



FRAMEWORK CONVENTION  
**ALLIANCE**  
BUILDING SUPPORT FOR TOBACCO CONTROL

# BULLETIN

## INSIDE THIS ISSUE

Key issues for INB-3	2
Stakes get higher in tobacco smuggling	3
Old wounds: Article 2	4
No barrier to agreement on track and tracing	5

## TODAY

14.15  
Unveiling of the Death Clock

## DEATH CLOCK

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

# 43,492,946

PEOPLE HAVE DIED FROM  
TOBACCO-RELATED DISEASES  
(AS OF 2PM ON 28 JUNE 2009)

## STRENGTHENING, CLARIFYING, SIMPLIFYING

As delegates gather in Geneva for the third meeting to negotiate a Protocol on Illicit Trade in Tobacco Products, the case for co-ordinated worldwide action against tobacco smuggling and other forms of illicit trade has never been stronger.

The latest research shows that illicit trade in cigarettes alone costs governments US\$40.5 billion in lost revenue every year, with losses falling disproportionately on low and middle income countries, and that the benefits of an effective protocol are likely to far outweigh the costs. (Joossens L, Merriman D, Ross H, Raw M. *“How eliminating the global illicit cigarette trade would increase tax revenue and save lives”*; International Union Against Tuberculosis and Lung Disease, and Johnson, P. et al *“Cost Benefit Analysis of the FCTC Protocol on Illicit Trade in Tobacco Products”*; for ASH UK.

Meanwhile, in Italy, Switzerland and the United States major court cases are underway alleging large-scale criminal conspiracies to smuggle tobacco products. These conspiracies are alleged to have involved some of the world's most notorious criminal gangs as well as terrorist organisations.

The Illicit Trade Protocol is the first agreement to be negotiated under the Framework Convention on Tobacco Control (FCTC). When FCTC Parties agreed to start work on illicit trade they recognised two essential facts. First, illicit trade in tobacco products undermines progress in fighting the terrible toll of

death and disease caused by tobacco use, mainly because it can be used by the tobacco industry as a weapon to try to prevent government action to raise tax levels, and hence reduce consumption through higher prices. Secondly, illicit trade is a global problem that crosses national boundaries, promotes international conflict, terrorism and organised crime and can be fought most effectively through co-ordinated international co-operation and action. It is much more difficult for countries to fight it on their own.

For these reasons, the Framework Convention Alliance (FCA) believes that the protocol is essential to international progress on tobacco control. Smuggling and other forms of illicit trade undermine national attempts to control tobacco use, particularly through taxation on tobacco products. **Fighting smuggling and counterfeit saves lives, helps fight organised crime and raises money.**

We recognise that the timetable for reaching agreement on the protocol is now 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 late 2010. But we believe that this timetable can and should be met. To do this will require decisive progress at INB-3.

We are in Geneva to press Parties to reach agreement on a strong and effective protocol. We will be counting the time on the Death Clock. One person dies from tobacco-related disease every

*Continued from page 1*

six seconds or less. We will be advising and informing Parties about illicit trade and about the progress of negotiations.

But we will also be communicating to the public outside the talks about whether Parties are living up to the pledges they made when negotiations on the protocol began. We will be awarding Orchids to those who play a positive role in the talks, and, when warranted, Ashtrays to those who seem to be obstructing progress.

FCA has published its detailed commentary and briefing material on the Chair's text for INB-3. Our approach to the Chair's text is based on three simple principles:

1. **Strengthening** the text, so that, for example, it includes clear action against duty free and internet sales of tobacco products
2. **Clarifying** the text, so that, for example, it contains effective provisions on licensing of participants in the tobacco industry and on due diligence
3. **Simplifying** the text, so that, for example, the Articles on offences and sanctions focus on matters within the remit of the WHO and ensure clear relationships with existing treaties such as the UN Treaty on Organized Crime (UNTOC).

We believe that the Chair's text offers a positive basis for talks at INB-3, but will require significant changes. In this Bulletin we summarise our position on four of the key issues. However, the need for changes must not be used as an excuse for delaying progress. INB-3 will be the critical meeting for the success of the protocol.

## KEY ISSUES FOR THE WEEK

Four key issues are likely to be the focus of negotiations at INB-3, and we set out FCA's positions on them below.

