LAST CHANCE IN SEOUL

Today is the day when everything has to come together, if this COP session is to be a full success.

So far, the only decision we’ve had in plenary was to adopt the Illicit Trade Protocol. But we still await a decision in Committee B on what will happen to prepare entry into force of the Protocol.

In Committee A, further partial guidelines for Articles 9&10 were adopted yesterday, after a surprisingly lengthy debate Wednesday.

Bogging Down on Micro-Edits

Committee A could, and should, finalise decisions on an Article 19 expert group (already foreseen in the 2014-2015 budget) and on the extension and revised mandate of the Article 17&18 working group. But as we’ve seen over the last couple of days, it is incredibly easy for negotiations to bog down on micro-edits – or on budgets.

The most difficult aspect of Committee A’s agenda this week is consideration of draft Article 6 Guidelines. Progress in the open-ended Working Group has been painfully slow, particularly because of the European Union’s refusal to accept the consensus that has developed amongst other Parties, for example yesterday on the use of tobacco tax revenue. It is anybody’s guess what, if anything, Committee A will be able to send back to plenary on this score. It would be a great shame if the Conference of the Parties failed to produce solid advice on how to best use tobacco taxation to reduce death and disease from tobacco.

In Committee B, there is the usual confusing effort to figure out the budgetary implications of various decisions and draft decisions. Only two decisions have actually been finalized so far – Norway’s proposal to elaborate options for conducting an impact assessment for the 10th anniversary of the entry into force of the Framework Convention on Tobacco Control, as well as the preparation of a report on possible approaches for an implementation review mechanism.

In the midst of discussions about budget line items, reducing the costs of working groups and other austerity measures, there is one important topic that still hasn’t had a proper airing, despite some Parties’ efforts: support for FCTC implementation at country level, otherwise known as mechanisms of assistance.

The crucial thing to keep in mind is that the COP isn’t responsible only for overseeing the budget of the Framework Convention Secretariat – its core mission is to ensure that Parties can and do meet their obligations under the Convention. As developing-country Parties have highlighted for a number of years, tobacco industry interference and the lack of integration of FCTC implementation into the global and national development frameworks mean that many aspects of the FCTC remain a dead letter.

Decisions Outstanding on Several Topics

And of course there are still decisions outstanding on voluntary assessed contributions, South-South cooperation, cooperation with the WTO and several other topics.

In the flurry of meetings, non-papers, draft decisions, calls to capitals, corridor conversations and hurried sandwiches, it’s easy to lose track of why we are here in Seoul: to collectively confront the biggest industrial epidemic in human history.

So perhaps we should all pause before we plunge into today’s deliberations to ask ourselves: in 10 years’ time, will we be able to look our children in the eye and say we really did our best, at COP5?
IS CODENTICIFY COMPLYING WITH THE TRACKING AND TRACING OBLIGATIONS UNDER THE ITP?

On Monday, Parties adopted the Protocol to Eliminate the Illicit Trade of Tobacco Products (ITP). One of the most important obligations under the ITP will be Article 8 on tracking and tracing. Tobacco companies have not waited until 2012 and are already actively promoting their own systems. In 2010, British American Tobacco (BAT), Imperial Tobacco Group (IT), Japan Tobacco International (JTI) and Philip Morris International (PMI) agreed to promote tracking and tracing standards, known as Codentify. A key part of the agreement reached is that all four companies would use the PMI Codentify marking system on their cigarette products. In 2011, the four companies created a legal structure, the Digital Coding & Tracking Association, to promote Codentify to governments for track & trace and digital tax verification.

CODENTICIFY CANNOT BE A TRACK AND TRACE STANDARD, AS IT PROVIDES NO DATA AFTER THE PRODUCT IS MANUFACTURED. FOR THE SAME REASON, CODENTICIFY MARKERS CANNOT REVEAL WHETHER A PRODUCT IS LEGAL OR NOT.

Codentify is a visible code printed on tobacco packaging to identify each package. The code is unique, contains 12 letters or numbers and is randomized. The codes are human-readable, but not stored in a database. The codes can contain information which is available at the time of printing, such as date and time of manufacture, machine of manufacture, brand, pack type, destination market, price and tax level.

