

**Report on Developing Country Delegate
participation in the first meeting of the
Intergovernmental Negotiating Body on a
Protocol on Illicit Trade in Tobacco Products
(INB-1)**

Geneva, 11-16 February 2008

Final Narrative and Financial Report

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Developing Country Participation at INB-1

Final Narrative Report

Background

Canadians have worked closely with delegates from low- and middle-income countries at FCTC negotiating meetings (INBs), at Open-Ended Intergovernmental Working Groups, and at the meetings of the FCTC Conference of the Parties. This working relationship, and the related support that it provides for delegates from low- and middle-income countries, has proven to be both effective and important for ensuring that the voices from these countries are heard and taken into consideration as decisions are made that have global implications.

At its second session, the Conference of the Parties to the WHO Framework Convention on Tobacco Control decided to establish an intergovernmental negotiating body (INB) to draft and negotiate a protocol on illicit trade in tobacco products (decision FCTC/COP2(12)). This decision recognized the protocol template that had been prepared by the illicit trade expert group (previously established by the Conference of the Parties) and invited Parties and accredited intergovernmental and nongovernmental organizations to provide comments on the template, at the latest three months prior to the first session of the INB.

The template recommends the adoption of a protocol under which Parties agree to implement a comprehensive set of measures – at both domestic and international levels – to combat illicit trade in tobacco products. The first INB meeting took place from February 11-16th, 2008, in Geneva. Participation from the NGO community, as in any FCTC process, was important, particularly from low- and middle-income countries.

The Canadian Global Forum for Tobacco Control (CGFTC) is committed to ensuring a balanced participation of developed and developing nations throughout the FCTC guideline and protocol development processes. This in turn, contributes to the development of more appropriate guidelines and protocols that will meet the needs of all FCTC Parties.

The Framework Convention Alliance funded 40 representatives from developed nations and 18 from developing nations. Health Canada agreed to fund the following participants from low- and middle-income countries, thereby decreasing the influence gap between these two groups:

- **Inoussa Saouna**, Director of SOS Tabagisme-Niger in **Niger** and Secretary-General of OTAF (Observatoire du Tabac en Afrique Francophone): Mr. Saouna is a long-time partner of HealthBridge and of the Canadian Global Tobacco Control Forum. He has been involved in efforts to monitor the illicit trade flowing through Niger and would add an informed francophone African voice to the NGO community attending the INB.
- **Dr. Roberto Iglesias**, Director of CINDES – Center of Studies on Integration and Development in **Brazil**: Dr. Iglesias has participated in various FCTC meetings and has published several publications on tobacco control policies in the South America. He is an active member of the Latin American Regional Working Group on Illicit Trade and brought an important and informed perspective to the INB1 meeting. Dr. Iglesias is involved in HealthBridge's CIDA-funded partnership with the main civil society network in Brazil,

ACT, and has also done work in the past on tobacco farming issues, thanks to previous support from Health Canada.

Goals and Objectives

The overall purpose of this contract was to enable the participation of the two delegates noted above in the INB-1, thereby ensuring low- and middle-income country civil society presence and leadership at the meetings, and the documentation of lessons learned in terms of how to maximize the positive impact of low- and middle-income delegates in the future, and how to facilitate fruitful exchanges between the Canadian and low- and middle-income representatives from around the world.

Activities

The following highlights the primary activities undertaken by each of the delegates, the outcomes of their participation, and a summary “insider’s report” on the negotiations from the African and Latin American perspectives, respectively, with specific recommendations on capacity building activities for each of the regions that would enhance their ability to effectively engage in future INB-1 negotiations. The full reports from each delegate, in the language originally prepared, are attached in the appendices.

Inoussa Saouna, delegate for Francophone Africa – activity report plus summary insider’s report

Overview of Activities

1. Attended sessions organized by and for the African delegates, and met with individual African delegates, to assess the level of comprehension among the delegates about the key points being raised in the broader INB-1 negotiations and to decrease knowledge gaps. These meetings also provided a valuable opportunity to share and raise awareness about the current and potential role of African civil society in tobacco control, and to renew collaboration with delegates from Burkina Faso, Cameroon, Guinée, and Cape Verde.
2. Participated in numerous meetings and seminars that addressed tobacco control in Africa more broadly.
3. Attended session organized by WHO that brought together delegates from and representatives of civil society to identify opportunities and strategies for tobacco control in Africa.
4. Met with a Swiss parliamentarian to discuss the importance of the role of parliamentarians in tobacco control. As a result of this meeting, a seminar is being planned for in July 2008 to bring together parliamentarians from 14 member countries of the Union Monétaire et Economique Ouest Africaine UMOEA to raise their awareness about the important role that they can play in tobacco control.
5. Met with a representative of Tobacco-Free Kids (TFK) to gain funding support for legal activities underway in Niger against BAT and Imperial Tobacco.

