Yesterday morning we received a refreshing blast of useful information and intelligent policy analysis from consultants commissioned to write the Secretariat’s technical paper. It was a concise and authoritative account of a feasible global tracking and tracing regime that would allow Parties to build on their existing systems, where those already exist.

Parties then asked a series of relevant, informed and important questions about how the proposed system would work. We now know for sure that:

• A regime can be set up that accommodates different Parties’ existing arrangements for tracking and tracing and tax stamps
• Parties with no existing system can work their way up, starting with a basic system of human-readable serial numbers
• The technology now exists to mark at pack level
• There is a useful and properly limited role for a global information focal point, as a portal to route enquiries to databases operated by Parties.

But in the afternoon it all started to go backwards. Instead of working out how to move the text of Article 7 towards the rational proposals of the technical paper, and how to address some key remaining questions (such as on data privacy), too many Parties simply repeated negotiating positions they had drawn up before even considering the technical paper. Some Parties once again tried to extoll their own arrangements. The technical paper makes this game irrelevant. Other Parties tried yet again to insert weasel wording to allow them to choose when and whether to implement any kind of tracking and tracing system at all, which would defeat the purpose of the whole proposal.

If this behaviour does not change, it presages disaster for the negotiations. There is little time to come to agreement. Every hour spent ignoring the framework in the technical paper makes success less likely. If Parties have practical objections to that framework, they should voice them clearly and suggest plausible, positive alternatives.

A small handful of Parties may wish to see the negotiations founder. But FCA does not believe it is what the great majority of Parties intend for this week. We urge Parties most strongly to return to the technical paper, to consider how to answer the questions that remain, and to bring their negotiating positions into line with the overall solution now in plain sight.

One weakness in an otherwise excellent presentation from the consultants was their repeated reference to “counterfeit”, perhaps reflecting experience in tracking and tracing pharmaceuticals where this is a critical issue.

For the purpose of controlling illicit tobacco it does not matter whether a manufacturer’s intellectual property is infringed. Illicit cigarettes may be lawfully produced product diverted to avoid duty, product in plain packaging, or presented as a brand claimed to be legitimate. But in fact it is always intended for illicit channels (for example “Jin Ling”). Or it may be a faked well-known brand.

Call it unlawful manufacturing. Call it smuggling. Please don’t call it counterfeit.
EXTRADITION FOR ILLICIT TOBACCO TRADE CRIMES: WHICH CRIMES AND HOW?

Is there a necessity for specific extradition provisions in the protocol? FCA does not believe so. The UN Convention against Transnational Organised Crime (UNCTOC) already provides for a detailed extradition framework provision for:

- transnational (cross-border)
- organised (involvement of three or more)
- serious illicit tobacco crime (any domestic crimes punished by four years or more).

The UN Office on Drugs and Crime, in Vienna, provides a fully developed and highly experienced system of administrative support for this framework.

Extradition is a difficult, expensive and lengthy process and is not commonly resorted to except in the most serious cases. Not many states regularly make extradition requests. This prompts two questions in respect of extradition for tobacco-related crimes:

1. Which Crimes?

For practical reasons, extradition should apply only in serious cases. An example of a serious case is *R v Neal and Hood* [2003] EWCA Crim 3449, an appeal against sentence before the English Court of Appeal. At their trial Neal and Hood had pleaded guilty to a contravention of the section 170(2) of the Customs and Excise Management Act 1979, and were sentenced to five and three years respectively. One of their co-accused had been acquitted, but the others had pleaded guilty. The Court of Appeal’s summary of the evidence is illustrative of the facts of a serious case:

This case involved the importation of large numbers of cigarettes between September 2000 and September 2001. On 27 April 2001 Customs officers intercepted a trailer containing smuggled cigarettes arriving at Hull. Some three million cigarettes were discovered concealed in pallets of olives, involving a potential loss of duty in the region of £400,000. Customs officers photographed the load, samples were taken from it and it was allowed to proceed. It was delivered to Clark’s yard at Belby Lodge, Howden. Customs officers observed part of the load being broken down. Neal was seen driving Clark’s Land Rover Discovery. A week later on 4 May 2001, a similar consignment was intercepted, concealed in a trailer load of reels of yarn. It was also addressed to Clark at his yard at Belby. Later examination showed that the reels contained 3.8 million cigarettes, involving a loss of duty in the region of £530,000. Customs officers observed Arsenovich, a senior member of the supply organisation in Greece who was entrusted to collect the money, meet Kelly and Farrell in Doncaster in an Audi motorcar. He was seen to collect a briefcase from his hotel and put it in the boot of the Audi. He placed it next to a cardboard box containing £258,390. Before closing the boot he had a look inside the box at which point Customs officers moved in and arrested Arsenovich, Kelly and Farrell. Neal was later arrested at his home. £15,000 was recovered from him, together with two cash counting machines and a mobile telephone. Paperwork involving previous deliveries to Belby Lodge was recovered. A roll of tape was also found, scientific examination of which showed that it had been used to tape the box containing the £258,390. Hood was arrested in September when two mobile phones linking him to the applicant Neil and co-accused were seized. Continuing inquiries revealed that there had been some twelve consignments in total. The duty evaded was conservatively estimated at around £4,000,000. The cigarettes originated in Greece before being driven across Europe to a depot in Belgium. From there they were imported into the UK through various ports. Telephone analysis showed substantial telephone contact between the applicants and co-accused.

