



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

# BULLETIN

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## TODAY:

FCA LUNCHTIME  
BRIEFING ON THE  
ILLICIT TRADE  
PROTOCOL

## DEATH CLOCK

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

# 39,776,437

PEOPLE HAVE DIED FROM  
TOBACCO-RELATED DISEASES.

(AT 9 AM 20 OCTOBER 2008)

# TOUGH TALKS MUST START NOW

WHO estimates that 5.4 million people die of tobacco-related diseases every year – one person every 5.8 seconds. Between the opening of this second session of the INB at 2:30pm this afternoon and its scheduled close at 1.00pm on Saturday afternoon, more than 73,000 people will lose their lives to tobacco.

The Framework Convention on Tobacco Control (FCTC) has, so far, been a success. It has stimulated global action to fight the terrible toll taken by tobacco.

But the Convention is still in its infancy.

The real test of its success will come over the years ahead in the strength of the protocols and guidelines that the Conference of the Parties adopts and in the effectiveness of action taken by the Parties both domestically and internationally to implement the Convention. It is through these actions that we will learn whether the FCTC is going to live up to its great promise.

In agreeing that illicit trade in tobacco products should be the subject of the FCTC's first protocol, the Parties recognised three major things: that illicit trade in tobacco products seriously undermines the achievement of the FCTC's public health objectives (primarily by undermining taxation policy, one of the most effective ways to reduce tobacco consumption); that illicit trade needs to be dealt with urgently; and that

it is a global cross-border problem that can only be effectively addressed through meaningful international co-operation. No state can effectively combat illicit trade in tobacco products on its own.

The urgent need for an effective protocol to address illicit trade in tobacco products is recognised not only by public health ministries but also by ministries of finance, customs and justice and by law enforcement agencies.

Illicit trade in tobacco products does not only harm public health. It costs governments around the world billions of dollars in lost revenue every year –

money that governments cannot afford to lose. And it undermines law and order and security. The illicit

tobacco trade is linked to other forms of illicit trade such as illicit drugs and firearms, involves organised crime groups and provides funds to terrorist organisations.

There is, indeed, a lot at stake in these negotiations.

This week, the negotiations begin in earnest. At INB-1, held in February this year, governments expressed their support for an effective protocol. But without text yet on the table, it could only be in-principle support. The real test of governments' commitment to take the necessary actions to address illicit trade in tobacco products was always going to

*"... it is a global cross-border problem that can only be effectively addressed through meaningful international co-operation."*

Continued from page 1

come once there was text to be negotiated. That time has now arrived.

The text prepared for INB-2 by the Chairperson of the INB, Mr Ian Walton-George, provides a very good basis for this week's negotiations. It contains most of the key elements of an effective protocol, but, like any first text, it can and should be improved.

FCA has prepared policy briefings that both address the bigger picture matters that need to be considered by Parties in the negotiations and provide technical suggestions to improve the text. These documents are available at [www.fctc.org](http://www.fctc.org) and from the FCA booth, and members of FCA's delegation would welcome the opportunity to discuss their contents further with Parties.

By the end of this week, we will have a much clearer sense of whether we are going to get the kind of protocol we need to effectively combat the illicit trade. That, as always, depends on Parties living up to their responsibilities. FCA enters the week

with the hope that Parties will engage with their responsibilities in the same constructive spirit that has characterised the sessions of the COP and the INB so far. FCA's message at the end of INB-1 was 'So far, so good'. We hope that at the end of this week, we will be saying 'Well on the way'.

As always, we will be observing the negotiations closely, congratulating Parties that participate constructively and putting the spotlight on those who fail to live up to their responsibilities. We wish all delegates a successful week of negotiations.

Jonathan Liberman  
FCA Policy Director

## FCA DOCUMENTS

As FCA's briefings outline, an effective international approach to illicit trade in tobacco products will require that strong measures be taken in three major areas:

### CONTROL OF THE SUPPLY CHAIN

Each Party will need to take effective measures to ensure that it tightly regulates within its jurisdiction the behaviour of those who are involved in the supply of tobacco products. This is not only a duty that States owe to their own citizens, but also an obligation they owe to other States. Any weak links or safe havens will be exploited by the illicit traders and inevitably cause harm in other States. Measures that Parties will need to commit to include: licensing of key participants in the supply chain; obligations on participants in the supply chain to exercise due diligence with respect to customers and contractors; tracking and tracing; record-keeping; security and preventive measures (such as restrictions on methods of payment and obligations to supply products only in amounts commensurate with actual demand); a ban on sales of tobacco products to consumers via the internet and other means of telecommunication; and a ban on tax-free and tax-reduced sales of tobacco products to international travellers.

