Worldwide news and comment

Ten years after the World Health Organization Framework Convention on Tobacco Control (FCTC) came into force, full implementation continues to be impeded by behind-the-scenes industry interference. In this issue we focus on systematic undermining of tobacco control by breaches of Article 5.3, which is designed to ensure that the setting and implementing of public health policy is protected from the vested interests of the tobacco industry. Although the guidelines for Article 5.3 specify that Parties should implement measures in all branches of government, the tobacco industry continues to enjoy a cosy relationship with policy makers in customs, law enforcement and taxation, both with multilateral agencies and in individual countries. Article 13 on tobacco advertising, promotion and sponsorship also continues to be inadequately implemented in many countries, due to both legislative loopholes and poor enforcement, particularly for sponsorship of youth-targeted events. We highlight examples of FCTC breaches in Lithuania, Spain and Germany, as well as the global tobacco industry initiative the International Tax and Investment Center (ITIC), and its collaboration with the World Customs Organization (WCO).

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Speakers advertised in the brochure for the ITIC-hosted 11th Eurasia Tax Forum. Photo credit: James Middleton

WORLD: ITIC & BIG TOBACCO'S 'SEAT AT THE POLICY TABLE'

The International Tax and Investment Center (ITIC), bills itself as "an independent, nonprofit research and educational organization founded in 1993 to promote tax reform and public-private initiatives to improve the investment climate in transition and developing economies". All four major tobacco companies – British American Tobacco (BAT), Philip Morris International (PMI), JT International and Imperial Tobacco Limited – are listed among its sponsors, and each of the companies has a staff member on the ITIC board.

ITIC enjoys charitable status in the USA under Internal Revenue Code section 501 (c)(3), which specifies that in order to qualify as tax-exempt, organisations must serve the public good. In addition, the legislation also restricts activities that can influence legislation. Contrary to both of these requirements, ITIC has a long history of lobbying for policies favourable to the tobacco industry.

In 2011, ITIC produced a report on illicit tobacco (*The Illicit Trade in Tobacco Products and How to Tackle It*). It highlighted disparities in taxation as an incentive for smuggling (while avoiding any suggestion that low taxing jurisdictions should raise taxation levels), provided support to the tobacco industry system of supply chain control system Codentify (which has been shown to have severe limitations), and concluded that international coordination and cooperation with the private sector is vital to tackle illicit trade (unsurprisingly, no mention is made of the tobacco industry's extensively documented record of involvement in smuggling). The report was subsequently cited when lobbying policy makers in several countries against plain packaging.

The report is a textbook example of the cooperation facilitated by the revolving, and sometimes wide open, door between policy makers and industry representatives, brought together under the umbrella of an ostensibly 'neutral' third party non-profit or trade organisation. The report's author, ITIC program advisor Liz Allen, previously had a senior role in UK Customs and Excise, the foreword was written by the Secretary General of the World Customs Organization (WCO), and before publication it was reviewed by staff at the European Anti Fraud Office (OLAF), the US Department of Treasury and International Monetary Fund. It was launched at WCO Headquarters in Brussels at a special panel session which included speakers from ITIC, WCO officials, diplomats from South Africa and China, and a representative from BAT.

In recent years, ITIC has worked closely with the WCO, hosting several joint meetings and conferences. Helpfully for ITIC's tobacco industry members, WCO also holds Observer status to the FCTC Conference of the Parties (COP). Immediately prior to COP6, ITIC convened discussions with Parties and Observers to discuss taxation and pricing policies. The move was slammed by WHO Director General Margaret Chan. In a speech at COP6 in 2014, she said: "Their agenda, at least, is easy to see: to undermine your power, your efforts to adopt the robust, expert-driven proposed guidelines on tobacco tax and price policy…don't be fooled by them".

WHO has subsequently urged all governments to follow a non-engagement policy with ITIC. The WHO Director of Noncommunicable Diseases Dr Douglas Bettcher stated in May: "ITIC has published extensively in favour of the tobacco industry's false positions on excise taxation, investment and illicit trade in tobacco products". Dr Bettcher's comments were made in response to revelations that Dave Hartnett, former head of corporate tax at UK Inland Revenue, became a director of ITIC less than two years after he stepped down from his UK government role.

In May 2015, the World Bank withdrew from a tax conference to be co-hosted by ITIC in New Delhi, India, following an outcry from the international public health community. However, ITIC continues to find favour with WCO: the following month, WCO welcomed ITIC into its Brussels headquarters, where Liz Allen developed and presented a two day module on excisable products and illicit trade. The module was part of the WCO Knowledge Academy; 2015 was the fourth consecutive year ITIC delivered the module. Attendees of the Academy included delegates from Ireland, Australia, Malaysia, Sri Lanka, DR Congo, Ethiopia, Cuba, Cameroon, Cote d'Ivoire and Angola. Directors and Deputy Directors-General of Customs and Revenue Authorities attended, as well as a representative from the World Health Organization.

