

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

Geneva: 14<sup>th</sup> March to 21<sup>st</sup> March 2010

### FREE ZONES

1. It is important that the Protocol contains strong obligations on “free zones” (also known as free trade zones). The revised International Convention on the simplification and harmonization of customs procedures (Kyoto Convention) defines “free zones” or “free trade zones” as part of a contracting party were any goods introduced are regarded, in relation to import duties and taxes, as being outside the customs territory. Goods in free zones may have labels and markings removed, be intermingled with other products, etc, largely outside the control of customs and law enforcement agencies. According to the World Customs Organization, free trade zones are a major concern for customs authorities and a potential risk for exploitation from organized crime organizations as well as terrorists.
2. The FCA therefore supports the prohibition of tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products in free zones, other than products sold to retail customers resident in the zones.
3. To the extent that there is not a full prohibition on tobacco and tobacco products in free zones, FCA would encourage and support parties to adopt specific language on “intermingling” in the Protocol that prevents the clandestine introduction or removal of tobacco products, key inputs, and tobacco manufacturing equipment to or from their customs territory, including bonded warehouses, free or foreign trade zones an in-transit shipments. Clandestine introduction or removal would include concealment, false manifesting or any other fraud scheme intended to disguise or misrepresent the contents of any shipment.
4. One means of effecting a ban on intermingling would be to prohibit mixing of tobacco and non-tobacco products in a single “consignment” – a specific shipment sent by a consignor to a named consignee, as set out in transportation and customs documentation, for example a bill of lading. (A single consignment may consist of multiple packages.)<sup>1</sup>

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<sup>1</sup> The following definition appears in the “Protocol Relating to the Definition of the Concept of Products Originating from Member of the Economic Community of West African States”; “consignment means all the products forwarded at the same time by an exporter to a consignee, or transported under the cover of a single document from an exporter to a consignee, or in the absence of such a document, under the cover of a single invoice”  
[www.comm.ecowas.int/sec/en/protocoles/Protocol\\_relating\\_to\\_the\\_definition\\_of\\_products050402.pdf](http://www.comm.ecowas.int/sec/en/protocoles/Protocol_relating_to_the_definition_of_products050402.pdf)

## **FCA Position**

5. To strengthen draft Article 11, FCA recommends the following amendments:
  - draft Article 11.1 should include cigarette papers, filter tow and manufacturing equipment used in the manufacture of tobacco products, and should clearly state that the application of all relevant provisions of the Protocol is the minimum action to be taken by Parties in implementing effective controls on transactions in free zones;
  - an additional subprovision should be included, before draft Article 11.2, requiring Parties to endeavour, when feasible, to prohibit the introduction into free zones, for commercial purposes, of tobacco, tobacco products, cigarette papers, filter tow and manufacturing equipment used in the manufacture of tobacco products. Not allowing these goods into free zones is undoubtedly the most effective means of ensuring that free zones are not used to facilitate illicit trade, including smuggling, illicit manufacturing and counterfeiting. FCA recognizes that a complete prohibition on entry may not be immediately possible in all Parties, but considers that all Parties should endeavour to implement such a prohibition when feasible; and
  - draft Article 11.2 should clearly require the prohibition by all Parties of intermingling tobacco products with non-tobacco products in consignments imported to or exported from free zones.
1. As noted above in relation to draft Article 1 (Use of terms), FCA supports the inclusion of a definition of 'free zones' based on the definition in the Revised Kyoto Convention, and further recommends the inclusion of definitions of 'intermingling' and 'consignment'.