

The WHO FCTC illicit trade protocol

A global solution to a global problem

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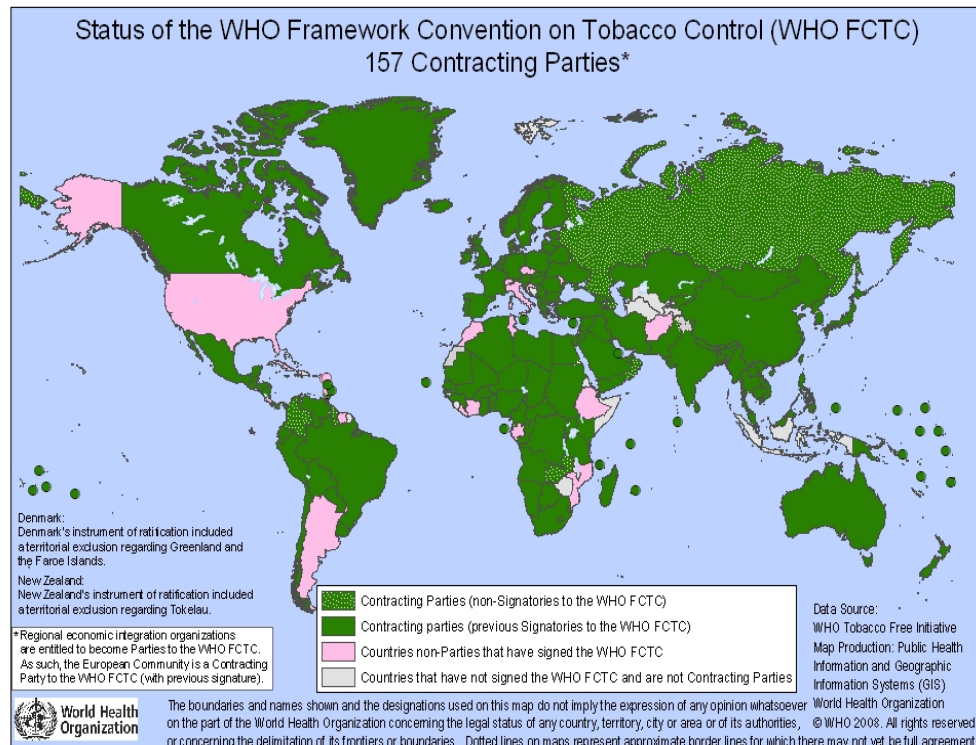
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Framework Convention Alliance

1. True global tobacco control coalition
2. Powerful voice in the negotiation process of the WHO FCTC
3. Over 300 Non-Governmental Organizations (NGOs) from more than 100 countries
4. Brings together health, consumer, human rights, environmental, religious and other groups to address tobacco

Status of the Framework Convention on Tobacco Control



- World's first health treaty
- Ratified in 2005 now has 157 Parties
- 8 out of 11 mega countries including China, Brazil, India, Japan,
- 25/27 EU Member States + EC

Status of the Framework Convention on Tobacco Control

Including:

- ⑧ 80% world population
- ⑧ 70% world cigarette producers
- ⑧ 70% world cigarette consumption
- ⑧ Over 60% cigarette exporters
- ⑧ Over 70% tobacco leaf producers

FCTC includes



Demand measures:

price; tax; protection from SHS; product regulation; packaging and labelling; education and public awareness; advertising, promotion and sponsorship; smoking cessation.

Supply measures:

Illicit trade; prevention of sales to and by minors; provision of support for alternative activities

Why governments need to work together to tackle illicit trade in tobacco

- ④ Undermines health objectives – gives access to cheap cigarettes
- ④ Loss of revenue – tax value in Europe of one container US\$2 million
- ④ Threat to law and order – smuggling carried out by transnational criminal gangs
- ④ Global problem

Article 15

Recognises essential to tobacco control to eliminate all forms of illicit trade,

including:

- Smuggling
- Illicit manufacture
- counterfeiting



Why a protocol is needed

- 🌀 Article 15 not sufficient - only a framework
- 🌀 Article 33 states that the Conference of the Parties may adopt protocols to this convention
- 🌀 So Conference of the Parties (COP 1) convened an expert group on illicit trade to develop a template in 2006

Expert group

- ④ Each WHO region + civil society nominated 4 experts;
- ④ Public health; finance/taxation; law enforcement/justice; customs/trade
- ④ 2 meetings September and December 2006
- ④ Template published 2007

