WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

FCTC/COP/INB-IT/2/REC/1

CONFERENCE OF THE PARTIES INTERGOVERNMENTAL NEGOTIATING BODY ON A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS

SECOND SESSION

GENEVA, 20–25 OCTOBER 2008

SUMMARY RECORDS

GENEVA
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ABBREVIATIONS

Abbreviations used in WHO documentation include the following:

ACHR – Advisory Committee on Health Research
ASEAN – Association of Southeast Asian Nations
CEB – United Nations System Chief Executives Board for Coordination (formerly ACC)
CIOMS – Council for International Organizations of Medical Sciences
FAO – Food and Agriculture Organization of the United Nations
IAEA – International Atomic Energy Agency
IARC – International Agency for Research on Cancer
ICAO – International Civil Aviation Organization
IFAD – International Fund for Agricultural Development
ILO – International Labour Organization (Office)
IMF – International Monetary Fund
IMO – International Maritime Organization
INCB International Narcotics Control Board
ITU – International Telecommunication Union
OECD – Organisation for Economic Co-operation and Development
OIE – *Office International des Epizooties*
PAHO – Pan American Health Organization
UNAIDS – Joint United Nations Programme on HIV/AIDS
UNCTAD – United Nations Conference on Trade and Development
UNDCP – United Nations International Drug Control Programme
UNDP – United Nations Development Programme
UNEP – United Nations Environment Programme
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNFPA – United Nations Population Fund
UNHCR – Office of the United Nations High Commissioner for Refugees
UNICEF – United Nations Children's Fund
UNIDO – United Nations Industrial Development Organization
UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East
WFP – World Food Programme
WIPO – World Intellectual Property Organization
WMO – World Meteorological Organization
WTO – World Trade Organization

PREFACE

The second session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products was held at WHO headquarters, Geneva, from 20 to 25 October 2008. The proceedings are issued in two volumes, containing, in addition to other relevant material:

summary records of committees – document FCTC/COP/INB-IT/2/REC/1
verbatim records of plenary meetings – document FCTC/COP/INB-IT/2/REC/2.

The documentation, including the list of participants, is accessible on the following web site: http://www.who.int/fctc/

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4. **Progress since the first session of the Intergovernmental Negotiating Body**

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5. **Presentation of the Chair's text for a protocol on illicit trade in tobacco products and general debate**

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[1] As adopted by the Intergovernmental Negotiating Body at its first plenary meeting.

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Information documents

FCTC/COP/INB-IT/1/6	Officers of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products

Diverse documents

FCTC/COP/INB-IT/2/DIV/1	Guide for delegates to the Intergovernmental Negotiating Body
FCTC/COP/INB-IT/2/DIV/2 Rev.2	List of participants

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COMMITTEE A

FIRST MEETING

Wednesday, 22 October 2008, at 10:25

Chairperson: Ms M.K. MATSAU (South Africa)

1. ORGANIZATION OF WORK: Item 3 of the Agenda (Document FCTC/COP/INB-IT/2/1)

The CHAIRPERSON recalled that the Chairperson of the Intergovernmental Negotiating Body had suggested that the Committee complete preliminary consideration of the Chairperson's text by Thursday lunchtime. In order to expedite the Committee's consideration of Parts III (Supply chain control) and IV (Enforcement), she suggested that participants should at present discuss major inputs, including those not covered by existing provisions. Written inputs for incorporation in the Chairperson's text should be submitted to the Secretariat no later than one hour after the conclusion of the Committee's morning and afternoon meetings; a standard form for proposals was available from the Secretariat. The written inputs would be considered by the Committee at a subsequent meeting.

After a discussion about the method of work involving Mr PADILLA (Philippines), Ms JACQUEZ (Mexico), Dr YIBOR (Toto), Dr YOUNES (Office of Governing Bodies, WHO Secretariat), Mr ROWAN (European Community), and Mr OLDHAM (alternate to Mr Leguerrier, Canada), the CHAIRPERSON said that text of substantive issues would be projected on screen in English. She urged representatives to concentrate on major submissions, and not to edit the text at this stage.

2. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3)

Part III: Supply chain control

The CHAIRPERSON, drawing attention to Part III: Supply chain control, invited participants to consider whether there were any other substantive issues that should be incorporated in the text.

Licence

Dr GAO Xingzhi (China) said that the purpose and nature of regulations under licensing must be clarified in order to control effectively tobacco manufacture, protect the legal tobacco trade and combat illicit trade in tobacco products. A licence should be a prerequisite for tobacco trading and an important legal document for legitimate tobacco manufacturers. The scope and nature of the licence should be clarified. Legal and natural persons involved in both the manufacture of tobacco and of raw materials and equipment, and in their import and export, should be issued with a licence, as should retailers. China, for its part, had issued licences to approximately five million tobacco retailers. The Parties should appoint a single centralized body, whose competence should be clearly defined, in order to grant and monitor licences. In China, licences for the manufacture and production of tobacco products for import and export, in addition to national sales, were granted and administered by the State Tobacco Monopoly Administration. In the provinces, licences for sales were granted by

provincial tobacco monopoly administrations. Mention should be made in the text of issues including the conditions to be met in order to obtain a licence, the documentation required, the scope of application of the licence and the licence's period of validity. It should be clearly stated that licences could not be lent, rented or traded. Modalities for the management of licences should be clearly stipulated; the use of modern technologies for online management would make for greater transparency, impartiality and efficiency, and for more effective monitoring. An authorization system for the transport of tobacco and tobacco products should be established. In China, authorizations for the transport of tobacco products, raw materials and key inputs were granted by the State Tobacco Monopoly Administration. Such authorizations had proved an effective means of preventing and combating the illicit trade in tobacco and movement of inputs, manufacturing equipment and products. China would be pleased to share its extensive experience in licence management with the Intergovernmental Negotiating Body.

Ms WEBBER-AITU (Cook Islands) said that the criteria for licences should not be based on threshold quantities. Paragraph 2 should include provision for the right of refusal to grant a licence where an applicant had contravened laws within a certain period. Licence requirements might also be extended to wholesalers, brokers, warehousers of tobacco products, leaf dealers and commercial importers and exporters.

Ms ALI-HIGO (Djibouti) said that threshold levels should be determined in accordance with national regulations.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that the scope of the section would be broadened by the addition of the words "or any other control which guarantees equivalent results" after "Licence".

Dr MEJÍA DE RIVERA (Honduras) said that the text should also refer to the import of tobacco products in a manner consistent with the commitments embodied in the WTO Agreement on Import Licensing Procedures and existing free trade agreements. As there were so many retailers, it could be difficult to grant licences to all of them.

Mr OULD DEIDA (Mauritania) said that all activities associated with tobacco should be subject to licensing. A provision to the effect that individual licences should not be transferable should be included in the text.

Mr SAMUDA (Panama) recalled the need to define and include the possibility of having certain authorities that could verify what happened when tobacco products were transported in transit through countries. Such a proposal could help international trade since the logistical channels in some countries were not used for that purpose.

Ms JAQUEZ (Mexico) drew attention to the need to include references in the text to the national legislation of each Party. The text should mention the obligations on each of the Parties and that specific reference should be made to the fact that those obligations should be met in accordance with national legislation and whenever required.

Mr PADILLA (Philippines) proposed an amendment to paragraph 1, as the qualifications given therein were limiting. The suggested wording was: "With a view to eliminating illicit trade in tobacco products, a full licensing system must cover every person, natural or juridical, involved in the supply chain system, inclusive, but not limited to, manufacturers, distributors, traders, retailers, transport operators, wholesalers, warehouse operators, importers, exporters, leaf curers, dealers and the like."

Mr OOKA (alternate to Mr Isomata, Japan) said that the provision on the licensing system should be determined by each country depending on its circumstances. He therefore proposed that it be worded so as not to apply equal regulation in each country but to use discretion by inserting such phrases as "where necessary". Illicit trade in tobacco products could only be prevented by controlling the supply channel of raw materials and tobacco products. It was therefore not necessary to include "manufacturing equipment" and "key inputs" in the text.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) said that specific reference should be made to the tobacco industry, including the manufacturers, wholesale distributors and importers of tobacco products. In Brazil, cigarette brands were licensed, and no brand could be sold if the manufacturer did not hold a licence issued by the health and tax authorities, thus facilitating the effective control and commercialization of tobacco products. Brazil therefore suggested licensing all cigarette brands.

Dr ABOU ALZAHAB (Syrian Arab Republic) stated that licensing should include the growing of tobacco leaves and seeds, the export of those products and the agricultural areas used for growing tobacco. The licences should also cover the use of fertilizers, equipment and the transport of raw tobacco leaves. The licensing processes would need to be reviewed periodically as conditions could change. A threshold should be stated in the section on licensing in order to determine the quantities concerned.

Dr PEERAMON NINGSANOND (alternate to Mr Sihasak Phuangketkeow, Thailand) supported extending licensing to cover wholesalers, brokers and all those involved in the supply chain, including commercial tobacco growers. Regarding the issue of suspending and cancelling licences, the procedure should be more flexible and should comply with national laws.

Dr NZEYIMANA (Rwanda) said that the text should include the obligation that countries use one tracing technology, particularly since three years was too short a period for low-income countries. The control of free trade zones should be considered and the licensing system for the tobacco industry should also include operators in free trade zones.

Ms AKIWUMI SIRIBOE (Ghana) proposed that the limitation placed on commercial import and export per year as a condition for licensing should be deleted as it implied that applicants who did not meet the specified tonnage could not operate without a valid licence, which was contrary to the spirit of the protocol. The licensing of applicants, regardless of nationality or residency, should be extended to include compliance with national law.

Dr NYO NYO KYAING (Myanmar) said that thresholds and the licensing of tobacco growers should be national decisions. Furthermore, the issue of transit should be included in the text, possibly in the section on licensing.

Dr AYOUB (Jordan) proposed that licensing should not depend on a sales threshold and that a link should be made to the growing of tobacco.

Ms WEBBER-AITU (Cook Islands) said, with regard to subparagraph 2(c), that public health should receive an agreed percentage of the amount collected in licence fees and tax and that it should not be included as an afterthought as seemed to be the case in that paragraph. She suggested that a set percentage of tax should be allocated specifically for use in the public health sector.

Mr FITZGERALD (alternate to Dr Doverty, Australia) agreed with the Cook Islands' comments. The phrase "of more than *X* tonnes" should be removed from subparagraph 1(d), as there was no need for a quantitative restriction in that area.

Ms DEL PADRE (Paraguay) agreed that it was not necessary to establish a threshold for granting licences. In addition to a tax identification number, it would also be advisable to include in the requirements an indication of the amount of tax paid.

Dr ANDRIANOMENJANAHARINIRINA (Madagascar) said that the granting of licences should not be limited to importers or exporters but should also extend to tobacco growers in order to cover all stages of production within the tobacco industry.

Mr BERTRAND (Canada) supported a number of positions outlined by other Parties, especially the proposal by the European Community. Regarding the views expressed by Djibouti and Mexico on various licensing requirements that could be left to the decision of individual Parties, Canada proposed "to the extent considered appropriate in the context of its own legal, administrative and regulatory framework".

Mr GÖRÜN (alternate to Mr Çelik, Turkey) supported the views expressed by other Parties against establishing a supranational threshold on annual tobacco sales through licensing, as it would be better to consider that issue under Parties' national competencies.

Mr OOKA (alternate to Mr Isomata, Japan) said, with regard to subparagraph 2(c), that the use of licence fees should be determined by each country according to its circumstances and, regarding subparagraph 2(h), that the number of years for which a licence was suspended or cancelled should also be left to the discretion of individual countries.

Dr PEERAMON NINGSANOND (alternate to Mr Sihasak Phuangketkeow, Thailand) recalled the suggestion made when the Parties had met in plenary the previous day that the word "commercial" should be deleted from subparagraph 1(d).

Dr LEWIS-FULLER (Jamaica) strongly supported other Parties in the proposal to remove any threshold for the number of tonnes to be considered per year. Under the section on requirements for licensing, subparagraph 2(b)(vi), "complete identification of the bank accounts intended to be used in the relevant transactions" should include a declaration of all bank accounts of an entity or legal or natural person; otherwise funds could be transferred between accounts and it would prove difficult to trace their destination.

Mr MALOBOKA (Namibia) noted that licensing should not be limited to large businesses, but should also be extended to small businesses for the sake of comprehensive control of tobacco use.

Mr AL HARBI (Saudi Arabia) proposed that, concerning the violation of licensing procedures, the text should stipulate the number of contraventions tolerated before a licence would be withdrawn. Strictness was needed to ascertain how many times a retailer or licensee had committed violations before having his or her licence revoked.

Ms KIPTUI (Kenya) supported the comments made by Ghana and proposed that the title of Part III should be amended to read: "Supply chain management", instead of "Supply chain control", since management encompassed control. Regarding subparagraph 1(a), she said that licences should be issued up to the level of the wholesaler in the supply chain, since it would be difficult to license retailers of tobacco products. She further proposed that at the beginning of subparagraph 2(h), the words "suspend or cancel a licence" should be amended to read: "revoke or suspend a licence", which better corresponded to the terms used in her country and perhaps in others.

Mr DUTTA (Bangladesh) said that his country had no objection to imposing licences on large-scale growers of tobacco or large businesses but considered it unrealistic to do so for small growers,

particularly poor farmers. In heavily populated countries like his own, a great many poor farmers grew tobacco and the imposition of licences would affect their livelihoods. The question should be left to the country's authority and an offer of alternative means of livelihood should be linked with any imposition of licences.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that the final text must accommodate the principle of proportionality.

The CHAIRPERSON suggested that wording to that effect should be incorporated in the text.

Customer identification and verification

Dr GAO Xingzhi (China) suggested that the entire section on customer identification and verification should be merged with the previous section on licences. No explanation was given in the text why a verification system should be set up, whom it was targeting, how the verification would be carried out and by whom and how it would be guaranteed. If a properly comprehensive licensing system was set up, the references to identification and verification would be superfluous.

Dr YIBOR (Togo) called for an explanation of the term "customer" in the context of verification and identification. Customers would already have a licence and therefore would already have been verified. The terms "verification" and "monitoring" could consequently be applied to licensees but "identification" should be applied to customers.

Mr OOKA (alternate to Mr Isomata, Japan) said that, for the licensing system to be successful, those working in the tobacco industry must identify and verify their customers. In paragraph 6, the term "sufficient evidence" was ambiguous and would create difficulties for tobacco manufacturers and distributors in accurately identifying unsuitable customers. The blocking of customers for a five-year period, as outlined in subparagraph 7(b), required further consideration.

Mr BERTRAND (Canada) observed that the protocol must be consistent with the Parties' legal, administrative and regulatory framework.

Dr GHAFARI (Islamic Republic of Iran) drew attention to the need for scientific and technological support for developing countries to enable them to apply the necessary registration and enforcement systems.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) said that the Parties, as well as members of the tobacco industry, should be involved in the verification process.

Mr SAMUDA (Panama) suggested inclusion of the principle of "knowing one's customer". He wished to omit paragraph 2, since the specific details were ill-suited to developing countries.

Mr AL HARBI (Saudi Arabia) said that the section must include a definition of the authority responsible for customer verification.

Ms MADOUGOU (Benin) said that some aspects of paragraph 2 could be included in the section on licences. In particular, subparagraph 2(d) should be a prerequisite for the granting of a licence.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) agreed with Japan about the burden placed on the trading community and with its views on paragraph 6. He also endorsed Canada's view that the protocol must be subject to Parties' domestic laws. Not all paragraphs should be obligatory. As the European Community had noted, some flexibility was required.

Dr KANGOYE (Burkina Faso), referring to subparagraph 2(f), observed that, in practice, it was hard to ensure that production was commensurate with reasonably expected demand. He asked whether a monitoring authority or customers themselves would be responsible for estimating the required amount, and on what basis.

Ms ALI-HIGO (Djibouti) proposed that transportation should be included in paragraph 1. On paragraph 7, she said that any blocked customer that re-offended should be blocked permanently.

Mr TAGOE (alternate to Dr Amankwa, Ghana) proposed that subparagraph 2(g) should be amended to read: "a description of the location where manufacturing equipment…".

Mr OULD DEIDA (Mauritania) suggested omission of the entire section, since its content and requirements were already covered in the section on licences.

Dr DLAMINI (Swaziland) suggested that due diligence obligations should be extended to all tobacco leaf dealers and commercial importers and exporters. Countries should be encouraged, not required, to impose due diligence obligations on tobacco leaf growers where practicable.

Ms DEL PADRE (Paraguay) suggested the deletion of paragraph 8.

Mr AL HARBI (Saudi Arabia) agreed with Djibouti on the importance of transportation.

Dr GVINIANIDZE (Georgia) suggested the inclusion in paragraph 7 of a clause to the effect that a customer blocked by any Party would be recognized as such by all other Parties.

Ms BARTMAN (Belarus) called for the omission, in paragraph 1, of the quantity of tobacco in tonnes, and in paragraph 7(b), of the period for which a customer would remain blocked. Both could be covered by the Parties' domestic legislation.

Mr JARAMILLO REY (Colombia) remarked that, according to paragraph 7, a customer could be blocked on the basis of an individual's assessment of the evidence. That provision was excessive. Responsibility in that respect should lie with the competent authorities.

Tracking and tracing

Ms WEBBER-AITU (Cook Islands) said that individual packets, and not just cartons, should be marked. That would permit identification after cartons had been split.

Mr KANGENYAN (India), referring to paragraph 2, requested that the deadline for the introduction of tracking and tracing markings be extended from three to five years.

Mr OOKA (alternate to Mr Isomata, Japan) said that, where an established system existed, it should be used. More flexible wording was required, to the effect that each country would seek to establish its own system.

Mr PADILLA (Philippines) proposed that all instances of the phrases "master case and cartons of cigarettes" and "packages of other tobacco products containing more than one unit pack" should be replaced by "packages of cigarettes and other tobacco products containing more than one unit". The definitions of "carton" and "master case" in Part I should be replaced by a definition of "package", which would cover all forms of packaging containing more than one unit, including cartons and master cases.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) called for a clear decision on whether the international tracking and tracing system would be controlled solely by the Parties or in cooperation with the tobacco industry.

Dr GHAFARI (Islamic Republic of Iran) supported India's suggestion to extend the deadline from three to five years. Turning to paragraph 1, he proposed that "based on" should be amended to read: "taking into account" or "drawing on", since "best practices" did not necessarily suit all situations.

Dr MEJÍA DE RIVERA (Honduras) proposed that the implementation period for the tracking and tracing system should be extended significantly. She expressed concern that difficulties would arise over trade marks and that the system would not keep pace with the evolution of brands.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that he would propose written texts for the five areas his Party wished to address.

Dr GAO Xingzhi (China) endorsed Japan's suggestion that Parties should make use of existing tracking and tracing systems, although the ultimate aim was to create an international system. He proposed that subparagraphs 3(e) and (f) be deleted.

Dr TARFANI (Algeria) requested that, in paragraph 3, the place of manufacture be inserted alongside the date of manufacture.

Mr SAMUDA (Panama), referring to paragraph 2, suggested that the tracking and tracing system should also be applied to individual packets. In paragraph 4, he proposed that the phrase "scanning technology" should be replaced by a more general wording such as "technological system" to allow for the introduction of new technologies.

Mr DUTTA (Bangladesh), also referring to paragraph 2, emphasized that the tracking and tracing system would require both advanced technology and substantial funding. It was therefore less accessible to some nations and needed to be implemented alongside technical and financial assistance from developed countries. He recommended extending the deadline to ten years.

Ms DEL PADRE (Paraguay) requested that the date of transportation be added to paragraph 3.

Mr BERTRAND (Canada) said that the section should be understood in the context of Article 15.2(b) of the WHO Framework Convention on Tobacco Control and should not limit the obligations and rights of the Parties in that regard.

Ms ALI-HIGO (Djibouti) shared Bangladesh's concerns regarding paragraph 2. A definition of the French term "caisse", which was not provided in the Convention, also needed to be included. Turning to paragraph 3, she proposed the inclusion of a transportation itinerary and, in respect of paragraph 10, she suggested that the exact nature of the cooperation mechanism be defined.

Mr FITZGERALD (alternate to Dr Doverty, Australia) supported comments by Canada. He would submit written text detailing several small proposals.

Mr OOKA (alternate to Mr Isomata, Japan) said that the term "central point" in paragraphs 6 and 7 was vague. He also recommended measures to ensure greater discretion in dealing with personal information.

Mr PADILLA (Philippines) proposed the addition of a requirement that all costs of tracking and tracing should be borne by each Party's tobacco industry.

Record-keeping

Dr MEJÍA DE RIVERA (Honduras) said that, owing to the large volume of illicit trade in tobacco products, the protocol should ensure that developing countries received assistance with the necessary technologies through international cooperation in order to enable them to apply the provisions of that section to retailers.

Mr ESCUDERO (alternate to Mr Portales, Chile), referring to paragraph 6, said that to require Parties throughout the world to share all records contemporaneously was ambitious, and suggested that the word "contemporaneously" be deleted.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that as a matter of principle he supported the exclusion of retailers from that section. He had also a proposed amendment which he would provide in writing.

Mr OOKA (alternate to Mr Isomata, Japan) suggested that the words "complete and" should be deleted from paragraph 1.

Ms BARTMAN (Belarus) suggested that the phrase "*X* tonnes" should be deleted. She supported the statement by the European Community concerning the exclusion of retailers.

Security and preventive measures

Dr NZEYIMANA (Rwanda) suggested that paragraph 3 should be deleted.

Mr SOOKOO (Mauritius) supported the statement by Rwanda in view of the proposed secure tracking and tracing system and because of a possible adverse effect on small traders.

Ms ALI-HIGO (Djibouti) requested that transport be included in paragraph 1.

Dr GHAFARI (Islamic Republic of Iran) said that implementation of the section under review would require some capacity building in developing countries.

Ms KIPTUI (Kenya) suggested that the words "including" and "transportation" should be deleted from paragraph 3.

Mr OOKA (alternate to Mr Isomata, Japan) said that it was not realistic to prohibit the intermingling of tobacco products with non-tobacco products as proposed in paragraph 3. The words "suspicious transactions" in paragraph 7 needed to be clearly defined. The protocol should also be worded to allow a measure of flexibility.

Mr BERTRAND (Canada) drew attention to the fact that statements were becoming repetitious as they were referring to each Party's legislative framework. In order to avoid that, he proposed that a text be included under Part II: General obligations.

Dr MEJÍA DE RIVERA (Honduras) proposed that Internet sales be banned as the industry used the Internet to market its products and to give children and young people easier access to them.

Ms ALI-HIGO (Djibouti) expressed concern about paragraph 3 and stated that Djibouti would reserve its position.

Ms MADOUGOU (Benin) requested clarification regarding the definition of "suspicious transactions". She suggested that evidence of a suspicious transaction should be required.

Dr GVINIANIDZE (Georgia) requested that the issue of harmonizing prices among Parties be mentioned.

Mrs DEL PADRE (Paraguay) proposed the deletion of paragraph 6.

Mr ESCUDERO (alternate to Mr Portales, Chile) suggested that the last part of paragraph 5 requiring specific forms of payment should be deleted as that requirement might hamper the international market.

Mr ROWAN (alternate to Mr Walton-George, European Community) supported the text in paragraph 6, which would not affect retailers. As previous speakers had mentioned, paragraph 7 should be considered in conjunction with the definition of a suspicious transaction.

Mr BAZARCHYAN (Armenia) supported paragraph 3, which had been comprehensively discussed, but perhaps with some change in the wording, notably regarding the important issue of suspicious transactions.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) supported Paraguay's proposal to delete paragraph 6 because it was impractical for local suppliers to carry out market surveys in other countries. Paragraph 7, requiring people to give information which might not be asked for under local legislation, might need legal clarification.

Ms WEBBER-AITU (Cook Islands) proposed a new section 8, to read: "All transactions should only be conducted with licensed persons".

Mr SCHIAFFINO (Uruguay) requested that other examples of sanctions, such as financial sanctions, be included in paragraph 2.

Ms BAQUERIZO (Ecuador) emphasized the importance of ensuring that no security or preventive measures should be subjected to any reference to a specific tonnage or percentage.

Mr ANDRIANOMENJANAHARINIRINA (Madagascar) said that the phrase "natural and legal persons" in paragraph 1 was unclear and suggested that it should be replaced by "importers, exporters and farmers of tobacco products".

Ms BARTMAN (Belarus) supported proposals to change the wording of paragraph 3 and to clarify the meaning of the term "suspicious transactions" in paragraph 7.

Ms LEWIS-FULLER (Jamaica) suggested the addition of a paragraph to indicate that each Party had a responsibility to secure all points along its borders where transborder operations might take place in order to prevent illegal imports.

Internet and other telecommunication-based modes of sale

Mr PADILLA (Philippines) proposed new wording with the title "Duty-free, Internet and other analogous modes of sale", to read: "In order to prevent diversion and potential sources of illicit trade,

each Party shall implement effective measures to prohibit duty-free, Internet and sales in free zones of tobacco and other tobacco products".

Ms FLORES SALGADO (Peru) suggested that the concept of proportionality should be excluded and that the phrase "more than *X* tonnes of tobacco per year" be deleted.

Mr NYO NYO KYAING (Myanmar) supported the text proposed by the Philippines to prohibit duty-free and Internet sales of tobacco and tobacco products.

Mr AL HARBI (Saudi Arabia) emphasized the widespread use of the Internet globally.

Mr OOKA (alternate to Mr Isomata, Japan) recalled that it was suggested in plenary that the expeerts' views be sought on these issues.

The CHAIRPERSON responded that the legal experts would look at the proposals after the Parties had expressed their views in the debate.

Dr PEERAMON NINGSANOND (alternate to Mr Sihasak Phuangketkeow, Thailand) supported the proposal to delete "more than *X* tonnes of tobacco per year" and to ban all Internet sales.

Mr OULD DEIDA (Mauritania) said that clarification was needed as to whether Internet sales could be instantly prohibited. That question had to be resolved first in view of the extraterritorial character of that form of commerce.

Ms BAQUERIZO (Ecuador) maintained that Internet sales of tobacco products, if they were permitted, should be regulated by each country under national legislation and in accordance with relevant international norms, such as the resolutions of the Universal Postal Union. Expert advice, for example from WTO and ITU, should be sought to determine how that might be achieved and to permit a more detailed debate.

Dr AYOUB (Jordan) supported a total ban on sales of tobacco products via the Internet.

Dr DLAMINI (Swaziland), pending expert advice, supported the proposal that Parties should be encouraged to prohibit sales of tobacco products via the Internet and through duty-free outlets.

Mr SCHIAFFINO (Uruguay) supported a ban on Internet sales of tobacco products.

Dr ABOU ALZAHAB (Syrian Arab Republic) stated that, as his country lacked the necessary technology to monitor Internet sales, no ban would be enforceable.