Codentify, however, is not a track and trace standard as the data are not stored throughout the supply chain. Without a link to a database, Codentify will be unable to provide all the information required in Article 8 of the ITP. Article 8.4 of the Protocol, for instance, requires information on the name, invoice, order number and payments record of the first customer or the intended shipment route, the shipment date, shipment destination and point of departure. All this information is not available when Codentify codes are printed on the packs. In the FCTC Protocol, tracking and tracing is defined as “the systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain.” A database system is needed which registers data on the product through the supply chain until that product turns up in the intended country of final destination.

Codentify cannot be a track and trace standard, as it provides no data after the product is manufactured. For the same reason, Codentify markers cannot reveal whether a product is legal or not. Because coding is applied only at the time of manufacturing, if a product is legal at the time of manufacturing, but becomes illegal during its international transport, Codentify will be unable to reveal its illegal status.

Codentify, a system developed and monitored by the tobacco industry, raises serious concerns in relation to Article 5.3 of the FCTC. This Article requires Parties, in setting and implementing their “public health policies with respect to tobacco control,” to “act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.” Article 8 of the Protocol specifically notes the need to avoid delegating tracking and tracing to the tobacco industry:

1. Each Party shall establish, in accordance with this Article, a tracking and tracing system, controlled by the Party, for all tobacco products that are manufactured in or imported onto its territory, taking into account their own national or regional specific needs and available best practice.

12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.

CODENTICIFY, WHICH HAS BEEN DEVELOPED BY PMI, ENDORSED BY THE THREE OTHER TTCS AND MONITORED BY THOSE FOUR COMPANIES, RAISES CONCERNS IN RELATION TO THE OBLIGATIONS OF BOTH ARTICLE 5.3 OF THE FCTC AND ARTICLE 8 OF THE NEWLY ADOPTED PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS.

As such, Codentify, which has been developed by PMI, endorsed by the three other TTCS and monitored by those four companies, raises concerns in relation to the obligations of both Article 5.3 of the FCTC and Article 8 of the newly adopted Protocol to Eliminate Illicit Trade in Tobacco Products.

Luk Joossens, Advocacy Officer, Association of European Cancer Leagues, Belgium

CORRECTION

The last sentence of the article in Thursday’s Bulletin, ‘Reducing Big Tobacco’s Control Over Agriculture’, page 2, should have read:

“...involvement of tobacco workers and officials in health and agricultural ministries makes the alliances sustainable and effective for promoting life-affirming social, economic and agricultural change.”

Also, the article should have said that ITGA claims to represent 30 million tobacco growers.
La interferencia de la industria tabacalera en las políticas de salud pública en Brasil

La industria del tabaco, como en otras partes del mundo, opera en Brasil para evitar o posponer las políticas de control del tabaco, además de reforzar su imagen y ampliar su mercado.

La ratificación del Convenio Marco para el Control del Tabaco (CMCT) en el país se retrasó debido a la intensa presión ejercida por los representantes de la industria tabacalera y sus aliados. Los logros recientes, tales como la prohibición de fumar en espacios cerrados de uso colectivo y la prohibición del uso de los aditivos en los cigarrillos, con firme apoyo de la población, han sufrido numerosos ataques e intentos de impedimento para su aplicación.

Igualmente hay que considerar el cabildeo en el Poder Ejecutivo, Legislativo y Judiciario. En el Ejecutivo, la influencia es a través de la relación y la colaboración entre los representantes del gobierno y la industria, a veces en situaciones de clara violación al artículo 5.3 del CMCT. A nivel Legislativo, legisladores comprometidos con los intereses de la industria utilizan estrategias procesales para demorar o descarrilar las discusiones y decisiones, como en el proyecto de decreto legislativo con el objetivo de frenar los efectos de la resolución que prohíbe el uso de aditivos en los cigarrillos.

En el poder Judicial, hay patrocinio sistemático de conferencias y seminarios jurídicos y publicaciones en el campo del derecho. Abogados, asesores y profesores escriben artículos que cuestionan la legalidad y constitucionalidad de las políticas públicas para el control del tabaco, pero omitiendo su relación con la industria del tabaco.

