



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

BULLETIN

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TODAY

13.30 - 14.30
FCA lunchtime briefing

DEATH CLOCK

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

43,504,658

PEOPLE HAVE DIED FROM
TOBACCO-RELATED DISEASES
(AS OF 9AM ON 29 JUNE 2009)

DEATH CLOCK UNVEILED



NGOs representing WHO's six world regions used the opportunity of yesterday's unveiling of the Death Clock to appeal to delegates to achieve significant progress during the current round of negotiations. *"Cigarettes are the world's most widely smuggled legal consumer product and about 650 billion sticks are escaping regulatory systems,"* Mary Assunta, chair of the Framework Convention Alliance, (centre in photo) reminded delegates. She urged them to, *"strengthen weak text, clarify ambiguities and simplify the complicated process; find solutions rather than focus on difficulties; look for common ground rather than take the individual approach. Explore what you can and are willing to do."* The Death Clock records the number of lives lost due to tobacco since negotiations on the FCTC began in October 1999. The ceremony was also attended by Dr Haik Nikogosian, head of the WHO FCTC Secretariat, and Dr Douglas Bettcher, director of the Tobacco Free Initiative.

KEEP THE SCOPE OF THE PROTOCOL BROAD

As we head into more detailed discussions about the scope of the protocol, Parties should consider seriously the disadvantages of eliminating all reference to tobacco leaf and manufacturing equipment. There is a danger of being so fixated on the

smuggling problems of the past that we forget the new forms of illicit trade that are developing.

When illicit trade was first being discussed at FCTC, the overwhelming problem was diversion of legally

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TRACK AND TRACE BASED ON UNIQUE PRODUCT MARKINGS

Article 7 requires Parties to the protocol to set up a tracking and tracing system. The system would require “*unique, secure and non-removable*” markings on all master cases and cartons, and on cigarette packs, when the technology is sufficiently developed.

Is the technology available? Are unique markings feasible for a mass consumer product like cigarettes? The answer to both these questions is a resounding ‘Yes’.



Current markings are only a first step in what is already technically achievable

Take the airline sector, for instance. Delegates who flew in to Geneva may have noticed a two-dimensional bar code on their boarding pass. The International Air Transport Association (IATA), which represents 230 airlines covering 93 per cent of international air traffic, has been using the Bar Code Boarding Pass (BCBP) as a unique identifier since 2005. The system will be obligatory for all IATA members in 2010.

Its advantages are that the technology is standardised at international level and has already been implemented by 200 airlines, including those operating in low- and middle-income countries. Information on the movements of any of the more than two billion passengers flying internationally each year can be accessed immediately from anywhere on the globe when the ticket code is scanned by a barcode reader.

Turning to the pharmaceutical sector, the European Commission has proposed EU-wide legislation to tackle counterfeit pharmaceutical products. (Proposal for a Directive COM (2008) 668). Pharmaceuticals are big business in the EU, involving 3,700 companies selling 30 billion packs a year. Counterfeit items make up a tiny proportion of overall trade (only about one in 20,000 products, or 1.5 million packs), but constitute a serious public health threat.

The EU is discussing applying an authenticity/traceability safety feature on pharmaceutical packaging to allow, say, a consumer, an expert or a scanning device to determine whether the outer packaging is authentic. It would also reveal whether the packaging had been opened, so acting as a form of seal. The safety feature might be a RFID tag, a hologram, a colour shift feature, a watermark or a chemical marker. It could be combined with ‘product serialisation’ involving a unique code being placed on the outside of individual packs. The code is scanned by a device linked to a central database.

Unique markers could appear on all pharmaceutical products, on prescription products, or on items intended for certain risk categories. The public consultation process that involved 100 industry representatives revealed product serialisation to be a serious option enjoying strong support.

Based on industry information, the cost to a large company of setting up a database is estimated to be Euro 3 million. Modifying a production line for mass serialisation could cost around Euro 150,000. Implementing and running a system with serial numbers would cost roughly Euro 0.02 per pack during the first five years of operation, thereafter falling to Euro 0.005 a pack. Over a ten-year period, the annual running costs to pharmaceutical manufacturers to operate mass serialisation on all 30 billion packs are estimated at Euro 371 million.