Had British law enforcement authorities been interested in arresting further members of the supply organisation they would have had to extradite them from Greece, or wherever they were located.

2. How?

Mostly, a state seeking the extradition of an alleged criminal will need a bilateral extradition treaty with the state in which that person is located. Some states do, however, extradite on the basis of domestic legislation only. International treaties like the proposed protocol provide a basic framework in which bilateral relations are established and domestic legislation enacted; they are seldom relied upon as the sole basis for extradition. Their main function is to ensure that states include the particular kind of offence within their bilateral relations and in their domestic law as extraditable offences.

*R v Neal and Hood* reflects conduct that the UNCTOC was designed to suppress: structured groups of more than three people (organised), crossing borders and territories of a number of states (transnational), involving serious domestic offences carrying penalties of more than four years imprisonment (serious crime). The UK, like other states harmed by such activities, has chosen to treat them as serious crime through the imposition of a maximum seven year sentence under section 12 of the Finance Act 1988. While most states are party to UNCTOC, not all have imposed a penalty of four years or more for illicit tobacco crime. What states should be seeking is more effective application of the existing UNCTOC regime to serious illicit tobacco crime rather than duplicate that regime in the protocol.

Professor Neil Boister
University of Canterbury
New Zealand
CHEAP ILLICIT TOBACCO IS A DANGER TO KIDS

Excellent research from a programme in the North of England aimed at fighting illicit trade shows just how it undermines tobacco control policies and increases consumption, particularly among young people and poorer social groups.

In June 2009 the North of England Tackling Illicit Tobacco for Better Health programme commissioned a study into the illicit tobacco market, and to inform the development of future campaigns to tackle the supply of and demand for illegal tobacco products.

More than 6,000 interviews were conducted in June and July 2009 across the North West, North East and Yorkshire and Humber regions of England. The aim of the research was to help the programme better understand:

- Why people purchase illicit tobacco products
- The groups most likely to be persuaded to stop buying these products
- The groups most likely to be persuaded to provide information to the authorities about the sale of illicit tobacco
- The attitudes of non-users about the potential impact of illicit tobacco on the community
- Awareness of and attitudes to the issues involved, of current enforcement activities and the prospect and implications of being caught
- The messages most effective in deterring smokers from buying counterfeit and smuggled products and the most effective messengers and methods

KEY FINDINGS ON CONSUMPTION OF ILLICIT TOBACCO

- Just over half (54%) of non-smokers were aware of cheap illicit tobacco and 13% of all non-smokers had come across it.
- Almost nine out of ten people (87%) agreed with the statement that illicit tobacco is “a danger to kids” because it can be obtained easily and cheaply
- While overall smoking prevalence has fallen, the uptake of smoking among young people shows some increase, despite the restrictions placed on the tobacco trade. 14% of 14-15 year olds and 29% of 16-17 year olds currently smoke
- The youngest smokers were above average purchasers of illicit tobacco
- A third of all smokers aged 14-17 bought illicit tobacco and on average it accounted for almost half of their total consumption.

FINDINGS ON PUBLIC ATTITUDES

- Overall almost six out of 10 people (57%) felt very uncomfortable with illicit tobacco. However, of the young people surveyed only 34% were uncomfortable, and 84% of 14-15 year old buyers thought that “everyone does it”
- Nearly two-thirds (63%) of people agreed with the statement that illicit tobacco brings crime into the local community
- Just under one-third of illicit tobacco buyers associated the trade with various forms of major crime. Just over one-fifth associated it with people trafficking and 17% attributed it to helping fund terrorism.

More than one-quarter of all respondents indicated that it was likely they would report someone they suspected of selling illicit tobacco. This figure increased to over three-quarters if sale to children was suspected.

MESSAGES

Potential messages can be grouped into two broad categories: social impact; and health risks. Social impact can be thought of in terms of commonality of behaviour, morality and criminality. Health impact messages relate to the personal and physical harm caused by the trade.

