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DEATH CLOCK

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

42,883,287

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES. (AS OF 9AM GENEVA TIME ON 18 MAY 2009)

ILLICIT TOBACCO TRADE TALKS NEED TIME AND MONEY

Preparations are now well advanced for the third session of the International Negotiating Body (INB) on a Protocol on Illicit Trade in Tobacco Products. The Protocol is being discussed under Article 15 of the Framework Convention on Tobacco Control (FCTC). The third INB takes place in Geneva from 28th June to 5th July. The Chair's text for INB 3 (the current draft of the Protocol) can be found online at apps.who.int/gb/fctc/e/E_it3.htm, together with expert papers on the issues of tracking and tracing, internet sales and duty free sales.

The current timetable for reaching agreement on the Protocol is extremely tight, with a decision required by the end of the fourth and final INB in mid 2010, for adoption at the next session of the FCTC Conference of the Parties in Uruguay in the last quarter of 2010.

There is an urgent need for governments to ensure that they are properly represented at INB 3, with a good balance of delegates with customs and law enforcement as well as health expertise. There is also growing concern that the negotiations, and the secretariat which administers the FCTC, are seriously under-funded, and that this reflects a lack of seriousness about the issue on the part of at least some high income country governments. The FCA is calling on these governments to increase their contribution to the secretariat to help support more balanced delegations at INB 3 and to help fund the policy work that is likely to be needed between INB 3 and INB 4.

We need a protocol which requires Parties to the Protocol to act effectively against illicit trade as defined in the FCTC, both through domestic action and international cooperation. Among the key elements in a strong protocol should be:

- Licensing of key participants in the supply chain for tobacco products, including manufacturers, commercial importers and exporters and wholesalers. Licenses should be removed from those shown to be involved in illicit trade
- Requirements that key participants in the supply chain conduct due diligence on their customers and contractors
- Record keeping, so that all participants in the supply chain keep proper records and make them available, so that the results can be shared when needed between law enforcement and customs authorities in different countries
- Requirements that participants in the supply take tough measures to ensure that tobacco products are not diverted into illicit channels. These measures should include not supplying in amounts that exceed legitimate demand in the stated destination market

A robust and effective tracking and tracing system, so that critical information can be read from tobacco products, and customs and law enforcement can readily access the information and use it to help prevent diversion of tobacco products into the illicit trade

IRELAND: CROSS-BORDER FRAUD... A HUGE CHALLENGE

JAMES HAMILTON, THE DIRECTOR OF PUBLIC PROSECUTIONS IN THE REPUBLIC OF IRELAND, WHICH LED THE WORLD IN THE INTRODUCTION OF SMOKEFREE LEGISLATION, HAS REPORTED THAT ONE IN FOUR CIGARETTES SMOKED IN IRELAND IS NOW ILLEGALLY IMPORTED. THE COST TO IRISH TAXPAYERS COULD BE AS MUCH AS 500 MILLION EUROS A YEAR.

Speaking to an international conference on cross-border fraud in Dublin, Mr Hamilton said that "organised crime and in particular cross-border fraud is a huge challenge facing all of us. Evidence shows us that organised criminals are increasingly sophisticated, operating across borders and continents". The conference was attended by police and prosecutors from across the European Union.

“ONE IN FOUR CIGARETTES SMOKED IN IRELAND IS NOW ILLEGALLY IMPORTED.”

Ireland has experienced a high level of cigarette smuggling from eastern European countries. In some parts of eastern Europe, a pack of 20 cigarettes can cost as little as one euro, compared to a typical cost in Ireland of about 7.5euros.

Josephine Feehilly, chair of the Irish Revenue Commissioners, has said that her organisation is determined to continue vigorous action against the illicit

trade. According to the Revenue, up to 100,000 euros-worth of cigarettes can be smuggled in a single holdall.

The Revenue believes that one in every five cigarettes consumed in the country was not taxed, although this was not all due to smuggling as Irish consumers can buy tobacco products in other EU countries and bring them into Ireland for personal use.

Last year, Revenue and customs officials carried out more than 10,000 seizures of 135 million illegal cigarettes in total, with 62 million counterfeit cigarettes included in that figure. There were 82 convictions for cigarette smuggling.

