



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

BULLETIN

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TODAY

TFI LUNCHTIME
BRIEFING ON
TOBACCO TAXATION
AND SMUGGLING

DEATH CLOCK

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

39,806,026

PEOPLE HAVE DIED FROM
TOBACCO-RELATED DISEASES

(AT 9 AM 22 OCTOBER 2008)

KEY POINTS FOR TODAY'S NEGOTIATIONS

After making good progress yesterday discussing the concepts contained in the Chairperson's text, this morning Parties will break into groups to discuss the text in further detail. As Parties begin these deliberations, FCA encourages you to make use of our detailed comments on the Chairperson's text, which are available at the FCA booth.

Key points that FCA would invite Parties to bear in mind today include:

COMMITTEE A

Committee A will have the opportunity to take important steps forward on key measures to control the supply chain. FCA considers that elimination of illicit trade in tobacco products requires that:

- licensing, due diligence, tracking and tracing, record-keeping and security and preventive obligations be applied as far through the supply chain as possible
- the sale of tobacco products to consumers via the internet be banned, in light of the ease with which tax laws can be evaded through internet sales
- the sale of duty-free products be banned, in light of the evidence of diversion of duty-free products into the illicit market, highlighted by FCA this week.

COMMITTEE B

In Committee B, delegates will consider important enforcement measures, including the establishment of offences, and a range of key means of international co-operation. In these areas, Parties have expressed understandable concern about duplication between the Chairperson's text and other international

agreements and arrangements, such as the United Nations Convention on Transnational Organized Crime, and about the capacity of the World Health Organization to administer a treaty that deals with issues of criminal justice. Constructive suggestions have been made about means of engaging other UN agencies, such as the United Nations Office on Drugs and Crime, in order to learn from their experiences and explore possibilities for co-ordination. FCA calls on Parties who express concerns about duplication of resources and expertise with other UN agencies to commit to taking action within appropriate fora to ensure that illicit trade in tobacco products receives the attention it deserves.

EXPERT GROUP ON SCOPE OF THE PROTOCOL

An expert group will meet concurrently with the committees to consider the scope of the protocol. As emphasised by many Parties in yesterday's plenary, elimination of illicit trade in tobacco products requires that measures be applied not only to tobacco products but also to tobacco leaf, key inputs such as acetate tow, and manufacturing equipment. Delegates should keep in mind that the inclusion of tobacco leaf does not mean that measures must be applied to tobacco growers themselves. Measures can be applied to others who deal with tobacco leaf, such as leaf dealers and commercial importers and exporters of tobacco leaf. Only by the application of appropriate measures across the entire supply chain can all forms of illicit trade be eliminated.

Jonathan Liberman
FCA Policy Director

CANADA TAKES ON ILLICIT TOBACCO AND ORGANISED CRIME

Linkages between the illicit tobacco market and organised crime in Canada have “increased exponentially” over the last six years, according to the country’s first ‘Contraband Tobacco Enforcement Strategy’, unveiled in May this year.

Traditionally regarded as a victimless crime, tobacco trafficking has become a significant source of income for all levels of organised crime. Illicit tobacco sales contribute to an underground economy estimated to be worth hundreds of millions of Canadian dollars a year.

Seizures of contraband tobacco by Canada’s national police service, the Royal Canadian Mounted Police (RCMP), reached an historic high in 2006, representing a 16-fold increase over 2001. The frequency of large-scale and multi-commodity seizures has been increasing, revealing that organised criminal operations are also involved in the movement of drugs, weapons, counterfeit cash and money laundering operations as well as human smuggling. Around 22 per cent of contraband cigarettes seized in Canada in 2006 proved to be counterfeit.

Underscoring the urgency of tackling the problem, Canada’s Minister of Public Safety, Stockwell Day, described the illicit tobacco trade as presenting “a serious threat to public safety in Canada.” Public opinion research undertaken in the summer of 2007 found that 74 per cent of Canadians regard the illegal tobacco trade as a “somewhat” to a “very serious” problem.

The Strategy developed by the RCMP is the first step in an expanded effort to break the links between illicit tobacco and organised crime which also involves the setting up of a new government task force. By directly combating organised crime and boosting public awareness of illicit tobacco, the Strategy builds on the approach Canada implemented in 2002 of taxing tobacco at high levels to cut smoking prevalence and improve public health.

Key elements of the Strategy involve:

- enhancing skills to effectively address the current problem of contraband

tobacco

- disrupting organised crime groups involved in illicit tobacco activities
- enhancing the gathering and sharing of intelligence and leveraging investigative capacity
- communications initiatives to increase public and law enforcement awareness of the illicit tobacco trade.

