

This document relates to item 6.3 of the provisional agenda.

FCA Policy Briefing:
Article 17 and 18 draft policy options and recommendations

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Key recommendations

- Substantive changes are required to the draft before it is ready for adoption by the COP;
- Revisions at the COP could correct some of the most problematic wording;
- Parties should give serious consideration to prolonging the mandate of the working group, possibly via alternative methods of work.

Introduction

As detailed in FCTC/COP/5/10, the working group on economically sustainable alternatives to tobacco growing was established in 2008, after two years of work by a study group on the same topic, established by a decision of COP1.

Unlike other working groups, this one was not mandated to produce *guidelines* for implementation of a specific FCTC article (or articles). Rather, its broad mandate included (among other things): work on research methodology, culminating in a “standardized methodological framework for comprehensive assessment of the viability and sustainability of tobacco growing and alternative livelihoods”; information exchange; and the task of drafting “policy options and recommendations”.¹

Parties have never made clear the exact difference between “guidelines” and “policy options and recommendations”, but it is reasonable to assume that the latter should be less prescriptive, reflecting the wide variety of situations in Parties with substantial levels of tobacco growing, the relative lack of Party experience in large-scale transition to alternative livelihoods and the long time-frame for the global shift from tobacco growing to other livelihoods.

As the FCA emphasized already at COP4,² despite substantial progress in implementing FCTC demand-reduction measures, there is (unfortunately for public health) no indication of an impending rapid decline in global demand for tobacco leaf. Population growth, particularly in low- and middle-income countries, largely offsets reductions in the prevalence of tobacco use. A recent study of the potential impact of tobacco control policies suggests that in the most optimistic scenario, the number of smokers worldwide could go down from 794 million in 2010 to 523 million in 2030 (a drop of 34 percent); in the absence of substantial further tobacco control measures, the number

¹ See FCTC/COP3(16).

² See <http://tinyurl.com/bss9shc>.

would actually grow to 872 million.³ (These projections account neither for use of non-smoked tobacco products nor for possible increases in smokers' average daily consumption of cigarettes, which would be the expected result of increases in income levels.

Tobacco leaf is relatively easy to transport and has a long shelf life, at least compared to most fruits and vegetables. As a result, many tobacco growers – particularly in the most tobacco-dependent countries in Africa – supply the international rather than domestic market. Prices for their product are largely unaffected by demand-reduction measures in their own countries.

With respect to tobacco farming and to sustainable alternative livelihoods, the primary challenges faced by Parties at present are national/local and pertain to larger domestic socio-economic realities and policies:

1. The difficult living and working conditions experienced by many tobacco farmers and workers, including debt servitude and child labour, which in many cases justify action to offer alternatives, even if demand is stable;
2. Changes in economic conditions (e.g. appreciation of national currency) or corporate behaviour that lead to sudden declines in tobacco growing in one country or sub-region;
3. The ability of the tobacco industry to mobilize groups claiming to represent growers' interests to oppose implementation of FCTC demand-reduction measures, such as tax increases or bans on advertising, promotion and sponsorship.

In FCA's view, the primary global need with respect to Article 17 is for improved information sharing between governments, intergovernmental organizations, NGOs and legitimate representatives of tobacco workers and farmers (free of tobacco and tobacco leaf company influence), with respect to trends in leaf demand, working conditions, possible alternative crops and livelihoods, and policy and enforcement measures that can improve the lot of the many thousands of tobacco growers for whom tobacco leaf provides at best a marginal living. Policy options and recommendations should be seen as one of several tools to improve information exchange about successful domestic policies.

As for Article 18 (which deals with environmental issues), although there have been discussions on deforestation stemming from the use of wood to cure tobacco, as well as the problem of extensive use of pesticides in tobacco-growing, it is not clear that there is sufficient information and Party experience to make firm global policy recommendations.

Problems in the draft policy options and recommendations

There are several classes of problems with the draft text:

- The inclusion of information that will be rapidly outdated;
- Lack of clarity with respect to guiding principles and to the circumstances under which Parties might wish to implement policy recommendations;
- Lack of coherence with existing legal and policy instruments;
- Impractical policy recommendations.

³ Méndez D, Alshaqeet O, Warner KE. The potential impact of smoking control policies on future global smoking trends. *Tobacco Control* 2012. doi:10.1136/tobaccocontrol-2011-050147.

1. Inclusion of information that will be rapidly outdated

The draft begins with an “overview of the global tobacco production chain”. This includes highly specific data that will almost certainly change over time, such as the market share of the five largest cigarette companies, the share of leaf production by continent/country and even the value of the global crop at the farm gate.

