

INTERNATIONAL CONFERENCE ON ILLICIT TOBACCO TRADE

July 30 – August 1, 2002

Chairpersons' Executive Summary

This is an executive summary of the International Conference on Illicit Tobacco Trade (ICITT), hosted by the Bureau of Alcohol, Tobacco and Firearms (ATF) with assistance from the World Health Organization (WHO) at the United Nations in New York from July 30 to August 1, 2002. A comprehensive report by the ICITT Chairpersons prepared with the Co-Chairs of the Working Groups will be circulated in the official languages of the United Nations, providing the detailed account of the proceedings and the potential best practices identified and described.

Representatives from 142 countries and other observers participated in the ICITT. Also attending were approximately 50 representatives from organizations in official relations with WHO (NGOs), other members of civil society, industry, media, and the public.

The goals of the Conference were to:

- Enable officials with taxation and revenue, law enforcement, and customs experience to identify and recommend viable measures or best practices to combat illicit tobacco trade at the national, regional, and global level.
- Create and enhance partnerships and coalitions to facilitate information sharing and international cooperation for revenue collection and law enforcement purposes.
- To help inform the Intergovernmental Negotiating Body (INB) of the Framework Convention on Tobacco Controls, WHO, and other interested parties on issues related to the illicit tobacco trade, and to present to the INB a Summary Report prepared by the ICITT Chairpersons with the Co-Chairs of the Working Groups.

The first day of the Conference was devoted to opening remarks¹ and three preliminary panel discussions.

¹ The speakers included:(1) Ray Kelly, Police Commissioner, New York, New York, (2) Bradley Buckles, Director, ATF, (3) Ambassador L. P. de Seixas Correa, Permanent Representative of Brazil, Geneva, Switzerland and Chair of the Framework Convention on Tobacco Control, (4) Dr. Derek Yach, Executive Director, Noncommunicable Diseases and Mental Health, WHO, (5) Kunio Mikuriya, Deputy Secretary General, World Customs Organization, (6) Dr. Joy de Beyer, Tobacco Control Coordinator, the World

The substantive work of the Conference was carried out during the second day in three Working Groups that met concurrently for the entire day.

The Working Groups² addressed the following:

- Working Group I: Licensing and Record Keeping.
- Working Group II: Labeling - Tracking and Tracing – Border Controls - Counterfeit and Contraband.
- Working Group III: Information sharing – Mutual Assistance - International Cooperation.

On the third day in the morning session, the Working Group Co-Chairs reported on the previous day's work. Discussion followed these reports. The final afternoon session was devoted to the Conference Chairpersons summarizing the reports presented by the Working Group Co-Chair and discussion by the delegates.

All three Working Groups recognized that there was some overlap with regard to their respective topics. Moreover, a common theme throughout the Conference on most topics was recognition that particular measures or best practices must fit the national context that is sensitive to each country's specific needs and resources.

A summary of the Working Group discussions is as follows:

1. Working Group I: Licensing and Record Keeping

Working Group I agreed that licensing and record keeping requirements are important tools for combating illicit tobacco trade. Highlights of this working group include the following observations and statements:

- All persons engaged in the business of growing, manufacturing, importing, exporting, wholesaling, storage, and transporting tobacco products may be licensed at a national or sub-national level to address a country's particular illicit tobacco trade problem.

Bank, (7) Kenneth Bell, First Assistant United States Attorney, Western District, North Carolina, and (8) Eve Slater, Assistant Secretary, Department of Health and Human Services.

²Andre Basse, First Secretary at the Permanent Mission of Senegal in Geneva and Bolivar Puno, Jr., Special Investigator and Prosecutor, the Philippines, chaired Working Group I. Joe Oliver, Senior Policy Advisor, Royal Canadian Mounted Police and Eugene Fatakanwa, Advisor on Customs, Excise and Exemptions, Ministry of Finance, Rwanda chaired Working Group II. John Daffron, Deputy Assistant Director (Alcohol and Tobacco), ATF, and Mainaga Taape, Acting Director, Customs and Tax Control, Tuvalu, chaired Working Group III.

- Licensing requirements may include bonding requirements, a record of good business practices, and other safeguards to ensure the collection of revenue and the sale and distribution of tobacco products within the normal channels of trade and commerce.
- An effective record keeping system should include the following:
 - Access to information by competent authorities.
 - Credible and verifiable records.
 - Standardized or uniform information requirements.
 - Strict accountability.
 - Regular auditing

2. Working Group II: Labeling - Tracking and Tracing – Border Controls - Counterfeit and Contraband

Working Group II developed several general observations and identified seven themes that provided the basis for measures and best practices that were identified. The Working Group agreed on the following general elements:

- International response begins with strong domestic action.
- The variety of best practices reflects the variety of unique circumstances faced by individual countries: no single solution is effective for everyone.
- Enhanced communication between the various arms of governments and ministries, as well as regional and inter-governmental organizations is essential.

