

**FCTC**WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL**Conference of the Parties to the  
WHO Framework Convention  
on Tobacco Control**Fourth session  
Punta del Este, Uruguay, 15–20 November 2010  
**Provisional agenda item 5.1****FCTC/COP/4/4  
14 May 2010**

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

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

**BACKGROUND**

2. The Conference of the Parties to the WHO Framework Convention on Tobacco Control decided at its second session<sup>2</sup> to establish an intergovernmental negotiating body open to all Parties to draft and negotiate a protocol on illicit trade in tobacco products which would build upon and complement the provisions of Article 15 of the WHO Framework Convention on Tobacco Control. The Conference of the Parties recognized that the template for a protocol on illicit trade,<sup>3</sup> as proposed by the expert group convened in accordance with decision FCTC/COP1(16) of the Conference of the Parties, established a basis for initiating negotiations by the intergovernmental negotiating body. The Conference of the Parties decided further that the intergovernmental negotiating body should report to

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

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

<sup>3</sup> Annex to document A/FCTC/COP/2/9.

the Conference of the Parties at its third session on the progress of its work, and that it should submit the text of a draft protocol to the Conference of the Parties for its consideration at its fourth session.

## Officers

3. At its first session, the Intergovernmental Negotiating Body elected as Chairperson Mr I. Walton-George (European Union); as Vice-Chairpersons it elected Dr J. Al-Lawati (Oman), Dr E. Jaramillo (Mexico), Mr P. Krishna<sup>1</sup> (India), Mrs L. Asiedu (Ghana, Rapporteur) and Mr J. Martin (Federated States of Micronesia).

4. At its third session, the Intergovernmental Negotiating Body re-elected Mr Walton-George as Chairperson. As Vice-Chairpersons, the Intergovernmental Negotiating Body elected Dr T. Vinit (Papua New Guinea), Mr H. Mohamed (Maldives), Mrs L. Asiedu (Ghana),<sup>2</sup> Dr E. Al Mansoori (United Arab Emirates) and Dr J. Regalado Pineda (Mexico).

5. As requested by the Intergovernmental Negotiating Body, the Conference of the Parties provided a clarification on Rule 28.1 of its Rules of Procedure, concerning the term of office of officers of subsidiary bodies. It decided that the second term of officers of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products, in accordance with Rule 28.1 of the Rules of Procedure of the Conference of the Parties, should include the sessions of the Intergovernmental Negotiating Body to be held between the third and fourth sessions of the Conference of the Parties.<sup>3</sup>

## Sessions of the Intergovernmental Negotiating Body

6. Four sessions of the Intergovernmental Negotiating Body were held, the dates and venues of which were decided by the Bureau of the Conference of the Parties in accordance with Rule 27.1 of the Rules of Procedure of the Conference of the Parties.

7. The first session of the Intergovernmental Negotiating Body was held in Geneva, Switzerland, 11–15 February 2008. It was attended by representatives of 132 Parties, as well as 20 States non-Parties, 3 intergovernmental organizations and 9 nongovernmental organizations accredited as observers to the Conference of the Parties.

8. The discussions were held in plenary and were based on the template for a protocol on illicit trade proposed by the expert group.

9. As mandated by the Conference of the Parties, the Chairperson drafted a “Chairperson’s text” following the first session.

10. The second session of the Intergovernmental Negotiating Body was held in Geneva, 20–25 October 2008. It was attended by representatives of 133 Parties, as well as 16 States

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<sup>1</sup> Replaced by Dr G. Balachandhran (India) as from 19 October 2008.

<sup>2</sup> Replaced by Dr M. Anibueze (Nigeria) at the fourth session of the Intergovernmental Negotiating Body.

<sup>3</sup> Decision FCTC/COP3(6).

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non-Parties, 2 intergovernmental organizations and 9 nongovernmental organizations accredited as observers to the Conference of the Parties.

11. The Intergovernmental Negotiating Body accepted the Chairperson's text<sup>1</sup> as the basis for negotiations, which were conducted both in plenary and in committees.<sup>2</sup>

12. Between the second and third sessions of the Intergovernmental Negotiating Body, the following intersessional work was conducted, as requested by the Intergovernmental Negotiating Body.

