I. INTRODUCTION: The Bureau of Alcohol, Tobacco and Firearms (ATF) with assistance from the World Health Organization (WHO) hosted the International Conference on Illicit Tobacco Trade (ICITT) at the United Nations in New York City from July 30 to August 1, 2002. This is the final report on the Conference as prepared by the Conference Co-Chairpersons, David L. Benton, Deputy Director, ATF, and Arthur J. Libertucci, Assistant Director (Alcohol and Tobacco), ATF.¹

This report describes the activities of the ICITT with special emphasis on the best practices the delegates identified as being effective or potentially effective in addressing illicit trade in tobacco and tobacco products. The final report is not a consensus document. Nor is it an endorsement by the United States of any proposal being considered at any negotiation such as the Framework Convention on Tobacco Control (FCTC). The Conference’s six working group chairpersons have reviewed, revised, and approved the report for accuracy and completeness.²

II. BACKGROUND:

Purpose: The ICITT was an informal meeting attended primarily by representatives of law enforcement, taxation and revenue, and customs agencies from 142 countries and governmental observers. The Conference provided delegates with an opportunity to

¹ John R. Lom, Senior Attorney, ATF, and assistant to all Chairpersons, ICITT Secretariat staff, contributed to the final report. On August 6, 2002, the ICITT Co-Chairpersons provided an executive summary (in six languages) to the Conference delegates which is also on ATF’s web page at www.atf.treas.gov/tobacco/icitt/index.htm then go to “What’s New.”
² Andre Basse, First Secretary at the Permanent Mission of Senegal in Geneva and Bolivar Puno, Jr., Special Investigator and Prosecutor, the Philippines, chaired the working group on “Licensing and Record Keeping” (Working Group I). Eugene Fatakanwa, Advisor on Customs, Excise and Exemptions, Ministry of Finance, Rwanda, and Joe Oliver, Senior Policy Advisor, Department of the Solicitor General, Canada (Royal Canadian Mounted Police) chaired the working group on “Labeling - Tracking and Tracing – Border Controls - Counterfeit and Contraband” (Working Group II). John Daffron, Deputy Assistant Director (Alcohol and Tobacco), ATF, and Mainaga Taape, Acting Director, Customs and Tax Control, Tuvalu, chaired the working group on “Information Sharing – Mutual Assistance - International Cooperation” (Working Group III).
share experiences and identify best practices to combat illicit trade in tobacco and tobacco products at the national, regional, and global level.3

The ICITT was not a negotiation; nor was it formally associated with the FCTC, a comprehensive negotiation on tobacco undertaken by the Member States of WHO. However, this report is available to anyone, particularly to those who may be participating in the FCTC negotiations and who are interested in regulatory practices that may be useful in combating illicit trade in tobacco and tobacco products.

Process: The Conference had three phases. Phase one took place on July 30 and was devoted to providing background for the delegates. Phase one was open to delegates and to others who registered to attend the Conference, including representatives of organizations in official relations with WHO, other members of civil society, industry, news media, the public. Eight speakers provided extensive remarks during the morning session.4 Four individuals representing organizations in official relations with WHO and individuals from the private sector provided brief remarks before the close of the morning session.5 The remarks provided during the morning session are available on ATF’s web page at www.atf.treas.gov/tobacco/icitt/index.htm click on “What’s New.”

The afternoon session was dedicated to three panel presentations and follow-up discussions. The topics discussed by the panels reflected the issues that were to be covered, the next day, in the three ICITT working groups.6

3 Also attending were approximately 50 representatives from organizations in official relations with WHO (NGOs), other members of civil society, industry, news media, and the public. The list of participants can be found on the ATF web page.

4 The eight speakers were: (1) Ray Kelly, Police Commissioner, New York City, New York, (2) Bradley Buckles, Director, ATF, (3) Ambassador L. F. 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 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.

5 Judith Wilkenfeld, International Union Against Cancer; Clive Bates; International Non Governmental Coalition Against Tobacco; John Kent, International Association of Airport Duty Free Stores; and Jon Thorpe, SICPA, provided brief remarks.

