

MOP2 BULLETIN

WEDNESDAY, 17 NOVEMBER 2021



THANK YOU!

We extend our thanks to the Convention Secretariat for their excellent work in effectively preparing for and supporting this virtual MOP.

Thank you also to the representatives of Parties from across the world, who have negotiated and made decisions that will advance the effective implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products.

We would also like to thank all of our FCA members for their untiring work to make MOP2 a success.

We look forward to seeing you at COP10/MOP3!

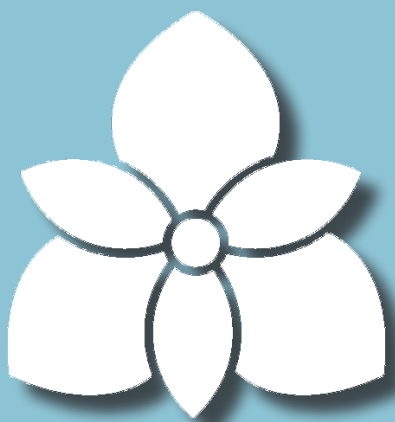
A VICTORY FOR THE PROTOCOL'S IMPLEMENTATION

One of the key successes from MOP2 day two was Committee A signing off on the implementation assistance strategy. Broadly speaking, the strategy focuses on creating a stronger foundation for the Protocol's implementation by addressing Parties' technical and financial resource needs as well as encouraging regional and international cooperation. By adopting the strategy, Parties have signaled their dedication to the Protocol through their commitment to address barriers to its implementation.

In terms of international cooperation, there is great importance in mobilising support from IGOs and NGOs, listed as a key component of the strategy. Continuing to encourage IGOs to participate in the Protocol's implementation will be critical for its success and can help to mainstream the Protocol across relevant systems and networks. Party delegates to the MOP have an important role to play in facilitating this process by working internally with relevant government agencies, such as Ministries in charge of customs or finance, in order to secure mandates for IGOs to support the Protocol's implementation and delivery of technical assistance. This kind of work will need to be one of the key takeaways for Parties after the closure of MOP2.

The strategy also addresses the fact that technical expertise and financial resources are critically needed in many Parties in order to strengthen their ability to implement the Protocol. Illicit trade causes substantial losses to government revenues and so, once up and running, the Protocol should fund itself with the tobacco industry bearing any costs associated with the implementation of obligations such as tracking and tracing, licensing, etc. through fees or levies. However, this can only be the case once Parties have the Protocol up and running, and that requires investment up front. Low- and lower-middle income Parties report low levels of Protocol implementation, and Parties in general report needing more support in order to improve implementation levels. Technical assistance and capacity building must be prioritised given the technical complexities of the Protocol, which is primarily a law enforcement, customs, and tax administration treaty. The implementation assistance strategy clearly recognises this need, as do Parties given their support of the strategy, but there remains a need to secure funding so that the strategy can be enacted.

Several Parties emphasised the need for greater technical and financial assistance during the Committee B discussions on the budget and workplan. Future MOP budgets will reap the benefits of the creation of the Investment Fund, as adopted during the day two plenary, but the revenue from the Investment Fund will only cover a portion of the MOP budget. A funding gap also remains at the national level for many Parties. All of our work from now to MOP3 comes with a price tag and Parties need to make more effort to find sustainable ways to fund it. Fortunately, when fully implemented the Protocol can be revenue-generating and self-sustaining, so Parties and potential sponsors should consider it to be a very good investment. We should consider that some countries might need some initial support to get these efforts started. The Convention Secretariat has done an outstanding job securing resources and is hard at work securing more, but it should not be left only to them—rather, it is the collective responsibility of Parties.



ORCHID AWARD

All AFRO Parties – for calling for more financial resources and technical assistance for the MOP and for implementation of the Protocol.



DIRTY ASHTRAY

Thank you to all Parties for not giving us a reason to award an Ashtray today.

SPECIAL MENTION

Parties of the region of the Americas for their statement to address tobacco industry interference in the sessions of the MOP. Through this initiative, these Parties took decisive and visible action to implement measures to increase the transparency of Parties' delegations to the MOP, in-line with FCTC Article 5.3 and its guidelines. We applaud the signing Parties of AMRO for this initiative!

FREE TRADE ZONES – THE “EXTRATERRITORIAL” ISSUE

Alejandro Ramos, Advisor to the Interamerican Heart Foundation, Uruguay

About 10% of confiscated goods inside Free Trade Zones (FTZ) are related to tobacco. In addition, 16% of the goods coming from other countries' FTZs that are confiscated by customs are related to tobacco. This is clearly an issue that needs to be addressed.

A 2018 survey from the Organization for Economic Co-operation and Development (OECD) found that 34% of responding countries had encountered tobacco smuggling in FTZs. Given the limited scope of customs activity inside many FTZs, this means the prevalence of tobacco smuggling in FTZs is likely much higher.

The territorial definition of FTZs as a special customs zone (even “extraterritorial”) is the core issue that needs to be resolved since it defines Customs involvement and procedures.

One key recommendation by many agencies such as the World Customs Organization (WCO) is that Customs should have the tools for proper surveillance and controls. Therefore, it is emphasized that the “extraterritoriality” of FTZs should apply to tax-exempt status of activities but not to relaxed customs controls.

