

Comments on the Chairperson's text for a protocol on illicit trade in tobacco products (FCTC/COP/INB-IT/2/3)

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Contents

Background	3
The Chairperson's text	4
Preamble	4
Part I: Introduction	4
Use of terms	4
Part II: General obligations	6
General obligations	6
Part III: Supply chain control	6
Licence	6
Customer identification and verification	8
Tracking and tracing	11
Record-keeping	13
Security and preventive measures	15
Internet and other telecommunication-based modes of sale.....	16
Part IV: Enforcement	17
Offences	17
Liability of legal persons	20
Sanctions	20
Search of premises and seizure of evidence	20
Confiscation and seizure	20
Seizure payments	21
Destruction	21
Special investigative techniques	21
Part V: International cooperation	22
Information sharing	22
Confidentiality and protection of information	23
Assistance and cooperation: Training, technical assistance and cooperation in scientific, technical and technological matters	23
Assistance and cooperation: Investigation and prosecution of offences	23
Protection of sovereignty	24
Jurisdiction	24
Joint investigations	24
Law enforcement cooperation	24
Mutual administrative assistance	25
Mutual legal assistance	25
Extradition	25
Part VI: Reporting	25
Part VII: Institutional arrangements and financial resources.....	26
Omissions from the Chairperson's text	27

Background

Parties to the WHO Framework Convention on Tobacco Control (FCTC) recognize, in Article 15.1, that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, is an essential component of tobacco control.

Illicit trade in tobacco products undermines high tobacco taxation policy, which evidence shows is one of the most effective ways to reduce tobacco consumption,¹ and deprives governments of billions of dollars in revenue, thereby reducing the funding available for public health and other policies. In addition to being a major health problem, illicit trade in tobacco products poses a significant threat to the maintenance of law and order. There is evidence that illicit trade in tobacco products is carried out by organized transnational criminal groups, and that money gained from illicit trade in tobacco products is used for other serious criminal enterprises, including terrorist operations.²

The Framework Convention Alliance (FCA) estimates that the global illicit cigarette trade represents approximately 10.7% of global sales, or 600 billion cigarettes annually, and that losses to government revenue as a result of illicit trade in tobacco products total approximately \$US 40 to 50 billion annually.³

The Conference of the Parties to the FCTC (COP) has recognized the need for a protocol to the FCTC to effectively address illicit trade in tobacco products, mandating an intergovernmental negotiating body (INB) to draft and negotiate a protocol.⁴ In establishing the INB, the second session of the COP (COP-2) recognized the template for a protocol on illicit trade in tobacco products,⁵ prepared by an expert group established by the first session of the COP (COP-1), as a basis for initiating negotiations.

At its first session (INB-1), the INB considered the expert group's template and discussed the content and form of a protocol on illicit trade in tobacco products. Support was expressed for the inclusion in a protocol of each of the key elements proposed in the expert group's template.⁶ The Chairperson of

¹ See generally FJ Chaloupka, T Hu, KE Warner, R Jacobs, and A Yurekli, 'The Taxation of Tobacco Products', in P Jha and FJ Chaloupka (eds), *Tobacco Control in Developing Countries* (OUP: Oxford, 2000) 237-272, available at <http://www1.worldbank.org/tobacco/tcdc/237TO272.PDF>; World Bank, *Curbing the Epidemic: Governments and the Economics of Tobacco Control* (Washington, DC: World Bank, 1999), available at http://www1.worldbank.org/tobacco/reports_pdf.asp.

² See generally United States General Accounting Office, 'Terrorist Financing: US Agencies Should Systematically Assess Terrorists Use of Alternative Financing Mechanisms', Report to Congressional Requesters GAO-04-163 (November 2003), available at <http://www.gao.gov/new.items/d04163.pdf>.

³ Framework Convention Alliance, *How big was the illicit tobacco problem in 2006?* (Geneva, 2007), available at http://fctc.org/x/documents/HowBigWasTheIllicitTobaccoTradeProblem_2006_English.pdf.

⁴ 'Elaboration of a protocol on illicit trade in tobacco products' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(12)).

⁵ 'Elaboration of a template for a protocol on illicit trade in tobacco products' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, provisional agenda item 5.4.1, A/FCTC/COP/2/9, 19 April 2007), available at http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_9-en.pdf ('the protocol template').

⁶ See generally the Chairperson's reflections on the overall content of the discussions: 'Drafting and negotiation of a protocol on illicit trade in tobacco products' (World Health Organization, WHO Framework Convention on Tobacco Control, Conference of the Parties, Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products, first session, FCTC/COP/INB-IT/1/7, 15 February 2008), available at http://www.who.int/gb/fctc/PDF/it1/FCTC_COP_INB_IT1_7-en.pdf.

the INB has, in accordance with the COP-2 decision and based on the discussions of INB-1, elaborated a draft text for a protocol on illicit trade in tobacco products for consideration by the second session of the INB (INB-2) (Document FCTC/COP/INB-IT/2/3).

The Chairperson's text

FCA congratulates the Chairperson and the Convention Secretariat on their work in elaborating the Chairperson's text for a protocol on illicit trade in tobacco products. FCA considers that the Chairperson's text contains most of the key elements of an effective protocol to combat illicit trade in tobacco products and provides a strong basis for the work of INB-2. Nevertheless, FCA considers that the text should be improved in a number of respects. The following comments are offered to assist Parties in their deliberations on the Chairperson's text.

Preamble

FCA recommends that the Preamble to the protocol clearly recognize the relationship between illicit trade in tobacco products and public health, and the need for a range of complementary measures to effectively address illicit trade. FCA recommends the use of the following suggested wording:

'Recognizing that illicit trade in tobacco products undermines public health through the evasion of taxation and other regulatory measures that decrease consumption of tobacco products;

Recognizing that effective action to prevent and combat illicit trade requires the adoption of a range of complementary regulatory and other measures.'

