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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

58,387,944

PEOPLE HAVE DIED FROM
TOBACCO-RELATED DISEASES.
(AS OF 9AM GENEVA TIME
ON 31 MARCH 2012)

**NEED TO START THINKING
ABOUT IMPLEMENTING WHAT
WE ARE AGREEING HERE**

It is easy to forget in the heat of INB negotiations, but finalising a Protocol is only the first (albeit an important) step in an effective global effort to combat illicit trade in tobacco products.

Implementation, and in particular the varied technical and capacity-building needs the Protocol will generate, calls for early discussion and planning. Several years may elapse between this INB and the first session of the Meeting of the Parties, and it is important not to lose momentum in the meantime.

Failure to move rapidly on capacity building would be a mistake in two ways. First, because every month that tobacco taxes are kept low because of fear of uncontrolled smuggling is one more month of avoidable deaths from tobacco. Second, because the tobacco industry is ready to jump in with 'gifts' and 'partnerships', so as to mould countries' policies for their own ends.

A recent example amongst many: last October, the press in Mali reported that British American Tobacco had donated generators, motors and boats to Malian customs, as part of the implementation of a cooperation agreement between the Malian government and BAT, signed in 2009. (Le Républicain, 28 October 2011)

Gifts Are Common

These types of gifts and agreements are common, particularly where customs services and policies are under-resourced and there are many competing priorities for government money.

Of course, spending on effective control of illicit trade in tobacco products should be seen as an investment rather than a cost, as controls should facilitate revenue collection, which should yield both significant health benefits (through higher effective prices) and substantial revenue.

But effective control is a multifaceted challenge, involving multiple agencies and ministries with a wide spectrum of

expertise — customs, police, finance, revenue, health etc. It is highly likely that many Parties lack capacity in one or more relevant areas, and it may seem daunting to tackle these multiple challenges simultaneously.

It is difficult to know the precise nature and extent of capacity-building needs until Parties have gone through all the provisions of a finalised protocol and thought through the various aspects of implementation.

What can be fairly confidently stated, however, is that no single organisation can provide technical assistance in all the areas where it is needed. Presumably the Secretariat will need to negotiate with other organisations to provide particular types of training and technical assistance, a task which may take some time.

An Overview Needed

And before such arrangements can be finalised, Parties will need a reasonable overview of the types and scope of technical assistance and capacity-building needs.

Ideally, the first session of the MOP would have enough information on these topics to establish a clear workplan for the Secretariat. But for this to occur, the Conference of the Parties (COP) will need to decide on some initial scoping steps, to be performed in the interim between Protocol adoption and entry into force.

As the INB has specialised knowledge on illicit trade issues which the COP does not, it would be useful for the INB, via its report to the COP, to highlight the importance of tackling implementation issues early and suggesting possible approaches.

One possibility, for example, would be to establish some sort of multidisciplinary expert group on capacity building and technical assistance for ITP implementation. But Parties may well

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THE CODENTIFY AGREEMENT: THE STRATEGY OF THE FOUR MAJOR INTERNATIONAL CIGARETTE COMPANIES TO CONTROL TAX MARKINGS ON PACKS

“
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AND MANAGEMENT OF
GOVERNMENTS.”

In November 2010, Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco International (JTI) and Imperial Tobacco Limited (ITL) signed an agreement that they would use the PMI Codentify marking system on their cigarette products. In addition, the companies agreed to develop a common strategy to convince governments to replace “outdated tax stamps” by Digital Tax Verification based on this Codentify marking technology.

Unusual Collaboration

Given the animosity that characterises relationships between these four companies, the agreement can be considered an unusual move. Indeed, historically companies have only collaborated in this way when under threat.

The first objective of Codentify markers is to verify of the authenticity of products. PMI began developing and implementing code verification systems to authenticate their products in 2003. It is now applying Code Verification System (CVS) codes on a voluntary basis on cigarette packs in a number of markets, including Belgium, Colombia, the Dominican Republic, Ecuador, France, Germany, Guatemala, Germany, Italy, Lebanon, Mexico, Netherlands, Panama, Peru, Portugal, San Marino, Spain and Sweden.