13. Regional consultations were held on 12 and 13 May 2009 in Tehran, Islamic Republic of Iran (Eastern Mediterranean Region), on 2 June 2009 in Geneva, Switzerland (European Region), on 4 and 5 June 2009 in Mexico City, Mexico (Region of the Americas), on 8 and 9 June 2009 in Beijing, China (Western Pacific Region), on 11 and 12 June 2009 in Dhaka, Bangladesh (South-East Asia Region), and on 26 and 27 June 2009 in Geneva (African Region).

14. The Convention Secretariat prepared expert reviews on the feasibility of an international tracking and tracing regime,<sup>3</sup> the legal ramifications of a possible ban of sales of tobacco products via the Internet<sup>4</sup> as well as of a possible ban on duty free sales of tobacco products,<sup>5</sup> the relationship of the protocol with other related international instruments,<sup>6</sup> legal advice on the scope of the protocol,<sup>7</sup> and an assessment of potential requirements at national level for an international track and trace regime.<sup>8</sup>

15. The Chairperson elaborated a revised Chairperson's text,<sup>9</sup> taking into account the discussions that had taken place at the second session of the Intergovernmental Negotiating Body, the results of the expert reviews, and of legal advice.

16. The third session of the Intergovernmental Negotiating Body was held in Geneva, 28 June – 5 July 2009. It was attended by representatives of 130 Parties, as well as 7 States non-Parties, 3 intergovernmental organizations and 15 nongovernmental organizations accredited as observers to the Conference of the Parties.

17. The negotiations were based on the revised Chairperson's text and held both in plenary and in committees.<sup>1</sup>

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<sup>1</sup> Document FCTC/COP/INB-IT/2/3.

<sup>2</sup> Committee A was chaired by Mrs M.K. Matsau (South Africa), with Dr Prakit Vathesatogkit (Thailand) and Dr C. Bekbasarova (Kyrgyzstan) as Vice-Chairpersons. Committee B was chaired by Mr M. Navarrete (Chile), with Mr Guo Xiaofeng (China) and Mr K. Ahmadi (Islamic Republic of Iran) as Vice-Chairpersons. The working group established to review the scope of the protocol was chaired by Dr H. Friza (Austria).

<sup>3</sup> Document FCTC/COP/INB-IT/3/INF.DOC./5.

<sup>4</sup> Document FCTC/COP/INB-IT/3/INF.DOC./4.

<sup>5</sup> Document FCTC/COP/INB-IT/3/INF.DOC./3.

<sup>6</sup> Document FCTC/COP/INB-IT/3/INF.DOC./7.

<sup>7</sup> Document FCTC/COP/INB-IT/3/INF.DOC./6.

<sup>8</sup> Document FCTC/COP/INB-IT/3/INF.DOC./8.

<sup>9</sup> Document FCTC/COP/INB-IT/3/3.

18. At the close of its third session, the Intergovernmental Negotiating Body agreed<sup>2</sup> that the negotiating text<sup>3</sup> which resulted from negotiations at the session would form the basis for further negotiations on a draft protocol to eliminate illicit trade in tobacco products.

19. Two drafting groups established by the Intergovernmental Negotiating Body<sup>4</sup> worked between the third and fourth sessions and as a result were able to propose text for the articles assigned to them<sup>5</sup> in order to facilitate further negotiation at the fourth session.

20. As requested, the Convention Secretariat prepared a document outlining options for the institutional and financial arrangements addressed in Parts VI and VII of the negotiating text, and the financial implications of implementing those options, in consultation with the permanent missions of Parties in Geneva.<sup>6</sup> The Secretariat also prepared a report on available technology for unique markings<sup>7</sup> requested by Drafting Group 1 in relation to Article 7 of the negotiating text.

21. The fourth session of the Intergovernmental Negotiating Body was held in Geneva, 14–21 March 2010. It was attended by representatives of 141 Parties, as well as 10 States non-Parties, 3 intergovernmental organizations and 8 nongovernmental organizations accredited as observers to the Conference of the Parties.

22. At its fourth session, the Intergovernmental Negotiating Body continued the negotiations in plenary, discussing provisions from the negotiating text as well as proposals contained in the reports of Drafting Groups 1 and 2.

