

**INSIDE THIS ISSUE**

CONGRATULATIONS!  
(NOW YOU'LL HAVE TO  
WORK EVEN HARDER) 1

IN BAT'S OWN WORDS:  
CONTRABAND HAS  
DECLINED 2

IT SEEMED LIKE A GOOD  
IDEA WHEN WE SIGNED... 2

REFUSER L'ASSISTANCE  
DE L'INDUSTRIE DU TABAC  
DANS LA LUTTE CONTRE  
LE COMMERCE ILLICITE  
DU TABAC ! 3

THANK YOU CIPRET-  
GENÈVE FOR SUPPORTING  
THE DEATH CLOCK AT  
THE INBs 4

**DEATH CLOCK**

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

**58,447,122**

PEOPLE HAVE DIED FROM  
TOBACCO-RELATED DISEASES.  
(AS OF 9AM GENEVA TIME  
ON 4 APRIL 2012)

## 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 CIGG 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

*continued on page 3*

# 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.

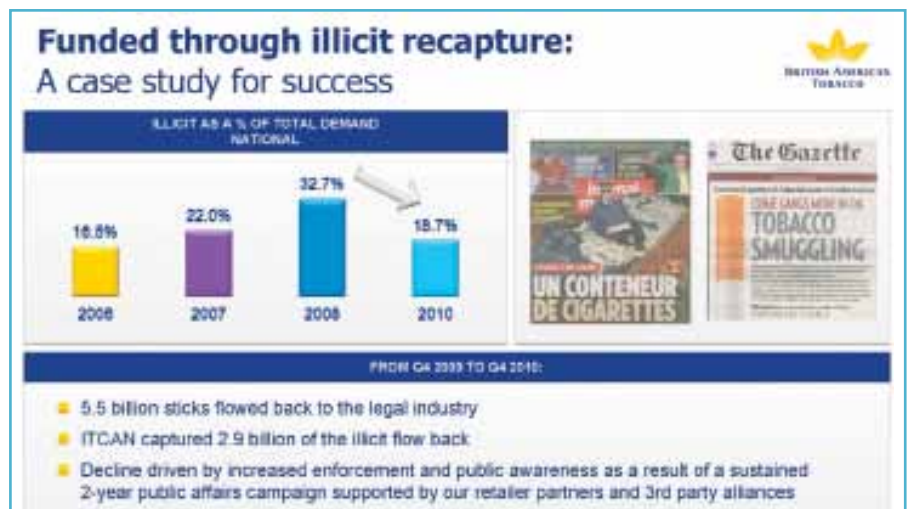
Fortunately, there are documented success stories about curbing the illicit tobacco trade. For example, it is worth noting that over the past few years, significant progress has been achieved in Canada.

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



BAT Powerpoint slide, 2011.

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**

## 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

*continued on page 4*

# 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 contre des objectifs de santé publique et contre l'intérêt des économies nationales. Ayant échappé aux taxes, les produits en provenance du circuit illégal sont généralement vendus à des prix dérisoires sur le marché et sont de ce fait accessibles à toute les couches de la population, notamment les jeunes et les pauvres, contribuant ainsi à la morbi-mortalité <sup>1,2</sup> due à la consommation du tabac.

Le protocole en discussion est le début d'une solution pour contrôler le phénomène. Il faudra toutefois que la capacité des pays, notamment les plus démunis, soit sérieusement renforcée. Les fabricants ont été rapides, très rapides à se positionner comme « les sauveurs » et dans de nombreux pays, il ont déjà passé et passent des accords avec les gouvernements, les douanes en proposant leur aide ..... Les exemples sont nombreux, au Benin, au Mali, au Laos, en Europe ..... la liste est longue et l'aide prend toute sorte de formes : formations, matériels, équipement etc...

## Loin d'être devenu un agneau

Il ne faut pas se leurrer : l'implication passée et encore soupçonnée aujourd'hui des industriels du tabac dans le commerce illicite pose un problème extrêmement sérieux. Ses intimidations, le harcèlement juridique qu'elle impose aux gouvernements qui tentent de mettre en œuvre la CCLAT et protéger leurs citoyens est preuve que le loup est loin d'être devenu un agneau ou du moins le bon samaritain qu'il prétend être...

L'industrie du tabac incite encore partout les gouvernements à maintenir des

faibles taxes sur le tabac, argumentant que les taxes élevées favoriseraient le commerce illicite. Or, il a été observé un taux important d'activités liées au commerce illicite du tabac dans certaines pays ayant des taxes faibles<sup>3</sup> et au contraire une diminution de la consommation du tabac, en plus d'une croissance de revenus pour les gouvernements dans les pays qui ont augmenté leurs taxes sur le tabac<sup>4</sup>.

