



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

# BULLETIN

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## TODAY

SAFE JOURNEY  
BON VOYAGE  
BUON VIAJE

## DEATH CLOCK

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

# 39,850,410

PEOPLE HAVE DIED FROM  
TOBACCO-RELATED DISEASES  
(AT 9 AM 25 OCTOBER 2008)

## FULL STEAM AHEAD

The question FCA put to the INB in yesterday morning's Bulletin was "Where do we go from here?" We urged Parties who want a strong protocol to combat illicit trade in tobacco products to stand up and be counted. Yesterday afternoon, we were pleased to see the INB Bureau, the Chair, and Parties from all regions come together to support a clear path forward for these negotiations.

At last we all seem to be pulling in the same direction, with a clear commitment to constructive work to bring us towards a successful INB-3.

In yesterday afternoon's plenary, Parties supported the route map proposed by the Chair and the INB Bureau, requesting intersessional meetings, technical papers and expert input on a number of important issues, including:

- the relationship between this protocol and other international agreements and agencies, including UNODC and WCO;
- the development of an international tracking and tracing system which will be effective for all countries, low- and high-income alike;
- requirements for customer verification and identification;
- security and preventive measures;
- the implementation of bans on

internet and duty-free sales; and

- the scope of the protocol, especially in relation to manufacturing equipment and key inputs used in the manufacture of tobacco products.

This work is vital if the Chair is to be able to revise and strengthen the draft protocol, and the Parties are to receive the guidance they need on key issues. It will provide a basis for meetings of each region to allow Parties to develop their positions in advance of INB-3.

*"an evolutionary process"*

It has been a difficult week but for those delegates – and representatives

of civil society – who were involved in the development of the FCTC, this comes as no surprise. As the Chair put it so neatly yesterday, this is "an evolutionary process", which will take time to come to fruition. We may need at least one more INB after INB-3 to reach agreement on a strong, effective draft protocol for presentation to the COP.

But as we go forward in this process, we need to maintain our commitment and sense of urgency about the problem we are here to address. We cannot afford to waste any time in our tight intersessional timetable if we are to ensure that INB-3 can make real progress towards a protocol that will save millions of lives and billions of dollars.

## THE TASKS FOR COP-3

On November 4, the death clock will reach a staggering 40 million tobacco-related deaths since the start of the World Health Organization's Framework Convention on Tobacco Control (FCTC) negotiations in 1999. As INB-2 concludes, this is a stark reminder that critical steps must be taken at the upcoming third Conference of the Parties (COP) to effectively implement the Convention.

Most urgently, Parties must adopt strong and effective guidelines for implementation of Articles 5.3, 11 and 13. These articles focus, respectively, on halting industry interference in public health policies; implementing effective packaging and labelling requirements; and

banning tobacco advertising, promotion and sponsorship.

Parties must also provide sufficient budget to enable the critical work of the Secretariat and the Conference of the Parties to be done and ensure the availability of financial resources and mechanisms of assistance to developing country Parties and Parties with economies in transition in order to make the effective implementation of the Convention possible by all Parties.

In preparation for COP-3, FCA's policy documents and other materials will be available at [www.fctc.org](http://www.fctc.org).

## LA MISIÓN PARA EL COP-3

El 4 de noviembre, el reloj de la muerte llegará a la impresionante cantidad de 40 millones de muertes relacionadas con el tabaco desde el inicio de las negociaciones del Convenio Marco para el Control del Tabaco (CMCT) de la Organización Mundial de la Salud en 1999. Tal como indica INB-2, ello constituye un crudo recordatorio de que se deben tomar medidas críticas en la próxima y tercera Conferencia de las Partes (COP) para la implementación del Convenio en forma efectiva.

Con mayor urgencia aún, las Partes

deben adoptar pautas sólidas y eficaces para la implementación de los Artículos 5.3, 11 y 13. Estos artículos se centran, respectivamente, en la interrupción de la interferencia que la industria provoca en las políticas de salud pública (mediante la implementación de requisitos eficaces sobre empaquetado y etiquetado) y en la prohibición de la publicidad, la promoción y el patrocinio del tabaco.

