ratified the FCTC in November 2007. Despite the country going through a turbulent period politically, draft tobacco control legislation is now awaiting enactment.

RECPHEC (Resource Centre for Primary Health Care), one of Nepal's leading health and development organisations, has been engaged in the country's tobacco control movement. One of the movement's notable achievements has been to mobilise more than 700 NGOs and 3,000 community-based organisations throughout Nepal. In addition, 'youth watch groups' in 48 districts of the country are advocating smoke-free areas and will be monitoring the future implementation of the tobacco control law at district level. Most districts have now been declared smoke-free areas which the volunteer 'youth watch groups' monitor regularly.

The 'tobacco control and regulation law' has been passed by the Cabinet and presented as a Bill to Parliament in January this year. Tobacco control organisations played an extremely active role while the law was in the process of being drafted, by undertaking political advocacy efforts with Members of Parliament and raising media awareness, which also generated political pressure. The draft Bill is now in the review committee of Parliament and once the parliamentary session resumes next month, Nepal will have a 'tobacco control and regulation law'. Nepal is taking progressive steps forward in tobacco control. The proposed Bill's allocation of 75 per cent of the total

space of each tobacco pack for health warnings will be Nepal's greatest achievement in relation to all Asian countries.

Media mobilisation has also had a national impact. Over 50 community-based radio stations now regularly provide public information on tobacco through public service announcements.

Live sessions between health personnel and tobacco users have created a conducive environment for tobacco cessation. In each district, the Health Rights and Tobacco Control Network awards individuals who are successful in quitting using tobacco. In one district, houses have been marked with sign boards reading, "Tobacco Free House". Print media regularly publish news, analytical articles and case studies that help sensitise the public and assist with advocacy to policymakers.

Nepal has shown that moves towards tobacco control legislation are possible, even during political upheavals, if people's voluntary spirit is mobilised in a collective effort.

*Shanta Lal Mulmi, Executive Director, RECPHEC
in co-operation with Mr. Bala Sagar Giri (Nepal Government Delegate)*

US MOVES TO BAN CIGARETTES BY POST

On 11 March 2010, the PACT (Prevent All Cigarette Trafficking) Act unanimously cleared the United States Senate. The Act aims to close loopholes in Federal law that allow online distributors to circumvent state tax and youth access laws. Among other regulations, PACT forbids the US Postal Service from

delivering cigarettes. The House of Representatives has already passed similar legislation, so the Act should soon be available for President Obama's signature.

Unanimous legislative votes are extremely rare in US politics, but before

celebrating a new political paradigm, we should remember that the Act is much more about the economy and addressing state budget deficits than public health.

Chris Bostic, FCA

CELLULOSE ACETATE TOW UPDATE

There continues to be confusion regarding cellulose acetate tow and its use as a filter material for manufacturing tobacco products.

Cellulose acetate tow is a network of fibres made from wood pulp. Within the manufacturing process, the filter material arrives as a single strip of more than 10,000 fibers compressed into 750 kilogram bales. A machine for manufacturing cigarette filters mechanically stretches this strip of compacted material in order to open the fibres. They are then sprayed with a plasticizer to bring them together, wrapped with thin paper and cut and fed into the cigarette-making machine, according to a BAT website (http://www.batcentralamerica.com/OneWeb/sites/BAT_58VLSP.nsf/vwPagesWebLive/B30BC3791B532B6980256BCA0075620A?op=endocument&DTC=&SID). Cellulose acetate is found in the harmonised schedule as 3912.11 (non-plasticized) and at 3912.12 (plasticized).

The website of SRI Consulting (<http://www.sriconsulting.com/CEH/Public/Reports/580.0400/>), a company which advises the international chemicals industry, states, "By far, the greatest use

of cellulose acetate flake is for tow used to manufacture cigarette filters".