### ENFORCEMENT

Each Party will need both to prohibit a range of conduct in its laws and to strongly enforce those laws in practice.

### INTERNATIONAL CO-OPERATION

Parties must be willing and committed to share information, technology and expertise, provide technical and financial assistance where needed, and co-operate in law enforcement.

Available at [www.fctc.org](http://www.fctc.org)

# SPOTLIGHT ON SMUGGLING: DEALING WITH A RECALCITRANT INDUSTRY

## THE HOW AND WHY OF TOBACCO INDUSTRY SMUGGLING

During the course of INB-2, editions of the Bulletin will be shining the spotlight on industry-promoted cigarette smuggling throughout Africa and in China, Lebanon and Vietnam. Each story is compelling in its own right but each only hints at the true extent of the problem.

Evidence implicating BAT in smuggling of its own tobacco brands is simply overwhelming. It involves a huge number of countries covering almost every region of the globe. And the evidence is drawn from hundreds and hundreds of once-secret tobacco company documents spanning more than a decade up to the mid-1990s.

The level of detail and frequency of occurrences documented suggests that this smuggling was not just aberrant behaviour by misguided underlings; it appears to have been premeditated company policy being pursued ruthlessly.

At any given moment in any country BAT may or may not have been encouraging smuggling but, apparently, contraband flows were evaluated as a strategic option. And the documents suggest that company objectives were often met through targeted and tightly controlled smuggling.

It is striking how similar BAT's organisational structure for smuggling appears to have been all around the world. Industry documents suggest:

- policy decisions on smuggling were made at high levels;
- regional middlemen obtained local personnel and ran day-to-day operations on the ground;
- there was ongoing tobacco company oversight of the mechanics of the smuggling operations, with the company sometimes intervening to exert more direct control; and
- a concerted effort by the tobacco company to hide their complicity through attempts to destroy the documentary record and/or by maintaining a façade.

The big picture which emerges is of tobacco manufacturers appearing to have relied on smuggling to assist their legal operations. Documents that were uncovered indicate that, unlike organisations that are solely engaged in illegal trade, tobacco companies were simultaneously involved with both legal and contraband cigarettes. The documents further suggest that, in the mid- to long-term, BAT had hoped to reduce its reliance on contraband activity if it could do so while maintaining profitability.

In 1993, a high-level BAT strategy group seemed to suggest its willingness to support smuggling, if necessary, using as the underlying rationale:

*"Transit trade is volatile, and disruptive to the orderly operation*

*of markets. It is in BAT's interest that markets are legal, taxed and controlled. However, our primary responsibility is to meet consumers' demands as profitably as possible."*

*Tobacco Strategy Group Meeting  
19 May 1993  
203469483*

## THE INDUSTRY AND THESE NEGOTIATIONS

Here is what the industry's documents tell us: at least through to the mid-1990s, major tobacco manufacturers appeared to be 'addicted' to smuggling.

Those same companies lurk in the corridors at this INB, and have gone into public relations overdrive in an attempt to influence the position of delegations.

Addicts can be rehabilitated, but the first step in any rehab program is to admit the problem. With tobacco companies continuing to deny they smuggled, even in the face of damning documentary evidence, they cannot be rehabilitated through inclusion in discussion of the protocol. Discussions with the industry regarding smuggling are at best a distraction and at worst a dangerous path to tread.

Counterfeiting poses a somewhat different challenge as industry interests on this narrow issue are more in line with health interests. The tobacco manufacturers can more credibly claim to be a legitimate stakeholder able to contribute positively on counterfeiting than they can on smuggling.

Despite this we must also be cautious about involving industry in discussion of counterfeiting. The tobacco industry would undoubtedly attempt to manipulate the situation to gain broader participation in consideration of smuggling; an area in which industry interests are antithetical to health interests. So, important as it is to combat counterfeiting, doing so in conjunction with the cigarette companies cannot occur if it undermines tackling the more critical problem of smuggling.

