CONGRATULATIONS!
(NOW YOU’LL HAVE TO WORK EVEN HARDER)

As we went to press last night, it appeared increasingly likely that Parties would reach a final deal on the protocol before we are forced to vacate the CICG later today.

This is quite an achievement: a generally agreed protocol on a technical issue, illicit tobacco trade control, which many of us only began to think about in detail when negotiations began at INB1 in 2008.

At the start of this INB, some optimistic observers were predicting quick consensus on the core of the protocol, Part III, which would leave lots of time to work through the thorny offences, criminal justice, mutual legal assistance and extradition articles.

We all know how that turned out: the African region quite rightly objected to qualifying obligations in Articles 6 and 9 as being “in accordance with national law[s] or legally binding and enforceable agreements”, rallying numerous Parties from other regions. The European Union dug in, and it took several days of shuttle diplomacy, informal meetings, calls to capitals, as well as multiple drafts of alternative language from AFRO, EU, Canada and others, before a deal was finally struck yesterday evening.

The final language is very welcome: “consistent with its national laws and the objectives of the WHO FCTC”. This eliminates the problem of a treaty subjecting international legal obligations between states to private agreements with non-state actors – in this case, the tobacco industry.

Meanwhile, the definitions working group and the language advisory committee threw up a number of issues that required considerable work through much of the session.

In Parts IV and V, there were a number of potentially controversial issues to resolve, and in some cases language that had never yet been looked at in plenary, such as Articles 12, 30, 31 and 32. Predictably enough, discussions got bogged down on the subject of mutual legal assistance and extradition, and in particular the question of what threshold would need to be met to trigger relevant obligations.

Lengthy debate broke out with respect to references to counterfeiting, particularly (but not only) in Article 12. Quite a number of Parties pushed hard to amend language to ensure that obligations to protect tobacco companies’ intellectual property do not make their way into this public health protocol.

In the end, Parties agreed on references to “illicit manufacturing”, with a proposed preambular paragraph clarifying that the protocol “does not seek to address issues concerning intellectual property rights”.

Much Work Left to Do

As delegates prepare to congratulate each other on finalization of the protocol and head back home, it seems almost surly to remind everybody: writing the protocol is only the first step to curbing illicit trade and thereby increase the price of tobacco products.

Domesticating the protocol is, in some respects, more challenging than implementation of the parent Convention, much of which can be accomplished by the Ministry of Health alone. Licensing, due diligence requirements, and national tracking and tracing systems, to use just those examples, will likely be led by revenue, finance, customs or similar authorities. Article 12 may involve revisions to regulations or criminal law, and hence work by ministries of justice. And so on.

Once the protocol comes into effect, Parties have only five years to establish a global tracking-and-tracing regime, which in turn depends on having national systems up and running by then. Enforcement and investigation capacity

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**IN BAT’S OWN WORDS: CONTRABAND HAS DECLINED**

As the time remaining to complete the illicit trade protocol runs down fast, motivation will be a key factor for the Parties to try and finish the task at hand. Some weary souls might start to wonder if all this hard work will eventually pay off by providing the reforms necessary to effectively address the contraband problem in their own countries.

Fortunately, there are documented success stories about curbing the illicit tobacco trade. For example, it is worth noting that over the past few years, significant progress has been achieved in Canada.

Contraband has been a significant problem for the past decade in Canada. The main source of contraband products is illicit manufacturing facilities operating in ‘reserves’ of native peoples located in the provinces of Ontario and Quebec. However, it is important to point out that the blame for the present contraband problem lies with the tobacco industry: it planted the seed of greed among current traffickers in the past, by supplying them with its own tobacco products, a crime for which tobacco companies have recently pleaded guilty.

Industry Documents the Decline

Although the industry continues to profess publicly that there is a “growing illegal black market” in Canada, several sources of information reveal the contrary, including internal tobacco industry documentation. For example, the adjoining illustration from a 2011 powerpoint presentation of British American Tobacco (BAT) clearly shows that the illicit market, as a percentage of the total tobacco market, has dropped dramatically – from 32.7 percent in 2008 to 18.7 percent in 2010.

While smoking prevalence has remained relatively stable since 2008, the Ontario and Quebec government budgets report substantial increases in tobacco tax revenues over the past few years, which is another indication that consumers are reverting back to legitimate tobacco products.

This is obviously not the result of guilt-stricken consumers suddenly developing moral fibre and abandoning the illicit market. What has happened is that the federal and provincial governments have gradually been implementing solutions that are impeding the spread of contraband products across the country.

Some of these solutions are quite obvious, such as raising penalties to levels that effectively deter individuals from engaging in cigarette trafficking. Governments have also reorganised departments and enforcement agencies in tactical committees to better coordinate efforts to deal with the source of contraband products and the local networks that deliver them to consumers.

**Block Supply of Raw Materials**

A key measure advocated for many years by the tobacco control community is to block the supply of raw materials to illicit manufacturing facilities. In Quebec, seizures of raw tobacco have been occurring since 2005, and have gradually increased to reach a level close to 87,000 kilograms in 2010. In Ontario, where virtually all Canadian tobacco growers are located, the government has just passed legislation to enable it to track raw tobacco through the supply chain.

Moreover, the possession and importation of tobacco manufacturing equipment is now regulated by the federal and provincial governments. As well, new federal regulations have introduced a new tobacco tax stamp regime that includes overt and covert security features.

