



INTERPOL

OFFICE OF LEGAL AFFAIRS

# COUNTERING ILLICIT TRADE IN TOBACCO PRODUCTS

## A GUIDE FOR POLICY-MAKERS



*Legal Handbook Series*





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**COUNTERING  
ILLICIT TRADE IN TOBACCO PRODUCTS:  
A GUIDE FOR POLICY-MAKERS**

**Legal Handbook Series**

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### **Legal Handbook Series**

International police and judicial cooperation requires innovative legal solutions to ensure it can effectively respond to the challenges of the twenty-first century.

In the context of INTERPOL's programmes and initiatives, the Legal Handbook Series intends to provide policy-makers and the law enforcement community worldwide with practical and user-friendly tools covering the legal aspects of various crime problems.

With the objective to provide the most up-to-date information on legal developments, the handbooks are elaborated in partnership with international organizations, academic institutions and the private sector. They aim to complement existing manuals and publications by improving the understanding of key concepts, informing about current trends and offering advice in line with international legal standards and requirements.

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## Foreword

Illicit trade in tobacco products (ITTP) is a global occurrence, affecting all regions and countries. It holds an allure for criminals to engage in it as tobacco products are light, small, easy to transport and to conceal. Tobacco is one of the most smuggled commodities in the world, allowing offenders to amass huge profits. Further, penalties are often not sufficient to act as a deterrent.

Illicit trade in tobacco products has negative and harmful consequences for countries at many levels. It affects consumers' health, reduces States' budgets, creates unfair competition for legitimate businesses, and feeds organized criminal groups who channel the profits obtained into other illegal activities.

This handbook aims to offer the first comprehensive legal analysis of the international legal framework against the ITTP. It provides guidance to policy-makers and law enforcement authorities on the implementation of key international instruments in the field, with an emphasis on the new Protocol to Eliminate Illicit Trade in Tobacco Products.

The ITTP holds many challenges for governments. One of the biggest is the involvement of organized criminal networks which employ increasingly sophisticated and varied methods to counterfeit and smuggle products. INTERPOL recognizes this as a growing issue threatening the security of States. A joint and coordinated effort is needed to find and implement lasting solutions to this multi-faceted problem.

**Joël Sollier**

**General Counsel, INTERPOL**



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## Introduction

According to some estimates, the total illicit cigarette trade accounts for 11.6% (657 billion cigarettes) of all cigarette consumption worldwide<sup>1</sup>. The detrimental impact of the illicit trade in tobacco products (ITTP) on the economic and social fabric of society is severe. The economic harm experienced by governments is great, with revenue losses estimated at between US\$40 to \$50 billion a year by way of smuggled cigarettes<sup>2</sup>. The ITTP results in significant loss of revenue for governments, means legitimate businesses lose trade, threatens public safety when illegally obtained profits are channeled to support organized crime and sometimes even terrorism and undermines public health strategies. Given that tobacco products are highly taxed goods, easy to transport and disguise, and laws and penalties addressing the criminal activities involved are relatively low, ITTP poses a high profit to low risk ratio and for this reason is appealing.

This handbook will examine the phenomenon of the ITTP in terms of its emergence over the course of the last few decades, current characteristics, historical precedents, typical forms and legislative and law enforcement responses. The intention is to offer rigorous and critical analysis as well as to provide States with legal options, best practice principles and practical information needed to design and implement anti-ITTP policies and strategies.

This handbook is comprised of two parts.

The **first part** provides a **general overview of the phenomenon**, analyzing how illicit trade in tobacco products manifests itself, its geographical reach and the involvement of organized crime and some terrorist organizations.

The **second part** explores the **current international legal framework** which could be utilized by governments to combat the ITTP, drawing attention to two specific groups of international conventions: cross-sectoral criminal justice treaties and sector-specific treaties. This part specifically examines the recently adopted Protocol to Eliminate Illicit Trade in Tobacco Products (Tobacco Protocol). It provides detailed guidance and policy recommendations for its implementation.

The appendices contain some practical tools, including: a contact list of relevant organizations, a country assessment checklist aiming to assist in the implementation of the Tobacco Protocol by identifying legislative and institutional gaps in domestic legal systems; and a table outlining national legislation across various legal areas including criminal codes, customs legislation, trademark legislation and specific tobacco legislation regarding licensing and marking requirements and the seizure and destruction of illicit goods. This table of national legislation is designed as a comparative tool for countries to understand how other jurisdictions have treated the same issue and to assess where improvement and/or change is required to meet the requirements of the Tobacco Protocol.

This handbook is also **available online** through the Legal Assistance pages of INTERPOL's website, at <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance>.



## Countering illicit trade in tobacco products: key issues and challenges

- Estimates from 84 countries around the world suggest that the **illicit cigarette trade** accounts for 11.6% of cigarette consumption being illicit, equaling 657 billion cigarettes a year.
- The **loss of tax revenue** from cigarette smuggling in the EU was 12.5 billion euros in 2012.
- Illicit tobacco products include genuine smuggled products, counterfeit tobacco products and illicit whites. These illicit products are traded clandestinely through **bootlegging** and large-scale **smuggling**.
- Any response to the ITTP requires the **active and coordinated involvement of a number of different stakeholders**, including: customs authorities, tax authorities, law enforcement, government policy makers, health departments, consumer protection and trade departments, consumers, and the private sector.
- Given the **global nature and complexity of the phenomenon**, solutions to treat the issue must be global in nature and fundamentally aim at international cooperation and the harmonization of laws and regulations in the area of illicit trade beyond borders.
- The **international legal framework relevant to fighting ITTP** is made up of a number of instruments which, although they were not specifically conceived to address ITTP, do provide important mechanisms, from a criminal justice perspective, by **addressing factors enabling ITTP**. Key international treaties in this regard are the **United Nations Convention against Transnational Organized Crime (UNTOC)** and the **United Nations Convention against Corruption (UNCAC)**.
- States may use **UNTOC** to combat ITTP: i) where one or more offences set forth by UNTOC itself (participation in an organized criminal group, corruption, laundering of proceeds of crime and obstruction of justice) have been committed as part of the ITTP by an **organized criminal group acting transnationally**; or ii) where engagement in ITTP is established as a **“serious offence”** domestically, i.e. in order to fall within the scope of UNTOC, an offence of counterfeiting/smuggling cigarettes would need to be a criminal offence with a penalty of at least four years imprisonment.
- States may use **UNCAC** provisions as **corruption is a fundamental element and facilitator of ITTP**. Bribery can be resorted to at different phases of the tobacco supply chain. For example, bribes can be offered to customs officials to permit the cross-border movement of smuggled cigarettes. When counterfeiting operations are involved, bribes might be given to law enforcement officials to allow the operation of an illegal manufacturing facility. Corruption can also play a role in the process of obtaining various types of permits and licenses from national authorities.

