



FCA RECOMMENDATIONS: A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS¹

Recommendations

At the second session of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (FCTC), the Parties should decide to:

- 1. Establish a negotiating body that is mandated to develop a protocol on the elimination of illicit trade in tobacco, to be submitted to the COP for adoption.**
- 2. Authorise the negotiating body to adopt any necessary modifications to the Rules of Procedure of the COP insofar as they apply to its proceedings in order to allow it to exercise its functions in the most efficient and effective manner.**
- 3. Request the Convention Secretariat to prepare a provisional agenda for the first meeting of the negotiating body based upon the issues raised in the report of the expert group on illicit trade established under decision FCTC/COP1(16) (Elaboration of protocols) and presented to the second session of the COP (A/FCTC/COP/2/9).**
- 4. Mandate the negotiating body to begin the process of developing a protocol without delay and to conduct the process as a matter of urgency. The negotiating body should report to the third session of the COP on the status of the process and should endeavour to complete its work as early as possible in 2010, with a view to the COP adopting the results during 2010.**

Background

Parties to the 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 global tobacco control. This is because:

¹ This document outlines FCA’s recommendations to the Conference of the Parties. Further information may be found in the FCA briefing paper ‘A Protocol on Illicit Trade in Tobacco Products’, available online at www.fctc.org.

- smuggled and counterfeit cigarettes are sold at lower prices, making cigarettes available cheaply, thereby increasing consumption and undermining efforts to keep young people, in particular, from smoking;
- illicit trade in tobacco products deprives governments of billions of dollars in taxation, reducing the funding available for public health and other policies;
- illicit trade in tobacco products undermines high tobacco taxation policy, which evidence shows is one of the most effective ways to reduce tobacco consumption;
- illicit trade in tobacco products makes top international brands available at affordable prices to low-income consumers, and to image-conscious young people who often regard such products as sophisticated and stylish; and
- illicit trade in tobacco products leads to the evasion of tobacco control laws, such as prohibitions on selling to minors, packaging and labelling requirements, and regulation of contents and disclosure, thereby undermining the effectiveness of measures implemented by Parties under the FCTC to protect their citizens from the devastating health, social, environmental and economic consequences of tobacco consumption.

Illicit trade in tobacco products poses a threat to all Parties to the FCTC. The presence of smuggled or counterfeit tobacco products in a Party's territory deprives it of revenue, undermines the effectiveness of its tobacco control measures, and may damage relations with other Parties attempting to eliminate illicit trade. Even for Parties in which smuggled or counterfeit tobacco products are not common, illicit trade in tobacco products represents a threat: it is a problem which may reach new territories if not dealt with, and it threatens law and order through its contribution to the financing and growth of transnational organised criminal activity.²

The 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. Given the scale of the problem, it is important that a robust international system to effectively address illicit trade be developed and implemented by the Parties to the FCTC as soon as possible.

The need for a protocol

At its first session, the Conference of the Parties to the FCTC reaffirmed 'that international collaboration for the control of illicit trade is an important area of tobacco control' and established an expert group to prepare a template for a protocol on illicit trade in tobacco products.³ A protocol to the FCTC is necessary because the elimination of illicit trade will require the implementation of a comprehensive system of international cooperation that is not provided for in Article 15. In order to implement such a system, Parties would have to commit to additional obligations and new cooperative mechanisms would have to be established.

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 online at <http://www.gao.gov/new.items/d04163.pdf>.

³ 'Elaboration of protocols' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, first session, decision FCTC/COP1(16)).

The report of the expert group established by the COP at its first session will be considered by the COP at its second session.⁴ FCA supports the template prepared by the expert group, which recommends the adoption of a comprehensive and cooperative multilateral approach to combat illicit trade in tobacco products, through measures including:

- licensing schemes for participants in the tobacco business;
- measures to eliminate money laundering;
- the development of an international system that enables the tracking and tracing of tobacco products;
- the implementation of laws governing record keeping and internet sales of tobacco products;
- the criminalization of participation in illicit trade in various forms;
- obligations for tobacco manufacturers to control their supply chain with penalties for those that fail to do so;
- programs to increase the capacity of law enforcement bodies; and
- programs to increase cooperation and technical assistance with respect to the investigation and prosecution of offences and the sharing of information.

The report of the expert group provides a template from which parties are able to negotiate a protocol. The template sets out a range of recognised measures that are available to combat illicit trade. Many aspects of the template are modelled on other multilateral framework conventions and their protocols. As such, it can be expected that negotiation of a protocol will be made easier by the adaptation of existing precedents in international law to the circumstances of illicit trade in tobacco. There is no further preparatory work that needs to be done before negotiation of a protocol can commence.

It is important that negotiations be commenced, and a protocol be adopted, as soon as possible. The health and economic harms of illicit trade in tobacco products require urgent action. In addition, with the negotiation of a protocol on illicit trade in tobacco products now clearly on the agenda of the COP, there is the possibility that Parties will delay the implementation of domestic measures until a protocol has been adopted, not wanting to implement measures that may conflict with, or fall short of, what is ultimately agreed in a protocol. At its second session, the COP should establish a negotiating body that is mandated to develop the draft text of a protocol, to be finalized and submitted to the COP as early as possible in 2010 for consideration and adoption by the COP during 2010.

⁴ '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 online at <http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_9-en.pdf>.