The CVS code, called ‘Codentify’,



The agreement between the four major international cigarette companies on Codentify and Digital Tax Verification.

identifies the place of manufacture, the machinery, date and time of production and brand information, but is not linked to the unique coding of the cartons or master cases and is not part of the recorded data for the tracking and tracing regime.

The PMI CVS code has the following form (this is just an example): TG9 XJ3 DRD GOK. Since the codes are human-readable, they are easy to counterfeit. However, checking the database allows easy verification of whether a code is authentic or not.

Jeannie Cameron, BAT’s former International Advocacy and Engagement Manager, Anti-illicit Trade, was quoted in Tobacco Journal International noting that

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the agreement between the four firms is unusual: “It’s not every day that the BAT board decides to take on its major competitor scheme (..) That decision was taken in the context of it being the only available technology to do what we needed to do. It works and it’s good and that’s why we decided to go down that route.”

BAT intends to use Codentify for tax verification and digital authentication only; it runs separate track and trace systems.

Serious Concerns

In fact, Codentify should never be used for tracking and tracing purposes, as the tracking and tracing provisions should be implemented under the strict control and management of governments. Even for the purpose of authentication, Codentify raises some serious concerns, such as the lack of independent auditing and doubts about the security of the proposed markings.

The Codentify agreement is both worrying and problematic, as tax verification should remain an exclusive competence of governments, and not of tobacco companies. Governments should be advised that while the companies can decide to use codentify on a voluntary basis for authentication, it should not be adopted by governments for tax verification and for tracking and tracing purposes. ■

Luk Joossens
Advocacy Officer
Association of European Cancer
Leagues, Belgian Foundation
Against Cancer

EL MERCADO PASIVO DEL CIGARRILLO Y EL ARGUMENTO DEL "INCREMENTO DEL CONTRABANDO"



RECIENTEMENTE EN MÉXICO, COSTA RICA, COLOMBIA, ENTRE OTROS PAÍSES, ESTE ARGUMENTO SE HA UTILIZADO PARA OPONERSE A LAS REFORMAS, REVERTIR LAS EXISTENTES O NEUTRALIZAR POSIBLES REFORMAS TRIBUTARIAS AL IMPUESTO AL CONSUMO DEL CIGARRILLO.

El conflicto comercio-salud acompaña todo el proceso de control del tabaco, desde sus inicios cuando no teníamos el Convenio Marco para el Control del tabaco y sigue presente, ahora cuando 174 países lo han ratificado.

Afortunadamente hoy este conflicto ha quedado definido en favor de la salud, entendiendo los Estados Partes que el legislador puede imponer restricciones, incluso a nivel de prohibición, por razones sanitarias y en beneficio de la salud y vida de los ciudadanos.

Este escenario no es ajeno a las negociaciones del protocolo de comercio ilícito. Por eso conviene recordar, que el mercado que materializa el Convenio Marco es el que responde a un "mercado pasivo", un mercado que el Estado y la sociedad simplemente toleran, pero que desestimulan, por considerar que se trata de un producto adictivo vinculado a actividades de naturaleza riesgosa y socialmente dañinas (Rodrigo Uprimny), y que si bien mantiene su carácter de "legal y lícito", es por considerar que una acción prohibicionista causaría más daño como ha sucedido con el alcohol, la prostitución y los juegos de azar. Por esta y otras razones, hoy no está en duda la prioridad de la salud como derecho sobre las libertades inherentes al mercado y al comercio.

Una acción de presión política

El argumento del "incremento del contrabando", cuando los Estados favorecen políticas de mayor precio e impuestos, es utilizado por la industria tabacalera cada vez que los Estados Partes gestionan estas políticas. Además de ser una acción de presión política ante los gobiernos y congresistas, la industria se aprovecha de la falta de estudios que informen a los gobiernos sobre la real cuantificación del contrabando, lo que les permite manejar a su antojo altos porcentajes que favorecen la negociación de sus intereses económicos, intimidando a los gobiernos.

Recientemente en México, Costa Rica, Colombia, entre otros países, este argumento se ha utilizado para oponerse a las reformas, revertir las existentes o neutralizar posibles reformas tributarias al impuesto al consumo del cigarrillo.

