



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

BULLETIN

INSIDE THIS ISSUE

Track and trace overview	2
Protocol triple bonus	3
Paraguay y Brasil: comercio ilegal	4
Paraguay-Brazil illicit trade	5
Tobacco "racketeers"	6
Negotiometer	6

DEATH CLOCK

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

43,549,040

PEOPLE HAVE DIED FROM
TOBACCO-RELATED DISEASES
(AS OF 9AM ON 2 JULY 2009)

TREAD CAREFULLY, COMMITTEE B

Since its first session, the INB has been grappling with the difficult question of how best to deal with criminal justice matters. This has been a thorny area throughout the negotiations. The essential issue is this: illicit tobacco trade needs to be treated by FCTC Parties as the serious matter that it is, but in a context where there is an existing set of international institutions and arrangements to deal with serious transnational crime. The issue is coming to a head in Committee B this week.

What FCA has always wanted is a strong protocol that will be ratified and effectively implemented by as many Parties as possible. As we are all learning with the FCTC itself, implementation is rarely easy. Effective implementation requires both commitment by Parties and an administering institution that can help make the agreement work in practice.

The crux of the issue is this. The United Nations Office on Drugs and Crime (UNODC) has the expertise and capacity to deal with criminal justice issues. The FCTC Secretariat does not. Much as we may like the protocol to be a single comprehensive instrument to tackle illicit tobacco trade, this is unrealistic. We need to find a way to make an effective link to the existing bodies that have the critical expertise.

On criminal justice issues, this means linking with UNODC, and not trying to turn the FCTC Secretariat or WHO into something they cannot be. For this reason, FCA supports the deletion of some of the international criminal co-operation elements of Part V of the Chair's text – Mutual legal assistance

(Article 30), Measures to ensure prosecution or extradition (Article 31), Prosecution of alleged offenders (Article 32) and Extradition of alleged offenders (Article 33), and the related provisions on Protection of Sovereignty (Article 25) and Jurisdiction (Article 26). FCA does not believe that the deletion of these Articles would weaken the protocol. On the contrary, FCA believes that this would give us a protocol more likely both to be effectively implemented and to ensure that the best use is made of existing capacity and expertise. In other words, to maximise our effectiveness in combating illicit tobacco trade.

FCA recognises that there are some Parties to the FCTC that are not Parties to the United Nations Convention against Transnational Crime (UNTOC). But there is no reason to expect that these States would ratify a protocol that included similar provisions on international crime co-operation. The same capacity and political constraints that keep States from ratifying UNTOC may well apply to such an illicit tobacco trade protocol. FCA does not believe it would be realistic to try to turn the FCTC Secretariat or WHO into something they are not in order to provide international criminal co-operation procedures for the small (and theoretical) group of States that may end up Parties to the protocol and remain non-Parties to UNTOC.

In Committee B, proposals to delete text are not always attempts to weaken the protocol, but can be a constructive way to find a protocol that is workable, effective and integrated with existing international arrangements.

TRACK AND TRACE

QUICK REFERENCE OVERVIEW

This overview shows the basic features of various track and trace systems discussed at INB-3. FCA does not endorse one system over another, nor any manufacturer or provider of any system.

	Brazil	European Commission/ PMI legal agreement	Turkey	California
Visible	X	X	X	X
Scanner Readable	X	X	X	X
Package Markings	X	1	X	X
Carton Markings				
Master Case Markings		X		
Tax Verification	X		X	X
Industry-administered		X		
Government-administered	X		X	X
Encrypted Data	X		X	X
Secure Ink	X		X	X
Industry-funded	X	X	X	
Government-funded				X
Reports	2	3	4	5

Notes:

- 1 Future project (Per EC/PMI legal agreement)
- 2 Government proprietary
- 3 Unknown audit capabilities
- 4 Refund, Stamp, Investigations, Anomaly Reports (California Board of Equalization)
- 5 Government proprietary

All systems have visible marks and can be read with various types of scanners.

The systems in Brazil, Turkey and California provide a visible verification of jurisdiction tax payments.

The systems in Brazil, Turkey and California utilise anti-counterfeit security features.

The tracking and tracing data in the Brazil, Turkey and California stamps is encrypted.

The EC system provides tracking and tracing at the master case level; the other systems at package level.

John Colledge
Retired Supervisory Criminal Investigator, currently Consultant on Customs & Trade
and Anti-Money Laundering

TRIPLE BONUS FROM ILLICIT TRADE PROTOCOL



New research shows that a widely adopted protocol could increase tobacco tax revenue by over £1.3 billion a year in the UK alone. (US\$2 billion, Spring 2009 conversion rate).

