



F C T C

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

Conference of the Parties

Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products

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Possible cooperation of the Convention Secretariat with other international organizations in relation to the future protocol

Note by the Convention Secretariat

1. The Conference of the Parties (COP) at its fourth session (Punta del Este, Uruguay, 15–20 November 2010) established an informal working group to work prior to the final session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products (INB).¹ The COP requested the informal working group, among other things, to make proposals with regard to the question of how the text of the draft protocol, and its implementation, can best complement existing relevant agreements and arrangements, including the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime, in order to maximize synergy and to avoid duplication. This should involve discussions with the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO) and other relevant international bodies.

2. During the deliberations on this matter the informal working group requested the Convention Secretariat to prepare a document, to be submitted for consideration by the INB at its fifth session, outlining possible collaboration with relevant international agencies in relation to the future protocol. It was recognized that no firm plans could be made, nor commitments from other organizations received, until the protocol was finalized.

¹ See decision FCTC/COP4(11).

Cooperation with relevant organizations

3. Article 36.1 of the draft protocol¹ stipulates that the “Convention Secretariat shall be the Secretariat of this Protocol”. The Secretariat would therefore be expected to provide the relevant support to Parties to the WHO FCTC during the period prior to the entry into force of the protocol, and to Parties to the protocol after its entry into force.

4. Some of the technical issues addressed by the draft protocol are outside the realm of public health. In providing assistance to Parties, it would therefore be advisable for the Secretariat to cooperate with relevant international organizations in order to make the best use of existing expertise and experience. The form and extent of such collaboration would depend on the final text of the protocol as well as on future decisions taken by the Meeting of the Parties.

5. Cooperation of the Secretariat with other international organizations could be formalized by memoranda of understanding or similar arrangements. Joint training and implementation workshops could be held, or experts from relevant organizations invited to participate in workshops. Arrangements would have to be made to cover the costs incurred by the organizations involved in providing such assistance.

6. Based on the discussions in previous sessions of the INB and in meetings of the informal working group, it would appear that two areas – international criminal justice and customs – would require the highest degree of external expertise and cooperation.

International criminal justice

7. UNODC provides secretariat functions to the United Nations Convention against Transnational Organized Crime and other treaties. The Convention Secretariat has held discussions with UNODC on possible ways of collaborating to provide technical and legal support to Parties to the future protocol on matters of international criminal justice, in line with the mandate of each secretariat. If the provisions on mutual legal assistance and extradition were to remain in the future protocol, the Convention Secretariat could enter into a memorandum of understanding or similar arrangements with UNODC.

8. In the context of such cooperation, it is likely that UNODC would be invited to provide assistance and/or training to Parties to the protocol on technical and legal questions arising from requests for mutual legal assistance and extradition. UNODC could also provide assistance with regard to criminal law currently covered in Article 12 (*Unlawful conduct including criminal offences*) of the draft protocol.

9. UNODC has already developed training and assistance tools, which are publicly available on its web site and include the Mutual Legal Assistance Request Writer Tool.² The tool can be used for all requests for mutual legal assistance in criminal matters, and is not limited to UNODC instruments; it could also be used in responding to a request based on the provisions of the protocol or on bilateral or regional treaties.

¹ As contained in document FCTC/COP/INB-IT/5/4.

² See <http://www.unodc.org/mla/index.html>.

Customs

10. Cooperation with the WCO would be relevant with regard to implementation assistance on customs matters. The Convention Secretariat has consulted the WCO throughout the negotiations on the draft protocol.

11. Specific topics for cooperation in connection with the future protocol would potentially include the tracking and tracing regime currently addressed in Article 7 of the draft protocol, security and preventive measures currently addressed in Article 9 of the draft protocol, free zones and international transit, currently addressed in Articles *5bis* and 11 of the draft protocol¹ and duty free sales, currently addressed in Article *11bis* of the draft protocol.

12. The specific forms of cooperation between the Secretariat and the WCO would depend on the requested assistance. A similar approach as described above for cooperation with UNODC would be possible.

Further available information

13. Attention is drawn to document FCTC/COP/INB-IT/3/INF.DOC./7, *Relationship of the protocol to other international instruments*, that was submitted by the Convention Secretariat to the INB at its third session. The document contains information on existing agreements and arrangements relevant to the objective of the INB, including a detailed review of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

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¹ The informal working group proposed a new Article 11, *Free zones and international transit*, to include both topics within one article. See document FCTC/COP/INB-IT/5/3.