Mr LINDGREN (Norway) could not support the inclusion of a provision to ban duty-free sales of tobacco products in the paragraph under discussion.

Ms BAQUERIZO (Ecuador) asked whether the paragraph applied to sales of illicit tobacco products only, as the text appeared to indicate, or, as Ecuador would prefer, to sales of all tobacco products.

The CHAIRPERSON said that in her view there appeared to be a move to ban all tobacco products.

Dr GAO Xingzhi (China) supported a comprehensive ban on sales of tobacco products via the Internet or analogous modes of sale and proposed that the text be amended accordingly. It would be necessary to include sanctions in that respect.

Mr MAJANJA (althernate to Professor Nzomo, Kenya) observed that such a ban, as currently worded, would include sales via telephone and facsimile systems and would therefore be extremely difficult to enforce.

Mr VILLARROEL ESPINDOLA (Bolivia) said that, because of legal difficulties relating to the use of telecommunication-based systems, there should be a ban on all sales of tobacco products via the Internet and analogous modes of sale.

Ms DELAND (Convention Secretariat) said that it was her understanding that the text had been worded to prevent the possibility of trade via the Internet or other telecommunication-based modes of sale as a means of avoiding the provisions of the proposed protocol, and it therefore stated that any such trade must comply with those provisions.

Dr BABB-SCHAEFFER (Barbados) requested that any provision referring to a ban on duty-free sales to be added to the paragraph under discussion be placed in square brackets for the time being.

Dr VIRGOLINI (Observer, Argentina)[1] suggested that those undertaking collection of tobacco leaves and their primary processing should also be included in the categories of persons required to hold a valid licence that were listed in paragraph 1 in the section on licence. Licensing at that early stage in the supply chain would not be difficult.

Mr CUNNINGHAM (International Union against Cancer), speaking at the invitation of the CHAIRPERSON, said that his organization would favour a ban on Internet and duty-free sales of tobacco products and acknowledged the discussions on free-trade zones.

The CHAIRPERSON, summarizing the discussions on Part III, said that speakers had emphasized the importance of the capacity of Parties to meet their various obligations under the proposed protocol and had drawn attention to the current disparities in capacity. She suggested that an appropriate paragraph recognizing the situation and the link to technical support requirements should be inserted at the start of Part III. Parties had drawn attention to the need for the protocol to refer to licensing along the whole supply chain. They considered that licensing should be in accordance with national legislation, and that the text should refer to periodic review and reasons for revoking licences. They had also emphasized the importance of enhancing the competence of national licensing authorities. Most speakers had called for the deletion of any reference to specific quantities of tobacco. Problems with transportation had been mentioned during the discussions on licensing and on tracking and tracing. The comments on security and preventive measures had indicated that that section would require close scrutiny; there had been calls for the deletion of paragraph 3 and for careful consideration of the use of the word “suspicious” in paragraph 7.

A revised text of the draft protocol, incorporating the proposed amendments, would be prepared for consideration later in the session.

[1] Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

Ms BAQUERIZO (Ecuador) emphasized her view that for illicit trade there should be no threshold quantity on proportions: any quantity of tobacco products traded illicitly should be subject to sanctions. Specific figures should therefore be deleted from the text.

The CHAIRPERSON confirmed that most representatives appeared to support that view.

Ms KIPTUI (Kenya) proposed that the text should include a provision requiring Parties to institute tax regimes to permit them to monitor all exports of tobacco products.

The CHAIRPERSON observed that Part III covered import and export of tobacco products and that reference to the tracking of such products, including those in transit, would therefore be appropriate.

Ms ALI-HIGO (Djibouti) agreed that the protocol should not include specific threshold quantities of tobacco products as those might not be applicable in all countries. However, it might be appropriate to set thresholds at the national level as quantitative data were extremely useful indicators in tracking production and consumption.

Dr NZEYIMANA (Rwanda) drew attention to the need for the text to define tobacco products in free-trade zones, an aspect of particular importance for countries in Africa.

Mr AL HARBI (Saudi Arabia) supported the deletion from the text of specific quantity thresholds.

The SECRETARY reminded Parties to submit proposed amendments in writing using the forms provided.

(For continuation of the discussion, see the summary record of the third meeting.)

The meeting rose at 13:55.

SECOND MEETING

Wednesday, 22 October 2008, at 15:15

Chairperson: Ms M.K. MATSAU (South Africa)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

The CHAIRPERSON reminded representatives that they should signal their inputs to the text, without providing the reasons behind them. Their inputs should then be submitted in writing to the Secretariat no later than one hour after the end of the meeting. To facilitate discussion, all inputs would be consolidated into a document that would be circulated to Parties before the next meeting. As some speakers had questioned a reference to tonnage at the previous meeting, she asked the Secretariat to explain that reference in paragraph 1 of the section on licence in Part III of the Chairperson's text.

Ms DELAND (Secretariat) said that the reference to the need for a licence to "sell more than *X* tonnes of tobacco per year" was intended to cover large growers and exclude small ones. It was known as a *de minimis* exception under which small growers would be exempt. She noted that the text referred to tobacco and not to tobacco products; that the word "tobacco" had not yet been defined; and that there were references throughout the text to the *de minimis* exception.

Mr DUTTA (Bangladesh) said that tobacco in the field was a leaf but when harvested and dried it became a tobacco product. A definition of tobacco was thus of critical importance.

Ms DELAND (Secretariat) said that the definition of tobacco was a matter for the Intergovernmental Negotiating Body. In reply to a question by Mr OULD DEIDA (Mauritania), she said that by the time tobacco arrived in a shop it had likely become a "tobacco product", the definition of which was in the WHO Framework Convention on Tobacco Control. She noted that the provision in subparagraph 1(a) of the section on licence did not refer to tobacco products.

Mr PADILLA (Philippines) said that the reference to tonnage was confusing. He suggested that it would be preferable to require a licence for all tobacco growers and then allow Parties to exempt certain sectors, such as small growers. The purpose of licensing was to keep track of all tobacco products, from the initial grower to the consumer.

The CHAIRPERSON said that the question would be discussed thoroughly at the next meeting.

PART IV: Enforcement

Search of premises and seizure of evidence

Ms TUCKER (alternate to Mr Walton-George, European Community) said that, pending negotiations on the section on offences, the present section should be directly linked to offences regarded as serious. She recommended that the phrase "used in the manufacture of tobacco" should be changed to read: "used in the manufacture of tobacco products".

Confiscation and seizure

Ms TUCKER (alternate to Mr Walton-George, European Community) asked for legal clarification as to whether the section applied to criminal forfeiture, i.e. after conviction, or to civil forfeiture in relation to that section. The European Community would submit two amendments in writing. She then referred to paragraph 6 and said that the provisions concerning bank secrecy should apply only to criminal offences.

Ms DELAND (Secretariat) said that she was unable to provide a definitive answer immediately. There could be some overlapping with the section on offences.

Mr OULD DEIDA (Mauritania) asked for clarification of the last sentence in paragraph 6 referring to bank secrecy and any common law revenue rule.

The CHAIRPERSON responded that the Secretariat planned to engage in consultations on the subject and would then report back.

Mr ESCUDERO (alternate to Mr Portales, Chile) said that Chile had already expressed concern about paragraph 6 in the plenary. He also requested clarification of the legalities regarding bank secrecy, which created problems for both his and other countries where bank secrecy could not be lifted. He felt that it should be legalized at an international level.

The CHAIRPERSON replied that all concerns regarding bank secrecy would be considered and responded to.

Dr GAO Xingzhi (China) said that he did not understand paragraph 8 and asked for an explanation.

Ms DELAND (Secretariat) said that a large part of the section on confiscation and seizure had been taken from the United Nations Treaty on Organized Transnational Crime, whose provisions were available online.

Ms GRANZIERA (Office of the Legal Counsel) said that, before she could offer a legal opinion of another organization's provisions, she would first have to consult that organization.

Mr PADILLA (Philippines) said that, although he was a lawyer, he had been confused by the section on confiscation and seizure. He agreed with China that paragraph 8 raised problems, but so did paragraph 7. The alleged proceeds of crime, i.e. tobacco products, could have a lawful origin even if confiscated for reasons of illicit trade. He also said that there was no mention of the instrument to be used, e.g. an order of a competent court or administrative agency or the simple whim of the Party concerned. Problems arose from incorporating provisions in other documents into a totally different context.

The CHAIRPERSON asked the Secretariat for guidance.

Ms DELAND (Secretariat) apologized for being unable to provide a more satisfactory answer. At its first session, the Intergovernmental Negotiating Body had requested the Chairperson to make use as far as possible of existing text in similar agreements. She understood the present frustration but could not offer a definitive legal interpretation of a text produced under the auspices of another organization. She promised that contact would be made with the organization concerned and an answer would be provided as soon as possible.

Mr BAZARCHYAN (Armenia) asked what was meant by "another person who has knowledge or should have knowledge" in paragraph 3. He did not understand the use of "should".

The CHAIRPERSON said that the text definitely needed to be clarified.

Mr PADILLA (Philippines) said that paragraph 3 referred to the crime known as "fencing", whereby a crime was committed and the proceeds then sold to another person who knew or should have known about their criminal origin. That person would therefore also be liable.

The CHAIRPERSON asked if that explanation satisfied the representative of Armenia.

Mr BAZARCHYAN (Armenia) said that he still did not understand what was meant by "should have known".

Dr BEKBASAROVA (Kyrgyzstan) said that the paragraph concerned the person who received part of the crime's proceeds and then passed it on to another person. It was that person who was the target of the paragraph; he should have known where the proceeds came from.

Mr OOKA (alternate to Mr Isomata, Japan) asked for clarification of the term "common law revenue" in paragraph 6 and the distinction between the phrases "in accordance with" and "subject to" the provisions of domestic law in paragraph 9.

Mr OULD DEIDA (Mauritania) said that he would prefer to use numbered articles in drawing up the protocol. He felt that paragraph 9 should be reworded to read: "nothing contained in this Article must affect the principle ...". The protocol must respect individual rights and the presumption of innocence. Terms such as "offence" and "crime" must be very carefully defined, particularly in view of the differences between the common law system and the legal systems of the francophone countries. He trusted that francophone legal experts would be consulted during the preparation of the final draft of the protocol.

Dr GHAFARI (Islamic Republic of Iran), speaking on paragraph 6, suggested that wording should be added to the effect that Parties should not refuse to make financial records available on the basis of national legislation.

Mr MAJANJA (alternate to Professor Nzomo, Kenya) said that paragraph 1(a) should be reworded to read: "if property or proceeds derived from crime …", which would then make paragraph 1(b) redundant. In paragraph 3, the wording "another person who has knowledge of or ought reasonably to have known of the commission …" would make the meaning clearer. In paragraph 6, it was important not to confuse civil and criminal proceedings. If Parties were to invoke their own domestic legislation, criminal proceedings would inevitably ensue.

The CHAIRPERSON noted that paragraph 1(b) referred to property used in, or destined for use in, criminal offences, as opposed to property derived from crime itself.

Mr BERTRAND (Canada) suggested that, since the protocol was closely related to the United Nations Convention against Transnational Organized Crime, discussion of all areas where the two instruments might overlap should be postponed until the next session of the Intergovernmental Negotiating Body, when experts on the Convention could be invited to attend.

Dr KULAIB (United Arab Emirates) said that the protocol must be clear and easily implemented. He suggested that paragraph 10 of the section under discussion should be merged with paragraph 3.

Ms GALAGAN (Russian Federation) noted that paragraph 4 provided for the partial confiscation of the proceeds of crime in cases where those proceeds had been intermingled with property acquired from legitimate sources. That provision was surely in conflict with the spirit of Article 1 of the WHO Framework Convention on Tobacco Control.

Mr ESCUDERO (alternate to Mr Portales, Chile) stated that paragraph 7 should refer to accused persons rather than offenders, since, at the stage of the proceedings referred to in the paragraph, the person concerned had not yet been convicted. He also asked for clarification of paragraph 8.

Ms TUCKER (alternate to Mr Walton-George, European Community) said that the language of the entire section on confiscation and seizure was acceptable to the European Community as it stood. Parties should beware of adopting language which varied from that of existing and related instruments, particularly since many of them were party to those instruments as well.

Mr OULD DEIDA (Mauritania) suggested that paragraph 8 should be reworded to read: "The interpretation of the provisions of the present Article must, in no case, prejudice the rights of third parties", removing the reference to "bona fide third parties".

Mr MAJANJA (alternate to Professor Nzomo, Kenya) said that, if "bona fide" were removed, the third parties referred to in paragraph 8 would include the accomplices to crime referred to in paragraph 3.

Dr DLAMINI (Swaziland) said that paragraphs 3 and 10 should not be merged; instead, paragraph 10 should be deleted from the current section and its content transferred to the section on destruction.

Ms LIKIBI-BOHO (Congo) suggested that the reference to "construed" in paragraph 8 should be removed and the paragraph should read: "This article shall not prejudice the rights of third parties". Otherwise, the paragraph could be interpreted in different ways.

Seizure payments

Mr OULD DEIDA (Mauritania) suggested the following wording in the section on seizure payments: "… authorize the authorities to levy an amount equivalent to lost taxes and duties from the producer or manufacturer of equipment used in the production of seized tobacco products".

Mr OOKA (alternate to Mr Isomata, Japan) argued that it was impossible to oblige the producers or manufacturers of seized tobacco products or equipment to repay the taxes or duties lost when it could not be proved that they had deliberately committed an offence. The paragraph should, therefore, be deleted.

Ms LEWIS-FULLER (Jamaica) said that the paragraph should also include importers and exporters of tobacco products and equipment.

Destruction

Dr GAO Xingzhi (China) said that there were many aspects of illicit trade, including counterfeiting, smuggling and illegal production; destruction was not always appropriate. Parties should decide what action to take based on their national legislation. He asked the Secretariat to clarify paragraph 2 in the section on destruction, which appeared to be almost identical to paragraph 10 in the section on confiscation and seizure.

Mr OOKA (alternate to Mr Isomata, Japan) suggested that the word "destroyed" should be replaced by "disposed of", since physical destruction was not necessarily the most appropriate course.

Dr KULAIB (United Arab Emirates) said that paragraph 2 should specify a deadline for the destruction of confiscated tobacco, tobacco products or equipment retained for training and law enforcement purposes.

Mr FITZGERALD (alternate to Dr Doverty, Australia) suggested the use of the wording of Article 15(4)(c) of the WHO Framework Convention on Tobacco Control, namely "destroyed, using environment-friendly methods where feasible".

Mr OULD DEIDA (Mauritania) agreed with the United Arab Emirates that a limit should be set on how long confiscated items could be retained for law-enforcement purposes.

Dr YIBOR (Togo) suggested that the management of seized products – including registration of the products, to whom they belonged and when and why they had been seized – should be covered in the destruction section.

Mr GÖRÜN (alternate to Mr Çelik, Turkey) said that Parties must respect the environment and the health of the persons involved in the process of destroying confiscated materials, as reflected in Article 18 of the WHO Framework Convention on Tobacco Control.

Mr SAMUDA (Panama) suggested that an addition to paragraph 1 could be made to the effect that products would be destroyed using environment-friendly methods where feasible, as reflected in Article 15(4)(c) of the Convention.

Mr PADILLA (Philippines) agreed that the language of Article 15 be echoed in paragraph 1. A new paragraph should be added stating that other confiscated equipment not directly related to the manufacture of illicit products could be used for training and law-enforcement purposes. For example, when contraband cigarettes were found in a car and both car and cigarettes were confiscated, destruction of the car would not be required.

Special investigative techniques

Mr OULD DEIDA (Mauritania) suggested that paragraph 1 be redrafted since the current reference to a Party taking measures "subject to its domestic law" and "where it deems appropriate" was ambiguous.

Dr GHAFARI (alternate to Mr Moaiyeri, Islamic Republic of Iran), noting that cooperation was crucial, suggested that "endeavour to" should be deleted from paragraph 4.

Mr OOKA (alternate to Mr Isomata, Japan) advocated that, although his Party hoped that it would be deleted, the section under discussion be carefully considered, as the feasibility of its provisions depended on each country's individual perspective.

Dr VIRGOLINI (Observer, Argentina)[1] suggested that a sentence could be added to the effect that Parties would take measures to preserve the independence of procedures for the investigation and

[1] Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

analysis of decommissioned products with regard to the interests of the tobacco industry, and would cooperate with each other and with international organizations to those ends. Such an addition would put into practice the principle contained in the new version of the preamble relating to Article 5.3 of the Convention on ensuring protection from the interests of the tobacco industry.

The CHAIRPERSON, summarizing the debate on Part IV, said that paragraphs 3, 6, 7, 8 and 10 of the section on confiscation and seizure should be redrafted as they had caused problems. There had been a controversial suggestion to delete the section on seizure payments; if it was retained, other key players, such as importers and exporters, should be included. Under the section on destruction, it had been suggested that clarifications were needed regarding disposal, that time limits should be imposed and that reference should be made to the Convention. It had further been suggested that parts of the section on special investigative techniques were confusing and should be redrafted and that emphasis should be placed on the importance of international cooperation and assistance. The main issues, therefore, were confiscation and seizure, and they would be discussed the following day.

Dr VILLARROEL ESPINDOLA (Bolivia) said that the technique of controlled delivery – that of a country allowing but duly monitoring passage of controlled substances through its territory with the aim of locating the persons responsible for their illicit trade – was economical and was used frequently in Bolivia in relation to cocaine.

Mr OULD DEIDA (Mauritania) suggested that stronger wording should be used in the section on special investigative techniques to require, rather than encourage, Parties to take action. Such an emphasis would tie in with Part V: International cooperation.

Dr KULAIB (United Arab Emirates), noting that illicit trade often operated at the international level, suggested that an international information-exchange system should be established whereby countries could be alerted when illegal trade had been discovered and seizures made.

(For continuation of the discussion, see summary record of the fifth meeting.)

The meeting rose at 16:50.

THIRD MEETING

Thursday, 23 October 2008, at 10:30

Chairperson: Ms M.K. MATSAU (South Africa)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

PART III: SUPPLY CHAIN CONTROL (continued)

Licence (continued from the first meeting, section 2)

The CHAIRPERSON introduced the working paper that had been produced overnight with proposed amendments relating to Parts III and IV of the Chairperson's text and invited comments on them.

Mr ROWAN (alternate to Mr Walton-George, European Community) drew attention to the fact that an amendment proposed by his delegation the previous day had not been incorporated into the revised Chairperson's text. The words "or any control system which guarantees equivalent results" should be included, where appropriate, after the word 'Licence' so that countries in the European Community using systems of control other than, but equivalent in effect to, licensing would not have to change their national legislation.

Dr LEWIS-FULLER (Jamaica) said that the text in paragraph 1 should be reordered to emphasize that the rationale behind the elimination of illicit trade in tobacco was the desire to meet public health objectives. She proposed amending the wording at the beginning of that paragraph to read: "In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco, tobacco products and manufacturing equipment", with the rest of the paragraph unchanged. In addition, the bracketed words "and key inputs" should be retained but amended to "and other inputs" as defining "key inputs" might have posed problems.

Mr TAGOE (alternate to Dr Amankwa, Ghana) expressed concern that a reference to a threshold on tonnage per year still appeared in the text. Parties in the WHO African Region strongly felt that any such limitation should be removed as it implied that applicants not meeting the required tonnage could not operate without a valid licence, which would therefore encourage illicit trading in tobacco.

The CHAIRPERSON pointed out that the text in question was in brackets and would be discussed further in plenary, where any decision on the matter would be made.

Dr NUNTAVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand), speaking on behalf of Parties in the WHO South-East Asia Region, accepted the amendments to the first sentence of paragraph 1 put forward by Jamaica but proposed dividing the section on licences into two subsections: 1(a), which would apply to all countries, and 1(b), which would be subject to national administrative and regulatory frameworks. Subsection 1(a) would remain largely unchanged but the

words "where necessary" and "to the extent considered appropriate in the context of its legal, administrative and regulatory framework, require that any legal or natural person be licensed by a competent authority for the purpose of", which appeared in brackets and in bold in the revised text, would be removed. Subsection 1(a) would include the new item "(a) wholesalers, brokers, warehousers and distributors" while the original sections 1(b), (c), (d), (e) and (f) would remain the same. The new subsection 1(b) would state: "The Parties shall endeavour to license, in accordance with their legal, administrative and regulatory framework, to the extent considered appropriate, any legal or natural person engaged in the growing or retailing of tobacco products".

At the request of Ms ALI-HIGO (Djibouti), the CHAIRPERSON read out the text as it appeared on screen at that point so that each Party could listen to the interpretation and verify that it had understood the amendments proposed:

"1(a) In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco, tobacco products [, and manufacturing equipment [and [key] [other] inputs] used in the manufacture of tobacco products], each Party shall prohibit the conduct of any of the following activities by any legal or natural person except pursuant to a licence to conduct such activities granted by a competent authority]:

(a) wholesalers, brokers, warehousers and distributors;

(b) manufacturing tobacco products;

[(c) manufacturing and the manufacturing equipment [or key inputs] used in the manufacture of tobacco products;] [and]

(d) [commercial] import or export [or wholesale] [of more than *X* tonnes] of tobacco [per year], tobacco products [, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products]; [and]

[(e) transporting [of more than *X* tonnes] of tobacco [per year], tobacco products [, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products]]

1(b) Each Party shall endeavour to license, in accordance with its legal, administrative and regulatory framework, to the extent considered appropriate, any legal or natural person for the purpose of growing or retailing tobacco and tobacco products."

Ms ALI-HIGO (Djibouti) proposed that, since it was not known whether certain accessories would be kept or retained in the list of key inputs, the selling of some products such as water pipes should be included under the section on licence. At the request of the CHAIRPERSON, she explained that the water pipe's main components were the body of the pipe and the tube used for inhaling the smoke, which were used only for the consumption of tobacco or drugs. It would therefore be advisable to control the sale of water pipes and subject such products to licensing.

Dr SIN Sovann (Cambodia), requesting clarification on revised paragraph 1(a) subparagraphs (d) and (e), observed that transport companies were usually separate from import and export companies. A tobacco company with a licence to import or export tobacco products could therefore employ an independent transport company not specifically licensed for tobacco control purposes to import or export its products. He also sought a clearer definition of the term "growing", with respect to the size of farm which would require a licence. Such a definition was essential if the regulation of tobacco farmers was to be subject to Parties' national law.

The CHAIRPERSON confirmed that the licensing of transport was important for tracking and tracing purposes.

Dr ABOU ALZAHAB (Syrian Arab Republic) endorsed the division of paragraph 1 into two parts, since that provided the only solution for Parties wishing to grow tobacco. Subparagraph 1(b) should be devoted to the manufacturing of tobacco products, and the growing of tobacco should be addressed separately. The same conditions should be applied to raw tobacco as to tobacco products.

Dr NUNTAVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand), responding to Cambodia, proposed that revised subparagraph 1(b)(a) should be amended to read: "commercial growing".

Mr OOKA (alternate to Mr Isomata, Japan), although willing to participate fully in the debate, and underlining his country's commitment to combating illicit trade in tobacco, expressed concern that the revised Chairperson's text was essentially a new document and this was the first opportunity to discuss it. He would therefore wish to discuss it further with the relevant agencies and ministries in his country before any final consensus. He asked about the main purpose of the second session of the Intergovernmental Negotiating Body and about the status of the text at the end of the discussions.

The CHAIRPERSON replied that the ultimate objective of the second session was to negotiate and agree upon a protocol. The collection of ideas had been only the first step in the negotiation process.

Mr WALTON-GEORGE, speaking in his capacity as Chairperson of the Intergovernmental Negotiating Body, acknowledged that all Parties would have to reflect on the revised text at home. The purpose of the second session was to negotiate and refine the text of the protocol. The greater the degree of consensus, the easier it would be to decide how to progress towards the third session of the Intergovernmental Negotiating Body. The results of the Committee discussions would be presented to a plenary session the following day, which would discuss how to take the work forward.

Mr OOKA (alternate to Mr Isomata, Japan) said that he understood the Chairperson but that he might raise further questions if necessary.

The CHAIRPERSON said that she would recommend to the plenary session that Parties should have the opportunity to discuss the revised text at home.

Mr PADILLA (Philippines) suggested an alternative paragraph 1, in which he sought to cover all aspects of the supply chain including tobacco growers. In his opinion, all countries must already have some form of control system in place even for tobacco growers. Under his proposed text, Parties would not be limited to implementing a licensing system and the paragraph could therefore be binding on all Parties. The proposed text read: "In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade, a licensing system, or other such control mechanism having the same effect, must cover every person, natural or legal, involved in, or related to the supply chain system, inclusive but not limited to: growers, manufacturers, distributors, traders, wholesalers, retailers, transport and warehouse operators, importers, exporters, leaf curers and dealers and the like".

Dr BEKBASAROVA (Kyrgyzstan) said that her country had no licensing system for its tobacco growers. She suggested that countries in the same position should be given a deadline of between three and five years to establish a licensing system, in the same way that a three-year deadline had been laid down in Article 11 of the WHO Framework Convention on Tobacco Control for the inclusion of medical warnings on packaging. Turning to paragraph 1, she proposed deletion of the words "where

necessary" and "to the extent considered appropriate in the context of its legal, administrative and regulatory framework, require that any legal or natural person be licensed by a competent authority for the purpose of".

Dr LEWIS-FULLER (Jamaica) said that her country had rejected the option of licensing all retailers, because the thousands of itinerant vendors selling individual cigarettes made it impracticable.

The CHAIRPERSON said that the Parties wished the licensing of retailers to be optional and dependent on a country's ability to implement it.

Mr ROWAN (alternate to Mr Walton-George, European Community) supported comments concerning an "equivalent control system". He suggested that the title of the section should be amended to read: "Licensing/control system", with all instances of the term "licensing" being replaced by the same phrase. In paragraph 1, the phrase "or any control system which guarantees equivalent results" should be inserted after "competent authority" and, throughout the section on licence, "or equivalent approval" should be added after "licence".

Ms AKIWUMI SIRIBOE (alternate to Dr Amankwa, Ghana), speaking on behalf of the Parties in the WHO African Region, endorsed the proposals by the Philippines and the European Community. Control systems, she added, must be applied from production level down to supply level.

Dr GAMKRELIDZE (Georgia), also speaking on behalf of Armenia, endorsed the proposal by Kyrgyzstan for an implementation deadline and supported the European Community's suggestions regarding a licensing/control system.

Mr OOKA (alternate to Mr Isomata, Japan) re-emphasized that the nature of a Party's licensing system should be determined by its individual circumstances.