A cost-benefit analysis by a former senior economic adviser to the UK government finds that the adoption of an illicit trade protocol could have enormous economic and health benefits. His report shows that, in the UK, a widely adopted protocol could:

- reduce smuggling by up to 80 per cent
- save 760 lives a year
- be worth £5.7 billion (US\$8.9 billion) to the UK in net present values.

The study analyses in detail the costs and benefits of implementing a strong and effective protocol on the illicit trade in tobacco products. It concludes that the benefits of adopting the protocol would far outweigh the costs of implementation.

The report focuses on the UK but also includes a methodology for making similar cost-benefit analyses in other countries, including a template which can be used to identify the key inputs.

The author, Paul Johnson, was Chief Micro-economist, and a Director of HM Treasury and deputy head of the Government Economic Service in the UK until summer 2007. He prepared the report as an independent economist commissioned by ASH, and funded by Cancer Research UK and the British Heart Foundation.

Tobacco smuggling is a health as well as an economic problem because illicit tobacco drives down prices. This leads to an increase in consumption, which in turn leads to an increase in smoking-related ill-health and premature death. A widely adopted protocol could also have the effect of increasing government tobacco tax revenues by up to £1.3 billion (US\$2 billion) a year.

Deborah Arnott, Chief Executive of the health campaigning charity ASH, and European Board member for FCA, said at the launch of the report:

"Tobacco smuggling does not just starve the government's coffers of much needed tax revenues but, more importantly, imposes enormous economic and health costs. This study shows that international action to tackle smuggling could result in substantial economic benefits as well as reducing the toll of death and disease caused by smoking. We urge governments to take into account all these potential benefits when making decisions about the relatively modest costs of tackling smuggling through the protocol."

Because tobacco smuggling is a global problem it requires a global response.

Assuming that most countries that are Parties to the

Framework Convention on Tobacco Control ratify the new protocol, benefits due to reduced healthcare costs, output gains due to reduced mortality and reduced absenteeism at work could be worth £5.7 billion (US\$8.9 billion) or more to the UK, in net present values. The annual costs to the UK of implementing the protocol are estimated to range between £9 million and £53 million (US\$14-83 million).

Figures for other countries will differ. In particular, costs are largely due to employment costs, which are high in the UK, and so are likely to be significantly lower in many other countries. Even using the most pessimistic assumptions, benefits are still likely to outweigh costs.

In order to compare costs and benefits which accrue at different times, the stream of costs and benefits are converted into Net Present Values over a 50-year period. Costs and benefits which

accrue in the future are discounted back to the present and aggregated. The discount rate used is 3.5 per cent, as recommended by the UK Treasury. The calculation of benefits is conservative as in this cost-benefit analysis, unlike many such analyses carried out for the UK government for policy evaluations, a monetary value has not been placed on human lives saved. Overall benefits would be significantly higher if this had been included.



Measuring the impact of the protocol

According to the HM Revenue & Customs, Departmental Report, July 2008, the UK is currently losing an estimated £2 billion (US\$3 billion) a year in revenue due to tobacco smuggling. Taking into account reductions in smoking prevalence due to increases in prices, the central estimate (assuming worldwide uptake of the protocol and a reduction in illicit trade in tobacco of 80 per cent) would be an increase in tax revenues of £1.3 billion a year (US\$2 billion), worth up to £32 billion (US\$50 billion) in net present values over 50 years.

REFERENCE

Johnson, P. *Cost benefit analysis of the FCTC protocol on Illicit trade in tobacco products* ASH, London, June 2009

A hard copy is available from FCA's stand at the INB or can be downloaded from the ASH website at www.ash.org.uk/itp/cba.

Summary and conclusions: www.ash.org.uk/itp/cba/conclusions

COMERCIO ILEGAL DE CIGARRILLOS ENTRE PARAGUAY Y BRASIL

Paraguay produce una oferta de cigarrillos muy superior a su consumo interno y la mayoría de esa oferta se exporta de forma ilegal a varios países del mundo. De esa exportación, aproximadamente 20.000 millones de cigarrillos llegan anualmente a Brasil, lo que equivale aproximadamente al 20% del total de la producción legal de este país. Esta estimación puede considerarse conservadora, pero representa un volumen anual de más de 750 millones de dólares, con un margen de rentabilidad de unos 600 millones de dólares, dado que el costo en puerta de fábrica de esa cantidad de cigarrillos exportada a Brasil oscila entre 150 y 175 millones de dólares en Paraguay. Este alto margen de rentabilidad mueve toda la cadena logística que lleva el producto por carretera desde la frontera con Paraguay hasta las grandes ciudades y el noroeste del país.

