



BULLETIN

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TODAY

FCA LUNCHTIME BRIEFING ON CO-ORDINATION AMONG INTERNATIONAL AGENCIES

DEATH CLOCK

SINCE THE OPENING OF THE FIRST WORKING GROUP FOR THE FRAMEWORK CONVENTION ON TOBACCO CONTROL ON 25 OCTOBER 1999

39,820,821

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES

(AT 9 AM 23 OCTOBER 2008)

CO-ORDINATION WITH OTHER AGENCIES NEEDED

Yesterday, Committees A and B worked through sections of the Chairperson's text dealing with enforcement and international co-operation.

The discussions ranged across a number of complex, technical legal issues, as the Committees discussed matters such as search and seizure, confiscation, special investigative techniques, jurisdiction, law enforcement co-operation, mutual legal assistance and extradition.

Much of the wording in the Chairperson's text on these matters has been drawn from other international agreements, primarily the United Nations Convention on Transnational Organized Crime (UNTOC).

The discussions crystallised the implications of the questions that have been raised since the COP decided to commence negotiation of a protocol, about the precise relationship between the protocol and other international agreements and arrangements.

In its decision, the COP reaffirmed that "co-operative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products", and recognised that this could most effectively be achieved if done in the context of work taking place in other international fora. It requested the INB to take into account existing agreements and arrangements relevant to its work

"in order to maximize synergy and complementarity, and to avoid duplication".

The confusion observed in both Committees yesterday about the relationship between the protocol and UNTOC, and the meaning of a number of the provisions included in the Chairperson's text, underline the need for the INB to engage with the United Nations Office on Drugs and Crime to explore areas of overlap and potential co-ordination.

This week's discussions have made it clear that effective action to eliminate illicit trade in tobacco products will require action not only within WHO, under this protocol, but also in other international agencies where complementary expertise and resources exist.

FCA urges the INB to engage with UNODC and other relevant agencies as a matter of urgency in order to ensure that INB-3 can proceed with greater clarity about the respective roles of the different organisations and the most effective ways of working together towards the elimination of illicit trade in tobacco products.

Jonathan Liberman
FCA Policy Director

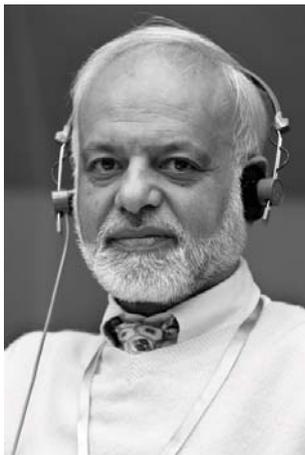
SMUGGLING TOBACCO LEAF

TOBACCO LEAF AND MACHINERY USED IN MANUFACTURE MUST BE INCLUDED IN THE TREATY

The role of Philip Morris and BAT in cigarette smuggling is well documented but little attention has been paid to the industry's role in global tobacco leaf smuggling. In Africa, the influence of the international leaf buyers Alliance One and Universal extends to raw tobacco smuggling. Some estimates suggest that up to a third of Malawi's tobacco crop is traded illegally.

This highlights the need for the protocol on combating the illicit trade in tobacco to deal with all aspects of the industry from raw ingredients to the finished product, and the means of production.

Estimates of the total trade in smuggled raw tobacco in Malawi vary widely. The World Bank estimates that, in 2003, up to 10,000 tons (9 per cent of the crop) of Malawian tobacco was diverted across the borders of Zambia and Mozambique and then re-imported to Malawi as "Zambian" or "Mozambican" tobacco.



Yussuf Saloojee

The Nation, Malawi's largest newspaper, estimated that smugglers traded 50,000 tons of tobacco valued at US\$59 million across Malawi's borders in 2005, representing 34 per cent of the 145,000 tons of tobacco sold at auction in Malawi that year.

Investigations show that Universal and Alliance One, through their subsidiaries in Zambia and Mozambique, openly buy smuggled tobacco from Malawi at illegal markets in the border areas. The companies then transport the tobacco, under licence, back to Malawi for processing in factories there. By purchasing smuggled tobacco, the leaf companies access low-cost tobacco and enjoy the savings from avoiding taxes collected at auction by the Malawi government.

