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DEATH CLOCK

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

47,381,437

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES (AS OF 09:00 ON 18 MARCH 2010)

TIME TO LOOK FOR COMMON GROUND

Yesterday saw some welcome progress on Part IV of the protocol - fruitful discussions that built upon and improved the work of intersessional drafting group 2. It is highly encouraging to see Parties reaching consensus on potentially delicate matters of search and seizure or proceeds of crime.

The big question is whether Parties can keep this co-operative spirit going when we head back into the thornier issues of Articles 5-7 - probably tomorrow in plenary, likely today in corridor conversations. To state the obvious, real progress on supply-chain provisions will require a willingness to listen and to seek consensus on concepts before haggling about wording - as well as exceptionally hard work as we race to beat the Sunday deadline of the end of INB-4.

We should not kid ourselves: the clock really is ticking down, and failure to reach agreement this week could soon mean no Illicit Trade Protocol.

That would be a major setback for the FCTC, which to date has been an extraordinary success, helping bring smoke-free spaces, advertising bans, graphic health warnings and other evidence-based tobacco control policies to countries around the world.

It would be particularly sad to waste this opportunity when the vast majority of Parties seem to honestly want a concerted international effort to deal with the health and financial damage caused by illicit trade. For the most part, the arguments are about the "how" of implementing supply-chain controls and co-ordinating systems between countries rather than about the fundamental desirability of tracking-and-tracing, licensing or due diligence regimes.

So what should we do to reach agreement? Some humble suggestions from the FCA:

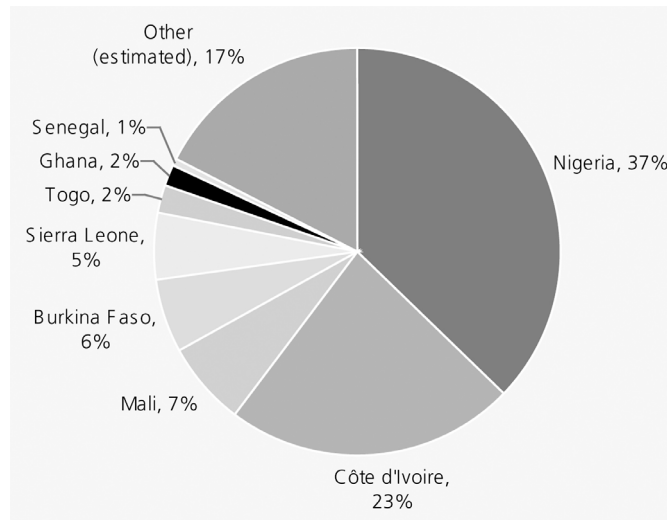
- Clarify which Parties actually disagree with the core measures of the protocol, or fundamentally do not believe in a multilateral approach to this issue. There may be a small minority that cannot be accommodated, at least for now, and Parties should neither tie themselves in knots to appease them nor waste their breath arguing with them
- Focus on core principles
- Consider which bits of text Parties could cut without crippling a useful and realistic international system of controls
- Adjust expectations to realities: no protocol can single-handedly solve all problems of illicit trade or substitute for national efforts to control smuggling
- Remember that the protocol, and the international system it will set up, is merely a starting point in global efforts to control illicit trade. At least as important as the system initially set up will be the flexibility to develop with changing technology and needs. FCA has suggested a technical committee of the Meeting of Parties as a possible mechanism to achieve this
- Listen to other Parties. Honest attempts to understand their practical and political constraints do not mean compromising your own principles.

Some Parties may note a small irony here: as civil society organisations, we are free to give negotiating advice without having to negotiate ourselves or put our government's name on a legally binding document. To which we can only respond that controlling illicit trade in tobacco products is a critical part of tobacco control and public health. We understand that you do the hardest part of the work; we will do what we can to help you do it well.