Shortly after, in July 2015, WCO headquarters were made available for the ITIC-hosted 11th Annual Eurasia Tax Forum. Speakers at the event included senior bureaucrats from the EU Commission and government ministers from Kazakhstan and Belarus. Another speaker was Austrian Member of the European Parliament (MEP), Othmar Karas, who is chair of the Kangaroo Group which promotes free trade across the European Union and provides contact between corporate lobbyists and MEPs. Several tobacco industry representatives are members of the group. Mr Karas has been criticised for being close to the tobacco industry; during negotiations for the revised European Tobacco Products Directive, he had regular meetings with Philip Morris International. Corporate Europe Observatory identified Mr Karas as one of the top ten MEPs with strongest relations to Philip Morris, and leaked internal PMI documents showed the company rated his views on the TPD as 'green'; that is, compatible with those of PMI.

SmokeFree Partnership Europe wrote to European Commission Director-General for Tax and Customs, Mr Heinz Zourek, to ask him not to attend the event. He responded that while he had taken note of concerns raised, "the Commission takes its obligations as a party to the FCTC very seriously…I can confirm that my participation in the Eurasia Tax Forum will have no bearing whatsoever on the Commission policy…"

Given what is known about the extent and sophistication of tobacco industry lobbying among MEPs, and an October finding by the European Ombudsman that the European Commission has not been transparent enough about tobacco lobbying, Mr Zourek's response appears blithe at best. The Ombudsman also specifically noted the need for proactive transparency in the European Commission beyond the Directorate General of Health.

As a key partner organisation for implementing the WHO Protocol to Eliminate Illicit Trade in Tobacco Products, WCO would do well to note the European Ombudsman's recommendation for transparency in relation to its cosy relationship with ITIC. It is timely for the WCO to follow the World Bank's lead and disassociate itself from ITIC.

This article is an edited extract of a report prepared by James Middleton and Judith Mackay, Clear the Air NGO, Hong Kong. Email chair@cleartheair.org.hk The report can be downloaded online at: http://tobacco.cleartheair.org.hk/?p=9237.

LITHUANIA: FCTC BREACHES UNDERMINE TOBACCO CONTROL PROGRESS

The FCTC took effect in Lithuania on 16 March 2005, making it among the earliest countries to be subject to its legal obligations. Despite this, violations of Articles 5.3 and 13 continue to occur. Under an agreement signed in late 2014 with the Interior Ministry, Philip Morris Baltic (PMB) contributes 104,000 EUR to the police department. Part of the donation is allocated to support police officers with a good track record against illegal tobacco, while the remaining portion is used to support police commissariats in different regions of Lithuania.

One of the most successful police officers has already received a cash bonus of 10 000 EUR based on the agreement. Commemorating the day of Criminal Police (October 27th) another 10 officers also received bonuses. The parties also agreed to actively cooperate in this field by exchanging information, developing common prevention projects and criminal offences detection. Given Philip Morris International's extensively documented history of involvement in smuggling, such blatant violations of FCTC Article 5.3 appear particularly absurd.

A poster to promote the Philip Morris-sponsored event Science Meadow

PMB also sponsors a social project called *Lietuva be šešėlio* (Lithuania without a shadow) which encourages the public to use an interactive map to report places where tobacco, alcohol or fuel are being illegally sold. According to project coordinators, more than 500 illegal places were closed based on reports lodged with this interactive tool. Project *Lietuva be šešėlio* is also actively developing information campaigns related to smuggled cigarettes, together with support from the Lithuanian government, State Border Guard Service, Police Department, Customs of the Republic of Lithuania, State Tax Inspectorate, Ministry of Finance of the Republic of Lithuania. The latest social information campaign is *Nusikaltimai vyksta ne pakelyje* (Crimes do not happen in packages).

The donation to the police service follows an agreement signed on June 25th 2014 between the State Tax Inspectorate under the Lithuanian Ministry of Finance and the Digital Coding and Tracking Association (Codentify), established by British American Tobacco, Imperial Tobacco Group, Japan Tobacco International and Philip Morris International. The agreement raises serious concerns about the independence and integrity of Lithuania's measures to tackle illicit tobacco.

In addition to the clear failure of the Lithuanian government to implement comprehensive measures to protect policy from the tobacco industry, Lithuanian youth continue to be exposed to tobacco industry advertising, in contravention of FCTC Article 13.

Despite widespread complaints from the public health community, PMB supports various science projects for students. Activities have included industry financing of student internship projects, while the latest PMB-sponsored project is Mokslo pieva (Science meadow), involving three main universities and other science institutions.