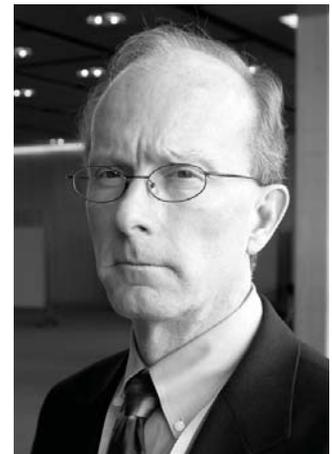
Farmers will accept lower prices at illegal markets than the price at the legal auction floors because they avoid deductions at auction that represent 20 per cent of the selling price. Such deductions include withholding tax, a cloth bag for wrapping bales charge, transportation costs to satellite depots and the auction floors, bank charges, charges from Auction Holdings Limited, the Tobacco Control Commission, the Tobacco Association of Malawi and the Agricultural Research and Extension Trust.

Tobacco leaf smuggling results not only in losses for grower countries but affects all countries. In order to produce cigarettes, an illegal manufacturer requires a supply of leaf, 'key inputs' and the machinery to manufacture. Licensing tobacco leaf buyers and machinery sales will limit the ability of illicit manufacturers to obtain critical inputs.

Illegal manufacturing has grown rapidly in recent years and become a major source of illicit tobacco products in the world today, threatening government revenue and public health. The industry estimates that, in 2000, about 150 billion counterfeit cigarettes were sold globally, or about 3 per cent of the total market.

Illegal manufacturing includes those products manufactured outside of

government control, without the payment of taxes, and counterfeit tobacco products, which are those products packaged in containers with a counterfeit trade mark affixed to the packaging.



John Colledge

National governments are the primary victims of illegal manufacturing, based on loss of tax revenue. In the case of counterfeit tobacco products, the trade mark holder is also a victim. Some nations have already recognised the need to regulate the trade in key inputs and manufacturing equipment. China has enacted legislation and Canada has proposed similar laws.

Given the scope of the illicit manufacturing problem, some controls are needed on raw leaf and processed bulk tobacco and on a limited number of key inputs such as cigarette tubes, cigarette paper, filter tow and key manufacturing equipment.

Yussuf Saloojee
National Council Against Smoking
South Africa

John Colledge III
Consultant
Customs & Trade and Anti-Money
Laundering, Sparks, Nevada, USA

SPOTLIGHT ON SMUGGLING: LEBANON

Lebanon's geographical location (bordered by Syria and Israel, and close to Cyprus) has made it a strategically important market for transnational tobacco companies (TTCs). In the research paper, *Smuggling as the "key to a combined market": British American Tobacco in Lebanon*, evidence from internal industry documents shows that smuggling has played an important role in the large-scale supply of foreign cigarette brands to Lebanon.

The Middle East region has been targeted by TTCs since the 1970s as a key emerging market because of its young and growing population. Inhabitants of Arab countries have grown in number from 127 million in 1970 to 335 million in 2007. Around 20 per cent of inhabitants are aged 15–24 years, a proportion predicted to rise as the overall population is projected to increase to 600 million by 2050. Between 1990 and 1997, tobacco consumption in the region grew by 24.3 per cent, making it "one of the few growing markets in the world for tobacco."

Cigarette smuggling in Lebanon has been a longstanding problem. An anti-smuggling squad within the Lebanese tobacco monopoly, the Regie, operated as early as the 1930s. It was from the early 1970s that smuggling grew to significant levels due, in large part, to weakened government control over customs and excise during the civil war, coinciding with the plummeting of domestic production and legal imports. Working through middlemen or "transit agents", TTCs enabled the supply of billions of sticks of cigarettes largely via Cyprus to Lebanon and beyond.

As contraband flooded the market, the Regie appealed to TTCs to stop supplying distributors known to engage in smuggling. Despite repeated requests, illegal cigarettes continued to flow into Lebanon and by 1983, "[l]egal imports account[ed] for only about a third of foreign cigarettes entering Lebanon." As well as supplying the Lebanese market, contraband was targeted at neighbouring countries such as Iraq, Jordan, Syria and Turkey.

While profiting significantly from this illicit trade, TTCs also sought to negotiate a legal presence in Lebanon in the form of a joint venture or even takeover of the Regie. Civil war made negotiations problematic but after the war ended in 1991 efforts were intensified amid expectations that the Regie would resume local production and legal imports. Discussion of the Regie's planned future status, as a monopoly or privatised company, recommenced within government. However, continued instability within the country and the region since the late 1990s has meant the issue has remained unresolved to the present day. In this context, BAT and other TTCs continued to rely on "dual [legal and illegal] distribution channels."

This research once again illustrates how the contraband trade has been integral to TTC strategies to expand

market access in emerging markets. However, while cigarette smuggling has been a global problem, Lebanon demonstrates the particular challenges faced by countries in situations of weak governance. The tobacco industry benefits from gaining access to closed or regulated markets, increasing revenues, and discouraging governments from raising tobacco taxes. Countries which face chronic political and economic instability are particularly vulnerable to such activities.