Lo anterior, sirve para afirmar:

- El principio que antecede y preside cualquier decisión vinculada al control del tabaco es la primacía del derecho a la salud sobre cualquier interés comercial vinculado a la industria tabacalera.

- La necesidad de blindar el protocolo de comercio ilícito de las acciones de la industria tabacalera para socavar la ratificación e implementación del mismo, por lo que es imperativo que desde el preámbulo y en el articulado pertinente, se haga mención expresa al artículo 5.3 del CMCT, que establece: "A la hora de establecer y aplicar sus políticas de salud pública relativas al control del tabaco, las Partes actuarán de una manera que proteja dichas políticas contra los intereses comerciales y otros intereses creados de la industria tabacalera, de conformidad con la legislación nacional".

- Visibilizar en el texto del protocolo la importancia de la sociedad civil, como actor principal de todo el proceso de implementación, acogiendo el principio básico del CMCT que indica: "La participación de la sociedad civil es esencial para conseguir el objetivo del Convenio y de sus protocolos". La sociedad civil y el conjunto de organizaciones que la representan son garantía de efectividad del protocolo para la eliminación del comercio ilícito de productos de tabaco. ■

Yul Francisco Dorado
Director America Latina, Corporate
Accountability International

JAPAN TOBACCO: LEOPARDS DON'T CHANGE THEIR SPOTS



Tobacco industry apologists I have met in television studios from time to time have admitted that in the past they may have allowed their product to be diverted to the illicit market, but only in order to assure me that this is no longer the case. A report published by the Organized Crime and Corruption Reporting Project (OCCRP) in November last year blows out of the water such tobacco industry claims to have cleaned up its act.

The OCCRP report documents evidence that 13 Japan Tobacco International (JTI) employees or distributors may have been working directly with smugglers, and that a senior executive at JTI blocked an investigation. Backing the story were thousands of pages of company records, e-mails and secret recordings now available on the OCCRP website (www.reportingproject.net). These had been followed up by interviews with a half-dozen past employees, including chief whistle blower David Reynolds. Reynolds ran JTI's Asian-Pacific office of Brand Integrity for four years before being promoted to oversee global operations at the end of 2008. His team included experienced investigators from the CIA, British police and US special forces.

Widespread Smuggling in a Dozen Countries

The allegations are that senior executives of JTI stood by as its distributors engaged in widespread smuggling of its products in a dozen countries, as recently as last summer. JTI brands were being smuggled through Russia, Moldova, the Balkans, Afghanistan and Middle Eastern countries, including Syria.

In April 2010, Reynolds complained in an email to Ryuichi Shimomura, JTI's legal officer, that executives were failing to tackle the problem. With regard to smuggling tobacco from Russia into the more heavily taxed European Union (EU), Reynolds wrote: "Shipments to unauthorised buyers have reached a massive scale exposing the company to fines potentially of around €30m... My team have been directed not to investigate several instances of smuggling related to specific JTI distributors – and the possible involvement of JTI employees with known smugglers."

Reynolds was sacked three days after sending the email.

He and his team were replaced by former employees of the Gallaher Group, which JTI bought in 2007. Gallaher, a British company, was implicated repeatedly in smuggling operations and helped smugglers evade more than \$1.5 billion in customs tax in Great Britain in the early 2000s, according to a lengthy UK court case. As a former employee with experience of both companies said to an OCCRP journalist, "You have to ask yourself how serious they are when they bring in people from Gallaher to take over,"... "The culture in Gallaher was very much, 'Let's not get caught, but if we do get caught, be prepared to defend ourselves.' They didn't take steps to stop smuggling, just to insulate themselves when it came out."

And so it proved. On 27 May 2011, JTI's Middle Eastern distributor, IBCS Trading, dispatched 90 million cigarettes to Syria Duty Free Shops (SDF) Ltd. Rami Makhlouf, a cousin of the country's

president, Bashar al-Assad, was the main shareholder in SDF on 9 May 2011, the day the EU subjected him to sanctions for providing "funding to the regime allowing violence against demonstrators", and for being "an associate of Maher al-Assad", the feared commander of Syria's Republican Guard.