EXAMPLE OF GOOD PRACTICES IN CUSTOMS CONTROL OF FTZ: THE URUGUAYAN EXPERIENCE

Since 2014, Customs Uruguay has had full online electronic surveillance of cargo entry and exit operations and inventories, including physical inspections within FTZs, thanks to the new legislation.

Highlights:

- Implementation of a “single window” for Foreign Trade, for all import, export, and transit-related regulatory requirements combined, with the use of digital forms for customs clearance (with a unique identifier of all cargo movements, including transits).
- WCO recommended Qualified economic operator program, with voluntary certificates granted by Customs aimed at all agents.
- Electronic seal for container-tracking and domestic movement and transit. Georeferencing of containers with round-the-clock electronic monitoring by a dedicated center at Customs Uruguay.
- Since 1996, regulations for the land movement of cargoes of cigarettes between FTZs and border free-trade shops, requiring a bond in the amount of 140% of the assessed value of cigarettes.
- Regional cooperation agreements with Brazil, and one in progress with Argentina, to monitor cargoes.

2. Customs has no authority to request periodic reports from tenant companies in FTZs and to audit them inside FTZs.

3. Fewer or no reporting requirements imposed on cargo entries -coming from and exiting to abroad- on FTZs.

To sum up, it is essential that FTZs be regarded as geographically inside the Customs territory, or as special areas where all non-tariff Customs activities, such as Customs procedures and border control functions (including inspections and seizures), are applied and properly enforced. FTZs should be regarded as geographically outside the Customs territory only if national legislation ensures that all necessary Customs procedures and border controls are applied and enforced properly.¹

The main consequences of an approach of FTZs being “extraterritorial”:

1. Customs has authority to inspect cargo only at entry to and exit from FTZs but it has no authority to inspect cargo movements or to monitor companies' activities inside.

¹ WCO. [Practical guidance on free zones](#). December 2020.

TAXATION AND ILLICIT TRADE: RESOURCES, CAPACITY BUILDING AND TECHNICAL ASSISTANCE NEEDS

Dr. Hana Ross, The WHO FCTC Knowledge Hub on Tobacco Taxation and Illicit Trade, South Africa and
Toughedah Jacobs, The WHO FCTC Knowledge Hub on Tobacco Taxation and Illicit Trade, South Africa

There is a consensus among researchers that significantly increasing the excise tax on tobacco products is the single most effective tobacco control measure. However, the illicit trade of tobacco products could undermine the effectiveness of this measure.

“ **DETERMINING WHAT KNOWLEDGE AND SKILL GAPS EXIST INSIDE A LOCAL ECONOMY IS A CRITICAL FIRST STEP TO ADDRESSING THE ISSUE.** ”

The WHO FCTC Knowledge Hub on Tobacco Taxation and Illicit Trade (the KH) was formally established in 2018 in order to assist the technical staff of Ministries of Finance and Ministries of Health to understand the negative macro-economic impact of tobacco use and to apply fiscal tools to correct it. Through the process of providing capacity building support to government agencies in several countries over the past several years, it has become increasingly clear that there is a significant knowledge gap when it comes to effectively controlling the supply chain for tobacco products.

Determining what knowledge and skill gaps exist inside a local economy is a critical first step to addressing the issue. When designing a plan, it is important to keep in mind that it needs to be supported by evidence and that the

illicit tobacco trade often varies greatly from region to region.

As situations are evolving, the KH's assistance adapts to changing environments. This means that the KH is continuously evaluating, updating, and investing in tools that best reflect the ever-changing landscape and the needs of Parties.

For example, the KH recently engaged in a robust technical assistance program with the Republic of Georgia. The collaboration between the KH and key stakeholders in Georgia began with designing a study to measure the size of illicit cigarette trade in response to a concern by the Ministry of Finance (MoF) that the planned tobacco tax reform could increase the supply of illegal cigarettes. To address this concern, three waves of data were collected in collaboration with a local research institute to establish that a tax reform would have a minimal impact on the size of the illicit cigarette market. The study also found that some illicit cigarettes were finding their way into Georgia from Abkhazia, a neighbouring territory occupied by Russia. These findings were quickly disseminated to the key stakeholders, including the Revenue and Customs Service of Georgia and helped inform a targeted approach to addressing the issue. As a result of the KH led study, the tobacco tax reform in Georgia continued with a tax increase and tax simplification, and the customs authorities began to focus their enforcement activities in the bordering Abkhazia region.

In addition to the study, several tailored workshops were held for customs authorities on measures to better control illicit trade in Georgia. Out of the workshops, a series of recommendations emerged that were later integrated into the workplan of

“ **IDENTIFYING KNOWLEDGE GAPS AND BUILDING TAILORED TOOLS TO HELP PARTIES ADDRESS LOCAL ISSUES IN THEIR ECONOMIES IS AN IMPORTANT STEP ON THE ROAD TO ADDRESSING THE CHALLENGE OF THE ILLICIT TOBACCO TRADE.** ”

the Revenue and Customs Service of Georgia.

One of the most encouraging outcomes of the capacity building program in Georgia is that it has increased the appetite for additional learning. During a subsequent workshop, a custom-made tax model was developed that is now being used by the MoF to continue with its tobacco tax reform.

Identifying knowledge gaps and building tailored tools to help Parties address local issues in their economies is an important step on the road to addressing the challenge of the illicit tobacco trade.

A list of capacity building products and services provided by the KH can be [found here](#).

