



FRAMEWORK CONVENTION  
**ALLIANCE**  
BUILDING SUPPORT FOR TOBACCO CONTROL

# BULLETIN

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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

# 43,578,629

PEOPLE HAVE DIED FROM  
TOBACCO-RELATED DISEASES  
(AS OF 9AM ON 4 JULY 2009)

## WORK IT THROUGH

This has been an intense and tiring week for participants at INB-3. In the last day and a half of negotiations, FCA would ask Parties to be realistic about what we have achieved and about how much further we have to go. That requires serious thought about what we should leave till INB-4.

What we have achieved: Parties are much clearer on their respective positions and know a good deal more about why other Parties are taking those positions. We have seen lots of informal side meetings and after-hours horse-trading, with Parties working to achieve coherent regional positions and trying to convince other regions to support them. This may seem messy and unpredictable, but it is important. In short, real negotiations are engaged.

What we are unlikely to achieve, to state the blindingly obvious, is anything close to final text. It is potentially dangerous to decide quickly on compromise language on most of the controversial issues that we face. For example, on tracking and tracing, despite a great deal of discussion, it seems that there is still serious disagreement on the outlines of a global system; on the issue of databases; on the role and nature of any central clearing house; and on whether unique markings should be required down to pack level. On licensing, due diligence, security and preventive measures, duty free and the criminal justice provisions in Parts IV and V, we also seem to have honest

disagreements, not merely differences in vocabulary or perspectives than can be bridged through an hour or two of extra talking.

As we start thinking about packing up and going home to our countries, there may be a tendency to reach quick compromises just to prove to ourselves that we are making progress. Where people really have thought it through and found something they can agree on, this is fine. But badly worded, unworkable compromises would represent a serious setback and not progress. It would be more helpful, on controversial items, to leave INB-3 with a few clearly worded alternative options to allow for serious and effective intersessional work.

**“ON CONTROVERSIAL ITEMS, LET US LEAVE INB-3 WITH A FEW CLEARLY WORDED ALTERNATIVE OPTIONS...”**

On the issue of intersessional work, everybody needs to take it seriously and to work hard and constructively. That of course applies not just to the Secretariat, or to experts hired by the Secretariat, but also to the Parties and indeed to the NGOs. The Chair yesterday proposed intersessional drafting groups: we believe these need to start by September. We also need another round of regional meetings ahead of the next INB. All this will cost money and take time. It is therefore essential that any shortfall this work creates in the budget of the Secretariat is made up by increased contributions from the Parties.

## ADDRESSING COMMUNICATION AND TRAINING

Tobacco majors are running their own public relations activities about illicit tobacco to fill voids in communication and training concerning customs officers and retailers. The protocol therefore needs to contain elements that provide for proper and independent training, in accordance with Articles 5.3 and 12 of the Convention.

In a significant number of countries, the tobacco industry is training customs officers and promoting its own tracking and tracing systems to government agencies. PMI reported meetings with 2,800 government agencies and 8,000 government employees during the past year, and continues its activities in parallel with the INB negotiations. BAT claims to have signed Memoranda of Understanding (MoU) and industry agreements with customs authorities in some 35 countries.

Awareness-raising communication activities are the right and obligation of Parties under Article 12 of the Convention, and should be protected

Number of countries in which BAT companies reported undertaking the following activities during 2008:

- dialogue with government on ways to prevent illicit trade: 94
- providing information to the authorities to combat illicit trade: 91
- monitoring seizures and the destruction of illicit stock: 72
- internal communications to raise awareness of the problem: 82
- external communications to raise awareness of the problem: 68
- providing training for authorities: 68
- involvement in industry and/or government task forces: 55

against the vested interests of the tobacco industry. Retailer information programmes, such as BAT's "Consumer First", in Germany, frame the discussion among retailers and consumers mainly by using them as promoters of tobacco industry positions on illicit trade issues, especially on counterfeit cigarettes. They often use misleading data and even

provide talking points for customer interaction.

BAT Nigeria runs several initiatives against illicit trade involving wholesalers and retailers: rewarding 300 wholesalers for stocking only genuine products; promoting partnerships with traders dealing only in genuine stock; plus pack modifications to make fakes easier to spot.

It seems governments are currently sharing with Big Tobacco their sovereign right to train and educate their customs officers and retailers. The protocol should include binding provisions that address the need for independent education and training on illicit trade for customs officers and retailers and protect Parties from undue interference.