23. The Intergovernmental Negotiating Body decided to recommend to the Conference of the Parties to the WHO Framework Convention on Tobacco Control that the draft protocol contained in document FCTC/COP/INB-IT/4/7 be considered by the Conference of the Parties at its fourth session, in accordance with decisions FCTC/COP2(12) and FCTC/COP3(6) of the Conference of the Parties.<sup>8</sup>

24. In accordance with the decision of the Intergovernmental Negotiating Body,<sup>9</sup> Parties were invited to submit comments on the accuracy of the Arabic, Chinese, French, Russian and Spanish

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<sup>1</sup> Committee A was chaired by Mr S. Shakerian (Islamic Republic of Iran), with Dr M.E. Anibueze (Nigeria) and Dr P. Vivili (Tonga) as Vice-Chairs, while Mr M. Navarrete (Chile) chaired Committee B, with Mr O.O. Salagai (Russian Federation) and Mrs I. Demuni de Silva (Sri Lanka) as Vice-Chairs.

<sup>2</sup> Decision FCTC/COP/INB-IT/3(1).

<sup>3</sup> Document FCTC/COP/INB-IT/3/5 Rev.1.

<sup>4</sup> Decision FCTC/COP/INB-IT/3(1).

<sup>5</sup> Drafting Group 1 worked on Articles 5, 6, 7, 10 and 11. For the report of Drafting Group 1, see document FCTC/COP/INB-IT/4/3; Drafting Group 2 worked on Articles 12–14 and 30–33. For the report of Drafting Group 2, see document FCTC/COP/INB-IT/4/4.

<sup>6</sup> Document FCTC/COP/INB-IT/4/5.

<sup>7</sup> Document FCTC/COP/INB-IT/4/INF.DOC.1.

<sup>8</sup> Decision FCTC/COP/INB-IT/4(1).

<sup>9</sup> Decision FCTC/COP/INB-IT/4(2).

translations of the English text of the draft protocol. These comments were taken into account in the translated versions of the document<sup>1</sup> to be submitted to the Conference of the Parties.

## **SUBSTANTIVE MATTERS**

25. An overview of the status of negotiations on each article of the draft protocol at the closure of the fourth session of the Intergovernmental Negotiating Body, prepared by the Convention Secretariat at my request, is attached as Annex 1. The text of the draft protocol, as it stood at the close of the fourth session, is contained in document FCTC/COP/4/5.

26. As the overview shows, the Intergovernmental Negotiating Body at its third and fourth sessions made very significant progress and reached consensus on 26 provisions,<sup>2</sup> while 23 remain under discussion. In particular, there was consensus on the “tracking and tracing” provisions (Article 7) and the great majority of the “licensing” provisions (Article 5). These articles are regarded as the “heart” of the protocol and indicate the strong commitment of the Parties to achieving a practical and effective set of provisions to eliminate illicit trade in tobacco products.

27. The following are my observations, which I trust will be helpful when the Conference of the Parties, in considering this matter, gives guidance on further negotiations.

### **Consensus provisions**

28. The attributed consensus should be read in light of the holistic approach that the Intergovernmental Negotiating Body agreed to take on the draft protocol: “Nothing is agreed until everything is agreed”. But the progress made shows, in my opinion, that agreement on the remaining elements of an effective Protocol is within sight.

### **Outstanding issues**

29. Although the Intergovernmental Negotiating Body made significant progress during its negotiations, a number of important and challenging issues remain unsolved. While some of these outstanding issues were not discussed at the fourth session, others were discussed at the fourth session, but consensus could not be reached.

### ***Provisions not discussed at the fourth session***

30. Due to time constraints, some of the articles that the Intergovernmental Negotiating Body had not previously agreed upon were not discussed during the fourth session, namely the Preamble and Articles 2, 6, 8, 9, 11, 11*bis*, 12, 26, 27, 28, 29, 30, 31–33, 41, 42 and 48. As a consequence, the

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<sup>1</sup> Document FCTC/COP/4/5.

<sup>2</sup> Article 3; Article 5, paragraphs 1, 2, 3 (a) – (g) and 4; Article 7; Article 13; Article 14, paragraphs 1 and 2; Article 19; Article 20, paragraph 1(a), (b), (d) and (e), paragraphs 2 and 3; Article 21 (pending the inclusion of “manufacturing equipment”); Article 22; Article 23; Article 24 (pending the inclusion of “manufacturing equipment”); Article 25, paragraph 1; Article 34; Article 35 (but with no agreement regarding the financial implications); Article 36, paragraphs 1 and 2(a); Article 37; Article 38; Article 39; Article 40; Article 43; Article 44; Article 45 (date and place to be determined); Article 46; Article 47; Article 49. With regard to Article 4, the one Party that had indicated a reservation regarding paragraph 1 of Article 4 lifted that reservation following the end of the fourth session.

