



This document relates to item 4.1 of the provisional agenda

Sixth Session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control,
13-18 October 2014, Moscow

FCA Policy briefing

The Protocol to Eliminate Illicit Trade in Tobacco Products

Key Recommendations

1. Parties are urged to have a frank discussion of the reasons for the relatively low number of signatories to the ITP, as well as the slow pace of ITP ratifications/accessions to date. Possible reasons could include, amongst others:
 - a. The multi-sectoral nature of the Protocol, leading to slow ratification processes;
 - b. Lack of financial resources for promotion of the Protocol;
 - c. Failure to clarify sources and types of technical assistance for ITP implementation;
 - d. Lack of clarity on technical aspects of the Protocol;
 - e. Concerns about the financial implications of the Protocol.

2. Taking into account the results of the discussion, Parties should give the Secretariat a clear mandate:
 - a. To organise awareness-raising activities;
 - b. To commission further research on technical aspects of the Protocol;
 - c. To strengthen co-operative arrangements with relevant international organisations;
 - d. To raise funds for more concerted preparation of ITP entry into force and implementation;
 - e. To counter tobacco industry claims on how to implement the Protocol, and in particular its promotion of the Codentify system.

Introduction

The last session of the COP adopted the Protocol to Eliminate Illicit Trade (ITP), with high hopes that the Protocol would eliminate one of the key practical and political obstacles to more rapid and effective implementation of Article 6 of the FCTC.

It was clear to many observers that achieving entry into force of the ITP would be more challenging than that of the FCTC: the Protocol requires a high level of involvement of multiple ministries and agencies, such as finance, customs, police, justice, revenue and health. A single article of the Protocol, Article 8 (tracking and tracing), is likely to require investments that surpass the tobacco control budgets of many Parties (although it is hoped Parties will be able to make the tobacco industry cover such costs in the short term, and of course such systems would protect tobacco tax revenue).

To add to these challenges at the national level, the FCTC Secretariat does not have, and probably never will have, all the expertise needed to provide the detailed technical assistance and expertise that Parties to the Protocol are likely to need for implementation. Thus, co-operative arrangements with other organisations are clearly needed.

Having said all this, we note that only 54 Parties signed the Protocol during the allotted signature period (compared to 168 Parties that signed the Convention during the 12-month period when it was open for signature). Only three Parties have ratified the Protocol at last report; at the corresponding time in 2005 (i.e. 21 months after being opened for signature), the Convention had already come into force, with multiple ratifications per month.

It should be noted that the FCTC was exceptional amongst international treaties for the speed with which it was signed and ratified – many such treaties require years to reach a critical mass of Parties. On the other hand, it should be of some concern that a number of Parties that played prominent roles during ITP negotiations (such as Brazil and Canada) chose not to sign the Protocol. The European Union, which made substantial financial contributions to the negotiations, has signed but not yet ratified the Protocol.

What next?

The FCA has argued in the past for a systematic approach to scoping the technical assistance and capacity-building needs stemming from the Protocol. (See, for example, our COP5 brief at <http://tinyurl.com/kccy2lm>). While we still believe that this type of approach is worth considering, we note that the budget allocated to the Secretariat to prepare for ITP implementation would probably not have been sufficient to undertake this type of work, even if Parties had agreed in principle with the approach.

In its interim performance report on 2014-2015 (FCTC/COP/6/22), the Secretariat proposes re-allocating the US\$345,000 that were set aside for holding the first session of the Meeting of the Parties (to the Protocol). The funds would, according to the proposal, go to:

- a) Studies on obstacles to entry into force and on approaches to overcoming them;
- b) Raising awareness of the problem of illicit trade amongst non-health sectors of government;
- c) Sub-regional workshops, with relevant ministries and agencies, to facilitate ratification/accession.

These broad categories of activities seem reasonable. But we note that allocating a sum of this size to Protocol-related activities is unlikely, by itself, to fundamentally change the dynamic of ITP (non-) ratification.

In the draft budget and work plan for 2016-2017, the Secretariat proposes allocating US\$586,000 (mostly from extrabudgetary funds) for preparation of entry into force of the Protocol, as well as US\$977,000 (primarily from voluntary assessed contributions) for the Meeting of the Parties, including a preparatory intergovernmental working group. These amounts are both quite large (given the non-ITP priorities the COP may wish to address) and quite small (in terms of likely technical assistance needs).

Our simple advice to Parties is to have an honest discussion about the obstacles to ratification/accession by their governments. Is it merely a matter of time, or is (for example) the lack of easily accessible expert advice on tracking and tracing a major obstacle? What types of materials are most useful to encourage discussion about ratification/accession with other ministries and agencies? What types of workshops are most helpful? Do Parties need to play a more active role in encouraging other international organisations to support ITP implementation? What other tools can the Secretariat produce to help Parties as they consider ratification/accession?

The Secretariat cannot be expected to resolve these issues on its own: Parties need to increase their engagement and provide clear guidance.

The tobacco industry continues to use the illicit trade issue to defeat tax increases and forge partnerships with governments

Another concern is the tobacco industry's continuing effort to turn the illicit trade issue to its advantage.

As many delegates will have experienced in their own countries, the (usually wildly exaggerated fear) of increased illicit trade remains the tobacco industry's argument of choice against proposed tobacco tax increases. It is hoped that adoption of Article 6 guidelines at COP6 will help Parties overcome these scare tactics and increase tobacco taxes assertively.

Although tobacco companies have a long record of encouraging illicit trade in their own products, they have also used the issue in recent years to forge relationships with police, customs and tax authorities, amongst other means, via the promotion of the Codentify system.¹ Codentify is a tobacco industry patent registered at the European Patent Register with the number EP1719070[1]. The acceptance of tobacco industry technology for a WHO tracking and tracing system would leave the tobacco industry plenty of opportunities to interfere, which is in clear contradiction with the wish of the Parties and the text of the Protocol.

In some cases, the industry has made the implausible claim that the Codentify system is consistent with Article 8 of the Protocol (and, it frequently adds, cheaper and more "modern" than competing systems, such as those using tax stamps and/or combinations of various kinds of covert and overt markings).

Parties would do well to discuss how to best counter this type of misinformation and interference.

Conclusion

Parties to the FCTC devoted substantial time and funds to negotiating a protocol specifically to implement Article 15 of the Convention. Two years after the adoption of the Protocol, it is time to collectively analyse the obstacles to its entry into force and decide on a strategy to overcome them.

¹ For more details, see Joossens L and Gilmore A. The transnational tobacco companies' strategy to promote Codentify, their inadequate tracking and tracing standard. Tobacco Control doi:10.1136/tobaccocontrol-2012-050796.