Summary Insider’s Report

Participation at this first INB was deemed a success in terms of the number and type of

connections made, with other civil society representatives, with African governmental representatives, and with a Swiss parliamentarian. The former connections will lead to renewed collaborations and joint activities, while the latter connection will hopefully lead to increased collaboration and coordination between parliamentarians and civil society throughout francophone Africa.

One point that became clear throughout the week was that the African delegates would benefit significantly from capacity building and training on all aspects surrounding the issue of illicit trade in tobacco.

Civil society delegates again demonstrated the key role that they play in global tobacco control. The participation of civil society delegates permitted them to better understand the (government) position taken by the African countries on tobacco control, to attend and contribute to a number of meetings, and to plan future actions.

Dr. Roberto Iglesias, delegate for South America – activity report plus summary insider's report

Overview of Activities

1. Participated in the broader INB-1 discussions.
2. Met with custom officials from Uruguay, Spain, and the European Union to gain a broader understanding of the channels that legal companies use to introduce cigarettes in illegal circuits in those countries.
3. Met with Jeff Sweeting of the Ontario Tobacco Research Unit (OTRU), who is part of team researching the contraband tobacco environment in several countries, including Brazil. (The team includes members of the RCMP and staff from HealthBridge and Physicians for a Smoke-free Canada, as well as several academics.) Dr Iglesias had sent some data and materials to him concerning the situation in Brazil. Mr. Sweeting was able to speak with Brazilian officials with whom Dr. Iglesias is unable to access. Therefore, this meeting provided the basis for the future interchange of data and analysis; this in turn will contribute to collaboration for a better diagnosis of the Brazilian situation.
4. Held discussions on an ongoing four-country study of illicit trade issues with experts from Uruguay, Argentina, Paraguay and Canada.

Summary Insider's Report

The main benefits of the meeting were twofold: to acknowledge official national positions, particularly of those countries that have had long-term experience in fighting smuggling and illicit markets, and the discussion that was made possible with non-governmental specialists and researchers from the various participating countries. At this first session, the parties agreed on the need for strong commitments to combat the global illicit trade in tobacco products. Several delegations noted that the final protocol will have to include provisions for technical cooperation/assistance and financial mechanisms in order to ensure that a high degree of compliance can be achieved in less developed countries.

If the protocol is implemented globally, counterfeit and illegal tobacco production will be controlled. However, it is important to note that counterfeit and illegal production will continue to supply illicit markets as long as some countries remain outside the protocol. Tracking and tracing illicit trade in only some countries will not tackle the global problem.

The illicit cigarette market in Brazil is based on two main foundations: (i) tax evasion or domestic production which does not pay all due taxes and (ii) cigarette smuggling, mainly from Paraguay and some Asian production. In order to address tax evasion, the Brazilian government implemented a system of special stamps in 2002. However, given current legal challenges launched against Brazil's tax legislation and administration and the legal power of the Inland Revenue Department to shut down cigarette companies for non compliance in paying cigarette taxes, this stamp system has not controlled evasion. In this context, implementing the track and tracing system in Brazil would help to reduce some tax evasion among the legal companies but would not resolve the legal disputes. This legal aspect is not often discussed among health and anti-smoking specialists. Dr. Iglesias and his colleagues are conducting research on the smuggling environment; their first results have demonstrated that Brazil faces a basic law enforcement problem. To address this issue, they plan to improve their understanding of the illegal market and why there are weaknesses in the legal system, and then discuss the situation with attorneys, policemen, and custom and fiscal authorities.

Paraguayan cigarettes are the other primary source for the illegal market. These cigarettes are not tracked or traced in Paraguay and will not be so immediately after the implementation of the protocol. The production of cigarettes in Paraguay is completely illegal and undertaken with the specific purpose of feeding illegal channels in Brazil and other countries. To address this situation, Paraguay will have to sign the protocol and Paraguayan authorities will have to control Paraguayan production. It is unlikely that this would happen before 2014/2015, if ever.

Finally, in relation to Mercosur, according to some preliminary research conducted in the region, Brazilian legislation is stronger than comparative measures in other countries, but this is not a sufficient condition to control tobacco smuggling. Therefore, participation in the Protocol discussion was particularly useful to provide the background to lead a public discussion on how to fight the illicit cigarette trade in the region.

Conclusion

Negotiations for the illicit trade protocol are just beginning. At this point, there are relatively few delegations with expertise on effective measures to control illicit trade. As experience during negotiations for the FCTC showed, it is important to build civil society expertise in developing countries and improve communications between Canadian and developing country delegates to ensure negotiations acquire momentum and move in a positive direction.