Ms ARNOTT (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIRPERSON, said that an effective protocol would provide governments with billions of dollars in extra revenue and save many hundreds of thousands of lives a year. A strong protocol needed teeth, however, and many of the proposed changes risked making the protocol toothless. Positive proposed changes included: the application of licensing across the supply chain; tracking and tracing measures at pack level; and bans on tobacco sales to consumers through the Internet and on duty-free sales. But less positive changes had been proposed. The protocol had to include mandatory provisions to control the supply chain. Flexibility might be necessary in licensing retailers and growers, but it must be limited to exceptional circumstances. Licensing, customer identification and verification, tracking and tracing and record-keeping must all be mandatory. Coordination with other international agencies possessing expertise and resources was necessary, and her organization urged the Intergovernmental Negotiating Body to engage urgently with the United Nations Office on Drugs and Crime and other relevant agencies to ensure that it proceeded with greater clarity at the third session about the roles of the organizations and the most effective ways of working together towards the elimination of illicit trade in tobacco products.

Mr LOM (alternate to Mr Bowerman, Observer, United States of America)[1] said that on past experience the regulation of tobacco growers was ineffective and unnecessarily reduced enforcement

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resources, and that his country had recently repealed such legislation. A more practical solution, as previously suggested by the observer of Argentina and other speakers, would be to consider a form of regulatory control of tobacco leaf processors.

The CHAIRPERSON said that two proposals had been made: the Parties in the WHO South-East Asia Region had proposed that growers and retailers should be licensed or controlled depending on the ability of each country; and the Philippines, supported by the European Union, had proposed that growers and retailers must also be licensed. It was therefore necessary to agree on whether that requirement should be left optional or made mandatory.

Mr DUTTA (Bangladesh), stating that his country was not ready to implement that requirement, requested that the provision remain optional.

Mr KANGENYAN (India) said that his was a vast country with many unregistered retailers. In view of the great difficulty which registration would pose for India, he did not agree with the requirement to license retailers.

The CHAIRPERSON said that the concern would be met by the proposal that the requirement should be optional depending on a country's ability to institute the necessary regulatory system. She then read out the text proposed by the Philippines:

"In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade, a licensing system or other such control mechanism having the same effect must cover every person, natural or juridical, involved in or related to the supply chain system including, but not limited to, commercial growers, manufacturers, traders, wholesalers, retailers, transport and warehouse operators, importers, exporters, leaf dealers and the like".

Mr PADILLA (Philippines) suggested that "growers" should be replaced with "commercial growers" and "must cover every person" with "shall cover every person".

The CHAIRPERSON said that the proposals by the Parties in the WHO South-East Asia Region and by the Philippines would both be submitted to the plenary for a decision.

Ms AKIWUMI SIRIBOE (alternate to Dr Amankwa, Ghana) supported the proposal by the Philippines, but objected to the phrase "commercial growers" since it did not cover those growing tobacco in their backyards.

Ms DEL PADRE (Paraguay) supported the position of the observer of the United States of America and other speakers because in Paraguay there were not the necessary conditions to cover all retailers and small growers.

Dr NUNTARVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand), speaking on behalf of the Parties in the WHO South-East Asia Region, asked the European Union to clarify the phrase "control system".

Mr FISCH BEREDO MENENZES (alternate to Ms Farani Azevedo, Brazil) suggested a modification to the text proposed by the Philippines, to read: "In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products each Party shall prohibit where appropriate in accordance with national law the conduct of any activity connected to tobacco products by any legal or natural person, except persons who are licensed or any other form of control system".

Ms ALI-HIGO (Djibouti) said that the Parties in the WHO Eastern Mediterranean Region supported the proposal by the Philippines because it provided some flexibility, so that the tonnage and volumes sold by retailers could be covered by national legislation.

Mr GILLANI (Pakistan) sought clarification from the Philippines of the words "commercial growers". Would anyone growing tobacco for their own use be exempted? Anyone who packed and sold tobacco would be included as a commercial grower. He therefore suggested that the word "commercial" should be deleted. He needed more time to consider the details of the Philippine proposal, and in particular the practicability of licensing growers, and to receive his country's instructions on that.

The CHAIRPERSON said that in previous discussions it had been decided to include the word "commercial" since it was impracticable to license everybody growing tobacco.

Mr ROWAN (alternate to Mr Walton-George, European Community), having listened to speakers' suggestions that licensing should be mandatory for some and optional for others, said that there were merits in both proposals and suggested that two lists should be made, one mandatory and one optional. The European Community had in place for licensing a strict monitoring and control of all tobacco products to the point of consumption in a Member State, which was the time that the taxes had been paid. Some Member States went further and licensed retailers, but he did not support going further than the time of tax payment. WHO's system could be of registration or of end-user documentation, for example. Those were effective and would have the equivalent effect of licensing for WHO.

Mr PADILLA (Philippines) offered another possible compromise through the deletion of the word "growers" and addition of "to the extent possible, growers and retailers", with the removal of the word "commercial".

The CHAIRPERSON noted Pakistan's indication of approval for that proposal.

Ms ALI-HIGO (Djibouti) expressed concern about the amount of flexibility with regard to retailers. Since there were no growers in her country, she was unable to comment on that. Retailers should be subject to a clearly defined system, however, and she preferred the first version with its strict system, even for retailers, leaving the definition of a retailer to the discretion of each national legislative body. Where the proposed text had "if possible" the implication was that it might be impossible. Retailers could be left on the first list. However, it would be difficult to describe those selling cigarettes singly as retailers. She supported the first sentence proposed by the Philippines as it met the concerns of those large countries which had many growers and left it open for farmers facing economic problems.

The CHAIRPERSON, noting that a compromise had been reached, proposed that consideration be given to paragraph 2, beginning with the text in square brackets in subparagraph 2(a).

Mr AL-BADAH (Saudi Arabia) said that the term "competent authority" would be more suitable than "an agency or set of agencies", which was unclear. A competent body was a body or institution that had powers, the relevant authority and a defined role.

The CHAIRPERSON invited the Parties to agree on the replacement of "an agency or set of agencies" with "competent authority".

It was so agreed.

Mr PRASAD (India) said that he understood the term "suspension" to represent an order whereby a licence was made inoperable temporarily, for a specified period of time, and that such a suspension could be revoked, at which point the licence was once again operable; cancellation represented an order to render the licence permanently inoperable. He requested clarification of the term "control system".

The CHAIRPERSON suggested that, in subparagraph 2(a), the words "suspend and [cancel]/**[revoke]**" should be replaced by "suspend and/or cancel".

Dr GAMKRELIDZE (Georgia) supported the suggestion to replace "and" with "and/or" in that phrase but would prefer "revoke" to "cancel" as the more definitive term. He proposed that the protocol should include a provision requiring Parties to publish a register of all competent authorities involved in licensing so as to facilitate international cooperation in that area.

Ms WEBBER-AITU (Cook Islands) proposed that the phrase "suspend and/or cancel" should be amended to read: "suspend, revoke and/or cancel".

Ms ALI-HIGO (Djibouti), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, said that some of those Parties had expressed concern at the words "regardless of nationality or residency" in subparagraph 2(a). She suggested that, to make the phrase acceptable, the words "taking into account national law" should also be included.

After clarification by Ms ALI-HIGO (Djibouti), the CHAIRPERSON said that the proposed additional words "taking into account national law" should appear in the introductory phrase of paragraph 2.

Mr BERTRAND (Canada) proposed that the introductory phrase should read: "With a view to ensuring an effective licensing and control system as appropriate and in accordance with national law, each Party [shall]/**[should]**."

Mr GILLANI (Pakistan) requested clarification of the term "control system" and asked whether a definition of the term would be included in Part I of the protocol. He questioned the sense of the proposed amended text of subparagraph 2(a), as it was not appropriate to suspend, revoke or cancel licences for applicants meeting the requirements of the Article.

The CHAIRPERSON replied that the representative of the European Community had explained what was meant by "control system" earlier in the meeting. She requested Pakistan to submit a proposal for the rewording of subparagraph 2(a) to meet his other concern.

Dr TUIKETEI (Fiji) proposed that, having agreed to use the term "competent authority" at the start of subparagraph 2(a), the Committee should replace "designated agencies" with "competent authority" later in the paragraph.

Dr GAO Xingzhi (China) proposed that the last sentence of paragraph 2(a) should be deleted since it would be for each Party to determine which agencies would be designated as competent. He further proposed that an additional provision should be added to the effect that the designated competent authority should elaborate licensing regulations and establish the necessary management system to ensure implementation of the Article, since those were national responsibilities and could not be spelt out in the protocol.

The CHAIRPERSON suggested that it might be preferable to retain the last sentence of paragraph 2(a) and then insert the proposed additional wording.

Dr GAO Xingzhi (China) indicated that the suggestion was acceptable.

Mr KANGENYAN (India) proposed that subparagraph 2(b)(viii) should be amended by inserting the words "and its production capacity" after "manufacturing equipment" and that the paragraph should be inserted after subparagraph 2(b)(iv) to improve clarity and continuity.

Dr YIBOR (Togo) proposed that the first part of paragraph 2(a) should be amended to read: "Designate or establish a competent authority to issue and renew licences. This authority should also have responsibility for suspending, revoking and cancelling licences for all applicants that do not satisfy the requirements of this Article".

Ms LIKIBI-BOHO (Congo) expressed a preference for the stronger wording "each Party shall" in paragraph 2 and supported the amendment proposed by Togo. She proposed that in subparagraph 2(b)(ii) the words "information regarding" should be replaced by "information mainly regarding".

Ms BAQUERIZO (Ecuador) endorsed the view expressed by Pakistan regarding the sense of paragraph 2(a) and proposed that the words "to all applicants that satisfy the requirements of this Article, regardless of nationality or residency" should be replaced by "in accordance with what is stated in this Article". She further proposed that the proposed amendment reading: "suspend, revoke and/or cancel" should be further amended to read: "suspend and/or revoke" since the term "revoke" implied cancellation.

The CHAIRPERSON requested Ecuador and Pakistan to consult informally so as to arrive at a compromise text and to submit their joint proposal, together with their original proposals, in writing to the Secretariat.

Ms DEL PADRE (Paraguay) reiterated Paraguay's proposal made at an earlier meeting that subparagraph 2(b) should require information to be provided on relevant tax revenues.

Mr TAGOE (alternate to Dr Amankwa, Ghana) said that the wording of subparagraph 2(a)(c) should indicate clearly that one and the same competent authority would be empowered to issue, renew, suspend and/or revoke particular licences.

Mr BARAVA (Papua New Guinea) proposed that in subparagraph 2(b)(iii) the words "precise business address or location" should be included in the list of required information. He further proposed the insertion of a new subparagraph 2(b)(i) to read: "oblige manufacturers to inform the competent authority six months in advance before a business location change."

Dr ABOU ALZAHAB (Syrian Arab Republic) said that a wide range of areas was represented in the supply chain and that it might therefore be necessary to designate more than one authority to deal with licensing. The provisions in subparagraph 2(a) should make that clear.

The CHAIRPERSON suggested that use of the term "competent authorities" might clarify the text.

Mr ROWAN (alternate to Mr Walton-George, European Community) recalled that he had proposed adding the words "or equivalent" wherever "licences" occurred in the protocol.

The CHAIRPERSON confirmed that the necessary changes would be made.

Mr MAJANJA (alternate to Professor Nzomo, Kenya) said that the protocol should recognize the difficulties that might arise if Parties were to designate multiple authorities for monitoring trade in tobacco products.

Mr BERTRAND (Canada) said that in paragraph 2(b), the word "including:" should be replaced by "which may include, but is not limited to:".

The CHAIRPERSON, responding to a point of order from Mr OLDHAM (alternate to Mr Leguerrier, Canada), took it that, in the absence of any objection, the Committee could agree to the wording suggested by Canada.

It was so agreed.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) said that, since the current section dealt with licensing requirements, it would be preferable to move paragraph 2(d) to Part IV: Enforcement of the Chairperson's text.

The CHAIRPERSON said that if she heard no objection she would take it that the Committee could agree to that suggestion.

It was so agreed.

Ms ALI-HIGO (Djibouti) said that the wording covering definitive cancellation of licences for repeat offenders should also be incorporated in the text.

The CHAIRPERSON invited the Committee to consider which of the two options concerning paragraph 2(h) was preferable.

Mr MAJANJA (alternate to Professor Nzomo, Kenya) said that in the first option for subparagraph 2(h), the word "**[revoke]"** should come before "suspend".

Mr TAGOE (alternate to Dr Amankwa, Ghana) said that he would prefer the second option for subparagraph 2(h), which provided for greater flexibility.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) said that in the first option for subparagraph 2(h), the words "and prohibit the licensee from re-applying for a licence during that period" should also be in square brackets.

Mr ROWAN (alternate to Mr Walton-George, European Community) stated his preference for the more precise first alternative.

Ms WEBBER-AITU (Cook Islands) said that the first alternative was indeed preferable; the text should, however, begin: "suspend, revoke or cancel ... ."

Ms LIKIBI-BOHO (Congo) said that the words "if any" should be deleted from subparagraph 2(iv).

Ms ALI-HIGO (Djibouti) said that the text of the first alternative should begin "suspend a licence...". Repeat offenders should be prohibited definitively from reapplying for licences, and wording to that effect should be included.

The CHAIRPERSON said that the most Parties had expressed a preference for the first alternative. The concern over the second one was that the sanction imposed might be disproportionate to the gravity of the offence. She asked whether Ghana could agree to the first alternative.

Mr TAGOE (alternate to Dr Amankwa, Ghana) replied that he could accept the first alternative.

Mr AZOFF (alternate to Mr Leshon-Yaar, Israel), supported by Mr GÖRÜN (alternate to Mr Çelik, Turkey) and Dr NUNTAVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand), said that the gravity of offences committed varied. It might not be justifiable to cancel a licence for a period of at least five years for a minor record-keeping offence. He would therefore support a compromise text incorporating wording from the two alternatives to provide for appropriate flexibility.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that he would need more time to consider the Israeli suggestion.

Mr PADILLA (Philippines) suggested that, for the sake of compromise, the text might be reworded along the following lines: "impose such appropriate sanctions, including suspension and revocation of the licence depending on the gravity of the violation".

Ms ALI-HIGO (Djibouti) said that she could accept wording to that effect.

Mr MAJANJA (alternate to Professor Nzomo, Kenya) suggested that, in order to take account of the concerns expressed, the suggested text might be further amended to read: "provide for penalties or sanctions appropriate to the gravity of the offence, including but not limited to, suspension [revocation] or cancellation of a licence [for a period of not less than five years], and prohibition of the licensee from ...".

Mr ROWAN (alternate to Mr Walton-George, European Community) said that he could agree to the wording suggested by the previous speaker, but would prefer the term "offence" to be replaced with "contravention".

Ms ALI-HIGO (Djibouti) said that she would prefer the wording "provide for sanctions ...." so as to give legislators the flexibility to determine appropriate penalties. She could accept use of the word "contravention".

The CHAIRPERSON said that, if she heard no objection, she would take it that the Committee could agree to deletion of the word "penalties".

It was so agreed.

Mr OLDHAM (alternate to Mr Leguerrier, Canada) said that Canada continued to have difficulty with the phrase "[for a period of not less than five years]", and suggested its deletion.

The CHAIRPERSON pointed out that the wording to which the previous speaker had referred was in square brackets and would be discussed further in due course.

Ms BAQUERIZO (Ecuador) said that the term "contravention" should be placed in square brackets pending a decision on terminology, which would also depend on discussions in Committee B.

The meeting rose at 13:20.

FOURTH MEETING

Thursday, 23 October 2008, at 15:00

Chairperson: Ms M.K. MATSAU (South Africa)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

Part III: Supply chain control (continued)

Licence (continued)

The CHAIRPERSON invited the Committee to resume its consideration of paragraph 2 of the section on licences in document FCTC/COP/INB-IT/2/3, as amended in the working paper submitted to the Committee that morning.

Mr BERTRAND (Canada) said, with reference to subparagraph 2(c), that Canada did not levy licence fees and, if it did, it would not agree to be bound by the protocol to use those fees for a specific purpose. He suggested that the subparagraph should be deleted.

Ms BAQUERIZO (Ecuador) agreed that the subparagraph should be deleted since the levying and use of fees was a matter for governments.

Ms SEKOU MADOUGOU (Benin) said that the subparagraph should be retained. Governments decided whether to levy licence fees, but it was justifiable for the protocol to specify how any fees which were levied should be used.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) said that the subparagraph should be deleted. No licence fees were levied in his country but, if they were, they would not be earmarked.

Dr GAO Xingzhi (China) said that no licence fees were levied in his country. Should subparagraph (c) be retained, the wording would need to be made more flexible.

Dr LEWIS-FULLER (Jamaica) said that subparagraph (c) should be retained. Reference could perhaps be made to "fees levied in accordance with national procedures" or similar wording.

Ms WEBBER-AITU (Cook Islands) said that it was in the interests of public health for licence fees to be used in the ways specified in subparagraph (c). The text referred to "any licence fees as may be levied", and so did not assume that fees were levied in all cases.

Mr KANGENYAN (India), speaking on behalf of the Parties in the WHO South-East Asia Region, Ms AMARTEY (alternate to Dr Amankwa, Ghana), Ms LIKIBI-BOHO (Congo) and Dr AL HALWAJI (Bahrain) all said that the subparagraph should be retained.

Mr OLDHAM (alternate to Mr Leguerrier, Canada) agreed, at the request of the CHAIRPERSON, to conduct informal negotiations to find a mutually acceptable wording for subparagraph (c).

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) said, with reference to subparagraph 2(g) that, in his country, there was no specific time limit for the expiry of licences. He suggested that the subparagraph should be placed between square brackets.

Ms BAQUERIZO (Ecuador) recalled that she had asked for the term "contravention" to be included in square brackets in subparagraph (h), since subsequent discussions might reveal hitherto unconsidered implications of the term. She requested the Parties to consider paragraph 2(a).

The CHAIRPERSON drew attention to the written proposal for paragraph 2(a) that had been prepared by Ecuador and Pakistan and invited comments from Parties:

"[(a) designate or establish a competent authority to issue or renew licences [or other control systems], subject to fulfilment of requirements under this Article, to conduct activities under this Article, irrespective of nationality or residence. The competent authority will also have powers to suspend, revoke, or cancel licences if the licensee's activities are not in accordance with provisions/requirements of this Article.]".

Mr GILLANI (Pakistan) explained that the rationale of the proposal was that a distinction should be drawn between issuing and renewing licences, on the one hand, and suspending and revoking them on the other, since the latter implied a violation after a licence had been issued. The substance of the paragraph remained the same.

Ms FLORES SALGADO (Peru) requested that the word "Article" at the end of the paragraph be replaced with "protocol".

Mr KANGENYAN (India) asked what "irrespective of nationality or residence" meant in the context.

Ms DELAND (Convention Secretariat) said that the Chairperson had, she believed, included that phrase in order to comply with WTO requirements and to ensure that licences were issued equivalently to both national and non-national businesses.

Mr ROWAN (alternate to Mr Walton-George, European Community) requested that the phrase "[or other control systems]" should be replaced with "[or equivalent approval]".

Dr KULAIB (United Arab Emirates) suggested that the phrase "irrespective of nationality or residence" should be omitted.

Mr TAGOE (alternate to Dr Amankwa, Ghana) requested that "will also have powers" should be replaced with "shall also have powers" and that "in accordance with" should be replaced with "in conformity with".

Ms BAQUERIZO (Ecuador) recalled that the aim of the proposal was to distinguish between issuing on the one hand, and suspension and revocation on the other. She therefore urged Ghana to be flexible.

The CHAIRPERSON noted that the amendments suggested by Ghana would neither alter the content nor contradict the distinction mentioned by Ecuador.

Ms BAQUERIZO (Ecuador) confirmed that she accepted the amendments suggested by Ghana.

Dr TUIKETEI (Fiji) requested that the sentence "The competent authority may include customs agencies, revenue authorities, public health authorities or any other competent authority", as in the original Chairperson's text, or at least a definition of "competent authority" should be included.

Ms SEKOU MADOUGOU (Benin) requested that the words "trade authorities" should be added before "or any other competent authority".

Mr ANDRIANOMENJANAHARINIRINA (Madagascar) suggested that the definition of "competent authority" would be better placed in the section on use of terms in Part I.

Ms LEWIS-FULLER (Jamaica) suggested that the last sentence, proposed by Fiji and Benin, should be removed since the list of competent authorities could be endless; indeed, as implied by the word "designate" at the beginning of the paragraph, the competent authority could even be an entirely new body.

The CHAIRPERSON asked the representative of Jamaica whether her concerns were addressed by the inclusion of "or any other competent authority" at the end of the sentence.

Ms LEWIS-FULLER (Jamaica) confirmed that that phrase did go some way to allaying her concerns.

Ms BAQUERIZO (Ecuador), recalling the proposal by Canada to insert "according to national law" in the first line of paragraph 2, said that the additional sentence at the end of the paragraph would be unnecessary since the national legislation of each country would determine which authorities were competent and which were not. However, she was open to the possibility of inserting a definition of "competent authority" in the section on use of terms.

Mr PADILLA (Philippines) suggested a new version of the whole of subparagraph 2(c), which he would submit as a written proposal.

Dr AL-BEDAH (Saudi Arabia) expressed support for the comments by the representative of Ecuador that the paragraph under discussion should mention simply "competent authority", with no further explanation.

Ms JAQUEZ (Mexico) expressed support for the view that the definition of competent authorities in the paragraph under discussion needed no amplification. While noting that some Parties were reluctant not to include the last sentence of the original Chairperson's text, she observed that there was a slight discrepancy between the Spanish version of the sentence, which read: "the designated agencies may include", and the current English version, "the competent authority may include". Furthermore, the current English version then repeated "any other competent authority" at the end of the sentence, which seemed superfluous. If the final sentence was to be retained, the wording would have to be reviewed and the English and Spanish versions harmonized. Reference should further be made to the need to adapt designation of authorities to current national legislation.

The CHAIRPERSON suggested that, since it had already been agreed to insert "in accordance with national law" earlier in paragraph 2, no definition of competent authorities was needed in subparagraph 2(a) because they would be defined in each country's national legislation. She therefore invited the Parties to comment on the proposal that the definition should be removed from subparagraph 2(a).

Dr DLAMINI (Swaziland), expressing support for the Chairperson's proposal that the sentence should be deleted, suggested that the Committee concentrate on removing the remaining text in square brackets.

The CHAIRPERSON read out the paragraph as amended so far and invited Parties' comments: "designate or establish a competent authority to issue or renew licences [or equivalent approval], subject to fulfilment of requirements under this Article, to conduct activities under this Article, irrespective of nationality or residence. The competent authority shall also have powers to suspend, revoke, or cancel licences if the licensee's activities are not in conformity with provisions/requirements of this protocol."

Ms LEWIS-FULLER (Jamaica) requested that "issue or renew" should be replaced by "issue and renew", since the competent authority would do both.

Ms WEBBER-AITU (Cook Islands) requested that the two references to "Article" should be replaced by "protocol", consistent with the use of "protocol" at the end of the paragraph.

Ms SEKOU MADOUGOU (Benin) expressed support for the paragraph as so amended.

The CHAIRPERSON asked the representative of the Philippines whether he still wished to amend the paragraph under discussion.

Mr PADILLA (Philippines) said that the paragraph as it stood was too verbose, and the version that he had been going to submit was more concise and less repetitive. However, since the majority of Parties were in agreement, he was willing to accept the new text.

Dr AL-BEDAH (Saudi Arabia) said that, since governmental authorities already existed, there was no point in referring to creating competent bodies.

Dr KULAIB (United Arab Emirates) reiterated his view that the phrase "irrespective of nationality or residence" should be omitted. However, the reference could perhaps be retained if the phrase "according to national legislation" was inserted; under his country's legislation, licences were granted according to nationality and residence.

The CHAIRPERSON recalled that the Parties had already agreed to include a reference to national legislative frameworks in the introductory paragraph.

Ms BAQUERIZO (Ecuador) suggested that the concerns of the United Arab Emirates could be met by inserting "of the applicants" after "regardless of nationality or residency", since applicants were mentioned in the original version of the Chairperson's text.

The CHAIRPERSON invited Parties' comments on the proposal that the words "of the applicant" could be added.

Ms BAQUERIZO (Ecuador) said that using the word "applicant" instead of "licensee" would reflect the usage in the Chairperson's text, but that she would leave it to the Chairperson's discretion.

Mr OLDHAM (alternate to Mr Leguerrier, Canada), in response to the CHAIRPERSON's request to find alternative wording for paragraph 2(c), suggested, after having consulted with Brazil, China and Israel, that the words "… allow for their use …" be replaced by "… consider the allowance for their use …".

The CHAIRPERSON suggested that the language could be simplified by removing the words "the allowance for".

Mr OLDHAM (alternate to Mr Leguerrier, Canada) said that he saw no objection to the CHAIRPERSON's suggestion, meaning that paragraph 2(c) would read: "monitor and collect any licence or equivalent approval fees as may be levied and consider their use in the effective administration and enforcement of the licensing system or for public health or any other related activity."

Ms SEKOU MADOUGOU (Benin) noted that the Committee had become stuck in excessively detailed and time-consuming editing work. Supported by Dr GAO Xingzhi (China) and Dr KULAIB (United Arab Emirates), she proposed that it should seek to accelerate progress by returning to its assigned task of reviewing the general thrust of the Chairperson's text, and leave the details to the plenary.

Ms BAQUERIZO (Ecuador) proposed following the practice of WHO's governing bodies by inserting "[*consensus*]" or a similar indication where agreement had been reached.

Mr OLDHAM (alternate to Mr Leguerrier, Canada) said that what the Committee was doing was in fact necessary and timely, and should be continued.

The CHAIRPERSON stressed that the details must be dealt with at some point because that was where differences in opinion tended to arise. Slow and painstaking work it might be but, if not done in the Committee, it would ultimately have to be delegated, along with the decision-making, to another body. Many Parties would then find themselves unable to identify with the final document and, hence, disown it.

Mr ROWAN (alternate to Mr Walton-George, European Community), supported by Dr DLAMINI (Swaziland), endorsed the position of the Chairperson. It was time to stop talking about goals and concepts and to engage in the serious business of negotiating a protocol on the illicit trade in tobacco products.

Dr GAO Xingzhi (China), speaking on paragraph 3, said that the scope of the text as it stood should be broadened by adding the following wording: "Every Party should formulate and promulgate the relevant specific provisions concerning licensing arrangements in accordance with its national laws".

Mr SAMUDA (Panama) said that the words "*tránsito*" and "*circulación*" in the Spanish version of paragraph 4 were inappropriate in connection with the specific subject of customs transit.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) suggested that the following words, in square brackets, be added to the first line of paragraph 4: "… audit measures to the transit of [tobacco and] tobacco products …".

Dr NUNTAVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand) requested that paragraph 4 be further amended to read: "… audit measures to the transit of tobacco and tobacco products [and manufacturing equipment used in the manufacture of tobacco products] in conformity with …".

Dr NYEZIMANA (Rwanda) proposed inserting a new paragraph, to become paragraph 5, reading: "All measures in this protocol applying to the manufacture, sale, trade, distribution, transit,

export and import of tobacco, tobacco products, manufacturing equipment and key inputs shall be applied to activities undertaken in free trade zones".