Part I: Introduction

Use of terms

FCA considers that amendments are required to the section on Use of terms, which will define the scope of many of the key provisions of the protocol. FCA recommends that further consideration be given to the following definitions in particular:

- The definitions of 'carton' and 'master case': FCA considers that these definitions are too narrow and are likely to be problematic in their application for the purposes of tracking and tracing. Further consideration should be given to the different ways in which tobacco products are, or could be, packaged, and definitions carefully drafted to ensure that tracking and tracing obligations cannot easily be evaded by packaging products in different quantities. FCA further notes that the term 'unit pack', used in both the definition of 'carton' and in the draft Tracking and tracing provision, has no clear meaning and is not defined in the Chairperson's text.
- The definition of 'due diligence': FCA considers that the scope of this definition may be too broad – participants in the tobacco business should be required to ascertain whether a business partner is complying or can reasonably be expected to comply with their legal obligations relevant to trade in tobacco products, not *all* legal obligations which they may owe in any context. FCA recommends that the words 'their legal obligations' be amended to '*their legal obligations relating to the manufacture, sale, distribution, storage, shipment, import or export of tobacco products*'.
- The definition of 'seizure': FCA notes that this definition applies to both 'freezing' and 'seizure', but omits the word 'freezing'. The *United Nations Convention against Transnational Organized Crime* ('UNTOC') contains an equivalent definition. The first element of the definition ('temporary prohibition of the transfer, conversion, disposition or movement of property') is a definition of 'freezing'; the second element ('temporary assumption of custody or control of property') is a definition of 'seizure'. FCA recommends that the definition be used as proposed in the Chairperson's text, but that the words defined should be '*freezing or seizure*'.
- The definition of 'suspicious transactions': FCA considers that this definition should be broadened to ensure the effectiveness of requirements for reporting of suspicious transactions. FCA recommends that the definition be expanded as follows: '*transactions which are conducted in such a way as to give rise to suspicion that they may be engaged in in contravention of relevant laws or with an aim to engage in conduct that may contravene relevant laws or otherwise do not correspond or conform to ordinary commercial practices*'.

Part II: General obligations

General obligations

FCA considers that the General obligations in the draft protocol should be broadly drafted to maximize their effectiveness. To assist in Parties in their deliberations on the draft provision, FCA offers the following specific suggestions:

- In sub-provision 2, the word 'regulatory' should be deleted, so that the text reads 'customs, police and other relevant ~~regulatory~~ agencies responsible for preventing, deterring, detecting, investigating and eliminating ...'.
- In sub-provision 3, words should be added to read 'originating within *or transiting through* their territory'.

Part III: Supply chain control

FCA supports the inclusion in the protocol of a strong set of measures to control and monitor the tobacco product supply chain. These regulatory measures will form the core of an effective approach to combating illicit trade in tobacco products.

Licence

FCA supports the proposed requirement that key participants in the tobacco product supply chain be required to hold a licence and that those who breach relevant laws and regulations not be permitted to participate. Licensing requirements enable authorities to restrict participation in an activity to those persons who can be expected to comply with relevant laws, and provide a flexible mechanism to support the enforcement of such laws.

FCA considers that licensing requirements should apply as follows:

- As provided for in sub-provision 1 of the Chairperson's text, manufacturers and commercial importers and exporters of tobacco products should be required to be licensed.
- Legal or natural persons wholesaling, brokering or warehousing tobacco products – all of whom form important links in the tobacco product supply chain – should be included as persons required to be licensed.
- *All* tobacco leaf dealers, and commercial importers or exporters of tobacco leaf, should be included as persons required to be licensed. FCA does not support the proposed approach of setting thresholds for licensing of persons selling tobacco leaf. FCA considers that thresholds would create administrative difficulty and would also encourage those

dealing in tobacco leaf to order their affairs so as to avoid being subject to licensing requirements, without necessarily lowering the amount of tobacco leaf they deal with.

- Legal or natural persons growing tobacco leaf should *not* be included as persons *required* to be licensed. FCA recognizes that licensing of tobacco growers will not be practicable in all Parties, and does not consider the setting of thresholds based on quantities of tobacco leaf sold to be a practical approach. FCA recommends that the draft protocol include a provision encouraging Parties, where practicable, to extend their licensing requirements to include growers of tobacco leaf. FCA also recommends that the draft protocol encourage Parties, where practicable, to extend their licensing requirements to include retailers of tobacco products.
- Legal or natural persons manufacturing manufacturing equipment and key inputs used in the manufacture of tobacco products should be included as persons required to be licensed. FCA notes that the kinds of manufacturing equipment and key inputs covered by the licensing requirements will need to be further defined.

FCA considers that the draft provision on Licensing in the Chairperson's text contains the key elements of an effective licensing system, including: designation of an agency or agencies to issue, renew, suspend and cancel licences; requirements that applicants for a licence provide information about themselves and their business; requirements for periodic review, renewal, inspection or audit of licensees; and suspension or cancellation of licences where relevant laws have been contravened. To assist Parties in their deliberations on the draft provision, FCA offers the following specific suggestions:

- FCA recommends that the title of the provision be 'Licensing' rather than 'Licence'.
- In sub-provision 2(a), FCA considers the wording 'to issue, renew, suspend and cancel licences to conduct the activities specified in paragraph 1 of this Article to all applicants that satisfy the requirements in this Article' problematic. The relevant requirements for the issuing or renewal of a licence are not 'requirements in this Article'. The relevant requirements – which may include, for example, requirements to establish that an applicant is of good character and a fit and proper person to carry out the relevant activities – will be established by Parties. Parties are also likely to establish requirements for suspension or cancellation of a licence additional to those contained in the Article regarding contravention of relevant laws or provisions. In addition, the words 'to all applicants' are too broad to apply to the issuing, renewal, suspension and cancellation of licences. FCA recommends that the wording be amended as follows: 'to issue, ~~renew, suspend and cancel~~ licences to conduct the activities specified in paragraph 1 of this Article to all applicants that satisfy *all relevant* ~~the requirements in this Article,~~

regardless of nationality or residency, *and to renew, suspend and cancel such licences*'.

- In sub-provision 2(b), FCA suggests the following amendments:
 - The words 'as applicable' should be added to the end of the chapeau, as at least paras (iii) and (viii) would apply only to certain categories of applicants, not to all. The text should read: 'contains all the requisite information about the licensee including, as *applicable*: ...'.
 - In para (ii), it should be made clear that information about corporate affiliates of the applicant should include information about any subsidiaries. The text should read: 'corporate affiliates *including subsidiaries*'.
 - In para (v), the words 'documentation regarding any offences committed or charges filed' are too broad and require further definition, while the words 'by government agencies' may be interpreted as too narrow to cover all relevant offences and charges. The text should read: 'documentation regarding any *relevant* offences committed *by the applicant* or charges filed *against the applicant* by government agencies *in any jurisdiction*'.
- Sub-provision 2(h) requires the suspension or cancellation of a licence 'when a licensee has contravened or has facilitated the contravention of relevant laws or provisions'. FCA considers that it is important that there also be a provision in the Article requiring Parties to refuse to grant a licence to an applicant who has contravened or facilitated the contravention of relevant laws or provisions. FCA recommends the inclusion of an additional sub-provision which states that each Party shall: '*refuse to grant a licence to conduct the activities specified in paragraph 1 of this Article to a natural or legal person who has contravened or has facilitated the contravention of relevant laws or provisions within the previous five years.*'

Customer identification and verification

FCA supports the proposed requirement that participants in the tobacco product supply chain be obliged to conduct due diligence with respect to the persons with whom they transact, and to refuse to transact with persons who have contravened relevant laws. Due diligence obligations require persons to exercise responsibility with respect to those with whom they transact, and therefore for what happens with their products once they part with them.

