



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

BULLETIN

INSIDE THIS ISSUE

Illegal manufacturing	2
Cigarette smuggling and terrorism	3
Ban duty free sales	4
Duty free breaches: examples	5
Comercio ilícito y terrorismo	6

TODAY

13.30 - 14.30

FCA lunchtime briefing

Tracking and Tracing: can it be made to work?

Venue: NGO Room, Espace Polyvalent, Ground Floor

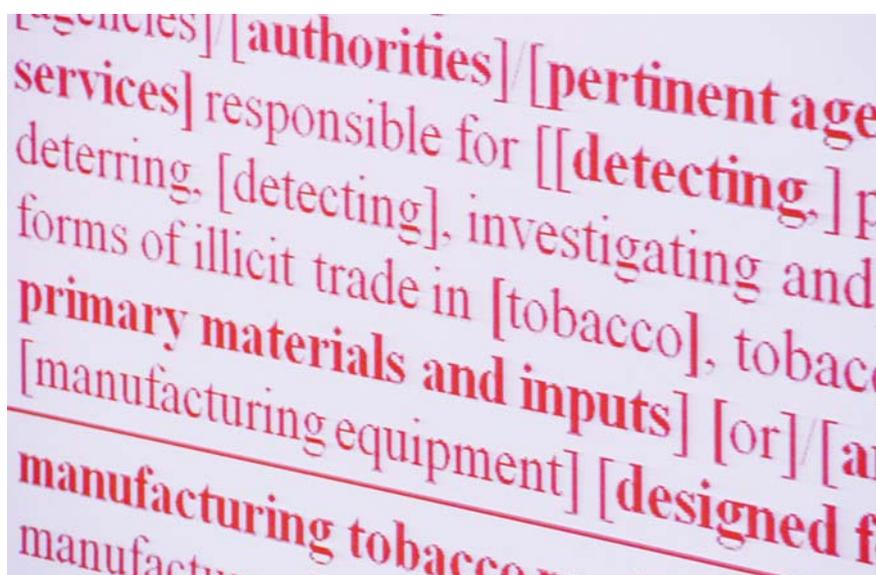
DEATH CLOCK

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

43,519,451

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES (AS OF 9AM ON 30 JUNE 2009)

[DOUBT] [UNCERTAINTY] [VACILLATION] [INDECISIVENESS] [IRRESOLUTION]



Monday saw a shambolic plenary session in which Parties apparently trying to weaken the protocol concentrated their fire on Article 3, dealing with its scope. After insistent demands from Brazil, Canada, Mexico and Japan to remove the words "tobacco" and "manufacturing equipment" from the Article, and equally insistent demands from other Parties that the Article be left alone, the Chair received legal advice that the entire Article was probably immaterial and could be deleted completely with no effect on the rest of the protocol at all. The afternoon saw a thicket of brackets inserted into Article 4 on general obligations, suggesting that some Parties are having trouble seeing the wood for the trees. It was a long, long day.

CANADIAN NON-PAPER DESERVES A GREAT DEAL OF NON-SUPPORT

Canada has circulated a non-paper that appears to suggest removing virtually all specific obligations from the Illicit Trade Protocol.

To quote: "Canada recommends that the Protocol be composed primarily of binding obligations on major concepts, that the Parties may give effect to within their respective jurisdictions by implementing actions based on a set of

minimum measures set out in the Protocol".

And how binding would those "minimum" measures be? Again, we quote: "Use of non-legally binding wording for the suggested measures: The Protocol may include minimum measures by which a Party could implement a binding obligation".

Continued on page 2

ILLEGAL MANUFACTURING

Not all illegal manufacturing is “counterfeiting,” but all “counterfeiting” is illegal manufacturing. The term “counterfeit cigarettes” has been used improperly to describe all forms of illegal manufacturing. The terms are not synonymous. The public, law enforcement, Customs and media awareness campaigns by some of the multi-national tobacco producers contributed to the confusion. As a result, it is not uncommon for public officials, including those in law enforcement to use “counterfeit” or “counterfeiting” when referring to all illegally manufactured tobacco products. The tobacco industry has made little or no effort to correct the errors.