Mr OLDHAM (alternate to Mr Leguerrier, Canada) asked whether the new paragraph was intended to apply to the section on licence alone or to the entire protocol. If the latter was the case, then the paragraph should be placed in an introductory paragraph or the preamble.

Dr NZEYIMANA (Rwanda) confirmed that the paragraph applied to the entire protocol and agreed that it should be transposed to an introductory paragraph or the preamble.

Mr GILLANI (Pakistan), reverting to paragraph 4, suggested inserting the words "key inputs" after "and manufacturing equipment".

Mr OLDHAM (alternate to Mr Leguerrier, Canada), noting that Canada would not be implementing the regime under the protocol, proposed the replacement in paragraph 4 of the words "endeavour to" with "where appropriate". He did not accept the insertion of the words "key inputs", and he requested a definition of the term "transit". Did it mean inter-provincial movement, as was the case in his country, or did it refer exclusively to transit across national borders?

The CHAIRPERSON recalled that the term "transit" had the previous day been defined as referring to transborder transit. A working group had been asked to look into the question of "key inputs" and had produced a working paper on the subject.

Mr GARCÍA (Bolivarian Republic of Venezuela) said that national transit was the movement of goods between two countries or within a single country, whereas international transit was the movement of goods from one country through another and into a third. The term had been proposed by Panama because the bulk of goods originating in Asia and elsewhere passed through that country into third countries in Latin America. Paragraph 4, like the new paragraph 5 just proposed by Rwanda, should be removed from the section on licence and placed in an introductory paragraph or the preamble.

Dr LEWIS-FULLER (Jamaica) said that paragraph 4 summed up the whole underlying principle of the protocol: the need for control over the international movement of tobacco and tobacco products. Both the phrases "shall endeavour to" and "as appropriate" should be deleted and the word "international" inserted before "transit". There was admittedly some uncertainty about the meaning of "key inputs"; "other inputs" would be more suitable. If a country disagreed with the principle embodied in paragraph 4, the implication was that it had reservations on the protocol.

Mr ROWAN (alternate to Mr Walton-George, European Community) suggested that paragraph 4 could be placed in the section on security and preventive measures in Part III. It was important to realize that trade and transit were crucial to the illicit trade in tobacco products. Tobacco company documents revealed that transit was used as a way of supplying the illicit market, costing countries around the world billions of euros. The European Community strongly objected to including the phrase "where appropriate" as it weakened the text.

Dr NUNTAVARN VICHIT-VADAKAN (alternate to Mr Sihasak Phuangketkeow, Thailand) supported the comments by Jamaica and the European Community about not inserting "where appropriate" in paragraph 4.

The CHAIRPERSON, summing up the discussion and observing that where to place paragraph 4 still had to be determined, requested the delegation of Jamaica to look into that matter. Since Canada disagreed with the substance of the provision and had stated that it would not apply it,

while other delegations were very much in favour, she appealed to Canada not to press for inclusion of the phrase "where appropriate".

Mr BERTRAND (Canada) said that his country had no intention of instituting audit measures on the movement of manufacturing equipment, tobacco products or even tobacco. Such movement was fairly well contained by Canada's existing regime, which comprised a number of effective controls.

The CHAIRPERSON observed that paragraph 4 might be extremely helpful to other countries with less stringent control measures than Canada and urged that Party to agree to retention of the phrase "shall endeavour to" and to deletion of the words "where appropriate."

Mr BERTRAND (Canada) said that the phrase "where appropriate" offered countries sufficient flexibility for achieving the necessary control over transit of tobacco and tobacco products, and that the phrase "shall endeavour to" might be taken to mean that each party must do its utmost to adopt and apply control measures. Nevertheless, he would not insist on including "where appropriate".

The CHAIRPERSON noted that paragraph 4 would consequently read: "Each Party shall endeavour to adopt and apply control and audit measures to the [international] transit of tobacco and tobacco products [and manufacturing equipment [and key inputs] used in the manufacture of tobacco products] in conformity with the provisions of this protocol in order to prevent illicit cross-border trade of such products."

Mr OOKA (alternate to Mr Isomata, Japan) said that the words "where appropriate" should be retained for the time being. In his country's view, manufacturing equipment and key inputs did not always need regulating. The subject was, moreover, being discussed in working groups, the outcome of which was awaited.

The CHAIRPERSON suggested replacing "where appropriate" with "where applicable". In her view "where appropriate" had connotations that tended to weaken the text; "where applicable" would, she thought, meet the concerns of Japan.

Mr OOKA (alternate to Mr Isomata, Japan) indicated his understanding of the Chairperson's comment.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that the European Community did not approve. Manufacturing equipment and key inputs were already in square brackets and everyone was awaiting the results of the working groups. The word "endeavour" should be retained. Most countries applied controls to goods in transit. The words "where applicable" would be acceptable if placed before "audit measures".

Dr AL-BEDAH (Saudi Arabia) said that it was first necessary to control the source before applying measures of verification or audit to the transit of tobacco products and illicit trade in tobacco.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) asked what was meant by "audit measures" for goods in transit since the goods were not being imported for local use.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that "audit measures" referred to a simple analysis of the relevant paperwork, such as bills of lading.

Mr OOKA (alternate to Mr Isomata, Japan) indicated his understanding of the Chairperson's comment, but said that the definition of transit appeared to depend on the country. Japan reserved its position on the paragraph.

Mr GARCÍA (Bolivarian Republic of Venezuela) said that from a customs point of view goods in transit were goods being moved from one country to another. In his country the term "auditing" was not used in such a context, but the word "verification" was. An auditor was a person who studied the accounts of a company, conducting a major review. For goods in transit the operation simply involved verification of the various documents concerned.

Mr SAMUDA (Panama) expressed agreement with Venezuela. Auditing was a quite different activity. When the subject had been discussed his country had proposed the term "verification".

Mr ROWAN (alternate to Mr Walton-George, European Community) accepted use of the term "verification measures".

The CHAIRPERSON took it that the Committee approved the content of paragraph 4 as amended.

It was so agreed.

The CHAIRPERSON said that it remained to decide where the paragraph should be placed. She reminded the Committee that it had not completed its examination of paragraph 1 of the section on licensing. There had been a number of proposals which the Secretariat had synthesized for the sake of a compromise text taking into account all the proposals submitted: "In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products, a licensing system or other such control mechanism having the same effect, shall cover every person, natural or legal, involved in, or related to the supply chain system, including but not limited to: manufacturers, traders, wholesalers, transport and warehouse operators, importers, exporters, leaf dealers and [retailers] and the like and to the extent possible [growers]".

Dr LEWIS-FULLER (Jamaica) read out her proposal for the merging of paragraph 4 with paragraph 1: "In the light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco, tobacco products and manufacturing equipment and other inputs used in the manufacture of tobacco products, each Party shall adopt and apply control and where applicable audit measures to the international transit of these products to ensure conformity with the provisions of this protocol in order to prevent illicit cross-border trade of such products. In particular, to the extent considered appropriate, …", the rest of the paragraph remaining unchanged.

The CHAIRPERSON said that there were two concepts involved: licensing and goods in transit. She was not convinced that they could readily be merged.

Dr LEWIS-FULLER (Jamaica) said that she had considered the possibility of placing the paragraph in the section on tracking and tracing.

The CHAIRPERSON said that there was agreement on the content of the paragraph but a place had to be found for it. The representative of Jamaica could make a proposal to the next plenary meeting.

Mr DUTTA (Bangladesh) drew attention to the last line of the proposed text, "[retailers] and the like and to the extent possible [growers]", which should be deleted.

Mr PRASAD (India), speaking on behalf of the Parties in the WHO South-East Asia Region, said that he had submitted a written text on the subject. Thailand had also done so. He wondered whether the draft under consideration was that one or a modified version, because several versions appeared to exist.

The CHAIRPERSON said that the Secretariat had received several formulations that it had tried to merge, taking all views into consideration. It had included "to the extent possible" in response to the concern of Bangladesh. Other details had been incorporated to meet other concerns. The text was a compromise.

Mr PRASAD (India) said that India wished to make its position very clear: retailers and growers should be excluded. India agreed that the text should cover the supply chain to the maximum extent, including all key players such as tobacco dealers, manufacturers, equipment manufacturers and so on. The requirement for a licence should not be stretched too far. The text should be adaptable to the national situation. India had so many small farmers and retailers that such a requirement would be impossible to apply. The protocol should be progressive and adaptable to as many countries as possible.

Dr AL-BEDAH (Saudi Arabia) said that, since without tobacco farmers there would be no protocol, such farmers should require licences.

Dr DLAMINI (Swaziland) said that much effort had gone into the text presented, which sought to recognize the requirement that key participants in the tobacco supply chain should need licences. In the spirit of the text, growers and retailers were included "to the extent possible".

Dr LEWIS-FULLER (Jamaica) supported India on the issue of retailers. Their number, their often itinerant nature, the selling of single sticks, and so on, made their inclusion impracticable. The phrase "where practicable" should be inserted. The crux was to cover the major participants in the supply chain.

Mr ROWAN (alternate to Mr Walton-George, European Community) expressed sympathy with India concerning growers and retailers. The amount of administration required in relation to any tangible results obtained would be enormous. The protocol should concentrate on the big issues such as tracking and tracing.

Ms ALI-HIGO (Djibouti) said that a consensus in a positive spirit had been reached on the question during the discussions that morning, a consensus based on the view that national legislation could allow countries to define "retailers" and "growers" in terms of the volume of tobacco.

Mr BAZARCHYAN (Armenia) agreed with the previous speaker. However, in his view, the reference to retailers should be deleted but that to farmers retained.

The meeting rose at 18:05.

FIFTH MEETING

Thursday, 23 October 2008, at 18:45

Chairperson: Ms M.K. MATSAU (South Africa)
later: Dr PRAKIT VATHESATOGKIT (Thailand)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Documents FCTC/COP/INB-IT/2/3) (continued)

Part III: Supply chain control (continued)

Licence (continued)

Mr OOKA (alternate to Mr Isomata, Japan) said a number of options existed for the wording of paragraph 1 and all of them should be left as they stood in the report to plenary since it was not realistic to achieve consensus at the moment, as wherever agreement had been reached, as in future, the square brackets could be deleted.

Ms DEL PADRE (Paraguay) said that the text did not refer to the primary processing agents. In a licensing system, licences should be required for such agents. In regard to growers, Paraguay considered that the matter could be left to national legislation. In Paraguay growers with less than 20 hectares of land were not taxed on it.

The CHAIRPERSON said that completing the Committee's work would require a different approach. So far hardly anything had been done and yet the Committee had to report to plenary and give Parties something to work on. She suggested spending some 15 minutes on each section. All ideas and proposals should be submitted in writing to the Secretariat, which would simply incorporate them in a document for submission to plenary, without any attempt at merging or synthesis. Instead of discussing every section in a bid for consensus, the various views would be stated in writing and listed. Too much time had been wasted. She took it that the Committee accepted the suggested change of approach.

Mr OLDHAM (alternate to Mr Leguerrier, Canada) asked how the new approach differed from that of the previous day.

The CHAIRPERSON replied that, the day before, the Committee had looked at different sections with a view to adding content that appeared to be missing. At the present meeting comments and proposals would be recast in a document. There would be no on-screen editing or discussion of detail.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that the concepts had already been discussed in the Committee and in plenary. A text had been produced by the Secretariat that participants were present to negotiate. If the Committee returned to the discussion of concepts it would have nothing but opinions to put before plenary. It would be preferable to continue as before. Speakers could be cut short if necessary and, if no agreement emerged on a point, the Committee should move on in an effort to find what it could agree on.

The CHAIRPERSON said that the question was not one of concepts but of their concrete formulation: she did not wish to open a debate on each section and thought that all proposed amendments should preferably be submitted in writing.

Mr ROWAN (alternate to Mr Walton-George, European Community) said that the screen was necessary for following the proceedings.

The CHAIRPERSON replied that the screen was not needed since consensus was no longer the immediate aim. All views submitted would be incorporated in a document.

Ms WEBBER-AITU (Cook Islands) suggested that they should start where they had left off, at paragraph 4. Failing comments, they should move on to the next paragraph, and so on. Any comment should just be noted and the matter taken up again later.

Dr Prakit Vathesatogkit took the Chair.

Customer identification and verification

The CHAIRPERSON suggested consideration of the nine paragraphs in the section on customer identification and verification, which started on page 3 of the working paper that was before the Committee. He invited comments on any of them but said that all proposed amendments or corrections should be submitted in writing.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) expressed concern about the entire section. Noting that, under its provisions, a large number of agents would be responsible for controlling commercial relations in order to discourage illicit trading, he questioned the feasibility of Parties monitoring the vast number of commercial transactions to the degree of detail required in the text. Since involving the industry in any form of self-regulation would be difficult in Brazil, he therefore proposed that the whole section should be placed in square brackets.

Mr OOKA (alternate to Mr Isomata, Japan) suggested that the introductory sentence to paragraph 8 on the treatment of blocked customers should permit a degree of flexibility since the provisions might be hard to apply on account of differing national legislation. He would submit a written proposal.

Ms DE SILVA (Sri Lanka), noting that the phrase “due diligence” had been defined in Part I of the Chairperson’s text as “a reasonable state-of-the-art investigation”, expressed concern at the use of the phrase throughout the section under discussion, since Sri Lanka was a developing country and could hardly ask all actors in the supply chain to use state-of-the-art technology. She would submit a written proposal for an alternative definition of “due diligence” to be included in Part I.

Mr AZOFF (alternate to Mr Leshno-Yaar, Israel) expressed support for the suggestion by Brazil as the section raised serious legal problems with respect to, for example, asking customers for their bank account numbers or for details of their corporate capital. Israel might be unable to fulfil the provisions as they stood. The section therefore required further discussion and should indeed be placed in square brackets.

Dr AL-BEDAH (Saudi Arabia) suggested that Parties had no cause for worry in the case of legal trade in tobacco, given that the section referred to illicit trade.

Mr BALACHANDHRAN (India) requested that the phrase “excluding the final retailer” in paragraph 2, line 3, should be retained.

Mr ROWAN (alternate to Mr Walton-George, European Community), voicing serious concern at paragraph 8(e) from the point of view of basic human rights, requested its deletion.

Tracking and tracing

Mr ROWAN (alternate to Mr Walton-George, European Community) said that, as a result of its extensive experience in combating illicit trade in tobacco products, the European Community had reached the conclusion that tracking and tracing, a key part of the protocol, was one of the most useful means of fighting the phenomenon. Legitimate products could be tracked from the point of production to the first and subsequent customers, meaning that seized goods could be traced back to identify when and by whom they had been diverted to illicit trade. Although national tracking and tracing systems were to be supported and encouraged, an international system was essential for combating international illicit trade. The agreements concluded by the European Community with Philip Morris International and Japan Tobacco International were legally binding; while he was not trying to impose the Community's system on other Parties or recommending the use of any particular company, he stressed the importance of identifying high standards that all international systems must meet. The inclusion of such provisions in the section under discussion would have a notable impact on illicit trade. He would submit written proposals for a small number of amendments.

Mr FITZGERALD (alternate to Dr Doverty, Australia) said that he too regarded tracking and tracing as important in the fight against illicit trade in tobacco products.

Mr OOKA (alternate to Mr Isomata, Japan) proposed that paragraph 11 should be deleted since its provisions would be impossible to apply in Japan.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) proposed that the first sentence of paragraph 9 should end with "establish a global tracking and tracing system", the rest of the sentence being deleted.

Mr KANGENYAN (India) reiterated his delegation's view, expressed the previous day, that "within [three] years" in paragraph 2 should be replaced by "within [five] years".

Mr LIBERMAN (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIRPERSON, expressed support for the proposal that Parties should be required to apply tracking and tracing as far through the tobacco-product supply chain as possible. Although the section under discussion included the key elements of an effective international system for tracking and tracing, a number of complex technological and practical issues required further consideration. A dedicated working group should be established to address those issues and report to the third session of the Intergovernmental Negotiating Body.

Mr BERTRAND (Canada) said that he found it difficult to accept the idea of an international tracking and tracing system. The protocol could, however, propose key elements to be included in a tracking and tracing system wherever necessary and feasible.

Dr ASQUETA (Uruguay) said that there appeared to be reasonable grounds for retaining the text contained in square-bracketed paragraph 11.

Record-keeping and *Internet and other telecommunications-based modes of sale*

Mr AZOFF (alternate to Mr Lashno-Yaar, Israel) asked why Parties needed to keep information of the kind outlined in subparagraph 2(a) of the section on record-keeping. Furthermore, where would

the information come from, and could a tobacco company be obliged – or, if selling its products abroad, be expected – to give it?

Mr WALTON-GEORGE (European Community), speaking in his capacity as Chairperson of the Intergovernmental Negotiating Body, explained that the information in question could help the authorities to estimate what constituted normal trade flows of tobacco products, machinery or key inputs into a market and, hence, enable them to detect any abnormal flows suggesting that they were being smuggled elsewhere as part of an illicit trade. It was information required on request. Parties were under no obligation to ask for it but had the option of seeking and obtaining it should they wish to check the situation with certain manufacturers.

Mr AZOFF (alternate to Mr Lashno-Yaar, Israel) said that the competent authorities monitored trends, forecasts and market volumes as a matter of course and, when auditing a particular company, could make their own calculations. He could see no point in including such a measure in a treaty.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) wanted subparagraph 5(c) of the section on record-keeping to be amended to read: "as far as feasible, kept in a common format, or as prescribed by the competent authorities." In response to Dr ASQUETA (Uruguay), who had asked whether two separate types of records were involved, he said that manufacturers in Brazil kept their own records in any form they chose.

Ms WEBBER-AITU (Cook Islands) requested that paragraph 5 be amended to read: "… each Party shall adopt effective [legislative and] administrative measures to require that all records are …".

Mr PADILLA (Philippines) proposed that a new paragraph should be added to the section on security and preventive measures: "Unless otherwise proved to the contrary, tobacco manufacturers (industry) are presumed responsible for legitimate tobacco products that are diverted or found illicitly traded".

Ms WEBBER-AITU (Cook Islands) said that the suggested alternative title of the section on Internet and other telecommunication-based modes of sale, namely "Duty-free, Internet and other analogous modes of sale", could be made clearer by replacing the word "analogous" with "similar".

Mr MBUYU MUTTEBA (Democratic Republic of the Congo) said that the tobacco industry was keeping a watchful eye on and would undoubtedly seek to thwart the work underway. While both imports and manufacturing in his country had formerly been in the hands of the customs services alone, steps had been taken to improve tracing and to combat abuses through a new two-tier system that prevented importers and manufacturers alike from obtaining a licence from those services without prior permission of the Ministry of Health.

Dr AL-BEDAH (Saudi Arabia) suggested that prompt exchange of information should be included among the security and preventive measures.

Ms MATSAU (South Africa) noted that paragraph 7 under record-keeping covered that concern, although it had been incorrectly reproduced in the working paper before the Committee. It should read: "The Parties shall endeavour to cooperate, with each other and with competent international organizations, in sharing information and progressively developing improved technologies for record keeping".

Mr KANGENYAN (India) expressed a preference for the fourth proposal on Internet and other telecommunication-based modes of sale, namely: "Each Party shall take all necessary legislative, executive, administrative and/or other measures to ensure that the sale of tobacco products to

consumers through the Internet and other telecommunication-based modes is prohibited". The Parties in the WHO South-East Asia Region had doubts, however, about whether the reference to the sale of duty-free tobacco products should be included in that provision.

Mr OLDHAM (alternate to Mr Leguerrier, Canada) supported that position. Canada's own laws dealing with tobacco taxation and control applied irrespective of the mode of supply, and accordingly applied to Internet sales.

Dr BABB-SCHAEFFER (Barbados) said that, to give countries like her own some flexibility for determining their taxation policies, the words "should" or "shall endeavour" should be inserted in the proposal on prohibition of duty-free sales of tobacco products. Alternatively, the text might be replaced with a provision similar to that in Article 6 of the WHO Framework Convention on Tobacco Control. Lastly, it needed to be made clear who should be concerned by the prohibition on sales: diplomats, international travellers or other categories of consumers.

Ms ALI-HIGO (Djibouti) preferred the fourth proposal in the section on Internet sales but also favoured inclusion of a time limit of three or four years after the entry into force of the protocol.

Mr OOKA (alternate to Mr Isomata, Japan) said that an expert opinion was needed on how the section on Internet sales related to the international trade regulations of WTO and other bodies. Some new ideas, for example on the prohibition of duty-free sales, had been included in the section, and Japan needed time to look into the feasibility of implementing them in its jurisdiction. It therefore reserved its position on the section.

The CHAIRPERSON said that an expert opinion had been requested from WTO.

Dr LEWIS-FULLER (Jamaica) said that, after consultations among delegates, the following three paragraphs on Internet and telecommunication-based modes of sale had been drafted:

"Each Party shall prohibit the sale or offering for sale of tobacco products to consumers via remote means, including but not limited to the Internet or any other means of telecommunication, whether across international borders or within its territory."

"Each Party shall prohibit legal and natural persons from knowingly supplying or delivering to consumers tobacco products sold through the means referred to in the previous paragraph whether across international borders or within territories."

"Parties shall cooperate with one another in implementing these two paragraphs."

Mr LINDGREN (Norway) said that two of the four proposals in the section being discussed would prohibit duty-free sales. Such a ban had not originally been included in the Chairperson's text. The wording should be kept in square brackets until the end of the present session to allow delegations to give it careful consideration in their capitals.

Mr DUTTA (Bangladesh) said that Bangladesh did not oppose the sale of legal tobacco and tobacco products at duty-free shops if tax or duty was charged on them, but that the duty-free privilege for the sale of such products at duty-free shops should be withdrawn.

Dr ASQUETA (Uruguay) endorsed the fourth proposal for inclusion in the text.

Dr LEWIS-FULLER (Jamaica) said that the text on duty-free sales had been separated from the text on Internet and telecommunication-based sales and now read: "Each Party shall implement effective measures to prohibit: (a) the sale within the territory of the Party of tobacco products on a tax-free or tax-reduced basis to international travellers; and (b) the sale of tobacco products on a tax-free or tax-reduced basis on transportation carriers within the jurisdiction of the Party".

Dr BABB-SCHAEFFER (Barbados) said that tobacco products intended for duty-free shops were finding their way into the hands of illicit traders. What was really needed therefore was not a ban on duty-free sales but a provision focusing on that problem, which might read: "Each Party shall prohibit legal and natural persons from knowingly supplying or delivering to consumers tobacco products intended for duty-free shops".

(For resumption of the discussion, see below.)

Part IV: Enforcement (continued from the second meeting)

Search of premises and seizure of evidence and *Confiscation and seizure*

Mr ROWAN (alternate to Mr Walton-George, European Community) said that under Part IV, the heading "Confiscation and seizure" should read: "Confiscation and seizure of assets". Clarification was still needed on whether such measures related to the seizure of assets following conviction of a criminal offence or to civil forfeiture of assets based on a civil standard of proof. If criminal confiscation was intended, confirmation was required that the offences in question were those referred to as criminal in Part IV, Offences, paragraph 2. On the other hand, if it was civil forfeiture that was intended, then any offence, minor or serious, that was acceptable to the courts could be used as the basis for confiscation and seizure.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) proposed that in the first sentence of paragraph 6 of the section on confiscation and seizure, the words "endeavour to" should be inserted after "each Party shall". In the second sentence of that paragraph, the phrase "subject to their national law" should be inserted between commas after "Parties shall".

Mr OOKA (alternate to Mr Isomata, Japan) asked for clarification of the term "freezing" in paragraph 2 of the section on confiscation and seizure.

Mr WALTON-GEORGE (European Community), speaking in his capacity as Chairperson of the Intergovernmental Negotiating Body, said that the term "freezing" was defined in Article 2(f) of the United Nations Convention against Transnational Organized Crime. Frozen property was not formally seized but merely temporarily immobilized.

Ms DE SILVA (Sri Lanka) pointed out that the term "seizure", which appeared in that Convention as a synonym of "freezing", was defined in the section on use of terms of the draft protocol.

Mr OOKA (alternate to Mr Isomata, Japan) reserved his position on paragraph 2 since he was unsure whether its provisions were compatible with his country's legislation.

Dr LEWIS-FULLER (Jamaica) and Mr ESCUDERO (alternate to Mr Portales, Chile) noted that the term "offender" in paragraph 7 was inappropriate since it assumed that the person concerned was guilty. The same issue arose in other parts of the draft protocol.

Mr KANGENYAN (India) said that the term "person under investigation" was used in his own country's legislation.

The CHAIRPERSON pointed out that "offender" was the term used in the United Nations Convention against Transnational Organized Crime.

Mr LOM (alternate to Mr Bowerman, Observer, United States of America)[1] urged caution in the inclusion of provisions from other legal instruments. Any change of wording might create ambiguity and undermine the instrument from which it was taken, as well as the future protocol. A reference to the instrument concerned might be more useful than reproducing its provisions. For instance, in the section under consideration, it might be stated that Parties, as appropriate and in accordance with their national laws, would observe the provisions of Article 12 of the United Nations Convention against Transnational Organized Crime.

Dr AL-BEDAH (Saudi Arabia) said that the section should be made more precise, especially in view of the risk of money-laundering involving the proceeds of illicit trade in tobacco products.

Destruction

Ms DE SILVA (Sri Lanka) noted that paragraph 10 of the section on confiscation and seizure and paragraph 2 of the section under discussion were almost identical. One or the other paragraph should be deleted, but all relevant content retained.

Part III: Supply chain control (resumed)

Tracking and tracing (resumed)

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) said that, in paragraph 1 of the section, the phrase "based on" should be replaced by "taking into account", to read: "taking into account available best practices".

Mr OLDHAM (alternate to Mr Leguerrier, Canada) asked for an assurance that the text would be fully edited before the Intergovernmental Negotiating Body considered it again. Many paragraphs which were not marked as provisional by means of square brackets in the working paper submitted to the Committee were, in fact, still subject to negotiation.

It was so agreed.

The meeting rose at 20:25.

[1] Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

SIXTH MEETING

Friday, 25 October 2008, at 17:40

Chairperson: Ms M.K. MATSAU (South Africa)

CONSIDERATION OF THE WORKING PAPER FOR THE DRAFT REPORT OF COMMITTEE A TO THE PLENARY

The CHAIRPERSON invited comments on the working paper for the draft report of Committee A to the plenary.

Mr OLDHAM (alternate to Mr Leguerrier, Canada), referring to the final sentence of the first page, expressed concern that the phrase "Text in brackets remains under consideration" implied that the rest of the text was not. He noted that all the text should be in square brackets, because although the Committee had begun developing the document, no agreement had been reached on its contents.

Ms BAQUERIZO (Ecuador) agreed with Canada that the final sentence implied that a decision had already been made on the text that did not appear in square brackets. In her opinion, the report reflected the Parties' various views and identified areas on which there was general agreement.