ASH Ireland, the Irish Cancer Society and the Irish Heart Foundation reacted with shock and outrage after an investigation broadcast in March this year on RTE's *Prime Time* programme, which found that children as young as 14 were being used to sell illegal and counterfeit cigarettes around the country. The Chief Executive of the Irish Heart Foundation Michael O'Shea said that his organisation was angered by

the Government's "apparent inability" to control the smuggling of illicit tobacco products into Ireland. He called for the Minister for Justice Dermot Ahern to increase resources to deter smugglers through measures such as increased penalties and prosecutions.

The Irish Government raised tobacco taxation by fifty cents a pack in the 2009 Budget, although the Irish Cancer Society had called for an increase of two euros, which it said could reduce tobacco consumption by as much ten per cent.

By Ian Willmore, FCA

2008 SNAPSHOT

- 10,000 seizures
- 135 million illegal cigarettes
- 62 million counterfeit cigarettes
- 82 convictions
- 14 year old sellers

Continued from page 1

- Action to prevent tobacco products being supplied through the internet and through duty free sales, and to stop the abuse of free trade zones to divert tobacco products into illicit channels
- Provisions to ensure that participation in illicit trade is penalised effectively and is treated when appropriate as a serious crime, and
- Provisions on exchange of information and cooperation between Parties, including training, technical assistance, law enforcement cooperation and cooperation in scientific, technical and technological matters.

The current Chair's text contains draft articles on all these points, but the language will need to be closely

studied and amended as necessary. We support a strong and effective Protocol, but this can only be achieved by careful drafting and by informed negotiation and discussion. To help this process, FCA will produce a detailed commentary on the Chair's text, including changes where we believe these are needed to improve the draft. We will also be producing briefing material for delegates at INB 3 on key policy issues in the Protocol.

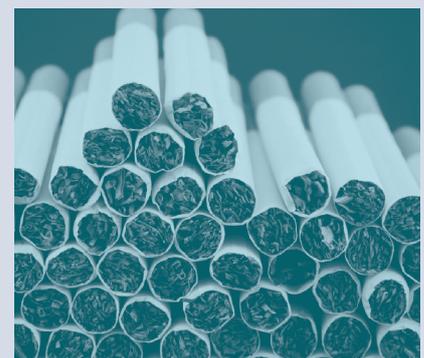
Action on illicit trade is crucial to effective tobacco control. Stopping smuggling and counterfeit products saves lives, fights organised crime and raises money. Help make sure your Government understands the case for a strong Protocol and that delegates come to INB 3 with a clear commitment to make the negotiations a success.

We are happy to help with information, briefing and advice on any aspect of the Protocol and the INB negotiations.

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PUBLIC HEALTH AND PUBLIC PURSE WRACKED BY ILLICIT TRADE

A MAJOR NEW REPORT FROM THE CENTRO DE INVESTIGACION DE LA EPIDEMIA DE TABAQUISMO IN URUGUAY IS TO BE PUBLISHED SHORTLY, ON THE EXTENT OF THE ILLICIT TRADE IN TOBACCO IN THE MERCOSUR COUNTRIES, ARGENTINA, BRAZIL, PARAGUAY AND URUGUAY. MERCOSUR IS A REGIONAL FREE TRADE AGREEMENT SIGNED BETWEEN THE FOUR COUNTRIES IN 1991.

The report, compiled by economist Alejandro Ramos from reports by experts throughout the MERCOSUR region, estimates the total size of the illicit market in the region in 2007 as 45 billion sticks (cigarettes) every year. Most of the illegal production is centered in Paraguay, and about nine in ten illicit cigarettes are consumed in Brazil. In addition, another 30 billion cigarettes leave the MERCOSUR region for other countries, often through Panama or Aruba. If the total of illicit trade in cigarettes around the world is about 600 billion sticks a year this would mean that about 12.5 percent of the trade comes from the MERCOSUR region.

Paraguay in particular has seen sharp growth in the tobacco industry over the last twenty years. In 1993 there were only three tobacco companies in the country, by 2007 there were as many as twenty-five firms importing tobacco and cigarettes and forty exporting. Total cigarette production is estimated at about 70 billion cigarettes in 2007, with a production cost of about five US cents a pack. A factory selling to smugglers might charge ten cents a pack in cash for large orders. The cost of pack of cigarettes in the legal trade in neighboring countries would be about fifty cents a pack.

