

**FCTC**WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL**Conference of the Parties to the  
WHO Framework Convention  
on Tobacco Control**Fifth session  
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**11 May 2012**

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**Report to the fifth session of the Conference of the  
Parties of the Chairperson<sup>1</sup> of the Intergovernmental  
Negotiating Body on a Protocol on Illicit Trade  
in Tobacco Products****INTRODUCTION**

1. The Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products (INB) mandated its Chairperson to submit a report to the fifth session of the Conference of the Parties (COP). The INB discussed and agreed on the outline to be used as a basis for this report. The draft report was subsequently circulated to the members of the Bureau of the INB for comments. I have taken the comments received into account in the report as presented below, and I would like to thank all Parties for their comments.

**BACKGROUND**

2. The COP decided at its second session to establish an intergovernmental negotiating body, open to all Parties, to draft and negotiate a protocol on illicit trade in tobacco products which would build upon and complement the provisions of Article 15 of the WHO Framework Convention on Tobacco Control.<sup>2</sup>

3. A Chairperson's report was submitted to the fourth session of the COP, taking into account the proceedings of the first four sessions of the INB.<sup>3</sup>

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<sup>1</sup> Mr Ian Walton-George (European Union).

<sup>2</sup> Decision FCTC/COP2(12).

<sup>3</sup> Document FCTC/COP/4/4.

4. The COP acknowledged the progress made by the INB and extended the mandate of the INB to a final session to be held in early 2012.<sup>1</sup> The INB was requested to submit the text of a draft protocol to eliminate illicit trade in tobacco products for consideration by the COP at its fifth session.

5. The COP also decided to establish an informal working group to work prior to the final session of the INB.

### **INFORMAL WORKING GROUP**

6. The informal working group held two meetings (Geneva, 4–8 July and 19–23 September 2011). It was comprised of representatives of 30 Parties (five Parties per WHO region)<sup>2</sup> and was chaired by Dr Nuntavarn Vichit-Vadakan (Thailand). Representatives of States non-Parties, intergovernmental organizations and nongovernmental organizations accredited as observers to the COP and with specific expertise in the matters under the mandate of the working group also participated in the meetings.

7. In accordance with its mandate, the informal working group developed possible text for those articles in Part III (Supply Chain Control) of the draft protocol that had not yet been agreed, and made proposals and recommendations on the other matters within its mandate.<sup>3</sup>

### **FIFTH SESSION OF THE INB**

8. The fifth session of the INB was held in Geneva from 29 March to 4 April 2012. It was attended by representatives of 133 Parties, as well as 7 States non-Parties, 3 intergovernmental organizations and 6 nongovernmental organizations accredited as observers to the COP.

9. The INB confirmed the following officers in the positions which they had held in the fourth session of the INB: Mr I. Walton-George (European Union) as Chairperson, and Mr H. Mohamed (Maldives), Dr E. Al Mansoori (United Arab Emirates) and Dr J. Regalado Pineda (Mexico) as Vice-Chairpersons. Mr A.T. Faireka (Cook Islands) replaced Dr T. Vinit (Papua New Guinea), and Dr M. Kabir (Nigeria) replaced Dr M. Anibueze (Nigeria) as Vice-Chairpersons.

10. On the first day, the INB decided to continue its practice of the two previous sessions to exclude the public from observing the proceedings of the INB. The negotiations were held in plenary. The INB agreed to proceed with its negotiations based on the draft protocol as it stood at the closure of INB4.<sup>4</sup> Following the presentation of the outcome of the work of the informal working group, the INB agreed that the drafting proposals made by the group for Articles 5, 6, 8, 9, 10, 11 and 11*bis* would form the basis of the negotiations on those articles.

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<sup>1</sup> Decision FCTC/COP4(11).

<sup>2</sup> Algeria, Kenya, Nigeria, Senegal and Swaziland from the African Region; Brazil, Canada, Mexico, Nicaragua and Panama from the Region of the Americas; Bhutan, India, Maldives, Nepal and Thailand from the South-East Asia Region; the European Union, Georgia (for the first meeting)/Israel (for the second meeting), Poland, Russian Federation and Turkey from the European Region; Egypt, Islamic Republic of Iran, Pakistan, Saudi Arabia and United Arab Emirates from the Eastern Mediterranean Region; and Australia, China, Cook Islands, Japan and Mongolia from the Western Pacific Region.

<sup>3</sup> See document FCTC/COP/INB-IT/5/3.

