

Briefing Note: Fourth Session of the Intergovernmental Negotiating
Body on an Illicit Trade Protocol
Geneva 14th March to 21st March 2010

Key Concepts and Terms

1. This note gives a brief explanation of some of the key terms and ideas that will be discussed at INB 4.

Licensing (Article 5)

2. Under this article, Parties would have to ensure that businesses involved in the tobacco trade would have to hold a valid licence. This should help Governments to collect information about participants in the tobacco trade, and to make sure that they comply with relevant laws and regulations, otherwise their licences could be refused, suspended or cancelled. FCA believes that licensing would be a powerful weapon in controlling illicit trade.
3. FCA does *not* think it would be practical to require licences for tobacco growers and retailers, although Article 5 should encourage Parties to do this as appropriate.

Customer Identification and Verification: (“Due Diligence”) (Article 6)

4. This article deals with obligations on businesses involved in the tobacco industry to find out essential information about businesses and people with whom they trade. The principle is that it should be unacceptable for anyone in the tobacco industry to sell products to dubious customers in the supply chain (or buy from them) and disclaim all responsibility if these products are diverted into illicit trade. FCA calls this “due diligence” because this is a more accurate term for the proposed obligations.
5. Due diligence is a duty – and a cost – that belongs with the tobacco businesses themselves and not with government or a state agency. For governments to conduct due diligence would mean costly and unnecessary bureaucracy. Of course, if businesses don’t conduct due diligence properly, they should be liable to appropriate penalties.

Tracking and Tracing (Article 7)

6. Tracking and tracing systems are used to determine the current and past locations and other information concerning property in transit. A complete tracking and tracing system allows such information to be uploaded, retained and



read in a standardised manner. These systems are used in many sectors, for example by shipping and delivery businesses such as UPS and FedEx.

7. There are several technologies deployed in tracking and tracing systems, which are at various stages of development and standardisation. They include:
 - barcode systems, widely used on consumer products, cheap to apply and to read, but relatively restricted in the amount of information that can be stored directly on the product and not secure (they can be seen by anyone and read by anyone with a barcode scanner)
 - 2d data matrix systems, which are “invisible” (or machine readable) barcodes, somewhat more expensive but contain more information and are more secure than conventional barcodes
 - radio frequency identification (RFID) systems, which are developing quickly and can contain a lot of information held securely, but are relatively expensive and currently lack agreed international standards.
8. The Secretariat has published a technical paper on how a tracking and tracing system might work under the Protocol ¹. Essentially, this would allow Parties to use any of the above technologies. The minimum standard that every Party would have to meet (whether they use one of the above systems or not) would be to require a unique number to be printed on each pack, carton and master case of cigarettes and other packaged tobacco products. These would relate together and would allow a law enforcement or customs officer in any Party to use a secure international “portal” (website) to input the number and get back the key information about the product from the Party of origin. (Note: this is more a tracing system than a tracking system – it helps work out what the supply chain was for a product, but doesn’t track its location at any given moment.)
9. The required minimum information is set out in Article 7.4 of the draft Protocol text.
10. Some Parties want to make a distinction between tobacco products made for export (which would be subject to tracking and tracing) and those made for domestic consumption (which wouldn’t). FCA thinks this would introduce a big loophole into the system – a lot of illicit tobacco products were theoretically produced for home consumption and then illegally exported.

Internet Sales (Article 10)

11. This article would cover sales of tobacco products to retail consumers over the internet and by other “remote” means. Such sales contribute significantly to the international problem of illicit trade. They allow someone in one jurisdiction to buy tobacco products from someone in another jurisdiction without the knowledge of anyone other than those arranging payment for the transaction and delivering the goods. Payment of taxes and duties and compliance with other tobacco control regulations is therefore very hard to monitor. FCA wants the protocol to require Parties to stop such sales.

¹ http://apps.who.int/gb/fctc/PDF/it4/FCTC_COP_INB_IT4_ID1-en.pdf FCA has produced a detailed commentary on this paper.

Free Zones (or “Free Trade Zones”) (Article 11)

12. Free zones are an area of a country where some laws and regulations of that country (including import duties, taxes, labour and environmental regulations) may not apply.
13. Inside free zones, it may be relatively easy for smugglers to remove labels and markings, mix (“intermingle”) tobacco and other products, and divert them into illicit trade channels, largely outside the control of customs and law enforcement agencies. According to the World Customs Organization, free trade zones are a major concern for customs authorities and a potential risk for exploitation from organised crimes well as terrorists.
14. FCA would like a ban on all movements of tobacco products into and out of free zones. Failing that, we at least want the Protocol to require Parties to stop the mixing of tobacco and non-tobacco products inside the zones.

Duty Free (Article 11 bis)

15. FCA wants the protocol to require Parties to ban duty-free sales of tobacco products at airports, ports, land border crossings and on ships and airplanes. There is clear evidence that the existence of legal duty-free sales facilitates illicit trade in tax-exempt product, supposedly intended for duty-free stores but in fact diverted into illicit channels.
16. A ban on duty-free sales would:
 - Increase government revenue, by eliminating untaxed sales
 - Reduce the ability of the tobacco industry to associate tobacco with luxury goods and International travel, and to use duty-free stores as marketing venues
 - End a source for relatively inexpensive tobacco products: lower prices increase consumption.

Key Inputs

17. “Key inputs” is a term that includes the important manufacturing components for cigarettes. A lot of the illicit trade in tobacco products comes from unlawful manufacturing – cigarettes made specifically for the purpose of smuggling and tax evasion.
18. Controlling the components used in making cigarettes would be an important means of preventing illicit manufacturing. If manufacturers cannot get their hands on, for example, cigarette papers and filters, then they cannot make cigarettes.
19. For the purpose of the protocol, it would be important to include as key inputs those components that can be easily identified and have few if any alternative uses. FCA has identified the following key inputs that seem to meet these requirements: cigarette papers, acetate filter tow, and reconstituted tobacco leaf.
20. There is a unique Harmonized Tariff Code for cigarette papers – 4813.¹ Cigarettes papers are specially engineered to control factors such as density, porosity, and burn rate. There is no other known use for cigarette papers except in making cigarettes. Cellulose acetate is used to make acetate tow for filters and also has a unique Tariff Code - 3912. Although cellulose acetate has several

industrial uses, acetate tow is used in very few products. More than 80% of world production is used in the manufacture of cigarettes. There are also only a handful of companies worldwide that manufacture acetate tow. Reconstituted leaf also has relevant Tariff Codes ².

21. Key inputs should be included in at least the following articles of the protocol:
- licensing (Article 5)
 - due diligence (Article 6)
 - record-keeping (Article 8)
 - security and preventive measures (Article 9)

What is the Framework Convention Alliance (FCA)?

22. The FCA is a network of more than 350 health and tobacco control organisations. It played an important role in negotiations on the FCTC, which formally recognised the role of civil society in developing, safeguarding and implementing the Treaty.
23. FCA has experts who are happy to help with any questions you may have or information you may want about these issues. Please contact Ian Willmore on willmorei@fctc.org or willmorei (Skype) or 00 44 7887 641344 (mobile).

² The RTL HS classification is Brazil was: 24039100, "Tabaco "homogeneizado" ou "reconstituido," and 240391 "Other" for the European Union. The HS of the United States sub-classified RTL at 2403.91.20 "Suitable for use as wrapper tobacco." Canada uses two classifications, 2403.91.10, "Suitable for use as wrapper tobacco – Packaged" and a further sub-classification of: 2403.91.20, "Suitable for use as wrapper tobacco -- Not packaged."