The CHAIRPERSON proposed that, for the purposes of clarity, the final sentence should be deleted.

Responding to the CHAIRPERSON's suggestion, Mr OLDHAM (alternate to Mr Leguerrier, Canada) observed that the use of square brackets still required some clarification.

The CHAIRPERSON responded that the bracketed text had been discussed but not agreed upon by the Committee. She thus proposed that the sentence should be amended to read: "While all text remains under negotiation, brackets reflect additions or comments made by delegations during Committee meetings". If there was no objection from the floor, she would take it that the Committee approved the proposal.

Mr BALACHANDHRAN (India), referring to the section on licence, requested that paragraph 1(b) include the exact wording as proposed by the Parties in the WHO South-East Asia Region, which read: "The Parties shall endeavour to license in accordance with their legal, administrative and regulatory framework, and to the extent considered appropriate, any legal or natural person engaged in growing or retailing of tobacco and tobacco products".

Dr DOVERTY (Australia) recommended that, in order to expedite proceedings, delegations should comment only if their proposed amendments were not reflected in the text. He confirmed that Australia's proposals had been fully addressed.

Mr ROWAN (alternate to Mr Walton-George, European Community) and Mr PADILLA (Philippines) both expressed satisfaction that all their additions had been included in the text.

Mr FISCH BERREDO MENEZES (alternate to Ms Farani Azevedo, Brazil) suggested that the entire section on customer identification and verification should be placed in brackets. Referring to the section on record-keeping, he then proposed that "or as prescribed by the competent authorities" should be inserted at the end of subparagraph 5(c).

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran), referring to the last line of paragraph 1 under tracking and tracing, pointed out that "based on" had not been deleted and replaced by "taking into account" as he had requested.

Dr BABB-SCHAEFER (Barbados), referring to the section on Internet and other telecommunication-based modes of sale, requested that the words "traders or consumers" be placed after "duty-free shops" so that the sentence would read: "Each Party shall prohibit legal and natural persons from supplying or delivering tobacco products intended for duty-free shops to traders or consumers".

Mr OOKA (alternate to Mr Isomata, Japan) said that the text reflected all his delegation's comments.

Mr BARAVA (Papua New Guinea) reiterated his proposal from the third meeting that "precise business" should be added before "location" in subparagraph 2(b)(iii) in the section on licence. He also proposed adding a new subparagraph 2(i) to the same section that would read: "oblige manufacturers to inform the competent authority six months in advance before a business location change".

Ms JAQUEZ (Mexico), speaking on behalf of the Parties in the WHO Region of the Americas, agreed with the content of the protocol, but drew attention to the difficulty of translating some English text into Spanish, for example, "assignability or transferability of licences" in Part III: Licence, paragraph 3,. She asked that efforts be taken to ensure compatibility of the terms; otherwise there would be a risk of commenting on text that was qualitatively different.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran), referring to Part IV: Enforcement, paragraph 6 of the section on confiscation and seizure, repeated his earlier proposal that "endeavour to" should be inserted after "each Party shall". He also proposed adding "subject to their national law" after "Parties shall not" in the same paragraph, so that the text would read: "Parties shall not, subject to their national law, decline to act".

Mr OLDHAM (alternate to Mr Leguerrier, Canada), referring to paragraph 1 of the tracking and tracing section under Part III: Supply chain control, proposed deleting "and in accordance with Article 15.2(b) of the WHO Framework Convention on Tobacco Control" from the paragraph and inserting at the end: "This section should be understood in the context of the WHO Framework Convention on Tobacco Control, Article 15.2(b), and not limit the obligations and rights of Parties in this regard".

Ms BAQUERIZO (Ecuador) supported Mexico regarding inconsistencies between translated versions of the text. To avoid misinterpretation, she suggested that technical terms used in the English version should be made as clear as possible, so as to be understood by everyone and not only experts.

Dr BEKBASAROVA (Kyrgyzstan) stressed that problems could be posed by such phrases as "in accordance with national legislation" that appeared throughout the protocol. Manufacturers or producers in the tobacco industry in Kyrgyzstan had the right to join discussions on national laws and it would therefore be difficult to integrate the protocol into her country's legislation. She suggested establishing a deadline – for example three years – for the introduction of certain provisions in all countries' legislation, which could help with the transition period.

The meeting rose at 18:10.

COMMITTEE B

FIRST MEETING

Wednesday, 22 October 2008, at 10:20

Acting Chairperson: Mr I. WALTON-GEORGE (European Community)
Chairperson: Mr M. NAVARRETE (Chile)

1. OPENING OF THE COMMITTEE: Item 1 of the Agenda

The ACTING CHAIRPERSON declared open the first meeting of Committee B.

Election of officers

The ACTING CHAIRPERSON announced that Mr M. Navarrete (Chile), Mr K. Ahmadi (Islamic Republic of Iran) and Mr Guo Xiaofeng (China) had been nominated as officers.

Decision: Committee B elected Mr Navarrete (Chile) as Chairperson of the Committee by acclamation.

Mr Navarrete took the Chair.

The CHAIRPERSON suggested that Mr Guo Xiaofeng (China) and Mr K. Ahmadi (Islamic Republic of Iran) be elected as Vice-Chairpersons.

Decision: Committee B elected Mr Guo Xiaofeng (China) and Mr K. Ahmadi (Islamic Republic of Iran) as Vice-Chairpersons.

2. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3)

Part IV: Enforcement

The CHAIRPERSON invited the Committee to consider the proposed provisions under the three sections relating to offences, liability of legal persons and sanctions in Part IV, Enforcement, of the Chairperson's text for a protocol on illicit trade in tobacco products.

The proposed measures relating to offences touched on the complex issue of distinguishing between criminal and minor offences in illicit trade. The laws governing illicit trade could be successfully enforced only if the crimes connected with such trade were clearly specified in every country's legal system. The proposals relating to sanctions also involved the difficult issue of harmonizing the different legal systems and of determining what sanctions should apply to criminal and to minor offences. For example, extradition could be applied only when countries applied similar sanctions to the same offences. Although it was difficult to apply criminal sanctions to minor offences,

minor offences lay behind much of the criminal conduct in illicit trade. Regarding the liability of legal persons, it was essential that all countries apply liability to legal as well as to natural persons in order that businesses and organizations conducting criminal activities could be punished; currently, that was the case in only a very few countries.

The CHAIRPERSON invited the Committee to agree that the Chairperson's text should form the basis of its discussions.

It was so agreed.

The CHAIRPERSON proposed two methods of work: in considering the Chairperson's text paragraph by paragraph, Parties could either submit written amendments to specific paragraphs of the draft text, which could then be revised by the regional groups, or they could make oral amendments to a projected version of that text on a screen.

Views were expressed on the proposed methods of work by Ms BILLICH (alternate to Dr Doverty, Australia), Mr ALBUQUERQUE E SILVA (Brazil), Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada), Mr GUO Xiaofeng (China), Mr ULMANN (France), speaking on behalf of the European Community, Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, Mr PRASAD (India), speaking on behalf of the Parties in the WHO South-East Asia Region, and Mr MOHANEDOUN (Mali).

In response, the CHAIRPERSON confirmed that the English text would be projected onto a screen with simultaneous interpretation of the amendments, and the amended text would be subsequently translated into the different languages.

Offences

Ms GONZÁLEZ (Bolivarian Republic of Venezuela) pointed out that in the Spanish version of the text, the term "offence" had been translated throughout as "*delito*". However, that term was not applicable in Venezuela, where customs offences encompassed both customs violations, which were resolved administratively, and generally attracted small sanctions such as fines, and the crime of smuggling, which was resolved in the criminal courts.

The CHAIRPERSON suggested that Venezuela should submit amendments to the Spanish text to resolve the issue, noting that he favoured use of the broadest possible terms so that the provisions could be more easily adapted to all countries' legislations.

Mr HOSHINO (Japan) asked that sufficient time be given for Parties to submit their amendments in written form.

The CHAIRPERSON replied that that request would be taken into account.

Mr LEGUERRIER (Canada) said that Canada had similar concerns to those expressed by Venezuela. His country also had different regimes – regulatory, customs and criminal – that could potentially cover all forms of illicit trade in tobacco. The Committee should therefore discuss the feasibility of adopting global legislative measures before it undertook a line-by-line reading of the text.

Ms BILLICH (alternate to Dr Doverty, Australia) echoed the concerns expressed by the representatives of Canada and Venezuela regarding the adoption of a global principle. Australia also

had a legislative regime that encompassed regulatory, customs and criminal justice frameworks, and an offence or infringement committed under one of those frameworks could apply to any criminal legislation acts.

Mr MUÑOZ (Chile) suggested that the problem could be resolved by first reading each paragraph and then opening the floor for general comments on the specific characteristics of legal systems that might have a vital bearing on the decision whether to adopt a particular paragraph or to amend it.

Mr ALBUQUERQUE E SILVA (Brazil) said that he shared the concerns expressed by Australia, Canada and Venezuela. A possible solution could be to amend paragraph 1 by including both minor and criminal offences, which would make paragraph 2 redundant, and then to list the different kinds of conduct, both illegal and criminal, which could be adapted to each State's legal systems. For example, in Brazil, the conduct described in subparagraph 1(e) would be a criminal offence and not a minor or administrative offence.

The CHAIRPERSON said that the expressed concerns would be taken into account and that delegates would have the opportunity to comment on each of the paragraphs in turn and subsequently to submit written amendments.

Mr ULMANN (France), speaking on behalf of the European Community, said that several delegations had already highlighted the difficulty that countries could encounter in distinguishing between major and minor offences. Dealing with offences separately made it possible to identify conduct that contravened the draft protocol and conduct that merited criminal sanctions. Such a distinction should also be maintained when considering issues such as extradition and legal aid, and where procedures involved a relatively tough minimum penalty. It would also make it easier to decide where international cooperation was needed. In the light of the concerns expressed by several delegations and to make the text clearer, he proposed inserting the following sentence at the beginning of paragraph 1: "Each Party shall make a distinction between minor offences carrying administrative or minor criminal sanctions and major offences carrying criminal sanctions and to which extradition and legal assistance apply".

Mr GUO Xiaofeng (China) stressed that the potential differences between the rules and sanctions in individual countries and the categories of offences in the text could give rise to legal difficulties when trying to implement the draft protocol. It was therefore important to lay down principles for identifying unlawful activity, rather than detailed rules or categories which were decisions that should be left to individual countries. In establishing what constituted an offence, illicit trade should be given priority. He added that offences on which consensus had been reached could be used as examples when deciding which offences should be included in the list. His delegation would submit, in writing, specific recommendations regarding categories of offences, including the deletion of all subparagraphs under paragraph 1, the promulgation of legislative and administrative measures to establish the types of conduct described as offences in the draft protocol and the establishment of sanctions to punish such conduct.

Ms DE SILVA (Sri Lanka) regarded the requirement that administrative offences had to be committed intentionally as irrelevant where there had been a breach of the legal provisions. *Mens rea* was applicable only for criminal offences. Furthermore, in accordance with national law, only the offences mentioned under subparagraphs 2(e), (f) and (h) could be categorized as criminal offences and carry heavy penalties. Offences such as counterfeiting in subparagraph 2(b), where intellectual property rights were involved, would have to be carefully scrutinized. As a compromise, she suggested that the Parties should consider first categorizing conduct where it constituted an offence and, thereafter, identifying the serious offences where extradition should apply in compliance with Part V:

International cooperation. Parties should decide whether offences that did not warrant extradition should be regulatory or criminal in their domestic legislation.

Ms GONZÁLEZ (Bolivarian Republic of Venezuela) agreed with Brazil on a general heading for offences covering unlawful and criminal acts and on leaving it to the Parties to categorize offences. For example, the offences in subparagraph 2(a) were categorized as criminal conduct; however, in Venezuela the manufacture, selling and distribution of tobacco without paying customs duty were regarded as minor offences subject to a fine.

Mr PRASAD (India) said that the classification of offences should be dealt with in accordance with domestic law and suggested that paragraph 1 should read: "Each Party shall adopt appropriate legislation and other measures as per its own domestic law".

Mr MAIZORIG (Mongolia) said that there should be two separate categories of offences but that the details of what constituted a criminal offence required further discussion. He proposed adding the following wording under paragraph 1: "The type of offences, such as criminal, administrative or others, should be established by the Parties". However, it might be advantageous to harmonize the categorization of criminal offences and he advocated approving the wording of the Chairperson's text.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) endorsed the wording of paragraph 1 and emphasized that "unlawful" was an essential component, as the Parties were then given leeway to determine whether an unlawful act constituted an administrative or criminal offence. He proposed the deletion of the words "when committed intentionally" as he did not believe the intention behind an offence or crime was important. However, he would welcome legal guidance on the matter.

The CHAIRPERSON explained that it was a universally recognized legal principle that a key element in deciding if an offence was criminal was whether it had been committed intentionally, for example, in cases of tax evasion. Minor offences were different, as they frequently were a result of negligence.

Mr TOESSI (Benin), in the interests of making progress, advocated broadly retaining the text in its present form and allowing individual countries to adapt it in accordance with their own legislation. In this way, some of the difficulties associated with categorizing offences could be resolved.

Ms ALARCÓN LOPEZ (Colombia) endorsed the suggestion that countries should adopt the necessary measures to allow implementation of the draft protocol's provisions.

Mr ALBUQUERQUE E SILVA (Brazil) said that the rewording of paragraph 1 as suggested by India was short, direct, objective and flexible enough to accommodate the various legal regimes of States Parties and should serve as the basis for further discussions.

Dr NDYANABANGI (Uganda), in reply to the CHAIRPERSON's request that delegates express their views on the suggestion put forward by Brazil, stressed the importance of maintaining the separate categories for administrative and criminal offences in the interest of producing an effective treaty and international cooperation, such as in extradition and legal assistance. To compile a list of unlawful activities and allow countries to decide on whether they constituted administrative or criminal offences would leave many loopholes. Furthermore, it would severely tax the capacity of countries that were in the process of developing legal systems to make such decisions in a timely fashion. What was needed was a strong, effective treaty in which criminal offences were harmonized, with the onus of incorporating them into domestic law being placed on countries.

Dr AL-LAWATI (Oman) said that in Oman the categorization of offences did not correspond to the two categories outlined in the Chairperson's text. As that could cause problems, he agreed with the suggestion made by the representative of India. He considered the question of intent as irrelevant in the perpetration of a crime and thus suggested deleting "intentionally" from paragraphs 1 and 2.

Mr ULMANN (France), speaking on behalf of the European Community, said that distinctions between offences varied even among the Member States of the European Union. He therefore suggested first to identify the types of conduct that all countries considered to be in violation of the draft protocol and punishable, and afterwards separate them into administrative offences that would be dealt with under paragraph 1 and serious offences that merited criminal sanctions according to the protocol's international cooperation elements reflecting other United Nations instruments. Thus, a clear distinction between types of crime was crucial in order to ascertain whether international judicial cooperation or extradition were appropriate.

The CHAIRPERSON replied that extradition applied only to criminal offences. The element of criminality would therefore be crucial in any decision on whether international cooperation was appropriate and sanctions, as well as extradition, applicable. Minor offences would be dealt with at national level. Hence, the draft protocol should make a clear distinction between types of offences and establish conformity among countries to enable appropriate action to combat conduct that harmed others, which the WHO Framework Convention on Tobacco Control had been designed to eliminate.

Mr GUO Xiaofeng (China), noting that several proposals had already been incorporated into the projected text, asked that his earlier proposals also be included.

Ms ALARCÓN LOPEZ (Colombia), supporting the proposal of Brazil that was based on that of India, asked how Colombia, for instance, would be affected since it did not extradite for such crimes and would find it difficult to reach consensus on the subject.

Mr ALBUQUERQUE E SILVA (Brazil) suggested that the entire paragraph of the Chairperson's text should be placed in square brackets, to assure that the discussion in plenary would reflect the actual situation.

Mr HOSHINO (Japan) said that, to give each Party a measure of freedom, it was important to retain the words "as may be necessary" in the first line of paragraph 1 of the Chairperson's text. If all the acts contained in subparagraphs (a) to (k) were unlawful, without exception, and each Party could decide how it implemented the provisions, Japan would have serious compliance problems, since not all the acts were unlawful in his country.

The CHAIRPERSON requested the delegate of China to repeat his country's proposal, which he had not had time to note down.

Mr GUO Xiaofeng (China) said that his delegation proposed that the distinction between crimes and offences could be retained, but that subparagraphs (a) to (k) should be deleted, leaving only the introductory text, which should read: "Parties should implement legal, and administrative and other means to establish acts in violation of the protocol as offences and to decide the appropriate penalty".

Mr TRIVEDI (alternate to Mr Balachandhran, India) said that some delegations had expressed the need for a highly prescriptive list of offences and categories. Prescriptive formulations sometimes hindered national governments in bringing their laws into line with a protocol or treaty, which was a time-consuming process. If they were given the possibility to act on certain existing laws, national governments could implement an international treaty more rapidly. Jurisprudence systems varied

among countries and a classification of offences that referred to areas that contradicted their legal principles would be counterproductive.

While international cooperation was necessary for transnational crimes, extradition requests must be preceded by dual criminality: that of the country where the crime occurred and that of the country from which extradition was sought. In India any crime perpetrated more than a year previously could qualify for extradition but had to be proven in a court of law. He also noted India's view that any prescriptive dimension in the category of offences could lead in the wrong direction and eventually prevent the national governments from taking the required steps to implement the protocol once it was ratified.

Mr KORKMAZ (alternate to Mr Çelik, Turkey) said that with so many varying national regulations, it was impractical to attempt to consider all of them. He recommended that only criminal offences should be mentioned in the text and that countries should establish their own regulations regarding administrative offences, which would obviate a long debate on criminal versus administrative offences.

Mr LEGUERRIER (Canada) said that the distinction between criminal and administrative regimes was important. He therefore suggested using the paragraph proposed by the European Community as the introductory paragraph of both sections, then going on to establish administrative offences and after that the criminal offences. The details could be worked out later. However, the Parties must have some guidance if the protocol was to retain at least the essential elements rather than leaving absolutely everything to each Party's discretion.

Mr KANG Nam-il (Republic of Korea) agreed that it was important to distinguish between major and minor offences, but considered it more important for the Committee to establish the common offences on which most countries could agree. According to the Chairperson's draft, the manufacture of tobacco products without a licence was a minor offence, while to do so without paying tax was a criminal offence. However, unlicensed manufacturers would not pay taxes. In some countries manufacturing without a licence was a major offence, making it very difficult for the Committee to draw an accurate distinction between minor and major offences. He therefore suggested that the Committee should decide on an introductory paragraph, followed by a single list of offences.

Dr MERIZALDE (Ecuador) said that in her country a violation of any law was an "infraction", which in turn was divided into "crimes", which were subject to criminal sanctions, and "contraventions", which were subject to administrative sanctions.

The CHAIRPERSON asked for comments on the words in bold in square brackets on the screen.

Mr KORKMAZ (alternate to Mr Çelik, Turkey) suggested that, for ease of reference, the names of the countries that had made the various proposals should be displayed on the screen.

It was so agreed.

Mr HOSHINO (Japan) said that if the Indian proposal was accepted, the phrase "as may be necessary" from the first line of the original text should also be included.

Mr ALBUQUERQUE E SILVA (Brazil) said that it was obvious that no agreement could be reached on the introductory paragraph. Brazil would not be willing to work with the European Community proposal and suggested leaving the entire section on offences in square brackets and moving on to the section on liability of legal persons.

Ms BILLICH (alternate to Dr Doverty, Australia) asked whether the Chairperson proposed that all three options presented at the meeting, together with the introductory paragraph in the Chairperson's text, should be submitted to the plenary for further debate or whether the intention was for the Committee to reach a decision on which, if any, of the introductory paragraphs should be retained and submit that decision to the plenary.

The CHAIRPERSON said that common ground could be found since everyone agreed on the general principles. The Committee would therefore submit to the plenary a report clearly setting out all the various positions, without prejudice to negotiations that might take place for reaching agreement on the offences section.

Liability of legal persons

The CHAIRPERSON emphasized the need to bear in mind the diverse customs in different countries; for example, in many of them only physical persons could be the subject of criminal proceedings, while legal persons could be the subject of only civil proceedings.

Mr TRIVEDI (alternate to Mr Balachandhran, India), regarding the issue of jurisprudence, suggested replacing the words "its legal principles" in the first line by "its domestic laws," to ensure that the text would be consistent throughout.

Sanctions

The CHAIRPERSON said that some speakers had already shown that sanctions - whether they should be criminal or administrative – were the key to the distinction between criminal and administrative offences. However, since punishment should be similar in each country, the matter called for a detailed examination. As courts interpreted treaties in the light of domestic law, the text must to be sufficiently clear to avoid differing interpretations in different countries, which could undermine the spirit of international cooperation that prevailed in the Intergovernmental Negotiating Body.

Mr ULMANN (France) speaking on behalf of the European Community and referring to paragraph 1, said that the text would be clearer if it were closer to the wording of an existing United Nations instrument, the United Nations Convention against Transnational Organized Crime, which in its Article 10.4 made a distinction between criminal and noncriminal sanctions. He also suggested that the last three words of paragraph 1, "including monetary sanctions", be deleted.

Mr TRIVEDI (alternate to Mr Balachandhran, India) asked whether the legal term "dissuasive sanctions" in the last line of paragraph 1 was intended to be pre-emptive. Also, he saw no need for a lengthy statute of limitations period and suggested deleting the words "lengthy statute of" before "limitations period" in the second line of paragraph 3.

The CHAIRPERSON explained that the purpose of paragraph 3 was to invite countries to establish in their domestic legislation a statute of limitations period sufficiently long to make it possible to apply the sanctions provided by law, subject to their national constraints.

Dr NGABA (Central African Republic) suggested that the first reference to "domestic law" in paragraph 3 should be changed to "national legislation" and that the words "establish under its domestic law" should be deleted so that the sentence read: "Each Party shall, where appropriate and in accordance with national legislation, establish a lengthy statute of limitations period …".

Ms EFRAT-SMILG (Israel) observed that it would be difficult in Israel to implement the "discretionary legal powers" referred to in paragraph 2. She asked that paragraph 2 be deleted. She agreed with the comments made by India concerning paragraph 3.

Mr ULMANN (France), speaking on behalf of the European Community, requested that, in line with the generally accepted wording in Article 11(2) of the United Nations Convention against Transnational Organized Crime, the beginning of paragraph 2 should be amended to read: "Each Party shall endeavour to ensure". He recommended that the wording in paragraph 3 should not be changed, since it was taken from internationally accepted legal instruments, including Article 11(5) of the United Nations Convention against Transnational Organized Crime and Article 29 of the United Nations Convention against Corruption.

Mr MOHAMEDOUN (Mali) said that a working group had been set up by the Parties in the WHO African Region with the purpose of drawing up draft amendments. He suggested that the words "and with due regard to the need to deter the commission of such offences" should be deleted from the end of paragraph 2. He also suggested the deletion of the words "establish under its domestic law" in paragraph 3, as it was not necessary to repeat the term "domestic law". He said that he would submit in writing additional stylistic improvements to the text.

The CHAIRPERSON said that it would be helpful if the delegations suggesting substantive amendments could read them out to the Committee. The different versions had already been translated.

Mr MOHAMEDOUN (Mali) said that his delegation had pointed out a stylistic problem contained in paragraph 4 that had been noted in plenary the previous day.

The CHAIRPERSON said that the Legal Counsel would reply to India's request for clarification of the use of "dissuasive" in paragraph 1.

Mr BURCI (WHO Legal Counsel) explained that the word "dissuasive" in paragraph 1 referred to penalties that would serve as a deterrent.

Ms DE SILVA (Sri Lanka) asked for clarification of paragraph 4.

The CHAIRPERSON replied that the intention of paragraph 4 was to reiterate that the provisions of the draft protocol concerning offences and sanctions were consistent with generally accepted international legal principles. All States Parties had a responsibility to categorize offences and apply the principles outlined in the draft protocol when combating illicit trade in tobacco.

Dr NGABA (Central African Republic) repeated his earlier suggestion to replace the first reference to "domestic law" with "national legislation" and to delete the words "establish under its domestic law" in paragraph 3. He also suggested deleting the final part of the sentence: "and a lengthier period where the alleged offender has evaded the administration of justice".

Mr ULMANN (France), speaking on behalf of the European Community, said that it was important for the draft protocol to be consistent with international legal instruments. He cited Article 11(5) of the United Nations Convention against Transnational Organized Crime: "Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this [protocol] and a longer period where the alleged offender has evaded the administration of justice". He saw no reason to deviate from internationally agreed text.

Mr AL JEHANI (Saudi Arabia) stated his concern about the conflicting provisions in paragraph 2 in the section on offences and paragraph 4 in the section on sanctions. While paragraph 2 stated that Parties should categorize offences as criminal, paragraph 4 stated that offences should be categorized in accordance with domestic law.

Mr ULMANN (France), speaking on behalf of the European Community, said that paragraph 4 of the Chairperson's text used the exact wording of Article 30(9) of the United Nations Convention against Corruption. He again stressed that it would be inadvisable to deviate from internationally agreed text.

The CHAIRPERSON concurred with the opinion of the European Community. It was important to maintain uniformity and consistency among international instruments to enable work carried out on an international level to be as effective as possible. Any contradictions in wording could give rise to problems of interpretation.

Dr AL-LAWATI (Oman) said that, although paragraph 4 had been taken from another Convention, it was the Committee's responsibility to discuss any contradictions between that paragraph and other paragraphs in the Chairperson's text. He agreed with Saudi Arabia that clarification by the Legal Counsel of the apparent contradictions between paragraph 2 in the section on offences and paragraph 4 in the section on sanctions was necessary.

Mr BURCI (WHO Legal Counsel), in reply to the request from Saudi Arabia and Oman for further clarification, said that in his view, paragraph 2 in the section on offences and paragraph 4 in the section on sanctions did not contradict each other. The words "description of the offences established in accordance with this protocol" in paragraph 4 had been used to ensure uniformity among the States Parties concerning the establishment of offences prescribed in paragraph 2. The description of the offences, legal defences and other legal principles controlling the lawfulness of conduct, as stated in paragraph 4, were still regulated under domestic law.

Mr TOESSI (Benin), in referring to the comments made by Mali on behalf of the Parties in the WHO African Region, added that the problems of tobacco use were more serious in developing countries, including Benin. As legislation on tobacco use in developing countries was becoming stricter, the tobacco industry was focusing on developing countries. Legislation at that level did not allow developing countries to impose effective sanctions on the tobacco industry, which was considered to be a legal person. The inability to impose sanctions would lead to serious health issues in developing countries, particularly in Africa. It was therefore important that the Chairperson's text should be amended in order to prioritize health issues, even if it differed from internationally accepted legal instruments, as it would greatly assist developing countries, in particular African countries, as well as developed countries, in overcoming the problem of tobacco use and addiction.

