

## Briefing Note: Fourth Session of the Intergovernmental Negotiating Body on an Illicit Trade Protocol

Geneva 14<sup>th</sup> March to 21<sup>st</sup> March 2010

### **TRACKING AND TRACING (Article 7)**

1. The Framework Convention Alliance strongly supports the establishment of an effective global tracking and tracing regime for tobacco products. Effective action against illicit trade would be greatly assisted if authorities could monitor the movement of lawfully manufactured tobacco products (tracking), and, upon seizure of such products, access information to assist in recreating the movement of products through the supply chain (tracing). The actual system implied by the current draft text of the protocol is more a tracing than a tracking system. Historically, diversion of legally manufactured products has been the main source of supply for the illicit trade. However, the markings used in a tracking and tracing system can also help distinguish legally manufactured from illicitly manufactured product

### **What is Tracking and Tracing?**

2. Tracking and tracing covers a wide variety of systems used to determine the current and past locations and other information concerning property in transit. An effective tracking and tracing system allows such information to be uploaded, retained and read in a standardised manner.
3. An example of a common application of tracking and tracing is in shipping and delivery businesses such as UPS and FedEx. Other industries using systems with relevant elements of tracking and tracing include the airline industry (where key passenger information can now be read from electronically generated tickets), and the food, chemicals and pharmaceuticals industries.
4. There are several technologies deployed in tracking and tracing systems, which are at various stages of development and standardisation. Technology which could be used in a tracking system under Article 7 include varieties of barcode and data matrix codes. Barcode systems are in very common use, and are generally cheap to apply and to read, although they are relatively restricted in the amount of information that can be stored directly on the product. Data matrix codes are more complex but offer greater security and can hold more information. As the coding and marking technology is evolving very quickly, no specific technology should be made mandatory, but rather global standards should be set subject to future review and improvement.

## Confidential and Non-Confidential Information

5. In the tracking and tracing regime for tobacco products proposed under Article 7, some information would be provided in “*unique, secure and non-removable*” markings on product packaging, so that it can be read and understood by any appropriate law enforcement or customs officer. Such information would include at a minimum location, date and time of manufacture, and intended destination. Other information (for example data about named individuals) would be accessible by law enforcement and customs officers by request to a competent authority in the Party of origin or to the ‘global information sharing focal point’ at the Convention Secretariat, using the information provided by the unique markings on the product to access database information, for example by making a request for further information to a competent authority in the Party of origin

## FCA Position

6. FCA broadly supports the overall approach taken in Article 7. However, there are a number of areas where we believe the current text needs to be strengthened or clarified. These include the following:

There should be no distinction in Article 7 between those products intended for domestic markets and those intended for export. This distinction would create a major loophole in the Protocol, which would be exploited by illicit traders. The current drafting of Article 7.3 appears contradictory since it requires markings on all “*unit packs of cigarettes*” manufactured for domestic markets, but on unit packs that are exported *only “as soon as technology is available”*. It should be noted that the Office of the Legal Counsel has commented (paragraphs 12-13 of the report of Drafting Group 1) that there is nothing in Article 15 of the FCTC to support a distinction between products for domestic use and products for export, or to support the exclusion of certain kinds of packages from the tracking and tracing regime.

The tracking and tracing regime should apply to all industrially packaged tobacco products, including for example packaged hand-rolled tobacco, and not only to cigarettes.

An additional subprovision should be included in Article 7.4 to require a record of the name, address and licence number of the manufacturer, and, if the products are imported, the importer. This critical information has been proposed to be required in respect of the first purchaser not affiliated with the manufacturer, and therefore should also be included in respect of the manufacturer and/or importer.

Article 12 of the Protocol (Unlawful conduct including criminal offences) should include as unlawful conduct knowingly dealing in products to which applicable unique identification markings have not been affixed, or on which markings have been defaced, falsified, removed, altered, or otherwise interfered with, as well as providing any material information that is false, misleading or incomplete, or failing to provide required information.

Where a Party requires additional information linked to unique markings (see paragraph 5 above) this should be possible either through the proposed global information sharing focal point or through direct Party to Party contact.

There needs to be a clear process under Article 7 for future development of the tracking and tracing regime, to require recording of information through the supply chain and not only at the time of manufacture, import or first shipment, to permit additional information to be added, to accommodate improvements in available technology, etc. The Protocol should therefore provide that the Meeting of the Parties to the Protocol should, at its first session, establish a technical committee responsible for making recommendations on the further development and expansion of the regime.