

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet External Relations and Defence Committee

Report back on the World Health Organization's Protocol to Eliminate the Illicit Trade in Tobacco Products

Proposal

- 1 To defer consideration of New Zealand becoming a Party to the *Protocol to Eliminate the Illicit Trade in Tobacco Products* (the Protocol) until there are changes in circumstance that warrant reconsideration.

Background

- 2 On 12 April 2016, Cabinet [CAB-16-MIN-0160 refers] invited the Ministry of Health (the Ministry) to report back to the appropriate Cabinet committee on whether New Zealand should become a Party to the Protocol.

The Protocol

- 3 The Protocol, adopted in Seoul on 12 November 2012, was negotiated under the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC). The Protocol aims to mobilise and guide a global response to illicit trade in tobacco products. New Zealand has been a party to the WHO FCTC since 2004 and participated in the negotiations of the Protocol.
- 4 The Protocol contains a range of obligations, including a series of supply control initiatives, such as licensing, tracking and tracing of tobacco products and record-keeping. There is also an emphasis on international collaboration and information sharing and countries are encouraged to support each other in areas such as mutual legal, administrative, technical and enforcement assistance.
- 5 The Protocol will enter into force 90 days after 40 WHO FCTC Parties have signed and ratified it. The minimum number of Parties has not yet been reached. On 22 March 2017, there were 26 Parties to the Protocol: Austria, Burkina Faso, Comoros, Congo, Costa Rica, Côte d'Ivoire, Ecuador, European Union, France, Gabon, Gambia, Iraq, Latvia, Lithuania, Mali, Mongolia, Nicaragua, Panama, Portugal, Saudi Arabia, Senegal, Spain, Sri Lanka, Swaziland, Turkmenistan and Uruguay.
- 6 Canada and Australia (comparable countries with similar tobacco control programmes to New Zealand) have not yet become Parties to the Protocol and are still considering their response.

Comment

Size of illicit trade of tobacco in New Zealand

- 7 Evidence suggests the illicit trade of tobacco is not as significant a problem in New Zealand as it is in other parts of the world. The size of the illicit tobacco market in New Zealand was estimated by Action on Smoking and Health to be between 1.8 percent and 3.9 percent of total tobacco consumption in 2013. A 2010 estimate by the tobacco industry concluded that illicit tobacco represented about 3.3 percent of total tobacco consumption in New Zealand. When put in the global context, New Zealand has a comparatively low level of illicit tobacco.
- 8 The absence of land borders limits the international movement of tobacco products to and from New Zealand by sea and air transport. New Zealand does not have any large scale domestic commercial growers and most tobacco used in New Zealand is imported. The New Zealand Customs Service import and export clearance processes, and systems for collecting duty on tobacco products, provide sound supply-chain controls.
- 9 Relevant agencies have been monitoring evidence related to illicit trade in New Zealand and conclude that there have been no significant developments since Cabinet's last consideration of the matter.
- 10 While the illicit tobacco market in New Zealand is still not assessed as posing a significant problem when compared to other countries, the New Zealand Customs Service continues to monitor this area. There is some evidence of increased volumes of illicit tobacco (principally cigarettes) being imported, and there have been several reasonably significant intercepts. There is also some anecdotal evidence of continued availability of illicit roll-your-own tobacco. The New Zealand Customs Service suggests that this is probably from domestic sources, as they are not encountering large volumes at the border.

Implications of signing and ratifying the Protocol

- 11 New Zealand's existing laws comply with many of the obligations in the Protocol. However, there are a number of obligations that New Zealand does not currently comply with.
- 12 If New Zealand were to become a Party to the Protocol, some legislative reforms would be needed along with new systems, processes and initiatives to support them. For example, New Zealand does not currently comply with obligations to implement a tracking and tracing system. In order to introduce a tracking and tracing system, new legislation would be needed, such as amending the Smoke-free Environments Act 1990 or Customs legislation. In either case the Ministry and the New Zealand Customs Service would need to co-design a new track and trace system.
- 13 New Zealand would also be required to create new offences to support reforms that are introduced to comply with the Protocol (particularly around Articles 7 and 8 concerning due diligence and tracking and tracing).
- 14 The impact of considering whether New Zealand should become a Party to the Protocol needs to be considered in the context that illicit trade is not currently a major problem in this country.

15 Therefore, on balance, it is my view that New Zealand does not need to become a Party to the Protocol at this time. New Zealand can decide to become a Party in future if the situation changes to the extent we need to reconsider this decision.

Consultation

16 The following departments and agencies have been consulted: Ministry of Foreign Affairs and Trade, Ministry of Justice, New Zealand Customs Service and New Zealand Police. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

17 There are no financial implications associated with this paper.

Human Rights

18 There are no human rights implications associated with this paper.

Legislative Implications

19 There are no legislative implications associated with this paper.

Regulatory Impact Analysis

20 A Regulatory Impact Statement is not required at this stage.

Gender Implications

21 There are no gender implications associated with this paper.

Disability Perspective

22 There is no disability perspective associated with this paper.

Publicity

23 I intend to publish this Cabinet paper on the Ministry's website once Cabinet's decisions are confirmed.

Recommendations

The Associate Minister of Health recommends that the Committee:

- 1 note that a report back is due to the Committee on 4 April 2017 on whether New Zealand should become a Party to the Protocol
- 2 note that the size of the illicit trade of tobacco in New Zealand is relatively small, estimated to be between 2-4 percent of the total market
- 3 note that if New Zealand were to become a Party to the Protocol, some legislative reforms would be required, along with new systems, processes and initiatives to support them
- 4 agree that New Zealand does not become a Party to the Protocol at this time
- 5 note that the Ministry will continue to monitor international and domestic developments around illicit trade
- 6 note that, dependent on international and domestic developments around illicit trade, New Zealand can choose to become a Party to the Protocol in the future and I would report back to the Committee at that time
- 7 note that I intend to publish this Cabinet paper on the Ministry's website once Cabinet's decisions are confirmed.

Authorised for lodgement

Hon Nicky Wagner

Associate Minister of Health