In Brazil, the total market for cigarettes, both legal and illegal, is estimated to be about 140 billion cigarettes. The legal market is dominated by Souza Cruz (with approximately a 78 percent share) and PMI (about 13 percent). The illegal market has been estimated at about 30 billion cigarettes a year. In the 1990s, Souza Cruz cigarettes were frequently manufactured in Brazil, exported to neighboring countries and then reintroduced illegally to Brazil, avoiding domestic taxes in a process called "triangulation". Cigarettes were also often produced for export but in fact sold in the domestic market. More recently, after struggles between the industry and the Brazilian Government over export taxes

on tobacco products, "triangulation" appears to have disappeared, but small producers have been prosecuted by the authorities for owning factories in Brazil and Paraguay, producing in Brazil, labelling products as coming from Paraguay, and then claiming that they had been illegally imported to Brazil by third parties.

Argentina has a domestic market of about 40 billion cigarettes, with PMI (Massalin Particulares) having about 70 percent of the legal market and BAT (Nobleza Piccardo) about 26 percent. Some small companies sell brands that are also produced in Paraguay, for example Rodeo. The small producers have also fought to avoid the tax system agreed with the major companies, which places a tax rate of 75 percent of retail price for the best selling brands. Small producers compete mainly for market share in cheaper brands.

In Uruguay, the leading cigarette firm, Montepaz SA, is domestically owned and has about 70 percent of the legal domestic market. Montepaz exports both cigarettes and cut tobacco to Paraguay, where it also owns a factory. The cigarette brands exported are "Calvert" and "Broadway", not sold in the domestic market. In 2006, Montepaz exported about 2.5 billion cigarettes, twice its domestic sales in Uruguay, and three million kilograms of tobacco raw material. It is likely that a substantial proportion of these exports are then resold to "operators" in Paraguay, who then move them to Brazil.

MERCOSUR country governments, with the governments of the associated countries of Bolivia, Chile and Peru, signed an agreement to fight brand counterfeiting and cigarette contraband in December 2004. A further agreement was substituted in 2006, but this contains fewer explicit commitments to action on illicit trade in tobacco products. The new agreement has not yet been ratified by most countries.



The report makes it clear that illicit trade in tobacco is damaging both the MERCOSUR economies and public health. For example, in Paraguay if tax could be collected on illicit production, the Government could expect to benefit by at least \$130 million a year.

The report makes a series of recommendations to fight the illicit trade in the region, including stronger penalties for individuals and companies convicted of offences related to illicit trade, and for any Government or public officials who are found to be involved. New offences related to organized crime are also recommended. The report calls for tougher regulations covering the transit of merchandise in free trade, transit and free ports, and for greater co-ordination and sharing of intelligence between customs bureaus and other law enforcement agencies. The report also calls for the establishment in MERCOSUR of a cross-border anti-fraud office.

Working Paper on "Illegal trade in tobacco in the MERCOSUR countries", by Alejandro Ramos MSc, for CIET Uruguay, funded by the Bloomberg Foundation

INDUSTRY WRONG ON HIGHER TAXES ILLICIT TRADE LINK

NEW RESEARCH SHOWS THE EXTENT OF THE ILLICIT TRADE IN CIGARETTES IN SOUTH AFRICA.

A paper by South African economist Evan Blecher now with the American Cancer Society shows that by 2007, illicit trade accounted for up to seven percent of the total market in South Africa. However, the evidence shows that tobacco control policy was successful and only partially undermined by illicit trade; consumption of tobacco products has continued declining while tax revenue has risen thanks to sharply higher excise taxes.

Since the early 1990s South Africa has introduced significant tobacco control legislation. In 1993, smoking was restricted on public transport, warning labels introduced on packaging and advertising and sales restricted to people over 16 years old. In 1999, smoking was banned in most public places, advertising and sponsorship and the distribution of free product was ended. Since 1991, there have also been significant increases in excise taxes which have led to large increases in the retail price of cigarettes.

The tobacco industry has long argued that high taxes are responsible for the growth in illicitly traded cigarettes, because higher prices encourage cross border smuggling, tax evasion on domestic production and brand piracy. The Tobacco Institute of South Africa, which represents most tobacco growers and cigarette manufacturers, claims the size of the illicit market to be 20 percent of the total market. Yet no research has been published to substantiate these claims.