Canadian authorities have established that the profits from illegal tobacco are funding other criminal activities such as gun running and drug trafficking.

More than 100 criminal groups in Canada are known to be involved in the illicit tobacco trade. Nearly 70 per cent of them are involved in trafficking drugs and weapons and almost one-third are known to use violence. The authorities have also noted a disturbing trend of more young people becoming involved with contraband tobacco, lured by the chance of making easy money with minimal risk of apprehension.

“Communities need to look at the type of people they are attracting when they become involved in illegal tobacco activity. It is organized crime that is benefiting, not the communities. They are wolves in sheep’s clothing – a beast that can’t be control... total traceability of the product is an international responsibility”

Jerry Montour, Grand Rivers Enterprises, Six Nations

According to the RCMP, targeting criminal organisations via the Contraband Tobacco Enforcement Strategy will have the greatest impact on disrupting all forms of illicit trade and keeping guns and drugs off Canada’s streets.

As well as reducing the availability of contraband tobacco across the country, the Strategy’s goal includes decreasing the demand for illicit tobacco and so, in turn, supporting the government’s public health objectives.

In addition to improved enforcement, public education is seen as being key to achieving a long-term impact. Raising awareness of black market tobacco is essential to cutting demand. A growing number of Canada’s five million smokers are purchasing contraband tobacco. Research conducted in June 2007

showed that 22 per cent of smokers – up from 16.5 per cent in 2006 - were puffing on illegal tobacco. Yet most are ignorant of the negative impact this is having on Canadian communities and the country’s economic integrity.

Canada’s current problem is both national and international in nature with contraband products entering the market via four main routes:

- legal and illegal production in the United States which is smuggled to Canada, or illegally manufactured in Canada
- counterfeit tobacco products and other brands entering the country illegally, mainly in sea containers from China
- diverted products free of federal sales taxes and provincial tax-exempt tobacco products
- other criminal routes, such as convenience store and cargo robberies or truck hijackings.

Of these, the chief source of illegal tobacco in Canada is manufacturing operations on Aboriginal Territory based on the US side of Akwesasne, Kahnawake in Quebec and Tyendinaga and Six Nations in Ontario. A conservative estimate is that tens of millions of cigarettes are being manufactured each year. Not all manufacturing operations are illegal. Many provincial governments allow Indians to obtain tobacco on a reserve without paying provincial taxes. These products are being diverted from Aboriginal communities throughout Canada and end up being sold illegally at a discount rate.

A multi-service government task force headed by the Department of Public Safety now has a mandate is to identify ways of disrupting and reducing the illicit tobacco trade. It includes the RCMP, Canada Border Services Agency, Canada Revenue Agency, Finance Canada, Agriculture and Agri-Food Canada, Health Canada and Indian Affairs and Northern Development Canada.

Andrew Kerr

SPOTLIGHT ON SMUGGLING: CHINA

China is considered the ultimate prize among tobacco's emerging markets, given its sheer size and promise of potential growth. The country is also believed to have the world's largest cigarette smuggling problem, a contention backed up by research published in the report, *'Key to the future': British American Tobacco and cigarette smuggling in China*. The paper reveals the scale of the smuggling trade and the complicity of transnational tobacco companies (TTCs) in its perpetuation.

By the late 1990s, the number of foreign cigarettes believed to be entering China illegally each year amounted to about 50 billion sticks. (To put this in context, that is a volume equivalent to all of China's current legal imports of foreign cigarettes - about 3 per cent of the 1.7 trillion stick market). In recent years, the Chinese government has increased efforts to crack down on smuggling activities and recover some of the estimated US\$1.8 billion in tax revenue lost annually. While there have been successful criminal prosecutions of local "transit agents" or middlemen, internal industry documents reveal the huge scale of this illicit trade, the key supply routes by which it has been conducted and the role of transnational tobacco companies (TTCs).

Cigarette smuggling into China grew rapidly during the 1980s. When the country reopened to imports in the late 1970s, tight quotas and high tariffs limited access to the market by TTCs. BAT documents suggest that smuggling became a vital route into China, both to earn lucrative profits and as a means of establishing a coveted market presence. BAT sales figures reflect the scale of this illicit trade. In 1990, for example, official cigarette imports to China by all TTCs totalled 10.5 billion sticks. Documents describe BAT exports alone as exceeding 20.3 billion sticks. The discrepancy suggests that the majority of the company's exports to China were unofficial or smuggled. The transit trade to China became one of the company's "larger profit centres", at one time accounting for around 25 per cent of BAT's total profits.

