

Toward a WHO Protocol on Illicit Trade in Tobacco Products

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When the Framework Convention on Tobacco Control (FCTC) was developed, the fight against illicit trade in tobacco products (smuggling, counterfeiting) was identified as a key element of global tobacco control. But as it seemed too complex to be handled directly within the Convention, it was decided that a supplementary treaty or Protocol be developed to take the necessary technical and diplomatic aspects optimally into account.

Negotiations toward this Protocol began in February, 2008, when over 132 States having ratified the FCTC met for the first time, and this was followed in October 2008 by a second meeting in Geneva. The WFPHA representative, Dr. Theo Abelin, chairperson of the Tobacco Control Program along with over fifty delegates from non-governmental organizations (NGOs) engaged in tobacco control. Under the leadership and coordination of the *Framework Convention Alliance* (FCA; www.fctc.org) these NGO delegates saw to it that a strong, but also realistic and effective treaty text would result.

Why is combating illicit trade an important element of tobacco control?

The most effective short-term measure to reduce tobacco consumption and tobacco-related morbidity and mortality is price increases, and governments can use high tobacco taxation as a tool to reach this goal. A price increase of 10 percent is likely to reduce tobacco consumption by approximately 4 percent in high income and by about 8 percent in low income countries. But smokers who buy smuggled cigarettes are not reached by this preventive measure. As they usually belong to the poorer segment of the population and include children, illicit trade in cigarettes leads selectively to higher smoking rates especially among children and the poor, especially in low and middle income countries. Under these circumstances small children often contribute to their family income by selling smuggled cigarettes in the streets, and they themselves may become smokers even before reaching the age of ten years. Health services for patients with tobacco-related chronic diseases are expensive and in general not available in the poorest countries and for the poorest segments of the population.

Is tobacco smuggling widespread enough to justify a separate international treaty?

Yes it is. As indicated in one of the FCA Factsheets, in 2006 an estimated 607 billion cigarettes were smuggled worldwide depriving governments of \$US 40-50 billion each year in tax revenue, which is more than the GDP of two-thirds of the world's countries. Finance ministries are therefore greatly interested in reducing the sale of smuggled tobacco products in their countries.

Is illicit trade in tobacco of interest beyond the health sector?

Yes, it certainly is, and this is why public health authorities should work closely with their colleagues from other ministries. The loss of State income from tobacco taxes, which could help finance health services, has already been mentioned. Even in countries where sales of smuggled cigarettes may play a minor role, money laundering, that is the transformation of money earned from illegal activities into "legal" money, is in itself an illicit activity. Mafia-type organizations have taken control of a large part of illicit trade in tobacco products, and the money earned is used again for illegal activities, apparently including financing of terrorist activities.

Is the tobacco industry interested in reducing illicit trade in tobacco products?

One would think that it is, but governmental inquiries have demonstrated multinational tobacco company involvement in the illicit sale of cigarettes. Their interest seems to lie in getting people in low income situations dependent on nicotine and acquainted with the big cigarette brands. This is why an effective Protocol on Illicit sales has to include tracing methods, which allow identification of cigarette shipments that originate from the big tobacco companies but where the officially declared countries of destination are not those where the cigarettes are finally sold.

Are counterfeit cigarettes a significant problem?

Until recently, counterfeit cigarettes were not a major problem. But at present, large quantities of counterfeit cigarettes are being sold on the black market, both through internet and street sales. As an example, as shown in Geneva by the International Consortium of Investigative Journalists (ICIJ), a number of hidden factories in Russia are flooding Europe with US\$ 1 billion worth of "Jing Ling" contraband cigarettes – the world's first ever cigarette brand designed and manufactured only for smuggling (<http://www.publicintegrity.org/investigations/tobacco/>).

In issue 74 of the “FCA Bulletin” (the NGO newspaper published daily during FCTC-related conferences), smuggling activities of BAT are presented as an example of how systematically the tobacco industry used smuggling “to meet consumers’ demands as profitably as possible”. In the same article it is pointed out that tobacco industry lobbyists were working hard in Geneva to reach the delegates and to promote wording of the Protocol which would allow the tobacco industry to participate in the fight against smuggling and counterfeiting.