- UNCAC applies regardless of the involvement of an organized criminal group. It can thus be utilized to support criminal proceedings against individuals acting by themselves, or groups that do not fulfil the requirements of an “organized criminal group” set forth in UNTOC.
- The **Protocol to Eliminate Illicit Trade in Tobacco Products (Tobacco Protocol)** is the first international legal instrument entirely dedicated to preventing and combatting the ITTP. While it contains key and innovative provisions, once it enters into force the Tobacco Protocol will require significant effort on the part of States parties to ensure its effective implementation.
- One of the key challenges will be the implementation of **supply chain control provisions**. Under Part III of the Tobacco Protocol, States are to establish control mechanisms covering many aspects of the supply chain. A major **regulatory system** will need to be established. As part of it, certain obligations will have to be imposed on licensees, such as **due diligence**, and **record keeping/reporting requirements**.
- A fundamental requirement of the Tobacco Protocol relating to the control of the supply chain is the establishment of a **national track and trace system**, which will then connect to a global track and trace regime. The purpose of the national track and trace system is to assist law enforcement with the identification of the point of diversion of genuine products.
- The **global track and trace regime** will be a point of information deposit and sharing by States parties to the Protocol. It will allow States to interact and exchange information with a view to **cooperating on illicit consignments** destined for their territory, or to be able to **identify routes** taken by those involved in organizing the illicit trade activity. The global regime will depend on the political will of States parties to share information with each other through a global information sharing focal point to be established.
- A major aspect of the Tobacco Protocol is the list of **unlawful conduct** left to States parties to criminalize or treat as administrative offences. In this regard, States need to be aware of their **parallel obligations under other international treaties** which mandate the criminalization of certain conduct. For example, Parties to the Protocol who are also Parties to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) should note that wilful trademark counterfeiting committed on a “commercial scale” will have to be criminalized. Under UNTOC and UNCAC, conducts such as obstruction of justice, money laundering, bribery of officials etc. are to be criminalized.
- The gravity of the offences will need to be determined in order to allocate **appropriate penalties** to those unlawful conducts that are administrative offences and those that are criminalized. Penalties imposed will need to act as a deterrent.
- The deterrent effect of penalties is to be accompanied by measures to ensure the **confiscation of proceeds of crime**. As the Tobacco Protocol is silent on the need for Parties to adopt a legal framework allowing them to permanently deprive offenders of their illicit

gains, policy makers are recommended to look beyond the Protocol. Good starting bases are UNTOC and UNCAC which contain extensive provisions in this area.

- Part V of the Protocol deals with international cooperation. Detailed provisions on extradition and mutual legal assistance are found, in almost identical terms, in the UNTOC. At the same time, for its implementation/application, Part V of the Protocol requires that the unlawful conducts set forth in the Tobacco Protocol be established as criminal offences. To the extent that Parties decide not to criminalize them, key provisions of Part V of the Tobacco Protocol may remain inapplicable.
- Any globally sound implementation strategy against the ITTP will have to consider the interplay between, as a minimum, all the above-mentioned international instruments. These should be read, understood and applied as a “package”. Also, designing an implementation strategy for one treaty will have direct consequences on the implementation of the others. For instance, States that have already implemented UNTOC will most likely find it easier to implement the Tobacco Protocol as this latter instrument draws heavily on provisions contained in UNTOC. Further, States that are planning to ratify/implement UNTOC should seriously consider engaging in the parallel, or at least closely coordinated, ratification/implementation of the Tobacco Protocol, as much legislative change to be made under the framework of the former will almost automatically benefit the latter.



## Part I

# ILLICIT TRADE IN TOBACCO PRODUCTS: UNDERSTANDING THE PHENOMENON



## 1. Understanding the phenomenon

### 1.1. Overview

The international tobacco market has a twofold nature comprised of a legitimate and illegitimate component. The form of the illicit and licit markets varies depending on the cultural, social and economic conditions of the market across countries and regions. The global reach of the legitimate tobacco market also means that the illicit tobacco trade has global reach, and certainly, ITTP is a problem for most countries.

The ITTP manifests itself in four major ways: 1) bootlegging; 2) large-scale smuggling; 3) counterfeiting; and 4) illicit whites (*see table 1*). The ITTP is a complicated issue, involving a number of different stakeholders, including: customs authorities, tax authorities, law enforcement, government policy makers, health departments, consumer protection and trade departments, consumers, and the private sector.

#### Box 1: Drivers of cigarette smuggling

The ITTP is the result of classic demand and supply.

##### Demand

- Smokers want cheaper products.
- Smokers want specific products unavailable in the domestic market or priced higher.

##### Supply

- Illegal and some legal tobacco manufacturers looking for an increase in market share, sales and profits.
- Tobacco manufacturers seeking to penetrate new markets.
- Criminals taking advantage of tax differentials.
- Criminals taking advantage of the type of product, i.e. cigarettes are light and portable.

##### Facilitators

- Criminal networks.
- Corruption and bribery of public officials.
- Money laundering.
- Weak government enforcement capacity.
- Inadequate legislation and sanctions.
- Unbalanced fiscal policy.
- Public tolerance.

#### Box 2: ITTP Facts

- Estimates from 84 countries around the world illustrates that the illicit cigarette trade accounts for 11.6% of cigarette consumption being illicit, equaling 657 billion cigarettes a year (Statistics taken from *PPACTE Industry and Market Response*, Luk Joossens, August 2011).
- About 1 in every 10 cigarettes smoked in 2011 was illicit, meaning revenue losses to governments of US\$40 to \$50 billion a year (Euromonitor).
- The loss of tax revenue from cigarette smuggling in the EU was 12.5 billion euros in 2012 (KPMG Project STAR).
- 190 billion counterfeit cigarettes are produced in China each year (WCO).
- The ITTP represents a burgeoning, multibillion dollar business, and this is not surprising given that it is the world's most smuggled legal substance (Tobacco Underground).
- "Illicit trade in cigarettes is the biggest illegal trade in a legal product in terms of value and second only to illegal drugs in terms of revenue generated by smugglers" (Euromonitor International 2012).

All continents/regions have had major struggles with ITTP: Europe, Eastern Europe, North America, South America, Middle East, Asia, Africa, and Australia. The problems vary and include ITTP issues within the region between neighboring countries; and between countries known for being source countries of certain types of illicit tobacco products, such as counterfeits or illicit whites, and other regions (*see section 1.7, "The geographical reach of the ITTP"*).

Given the global nature and complexity of the phenomenon, solutions to treat the issue must be global in nature and fundamentally aim at international cooperation and the harmonization of laws and regulations in the area of illicit trade beyond borders.