FCA considers that due diligence obligations should apply as follows:

- As provided for in sub-provision 1 of the Chairperson's text, due diligence obligations should apply more broadly through the supply chain than just to those entities that are licensed, including to all natural and legal persons engaged in manufacturing, distributing, storing, shipping,

and commercial importing or exporting of tobacco products, and in selling tobacco products other than at final retail.

- Due diligence obligations should also apply to *all* tobacco leaf dealers, and commercial importers or exporters of tobacco leaf. As set out above, FCA does not consider the setting of thresholds to be a practical approach.
- Parties should *not* be *required* to impose due diligence obligations on persons growing tobacco leaf, but should be encouraged to do so where practicable.
- Due diligence obligations should apply to persons manufacturing manufacturing equipment and key inputs used in the manufacture of tobacco products. FCA notes that the kinds of manufacturing equipment and key inputs covered by the due diligence requirements will need to be further defined.

FCA considers that the draft provision on Customer identification and verification in the Chairperson's text contains the key elements of effective due diligence requirements, including: requirements to obtain information from persons with whom transactions are engaged in; conduct of further due diligence in the event of a material change in circumstances; periodic reporting on compliance with due diligence obligations; termination of a relationship in circumstances of contravention of relevant laws; and monitoring of the activities of persons with whom transactions are engaged in in order to detect transactions that do not appear to be commensurate with product demand. To assist Parties in their deliberations on the draft provision, FCA offers the following specific suggestions:

- FCA considers that the term 'customer' is not broad enough to cover the range of entities covered by the draft provision. The entities covered, as determined by sub-provision 1, include 'any such natural or legal person with which they engage in a commercial transaction'. The term 'customer' is narrower, indicating purchase of goods or services. FCA recommends that where the term 'customer' is now used, this be amended to '*customer and contractor*' or '*customer or contractor*' as appropriate.
- In sub-provision 2(d), the words 'documentation regarding any offences committed or charges filed' may be too broad and require further definition, while the words 'by government agencies' may be interpreted as too narrow to cover all relevant offences and charges. The text should read: 'documentation regarding any *relevant* offences committed *by the applicant* or charges filed *against the applicant* by government agencies *in any jurisdiction*'.
- In sub-provision 2(f), 'tobacco' should be included, as follows: 'a description of the intended use and intended market of the *tobacco*, tobacco products or manufacturing equipment ...'.

- In sub-provision 5, FCA considers that the wording used in the FCTC should be used, as follows: 'legislative, *executive*, administrative and/or other measures'.
- In sub-provision 6, FCA suggests the following amendments:
 - The word 'knowingly' should be deleted, as knowledge may not always be an element of the relevant offences, and it will often be difficult for a person under due diligence obligations to discern the state of mind of another person, particularly a legal person.
 - The words 'engaged in the sale, distribution, storage, or shipment of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products in contravention to provisions of this Protocol or any other activity contrary to the provisions of this Protocol' are too narrowly defined. Some important activities have been excluded, and the reference to 'provisions of this Protocol' is not sufficient, as the relevant laws which may be contravened by participants in the tobacco business will be Parties' domestic laws, not provisions of the protocol. FCA recommends that the words be amended as follows: 'engaged in the *manufacture*, sale, distribution, storage, ~~or shipment~~, *import or export* of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products in contravention to ~~provisions of this Protocol~~ *of applicable laws or provisions*, or any other activity ~~contrary to the provisions of this Protocol~~ *in contravention of any relevant laws or provisions*'.
- In sub-provision 7(d), FCA suggests the following amendments:
 - The words 'engage in illicit sale, distribution, storage, or shipment of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products or any other activity contrary to the provisions of this Protocol' should be amended to 'engage in ~~illicit~~ *the manufacture*, sale, distribution, storage, ~~or shipment~~, *import or export* of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products *in contravention of applicable laws or provisions*, or any other activity ~~contrary to the provisions of this Protocol~~ *in contravention of any relevant laws or provisions*', as in sub-provision 6.
 - The words 'shall be lifted' should be amended to '*may be lifted*'. There should not be a positive requirement for an entity to 'unblock' another, which is the suggestion in the word 'shall' – while blocking should be required for a particular period of time, it should not be *required* to be lifted at the end of that period.
- FCA recommends that sub-provision 7 of the draft provision on Security and preventive measures – dealing with suspicious transaction reporting, which is an important element of due diligence – be moved to the draft provision on Customer identification and verification.

Tracking and tracing

FCA supports the proposal that Parties be required to implement tracking and tracing measures, and the application of tracking and tracing obligations as far through the tobacco product supply chain as possible. Tracking and tracing measures allow authorities to monitor the movement of lawfully manufactured tobacco products as they travel through the supply chain, and re-create the route taken by lawfully manufactured tobacco products that they have seized.

FCA considers that the draft provision on Tracking and tracing in the Chairperson's text includes the key elements of an effective international tracking and tracing system, including: recording of information on both imported and locally manufactured products; uploading of information onto a database, with that information being accessible by the authorities; sharing of information between Parties; and ongoing improvement of the system in light of ongoing technological developments.