<sup>4</sup> See document FCTC/COP/INB-IT/5/4.

11. The INB established an open-ended working group on definitions, chaired by Mr G.H. Gorun (Turkey), which reported to the plenary on 30 March and 3 April 2012.
12. In addition, an open-ended working group on mutual legal assistance and extradition was established. It was chaired by Ms K. Evison (New Zealand) and reported to the plenary on 3 April 2012.
13. The INB also established an advisory committee on language, with a view to ensuring accuracy and consistency in the language of the text negotiated by the INB and subsequently translated. The advisory committee on language, chaired by Dr M.A. Vecino Quintana (Spain), reported to the plenary on 30 March and on 2 and 3 April 2012.
14. At the outcome of the negotiations, the INB decided to recommend to the COP that the draft protocol to eliminate illicit trade in tobacco products contained in document FCTC/COP/INB-IT/5/5, on which consensus was obtained, be considered by the COP at its fifth session, in accordance with decisions FCTC/COP2(12), FCTC/COP3(6) and FCTC/COP4(11).
15. The text of the draft protocol submitted to the COP also takes account of the comments submitted by Parties on the Arabic, Chinese, French, Russian and Spanish translations of the English text, in line with the decision of the INB.

### **Matters referred to the COP**

16. During its last plenary meeting, the INB decided to refer the following matters to the COP. (In addition, two delegations and two regional groups submitted comments for inclusion in this report. They are included in the Annex to this report.)

- **Financing of the Protocol**

The INB considered the recommendations made by the informal working group regarding the financing of the protocol. The outcome of those discussions is reflected in Article 33 (*Meeting of the Parties*). With the addition of paragraph 6, the INB clarified that, following the first session of the Meeting of the Parties, the operation of the Protocol would be financed through voluntary assessed contributions by the Parties to the Protocol as well as other possible resources. Paragraph 7, also added during the fifth session of the INB, requires that the budget and workplan of the Meeting of the Parties be distinct from the budget and workplan of the COP.

One delegation noted that the proposal for financing of the Protocol contained in Article 33 was not the only option. The delegation was uncertain about the costs following the entry into force of the Protocol. As it was possible that the initial costs would be high, for example for establishing the global information sharing focal point, it would be difficult to accept this proposal for financing.

- **Article 43 (*Signature*)**

Article 43 (*Signature*) stipulates that the Protocol shall be open for signature at World Health Organization headquarters in Geneva and, following a 4 to 6 week interval,<sup>1</sup> at United Nations Headquarters in New York. Attention is drawn to the fact that the COP is requested to determine when the Protocol should be open for signature in both places and to include that information in Article 43 of the Protocol when it is being considered for adoption.

- **Technical assistance, cooperation and capacity building with regard to the Protocol**

Several Parties and regional groups underlined the importance of technical assistance, cooperation and capacity building with regard to the Protocol. The comments contained in the Annex to this report refer in more detail to this matter.

- **Article 11bis,<sup>2</sup> paragraph 2: Timeline for evidence-based research**

During the discussion of paragraph 2 of Article 11bis<sup>2</sup> as well as paragraph 5 of Article 5,<sup>3</sup> several Parties and regional groups noted that it would be useful if the evidence-based research could commence at an earlier stage than five years following the entry into force of the Protocol as indicated in these paragraphs. In this regard, see also the comments contained in the Annex to this report.

- **Financial assistance to Parties**

Several Parties and regional groups stressed the importance of providing financial assistance to Parties. The comments contained in the Annex to this report refer in more detail to this matter.

17. Finally, I would like to record my sincere appreciation for the support given to me by the members of the Bureau of the INB, the Chairs of the working groups, all the Parties and the Convention Secretariat during my extended term as Chairperson of the INB. I would also like to thank the European Union for its generous financial support without which it would not have been possible to complete the work. The fact that we achieved consensus on the text of the draft Protocol is due to the commitment and energy of everyone involved, and a willingness to seek solutions and take hard decisions on difficult issues. I believe that the current text has met the objective given by the COP of producing a strong and effective Protocol which will make a very significant contribution to eliminating illicit trade in tobacco products and protecting the health of our citizens, particularly the young and vulnerable. It has once again been a huge privilege and a pleasure to serve as Chairperson of the INB, and I look forward to the speedy adoption and coming into force of the Protocol.

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<sup>1</sup> As explained by the Convention Secretariat during the fifth session of the INB, this interval is requested by the United Nations Treaty Section (acting as the Depository) for operational reasons. The INB took note of this request.