## 1.2. Terminology and definitions

Defining the types of activities that fall within the scope of illicit trade in tobacco products is essential for a thorough treatment of the issue and to create workable solutions. Illicit trade is **not** limited to smuggling, and is conceptually much broader. Specific activities that form the ITTP are enumerated in table 1, and terminology and definitions that have been deliberated in an international forum are given. The definitions of *illicit trade* and *tobacco products* are both derived from the World Health Organization’s *Protocol to Eliminate Illicit Trade in Tobacco Products*, article 1(6) and 1(13) respectively. It is important to note that the discourse on the ITTP focuses more on the illicit trade in cigarettes as opposed to other tobacco products, such as cigars, chewing tobacco, role-your-own and make-your-own cigarettes.

ITTP activities are more expansive than for other products as they contain certain activity specific to tobacco, specifically the illicit white phenomenon. When defining the different types of illicit trade, the most relevant characteristics are the origin of the tobacco products (are they produced legally, illegally and/or secretly stored) and their destination (are they intended for domestic or cross-border consumption).

*Table 1: Terminology and definitions<sup>3</sup>*

TERM	DEFINITION
Illicit trade	Any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity.
Tobacco products	Products entirely or partly made of leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing.
Smuggling	The illegal trade across borders of genuine or illicitly manufactured products without the payment of applicable taxes or duties.
Small-Scale Smuggling / Bootlegging	An illegal activity where individuals or small groups purchase tobacco products from low tax jurisdictions, usually duty paid, in amounts that exceed customs regulations, for resale in high tax jurisdictions, to exploit tax differentials between neighboring countries. Bootlegging normally occurs over shorter distances with lesser quantities of cigarettes.
Large-Scale Smuggling	Large-scale smuggling of tobacco products involves the illegal trade of large consignments of cigarettes and other tobacco products, without the payment of applicable taxes and duties and conducted by criminal networks, across borders. Goods (either genuine or counterfeit) are diverted from legal trade channels, in breach of import or export laws.
Contraband	Smuggled genuine tobacco products that are illegally traded.
Counterfeit tobacco products	Fake tobacco products that are manufactured illicitly carrying or imitating the trademark of a particular product without the agreement of the trademark’s owner.
Cheap/Illicit Whites	New cigarette brands (generally with registered trade brands) produced legally in one jurisdiction but produced intentionally for smuggling into other countries where there is no prior legal market for them. Tax possibly paid in production country, but rarely. Products are lawfully exported from the production country and tax will not be paid in the destination country.

<b>Loose leaf tobacco / Chop-Chop</b>	Unbranded tobacco products sold as loose or cut/shredded leaf of tobacco, consumed in roll-your-own or in empty cigarette tubes.
<b>Baggies</b>	Unbranded tobacco sold illegally in the form of loose cigarettes in clear, plastic re-sealable bags.
<b>Illegal Manufacturing</b>	The production of tobacco products contrary to law, including counterfeit tobacco production, and undeclared production. These products can be sold on the domestic market or smuggled into another jurisdiction.
<b>Tax Avoidance</b>	Legal activities engaged in with the intention of paying less or no taxes.
<b>Tax Evasion</b>	Illegal activities engaged in with the intention of paying less or no taxes.
<b>Grey Market Products / Parallel Imports</b>	Branded goods imported into a market and sold without the consent of the trademark owner in that market.

### 1.3. Large-scale organized cigarette smuggling

Over the course of the last 20 years the large-scale smuggling of genuine cigarettes (contraband) of well-known brands was the predominant type of illicit trade. This type of smuggling involved:

- Large consignments of genuine cigarettes exported either legally or without the owing duties and taxes being paid.
- These consignments would transit via a number of countries.
- Before arriving at the nominated destination country, these shipments of tobacco products would be diverted from legal international trade, somehow “disappearing” in transit and into the contraband market.

In certain markets, cigarettes manufactured for domestic use would be exported to another country (most often a neighboring country) where there was no prior market for them, and would then be smuggled back into the country of manufacture using documentation indicating that the goods are not cigarettes for the purpose of tax avoidance. Canada is a good example of this, as cigarettes made for the Canadian domestic market were exported to New York, where there was no market for them (American consumers smoked American brands) and were then smuggled back into Canada evading taxes owed. Another example is the UK which had a massive ITTP problem some years ago, where UK Customs and Excise estimated the illicit cigarette market to be 21% in the year 2000. Certain cigarette brands were exported in large quantities to countries where the intended market was unclear, then re-entered the UK market by way of large-scale smuggling. Other regions were not untouched by this phenomenon, such as Europe, Asia and South America, where countries in these regions were either source countries of the illicit product, transit or destination countries (*see section 1.7, “The geographical reach of the ITTP”*).

The methodology utilized by some tobacco manufacturers was either to declare export to a market known to have poor controls in place, or to a 'free zone' where no customs controls operate, or to engage in undeclared production (the production of genuine tobacco products in excess of what a particular market consumes. The oversupply into a market is not intended for that market but is used to supply the black market in the region).

**Box 3: Goods in transit**

Goods in transit are those that are moving between their place of origin and their final destination. In between these points they pass through what are called 'transit States'.

Transshipment is the transfer of goods whereby the mode of transport of the goods is changed during the transfer, for example from ship transport to road transport.