The CHAIRPERSON invited those delegations that had submitted proposed amendments to Part IV: Enforcement in writing to read aloud their proposals to the Committee.

Mr MOHAMEDOUN (Mali), turning to the section on offences, said that the Chairperson had already responded to his delegation's proposal to omit the words "when committed intentionally" from the introductory paragraph of paragraph 1. Mali had proposed the addition of a new subparagraph 1(l) after 1(k) to take account of any other unlawful conduct, as the present list did not appear to be exhaustive. Regarding subparagraph 1(a), many delegations had supported the view that a licence should be required for all tobacco sales, irrespective of the quantity involved. Minor corrections had been requested to subparagraphs 2(e) and (h) in the French version. Proposals had been submitted in writing on the paragraphs relating to sanctions in order to eliminate repetition.

Mr AL JEHANI (Saudi Arabia) believed that the reference to "domestic law" in paragraph 4 on sanctions contradicted the terms of paragraph 2; he thus requested that paragraph 4 be reworded.

Mr TRIVEDI (alternate to Mr Balachandhran, India), referring to the intervention of Mali on subparagraph 1(a) of the section on offences, said that his delegation had already submitted proposals on licensing the sale of tobacco, under Part III: Supply chain control, to Committee A. Therefore, he requested that discussion of the matter be suspended pending the outcome of deliberations in Committee A.

The CHAIRPERSON agreed to the request by India.

Mr ULMANN (France), speaking on behalf of the European Community, said that his delegation had submitted written proposals relating to the draft provisions on offences and had requested the deletion of subparagraph 1(h) as it did not conform to Article 14, subparagraph 3(g) of the United Nations International Covenant on Civil and Political Rights (1976) that provided that no one should be compelled to testify against himself or to confess guilt. Criminal conduct in paragraph 2 should be further defined by adding the words "on a commercial scale" after the words "when committed intentionally". The word "conspiring" in subparagraph 2(g) was deemed inappropriate and should therefore be deleted. The provisions in subparagraph 2(h) should apply only to a "major" offence and the paragraph should be amended accordingly. He agreed with India's suggestion to await the outcome of discussions in Committee A before taking a decision on subparagraph 1(a).

The European Community did not think that paragraph 4 of the section on sanctions contradicted paragraph 2; on the contrary, while it was generally accepted that international law had primacy over domestic law, in the current instance, the "law enforcement measures" referred to in paragraph 4 were subject to "domestic law" and the provisions of paragraph 2 were in harmony with that concept.

Mr HOSHINO (Japan) said that his delegation had submitted a written proposal on subparagraph 1(c) in the section on offences as it considered that manufacturing equipment or key inputs used in the manufacture of tobacco products should be excluded from the scope of the draft protocol.

Mr ALBUQUERQUE E SILVA (Brazil) said that the principle expressed by the European Community that international law had primacy over national legislation was not accepted in his country.

The CHAIRPERSON said that, although domestic law could take precedence over international law, once a country had signed an international treaty, that treaty would be adopted and thus become part of the country's domestic laws.

The CHAIRPERSON, responding to a question from Ms GONZÁLEZ (Bolivarian Republic of Venezuela), explained that the remaining sections of Part IV were being examined by Committee A.

(For continuation of the discussion, see summary record of the third meeting.)

Part V: International cooperation: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3)

Information sharing: Statistical data

Mr ULMANN (France), speaking on behalf of the European Community, said that in paragraph 2, it would be preferable to use an existing database, such as that of the Customs Enforcement Network (CEN) to avoid duplication; therefore he suggested that the phrase "such as

CEN" be inserted after "secure, central, automated database". Before commenting on paragraph 3, he sought clarification from Legal Counsel on the scope of the database, in particular whether it would contain statistical or criminal data.

The CHAIRPERSON replied that he believed that the database would, in his view, contain statistical data but that the European Community query would be verified.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) suggested that the "central automated database" referred to in paragraph 3 could be a clearing house facility within the Convention Secretariat available for all Parties to consult, based on the model of the Biosafety Clearing-House established under Article 20(1) of the Cartagena Protocol on Biosafety of the United Nations Convention on Biological Diversity (1992).

Dr NDYANABANGI (Uganda), speaking on behalf of the Parties in the WHO African Region, said that it should be clarified whether national databases were required in addition to a centralized database that would be managed by the Convention Secretariat to ensure that it could be accessed by all Parties.

Ms BILLICH (alternate to Dr Doverty, Australia), referring to paragraph 2, noted that no definition of the term "non-nominal" had been provided and asked whether it could be clarified within the text to show that nonpersonal information was placed in the database.

Mr ALBUQUERQUE E SILVA (Brazil) said that his delegation had not requested the placing in square brackets of the phrase "or manufacturing equipment" in subparagraph 1(a), as it had understood that no decision would be taken on the inclusion of the term until the discussion on principles that would take place on the following Friday.

The CHAIRPERSON said that the comment by the delegate of Brazil had been noted.

(For continuation of the discussion of *Information sharing: Statistical data*, see summary record of the third meeting.)

The meeting rose at 13:00.

SECOND MEETING

Wednesday, 22 October 2008, at 15:20

Chairperson: Mr M. NAVARRETE (Chile)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

Part V: International cooperation (continued)

Information sharing: Operational data

The CHAIRPERSON invited general comments, reminding representatives that proposed amendments should be submitted in writing and that the Committee would consider those proposals in detail later in the session.

Mr HOSHINO (Japan) said that, as indicated in plenary, Japan considered manufacturing equipment to be beyond the scope of the protocol and had submitted a proposed amendment in relation to the words "manufacturing equipment [or key inputs]".

Mr ULMANN (France), speaking on behalf of the European Community, said that, as indicated in his delegation's written submission on the protocol, all sections relating to information sharing should conform with general data protection standards, and he therefore reserved his position on those sections, pending detailed consideration to ensure adherence to such provisions.

Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada) said that Canada had been requested by the Chairperson of Committee A to draft a provision for inclusion in Part II: General obligations, to recognize national legislation and frameworks. Such recognition would apply to Canada's legislation in relation to the sharing of statistical data, in particular to customs laws governing the disclosure of information. She shared the concern expressed by the European Community regarding data protection and proposed that a paragraph should be inserted at the end of the section on Information sharing: Statistical data, to read: "The Parties agree to protect the information received from other Parties and to ensure that the third-party rule is applied when treating the information".

Information sharing: Confidentiality and protection of information

Mr VIDOVIĆ (Serbia) said that there were inconsistencies in the texts of the first sentence in paragraph 2 and paragraphs 8, 21(d) and 22 in the section on mutual legal assistance. On the one hand there were provisions indicating that exchange of information was to be subject to national laws on confidentiality and privacy, while on the other there were provisions stipulating that refusal to share information was not permitted on the grounds of bank secrecy and fiscal matters.

The CHAIRPERSON suggested that the text should be considered in greater detail at a later meeting.

Mr ULMANN (France), speaking on behalf of the European Community, referring to the amendment proposed by Canada, observed that statistical and operational data did not enjoy the same

protection as information relating to mutual legal assistance in investigations, prosecutions and judicial proceedings. Legal clarification was thus needed at some point to confirm that the provisions in the section under consideration conformed to universal data protection standards.

The CHAIRPERSON said that he took note of the concern and would deal with it later.

Assistance and cooperation: Training, technical assistance and cooperation in scientific, technical and technological matters

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) proposed that "and competent international organizations" should be replaced by "and/or through competent international organizations" in the first sentence of paragraph 1. He further proposed the deletion of "state-of-the-art" in the second sentence of paragraph 1, since in many countries state-of-the-art technology was not available.

Mr ULMANN (France), speaking on behalf of the European Community, proposed the insertion of "protection of personal data" after "information management" in the second sentence of paragraph 1.

Mr MOHAMEDOUN (Mali), referring to the second Iranian amendment, suggested that it might be preferable to replace the words "state-of-the-art technology" with "appropriate technology".

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) accepted the suggestion from Mali. Referring to paragraph 2, he proposed that the insertion of "technological" after "technical", and the replacement of "and to stimulate discussion on issues and needs of mutual concern, including the special needs" with "taking into account the special needs".

Assistance and cooperation: Investigation and prosecution of offences

Mr MOHAMEDOUN (Mali) said that, because of financial constraints, Mali would have to modify existing bodies rather than establish a new authority, as suggested towards the end of paragraph 2. He therefore proposed that "establishment of a designated authority" should be replaced by "designation and if necessary establishment of an authority".

Ms ALI-HIGO (Djibouti) said that the wording in paragraph 1 should read: "Parties agree to develop necessary mechanisms to strengthen cooperation" rather than "to take all necessary measures ... ". She then requested clarification of the objective and requirements of paragraph 2, in particular the phrase "ability to cooperate".

The CHAIRPERSON replied that it was a semantic problem and that he would refer the request to the Legal Counsel.

Mr HOSHINO (Japan) noted that Japan had proposed the addition of "where appropriate" after "necessary measures" in the first sentence of paragraph 1 as each country should have the discretion to decide which arrangements to enter into.

Ms DE SILVA (Sri Lanka) suggested that, in paragraph 2, "where appropriate under domestic law," should be replaced with "where permitted under domestic law". In her country, the judiciary was an independent institution and was not legally required to cooperate with other institutions.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) said that the phrase in the first sentence of paragraph 2: "without prejudice to provisions of this protocol" was redundant and should be deleted. A new paragraph should be added concerning national centres and their function and role in enforcement of the protocol. He drew attention to Article 19, Competent National Authorities and National Focal Points of the Cartagena Protocol on Biosafety to the United Nations Convention on Biological Diversity in that regard.

The CHAIRPERSON invited the representative of Iran to submit a text in writing.

Mr ULMANN (France), speaking on behalf of the European Community, suggested that the word "relevant" should be inserted before "information at the national and international levels" in paragraph 2.

Protection of sovereignty

Ms EFRAT-SMILG (Israel) said that "granting due respect to the principle of *ordre public*" should be added at the end of paragraph 1.

Jurisdiction

Dr NDYANABANGI (Uganda), speaking on behalf of the Parties in the WHO African Region, said that paragraph 1(b) should be amended to read: "... an aircraft or a vehicle or other means of transport registered... ".

Mr ULMANN (France), speaking on behalf of the European Community, said that he would have some difficulty with that proposed amendment since jurisdiction was exercised by the State in which the vehicle was found.

Mr BURCI (WHO Legal Counsel) said that it was his understanding that the intent of the Ugandan proposal was to avoid gaps in the event of smuggling or illicit trade using other vehicles, such as a car or truck. However, the provision in subparagraph 1(b) applied only to vessels and aircraft, since, under international law, the State in which the vessel or aircraft was registered, or whose flag it was flying, had jurisdiction over that means of transport. However, that was not the case for a vehicle since jurisdiction was exercised by the Party on whose territory the vehicle was found. That scenario was covered under subparagraph 1(a); thus there did not seem to be gaps.

Mr MOHAMEDOUN (Mali) wondered which country would have jurisdiction in the event of an offence being committed on the high-speed train between England and France.

Ms ALI-HIGO (Djibouti) agreed that it was not necessary to amend subparagraph 1(b), since the concerns raised by Uganda were covered under subparagraph 1(a).

Dr NDYANABANGI (Uganda) said that she was satisfied with the explanation from the Legal Counsel and would withdraw her proposed amendment.

Mr MOHAMEDOUN (Mali) drew attention to an editorial amendment to the French version of subparagraph 2(c)(ii) [replace *établie* with *prévue*]. Paragraph 3 should be deleted since its content was covered by subparagraphs 1(a) and 2(b).

Mr ULMANN (France), speaking on behalf of the European Community, cautioned against embarking upon a discussion of vocabulary and concepts that had already been debated at length in

other bodies and were broadly accepted at the international level. Ms DE SILVA (alternate to Ms Farani Azevedo, Brazil) and Mr MAIZORIG (Mongolia) supported his comments.

Joint investigations

The CHAIRMAN noted that there were no comments.

Law enforcement cooperation

Mr MOHAMEDOUN (Mali) said that it would be preferable to use the term "offences" rather than "crime" in subparagraph 1(b)(ii).

Mr HOSHINO (Japan), referring to paragraph 1, said that, in order to provide for the necessary discretion, the words: "consistent with their respective domestic legal and administrative systems", should be inserted after "Each Party shall adopt".

Mr ULMANN (France), speaking on behalf of the European Community, proposed that, in order to ensure that the protocol was consistent with data protection regulations, the phrase "in specific cases" should be inserted after "inquiries" in subparagraph 1(b). Subparagraphs 1(e) and (f) should be amended to read: "exchange relevant information" and "accordingly" should be inserted at the end of the first sentence of paragraph 2.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) suggested that "where possible" should be inserted after "Parties shall endeavour to cooperate" in paragraph 3.

Mutual administrative assistance

Mr HOSHINO (Japan) proposed that the phrase "Consistent with their respective domestic, legal and administrative systems, …" should be inserted at the beginning of the first paragraph. He also proposed that the phrase "Such information may include:" should be preceded by the following clause, taken from Article 18.5 of the United Nations Convention against Transnational Organized Crime: "The competent authorities receiving the information shall comply with a request that the said information remain confidential, even temporarily, or with restriction on its use". The clause was designed to ensure confidentiality of information.

Ms JUCÁ DA SILVEIRA SILVA (alternate to Ms Farani Azevedo, Brazil) said that, since the section dealt with information sharing rather than administrative assistance, its content should instead be incorporated into the sections on information sharing.

Mr LEGUERRIER (Canada) supported the Parties' comments. He added that subparagraph (d) was out of place in the section, since it dealt with "persons" rather than "data".

Mr ULMANN (France), speaking on behalf of the European Community, expressed concern that the section was based on the Council of Europe/OECD International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention), which had not as yet entered into force. Responding to Canada's concerns about subparagraph (d), he suggested the deletion of the phrase "or suspected of being about to commit such an offence".

Mutual legal assistance

Ms EFRAT-SMILG (Israel), for the purpose of clarity asked whether a similar wording to that proposed by Japan at the beginning of the section on mutual administrative assistance could be added at the beginning of the section on mutual legal assistance. Her suggested wording was: "Consistent with their respective legal systems, …".

Mr TOESSI (Benin) recommended that the verb "afford" replace "provide", in the first sentence of paragraph 1.

Mr LEGUERRIER (Canada), referring to paragraph 1, proposed that "reasonable grounds to suspect" should be amended to read: "reasonable grounds to believe", as that would raise the threshold in terms of legal decision-making.

Ms BILLICH (alternate to Dr Doverty, Australia) pointed out that the clauses in the section were taken primarily from Article 18 of the United Nations Convention against Transnational Organized Crime. That Convention dealt exclusively with serious offences; however the protocol was also concerned with regulatory, customs and licensing offences. As it stood, the protocol did not allow for a distinction between offences attracting mutual legal assistance or otherwise.

To ensure consistency with the rest of the text, Dr RANGREJI (alternate to Mr Balachandhran, India) proposed that the Israeli suggestion for the beginning of paragraph 1 should be amended to read: "In accordance with their domestic law, …". In his opinion the wording "Parties shall afford one another the widest measure of mutual legal assistance …" should remain unchanged, since the wording also appeared in the United Nations Model Treaty on Mutual Assistance in Criminal Matters.

Ms EFRAT-SMILG (Israel) accepted the suggestion from India and clarified that the wording she had proposed had been designed to ensure consistency with the earlier proposal from Japan.

Mr ULMANN (France), speaking on behalf of the European Community, supported the comments by Australia. In line with previous discussions regarding the introductory sentence for the section on offences, he proposed that the word "serious" should be inserted before "criminal offences covered by this Protocol" in the first paragraph of the section on mutual legal assistance. The number 2 should also be removed from the reference to "Article XX" in the same sentence. The paragraph should be consistent with the section on offences, once the latter had been finalized.

He also expressed concern that some proposals were not providing greater clarity. When addressing cooperation, mutual legal assistance and extradition in relation to major offences, it served no purpose to deviate from well-known conventions on organized crime and corruption. The quality and effectiveness of the protocol would be greatly increased if a clear distinction were made between major and minor offences in the section on offences.

Dr RANGREJI (alternate to Mr Balachandhran, India), addressing the question of major and minor offences, pointed out that mutual legal assistance was applied to offences of varying severity. Moreover, classification and punishment of offences differed among countries. At multilateral level, it was therefore inadvisable to restrict mutual legal assistance to major offences. His delegation strongly supported the use of the wording "criminal offences" without any qualification.

Mr VIDOVIĆ (Serbia) requested that paragraphs 8, 17 and 21(d) be checked for consistency.

Mr MOHAMEDOUN (Mali) and Mr BANIYA (Nepal) agreed with India's comments regarding the difficulties in distinguishing between offences.

Assistance and cooperation: Investigation and prosecution of offences

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) proposed that a new paragraph be inserted in the section as follows:

"Each Party shall designate one national focal point to be responsible on its behalf for liaison with the Convention Secretariat. Each Party shall also designate one or more competent national authorities which shall be responsible for performing the administrative functions required by this Protocol and which shall be authorized to act on its behalf with respect to those functions. A Party may designate a single entity to fulfil the functions of both focal points and competent national authorities. Each Party shall no later than the date of entry into force of this Protocol notify the Secretariat of the names and addresses of its focal point and competent national authority or authorities. The Secretariat shall forthwith inform the Parties of the notifications it receives under this paragraph and shall also make such information available through the Convention Secretariat clearing house."

The proposed paragraph was an adaptation of Article 19 of the Cartagena Protocol on Biosafety to the United Nations Convention on Biological Diversity. He would also provide a proposed text based on an article from the same protocol regarding the creation of a Convention Secretariat clearing house for the exchange of information, as had been proposed earlier.

Mutual legal assistance

Mr ULMANN (France), speaking on behalf of the European Community, said that the phrase in paragraph 13, "Each Party shall designate a central authority", had been used in other conventions. He recommended that a central national authority should be designated, unless there were already specific contacts.

Ms MATEL (alternate to Mr Nkou, Cameroon) proposed that the first part of paragraph 10 be replaced with the following text:

"A person who is being detained or is serving a sentence in the territory of one Party may be transferred to the territory of another Party for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Protocol if the following conditions are met."

Dr RANGREJI (alternate to Mr Balachandran, India) supported in principle the text proposed by Cameroon. He pointed out that a transfer is normally made only upon request and therefore the brackets in the written version of the text should be removed.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) said that those provisions were based on the United Nations Convention against Transnational Organized Crime, and so it might not be necessary to change the text if most countries had signed that Convention.

Ms ALARCÓN LOPEZ (Colombia) noted that, as some countries had not signed all the international instruments on which the proposed text was based, she recommended the inclusion of the necessary provisions to cover the legal systems of those countries.

Mr LEGUERRIER (Canada) supported the comments by Brazil and the European Community about the duplication of measures taken from other international instruments. He recommended that "being detained" be included in the first line of paragraph 10. Canadian legislation provided only for persons serving a sentence to be transferred under such an agreement.

Ms MATEL (alternate to Mr Nkou, Cameroon) proposed that in paragraph 27, after the text, "Without prejudice to the application of paragraph 12 of this Article", the following phrase should be

inserted: "any person taking part in a legal assistance measure cannot be pursued as a result of previous acts or condemnations. This immunity ends 15 days after notification of that party at the end of the relevant legal assistance measure".

Dr RANGREJI (alternate to Mr Balachandran, India) supported the comment by Brazil on new formulations. Paragraph 27 in the mutual legal assistance section largely dealt with the standard formulation on the safe conduct of witnesses with the usual period of 15 days. That was already provided succinctly.

Extradition

Mr ULMANN (France), speaking on behalf of the European Community, reiterated his earlier comment that extradition must be consistent with the definition of major criminal offences.

Mr HOSHINO (Japan) said that, as stated earlier in plenary, only serious offences were extraditable in Japan, some warranting a prison term of more than three years. He stressed the difficulty of identifying which acts in illicit trading of tobacco might be considered an extraditable offence and thus suggested a global view of the proposed article on offences. Paragraph 7 on extradition could possibly cover that issue but he still had reservations and would need further assurance.

Dr RANGREJI (alternate to Mr Balachandran, India) restated that it was a sovereign right of a State to frame its own criminal laws and to decide which offences were extraditable. In India the punishment for a serious offence was one year or more in prison, and his country had agreements with a number of countries on that understanding. A major criminal offence was not the same as a serious offence.

The CHAIRPERSON said that in his personal view it was generally the type of sanction that was the criterion for deciding whether an offence was serious and extraditable.

Ms BILLICH (alternate to Dr Doverty, Australia) said that, although there had been an attempt to draft provisions on extradition, according to Article 16 of the United Nations Convention against Transnational Organized Crime, they did not generally comply with the latter's provisions. In particular, she wanted to point out the concept of dual criminality. She agreed with India and the European Community on the serious nature of criminal offences and the term of imprisonment that would trigger the process of extradition. It appeared that no allowance had been made in the drafting with regard to dual criminality or the serious nature of offences.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) supported the comments by the European Community and India. It was not possible to apply extradition to every offence. He suggested that paragraph 1 should state that only criminal offences committed by criminal organizations should be subject to extradition.

Ms ALARCÓN LOPEZ (Colombia) said that her delegation, like that of Japan, would have reservations about extradition for tobacco-related offences, as Colombia's national legislation did not provide for extradition and it would therefore be difficult for Colombia to join a consensus on that matter. The same was true regarding the proposal put forward by Brazil concerning offences committed by criminal organizations.

Dr RANGREJI (alternate to Mr Balachandhran, India) requested clarification from Brazil regarding the term "criminal organizations", since a large number of serious offences committed by individuals could also be classified as extraditable offences. The text should therefore not include a reference to criminal organizations.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) said that the section on extradition reproduced text from the United Nations Convention against Transnational Organized Crime. Offences committed by criminal organizations should be described as serious offences and the text should therefore be amended to include a reference to criminal organizations.

Mr LEGUERRIER (Canada) did not support the inclusion of paragraph 8 in the section on extradition. His country agreed to support, in principle, requests for extradition but would not give priority to, or expedite, those procedures over other or future procedures.

Mr MAIZORIG (Mongolia) requested clarification from the Legal Counsel as to whether there were any clauses that provided for cases of constitutional difficulties within countries concerning extradition, since, according to Mongolia's constitution, citizens of Mongolia could not be extradited to other countries.

Mr BURCI (WHO Legal Counsel) explained that the constitutions of many countries excluded extradition for citizens of those countries except in extreme circumstances. For that reason many recent conventions, including the United Nations Convention against Transnational Organized Crime, contained the provision that, if a person who was suspected of having committed a criminal offence stated within the Convention in question could not be extradited because he or she was a national of that country, the country would have the obligation to prosecute that person in order to avoid any impunity on the basis of nationality.

Ms EFRAT-SMILG (Israel) supported Canada regarding paragraph 8, as her country also could not expedite or simplify evidentiary requirements concerning any offences under the Protocol or any other treaty.

Dr RANGREJI (alternate to Mr Balachandhran, India) endorsed the proposal by Canada and Israel to remove paragraph 8 as each country was bound by its own evidentiary law and could not simplify evidentiary requirements solely in cases of illicit trade in tobacco.

Mr CONTE (Guinea) proposed an intermediary solution to the problem: replace the word "expedite" with "facilitate" in paragraph 8, in order to reduce any constraints at a national level concerning evidentiary requirements.

Mr SAMUDA (Panama) and Mr ESCUDERO (alternate to Mr Portales, Chile) both proposed deleting paragraph 8 from the text owing to its complicated content.

Mr ULMANN (France), speaking on behalf of the European Community, reiterated that paragraph 8 provided a principle for the correct implementation of the protocol. As no deadline had been stipulated, Parties were expected to carry out the procedure in good faith and as quickly as possible. The text itself was the result of previous international negotiations, including Article 16, paragraph 8 of the United Nations Convention against Transnational Organized Crime.

Ms BILLICH (alternate to Dr Doverty, Australia) noted that, although Article 16, paragraph 8 of the United Nations Convention against Transnational Organized Crime had been replicated in the draft of the protocol, it should be borne in mind that the offences dealt with in that Convention were much more serious than those that would be dealt with in the protocol on illicit trade in tobacco products.

Ms JUCÁ DA SILVEIRA SILVA (alternate to Ms Farani Azevedo, Brazil) said that her delegation wished to withdraw the proposal that it had made previously concerning paragraph 1 of the section on extradition.

Dr ANIBUEZE (Nigeria) felt that the problem posed by paragraph 8 was solved in paragraph 9 and he therefore supported the proposals.

Dr AL-LAWATI (Oman) requested clarification of the European Community's proposal that the word "major" should be added before "criminal offences" in paragraph 1. He asked how the term would be defined throughout the article on extradition.

Mr ULMANN (France), speaking on behalf of the European Community, said that defining a major criminal offence was linked to the section on offences at the beginning of Part IV of the protocol, where the European Community had proposed an amendment to distinguish between minor and major offences. It was essential to define major criminal offences linked to illicit trade in tobacco products, since an offence could be criminal without being major. The protocol must provide for those major offences to which extradition and legal assistance would apply. As it would not be desirable for extradition to apply to all offences that were considered criminal in the protocol, such procedures should therefore apply only to those offences defined as major.

Dr NGABA (Central African Republic) also proposed removing paragraph 8, since paragraph 9 covered the issues raised therein.

The CHAIRPERSON wished to clarify that all Parties were in agreement regarding the deletion of paragraph 8.

Mr ULMANN (France), speaking on behalf of the European Community, said that his delegation would agree as long as extradition was applied to major criminal offences and not other offences. It was a serious point that required due diligence, which in no case should be abandoned.

Dr AL-LAWATI (Oman) requested clarification as to whether subparagraph 5(a) constituted an exception to the protocol, since the protocol contained an article on nonexclusion.

Mr BURCI (WHO Legal Counsel) replied that the clause contained in subparagraph 5(a) was common in criminal law treaties. In many countries extradition was conditional on the existence of a treaty with the requesting country; if no bilateral treaty was in force then countries could accept the protocol as a multilateral treaty that provided a legal basis for extradition. In such cases, countries would have to declare that they had accepted the treaty concerned by notifying the Depositary.

Dr ANIBUEZE (Nigeria) proposed replacing "guarantees" with "privileges" in paragraph 13 so that the text would read: "including enjoyment of all the rights and privileges".

Mr TOESSI (Benin) requested an explanation of paragraphs 16 and 17. If extradition were refused following the provision of information relevant to the requesting Party's allegation, there would then appear to be a contradiction between the two paragraphs in question.

Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada), referring to the section on mutual legal assistance, requested an amendment to the second sentence in paragraph 5. Following the words "The competent authorities receiving the information", she proposed adding "shall deem the said information to be confidential and with restrictions on its use, unless otherwise stated by the transmitting Party".

(For continuation of the discussion of individual sections, see summary records of the third and fourth meetings.)