6 In addition to the six, working group co-chairs, the following delegates participated as panelists: Aliya Abdirova, Deputy Head, Office of Production and Turnover, Ministry of State Revenues, Kazakhstan; Paul Michael Duffus, Deputy Commissioner of Taxation, Australia; and Preston Gallant, National Manager of Excise and Duty Operations, Canada for Working Group I. Austin Rowan, Head of Operations, Task Group Cigarettes, European Anti-Fraud Office; Fritz Weber, Chief, Section Imposition Tabac et Biere, Swiss Customs Office; Xingyong Song, Deputy Director, General Administration of Customs, People’s Republic of China; and Marcelo Fisch Berredo Menezes, General Coordinator of Inspections, Federal Revenue, Brazil participated on the Working Group II panel. Nurbek Isakov, Office of the Prime Minister, Unit of Social and Cultural Development, Kyrgyz Republic made a presentation during the Working Group III panel.
Phase two of the Conference focused on three working groups. The ICITT organizers recognized three areas of concern that needed to be addressed to effectively combat the illicit trade in tobacco and tobacco products. These concerns provided the basis for the Conference’s three working groups:

1. Ensuring the responsibility of those in the business of tobacco from the grower to the retailer. This issue was mostly covered by Working Group I – Licensing and Record Keeping.

2. Keeping track of the product. This was the focus of Working Group II -- Labeling - Tracking and Tracing – Border Controls - Counterfeit and Contraband.

3. Coordinating Government action. This was the work of Working Group III - Information sharing – Mutual Assistance - International Cooperation.

The working groups met concurrently, in separate meeting rooms during the morning and afternoon sessions of July 31 and were charged with identifying best practices. This phase of the Conference was open to delegates only.

The third phase of the Conference was dedicated to summarizing the work of the three working groups. During the morning of August 1, the working group co-chairs, in plenary session, presented oral reports on their particular group’s work. An opportunity for follow-up discussion was provided after each presentation. This session was open only to delegates.

During the afternoon and final session, one of the Conference Co-Chairpersons provided a final oral summary of the Conference’s working groups. The last session was open to delegates, representatives of organizations in official relations with WHO, other members of civil society, industry, news media, and the public.

**III. ANALYSIS:** The remainder of this report will focus on the practices identified by the delegates during the three working group sessions. As indicated previously, in order to promote frank and open discussions, the working group sessions were open only to delegates. Though many if not all of the practices identified by delegates may be in the public domain, in order not to violate any real or perceived confidences, this report does not ascribe a practice to a particular country or delegation. The only exception is where such practices or identifications may be associated with multilateral or regional agreements or organizations. However, if any person is interested in obtaining more information on a practice referred to in this report, please contact the ICITT Co-Chairpersons who will contact the appropriate delegation to seek approval for providing the requested information.

Four themes appear to have been common in all three of the working groups:
An effective international response to illicit tobacco trade issues must first begin with strong domestic action. In other words, each country must develop a regulatory regime that controls tobacco trade at and within its own borders.

Practices to combat illicit tobacco trade must reflect the unique circumstances of each country. One particular measure may be more effective in one country than in another. Economic factors, the number of producers, and whether a country is an importer/exporter or both of such products were some of the reasons mentioned by delegates for the variety of regulatory practices that were identified during the Conference.

Communication and cooperation between the various arms of government and ministries (i.e., law enforcement, taxation and revenue administrations, customs services, health ministries, agricultural departments etc.) as well as appropriate regional and intergovernmental organizations (e.g., WHO, the World Customs Organization (WCO), Interpol, the European Anti-Fraud Office (OLAF)) are essential to enhancing the effectiveness of tobacco control measures. Regardless of the measures used, they lose their effectiveness if governments and competent authorities cannot share information on timely or real-time bases and cooperate in other ways.

The need to explore the effectiveness of potentially new practices or more sophisticated tools to address the tobacco black market.

Working Group I (Licensing and Record Keeping): The delegates in this Working Group generally agreed that those in the business of tobacco – from the grower to the retailer – must conduct their trade related activities within normal channels of commerce.

During their discussions, the delegates agreed on the following general statement:

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.

Most delegates viewed licensing as a tool to reduce illicit trade, regulate business, and collect taxes. Some delegates approached licensing with an emphasis on lowering tobacco consumption by reducing the amount of illicit product that is available.