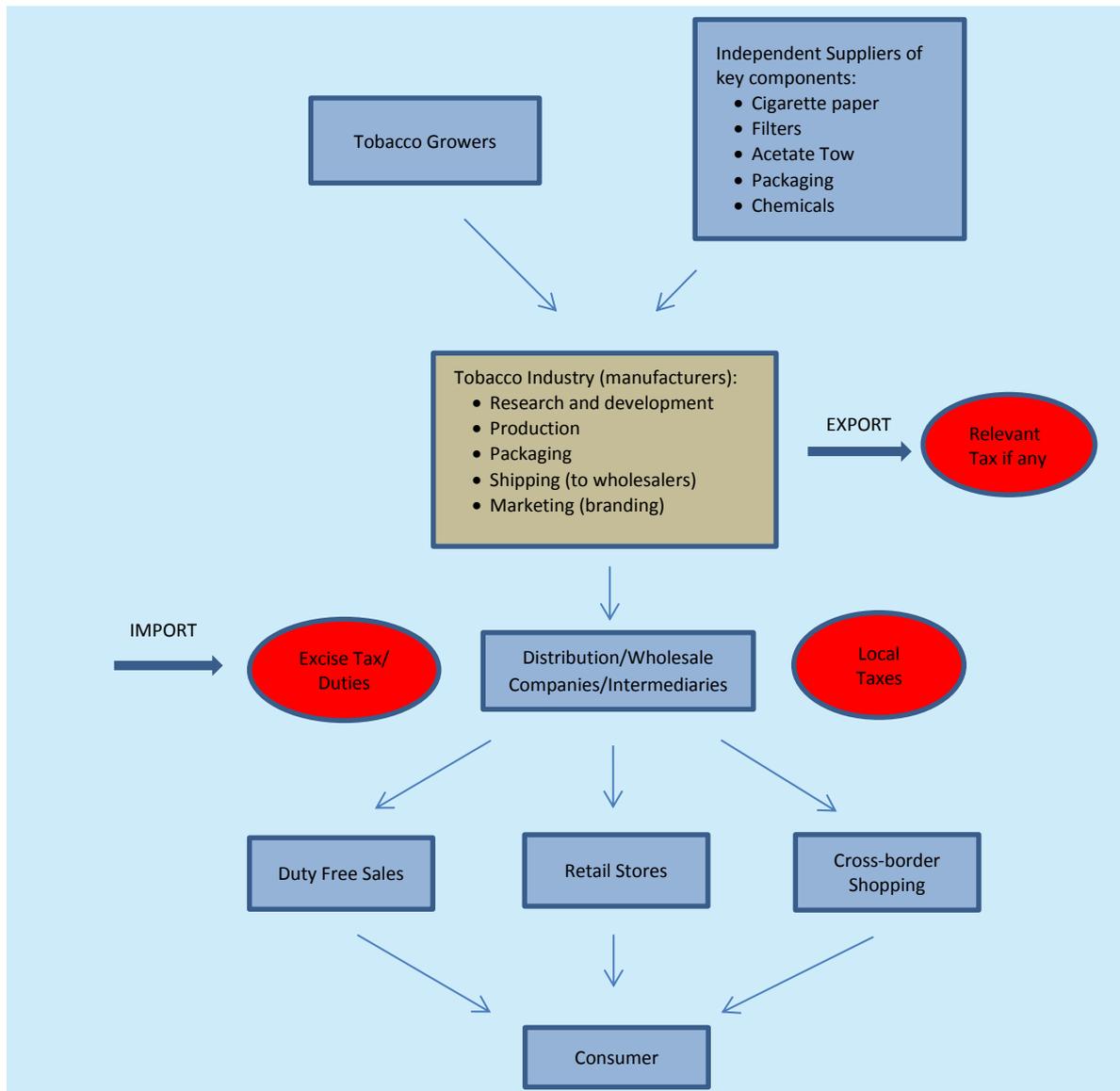
***The In-Transit Regime***

A facilitating factor in large-scale cigarette smuggling is the in-transit regime, where duties and taxes are temporarily suspended for goods in transit. Smuggled goods will transit a number of countries (being imported and exported through many different locations), over a short period of time, before "getting lost" in transit, and arriving at their intended destination country (not the country declared as the final destination of the goods). This occurs in order to hinder the identification of the owner of the goods, and interrupts the tracking and tracing of the goods within the transit regime. During transit, unofficial traders are able to purchase the goods and remove them from the legitimate supply chain.

**1.4. How is the illicit business conducted?**

Control of the **legal** supply chain is vital for efforts aimed at combatting illicit trade. Having adequate controls in place will mean easier identification of the source of the problem and any weak links involved. These weak links could be a number of things including: (1) theft (from warehouses and storage facilities or during transit etc., by tobacco industry employees or unrelated third parties); and (2) the direct or indirect involvement of some companies within the tobacco industry in the smuggling activity (including the diversion of genuine products, or undeclared production), or the overproduction of cigarettes for a particular legal market made explicitly for smuggling etc. The figure below demonstrates that the legal supply chain is controlled to a great extent by the tobacco industry, from sourcing the raw tobacco, to manufacturing, to distribution at the first customer level, and sometimes at second and third customer levels. Regulating the legal supply chain will help expose illicit activities in the ITTP.

Figure 1: Legal supply chain

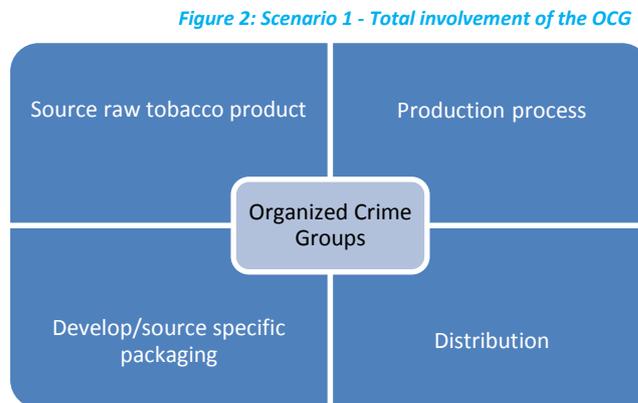


### 1.5. Modi operandi of the smuggler

Both genuine and counterfeit products rely on large-scale smuggling to achieve distribution via illicit trade. The sophistication and complexity of this activity will depend on the size and ambition of the smuggling/illicit trade and the organized groups involved (see section 1.8, “Involvement of transnational organized crime in the ITTP”). When defining the different types of illicit trade, the most relevant characteristics are origin (whether legal, illegal and/or kept secretly) and destination (whether domestic or cross border). There are different scenarios to consider.

### 1.5.1. Scenario 1

The first scenario is where the organized crime group (OCG) is involved in **all** aspects of the process as shown in figure 2.



### 1.5.2. Scenario 2

Another scenario is where organized crime groups use persons who act as **intermediaries**. These intermediaries are crucial to the process and:

- Source the tobacco products by engaging directly with the manufacturers;
- Liaise with the organized crime group to determine the trade routes to be used; and
- Negotiate risk mitigation mechanisms to ensure successful delivery.

There are a number of factors upon which the smuggling methodology relies (the following list is non-exhaustive):

- The international trade in tobacco products, predominantly cigarettes, suffers from a general lack of enforcement by States.
- Goods in transit are afforded certain protection to facilitate trade. The **in transit regime** (where customs' duties, excise and value-added taxes are temporarily suspended for goods destined for a third country) means that tobacco products *en route* from their country of origin to their final destination may be bought by unofficial traders.
- Free trade zones allow for manufacture, storage and assembly of products right before distribution. Free trade zones are often outside the jurisdiction of customs authorities, and are operated by Investment authorities. Customs authorities therefore apply their controls outside the zone and not over the zone (*see section 4.3.9, "Free zones and international transit (art. 12)"*).

- Perception in some countries that offences are not seen as serious and thus penalties are not a deterrent from engaging in smuggling activity. Essentially, this is a HIGH profit, LOW risk activity.
- Transporting costs and other associated costs are small when compared to the significant profits generated by ITTP.
- Corruption of officials.
- Probability of checks on containers carried out by customs authorities, which varies across jurisdictions. Customs physically check a very small percentage of containers passing through their jurisdiction when compared to the flow of trade and the huge amount of goods entering and exiting ports daily.
- False information placed on customs documentation, such as incorrectly listing the type of goods in the container, the amount of tax to be paid, and a false origin/destination of the goods.