These findings support the need for concerted attention against cigarette smuggling in the Middle East through a dedicated protocol to the FCTC. The cross-border nature of the smuggling problem requires collective action across the region. The protocol itself should include tracking and tracing systems, obligations on transnational tobacco companies to control their supply chain, enforcement and prosecution mechanisms, anti-money laundering measures, record keeping of imports and exports and sharing of information between countries. Collective action is needed, both regionally and globally, to conclude a strong protocol to the FCTC to effectively tackle the global problem of tobacco smuggling as well as providing increased support to countries such as Lebanon in implementing its measures.

REFERENCE

Nakkash R, Lee K, (2008). *Smuggling as the "key to a combined market": British American Tobacco in Lebanon*. Tobacco Control. 17(5): 324-331. <http://tobaccocontrol.bmj.com/cgi/reprint/17/5/324>

IL FAUT INTERDIRE LA VENTE DES PRODUITS DU TABAC DUTYFREE

L'Alliance pour la Convention-Cadre (ACC) recommande que le protocole sur le commerce illicite des produits du tabac inclue une interdiction des ventes des produits du tabac en franchise de taxes ou à taxes réduites à l'attention des voyageurs internationaux, comme c'est le cas dans les magasins en « Duty-free ».

Cette mesure ne figure pas actuellement dans le texte du Président. L'OIN2 constitue une opportunité pour que les Parties progressent sur cette question.

Lors de l'OIN 1, en février 2008, quatre pays (le Nigéria, Palau, les Philippines et l'Arabie Saoudite) ont demandé qu'une interdiction des produits du tabac en franchises de taxe soit incluse dans le protocole afin de réduire efficacement la contrebande.

LES PRODUITS HORS TAXES FAVORISENT LA CONTREBANDE

Dans de nombreux pays, à travers le monde, une proportion importante des cigarettes qui étaient supposées être en vente dans les magasins « duty-free » finissent en réalité par être vendues dans des réseaux parallèles illicites.

Le Département fédéral américain a par exemple rendu compte en 2008 que les magasins en duty-free jouent un rôle majeur dans la contrebande de cigarettes en Bulgarie. Le Centre bulgare d'Etudes démocratiques a indiqué que « selon les experts, environ deux tiers des cigarettes en vente dans les duty-free seraient réexportées en Europe de l'Ouest, et seulement un tiers finit sur le marché bulgare ».

En mai 2008, à la suite de pressions diplomatiques de la part des Etats-Unis, le Parlement Bulgare a fermé les magasins en duty-free le long des frontières avec la Serbie, la Turquie et la Macédoine.

« L'une des sources du marché illicite des cigarettes en Roumanie est le système des duty-free », a déclaré Lulian Butnaru représentante des Douanes roumaines sur le site internet des Rapports sur le Crime Organisé et la Corruption.

La police des frontières de la Bulgarie, la Moldavie et de l'Ukraine admet que les magasins en duty-free sont une source importante de contrebande de cigarettes.

En ce qui concerne la Colombie, le jugement intervenu dans le cadre d'une procédure engagée devant la Cour Fédérale des

Etats-Unis en 2000 par les gouverneurs des Etats de Colombie à l'encontre de Philip Morris, stipule notamment : « les cigarettes vendues sous couvert de duty-free permettent en réalité d'approvisionner des personnes connues de Philip Morris, qui les revendent à des contrebandiers en Colombie ».

Les ventes hors taxes sont à l'origine de la contrebande dans de nombreux autres pays tels que l'Egypte, l'Inde, les Philippines, la Thaïlande et le Vietnam...

L'industrie du tabac est pleinement consciente du fait que les produits en duty free contribuent au commerce illicite (cf ci-dessous références). Les cigarettes destinées aux ventes hors taxes sont souvent détournées avant même de parvenir aux magasins duty-free.

DE PLUS EN PLUS DE PAYS INTERDISENT LA VENTE HORS TAXES DES PRODUITS DU TABAC

Singapour a interdit la vente et l'importation hors taxe des produits du tabac. Le Népal a interdit récemment les ventes de tabac hors taxe à l'aéroport. Le Sri Lanka et les Barbades ont également interdit l'importation des produits du tabac hors taxe. Le Canada impose des taxes fédérales sur la vente des produits du tabac dans ces magasins duty-free. La Bulgarie a également pris des mesures. Au sein de l'Union Européenne, les ventes en duty free sont interdites ce qui prouve que cette mesure est possible et applicable.