According to the Law on Tobacco Control, industry is prohibited from sponsoring events designed for persons under 18 years of age as well as radio and television programmes and also events and activities involving, or taking place in, several countries or otherwise having cross-border effects. Sponsorship of events such as these generates exposure which acts as surrogate advertising, both to young adults and their peers under the age of 18, and helps to create an impression of a legitimate and respected industry.

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SPAIN: PHILIP MORRIS SIGNS AGREEMENT WITH CIVIL GUARD POLICE

On 29 October, Philip Morris Spain signed an agreement with the Spanish police to fund equipment including underwater cameras, night vision systems, and scanners for verifying authentication and tracking of tobacco products. The agreement also includes support during inspections and seizures of counterfeit products to assess possible illegal activities regarding the entire production and distribution chain, as well as research and studies about illicit tobacco.

The agreement takes place against the backdrop of a hotly contested battle for the European Commission's approach to track and trace technology to meet the requirements of the revised European Tobacco Products Directive (TPD). Unlike the WHO protocol to Eliminate Illicit Trade in Tobacco Products (which the EU has signed, but not ratified), the TPD doesn't exclude the tobacco industry from a central role in fighting illicit tobacco. The track and trace system supported by the TPD also doesn't require secured markings on tobacco packages.

The tobacco industry is arguing for its own technology Codentify – a system developed by Philip Morris and licenced at no cost to BAT, Imperial Tobacco Group and Japan Tobacco International – against a Swiss company SICPA. Officials at the European Anti-Fraud Office, OLAF, have already thrown support behind Codentify and expressed concern that the SICPA technology may be incompatible with working agreements currently in place with the tobacco industry to combat smuggling.

OLAF's support ignores significant concerns about the adequacy of Codentify, particularly its use of relatively unsecured equipment and potential for codes to be used more than once. Use of Codentify also opens up the possibility that investigations and inquiries could be transparent to the tobacco industry, and therefore potentially beneficial in shaping its reponse.

OLAF has noted that efforts to disrupt illicit tobacco rely on the input of the industry, a situation created by anti-smuggling agreements between tobacco companies, the EC and EU member states. The agreements were enacted with companies from 2004, following a case in the 1990s in which cigarettes were legally exported from the US and later appeared on the black markets of countries such as Italy, Spain and other European countries. The anti-smuggling agreements, due to expire in 2016, require tobacco companies to control their supply chain and set penalty payments for cigarette seizures. The agreements have generally been ineffective due to a range of loopholes, particularly because customs officials rely on industry to determine counterfeit cigarettes.

In the mid 1990s, it was estimated that 16% of the Spanish cigarette market was illegal. This was reduced to 2% in 2001, following a focused operation which included inter-jurisdictional cooperation, coordinated customs activity and participation in the EU investigation of cigarette smuggling by transnational tobacco companies. The main source of illegal cigarettes had been products from transnational tobacco companies supplying Spain via seaports. A 2014 OLAF report suggests that the illicit tobacco market in Spain has re-emerged and is fuelled by contraband originating in Gibraltar.

There is a lack of technical expertise in tracking and tracing in many European countries, creating a significant opportunity for the industry to step in and fill the gap. In addition, a comprehensive two year strategy and action plan to tackle illicit tobacco published by the EU in June 2013 – which aims to target supply and demand in illicit products, decrease smuggling incentives (primarily through tax harmonisation), improve security of the supply chain through tracing and tracking, and strengthen and coordinate enforcement – has no new budget allocation.

Philip Morris is likely to benefit from the agreement with the Spanish police in several ways. Apart from the obvious public image benefit of being seen to support strong law enforcement, providing apparently welcome assistance to police agencies in individual countries in Europe helps to cement the industry's positioning as an essential partner in the fight against smuggling. Supplying research and 'academic' advice provides an opportunity for PMI to shape law enforcement expertise based on research favourable to its position.

In 2011, Philip Morris gave a donation of $23 million to Interpol; as with that donation, this agreement with the Spanish police generates goodwill within law enforcement and makes it appear that PMI is part of the solution rather than a root cause of the problem.

This article is also published on our website at http://blogs.bmj.com/tc/2015/12/02/philip-morris-agreement-with-spanish-police-undermining-the-fctc/.

GERMANY: PHYSICIANS PROTEST TOBACCO 'FLAGSHIP TRADE FAIR'

In September 2015 in the German city of Dortmund, the world's leading trade fair for tobacco products, InterTabac was held. As in previous years, it was organized by a municipal company on behalf of the city of Dortmund; and as in previous years, the city's mayor sent a warm welcome address to tobacco companies from all over the world.