Intergovernmental Negotiating Body did not have the opportunity to consider the text of the draft protocol as a whole for completeness or the interactions between its various articles.

31. The detailed list of the status of these articles is attached as Annex 1.

32. With regard to the provisions that were not discussed at the fourth session, I would like to note the following:

- The Preamble was discussed at length and revised at the second session of the Intergovernmental Negotiating Body. Bearing in mind the nature of the Preamble, it is possible that there will be amendments until the negotiations are completed.
- For Articles 12, 30 and 31–33, the text shown is that proposed by Drafting Group 2 (established to work between the third and fourth sessions of the Intergovernmental Negotiating Body).<sup>1</sup> The report of the Drafting Group notes that the group could not reach consensus on whether the provisions relating to mutual legal assistance and extradition should be included in the protocol.<sup>2</sup> However, the Drafting Group agreed that if these provisions were to be retained in the draft protocol, their language should be based on Articles 18 and 26 of the United Nations Convention against Transnational Organized Crime. These matters remain to be discussed and decided.
- Article 27 (*Joint investigations*) was placed in square brackets at the third session because it was proposed for deletion.
- On the last day of the fourth session, I read out in plenary an amendment to Article 48 (Depositary), which was proposed by the United Nations Treaty Section, Office of Legal Affairs, following their review of Part X of the negotiating text. The suggested language for Article 48 is: “The Secretary-General of the United Nations shall be the depositary of this Protocol”. In the practice of the Secretary-General as depositary, it is not necessary to specify that the Secretary-General will also be the depositary of amendments and/or annexes. By virtue of being depositary of the Protocol, the Secretary-General would automatically assume depositary functions for any amendments and related protocols. Because of time constraints, the Intergovernmental Negotiating Body was not able to finalize discussions on this proposal.

33. Based on the previous discussions, on the current wording, as well as on my personal assessment, I would consider that agreement should be fairly easy to reach on the Preamble as well as on Articles 6, 8, 9, 11, 28, 29 and 48.

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<sup>1</sup> Unlike for the text of Articles 6, 11 and 11*bis*, for Articles 12 and 30–33 I chose only to show the text that was proposed by Drafting Group 2. The “old” text is contained in document FCTC/COP/INB-IT/3/5 Rev.1, pages 26–28 and 39–40, which can be accessed on the FCTC web site at [http://apps.who.int/gb/fctc/PDF/it3/FCTC\\_COP\\_INB-IT3\\_5Rev1-en.pdf](http://apps.who.int/gb/fctc/PDF/it3/FCTC_COP_INB-IT3_5Rev1-en.pdf). This was not an oversight, but a deliberate decision. While the Chair of Drafting Group 1 had made proposals for Articles 6, 11 and 11*bis*, the text of Articles 12–14 and 30–33 constitutes proposals from the whole of Drafting Group 2.

<sup>2</sup> Document FCTC/COP/INB-IT/4/4, paragraphs 12 and 17.

***Provisions discussed at the fourth session without consensus being reached***

34. Other provisions of the text were discussed at the fourth sessions, but the Intergovernmental Negotiating Body did not reach consensus on them. In this regard, I would like to point out the following:

- An open-ended working group to discuss the defined terms to be included in Article 1 was established at the fourth session. The Intergovernmental Negotiating Body agreed that the report of this working group should be allied with the Chairperson's report to the Conference of the Parties. It is therefore attached as Annex 2.
- Article 5*bis* was introduced at the fourth session. Parties indicated that it would be useful to discuss this provision in conjunction with Article 11 (*Free Zones*).
- The Intergovernmental Negotiating Body could not agree whether in Article 10 the sale of tobacco products and manufacturing equipment through Internet- telecommunication- or any other evolving technology-based modes of sale should be completely banned, or whether the relevant provisions of the protocol should be applied to these modes of sale.
- Article 15 is placed in square brackets as it was proposed that the entire Article should be deleted.

35. Based on the previous discussions, on the current wording, as well as on my personal assessment, I would consider that agreement should be attainable on Articles 10 and 18.

