

INSIDE THIS ISSUE

The impact of illicit cigarette trade on health and revenue	2
Ban remote sales	3
Illicit trade in Togo	3
Industry global scare campaign	4
Bulgaria: conduit for smuggling	4
Free zones	5
Cigarette smuggling in Sub-Saharan Africa	6

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

47,322,259

PEOPLE HAVE DIED FROM TOBACCO-RELATED DISEASES (AS OF 09:00 ON 14 MARCH 2010)

IF NOT NOW, THEN WHEN?

A few years ago, a neurologist acquaintance asked me where I worked, and I told her I was in tobacco control. Even among health professionals, this frequently leads to blank stares. But not in her case.

“It’s very important, what you’re doing,” she said. “A couple times a week, I get patients presenting with head pains, and when I investigate, it’s lung cancer that’s metastasized into brain cancer. And inevitably they look at me and say, ‘Why me? Why did this have to happen to me, of all people?’”

I remind myself of these patients whenever the statistics that get thrown around in public health get to be too much. Five million people per year die from tobacco-caused disease – roughly equivalent to the entire population of Denmark. In the course of the 21st century, one billion people are forecast to die from tobacco – a number so staggering, it seems completely unreal. And yet, at some point many of those one billion will be asking themselves that same question: “Why me? Why did this have to happen to me, of all people?”

What, you may wonder, does this have to do with the work we are here to conduct this week? Parties will be talking primarily about the finer details of tracking and tracing, about markings on cigarette packs (or is that only master cases?), about extradition and mutual legal assistance, about what kinds of controls are or are not feasible in free zones. It will be all about the flow of

merchandise and the payment or non-payment of taxes, about investigations and organised crime.

Countries all come to this negotiating round with legitimate interests to defend and many practical questions they want answered. But delegates may wish, from time to time, to step back from the details and remember the big picture: illicit trade in tobacco products kills. And not in an abstract sense. Because the

“ **DELEGATES MAY WISH TO STEP BACK FROM THE DETAILS AND REMEMBER THE BIG PICTURE: ILLICIT TRADE IN TOBACCO PRODUCTS KILLS.** ”

streets of Rio or Montréal or Kampala are awash in cheap, smuggled cigarettes today, some teenager will start smoking tomorrow. That teenager will die from brain cancer, perhaps in 30 or 40 years. And, as they die, wonder, “Why me?”

If that is not enough motivation to work hard, there is also a lot of money involved. Billions of dollars a year of tobacco taxes evaded. Governments could also raise many tens of billions more if they were free to raise tobacco taxes higher.

In short, what you do here this week matters a great deal. We trust you will act accordingly, and offer whatever help we can give in clarifying issues, finding information or seeking compromises.

Good luck, and have a busy and productive week!

Francis Thompson, FCA

THE IMPACT OF ELIMINATING THE GLOBAL ILLICIT CIGARETTE TRADE ON HEALTH AND REVENUE

In June last year a report was published by the International Union against Tuberculosis and Lung Disease entitled *How eliminating the global illicit cigarette trade would increase tax revenue and save lives*. A fact sheet on the report is available on the FCA website (http://www.ftc.org/dmdocuments/INB3_fact_sheet_illicit_trade_save_revenue_lives.pdf).

The report was well received by customs authorities around the world. The World Customs Organization asked the authors to make two presentations on the report at their headquarters in Brussels, at the 18th Meeting of Heads of European Customs Investigation/Intelligence Services and at the World Customs Organization Working Group on Commercial Fraud. The authors submitted the report to the scientific journal "Addiction" and the article was accepted for publication in March 2010, just before the start of INB-4.

The main findings of the research are:

"According to available estimates the size of the illicit trade varies between countries from 1% to about 40-50% of the market, 11.6% globally, 16.8% in low income and 9.8% in high income countries. The total lost revenue is about \$40.5 billion a year. If this illicit trade were eliminated governments would gain at least \$31.3 billion a year, and from 2030 onwards over 164,000 premature deaths a year would be avoided, the vast majority in middle and low income countries".

The results show approximately US\$40 billion in lost revenues. If this illicit trade were eliminated there would be an overall increase in cigarette prices of around 4 per cent and a consequent fall in consumption of around 2 per cent. Although this fall in consumption would reduce tax revenue, eliminating the illicit trade would still result in a net gain for governments of at least US\$31 billion a year, and from 2030 onwards it would save over 164,000 lives a year. In six years over a million lives would be saved, the vast majority in middle and low income countries.