*Susan Cavanagh*  
FCA

## VIETNAM NEEDS AN EFFECTIVE INTERNATIONAL TRACKING AND TRACING SYSTEM

From 8 July 2009, dealers in illegally imported tobacco products in Vietnam could be subject to criminal investigation, according to the Vietnamese Prime Minister's Decree 43/2009/ND-CP. Implementation of the ban will pose a tremendous challenge for the authorities, however, considering how widespread are the transport and trading of smuggled tobacco products.

Vietnam shares long borders with China, Cambodia and Lao PDR. Cross-border smuggling of cigarettes and other goods by land has been escalating, as has the use of ships and other means of transport. Between January 2007 and October 2008, Vietnamese authorities made 15,455 seizures of more than 13.2 million packs of smuggled and counterfeit cigarettes. This is only a small portion of the smuggled cigarettes consumed in the domestic market.

Vietnam has already developed and implemented its own tracking system of stamps and barcodes. But smugglers have been able to produce counterfeit versions. The Vietnam Tobacco Association estimates that around 630 million packs of cigarettes were illegally imported in both 2007 and 2008,

accounting for 15-20 per cent of the domestic market. This meant a US\$200 million drain on foreign currency and losses in tax revenue of US\$140-167 million per year.

It is important that Vietnamese authorities continue apprehending smugglers within its borders, though it is difficult to adequately address the problem without tackling the source of the smuggled goods. The authorities need to know the origin and pathways of smuggled cigarettes in order to effectively plug the leaks rather than simply mop the floor.

What is required is an effective international tracking and tracing system, coupled with strong collaboration between authorities in suspected source countries.

In addition, and as recommended in Article 11 of the FCTC, implementation of pictorial health warnings, specific to Vietnam, on packs of locally consumed cigarettes would be an additional tool for identifying cigarettes smuggled into the country.

*Dr. Pham Thi Hoang Anh*  
Country director, Healthbridge (Vietnam)

# INDUSTRY WRONG ABOUT LINK BETWEEN HIGHER TAXES AND ILLICIT TRADE



A paper by South African economist Evan Blecher, now with the American Cancer Society, shows that by 2007, illicit trade accounted for up to seven per cent of the total market in South Africa. However, the evidence shows that tobacco control policy has been successful and only partially undermined by illicit trade; consumption of tobacco products has continued declining while tax revenue has risen, thanks to sharply higher excise taxes.

Since the early 1990s, South Africa has introduced significant tobacco control legislation. In 1993, smoking was restricted on public transport, warning labels were introduced on packaging and advertising and sales restricted to people over 16 years old. In 1999, smoking was banned in most public places, advertising and sponsorship and the distribution of free product was ended. Since 1991, there have also been significant increases in excise taxes which have led to a large increase in the retail price of cigarettes.

The tobacco industry has long argued that high taxes are responsible for the growth in illicitly traded cigarettes because higher prices encourage cross-border smuggling, tax evasion on domestic production and brand piracy. The Tobacco Institute of South Africa, which represents most tobacco growers and cigarette manufacturers, claims the illicit market amounts to 20 per cent of the total market. Yet no research has been published to substantiate this claim.

Evan Blecher estimated the total consumption of cigarettes in the country from national survey data on smoking prevalence and daily cigarette smoking rates. He then adjusted this data for the known 'legal' market to estimate the unknown 'illicit' market, a methodology similar to that used to measure indirect tax losses in the United Kingdom. His conclusion is that the total size of the illicit market – up to seven per cent in

2007 – is much smaller than the tobacco industry has been claiming.

He quotes data showing that legal cigarette consumption declined consistently until the early 2000s, attributed to higher excise taxes on cigarettes, after which consumption stabilised at about 24 billion sticks a year. Smoking prevalence also declined consistently until 2002 after which it stabilised at about 24 per cent. The stabilisation in prevalence and consumption is attributed to the fact that tobacco excise taxes did not rise as sharply as in previous years.

Consumption taxes on cigarettes in South Africa comprise two separate taxes, a specific excise tax levied per packet of cigarettes as well as Value Added Tax (VAT) levied at a flat rate of 14 per cent. Even while losses in excise taxation grew significantly as illicit trade grew, so did total excise tax collections. Between 1997 and 2007, total excise tax collections rose by over 123 per cent in real terms, dwarfing any loss through illicit trade.

Blecher concludes that as taxes and prices have risen total consumption has fallen. A small number of consumers have substituted their legal consumption with illicit consumption. But predictions that higher taxes would simply drive the industry underground have not come true. The total market has declined in size by up to 20 per cent between 1997 and 2007, in spite of increases in illicit trade.