Best Practices: Several delegates pointed out that licensing is just part of a regulatory system that addresses a person’s qualification to participate in tobacco trade. Other mechanisms were identified (i.e., permits and registration) in which the privileges and burdens on the permit holder or registrant would not be as great as those for licensees.
Nevertheless, the focus of the group’s discussion was on licensing as a best practice for regulating those in the business of making and trading tobacco and tobacco products.

**Licensing:** Working Group I discussed elements to be considered in an effective licensing regime:

- **Business Integrity:** Many countries agreed that having a license was a privilege and with that came obligations and responsibilities. To be granted a license, an applicant must demonstrate a record of business integrity or, as was often described, be a “fit and proper” person.

- **Requirements:** The delegates agreed the criteria and indicators for determining the appropriate level of business responsibility would have to be determined by the relevant Governmental authority. This could include bonding, a record of good business practices (including the sale and distribution of products within the normal channels of trade), and the proper collection of revenue. Some delegates felt that one of the elements for determining responsibility was a past record in a tobacco related crime. Others felt that such emphasis was inappropriate and should not automatically exclude a person from holding a license.

- **Flexibility:** Echoing one of the common themes, the delegates agreed that licensing regimes must be appropriate for the national problem. In other words, “the problem” being addressed by licensing (i.e., illicit growing, manufacturing, transporting, exporting, and importing) is different in every country. A great deal of this discussion centered on the value of licensing growers and retailers. Licensing at these levels involved a cost-benefit and feasibility analysis to determine whether this approach would be appropriate concerning the amount of resources required to regulate growers and/or retailers. Some countries, for example, have a large number of tobacco growers where the cost-benefit analysis recommends focusing the licensing mechanism at a different or more manageable level along the production/distribution chain such as manufacturers or wholesalers. Other countries have fewer growers and thus the costs of licensing at that level are less and more manageable.7

- **Duration:** A variety of views were expressed concerning the duration of a license ranging from annual, renewable licenses to “life time” or permanent licenses. Many delegates appeared to favor a long-term (three years or more) renewable license.

**Record Keeping:** The delegates agreed that record keeping is an important element of a licensing regime. Delegates agreed that strict record keeping was essential to qualifying for, and maintaining, a license. Delegates also agreed that it may be appropriate to require

---

7 One delegation mentioned that only 30 growers existed in its country while another delegation noted that the number of growers in its country numbered into the thousands.
record keeping on the part of other persons who have, at some point, control over tobacco or tobacco products during its production and distribution to account for the products. Record keeping helps to monitor and assess tobacco growing and manufacturing output and formulating and implementing tobacco control policies.

Many delegates expressed the need to provide appropriate education and outreach, as well as relevant intervention programs to help support any record keeping system. In other words, because some individuals in the production/distribution system may have different levels of experience with respect to book keeping requirements, part of the regulatory scheme should provide for adequate training of these individuals.

The delegates also identified a series of essential elements of a record keeping system that would include but would not be limited to the following:

- Access to information and regular auditing by competent Government authorities.
- Requiring credible and verifiable records for which the record holder would be held strictly accountable.
- Standardization of the type of information to be reported.

The delegates recognized that record-keeping requirements based on the above elements allows Governments to use such records for a variety of purposes such as accounting for:

- Raw materials, production, transfers, inventory (including in-bond storage and transfers and accounting for waste or unusable product), distribution, and consumption.
- Identification of the product by stamps or other means.
- Inspection.

Most delegates agreed that the information required by national laws should be properly maintained in records and accounts for use by the appropriate authorities to monitor the movement of tobacco and tobacco products, verify any liabilities imposed by law and to help develop appropriate tobacco control policies. Some delegates indicated that such records should be held for a period of time.

**Working Group II (Labeling - Tracking and Tracing – Border Controls - Counterfeit and Contraband):** Working Group II covered the greatest number of topics associated with combating illicit tobacco trade. The discussions in this group revealed some differences in the means used to achieve similar goals and also provided for a wide variety of measures used to address circumstances that may be unique to particular countries.
The delegates agreed that with the topics given, this working group’s key goals were to identify best practices that would assist in:

- Deterring and preventing the illicit trade in cigarettes and other tobacco products.
- Detecting contraband activities.

**Best Practices:** The delegates identified six regulatory functions, which if managed with effective measurers or practices would likely allow Governments to achieve the goals identified above:

- Labeling.
- Monitor, document and control the movement of tobacco products.
- Capacity building.
- Monitoring and assessment.
- Cooperation and collaboration.
- Domestic legislation/policy framework.

