



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

BULLETIN

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DEATH CLOCK

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

43,593,423

PEOPLE HAVE DIED FROM
TOBACCO-RELATED DISEASES
(AS OF 9AM ON 5 JULY 2009)

THANKS, BUT MORE HARD WORK AHEAD

FCA would like to congratulate everyone at INB-3 for surviving a warm and sometimes sticky week in Geneva. There has been real progress, although there is a great deal left to do.

The Illicit Trade Protocol that is agreed by the end of INB-4 will doubtless be a step forwards in fighting the illicit trade in tobacco products. How large a step depends on what we all do next and, in particular, on how we use the few months from now until the next INB.

It is sometimes easy to forget our sense of optimism and purpose. The negotiations have

occasionally seemed like a bad dream, as brackets appear and disappear, as "shall" fights with "should" and as attempts are made to use the words "as appropriate" as treaty code for "if and when we feel like it".

At several points, FCA has been tempted to propose that any Parties seeking to insert a bracket in an Article should be required to apply for a licence, conduct due diligence on how other Parties would react to their bracket, track and trace what has happened to previous brackets they have produced and keep accurate records of their bracketing behaviour. Offences and penalties for bracketing should perhaps be left, as appropriate, to the domestic law of the Parties.

More seriously: how intersessional work is organised will be crucial. It will require a willingness to commission and to use relevant and high-quality research and expertise. It will need openness – so that observers, whether NGOs, external agencies or non-Parties – can make their important contributions and not feel that they have been ignored or excluded.

If this costs money and stretches budgets, then Parties must be prepared to step up and provide the resources required. At the beginning of the week,

important research was published showing that the illicit trade in cigarettes alone costs

governments around the world US\$40.5 billion in lost revenue every year. The very modest investment required to fund an effective protocol process must surely represent the bargain of the century.

FCA thanks everyone at INB-3 for their hard work this week. We look forward very much to meeting and engaging with Parties during the intersessional work and at INB-4.

We wish everyone a safe and happy trip back home.

“ **HOW INTERSESSIONAL
WORK IS ORGANISED
WILL BE CRUCIAL...** ”

AVANCES EN EL CONTROL DEL COMERCIO ILEGAL ENTRE BRASIL Y PARAGUAY

En su campaña electoral, el candidato a presidente Fernando Lugo sostuvo que combatiría la corrupción, aumentaría la transparencia de los sectores público y privado y establecería políticas sociales con el objetivo de mejorar la distribución del ingreso en el país. Para quienes trabajamos en la cuestión del control del tabaquismo en la región, ese discurso fue una señal de que, si fuera electo, Fernando Lugo estaría dispuesto a considerar aumentos de los impuestos sobre los productos del tabaco y contribuir así a la financiación de las políticas sociales deseadas, ya que la industria tabacalera puede ser una fuente de recursos fiscales relativamente grande en Paraguay.

Con esas consideraciones, representantes del Centro de Investigación sobre la Epidemia del Tabaquismo (CIET) de Uruguay y de la Alianza para el Control del Tabaquismo (ACT) de Brasil, se desplazaron a Paraguay en junio de 2008, después de la victoria de Lugo, para iniciar acciones tendientes a lograr un mayor impuesto selectivo sobre los cigarrillos paraguayos, que es el menor de la región actualmente.

Aumentar la tasa o la base del impuesto sin aumentar los controles fiscales sobre la producción no tiene sentido. La discusión técnica con miembros del gobierno y especialistas locales sobre las características de la demanda y la tributación de los cigarrillos llevó naturalmente a pensar en un sistema de seguimiento y trazabilidad de la producción y distribución de esos productos, así como a identificar problemas y mejoras en el sistema de administración tributaria en el país. CIET y ACT trabajan desde fines de junio de 2008 analizando la información disponible sobre estas cuestiones, discutiendo vías alternativas y buscando cooperación técnica internacional para ayudar al gobierno paraguayo. CIET financió dos seminarios en Paraguay, en abril y mayo de 2009, para analizar la información disponible sobre el sector del tabaco en el país, el sistema tributario y el comercio ilegal.

Las nuevas autoridades fiscales paraguayas no conocían en profundidad las negociaciones del protocolo de comercio ilícito ni los sistemas de seguimiento y trazabilidad de los productos de tabaco. Pero sí eran conscientes de que la producción paraguaya terminaba alimentando el mercado ilegal brasileño. Dada la naturaleza del problema y el impacto sobre el país vecino, nos pareció necesario y oportuno organizar un seminario técnico sobre estos temas conjuntamente con las autoridades brasileñas. Los objetivos eran claros: proporcionar información a las autoridades paraguayas y discutir conjuntamente herramientas disponibles que podrían ayudar a solucionar el problema bilateral del comercio ilegal, así como aumentar la recaudación en Paraguay.