Brasil ha hecho un enorme esfuerzo para combatir esta situación, reforzando los efectivos policiales y aduaneros en las fronteras, con un aumento gradual del número de los agentes destinados a la lucha contra el comercio ilícito. Además, las autoridades tributarias brasileñas implementaron un sistema de control y seguimiento de la producción de cigarrillos que es controlado por el gobierno, con el objetivo de eliminar la proporción de la producción doméstica sin impuestos. Todas estas medidas son sin duda positivas, pero no parecen detener la producción paraguaya que entra en el territorio brasileño sin pagar los debidos impuestos domésticos.¹

Para eliminar la entrada ilegal de cigarrillos paraguayos a Brasil (así como del resto de sus mercados exteriores) es necesario formalizar las fábricas tabacaleras paraguayas y controlar su producción, eliminando las cantidades producidas fuera del control oficial. Para entrar en el mercado brasileño, toda importación de cigarrillos tiene exigencias especiales y el importador debe tener autorización especial de las autoridades aduaneras. Por lo tanto, existen diversas dificultades y problemas de coordinación, tanto dentro de Paraguay como entre Paraguay y Brasil,

para avanzar en la legalización de la producción y en la entrada legal a Brasil.

En Paraguay, las nuevas autoridades tienen al menos una seria dificultad y un problema de incentivo. La dificultad es obvia: hacen frente a la resistencia de los productores de cigarrillos, que legalizan sus operaciones sólo parcialmente y que además cuentan con fuerte poder económico y político. El sistema de seguimiento y localización eliminaría la cobertura legal y la rentabilidad de sus operaciones actuales.² Objetivamente, el gobierno no tiene fuerza política para hacer frente a esta dificultad, ya que no tiene mayoría en el Congreso y los intereses de las fábricas tabacaleras tienen representación y voz en el legislativo.

Una forma de vencer esta dificultad es garantizar a los productores el acceso a los mercados exteriores, pero las nuevas autoridades paraguayas no disponen de esa herramienta y los mercados importadores no tienen elementos para confiar en las nuevas autoridades.

El problema de incentivo de las autoridades tributarias paraguayas también es claro y precisa ser entendido por los interesados en el tema. La producción de cigarrillos paraguaya se destina básicamente a la exportación, por lo que las autoridades no pueden recaudar impuestos indirectos en esa operación; tampoco serían recaudados si se implementase el sistema de seguimiento y localización. Consecuentemente, las autoridades tributarias paraguayas asumen el costo de hacer frente a las dificultades, que no son pocas, y no recaudarían los impuestos indirectos para el tesoro del país.³ Claramente, quien obtiene los beneficios con el sistema de seguimiento y localización en Paraguay son los países consumidores o importadores del producto paraguayo. ¿Por qué el gobierno y las autoridades tributarias paraguayas harían solos todo el esfuerzo? Existe el incentivo de una mayor transparencia internacional y de mejorar la reputación del país. Pero claramente los ganadores económicos de una mayor reputación paraguaya son los países importadores, por lo que

deberían ser ellos quienes identificasen las razones para apoyar el esfuerzo de las autoridades tributarias de Paraguay en la implementación de un sistema de seguimiento y localización.

¿Cuáles son los problemas entre Paraguay y Brasil para resolver esta cuestión? Entre las nuevas autoridades paraguayas y las autoridades brasileñas hay un problema de coordinación. Esto se debe a la necesidad de resolver casi simultáneamente la formalización de las empresas en Paraguay y la implementación del sistema de seguimiento y localización (objetivo de Brasil) y la autorización para importar legalmente a Brasil (objetivo de las autoridades paraguayas para vencer la resistencia interna).

La resolución de este problema de coordinación no es fácil porque hay que vencer el desconocimiento mutuo y la falta de confianza entre las autoridades de ambos países. Además, las autoridades brasileñas parecen no tener claras las ventajas en términos de ganancias fiscales y de salud pública que obtendrían por el control de este comercio ilícito.