### 1.5.3. Scenario 3

Another smuggling method is where legitimate tobacco products marked for export are legally exported, and then eventually smuggled back into the country of origin for sale on the black market. More often than not, many of these cigarettes are smuggled to third countries with around 10% making their way back to the country of origin.

The **modes of transport** used include ports (smuggled in shipping containers), air transport, road vehicle transport and postal transport and services.

In Europe the large-scale smuggling of well-known brands has decreased substantially over the last 10 years, with concerted efforts made by Governments to target and expose tobacco industry involvement in illicit trade (*see box 28, “The cooperation agreements between the EU and the tobacco industry”*), and to regulate the industry more stringently. However, other types of illicit trade have increased, such as illicit manufacturing, including counterfeiting and the proliferation of illicit whites. Of course large-scale smuggling is still utilized to achieve distribution of illicitly manufactured goods such as counterfeit cigarettes and illicit whites.

#### Box 4: Some factors facilitating/ contributing to illicit trade

- Ease and cost of smuggling tobacco in a country;
- Presence and level of development of organized crime networks;
- Presence of informal distribution networks;
- Tax levels on cigarettes in a country;
- Chances of offenders being brought to justice
- Type and level of applicable penalties;
- The overall level of corruption.

## 1.6. From large-scale smuggling to counterfeits and illicit whites

While historically, the ITTP consisted predominantly of large-scale smuggling of genuine cigarettes of well-known brands, in recent years this has greatly reduced and has been supplemented by steady growth in the smuggling and sale of **illicit whites** and **counterfeit cigarettes**, widening the scope of illicit trade (see table 1).

### 1.6.1. Counterfeit cigarettes

This category of the ITTP has been facilitated by the development of new technology. Counterfeiting depends on the ready availability of technology to manufacture tobacco products, and to copy packaging and labels, and even the tax stamps placed on cigarette packets. Sophisticated equipment is available to counterfeiters and the financial return is worth the initial investment in the counterfeiting venture which is made back within a matter of weeks.

Counterfeit goods create unfair competition for legitimate businesses and their trafficking deprives governments of revenues.

Well known source countries for counterfeit production are China, Vietnam, North Korea, Iran, Iraq, United Arab Emirates, Paraguay, Uruguay, Belarus, Poland, Romania, Russia, the Czech Republic and Spain<sup>4</sup>.

### 1.6.2. Illicit whites

Illicit whites are ‘new brands’ of cigarettes which are created by the manufacturer, including with registered trade-marks, but with no intended legitimate market. These brands are produced legally in a country (their manufacture is in accordance with national legislation) and the location of these factories is well known to authorities. However, the cigarettes are not intended for the domestic market, but are produced with the sole intention of smuggling into other markets under the guise of legitimate exports. In most cases, product and export is both lawful and follows the requirements of national laws, however, the relevant authorities do not take an active interest in the products post-export and as such manufacture and export are not subject to any intervention.

#### Box 5: Illicit whites in the EU

*“Consumption of illicit white brands increased by 3% to 16 billion sticks in 2012, representing over 24% of total counterfeit and contraband volumes in the EU”.*

*Source: KPMG Project Star 2012*

As manufacturers of illicit whites are able to operate legally within a country, they have fairly sophisticated facilities where they are able to produce cigarettes of a higher quality than counterfeits. They can also avoid the litigation associated with counterfeiting activity.

There are no import statistics to quantify the volumes of “new” brands as they have been smuggled to markets and as such fall outside normal customs reporting processes. Illicit whites will also be unlikely to possess the labeling, packaging, or health warning requirements and other marks, like tax stamps, which are required in the market into which they are smuggled. Domestically, they are either taxed for local consumption or untaxed for export, and they are sold to first customers, without

establishing the legitimacy of the customer, who can then trade the products on the black market without paying the requisite duties owing.

The largest illicit white brands in the EU are Jin Ling, Classic and American Legend. Other brands also grew in popularity including Fest, Gold Mount, Minsk, Premier, Fast, Raquel, Ducal, Marble, CK, Kiss, Nz, Austin, GR, Magnat and Queen<sup>5</sup>. Jet and Hero are large brands in the Asian market.

Well-known source countries of illicit whites are Belarus, Vietnam, Indonesia, Philippines, India, Cambodia, Paraguay, Ukraine, Russia, UAE, Kenya and a number of free trade zones<sup>6</sup>.

### 1.7. The geographical reach of the ITTP

The ITTP is a global phenomenon and occurs in all regions and in all countries to some extent, whether they be developed or developing economically. The ITTP situation varies from country to country according to the taxation, legislative, regulatory and political environment of the country. Further, the situation may differ according to whether a country is involved in growing or production, or is a transport hub, or has poor border controls, or has either very high or very low taxation rates. As a result, different countries have different roles to play and manage.

When we refer to **source countries** we refer to countries from which illicit tobacco products originate, **destination countries** being countries for which the goods are intended, and **transit countries** being countries through which the goods pass on the way to their intended destination (*see figure 3*).

#### Box 6: The Transcrime Factbooks on Illicit Trade in Tobacco Products

These publications provide detailed analyses of the ITTP and its relationship with the legal market across varying countries and regions. Currently there are Factbooks on the UK, Italy, Ireland, Poland and Germany.

*Source: Transcrime*  
*Available language: English*  
*Link: <http://www.transcrime.it/en/transcrime-pubblicazioni/>*

If we look at destination countries, there are certain features by which some countries are targets for the sale of illicit tobacco products. These include, inter alia:

- Consumer acceptance of illegal products/cheaper products;
- Consumer inability to recognize illegal products;
- Comparative to neighboring countries, the tax rate is higher;
- Tobacco retail price, relative to income in the country and its distribution, is high (signaling a high tax tobacco taxation policy);
- Low level of law enforcement control on ITTP; and
- Inadequate legislation regarding smuggling, organized crime, intellectual property, confiscation of proceeds of crime, seizure and destruction, and low associated penalties.