WEST AFRICAN SITUATION

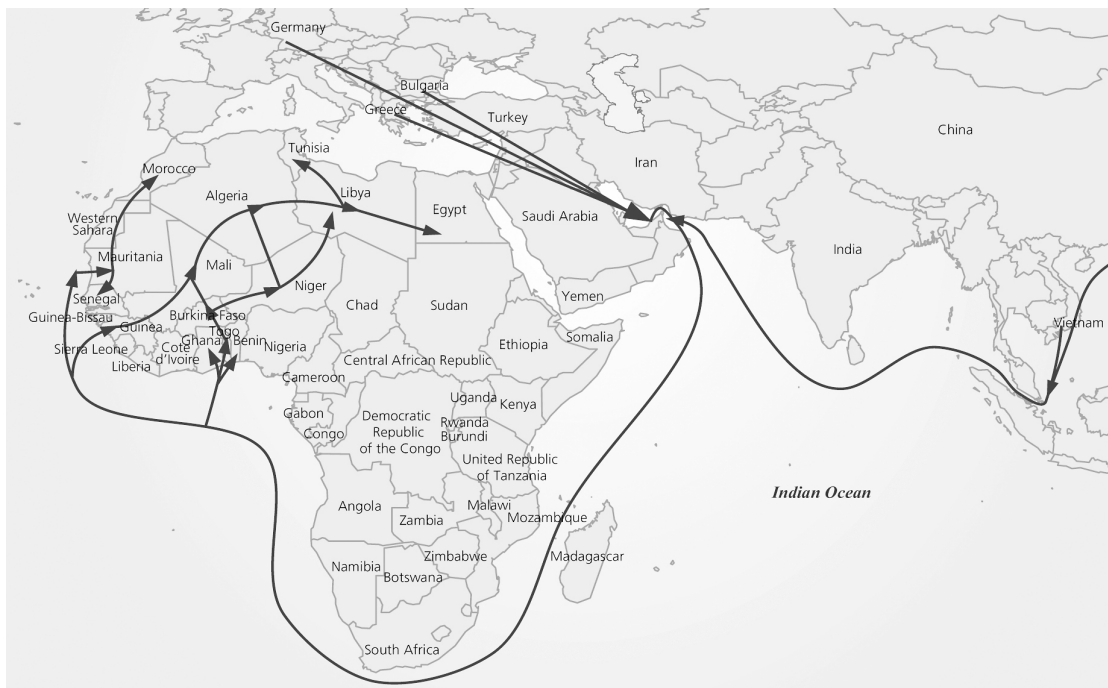
Telling graphics from the UN Office on Drugs and Crime report entitled, *Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment*, published in July 2009. (http://www.unodc.org/documents/data-and-analysis/Studies/West_Africa_Report_2009.pdf)

WEST AFRICA'S ILLICIT CIGARETTE MARKET (IN VALUE AT RETAIL PRICES)



Source: WHO, UN Population Division, UNODC and others

CIGARETTES FROM THE WORLD TO AFRICA



Route

Source: Far East (China, Vietnam); Europe (Bulgaria, Luxembourg, Greece)

Vector to West Africa: Via worldwide free trade zones, particularly Jebel Ali (Dubai) and through tax havens

Vector within West Africa: Landfall at a) Ghana-Benin-Togo, b) Guinea (Conakry) and c) Mauritania, Trans-Saharan routes to North African markets

Destination: West Africa (1/3), North Africa (2/3)

Value

Volume: 11 billion illicit cigarettes for West African consumer markets, 21 billion for North Africa

Value: US\$774 million

Traffickers

Groups involved: Cigarette manufacturers, local distributors

Residence of traffickers: West Africa

Threat

Estimated trend: Increasing

Potential effects in region: Corruption, possible insurgent funding, loss of tax revenues

Potential effects outside the region: Corruption, possible insurgent funding, loss of tax revenues

BAT'S COMPLICITY IN CIGARETTE SMUGGLING IN AFRICA

Internal corporate documents from major tobacco manufactures, made public through two US litigation settlements in 1998, provided evidence of tobacco companies' complicity in cigarette smuggling throughout Asia, Europe, the Middle East, North America, and Latin America. Only one year after British American Tobacco (BAT) opened its litigation document depository to the public, BAT's public relations firm reported to the company that its depository located in Guildford, UK, was a "skeleton" in the company's closet - in part due to the public airing of BAT's internal documents relating to cigarette smuggling. While the tobacco industry has long asserted that price differentials were (and continue to be) responsible for increases in transborder cigarette smuggling, analyses of internal tobacco company documents have shown that "transit" or "duty not paid" cigarettes (terms used internally by the tobacco industry to refer to smuggled cigarettes) were incorporated into industry business plans and played an essential role in increasing market share, particularly in emerging markets in low- to middle-income countries.