In the tobacco sector, unique markings on individual packs are already in use in Brazil, California and Turkey. The lesson from the airline and pharmaceutical industries is that uniquely identifying billions of items is entirely feasible. This is clearly the way to go in tackling the illicit cigarette trade. And while only one in 20,000 pharmaceutical products is counterfeit, the illicit cigarette trade involves one in every nine cigarettes.

Luk Joossens
Framework Convention Alliance



CANADIAN POLICY MEASURES TO COMBAT CIGARETTE CONTRABAND



Recommended reading for all INB-3 participants is an important review of the effectiveness of policy measures to combat contraband cigarettes published this month by the Ontario Tobacco Research Unit. It is, without doubt, the most extensive and recent research on policy measures to address the illicit cigarette trade.

While the report has a clear focus on the Canadian situation, it also provides up-to-date information on anti-contraband policies in different parts of the world. Case studies of Australia, Brazil, Canada, the EU, Spain and the UK are discussed in detail.

With INB-3 in mind, the report provides factual background to the measures under discussion in Geneva this week.

The effectiveness and the relative merits of the following ten anti-contraband policy measures are examined in the report:

- licensing
- tax-markings/stamping
- tracking and tracing
- record-keeping/control measures
- enhanced enforcement
- export taxation
- tax harmonisation
- tax agreements/compacts
- legally-binding agreements with the tobacco industry and memoranda of understanding
- public awareness campaigns.

According to the authors, both the type of contraband and the means of distribution influence the effectiveness of different policies. For example, policy measures that were effective in combating legally manufactured but cross-border smuggled cigarettes in the 1990s prove less effective in fighting the illicitly manufactured and counterfeit

cigarettes that dominate contraband activity today in many countries.

Case studies indicate that while contraband sources often emerge domestically, the ease of transport and manufacturing means sources can readily be displaced to neighbouring countries or overseas jurisdictions. Inter-agency co-operation, both domestic and international, is a vital component of all successful anti-contraband strategies.

The dynamic nature of contraband supply requires a comprehensive approach focusing on both immediate and future threats. Vital to this are policies such as tax-paid markings, licensing, record-keeping that are designed to ensure that contraband tobacco products do not appear in the legitimate retail sector. Equally essential are measures such as enhanced taxation stamps to ensure that counterfeit products are easily identifiable. Adequate investment in enforcement is also essential to the success of anti-contraband measures. Given the global scope of the phenomenon, greater international co-operation and information sharing is paramount, finds the report.

The report is highly critical of Memoranda of Understanding with the tobacco industry. The authors state (on page 92) that: *"memoranda of understanding (MOUs) are not considered useful because they do not have the weight of legally binding agreements. As seen in the Canadian case study, even though manufacturers signed a 'gentleman's agreement' with the Canadian government to stop exporting their products to be smuggled back into Canada, the inability of the government to enforce these voluntary agreements meant that nothing changed. Therefore, strong legal agreements that require manufacturers to provide a list of distribution points and demonstrate how they monitor and control their supply chain are recommended as high potential solutions"*.

In conducting their research the authors made use of:

1. a systematic literature review of both academic and non-academic materials on contraband tobacco and relevant policies;
2. interviews with representatives from academia, non-governmental organisations, governments and international organisations. Key informants were chosen for their overall knowledge of tobacco smuggling or their intimate knowledge of a specific anti-contraband policy measure;
3. a series of four expert focus panels, to validate, enrich understanding of, and further assess the feasibility of implementing various policy measures.

The report also identifies and defines the various forms of contraband tobacco, including casual bootlegging, organised international smuggling, illicit manufacturing, tax-avoidance from duty free sources, and counterfeit cigarettes.

The research was funded by the Canadian Tobacco Control Research Initiative (CTCRI).

REFERENCE

Sweeting, J., Johnson, T., Schwartz, R., *Anti-Contraband Policy Measures: Evidence for Better Practice*. Toronto, ON: The Ontario Tobacco Research Unit, Special Report Series. June 2009.