Las autoridades paraguayas han dado señales de querer moverse hacia la formalización de las empresas tabacaleras y la implementación del sistema de seguimiento y localización. Pero han sido señales muy tímidas, debido a las dificultades internas a las que se enfrentan. Las autoridades brasileñas no conocen las verdaderas intenciones de las autoridades vecinas y no tienen muchas razones para confiar en las señales emitidas hasta la fecha por Paraguay, por la debilidad de las mismas y por la experiencia del pasado. Los temores paraguayos en relación a Brasil pueden explicarse por la existencia de un cierto proteccionismo de su vecino y por la dificultad que las autoridades brasileñas tendrán para enfrentarse a las resistencias de las empresas tabacaleras nacionales.

¿Cómo avanzar? Claramente hay que solucionar un problema de conocimiento mutuo de las autoridades, ayudar a vencer las dificultades internas en ambos

países y avanzar gradual y simultáneamente en los objetivos de ambas autoridades. Creemos que hay espacio para un facilitador, gubernamental o no gubernamental, que colabore para el conocimiento mutuo de las autoridades de los dos países y que ayude a vencer las dificultades internas, especialmente en Paraguay, que es el

país con instituciones fiscales más débiles. Estos fueron los dos objetivos de la acción de Alianza de Control de Tabaquismo (ACT) de Brasil y del Centro Investigación de la Epidemia del Tabaquismo (CIET) de Uruguay, entre julio del año pasado y mayo de este año. Los trabajos culminaron con la realización de seminarios en Paraguay y

de una reunión técnica en Sao Paulo con la presencia de autoridades de ambos países sobre el protocolo de comercio ilícito, el sistema de seguimiento y localización y las experiencias internacionales de lucha contra el contrabando.⁴

*Roberto Iglesias
Alianza de control de tabaquismo, Brasil*

Notas:

¹ La producción paraguaya accede a Brasil utilizando la cadena logística creada en los años noventa, cuando las empresas de cigarrillos legales brasileñas exportaban a Paraguay 10 veces la capacidad de consumo de Paraguay.

² La cobertura legal se obtiene mediante el pago de impuestos sobre una pequeña parte de la producción. La mayoría de la producción de las fábricas no paga impuestos nacionales y termina siendo enviada por distribuidores a Brasil sin pagar tampoco los impuestos brasileños, por lo que tiene un alto margen de rentabilidad.

³ Hay ganancias de impuestos directos y de otras tasas, como resultado de la formalización de empresas.

⁴ Comentaremos esta experiencia de acercamiento a las nuevas autoridades paraguayas en un próximo artículo.

PARAGUAY-BRAZIL ILLICIT CIGARETTE TRADE

Cigarette manufacturers in Paraguay turn out far more cigarettes than the country's smokers can consume. The majority of production is exported illegally to various countries around the world. Paraguay exports approximately 20 billion cigarettes a year to Brazil, equivalent to 20 per cent of Brazil's own legal manufacture. This is likely to be a conservative estimate. The annual turnover exceeds US\$750 million and yields a profit of around US\$600 million.

Brazil has made substantial efforts to combat this illicit trade by reinforcing both police and customs intelligence at the borders. Brazilian tax authorities have also implemented a government-controlled tracking and tracing system for cigarette manufacturing, aiming at eliminating the share of domestic manufacturing that evades taxes. All of these measures are undoubtedly positive, but do not appear to affect the flow of Paraguayan manufactured cigarettes that enter Brazil without paying domestic taxes.

Eliminating the illegal flow of Paraguayan cigarettes into Brazil, and into all other external markets, demands legalising Paraguay's cigarette factories and controlling their production, as well as eliminating cigarettes that are manufactured outside the control of the authorities. In Brazil, all cigarette imports have to meet the additional requirement of having a special customs authorisation. There are barriers and co-ordination problems in Paraguay, and between Paraguay and Brazil, in making progress in legalising cigarette manufacturing in Paraguay and legally exporting to Brazil.

The new Paraguayan government is having to confront the resistance of cigarette manufactures who are only partially legalising their operations, and who wield significant political and economic power. A tracking and tracing system would eliminate the current benefit enjoyed by manufacturers who, at best, pay only minimal tax on their production. The system would thus negatively affect the future profitability of their operations. The government, however, does not have sufficient political weight to confront the problem as it lacks a majority in Congress where the cigarette manufacturers' lobby has representation and voice.

There is also an incentive problem for Paraguayan tax authorities. Cigarette manufacturing in Paraguay is chiefly aimed at export, and as such goes untaxed in Paraguay. The

tax revenue, on imported cigarettes, would instead go into Brazilian government coffers. Clearly, those who would profit from tracking and tracing in Paraguay are the cigarette importing countries.