Publicly available internal BAT records, dating from the 1980s and 1990s, also suggest cigarette smuggling has played an important role in BAT's market penetration across Africa. Documents describe how BAT knowingly worked through key distributors in Africa which, acting as middlemen, purchased cigarettes from BAT only to then supply them to "transiteers"; a term used to refer to those parties who physically transport contraband across borders. Distributors also insulated BAT from direct contact with transiteers, thus reducing the risk of exposure for BAT. According to one BAT document stamped "Secret", one distributor, Sorepex, "provide[d] 'cover', albeit increasingly flimsy, for BAT in some fairly shady business." A BAT memo regarding Cameroon stated:

"It was agreed that Michel Chevaly [of Sorepex] was in an exposed position and in [the] future JMT [John Ticehurst, BATUKE (BAT)] should not travel with him in Cameroon. One of the main functions of SOREPEX was to allow BAT to keep at arm's length from transit customers — particularly in Cameroon."

Additionally, distributors offered BAT detailed knowledge of major entry points to the African continent, including Port Said, Egypt for North Africa, Djibouti for East Africa and Malabo, Equatorial Guinea for West Africa. Further, plans to conceal cigarettes among other merchandise and falsify documents on the origin of the shipment were made known to BAT by Sorepex:

Sales departing from Malabo to North Cameroun and Chad. Via three transporters: Sodisa, Mouchili and Bogno...

1. For the first time, Bogno will buy 300 cartons: this is the capacity of his truck, taking into account the other merchandise which will 'hide' the cigarettes

2. Each time, I will ask M & B [Mouchili and Bogno] to sign a document testifying that the cigarettes have really been exported

from the North. I will countersign this document which will enable BAT to pay them – via Sorepex...[translated from original French]

Similarly, to avoid detection between Niger and Nigeria, Sorepex reported that "[D]irect imports to Nigeria [would be] through Mr Adjil...[who] would disguise the cigarette importations by calling the shipment something else, e.g. matches..."

Smuggled cigarettes were also essential to BAT's management of its cigarette brands in Africa. A 1991 internal BAT memo regarding the launch of a new brand in West Africa states:

The reasons why we were so enthusiastic about Lambert & Butler[L&B] were ... the possibility of GT[General Trade, a term used to refer to smuggled cigarettes] exploitation were considered to be good (Ghana, Cameroon) ... I accept that in retrospect we may have been over optimistic about its [L&B] potential in Togo, Benin, Niger, but the main reason for its launch in those markets was not to exploit domestic markets but for GT opportunities.

Similarly, a 1990 internal BAT memo states,

Kool is considered to be the best B&W [Brown & Williamson, then BAT's U.S. subsidiary] product offering for the Nigerian market... Both legal and transit importing would be required to properly – and profitably– develop the brand...

BAT's documents show that it also used legal cigarette sales "to provide cover for advertising and GT business." In a 1991 memo, BAT marketing executive Joe Green considered the distribution strategies for Cameroon in terms of two scenarios where legal imports were permitted and where legal imports were prohibited. Even if legal imports were allowed, Green stated,

"GT shipments will remain the mainstay of our activity...The Malabo distribution channel will have to be maintained...Maintain a minimum cover level of BHSF [Benson and Hedges brand] via legal imports."

The findings from BAT's internal documents suggest that the company's complicity in contraband trade extended across the African continent. Any contribution by the tobacco industry to address the problem of illicit tobacco trade should be viewed within this context.

*Monique E. Muggli
Campaign for Tobacco-Free Kids*

Sources:

LeGresley EL, Muggli ME, Collin J, Patel P, Lee K, Hurt RD. *British American tobacco and the "insidious impact of illicit trade" in cigarettes across Africa.* Tobacco Control 17;339-345, 2008.

Hurt RD, Ebbert JO, Muggli MM, Lockhart NJ, Robertson CR. *Open Doorway to Truth: Legacy of the Minnesota Tobacco Trial.* Mayo Clinic Proceedings 84(5), 2009.

TRACKING AND TRACING TECHNOLOGY ALREADY IN PLACE IN KENYA

Kenya is the centre of the tobacco trade in East Africa, producing tobacco products for its domestic market and 17 other countries in Africa and beyond.