Messages connecting illicit tobacco to criminality resonate more strongly as people’s discomfort levels about the trade increase. Similarly, those less comfortable were more responsive to statements about the distasteful substances found in illicit tobacco products. However, overall messages about distasteful ingredients have little impact on buying habits and are not likely to be effective.

The research is now being used to inform an integrated approach to fighting illicit trade between police, trading standards officers, the local health service and other agencies. The Programme would be pleased to hear from others who are developing alliances on the issue at a local and regional level.

Ian Wilmore, FCA

Full report and photograph: http://www.illicittobacconorth.org
MAJOR UK HEALTH BENEFITS FROM HIGHER TOBACCO TAXES

A new report produced by an independent economist, and published by ASH, shows that increasing taxation so that tobacco prices in the UK rise 5 per cent above inflation will:

- lead to a reduction in the number of smokers in the UK by 190,000
- save the National Health Service (NHS) over £20 million (US$30.1 million) a year by reducing the cost of treating smoking-related diseases
- reduce smoking-related absenteeism in the workplace saving over £10 million (US$15 million) a year
- increase government tax revenues overall by over £500 million (US$753 million) a year - a total of £2.6 billion (US$3.9 billion) in the first five years.

ASH, and 49 other public health organisations including major heart and cancer charities, children’s organisations and scientific and medical organisations, have called on the UK government to make the necessary increase in tobacco taxation part of the next Budget on 24 March 2010.

The tobacco industry argues that increased taxation leads to increased smuggling. However, analysis by the World Bank has shown that high availability of illicit tobacco is linked not to high levels of taxation but to corruption and tolerance of contraband sales. Indeed, both low-tax and high-tax jurisdictions suffer from the illicit tobacco trade. A study conducted for ASH found that the tobacco industry has increased its prices way above inflation in recent years, hiding behind the smokescreen of tax rises which they blame for the increase.

Trade in illicit tobacco in the UK has declined significantly in recent years due to tough action taken by government. The market share of smuggled and counterfeit cigarettes was only 12 per cent in 2007/8, down from 14 per cent in 2006/7 and 21 per cent in 2000, a reduction of more than a half in less than a decade (Measuring Tax Gaps 2009. HM Revenue & Customs. December 2009. http://www.hmrc.gov.uk/stats/measuring-tax-gaps.pdf).

Signatories to the ASH Budget submission are also urging the government to support adoption of a strong illicit trade protocol to the WHO FCTC. According to work undertaken for ASH by Paul Johnson, former Chief Micro-economist at HM Treasury and deputy head of the Government Economic Service, this has the potential to further reduce the illicit trade in tobacco by up to 80 per cent.

Deborah Arnott, Chief Executive of ASH, said at the launch of the report, “Smoking is a childhood addiction and not an adult choice. By increasing tobacco taxation we help discourage children from buying cigarettes. An above-inflation price rise would also help adults stop smoking.”

The report used two economic analysis models (cost benefit analysis [CBA] and public finances analysis [PFA]) to calculate both the economic and revenue benefits of increasing taxation. The report’s author, Howard Reed, commented, “The economic analysis and forecasts in this report clearly show that an above-inflation rise in the price of tobacco is good for the health of the individual as well as for the health of the country.”

The PFA measures the net effects of the tobacco tax increase on government revenue over five years, rather than the 50 years used in the CBA. This is because the government is particularly concerned with the effects of policy changes in the next few years (i.e. the life of the next parliament). Table 4 (taken from the report) shows the results from the public finances analysis.

Joy Townsend, Emeritus Professor of health economics and primary care at the London School of Hygiene and Tropical Medicine, supported the economic models and results and said, “This is an excellent and valuable report. It uses sound, well-developed economic models which illustrate most effectively how great an impact raising taxes can have in reducing the demand for tobacco, and the clear and significant benefits for both public health and public finances. The government should act on its recommendations.”

The Foundation for the Study of Infant Deaths (FSID) FSID’s Director, Joyce Epstein, said, “Scientific evidence shows that every year the lives of over 100 UK infants could be saved if no pregnant woman smoked. Smoking by fathers increases the risk of infant death as well. Our organisation supports increasing the price of tobacco because it will encourage smokers to consider quitting and so protect their children.”

Deborah Arnott
Chief Executive, ASH

The full report The Effects of Increasing Tobacco Taxation can be found at: www.ash.org.uk/tax/analysis
Why should “key inputs” and tobacco manufacturing equipment be included in any protocol on the illicit trade in tobacco products? Illegal manufacturing, including those products manufactured by unlicensed manufacturers, products with counterfeit trademarks and over-production by licensed manufacturers, are major sources of illicit tobacco products in today’s contraband tobacco marketplace. Controlling “key inputs” and tobacco manufacturing equipment is necessary to curb illegal manufacturing and to provide an additional audit trail to verify production and taxation records of licensed tobacco manufacturers.