There are three types of illegally manufactured tobacco products:

- those bearing counterfeit trademarks
- those produced in unlicensed facilities, but not bearing counterfeit marks
- those produced by a licensed manufacturer, but without tax payments or possibly in violation of other laws.

Trademark holders are concerned about the customer perception and acceptance of their products. Merchandise with counterfeit marks could result in the loss of customers, which translates to a reduction in revenue. The potential loss of revenue makes this a primary concern for trademark holders. Campaigns by the tobacco industry have also successfully created the notion that products with counterfeit trademarks are more harmful than those manufactured by the legal industry. Obviously, seizures and destruction of tobacco with counterfeit trademarks serve the financial interests of the trademark holders.

Illegal manufacturing takes place in North and South America, eastern Europe, south and east Asia. Illegally manufactured tobacco products are traded internationally. Production

methods range from hand-produced products, to products manufactured in state-of-the-art factories. Illegal manufacturing provides illicit tobacco products to organised criminal groups for distribution and retail sales.

Licensed factories have also been used in the illegal production of tobacco products, occurring outside of government controls, the goods being introduced into the black market. An example of this is manufacturing conducted after normal working hours, but utilising authentic packaging.

It is important to use the proper terms when discussing the illicit tobacco trade.

TIP OF THE DAY:

NATIONAL LAW ENFORCEMENT TELETYPE SYSTEM (NLETS)

Could Nlets serve as a model for an “international clearing house” for data concerning tracking and tracing? Nlets is a law enforcement network in the United States that performs a variety of national and international data functions related to wanted persons, stolen property, motor vehicle registrations, driver’s licenses, and criminal histories. Police officers in the US can enter queries for all US states and territories, and Canada. The system also provides access to some INTERPOL data.

In recent years, technology has provided connectivity for law enforcement officers in the US. From the field they can access databases of fingerprints or photographs by means of hand-held computers or PDAs. Visit the website at www.nlets.org, review the site and consider how this system might serve as a starting point for an “international clearing house”.

Continued from page 1

So there would be minimum measures to implement binding obligations, but these measures would not be legally binding? FCA talked to the head of the Canadian delegation, who assures us that this is not the case: Canada favours at least some binding, minimum measures. (*Editor: Though they might need a better editor.*)

Leaving aside this bit of semantic acrobatics, how would the Canadian approach work in practice? For example, draft Article 6 sets out extensive “due diligence” requirements for entities involved in the tobacco business. This article could clearly be simplified, for example by not obliging private entities to collect information that governments already collect as part of licensing, as the FCA is proposing. But could one really have a “binding obligation” on the “major concept” of due diligence or customer verification? Or are we to take it that Canada wants to effectively dispense with the whole concept?

What Canada appears to be proposing is that the Protocol should be nothing more than a somewhat expanded version of Article 15 of the Convention – which already contains “binding obligations on major concepts”. Not exactly a stellar result for four INBs on the first and presumably most urgent protocol to the FCTC.

Certainly, if all Canada wishes to propose is a series of non-binding measures to implement “major concepts”, the Canadians might wish to explain the added value of putting us through a lengthy negotiating process, when guidelines would have potentially provided an equally useful catalogue of non-binding measures with much less effort and expense.

Finally, we note that the second half of the Canadian non-paper, on international criminal justice issues, is considerably more constructive. It provides a coherent analysis and a specific suggestion for improvement. If only the first half had been as constructive.

TIES GROW BETWEEN CIGARETTE SMUGGLING AND TERRORIST ORGANISATIONS

TOP SMUGGLING HUBS REVEALED



New investigative journalism reports released today find an increasing link between the illicit tobacco trade and funding for terrorist organisations. The investigations, which also detail the world's largest tobacco smuggling hubs, underscore the vast scope and seriousness of the illicit tobacco trade and the urgent need for the Parties meeting in Geneva to quickly negotiate the strongest possible treaty to combat this problem.

The investigation, part of a series entitled 'Tobacco Underground', was conducted by the International Consortium of Investigative Journalists (ICIJ).