## Refusent catégoriquement les « aides »

Il est important que les parties prennent pleine conscience du problème et refusent catégoriquement les « aides », collaborations, tout partenariat avec l'industrie du tabac, comme le prévoit la CCLAT et ses dispositions de contre l'ingérence des cigarettiers et affidés dans la mise en œuvre du traité. Ce protocole offre l'opportunité aux Parties de commencer à se préparer sérieusement à lutter contre le commerce illicite. Dores et déjà il faut réfléchir ensemble aux mécanismes d'assistance technique les plus efficaces et fluides qui vont pouvoir fonctionner entre les parties.

En rentrant chez eux, les membres des délégations nationales doivent tout de suite commencer à analyser leur situation et évaluer les changements qu'il va falloir qu'ils effectuent chez eux sur le plan législatif, structurel, en matière de

formation, de développement et de l'assistance technique et de l'aide d'autres pays dont il vont avoir besoin ou qu'il vont pouvoir fournir.

Il est nécessaire que le rapport de l'INB5 inclut des recommandation sur ces aspects :

Il sera nécessaire que la COP 5 mette en place un groupe intersessionnel multidisciplinaire d'experts disposant de connaissances spécialisées dans les domaines requis (douane, mise en œuvre de politiques, administration fiscale, assistance technique pour la mise en œuvre d'autres instruments internationaux, etc.) afin de répondre au mieux au besoins identifiés par les délégations en matière d'assistance technique et renforcement des capacités. Ce groupe pourra rendre compte de ses travaux à la COP6 ou la première session de la MOP/ ROP si celle-ci a lieu avant.

Si ce protocole a une chance d'atteindre ses objectifs, l'industrie du tabac doit être définitivement bannie de tout pouvoir d'influence et ses « contributions » refusées. La collaboration et assistance entre pays qui veulent véritablement protéger leurs citoyens et lutter contre des criminels doivent être considérée comme prioritaire. ■

**Dr Luhindi P**  
**Tobacco Control Advocate**

<sup>1</sup> WHO Tobacco Free Initiative, Report on the global tobacco epidemic, 2011. Available from: [http://www.who.int/tobacco/global\\_report/2011/en/index.html](http://www.who.int/tobacco/global_report/2011/en/index.html)

<sup>2</sup> American Cancer Society and World Lung Foundation: Tobacco Atlas, 4th Edition. <http://www.tobaccoatlas.org/>

<sup>3</sup> Blecher E, van Walbeek C. An international analysis of cigarette affordability. *Tob Control* 2004;13:339-46. [www.pubmedcentral.nih.gov/picrender.fcgi?artid=1747952&blobtype=pdf](http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1747952&blobtype=pdf)

<sup>4</sup> WHO Tobacco Free Initiative, Building blocks for tobacco control: a handbook. Geneva, World Health Organization, 2004. [www.who.int/tobacco/resources/publications/tobaccocontrol\\_handbook/en/](http://www.who.int/tobacco/resources/publications/tobaccocontrol_handbook/en/)

## CONGRATULATIONS!

*continued from page 1*

may need to be increased; licensing systems may need to be set up from scratch.

In short, Parties have put themselves on a tight schedule. To meet it – and to control illicit trade as rapidly as possible – preparations for capacity building and technical assistance need to start as quickly as possible. In particular, the INB needs to send a clear message to the COP on the importance of preparing the ground for the MOP in this area.

Concretely, this could for example involve the establishment of an expert group, with a wide range of expertise, to look at the areas in which capacity building and technical assistance are likely to be necessary and how they can best be provided. This could include looking at options for which international organizations might be best placed to provide which type of technical assistance.

Whatever the mechanism chosen, the objective would be to gather enough information to allow the first MOP to take quick and appropriate action.

As the Death Clock in the CIGG lobby reminded us all week, delays in tobacco control are measured not just in weeks, months and years but in human lives. The same applies with respect to illicit trade control – higher tobacco prices are the single most effective intervention to reduce prevalence and consumption, so failure to control illicit trade has not just a revenue impact, but an impact on death tolls.

On that cheery note, we wish all delegates safe travel home, and look forward to seeing many of you again in November in Seoul. ■



# ORCHID AWARD



"To all who worked so hard for a successful outcome to the 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.

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## THANK YOU CIPRET-GENÈVE FOR SUPPORTING THE DEATH CLOCK AT THE INBs



Death clock at the opening of INB1 (11 Feb. 2008), left, and INB5 (29 March 2012).

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

*continued from page 2*

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 predates Lao'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. ■