Echoing one of the common themes, the delegates were rather adamant that simply because one practice was used and proved to be effective in one country or region, did not necessarily mean that the same practice was practical or effective for another country or region. Delegates felt that there is no single solution that will be effective for everyone. Accordingly, the best practices listed under each of these regulatory functions represent a sample of practices that are available and it is up to each country to determine which of these practices would be applicable to its particular situation or circumstance.

**Labeling:** Many delegates agreed that an effective labeling system would assist authorities in determining the origin of tobacco products and/or their legal status. One delegation noted that this practice had added importance because most countries do not even have basic labeling requirements. The delegates discussed a variety of requirements that different countries currently use or could implement. These include:

- Destination marking that identifies the country of final destination and might appear as “Sales only allowed in Country X.”
- Country-specific health warning usually developed with assistance from health ministries.
- Export marking indicating that the product is not eligible for the domestic market and could appear as “Not for sale in Country X.”

- Fiscal marking/tax stamp (e.g., Duty Paid or Tax Paid) or color-specific mark. These marks or stamps are registered with appropriate authorities to identify the product’s domestic legal or tax-paid status.

- Name and address of the manufacturer which appear on the label as is and may also be included in information contained or referenced by bar codes or batch numbers.

- Expiry date. Product found for sale beyond the expiry date would be considered outside the normal channel of trade.

- Requiring packaging and labeling of single cigarettes. Such cigarettes are more attractive to vulnerable groups because the sale of a single stick is obviously less expensive than entire pack.

- Covert markings, which would be used only by legitimate manufacturers.

The above sample of labeling requirements is an indication that delegates differed as to the extent of information that had to be disclosed on a label to make it an effective tool to constrain the distribution of contraband tobacco products. For example, some delegates felt it was essential to identify the country of final destination in order to know at the point of production where the product was going, whether it fulfilled existing requirements, and whether the volume could be accommodated at the final destination. Others felt it would be difficult for manufacturers to comply with the “destination requirement” because they do not always know the final destination of their products. One delegation noted that it was impossible to comply with this requirement particularly with regard to those products sold in duty free stores. Still another delegation felt that the importing country should establish the labeling requirement because it was in the best position to enforce compliance. This variety again exemplifies one of the consistent themes of the Conference that each country, given its unique circumstances, must decide which practices are most effective to combat illicit tobacco trade.

**Monitor, Document and Control the Movement of Tobacco Products:** The delegates agreed that exercising some level of control over the movement and distribution (points of origin, transit, and destination) of tobacco products was a key element to managing contraband tobacco. Delegates discussed a range of measures to potentially achieve this objective, including:

- Tracking and Tracing. An effective track and trace system would permit authorities to independently trace the movement of tobacco products from the
time of manufacture through to the point where all duties and taxes have been collected, and identify the customers throughout the distribution chain.\(^8\)

- Certificate of origin/end-user or single transit document. This would require that the product would have to be accompanied, at all times, with such a certificate or document.\(^9\)

- Export/import licensing, permits, or registration which require those in the business of exporting or importing cigarettes to conduct their business within normal trade channels.\(^10\)

- Early warning system in which the exporting country alerts the receiving and transit countries that an export shipment is about to take place.\(^11\) A variation of this system involves the exporting country authorizing export shipment only if the exporter presented to the proper authorities of the exporting country all appropriate shipping documents.

- Guarantee/bond system that would require all exporters to post a bond for international shipments of tobacco products. Liability under the bond would be relieved upon proof of landing in a foreign jurisdiction.\(^12\)

- Export tax regime in which all exports of tobacco products are taxed and a tax refund is provided upon proof of payment of taxes in the country of import.\(^13\)

- Pre-authorization system in which the exporting country requests the importing country for permission to export. This system raised concerns with some delegates because it could run afoul of World Trade Organization rules. Other delegates referred to the Rotterdam Convention, which governs toxic pesticides and other hazardous chemicals and requires prior informed consent from the importer before proceeding with the transaction, as a possible model.\(^14\)

---

\(^8\) Based on the discussion, a dedicated, government-controlled tobacco track and trace system does not appear to be operational at this time in either a national or international context.

