

Next steps In international preparations for ITP implementation

**World Conference on Tobacco or Health
19 March 2015**

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A quick reminder on the Illicit Trade Protocol

- Negotiated as a Protocol to the FCTC. This means it's a separate treaty, but open only to FCTC Parties. (But new ratification/accession needed, separate governance.)
- Negotiated from 2008 to 2012; adopted by COP5 (November 2012).
- As of 11 March, 54 signatories and 6 Parties (Austria, Gabon, Mongolia, Nicaragua, Spain and Uruguay).
- Key element of Protocol is global tracking and tracing regime (Article 8), with information-sharing focal point at Secretariat, to be operational within five years of entry into force.

Three important players missing – for now

- The European Union, which funded much of the ITP negotiations, has yet to ratify the Protocol but the new version of the Tobacco Products Directive (April 2014) includes an article requiring a Union-level traceability system and two EU members are Parties.
- Brazil, which was very active in ITP negotiations, failed to sign the Protocol but is considering accession and already has an elaborate tracking-and-tracing system.
- Canada, another very active Party in negotiations, also failed to sign; its primary immediate smuggling concern is illegally manufactured product from within Canada or from the United States (non-Party). But did introduce high-tech stamp system in 2011.

Why is the ITP's entry into force slower than the FCTC's?

- Inherently more complicated – while the Ministry of Health is clearly the lead for the FCTC and is responsible for most of the implementation (except taxation!), ITP requires substantial commitments by multiple departments/agencies:
 - Customs
 - Finance
 - Police
 - Justice
 - Health.
- Actually, many international agreements take a long time to come into effect. (E.g. 12 years for UN Convention on Law of the Sea.)

Why is the ITP's entry into force slower than the FCTC's? (2)

- *Cost*: although the Protocol explicitly mentions that the tobacco industry “may” be made to bear the cost of the most expensive element of the Protocol – tracking and tracing – implementing the ITP does require a substantial investment (which should be recouped in higher revenues, industry payments).
- *Uncertainty*: full details of how national tracking-and-tracing systems will interact with the global information-sharing focal point have yet to be worked out.
- *“You go first” attitude*: particularly for countries that import a substantial portion of their domestic consumption, the ITP is more attractive if it already has a lot of members (ideally, big exporters).

Why is the ITP's entry into force slower than the FCTC's? (3)

- *Lack of information/loss of institutional memory:* Some countries sent only Health officials to ITP negotiations. They may be familiar with the details of the Protocol, but this information may or may not have been conveyed to (or absorbed by) other departments. And in a number of cases, delegates to ITP INBs have now retired or moved to other files.
- *Lack of accessible, authoritative information sources:* The real experts on ITP implementation are national government officials who have overseen development of illicit trade control efforts. No budget so far to bring them to Geneva.

What could accelerate entry into force?

- *Money*: It is irrational for Parties to spend millions to negotiate the ITP, then leave Secretariat with shoe-string budget to prepare entry into force. A modest increased investment would have a big impact.
- *Expert panel*: COP6 mandated the Secretariat to set up a panel of experts (up to 2 people per region). This panel's job is not just to answer one-off information requests, but also to "facilitate exchanges of information, experiences and challenges among Parties, including on existing good practices" – in short, to be a brain trust for the Protocol from now until COP7.

What could accelerate entry into force? (2)

- *Technology*: In the area of tracking and tracing, yesterday's science fiction is today's commonplace – e.g. GPS on smart phones. Familiarity with technology should increase, and costs should come down.
- *Tobacco taxation – and tight government budgets*: The ultimate purpose of the ITP is to enable governments to raise tobacco taxes, increase revenues and reduce tobacco use. The higher tobacco taxes go, the stronger the incentive to have an effective Protocol.

A scenario – ITP in effect in 2016

- *European Union ratification, followed by most EU member states. This could add as many as 27 Parties (and could attract ratifications by near-neighbours).*
- *Secondments to reinforce expert panel/Secretariat.*
- *Co-operation with UNODC, WCO etc. increases technical assistance available to prospective Parties.*
- *Informal discussions on details of global tracking-and-tracing regime. The five-year deadline for setting up the global focal point means preparations are very important.*
- *FCTC Parties start to worry about being on the outside. Some ratify/accede to be able to shape MOP1.*

A scenario – ITP in effect in 2016 (2)

- The 40th Party to the ITP needs to ratify/accede the Protocol 90 days before the end of COP7 in order to hold the first Meeting of the Parties in this cycle – in practice, would be preferable months earlier, e.g. early 2016.
- A key decision at MOP1 will need to be what forms of technical assistance will be made available to Parties and by which means – *this needs preparation*.
- On the other hand, ITP Parties will have a strong and immediate interest in successful implementation by others = incentive to invest in TA.

Further information

- Text of the Protocol: <http://tinyurl.com/ngq5lj8> .
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