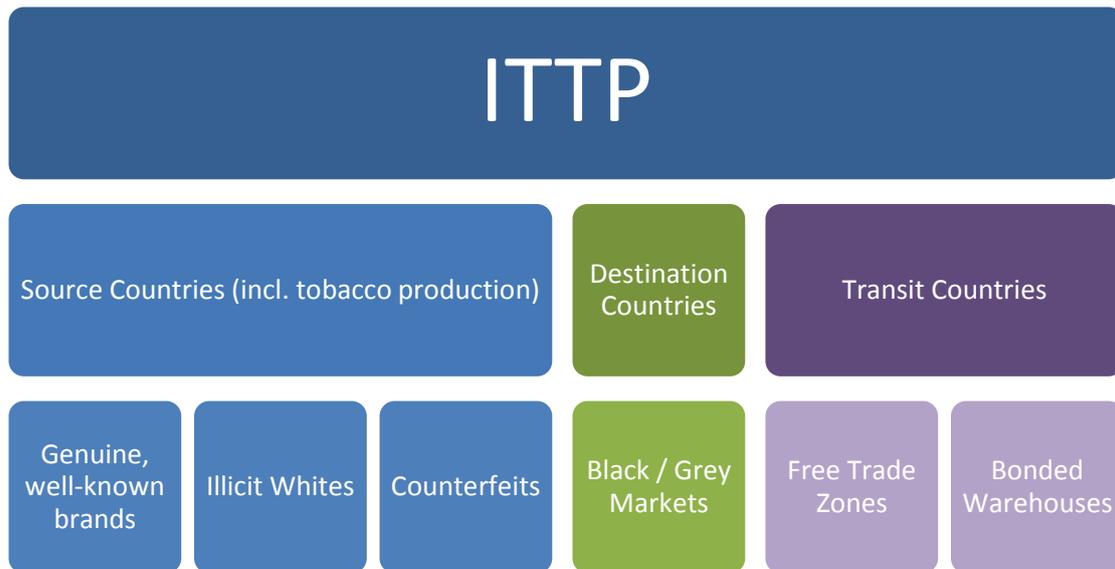


Figure 3: Source, destination and transit countries

### 1.7.1. Phantom Markets

Some countries such as Moldova, Latvia, Luxemburg, Russia, Afghanistan, and Andorra have been noted on export documents by manufacturers as final destinations. They are, however, referred to as “phantom markets” as these countries do not have sufficient demand for tobacco products to prove that the amount supplied was intended for the legitimate market. Interestingly, nominating phantom markets with relatively small populations as the final destination on export documents means that declared export levels would supply men, women and children with huge quantities of cigarettes individually. Thus, the oversupply of cigarettes to phantom markets signals the intention to introduce them into the black market in a neighboring country or in the region.

### 1.7.2. Europe

Europe is an interesting region with varying issues when it comes to the ITTP. If we look at Eastern and Western Europe, some assertions can be made based on studies conducted on ITTP by various entities<sup>7</sup>. Western Europe is more often than not the destination market, and Eastern Europe a source of illicit tobacco products, along with other source countries such as China and Paraguay. Western European countries such as the UK, France, Germany, Italy and Spain, have had serious problems with ITTP in the past and have managed over the course of the last 10 years to significantly reduce ITTP in their respective markets through targeted programmes and action (see box 7, “Case study: The UK’s Tackling Tobacco Strategy 2000”).

Eastern European countries, such as Russia, Ukraine and Montenegro are known to be producing illicit whites and counterfeit cigarettes which are destined for Western European markets.

Additionally, there are some countries which fit a number of categories. A good example is **Poland, which is a destination, source and transit country, and a transit country for tobacco products intended for Western Europe**<sup>8</sup>. The reason for this is its geographical positioning, sharing borders with Russia, Lithuania, Belarus, Ukraine, Slovakia, Czech Republic, and Germany and with coastline

along the Baltic Sea. Poland is the primary producer of finished tobacco products in Europe and the third largest finished tobacco product exporter worldwide<sup>9</sup>, after Germany and the Netherlands. Its Eastern European neighbors' cigarette prices are lower than Poland's, creating a demand for illicit whites produced by these same neighbors. Illicit whites and counterfeits produced by Poland's neighbors and intended for Western Europe, transit through Poland.

### Box 7: Case study: The UK's Tackling Tobacco Strategy 2000

The UK, along with Italy and Spain, had the largest incidence of illicit tobacco trade in Europe in the late 1990's and early 2000's. Within 10 years all three countries significantly reduced their percentage of illicit cigarette trade through effective policies and strategies. While the UK's market share of illicit tobacco is still above average compared to other EU member states, its Tackling Tobacco Smuggling Strategy is comprehensive. The illicit cigarette market reduced from 21% to 11% since 2000, and from 61% to 49% for hand-rolling tobacco over the same period.

Since the Strategy was first introduced in 2000, the size of the illicit cigarette market has almost halved itself in the UK with more than 20 billion cigarettes and over 2,700 tonnes of hand-rolling tobacco seized by Her Majesty's Revenue and Customs (HMRC). Importantly, there have been more than 3300 criminal prosecutions for tobacco offences from the year 2000 to date.

The current key objectives, introduced in April 2011, of the Strategy are:

- Targeting and disrupting the organized criminal gangs behind the fraud with the view that **prosecution** remains the most powerful sanction to tackle it;
- Seizing greater volumes of illicit product to undermine the economics of the fraud. Seizing sufficient volumes will take the profit out of the crime and remove the incentive to engage in it;
- Taking hard-hitting action against offenders to deter and punish those involved in the fraud;
- Reduce the availability of genuine tobacco products for fraud, through supply chain control, targeting duty free sales, and reducing minimum indicative levels for EU travellers;
- Decreasing demand for illicit tobacco products;
- Collaborating with overseas partners and international organizations: working with the industry.

Working with manufacturers is a key part of the strategy and signed Memoranda of Understanding (MOU) between the government and the main tobacco manufacturers were entered into in 2001 and enhanced in 2006, and required tobacco manufacturers to:

- Sell their tobacco products in brands and amounts consistent with legitimate demand in the export market;
- Respond to requests following significant seizures of their product to identify the production and movement history of the consignment; and
- Cease supplying customers where they fail to demonstrate effective product control.

Legislation complemented the existing MOUs imposing obligations on manufacturers and penalizing them for failure to comply, through hefty fines. Other civil and criminal sanctions available include seizure of goods, vehicles/vessels and possible non restoration, cash and confiscation of assets under proceeds of crime legislation, criminal prosecutions with imprisonment penalty of up to 6 months, financial wrong-doing penalties of up to 100% of the duties owed, fines of up to £5000 for selling illicit tobacco not bearing UK duty paid fiscal markings, prohibition on sale of tobacco products for up to 6 months, travel restrictions on repeat tobacco smugglers, and civil action including winding-up orders and bankruptcy.

The current UK tobacco market consists of genuine UK and non-UK brands of cigarettes, hand-rolling tobacco, counterfeits, and increasingly, illicit whites. The MOUs attempted to take steps against counterfeits as well by requiring manufacturers to take action against suspected trademark infringements where there was a reasonable prospect of success.

In April 2008, the UK Border Agency (UKBA) was launched. Currently HMRC and the UKBA work together on the joint implementation of the strategy.

**Source:** HMRC & UKBA "Tackling Tobacco Smuggling - Building our Success: A renewed strategy for HM Revenue & Customs and the UK Border Agency", April 2011

**Link:** [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_MiscellaneousReports&propertyType=document&columns=1&id=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246)

### 1.7.3. South America

When comparing regions, Latin America has the *highest* average level of illicit trade penetration in the world<sup>10</sup>. The tri-border area where Brazil, Paraguay and Argentina meet is at the core of much illicit trading activity. The ITTP in this region is fueled by the geographical, political, economic and legislative situation of each of these countries, facilitating illicit trade activity in drugs, arms and cigarettes. Other issues include corruption, porous borders, difficult terrain and geographical positioning, organized crime prevalence in the region, inadequate legislation, weak law enforcement and weak sanctions<sup>11</sup>.