Las Partes también deben proporcionar fondos suficientes para permitir la realización del trabajo de

la Secretaría y de la Conferencia de las Partes y garantizar la disponibilidad de recursos financieros y mecanismos de asistencia para las Partes de los países en vías de desarrollo y las Partes con economías de transición a fin de que la efectiva implementación del Convenio sea posible para todas las Partes.

En vista de la preparación de COP-3, las políticas de ACM y otros materiales estarán disponibles en [www.fctc.org](http://www.fctc.org).

## LA MISSION POUR COP-3

Le 4 novembre, l'Horloge de la mort affichera le nombre sidérant de 40 millions de personnes décédées de maladies causées par le tabac depuis le début des négociations de la Convention Cadre de Lutte Anti-tabac de l'Organisation Mondiale de la Santé en 1999.

Au moment où l'OIN2 s'achève, il s'agit d'un rappel déterminant pour que des décisions clés soient adoptées lors de la troisième Conférence des Parties en vue de mettre en œuvre efficacement la Convention.

Le plus urgent est que les Parties adoptent des lignes directrices fortes et efficaces concernant la mise en œuvre des articles 5.3, 11 et 13. Ces articles concernent respectivement la préservation de l'interférence de l'industrie du tabac dans les politiques publiques de santé, la mise en œuvre d'un conditionnement et d'un

étiquetage sanitaire efficace, et l'interdiction de la publicité, de la promotion et du sponsoring en faveur du tabac.

Les Parties doivent également se doter d'un budget suffisant pour que le Secrétariat et la Conférence des Parties puissent réaliser le travail crucial requis et également veiller à ce que les mécanismes d'assistance aux Parties à faible revenu et à revenu intermédiaire soient effectifs afin que la Convention soit mise en œuvre dans l'ensemble des pays ayant ratifié.

Afin de préparer la COP-3, des documents ont été préparés par l'Alliance pour la Convention Cadre (ACC) et sont disponibles sur le site [www.fctc.org](http://www.fctc.org).

# BUILDING AN ILLICIT TOBACCO TRADE PROTOCOL WITHIN THE EXISTING GLOBAL SYSTEM OF CRIMINAL JUSTICE



One of the issues central to this week's negotiations, particularly in Committee B, is the role that criminal justice mechanisms will play in countering the illicit trade. The policy – elimination of the illicit trade in order to achieve health goals – must rely on various mechanisms. One of these is criminal justice,

which is not a health mechanism. In a very broad sense this criminal justice mechanism includes interdiction techniques useful in control of the tobacco supply chain such as the new tracking and tracing system being developed here. In a narrower sense, criminal justice means the process of investigation, prosecution and punishment of criminals, handled by police, prosecutors and the judiciary. The challenge for the INB is that a UN criminal justice mechanism to support international co-operation in regard to policing, prosecution and punishment already exists.

## MANDATE

The mandate for criminal justice policymaking within the UN lies with the UN Commission on Crime Prevention and Criminal Justice (UNCCPCJ), which meets in Vienna. Its secretariat is the UN Office on Drugs and Crime (UNODC), also based in Vienna. The UNODC also serves as the secretariat of the other criminal justice treaty regimes.

## EXISTING TREATIES DEALING WITH THE ILLICIT TRADE IN TOBACCO

The most relevant treaty is the UN Convention on Transnational Organized Crime, which establishes a procedural regime for the global suppression of transnational organised crime, including in certain circumstances the illicit trade in tobacco.

The trigger of the Convention is descriptive:

- transnational (cross border)
- organised (three or more persons)
- serious crime (punishable by deprivation of liberty for at least four years, as provided in domestic law).

But the Convention does not prescribe any particular type of crime. It might be illicit trade in tobacco – it might

be the illicit trade in any commodity. The Chairperson's text of the illicit trade protocol does attempt to prescribe certain tobacco-related crimes; central to the negotiations in Committee B has been whether it is necessary to do so in a treaty.