It is likely that there are other reasons, in addition to higher excise taxes, which have encouraged the growth in illicit trade in South Africa. Illegal traders in South Africa specialise in trade routes rather than commodities and a route can host a wide range of commodities over time, and several commodities at the same time. For instance, routes between South Africa and China include illicit trade in abalone, clothes, electronics, drugs, guns, human beings and diamonds, in addition to cigarettes.

The illicit trade in a number of commodities has been able to grow in South Africa as a result of large and

highly effective organised crime syndicates. This has been compounded by weak border controls and corruption. This conclusion supports the findings of other studies, including a February 2009 report by the influential South African Institute of Strategic Studies, which stated that, *"cigarette smuggling continues to be a problem in the region. South Africa is a major market, as has been observed by the tobacco industry. Routes lead into the country through Botswana, Namibia and Swaziland. From the various interceptions by customs authorities, the cigarettes appear to originate from China and Zimbabwe. For various reasons, detection of cigarette smuggling tends to be low, and this activity is set to continue in 2009"*.

Yet the illicit trade in cigarettes has declined since peaking at nearly 10 per cent of the total market in 2000. This may be a function of the spectacular decline in tobacco production in Zimbabwe where production levels have fallen by over 70 per cent since 2000.

In November 2006, South African Revenue Services (SARS) closed the operations of Mastermind Tobacco Company in a R57 million (US\$7.2 million) fraud case. SARS had earlier charged employees and directors of the company with tax evasion and cigarette smuggling. This highlights that industry is not the innocent victim of smugglers but an active participant in illicit trade.

Numerous documents available on the internet also reveal BAT's involvement with smuggling.

Blecher concludes that the strategy of increased excise taxes to reduce cigarette consumption and increase government revenue has worked with dramatic effect, even in the face of the growth in illicit trade. The illicit trade in cigarettes must be seen in the context of the growth in organised crime and cannot be solely attributed to high excise taxes.

## REFERENCE

Blecher, E., *A Mountain or a Molehill: Is the Illicit Trade in Cigarettes Undermining Tobacco Control Policy in South Africa?*, American Cancer Society. [evan.blecher@cancer.org](mailto:evan.blecher@cancer.org)

## EL PROTOCOLO DEBE INCLUIR LA PROHIBICIÓN DE LAS VENTAS DE *DUTY FREE*

La disponibilidad de productos de tabaco de *duty free* contribuye al comercio ilícito, tal y como lo ha confirmado el Documento de Expertos en la materia producido para el INB-3, así como los documentos internos de la industria tabacalera y su admisión en público y por la experiencia de primera mano en muchos países; debido a esta experiencia, muchas Partes quieren que el protocolo incluya la prohibición de las ventas de *duty free*.

Poco antes del INB-3, BAT admitió públicamente que hay un problema con “el comercio ilícito en el área de *duty free*”. Dada esta afirmación, ¿cómo podría existir duda alguna sobre la conexión entre *duty free* y contrabando?

En muchos países del mundo, los cigarrillos desviados que nunca llegan a las tiendas de *duty free* son una fuente principal de contrabando. El protocolo debe ayudar a las Partes afectadas. Una prohibición sobre el *duty free* también ayudaría a prevenir problemas futuros para las Partes que actualmente no se ven afectadas.

Puede ser que actualmente en la mayor parte de la Unión Europea (UE), sólo un pequeño porcentaje de comercio ilícito esté conectado al *duty free*. Pero es debido a que la UE prohibió en 1999 las ventas de *duty free* a los individuos que viajan dentro de su territorio. Con anterioridad a esa prohibición, la contribución del *duty free* al contrabando en la UE era significativamente mucho más elevada.

Sin embargo, en los países del este de la UE, incluso hoy día el *duty free* está

relacionado con el contrabando; por ello se ha solicitado a Bulgaria y Rumanía que actúen sobre el *duty free*.

BAT afirma que tiene en práctica “rigurosos controles” voluntarios sobre los envíos de *duty free*. Pero la cuestión es que la acción voluntaria de la industria del tabaco es totalmente inadecuada y no funciona.

La industria tabacalera pone el grito en el cielo ante una prohibición de las ventas de *duty free*. Pero si realmente éstas no son importantes, porque sólo representan un pequeño porcentaje de las ventas totales, ¿por qué las empresas tabacaleras transnacionales se oponen tan férreamente?

Se ha argumentado que se supone que el protocolo ha de controlar el comercio ilícito, no las ventas legales. Pero el protocolo contendrá muchas otras medidas de control de ventas legales, tales como su seguimiento y trazabilidad, verificación del cliente, licencias y gestión de datos, etc.