On counterfeiting, the tobacco industry should be restricted to being just one of several providers of information and, even then, only on those matters where the required information cannot reasonably be obtained from a more reliable source. The intelligence-gathering reach of tobacco companies should be of assistance. However, the industry's views on how to respond to counterfeiting, especially regarding pack design and markings, are likely to be influenced by their positions on matters in sharp conflict with health interests and the overriding health objective of the protocol.

Eric LeGresley  
Tobacco Control Consultant

## TOBACCO AND TERROR

International crime syndicates are raising millions of Australian dollars from the sale of illegally imported tobacco in Australia, according to an article published in *The Australian*, on 11 March 2008. The proceeds are being sent to groups linked to terrorists in the Middle East.

Richard Janeczko, national manager for investigations with Australian Customs, told *The Australian* that the illegal tobacco industry is emerging as a potentially lucrative source of terror financing, with Middle East and Vietnamese crime groups being actively involved in importing tobacco.

He told the newspaper that based on information from law enforcement agencies abroad, "It is believed the Lebanese groups responsible for tobacco importation and distribution in Australia have links to terror groups back in the Middle East."

The illegal tobacco industry is beginning to rival illicit drugs as a source of revenue and is increasingly dominated by the same players, Janeczko said. "It is a big issue and I think people have underestimated the degree of criminality involved."

He estimated that the sums raised were probably in the millions of Australian dollars, although it was impossible to know precisely. Most of the money is sent to groups through intermediaries and in small quantities, well below the reporting threshold.

Last year's seizures of around 95 million cigarettes and 236 tonnes of tobacco meant a loss in excise duty estimated at Aus\$100 million, according to Janeczko.

Most of the tobacco was smuggled in shipping containers from Vietnam, China, the Philippines and Indonesia.

### EARLIER EVIDENCE OF THE TOBACCO-TERROR LINK

*The Australian* article adds to concerns about profits from illicit tobacco being a source of funding for terrorist activities. Being legally traded and widely

smuggled, tobacco is an ideal medium for criminal groups to penetrate and exploit the legal trade system with little risk of detection and minimal legal penalties if caught.

The current absence of an international legal regime to clamp down on the illegal tobacco trade is akin to laying out the welcome mat to organised criminal networks and terrorist groups which have become highly sophisticated and fluid in their operations.

A report published in November 2003 by the General Accounting Office (GAO) of the US Congress (GAO-04-163) emphasised contraband tobacco alongside counterfeit goods and illicit drugs as a highly profitable and important source of terrorist funding. One example cited is of Hezbollah generating an estimated profit of US\$1.5 million between 1996 and 2000 by buying cigarettes in North Carolina, a low-tax US state, for resale in Michigan, a high-tax state. Putting this into context, the cost of the 9/11 attacks on the World Trade Centre may have been between \$300,000 and \$500,000 says the GAO report. Officials from the Bureau for Alcohol, Tobacco and Firearms told the GAO that Al Qaeda and Hamas also earned assets from selling contraband tobacco or counterfeit cigarette tax stamps.

Writing in *The Police Chief* (the official publication of the International Association of Chiefs of Police), in February 2004, William Billingslea, a senior intelligence analyst with the US Bureau of Alcohol, Tobacco, Firearms, and Explosives opened by stating, "Illicit cigarette trafficking now rivals drug trafficking as the method of choice to fill the bank accounts of terrorists."

Investigators discovered traffickers in the United States and the United Kingdom had provided material support to Hezbollah and the Real IRA (RIRA), among other terrorist groups. Law enforcement research indicated that groups tied to the Kurdish Workers Party (PKK), and Islamic Jihad (both Egyptian and Palestinian) have been involved in illicit trafficking of cigarettes.

Billingslea says that terrorist groups work with organised crime groups as well as with international drug trafficking organisations. Hezbollah and Hamas members reportedly established front companies and legitimate businesses in the cigarette trade in Central and South America.

The IRA was one of the first terrorist groups in Europe to begin using cigarettes to fund their activities, according to Billingslea. He refers to estimates that illicit cigarette trafficking by the three primary factions of the IRA (the Provisional IRA, Real IRA, and the Continuity IRA) yielded more than \$100 million in the five years up to 2004. In addition, the Loyalist Volunteer Force and the Ulster Volunteer Force were estimated to have raised, respectively, \$3.3 million and \$2.5 million annually.