Appendix 1: Inoussa Saouna's Full Report

SOS TABAGISME-NIGER

Rapport sur notre participation à la première session de négociations du protocole sur Commerce illicite du tabac

Genève février 2008

Introduction

À la demande de la Conférence des Parties à la Convention cadre de l'OMS pour la lutte antitabac, l'organe intergouvernemental de négociation d'un protocole sur le commerce illicite du tabac a été institué. L'objectif de cet organe est d'élaborer un protocole qui s'appuiera sur les dispositions de l'article 15 de la Convention cadre pour la lutte antitabac. Ainsi, la première session de cet organe a été convoquée du 11 au 17 février 2008 à Genève en Suisse. Cette session a vu la participation des délégués de tous les pays parties à la Convention.

Comme lors des négociations de la CCLAT, les négociations de ce protocole nécessitent une large participation de la société civile du monde. Le rôle de la société civile en de pareilles circonstances est de rencontrer les délégués des pays en vue de les sensibiliser sur les points importants de ces négociations dans le but d'avoir un protocole fort et efficace. C'est pourquoi au vue de la faible participation des ONG des pays en voie de développement, SOS Tabagisme Niger a bénéficié d'une subvention de Health Bridge avec l'appui de Santé Canada.

L'objectif :

La participation des organisations de la société civile aux sessions de négociations a pour objectif de rencontrer les délégués des pays pour faire passer les positions de la FCA (l'Alliance pour la Convention Cadre), un regroupement de plus de 300 ONG et associations dont le but est de suivre la mise en œuvre de la Convention et de ses protocoles.

Pendant la session :

Conformément à l'objectif de la FCA, nous avons participé aux sessions de la région Afrique de l'OMS, rencontré plusieurs délégués des pays africains afin de s'enquérir de leurs compréhensions des discussions mais aussi de leur faire part des points de vue de la société

civile. Ainsi, nous avons eu l'opportunité de rencontrer les délégués du Burkina Faso, du Cameroun, de la Guinée et du Cap vert. Participer aux sessions de négociations signifie aussi rencontrer plusieurs partenaires, notamment de la société civile, de même que les bailleurs de fond. Ainsi, nous avons eu plusieurs rencontres et participé à des réunions et séminaires de réflexions sur les stratégies de la lutte contre le tabac en Afrique.

L'OMS ,à travers l'Initiative pour un monde sans tabac, a organisé une grande réunion des délégués et représentant de la société civile africaine afin d'identifier les opportunités et stratégies de la lutte contre le tabac en Afrique. Nous avons également rencontré un député fédéral suisse pour discuter de l'importance du rôle des députés en matière de lutte contre le tabagisme. A l'issue de cette rencontre, une idée de l'organisation d'un séminaire en faveur des députés de l'Afrique francophone a été retenue pour juillet 2008. L'objectif de ce séminaire est de réunir les députés de 14 pays membres de Union Monétaire et Economique Ouest Africaine UMOEA pour les sensibiliser sur le rôle important qu'ils ont à jouer en matière de lutte contre le tabac.

Notre participation à cette session nous a également permis de discuter avec des partenaires sur les projets et activités en cours au Niger. Avec la collaboration de Francis Thompson, nous avons rencontré Patricia Lambert de Campagin for Tobacco-Free Kids pour discuter d'un appui à notre action en justice au Niger. À la suite de cette rencontre des promesses fermes ont été établies pour soutenir notre procès contre BAT et Impérial Tobacco au Niger.

Leçon retenue :

Notre participation à cette session a été un succès au regard de toute les rencontres actions menées pendant cette session. Cependant nous pensons que les délégations africaines doivent bénéficier d'une intersession sous forme de séminaire afin de les former sur le concept du commerce illicite du tabac et mieux cerner les enjeux. Aussi, nous entendons organiser une rencontre au Niger pour donner un compte-rendu à la presse et aux membres de notre organisation de cette session de négociations.

Conclusion :

La première session de négociation de l'organe intergouvernemental semble être un succès. Elle a permis de jeter les jalons de globalisation de la lutte contre le commerce illicite du tabac.

La société civile a encore démontré le rôle clé qu'il peut jouer dans un tel processus. Notre participation nous a permis de comprendre la position des pays africains, d'avoir des rencontres utiles, et de planifier des actions futures.

Nous souhaitons forte participation des ONG africains à la prochaine session mais surtout une grande participation des ONG francophones.