Lo mejor es prevenir. Es mejor prohibir las ventas de *duty free* para que no haya un pretexto para el almacenamiento y envío de tabaco libre de impuestos y la consiguiente motivación y oportunidad para su desvío. Por analogía, es más fácil evitar que los caballos se escapen del establo que perseguirlos una vez se han escapado, especialmente si se han ido a otro continente.

Durante el desarrollo de las negociaciones del protocolo, del INB-1 al INB-2 y al INB-3, el número de Partes que solicitan una prohibición de las

ventas de *duty free* ha aumentado continuamente. Este creciente apoyo es alentador.

Hay un impulso internacional contra el *duty free*, ya que más gobiernos están actuando. Nepal prohibió todas las ventas de tabaco de *duty free* en 2008. En 1999, la UE, compuesta ahora por 27 Estados miembros, eliminó las ventas de *duty free* para los individuos que viajen dentro de su territorio. Bulgaria fue más allá y en 2008 eliminó las ventas de *duty free* en las fronteras terrestres con países que no son de la UE. Rumanía ha anunciado que está considerando actuar igual que Bulgaria. Indonesia cerró el paso a nuevas tiendas *duty free* en abril de 2009. Desde 2001, Canadá ha impuesto un impuesto federal al tabaco en tiendas *duty free*, pero no un impuesto provincial. El Ministro de Sanidad indio solicitó la prohibición de las ventas *duty free* de tabaco en noviembre de 2008.

Además de reducir el comercio ilícito, la prohibición de ventas de *duty free* incrementaría los ingresos gubernamentales, al eliminar ventas libres de impuestos. Reduciría además la capacidad de la industria tabacalera de asociar el tabaco con bienes de lujo y con los viajes internacionales y de utilizar las tiendas *duty free* como espacios de marketing. Asimismo, disminuiría la aceptación social de los productos del tabaco. Y acabaría con una fuente de productos del tabaco económicos: los precios más bajos incrementan el consumo.

*“Los productos del tabaco destinados a las ventas de duty free, y por lo tanto producidos, almacenados y transportados libres de las obligaciones e impuestos habituales, se desvían a menudo para su comercio ilícito.”*

Revisión de expertos preparada para la INB-3, p.3 (INF.DOC./3)

*“Las tiendas de duty free juegan un papel fundamental en el contrabando de tabaco en Bulgaria”.*

Informe 2008 sobre la Estrategia de Control Internacional de Narcóticos del Departamento de Estado de EE UU

*“Una de las fuentes importantes de cigarrillos ilegales en el mercado rumano son las tiendas duty free,” afirma Iulian Butnaru, un representante de Aduanas de Rumanía. ... Esta opinión es compartida por la policía en Moldavia, Bulgaria, Ucrania y otros países”.*

Fuente: The Organized Crime and Corruption Reporting Project, 2007

# CARIBBEAN COUNTERFEIT

The Caribbean is renowned for sun, sea, sand... and also smuggling. In some places, cigarette smuggling is a highly organised operation whose perpetrators derive their entire income from illicit tobacco. British American Tobacco (BAT), which sells its brands in 21 Caribbean countries, says that Caribbean governments lost in excess of US\$8 million in 2008 due to the entry of contraband and/or counterfeit cigarettes.

It is common, in Barbados, for cartons of cigarettes intended for duty free sale to be sold as single packs in non-duty free outlets. 'Suitcase traders' travel to low-tax jurisdictions like Guyana, buy popular brands such as *Benson & Hedges* in airport duty free stores, then return to Barbados. With the aid of corrupt customs officers, contraband enters Barbados free of duty.

Guyana has a long history of cigarette smuggling. Lying on the northwest shoulder of South America, it is sandwiched between the unmonitored borders of Venezuela to the west, Brazil to the southwest and Suriname to the east. Lack of security means large volumes of cigarettes move across borders, robbing the Guyanese Revenue Authority of millions of dollars in annual revenue. Unregulated vendors ply their trade openly.

Trinidad and Tobago is home to the Caribbean's largest cigarette producer - the West Indian Cigarette Company (Witco), a subsidiary of BAT. Last November, when the Tobacco Control Bill was introduced into Parliament, the managing director of Witco called for concessions for both smokers and producers on the grounds that Witco had during the previous year paid the government substantial sums in customs excise, corporate tax and VAT of TT\$450 million (US\$74 million, at current rates of exchange). Pointing to Barbados, where the government had doubled tobacco taxation, Witco's MD argued that the tax rise had led to container loads of cigarettes arriving from China.