“...PREDICTIONS THAT HIGHER TAXES WOULD SIMPLY DRIVE THE INDUSTRY UNDERGROUND HAVE NOT COME TRUE.”

Evan Blecher estimated the total consumption of cigarettes in the country from national survey data on smoking prevalence and daily cigarette smoking rates. He then adjusted this data for the known 'legal' market to estimate the unknown 'illicit' market, a methodology similar to that used to measure indirect tax losses in the United Kingdom. His conclusion is that the total size of the illicit market – up to seven percent in 2007 – is much smaller than the tobacco industry has been claiming.

He quotes data showing that legal cigarette consumption declined consistently until the early 2000s, attributed to higher excise taxes on cigarettes, after which consumption stabilised at about 24 billion sticks a year. Smoking prevalence also declined consistently until 2002 after which it stabilised at about 24 percent. The stabilization in prevalence and consumption is attributed to the fact that the tobacco excise taxes did not rise as sharply as in previous years.

Consumption taxes on cigarettes in South Africa comprise two separate taxes, a specific excise tax levied per packet of cigarettes as well as Value Added Tax (VAT), levied at a flat rate of 14 percent of value added. Even while lost excise taxation grew significantly as illicit trade grew, so did total excise tax collections. Between 1997 and 2007, total excise tax collections rose by over 123 percent in real terms, dwarfing any loss through illicit trade.

Blecher concludes that as taxes and prices have risen total consumption has fallen. A small number of consumers have substituted their legal consumption with illicit consumption. But predictions that higher taxes would simply drive the industry underground have not come true. The total market has declined in size by up to 20 percent between 1997 and 2007, in spite of increases in illicit trade.

It is likely that there are other reasons, in addition to higher excise taxes, which have encouraged the growth in illicit trade in South Africa. Illegal traders in South Africa specialise in trade routes rather than commodities and a route can host a wide range of commodities over time, and several commodities at the same time. For instance, routes between South Africa and China include illicit trade in abalone, clothes, electronics, drugs, guns, human beings and diamonds in addition to cigarettes.

The illicit trade in a number of commodities has been able to grow in South Africa as a result of large and highly effective organised crime syndicates. This has been compounded by weak border controls and corruption. This conclusion supports the findings of other studies, including a February 2009 report by the influential South African Institute of Strategic Studies, which stated that *“cigarette smuggling continues to be a problem in the region. South Africa is a major market, as has been observed by the tobacco industry. Routes lead into the country through Botswana, Namibia and Swaziland. From the various interceptions by customs authorities, the cigarettes appear to originate from China and Zimbabwe. For various reasons, detection of cigarette smuggling tends to be low, and this activity is set to continue in 2009”*.

Yet the illicit trade in cigarettes has declined since peaking at nearly 10 percent of the total market in 2000. This may be a function of the spectacular decline in tobacco production in Zimbabwe where production levels have fallen by over 70 percent since 2000.

In November 2006, South African Revenue Services (SARS) closed the operations of Mastermind Tobacco Company in a R57 million fraud case. SARS had earlier charged employees and directors of the company with tax evasion and cigarette smuggling. This highlights that the industry are not innocent victims of smugglers but active participants in the illicit trade. Numerous documents available on the Internet also reveal BATs involvement with smuggling.

Blecher concludes that the strategy of increased excise taxes, to reduce cigarette consumption and increase government revenue, has worked with dramatic effect, even in the face of the growth in illicit trade. The illicit trade in cigarettes must be seen in the context of the growth in organised crime and cannot be solely attributed to high excise taxes.

“A Mountain or a Molehill: Is the Illicit Trade in Cigarettes Undermining Tobacco Control Policy in South Africa?”, by Evan Blecher, American Cancer Society. evan.blecher@cancer.org

SWISS LINK IN \$1 BILLION LAUNDERING

THE LARGEST CASE OF ORGANISED CRIME EVER HEARD BEFORE A SWISS COURT HAS NOW BEGUN. THE TRIAL, BEING HEARD IN BELLINZONA, TICINO CANTON, INVOLVES NINE DEFENDANTS, WHO ARE ALLEGED TO BE MEMBERS OF AN INTERNATIONAL CIGARETTE SMUGGLING RING. FOUR DEFENDANTS ARE SWISS, THREE ITALIAN, ONE FRENCH AND ONE SPANISH.

