

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

Geneva 14th March to 21st March 2010

LICENSING (Article 5)

1. The Framework Convention Alliance believes that entities engaged in the tobacco trade should be required to hold a valid licence. This will enable authorities to collect information in relation to participants in the tobacco trade, restrict participation to those persons that can be expected to comply with relevant laws and regulations (including those required under a Protocol), and suspend or cancel the licences of those persons that do not comply.
2. Licensing is both a practical and a very powerful way to collect revenue efficiently and to control illicit trade, since withdrawal or suspension of a licence would prevent a business from involvement in the tobacco trade in the Party concerned.

FCA Position

3. FCA supports requiring licences for natural or legal persons engaged in:
 - manufacturing, import, export, warehousing, brokering or wholesaling of tobacco products
 - import, export, warehousing, primary processing, wholesaling or brokering of tobacco (excluding wholesaling or primary processing by the grower)
 - manufacturing, import, export, brokering or wholesaling of cigarette papers, filter tow or manufacturing equipment used in the manufacture of tobacco products, and retailing of manufacturing equipment.

For this purpose:

- tobacco products include key inputs, specifically cigarette papers and filter tow
- primary processing means the first stage of the manufacturing process (blending, cutting etc). In this sense, primary processing is a term in common use in the tobacco industry ¹

1. However, FCA does *not* think it practical to require licences for tobacco growers (even if they are engaged in what might otherwise be considered primary

¹ See for example

www.philipmorrisinternational.com/pmintl/pages/eng/ourbus/Factory_tour.asp and
<http://www.hmrc.gov.uk/MANUALS/tpdmanual/TPD6130.htm>

processing as above) or for retailers, although Article 5 should encourage Parties to do this as appropriate.

2. Parties should be required to have appropriate authorities to administer the required licence system, with the power to issue, renew, suspend and remove licences. Article 5 should also set out in detail the information that applicants for a licence will be expected to provide.
3. Article 5 needs to contain an explicit provision providing for the suspension or revocation of the licences of entities breaking the law. It should also provide that licensing authorities do not grant licences to applicants if their application information indicates that they are unfit to carry out the activities covered by the application.

Key Amendment

4. FCA recommends adding the following sub-paragraphs to Article 5.3:

“5.3(c) provide that the competent authority or authorities shall refuse to grant a licence to conduct the activities specified in paragraph 1 of this Article if the information provided in the licence application or any other information available to the authority or authorities indicates that the applicant is unfit to carry out the activities covered by the application;” and

“5.3(d) provide that the competent authority or authorities shall, when satisfied that any licensee is unfit to continue to conduct the activities covered by their licence, including on the basis of evidence that the licensee has engaged in illicit trade, suspend or cancel the licence”.