Since the early 1980s, Hong Kong has provided the most important route by which contraband cigarettes reach China. BAT shipped billions of sticks to its Hong Kong subsidiary, BATHK. Another key route was overland from Russia and central Asia, largely used for transporting BAT's US international brands.

By the early 1990s, the scale of the illicit trade, and the multiplicity of routes and local agents, led BAT to lose a certain degree of control. Some supplies were leaked to other markets, while the impending handover of Hong Kong to Chinese rule in 1997 raised concerns about continued access via middlemen. In the early 1990s, BAT initiated a restructuring of its operations in the Far East "to improve the effectiveness of the Group's penetration of the China market." BAT documents describe the purpose of this reorganisation:

"BAT Distribution is set up to enable BATHK to effect a

formal separation of its transit from its official trade by transferring the transit [smuggling] trade to this company. BAT Distribution activities remain fully controlled by the BAT China Group (and not any of its subsidiaries) but structurally and formally, BAT Distribution is owned elsewhere in the BAT Group in a tax haven."

While not wholly implemented, careful protection of the lucrative smuggling trade continued to be of primary concern in internal decisions about pricing BAT brands and its subsequent efforts to negotiate a joint venture with the Chinese government.

In common with other transnational tobacco companies, BAT has depicted smuggling as an inevitable consequence of tax differentials, weak border controls, and import restrictions and bans. The findings of this research demonstrate that the separation between 'Big Tobacco' and traffickers and criminals has been less stark. Contraband has been a hugely profitable and integral part of BAT operations in China over the past two decades. It has served to build market presence, in competition with other international brands, and has been integral to the growth of BAT overall and its aspirations to supersede PM to become the world's leading tobacco company.

For the Chinese government, this illicit trade undermined restrictions on cigarette imports and represented an enormous loss of tax revenue. As well as being the cause of huge losses in government revenues, smuggling has made foreign cigarettes more accessible and affordable, thus stimulating consumption and undermining tobacco control measures most notably among youth and low-income consumers.

REFERENCE

Lee K, Collin J. (2006). *'Key to the future': British American Tobacco and cigarette smuggling in China*. PLoS Medicine, July; 3(7): 228-37. <http://medicine.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pmed.0030228>

FCA BRIEFINGS ON A STICK



All of FCA's factsheets, policy briefings and a media briefing for INB-2, in the six official UN languages, are available on a handy 1 gigabyte USB memory stick.

Visit the FCA stand in the CIGG foyer to collect yours.

NGOS MOBILISE IN RESISTANCE TO TOBACCO TRANSNATIONALS

As Parties meet here in Geneva, they should be aware that civil society is watching these negotiations and taking action to advance FCTC implementation around the world.



Sri Lanka

Three weeks ago, for instance, Gallego Punyawardana of the Swarna Hansa Foundation and Olcott Gunasekera of the Sri Lanka National Federation on Smoking and Health met Sri Lankan Prime Minister,

Hon. Rathnasiri Wickramanayaka, to discuss the importance of rigorous enforcement of Article 5.3 of the WHO FCTC regarding protecting public health policy from interference by tobacco corporations. After the meeting, a delegation of NGOs and public officials visited the headquarters of the Ceylon Tobacco Company, a British American Tobacco (BAT) subsidiary, to deliver an unequivocal message: Big Tobacco does not get a seat at the table to discuss tobacco control policy.

Swarna Hansa and Sri Lanka National Federation on Smoking and Health are among dozens of FCA members in 30 countries that participated in the Network for Accountability of Tobacco Transnationals' (NATT) 9th International Week of Resistance. The two NGOs presented the Prime Minister and BAT with copies of Corporate Accountability International's *Protecting Against Tobacco Industry Interference: The 2008 Global Tobacco Treaty Action Guide*. The Guide contains detailed suggestions for implementation of Article 5.3 and presents case studies of tobacco corporations' attempts to weaken the treaty in countries around the world. Case studies expose tobacco corporations' meetings with public officials to promote bad health policies, using donations to influence customs officials, sponsoring front groups to host public events, and pre-empting tobacco control policies with unenforceable voluntary agreements.

Actions also took place in Argentina, Austria, Bangladesh, Chile, Colombia, Costa Rica, Ecuador, Gabon, Ghana, Guatemala, Honduras, India, Japan, Kenya, Malaysia, Mexico, Nepal, Nigeria, Panama, the Philippines, Scotland, Sri Lanka, the US., Uruguay and Zambia.