The results also show how the burden of illicit trade falls most heavily on lower income countries. About 44 per cent (US\$17.6 billion) of total annual revenue loss occurs in high income countries and 56 per cent (US\$22.9 billion) occurs in low- and middle-income countries. Eliminating illicit trade would cause prices to rise by almost the same percentage (about four per cent) in both high- and low- and middle-income countries. The reason for this is that although taxes are higher in high-income countries, on average, the share of consumption that is illicit is lower.

Finally, the data shows that the overall level of smuggling is higher in countries that have lower cigarette prices (these

countries also generally have a lower tax rate). The tobacco industry has claimed the opposite, that high taxes drive smuggling, and has sometimes successfully argued to governments that they should not increase tobacco tax because this will increase the level of smuggling. The argument is that smugglers will smuggle into a country where they can make the highest profit, and that these are the countries where tax is a high proportion of the price, leaving a

“ IF THIS ILLICIT TRADE WERE ELIMINATED GOVERNMENTS WOULD GAIN AT LEAST \$31.3 BILLION A YEAR, AND FROM 2030 ONWARDS OVER 164,000 PREMATURE DEATHS A YEAR WOULD BE AVOIDED ”

large margin to reduce the price – by avoiding tax – and still retain a profit. In fact, a high tax margin may provide the initial incentive to smuggle, but the data show that it is not the only factor. Other factors include the ease and cost of operating in a country, industry participation, how well organised crime networks are, the likelihood of getting caught, the punishment for being caught, corruption levels, and so on. In Norway, where in January 2008 a packet of Marlboro cost US\$12 (the country with the highest cigarette prices in the world), only 6 per cent of survey respondents had seen tobacco products during the last 12 months which they believed were smuggled. In Lithuania, where in January 2008 a packet of Marlboro cost US\$2 (the country with the lowest prices in the EU), the percentage was 36 per cent. The data indicate that these other factors are more important than price; that in fact the level of illicit trade is lower in regions where the price of cigarettes is higher.

Luc Joossens, FCA

Source: Joossens L, Merriman D, Ross H, Raw M, *The impact of eliminating the global illicit cigarette trade on health and revenue*, *Addiction* (2010) in press.

TIME FOR A GLOBAL BAN ON INTERNET/REMOTE TOBACCO SALES

Remote sales of tobacco products, including via the internet, are an inherently international problem necessitating an international solution. Most of these sales are to evade taxes, with products being shipped between lower and higher tax jurisdictions, directly to consumers. The nature of the transaction – normally across borders – makes it very difficult to ensure tobacco taxes are paid.

“**THE PROTOCOL SHOULD CONTAIN A BAN ON REMOTE RETAIL SALES**”

Other problems with internet sales concern required health warnings often being missing and possible infringements of national product

standards. Complying with legislation against selling tobacco to minors is also made more difficult.

It is time for global action. The protocol should contain a ban on remote retail sales of tobacco products to consumers. Encouragingly, at INB-3, a very large number of regions/Parties called for a ban on internet/remote sales.

Since INB-3, new legislation to ban internet sales has been put into effect in Trinidad and Tobago, the Seychelles and the Cayman Islands. Internet tobacco sales are also prohibited in the Canadian province of Quebec, Iran, South Africa, and the US states of New York, Alaska and Connecticut.

Mail order sales of tobacco products, meanwhile, are prohibited in at least Brazil, Canada, the Cayman Islands, Kenya, Seychelles, South Africa and Trinidad and Tobago. Legislation in Canada prohibits shipment to consumers across provincial boundaries.

It is worth noting that the term “remote sales” is better than “internet sales”. “Remote sales” is broader and would cover not only sales transactions via the internet, but also mail order sales, and sales placed by telephone, fax or text message, for example.

In short, all Parties are urged to support a ban on remote sales in the protocol.

*Rob Cunningham
Canadian Cancer Society*

ILLICIT TOBACCO TRADE ROBBS TOGO ECONOMY

The illicit tobacco trade in Togo is depriving the West African nation of millions of dollars, according to a recent ANCE-Togo report.

The report on tobacco smuggling between Togo and Benin found that between 2003 and 2007 illicit trade deprived Togo's economy of about 5 billion CFA francs in duties and taxes, roughly equivalent to US\$10 million.

Most of this illicit trade is smuggled into Togo via sea routes, waterways and by land with the borders of Hilla Condji, Agbanakin, Agouegan and Djeta (between Togo and Benin) and the borders of Aflao or Kodome (between Togo and Ghana) seeing the most activity.