Working Group II found that the measures and best practices that it identified fell within seven categories. These were as follows:

A. Labeling is particularly useful to constrain the distribution of contraband and as such is necessary to identify the manufacturer, country of origin/destination, and the legal status of the product (i.e., tax or duty paid or exempt). Practices (some of which have not been implemented) that are available for this purpose include:

- Name and address of manufacturer.
- Destination or color-specific marks.
- Country specific health warnings.
- Export and fiscal markings or tax stamps.
- Bar code, batch number, or expiry date.
- Labeling of individual cigarettes.

B. Monitoring and documenting the movement of tobacco and tobacco products is essential to controlling the movement of such goods. The delegates identified a range of measures that could be used to ensure such control:

- Certificate of origin or end user.
- Identification of customers.
- Export and import permits.
- Single transit document.
- Bonding and guarantee requirements.
- Export tax regime.
- Early warning system and pre-authorization system based on the Rotterdam Convention.

C. Capacity building may be required to assist countries in implementing their anti-illicit tobacco trade regimes. Such assistance could be provided through:

- Training and technical assistance.
- Full automation or computerization of customs procedures.

D. Monitoring and assessment are important to determine the size, nature, and scope of the tobacco black market. Effective monitoring and assessment should:

- Establish legitimate demand thresholds.
- Identify trends and safe havens.
- Provide for the assessment of risks.

E. Cooperation and collaboration, though covered by Working Group III, were considered essential requirements to effectively control illicit tobacco trade. Important components associated with these practices include:

- Data banks on seizures.
- Joint enforcement operations and inter-operability of data systems.
- Identification of counterfeit products and purchasers of tobacco manufacturing equipment.
- Mutual Legal Assistance Treaties.

Countries relayed different experiences with respect to cooperation provided by tobacco manufacturers.

F. Strong domestic legislation and policy frameworks are required to provide for sanctions and penalties to deter illicit tobacco trade. Such measures could include:

- Penalties, sanctions and prohibitions (against contraband, counterfeit, corruption, and violence towards authorities).
- Seizure of contraband, conveyances and proceeds of crime.
- Disposal (or destruction) of contraband tobacco products.
- Collection of taxes at time of manufacture (including for exported product).

The delegates expressed different views as to whether any proceeds generated by the sale of such products should be earmarked. Among supporters of earmarking, views differed on using the proceeds for health or law enforcement programs.

G. Distinguishing between contraband and counterfeit products is important because one product is considered legal but for the payment of taxes and authorized import and the other is totally fraudulent. The delegates felt that the following could address this problem:

- Appropriate technical resources.
- Training and laboratory services.
- Independent verification.

3. Working Group III: Information sharing – Mutual Assistance - International Cooperation

Working Group III generally agreed that to eradicate illicit cross border trade in tobacco products, countries must provide mutual assistance and cooperate through the sharing of information relating to the exportation and importation of tobacco products. Some of the more prominent issues addressed by this Working Group were:

- Cooperation between the WHO and the World Customs Organization (WCO) is useful because of the WCO's disciplines and experience in information sharing among customs authorities.
- Periodic intergovernmental conferences would enhance and keep current the level of understanding of countries on methods of information sharing and cooperation.
- Create a database of all information sharing agreements and the each country's information sharing contact points.
- Information exchange agreements must be legally binding in nature but such a requirement presented problems for some countries.
 - The type of information to be exchanged could include, but is not limited to: the value of the goods, the quantity of the goods, and the name of the producer.
 - Information exchange should be available on a real time basis (i.e., electronic transmission).
- WTO Rules of Origin agreement, WCO agreements, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Rotterdam Convention (movement of hazardous

materials), and the Nairobi Convention might serve as useful models in developing specific processes.

- A model bilateral information sharing agreement developed under the auspices of the World Customs Organization has been used by various customs organizations to create bilateral information sharing agreements.
 - A memorandum of understanding (in lieu of a bilateral agreement) enables neighboring countries to share very specific information about the border crossing of tobacco products in certain types of individual transactions.
 - A mutual legal assistance treaty allows countries to exchange specific information but the process is time-consuming and forecloses real-time information exchange.
 - The value of multilateral and bilateral agreements and the benefit of one such approach over the other.
- Information sharing should be expansive and should include all elements of government, beyond customs and law enforcement agencies to include agriculture, health, finance, tax, licensing, etc.
 - Confidentiality of information received should be ensured and the right for a country to decline to furnish information in the event a requesting country has failed to respect confidentiality requirements.
 - Consider compiling export and import information in a common database that would be accessible electronically to all parties though the administrative costs and burdens of establishing and maintaining such a database could be prohibitive and impractical.

Respectfully submitted:

David L. Benton and Arthur J. Libertucci
Conference Chairpersons August 7, 2002

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