Available on the OTRU website:
Full report: http://www.otru.org/pdf/special/special_anti_contraband_measures.pdf

Summary: http://www.otru.org/pdf/special/special_anti_contraband_measures_summary.pdf

ORGANISED CRIME: THE EVIDENCE

Important investigations by the International Consortium of Investigative Journalists (ICIJ) have uncovered startling new evidence about the major Swiss tobacco smuggling case reported in the May 2009 edition of FCA's Bulletin Online, and via www.publicintegrity.org/investigations/tobacco.

Nine defendants are now facing prosecution in Bellinzona, Ticino Canton, for alleged involvement in an international cigarette smuggling ring. The defendants, four Swiss, three Italian, one French and one Spanish, are alleged to have laundered more than US\$1 billion between 1994 and 2001 through an exchange office in Ticino. The operation is said to have included two Italian organised crime groups, the Camorra of Naples and the Sacra Corona Unita of Apulia. Swiss law enforcement officers codenamed the investigation "Montecristo" after the famous novel by Alexandre Dumas.

Money from the groups is alleged to have been brought to Ticino to be spent on buying cigarettes from duty free bonded warehouses in Rotterdam or Antwerp, or from wholesalers. The cigarettes were then carried illegally to Montenegro and then in speedboats across the Adriatic from Montenegro to the Apulian coast and from there to black markets in Naples and Apulia. The indictment says that well-known freight transport companies based in Switzerland,

including Danzas, Mundotrans and Swissair Cargo, were among those used to ship the cigarettes to Montenegro. About 215 million cartons are alleged to have been smuggled to Italy, and the indictment says that some were also sold through black markets in Britain and Spain.

The ICIJ report reveals details of a parallel investigation in Italy, where a judge in Bari is now considering whether evidence collected by prosecutors is enough to justify a trial. The evidence suggests that between 1994 and 2002 the Camorra and Sacra Corona Unita operated freely in Montenegro. The papers deposited with the court originally named fifteen people, including the current Montenegrin Prime Minister Milo Djukanovic and former finance minister Dusanka Jeknic. In March, the prosecutors dropped Mr Djukanovic from the indictment. Also in the group of possible defendants are managers of Montenegro Tabak Transit, a state company allegedly set up specifically to control smuggling operations. The case has been marked by a series of apparent gangland killings. So far two key witnesses and five others mentioned in the case have been murdered.

According to the ICIJ report, the extent of smuggling involving Montenegro was described in a 2006 thesis for the London Business School by Ratko Knezevic, a former government insider

and Washington lobbyist. He reported estimates *"that by the end of [the] 1990s, the Montenegrin government was earning as much as \$700 million annually from the clandestine cigarette trade"*. According to the Swiss indictment, *"starting in the early 1990s until the beginning of 2001, almost the whole flow of funds stemming from Montenegro's cigarette smuggling trade, managed by the Camorra and Sacra Corona Unita, went through the Swiss financial market. During this time, more than one billion dollars were laundered"*. Money from the trade was deposited in banks in Cyprus, Monte Carlo and Switzerland.

Some Parties at INB-3 continue to claim that tobacco smuggling is not a major problem, and does not need to be covered by international agreements as a potentially serious crime. This case shows just how wrong they are. Tobacco smuggling involves organised criminal gangs, enormous sums of money and networks spanning many countries. It is also associated with violence and murder. The "Montecristo" case proves beyond doubt that illicit tobacco should be treated as a high priority by governments and law enforcement agencies. A strong Illicit Trade Protocol is an essential weapon in the fight against organised crime.

*Ian Willmore
FCA*

BANGLADESH PERSPECTIVE ON ILLICIT TRADE

In Bangladesh, illicitly traded cigarettes account for more than 30 per cent of domestic sales.

According to the World Bank, the tobacco industry benefits economically from the business of cigarette smuggling. Internal company documents from British American Tobacco in Bangladesh have noted the large volume of smuggled cigarettes entering into the country. Bangladesh, in particular, is a major target for cigarette smuggling due to its large population and close proximity to India. An excessive level of production of cigarettes in Bangladesh suggests that it may in fact act as a supplier to neighbouring India and Myanmar.