The meeting rose at 18:05.

THIRD MEETING

Thursday, 23 October 2008, at 10:20

Chairperson: Mr M. NAVARRETE (Chile)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

Part IV: Enforcement (continued)

Offences (continued from the first meeting, section 2)

The CHAIRPERSON said that, while he recognized that each country had its own legislation and administrative rules, it was to be hoped that the Committee would be able to achieve its goal of producing a harmonized text that could be submitted to the next plenary meeting. He recalled the serious consequences of the illicit trade in tobacco products. With regard to the section on offences, two positions had emerged: that the categories of minor offences and major offences should be retained; and that a list of criminal acts should be drawn up and countries given the freedom to categorize them as offences or crimes. He suggested that one solution might be to draw up a list of offences considered serious in all countries, which carried criminal sanctions and to which extradition applied; and at the same time to allow countries greater flexibility in designating types of offences that were subject to administrative sanctions.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) endorsed the Chairperson's suggestion. However, he had been concerned to note differences in the working methods of Committees A and B. For example, Committee A was considering recommendations from Parties without projecting the Chairperson's text on to a screen. It should be clearly understood that the sole task of the Committees was to propose ideas that would subsequently be subject to negotiation in plenary. Committee B was engaged in drafting efforts which in some cases involved the elimination of proposals by Member States that would otherwise have been submitted to the plenary for discussion. It would be helpful to have clarification regarding the working methods and role of Committee B.

The CHAIRPERSON said that the Committee's objective was not to produce a final text. But for practical reasons, a clear text would enable the plenary to carry out its work more effectively. The purpose of a second reading would be to identify points on which it might be possible for countries to reconsider their positions with the aim of reaching agreement.

Mr HOSHINO (Japan) also expressed concern about the Committee's working methods. The new language contained in square brackets constituted virtually a new version of the Chairperson's text and his delegation would therefore need to conduct further consultations with the relevant national agencies. The sessions of the Intergovernmental Negotiating Body should provide occasions for an exchange of views by Parties without placing any onus on them to produce a consensus text. His country was committed to combating illicit trade in tobacco and to producing a protocol that would be acceptable to as many Parties as possible, taking into account their individual legal and administrative backgrounds.

Mr ULMANN (France), speaking on behalf of the European Community, welcomed the revised text, which covered the different national positions. Despite the concerns expressed by numerous delegations, the main objective should be to make progress. There appeared to be two types of amendments: those that clarified and improved the wording, which should prove easy to accommodate, and others of a more fundamental nature, for example, in the section on offences that would require high-level political decisions in individual countries. A possible solution might be to prepare a report on the different views held by countries on how to deal with offences and postpone further negotiations on the subject until the next session of the Intergovernmental Negotiating Body.

Mr GUO Xiaofeng (China) also welcomed the revised text, which should provide a good basis for further work. He agreed with the Chairperson's proposal that the Committee should discuss the major issues and try to agree on the fundamental principles of the text, for example, on what constituted a serious offence. The Committee might also wish to consider establishing a small drafting group whose task would be to clarify the issues in square brackets and facilitate further discussion of the text with the aim of producing a consensus document suitable for submission to the plenary. Those delegations that were not mandated to reach consensus on the whole text during the current session could focus on reaching agreement on as many of the major points as possible. All remaining problems could then be dealt with at the political level and discussed further during the next session. His delegation supported the Chairperson's suggestions for the conduct of the discussions.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) said that he shared the concerns expressed by Japan. With regard to the separation and categorization of offences in the manner suggested by the Chairperson, his delegation would not be able to take a final position on some juridical aspects and would have to seek advice from the capital. He pointed out that his delegation had not received copies of the Chairperson's text and other relevant documents in time to allow all the agencies concerned to be consulted. Furthermore, the Secretariat had failed to clarify certain ambiguities connected with the extraction of text from other international instruments, particularly in relation to enforcement. Despite those misgivings, it would be possible to continue the negotiating process, although there could be no compromise over delicate issues that required internal consultation on juridical aspects. It would, therefore, not be possible for Brazil to agree to the issuing of a final text at that stage in the negotiations. For example, it still had serious concerns about the effectiveness of the protocol in aspects concerning the protection of health. Delegations should be free to voice views and have them included in a revised text for consideration by the Intergovernmental Negotiating Body at its third session, and enough time should be allowed for the conduct of internal consultations. He urged the Chairperson to proceed towards finalization of the negotiations in a manner that was acceptable to the Committee as a whole.

The CHAIRPERSON reiterated that the Committee's main aim was to seek common positions and advance its work rather than develop a final text at the current session. The definition of offences was a highly sensitive issue that could have a bearing on countries' legal systems and constitutions and would therefore require further consultation in national capitals. He agreed with China that it might be more helpful to devise principles for defining the most serious types of offence.

Mr MOHAMEDOUN (Mali) emphasized the need for flexibility when determining what constituted a serious offence.

Dr AL-LAWATI (Oman) welcomed the revised text. The many new proposed amendments it contained were an indication that progress was being made. However, the Committee should now aim at reducing the number of square brackets. The fact that Committee A had adopted a different working method was of no importance.

Mr KORKMAZ (alternate to Mr Çelik, Turkey) said that the distinction between serious and non-serious offences was inadequate; "criminal" and "administrative" offences could be a viable alternative. At that stage, it would be advisable to include only criminal offences in the protocol.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) welcomed the revised text and stressed the importance of improving and clarifying the wording in order to advance the negotiating process.

Mr GUO Xiaofeng (China) said that he had made proposals on illicit trade and on offences, the latter having been incorporated in the new text before the Committee. The previous day there had been no discussion of criminal conduct, a subject that should be discussed at the present meeting. Some delegations had reservations about continuing the discussion. However, the Secretariat had sent out the draft in August and some delegations had studied it with their relevant departments at home and had expressed views and suggestions.

His delegation was clear about which parts of the text it could or could not accept. While some delegations did not agree on certain parts, they could be discussed in the future. Many of those present had come a long way in order to negotiate; it was unreasonable to hold up the discussion simply because some Parties had not been properly briefed.

His proposal was that offences relating to illicit trade should comprise four areas, namely, production and sale of products, trade mark offences, licensing offences and smuggling. Other relevant offences could be determined within each country in accordance with domestic law. Many countries had very different definitions of offences. The protocol should state which offences were major and include the hard core activities, leaving the rest to be determined in accordance with each Party's criminal code.

Mr PRASAD (India) said that, as he had stated at the previous meeting, issues regarding classification and definition were best left to national governments. If the Committee embarked on a pre-emptive exercise, it might not achieve a treaty with which Parties could comply under their domestic laws.

He also shared other Parties' concerns about the time factor. Although the draft protocol had been sent out as early as August, a draft alone did not offer the same scope as a draft combined with the views expressed in the Intergovernmental Negotiating Body. The dialogue should help narrow down the differences and lead to a treaty that each Party could implement. While he agreed on the need to move forward, the legitimate concerns expressed by India and other countries should be borne in mind.

Mr ESCUDERO (alternate to Mr Portales, Chile) said that the version of the draft protocol currently before the Committee was adequate to allow it to make progress. Without rushing into final decisions, the Committee must ensure that each stage in the process represented an advance in relation to the previous stage. If the Committee went ahead with the discussion, by that evening it could submit to the Chairperson a text that clearly showed which areas had generated most discussion and on which the subsequent stages the negotiations should focus. There would be time later for final discussion of the aspects now being identified, which would lead to a protocol that each Party could rapidly approve. He cautioned against excessive haste in arriving at a text that might be thrown out by national parliaments on grounds of, for instance, unconstitutionality. No matter what method the Committee adopted, its goal could be attained.

Ms DE SILVA (Sri Lanka) said that representatives appeared to disagree on how to define criminal and administrative offences. She therefore reiterated her suggestion that, if some agreement on serious offences could be reached, perhaps the Chairperson could work with the Legal Counsel to find definitions that could be circulated to the Parties for their consideration.

Mr ULMANN (France), speaking on behalf of the European Community, said that he fully understood the position adopted by China. It was too soon to go into detail, but the aim of the protocol must be some degree of harmonization of legislation on serious crimes. While the time had not come for final definition of serious offences, what was vital at that stage was agreement on a crime threshold: a minor offence could turn into a major offence when practised on an organized scale. A minor offender and a criminal organization could not be treated in the same way. International cooperation must concentrate on large-scale trafficking. The threshold issue was relevant to all the offences referred to in paragraph 2 of the draft protocol and should be specifically mentioned. He agreed with the Parties that had called for the text to contain minimum standards.

The CHAIRPERSON proposed that the delegations transmit in writing to the Convention Secretariat the types of conduct they would like, generally speaking, to be included in such a treaty, in the interest of uniformity. The Secretariat could then collate the various proposals, establish a list based on the various national legislations and submit it to delegations for their approval. That would afford a general idea of conduct considered most serious by each country's legislation and make for a text that was uniform with regard to serious offences. There was, inter alia, the issue of a threshold of seriousness of activity. The draft would not be a final text; the stage the negotiations had reached left the Committee a degree of flexibility, since the text would certainly be subject to subsequent revisions.

Ms BILLICH (alternate to Dr Doverty, Australia) suggested that definitions should be contained in a definitional clause following the preamble, rather than in the individual sections.

Mr MOHAMEDOUN (Mali) said that, regarding a hierarchy of offences, paragraph 1 stated that each Party would take the measures necessary to prohibit certain activities under its domestic legislation. Accordingly, the matter could be approached either chronologically from production right up to final consumption or by ordering the existing list by degree of seriousness.

Mr MBUYU MUTTEBA (Democratic Republic of the Congo), supporting the previous speaker, said that the matter was a delicate one for many national legislations. One way of proceeding could be to consider the existing list act by act with a view to identifying essential areas for debate, especially to determine which acts might be generally considered serious. That did not preclude the addition of further offences at a later date.

The CHAIRPERSON suggested that delegations should declare which acts in the current text they considered to constitute serious offences so that headway could be made with the definition process.

Ms GONZÁLEZ (Bolivarian Republic of Venezuela) said that to seek to determine which offences were serious at that juncture would be to limit the debate. Venezuela understood that each Party would take appropriate legislative and other measures to classify offences in accordance with its domestic laws and to determine appropriate penalties. The serious offences listed in paragraph 2 were not all considered very serious in Venezuelan legislation and they would need to be graded. Her delegation would therefore need to consult the relevant national bodies with regard to the imposition of sanctions and especially to extradition, since Venezuela did not extradite its nationals.

Mr ULMANN (France), speaking on behalf of the European Community, said that all progress would, in principle, be supported by his delegation. None of the offences listed in the Chairperson's text was intrinsically serious; the seriousness of the offence was determined by factors of scale, threshold and financial implications. His delegation would be proposing a text that defined offences in more general terms; the scale, not the nature, of the offence should determine its severity.

Dr MERIZALDE (Ecuador) supported the comments made by the Bolivarian Republic of Venezuela. Ecuador did not extradite its nationals.

Mr MOHAMEDOUN (Mali) said that extradition was a sensitive issue. He reminded the Committee that the sections being discussed at that time were offences and sanctions, and that the section on extradition should be discussed when that part of the Chairperson's text was under consideration.

Mr AL JEHANI (Saudi Arabia) said that the definition of offences varied from country to country. A general text should be drafted, which categorized offences as major or minor in accordance with national legislation. That would allow flexibility at national level. Serious offences should entail serious sanctions, and minor offences should entail minor sanctions.

The CHAIRPERSON asked all Parties that wished to propose amendments to the text to submit them in writing to the Convention Secretariat. The current discussion would resume that afternoon, at which point the text suggested by the European Community and all written amendments submitted by other Parties would be considered.

Liability of legal persons

The CHAIRPERSON noted that a suggestion had been made the previous day to replace the words "legal principles" with "domestic laws" in paragraph 1.

Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada) said that it was important to maintain consistency between all references to domestic systems in the Chairperson's text. In paragraph 4 of Part II: General obligations, the phrase "consistent with their respective domestic legal and administrative systems" was used; one formulation should be used throughout the Chairperson's text.

Dr NGABA (Central African Republic) said that in order to maintain consistency with the WHO Framework Convention on Tobacco Control, the term "domestic laws" should also be used in the Chairperson's text.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) said that there was a difference between "legal principles" and "domestic laws"; "legal principles" concerned aspects not necessarily covered by laws. Although his delegation preferred the term "domestic laws", it would accept the proposal by Canada.

Ms DE SILVA (Sri Lanka) commented that any amendments to paragraph 1 should be reflected in paragraph 2, where the term "legal principles" was used. In paragraph 3 the word "criminal" in the term "criminal liability" was redundant and should be deleted as the offences themselves were described as "criminal".

Ms CHEUNG Siu Hang (alternate to Dr Gao Xingzhi, China) supported Canada's proposal to use the wording in paragraph 4 of general obligations for the sake of maintaining consistency.

Mr PRASAD (India) agreed that it was important to maintain uniformity throughout the Chairperson's text. His delegation had no objection to replacing the words "domestic laws", as previously suggested by his country, with "domestic legal and administrative systems", as proposed by Canada.

Ms MATEL (alternate to Mr Nkou, Cameroon) said that Cameroon would prefer the term "domestic laws". As there was a difference of opinion among the delegations, she suggested that paragraph 1 should contain the phrase "legal principles or domestic laws" so that Parties could adopt measures in accordance with either their legal principles or their domestic laws.

Mr MOHAMEDOUN (Mali) said that was a subtle difference between "legal principles" and "domestic laws", the former being of a more general character. He supported the suggestion to replace "legal principles" with "domestic laws" in paragraphs 1 and 2 in order to maintain consistency, and to delete the word "criminal" from the term "criminal liability" in paragraph 3.

Dr AL-LAWATI (Oman) considered that India's suggested inclusion of the words "domestic laws" the previous day should be deleted from the text and "India" should be added in brackets after "Canada" to show that it supported Canada's proposal.

The CHAIRPERSON suggested that the Committee should accept Canada's proposed amendment to paragraph 1.

Mr MOHAMEDOUN (Mali) suggested that only the words "legal systems" should be retained, since the terms "administrative" and "criminal" were covered by that term.

The CHAIRPERSON said that, in addition to Canada's proposal, the suggestion by Sri Lanka to delete the word "criminal" from paragraph 3 should also be considered by the Committee.

Dr AL-LAWATI (Oman) reiterated his previous comment that the words "domestic laws" suggested by India the previous day should also be deleted from paragraph 1.

The CHAIRPERSON, replying to the comment made by Oman, confirmed that "domestic laws" would be deleted from the relevant paragraphs.

Mr AL JEHANI (Saudi Arabia) agreed with the representative of Mali that the term "domestic laws" was sufficient in paragraph 1.

The CHAIRPERSON took it that the amendment proposed by Canada was acceptable.

It was so agreed.

Sanctions

The CHAIRPERSON invited comments on the relevant section of the Chairperson's text and the proposed amendments to paragraphs 1, 2 and 3.

Dr AL-LAWATI (Oman), referring to paragraph 3 of the section on liability of legal persons, supported Sri Lanka's earlier proposal and suggested that the word "criminal" should be placed in brackets. He suggested that, in paragraph 4 of the section on sanctions, the words "in accordance with this protocol" should either be deleted or placed in square brackets.

Mr ULMANN (France), speaking on behalf of the European Community, confirmed that he did not propose any new amendments to the wording. Before any amendments to the text were accepted, he would need to consult experts within the European Community to ensure that the substance and validity of the text had not been altered. He reiterated that he saw no reason to deviate from language used in internationally accepted legal instruments and requested that the plenary take note of his

concerns. That issue could be discussed in more detail at the third session of the Intergovernmental Negotiating Body.

Ms DE SILVA (Sri Lanka) said that it was extremely important to retain the words "in accordance with domestic law" which had been placed in square brackets in paragraph 3 since the statute of limitations would be applicable within the domestic territory and applicable domestic laws would determine whether there should be a lengthy statute of limitations period for the offences identified in the draft protocol.

Mr MOHAMEDOUN (Mali) said that the provisions contained under sanctions would depend on the definition of the term "offences". Domestic laws categorized offences differently. The sanctions imposed should therefore depend on the definition of the offence under domestic law.

Dr AL-LAWATI (Oman) pointed out a problem of translation. In paragraph 4, the word "offences" had been changed to "crimes" in Arabic, and should therefore be amended to "offences". The brackets should be retained within the text.

Mr ULMANN (France), speaking on behalf of the European Community, suggested the addition of the words "criminal or non-criminal" in paragraph 1 should be in bold type.

Mr MOHAMEDOUN (Mali) asked the previous speaker to confirm the correct translation into French of "criminal" and "non-criminal".

Mr ULMANN (France), speaking on behalf of the European Community, replied that the terms should be translated as "*pénal*" and "*non-pénal*".

The CHAIRPERSON, turning to paragraph 2, asked whether Parties preferred the terms "endeavour to ensure" or "ensure".

Mr MOHAMEDOUN (Mali) said that "endeavour to ensure" implied a reliance on the means available while "ensure" placed the emphasis on achieving results.

The CHAIRPERSON asked whether the European Community could accept the original word "ensure" in place of its proposed "endeavour to ensure".

Mr ULMANN (France), speaking on behalf of the European Community, said that the term "endeavour to ensure" appeared in other international legal assessments and was evidently the fruit of lengthy negotiations in other fora. The term provided a safeguard in that it demonstrated the commitment of Parties to achieving the ends described, while acknowledging that they could not necessarily guarantee results.

Ms EFRAT-SMILG (Israel) said that Israel had already proposed the deletion of the entire paragraph as, in her country, there could be no suggestion that the Government would interfere with the judiciary. However, noting that the words "endeavour to ensure" appeared in Article 11, paragraph 2, of the United Nations Convention against Transnational Organized Crime, she could agree to retaining paragraph 2 (as proposed by the European Community) and provided that the wording proposed by the Parties in the WHO African Region was deleted.

Mr MOHAMEDOUN (Mali) said that he had no objection to retaining the words "endeavour to ensure" in paragraph 2.

The CHAIRPERSON noted that there appeared to be acceptance of the phrase "endeavour to ensure" which would sit well with the concept of an autonomous judiciary whose powers were generally separate from those of the State and the executive.

Dr NGABA (Central African Republic) said that, while he agreed with the Chairperson's conclusion, it would have been preferable for all Parties to have sight of the international legal instruments referred to.

Mr MBUYU MUTTEBA (Democratic Republic of the Congo) said that he could accept the words "endeavour to ensure", although he had understood that the intention was to produce a strong protocol and the use of that phrase might weaken it.

Mr ULMANN (France), speaking on behalf of the European Community, said that the Committee's work might indeed be more effective and potential problems solved if copies of relevant international legal instruments, in particular the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, were made available to all Parties.

The CHAIRPERSON confirmed that copies of the relevant international conventions would be made available to Parties for the Committee's meeting that afternoon.

Part V: International cooperation (continued)

Information sharing: Statistical data (continued from the second meeting)

The CHAIRPERSON drew attention to the proposal by Canada to add to paragraph 4 the sentence: "The Parties agree to protect the information received from other Parties and to ensure that the third Party rule is applied when treating the information".

Mr ULMANN (France), speaking on behalf of the European Community, said that he had no objection to the proposal by Canada. In respect of paragraph 2, he suggested that "managed by XXX" be replaced by "managed, inter alia, by the World Customs Organization" as that organization already managed an information-exchange system with great efficiency.

Mr HOSHINO (Japan) said that his delegation would reserve its position in respect of the proposal by Canada, as it had yet to be reviewed by his Government; in the meantime, he requested an explanation of the term "third Party rule".

Ms BILLICH (alternate to Dr Doverty, Australia) requested confirmation that the term "non-nominal" in paragraph 2 referred to non-identifiable personal information.

Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada) explained that the "third Party rule" meant that, if information was supplied from one Party to another, the Party receiving the information could not transmit it to a third Party without the prior authorization of the Party that had originally supplied it. However, the Canadian proposal for paragraph 4 could conveniently be replaced by wording which Canada had already submitted for the section on mutual legal assistance, namely: "shall deem the said information to be confidential and with restrictions on its use, unless otherwise stated by the transmitting Party".

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) requested that the reference to the World Customs Organization in paragraph 2 be placed in square brackets until it had been examined by the experts as, in general, he preferred to avoid listing organizations by name.

Mr PRASAD (India) said that he agreed that listing one or more organizations might give rise to unwelcome complications. Mentioning third Parties was also a matter that would need to be reviewed by the relevant experts.

Mr ULMANN (France), speaking on behalf of the European Community, said that his intention in suggesting the insertion of the phrase "managed, inter alia, by the World Customs Organization" in paragraph 2 had been as a reminder to use existing systems before creating new ones. Therefore, a phrase such as "using existing systems when appropriate" could be used instead.

Information sharing: Operational data (continued from the second meeting, p. 59)

Mr HOSHINO (Japan) asked whether the phrase "subject to national law" in the introductory paragraph meant that administrations were obliged to provide the information referred to in the paragraph only to the extent permitted under their national law.

The CHAIRPERSON confirmed that national law would prevail in the event of any conflict with the protocol.

Information sharing: Confidentiality and protection of information (continued from the second meeting, p. 60)

Ms CHEUNG Siu Hang (alternate to Dr Gao Xingzhi, China) said that the term "operational and statistical data" in paragraph 1 might not be consistent with the somewhat wider definition, "exchange of information under this protocol", given in paragraph 2.

Ms DE SILVA (Sri Lanka) said that information supplied by Parties appeared to be afforded adequate protection in the section under consideration. The proposal by Canada to add text to paragraph 4 of the operational data section was therefore redundant.

Mr BURCI (WHO Legal Counsel), responding to the question by China, said that the term "operational and statistical data" in paragraph 1 referred to the previous two sections, whereas paragraph 2 was broader and referred to information under the protocol as a whole. While the information referred to in the two paragraphs was different, that did not mean that there was necessarily a contradiction between them; however, at a later date, Parties might wish to consider moving paragraph 1 to a more suitable place within the protocol as it did not refer to confidentiality, but rather to the designation of an authority for the exchange of operational and statistical data.

Recalling the statement made by Serbia the previous day, he said that there appeared to be an inconsistency between some of the provisions in the part of the protocol currently under consideration and paragraph 8 of the section on mutual legal assistance which stated: "Parties shall not decline to render mutual legal assistance pursuant to this Article on the ground of bank secrecy". Paragraph 2 of the section under consideration stated that the exchange of information "shall be subject to national law". He recommended that both approaches be considered and one of the two eventually adopted in the text.

Assistance and cooperation: Training, technical assistance and cooperation in scientific, technical and technological matters (continued from the second meeting, p. 60)

Mr BAKER (New Zealand) proposed adding, after the word "shall" in the first line of paragraph 1, the words "to the extent necessary", which would make the wording consistent with that of Article 60 on training and technical assistance of the United Nations Convention against Corruption, 2003.

The CHAIRPERSON, referring to paragraph 1, invited comments on the proposed insertion by Mali of "appropriate" and by the Islamic Republic of Iran of "state-of-the-art", before "technology"; in his view, "appropriate" was the more suitable term.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) said that he wished to withdraw his delegation's proposal for the insertion of the term "state-of-the-art" as many countries would not have such costly technology available to them. He had no objection to the use of "appropriate".

The CHAIRPERSON invited comments on the proposal by the Islamic Republic of Iran to insert the words "and technological" before "assistance" in paragraph 2. The term "technical" seemed more appropriate as it was generally understood to have a broader meaning than "technological", which it encompassed. Moreover, "technical" was commonly used in international parlance.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) maintained that "technical" and "technological" were not synonymous; the latter word was broader in meaning and implied greater technical sophistication.

Mr LEGUERRIER (Canada) suggested that, to avoid confusion between "technical" and "technological" in paragraph 2, the same words used as in the title of the section under discussion, namely "training, technical assistance and cooperation in scientific, technical and technological matters".

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) agreed with that suggestion.

Mr MOHAMEDOUN (Mali) also agreed with Canada's proposal and supported the proposed insertion by Japan of "where appropriate" in paragraph 1.

Assistance and cooperation: Investigation and prosecution of offences (continued from the second meeting, p. 60)

Mr HOSHINO (Japan) proposed inserting in the first line of paragraph 1, after "measures", the words "where appropriate", since the obligation of entering into bilateral, multilateral or other agreements could not be imposed on governments.

The CHAIRPERSON invited comments on the proposed addition by the Islamic Republic of Iran of a third paragraph in the section under consideration.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran) said that the purpose of the proposed new paragraph was to indicate the need for each Party to set up a national centre for the purpose of fulfilling the objectives described in paragraph 2. If the Committee approved the new text, the last part of paragraph 2, after the words "by its domestic law", would become redundant and would therefore need to be deleted.

Ms EFRAT-SMILG (Israel) said that Israel was unable to accept the proposal that Parties should designate a national focal point to be responsible for liaison with the Secretariat, since the protocol was, by definition, a treaty between the Parties and not an agreement between any Party and the Secretariat. It was, moreover, too early to decide what functions the Secretariat should have.

Mr ULMANN (France), speaking on behalf of the European Community, agreed with the previous speaker that it was too early to decide on the Secretariat's functions, which would be discussed under Parts VI to X of the Chairperson's text.

Mr AHMADI (alternate to Mr Moaiyeri, Islamic Republic of Iran), while acknowledging the concerns expressed by the two previous speakers, said that he considered it important that reference should be made in the section under discussion to the creation of a clearing-house mechanism within the Secretariat. He was, however, aware that definitive wording could not be agreed until the provisions relating to institutional arrangements in Part VII of the Chairperson's text had been finalized.

The CHAIRPERSON, referring again to paragraph 1, suggested deleting the words "develop mechanisms", which appeared in square brackets, since the original phrase "take all necessary measures" encompassed the development of mechanisms.

In paragraph 2, he proposed that the phrase "without prejudice to the provisions of this Protocol" should, at the suggestion of the Islamic Republic of Iran, also be deleted. He further proposed that the text in parentheses that referred to domestic law should be redrafted and that the insertion of "relevant" between "exchange" and "information", as suggested by the European Community, should be accepted.

It was so agreed.

Mr PINTO NUNES (alternate to Ms Farani Azevedo, Brazil) reiterated Brazil's opposition to the inclusion in paragraph 2 of the reference to combating illicit trade in manufacturing equipment or key inputs used in the manufacture of tobacco products. That issue was still under consideration in other forums and Brazil had no authorities dedicated to combating illicit trade in manufacturing equipment.

Mr HOSHINO (Japan) concurred with Brazil. Manufacturing equipment and key inputs used in the manufacture of tobacco products should be outside the scope of the protocol's provisions. He understood, like Brazil, that no agreement had been reached on the issue.