A pack of Chinese cigarettes sells in Trinidad and Tobago for TT\$6.00 less than the popular Witco brand *Demurer*. Efforts to trace the source of Chinese cigarettes turned up a firm describing itself as a professional supplier of cigarettes. The company's website boasted: "*We can supply various foreign and domestic brand cigarettes. We accept*



*Cheap Chinese cigarettes sold in Trinidad & Tobago*



*Unregulated cigarette vender in Georgetown, Guyana*

*both wholesale and retail orders. If you need us to produce some special brand or your own brand, we can also meet your need as long as you can send us a sample and your quantity is good enough for production ... we sincerely hope to establish long term win-win business partnership with all the cigarette sellers from all over the world".* In other words, they are willing to reproduce and package any brand sent to them - a classic case of counterfeiting.

At a media conference last year, in Jamaica, Danville Walker, the Commissioner of Customs warned that the government is losing hundreds of millions dollars in revenue due to illegal imports of cigarettes, and other contraband. From one flight alone, customs officers confiscated at least seven suitcases and four bags filled with cigarettes. "It's an extremely lucrative trade" said Walker, "This cannot be seen as a trivial issue anymore". He also pointed to the possibility of networks for illegal cigarettes being used for smuggling other illegal items onto the island, such as guns and drugs.

The Bloomberg-funded Caribbean Graphic Health Project aims to establish a regional standard for labelling of retail packs of tobacco products. This will make picture-based health warnings mandatory and enforceable by law. Once the standard becomes a reality, it will act to restrict trade in contraband cigarettes in the Caribbean Community. Packs which are not validated by specified graphic health warnings will be regarded as contraband.

*Wayne Hunte*

*Tobacco Control Officer, Heart & Stroke Foundation of Barbados*

## REFERENCE

*Millions up in smoke*, Jamaica Gleaner News, 06/12/2008  
*\$1.5m lost to illegal tobacco*, Barbados Sunday Sun News, 07/06/2009

## DIRTY ASHTRAY AWARD



To China, Japan and the Republic of Korea for stating that a ban on duty free was outside the scope of the protocol. The scope of the protocol is decided by Parties.

## ORCHID AWARD



To Mongolia for reminding Committee A that States are the subject of international law and that Article 5.1 must, therefore, impose obligations on States.



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.

Framework Convention  
Alliance

Rue Henri-Christiné 5  
Case Postale 567  
CH-1211  
Geneva, Switzerland

Representative Office:  
FCA c/o ASH International  
701 4th Street NW, 3rd Floor  
Washington, DC 20001  
USA

Phone: +1 202 289 7155  
Fax: +1 202 289 7166  
Email: editor@fctc.org

www.fctc.org

## UK CUSTOMS WORKING HAND-IN-HAND WITH HEALTH

A groundbreaking initiative to crack down on tobacco smuggling in the UK has seen Customs second a top expert in illicit trade to the Ministry of Health. Judith Kelly, who is UK Customs Tobacco Policy Project Manager, is responsible for helping ensure that the Health Ministry's tobacco strategy, which is currently under development, includes effective measures to tackle tobacco smuggling.

Here in Geneva leading the UK's delegation at the INB, Judith says, "I've been on a real learning curve since I came to the Conference of the Parties in Bangkok and first got involved in the development of the protocol. Health and Customs are both equally committed to the elimination of the illicit trade in tobacco. By working together we can develop real insight into each other's work and find more effective solutions to the problems we jointly face."

She is based in the north of England which has some of the highest levels of tobacco smuggling in the UK. She is working in collaboration with the regional tobacco control offices which have prioritised tackling smuggling as essential to reducing smoking prevalence in their regions. Together they are developing co-ordination and enforcement plans with local health and community workers, council officers and the police.

Particularly in poorer communities, buying illicit tobacco products is often not regarded as a crime, even by officials. To tackle this problem, research



*Judith Kelly, UK Customs Tobacco Policy Project Manager*

is underway to identify what messages will undermine community acceptance of, and support for, tobacco smuggling. Training is underway to explain to police, judges and local council officers the links with organised crime and terrorism.

The UK government recognises that tobacco smuggling needs to be tackled at local, regional, national and international levels. The north of England programme "Tackling Illicit Tobacco for Better Health" is setting the standard for a fully co-ordinated approach. This blueprint will, with Judith's help, be rolled out throughout the UK.

*Deborah Arnott  
Chief Executive, Action on Smoking and Health*

### NEGOTIOMETER

Entering the seventh day of negotiations, the proportion of the Chair's text on which there have been concrete discussions and alternative proposals have been tabled stands at:

55% discussed

Elapsed time as a proportion of total time available:

83.8% elapsed

Average negotiating rate for INB-3 slipped again, to 160.9 words per hour. As a consequence, the required negotiating rate to complete the Chair's text in the time available has increased to 676.9 words per hour, from yesterday's previous high of 467.4.