It continues: "The worldwide economic slowdown, which started in 2008, resulted in a marked reduction in uses other than filter tow. Looking at a year-end snapshot, filter tow would have accounted for 87–88% of the total consumption of cellulose acetate; the other applications had dropped to about 60–70% of their previous levels".

The website of the Rhodia Group (http://www.rhodia.com/en/our_company/businesses/acetow/index.tcm) leads with a photo of Rhodia Acetow cellulose acetate and the statement: "Rhodia's Acetow enterprise is a worldwide market leader and global player in the manufacture of cellulose acetate fiber, used extensively in the manufacture of cigarette filters".

As with the previous statement above regarding the "greatest use" description in the SRI abstract, "extensively" suggests a significant volume. The *Klinger News*, a publication of Klinger Group, reported the following in an article entitled *From Sopwiths to Cigarettes*, published in May 2004: "Filter Tow - used to produce

cigarette filter material for major brands in over 50 countries".

Although no specific quantity is cited, that one company alone has clients in "over 50 countries" suggests a significant volume of production.

The discussion of acetate tow is part of the wider discussion of illegal manufacturing. Illegal manufacturing is a major component of illicit trade in the 21st century. It impacts every WHO region to varying degrees.

As the Parties discuss the issue and consider the needs of their country and region, they should further examine their own tariff schedules and how they classify tobacco manufacturing machinery. Some Parties do not describe or classify tobacco manufacturing machinery in any greater detail than that of manufacturing acetate filter tow, which may result in a "dual-use" for the machinery.

Major producers of acetate tow are located in countries including Germany, Japan, Korea, the United Kingdom and the United States.

*John Colledge III
Consultant, Illicit Trade and
Anti-Money Laundering*

DON'T FREE THE FREE ZONES

'Free zones' have not so far been much discussed at this INB but they are critical to the illicit trade in tobacco. FCA would ask Parties not to forget that action on this issue is of great importance.

Free zones are areas of countries where tariffs, duties and quotas may be eliminated and other regulations relaxed to attract new business. They can be defined as manufacturing centres that involve the import of raw materials or components and the export of factory products.

Goods in free zones may have labels and markings removed, be mixed with other products in ways that change declarations on customs and transit documents that applied when they entered the zone. They may also be tampered with and altered in ways that are largely beyond the control of customs and law enforcement. In relation to tobacco products, cigarette packets, cartons, master cases and pallets may be opened, altered, interfered with and resealed. They may also be mixed in containers and covered with other products.

Smugglers routinely take advantage of the "in transit" system used in free trade zones and other shipping centres, which allows for temporary tax suspension while the tobacco is *en route* to a third country. Cigarettes may sit for weeks in free trade zones until they are sold. They then pass quickly through multiple buyers in a short period of time, complicating efforts to identify where "leakages" occur. On occasion, cigarettes are even illegally sold while at sea, with vessels offloading them to smaller boats that take them to shore.

Free zones urgently require regulation under the protocol. We would urge Parties simply to stop the movement of tobacco products into and out of the zones. If this cannot be agreed, the zones must be subject to other provisions of the protocol. The "intermingling" of tobacco products with other products in a consignment must also be barred. Action on free zones is not an optional extra: it is essential if the world is to get a grip on illicit trade.

Ian Willmore, FCA

FREE ZONE EXAMPLE:

One free zone website says that "imported merchandise, removed into or manufactured in a Free Zone for industrial or commercial operations or any other operations involving economic growth and development, is not subject to import taxes and duties. This includes:

- (1) Machinery, equipment, and parts;
- (2) Foreign merchandise; and
- (3) Merchandise transferred from other Free Zones.

In addition the imported merchandise removed into or manufactured in a Free Zone is also not subject to Value Added Tax (VAT), excise taxes, alcohol tax, including tax stamp and fees under the Alcohol Act, Tobacco Act, and Playing-Card Act".