Key template elements

- ① Tracking and tracing
- ① Legal obligations on manufacturers to control supply chain
- ① licensing of the supply chain; and
- ① enhanced law enforcement measures

COP 2 Bangkok July 2007

- ① Agreed to start negotiations
- ① On basis of expert template
- ① International negotiating body to be set up to start negotiating the illicit trade protocol
- ① Timetable : protocol to be adopted at the fourth COP in 2010
- ① First meeting February 2008

INB 1 February 2008

'So far so good'

- ① Ian Walton-George, from the EC elected Chair of the INB
- ① Chair's text based on the week's discussions to be drafted for INB 2
- ① negotiations positive supporting a strong protocol
- ① All template elements remained on the table

Chair's text published August 2008

Contains the following areas:

- ① Supply chain controls
- ① Enforcement measures
- ① International cooperation
- ① Reporting and exchange of information
- ① Institutional arrangements and financial resources
- ① Settlement of Disputes
- ① Development of the protocol

Chair's text published August 2008

- ① Supply chain controls include:
 - licensing of manufacturers and other participants in the tobacco business;
 - Know Your Customer procedures
 - Tracking and tracing
 - Record-keeping
 - Security and preventive measures
 - Internet sales

Chair's text published August 2008

- 🌀 Enforcement including
 - Offences
 - Liability of legal persons
 - Sanctions
 - Search of premises and seizure of evidence
 - Confiscation and seizure
 - Seizure payments
 - Destruction; and special investigative techniques

Chair's text published August 2008

- 🌀 International cooperation including:
 - Information sharing: statistical data, operational data, confidentiality and protection of information
 - Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters, investigation and prosecution of offences
 - Protection of sovereignty
 - Jurisdiction
 - Joint investigations
 - Law enforcement cooperation
 - Mutual administrative and legal assistance
 - extradition

Chair's text published August 2008

- ④ Reporting and exchange of information
 - Each party shall report on its implementation of this protocol, through the Convention Secretariat.
- ④ Institutional arrangements and financial resources
 - Meetings 1 year after entry into force and regularly thereafter
 - FCTC Convention Secretariat will be the Secretariat for the protocol

Chair's text published August 2008

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Licensing of the supply Chain

Licensing and other arrangements to monitor and control the behavior of participants within the tobacco supply and distribution chains : tobacco sales companies, tobacco manufacturers, manufacturing equipment companies, tobacco import and export companies.

Licensing of the supply Chain

Face loss of license, and serious penalties if found to be engaging in illicit trade in tobacco.

Supply chain controls Tracking and Tracing

Unique markings which identify information date and place of manufacturing, production shift, product description, the first customer and shipment info. Currently available at master case and carton level, but feasible at pack level too.




Tracking and tracing:

- ④ Enables immediate identification of illicit products;
- ④ Enables rapid identification of counterfeit;
- ④ Enables identification of the point at which a product entered the illicit supply chain; and
- ④ Can be used to identify retailers selling to underage smokers.


Tracking and tracing

Chair's text definitions

 **Tracking:** means the systematic monitoring by the competent authorities or other person on their behalf of the route or movement taken by tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products through their respective supply chains of manufacture, sale, distribution, shipment, import or export, or any part thereof.

Tracking and tracing

Chair's text definitions

 **Tracing:** re-creation by any competent authority or other person on their behalf of the route or movement taken by tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products through their respective supply chains of manufacture, sale, distribution, storage, shipment, import or export, or any part thereof;

Supply Chain control

Failure to control the supply chain leads to serious penalties including liability for unpaid taxes and duties on seized products;

International agreements on

- ④ Enhanced law enforcement and international cooperation;
- ④ Including information sharing, cooperation in respect of investigation and prosecution of offences, mutual legal assistance and extradition arrangements;
- ④ This will increase the effectiveness of international action against the illicit trade, both in genuine manufactured and counterfeit tobacco products.

INB 2 Geneva October 2008

- ④ Detailed negotiations expected to start at this meeting
- ④ Devil in the detail
- ④ Customs and finance ministries will be in the lead not health
- ④ EC taking a strong lead but some MS less supportive
- ④ You can help by lobbying your MS for a strong protocol

Final comments

- ④ Framework Convention Alliance's briefings on illicit trade and the protocol – position on Chair's text due for release shortly: www.fctc.org/
- ④ Chair's text at:
http://www.who.int/gb/fctc/PDF/it2/FCTC_COP_INB_I_T2_3-en.pdf.