Cigarettes are cheap and readily available in Togo. They should be relatively scarce and expensive, however, based on the country's high duties and

taxes on tobacco products (representing approximately 63.75 per cent of their CIF value at import).

This contradiction led the National Consumers and Environmental Alliance (ANCE) to conduct a preliminary study into illicit tobacco trade in Togo. The Framework Convention Alliance Opportunity Grant 2009, managed by the American Cancer Society, funded the research.

The report also found that:

- Perpetrators and cigarette smuggling accomplices in Togo and Benin are distribution and cigarette sale companies, distributors and large international tobacco firms
- Cigarette counterfeiting involves several brands such as Superkings, Royal and Fine, in particular. This illicit trade represents about 16 per cent of the tobacco trade in Togo and Benin

- There is no appropriate legislation, specialised agencies or effective means of illicit tobacco trade control in the countries investigated.

ANCE-Togo will use the report to promote sustainable development and improve people's health in Togo plus provide information on the country's illicit tobacco trade.

The report presents a series of recommendations in three main areas: promoting customs co-operation; reinforcing the legal and institutional framework of control; and encouraging the follow-up and traceability of tobacco.

Trina Tune

For more information, download the full report

<http://www.smokefree-togo.org/userfiles/file/Final%20report%20illicit%20trade%20tobacco.pdf>

INDUSTRY GLOBAL SCARE CAMPAIGN SAYS INCREASED TAXES WILL LEAD TO SMUGGLING: AUSTRALIA NOW HAS PROBLEM

Recent Australian media reports suggest that the tobacco industry in Australia is now following its time-honoured lobbying approach of threatening that smuggling will rise if the government increases tobacco taxation.

The Australian Daily Telegraph reported that international flight crews bringing illegal cigarettes through Sydney Airport account for part of an increase in Australia's tobacco black market. (<http://www.news.com.au/national/illegal-cigarettes-being-smuggled-into-australia/story-e6frkvr-1225770029584>). In the first quarter of 2009, customs detected 11 shipments of illicit tobacco products comprising 65 tonnes of leaf and 22 million cigarettes. The amount of tax involved was AUS\$27 million. The total figure for all 2008 was AUS\$50 million.

The Daily Telegraph quoted Customs investigations manager Richard Janeczko as saying that smuggling took diverse forms:

"Anything from airline crews bringing them in, people trying to order them in on the internet, or full container loads disguised as things like pretzels," he said.

"But the big smuggling is done by full container load – you're talking \$4-\$6 million dollars in revenue foregone in every one that's gone through."

Meanwhile BAT has been lobbying hard to resist rises in tobacco taxation, commissioning a report from PricewaterhouseCoopers to back its case. Absurdly, BAT is claiming that it is concerned about the public health implications of illicit trade because illegal tobacco is "not subject to quality control standards". These would presumably be the quality

standards that result in the premature death of half of all long-term smokers.

Not surprisingly, the Chief Executive of ASH, Anne Jones, said this was all part of a global scare campaign by the tobacco industry:

"They are trying to counter any government increase in tobacco tax by saying there's going to be this massive increase in smuggling so you shouldn't do it... if we put the tax up on tobacco, we will see immediate decline in consumption."

ASH Australia says that tobacco tax levels in Australia are lower than in many other OECD countries at around 69 per cent of the retail price.

The truth, of course, is that Australia needs to use high tobacco tax rates to reduce consumption and promote public health. High tax levels do not necessarily lead to increases in illicit trade, as the most authoritative research by Joossens et al clearly shows. Effective action against illicit trade can prevent that from happening. But action on illicit trade requires international co-operation, and that can best be promoted through an effective protocol.

Ian Willmore, FCA

How Eliminating the Global Illicit Cigarette Trade Would Increase Tax Revenue and Save Lives, Joossens et al. http://www.tobaccofreecenter.org/files/pdfs/en/ILL_global_cig_trade_full_en.pdf

BULGARIA: CONDUIT FOR ILLICIT CIGARETTE TRADE BETWEEN ASIA AND EUROPE

A seminar organised by the European Union Anti-Fraud Office (OLAF) and the "Journalists Against Corruption" group was held on 29 January 2010 in Sofia, Bulgaria, to discuss the illegal trade in cigarettes.

