

# MOP2 – Duty Free position paper

## *Our key points*

The Duty Free industry fully supports the implementation of the provisions of the WHO Protocol to eliminate the illicit trade in tobacco products such as the establishment of licensing, due diligence, establishment of a tracking and tracing system, requirement of record keeping, and security and preventive measures. Indeed the majority of these measures are already an active industry practice even without the regulatory requirements proposed in the Protocol.

The Duty Free industry has a strong record of cooperation and partnership with national customs authorities. This close partnership which underpins already tight regulation and procedures should be built upon to facilitate the introduction of these additional measures.

The Duty Free industry supports the introduction of necessary measures to combat illicit trade and recognises and fully supports the need for countries to take appropriate law enforcement action against those who engage in illicit trade.

In 2020 the Duty Free industry makes four key points:

1. **The evidence-based study requested in Article 13 of the Protocol should only be carried out after adequate time is given for already planned changes to the industry to take place following entry into force of the Protocol.** Until then it will be impossible to ascertain if any further policy actions are required. Furthermore, all signatory countries must be aligned on the methodology and scope of the study.
2. **This study must be carried out in a fair and objective manner with full industry participation.** The Duty Free industry worldwide has a long history of working closely with customs and enforcement bodies worldwide to eradicate problems such as illicit trade, smuggling, and counterfeiting.
3. The DFWC and its members fully support the objective of the Protocol. Our members suffer significant economic damage as a result of illicit trade in tobacco products. **There can be no justification for penalising legitimate, law abiding businesses under a pretext of controlling illicit trade.**
4. Duty Free retail revenue is the cornerstone of growth for airports, ports, and the global aviation & maritime industry. **Duty Free is a transparent, controlled, and legitimate retail channel which is vital to maintaining and improving transport infrastructure; lowering travel costs; and enhancing the overall travel experience for consumers.**

## Duty Free has a safe, secure and legitimate supply chain

The Duty Free industry already fully complies with a range of unique and important controls that help secure our channel and contribute to the fight against illicit trade.

Our supply chain is one of the most secure in the world with processes and technologies in place to provide for verification of registration, compliance, certification, review and audit.

- Many Duty Free industry operators have introduced some of the most advanced 'track and trace' technologies to ensure that the origin, intended destination and manufacture information of tobacco products can be traced. Many more are in the process of doing the same.
- Duty Free retailers maintain supply chain records which are made available to customs authorities to review as required.
- Duty Free retailers must retain all documents relating to duty free sales and the movement of goods into or out of the Duty Free shop, typically for a period of five years.
- Duty Free retailers are subject to substantial financial penalties from customs authorities should there be discrepancies in their stock control procedures.
- Duty Free retailers are subject to detailed controls by customs authorities worldwide to ensure that only travellers eligible to purchase duty free tobacco are able to.

## MOP2 risks penalising law-abiding manufacturers and retailers, and does not consider the unique nature of Duty Free

The DFWC fundamentally rejects the implication in Article 13 of the Protocol that Duty Free sales may be a major source of international illicit tobacco trade.

Penalising legitimate responsible retailers, airports, airlines and maritime companies who have been selling Duty Free tobacco responsibly for many decades would have no impact on reducing illicit trade.

The purpose of this Protocol is to eliminate illicit trade in tobacco products; it should not be a vehicle for the WHO to achieve other policy objectives such as limiting the availability of legal Duty Free tobacco sales to legitimate customers.

## The Roadmap for Research into Duty Free should be structured to produce a fair and objective conclusion and must involve the industry

The Protocol calls for an evidence based study to assess the extent to which Duty Free contributes to illicit trade. During the first Meeting of the Parties, ratifying states decided to call on the WHO's FCTC Secretariat present a roadmap setting out the timelines and steps, before initiating this research.

While our industry fully supports the decision to conduct this research, it is extremely important that several factors are considered as in running the study:

- The study should only take place after adequate time is given for planned changes to the industry to take place following entry into force of the Protocol.
- The study must include and welcome participation by the industry. A lack of knowledge of our highly-controlled and transparent industry could lead to findings and policy outcomes that are unfair, unnecessary, and onerous on law-abiding, responsible retailers and stakeholders.
- This research is the opportunity for WHO to get the most comprehensive picture of the Duty Free supply chain. It is critical that WHO works with Duty Free stakeholders to prepare the protocol's research roadmap.

Without reasonable opportunities for industry involvement the research risks being hastily conducted, incomplete and inaccurate, and unfair.

Presently, there are significant problems with the scope of the research being proposed which raises concerns about the usefulness and reliability of the results. The Global Duty Free Industry is a business that spans the world and operates in every jurisdiction. The application of rules and regulations, the level of interaction with customs authorities and the obligations on the industry actors vary from country to country. There is no common framework of rules for the operation of Duty Free, or consistency in terms of application of the rule, across the world which would enable a study to derive accurate conclusions without examining jurisdictions individually.

At the very best, research into the suitability of rules and regulations ought to be done at a local level. An operator acting in accordance with the applicable rules and regulations, and in partnership with the relevant authorities, should not be held to account for non-compliance with rules and regulations by another operator in another jurisdiction.

Given the complexity of the topic and the wide range of the roadmap as a preparation for the research of article 13.2 of the protocol, we suggest carrying out a study that will give the necessary context to all stakeholders for the road map. Versatile methodologies should be proposed by this roadmap to make sure the study is feasible and reflects what the Duty Free channel really is.

The Duty Free industry worldwide has a long exemplary history of working closely with Customs and enforcement bodies worldwide to ensure security of the industry's supply chain which contributes to the prevention of illicit trade. This means that customs agencies should also be part of the roadmap process. We also argue that Duty Free stakeholders have an expertise to share for this kind of study.

Therefore, 4 types of stakeholders can give valuable input to this major study.

1. Tobacco manufacturers
2. Duty Free distributors
3. Duty Free retailers
4. Customs authorities

These stakeholders are used to working together and all have data and expertise that are key to be included in establishing the legitimacy of the roadmap.