However, FCA considers that there are a number of complex technological and practical issues that need to be further considered before provisions on tracking and tracing can be concluded. The discussion of these issues will require considerable technical expertise and attention, and FCA considers that progress requires the establishment of a dedicated working group. FCA recommends the establishment of such a working group, which should be mandated to present a report to the third session of the INB (INB-3) addressing a range of issues, including the following:

- How far through the supply chain is it currently technically feasible to require the recording of information? How is technology likely to change and over what period, and what processes should be in place under the protocol to allow obligations to be updated in light of these changes?
- What information should be recorded at what stage of the supply chain?
- What information should be recorded on the product itself, and what information should be recorded in a database?
- What units should the obligations apply to? The Chairperson's text uses 'master cases' (defined as 'packaging for about 10,000 cigarettes') and 'cartons' (defined as 'packaging for five or more unit packs of tobacco products'). These definitions are problematic because it would be easy to package products differently to avoid the obligations. The working group should discuss the different way products are (or could be) packaged and ensure that the units are defined in such a way as to avoid evasion of the obligations.
- How should obligations be imposed with respect to tobacco products other than cigarettes?
- How should obligations be imposed with respect to manufacturing equipment and key inputs used in the manufacture of tobacco products?
- What arrangements could be used to track and trace packaged tobacco leaf?
- How can information best be shared between jurisdictions? For example, how would the 'link' referred to in sub-provision 7 of the draft provision in the Chairperson's text work? Would it be on request by Parties, or through access to a database, or both?

- How can Parties' national systems be standardized to facilitate international cooperation?
- What technology/ies or forms of marking can/should be used to record information?

While these issues should be considered further through a working group, FCA would like to note some general preliminary concerns:

- FCA is concerned that the Chairperson's text proposes requirements with respect to cigarettes only when packaged in master cases and cartons, and not at pack level – the only reference to cigarette packs is the requirement in sub-provision 10(d) to endeavour to cooperate with respect to 'further development of the technology to mark and scan cigarette packs'. FCA considers that the protocol should include obligations relating to cigarette packs.
- FCA is concerned that the Chairperson's text may be read as suggesting that tracking and tracing will occur through non-standard national systems. FCA considers that the possibility of internationally standardized tracking and tracing should be considered by the proposed working group.
- FCA is concerned that the use of the word 'scanning' in the draft provisions in the Chairperson's text may be too restrictive, suggesting a requirement for certain kinds of technology.
- FCA is concerned that the approach taken in sub-provision 10 of the draft provision in the Chairperson's text to ongoing cooperation in relation to technological matters may not be effective. FCA considers that, given the complexity of the technological issues, the establishment of an ongoing subsidiary body should be considered to facilitate the necessary cooperation.

While noting that the draft provision on Tracking and tracing in the Chairperson's text will require further consideration based on the work of a working group, FCA offers the following specific suggestions for consideration by the Parties in their discussions on the draft provision:

- In sub-provision 2, FCA recommends that the words 'unique machine-scannable and human readable markings' be amended to include the words 'secure' and 'non-removable', which were important features of the marking system proposed in the expert group's template of a protocol on illicit trade.⁷
- In sub-provision 3, FCA suggests the following amendments:
 - In the chapeau, the word 'allow' should be added to read '*allow* the determination of ...'.
 - In para (j), the words 'intended shipment route' should be added to read 'the shipment date, shipment destination, point of departure, *intended shipment route*, and consignee'.

⁷ See paras 18-20 of the protocol template: codes and markings should be 'non-removable' and 'highly secure, containing specific and robust security features'.

- As the tracking and tracing system must apply to all products ‘manufactured in or imported into’ a Party’s territory – with requirements in relation to imported products needed to deal with products from non-Parties – a requirement for the importer to record information needs to be added to sub-provision 4. For imported product, the first shipment after import needs to be recorded for tracking and tracing to work. The text should read ‘by the manufacturer *or importer*’. For both manufacturers and importers, the text should require the information to be recorded ‘at *or before* the time of first shipment’.⁸
- In sub-provisions 5 and 10, the obligations should not be on ‘licensees’ but on all those persons who have obligations under this provision on Tracking and tracing.
- In sub-provisions 6 and 7, the terms ‘central point’ and ‘central point of contact’ require clarification. It is currently unclear whether this is referring to an agency/body or an electronic database. FCA considers that this matter will require further consideration by the proposed working group.
- In sub-provision 9, the words ‘requirements being imposed on manufacturers’ should be amended to ‘requirements being imposed on manufacturers *and importers*’.

Record-keeping

FCA supports the proposed requirement that participants in the tobacco product supply chain be obliged to keep records of transactions in which they engage and to make these records easily accessible to relevant authorities. The trade in tobacco products cannot be monitored by authorities unless those who participate in it make and keep records of their activities, and provide access to these records to authorities.

FCA considers that the draft provision on Record-keeping in the Chairperson’s text includes the key elements of an effective international approach to record-keeping, including: obligations to maintain records for a specified period of time; obligations to make records available to relevant authorities; and sharing of records between Parties.

As obligations with respect to record-keeping and the sharing of records between Parties will overlap with those relating to tracking and tracing, FCA

⁸ Note that the *Legislative Guide for the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime* states (p 430, available at <http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>) states that the requirement under the Protocol that markings be affixed to ‘imported firearms’ ‘means that the process must generally be complete at the time the firearm is actually imported. The Protocol does not specify whether the importer or exporter should be required to affix such additional markings or at what stage of the process this must be done, leaving those decisions to the discretion of national legislatures.’

recommends that the draft provision on record-keeping also be considered by the proposed working group on tracking and tracing, to ensure that the two provisions work effectively together, with all necessary information being required to be recorded and shared and no unnecessary duplication.

While noting that obligations on record-keeping should be considered further through a working group, FCA would like to make the preliminary recommendation that record-keeping obligations should apply to *all* commercial transactions other than final retail sale – including for all tobacco leaf dealers and all commercial importers and exporters of tobacco leaf – with the only exception being for tobacco growers, in relation to whom the obligations should be encouraged rather than required. FCA offers the following specific suggestions for consideration by the Parties in their discussions on the draft provision on Record-keeping in the Chairperson’s text:

- In sub-provision 1, FCA suggests the following amendments:
 - The words ‘of all transactions relevant to the object and purposes of this Protocol’ are not sufficiently defined, and should read ‘of all transactions *in which they participate relating to the manufacture, sale, distribution, storage, shipment, import or export ...*’.
 - The words ‘complete and accurate records’, which appear to describe the substance of the primary record-keeping obligation, should be further defined. FCA considers this to be an important matter for discussion by the proposed working group on tracking and tracing and record-keeping.
 - Following the words ‘all natural persons engaged in ... the manufacture, sale, distribution, storage, shipment, import or export of tobacco products’, the words ‘*excluding the final retailer and persons importing or exporting tobacco products for their personal consumption*’ should be added.
- Sub-provision 2:
 - FCA considers that it would be preferable to apply this obligation more broadly through the supply chain than just to those entities that are licensed. The chapeau should clearly specify which persons are covered by this sub-provision.
 - Para (b) should state ‘quantities of *any* tobacco, tobacco products ...’, as not all persons covered by the sub-provision will deal in all the goods and products mentioned.
- FCA considers that it would be preferable to apply sub-provision 3 to particular persons intended to be covered by these requirements, rather than to the more general category of licensed persons. It is not yet clear whether all persons who are proposed to be covered by these requirements will be required to be licensed, or whether all those who are required to be licensed should be covered by these requirements.

