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From: Presidency
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To: High Level Working Party of Directors-General for Customs

Subject: Future Challenges for the Customs Authorities in the Control of Movement of Tobacco Products
- A background to a discussion document for High Level Working Party of Directors-General for Customs

Delegations will find in the annex the above document, prepared by the Presidency.

Future Challenges for the Customs Authorities in the Control of Movement of Tobacco Products

A background for a discussion document for the High Level Working Party of Directors-General for Customs, prepared by the Presidency

The Protocol to Eliminate Illicit Trade in Tobacco Products was developed in response to the growing illicit trade in tobacco products. Apart from posing a serious threat to public health in view that it increases access to often cheaper tobacco products, this trade also causes substantial losses in government revenues while providing funds for criminal organisations.

The Protocol, *inter alia*, aims to make the supply chain of tobacco products secure; one of the measures being the establishment of a global tracking and tracing regime within five years of entry into force of the Protocol.

Moreover, the Protocol establishes offences, addresses liability and seizure payments, and the disposal of confiscated products.

In view of the irreconcilable conflict between the tobacco industry's interests and public health interests, the Protocol includes specific obligations regarding the mentioned industry. Parties have to ensure that any interaction with the tobacco industry is carried out with maximum transparency, and in relation to tracking and tracing. Parties must not delegate any of their obligations to the tobacco industry.

The revised Tobacco Products Directive which was adopted in 2014, aims to secure the supply chain on the basis of an EU-wide tracking and tracing system. By implementing the tracking and tracing provisions of the TPD, Member States will also comply with the corresponding provisions of the FCTC Protocol. As of May 2019, cigarettes produced in, or for consumption in the EU, will be track and traced. The Commission is currently preparing the legislation required to establish the EU's future tracking and tracing system.

The extent of the illicit tobacco trade in the EU is a cause for serious concern. It is estimated that the illicit tobacco consumption in the EU is in the range of 55 to 65 billion sticks albeit the overall decrease in consumption. Over the last two years, seizures of illicit tobacco products have risen by a fifth which indicates a stable or possibly even growing share of illicit cigarettes.

The smuggling of illicit cigarettes in very large quantities, particularly in containers, is less frequent today as opposed to multiple border-crossings with smaller quantities which is gaining in frequency.

It has been observed that contraband from the major international producers is today much less prominent in the EU. On the other hand, cheap whites and counterfeits dominate in the large-scale seizures, particularly in seizures related to containerised cargo. This instigated the European Parliament to call on the Commission to tackle the problem of cheap whites.

One other issue of concern for Customs Authorities is the fact that Tax stamps are used in 22 Member States, and the size and placement is defined by MS' domestic legislation. In 19 MS there is a requirement that stamps must be broken on the opening of the pack. Within two years health warnings must change on all packs and the tax stamp has to move. This means that all manufacturing processes have to be changed with significant consequences to the industry. Packaging has to change completely due to the health warning positioning. The recommendation by the Confederation of European Community Cigarette Manufacturers (CECCM) is that manufacturers should be free to choose where to position the tax stamp, and to remove the requirement to break stamp on opening.

Points for discussion

Are Member States satisfied with the method by which this dossier is being handled?

Are there concerns about small producers in relation to the development of the T&T? Has the cost of the system been established? Also, is the timeline of May 2019 realistic?

How effective would the development of the T&T system really be in the fight against the trade in illicit cigarettes particularly cheap whites and counterfeit?