JTI Agreement with OLAF

The story was staggering given that in 2007 JTI signed up to an anti-smuggling agreement with the European Commission and Member States which should have put a stop to this sort of behaviour. The European Anti-Fraud Office (OLAF) has confirmed that it is aware of the OCCRP report and is carefully evaluating its allegations, but won't comment further at this time.

JTI, which is based in Geneva, has confirmed that OLAF is carrying out an investigation into the company's distribution network, but continues to assert that it's done nothing wrong, while telling employees that they are not to answer questions from outside investigators, an action contrary to their commitments under the agreement with the EU.

JTI is the world's third largest global tobacco company, operating in more than 120 countries, with a world market share of around 10 percent and sales worth over US\$25 billion. It owns major global brands such as Mild Seven and Benson and Hedges and Winston and Camel (outside the US).

If allegations that JTI has carried on aiding and abetting smuggling are substantiated, then it shows clearly that a regional agreement like that negotiated by the EU with the top four tobacco companies — JTI, Philip Morris International, British American Tobacco (BAT) and Imperial — is insufficient. The global treaty currently being negotiated is the essential next step, and it must include tracking and tracing down to pack level to ensure that supply chain controls work properly. It also goes to show that governments will need to safeguard against tobacco industry interference in the treaty if it is to be effective. ■

Deborah Arnott
Chief Executive, ASH (UK)

PROTOCOL WOULD BOOST BRAZIL'S TENTATIVE STEPS TOWARDS COOPERATION TO FIGHT ILLICIT TRADE

Growing interest by the Brazilian Government in fighting the crime that accompanies illicit tobacco trade has recently resulted in serious efforts to tackle the problem. There is also agreement that greater cooperation with neighboring Paraguay will be necessary.

Proximity to Paraguay and the extensive length of Brazil's borders facilitates the entry of millions of packs of cigarettes into the country illegally each year, by both land and water routes. A World Bank report found, "while legal cigarette consumption has decreased since 1986, illegal consumption increased between 1992 and 1998, reaching 500 cigarettes per adult, and then gradually decreased, reaching an annual average of 310 cigarettes per adult in recent years".¹

The Federal Revenue Secretariat indicates that this trade is growing, especially in the centre-west and north of the country, marking a shift from traditional southern routes used by smugglers, which have become more risky. However, the southern states are still an important entry site to the domestic market.

Extremely Organised Gangs

The production of cigarettes in Paraguay currently lacks monitoring, but is well-established, formally constituted, and produces its own brands. Extremely organized gangs operate on these routes, relying on vast logistical and counter-intelligence resources in order to monitor the movements of federal agents and efficiently distribute the illicit cigarettes in all regions.

Along with cigarettes, these gangs often carry drugs and weapons. By crossing the border hidden in boats, cars or trucks, illegally imported cigarettes evade Brazilian Government inspections and controls, as well as the collection of all taxes levied on tobacco products.

The illegal tobacco market is outside the scope of existing public policies aimed at controlling consumption. There are no official figures on its size, and the only information available is provided by the tobacco industry. Souza Cruz (the



Cigarettes and other goods seized in a joint operation in southern Brazil in 2011.

<http://mpbnoticia.blogspot.com.br/2011/05/2-bpm-mais-de-66-mil-carteiras-de.html>

Brazilian branch of British American Tobacco) and the Tobacco Industry Association (ABIFUMO) disseminate surveys conducted by reputed companies like Nielsen and IBOPE but do not disclose the methodology and other information necessary for validating the results. The industry habitually claims that illegal tobacco accounts for around 30 percent of total cigarette consumption.

The industry is also quick to react to suggestions to raise tobacco taxes, saying the move would further spur the growth of illegal markets. Members of Congress and officials at the Ministry of Finance say this is the main argument used by the industry to oppose tobacco control measures in accordance with Brazil's FCTC obligations. That such measures would ruin farmers is another argument. Lacking independent data to counter the industry's allegations, Brazil's policymakers have in the past postponed or abandoned plans to raise tobacco taxes.