Bangladesh

AMÉRICA LATINA CELEBRA LA SEMANA INTERNACIONAL DE RESISTENCIA A LAS TABACALERAS

Durante La Semana Internacional de la Resistencia contra Las Transnacionales de Tabaco, en Colombia, el Secretario de Salud de Bogota, Héctor Zambrano, en un evento que convoco aproximadamente 300 personas, realizo un llamado para oponerse a las interferencias que utiliza la industria del tabaco para socavar las políticas de control del tabaco.

Como respuesta, BAT ha lanzado esta supuesta campaña llamada "prevención en la juventud" en Colombia. Esta campaña de BAT se debe también considerar a la luz de la ratificación reciente de Colombia del CMCT y la expedición de la Resolución 1956 del Ministerio de Protección Social que establece ambientes 100% libres de humo. La industria del tabaco como BAT utiliza iniciativas y promesas voluntarias de responsabilidad social corporativa en un esfuerzo para apartar leyes y regulaciones fuertes de implementación del Convenio Marco. Además, las campañas supuestas de "prevención en la juventud" patrocinadas por las corporaciones del tabaco, han demostrado ser ineficaces en el mejor de los casos, y refuerzan a menudo los mismos temas que la publicidad del cigarrillo. La foto de un adolescente utilizada en la supuesta "campaña de prevención" crea una asociación no-tan-sutil entre BAT y su mercado objetivo e ilustra los peligros de dejar que estas corporaciones con carácter lucrativo se comuniquen con nuestros niños.



Colombia

En Costa Rica, RENATA, organización de control del tabaco, en colaboración con diputados de la Asamblea Nacional, presento por la televisión mensajes alusivos a la Semana de Resistencia. Igualmente, la Ministra de Salud, María Luisa Ávila, envió un mensaje a los diputados de su país para que mantengan las puertas cerradas a la industria tabacalera en la formulación de políticas públicas de control del tabaco.

En Honduras, registramos que la Semana Internacional de Resistencia a las Transnacionales del Tabaco se vinculo a diferentes actividades del Día Nacional de No Fumar organizadas por Alianza Hondureña Antitabaco. También APALTA gestiona la distribución de la Guía de Acción en eventos con activistas del control del tabaco.

En Guatemala con el apoyo del Consejo Nacional para la Prevención y el Control del Tabaco en Guatemala, se realizo una conferencia de prensa y un taller sobre análisis de la Guía de Acción 2008

Protecting Against Tobacco Industry Interference: The 2008 Global Tobacco Treaty Action Guide, available in English, French and Spanish. <http://www.stopcorporateabuse.org/cms/page1727.cfm>

RESOURCING AN EFFECTIVE PROTOCOL

A number of Parties from a wide range of regions, and including low- and high-income countries, have raised the issue of funding and resourcing of the protocol, particularly for low-income countries.

This is an ongoing issue relevant to all elements of the WHO FCTC, not just illicit trade. However, effective action to address illicit trade in tobacco demands substantial funding, which is not the case for most elements of the FCTC. FCA has estimated that illicit trade in tobacco loses governments worldwide between US\$40 and US\$50 billion each year.

The protocol first has to be implemented before gains in revenue from reducing illicit trade can be realised. Implementation will require significant resources and funding that are not available in many low-income countries.

So where are these resources to be found? Questions similar to this have been examined by the working group on Articles 9 and 10 (product regulation and disclosure). Three Parties - Brazil, Canada and the European Commission - whose involvement is also crucial to the development of an effective illicit trade protocol, are the Key Facilitators of that group.

The conclusion the working group reached was that the tobacco industry should pay the costs of regulation. This is just as true for illicit trade as it is for product regulation. Some suggested mechanisms are set out in the working group's progress report to COP-3 (see extract below). We suggest that the Convention Secretariat ensures that the work being carried out by the Article 9 and 10 working group on identifying effective financing mechanisms should inform discussions on the financing of implementation of the illicit trade protocol.

There is also significant potential for low-income countries to seek funding assistance from high-income countries for the implementation of the protocol. For example, the EU provides funding which could go to supporting "the fight against communicable and non-communicable diseases, in particular through facilitating the implementation of international treaties in the area of Public Health." Between 2007 and 2013 there is over EUR 11.2 billion available for the 17 countries covered by the European Neighbourhood and Partnership Instrument; EUR 17 billion for 48 countries covered by the Development Co-operation Instrument; and EUR 22 billion for the 78 African, Caribbean and Pacific countries and overseas countries and territories of Member States covered by the European Development Fund. There is also a window of opportunity with the forthcoming review of the Millennium Development Goals. These opportunities, and others, need to be fully explored by Parties, supported by the Secretariat.