\(^9\) One delegation claimed that the “single document system” exists but explained that, after years of study, the WCO declined to consider it.

\(^10\) See discussion of Working Group I.

\(^11\) One delegation has such a system which is operated by customs services who transmit electronic messages about the departure and destination of sensitive goods.

\(^12\) In 1996, one delegation a 100% guarantee on tobacco products that virtually eliminated transit fraud.

\(^13\) One delegation described their use of an export tax/rebate system. This system combines both a tax-rebate mechanism and a threshold to establish the effective tax rates. A fixed percentage of total domestic production is used as a proxy for the legitimate demand to export markets. The export tax is refunded when the importer provides proof to their government that tax was paid to the importing country. Exports that exceed the threshold amount are taxed at a higher rate and the tax is not refunded because it is assumed that any amount over the threshold is not intended for legitimate trade.

\(^14\) For more on this Convention see, www.pic.int/
- Monitoring container shipments before they reach their destinations by engaging the ports that send the highest volumes of container traffic into a particular country, as well as the Governments in those locations, in a way that will help detect potential problems at their earliest possible opportunity.\(^{15}\)

- Independent verification to document the movement of tobacco products. In other words, to have a source of information that is outside the control of those being regulated.

**Capacity Building:** Delegates recognized that some countries may not have the capacity to implement effectively some of the proposed best practices identified by the working group. Though not a “best practice” per se, the delegates felt that it was important to identify capacity building as a means to assisting countries so that they could “operate on a somewhat level playing field.” This would diminish the possibility of some countries being used as “safe havens” for illicit traders because their regulatory mechanisms would be close to equal with all other countries and because they would be able to at least match the sophistication and resources of illicit traders. As such, many delegates agreed on the need to provide support to some countries in the following areas:

- Training and laboratory services.

- Computerization and full automation of customs procedures and other technical resources.

- Technical assistance.

- Independent verification

One potential concern that the delegates identified in the capacity building discussions was to provide sufficient technical expertise to identify a counterfeit product and to distinguish it from a contraband product. A good number of delegates expressed the importance of distinguishing between contraband and counterfeit, making the point for example that not all counterfeit tobacco products are necessarily contraband, if imported legally and taxpaid. In addition, there was some discussion surrounding the industry’s use of the term “unauthorized” to describe well-known international brands that have been legally manufactured under license in one jurisdiction but diverted to another jurisdiction without the permission of the license-holder. Delegates also noted that offenses involving contraband and counterfeit were often associated with defacing of marks and stamps that are required on the package.

---

\(^{15}\) One delegation described a similar program known as the Container Security Initiative which is intended to secure its border against dangers that might be introduced through commercial traffic.
Monitoring and Assessment: The delegates noted that a comprehensive evaluation of the illicit and legal tobacco markets is required in order to determine the size, nature and scope of the tobacco black market. Effective monitoring and assessment will assist countries in:

- Risk and trend assessments. Delegates discussed using data based on production and confiscation of illicit product to make risk assessments and to identify trends and safe havens. Intergovernmental groups such as the WCO, Interpol, and OLAF could coordinate or assist in such analysis.

- Establishing legitimate demand thresholds. Using information obtained for risk and trend assessments countries could determine legitimate demand for their tobacco products in the export market. This would be useful for countries interested in taxing exports and providing refunds based on the legitimate demand for the exported product in other countries. Some of the delegates indicated that the most effective way to provide this information was in terms of the quantity cigarettes and by specific brands.

Cooperation and Collaboration: While information sharing, mutual assistance, and international cooperation were the focus of Working Group III, the delegates in Working Group II nevertheless felt that the issue was of such importance that they discussed the need for enhanced cooperation and coordination at the domestic (interagency, i.e., Health, Police, Customs and Tax), regional and international or global levels (bilaterally and with existing organizations, i.e., WCO, WHO, Interpol & OLAF). These views have been included in the discussion of Working Group III.

During the discussion of these topics in Working Group II, the delegates engaged in an open, frank and lively exchange of views on whether cooperation and information exchange with the tobacco industry should be identified as a “best practice.” Several delegates expressed strong views about the role of tobacco manufacturers in the illicit trade of tobacco products and their refusal to provide information to competent authorities. Most who expressed these views were adamant that such cooperation would be an ineffective tool to combat illicit tobacco trade given industry’s refusal to provide meaningful information in the past.