The investigation found that around six terrorist groups, including Al-Qaeda, the Taliban, the Real IRA and the Columbian FARC, are using tobacco smuggling to fund their activities. Due to the small size and weight of cigarettes, and the high profit margins involved, cigarette smuggling is a highly appealing business for criminal networks and terrorist groups.

The report states, *"The increasing use of smuggled tobacco by terrorist and insurgent groups parallels the rapid growth of a multibillion-dollar trade in cigarette smuggling around the world. Huge tobacco black markets have arisen from New York State to Paraguay to Eastern Europe, as smugglers move cheap and counterfeit cigarettes to sell in lucrative high-tax regions. The illicit trade is fueling addiction, say health experts, by making inexpensive cigarettes widely available, while robbing governments of sorely needed tax revenue. At the same time, officials warn, the booming black markets are fueling not only some*

terrorist groups but dozens of organized crime gangs, who find the big profits and low risk hard to resist".

Additionally, the investigation found that China is the largest source of counterfeit cigarettes in the world, producing more than 400 billion counterfeit sticks annually. Ninety-nine per cent of counterfeit cigarettes in the US are believed to originate in China.

As stated in the reports, *"Though a nearly invisible industry, cigarette counterfeiting is an immensely lucrative one, with profits rivaling those of the narcotics trade, officials say. While one 40-foot container of cigarettes (containing 10 million sticks) can be produced in China for just \$100,000, the street value of such a container smuggled into the United States is up to \$2 million. And though a drug trafficker might land a life sentence if caught, a cigarette counterfeiter receives a comparative slap on the wrist — a handful of years in jail, or possibly a fine. Interviews with law enforcement officials, tobacco industry investigators, and the smugglers themselves reveal the Chinese business is booming, with no shortage of groups vying to enter the trade"*.

Paraguay and Ukraine are close behind, with each country producing and importing staggering numbers of cigarettes far beyond what could ever be consumed by each country's legitimate markets. In Paraguay, more than 2,600 brands of cigarettes are manufactured and renegade factories produce more than 20 times what the country could possible consume. Up to 90 per cent of these cigarettes wind up on the black market.

In Ukraine, during 2008, the world's four largest transnational tobacco companies – Phillip Morris International, British

American Tobacco, Japan Tobacco International and Imperial Tobacco – produced and imported 130 billion cigarettes, 30 per cent more than smokers in the country could consume. This is creating a European black market worth \$2 billion a year.

And the 40 billion excess cigarettes? The report says, *"The huge surplus has reached such proportions that it has become a parallel industry, experts say, with all sides benefiting from it, from manufacturers to organized crime gangs who control the black market. In addition, hundreds of thousands of Ukrainians, Romanians, Hungarians, and Poles along the border rely on the trafficking of cigarettes for their livelihood, buying the cheap smokes in Ukraine and unloading them tax-free in European countries where prices are far higher"*.

Matthew L. Myers, President of the Campaign for Tobacco-Free Kids, said, *"This report shows that curbing illicit trade is crucial not only for health and economic reasons, but also to protect national and international security. Illicit trade undermines efforts to reduce tobacco use and save lives and costs governments billions of dollars in revenue. This investigation showcases the need for strong international co-operation to reverse the increasing flow of smuggled and counterfeit cigarettes"*.

REFERENCE:

The investigative reports can be found at www.tobaccofreecenter.org/press_release/2009/06/29/illicit_trade_cpi_report.

PROTOCOL MUST INCLUDE A BAN ON DUTY FREE SALES

The availability of duty free tobacco products contributes to illicit trade, as confirmed by the Expert Paper on the issue produced for INB-3, by the tobacco industry's internal documents and public admissions, and by the first hand experience of many countries. It is because of this first hand experience that so many Parties want a ban on duty free sales in the protocol.

Shortly before INB-3, BAT publicly admitted that there is a problem with "illicit trade in the duty free area". Given this admission, how could there possibly be any doubt about the connection between duty free and contraband?

In many parts of the world, diverted cigarettes that never make it to duty free stores are a major source of contraband. The protocol must help these affected Parties. A duty free ban would also help prevent future problems for Parties which are currently unaffected.