According to General Vanjo Tanov, the head of Bulgarian Customs, about 60 per cent of the cigarettes produced in Bulgaria are legally exported, but a high proportion subsequently return illegally to the country. The illicit trade has been encouraged by two factors: first, excise duty on tobacco products is lower in the neighbouring countries of Greece and Romania. Second, visas are no longer required between Bulgaria, Macedonia

and Serbia. The end of visas has led to an increase in the so-called "suitcase trade" in cigarettes between these countries. The "suitcase trade" involves people crossing national frontiers on foot carrying suitcases or/and bags. Suitcase carriers reach the nearest market place in a neighbouring country, or meet accomplices and sell their "goods".

General Tanov revealed that in 2009 more than 74 million cigarettes were confiscated by Bulgarian Customs.

Alessandro Buttice, of OLAF, identified the illicit trade in tobacco products as one of the most dangerous contemporary crimes. According to Wolfgang Hetzer, another senior OLAF representative

participating in the seminar, around 43 per cent of cigarettes seized last year were counterfeit.

General Tanov warned that there is a growing problem with illegal trade in cigarettes from Asia to Europe through Bulgaria.

According to OLAF's data, the highest number of prosecutions for cigarette smuggling in the EU countries are in Luxembourg and Belgium. OLAF statistics show that 4.7 million cigarettes were confiscated during 2007, rising to 5.2 million cigarettes in 2008.

Liliana Tsoneva-Pentcheva, Ian Willmore

FREE ZONES - PROTOCOL PROVISIONS MUST BE STRENGTHENED

As negotiations on the Illicit Trade Protocol have proceeded, there has been increasing recognition of the need for measures in the Protocol to deal with free zones. This is very positive. Free zones are a significant and increasing source of illicit trade.

While the proposed text on free zones arising from Drafting Group 1 is worth supporting, the provisions must be strengthened. The existing proposed text would require that the provisions of the Protocol apply to free zones, and would ban, for shipments in and out of free zones, the “intermingling” of tobacco products with non-tobacco products.

To improve the draft text, the Protocol should at a minimum contain a general obligation that Parties “should, as appropriate” exclude for any commercial purpose tobacco, tobacco products, and tobacco manufacturing equipment from free zones. Such a general provision would assist Parties in implementing such an approach, where feasible. The exclusionary approach is the best available to prevent illicit trade associated with free zones.

WHAT ARE FREE ZONES?

Many countries have created free zones in a defined geographic area within a country in order to promote economic development. In a free zone, governments often reduce corporate income taxes and other taxes to encourage companies to locate there. Also, regulatory control is reduced. Frequently, customs oversight is in practice non-existent.

The Revised Kyoto Convention (which deals with customs) defines a “free zone” as “a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory”. (Specific Annex D, Chapter 2). “Free zones” are sometimes called “free trade zones”, “foreign trade zones”, etc.

The number of free zones worldwide has grown dramatically in recent years, thus increasing the risk of illicit trade. How many there actually are depends on the particular definition of “free zones”.

WORLD CUSTOMS ORGANIZATION CALLS FOR ACTION

In its intervention during the opening plenary of INB-3, the World Customs Organization (WCO) called for the Protocol to address free zones in response to the connection between free zones and illicit trade. The WCO stated: “Another extremely important issue is related to free zones which are regarded in some countries, insofar as import duties and taxes are concerned, as being outside the Customs territory. This implies the risk of exploiting/misusing the free zone system for commercial fraud purposes.... It is therefore evident that the Protocol should include the most

“ FREE ZONES ARE A SIGNIFICANT AND INCREASING SOURCE OF ILLICIT TRADE. ”

appropriate provisions for the prevention and detection of fraud cases exploiting the free zone system.”

THE TOBACCO INDUSTRY IS CONCERNED

The major transnational tobacco companies are very concerned by the threat posed by free zones. (Note that vast volumes of tobacco products – whether counterfeit, illicitly manufactured or otherwise – made by operators other than the major transnationals, are passing through free zones.)

British American Tobacco wants the Protocol to address free zones. It stated in a news release on day 2 of INB-3: “There are around 700 worldwide – black holes where goods move in with one set of paperwork and out with another, fuelling illicit trade”.

WHAT SHOULD BE IN THE PROTOCOL?

As discussed, a paragraph needs to be added to Article 11 of the Protocol that Parties should as appropriate prohibit the introduction for commercial purposes of tobacco, tobacco products and tobacco manufacturing equipment from free zones.