According to the Swiss Federal Prosecutor's Office, the accused were part of a criminal enterprise involved in the smuggling of cigarettes between Montenegro and Italy. They are said to have laundered more than \$1 billion from the illegal trade between 1994 and 2001, through an exchange office in Ticino. Lawyers for the accused have said that Switzerland does not have jurisdiction over an international cigarette smuggling ring that operated in Italy, the Balkans and the Americas.

indictment says that some were also sold on the black markets in Spain and Britain.

Montenegro benefited from the business, since the country awarded import licences and demanded transit fees. If the fees were not paid, it is alleged that the local Montenegrin authorities prevented the smugglers' boats from leaving.

One accused alone is said to have received and laundered the equivalent

“NEARLY THE TOTAL FLOW OF MONEY FROM CIGARETTE SMUGGLING THE CRIMINAL ORGANIZATIONS CAMORRA AND SACRA CORONA UNITA WERE RUNNING VIA MONTENEGRO WENT THROUGH SWITZERLAND”

The enterprise is said to have included members of two Italian organized crime groups, the Camorra of Naples, and the Sacra Corona Unita of Apulia. Money from the groups is alleged to have been brought to Ticino and then spent on buying cigarettes from duty-free, bonded warehouses in Rotterdam or Antwerp or from wholesalers. The cigarettes were then taken illegally to Montenegro, avoiding payment of duty, and were then taken in speedboats to across the Adriatic from Montenegro to the Apulian coast and from there to the black markets in Naples and Apulia, where they were sold for a profit. According to the Swiss prosecutor's office “nearly the total flow of money from cigarette smuggling the criminal organizations Camorra and Sacra Corona Unita were running via Montenegro went through Switzerland”.

The indictment says that well-known freight companies based in Switzerland were among those used to transport the cigarettes, including Danzas, Mundotrans and Swissair Cargo. About 215 million cartons are alleged to have been smuggled to Italy, and the

of \$795 million. “In particular by setting up and running the logistics of the finances he helped the criminal organizations to make large profits and thereby contributed to the long-term strengthening of their power,” says the indictment. The defendants allegedly supplied their Italian clients with more than two billion packets of cigarettes over the years. Prosecutors have requested that assets seized from the defendants, around 73 million Swiss francs and about 40 buildings, should be permanently confiscated.

In concerted raids all over Switzerland on August 31, 2004, the Federal Prosecutor's Office made a series of arrests. The trial is scheduled to continue until June 19.

Federal Prosecutor's Office

(German, French, Italian)

<http://www.ba.admin.ch/ba/de/home.html>

Swiss Federal Criminal Court

(German, French, Italian)

<http://www.bstger.ch>

By Ian Willmore, FCA

FORTHCOMING RESEARCH

A major new research report on the global extent of illicit trade is to be published in the run-up to the third International Negotiating Body on the Illicit Trade Protocol.

Illicit trade has been previously estimated to cost governments more than \$40 billion a year, with losses disproportionately greater in low and middle income countries.

“The global illicit cigarette trade and its impact on revenue and deaths”, by Luk Joossens, David Merriman, Hana Ross and Martin Raw, has been funded by the Bloomberg Philanthropies and the Framework Convention Alliance. It will provide the best available figures on the extent of illicit trade, what it costs in lost taxation, what the benefits to public health of effective action against the trade could be, and how the costs and possible benefits could be distributed between high, middle and low income countries.

A full summary of this important research will be included in the next FCA Bulletin.

The first report showing the costs and benefits of a strong Illicit Trade Protocol has been commissioned by Action on Smoking and Health in the UK.

The report, *“Cost Benefit Analysis of the FCTC Protocol on Illicit Trade in Tobacco Products”* by former senior UK Treasury official Paul Johnson and colleagues, will assess the potential impact of the Protocol on the size of the illicit tobacco market in the UK, and quantify its costs and benefits. It is also intended to offer a methodology for making similar assessments in other countries.

A full brief on the report's findings will be included in the next FCA Bulletin.