### LICENSING AND DUE DILIGENCE (ARTICLES 5 AND 6)

We support the proposal (in Article 5) that Parties should require tobacco manufacturers, wholesalers, distributors and other participants in the supply chain to hold a valid licence. We also support the proposal that Parties should require retailers to hold a licence, where appropriate.

We also support the proposal (in Article 6) that Parties should require those involved in trade in tobacco products to conduct "due diligence", in other words to check that their trading partners have a valid licence, and to obtain information about the purpose of relevant transactions. They should also be required to report suspicious activities to the authorities. We want to clarify Article 6, so that private companies are not required to collect detailed information already provided to government as part of the licensing process, and to make it clear that authorities should have the power to refuse or remove licences from those who are unfit to conduct the activities covered by the Article, and to take other measures to prevent them from engaging in future transactions.

### TRACKING AND TRACING (ARTICLE 7)

We strongly support the establishment of an effective global tracking and tracing system for tobacco products. This is essential if authorities are to be able to obtain key information about the movement of tobacco products between and within countries, for use in investigations and law enforcement.

So we broadly support the overall approach taken in draft Article 7, and particularly the requirement for a unique number to be included on master cases and cartons, and for the number to be associated with specified information held in

national databases and an international clearing house.

However, we think that the tracking and tracing system should be extended to individual packs of tobacco products.

We support the setting up of an international clearing house, to hold relevant information and to ensure that enquiries from customs and law enforcement are answered quickly and accurately, without tobacco businesses gaining knowledge of investigations in progress. We also believe that national databases must be operated by governments or by agencies under government control.

The main costs of the system would be met by the manufacturers, since they would be required to place unique numbers on products and upload relevant information. However, Parties will need to make appropriate contributions to the cost of the central clearing house.

Although a global tracking and tracing system is both feasible and important, we share the concern of many Parties that some key details of the proposed system are not yet clear. For that reason, we think that a working group on Article 7 should be established at INB-3 to look at the current draft, and at how the tracking and tracing system would work, and to report back before INB-3 is concluded.

### INTERNET SALES AND DUTY FREE (ARTICLES 10 AND 11)

We strongly support the proposed requirement that Parties should prohibit internet-based and other remote methods of sale of tobacco and tobacco products. This is the second option proposed in Article 10. However, we think the draft text should be clarified to make it clear that it applies only to retail sales, and should be extended to cover retail sales by any remote means, and also providing services that facilitate payment for retail sales by the internet and other remote

*Continued on page 6*



# STAKES GET HIGHER IN TOBACCO SMUGGLING

Illicit trade in cigarettes is now at least 50 per cent higher than was estimated in a report commissioned by the World Bank in 2000, and is costing governments US\$40 billion in lost tax revenue, according to new research released today. Low- and middle-income countries are bearing the brunt of the illicit trade in tobacco products and consequently suffer the highest losses in revenue, finds the new report.

In the most authoritative study to date on the extent of the global illicit cigarette trade, experts from Belgium, the UK and the US conclude that, in 2007, 11.6 per cent of the global cigarette market was illicit, equivalent to 657 billion cigarettes a year. It represents a substantial increase on the 6 to 8.5 per cent (based on 1995 data) estimated in the study from 2000.

Poorer nations are being disproportionately hit, says the report. Whereas illicit cigarettes make up 9.8 per cent of the market in high-income nations, the share rises to 16.8 per cent in low-income countries. But there are wide variations. Illicit cigarettes make up 50 per cent of the market in Georgia, 40 per cent or more in Uzbekistan, Bosnia and Herzegovina, Albania and Bolivia and over 20 per cent in 15 other countries.

*Key findings from the report:*

CURRENTLY:	GLOBAL	HIGH INCOME	LOW/MIDDLE INCOME
Illicit cigarette market (%)	11.6	9.8	12.1
Illicit cigarettes/yr (billion)	657	124	533
Revenue loss (US\$ billion)	40.5	17.6	22.9
<b>WITHOUT ILLICIT TRADE:</b>			
Immediate revenue gain (US\$ billion)	31.3	13	18.3
Lives saved in year 2030, and in each year thereafter	164,000	32,000	132,000

Eradicating illicit trade is estimated as bringing governments an immediate windfall of US\$31 billion, resulting from an overall 3.9 per cent increase in cigarette prices. Low- and middle-income nations would gain most financially. They would also be the countries to benefit most significantly in terms of lives saved from tobacco-related diseases. The experts calculate that eliminating illicit cigarettes could save as many as 164,000 lives in the year 2030, and each year thereafter. Fully 132,000 of these would be in low- and middle-income countries.