**RECOMMENDATION OF THE INTERGOVERNMENTAL NEGOTIATING BODY TO THE CONFERENCE OF THE PARTIES**

36. At its fourth session, the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products decided to recommend to the Conference of the Parties to the WHO Framework Convention on Tobacco Control that the draft protocol to eliminate illicit trade in tobacco products contained in document FCTC/COP/INB-IT/4/7 be considered by the Conference of the Parties at its fourth session, in accordance with decisions FCTC/COP2(12) and FCTC/COP3(6) of the Conference of the Parties.<sup>1</sup>

**Matters referred to the Conference of the Parties**

37. At its fourth session, the Intergovernmental Negotiating Body discussed the need to raise the following matters in particular (requiring guidance on principles) with the Conference of the Parties:

- (a) the method of financing of the protocol, currently referred to in Article 35. In particular, the Intergovernmental Negotiating Body could not agree whether, following the entry into force of the protocol, only the Parties to the protocol should finance the protocol, or whether all Parties to the WHO Framework Convention on Tobacco Control should pay contributions, regardless of whether or not they were also Parties to the protocol.

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<sup>1</sup> Decision FCTC/COP/INB-IT/4(1).

(b) whether the provisions on mutual legal assistance and extradition (currently referred to in Articles 30–32) need to be retained in the draft protocol;

(c) how to cover the issue of protection of personal data; and

(d) how to take forward the negotiations to achieve an agreed protocol in an efficient and cost-effective manner. Suggestions were made that a further and final session of the Intergovernmental Negotiating Body should be held to finalize the negotiations. One regional group requested the Secretariat to provide, for consideration by the Conference of the Parties, a new information document outlining the financial implications of the measures set out in the text of the protocol, including governance, information systems and technical assistance.

38. Finally, I would like to express my great appreciation for the active support given to me by the members of the Bureau of the Intergovernmental Negotiating Body, the Chairs of the committees and working groups, all the Parties and the Convention Secretariat during my term as Chairperson of the Intergovernmental Negotiating Body. It has been a privilege and a pleasure to serve in this capacity, and I look forward to the speedy conclusion of the negotiations and the early adoption of the protocol.



## ANNEX 1

**DRAFT PROTOCOL TO ELIMINATE ILLICIT TRADE  
IN TOBACCO PRODUCTS<sup>1</sup>**

Status of negotiations on each article at the closure of the fourth session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products

**Preamble**

The Preamble was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text in this part is therefore unchanged from that contained in the Negotiating Text for a protocol to eliminate illicit trade in tobacco products (hereafter: “negotiating text”), document FCTC/COP/INB-IT/3/5 Rev.1<sup>2</sup> and the Preamble remains under discussion.

**PART I: INTRODUCTION*****Article 1 (Use of terms)***

An open-ended working group to discuss Article 1 was established during the fourth session of the Intergovernmental Negotiating Body. The results of the discussions of the working group were distributed at the fourth session and are attached as Annex 2. The Intergovernmental Negotiating Body decided to transmit the report of the working group to the Conference of the Parties allied with the report of the Chairperson.

***Article 2 (Relationship between the Protocol and other agreements and legal instruments)***

Article 2 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1) and the Article remains under discussion.

***Article 3 (Objective)***

Consensus was reached on Article 3 at the third session of the Intergovernmental Negotiating Body.<sup>3</sup>

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<sup>1</sup> Document FCTC/COP/INB-IT/4/7.

<sup>2</sup> *Negotiating text for a protocol to eliminate illicit trade in tobacco products.*

<sup>3</sup> “Consensus” in this document refers to consensus reached in plenary.

## **PART II: GENERAL OBLIGATIONS**

### ***Article 4 (General obligations)***

Article 4 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The one Party that had indicated a reservation regarding paragraph 1 of Article 4 lifted that reservation following the end of the fourth session.

## **PART III: SUPPLY CHAIN CONTROL**

### ***Article 5 (Licence, equivalent approval or control system)***

Article 5 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the drafting proposal for this provision contained in document FCTC/COP/INB-IT/4/3.<sup>1</sup> The only element on which no agreement was reached was paragraph 3 (h) – (j).

The Article remains under discussion.

### ***Article 5bis (International transit)***

Article 5bis was introduced as a new Article at the fourth session of the Intergovernmental Negotiating Body.

The Article remains under discussion.

### ***Article 6 (Customer identification and verification)***

Article 6 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1) and document FCTC/COP/INB-IT/4/3, and the Article remains under discussion.