Other delegates noted that consultation with tobacco manufacturers formed part of their approach to managing illicit trade. Most of the delegates that held this view felt that Government-industry cooperation was an effective practice and that if such cooperation failed; countries were not precluded from taking legal action.16

---

16 During these discussions one delegation referred to a memorandum of understanding (MOU) that it had with a cigarette manufacture. The MOU provides for a voluntary system in which Customs authorities may raise concerns over specific first customers of the manufacturers. A red card is issued where a high volume of seizures can be related to a specific customer and the Customs authorities would expect the manufacturer to immediately stop trading with the company. A yellow card is issued where there have been fewer seizures and the authorities are beginning to become concerned. When a yellow card is issued, the manufacturer would be expected to be extra diligent with all further dealings the customer in question. If seizures continued, the authorities would issue a red card.
Some delegates felt that information exchange with the manufacturers of cigarette making machines was also important to help identify the purchasers of tobacco manufacturing equipment. Such practice could help identify the sources of production, which would be useful in combating counterfeit manufacturing.  

**Domestic Legislation / Policy Framework:** The delegates recognized that illicit tobacco trade does not operate in a vacuum and is often associated with a wide variety of offenses. In addition to those mentioned previously, other offenses include money laundering, corruption, and violence toward authorities. The delegates recognized that statutory and regulatory measures that are enforced with appropriate penalties, sanctions and prohibitions would deter these and the other forms of illicit conduct previously mentioned such as contraband and counterfeit products. The delegates also agreed that there was a need for legislation authorizing:

- Seizure of contraband, conveyances and proceeds of crime.
- Destruction or other disposal of contraband tobacco products.

On this latter point some delegates favored destroying all contraband while others felt that the product was otherwise a legal product but for the payment of taxes. There was also a call for some level of flexibility with respect to the disposal of confiscated tobacco products since they could be used for law enforcement sting operations and training of authorities.

This discussion led to a divergence of views on whether or not to earmark a portion of the monetary proceeds generated from the sale of confiscated goods and tobacco tax revenues to tobacco control initiatives, including law enforcement and health. Some delegates remarked that budgetary considerations are beyond the mandate of the working group and that these decisions are best left to competent domestic authorities.

Delegates also felt that the collection of tobacco taxes at the time of manufacture, including on tobacco products destined for export, can enhance enforcement efforts. In other words, since exports are generally not taxed, the exporter would have to provide reliable records that indeed the product was properly exported to receive a tax refund.

**Working Group III (Information Sharing – Mutual Assistance - International Cooperation):** The delegates in this Working Group agreed that to eradicate effectively the illicit cross border trade in tobacco and tobacco products, it was essential for countries to share information, provide mutual assistance, and cooperate with each other. Some of these mechanisms will also enable Governments to evaluate better whether their respective regulatory practices are effective.

---

17 One delegation noted that the machines themselves leave identifiable marks on the product that allows for tracing the product to its source.
Best Practices: This Working Group expressed a variety of ideas to enhance, and in many cases to create, mechanisms that will allow them to achieve their information sharing and related goals. Delegates did discuss mutual assistance and international cooperation; they did so in the context of enhanced information sharing. Many delegates discussed whether some of the practices they identified were more effective if implemented on a multilateral or bilateral basis:

- **Multilateral Agreement:** Many delegates agreed that a multilateral agreement could provide international minimum standards for the sharing of information and further agreed that the multilateral agreement approach has many positive features. Importantly, it enables all countries to exchange information on the same basis and does not encourage illicit traders to migrate to another country that does not exchange information.

- A view was expressed that in order to be effective a multilateral agreement should identify with specificity the elements of information that will be exchanged. The agreement should not use national law as the threshold for determining the parameters of the information that may be shared. That is, it should not use as a threshold those elements of information that are required under existing national law. Rather, it should identify the specific elements of information covered.