ACT organizó ese seminario técnico en São Paulo en mayo de este año. El evento de dos días contó con la participación de autoridades fiscales y de control de tabaquismo de ambos

países; especialistas internacionales, como Luk Joossens, John Colledge y Vera da Costa e Silva; autoridades policiales y del Ministerio de Industria de Brasil y especialistas nacionales de ambos países.

Al final del seminario fue redactado un documento con los temas discutidos durante las sesiones. Estos temas forman parte de cualquier programa de trabajo razonable para combatir el comercio ilegal en la región. En primer lugar, todos los participantes consideraron que era necesario apoyar y participar en la negociación del protocolo sobre comercio ilícito; y ya se ha dado un primer paso en ese sentido, con la presencia de una autoridad tributaria paraguaya en el Órgano de Negociación Intergubernamental del Protocolo, que se celebra estos días. En segundo lugar, los participantes coincidieron en la necesidad de aumentar y mejorar la

información disponible sobre el mercado ilegal, incluyendo estimaciones anuales sobre su volumen en relación al consumo total. En tercer lugar, se consideró la

importancia de legalizar y otorgar licencias a las fábricas de cigarrillos en la región como primer paso de un control efectivo de la producción y de la recaudación. Además, el seminario identificó la necesidad de mejorar la percepción que el sistema judicial tiene respecto al contrabando de cigarrillos, para que sea juzgado como un delito serio. Finalmente, se discutió la posibilidad de llevar a cabo estudios para identificar los efectos del contrabando en la salud pública; así como incorporar el comercio ilegal en el análisis de la demanda de cigarrillos y estudiar las características de los cigarrillos objeto de contrabando.

El balance del seminario puede ser considerado positivo en cuanto al intercambio de información sobre los temas entre las partes. Asimismo, la sesión contribuyó al conocimiento personal entre las autoridades y al desarrollo de una mayor interacción entre especialistas, nacionales e internacionales, con las autoridades nacionales responsables de combatir el contrabando en la región. El encuentro de São Paulo también deberá servir para facilitar la organización del seminario sobre impuestos y mercado ilegal que los gobiernos de los países del Mercosur celebrarán en Montevideo los próximos 13 y 14 de octubre de este año.

*Roberto Iglesias
ACT, Brasil*

*Alejandro Ramos MSc
CIET, Uruguay*

EL BALANCE DEL SEMINARIO FUE POSITIVO EN CUANTO AL INTERCAMBIO DE INFORMACIÓN Y AL DESARROLLO DE UNA MAYOR INTERACCIÓN ENTRE ESPECIALISTAS Y AUTORIDADES NACIONALES

QUESTIONS AND ANSWERS ON DUTY FREE

In Committee A, on Friday, many Parties, especially developing countries, expressed support for a ban on duty free tobacco sales. However, some Parties raised points against a ban. Below, are responses to the various arguments that have been raised.

ARGUMENT: DUTY FREE IS NOT RELATED TO ILLICIT TRADE.

Response: There is overwhelming evidence of the connection, including the Expert Review for INB-3, investigative reports, an admission by British American Tobacco, industry documents and the direct current experience of many countries. During discussions in Committee A, various Parties described how cigarettes intended for duty free sale in another country ended up in their own country.

In Committee A, the European Community described how, in the early and mid-1990s, diversion of cigarettes intended for duty free outlets was a huge problem in the EC. Highlighting the magnitude of the problem at that time, the EC stated that for every 10 container loads of cigarettes marked for duty free, nine would be diverted into illicit trade and never reached duty free outlets. This illustration is in fact a good description of what is happening today in other parts of the world.

The main reason why things have changed in the EC is that, in 1999, it banned duty free sales to individuals travelling within its borders. Contraband related to duty free has dramatically declined since then.

ARGUMENT: A BAN ON DUTY FREE SALES WOULD GO FURTHER THAN FCTC ART. 6.2 (DUTY FREE) AND THUS CONFLICT WITH THE CONVENTION

Response: In fact, a protocol is supposed to go further than the parent Convention, adding detail and further obligations.

ARGUMENT: TOBACCO IS A LEGAL PRODUCT

Response: Tobacco is a restricted product. Guns and medications are also not sold in duty free stores.

ARGUMENT: A DUTY FREE SALES BAN WOULD GO BEYOND THE SCOPE OF THE PROTOCOL. THE PROTOCOL COVERS FCTC ART. 15 (ILLICIT TRADE), WHILE DUTY FREE IS COVERED BY ART. 6.2

Response: Duty free is clearly related to illicit trade. Moreover, some matters are related to more than one FCTC article. Duty free, for example, is related to both Art. 6.2 and 15. It is the Parties that determine the protocol's scope.

ARGUMENT: DUTY FREE SALES REPRESENT ONLY A SMALL VOLUME

Response: The issue is not the volume of legal duty free sales, but the volume that gets diverted before it gets to duty free stores.