## CAPACITY

The UNODC is at the centre of a global criminal justice system. It possesses legal expertise on how the criminal justice treaties work and functional expertise on how they should be implemented. The UNODC trains national officials and develops model legislation to enable states to co-operate with one another through legal assistance and extradition. States have responded by developing complementary criminal justice infrastructures at a national level. The problem facing INB-2 is whether there is any point, or there are any funds, to build an international tobacco-specific criminal justice machinery under the aegis of the FCTC here in Geneva and try to develop complementary national structures.

## WILLINGNESS

The UN criminal justice machinery in Vienna also has budget constraints, so the question of funding cannot be avoided. But it does possess the basic criminal justice machinery so some formal and effective link with that machinery needs to be made in the development of the illicit trade protocol. This is important for maximising the impact of the protocol on illicit trade and thus achieve the overall goal of eliminating illicit trade in tobacco.

Professor Neil Boister  
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University of Canterbury  
New Zealand

# COMBAT CIGARETTE SMUGGLING BY CONTROLLING THE SUPPLY CHAIN

A recent paper reporting on experience in combating cigarette smuggling in three European countries during the past decade concludes that the key to tackling large-scale cigarette smuggling is to cut off supply to the illicit market. The following example, drawn from the paper, describes the situation that confronted Italy.

Italy was one of the first European countries to be faced with serious cigarette smuggling. An estimated 1,500 tonnes of smuggled cigarettes were sold in Italy in 1985, rising to 8,400 tonnes in 1992 and peaking at 17,000 tonnes in 1998. American manufactured cigarettes, especially Marlboro, were chiefly involved. The *modus operandi* of the smuggling route was:

1. Cigarettes were manufactured in the US
2. A first purchaser placed an order with manufacturer
3. Containers were exported to the port of Antwerp, in Belgium, under the "transit" regime, which allows the temporary suspension of taxes on goods destined for a third country
4. Containers were exported and imported through many different locations in a short period of time, the objective being to obscure the tracking of the goods and to make it extremely difficult to identify the real owner
5. Payments were often made in cash or from tax havens or countries with secretive banking laws, such as Liechtenstein or Switzerland
6. The containers were then transferred from the legal transit regime to the illegal domain, in a location known for its lack of surveillance, for example warehouses in Montenegrin ports
7. Cases of cigarettes were

transferred to speedboats and shipped at night across the Adriatic to Italy, about 100 miles away

8. The cigarettes were sold in the streets of Naples and Bari, often by immigrants

By 1998, European governments and European Community (EC) officials had begun investigating, believing that manufacturers were selling American cigarettes to traders who resold them into black markets set up to evade foreign taxes. In November 2000, the EC filed a civil action in New York against Philip Morris (PMI) and RJ Reynolds accusing the companies of "an ongoing global scheme to smuggle cigarettes, launder the proceeds of narcotics trafficking, obstruct government oversight of the tobacco industry, fix prices, bribe foreign public officials, and conduct illegal trade with terrorist groups and state sponsors of terrorism." Led by Italy, ten EU Member States joined the lawsuit in 2001.

In 2004, the EC and the Member States dropped the case against PMI in return for an enforceable and legally binding Agreement (which did not constitute an admission of liability by PMI). Under the Agreement, PMI agreed to pay the EC US\$1 billion over 12 years. The company was also required to make substantial additional payments if smuggled PMI cigarettes continued to be seized by the authorities.

From the late 1990s, there was a striking reduction in seizures. Legal sales – which fell from the mid 1980s to the beginning of the 1990s and were then stable from 1991–1997 at around 89,000 tonnes per year – rose to just under 103,000 tonnes in 2002. The volume of seized cigarettes, reflecting the amount of smuggling, was a mirror image of legal sales, decreasing from 1,700 tonnes in 1998 to just 333 tonnes in 2002. Over this period, American

manufacturers changed their export practices such that the number of cigarettes exported from the US to Antwerp fell from 49 billion in 1997 to 3 billion in 2001. Cigarette smuggling fell from around 15 per cent in the 1990s to 1-2 per cent in 2006.