### ***Article 7 (Tracking and tracing)***

Consensus was reached on Article 7 at the fourth session of the Intergovernmental Negotiating Body.

### ***Article 8 (Record-keeping)***

Article 8 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

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<sup>1</sup> *Proposals of Drafting Group 1 to the fourth session of the Intergovernmental Negotiating Body on Articles 5, 6, 7, 10 and 11 of the negotiating text for a protocol to eliminate illicit trade in tobacco products.*

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 9 (Security and preventive measures)***

Article 9 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 10 (Sale by Internet, telecommunication or any other evolving technology)***

Article 10 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the drafting proposal for this provision contained in document FCTC/COP/INB-IT/4/3.

The Article remains under discussion.

***Article 11 (Free zones)***

Article 11 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1) and document FCTC/COP/INB-IT/4/3, and the Article remains under discussion.

***Article 11bis (Duty free sales)***

Article 11bis was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1) and document FCTC/COP/INB-IT/4/3, and the Article remains under discussion.

**PART IV: OFFENCES**

***Article 12 (Unlawful conduct including criminal offences)***

Article 12 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in document FCTC/COP/INB-IT/4/4,<sup>1</sup> and the Article remains under discussion.

***Article 13 (Liability of legal persons)***

Consensus was reached on Article 13 at the fourth session of the Intergovernmental Negotiating Body.

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<sup>1</sup> *Proposals of Drafting Group 2 to the fourth session of the Intergovernmental Negotiating Body on Articles 12–14 and 30–33 of the negotiating text for a protocol to eliminate illicit trade in tobacco products.*

**Article 14 (Prosecutions and sanctions)**

Consensus was reached on paragraphs 1 and 2 of Article 14 at the fourth session of the Intergovernmental Negotiating Body.

Paragraph 3 remains under discussion.

**Article 15 (Search of premises and seizure of evidence)**

Article 15 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the text contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1).

The Article remains under discussion.

**Article 16 ([Confiscation and seizure of assets]/[Seizure and confiscation])**

Article 16 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the text contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1).

The Article remains under discussion.

**Article 17 (Seizure payments)**

Article 17 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the text contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1).

The Article remains under discussion.

**Article 18 ([Destruction]/[Disposal])**

Article 18 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the text contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1).

The Article remains under discussion.

**Article 19 (Special investigative techniques)**

Consensus was reached on Article 19 at the fourth session of the Intergovernmental Negotiating Body.

**PART V: INTERNATIONAL COOPERATION****Article 20 (General information sharing)**

Consensus was reached on subparagraphs (a), (b), (d) and (e) of paragraph 1 as well as on paragraphs 2 and 3 of Article 20 at the fourth session of the Intergovernmental Negotiating Body. Subparagraph (c) of paragraph 1 remains under discussion.

**Article 21 (Enforcement information sharing)**

Consensus was reached on Article 21, with the exception of the chapeau, at the fourth session of the Intergovernmental Negotiating Body.

The chapeau of Article 21 remains under discussion.

**Article 22 (Information sharing: confidentiality and protection of information)**

Consensus was reached on Article 22 at the fourth session of the Intergovernmental Negotiating Body.

**Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters)**

Consensus was reached on Article 23 at the fourth session of the Intergovernmental Negotiating Body.

**Article 24 (Assistance and cooperation: investigation and prosecution of offences)**

Consensus was reached on Article 24 at the fourth session of the Intergovernmental Negotiating Body, pending the decision on the inclusion of “manufacturing equipment” in this Article.

**Article 25 (Protection of/ [Respect for]/[Protection of and respect for] sovereignty)**

Consensus was reached on paragraph 1 of Article 25 at the fourth session of the Intergovernmental Negotiating Body.

Paragraph 2 of Article 25 remains under discussion.

**Article 26 (Jurisdiction)**

Article 26 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

**Article 27 (Joint investigations)**

Article 27 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

**Article 28 (Law enforcement cooperation)**

Article 28 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

Article 28 was agreed upon by Committee B at the third session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 29 (Mutual administrative assistance)***

Article 29 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 30 (Mutual legal assistance)***

Article 30 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in document FCTC/COP/INB-IT/4/4, and the Article remains under discussion.

***Article 31 (Extradition)***

Article 31 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in document FCTC/COP/INB-IT/4/4, and the Article remains under discussion.