"The case for co-ordinated worldwide action has never been stronger," commented Laurent Huber, director of the Framework Convention Alliance. "Governments cannot leave this meeting and justify inaction by saying it was too difficult - the costs are simply too great."

Importantly, the report also overturns the tobacco industry argument that increasing tobacco tax breeds smuggling. The authors point to the contrasting cases of Norway and Lithuania. In Norway, the country with

the world's highest cigarette prices, where a pack of Marlboro cost US\$12 in January 2008, only six per cent of people surveyed had in the past year seen tobacco products they believed to be smuggled. In Lithuania, however, having the lowest cigarette prices in the

**“THE CASE FOR CO-ORDINATED WORLDWIDE ACTION HAS NEVER BEEN STRONGER.”**

European Union in January 2008 (and Marlboro at US\$2 per pack), smuggled cigarettes accounted for 36 per cent of the market.

While a high tax margin can be an initial incentive to smuggling, it is not the most important factor, say the experts. The presence of informal distribution channels, organised crime, industry participation and corruption are stronger drivers of smuggling than are price levels.

The report also presents recently published evidence of substantial reductions in smuggling achieved in Italy, Spain and the UK that show the problem can be successfully tackled.

## REFERENCE

Joossens, L., Merriman, D., Raw, M. and Ross, H., *How Eliminating the Global Illicit Cigarette Trade would Increase Tax Revenue and Save Lives*, International Union Against Tuberculosis and Lung Disease, June 2009.

Available at: [http://www.ftc.org/index.php?option=com\\_content&view=article&id=291:inb3-report-saving-revenue-and-saving-lives&catid=222:meeting-resources&itemid=230](http://www.ftc.org/index.php?option=com_content&view=article&id=291:inb3-report-saving-revenue-and-saving-lives&catid=222:meeting-resources&itemid=230)

# REOPENING OLD WOUNDS: WHAT HAS HAPPENED TO ARTICLE 2 OF THE FCTC?

Article 2 of the FCTC governs relations between the FCTC and other treaties. Article 2.2 gives priority to the FCTC in the event of a conflict with a treaty concluded after the FCTC. In addition, the law of treaties gives priority to the FCTC over treaties concluded earlier than the FCTC. Both of these rules apply not only to the FCTC but, also to FCTC protocols. Article 2.4 of the revised Chairperson's Text would alter this position and give priority to all other treaties over the illicit trade protocol in the event of conflict. The question is, why?

Why would FCTC Parties wish to reopen an intense and time-consuming debate about the relationship between the FCTC (and its protocols) and other treaties? The relationship between the FCTC, its protocols, and other treaties was highly controversial during FCTC negotiations. The question of whether the FCTC should prevail over trade agreements, such as the World Trade Organization Agreement, provoked such intense debate that three different proposals were rejected before the Parties eventually settled on the text in Article 2.2 of the FCTC. Most importantly, at the Fifth Session of FCTC negotiations, Parties rejected the inclusion of a clause similar to that proposed in Article 2.4 of the revised Chairperson's Text.

Why then, should Parties waste precious negotiating time debating Article 2.4 of the revised Chairperson's Text?

Why would FCTC Parties wish to undermine the importance of the illicit trade protocol, as currently proposed in Article 2.4 of the revised Chairperson's Text? Obviously, the relationship between the protocol and the UN Convention on Transnational Organized Crime (UNTOC) is important but, why does Article 2.4 concern all international treaties and not just UNTOC? In any case, how would the protocol conflict with UNTOC? Also, is it even permissible for the protocol to conflict with the terms of the FCTC?

We could spend the week debating the answers to these questions. The simple answer to all of these questions is to delete Article 2.4 from the draft text. This would ensure that Parties can spend time debating the issues of central importance, such as control of the supply chain, offences and penalties, exchange of information and other forms of international co-operation.

## CIGARETTE SMUGGLING INTO GHANA

Ghana, considered as the trade gateway to West Africa, is among the target countries for cigarette smugglers in the West African sub-region. During 2003-4, about 15 per cent of the cigarettes consumed in Ghana were smuggled in.

In 2004 alone, 10,911 reams (10 packs x 20 sticks) of assorted cigarettes having a potential tax element of around GH¢73,522.42 were seized and destroyed by the Ghana Customs, Excise and Preventive Service (CEPS). In 2007, the volume of smuggled cigarettes was reduced to 1,590 reams.