<sup>2</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 13 (*Duty free sales*).

<sup>3</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 6 (*License, equivalent approval or control system*).

## ANNEX

### 1. Comments with regard to Article 11<sup>1</sup> (*Free zones and international transit*)

The delegations of the Philippines and Singapore, while agreeing that Article 11 (*Free zones and international transit*) should be included in the consensus text, requested that the following statement by these delegations be attached to this report.

#### **“Joint statement of the delegations of the Philippines and Singapore**

The delegations of the Philippines and Singapore reserve their position on the text as set out in Article 11 paragraphs 1 and 2 of the draft Protocol. Both delegations further reserve their right to revisit this issue at COP5. The firm position of both delegations includes:

- free zones facilitate legal trade;
- intermingling of goods in free zones is lawful;
- the text as set out in Article 11(2) is unworkable, particularly:
  - as it seeks to prohibit the removal of duty-paid tobacco products and non-tobacco products mixed in a single container from a free zone of a State into that State’s customs territory;
  - as it seeks even to prohibit the removal of duty-paid tobacco products and non-tobacco products mixed in a single container from a free zone of a State to another State; and
  - as it obliges States with free zones to unpack and repack any containers which arrive in the free zone already comprising a mixture of tobacco and non-tobacco products;
- the prohibition on intermingling in the free zone as set out in Article 11 must necessarily include an illicit element such as mixing of tobacco products and non-tobacco products in a single container for the purpose of concealing or disguising tobacco products; and
- to address the issue of intermingling effectively, it should be dealt with not just in the free zones but throughout the entire supply chain.”

### 2. Comments by the African Regional Group

- Given that the tobacco industry is moving its manufacturing operations and related investments to the low- and medium-income countries and noting the African Region’s concerns about the increasing extent of illicit manufacture, hence the need to control effectively key inputs and manufacturing equipment, having, in the spirit of compromise,

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<sup>1</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 12 (*Free zones and international transit*).

accepted the text in Articles 5.5<sup>1</sup> and 11*bis*.<sup>2</sup> fixing time periods within which research is to be done: the African Region requests that priority be given to carrying out research in the areas identified as well as baseline research to establish the burden of illicit trade in the African Region to facilitate the implementation of the identified interventions in the Protocol;

- Technical assistance and capacity building needs of Parties in the African Region in the implementation of the Protocol – the African Region proposes that detailed scoping of the technical assistance and capacity building needs of Parties be carried out to facilitate decision-making on governance; staffing and budgetary needs to be discussed at the sixth session of the COP or at the first session of the MOP, depending on which takes place first;
- Parties shall not accept technical assistance from the tobacco industry for the implementation of the Protocol;
- For a successful implementation of the track and trace system, there is need for the Secretariat to develop a set of minimum requirements for such systems and make it available to Parties, including best practice from Parties currently implementing successful and effective systems that are not amenable to tobacco industry interference; and
- The cost of implementing the track and trace system shall be borne by the tobacco industry but run exclusively by the competent authorities in the jurisdiction of the Parties.

### **3. Comments by the Regional Group of the Americas to be included as recommendations to the COP**

- Encourage Parties to collect information on their current legal, regulatory and policy frameworks, taking into consideration different aspects addressed in the Protocol.
- Task the Convention Secretariat to develop a self-assessment check-list that could be used by Parties to assess their legal, regulatory and policy frameworks to assist in determining what is required in order to implement the Protocol.
- Encourage Parties to cooperate, share information and experiences in order to prepare and implement the Protocol. In order to reduce costs and improve multisectoral engagement, also, encourage Parties, regions, and international organizations to adopt information technologies that could facilitate information sharing and capacity building.
- Request that the Secretariat undertake a study to identify the basic requirements of elements of the global information sharing focal point, such as the type of information to go through the focal point, the standards to be used and any other elements that Parties need to consider in implementing Article 7<sup>3</sup> of the Protocol.

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<sup>1</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 6.5 (*License, equivalent approval or control system*).

<sup>2</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 13 (*Duty free sales*).

<sup>3</sup> Note by the Secretariat: because of the re-numbering of the articles of the draft protocol, the new reference is Article 8 (*Tracking and tracing*).

- Request the World Health Organization, through its regional and country offices, to collaborate with the Convention Secretariat and with Parties in preparatory work for the signature, ratification and implementation of the Protocol.

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