None of the guidelines for implementation for other FCTC articles supply this type of time-sensitive information. For example, Article 14 guidelines do not begin with an overview of cessation service availability in various countries; Article 13 guidelines do not provide an overview of existing tobacco industry marketing practices and; Article 11 guidelines do not start with a discussion of cigarette packaging trends in different parts of the world.

Recommendation: The Introduction section of the draft should be substantially shortened to reduce the risk of obsolescence. Time-sensitive information can, if necessary, be moved to an annex.

2. Lack of clarity with respect to guiding principles and to the circumstances under which Parties might wish to implement policy recommendations

The list of guiding principles in the draft is inconsistent with COP practice in the drafting of guidelines and should be improved.

“Principle 1” is not a principle, but rather a definition of “livelihood diversification”.

“Principle 2”, referring to involvement of tobacco growers and workers “in line with Article 5.3”, is important, but no further information is provided, including on how it might be applied in countries where industry-dominated organizations are the most visible “representatives” of tobacco growers.

“Principle 3” states that policies and programmes “should be based on best practices” – a basic principle of policy-making that is not obviously of particular relevance to Articles 17 and 18.

The other principles are relevant, but arguably insufficient to provide guidance for many Parties.

One area for which guiding principles would be particularly welcome is the question of when Parties should make substantial efforts to implement Article 17. Investing resources in sustainable alternative livelihoods when there is no pressing need to do so can divert scarce tobacco control resources; failing to prepare for a major shift in economic conditions for growers can also be problematic.

Article 17 itself simply says Parties “shall...promote, *as appropriate*, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.” In FCTC Article 4.6, there is a reference to “the economic transition of tobacco growers and workers *whose livelihoods are seriously affected as a consequence of tobacco control programmes* in developing country Parties, as well as Parties with economies in transition.”

When might the promotion of economically viable alternatives be appropriate? Clearly this is a matter for individual Parties to decide, but some situations would be worth mentioning in the policy options and recommendations:

- a) When there is a sharp change in demand for or supply of tobacco leaf at national or sub-national level, or a reasonable likelihood of such a change in the near future, whether or not it is related to tobacco control policies – for example, when rapid currency appreciation results in leaf from a particular country being priced out of the global market;
- b) When tobacco growers' and/or farm workers' economic or social conditions are particularly bad (e.g. high levels of child labour, exploitative contracts, unsustainable debt levels);
- c) When food security is a significant issue and scarce arable land is used for tobacco;
- d) Where tobacco farming and curing is a significant source of deforestation or other environmental problems.

Recommendation: The Guiding Principles section requires further discussion and revision to ensure it provides appropriate guidance to policy-makers.

3. Lack of coherence with existing legal and policy instruments

Many of the problems noted in the tobacco-growing sector are not unique to tobacco leaf. For example, in countries where child labour on tobacco farms is a significant problem, it is frequently also a problem in other sectors – although it may be aggravated by the labour-intensive nature of tobacco leaf harvesting and curing. Similarly, farmers of many crops are subjected to various “sharp practices” by purchasers, such as price-fixing, down-grading and abusive contracts. Also, “company unions” – organizations that purport to represent the interests of workers but in fact are under the control of their employers or quasi-employers – are common not just in agriculture but in many other economic sectors.

Moreover, there is an extensive body of international and national law dealing with issues such as child labour and labour rights; legal safeguards against abusive contracts are also widespread. However, particularly in section 4.5 of the draft (“Identifying and regulating tobacco industry strategies that promote tobacco farming and the manufacture of tobacco products”), there seems to be the assumption that Parties need to develop stand-alone health and safety and labour regulations for the tobacco-growing sector, such as in the following:

- “Parties should develop policies that protect tobacco farmers from the practices of the tobacco industry, such as price fixing that is disadvantageous to farmers and violations of labour rights.”
- “Parties should... create regulatory mechanisms for the control and inspection of industry activities concerning labour relations and worker health. Parties should develop policies and programmes for tobacco growers and workers to take care of health concerns...”

Similarly, in section 5.1, there is the suggestion that “[l]egislative measures, policies and programmes should be developed that ensure that children from tobacco growing regions are not present during nor participate in tobacco production.”

The reality is that there are several widely ratified international conventions on child labour (including ILO conventions 138 and 182), and many countries have national legislation and programmes on the issue.⁴ While clearly there remains a good deal to do, even in the legislative area, it is unlikely that many countries will adopt legislation to deal with child labour only in the area of tobacco growing. A more realistic approach to dealing with child labour in tobacco growing would focus on improved enforcement and implementation of existing legislation and policies in tobacco-growing areas.