- In sub-provision 5, FCA suggests the following amendments:
 - In the chapeau, FCA considers that the wording used in the FCTC should be used, as follows: '*legislative, executive, administrative and/or other measures*'.
 - In para (b), it should be made clear how information is to be made available to competent authorities (eg on request or periodically).
 - In para (c), noting that this requirement applies only 'as far as feasible', FCA considers that the word 'electronically' should be added, as follows: 'as far as feasible, kept *electronically and* in a common format'.
- FCA considers that the sharing of records between Parties, briefly dealt with in sub-provision 6, should be considered by the proposed working group, and attention given to its relationship with the provisions dealing with information sharing in Part V of the Chairperson's text.

Security and preventive measures

FCA supports the proposed requirement that Parties oblige participants in the tobacco product supply chain to take measures to prevent the diversion of tobacco products into illicit trade channels. Such requirements ensure that participants in the tobacco product supply chain exercise responsibility with respect to what happens to products once they part with them, reinforcing provisions requiring the undertaking of due diligence.

FCA considers that the draft provision on Security and preventive measures in the Chairperson's text includes key effective measures, including: a general obligation to take all reasonably practicable measures to prevent diversion; restrictions on acceptable methods of payment; and an obligation not to supply in amounts that exceed legitimate demand. To assist in Parties in their deliberations on the draft provision, FCA offers the following specific suggestions:

- FCA considers that the requirement set out in sub-provision 1 to take 'all reasonably practicable measures to prevent diversion' should apply to *all* participants in the tobacco product supply chain, including all tobacco leaf dealers and commercial importers and exporters of tobacco leaf, and all tobacco growers. While what is 'reasonably practicable' will depend on the kind of entity to whom the obligation applies, all participants in the tobacco product supply chain should be required to meet this standard.
- FCA recommends that sub-provision 2 include other examples of effective sanctions, such as financial penalties, in addition to licence-based sanctions.
- As noted above, FCA recommends that sub-provision 7, dealing with reporting of suspicious transactions, be moved to the draft provision on

Customer identification and verification, and that the definition of 'suspicious transactions' in the draft provision on Use of terms be broadened.

- FCA recommends the inclusion of an additional sub-provision requiring Parties to oblige participants in the tobacco product supply chain to only transact with persons they, on reasonable grounds, believe to be licensed, where a licence is required for the conduct of the activities in which such persons are engaged. Such an obligation would be consistent with the proposed requirement in sub-provision 2(a) of the draft provision on Customer identification and verification that, as part of the undertaking of due diligence, persons obtain information to confirm the holding of an applicable licence.

Internet and other telecommunication-based modes of sale

The sale and purchase of tobacco products via the internet or other means of telecommunication are easily used as a means of evading taxes, as well as other regulations including prohibitions on sales to minors and packaging and labelling requirements. The most effective way to prevent such evasion would be to require a ban on internet and other telecommunication-based modes of sale of tobacco products, as proposed by several Parties at INB-1.

FCA does not support the approach proposed in the Chairperson's text, which would permit the sale of tobacco products via the internet and other means of telecommunication, provided 'all relevant obligations covered by th[e] Protocol' had been complied with. FCA considers that this proposed approach does not effectively address the realities of internet and other cross-border telecommunication-based modes of sale.

States face very serious difficulties in regulating internet transactions, arising from both the inherently cross-border nature of the internet and the volume of transactions that can take place between persons in different physical locations. Persons located within one state's territory can interact directly with persons located within the territory of another state, and effect exchange of goods without the involvement of any other person other than those delivering the goods (who may or may not be aware of the nature of the goods they are delivering), in circumstances where the laws of the respective states governing the interactions – including taxation laws – may be substantially different, and where each of these states would find it practically impossible to enforce its laws against the person located in the other state.

While states generally seek to prevent their taxation laws from being circumvented through cross-border trade by imposing duties payable upon import, the enforcement of such duties is very difficult in the case of cross-border internet or other telecommunication-based transactions. The payment of duties on products purchased over the internet and imported into a state's territory through delivery services is difficult to monitor, particularly as those

involved in transporting and delivering products will often be unaware of their contents. Different delivery services can deliver multiple consignments of products to either the same individual at the same address or multiple individuals at different addresses, without authorities observing any unusual or suspicious activity.

FCA considers that the evasion of taxes and other tobacco control regulations through internet and other telecommunication-based sale and purchase of tobacco products cannot be effectively addressed by the measures proposed under other provisions of the Chairperson's text, most of which do not require obligations to be imposed on those centrally involved in internet sales – including retailers, purchasers, delivery service providers and others who facilitate such transactions, including credit card service providers. FCA recommends the inclusion in the protocol of a provision requiring Parties to ban internet and other telecommunication-based modes of sale of tobacco products to consumers.

Part IV: Enforcement

FCA supports the inclusion in the protocol of strong provisions relating to enforcement – both the establishment of a comprehensive set of offences and the provision of effective enforcement mechanisms. Effective enforcement of laws against illicit trade in tobacco products deters participation in illicit trade and holds those who breach the law accountable for their conduct.

Offences

FCA supports the proposed requirement that Parties establish offences to hold those who participate in or facilitate illicit trade in tobacco products accountable for their conduct and to facilitate international cooperation to combat illicit trade.

FCA considers that, while not all of the offences to be established should be required to be criminal offences – as some Parties may wish to establish other kinds of offences (such as regulatory offences that carry civil fines or other civil penalties) for some kinds of proscribed conduct – it is critical that the most serious conduct be criminalized by all Parties, particularly if criminalization is to be treated as the basis for the formal aspects of international legal cooperation set out in Part V of the Chairperson's text.