In eastern Turkey, a raid on a PKK safe house turned up a printing press for producing counterfeit tax stamps rather than arms and ammunition. The PKK has also made large sums of money by selling smuggled US cigarettes into Iraq across the Turkish border.

Billingslea says that the "new face of terrorism" is goal-oriented, integrating perfectly legal enterprises with criminal or illicit enterprises and appearing more like an organised crime group that also conducts terrorist acts, rather than a terrorist group that commits crime. Beyond traditional ways of raising funds, terrorist groups are also starting to exploit the freedom of cyberspace, and gaps in legislation, to get involved in internet sales of cigarettes.

Andrew Kerr

# BAN ON DUTY-FREE TOBACCO SALES NEEDED

The FCA recommends that the illicit trade protocol includes a ban on tax-free and tax-reduced sales of tobacco products to international travellers, such as in duty-free stores. This measure is not currently included in the Chair's text. INB-2 is an important opportunity for Parties to make new progress towards a ban on duty-free tobacco sales.

At INB-1, in February 2008, four countries - Nigeria, Palau, the Philippines and Saudi Arabia - called for a ban on duty-free sales to be included in the protocol. Such a ban would be an effective measure to reduce contraband.

## DUTY-FREE SALES RESULT IN CONTRABAND

In many countries around the world, cigarettes supposedly intended for duty-free sale end up being diverted in vast volumes into illicit distribution channels.

For example, in 2008 the US State Department reported that "Duty free shops play a major role in cigarette smuggling in Bulgaria." In 2002, the Bulgarian Centre for the Study of Democracy had stated that "Experts estimate that around two-thirds of cigarettes sold in duty-free shops are subsequently "re-exported" to Western Europe, while the remaining third ends up on the Bulgarian market."

In May 2008, subsequent to the urging of the US Ambassador, the Bulgarian Parliament closed duty-free shops along the border with Serbia, Turkey and Macedonia. Duty-free shops along the Bulgarian border with EU countries had been closed earlier, when Bulgaria joined the EU.

Regarding Romania, the Organized Crime and Corruption Reporting Project reports on its website under the headline "Duty-free highway": "One of the important sources of illegal cigarettes in the Romanian market are the duty free shops' says Lulian Butnaru, a representative of the Romanian Customs. The Romanian border police also agree that duty free shops are the source for much of the smuggled cigarettes. This is an opinion shared by police in Moldova, Bulgaria, Ukraine and other countries."

In the case of Colombia, a lawsuit filed in US federal court in 2000 by Governors of states in Colombia against Philip Morris stated in part: "The document also reflects that the majority of cigarettes sold under the guise of "duty free" are, in fact, being

sold to "tax-free customers" who are, in fact, individuals known to the Philip Morris defendants as selling virtually all of their cigarettes to smugglers in Colombia."

Duty-free has been a source of contraband in many other places such as Egypt, India, the Philippines, Thailand and Vietnam among numerous others.

The tobacco industry is fully aware of how duty-free contributes to illicit trade (see box). Often, cigarettes specifically intended for "duty-free" sale are diverted even prior to arrival at a duty-free store.

## MORE COUNTRIES ARE BANNING DUTY-FREE TOBACCO SALES

Singapore has long banned duty-free sales and duty-free imports of tobacco by consumers. Nepal recently banned duty-free tobacco sales at its airport. Sri Lanka and Barbados have banned duty-free tobacco imports by consumers. Canada imposes federal tobacco tax for sales in "duty-free" stores, but not provincial tobacco taxes. Bulgaria has taken action, as noted. In the European Union, duty-free sales to individuals travelling within the EU have been banned - a development which demonstrates the feasibility of eliminating duty-free tobacco sales.

## ADDITIONAL BENEFITS

In addition to being a conduit for the flow of contraband, duty-free sales provide cigarettes legally at inexpensive prices, which increases overall tobacco consumption. Duty-free sales also increase the social acceptability of tobacco products and build the association between cigarettes and international travel; something which is desirable for tobacco companies.

A ban on duty-free sales would also provide additional revenue to governments, revenue that could potentially fund implementation of new measures to prevent contraband tobacco. Banning duty-free tobacco sales thus presents a win-win opportunity.

Rob Cunningham  
Canadian Cancer Society

## EXCERPTS FROM INDUSTRY DOCUMENTS

### Thailand:

"Supply in most areas generally good, in Bangkok leakage of duty-free stocks is high."