Protection of sovereignty (continued from the second meeting, p. 61)

Dr AL-LAWATI (Oman) requested clarification of the phrase "granting due respect to the principle of public order" which the Israeli delegation had proposed for insertion at the end of paragraph 1.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) said that, in subparagraph 21(b) of the section on mutual legal assistance, one of the grounds for denying a request for legal assistance included *ordre public* or other essential interests. In the section on extradition, however, no such ground was provided for a Party to refuse a request for extradition if it considered that compliance with that request would be injurious to its public order. She therefore proposed inserting, at the end of paragraph 14 of the section on extradition, similar wording to that contained in subparagraph 21(b) of the section on mutual legal assistance. The principle of public order needed to be reflected in the provisions relating to the protection of sovereignty, hence her proposed amendment.

Mr ULMANN (France), speaking on behalf of the European Community, asked why the previous speaker sought to amend provisions that were identical to those contained in the United Nations Convention against Transnational Organized Crime, which her own country had ratified.

(For continuation of the discussion, see summary record of the fourth meeting, p.81.)

The meeting rose at 13:00.

FOURTH MEETING

Thursday, 23 October 2008, at 15:15

Chairperson: Mr M. NAVARRETE (Chile)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: Item 6 of the Agenda (Document FCTC/COP/INB-IT/2/3) (continued)

Part IV: Enforcement (continued)

Offences (continued from the third meeting)

The CHAIRPERSON, referring to the title of the section, said that "*delitos*" was not the most appropriate Spanish translation of the term "offences" which included offences of a criminal nature ("*infracciones penales*") and those of a non-criminal nature ("*infracciones administrativas*"). For that reason, he preferred the use of the term "*infracciones*" in Spanish.

Ms GONZÁLEZ (Bolivarian Republic of Venezuela) said that it was her understanding that both "*ilícitos*" (unlawful activities) in Spanish covered both "*delitos*" and "*infracciones*" which were used in Spanish to refer to unlawful activities. "*Delitos*" referred to more serious criminal offences, while "*infracciones*" was used to describe offences that were not necessarily criminal.

Mr BURCI (WHO Legal Counsel) read out the proposed amendment to the section which had been submitted on behalf of the European Community: "the above conduct shall constitute serious offences when they are involved in the illicit trade of tobacco products above *X* tonnes".

Mr ULMANN (France), speaking on behalf of the European Community, said that the wording of the proposed amendment would obviously need to be reviewed and improved. Nevertheless, he wished to highlight the serious matter of setting a threshold in terms of the quantity of tobacco traded illicitly, hence the reference to "*X* tonnes", as that would demonstrate the severity of the crime in terms of the amount of tax avoided.

Mr MOHAMEDOUN (Mali) said he did not agree with the tense used in the proposed amendment and requested that "shall constitute" be changed to "constitute". With regard to setting a tonnage limit, if the activity was illegal, he questioned whether it would be reasonable to allow the trade of even small quantities to avoid being categorized as illicit.

Mr GUO Xiaofeng (China) said that the distinction between a serious and an ordinary offence did not exist in the Chinese legal system; his delegation could not, therefore, accept the proposed amendment.

Mr ULMANN (France), speaking on behalf of the European Community, explained in response to Mali that "shall constitute" in English did not denote a future tense but rather an obligation that could more literally be translated into French as "*doivent constituer*".

With regard to the concept of "serious offences", he agreed with Mali and China that, from the standpoint of certain legal systems, including that of France, a simple distinction between criminal and non-criminal law would have sufficed. However, the question of degree or seriousness had been introduced to cater for other legal systems in the European Community. The amendment was also

designed to establish a link with the extradition provisions of Part V, since the relevant international Conventions made extraditions conditional on a minimum penalty requirement, usually one of at least three years' imprisonment.

Mr ALBUQUERQUE E SILVA (Brazil) said that the Brazilian legal system distinguished between criminal and non-criminal offences. However, it would not be possible to determine whether a crime was more or less serious on the basis of the quantity of tobacco products seized: it was the illegality of the act itself that would be punishable under Brazilian law.

Mr MAIZORIG (Mongolia) said that he wished to clarify the proposed text by adding the word "criminal" after "serious". With regard to the remarks by Brazil, the seriousness of a crime could be established according to the type of punishment meted out by a court of law.

Mr TRIVEDI (alternate to Mr Balachandhran, India) shared the concerns expressed by Brazil: his delegation would have difficulty in accepting both the proposed threshold of "*X* tonnes" and the implication that illicit trade in a lower tonnage would be considered a lesser crime. He preferred to hear the views of legal experts before a decision was taken on the matter. Trying to make the proposed article multidimensional by linking it with the subject of extradition would make it difficult to capture the essence of what had originally been intended in that part of the text.

The CHAIRPERSON said that there appeared to be consensus on the idea of introducing parameters of some kind although there would have to be further work to find objective parameters that would be acceptable to all.

Mr GUO Xiaofeng (China) acknowledged that countries had different legal systems and that there would be a need for some compromise to reach a solution acceptable to all. If the proposal put forward by Mongolia were to be adopted, that would go some way towards meeting his concerns. He did not believe that a reference to the number of tonnes of tobacco should be made in the introductory paragraph because illicit trade took many forms and selling a quantity of tobacco was only one of them; determining the quantity involved could be left to national legislation. His proposal was to make reference to serious crime punishable by a sentence of a given number of years.

The CHAIRPERSON agreed that each country would have to regulate according to its own principles and domestic laws, although for matters such as extradition there would have to be some uniformity in the sanctions imposed.

Dr AL-LAWATI (Oman) asked whether the adjectives "serious", "unlawful" and "criminal" would be used to refer to a range of offences in paragraphs 1 and 2.

The CHAIRPERSON said that various words had been used within the section to describe similar concepts; however, the exact terminology could be agreed at a later date. Currently, the point at issue was to reach broad agreement on the principles.

Ms CHEUNG Siu Hang (alternate to Dr Gao Xingzhi, China) requested that the amendment proposed on behalf of the European Community be amended to read: "the above conduct shall constitute serious criminal offences where, under the law of the Party, they attract a custodial sentence of *X* years or more".

Mr MOHAMEDOUN (Mali) said that Malian legislation provided for both minimum and maximum custodial sentences and fines, depending on the criminal or non-criminal nature of the offence committed.

The CHAIRPERSON said that the question of the nature of the offence, whether criminal or non-criminal, was complicated as each country had its own legislation on the subject. However, he was confident that a harmonized text could be produced that would sanction the most serious cases of illicit trade, which was the intent of the protocol.

Ms CHEUNG Siu Hang (alternate to Dr Gao Xingzhi, China), responding to the remarks made by Mali, suggested that the word "minimum" be inserted before "custodial" in the proposal put forward by China.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) objected to the insertion of "minimum" on the grounds that in Israel criminal offences always carried a sentence of a specified period, which was usually the maximum.

Dr AL-LAWATI (Oman) pointed out that there were two elements that needed to be defined: the length of the sentence and the weight of the tobacco product involved.

The CHAIRPERSON expressed concern that the amendment process was becoming too detailed and urged the Committee to focus on more general points to allow genuine progress to be made. All the comments made had been noted and would be given serious consideration. He therefore suggested taking up law enforcement cooperation in Part V and resuming the discussion on offences at a later stage.

Part V: International cooperation (continued from the third meeting)

Law enforcement cooperation (continued from the second meeting)

The CHAIRPERSON invited the Committee to consider the proposal by Japan to insert the words "consistent with their respective domestic legal and administrative systems" after "Each Party shall adopt" in paragraph 1.

Mr ALBUQUERQUE E SILVA (Brazil) and Mr TRIVEDI (alternate to Mr Balachandhran, India) endorsed the proposed amendment.

The CHAIRPERSON said that, in the absence of any objection, he took it that the Committee wished to approve the amendment proposed by Japan.

It was so agreed.

The CHAIRPERSON said that he took it that the Committee wished to approve the addition, in subparagraphs 1(e) and (f), of the word "relevant" after "exchange", as proposed by the European Community.

It was so agreed.

THE CHAIRPERSON invited the Committee to consider the proposal by the European Community to insert the words "in specific cases" after "inquiries" in subparagraph 1(b).

Mr LEGUERRIER (Canada) asked for clarification regarding the wording of subparagraph 1(b)(ii).

Mr BURCI (WHO Legal Counsel) said that the wording in subparagraph 1(b)(ii) had been taken from Article 27 of the United Nations Convention against Transnational Organized Crime which

consistently utilized the expression "proceeds of crime", as defined in Article 2(e), rather than "proceeds of offences".

Dr RANGREJI (alternate to Mr Balachandhran, India) noted that "proceeds of crime" was the standard term used in most mutual assistance agreements.

Mr MOHAMEDOUN (Mali) said that the fact that the term "crime" had been taken from a Convention on criminal activities did not necessarily mean that it was also suited to a protocol dealing with activities that might not be of a criminal nature. Under his country's legal system, a crime was an offence which carried a term of imprisonment of five to 20 years. He had, therefore, suggested using the term "the offence", rather than "crime". He urged the Committee to approve the proposed amendment.

Mr ULMANN (France), speaking on behalf of the European Community, sympathized with the views expressed by Mali and highlighted the linguistic difference in the use of the words "crime" in the English and "infraction" in the French text.

Ms ALI-HIGO (Djibouti) said that she was opposed to the insertion in subparagraph 1(b) of the words "in specific cases", which would restrict the scope of the text.

Dr AL-LAWATI (Oman) emphasized the danger of becoming bogged down in terminology used in the United Nations Convention against Transnational Organized Crime. While he appreciated the concerns expressed about changing language taken from other international instruments, he agreed with Mali that changes could be made, provided they were relevant.

Mr TOESSI (Benin) drew attention to potential difficulties that could arise in implementing the provisions contained in the draft protocol where their original meaning had changed in translation, and the effect that such ambiguity could have on the penalties imposed for offences. In his own country's legal system, proceedings were often unnecessarily protracted and reached an unsatisfactory outcome because of failure to agree on the interpretation of certain terms. To avoid such a situation, the Committee should endeavour to produce a text whose meaning was clear to all the Parties concerned.

The CHAIRPERSON said that even when a piece of text had been agreed upon it would still be necessary to review the terminology in order to avoid the type of problems mentioned by previous speakers.

Mr ULMANN (France), speaking on behalf of the European Community, asked whether the insertion of "accordingly" after "amending them", in paragraph 2 had been approved.

The CHAIRPERSON said that it had been agreed that, in principle, the word should remain in square brackets.

Mutual administrative assistance (continued from the second meeting)

The CHAIRPERSON invited the Committee to consider the proposal by Japan to insert the phrase "Consistent with their respective domestic legal and administrative systems" at the beginning of the introductory paragraph.

Mr ULMANN (France), speaking on behalf of the European Community, said that his Party had not yet had time to examine the legal implications of the proposed amendment and could not, therefore, adopt a position at that stage.

Mr LEGUERRIER (Canada) proposed the addition, in subparagraph (d), of "or be a party to" after "committed" in order to cover conspiracy and criminal organizations.

The CHAIRPERSON invited the Committee to consider the proposal by Japan to insert in the introductory paragraph, after "the manufacture of tobacco products", the sentence "The competent authorities receiving the information shall comply with a request that the said information remain confidential, even temporarily, or with restriction of its use".

Mr ULMANN (France), speaking on behalf of the European Community, supported the proposed amendment.

Ms CHEUNG Siu Hang (alternate to Dr Gao Xingzhi, China) observed that the proposed amendment read as though the Party providing the information had to take the initiative in requesting that it remained confidential. She preferred the wording that had been proposed by Canada at the previous meeting to the effect that information received should be deemed confidential unless otherwise stated by the transmitting party.

Mr HOSHINO (Japan) explained that his amendment was designed to ensure better protection for confidentiality. Its wording was taken from Article 18(5) of the United Nations Convention against Transnational Organized Crime. He would not press the amendment, but reserved the right to comment on it at a later stage following consultations with his capital.

Dr RANGREJI (alternate to Mr Balachandran, India) said that India concurred with what had been stated by China. However, since both the transmitting and the receiving Parties needed to agree that the transmitted information should remain confidential, he suggested that the phrase "unless otherwise stated" should be changed to "unless otherwise agreed to"; that was the standard phrase in most agreements on mutual legal assistance.

Mutual legal assistance (continued from the second meeting)

The CHAIRPERSON invited comments on the proposed insertion by Israel of "Consistent with their respective legal systems" and by India of "In accordance with their domestic law" in paragraph 1. In his view, the term "legal system" was broader than "domestic law" since it encompassed both international and domestic law, and he therefore suggested that the Committee approve the amendment proposed by Israel.

Dr RANGREJI (alternate to Mr Balachandran, India) suggested that, for the sake of consistency with the wording used in earlier sections of the draft protocol, paragraph 1 could open with the words "Consistent with their respective domestic legal and administrative systems".

Mr ULMANN (France), speaking on behalf of the European Community, said that his delegation feared that the proposed addition might disturb the balance of the text. Further consideration of its implications was therefore required.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) said that the purpose of the amendment was to take account of each Party's legal system and to acknowledge and safeguard the independence and discretion of the judiciary in relation to some of the purposes listed in paragraph 3 for which mutual legal assistance might be requested, such as executing searches and seizures, and freezing of assets, which depended on court orders in her country.

Mr VIDOVIĆ (Serbia) thanked the Chairperson and the Legal Counsel for confirming that paragraph 8, concerning bank secrecy, contradicted paragraphs 17 and 21(d), as well as paragraph 4 of general obligations. He therefore proposed amending the beginning of paragraph 8 to read "Parties

shall endeavour not to decline…" and the beginning of paragraph 22 to read "Parties shall endeavour not to refuse…".

Dr RANGREJI (alternate to Mr Balachandran, India) said that the proposed amendment to paragraph 22 diluted the basic thrust of the Article, which was that every effort should be made not to deny mutual legal assistance on fiscal grounds, since many illicit tobacco trade offences, such as dealing in counterfeit cigarettes, involved large sums of money.

Mr VIDOVIĆ (Serbia) said that the proposed amendment was based on the Legal Counsel's confirmation that the wording of paragraph 22 was in legal conflict with other provisions, in particular paragraph 4 of general obligations.

The CHAIRPERSON invited comments on Cameroon's proposal to insert the words "may be transferred to the territory of another Party" in paragraph 10.

Ms MATEL (alternate to Mr Nkou, Cameroon) said that her country's proposed amendment, if accepted, would render superfluous the words "whose presence in another Party is requested", and they would therefore need to be deleted.

Mr ULMANN (France), speaking on behalf of the European Community, said that, while he did not deny the value of the current discussion, which reflected deep concerns, or wish to deprive the Parties of the opportunity of exchanging information about their legal systems, it was important to bear in mind that similar debates had already taken place and that most of the international agreements used as source material for the text had been ratified. It would therefore help the Parties in their discussions on the current protocol if they could be provided with a study, before the third session of the Intergovernmental Negotiating Body, explaining the rationale behind the adoption of the agreements in question.

Dr RANGREJI (alternate to Mr Balachandhran, India), referring to paragraph 10, urged that the words "being detained or is" be retained, because the presence of persons who were detained while undergoing trial in the territory of one Party was often requested in that of another Party for purposes of testimony. He likewise urged the retention in the same paragraph of the words "whose presence in another Party is requested", since no person could be transferred from the territory of one Party to that of another if his or her presence was not requested.

Ms MATEL (alternate to Mr Nkou, Cameroon) observed that her amendment referred only to the transfer of a person serving a sentence, where the testimony of such a person would have an important bearing on an investigation being conducted in the territory of another Party.

Ms ST LAWRENCE (alternate to Mr Leguerrier, Canada) said that she shared the views expressed by the France, speaking on behalf of the European Community, on the need to ensure consistency between the draft protocol and the United Nations Convention against Transnational Organized Crime. Her delegation had proposed the deletion of the words "being detained or is" in paragraph 10 because, in the Canadian legal system, a person who was being detained and had not been convicted could not be extradited or transferred to another country for the purposes listed in paragraph 3 of the section under discussion.

Mr MOHAMEDOUN (Mali) said that there was a case for accepting Canada's proposed amendment because persons in detention who were not yet serving a sentence benefited from a presumption of innocence in some countries. While the deletion of the words concerned would be more in line with Mali's national legislation, he could accept their being either retained or deleted, as Parties with different legal systems might require greater flexibility.

The CHAIRPERSON suggested, without prejudice to the views expressed, that the wording of subparagraph 10(b), which, in his view, upheld the principle of independence of each Party, might help to resolve the issue.

Dr RANGREJI (alternate to Mr Balachandhran, India) considered that some confusion had arisen between extradition and mutual legal assistance. In the latter case, only two situations applied: a person whose presence was requested in the territory of another Party was either a detained person undergoing trial or one who was serving a sentence. He therefore reiterated his request that the words "being detained or is" be retained. He likewise urged the retention of the words "whose presence in another Party is requested", since it was his firm belief that a person whose presence in another Party's territory had not been requested would not be transferred.

Mr MOHAMEDOUN (Mali) said that the explanation given by India was entirely appropriate. Since the paragraph under discussion related to mutual legal assistance and not to extradition, he had no objection to the word "detained" being retained.

Mr LEGUERRIER (Canada) said that in the circumstances Canada would withdraw its proposed amendment to paragraph 10.

Ms DE SILVA (Sri Lanka) said that, since many States had already adopted the United Nations Convention against Transnational Organized Crime, it would be advisable to maintain the text of the paragraph as drafted by the Chairperson as Article 18(10) was identical to paragraph 10 of the draft protocol.

The CHAIRPERSON pointed out that the Canadian delegation had withdrawn its proposed amendment.

Mr ULMANN (France), speaking on behalf of the European Community, said that he had proposed the addition, in paragraph 13 of the phrase "unless there are already specific contacts" in the first line because, in order to expedite matters, the legal systems of the European Community, and perhaps other regional organizations, authorized direct contacts between local legal authorities without going through a particular central authority. It might well be useful for Parties to designate a central authority, but other types of contact should not be excluded.

Ms MATEL (alternate to Mr Nkou, Cameroon) said that there were two errors in the transcription of her proposed amendment to paragraph 27. In the third line the words "of that Party" should have read "to that person" and "at the end" should read "of the end". The proposal was intended merely to simplify the text, highlighting the central idea, because, should it be too complex to be readily understood, some Parties might take some time to sign or ratify it.

Mr ULMANN (France), speaking on behalf of the European Community, said that he envisaged enormous difficulties in implementing the amendment proposed by Cameroon if the person concerned was held up for some administrative reason, because of a strike or by an accident. It would therefore be advisable once again to retain the wording of previous instruments.

Dr RANGREJI (alternate to Mr Balachandhran, India) said that the original wording of paragraph 27 incorporated the idea put forward by Cameroon, in that it contained, in the fifth and sixth lines, the words "in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested Party", which was standard phraseology, and the 15-day requirement was also mentioned in the seventh line. Moreover, the proposed introduction of the word "immunity" by Cameroon was erroneous, that word having a different legal connotation. He could see no added value in the proposal.

Ms MATEL (alternate to Mr Nkou, Cameroon) said that she was not endeavouring to add anything, but simply proposing that a lengthy paragraph be replaced by a much shorter one that focused on the central issue and would be much easier to understand.

Extradition (continued from the second meeting)

The CHAIRPERSON invited delegations to highlight their main positions on extradition, a highly complex issue, without going into details that could be dealt with at a later date.

Mr ULMANN (France), speaking on behalf of the European Community, suggested that, for the sake of consistency with what had been decided for the section on offences the word "major" earlier proposed for insertion in the first paragraph should be replaced by "serious", since only serious offences would entail extradition proceedings.

Mr MOHAMEDOUN (Mali) said that a comparison had shown that the Chairperson's text drew heavily on the section on extradition contained in the United Nations Convention against Transnational Organized Crime. However, not all the offences mentioned could be categorized as criminal in terms of the draft protocol, so perhaps "offences" alone should be used instead of "serious criminal offences" because extradition was governed by national legislation, or bilateral or multilateral agreements, which would determine whether an offence was extraditable. To talk of "serious criminal offences" suggested a hiatus between the Convention in question and the draft protocol.

The CHAIRPERSON invited the Committee to comment on Nigeria's proposal to replace the word "guarantees" by "privileges" in the third line of paragraph 13.

Dr RANGREJI (alternate to Mr Balachandhran, India) said that "privileges" were much weaker than "guarantees". Principles of natural justice were not privileges, but guarantees and fundamental rights under most constitutional legal systems.

The CHAIRPERSON agreed that legal instruments usually referred to rights and guarantees, rather than privileges, which had a different connotation. He suggested deleting the word "privileges" and retaining the original text

Mr ALBUQUERQUE E SILVA (Brazil) said that his delegation had serious reservations about the inclusion of provisions on extradition in the protocol. With a view to obtaining a large number of ratifications of the protocol, it might be found during the current negotiations that it was necessary to revisit the principle of non-admission of reservations, and he requested advice from the Legal Counsel on that issue.

Mr BURCI (WHO Legal Counsel), replying to Brazil, said that it was for Parties to decide what should or should not be included in the protocol. The fact that sizeable parts of the Chairperson's text had been taken from another Convention appeared to be causing problems regarding language and the relevance of certain provisions, extradition being a case in point. Depending on how the text evolved, the Parties might wish to revisit the matters raised at a later stage in order to determine whether certain provisions should be included at all or whether reference should be made to other Conventions that already dealt with similar matters.

Ms BILLICH (alternate to Dr Doverty, Australia) said that, for the sake of consistency with other international instruments dealing with extradition, the protocol should make provision for the application of dual criminality between two States.

Ms MATEL (alternate to Mr Nkou, Cameroon) said that if the idea was simply to copy texts already signed rather than produce the Intergovernmental Negotiating Body's own text, she could see

no reason for the meeting. The purpose of the Parties' presence was to ensure that the provisions of the current text were acceptable to the majority of the Parties, without, of course, excessive deviation from principles previously adopted in other texts. Therefore, all proposed amendments should be taken into account. She also requested information on the status of signatures and ratifications of the texts distributed that day in the meeting room.

Mr MOHAMEDOUN (Mali) said that, while he could accept the principle of extradition, which was possible even when the offence was not of a criminal nature, it had to be compatible with domestic laws and relevant bilateral and multilateral agreements. Some unlawful trading activities might, in some circumstances, fall within the sphere of application of Conventions concerning organized crime. In other cases, they might be covered by the protocol, but he recommended that extradition be envisaged with some flexibility, taking into account domestic legislation.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) thanked Canada for highlighting the absence of a dual criminality principle. Principles of dual criminality, *ordre public* and the preservation of other essential interests were all fundamental to extradition treaties in Israel. She therefore proposed to add the following language, copied from subparagraph 21(b) of section on mutual legal assistance, at the end of paragraph 14: "or if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests".

Dr RANGREJI (alternate to Mr Balachandhran, India), referring to the comments made by Israel, said that the language of paragraph 14 was the standard language used in bilateral and multilateral agreements in order to guarantee civil political rights. Grounds for refusal of extradition and civil political rights were two separate issues which should not be placed in the same paragraph.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) agreed with the comments made by the representative of India and suggested that her proposed addition to the text should be placed in a separate paragraph.

Mr HOSHINO (Japan) reiterated that not all the offences listed in the Chairperson's text were grounds for extradition under Japanese domestic law. The corresponding legislation was not envisaged in his country at that time. He therefore wished to enter a reservation to that provision of the Chairperson's text.

Mr ULMANN (France), speaking on behalf of the European Community, agreed with Japan that only some of the offences listed in the Chairperson's text should constitute grounds for extradition. For that reason, he had proposed to add the word "serious" to paragraph 1. With regard to the comments made by Israel, he acknowledged that the principle of State security was an important element of most extradition treaties, but it should not be confused with the concept of *ordre public*. He therefore had serious reservations concerning the proposal made by Israel.

Mr MOHAMEDOUN (Mali) said that the concept of *ordre public* was fundamental; if countries felt that their *ordre public* was affected, they were entitled to react accordingly. In paragraph 10, he proposed that the words "without undue delay" should be replaced by "within a reasonable period of time".

Dr RANGREJI (alternate to Mr Balachandhran, India) said that the grounds for refusal of legal assistance contained in paragraph 21 of the section on mutual legal assistance were also present in most bilateral treaties as grounds for the refusal of extradition. He therefore suggested the inclusion of subparagraphs (b) and (d) of paragraph 21 in the section on extradition, thereby addressing the concerns expressed by Israel.

Ms HACOHEN (alternate to Mr Leshno-Yaar, Israel) agreed with the suggestion by India that a separate paragraph should be created, beginning "Extradition may be refused:" followed by the text contained in subparagraphs (b) and (d) of paragraph 21 of the section on mutual legal assistance.

Mr TOESSI (Benin) remarked that the discussion was at times hard to follow, since some delegations were referring to paragraphs that had already been considered. In order for the discussions to progress, he asked the Chairperson whether delegations wishing to comment on such paragraphs could submit their suggestions in writing.

The CHAIRPERSON said that the submission of suggestions in writing would delay the proceedings further; orally submitted suggestions, even if they referred to previous paragraphs, were preferable since they allowed Parties to comment immediately.

Dr RANGREJI (alternate to Mr Balachandhran, India) confirmed that the words "mutual legal assistance" in subparagraph 21(d) under the section on mutual legal assistance should be replaced by "extradition" for the purpose of insertion in a new paragraph under the section on extradition.

The CHAIRPERSON said that the Committee had completed its second reading of the Chairperson's text. He asked whether Parties wished to make any further comments.

Mr KANG Nam-il (Republic of Korea) supported the views expressed by Japan regarding the scope and application of extradition. Extradition had major implications for human rights. Therefore, only criminal offences should be extraditable. He asked for the opinion of the Legal Counsel on that matter.

Mr BURCI (WHO Legal Counsel) agreed with the Republic of Korea that extradition should apply only to criminal offences, and should not be envisaged for administrative or civil offences. The debate in the Committee centred on the nature of the criminal offence that would justify extradition under the protocol.

Mr VIDOVIĆ (Serbia) said that, in order to maintain consistency throughout the protocol, the words "endeavour not to" previously proposed by his delegation for paragraph 8 of the section on mutual legal assistance should also be inserted to paragraph 15 of the section on extradition, so that it would read: "Parties shall endeavour not to refuse a request …".

The CHAIRPERSON said that the Convention Secretariat would prepare a text to be circulated the following day containing all the views, comments and amendments proposed by Parties. He would then prepare a report to submit to the plenary reflecting the main points of consensus as well as the main concerns and issues raised during the two sessions of the Committee.

Ms MATEL (alternate to Mr Nkou, Cameroon) added that it should be mentioned in the report that only Parts IV and V of the Chairperson's text had been discussed by the Committee.

The CHAIRPERSON confirmed that all comments and views would be noted. He thanked the Parties for their clear contributions and suggestions on what was a complex subject. It was important to maintain uniformity in the draft protocol so as to enable the work of combating the illicit trade in tobacco products to be as effective as possible. He declared the work of the Committee closed.

The meeting rose at 17:40.

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LISTE DES PARTICIPANTS

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