It may be the case that in most of the EU only a small percentage of illicit trade is now connected to duty free. But that is because since 1999 the EU has banned duty free sales to individuals travelling within its borders. Prior to that, the duty free contribution to contraband in the EU was far more significant.

On the eastern edge of the EU, however, even today, duty free is connected to contraband. That is why Bulgaria and Romania have been moving to act on duty free.

BAT says it has voluntary "rigorous controls" related to duty free shipments. But the bottom line is that voluntary tobacco industry action is totally inadequate and is not working.

"Tobacco products that are destined for duty-free sale, and are therefore produced, stored and transported free of the usual duties or taxes, are often diverted into illicit trade".

Expert review prepared for INB-3, p.3 (INF.DOC./3)

"Duty free shops play a major role in cigarette smuggling in Bulgaria".

U.S Department of State 2008 International Narcotics Control Strategy Report

"One of the important sources of illegal cigarettes in the Romanian market are the duty free shops' says Iulian Butnaru, a representative of the Romanian Customs. ... This is an opinion shared by police in Moldova, Bulgaria, Ukraine and other countries".

Source: The Organized Crime and Corruption Reporting Project, 2007

A duty free sales ban passes the tobacco industry "scream" test. If it really is the case that duty free sales are unimportant because they only constitute a small percentage of overall sales, then why are transnational tobacco

companies so fervently opposed?

One comment made is that the protocol is supposed to control illicit trade, not legal sales. But the protocol will contain many other measures to control legal sales, such as tracking and tracing of legal sales, customer verification, licensing and record-keeping, etc.

Prevention is best. It is better to ban duty free so that there is no pretext for the storage and shipment of tax-exempt tobacco and thus motivation and opportunity for diversion. By analogy, it is far easier to prevent horses from leaving the barn than to chase them after they have left, particularly if they have moved to another continent.

As the protocol negotiations have proceeded from INB-1 to INB-2 to INB-3, the number of Parties calling for a duty free ban has continued to increase. This growing support is encouraging.

In addition to reducing illicit trade, a ban on duty free sales would increase government revenue by eliminating untaxed sales. It would reduce the ability of the tobacco industry to associate tobacco with luxury goods and international travel and to use duty free stores as marketing venues. It would reduce the social acceptability of tobacco products. And it would end a source of inexpensive tobacco products: lower prices increase consumption

GROWING INTERNATIONAL MOMENTUM AGAINST DUTY FREE

More governments are taking action:

Nepal: banned all duty free tobacco sales in 2008

European Union: now consisting of 27 Member States, in 1999 banned duty free sales to individuals travelling within the EU

Bulgaria: went beyond the EU position by banning duty free sales at land borders with non-EU countries in 2008

Romania: announced it is considering the same move as Bulgaria

Indonesia: shut down arrival duty free stores in April 2009

Canada: since 2001, has imposed federal tobacco tax for sales in "duty free" stores, but not provincial tobacco tax.

India: the country's Health Minister called for a ban on duty free tobacco sales in November 2008.

EXAMPLES OF WHY THE PROTOCOL MUST INCLUDE A BAN ON DUTY FREE SALES

In many parts of the world, the existence of duty free outlets has become a major opening for contraband. Cigarettes supposedly intended for duty free sale never make it to duty free stores and instead are diverted in mass quantities into illegal distribution channels. Illustrated on this page are examples of packages marked for duty free sale in one country but diverted and ending up as contraband in another country, perhaps a continent away. It is essential that the protocol includes a ban on duty free sales.



Contraband purchased in Egypt in November 2007, with South Korean warnings and marked for 'Duty Free' in South Korea



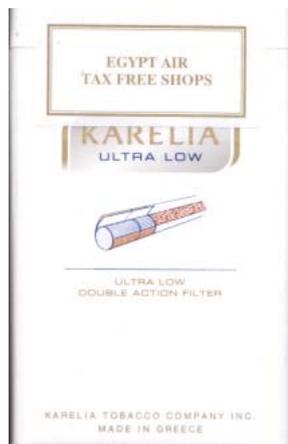
Contraband purchased in Egypt in November 2007, with UK health warnings and marked on the side 'For Duty Free Sale Only'



