

Key elements of an effective protocol on illicit trade in tobacco products

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 is one of the most effective ways to reduce tobacco consumption. It also deprives governments of billions of dollars in revenue and poses a significant threat to the maintenance of law and order.

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 (Decision FCTC/COP2(12)). At its second session (INB-2), the INB will consider the draft text for a protocol on illicit trade in tobacco products (Document FCTC/COP/INB-IT/2/3) elaborated by the Chairperson of the INB based on discussions at its first session (INB-1).

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 represents a strong basis for the work of INB-2. The text recognizes that effective measures will be required in three main areas: Supply chain control; Enforcement; and International cooperation. FCA considers that an effective protocol on illicit trade in tobacco products should contain strong provisions dealing with each of the following matters:

Supply chain control

- **Licensing** of key participants in the supply chain, including: manufacturers, commercial importers and exporters, wholesalers, brokers and warehouse owners of tobacco products; tobacco leaf dealers and commercial importers and exporters of tobacco leaf; manufacturers of manufacturing equipment and key inputs used in the manufacture of tobacco products; and, where practicable, growers of tobacco leaf and retailers of tobacco products;
- **Customer identification and verification** requirements to ensure that key participants in the supply chain conduct due diligence with respect to customers and contractors with whom they transact, including: obtaining information about their identity and business dealings; monitoring their activities to detect transactions that do not appear to be commensurate with product demand; reporting any suspicious transactions; and terminating business relationships where relevant laws have been broken;
- **Tracking and tracing** of products through the supply chain, with: information required to be recorded to allow tracking and tracing as far through the supply chain as possible; sharing of information between authorities in different Parties; and arrangements to allow ongoing improvement of the system in light of technological developments;

- **Record-keeping** requirements for key participants in the supply chain, including requirements that records of all relevant transactions be maintained for a specified period of time and made available to relevant authorities, and sharing of records between Parties;
- **Security and preventive measures**, including: requirements that participants in the supply chain take all reasonably practicable measures to prevent diversion into illicit trade channels; restrictions on acceptable methods of payment; and obligations not to supply products in amounts that exceed legitimate demand;
- A complete ban on **internet and other telecommunication-based modes of sale** of tobacco products to consumers; and
- A complete ban on **tax-free and tax-reduced sales** of tobacco products to international travelers.

Enforcement

- Establishment of a comprehensive set of **offences**, including criminal offences;
- Measures to **hold corporate entities liable** for the commission of offences;
- Application of effective and dissuasive **sanctions**;
- Measures to enable **search of premises and seizure of evidence**;
- Measures to enable **confiscation and seizure** and identification, tracing and freezing of property, equipment and assets, including proceeds of crime;
- Recovery of unpaid taxes and duties from the producer or manufacturer of seized products (referred to in the Chairperson's text as '**seizure payments**');;
- Measures to ensure the **destruction** of confiscated property (while allowing for use for training or law enforcement purposes);
- Use of **special investigative techniques**, such as controlled delivery, electronic and other forms of surveillance and undercover operations;
- Measures for the **enhancement of law enforcement capacity**; and
- Measures to ensure necessary **public education and awareness-raising**.

International cooperation

- **Information sharing** between Parties, include general, statistical and operational information (subject to appropriate safeguards);
- **Assistance and cooperation with respect to training and scientific, technical and technological matters**;
- Exercise of **jurisdiction**;
- Establishment of **joint investigations**;
- **Law enforcement cooperation**, including with respect to prevention, detection, investigation, prosecution and punishment of offences covered by the protocol;
- **Cooperation for purposes of confiscation** of property, equipment or assets, including proceeds of crime;
- Provision of **mutual legal assistance** in relation to criminal offences covered by the protocol;
- **Extradition** in relation to criminal offences covered by the protocol;
- **Transfer of proceedings** for the prosecution of criminal offences covered by the protocol; and
- Appropriate cooperation with **non-Parties** to the protocol.