Government statistics indicate 4.7 billion, 5.4 billion and 7.3 billion cigarette sticks were produced in 2003, 2004 and 2005. BAT Kenya reported that it exported 56 per cent of its local production in 2005 and the proportion of exports has grown since then. BAT - the leading tobacco company in Africa - has more than doubled its cigarette production in the country.

Historically, there is evidence that BAT facilitated the worldwide illicit trade in tobacco. Evidence presented to the British House of Commons Health Select Committee in 2000, for instance, showed that in the 1990s BAT undertook a comprehensive, planned project to promote smuggling of its tobacco products worldwide. The evidence was based on BAT documents published as a result of litigation which showed high official awareness of and involvement in the smuggling operations, with contraband cigarettes referred to by a range of euphemisms, including DNP (duty not paid) and GT (general trade).

Kenneth Clarke, BAT's deputy chairman, even said publicly after the company's activities were exposed: "We act, completely within the law, on the basis that our brands will be available alongside those of our competitors in the smuggled as well as the legitimate market". Under pressure to clean up its act, BAT now says that it wants to help tackle the illicit trade and supports the idea of an illicit trade protocol. Proper monitoring of the activities of the tobacco industry is vital to ensure that these words are backed up by action.

This is already underway in Kenya. Diversion of transit goods had been a growing problem for the country. Goods falsely declared as in transit to other jurisdictions evade local taxes and duties to then be dumped on the Kenyan market, with the government losing out heavily. It is estimated that the Kenyan government loses US\$30 million per year due to illicit trade. The challenges Kenya faces on illicit trade include:

1. Diversion of export and transit cargoes including backflow of exports and inward smuggling. This accounts for approximately

70 per cent of the tax loss or concealment of products in the market.

2. The balance of 30 per cent lost tax results from under-declared production and/or misclassified tobacco products and/or illicit manufacturing, adding up around US\$10 million per year.

The Kenyan government's response has been to establish a track and trace system composed of two elements:

1. Special markings on cigarette packets in the form of tax stamps
2. A tracking system to monitor cargo in transit or export cargo destined for neighbouring countries

THE TAX STAMP SYSTEM

Tax stamps are used for tobacco products intended for the domestic market. The details of the stamps are kept in a database by the Kenya Revenue Authority. The tobacco industry is required to keep records of the usage of the stamps and provide details about production. Local cigarette consumption is monitored on the basis of tracking of the tax stamps in the market. A detailed monitoring framework involving the tax authority and police has been developed for surveillance to ensure that all cigarettes bear excise stamps and indicate payment of taxes, and their legitimacy. Products which do not bear stamps are periodically seized, the offenders arrested and prosecuted. The penalty includes a prison term not exceeding three years. Penalties are levied against manufacturers as well as persons handling illicit products. Products seized are destroyed by burning.

THE CARGO TRACKING SYSTEM

The cargo tracking system used in Kenya was designed following interviews with customs officials, port operators, customs brokers and transporters. The interviews identified the diversion methods being used, the level of risk of diversion, the weakness exploited and the impact of violations. The major problem identified was a weak security feature inherent in manual container seals. This information was then used to design a system based on radio frequency identification (RFID) to replace the manual seals for tracking the containers. This is a technology similar in theory to bar code identification but uses an electronic tag for the purpose of identification and tracking using radio waves.

The cargo tracking system works as follows:

Vehicles carrying cargo for export must be licensed and have the tracking mechanism installed by the transporter. The cigarettes are loaded onto the vehicle under supervision of an authorised officer from the Kenya Revenue Authority who seals the container using an electronic seal which is subsequently armed.

Movement of the truck and the status of the seal are monitored on a real-time basis that gives the location of the vehicle and the status of the seals. Any deviation from the designated export/transit route or any attempts to tamper with the seal send an alert which is transmitted to Rapid Response Units stationed along the designated routes. The Rapid Response Units then arrest the offending vehicle. On reaching the port of exit from Kenya, or upon receipt by tax authorities in the destination country, the electronic seal is disarmed by Kenyan tax authorities.

For container-level tracking (and tracing) the RFID system is highly cost-effective. This system has already demonstrated its effectiveness in curbing diversion, in facilitating trade between Kenya and its neighbours and shortening turn-around time of transit trucks. It shows that tracking and tracing is feasible in low- as well as high-income countries.