Brazil-Paraguay: Tentative Steps

In 2011, Paraguayan and Brazilian officials made tentative moves towards cooperating on illicit tobacco, which continue to encounter resistance in some sectors of the Brazilian Government. One recommendation is for Brazil to provide technical assistance for a system to monitor the supply chain in Paraguay, at the same time facilitating intelligence-gathering about the distribution of cigarettes in Brazil.

Also in 2011, the Brazilian Government released a programme — the Strategic Plan for the Border — which aims to enhance border security through coordinated action against organised crime, with an increase in personnel from the Armed Forces, Federal Police, the National Force and Federal Traffic Police. Although not focused specifically on illegal cigarettes, the plan's success would certainly result in fewer tobacco products entering the country illegally.

Of course, ratifying the Protocol on Illicit Trade in Tobacco Products, which is currently being discussed at the INB this week in Geneva (and if agreed would be adopted by the FCTC Conference of the Parties in November) would greatly boost Brazil's initiative to address the matter, since it would imply a commitment to overcome the remaining obstacles to increased cooperation with other countries, especially Paraguay. It would also increase the visibility of the issue in some sectors of the executive branch, which are still reluctant to give technical assistance to Paraguay.

The protocol would also possibly reorient Brazil's legal system and police force, which currently focus only on apprehending goods, while letting the smugglers go free. A consensus on the protocol's articles could promote a new understanding that, regardless of a product's value, both the arrest of the smuggler and seizure of the merchandise are important public health issues. ■

Aline Biz
Economist
Alliance for the Control of Tobacco Use (ACT - Brazil)

¹ Iglesias et al, 2007.

DIRTY ASHTRAY AWARD



Watch this space!

ORCHID AWARD



To Brazil for its leadership in removing 'counterfeit', and for repeatedly emphasising that Parties are negotiating a public health instrument.



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

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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MALDIVES HIKES TOBACCO IMPORT TAXES BY 200 PERCENT



Maldives increased the import duty on cigarettes by 200 percent on 1 December 2011. The duty on other tobacco products rose 150 per cent.

"The increase will be critical in reducing tobacco use and discouraging uptake of the tobacco habit among young people in the South Asian island nation", said Mr. Hassan Mohammed, Head of the Tobacco Control Unit in the Maldivian Ministry of Health.

According to the Global Youth Tobacco Survey of 2007, nearly 6 per cent of school-going children 13-15 years old in the Maldives used tobacco in some form. Another 6.7 per cent were likely to initiate smoking in the next year.

"The tax increases also help reduce the money spent on treating tobacco-related diseases through a reduction in tobacco use, especially with the Government's decision to provide universal coverage of the national social insurance scheme 'Madhana'," Mr. Mohammed added.

Even before the measure came into effect, importers had raised the prices for all types of cigarettes. The prices for Camel and Marlboro, the most popular brands in the country, were formerly MVR 20 and MVR 25, respectively. (1 USD is about 15 MVR). These have now been raised to MVR 38 and MVR 45, respectively.

According to the Maldives Customs Service in 2010, the country imports all its tobacco: cigarettes worth a value of MVR 120 million annually and other tobacco products worth MVR 4 million annually. In 2010 alone, this small island nation of around 360,000 people imported over 346 million cigarettes.

The Government says additional measures are in the pipeline which, when implemented, would further increase the price of tobacco products. These include the proposed revision in 2012 of the prevailing goods and services tax (GST) from 3.5 per cent to 6 per cent, and packaging and labelling requirements — including pictorial health warnings — that are expected to come into force in 2012. ■

IMPLEMENTING

continued from page 1

prefer other mechanisms – there are various different models to look at, based on experience with other international instruments.

And of course individual Parties should be encouraged, as soon as the ITP is finalised, to look in detail at the practicalities of implementation in their own country. This self-evaluation would

involve looking at each provision of the protocol and seeing whether it requires legislative or regulatory changes — and also trying to identify what additional personnel, training, etc. may be required.

An effective protocol not only has well-drafted provisions, but is also accompanied by well-crafted implementation plans. ■