ARGUMENT: A DUTY FREE SALES BAN WOULD VIOLATE OTHER INTERNATIONAL AGREEMENTS

Response: The Expert Review prepared for INB-3 concluded that a ban on duty free sales would not violate international agreements. In fact, various countries have banned, or are banning, duty free sales.

ARGUMENT: THE PROTOCOL SHOULD FOCUS ON ILLICIT TRADE, NOT LEGAL SALES

Response: There are many other measures focusing on legal sales in order to prevent illicit trade, e.g. licensing, record-keeping, and tracking and tracing.

ARGUMENT: THERE SHOULD BE A PROVISION TO "PROHIBIT OR RESTRICT" DUTY FREE

SALES, AND EACH PARTY CAN DECIDE

Response: This would bring us no further than what is already in FCTC Art. 6.2, which has a provision for "prohibiting or restricting". Merely "restricting" means duty free sales could continue with an age restriction or maximum sales quantity (e.g. 200 cigarettes). A protocol provision allowing for "restrictions" would be no advance at all.

ARGUMENT: THE PROBLEM CAN BE SOLVED BY CONTROL MEASURES ON DISTRIBUTION TO DUTY FREE STORES

Response: Although control measures are very important, it is far better to prevent a problem in the first place than to try and prosecute afterwards. By analogy, it is far better to prevent horses escaping from the barn than trying to catch them afterwards.

ARGUMENT: EACH PARTY HAS THE SOVEREIGN RIGHT TO ESTABLISH ITS TAX LAWS

Response: Although true, each Party has the sovereign right to adopt all its laws, whether on tobacco advertising, package warnings, licensing, etc.. By ratifying an international treaty, a Party chooses to fulfill treaty obligations. Furthermore, there are many treaties affecting the tax ability of Parties, including trade agreements and tax treaties.

CONCLUSION

The real issue is political will. All Parties are urged to support a ban on duty free tobacco sales. The protocol must respond effectively to major issues in developing countries, in addition to developed countries. Diversion of products intended for duty free hits developing countries especially hard.



DIRTY ASHTRAY AWARD

[should]/[shall] go to [All who worked [hard] this week to frustrate consensus for a strong protocol*]. This effort was neither necessary* nor appropriate [~~in accordance with domestic law~~]



ORCHID AWARD

To all who worked hard this week to build consensus for a strong protocol. Stick at it.



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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PROTOCOL NEEDS TO INCLUDE SELECTED KEY INPUTS

There has been much confusion this week about what constitute “key inputs” and whether they should be included in the protocol. It is vital that the protocol includes selected key inputs in order to control illicit manufacturing. By definition, Articles in the protocol that address tobacco manufacturers will not have any impact on illicit manufacturers. Therefore, Parties need the tools to be able to control the supply of inputs to these manufacturers, by requiring that manufacturers of these inputs be licensed and that they exercise due diligence in supplying their products to tobacco manufacturers.

Preliminary research has identified two key inputs that appear to be logical candidates for inclusion in certain articles of the protocol: cigarette papers and acetate tow (also called filter tow). Canada has argued since the Working Group on Scope at INB-2, and continues to argue, that any key inputs need to be “unique” and “identifiable” if they are to be controlled. Cigarette papers and acetate tow meet these requirements.

There is a unique Harmonized Tariff Code for cigarette papers - 4813. What other possible uses could there be for papers intended for the production of cigarettes? Cigarettes papers are specially engineered, for example to control density, porosity, and burn rate and to allow fire-safe cigarettes to self-extinguish.

Cellulose acetate is used to make acetate tow for filters and also has a unique Tariff Code - 3912. Although cellulose acetate has several industrial uses, as far as we know there is only one

use for acetate tow: cigarette filters. As well, there is only a handful of companies worldwide that manufacture acetate tow; seven are members of the Global Acetate Manufacturers Association (GAMA).

There are several elements of Part III, Supply Chain Control, that should be applied to manufacturers of cigarette papers and acetate tow:

- a requirement that they be licensed (Article 5)
- a requirement that they exercise due diligence in their transactions with tobacco product manufacturers (Article 6)
- a requirement that they maintain complete and accurate records of all transactions with tobacco manufacturers (Article 8)
- a requirement that they report suspicious transactions to competent authorities (Article 9).

Clearly, Parties need technical advice on this important issue before any firm decision is taken on the inclusion of key inputs. We have to wonder, given what our research has found, whether there are not other issues at play, such as a desire by certain Parties to protect their domestic paper and tow manufacturers from additional regulation. Surely this consideration should not take precedence over the need to control all aspects of the illicit tobacco trade, which has serious consequences for national treasuries and global health.

*Melodie Tilson
Director of Policy
Non-Smokers' Rights Association, Canada*

**An effective protocol =
increased revenue and
better health**