AUTRES AVANTAGES

Non seulement, les ventes hors taxes de tabac alimentent la contrebande mais en plus elles rendent ces produits plus accessibles et meilleur marché, ce qui augmente la consommation globale. La vente hors taxe des produits du tabac contribue également à l'acceptabilité sociale du tabagisme et établit une relation entre fumer et voyager, ce qui va tout à fait dans le sens de ce que souhaitent les cigaretteurs.

Et enfin, une interdiction de la vente taxée des produits du tabac rapporterait à l'Etat des recettes fiscales supplémentaires qui pourraient financer la mise en œuvre des nouvelles mesures destinées à prévenir la contrebande du tabac.

Interdire la vente hors taxe des produits du tabac représente une mesure gagnante.

Traduction et adaptation du texte : Ban on Duty-free tobacco sales needed, de Rob Cunningham

CITATIONS DES DOCUMENTS INTERNES DE L'INDUSTRIE DU TABAC

Thaïlande :

« L'approvisionnement est généralement bon à Bangkok, les fuites des stocks en duty-free sont importantes ». Source : n° Bates 500205893

Bangladesh :

« L'approvisionnement continuera à être un problème majeur au Bangladesh en 1994... SUTL fera de son mieux pour améliorer cette situation en développant des accès

via la Birmanie pour optimiser les fuites des magasins duty-free. »

Source : n° Bates 500282756

Israël – Népal :

« Nous avons une cargaison de cigarettes SE 555 embarquées pour des magasins en duty free en Israël et également pour le marché intérieur du Népal. Nous pensons qu'il s'agit de la même marque et que nous pouvons la comptabiliser deux fois, une fois en Israël et une fois au Népal.

Source : n° Bates : 500200164

UK DEATH TOLL FROM ILLICIT TOBACCO HIGHER THAN FROM ILLEGAL DRUGS



A new report published by Action on Smoking and Health, in the UK, and endorsed by over 100 organisations including local councils, health charities, medical organisations and children’s welfare groups, has called on the UK government to introduce tough new measures to tackle the illicit trade in tobacco.

Around 21 per cent of all tobacco smoked in the UK

is illicit, losing the government around £2.4 billion (US\$4.2 billion) in revenue each year. A recent article in the British Medical Journal estimated that illicit tobacco causes around 4,000 premature deaths a year, greater than the death toll from all illegal drugs put together.

Eliminating illicit tobacco would not only see government revenues rise significantly but the average price paid for tobacco would increase by 12 per cent, leading to a decline in the number of smokers by up to 8 per cent.

The illicit trade in tobacco is also a major cause of the growing increase in health inequalities between rich and poor in society. A recent survey carried out for Action on Smoking and Health in England found that poorer smokers are much more likely than richer smokers to buy illicit tobacco. One-in-four of the poorest smokers buy illicit tobacco compared to only one-in-eight of the richest smokers.

Younger smokers are also much more likely to buy illicit tobacco. Thirty per cent of 16-24 year olds buy illicit tobacco compared to only 21 per cent of those aged between 35 and 44 and 11 per cent of those over 65.

Illicit tobacco typically costs around half the price of tax-paid tobacco in the UK. This suppresses the real price of tobacco and makes smoking a more attractive option for the consumer.

UK Customs first introduced a strategy in 2000 to tackle the illicit trade in tobacco. Since then there has been significant success. Cigarette smuggling has been reduced from 20 per cent, and rising, in 2000, to currently around 13 per cent. However, there is still a major problem with handrolled tobacco which has an illicit market share above 50 per cent. One-in-four cigarettes smoked in the UK is handrolled. Taking manufactured and handrolled cigarettes together explains why the UK market share of smuggled

cigarettes remains over 20 per cent.

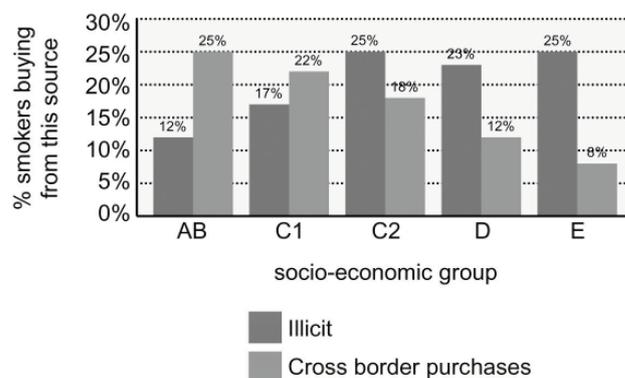
The UK government has committed itself to shortly publishing a new strategy on tackling tobacco smuggling. Civil society in the UK is urging the government to ensure this includes signing up to the legally enforceable EU Agreements with the tobacco industry - the UK being the only EU Member State not to have signed up - and supporting the development and ratification of a strong illicit trade protocol to the FCTC.