What measures are proposed to control Illicit Trade?

On the one hand, Article 15 of the FCTC demands that countries should enact legislation which prohibits and makes punishable the different forms of illicit trade in tobacco products including internet sales, and that confiscated tobacco as well as manufacturing equipment be destroyed. On the other hand, the international community needs to collaborate to monitor and collect data on cross-border trade. Technical means such as marking cigarette packages with bar code labels need to be defined to enable governments to implement such measures. A report on the results of the Geneva Conference issued in November, 2008 (www.who.int/gb/fctc/PDF/cop3/FCTC_COP3_4-en.pdf) confirms this joint national and international approach, but also makes it clear that there are still important practical problems to be solved.

Is it true that high cigarette taxes lead to more illicit trade?

An argument often used by the cigarette industry against cigarette tax increases is that tax and price increases lead to an increase of smuggling. This may be true to some extent for some countries, but it is not a plausible argument, when the smuggled cigarettes have also been bought from the tobacco companies. Just as important, large scale smuggling operations affect mostly low and middle income countries, whereas the argument against tax increases is often used in high income countries.

Is it possible to develop one single protocol for high and low income countries?

This question was raised at the Geneva Conference, when measures to trace tobacco products from factory to the end users were discussed. Delegates from several low income countries, such as from sub-Saharan Africa pointed out that under their conditions with long unsupervised border regions, cross-border tracing of cigarettes would not be possible, whereas they would still like to use the other

instruments provided by the protocol. A formula should therefore be found which differentiates between the obligations of different types of countries.

Why should duty-free tobacco sales be banned as part of the fight against illicit trade in tobacco?

In some countries, large quantities of cigarettes sold at duty-free stores end up in illicit markets of the same or other countries. According to the FCA Bulletin quoted before, this has been shown for Bulgaria, Romania, Colombia, but also for Egypt, the Philippines, Thailand and Vietnam. In other countries, cigarettes intended for duty-free sale are diverted even before arriving at a duty-free store. Countries like Singapore, Nepal, Sri Lanka and Barbados have banned duty-free tobacco imports by consumers, and within the European Union, duty-free sales to individuals travelling within the EU have been banned – a developments which demonstrates the feasibility of eliminating duty-free tobacco sales, as the FCA-Bulletin writes.

How does the Intergovernmental Negotiating Body (INB) work to develop the Protocol?

The INB is open to all Parties to the FCTC – that is all States having ratified the Convention (as of November 2008, 161 States have ratified). At its first Conference in February 2008 the INB elected Mr. I. Walton-George of the European Union as its Chairperson. Vice-Chairpersons were elected from Oman, Mexico, India, Ghana and the Federal Republic of Micronesia. In advance of each INB Conference, the Chairperson makes available to the delegations a draft Protocol text, which is studied by the national administrations and discussed at Regional meetings, before the text becomes the basis for negotiations at the INB Conference itself. The FCA supports this process by preparing detailed comments to the Chairperson's text including proposed alternative wording, to make sure that a clear and effective protocol text will eventually result.

What are the next steps?

A third session of the INB is planned from 28 June to 5 July 2009 in Geneva, and the Chair has been asked to elaborate a revised Chairperson's text for that session. Texts, opinions and advice submitted by committees, working groups and experts will be considered in this process.

What can national Public Health Associations (PHAs) do to support the control of illicit trade?

National PHAs have often close contacts with their Ministries of Health as well as with national NGOs specifically engaged in tobacco control. Often these agencies and organizations are more interested in health behaviour change than in issues of illicit international trade, and PHAs are well suited to advocate for an inter-sectoral approach, in which the control of illicit trade through an effective international protocol plays an important role.

What can the World Federation of Public Health Associations (WFPHA) offer to support the control of illicit trade?

The WFPHA Program on Tobacco Control can support its member associations in their advocacy activities by informing them about the progress toward the protocol and the exemplary position papers and documentation of the FCA and its members.

Note: The author thanks the Framework Convention Alliance (FCA) for its excellent documentation, which is the source for much of the content of this report.