Obviously, the contraband problem still exists in Canada, and more needs to be done to eradicate it. However, the key message here is that many of the measures that have been implemented in Canada are contained in the illicit trade protocol. And yes, they do work and are very much worth fighting for!

François Dampousse, M. Sc. Director, Quebec office, Non-Smokers’ Rights Association

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**IT SEEMED LIKE A GOOD IDEA WHEN WE SIGNED...**

In 2001, the Lao National Committee for Planning and Investment signed a legally binding and enforceable 25-year Investment License Agreement (ILA) with Coralma International and S3T Pte Ltd, effectively entering into a joint venture that created Lao Tobacco Limited (LTL).

In addition to a 5-year (2002-06) profit tax holiday, the ILA fixes ad valorem excise tax rates (at either 15 percent or 30 percent) for 25 years. According to the ILA, if production costs are not more than LAK 1,500 per pack of 20 cigarette sticks (1 USD = LAK 8,000), an excise tax rate of 15 percent is applied, while a 30 percent rate is applied on cigarettes produced at a higher unit cost.

These rates are much lower than the rate (55 percent) required by Lao PDR’s Tax Law 2005, resulting in significant forgone government revenues, as no tobacco companies report any production costs above LAK 1,500 per pack. In addition to depriving the government of revenues, these low tax rates keep cigarette prices...
**REFUSER L’ASSISTANCE DE L’INDUSTRIE DU TABAC DANS LA LUTTE CONTRE LE COMMERCE ILLICITE DU TABAC !**

Le commerce illicite des produits de tabac est une menace majeure pour la santé publique, contribuant à une mortalité précoce et à des disparités de santé. La lutte contre ce commerce illicite doit être une priorité pour les gouvernements.

**Les facteurs de succès**

- Des taxes élevées sur le tabac.
- Des mesures législatives stériles ne favorisant pas le tabac.
- Des politiques de santé publique efficaces réduisant la consommation de tabac.
- Des campagnes de sensibilisation efficaces.

**Les défis**

- Le commerce illicite est difficile à détecter et à contrôler.
- La mobilité des marchandises augmente les défis.
- Les marchands de tabac peuvent opérer en toute légalité.

**La nécessité de l’assistance technique**

L’assistance technique est nécessaire pour aider les pays à mettre en œuvre des mesures de lutte contre le commerce illicite. Cela peut inclure la formation des gouvernements, l’assistance technique en matière de fiscalité, et la mise en œuvre de programmes de lutte contre le tabac.

**Les recommandations**

- Les Parties doivent créer des organismes spécifiques pour gérer l’assistance technique.
- Les gouvernements doivent être encouragés à accepter l’assistance technique.
- Les associations de consommateurs et de santé publique doivent être impliquées dans le processus.

**Conclusion**

La lutte contre le commerce illicite du tabac est un défi majeur. Il est crucial que les gouvernements prennent des mesures concrettes pour lutter contre ce problème. L’assistance technique est essentielle pour leur donner les outils nécessaires pour y parvenir.

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THANK YOU CIPRET—GENÈVE FOR SUPPORTING THE DEATH CLOCK AT THE INBs


FCA would like to warmly thank local tobacco control NGO, CIPRET-Genève, and its director, Dr. Jean-Charles Rielle, for their continuous support of the Death Clock during all five INBs.

Since 2008, the Death Clock has become widely recognised as a powerful symbol that reminds delegates, and others, about the millions of people around the world whose futures are linked to the negotiations on the illicit trade protocol in Geneva.

At the first unveiling ceremony of the Death Clock, on 11 February 2008, (the opening of INB1), the Death Clock revealed that 36,037,000 tobacco-related deaths had occurred since negotiations began on the Framework Convention on Tobacco Control (FCTC) on 25 October 1999. When the Death Clock was unveiled at the beginning of INB5, on 29 March, the count had increased to 58,361,000: in just over four years, tobacco had killed another 22 million people in the world.

The protocol is one important instrument developed under the FCTC that has the capacity to reduce this shocking number of premature deaths. As the Death Clock ticks faster than ever, we are reminded that we have no option than to make the protocol an overwhelming success.

GOOD IDEA
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low and do not help to curb cigarette consumption.

A closer look at the ILA also shows that the government has little power in decision-making under the contract, and risk-sharing is skewed against the government. In fact, since the contract signing, the Imperial Tobacco Group has acquired both Coralma and S3T, resulting in a 53 percent controlling share of LTL.

The ILA predated Laos’s ratification in 2006 of the WHO FCTC, which prohibits such agreements under Article 5.3, and which recognises that price and tax measures are an effective and important means of reducing tobacco consumption by various groups, in particular young persons (Article 6).

In order to correct the significant losses, the Lao Government has issued decrees since 2010 for the collection of a 10 percent value-added tax (VAT) on the product’s ex-factory price and of an additional specific tax of LAK 500 per pack, in addition to the existing ad valorem excise tax. Thus at present, there are three types of tobacco tax applied to locally produced cigarettes: (1) ad valorem excise, (2) specific excise and (3) VAT.

Dr. Ulysses Dorotheo Southeast Asia Tobacco Control Alliance

BULLETIN WRITERS

Some delegates have inquired why front-page articles in the FCA Bulletin are generally unsigned. This is because they represent the consensus views of FCA delegates. Indeed, topics are usually chosen by members at our daily evening meeting, and the articles reviewed by multiple members before publication.