***Article 32 (Measures to ensure extradition)***

Article 32 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in document FCTC/COP/INB-IT/4/4, and the Article remains under discussion.

***Article 33 (Extradition of alleged offenders)***

Article 33 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

This Article is proposed for deletion by Drafting Group 2 as reflected in document FCTC/COP/INB-IT/4/4.

## **PART VI: REPORTING**

***Article 34 (Reporting and exchange of information)***

Consensus was reached on Article 34 at the fourth session of the Intergovernmental Negotiating Body.

## **PART VII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES**

### ***Article 35 (Meeting of the Parties)***

Consensus was reached on Article 35 at the fourth session of the Intergovernmental Negotiating Body. However, the Intergovernmental Negotiating Body did not reach agreement regarding the financial implications for Parties and recommended that the matter be considered by the Conference of the Parties.

### ***Article 36 (Secretariat)***

Article 36 was discussed at the fourth session of the Intergovernmental Negotiating Body, based on the text contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1).

Consensus was reached on paragraphs 1 and 2(a).

The remaining subparagraphs are still under discussion.

### ***Article 37 (Relations between the Meeting of the Parties and intergovernmental organizations)***

Consensus was reached on Article 37 at the fourth session of the Intergovernmental Negotiating Body.

### ***Article 38 (Financial resources)***

Consensus was reached on Article 38 at the fourth session of the Intergovernmental Negotiating Body.

## **PART VIII: SETTLEMENT OF DISPUTES**

### ***Article 39 (Settlement of disputes)***

Consensus was reached on Article 39 at the third session of the Intergovernmental Negotiating Body.

## **PART IX: DEVELOPMENT OF THE PROTOCOL**

### ***Article 40 (Amendments to this Protocol)***

Consensus was reached on Article 40 at the third session of the Intergovernmental Negotiating Body.

### ***Article 41 (Adoption and amendment of annexes to this Protocol)***

Article 41 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

**PART X: FINAL PROVISIONS*****Article 42 (Reservations)***

Article 42 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 43 (Withdrawal)***

Consensus was reached on Article 43 at the third session of the Intergovernmental Negotiating Body.

***Article 44 (Right to vote)***

Consensus was reached on Article 44 at the third session of the Intergovernmental Negotiating Body.

***Article 45 (Signature)***

Consensus was reached on Article 45 at the third session of the Intergovernmental Negotiating Body; the date and place remain to be determined.

***Article 46 (Ratification, acceptance, approval, formal confirmation or accession)***

Consensus was reached on Article 46 at the third session of the Intergovernmental Negotiating Body.

***Article 47 (Entry into force)***

Consensus was reached on Article 47 at the third session of the Intergovernmental Negotiating Body.

***Article 48 (Depositary)***

Article 48 was not discussed at the fourth session of the Intergovernmental Negotiating Body.

The text of this provision is therefore unchanged from that contained in the negotiating text (document FCTC/COP/INB-IT/3/5 Rev.1), and the Article remains under discussion.

***Article 49 (Authentic texts)***

Consensus was reached on Article 49 at the third session of the Intergovernmental Negotiating Body.



## ANNEX 2

**REPORT OF THE OPEN-ENDED WORKING GROUP ON DEFINITIONS  
ESTABLISHED BY THE FOURTH SESSION OF THE INTERGOVERNMENTAL  
NEGOTIATING BODY ON A PROTOCOL ON ILLICIT TRADE IN  
TOBACCO PRODUCTS**

Status of discussions on the use of terms as of the end of  
the second meeting of the working group on 20 March 2010 <sup>1</sup>

1. “Blocked customers” (*not yet defined – awaiting proposal from Turkey*)<sup>2</sup>
2. “Brokering” means acting as an agent for others, as in negotiating contracts, purchases, or sales in return for a fee or commission. (*Agreed*)
3. [“Cigarette” means any product, other than cigars, cigarillos, pipe tobacco and water pipe tobacco, that contains tobacco and is intended to be burned or heated under ordinary conditions of use, and includes, without limitation, any “roll-your-own” tobacco which, because of its appearance, type, packaging or labelling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.] (*EU proposal*)

*or*

[“Cigarette” means any product that contains tobacco and is intended to be burnt or heated under ordinary conditions of use; the term includes, without limitation, any “roll-your-own” tobacco, which, because of its appearance, type, packaging or labelling is suitable for use by and likely to be offered to or purchased by consumers as tobacco for making cigarettes.] (*Negotiating text*)

4. “Commercial quantities” means quantities intended to make profit, and excludes quantities that are intended for personal use, the evaluation of which should be based on criteria such as the status of the operator engaged in the activity, the nature and amounts of products involved, location, transportation and documentation related to the products. (*Agreed*)
5. “Confiscation”, which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority. (*UNTOC*) (*Agreed*)

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<sup>1</sup> Where agreement was not reached by the working group, definitions remain under discussion.