Known routes of contraband tobacco products finding their way into Bangladesh extend from Albania, Egypt, Poland and Singapore. Also, a huge number of bidi (made by tendu leaf) from India and cheroot from Myanmar are coming into Bangladesh. As well as this, many other brands which are illegally imported from other countries are also available in Bangladesh markets.

The availability of cheap cigarettes and other tobacco products undermines efforts to promote cessation of smoking and makes addicts of people in need of help. The creation of a black market undermines all control over sales.

Illicit trade in tobacco products is also an important issue in the National Strategic Plan of Action for Tobacco Control 2007-2010 in Bangladesh tax revenues, and reinforces criminal organisations and corruption. Unless smuggling is counteracted at both national and international levels, the impact of other tobacco control measures will be largely undermined.

As the illicit tobacco trade can circumvent several tobacco control measures, especially tobacco taxes, a strong protocol to combat the illicit trade is essential for effective and successful implementation of the FCTC, to reduce tobacco use and save lives.

*Iqbal Masud
AMIC, Bangladesh*

GLOBAL FINANCIAL CRISIS AND THE PROTOCOL

At the conclusion of INB-2, a question was posed concerning the impact of the global financial crisis on the future illicit trade protocol. Since then, the implications of the crisis have become clearer.

The global financial crisis heightens the importance of efforts to address illicit trade. Over the long term, an effective illicit trade protocol should significantly increase the collection of tax revenue, reduce the negative health and financial impacts of tobacco consumption and combat organised criminal activity.

As the global financial crisis has played out over the first half of 2009, at least three concerns of relevance to the illicit trade protocol have emerged. First, in attempts to stimulate economic activity, many national governments have initiated large-scale spending packages that have increased public debt. Second, international trade has declined dramatically, indicating a significant drop in consumer spending and placing a greater importance on trade facilitation. Third, in some nations, rising rates of unemployment are beginning to undermine social stability and increase the incentives associated with criminal conduct.

The rise in government spending and debt is related to the illicit trade protocol in a number of ways. At the most general level, deficit budgets increase the importance of tax collection, including with respect to tobacco products. At a more specific level, increasing taxes on tobacco products is an attractive policy option to address the crisis because increasing tobacco taxes would increase revenue while only dampening consumer demand for a harmful product. Where the approach of increasing taxes is adopted, the importance of tax collection will increase in line with the potential growth in tax revenue.

Another potential implication of rising government spending and debt is that government spending is directed towards the stimulation of economic activity. A potential side-effect of this approach is that governments reduce spending on other activities, including engagement in multilateral treaty-making.

However, because the illicit trade protocol stands to increase government revenue significantly for many nations, any possible short-term disengagement or under-commitment of resources to the negotiations are likely to have long-term negative implications.

The sharp drop in consumer spending in many nations is reflected in significant falls in international trade. Since one strategy for stimulating economic activity is to remove impediments to that activity, making trade easier (trade facilitation) has increased in importance. Customs authorities often seek to balance concerns relating to trade facilitation against the importance of enforcing customs laws. Thus, a renewed emphasis on trade facilitation is associated with a risk that illicit trade may become easier.

The need to increase government revenue and the possibility that trade facilitation will reduce some barriers to engaging in illicit trade also comes against a backdrop of increasing social instability in some nations. This instability, which is associated with increasing unemployment, creates an environment that increases the incentives to commit crime and evade taxes.

While this combination of factors does not suggest doom and gloom, it does suggest that the illicit trade protocol is more important today than it was when negotiations began. The importance of potential increases in tobacco tax collection has increased. Efforts to facilitate trade may inadvertently lead to increases in illicit trade and the economic situation has a social impact that may encourage illicit activity. This suggests that FCTC Parties should intensify their commitment to the negotiations with a view to implementing a long-term multilateral solution to the problems posed by illicit trade in tobacco products.

