

BULLETIN

TUESDAY 9 OCTOBER 2018

WHAT'S ON: MOP1 SIDE EVENTS AT WHO HQ

TUESDAY 9 OCTOBER

13:30 – 14:30

SALLE A

ENTRY INTO FORCE OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS: ANOTHER KEY MILESTONE

This session will provide information on the negotiations, adoption, promotion, entry into force and implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products

WEDNESDAY 10 OCTOBER

13:30 – 14:30

SALLE A

EXPERIENCES IN THE IMPLEMENTATION OF TRACKING AND TRACING SYSTEMS

This session will provide an opportunity for Parties implementing tracking and tracing systems to share their experience, lessons learnt and perspectives

SLOW DOWN, WE JUST GOT HERE!

Parties had barely got their bearings in Committee A yesterday when the issue of co-operation with other intergovernmental organisations came up under agenda item 4.2. As a result, they missed their first opportunity to discuss a critical subject for this MOP: how can the ITP Secretariat mobilise existing organisations and international arrangements to effectively help implement the Protocol?

If the ITP is implemented in isolation, the Secretariat will find itself constantly re-inventing the wheel. For example, the Protocol will involve governments sharing sensitive information about criminal investigations, which may require secure channels of communication. It would of course be much more efficient to call on the expertise of one of the intergovernmental organisations (IGOs) that has been dealing with this type of issue for decades.

In short, MOP requires effective coordination, and the skills and expertise from law enforcement, customs agencies and tax authorities. That means a number of IGOs need to be involved up-stream in planning for implementation, and work in partnership with the ITP Secretariat, not merely be consulted from time to time on an ad hoc basis.

At MOP1, measured answers will have to be found to important questions. For some of these, such as establishing a global tracking and tracing regime and agreeing on legislative options for free zones, the clock is already ticking. This does not mean that MOP has to rush into decisions without thinking through potential consequences, and ensuring full participation of all Parties - including non-English speakers.

Discussions at MOP1 will be technical and at times complicated; this will not come as a surprise to any Party to the Protocol. Technical discussions are the expectation, but they are deemed to be worthwhile in order to address the illicit trade in tobacco products, which is a pervasive form of tax evasion and contributes to a global tobacco epidemic that kills 7 million people annually.

However, discussions at MOP are not valuable by default, especially if they occur at lightning speed and without adequate participation from Parties. When guiding discussion and gavelling through decisions, there needs to be careful consideration for both the varying technical capacities of delegations and linguistic differences.

The initial documents for MOP – including important technical reports – were not provided to delegations within the 60 day timeline. This gave limited time for delegations to review the material, especially for non-English speaking Parties who experienced further delay. The effect of this is felt most strongly among Parties from low and middle-income countries who may not have access to a team of experts well-versed in these technical matters and available to review at the 11th hour. This also puts them at a disadvantage in MOP discussions compared to higher income countries.

To further exacerbate this, documents have been presented to Parties during MOP in white paper form and available only in English. This anglo-centric method of operating is against the spirit of international cooperation – which the ITP should exemplify!

Decisions should not be made at MOP until materials are available in all relevant languages and Parties have had time to review and participate in discussion among other Parties.

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DE QUEL TYPE DE PERSONNEL LE SECRÉTARIAT A-T-IL BESOIN?

Lorsqu'on se sent malade, on n'appelle pas le plombier. C'est pourtant le genre de choix que la MOP risque de faire si elle tente d'économiser sur les dépenses de personnel de manière inappropriée.

C'est un des grands enjeux dans le débat concernant le budget et le plan de travail pour les deux prochains exercices (2018-19 et 2020-21). Et ce n'est pas qu'une question d'argent: il s'agit de décider aussi de l'orientation que la MOP veut donner au travail de son Secrétariat.

Le Protocole, il y a lieu de le rappeler, a un objectif de santé publique, tout comme la Convention dont il dépend, la CCLAT. Cependant, au niveau national, presque tous les détails opérationnels relèvent des administrations fiscales, des douanes, de la police et d'autres agences.

Ceci est notamment vrai pendant la période de rodage du Protocole – c'est-à-dire d'ici l'entrée en vigueur opérationnelle du point focal mondial pour l'échange d'informations mandaté par l'article 8 – période durant laquelle le Secrétariat devra rapidement établir des relations de confiance avec les autorités nationales et

les organisations intergouvernementales pertinentes.

Il ne s'agit pas d'une tâche dont des spécialistes de santé publique pourront s'acquitter en y consacrant 20% ou 30% de leur temps, comme il est prévu notamment pour l'exercice 2020-21. Il convient en l'espèce de compter sur un personnel de haut niveau, doté d'une solide expérience, par exemple dans le monde des douanes, de la justice ou de la police.

Le Secrétariat se doit de parvenir rapidement à mobiliser une série d'agences qui seront à même d'apporter leur soutien technique aux pays en voie de développement. Pour ce faire, ceci requiert une connaissance des milieux douaniers ou policiers et des organisations intergouvernementales qui servent déjà à faciliter la coopération internationale dans ces domaines.