- Many delegates noted that parties that ratify a multilateral agreement would meet their obligations by establishing domestic procedures or using national law to allow the exchange of the specific information enumerated in the multilateral agreement.\(^\text{18}\)

- Some delegates expressed that a multilateral agreement must contain a provision that requires confidentiality of information received and authorize a country to decline to furnish information in the event the requesting country has failed to respect the confidentiality requirement in the past. Most of these delegates felt that this provision should contain additional conditions to ensure confidentiality. Existing international agreements such as the Nairobi Convention and model agreements developed under the auspices of the World Customs Organization (WCO) contain examples of appropriate safeguards.\(^\text{19}\)

---

\(^\text{18}\) The World Trade Organization’s Rules of Origin Agreement may provide a model for some of the provisions of a multilateral agreement. This agreement provides criteria for determining where a product was made. See, http://www.wto.org/english/tratop_e/roi_e/roi_e.html

\(^\text{19}\) Also known as the “International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences” is intended to enhance cooperation between customs authorities by, among other things, providing for assistance between Parties on a reciprocal basis. Many delegates indicated that it was inadequate because it was not binding and thus needed to be amended. See, www.wcoomd.org/ie/En/Conventions/conventions.html
- **Bilateral Agreements:** Other delegates expressed the view that bilateral agreements and regional agreements are also useful in that they can take into account unique circumstances of the parties and allow parties significant flexibility. For example, countries within the same region may have common inspection and record of entry of goods upon entry into the first country in the region and affix a common stamp to the goods in order to evidence that the tobacco products entered the region in a legitimate fashion. This system would require the parties’ mutual trust and confidence.

- Many delegations noted that the WCO’s model bi-lateral information sharing agreement has been used by various customs organizations to create bi-lateral information sharing agreements. Also, bilateral agreements may be utilized to provide additional conditions for the exchange of information beyond the international minimum standards generally contained in a multilateral agreement where parties so desire.

- Some delegates referred to memorandums of understanding (in lieu of a bilateral agreement), which enables neighboring countries to share very specific information about the border crossing of tobacco products in certain types of individual transactions.

**Information Sharing:** The discussions on information sharing covered a range of current practices and “new” ideas, some of which have not been used with respect to tobacco, as models for future action. The practices the delegates identified (some of which were raised in Working Group II) are:

- **Information:** Delegates identified the following types of information that would be useful to exchange: the value of the goods, the quantity of the goods, and the name of the producer, purchaser of tobacco manufacturing equipment, and tobacco trade license holder. Some delegates expressed the

---

20 WCO also helps facilitate information exchange between customs authorities on a regional basis. For example, the Asia-Pacific RILO (Regional Intelligence Liaison Office) issues a monthly bulletin that contains seizure information and analysis of such information based on the Office’s administration of a database, which includes information from the 24 Asia-Pacific RILO member countries. There are nine other RILOs in the world. See, www.wto.org/english/tratop_e/tradfa_e/wkshop_2001/mikuriya.ppt

21 The WCO has adopted a model bilateral convention on mutual administrative assistance for countries to implement as part of a national customs policy. Courts throughout the world have recognized these agreements as a legal basis for wide ranging cooperation among customs authorities. See, www.wcoomd.org/ie/En/Conventions/conventions.html

For example, two delegations have an agreement that contains a provision that allows a Party not to transmit information if it believed that such action would likely prejudice its sovereignty, would be likely to prejudice public policy, security, or other essential interest, or be contrary to the legal system of the requested Party.

22 Two delegations have a Memorandum of Understanding in which they exchange intelligence via automated means. The downloading of the data is done through the transfer of magnetic tapes between agencies. Both Parties may re-visit the MOU to find a more efficient way to exchange the data.
need that the data include information on seizures of illicit tobacco products, identification of counterfeit products, and information pertaining to production and distribution of tobacco and tobacco products. Some delegates expressed the view that an effective national strategy for reduction and prevention of illicit tobacco trade should include information derived from all elements of government, beyond customs and law enforcement agencies such as revenue and tax, agriculture, and health.

- **Databank:** Establishment of a databank with a common or uniform database specific to tobacco based on export/import information. This information would be accessible to all parties to the agreement creating the databank. As one delegate described, such a bank “would establish a universal culture of information sharing.” Several delegates explained that such a databank would have to be based on common standards or information requirements so that countries could collect and submit information on the same basis. This would permit the “interoperability” of data systems. However, some participants expressed concerns about the administrative costs and burdens of establishing and maintaining such a database.