Otra manera de frenar las acciones de control del tabaco en el país es a través de litigios. En setiembre ya la Empresa Souza Cruz, afiliada de BAT en Brasil, presentó una demanda judicial en contra de la Alianza de Control del Tabaquismo (organización no-gubernamental) por un spot televisivo de una campaña llamada LimiteTabaco. El video tuvo gran visibilidad porque fue transmitido por la mayor red televisiva del país.

La protección de las políticas públicas para el control del tabaco contra la interferencia indebida de la industria del tabaco y el monitoreo de sus tácticas son fundamentales para el progreso y el mantenimiento de las políticas de salud. La unión de esfuerzos de los países partes del CMCT es aún más necesaria en vista de las nuevas estrategias adoptadas por la industria tabacalera para evitar la aplicación del tratado y así garantizar su implementación.

Mônica Andreis
Vice-Directora ACT Brasil
The trade in illicit cigarettes in Southeast Asia puts populations at risk for greater smoking. A collaborative partnership among Duke University’s Program on Global Health and Technology Access, the Southeast Asia Tobacco Control Alliance and the American Cancer Society engaged investigators in the region in taking measure of illicit trade in tobacco using a common methodology.

The research was supported by an NIH Fogarty grant on the “Political Economy of Tobacco Control in Southeast Asia. It measured illicit consumption by comparing estimates of consumption to tax-paid sales, and measured smuggling by comparing imports recorded by a country to exports reported by trade partners. Discrepancies indicate illicit consumption and smuggling. These methods provide objective estimates independent of those provided by the industry and are relatively inexpensive to undertake. Such studies also focus policy responses to the particular problems faced by each nation.

**Smuggling is on the rise, with no clear relation to tax increases evident.**

Consistent links between tax increases and increases in smuggling are not evident across countries. For most countries, smuggling fluctuated year-over-year. However, table 1 shows periods where smuggling increased and decreased between one tax increase and the next.

<table>
<thead>
<tr>
<th>Country</th>
<th>Top 2 Sources for Inward Smuggling</th>
<th>Top 2 Share of Inward Smuggling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>Indonesia, Korea</td>
<td>80.3%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Singapore, Viet Nam</td>
<td>57.5%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Singapore, Indonesia</td>
<td>96.5%</td>
</tr>
<tr>
<td>Philippines</td>
<td>Hong Kong, Singapore</td>
<td>61.5%</td>
</tr>
<tr>
<td>Thailand</td>
<td>Singapore, Malaysia</td>
<td>68.8%</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>Singapore, Hong Kong</td>
<td>79.4%</td>
</tr>
</tbody>
</table>

Table 2: Top 2 Sources for Smuggled Cigarettes, 2010

Source: United Nations Comtrade Database

Trade discrepancies not only provide an estimate of smuggling activity, but they can pinpoint important sources for illicit cigarettes. Table 2 displays the proportion of cigarettes smuggled into each country from the top two origins of illicit cigarettes for each country.

Targeted efforts directed toward a country’s most substantial sources of smuggled cigarettes can focus scarce resources. Origins of importance to multiple countries can be the focus of region-wide efforts.

When cigarette imports vastly exceed tobacco consumption in a country, this should flag concerns that the country is serving as a conduit for smuggled cigarettes.

<table>
<thead>
<tr>
<th>Country</th>
<th>Increased smuggling following tax increase</th>
<th>Decreased smuggling following tax increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>No tax changes</td>
<td>No tax changes</td>
</tr>
<tr>
<td>Indonesia</td>
<td>No tax changes</td>
<td>No tax changes</td>
</tr>
</tbody>
</table>

Table 1: Periods of smuggling increase and decrease following a tax increase

Source: UN Comtrade

Where domestic consumption revolves around the consumption of a unique tobacco product, illicit production locally may be the key concern highlighted in such studies.

In Indonesia, kretek are the dominant form of consumption. The country is the also largest producer of this tobacco product. Because of this, the magnitude of smuggling is low relative to illicit production. The existence of many small producers, supported by favorable tax rates imposed on their products, exacerbates illicit production by increasing the costs of tax enforcement and compliance monitoring. Illicit consumption in Indonesia amounted to 23 billion cigarettes by 2004, or 2.6 trillion Rupees in revenue losses.

The use of effective tax stamps, effective licensing and monitoring of production, and reduction of tax advantages accorded to small producers can target both illicit consumption and production.