Y consacrer le budget conséquent ne devrait pas être vu comme une dépense, mais bien comme un investissement incontournable dans la réussite du Protocole.

THE CANADIAN EXAMPLE: TOBACCO COMPANIES CONVICTED OF CONTRABAND

In Canada, in 2008 and 2010, the three major tobacco companies were convicted of contraband and entered civil settlements with federal and provincial governments. The convictions followed guilty pleas and resulted in fines of C\$525 million, the largest in Canadian history. Civil payments totalled C\$1.175 billion, with fines and civil payments together totalling C\$1.7 billion (US\$1.3 billion).

These outcomes arose from actions in the 1990s when the three major tobacco companies in Canada exported vast quantities of Canadian made and branded cigarettes tax-exempt to the U.S., knowing that these cigarettes would return to Canada illegally as contraband. The result was that an estimated 25-30 per cent of the Canadian market in 1993 was contraband. At the time, the companies claimed that they were not doing anything illegal.

The contraband situation prompted the federal government and 5 of 10 provincial governments in 1994 to reduce tobacco tax rates (the rates were not fully restored until 2002). This had a serious adverse impact on smoking prevalence trends, especially among youth. Moreover, government tobacco tax revenue decreased substantially following the reduction in tax rates.

Eventually there were criminal investigations, including Royal Canadian

Mounted Police (RCMP) searches and document seizures at tobacco company offices. The three companies that were convicted and entered civil settlements were Imperial Tobacco Canada (British American Tobacco subsidiary); Rothmans, Benson & Hedges (Philip Morris International subsidiary); and JTI-Macdonald (now a Japan Tobacco International subsidiary, but previously, in the 1990s as RJR-Macdonald, an R.J. Reynolds subsidiary). Also, Northern Brands International, a U.S. subsidiary of R.J. Reynolds, was convicted in both Canadian and US courts.



Governments recovered only a small percentage of the total revenue lost. In subsequent court filings, federal and provincial governments estimated that more than C\$10 billion was forgone. Adding in the lower revenue following the tax rollback, the forgone revenue would be much, much higher.

The Canadian experience shows not only the importance of high tobacco taxes and contraband prevention, but also demonstrates that the tobacco industry has engaged in illicit trade on a massive scale and cannot be trusted.

Rob Cunningham, Canadian Cancer Society

EVERYTHING YOU EVER WANTED TO KNOW ABOUT FREE ZONES

Trends in illicit tobacco trade require us to pay attention to illicit manufacturing, and particularly to “cheap or illicit whites” over counterfeit and contraband of major cigarette brands. This will require us to improve oversight and control of Free Zones.



“CHEAP OR ILLICIT WHITES” ARE CIGARETTES PRODUCED IN COUNTRIES SUCH AS CHINA, PARAGUAY, BELARUS, UKRAINE AND OTHERS, ENTIRELY INDEPENDENTLY OF THE TRADITIONAL TOBACCO MANUFACTURERS. THEY ARE CHEAP CIGARETTE BRANDS, MANUFACTURED BY SOMETIMES TAX PAYING LEGITIMATE BUSINESS ENTERPRISES BUT DIRECTED TO ILLICIT MARKETS IN OTHER COUNTRIES AND REGIONS, AND ARE SOLD WITHOUT PAYING TAXES IN THE DESTINATION MARKET

WHAT ARE FREE ZONES?

Free zones (FZ), also known as free trade zones (FTZ) or Special Economic Zones (SEZ), are areas where regulations and controls are relaxed in an attempt to foster international investment, trade, and employment. This relaxation includes exemptions from import duties and taxation, as FZs are considered to be outside the applicable customs union for the country in which they are located. There are more than 4,000 such zones worldwide.

WHY ARE THEY PROBLEMATIC?

Because FZs are created to improve business and investment opportunities, these incentives often result in reduced financial and trade controls. Some countries totally disregard business in their FZs and often do not treat them as part of the customs territory, providing minimal or no oversight.

FZs facilitate the transit of illicit manufacturing (counterfeit or “illicit whites”) and their untaxed leakage into the customs areas of neighboring countries. Cigarettes may also be re-stuffed (repackaged) into new untraceable containers that are falsely presented as containing other products and leave the FZ to be sold illegally in other markets.

WHAT DOES THE ITP SAY ABOUT THEM?

Article 12 of the ITP requires Parties to implement “effective controls” on manufacturing of and transactions in tobacco and tobacco products in FZs. It also requires Parties to prevent the intermingling of tobacco products with non-tobacco products (where tobacco products and other products are mixed in a single container or other transportation unit in FZs, with the intention of facilitating smuggling). Article 12 also states that Parties should adopt and apply control and verification measures on the transit and transshipment of both tobacco products and manufacturing equipment. These controls need to be in place within 3 years of the ITP coming into force.