If the UK government is to tackle smuggling effectively it needs to implement a comprehensive strategy at local, regional, and national level and internationally too.

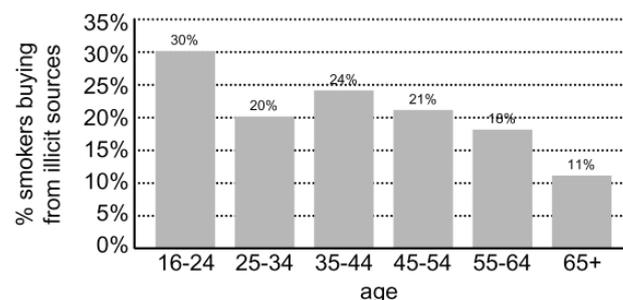
Deborah Arnott
Director, Action on Smoking and Health, UK

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Beyond Smoking Kills, Action on Smoking and Health. 7 October 2008. http://www.ash.org.uk/files/documents/ASH_691.pdf. Executive summary at: http://www.ash.org.uk/files/documents/ASH_692.pdf Press release at http://www.ash.org.uk/ash_eyhkq96u.htm



Sources of ‘cheap cigarettes’ by socio-economic group (Smoking Toolkit Study)



Smokers who buy illicit cigarettes by age group (Smoking Toolkit Study)



DIRTY ASHTRAY AWARD

To all Parties which proposed the need for "flexibility": a euphemism for weakening the protocol.



ORCHID AWARD

To China for recognising the need to include tobacco leaf and tobacco manufacturing equipment in order to ensure a strong protocol.



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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WHAT ABOUT THE GLOBAL FINANCIAL CRISIS?

The Party for the Democratic Republic of the Congo has asked, 'What are the implications for the protocol of the current financial crisis?' A good question. From an economist's point of view there are two main aspects to consider; a likely fall in demand if there is a recession, and a change in both government and popular attitudes to regulation. This crisis has led to renewed acceptance of the need for greater regulation.

"The world will need to construct a new global economic order for the 21st century, and that will include a new global regulating agency. Unilateralism can't work in a world of economic interdependence."

Joseph Stiglitz, Nobel Laureate and ex-chief economist of the World Bank

GAINS IN GOVERNMENT TAX REVENUE

Demand for tobacco will fall - people will smoke less - when the tax has to be paid on the 600 billion cigarettes currently sold illicitly each year, but governments will gain revenue of some extra US\$40 - 50 billion annually worldwide. Many of our governments will receive millions of dollars in extra revenue each year. In Africa, governments are often highly dependent on customs duties and could receive considerable additions to their budgets if the new system works effectively. Finances will be tight in most countries for some time to come, following the massive loans and investments they have made to recapitalise banks to keep them viable. Governments will want to raise tax levels as little as possible and so will prize the extra revenue accruing from the increase in legitimate tobacco sales.

This revenue is likely to considerably exceed the costs of implementation of the protocol, although costs and benefits will not be equally spread across countries. Those with high consumption of smuggled or counterfeit tobacco and relatively

high tobacco taxes will stand to gain the most. Those with low illicit trade and low tax rates will obviously have less to gain. Most costs of regulation should fall to the tobacco companies. However, low income countries, facing problems with shortage of financial and technical capacity, may well need initial support. The substantial global benefits should be able to sustain and justify such support.

REDUCTION IN SMOKING AND DEATHS FROM SMOKING

Despite the increase in tobacco revenues, the overall demand will fall as cheap illicit tobacco products are no longer available and only fully-taxed products are in the market. This fall will impact particularly on younger and poorer smokers, reducing smoking, deaths and health inequalities. It is estimated that for the UK alone some 4,000 to 6,500 deaths would be avoided each year.¹

...AND OTHER BENEFITS

A successful global protocol against smuggling could have extraordinary side effects. It could reduce global criminality, improve law and order and reduce funds for terrorism. It could also lead the way to solving other perennial problems including arms smuggling.

Let it be!

Professor Joy Townsend
London School of Hygiene

REFERENCE

¹ West, R., Townsend, J., Joossens, L., Arnott, D., Lewis, S. *Why combating tobacco smuggling is a priority*, 9 October 2008. BMJ 2008;337:a1933