



FACILITATION PANEL (FALP)

SIXTH MEETING

Montréal, 10 to 14 May 2010

Agenda Item 8: Other business

WHO PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS: THE PROPOSED BAN ON DUTY-FREE SALES HARMS THE REPUTATION OF CONTROL AUTHORITIES, REGULATORS, AIRPORTS & TRAVEL RETAILERS

(Presented by Airports Council International)

1. INTRODUCTION

1.1 The purpose of this paper is to raise the awareness of Panel members to a proposal in the World Health Organisation (WHO) draft Protocol on Illicit Trade in Tobacco Products, to ban duty free tobacco sales (at airports and other locations) on the grounds that such products are being diverted into illicit trade. ACI is concerned that this allegation is completely false and that the reputations of control authorities, regulators, airports and retailers are being harmed by this proposal.

2. BACKGROUND

2.1 The WHO's tobacco control treaty, the Framework Convention on Tobacco Control (FCTC), came into effect in February 2005. States that have ratified the FCTC are obliged to implement the provisions in the treaty that require legislative action, such as mandatory health warnings, bans on advertising and promotion, restrictions on smoking in public places, as well as measures to eliminate illicit trade and smuggling.

2.2 As part of the implementation process, WHO member States agreed to negotiate a Protocol, or supplementary treaty, on necessary action to eliminate illicit trade in tobacco products and created an Intergovernmental Negotiating Body (INB) to develop the text of this Protocol. The current version of the draft Protocol includes Article 11bis, which includes text banning duty free sales of tobacco products.

2.3 The INB has met on four occasions. The most recent meeting took place from 14-21 March, 2010, in Geneva. The meeting reportedly did not reach any consensus on a number of key aspects of the Protocol and as a result, Article 11bis was not discussed. The proposed ban, therefore, remains in the draft Protocol. It is understood that further negotiations on the Protocol will likely take place in 2011.

2.4 Airports Council International (ACI) supports a strong Protocol on illicit trade. However, ACI rejects totally the allegation that duty free tobacco products destined for sale in airport retail outlets are being diverted into illicit trade. The airport duty free supply chain is one of the most tightly controlled and regulated supply chains, as it operates under a Customs bonded process, within security restricted areas of airports, that are regulated by the Aviation Security Authorities.

2.5 ACI considers that the grounds put forward by the proponents of the ban are completely unfounded. The allegations imply that airports, retailers, customs authorities and aviation security regulators are acting in collusion with the criminal elements involved in illicit trade. Clearly this is absurd. ACI and the travel retail associations strongly oppose this ban for this reason and are taking all necessary actions to protect their professional reputations, which are seriously harmed by this allegation.

2.6 The ACI World Annual General Assembly passed a resolution titled ‘Governments must act to safeguard duty free operations at airports’, on 3 November 2009 (see copy in the Annex). ACI has enlisted its member airports to raise objections to the proposed ban with their respective State authorities. In parallel, the travel retail associations have met with many delegations and State representatives. It was apparent through these advocacy efforts that in many States the control authorities and regulators were unaware of this issue. Typically, it was being handled by the health ministries without adequate consultation with other ministries that would be affected by such a ban. Accordingly, ACI takes this opportunity to draw the attention of the Panel members to this issue.

3. ACTION BY THE PANEL

3.1 ACI invites the Panel members to note this issue and to draw it to the attention of their respective control authorities and ministries, whose reputations continue to be harmed by the proponents of a ban. ACI hopes that States will oppose a ban in the next round of negotiations on the Protocol, as there is no link between airport duty free sales and illicit trade.

APPENDIX



NINETEENTH GENERAL ASSEMBLY
(Kuala Lumpur, 3 November 2009)

RESOLUTION No. 3

**GOVERNMENTS MUST ACT TO SAFEGUARD
DUTY FREE OPERATIONS AT AIRPORTS**

The Nineteenth ACI General Assembly,

Supports the World Health Organisation's (WHO) Framework Convention on Tobacco Control and the need for a Protocol on the Illicit Trade in Tobacco Products,

Refutes allegations that duty free products intended for sale at airport duty free shops are diverted into illicit trade,

Strongly asserts the integrity of the security of the supply chain for duty free products intended for sale at airport duty free shops,

Notes that the supply chain for duty free products intended for sale at airport duty free shops is also subject to regulatory control by Customs authorities and aviation security regulators,

Notes that duty free purchases are an important aspect of the passenger's travel experience and contribute important non-aeronautical revenues to airports,

Considers that any ban on duty free sales would be unjustifiable, unfair to the traveling public and would have a very detrimental effect on airports,

Resolves that:

1. All governments must safeguard the interests of passengers and the rights of airports and retailers — by opposing any ban on the lawful business of duty free sales at airports.
2. All governments should affirm the integrity of the supply chain for duty free products intended for sale at airport shops, since this is under their jurisdiction and that allegations of diversion of such products into illicit trade are false and injure their reputations.
3. All airports should raise the awareness of the implications of any ban on duty free sales to their governments (including the Finance, Transportation, Customs and Aviation Security authorities) and seek assurances that this lawful business will be allowed to continue.

4. The Direct General, ACI should continue her efforts to refute allegations that duty free products intended for sale at airport duty free shops are diverted into illicit trade and to safeguard duty free operations at airports.

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