#### Box 8: Flow of contraband

“The flow of Paraguayan contraband cigarettes to Brazil is 20-30 billion sticks annually. In contrast, legal exports to Brazil are zero.”

*Source: Tobacco Underground, International Consortium of Investigative Journalists, 2009*

The ITTP operates in multiple ways in this region, depending upon the countries involved, their own penetration by illicit trade, and their tobacco policies.

Brazil is a large exporting market for cigarettes and exports primarily to Paraguay and to Belgium. Whereas once Brazil was a major producer of tobacco and tobacco products, and tobacco played a major role in the Brazilian economy, in the late 90’s Brazil adopted significant tobacco control measures, recognizing the health implications of tobacco use. This shift saw Brazil become a major exporter for tobacco products in the region. Even though this reduced the consumption rate in Brazil of legitimate tobacco products, this did not account for the consumption of illicit tobacco products. If Paraguay’s import information is examined alongside Brazil’s export information, one can see the absorption of Brazil’s late 80’s consumption levels moving across to Paraguay around the same period. Importantly, Brazil is currently the largest consumer of illicit products in South America<sup>12</sup>.

The illicit trade in Brazil manifests itself through:

- The diversion of Paraguayan imports back into Brazil;
- The undeclared production of tobacco products in Brazil; or
- The alleged export of tobacco products to Paraguay which were never actually exported, in order to evade tobacco taxes.

The sudden large increase in Paraguayan consumption in the late 90’s points to the diversion of imported product from Paraguay into other South American countries and particularly back into Brazil. This is evidenced when analyzing Paraguay’s high importation levels which amount to huge consumption levels for each individual, including children, unless otherwise explained by smuggling<sup>13</sup>.

Paraguay itself hosts a massive illicit industry, a product of its history. In 1999, Brazil tried to counter the rampant increase in illicit tobacco consumption by levying a 150% tax on exports. In response, multi-national tobacco companies increased construction of manufacturing facilities in Paraguay, circumventing Brazil’s export tax. Today, Paraguay manufactures more than 2600 cheap cigarette brands, all registered with the Ministry of Industry and Commerce. However, the majority of these brands are not sold in the domestic market but are found in Brazil, Argentina, Uruguay and Bolivia, making Paraguay a major manufacturer of illicit whites. Paraguayan cigarettes are now becoming well known around the world, being cheaper to manufacture than Chinese cigarettes and of superior quality<sup>14</sup>.

#### 1.7.4. Asia Pacific

The Asia Pacific region also battles with ITTP issues, ranging from the production and distribution of counterfeits and illicit whites, to being recipients of illicit products. China, North Korea, Philippines and Vietnam are known sources for illicit cigarettes. Taiwan and Hong Kong (China) are destination countries for ITTP<sup>15</sup>. Singapore, as the world's busiest port and free zone, is a regional and global transit point for ITTP.

In Asia, the counterfeiting problem is the most pervasive ITTP issue. China is still the largest source country for counterfeit cigarettes in the world, estimated at manufacturing 190 billion counterfeit cigarettes annually<sup>16</sup> as well as being the largest consumer of tobacco products (one third of the world's smokers are Chinese<sup>17</sup>). Within its own borders, China has to contend with enforcing the law in areas resisting such control. This is particularly evident in Yunxiao in the Fujian Province, and in the Guangdong Province where the majority of counterfeit cigarettes are manufactured. The illicitly manufactured cigarettes are then exported from the major Chinese ports of Xiamen, Guangzhou, Shanghai and Shenzhen. Illicit factories are hidden in the hills and underground<sup>18</sup>. Attempts by police to fight illicit trade are often met with violence and armed resistance. The Chinese State Tobacco Monopoly Administration (STMA), the relevant authority in China for tobacco control, does not shy away from its responsibility in curbing the illicit trade, though the situation has yet to change. China also has some of the world's toughest laws when it comes to illicit trade, including long terms of imprisonment and hefty fines for offenders<sup>19</sup>.

While Paraguayan illicit whites have a market mostly in South America, Chinese counterfeits are found in markets around the world, as well as serving a domestic market in China.

Australia's illicit trade problem stems more from the large-scale smuggling of loose leaf tobacco into Australia, coming from Indonesia and Malaysia. This situation is unique to the Australian tobacco environment<sup>20</sup>.

#### 1.7.5. Middle East and Africa

Middle East and Africa are interesting regions which include source, destination and transit countries of genuine and counterfeit products and illicit whites. Many countries in Northern Africa provide transit for goods intended for the Middle East, and north African countries are destination countries for goods originating in the Middle East.

Given some major political crises in these regions, it comes as no surprise that countries that once did not suffer a significant problem with ITTP now have a major issue. The increase of ITTP in these countries can be tied to political upheaval, or more accurately the demise of political structures and governance. Egypt is a key source of contraband for North Africa now, whereas a few years ago the illicit tobacco problem was minute. The same applies to Libya, once a well-regulated market, and now a key destination country for illicit goods originating from the UAE<sup>21</sup>.

For the Middle East, Iran and the UAE are known sources of illicit whites production. The UAE is also known as a manufacturing source of illicit cigarettes (counterfeits and illicit whites) and a transiting

and transshipment source<sup>22</sup>. The presence of free trade zones, particularly the Jebel Ali Free Zone in Dubai, accounts for the ease of manufacturing illicit tobacco products and their dissemination into the region<sup>23</sup>.

Eastern and Southern Africa are not exempt from sharing the ITTP burden. They are both regions in Africa where illicit tobacco products are destined. Zimbabwe is the source of much trafficking of illicit cigarettes into Eastern and Southern Africa, as well as counterfeits originating from China, and illicit whites from Asia, the Middle East and Eastern Europe<sup>24</sup>.

### 1.8. Involvement of transnational organized crime in the ITTP

As far as the ITTP undermines public health strategies and creates unfair competition for legitimate businesses, a greater cause for concern is where it threatens public safety by allowing organized crime groups controlling illicit trade activity to be established or to be sustained. These groups, in turn, are able to direct illegally obtained profits towards supporting other serious organized crime activity. In fact, for its success, illicit trade relies significantly on organized crime and organized crime group involvement, to the detriment of the national security interests of countries.

#### Box 9: The big business of transnational organized crime

Transnational organized crime was estimated, in 2009, to turnover profits of **USD 870 billion**, amounting to 1.5 % of the global GDP.

This estimation is significantly large even though it is not based on local organized crime that does not cross States' borders.

To put this estimation in perspective, the figure is more than six times the amount of money used for official development assistance for 2009, and equals approximately 7% of the value of global merchandise export.