To assist Parties in their deliberations on the draft provision on Offences in the Chairperson's text, FCA offers the following specific suggestions:

- Sub-provision 1:
 - While FCA understands why the words ‘when committed intentionally’ are used in the obligation to criminalize particular conduct, FCA considers that these words should not be included for this more general obligation to ‘establish the following conduct as unlawful’.
 - FCA recommends that, once agreement has been reached on the part of the protocol dealing with Supply chain control, sub-provision 1 of the draft provision on Offences be carefully considered to ensure that the provisions are consistent and all proscribed conduct is covered. For example, FCA notes that failure to ‘take all reasonably practicable measures to prevent diversion of tobacco products into illicit trade channels’ (required under sub-provision 1 of the draft provision on Security and preventive measures) is not included in the draft provision on Offences, and would therefore not be subject to the international cooperative measures applicable to offences proposed in Part V of the Chairperson’s text.
 - FCA recommends that amendments be made to paras (a), (b) and (c) to ensure that all conduct for which persons should be required to hold a licence is covered. Conduct required to be established as unlawful if engaged in without a licence should include: manufacturing tobacco products; commercial import or export of tobacco products; wholesaling, brokering or warehousing tobacco products; commercial dealing in tobacco leaf; commercial import or export of tobacco leaf; and manufacturing manufacturing equipment or key inputs used in the manufacture of tobacco products (noting that the kinds of equipment and key inputs to be covered will require further definition).
 - In para (d), FCA recommends that ‘without appropriate labelling, marking or stamping’ be amended to ‘without *required* labelling, marking or stamping’.
 - FCA considers that para (e) should be moved to sub-provision 2, and the word ‘*required*’ included before ‘labelling, stamping or marking’. Defacing, falsifying, removing, altering or interfering with required labelling, stamping or marking of tobacco products – particularly tax stampings – is serious misconduct and should be criminalized by all Parties. FCA notes that ‘falsifying’ required labelling, stamping or marking is already contemplated in sub-provision 2(b), which applies, inter alia, to ‘counterfeiting’ fiscal stamps, markings or labels.
 - FCA considers that paras (f) and (h) should be moved to sub-provision 2. Obstruction of inspectors, auditors and other public officials and making incomplete or false statements to inspectors, auditors, customs officers or other authorised public officials are ‘obstruction of justice’ type offences and should be criminalized by all Parties. FCA notes that the other such offence – misdeclaration of description, quantity or value – is already included in sub-provision 2(d).

- FCA considers that para (g) should be moved to sub-provision 2. The keeping of accurate records is critical in enabling authorities to control and monitor the tobacco product supply chain. Failure to maintain records or maintaining false records should be criminalized by all Parties.
 - FCA recommends that para (i) be extended to include *supplying* to a person who should be, but is not, licensed – it should not be limited to obtaining from an unlicensed person.
 - In para (j), FCA considers that the term ‘intermingling’ needs to be defined or the provision re-drafted to clarify what kind of intermingling it is intended to address. FCA recommends that consideration be given to moving para (j) to sub-provision 2 and amending it to ‘*disguising* tobacco products as non-tobacco products during the progression through the supply chain of tobacco products’.
 - FCA recommends that para (k) be amended so as to enforce a complete ban on internet and other telecommunications-based modes of sales of tobacco products to consumers.
- Sub-provision 2:
 - FCA fully supports para (a). Tax evasion is the heart of illicit trade in tobacco products and should be criminalized by all Parties.
 - FCA does not support the obligations set out in paras (b) and (c) to criminalize counterfeiting of tobacco products and manufacturing, selling, distributing, storing, shipping, importing or exporting of counterfeit products. Counterfeit as an intellectual property matter is already dealt with through other international agreements and arrangements, including the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (‘TRIPS’) and the *Paris Convention for the Protection of Industrial Property* (‘Paris Convention’). The protocol, and the resources that will be required to ensure its effective implementation, should only be concerned with the sale of counterfeit products to the extent that this undermines public health by evading taxation laws and other relevant laws and regulations, not with the protection of tobacco manufacturers’ intellectual property rights. FCA considers that, to avoid confusion, the falsifying of fiscal stamps and similar required markings should not be treated as ‘counterfeiting’. As noted above, FCA recommends that defacing, falsifying, removing, altering or interfering with required labelling, stamping or marking of tobacco products be criminalised by all Parties.
 - In para (d), FCA recommends that the words ‘official documentation’ be added, to read: ‘*misdeclaring in official documentation*’.
 - FCA broadly supports paras (e), (f), (g) and (h).

Liability of legal persons

FCA supports the draft provision on Liability of legal persons, which will ensure that Parties may hold corporate entities liable for the commission of any offence covered by the protocol.

FCA considers that the liability of legal persons for any offence covered by the protocol should be without prejudice to the liability of natural persons for any such offence, and recommends that the word 'criminal' be deleted from sub-provision 3 of the draft provision, as follows: 'Such liability shall be without prejudice to the ~~criminal~~ liability of the natural persons who have committed the ~~criminal~~ offences.'

Sanctions

FCA supports the draft provision on Sanctions, which will ensure that Parties impose effective sanctions on those held liable for any offence covered by the protocol.

FCA recommends that sub-provision 1 be amended to refer to 'effective, ~~proportionate~~ and dissuasive sanctions', as Parties' sanctions which are effective and dissuasive should not be open to question by other Parties on the basis of different views as to what is 'proportionate'.

Search of premises and seizure of evidence

FCA supports the draft provision on Search of premises and seizure of evidence, which will ensure that Parties' competent authorities may search premises and seize evidence with respect to the commission of any offence covered by the protocol.

Confiscation and seizure

FCA supports the draft provision on Confiscation and seizure, which will ensure, to the greatest extent possible, that Parties' competent authorities may: confiscate property, equipment or other instrumentalities used in or destined for use in any criminal offence covered by the protocol, and proceeds of (or property of corresponding value to proceeds of) such offences; and identify, trace and seize such items for the purpose of eventual confiscation.

FCA considers that the word 'freezing' should be included in sub-provision 2 of the draft provision, as follows: 'to enable the identification, tracing, *freezing* or seizure of any item ...'.

FCA further suggests that the inclusion of sub-provision 10 in the draft provision is not necessary in light of Art 15.4(c) of the FCTC and the proposed provision on Destruction.

Seizure payments

FCA supports the principle reflected in the draft provision on Seizure payments – that a manufacturer/producer has significant capacity to control its supply chain, and should be held accountable for failing to exercise this control responsibly.