Source: Bates #500205893

### Bangladesh:

"supply will continue to be a major problem in Bangladesh during 1994... SUTL will strive to improve this situation by developing land routes via Myanmar and optimizing duty-free leakage."

Source: Bates #500282756

### Far East:

Far East Duty Free market assumptions: "Sensitivity of sales due to leakage into GT/domestic markets".

Source: Bates #500214593

### Israel-Nepal:

"We record SE 555 as a shipment into Israel Duty Free and then also as a Domestic Sale in Nepal by yourselves. We believe it is the same brand and therefore we are counting in twice, once in Israel and once in Nepal."

Source: Bates #500200164.



## DIRTY ASHTRAY AWARD

In line with practice at previous rounds of negotiations, the FCA will be conferring its symbolic 'Dirty Ashtray Award' on the Party, Parties or groups that did most during the previous day's talks to hinder progress with tobacco control.



## ORCHID AWARD

And those adopting the most enlightened and positive stance will be in line to receive the 'Orchid Award'.



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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## THE FRAMEWORK CONVENTION ALLIANCE AND ITS EFFORTS IN BUILDING SUPPORT FOR TOBACCO CONTROL

**TOBACCO USE IS THE NUMBER ONE CAUSE OF PREVENTABLE DEATH, DISEASE, AND DISABILITY IN THE WORLD TODAY. OVER 5.4 MILLION PEOPLE DIE EACH YEAR FROM TOBACCO-RELATED DISEASES – EQUIVALENT TO ONE DEATH EVERY 5.84 SECONDS.**

**IF URGENT ACTION IS NOT TAKEN IT IS PROJECTED THAT ONE BILLION PEOPLE WILL DIE THIS CENTURY FROM TOBACCO-RELATED ILLNESSES.**

**WITHOUT URGENT ACTION, TOBACCO WILL SOON BECOME THE LEADING CAUSE OF DEATH WORLDWIDE, CAUSING MORE DEATHS THAN HIV, TUBERCULOSIS, MATERNAL MORTALITY, AUTOMOBILE ACCIDENTS, HOMICIDE AND SUICIDE COMBINED.**

**BUT THE BENEFITS TO BE REAPED BY EFFECTIVE MEASURES ARE ENORMOUS, MEASURED IN TERMS OF PREVENTABLE DEATHS AND DISEASE, ENHANCED QUALITY OF LIFE FOR MILLIONS OF PEOPLE WORLDWIDE AND BILLIONS OF DOLLARS SAVED IN LOST REVENUE AND HEALTH CARE COSTS.**

The Framework Convention Alliance is made up of more than 350 organisations from over 100 countries which are working to support the signing, ratification and effective implementation of the Framework Convention on Tobacco Control (FCTC) and related protocols.

The Alliance includes individual non-governmental organisations (NGOs) and organisations working locally and nationally, as well as existing coalitions and alliances operating at national, regional and international levels.

### WHY WAS THE FCA FORMED?

The FCA was formed out of the need for improved communication among groups already engaged with the FCTC process and the need for a more systematic outreach to NGOs not yet engaged in the process. Developing countries, in particular, stand to gain from and contribute to the creation of an effective FCTC.

The Framework Convention on Tobacco Control represents an historic opportunity for global action to curtail the tobacco epidemic and save billions of dollars.

The FCA has been a major player in positively influencing the outcome of inter-governmental negotiations on the FCTC.

The strength in the FCA comes from its core principle of inclusivity. This principle has enhanced the participation of many

developing country NGOs, ensuring breadth and depth of global experience and advice throughout the negotiations.

When it came time to sign and ratify the treaty the FCA played a key role in obtaining 168 country signatures and securing a substantial number of ratifications in record time.

The work of the FCA does not end with FCTC negotiation meetings. Its work extends to supporting members of the Alliance throughout all of the WHO regions via strategic planning and advocacy workshops.

When necessary, the FCA also provides financial and technical support for members campaigning on ratification, implementation and the monitoring of the FCTC.

A major part of the FCA's work is a monitoring and reporting role in holding governments accountable for their commitments under the Convention.

The FCA has positively influenced the development and adoption of guidelines for best practice evidence-based implementation of the FCTC's Articles.

And, at this meeting – the INB-2 of the illicit trade protocol – the FCA looks forward to working with delegates to develop a strong protocol which will save lives and save money.