One might ask whether the smugglers have changed strategies or if Ghana Customs, Excise and Preventive Service has adopted ways of effectively fighting cigarette smuggling into Ghana. If so, the authorities should expand seizures to point of sale.

In total, between 2004 and 2007, 18,848 reams of seized cigarettes of assorted

brands (Rothmans, London King Size, Fine, Royal and Bond) were destroyed by CEPS headquarters. In the first half of 2009, the country's customs service has seized 416 reams of assorted cigarettes which are pending disposal.

Customs officials need to adopt sophisticated methods to intercept consignments of smuggled tobacco. Border inspection in developing countries is difficult, coupled with inadequate logistics and resources. Customs agencies and authorities in Africa are committed to fight smuggling, using resources and appropriate technology and without the interference of the tobacco industry.

Additional international technical support, co-operation and exchange of expertise needs to be extended to Ghana and other developing countries in the fight against cigarette smuggling. This could be achieved through the timely

development, implementation and enforcement of a strong protocol on illicit tobacco trade.

The protocol would cut governments' revenue losses and help reduce the availability of cheap and affordable cigarettes to children, and reduce levels of addiction, disease and poverty in Africa.

We trust that a strong illicit tobacco trade protocol will enhance and consolidate the achievements of Ghana Customs, Excise and Preventive Service in combating the illicit tobacco trade and therefore generate additional revenue for the Ghanaian government.

*Issah Ali*  
*Executive Director*  
*Vision for Alternative Development (VALD)*  
*GHANA*

# NO BARRIER TO AGREEMENT ON TRACK AND TRACE

As INB-3 begins, some Parties are already claiming that a global tracking and tracing system is not practical. But before this idea takes hold, delegates should consider the planning for such a system already done by the major tobacco companies. BAT appears to have tracking and tracing plans sufficiently advanced to be put into effect when an illicit trade protocol enters into force. PMI operates some elements of a tracking and tracing system in relation to their agreement with the European Union. The news undermines claims from some Parties that such a system is too complex or difficult to introduce.

It is understood that PMI is planning briefing events on tracking and tracing in Geneva during INB-3. BAT meanwhile has been conducting extensive preparatory work on its own version of

directly on the product. RFID systems are developing quickly but are relatively expensive and currently lack agreed international standards.

BAT's plans are based on a standard barcode format for master cases of cigarettes, and a 2D data matrix format for cartons. Information from both formats can be easily read by standard handheld readers (even by some mobile phones). Both the master case barcode and carton data matrix code would contain a serial number, a factory number, a production line number and a date and time of production. This could be readily associated, as implied in Article 7 of the Chair's text, with other information on a national database, including first customer and shipment information. This would enable any law enforcement or customs officer in a

tracing system although this would make the system far too dependent on the tobacco industry and would make it too easy for companies to identify what investigations were being undertaken by law enforcement and customs officers. It would also make it difficult or impossible for information about tobacco products imported to Parties from non-Parties to be recorded.

Finally, both PMI and BAT are understood to oppose the proposal for a central clearing house in Geneva. But this proposal is vital if the tracking and tracing system is to be effectively insulated from the tobacco industry. One key element of the central clearing house is that it handles requests for information from law enforcement and customs officials to national databases and returns the results, making it impossible for the industry to know the source of such requests and hence protecting the security of investigations.

FCA strongly supports the establishment of an effective global tracking and tracing system for tobacco products. To fight illicit trade effectively requires authorities to monitor the movement of lawfully manufactured tobacco products, and, upon seizure of such products, to access information to help recreate the movement of products through the supply chain.

However, in order to help improve the chances of a successful conclusion being reached at INB-3, we would recommend that a working group on Article 7 be set up to examine and clarify these and any other related issues and to report back before the conclusion of the INB. The new evidence that PMI and BAT have already worked out how to introduce tracking and tracing completely undermines claims by some Parties that such a system is impractical. There is no longer any justification for failing to reach agreement on a tracking and tracing system at this INB.

## FCA STRONGLY SUPPORTS THE ESTABLISHMENT OF AN EFFECTIVE GLOBAL TRACKING AND TRACING SYSTEM FOR TOBACCO PRODUCTS.

tracking and tracing, based on barcodes similar to the system implied by Article 7 of the current Chair's text.