However, FCA considers that further work may be required to examine how this principle can best be implemented with respect to cross-border trade. FCA recommends that the Parties request the Convention Secretariat to prepare a paper on these issues for consideration by INB-3.

While noting that the draft provision on Seizure payments in the Chairperson's text may require further work, FCA offers the following specific suggestions for consideration by the Parties in their discussions on the draft provision:

- FCA considers that the word 'lost' should be replaced by the word 'unpaid', to read: 'amount equivalent to *unpaid* taxes and duties'.
- FCA considers that the term 'genuine' should be deleted. FCA understands the use of the word 'genuine' in this context to be intended to distinguish between products manufactured/produced by the manufacturer/producer identified on the product and counterfeit product not in fact manufactured/produced by the manufacturer/producer identified on the product. FCA considers that it is unnecessary to make this distinction here, as the draft provision only refers to the levying of payments on 'the producer or manufacturer' – if seized products were counterfeit and not manufactured/produced by the manufacturer/producer identified on the product, the provision would not apply with respect to that manufacturer/producer.
- FCA considers that the draft provision is strangely located in the Chairperson's text, and would be better placed following the draft provision on Sanctions.

Destruction

FCA supports the draft provision on Destruction, which will ensure that tobacco, tobacco products, or relevant manufacturing equipment/key inputs confiscated by Parties are destroyed and cannot re-enter the illicit market, while allowing for their legitimate use in training and law enforcement.

Special investigative techniques

FCA supports the draft provision on Special investigative techniques, which will ensure that Parties' competent authorities may use appropriate special investigative techniques to effectively combat illicit trade.

Part V: International cooperation

FCA supports the inclusion of strong provisions on international cooperation in the protocol. Effective international cooperation – including exchange of a range of relevant information, cooperation in scientific, technical and technological matters and cooperation in law enforcement – is critical to combating illicit trade in tobacco products.

Information sharing

FCA supports the inclusion in the protocol of comprehensive provisions on information sharing between Parties. FCA considers that the draft provisions dealing with information sharing in the Chairperson's text will greatly facilitate the sharing of relevant information in order to effectively combat illicit trade, including through the communication of information to a central authority to be shared with all Parties.

However, FCA considers that further work will be required to articulate how the 'secure, central, automated database' proposed in the Chairperson's text will work – including how information will be placed on the database, how information will be accessible, and by whom the database will be administered (eg the Secretariat or a technical body reporting to the Meeting of the Parties) – and to ensure that the various provisions of the Chairperson's text that deal with information sharing work logically and effectively together. FCA recommends the establishment of a working group to further consider the draft provisions dealing with information sharing, either at INB-2, or inter-sessionally to report back to INB-3.

While noting that the draft provision on Information sharing in the Chairperson's text will require further consideration based on the work of a working group, FCA offers the following specific suggestions for consideration by the Parties in their discussions on the draft provision:

- FCA recommends that the draft provisions on 'Statistical data' and 'Operational data' be consolidated into one provision dealing with 'Information sharing'. FCA notes that, as currently drafted, the provision on 'Statistical data' appears to include some information that is not only 'statistical'.
- FCA recommends that the consolidated provision on Information sharing include a requirement to share relevant information on all persons licensed by a Party, persons refused a licence by a Party or persons whose licence has been suspended or cancelled by a Party. Such information should be automatically available to all Parties on a secure database – not only on the 'initiative' of the Party with the information or 'on request where the requesting Party provides due justification ...' – to enable them to check, for example, whether licence applicants have had a licence refused or cancelled in another Party.

FCA notes that the consolidation of the draft provisions on 'Operational data' and 'Statistical data' into one provision on Information sharing, as suggested above, would facilitate the identification of information to be shared only directly between Parties, and information to be placed on the proposed central database.

- In sub-provision 1, FCA notes that para (c) ('data on the agricultural production of tobacco') seems to overlap with para (b) ('quantity or value of production of tobacco').
- In sub-provision 2:
 - As noted above, FCA considers that further consideration should be given to how best to facilitate the effective operation of the proposed database.
 - FCA considers that the term 'non-nominal' should be defined.

Confidentiality and protection of information

FCA supports the inclusion in the protocol of requirements for the protection of confidential information shared by Parties.

FCA considers that sub-provision 1 of the draft provision on Confidentiality and protection of information should be moved to the draft provision on Information sharing and further considered by the proposed working group on information sharing. The identification of both the authority/ies to which information is to be supplied, and the authority/ies which will supply information, is a key part of the system of information sharing to be established under the protocol.

Assistance and cooperation: Training, technical assistance and cooperation in scientific, technical and technological matters

FCA supports the draft provision, which will facilitate cooperation in training, technical assistance and scientific, technical and technological matters to assist in effective action against illicit trade in tobacco products.

Assistance and cooperation: Investigation and prosecution of offences

FCA supports the principle that Parties should cooperate in the investigation and prosecution of offences covered by the protocol, but recommends that the relationship between this draft provision and the draft provision on Law enforcement cooperation be further examined, and the provisions carefully drafted together to ensure their effectiveness.

To assist Parties in their consideration of the draft provision, FCA notes that:

- Sub-provision 1 may be unnecessary in light of sub-provision 2 of the draft provision on Law enforcement cooperation.
- The first part of sub-provision 2 ('ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade ... have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law') overlaps with sub-provision 1 of the draft provision on Law enforcement cooperation; while the second part ('consider the establishment of a designated authority to serve as a national centre for the collection, analysis and dissemination of information among the other authorities and with other Parties') should be dealt with in the draft provision on Information sharing and further considered by the proposed working group on information sharing.

Protection of sovereignty

FCA broadly supports the draft provision on protection of Parties' sovereignty.

Jurisdiction

FCA broadly supports the draft provision on Jurisdiction, which will ensure that Parties establish their jurisdiction over criminal offences covered by the protocol in appropriate circumstances.

Joint investigations

FCA supports the draft provision on Joint investigations, which will facilitate the establishment of joint investigative bodies on a bilateral or multilateral basis to combat illicit trade in tobacco products.

Law enforcement cooperation

FCA supports the draft provision on Law enforcement cooperation, which will facilitate effective cooperation for the prevention, detection and investigation of offences covered by the protocol and the prosecution and punishment of those involved in the commission of such offences. As suggested above, FCA recommends that the relationship between this draft provision and the draft provision on Assistance and cooperation: Investigation and prosecution of offences be further examined, and the provisions carefully drafted together to ensure their effectiveness.