The findings from these studies both highlight useful approaches to measuring the magnitude of illicitly traded tobacco and point to policy steps that might be taken to prevent illicit trade.

This project received support from the NIH Fogarty International Center, awarded to Duke University’s Program on Global Health and Technology Access in collaboration with the Southeast Asian Tobacco Control Alliance and the American Cancer Society. The content is solely the responsibility of the authors and does not necessarily represent the official views of the Fogarty International Center or the National Institutes of Health.

Southeast Asia Tobacco Control Alliance (SEATCA)
In late October 2012, a study conducted by NKC Independent Economists was released that attempts to measure the primary elements of the tobacco value chain in 15 African countries that are part of the COMESA/SADC/SACU* regional blocs. The study was commissioned by the Tobacco Institute of Southern Africa (TISA), a body representing the tobacco industry in the region.

The study’s release coincides with the Fifth Conference of Parties (COP5) in South Korea and is most likely meant to influence deliberations around Articles 17 and 18 of the Framework Convention on Tobacco Control (FCTC). Articles 17 and 18 speak to the framework convention on tobacco control (fctc). articles 17 and 18 of the report. Some of the study’s main findings are:

- The tobacco industry (farming, processing, and selling) provides employment to a total of 4.4 million people who support a total of 24 million dependents in the 15 countries covered.
- Taxes collected (VAT and Excise taxes) were $5.6 billion in 2011 for the 15 countries.
- Total value of trade (imports and exports) was about $3 billion for the 15 countries.
- Total value of the tobacco value chain (raw tobacco production, exports, imports, taxes) was estimated at $10 billion (see section 2.4).

In what follows, I interrogate these findings and the methods used by the study.

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2.0. General Comments

2.1. Data Sources. Apart from consulting reputable data sources, such as the IMF, World Bank and FAO, for macro variables (which they mostly get right, see 2.5 below), other variables more pertinent to answering the research question seem to have come from organizations with an interest in the continued survival of the tobacco industry. It is good practice to reference, in full, a particular data source (and to provide internet hyperlinks where possible) so that others may interrogate the methods and assumptions underlying a particular estimate. This is not done in this study, and it therefore casts doubt on the validity of the figures quoted in the report.

2.2. The study reports a total of 296,890 establishments (wholesale, formal retail, informal retail) selling finished tobacco products in the 15 countries covered. This number is reported without any further commentary but the implied conclusion is that these establishments rely on selling tobacco products and failure to do so would jeopardize their financial position. But these establishments sell other fast moving consumer goods (bread, milk, eggs, etc…) alongside tobacco products, and it is a stretch to imply that 296,000 entities would cease to exist if prevented from selling tobacco.

2.3. The study reports that there are 1.2 million small-scale tobacco farmers, employing 3.9 million people in the region. 18 million people are in turn dependent on the farmers and their employees for their livelihoods. Further, the study reports that the value of raw tobacco produced in 2011 was $1.2 billion. This data comes from only nine out of 15 countries: Angola did not report any data while Egypt, Botswana, Lesotho, Namibia, and Swaziland had a “not applicable” entry against their names. Do these numbers represent a significant proportion of each country’s total agricultural employment and is the income for each person reliant on tobacco agriculture significant? By analysing objective data from 160 sources alongside the TISA study, I have estimated the numbers of small-scale tobacco farmers and associated employment levels. On average, tobacco employment constitutes 2.5 percent of total agricultural employment in the nine countries reporting. Excluding the two outliers (Malawi and Zimbabwe) would bring the average contribution of tobacco employment down to 0.93%.

2.4. The study commits a couple of methodological errors in arriving at what it calls the Tobacco Value Chain Total Value (TvCTV) for the 15 countries considered. As stated earlier, the value of this amount is estimated at $10 billion. A footnote defines this number as the summation of the value of raw tobacco production, value of total exports, value of total imports and taxes paid. In adding all these numbers together, the authors are either guilty of double counting or adding “apples” to “oranges.”

Further, tobacco tax revenues are not at risk of declining (or disappearing) as countries try to reduce tobacco consumption through tax measures. The consensus in the economics literature is that tobacco is price inelastic. Therefore, excise tax hikes can only serve to increase the revenue collected by governments from tobacco.