There are precedents for international controls of manufacturing equipment and “key inputs” or components. The United Nations Office of Drug Control drafted model legislation (UNDCP Model Drug Abuse Bill 2000) to provide uniform guidance in controlling drug manufacturing equipment. The Australia Group, the Wassenaar Arrangement for Conventional Weapons and Dual-Use Items and Technology, Missile Technology Control Regime and the Nuclear Suppliers Group are well-known international counter-proliferation regimes or groups that were intended to not only control weapons systems, but also the manufacturing equipment and components such as chemicals, metals, and related technology required to produce the systems.

The intent with the illicit trade protocol was to include several “key inputs.” Cigarette paper, cigarette tubes, acetate filter tow, and reconstituted tobacco leaf wrapper are important and unique components that can be identified by their harmonised schedule (HS) numbers.

Cigarette paper is used to wrap tobacco for cigarettes, cigarette tubes are filter-tipped cigarette paper tubes, acetate filter tow is used in cigarette filters, and reconstituted tobacco leaf wrapper is used in the production of tobacco products that were classified as little cigars in some jurisdictions, but are more similar to cigarettes than cigars.

The slight difference allows marketing techniques in some jurisdictions that avoid labelling, health warnings and other regulatory requirements associated with cigarettes. The illicit trade of other tobacco products is growing rapidly in many locations. Tobacco manufacturing and cigarette wrapping equipment can also be uniquely described by the HS system. (http://www.wcoomd.org/home_wco_topics_hsoverviewboxes_hsoverview_hsharmonizedsystem.htm).

The “key inputs” described above, and manufacturing equipment, are unique to manufacturing tobacco products and can be specifically described within an already established and recognised international system that was intended to aid in taxation and monitor controlled goods. The suggested controls are necessary to maintain the relevancy of the illicit trade protocol.

John Colledge III
Consultant - Illicit Trade and Anti-Money Laundering
The Kingdom of Jordan is developing a new strategy to tackle illicit trade in its country. To achieve progress, the government is co-operating with the civil society groups Lina Creative and Development Group (LCD Group) and Land Human to Advocate Progress (LHAP). Although, according to the World Bank, Jordan is a low- to middle-income country, the WHO’s Illicit Trade Report states that there is a high level of illicit trade.

Compared to its neighbours, Jordan has a policy of high prices and taxes. Cigarettes commonly cost twice what they do across the border. A pack of 20 Marlboro cigarettes, for instance, now costs 1.60 dinars (about US$2.25). Jordan passed a public health law in 2008 which introduced a variety of tobacco control measures.

Located at the heart of the Middle East, Jordan is at the centre of communication routes linking five countries. It is also a growing centre for international visitors. Almost 14.5 million people visited duty-free shops in 2009. Jordan also encourages investment through free zones.

According to Jordan Customs, 11.4 million cigarettes were seized in 2009, more than 8 million of them in Aqaba. Figures supplied by the Jordanian Ministry of Health are even higher. One estimate is that more than 23 billion cigarettes were illicitly supplied across the Middle East region, equivalent to roughly one in every six cigarettes.

Jordan is developing action against illicit trade based on four key elements: recording, tracking, investigation and prosecution:

- **Recording** data, including customs documents, and ensuring that data is well archived and shared electronically through the web
- **Tracking** through the Automated System for Customs Data (ASYCUDA), using satellite tracking. The Jordanian government believes its system to be the most advanced in the region
- **Investigation**, with the Enforcement Directorate of Jordan Customs receiving alerts through tracking and other means and responding with mobile patrols
- **Prosecution**, with seized product routinely destroyed, fines increased to double the previous level, and close co-operation in legal actions with the World Customs Organization

Customs in Jordan have also introduced a Customs Administration Modernisation programme to improve the exchange of data among government agencies, to reform the process and cut the time required for export, import, and transit procedures.

Civil society in Jordan is backing the government’s action against illicit trade but has also pointed to an urgent need for co-ordinated international action on the issue, including by means of an effective protocol. LCD Group and LHAP have also called for investment in tobacco to be discouraged inside free zones and for sharp price rises on tobacco sold in duty-free shops.

Mawya Al-Zawawi, LCD Group
Inas Al-Mustafa, LHAP

CORRECTION

Sunday’s Bulletin article on the Sofia, Bulgaria seminar on illicit trade referred to “4.7 million” cigarettes being seized in the EU in 2007, and “5.2 million” in 2008. These figures should have been billions. Also, Luxembourg did not have a high level of prosecutions. Apologies for the error.