To assist Parties in their consideration of the draft provision, FCA notes that:

- the application of the draft provision may be too narrow, with sub-provisions 1(a) and (b) applying only to ‘criminal offences covered by this Protocol’ rather than to all ‘offences covered by this Protocol’.
- various of the sub-provisions included in the draft provision should be considered together with the other provisions dealing with information sharing, as suggested above, to ensure that all necessary information sharing is covered and there is no unnecessary duplication.
- the words ‘endeavour to’ in sub-provision 3 should be deleted, as the obligation is already sufficiently qualified by the words ‘within their means’.

Mutual administrative assistance

FCA supports the principle that Parties should share all relevant information to assist one another in the prevention, detection, investigation, prosecution and combating of illicit trade, but recommends that the content of the draft provision on Mutual administrative assistance be moved to the provision on Information sharing, and carefully examined together with the other provisions dealing with information sharing to ensure their effectiveness.

Mutual legal assistance

FCA supports the draft provision on Mutual legal assistance, which will facilitate the provision of the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the criminal offences covered by the protocol.

Extradition

FCA supports the draft provision on Extradition, which will assist Parties in holding those involved in the commission of criminal offences covered by the protocol accountable for their criminal conduct.

Part VI: Reporting

FCA broadly supports the draft provision on Reporting and exchange of information, which will be critical in monitoring the implementation of the protocol and maximizing its effectiveness.

However, FCA recommends that the INB should further consider to what extent the Meeting of the Parties to the protocol should determine the reporting mechanism – eg frequency of reports, process for consideration of reports – as is currently proposed in sub-provision 2. FCA reserves its position as to whether some elements of the reporting mechanism should be set out in the protocol – noting, for example, that in Article 21.2 of the FCTC, there is a requirement that each Party submit its initial report within two years of entry into force of the Convention for that Party.

Part VII: Institutional arrangements and financial resources

FCA broadly supports the draft provisions on Institutional arrangements and financial resources for implementation of the protocol. FCA reserves its position as to whether the dispute settlement provisions set out in Article 27 of the FCTC will be appropriate for the settlement of disputes concerning the interpretation or application of the protocol, or whether a different dispute settlement mechanism should be established.

FCA offers the following specific suggestions to assist Parties in their deliberations on the draft provision on Meeting of the Parties:

- FCA considers that there may need to be discussion to clarify whether the contemplated ‘voluntary extrabudgetary contributions’ proposed in sub-provision 4 to be receivable by the Secretariat are limited to extrabudgetary contributions from Parties, and, if not, any restrictions that should be imposed on the entities from whom extrabudgetary contributions can be received.
- FCA considers that Article 23.5 of the FCTC contains too much detail relating to Articles of the FCTC to be appropriately referenced ‘*mutatis mutandis*’ in sub-provision 6. FCA recommends that, once the substantive content of the draft protocol has been agreed, sub-provision 6 be redrafted in such a way as to reflect that substantive content.

FCA also suggests that in the draft provision on Secretariat, further consideration be given to the necessity of including sub-provision 2(g). FCA notes that the accreditation of intergovernmental and nongovernmental organizations as observers, and the role of the Secretariat in the process of accreditation, is provided for in Rules 29-31 of the Rules of Procedure of the Conference of the Parties to the FCTC, which sub-provision 5 of the draft provision on Meeting of the Parties proposes ‘shall apply, *mutatis mutandis*, to the Meeting of the Parties’. FCA considers that the inclusion of sub-provision 2(g) in the draft provision on Secretariat, and particularly the use of the words ‘enter into official relations with’, which are different from the terms used in the Rules of Procedure, could lead to confusion about the process of accreditation.

Omissions from the Chairperson's text

FCA notes that two important provisions considered in the expert group's template for a protocol on illicit trade in tobacco products have not been included in the Chairperson's text, and recommends that they be added to the draft protocol:

Enhancement of law enforcement capacity (protocol template paras 29-31) – effective enforcement action will require adequate resourcing of, and delivery of appropriate training and educational programs to, police, customs, excise and tax officials, and other relevant personnel (for a provision requiring Parties to provide specific kinds of training to particular personnel, see, for example, Article 29(1) of UNTOC); and

Cooperation for purposes of confiscation (protocol template paras 46-47) – because illicit trade in tobacco products is transnational in nature, formal cooperative arrangements between the Parties may be required to allow for confiscation of property or assets used in or destined for use in, and proceeds derived from (or property of corresponding value to proceeds derived from), the commission of offences covered by the protocol (for provisions requiring international cooperation for purposes of cooperation, see, for example, Articles 13 and 14 of UNTOC).

The expert group's template also recognized the importance of three other matters which FCA considers should be included in the protocol:

- a provision providing for the **transfer of proceedings** for the prosecution of a criminal offence covered by the protocol from one Party to another, where such transfer is considered to be in the interests of the proper administration of justice (the need for coordination between Parties in relation to litigation and prosecution of offences was discussed at paras 66-67 of the protocol template) (see, for example, Article 21 of UNTOC);
- provisions dealing with **public education and awareness-raising** to prevent and combat illicit trade in tobacco products (the promotion of public awareness was discussed at para 5 of the protocol template) (see, for example, Article 31 of UNTOC); and
- a provision dealing with **cooperation with non-Parties** to the protocol (the relationship between Parties and non-Parties was discussed at para 5 of the protocol template). Note that a provision dealing with the extent to which Parties to the protocol should, and how they might, exchange information with and cooperate with non-Parties to the protocol will be important to dealing with illicit trade that takes place in or involves conduct in non-Parties. However, such a provision cannot be drafted until after the substantive content of the protocol is further advanced, when it will be possible to articulate which of the

arrangements for exchange of information and cooperation might be extended to non-Parties.

Finally, FCA considers that, as proposed by several Parties at INB-1, the protocol should require Parties to **ban tax-free and tax-reduced sales of tobacco products to international travelers**, including such sales that occur in duty-free stores. In many parts of the world, tobacco products supposedly intended for duty-free outlets are diverted in vast volumes, tax-free, into contraband distribution networks. The most effective way to prevent this from occurring would be to completely ban such sales.⁹

⁹ It should be noted that such a ban would have a number of other positive outcomes. Duty-free tobacco sales: provide access to cheap tobacco products, which increases consumption; associate tobacco products with an international travel lifestyle; contribute to the normalization of tobacco products and their consumption; and reduce government revenue.