HOW DO WE MOVE FORWARD ON ARTICLE 12?

There are real challenges to the effective implementation of Article 12, particularly for low and middle-income countries, where many FZs are located, and which face financial constraints to effective enforcement.

Since many Parties remain committed to FZs on the grounds of their claimed economic benefits, the Protocol’s required controls will need to be implemented with considerable care. Detailed guidance and technical assistance will be needed. Implementation of Article 12 also requires effective engagement with international enforcement agencies such as the World Customs Organisation, Interpol, Europol, and the Financial Action Task Force on Money Laundering (FATF/OECD). FCA is calling for:

- The establishment of a working group on free zones to provide detailed guidance to Parties on implementing Article 12 of the Illicit Trade Protocol.
- This working group should develop a set of criteria outlining what legislative options are available for effective controls in free zones, as well as;
- Clarifying the level of oversight that customs authorities are expected to perform within free zones, and;
- Recommending models for effective interagency cooperation (e.g. customs, law enforcement) to address illicit trade within FZs.

THE TRUE COST OF TOBACCO

This week, the World Bank will release its Human Capital Index. This index rates countries on how close they are to having a healthy, educated workforce that is prepared for the more highly-skilled jobs of the future; and to compete effectively in the global economy.

The health and economic costs of tobacco are clear: it kills more than seven million people every year and millions more suffer from tobacco-related disease – often during their most economically productive years. The global economic cost of smoking amounts to nearly 2 trillion dollars annually, almost 2 per cent of the world’s GDP.

The tobacco industry pushes a narrative about its own economic contribution as an obstacle to the implementation of tobacco control policies. The true cost of tobacco is to be found in the stories of suffering told by the victims like Ike, a non-smoking mother of two from Indonesia, who developed throat cancer from second-hand smoke exposure, or Sunita, a 27-year old smokeless tobacco user from India, who never smoked but developed fatal oral cancer.

The FCTC and the ITP are solutions to reducing tobacco’s harm. If they are properly implemented, cost savings from improved health and productivity, and increased taxes, can fund investments in a country’s human capital and save lives.

Vital Strategies

ORCHID AWARD



To Benin on behalf of AFRO region for calling for more financial and human resources for the MOP and for implementation of the Protocol.

DIRTY ASHTRAY



Thank you to all Parties for not giving us a reason to award an Ashtray today.

THE UK EXAMPLE: HOW TOUGH ANTI-SMUGGLING MEASURES INCREASED GOVERNMENT REVENUES

The UK provides a case study for how tough anti-smuggling measures, as enshrined in the Illicit Trade Protocol, can enable governments to raise taxes, increase revenues and discourage smoking.

This wasn't always the case. During the 1990s the government started increasing taxes above inflation to reduce affordability. By the beginning of the 21st century over 20 per cent of cigarettes smoked in the UK were smuggled, up from 5 per cent in the early 1990s. Worse still the illicit market share was predicted to grow to a third of the market within a couple of years if no action was taken. And access to cheap tobacco meant that the tax policy, which should have discouraged smoking and increased government revenues, was failing on both counts.

The tobacco industry lobbied hard, saying it was high taxes causing increased smuggling and the only solution was to cut taxes. But media investigations and parliamentary enquiries revealed that it was the industry itself that was fuelling the illicit trade. Tobacco transnationals were exporting cigarettes to countries where there was no end market, knowing they'd bounce back to the UK, cheap and untaxed. A good example is Andorra. From 1993 to 1997 sales of UK cigarettes to Andorra ballooned more than a hundredfold from 13 million to 1.5 billion. Andorra was importing enough cigarettes for every man, woman and child to smoke 140 a day. And it wasn't just Andorra, British cigarettes were being exported to all sorts of places with no end market, including Latvia, Kaliningrad, Afghanistan and Moldova.

The tobacco transnationals denied all knowledge, but as one Member of Parliament said to the Chief Executive of Imperial Tobacco, "One comes to the conclusion that you are either crooks or you are stupid, and you don't look very stupid." The UK Government held its nerve and continued to increase taxes, while implementing a tough anti-smuggling



strategy, which included strict supply chain controls and financial sanctions very much along the lines of the Protocol. Between 2000 and 2016, the last year for which there are figures, the size of the illicit market for cigarettes fell by nearly 60 per cent from 17 to 7 billion sticks, with revenue losses down from US\$3.67 billion to US\$2.36 billion (at current exchange rates).

Illicit trade is a major and growing global problem but the lesson from the UK is clear. The Illicit Trade Protocol can help countries raise taxes, increase revenues and drive down smoking prevalence.

Deborah Arnott
Chief Executive ASH (UK)

The Framework Convention Alliance (FCA) is a global alliance of NGOs working to achieve the strongest possible Framework Convention on Tobacco Control. Views expressed in the Alliance Bulletin are those of the writers and do not necessarily represent those of the sponsors.



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