Appendix 2: Roberto Iglesias' Full Report

Report on the INB on a Protocol on Illicit Trade in Tobacco Products
First session
Geneva, 11-15 February 2008

Roberto Iglesias
5 March 2008

The INB -1 on a Protocol on Illicit Trade in Tobacco Products was very constructive and was very instructive for me. As known, the parties discussed around the document: "Drafting and negotiation of a protocol on illicit trade in tobacco products: Template for a protocol on illicit trade in tobacco products, as proposed by the expert group convened in accordance with decision of the Conference of the Parties".

As one of the main conclusion of the first session, the parties agreed on the need for strong obligations to combat the global problem of illicit trade in tobacco products, but several delegations pointed that the final protocol will have to include also technical cooperation, assistance and financial mechanisms in order to achieve a high degree of compliance among the less developed parties. The mandate given to the Chair was to prepare a draft text for the INB-2, to be presented in May 2008, incorporating the elements of the expert group's template, including measures dealing with control of the tobacco supply chain, criminalization and enforcement and international cooperation. During the session, it was noted that measures should complement provisions of relevant UN and World Trade Organization agreements, as well as country-specific or region-specific free-trade agreements. Flexibility for Parties to implement stronger obligations was recommended. However, flexibility in areas such as liability, law enforcement and legal and judicial processes should be carefully discussed in next INBs in order to harmonize Protocol basic provisions and national law principles.

The main benefits of the meeting were two: to acknowledge official positions, particularly of some countries with a long experience of fighting smuggling and illicit markets, and the discussion with non-governmental specialists and researchers from different countries. In the first area, it was very useful to talk to some custom officials from Uruguay, Spain, European Union, etc. They have examples of the several channels that legal companies use to introduce cigarettes in illegal circuits. This is one type of supply of the illegal market. In the second area, besides the traditional contacts with regional researchers which are always fruitful, I had an important talk with Jeff Sweeting of the Ontario Tobacco Research Unit (OTRU) who is part of team researching contraband tobacco environment in several countries and in Brazil. I sent some materials on Brazil and the data that I have collected. He talked to Brazilian officials that I have no access. So in the future we can interchange data and analysis in order to collaborate for a better diagnosis of the Brazilian situation.

I think that the orientation of the whole protocol is to control cigarette production, mainly legal production, in order to avoid its channeling to illegal markets, through different mechanisms such as licensing, track and tracing and, of course, appropriate penalties for illicit behavior. As long as, the protocol will be implemented all over the world, counterfeit and completely illegal

production will also be controlled. But, it is important to note that completely illegal production and counterfeit cigarette will continue supplying illicit markets as far as some countries remain outside the protocol. Track and tracing in some countries will not tackle the global situation.

The cigarette illicit market in Brazil has two main sources: tax evasion or domestic production which does not pay all due taxes and cigarette smuggling, mainly from Paraguay and some Asian production. In order to tackle tax evasion, Brazil has already implemented a system of special stamps since 2002, but this system has not controlled evasion¹. This is so because lack of tax compliance is the result of tax disputes in courts. Small tobacco companies are challenging several aspects of the tax legislation and administration and even the legal power of the Inland Revenue Department to closure cigarette companies for non compliance with cigarette taxes. In this context, the track and tracing system implemented in Brazil would help to reduce some tax evasion of the actual legal companies but will not resolve the other source of tax evasion or lack of tax compliance. This second aspect is in fact a legal dispute between small and medium cigarette companies and the Inland Revenue Department. It is a large and cumbersome legal problem which is not much discussed among health and anti-smoking specialists.

The Paraguayan cigarettes are the other main source of the illegal market. They are not tracked neither traced in their country and they will not be so immediately after 2010. It is completely illegal production which it is produced with the specific purpose of feeding illegal channels in Brazil and other countries. Which is the response of the protocol for this situation? To tackle this situation, Paraguay will have to sign the protocol and Paraguayan authorities will have to control Paraguayan production. This could be in operation in 2014/2015 or never.

Meanwhile, Brazil judicial system has to enforce its present laws which penalize smugglers in the tax and penal jurisdiction. Now, we are conducting some research in the smuggling environment and our first results have pointed that Brazil has some law enforcement problem. We do not have a completely clear idea of the reasons, although this is not a surprise because there is perception that law enforcement problem is a general issue in the country. What are the next steps? First, improve our understanding of the illegal market and why there are fragilities in the repression, to discuss the situation with penal lawyers, prosecuting attorneys, policemen and custom and fiscal authorities.

Finally, in relation to Mercosur, according to some preliminary research conducted in the region, Brazilian legislation is stronger than the comparative measures in other countries, but as said, this is not a sufficient condition to control tobacco smuggling. So the Protocol discussion is useful to stimulate the public discussion on how to fight the illicit cigarette trade in the region.

¹ With the present system, the authorities are able to identify genuine from counterfeit stamps and are able to charge domestic producers selling cigarettes with counterfeited stamps.