InterTabac constitutes a blatant violation of the FCTC. While Germany has committed to curbing tobacco consumption, one of its cities actively furthers it. While Germany is obliged to protect its citizens from secondhand smoke, one of its cities circumvents the law for the protection of non-smokers. While Germany needs to protect itself from tobacco industry influence, one of its cities advocates tobacco industry interests, and while Germany should have implemented a comprehensive ban on the promotion of tobacco products five years ago, one of its cities proudly organises the world's biggest tobacco trade fair.

InterTabac faces growing opposition in Germany as well as worldwide. This year, for the first time major German health organisations such as the German Heart Foundation, the German Diabetes Association, the Federal Association of Respiratory Physicians, the Professional Association of Children and Adolescent Physicians and the Medical Association of Westphalia-Lippe, together representing 43,000 physicians (many of them from Dortmund) supported the Forum Rauchfrei protest against the trade fair. The protest met with a wide and positive response in the media.

Still, officials are unwilling to take action. Pointing out that tobacco is a legal product and tobacco trade fairs may be organised by the tobacco industry, they ignore the fact that InterTabac in Dortmund is organised by a municipal company which acts by order of the city. Attempts to urge the mayor and the city council to put an end to the fair have so far been fruitless. In 2015 Forum Rauchfrei sent an appeal, co-signed by many internationally renowned organisations and individuals working in the field of tobacco control, to the health minister of North Rhine-Westphalia, the federal state in which Dortmund is located. She was, however, not willing to criticise the trade fair.

We feel confident that we will succeed in stopping this trade fair in the near future, as we get more and more international encouragement. Many of the appeal's co-signers were members of Indonesian tobacco control organisations who still remember InterTabac ASIA, which was to be held in Bali in February 2014, but was cancelled due to a massive wave of protest initiated by Forum Rauchfrei. InterTabac ASIA was also planned by the company in Dortmund, which at that time wanted to open the Southeast Asian market for German tobacco companies.

Consistently mounting international pressure on the city of Dortmund is likely to be the only way to make it stop organising the world's biggest tobacco trade fair. We call on the global tobacco control community to continue to support us in this fight.

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INDIA: TOBACCO PRODUCTS SALES BY UNLICENSED VENDORS BANNED IN PUNJAB

In a landmark decision, the Director of Local Government, Punjab, India issued a circular in September 2015 to all Regional Deputy Directors, Municipal Committees and all Commissioners, Municipal Corporations to ensure closure of all tobacco shops which are not licensed under the Punjab Tobacco Vends Fees Act (PTVFA). Although the act dates from 1953, it had not been enforced. As a result, tobacco products including flavoured, scented and single cigarettes were being sold freely in Punjab

It is pertinent to mention here that the Food Safety and Standards Authority of India (FSSAI) issues license to any eatery/shop/commercial establishment only to sell safe food products, not to sell harmful tobacco products. The implication of the present order means that besides open roadside vendors, the shops selling other products (besides tobacco) shall not be able to sell tobacco products. Designated Food Safety Officers are empowered to cancel the license of any Eatery/shop/Commercial establishment, licensed under FSSAI, if they are found selling tobacco products in the premises.

The move is expected to have far-reaching public health implications and lead to stronger enforcement of Act (COTPA) 2003.

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PAKISTAN: SUPREME COURT ORDERS SHEESHA CAFÉ CLOSURES

In early November, the Pakistan Supreme Court ordered all sheesha (shisha) cafés to be closed across the country. The order came after legislation to ban sheesha cafes has been stalled since 2014. The court urged provincial governments to enact bans, and requested federal and provincial attorneys-general to report on compliance at the next hearing of the case, which was adjourned indefinitely.

Patchy local legislation and actions have previously been implemented; however, even where bans have been implemented they have been widely flouted.

Following the order, the Defence Housing Authority in Karachi seized over 800 hookahs and destroyed them by using a steamroller to crush them. Seized tobacco and powder were also burned. While the action received significant media coverage, with Pakistan among the four fastest growing tobacco markets in the world, much more remains to be done to effectively curtail the tobacco epidemic in the country.

SWITZERLAND: SHARP RISE IN FEMALE SMOKING DEATHS

Switzerland's status as one of a handful of nations to have not ratified the FCTC, and its status as a tobacco industry-friendly country appears to be coming at a disproportionately high cost to the country's women. Figures recently released by the Health Ministry show that the number of tobacco-related deaths in women increased sharply between 1995 and 2012.

While the number of male deaths declined by 13% during the period, the number of female deaths increased by 58%, to a total of 3300 in 2012. Much of the increase is among women under 64 years of age.

Although the adult prevalence of smoking is lower in Switzerland than the average for high income countries, the rate is higher than average among both boys and girls. With a dismal record on tobacco control policies, particularly for advertising bans, tax as a percentage of the total price, and smoke-free public spaces, the country is well-placed to continue to sacrifice the health of its people in favour of profits for the tobacco industry.

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