On issues such as pricing and working conditions, it is striking that the draft makes no reference to either trade unions or farmers' cooperatives, suggesting instead (in 4.5) that governmental organizations provide "support to smallholders in their bargaining with first processors". Parties differ widely in the systems they use to ensure fair prices for farmers, but independent representative organizations typically play an important role.

Finally, in section 5.4 (Environmental audit), the draft recommends that Parties "should control by law: deforestation, water and soil contamination and the amount of pesticide residues in or on tobacco crops and fertilizers. They should establish standards for workers handling pesticides and fertilizers." Again, it seems improbable that many governments would wish to establish separate environmental rules solely for the tobacco-growing sector.

Recommendation: sections 4.5, 4.7, 4.9 and 5.1 (amongst others) should be reviewed and modified as appropriate to refer to existing systems with respect to protection of labour rights, collective bargaining, occupational health and safety and child labour, with an emphasis on ensuring that existing protections are effectively implemented in tobacco-growing areas. Section 5.4 should be modified to reflect the range of legislative and regulatory practice with respect to environmental protection, for example by suggesting Parties begin by reviewing existing environmental legislation and policies to see whether they are appropriate for the environmental problems caused by tobacco growing, and if they are, that they are being adequately enforced/implemented.

4. Impractical policy recommendations

In a number of cases, the draft includes policy recommendations that are simply impractical. This is particularly the case with section 4.4 ("Curtailing policies that promote and support tobacco farming"). The core objective of this section is laudable: Parties can and should seek policy coherence with respect to tobacco-growing, and it is inefficient and counterproductive if one agency of government seeks to shift tobacco growers to other crops or livelihoods, while another agency provides subsidies to farmers to start growing tobacco. However, coercive measures are likely to be neither effective nor justified.

In particular, as FCA has said in the past, the idea of "placing a ceiling on land under tobacco cultivation" is impractical in most countries, particularly any country where farmers do not require prior approval of their choice of crop in a given year. It is even more impractical to propose, as is done in draft section 6.3, that Parties should coordinate such production caps "so that efforts made to reduce tobacco production by one Party are not neutralized by another increasing production."

Equally objectionable, in FCA's view, is the blanket suggestion that "government policies... for ensuring remunerative prices for tobacco growers *must be discontinued* in a phased

⁴ Cf. International Labour Organization. Tackling Child Labour: From Commitment to Action. Policy Note, June 2012. On-line at: http://www.ilo.org/jpec/Informationresources/WCMS_181875/lang--en/index.htm.

manner with defined timelines.” Taken literally, this directly contradicts the recommendation in the following section which calls on Parties to protect tobacco farmers from price fixing.

At COP4, FCA suggested wording on the topic of policy coherence and subsidies to tobacco growing:

Parties should identify and analyse subsidies and other government mechanisms that may support tobacco growing and primary processing of tobacco leaf to determine whether they have the effect of encouraging farmers to switch into tobacco growing or of preventing existing tobacco growers from moving partly or completely to other crops. In such cases, they should be modified so as to reduce new entries into tobacco growing and to encourage an orderly transition to alternative livelihoods.

Another section of the draft that could be substantially improved concerns environmental audits (5.4). Two recommendations are rather surprising:

- “Parties should regulate the seasons of the year in which tobacco farming is allowed to avoid tobacco monocropping, to protect other agricultural resources and ensure environmental conservation and food security.”
- “The regulations should ensure that opening up new individual farms is prohibited unless environmental impact assessment licenses/approvals have been obtained from competent environmental authorities.”

Government control over agricultural activities differs by Party, but it is likely many Parties would find both of these recommendations impractical to implement.

Recommendation: Sections 4.4, 5.4 and 6.3 should be rewritten to remove impractical recommendations.

Conclusion

The working group on Articles 17 and 18 has held three meetings since it was established in 2008. The issues it has discussed to date are important to a number of Parties, and may become more important to others in future decades. However, agricultural issues such as tobacco growing are complex and require expertise from multiple areas (agronomy, labour relations, rural development, environmental sciences, etc.). It is clear that the working group would need several more meetings to complete the numerous tasks assigned to it by COP3.

In view of the limited resources available to the COP, FCA recommends that Parties discuss alternative or supplementary working methods (such as virtual meetings or smaller drafting groups) to allow the working group to complete its work.