<sup>2</sup> After the report of the working group was circulated as part of the draft report of the Chairperson of the Intergovernmental Negotiating Body to the Conference of the Parties, Turkey expressed the view that there was no need to include this term in Article 1 “Use of terms” of the protocol.

6. “Controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. (*UNTOC*) (*Agreed*)

7. “Due diligence” means conducting a reasonable investigation before the commencement of, or during the course of, a business relationship for the purpose of ascertaining whether a business partner or prospective business partner is complying with or can reasonably be expected to comply with his or her legal obligations under this Protocol. (*UNTOC amended*) (*Agreed*)

8. “Free zone” means a part of the territory of a Party where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs territory. (*Revised Kyoto Convention*) (*Agreed*)

9. “Illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity. (*WHO FCTC*) (*Agreed*)

10. “Intermingling” or “Intermingled” means mixing together tobacco products with non-tobacco products. (*Agreed*)

11. “Licence” means permission from a competent authority following submission of the requisite application or other documentation to the competent authority. (*Negotiating text*) (*Agreed*)

12. [“Manufacturing equipment used in the manufacture of tobacco products” means machinery which is designed to be used [solely] for the manufacture of tobacco products and is integral to the tobacco products making process.] (*EU proposal*)

*or*

[“Manufacturing equipment used in the manufacture of tobacco products” means machines which are essential to and unique to the manufacture of tobacco products, including cigarette-making-machines, machines for stripping tobacco leaf, and machines for cutting tobacco.] (*Working group established at the third session of the Intergovernmental Negotiating Body*)

*or*

[“Manufacturing equipment used in the manufacture of tobacco products” means those products which are essential machines to the manufacture of tobacco products, that are identifiable and that can be controlled effectively, including cigarette-making-machines, machines for stripping tobacco leaf, and machines for cutting tobacco.] (*Working group established at the third session of the Intergovernmental Negotiating Body*)

or

["Manufacturing equipment used in the manufacture of tobacco products" means manufacturing equipment means any machinery used in the making of cigarettes, of cigarette packaging and cigarette filters and all other machinery used to manufacture tobacco products, including all second hand equipment or reconditioned used by recognised manufactures, including parts of equipment and spare parts.]

13. "Party" means, unless the context indicates otherwise, a Party to this Protocol. (*Negotiating text*) (*Agreed*)

14. ["Personal data" means any information relating to an identified or identifiable natural person.] (*EU proposal*)

15. ["Primary processing means" the first major processes that took place on tobacco leaf after it had been [grown] / [cured], such as [re]drying, [curing,] cutting and stem-removal.] (*Working group established at the third session of the Intergovernmental Negotiating Body, amended by China*)

16. "Proceeds of crime" means any property derived from or obtained, directly or indirectly, through the commission of an offence. (*UNTOC*) (*Agreed*)

17. ["Processing of personal data" means any operation or set of operations which is performed upon personal data, such as collection, recording, organization, storage, alteration, retrieval, consultation, use, disclosure, combination, blocking, erasure or destruction, as well as transfers of personal data across national borders. ] (*EU proposal*)

18. "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. (*UNTOC*) (*Agreed*)

19. Secure (exchange of information) (*Not yet defined – awaiting proposal from Turkey*)<sup>1</sup>

20. "Seizure" or "Freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority. (*UNTOC*) (*Agreed*)

21. "Smuggling" means Customs fraud consisting in the movement of goods across a Customs frontier in any clandestine manner. (*Nairobi Convention 1977 – Customs offences*) (*Agreed*)

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<sup>1</sup> After the report of the working group was circulated as part of the draft report of the Chairperson of the Intergovernmental Negotiating Body to the Conference of the Parties, Turkey expressed the view that there was no need to include this term in Article 1 "Use of terms" of the protocol.

22. “Tobacco products” means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing. (*WHO FCTC*) (*Agreed*)

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