OFFENCES AND PENALTIES

Kenya has resorted to charging offenders under the Economic Crimes Act which provides a maximum penalty of 10 years and a fine equivalent to double the taxes. This is considered to be more punitive than tax legislation.

Kenya also hosts the Regional Intelligence Liaison Office (RILO) Office for East and Southern Africa. Through this office and its systems, Kenya is able to share information on trends, modus operandi, routes and significant cases of illicit trade in East and Southern Africa.

*Rachel Kitonyo
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More information:

Siror, J.K. et al, *Application of RFID Technology to Curb Diversion of Transit Goods in Kenya*, ncm, pp.1532-1539, 2009
Fifth International Joint Conference on INC, IMS and IDC, 2009

LES DOUANES DOIVENT ÊTRE DAVANTAGE IMPLIQUÉES EN AFRIQUE

Un protocole relevant notamment de la compétence des Douanes

L'administration des douanes a longtemps été assimilée à un "gendarme aux frontières" reposant sur une organisation presque militaire, elle était avant tout le symbole de la puissance publique chargé de protéger l'espace national contre l'afflux de marchandises étrangères susceptibles de déséquilibrer le marché intérieur.

Si la douane est une administration très ancienne, elle est à la fois l'une des plus modernes, et des plus réactives dans un contexte en évolution rapide.

Ses compétences élargies la chargent de mettre en œuvre et de faire respecter les dispositions législatives et réglementaires relatives à tout mouvement de personnes ou de marchandises au niveau des frontières.

Dans ce cadre, la question de la sécurité et de la protection de la santé publique est devenue une de leurs prérogatives.

Une évolution préoccupante du commerce illicite des produits du tabac

Le commerce illicite a connu un développement et celui portant sur les produits du tabac s'est tout particulièrement aggravé au cours de ces dernières décennies. Cette évolution résulte notamment de l'implantation de réseaux organisés par des professionnels disposant de moyens de transport et de communication de haute technologie. Ces réseaux gèrent leurs activités en coordination avec d'autres réseaux extérieurs, voire sont liés à des groupes terroristes.

Le rapport *Douanes et tabac 2008* illustre cette situation et cette évolution préoccupante du commerce illicite. Selon ce rapport, "1 416 saisies ont été effectuées dans soixante-quatre pays membres de l'Organisation Mondiale Douanes en 2007 et ce nombre est passé à 1 654 en 2008, représentant

pour cette année à 2,3 milliards d'unités".

L'Afrique est très touchée mais les données manquent cruellement

En Afrique, le rapport manque cruellement de données.

Ainsi en Afrique du Nord et en Afrique Centrale aucune saisie de cigarettes n'a été signalée dans la base de données durant la période 2007-2008 alors même qu'il a été avéré que le Sahara, en raison de ses frontières poreuses, constituait une plaque tournante de la contrebande de cigarettes.

En ce qui concerne l'Afrique occidentale, seule une saisie au Burkina Faso a été recensée en 2008. Cette saisie, faite dans une voiture, a été réalisée dans la capitale Ouagadougou et elle concernait

“ **L'AFRIQUE EST TRÈS TOUCHÉE MAIS LES DONNÉES MANQUENT CRUELLEMENT** ”

une cargaison de 662 500 cigarettes de la marque Peter Stuyvesant en provenance du Togo. L'année précédente, le Mali avait fait état de six saisies portant sur plus de 2 millions de cigarettes (2 135 000 cigarettes) mais aucune saisie n'est référencée en 2008 dans ce pays.

Cette absence de données met en exergue la gravité de la carence de contrôles dans la circulation des produits de tabac au niveau du continent africain.

Cette carence de contrôle explique le développement du commerce illicite des produits du tabac.

Pourtant il est désormais acquis que ce commerce illicite entraîne non seulement des pertes économiques au travers de la perte de recettes fiscales pour les Etats mais présente des conséquences sanitaires majeures. Le commerce illicite des produits de tabac sape littéralement les politiques fiscales actives permettant de réduire sensiblement la consommation de tabac tout en

permettant aux gouvernements de disposer de moyens pour lutter efficacement contre cette épidémie. L'ampleur des dégâts attribuables à l'existence de ce commerce illicite a ainsi conduit les Parties à la Convention Cadre de Lutte Anti-tabac de l'OMS à négocier rapidement l'actuel projet de Protocole.