*Dr Benn McGrady,
Australian lawyer and policy adviser specialising in issues relating to
international trade and global health.*

VESTED INTEREST CLARIFIES POSITION

A letter is circulating at INB-3 from PMI, which includes its comments on the Chair's text. It makes interesting reading. PMI claims, for example, that its tracking and tracing system has *"received wide appreciation"*. The system proposed by PMI is inadequate in important respects, for example because it gives the company complete control over the tracking and tracing database. But it shows beyond doubt that delegations at INB-3 that have been claiming that a tracking and tracing system is not feasible are wrong.

PMI has also produced a commentary on the Chair's text for the protocol, which - shamefully - seems to be a lot more advanced than the positions taken by some of the Parties at INB-3. For example, PMI opposes any exemptions for small and medium firms from Article 6, on customer identification, and from Article 7 on tracking and tracing. PMI supports the principle of blocking firms shown to be involved in illicit trade. It supports an international central *"internet backed access point"* for the tracking and tracing system. It also supports action to end the diversion of tobacco products into illicit channels in free trade zones.

However, some key elements of an effective protocol are still opposed by PMI. The company opposes an end to tobacco sales over the internet, claiming that minors could be protected by *"reliable age verification"*, which is simply not possible. Unlike some Parties, however, PMI would support an end to internet sales across national borders. PMI also opposes attempts to end the duty free sales of tobacco products, claiming wrongly that this is not a significant source of illicit trade.

It would of course be utterly unacceptable if some Parties at INB-3 took positions on an illicit trade protocol that were even worse than those of a major tobacco firm such as PMI. By producing its own comments on the Chair's text, PMI may inadvertently have established a baseline for a protocol below which any Party would be embarrassed to sink.



DIRTY ASHTRAY AWARD

To Cuba for using disinformation to try to block action to ban duty free; and for not having the courage to ratify the Convention to protect the health of their citizens.



ORCHID AWARD

To the Philippines for emphasising the primacy of health over trade; a principle undermined by Article 2.4 of the Protocol.

Continued from page 1

manufactured, usually major-brand cigarettes, frequently with the involvement or at least the acquiescence of manufacturers. While this type of diversion is still a major problem, in some regions we have seen the rise of new forms of illicit trade, particularly illegal manufacturing. Stopping illegal operators from purchasing cigarette-making equipment, and restricting their access to leaf, are important in shutting down this new form of illicit trade.

Ironically, two of the countries most affected are Brazil and Canada – both of whom spoke yesterday in favour of limiting the scope of the protocol.

In the case of Brazil, there are doubtless legitimate worries about the feasibility of regulating tens of thousands of small farms in the world's number one exporter of tobacco leaf. However, this is not a logical reason to give up any hope of regulating the international trade in tobacco leaf – which, just like the cigarette trade, is dominated by large companies. Smuggling of tobacco leaf and uncontrolled purchases of leaf by illegal manufacturers are already issues in several countries.

On the topic of manufacturing equipment, it is true that it would be hard to transfer all elements of a tracking-and-tracing system designed for tobacco

products to the trade in machinery. It is unfortunate that we still lack clarity on several of the practical issues. But this, surely, is an argument for further work, not for giving up on the issue.

The one argument that definitely does not hold up is that it is legally impossible for the protocol to deal with manufacturing equipment and leaf, because of the wording of Article 15. Nobody is seeking to regulate trade in these categories for their own sake – the purpose is always to deal with the major public health problem (and fiscal problem) of illicit trade in tobacco products.

Finally, there is the question of how we can reach a final decision on scope without having a clearer idea of what Parties wish to include in Part III of the protocol. If Parties decide to put more emphasis on illegal manufacturing later this week, why, at the beginning of the week, would they want to throw away a range of potential tools through a premature decision on scope?



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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BULLETIN - THANK YOU CIPRET

We would like to sincerely thank CIPRET-Genève (www.cipret.ch) for its ongoing support for the Death Clock during the three INBs in Geneva.

The Death Clock reminds delegates that with every superfluous word on the floor of the plenary another life slips ever closer to its end because of tobacco.