Other improvements to the draft Article 11 on free zones are needed. A definition of “intermingling” does not currently exist but is necessary. Moreover, the definition of “free zone” from the Revised Kyoto Convention should be added.

Further, whether in Article 11 or Article 11 bis on duty-free, the Protocol should have a provision regarding the elimination of duty-free sales to consumers in free zone locations.

Many countries already have national legislation to exclude product categories, such as weapons and pharmaceuticals, from free zones. It is feasible and desirable for tobacco to be added to the lists of products excluded from free zones.

Even in the United States, it is understood that national legislation prohibits tobacco manufacturing in free zones.

The Revised Kyoto Convention has a provision stipulating that Parties should decide which goods are (or are not) to be admissible to free zones: “National legislation shall specify the requirements relating to the establishment of free zones, the kinds of goods admissible to such zones and the nature of the operations to which goods may be subjected in them”. (Specific Annex D, chapter 2, paragraph 2). This means that a Party has the discretion to exclude specific product categories from free zones.

EFFECTIVE ACTION NEEDED

The Protocol must effectively address free zones. Parties need to act quickly before a growing problem gets even worse.

DIRTY ASHTRAY AWARD



ORCHID AWARD



Welcome back to Geneva. Civil Society looks forward to a productive week of negotiations.



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

www.fctc.org

CIGARETTE SMUGGLING AND FRAUDULENT PRACTICES IN SUB- SAHARAN AFRICA

Cigarette smuggling in Africa has been relatively little researched. Yet it plays an important role in regional smuggling economies, general fraudulent practices and even war economies.

Cigarette smuggling and fraud are rife in the Democratic Republic of Congo (DRC), Uganda and particularly Southern Sudan. Sudan has an estimated annual consumption of 1 billion cigarettes. Yet, it is estimated that about 3 billion cigarettes annually enter the Southern Sudanese market. The remaining 2 billion are therefore suspected of being smuggled to neighbouring countries. There is a major illicit flow of cigarettes from Sudan back into Uganda and Kenya, as well as to the Central African Republic, Chad and Ethiopia.

One could argue that taxation plays a role in this, as taxation in Sudan is significantly lower than in Uganda. However, other factors are even more important. First, there is the problem of weak state capacities in the region. Even if taxes were equal, there still is the problem of state enforcement, as many states are not capable of controlling long borderlines. Moreover, there is the problem of corrupt government officials, which of course stimulates smuggling practices.

Many of the cigarettes smuggled in and out of Southern Sudan evade taxation, although taxes are lower there than in neighbouring countries. Smugglers instead resort to bribing government officials or rely on smuggling routes.

Secondly, there are embedded smuggling networks, with long historical roots, which are also well organised. A major factor in this is that similar ethnic groups living on different sides of (colonial) borders remain closely connected to each other. Traders can easily tap into these smuggling networks and have easy access to an available market.

Thirdly, various criminal elements in the region, as well as rebel groups, rely on cigarette smuggling. The rebel group 'Armed Forces of the Congolese People' (FAPC - 'Forces Armées du Peuple Congolais') held power in certain areas of northeastern DRC between 2003 and

2005. Several UN reports describe how the group financed itself through controlling certain trading routes, with cigarettes being an important commodity. Cigarettes are an ideal commodity for criminal organisations - they are small and easy to transport and find a ready market.

As with 'blood diamonds', which contribute to financing major human rights abuses, it can be argued that there also are 'blood cigarettes'. Although manufacturers claim they are not responsible for smuggling practices in neighbouring countries, the illegal trade in particular brands of cigarettes is a direct contributor to serious abuses of human rights. Manufacturers should therefore remain legally responsible for their products throughout the supply chain.

In summary, these factors help us to understand why levels of cigarette smuggling are higher in low-income countries even though prices are lower. The institutional context, rather than levels of taxation, is favourable for smuggling practices. Moreover, in a low-income context where price is a very important factor influencing the purchase of cigarettes, tax evasion and fraudulent practices become an attractive option for cigarette traders. Naturally, this has a negative impact on effective health policies. It has been shown how low-income smokers are particularly responsive to price changes, and this is certainly the case in low-income countries in Sub-Saharan Africa.

Dr. Kristof Titeca

The author is a Postdoctoral Fellow from the Research Foundation – Flanders at the Institute of Development Policy and Management (University of Antwerp, Belgium) and has conducted extensive anthropological research into smuggling practices in central and eastern Africa since 2004. Kristof.Titeca@ua.ac.be