DIRTY ASHTRAY AWARD

To Parties calling for tobacco manufacturing equipment to be excluded from the protocol



ORCHID AWARD

To the INB for deciding that the MOP and the COP should be separate



The Framework Convention Alliance (FCA) is a global alliance of NGOs working to achieve the strongest possible Framework Convention on Tobacco Control. Views expressed in the Alliance Bulletin are those of the writers and do not necessarily represent those of the sponsors.

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PHILIPPINES: FREEPORT IS HAVEN FOR ILLICIT TRADE

The following text is taken from an article by Chay Florentino-Hofleña which appeared in *Smoked Out*, a special edition of Newsbreak magazine, published in the Philippines by Public Trust Media Group Inc. on 2 March 2010. With kind permission.

(http://newsbreak.com.ph/index.php?option=com_content&task=view&id=7612&Itemid=88889376)

"Authorities say it's possible that cigarette smuggling is being used as a front for drug trading and money laundering.

ROUNDAABOUT

Certainly, smuggling operations continue to be brisk business, if small boats near the Subic Bay Freeport are any indication. A former ranking Customs official says these small boats have a military look but are actually used for smuggling cigarettes.

Cigarettes manufactured in China are "exported" and brought to the Philippines on big ships. These shipments are then broken up and placed in smaller boats. "Those are the fast boats, which are able to reenter China and go to Vietnam. Cigarettes are smuggled back to their country."

Smugglers of counterfeit cigarettes take their container vans in circumlocutory routes. For instance, Chinese-made cigarettes head for Hong Kong then to Manila as a transshipment point. From Manila, they make their way to Vietnam via small fishing vessels and then from there proceed to other countries of final destination.

It works for the Chinese because whenever they export cigarettes, they get tax rebates; when these cigarettes re-enter China illegally, they make a profit. The cost of bringing out their goods is minimal compared to the profits they make. According to estimates, smugglers end up spending only at least \$700 per container van if they go the Mainland-Hong Kong-Manila route.

There have been instances, too, when cigarettes from China entered Subic for transshipment but were replaced by locally made Marlboro cigarettes. The switches were made while the ships were docked for about a week at the Freeport—the counterfeit cigarettes from China were unloaded for the domestic market and replaced with genuine

Marlboros, which were "consolidated" and shipped out.

"Consolidators" buy locally produced cigarettes in small quantities from small outlets until they accumulate volumes large enough for illegal shipment or "diversion" outside, industry insiders explain. This is illegal because cigarettes that are exported require certification from the National Tobacco Authority.

LIKE DRUGS

Only last January, 1,000 master cases of locally produced Marlboro cigarettes supposedly for shipment to Vietnam and The Netherlands were intercepted. The cigarettes were valued at P15 million (US\$ 330,000), and if sold in Europe or North America, could easily generate returns of P150 million (US\$ 3,330,000). CIIS (Customs Intelligence and Investigation Service, ed.) agents reported that the cigarettes were mis-declared as 490 pieces of furniture and decoration, and 450 cases of assorted grocery items. The shipment was found inside two 20-foot container vans at the Manila International Container Port.

Even Fortune Tobacco's Hope cigarettes, which are popular among overseas Filipino workers, are being smuggled to the Middle East.

Customs officials say the price difference of cigarettes among neighboring countries explains the bootlegging phenomenon. Consolidators try to smuggle out genuine cigarettes but mis-declare them and illegally export them to countries that include the United States.

This makes economic sense because export container vans headed for the US cost only about \$500. A 20-foot container van can hold 500 master cases of cigarettes or 250,000 packs. Factoring in cost and the sale value of cigarettes in the US, one official asks, "Tell me of a product other than drugs that brings in that kind of a profit -200 percent or 300 percent." The so-called gray market is already being regarded by cigarette manufacturers as their third or fourth biggest competitor, with China's underground manufacturers and its trillion-stick-a-year market seen as both threat and opportunity."

Deborah Sy
HealthJustice, Philippines