- **Notification:** The Customs authorities in the exporting country will notify Customs authorities in the receiving country about a shipment that includes the estimated date of arrival of the identified tobacco products. Most of the delegates who raised this practice agreed that the procedures of requesting information under an agreement should be specific and clear-cut, such as identifying the contact point within the government responsible for processing these requests.

- **“Real Time”:** Sharing of information on a “real time” basis particularly with respect to notifications of export shipments and cargo arrivals. Many delegates expressed the view that timely information was vital to addressing illicit tobacco trade concerns.

- **Binding:** Information sharing agreements that are legally binding. Many delegates believed this would address the issue of so-called “free-riders” who benefit from shared information but who, in turn, do not share any information within their possession.

**Mutual Assistance and International Cooperation:** The focus of Working Group III was mostly on information sharing though there were several areas where the sharing of information led to or was part of a program to enhance mutual assistance and international cooperation. Some of the practices that fell under this category of issues are:

---

23 Delegates mentioned the Basel Convention as an example of an international repository of data. The Convention deals with the illegal trafficking of hazardous waste. One of the Convention’s requirements is that each Party must report information on the generation and movement of hazardous waste through a yearly questionnaire. See, www.basel.int/index.html
**International Organizations:** Cooperation between WHO and the WCO is important because of the WCO’s disciplines and experience in information sharing among customs authorities.

**Existing Agreements:** Delegates referred to a number of agreements or resources, “as is,” or as models for future agreements including the Nairobi Convention, WTO Rules of Origin agreement, WCO agreements, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances\(^{24}\), the Rotterdam Convention (movement of hazardous materials), the Basel Convention, the WCO Model Agreement and other WCO functions, and Memorandums of Understanding.

**Conferences:** Periodic conferences would enhance and keep current the level of understanding of countries on methods of information sharing and cooperation. Information sharing through meetings and seminars.\(^{25}\) Establish an information source that would list all meetings and seminars that would have relevance to combating illicit tobacco trade. Some delegations agreed that a compilation of existing information sharing agreements and conventions would be valuable for this process.

**Joint Enforcement:** Such operations would include coordinated action by governmental and intergovernmental agencies with law enforcement, taxation and revenue, and customs expertise.\(^{26}\) This element combines information sharing with international cooperation.


\(^{25}\) One delegation noted that it recently hosted a law enforcement conference on international cooperation on combating smuggled tobacco which produced a document encouraging countries of the Asian Pacific region to establish liaison officers in international airports as conduits for information sharing.

The International Conference on Illicit Tobacco Trade was the first meeting of its kind in which representatives from governments and observer organizations with law enforcement, revenue and taxation, and customs expertise met to discuss illicit trade only with respect to tobacco products.

\(^{26}\) As an example of effective joint enforcement operations, delegates referred to Project Scorpio, which was a customs surveillance operation that targeted alcohol and tobacco smuggling. The United Kingdom in partnership with Finland and Italy, led this initiative in which a total of thirty countries and two intergovernmental organizations (OLAF and WCO) participated.

Another example of international cooperation occurred under the auspices of the G8 Senior Experts Group on Transnational Organized Crime. Italy, supported by the United Kingdom, proposed a project calling for common action against transnational organized cigarette smuggling. The project's overall objective was to promote cooperation, intelligence sharing and legislative harmonization. To this end, in March 2001, a two-week operational plan targeting organized cigarette smuggling was implemented. The subsequent results were analyzed with the view to identify cover loads and routes used in cigarette smuggling, to outline the involvement of transnational organized crime, and to ascertain obstacles to cooperation. Representatives of G8 and EU member States, Interpol, the WCO, and OLAF participated.
**MLATS:** Mutual Legal Assistance in Criminal Matters Treaties seek to improve communication and cooperation between law enforcement authorities. MLATS also provide for summoning of witnesses, production of documents and other evidence, the serving of judicial documents by designating a point of contact for information exchange. Some delegates indicated that the MLAT process is time-consuming and forecloses real-time information exchange.

**III. CONCLUSION:** We hope that this report will contribute to the consideration of regulatory practices that are or could be available for use in global efforts to combat the illicit tobacco trade. It may be that in the future another country would like to host a similar conference to continue the international dialogue started at the ICITT.

Respectfully submitted,

David L. Benton
ICITT Co-Chairperson

Arthur J. Libertucci
ICITT Co-Chairperson

September 24, 2002