

Briefing Note: Fourth Session of the Intergovernmental Negotiating Body on an Illicit Trade Protocol

Geneva: 14th March to 21st March 2010

INTERNET SALES (Article 10)

1. The Framework Convention Alliance believes that the Illicit Trade Protocol should include obligations on Parties to end internet (and other remote telecommunications based) sales of tobacco products to retail customers.
2. Remote sales contribute significantly to the international problem of illicit trade. Tobacco products are a consumer product intended for immediate consumption. They are available from a wide variety of different sources in most jurisdictions, including shops, supermarkets, bars, restaurants, vending machines, and street sellers. Internet and other remote sales generally present disadvantages to the smoker, including bigger investment (buying in bulk), delay in getting the product, and additional mailing costs. Therefore, such sales may be particularly attractive where the smoker intends to avoid applicable regulations, including bans on sales to minors and tobacco taxes.
3. Remote sales allow someone in one jurisdiction to buy tobacco products from someone in another jurisdiction without the knowledge of anyone other than those arranging payment for the transaction and delivering the goods. Payment of taxes and duties and compliance with other tobacco control regulations is therefore very hard to monitor.

FCA Position

4. FCA supports a ban on remote retail sales of tobacco products, including internet sales. Remote means of sale are easily used to evade taxes and duties, as well as other effective tobacco control measures including prohibitions on sales to minors and packaging and labelling requirements.
5. FCA recommends the inclusion of a clear, strong provision requiring a ban on remote retail sales of tobacco products, including the following points:
 - the prohibition should apply only to retail sales – meaning sales directly to consumers
 - it should require each Party to implement effective measures to impose a prohibition within three years of entry into force of the protocol for that Party



- it should apply to sales by *any* remote means - defined as 'any means of transacting by which the parties to the transaction are not in the same physical location': including mail order sales; sales through the internet or any other telecommunications medium; and sales through any other technology that may be developed and used for remote transactions. All remote means of sale pose serious risks for the evasion of taxation laws and other tobacco control laws and regulations. Only a prohibition on all remote means of sale will allow Parties to effectively implement a ban by targeting all those involved, including, in particular, persons transporting or delivering tobacco or tobacco products sold through remote means
- it should apply not only to sales of tobacco or tobacco products by remote means, but also to providing services that facilitate payment for such sales and transporting or delivering tobacco or tobacco products resulting from such sales. An effective ban on remote means of sale of tobacco and tobacco products must cover providers of these services, particularly where retailers engaging in prohibited sales are located outside a Party's territory, as is often the case in internet transactions.

Key Amendment

6. FCA recommends the following language for Article 10:

"Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective measures to prohibit:

(a) retail sales or offering for sale of tobacco or tobacco products through any remote means, including the Internet or any other telecommunications medium;

(b) provision of any service that facilitates payment for any retail sale of tobacco or tobacco products through remote means, by any natural or legal person who knows or ought reasonably to know that they are facilitating payment for such a sale; and

(c) transport or delivery of tobacco or tobacco products the subject of retail sale through remote means, by any natural or legal person who knows or ought reasonably to know that they are transporting or delivering tobacco or tobacco products the subject of such a sale."