OLAF's 1998 investigation into US tobacco companies, activities by Italian customs and the ensuing lawsuit against the American firms appear to have had a significant impact. There was a dramatic fall in US cigarette exports to Europe over the period covered by these activities. A plausible interpretation of the data is that the tobacco industry promptly changed its export practices in response to the investigations. The investigations and the threat of legal action changed the risk-benefit equation for the industry. The prospect of a lawsuit and possible financial penalties increased the risks and reduced the benefits of supplying cigarettes to the illicit market.

The data from Italy show that the tobacco industry can exercise considerable control over the supply chain. When companies see smuggling becoming too risky, they cease supplying the illicit market and their brands are no longer available via illicit channels.

Enforceable measures to control the supply chain need to be at the heart of the FCTC protocol on illicit tobacco trade. They should facilitate investigations into smuggling operations and make the industry liable for controlling the supply chain.

Luk Joossens  
Martin Raw

## REFERENCE

This article is based on a report an article available online at <http://tobaccocontrol.bmj.com/cgi/rapidpdf/tc.2008.026567v1>

## USAGE DE SYNONYME DANS LE TRAFIC ILLICITE DE TABAC

Outre les cinq millions de décès annuels consécutifs à la consommation et à l'exposition de la fumée du tabac, le trafic illicite de tabac est responsable des pertes annuelles considérables de plusieurs milliards de dollars au trésor public, notamment par la contrebande et la contrefaçon.

L'Apparition récente des paquets des cigarettes de marque «MEKAKO» sur le marché congolais vient confirmer l'un des résultats d'une étude publiée le jeudi 10 Juillet 2008, dans la version en ligne du Journal «Tobacco Control», qui a constaté que l'industrie du tabac s'appuyait sur la contrebande de tabac comme un élément important de sa stratégie pour le marché en Afrique.

Cette nouvelle marque de cigarette qui porte étrangement, et sans doute pas fortuitement, la même dénomination que le savon «MEKAKO» d'usage fréquent par plus d'un congolais, est fabriquée comme par coïncidence dans un même pays asiatique, et ne porte pas de vignette, preuve de paiement des frais fiscaux, obligatoires pour tout produit de tabac importé et vendu par des petits commerçants en République Démocratique du Congo.

La dénomination et la présentation de cette nouvelle marque de cigarette

pourraient faciliter la dissimulation des cigarettes dans d'autres marchandises et par conséquent la falsification de documents douaniers, étant donné que pour le commun de congolais, y compris les douaniers, la marque «MEKAKO» est synonyme de savon, au même titre que «BIC» est synonyme de stylo ou encore «PEPSODENT» est synonyme de dentifrice.



Les frontières étant poreuses et les contrôles moins rigoureux dans bon nombre des pays en développement, un transitaire qui déclarerait avoir du «MEKAKO» dans sa cargaison à un poste douanier, sans préciser qu'il s'agit du tabac et non du savon, pourrait aisément faire passer par contrebande des produits de tabac, tout en prenant soigneusement soin de dissimuler les cigarettes dans les savons.

Ainsi, grâce au commerce illicite du tabac entretenu par l'industrie elle-même,

celle-ci maximise les profits en évitant les taxes obligatoires imposées par les gouvernements.

Pendant deuxième session de l'organe intergouvernemental de négociation d'un protocole sur le commerce illicite de tabac une attention particulière devra donc être attirée sur la dénomination et la présentation des produits de tabac qui ne doivent pas faire évoquer ou prêter à confusion avec un autre produit à usage courant dans la société.

Un protocole fort sur le commerce illicite dans le cadre de la Convention cadre de la lutte antitabac (CCLAT) aidera les pays à aborder le problème de commerce illicite du tabac qui sape les politiques fiscales et aggrave les problèmes de santé publique, les gouvernements sont privés de milliards de dollars en matière de fiscalité, ce qui réduit le financement disponible pour le soutien à la politique globale de lutte antitabac, de la santé publique et d'autres politiques de développement.

Patrick Musavuli, MD  
Initiative de Mobilisation Panafricaine  
Pour le Contrôle de Tabac (IMPACT)

L'étude complète est disponible à l'adresse suivante: <http://tobaccocontrol.bmj.com/cgi/rapidpdf/tc.2008.025999v1>

## THE INTERNET: A GROWING PROBLEM

### “EVERY COMPUTER WITH THE INTERNET IS LIKE A DUTY-FREE SALES POINT”

The debate about banning tobacco sales via the internet is over in Brazil, South Africa, and the US state of Vermont. Each has decided to prohibit such sales.