2.5. It seems that the study has correctly reported the usual macro variables (i.e. percent of Agricultural GDP due to tobacco, area under cultivation, production in tonnes, value of exports, imports etc…), if only because these statistics are easier to cross-check against reputable online databases. But the fallacy is in the way these figures are added together in quantifying the value chain (see point 2.4 above).
AVANCES Y DIFICULTADES EN CONTROL DE TABACO EN PERÚ

La ratificación del CMCT ha significado para Perú una excelente oportunidad para avanzar con importante fuerza y compromiso en su implementación, tanto desde la sociedad civil como principal impulsor, como por los organismos de gobierno en su responsabilidad ejecutora.

El desarrollo de legislación que concreta la implementación de nuestro compromiso ante el CMCT es, en la mayoría de países, un proceso laborioso debido a los fuertes lobbies de la IT y cuando finalmente estos se sienten amenazados por Leyes que se ajustan a los más elevados estándares de los artículos del CMCT y que no han podido frenar, la interferencia de la Industria Tabacalera (IT) se continúa expresando a través de demandas o denuncias ante organismos jurisdiccionales o administrativos.

Perú logró una Ley de ambientes 100% Libres de Humo de Tabaco (ALHT) con el más alto estándar, pues no permite ninguna excepción en lugares públicos cerrados, en el perímetro interior de trabajo, así como de salud, educación, establecimientos públicos y de transporte. Igualmente legislió ya para tener advertencias sanitarias gráficas en el 50% de ambas caras del empaquetado; prohibición de venta a menores y por menores; paquete mínimo de 10 unidades, fomento a la educación y la cesación, restricción a la publicidad.

En el primer intento de la IT con demanda de inconstitucionalidad al articulado de ambientes 100%ALHT, nuestro Tribunal Constitucional los fulminó con una ejemplar sentencia, en la que además fortaleció el CMCT como un tratado de Derechos Humanos en amplia concordancia con la Constitución peruana y que además la ley 29705 no tendrá ninguna posibilidad de retroceso.

No obstante, continúan denuncias ante Órganos Administrativos en una persistente pretensión de hacer retroceder la ley de ALHT. Enfrentamos también demandas de amparo contra el empaquetado no menor a 10 unidades y un sospechoso amparo que permite el único lugar exclusivo para fumadores en el Aeropuerto internacional de Lima.

La implementación de la ley de ALHT, que requiere de promulgación de los Gobiernos Municipales Provinciales y distritales a nivel nacional, igualmente está sufriendo la presión de la IT, a través de visitas y advertencias de representantes de la IT para que estas se retrasen. Incluso la nueva propuesta de prohibición total de Publicidad, Promoción y Patrocinio (PPP) de productos de tabaco ya está bajo contra ofensiva de la IT. La Sociedad Civil peruana es sin ninguna duda una importante fuerza social, que integra ONGs, la academia y la cultura, y que ha facilitado el proceso del control del tabaco en Perú y lo impulsa a continuar siendo uno de los países menos consumidores de tabaco del mundo y asumir el papel de ser un importante combatiente contra este flagelo en los futuros acuerdos de la COPs.

LA SOCIEDAD CIVIL PERUANA ES SIN NINGUNA DUDA UNA IMPORTANTE FUERZA SOCIAL, QUE INTEGRA ONGS, LA ACADEMIA Y LA CULTURA, Y QUE HA FACILITADO EL PROCESO DEL CONTROL DEL TABACO EN PERÚ Y LO IMPULSA A CONTINUAR SIENDO UNO DE LOS PAÍSES MENOS CONSUMIDORES DE TABACO DEL MUNDO Y ASUMIR EL PAPEL DE SER UN IMPORTANTE COMBATIENTE CONTRA ESTE FLAGELO EN LOS FUTUROS ACUERDOS DE LA COP5.

3.0. Conclusion

This short write-up has highlighted some of the methodological shortcomings in the TISA study released at the end of October 2012. Further, using the TISA study’s own-estimates, I have shown that the tobacco farming sector is not as important, from both an agricultural employment and income perspective, as the study makes it out to be. In addition, the value ascribed to the tobacco value chain is likely to have been overstated if one accounts for double counting.

Dr. Carlos Farias (COLAT-Perú)