TOBACCO, CONFLICT AND TERRORISM

CO-OPERATION BETWEEN LAW ENFORCEMENT AND CUSTOMS ORGANISATIONS IN THE EUROPEAN UNION AND THE UNITED STATES HAS RESULTED IN THE INDICTMENT OF A US BUSINESSMAN ON CHARGES OF INVOLVEMENT IN THE SMUGGLING OF MILLIONS OF CIGARETTES. SOME OF THE MONEY FROM THE SMUGGLING OPERATIONS IS ALLEGED TO HAVE GONE TO HELP FUND THE "REAL IRA". A SPLINTER REPUBLICAN GROUP IN NORTHERN IRELAND WHICH RECENTLY CLAIMED CREDIT FOR THE KILLING OF TWO BRITISH SOLDIERS IN COUNTY ANTRIM IN IRELAND.

On 6th March 2009, the United States Attorney's Office for the Southern District of Florida, announced that Mr Roman Vidal had been indicted by a federal grand jury in Miami on charges of conspiracy to commit mail fraud and wire fraud, and of smuggling goods out of the US.

According to the indictment and an affidavit filed with the complaint, the investigation revealed that an organization smuggling cigarettes out of the Port of Miami operated out of Spain, Great Britain, Ireland and Miami, Florida. Mr Vidal is alleged to have run the Miami portion of the operation. The affidavit, from US Special Agent Robert Manzares, makes clear that the investigation was based on close co-operation between the US Authorities and the EU anti-fraud office OLAF.

The indictment alleges that hundreds of cases of cigarettes were bought in Panama and transported to Miami. Other cargo, such as wood flooring and building insulation material, was then used as cover loads to conceal the cigarettes. False bills of lading were prepared that only declared the cover load material. Customs duties and taxes were based on the falsely declared cargo, so no duties or taxes were paid on the cigarettes. It is alleged that on two separate occasions, Mr Vidal transported approximately 13.3 million cigarettes in shipments, one to Dublin, Ireland and one to Felixstowe, Great Britain. Based upon the false bills of lading, custom duties and taxes paid on these shipments were about \$2,900 and \$2,500. The true customs duties and taxes that should have been paid on these shipments were \$2.1 million each.

U.S. Customs agents have told the Miami court that they were able to trace the intended destination of the Dublin shipment to associates of dissident Irish republicans. According to Mr Manzares's affidavit: *"during the course of the investigation, evidence has indicated that some of these associates were connected to the group Real IRA. Real IRA, a paramilitary organisation, is an illegal organisation in Ireland and is designated as a terrorist organisation in the United Kingdom and the United States"*.

The shipment to Dublin is alleged to have begun in December 2005, with the movement of nearly 730 master cases of cigarettes (i.e. about 7.3 million sticks)

from Panama to Miami. The affidavit states that the cigarettes, hidden under wood flooring, were transported to Dublin in February 2006, where they were seized by the Irish authorities. The affidavit also states that a further shipment of 600 master cases (i.e. about 6 million sticks) was shipped in March 2008 to Felixstowe in the UK, under a false bill of lading claiming that the shipment consisted only of building insulation material.

The case shows once again the enormous profits that can be made from the illicit trade in tobacco products. In total, the tax avoided on just two shipments is alleged to have been more than \$2 million. It also shows that illicit trade is a worldwide business, requiring a co-ordinated international response. In this case, the investigation required the close co-operation of the US authorities, OLAF and law enforcement and customs organisations in a number of EU member states. The result is four serious criminal charges: the wire and mail fraud offences carry a maximum possible sentence of twenty years' imprisonment and the smuggling offence a maximum possible sentence of ten years' imprisonment.

The case also shows the close connection between tobacco smuggling, conflict and terrorism. Throughout the long civil conflict in Northern Ireland, tobacco smuggling has been a source of funding for both Loyalist and Republican paramilitary groups. Although violence in Northern Ireland has fallen sharply since the 1998 Good Friday agreement, some former paramilitaries are still heavily engaged in organized crime, and violent splinter groups such as the "Real IRA" are still seeking to fund their actions through smuggling.

An effective Protocol on Illicit Trade in tobacco products, leading to continuing co-operation between law enforcement and customs is an essential weapon in the fight against this pervasive type of international crime.

By Ian Willmore

See: <http://www.usdoj.gov/usao/fls/PressReleases/090306-02.html> for details of the indictment.



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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