Brazil banned the sale of tobacco through the internet in 2003. Vermont's ban on internet sales to consumers came into effect on 1 July 2008 and last month the South African parliament agreed to a similar ban.

Internet sales offer smokers a way to evade tobacco taxes, so keeping cigarette prices down and smoking levels up. Internet-based tax evasion also

sharply reduces government tobacco revenues. For example, in the US, an estimated US\$1.4 billion is lost annually in uncollected tobacco taxes from internet sales.

Internet tobacco sales are growing rapidly. In 2000, there were 40 websites selling tobacco in the US. By 2006 there were 770. The number of smokers who had ever purchased cigarettes over the internet had grown from 1.1 per cent in 2000 to 6.7 per cent in 2002.

Further, the rapidly increasing number of websites selling tobacco products make it easier and cheaper for kids to buy cigarettes.

Using the internet to market and sell cigarettes is a simple, straightforward

exercise. There are few barriers to entering this market. Within weeks, an entrepreneur can set up a website, register with the top search engines, secure stocks, set up a delivery system and sell cigarettes directly to consumers.

As website owners can open and close their sites with ease, there is little incentive to comply with tax laws or prevent sales to those who are underage. Without a ban on Internet sales of tobacco, every computer becomes a potential duty-free cigarette vending machine.

Yussuf Saloojee  
National Council Against Smoking  
South Africa



## DIRTY ASHTRAY AWARD

No ashtray today



## ORCHID AWARD

To the INB Bureau for a proposal for a way forward and to the many delegates who showed commitment to the process by seeking technical work to be completed and calling for regional meetings before INB-3.



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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## FREE TRADE ZONES: ECONOMIC BOON OR HAVEN FOR TRADE FRAUD?

Free trade zones (FTZs), previously known as free ports, play important roles in the economic well-being of many regions and localities around the world. The intended purpose of the zones was trade facilitation yet many zones were or are associated with various forms of trade fraud, including the illicit tobacco trade.

Why are transnational criminals attracted to FTZs? The answer lies in the definition.

Britannica.com defines a zone as: "an area within which goods may be landed, handled, manufactured or reconfigured, and re-exported without the intervention of the customs authorities. Only when the goods are moved to consumers within the country in which the zone is located do they become subject to the prevailing customs duties."

There are two notable clauses in the above definition: "...without the intervention of customs..." and "...prevailing customs duties." The zones have little or no supervision and the merchandise stored in the zones is duty-free.

Historically, FTZs have played important roles in the illicit tobacco trade. Repacking, and the alteration of labels are among the activities that go on in the zones, in the absence of supervision and tracking and tracing of merchandise. The altered merchandise is diverted from the zones into the black market. The zones also provide locations for

buyers to examine contraband products prior to purchase. Prohibited merchandise, which includes counterfeit merchandise, illicit drugs and child pornography, cannot be legally stored in a FTZ.

The level of customs control in the zones varies widely by country. The World Customs Organization (WCO) encourages members to exercise control over the zones in their jurisdictions through national legislation. Despite the emphasis by the WCO, major problems exist.

The WCO Commercial Fraud Working Group will meet in Brussels, in December 2008, and the FTZ issue will likely be on the agenda for action and reporting to the WCO Enforcement Group in February 2009.

Governments must enact necessary legislation and provide adequate funding to exercise reasonable control over the conduct of free trade zones to prevent their exploitation by transnational criminals.

John Colledge III  
Consultant

Customs & Trade and Anti-Money  
Laundering

## QUOTE FROM THE INB CHAIR DURING YESTERDAY MORNING'S PLENARY SESSION TALKING ABOUT STAINLESS STEEL E-CIGARETTES AND COMPARING THEM TO ROLEX WATCHES:

"Imagine sucking on your Rolex. One gives you the time, the other takes it away."

Baboom tish!