Capacity and expertise is also an issue when it comes to the areas of enforcement and legal co-operation addressed in the Chairperson's text. The Secretariat of the WHO FCTC is required to support the implementation of the entire FCTC. It is a health body which does not possess all the relevant expertise on law enforcement issues. There are opportunities for synergy with other UN bodies and treaties given the overlaps between this protocol and other treaties such as the UN Convention on Transnational Organized Crime, which is overseen by the UN Office on Drugs and Crime (UNODC). Parties have recommended that links be made with UNODC and we would urge that this be given priority between now and the next INB.

Deborah Arnott
Director, Action on Smoking and Health UK

EXTRACT FROM PROGRESS REPORT TO COP-3 OF THE WORKING GROUP ON ARTICLE 9 AND 10

"Implementing and operating an effective programme for regulating tobacco products requires allocation of significant resources, which may have the undesirable consequence of drawing funding and capacity away from other important tobacco control interventions of high priority. The working group considered that all costs related to tobacco product regulation should be borne by the tobacco industry. This would translate the principle of internalization of external costs into practice.....

"8. The working group intends to look further at means that Parties have at their disposal to finance tobacco product regulation programmes, in conjunction with a monitoring plan and in accordance with Article 5.3 of the WHO Framework Convention, such as:

- (a) designated tobacco taxes;
- (b) manufacturing and/or importing licencing fees;
- (c) product registration fees;
- (d) tobacco selling licences (distributors and retailers);
- (e) non-compliance fees levied on the industry (for example, administrative monetary penalties)."



DIRTY ASHTRAY AWARD

To Brazil for its illogical and obstructionist positions which have slowed down negotiations this week.



ORCHID AWARD

To the Philippines for recognising that the tobacco industry should carry the cost of the implementation of the protocol.



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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THOUGHTS ON TRACKING AND TRACING

Tracking and tracing is a major component of the Chairperson's text for a protocol on illicit trade, yet its concepts are not well understood by everyone. It is not my intention here to recommend a particular technology but rather to explore some of the basic concepts of applying tracking and tracing to contraband cigarettes in a law enforcement environment.

The tracking and tracing of people and evidence are important components of virtually every criminal investigation. As a criminal investigator, I have used shoe prints, blood and other fluid trails, invisible powders and inks, credit card or automated teller machine activity, interviews and interrogations, serial numbers, unique marks, fingerprints, hand-writing comparisons, chemical analysis, and global positioning system trackers, to track or trace people and evidence.

Criminals are seldom convicted on the basis of one piece or type of evidence. Instead, pieces of various types of evidence are used to build the criminal case. When conducting an investigation, I preferred to collect a variety of evidence to build a strong case for the prosecutor.

The introduction of a secure tracking and tracing regime for tobacco products will provide my former law enforcement colleagues with a valuable tool to aid them in investigating theft and smuggling, and in collecting revenue.

Tracking and tracing makes it possible to quickly and reliably distinguish one package, carton, or master case from another through the application of unique marks and numbers. The system could be interfaced with production, customs, import and export and tax data and could provide a broad-based system with multiple uses for various government ministries or departments.

The system must be under national control because the sensitivity and security of the data involved is paramount to its success.

Were such a system to be under the control of the tobacco manufacturers, it would be a simple task for them to analyse the law enforcement queries of their databases and detect patterns of enforcement activity, including possible identification of targets of smuggling investigations. If the manufacturer was involved in the smuggling scheme, they could quietly cease operations and possibly avoid detection.

Law enforcement agencies should have the necessary training and forensic capabilities to determine the authenticity of the product trade marks rather than have to consult the manufacturer on all suspect shipments.

Tobacco manufacturers are not on the list of "need to know" parties concerning every seizure or investigation involving their products.

Tracking and tracing technology has a major role to play in the prevention of the illicit tobacco trade. We should recognise that the technology will be of little or no use with illegally produced products but it will greatly aid in controlling diversion from legal suppliers.

Finally, the costs of tracking and tracing technology vary widely but some or all of these costs can be recovered from enhanced revenue collection or the forfeiture of the proceeds of tobacco smuggling.

John W. Colledge III
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