Tracking and tracing systems are in common use in many industries to determine the current and past locations and other information concerning property in transit. An effective tracking and tracing system allows such information to be uploaded, retained and read in a standardised manner. Such systems are used by shipping and delivery businesses such as UPS and FedEx, and also by airlines and the food, chemicals and pharmaceuticals industries.

There are several technologies used in tracking and tracing systems, now at various stages of development and standardisation. Two examples are barcode systems and radio frequency identification (RFID) systems. The former are ubiquitous, cheap to apply and to read, but relatively restricted in the amount of information that can be stored

Party to read a unique identifying number from the case or carton and access information from the national databases through the proposed central clearing house in Geneva. The main costs of the proposed system would be met by the manufacturers, since they would be required to place unique numbers on products and upload relevant information.

There are, however, some serious problems with the PMI and BAT plans, worryingly reflected in what are understood to be the early negotiating positions of some Parties. Both PMI and BAT oppose extending tracking and tracing to pack level, although there is no technical obstacle to including unique identifiers on packs. BAT are hostile to the idea of including shipping information since this may not be known at point of production, although this information could readily be added to national databases before export. Both companies want producers to control databases required by any tracking and

*Ian Willmore  
Framework Convention Alliance*



## DIRTY ASHTRAY AWARD

No awards today as we would like to start the week on a positive note but we'll be watching.



## ORCHID AWARD

Watch this space.



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.

Framework Convention  
Alliance

Rue Henri-Christiné 5  
Case Postale 567  
CH-1211  
Geneva, Switzerland

Representative Office:  
FCA c/o ASH International  
701 4th Street NW, 3rd Floor  
Washington, DC 20001  
USA

Phone: +1 202 289 7155  
Fax: +1 202 289 7166  
Email: [editor@fctc.org](mailto:editor@fctc.org)

[www.fctc.org](http://www.fctc.org)

means, and knowingly transporting or delivering tobacco or tobacco products that have been the subject of such retail sales.

We also support the proposal in Article 11 that seeks to prohibit any tax and other regulatory advantages that may exist in "free trade areas" from applying to tobacco products, including tax-reduced and duty free sales, although we think that "free trade zones" would be a more accurate term. For simplicity and effectiveness, we think that the Article should simply require Parties to prohibit the entry of tobacco products into free trade zones. The existence of legal channels for tax-free or tax-reduced products creates a cover for supplying to illegal markets, and customs vigilance is sometimes lower inside free trade zones than outside.

For similar reasons, we also think that the Article should require Parties to end all duty free sales of tobacco products. Tobacco products marked for duty free sale may end up as contraband continents away. FCA members have evidence of such sales from stores or street vendors in, for example, the Dominican Republic, Egypt, India, Iran, Pakistan and Philippines. In some countries, supposed "duty free" cigarettes are a major source of contraband volume. We would strongly urge Parties to resist lobbying from the tobacco industry and trade associations

involved in duty free sales to prevent progress towards ending such sales.

### OFFENCES AND SANCTIONS

We believe that the Articles relating to offences and sanctions need considerable simplification to reflect the differences in civil and criminal law and procedures between Parties to ensure that this part of the protocol is within the role, functions and resources of the Secretariat and the WHO, and to establish a clear link to other international agreements, particularly UNTOC.

To achieve this, we recommend that Parties should be required to establish a range of offences under the protocol, but that these may be criminal, civil or administrative as appropriate (Article 13). The proposed link between the protocol and UNTOC (Article 15) should be strengthened, with Parties ensuring that the most serious forms of illicit trade are established as serious crime, punishable by a maximum penalty of at least four years imprisonment. All illicit trade offences should be subject to effective sanctions, including licence suspension or cancellation, monetary sanctions and imprisonment.

*Full FCA briefing documents and side by side commentary on the Chair's text can be found at [www.fctc.org](http://www.fctc.org) (under "Meeting Resources"). They will also be widely distributed to delegates as hard copy and on computer memory sticks.*

## SCAN THIS!

Use a camera phone equipped with barcode reader software to read the text embedded in this two-dimensional barcode. Welcome to the world of track and trace!

Compact two-dimensional codes are ideal for tagging small items such as unit-dose medicine packs or electronic components. This QR Code is one of a growing number of technologies used in commercial tracking applications.

Observant delegates will have found a boarding card bearing another QR Code in FCA's delegate information pack.



*Continued from page 2*