Le Protocole doit permettre d'aider à un meilleur contrôle de la chaîne d'approvisionnement mais il suppose que les pays africains soient en mesure d'appliquer un tel instrument international.

Ceci suppose notamment que les responsables concernés dans les pays d'Afrique, à savoir les services des Douanes, soient activement associés à l'élaboration et la mise en œuvre de ce Protocole. La présence de l'Organisation

Mondiale des Douanes, en tant qu'Organisation Internationale, dans le cadre des négociations constitue une illustration de l'implication indispensable

de ces administrations dans le processus.

La région africaine, particulièrement ciblée par les fabricants de tabac qui veulent développer leurs marchés sur le continent et sont prêts à inonder les pays de leurs produits par le biais de la contrebande, a une responsabilité particulière vis-à-vis des autres régions pour que le Protocole adopté soit fort et efficace pour endiguer ce problème du commerce illicite. Ceci nécessite cependant qu'à son niveau, les Etats-Parties s'impliquent pleinement, notamment les services les plus concernés.

Saouna Inoussa
Président, SOS Tabagisme-Niger



DIRTY ASHTRAY AWARD

No ashtray today - we want to encourage a positive attitude.....but you know who you are.



ORCHID AWARD

Canada* and Sri Lanka for leadership in negotiations on Articles 13-16

*this doesn't mean we agree with all your positions

IL EST TEMPS D'INTERDIRE À L'ÉCHELLE MONDIALE LA VENTE DE TABAC PAR INTERNET/À DISTANCE

La vente de produits du tabac à distance, y compris par Internet, est par définition un problème international, qui nécessite une solution internationale. Ce commerce a le plus souvent pour objet d'éviter les taxes, les produits étant expédiés entre les territoires où les taxes sont moins élevées à ceux qui ont des taxes plus élevées, directement aux consommateurs. De par la nature même de la transaction, habituellement entre pays/territoires différents, il devient alors extrêmement difficile de garantir que les taxes sur le tabac sont payées.

L'autre aspect problématique de la vente par Internet concerne les mises en garde obligatoires, souvent absentes des emballages, de même que des contraventions aux normes nationales applicables aux produits. Ce commerce virtuel vient également compliquer l'application des lois interdisant la vente de tabac aux mineurs.

Il est temps d'agir à l'échelle mondiale. Le protocole devrait inclure l'interdiction de la vente à distance au détail des produits du tabac aux consommateurs. Il est encourageant de constater qu'à l'occasion de l'OIN-3, un très grand nombre de régions/Parties ont réclamé l'interdiction de la vente par Internet/à distance.

Depuis l'OIN-3, de nouvelles lois interdisant la vente par Internet sont

entrées en vigueur à Trinidad et Tobago, aux Seychelles et aux îles Caïmans. La vente de tabac par Internet est également interdite au Canada dans la province de Québec, en Iran, en Afrique du Sud ainsi que dans les états américains de New York, de l'Alaska et du Connecticut.

Pour sa part, la vente de produits du tabac par commande postale est interdite notamment au Brésil, au Canada, aux îles Caïmans, au Kenya, aux Seychelles, en Afrique du Sud de même qu'à Trinidad et Tobago. La législation canadienne interdit l'expédition de produits du tabac aux consommateurs d'une province à l'autre.

Il est important de noter que le terme « vente à distance » est plus adéquat que « vente par Internet ». La « vente à distance » est plus générale et couvre non seulement les transactions effectuées par Internet, mais aussi les commandes postales et les commandes passées par téléphone, télécopieur et messagerie texte, entre autres.

Bref, il importe de toute urgence que toutes les Parties en cause appuient l'interdiction de la vente à distance dans le cadre du protocole.

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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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SWISS CHEESE UPDATE

Yesterday's *Bulletin* article ("Holes like Swiss cheese") reported on the disappointing verdict that emerged from the largest legal case concerning organised crime ever to be heard by a Swiss court. *Bulletin* wishes to report that both the Swiss prosecutor and the seven acquitted defendants have recently appealed against the court's decision in the smuggling case dubbed "Ticinogate". Swiss justice thus has a further opportunity to make its mark against cigarette smuggling.