Contraband purchased in Pakistan in January 2009, marked 'GCC Duty Free' (Gulf Co-operation Council)



Contraband purchased in India in March 2009, with South Korean warnings, marked 'Duty Free' for South Korea



Contraband made in Greece, purchased from retailer in Egypt but marked 'Egypt Air Tax Free Shops'



Contraband purchased in Iran in 2009, marked 'Duty Free Turkey' and 'Duty Free Levant' (e.g. Syria and Lebanon)



Far left: contraband purchased in Pakistan in January 2009, with UK warnings but marked on side 'For Duty Free Sale Only'

Left: contraband purchased in Dominican Republic in January 2009, with UK warnings but marked on side 'For Duty Free Sale Only'



Contraband purchased in the Philippines in June 2009, marked 'Duty Free Asia-Pacific' and 'Duty Free Hong Kong and Macao'

DIRTY ASHTRAY AWARD



To Canada for conspiring to weaken the protocol by calling for “non-legally binding wording” for measures in the protocol, two weeks in advance of INB-3, and for maintaining this position during the negotiations.

ORCHID AWARD



To the many many Parties which supported the deletion of Article 2.4, to avoid undermining the protocol.

NUEVAS INVESTIGACIONES REVELAN LOS VÍNCULOS ENTRE EL COMERCIO ILÍCITO DE TABACO Y EL TERRORISMO

El informe, parte de la serie “Tobacco Underground”, realizada por el Consorcio Internacional de Periodistas de Investigación (ICIJ, en sus siglas en inglés), desvela los grandes centros de contrabando de tabaco del mundo y pone de relieve el amplio alcance y la gravedad del comercio ilícito de tabaco y la necesidad urgente de un protocolo sólido para hacerle frente.

La investigación halló que unos seis grupos terroristas (al-Qaeda y las FARC, entre otros) utilizan el contrabando de tabaco para financiar sus actividades; la facilidad del transporte de cigarrillos y su amplio margen de ganancias hacen que el contrabando de cigarrillos sea altamente rentable para las redes de delincuencia y terrorismo.

Según las investigaciones realizadas, China es la mayor fuente de cigarrillos de contrabando del mundo, con una producción anual de más de 400 mil millones de cigarrillos de contrabando al año. Se cree que el 99% de los cigarrillos de contrabando que se consumen en EE UU proceden de China. Paraguay y Ucrania son asimismo

grandes centros de producción de cigarrillos de contrabando. En Paraguay hay una producción de cigarrillos 20 veces mayor de lo que el país puede consumir. Y en Ucrania, en 2008, las cuatro grandes empresas internacionales de tabaco producen e importan 30 mil millones de cigarrillos, 30 por ciento más de lo que el país consume, lo que genera un mercado negro europeo de 2000 millones de dólares US anuales.

Según el informe, “los excedentes de cigarrillos han alcanzado tal proporción que han generado una industria propia paralela propia.” Para Matthew L. Myers, presidente de Campaign for Tobacco-Free Kids, “el informe demuestra que frenar el comercio ilícito es vital no sólo en términos sanitarios y económicos, sino también de seguridad nacional e internacional.”

El informe de la ICIJ está disponible en http://www.tobaccofreecenter.org/press_release/2009/06/29/illit_trade_cpi_report.



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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FCA BRIEFING MATERIALS

Any delegates who have not yet done so are welcome to collect from the FCA table an FCA illicit tobacco information pack and a USB flashdrive containing digital versions of the briefing materials. Information is available in all six UN languages.

Policy materials present FCA's position on the Chair's text, both in summary and in detail by topic, with key recommendations. There is also a side-by-side commentary on the Chair's text, with detailed recommendations.

Also in the pack is a series of factsheets on: a cost/benefit analysis of the illicit trade protocol; how eliminating the illicit cigarette trade would increase tax revenue and save lives; illicit tobacco trade in the MERCOSUR region; and the results of research on illicit trade in South Africa.

And, last but not least, a track and trace boarding card for the journey from ‘Smugglestopper’ to ‘Lifesaver’. Conditions of travel: strengthen, clarify, and simplify the protocol on illicit trade. Gate closes 2010.