Why, then, should Paraguay's tax authorities take action? There is the incentive of improving the country's international reputation and transparency. But other potential economic winners of enhancing Paraguay's reputation need to identify reasons to support the efforts of the country's tax authorities to set up the tracking and tracing system.

For Paraguay and Brazil to move forward calls for simultaneously resolving problems of co-ordination between the countries. They arise from Brazil's objective of seeing Paraguay legalise its cigarette factories and establishing a tracking and tracing system before Brazil will open discussion on legal imports. Paraguay's objective is to discuss authorisation for legal cigarette imports into Brazil at the same time that it implements a tracking and tracing system. In this way, the Paraguayan government aims to overcome internal opposition.

The solution to this is not easy given the mutual lack of understanding and mistrust between the authorities of the two countries. In addition, Brazilian authorities seem unable to clearly appreciate the advantages regarding tax revenue and for the country's health system that they will gain by bringing the illicit trade under control.

How can progress can be achieved? Clearly, these problems and the internal difficulties facing both countries need to be resolved. We believe that there is space for some kind of facilitator, governmental or otherwise, to help in advancing mutual understanding and arriving at agreement.

Over the past year, these have been the objectives of ACT, in Brazil, and CIET, in Uruguay. Our work will culminate in us holding seminars in Paraguay and a technical meeting in São Paulo with the authorities of both countries on the illegal trade protocol, on the track and tracing system and sharing international experience in the fight against smuggling.

*Roberto Iglesias
Alliance for Tobacco Control, Brazil*



DIRTY ASHTRAY AWARD

To Japan for consistently trying to weaken the protocol, including not supporting a ban on retail sales over the internet.



ORCHID AWARD

To SEARO for a co-ordinated and positive approach which is helping progress the negotiations in Committee A.



FRAMEWORK CONVENTION
ALLIANCE

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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KEEP THE “RACKETEERS” OUT OF THE PROTOCOL

On 22 May 2009, the United States Court of Appeals unanimously upheld the determination of Federal District Judge Gladys Kessler that major players in the tobacco industry, including Philip Morris and BAT, had violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by maintaining “an illegal racketeering enterprise” and that “each Defendant participated in the conduct, management, and operation of the enterprise”. The court found that “Defendants engaged in a scheme to defraud smokers and potential smokers by (1) falsely denying the adverse health effects of smoking, (2) falsely denying that nicotine and smoking are addictive, (3) falsely denying that they manipulated cigarette design and composition so as to assure nicotine delivery levels that create and sustain addiction, (4) falsely representing that light and low tar cigarettes deliver less nicotine and tar and therefore present fewer health risks than full flavor cigarettes, (5) falsely denying that they market to youth, (6) falsely denying that secondhand smoke causes disease, and (7) suppressing documents, information, and research to prevent the public from learning the truth about these subjects and to avoid or limit liability in litigation”.

Furthermore, though the evidence to support the 2006 racketeering verdict was based on decades of prior misbehaviour, the court concluded that the defendants “were reasonably likely to commit future RICO violations unless enjoined (*Editor: prevented by court order*) because they continued to make false and misleading statements at the time of trial, their businesses presented continuing opportunities to commit RICO violations, and their corporate leadership continued to consist of veteran employees with longstanding ties to the companies”.

So, let us consider what is going on here. Major tobacco companies, including two whose representatives have been swarming around this INB, have been found to be “racketeers”, and this finding has been upheld following extensive briefing and argument by a unanimous appellate court. Yet proposals have been put on the table to allow these racketeers to be the repositories for critical data and to require WHO to negotiate agreement with them. When the fox is put in charge of the chicken coop, we do not have to speculate about how the chickens will fare.

*Richard Daynard
Chair, Tobacco Products Liability Project
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NEGOTIOMETER

A check on progress as the talks enter their fifth day.

First, the proportion of the Chair’s text on which there have been concrete discussions and alternative proposals have been tabled:

44% discussed

Below, the elapsed time as a proportion of the total time available:

54% elapsed

At Sunday’s opening of the negotiations the required negotiating rate (RNR) for delegates to consider the entire Chair’s text in the scheduled time was 294.6 words per hour.

Delegates begin this morning having so far achieved an average negotiating rate (ANR) of 226.7 words per hour, a significant improvement on yesterday morning when the ANR stood at 153.1.

The RNR for the remainder of INB-3, however, now stands at 338.5 words per hour.