Source: UNODC Fact Sheet on "Transnational Organized Crime – the Globalized Illegal Economy" 2012



#### Box 10: Further reading on the ITTP phenomenon

Framework Convention Alliance, *How Big was the Global Illicit Tobacco Trade Problem in 2006?*, Prepared for the Second Session of the Conference of the Parties to the WHO FCTC, June 30 – July 6, 2007, Bangkok, Thailand.

Link: <http://www.fctc.org/publications/fact-sheets/illicit-trade/55-how-big-was-the-global-illicit-tobacco-trade-problem-in-2006>

Allen, Elizabeth, 'The Illicit Trade in Tobacco Products and How to Tackle It', International Tax and Investment Centre Publication, Second Edition, 2013.

Link: <http://www.iticnet.org/images/The%20Illicit%20Trade%20in%20Tobacco%20Products%20and%20How%20to%20Tackle%20It%20-%20Second%20Edition2.pdf>

KPMG Project Star 2012.

Link: [http://www.pmi.com/eng/media\\_center/media\\_kit/documents/project\\_star\\_2012\\_final\\_report.pdf](http://www.pmi.com/eng/media_center/media_kit/documents/project_star_2012_final_report.pdf)

Joossens, Luk & Raw, Martin, "From Cigarette Smuggling to Illicit Tobacco Trade", *Tobacco Control*, 2012: 21: 230-234.

Link: <http://tobaccocontrol.bmj.com/content/21/2/230.long>

Shafey, o., Cokkinides, V., Cavalcante, T.M., Teixeira, M., Vianna, C., Thun, M., "Case Studies in International Tobacco Surveillance: Cigarette Smuggling in Brazil", *Tobacco Control*, 2002: 11: 215-219.

Link: <http://tobaccocontrol.bmj.com/content/11/3/215.full#xref-ref-2-1>

### 1.8.1. ITTP requires organization

When examining the ITTP from the perspective of the varying types of criminal conducts involved, it is clear that it requires organization at a complex level to achieve success, i.e. to transport goods clandestinely and transnationally from one jurisdiction to another. This would necessarily involve individuals coordinating the business of the illicit trade, from the first venture to continued involvement after methods have proven successful and enabled the earning of significant profits.

The number of players involved in the illicit trade venture, all of whom perform some necessary function, the variety of expertise necessary to realize the illicit trade activity (e.g. those responsible for sourcing the technology, the manufacture of the products, the movement of the goods and routing, the distribution channels etc.), the planning required, the connections between individuals based in different regions and countries, all demonstrate that ITTP requires significant and complex organization.

The call to this criminality is quite simply that it is a **high profit, low risk** activity. Pre-established OCGs who deal in other commodities (drugs and arms etc.) and wish to fund their ventures are thus drawn by the ITTP. For example, the Italian Mafia has been involved in this trade since the early or middle of the twentieth century<sup>25</sup>.

### 1.8.2. The composition of the organized crime group today

Today, we appear to be at cross-roads with regards to how organized crime groups are viewed and defined. Traditional-type OCGs are not the only OCGs involved in ITTP. In fact, the groups involved in ITTP today are mostly hybrid groups, or networks of smaller OCGs interacting to achieve the material/financial benefit of the group as a whole. The larger group can also include single actors responsible for a specific role in the venture. What is important is the relationships and links between all the players (the network), and not whether the larger group is a traditional mafia by definition or not. Determining the links between players and mapping the structure of the groups involved is be vital in dismantling the operating networks.

Overall, there is an understanding that the groups operating today involved in serious crime:

- Are fluid/flexible;
- Are less integrated criminal structures of a network type (loosely structured);
- Are informal;
- Have undefined membership;
- Collaborate for their own mutual benefit;
- Have no clear boundaries; and
- Sometimes lack primary criminal objectives.

At a more practical level, however, legislators, policy makers, judges and prosecutors still operate under the impression that the organized crime group is a traditional “mafia” style group, centrally

controlled with a hierarchical structure, with a defined membership, clear boundaries, and operating with clear objectives in mind for their financial benefit. These outmoded stereotypes make it difficult to enact proper policies and laws to effectively put an end to an organized crime group's ability to engage in criminal activity for its financial/material benefit.

### 1.8.3. Engagement in a range of criminal conduct

It is significant to note that those engaging in illicit trade often deal in a range of commodities, not just one type. Also, they will necessarily have to engage in other criminalities to achieve success in the primary criminal venture, such as money laundering, bribery, fraud etc. Some offenders are content to stick to ITTP which provides a healthy profit, without the associated risk. Others use easy funds acquired from ITTP to fund other illicit trade activity requiring a greater financial and risk investment on their part.

In support of this argument, one can examine the network of organized crime groups engaged in various criminality (trafficking in other commodities, corruption, money laundering). Logically, routes for smuggling can stay the same even where commodities vary or trusted "colleagues" would be able to be utilized to smuggle other commodities where they have proved successful and trustworthy in the past. Putting the informal supply chain in place requires work, but once accomplished can be reused. Groups do not necessarily have to change their composition where they may change the commodity in which they deal, though of course they will have to account for increased risk where the goods smuggled carry greater penalties if caught.



#### Box 11: Further reading on organized crime

UNODC FACTS, "Transnational Organized Crime – the Globalized Illegal Economy", 2012.

**Link:** [http://www.unodc.org/documents/toc/factsheets/TOC12\\_fs\\_general\\_EN\\_HIRES.pdf](http://www.unodc.org/documents/toc/factsheets/TOC12_fs_general_EN_HIRES.pdf)

Desroches, F., "The Use of Organized Crime and Conspiracy Laws in the Investigation and Prosecution of Criminal Organizations", *Policing*, Volume 7, Number 4, February 2013, pp. 401–410

**Link:** <http://policing.oxfordjournals.org/>

Ayling, J., "Criminalising Organisations: Towards Deliberative Lawmaking", *LAW & POLICY*, Vol. 33, No. 2, April 2011

## 1.9. Involvement of terrorist groups in the ITTP

Given the high profit to low risk ratio involved in ITTP, organized crime groups, and even terrorists, are attracted by the ITTP to fund their other illicit activities, like drug, arms, human trafficking and of course, ultimately terrorist activities.

If one considers the advantages for terrorist organizations to engage in organized crime and the profits to be made, the links between transnational organized crime groups and terrorists can be drawn to some extent. The advantages of such collaboration, and the list is non-exhaustive, are as follows:

### Box 12: WCO Illicit Trade Report

“Commercial Fraud not only causes significant financial damage to the government’s budget and the economic stability/competitiveness of compliant traders, it may also be a source to finance terrorist or other criminal activities. Trafficking in cigarettes is, next to trafficking in drugs, assumed to be one of main sources to fund terrorist activities in the sub-Saharan region where criminals involved in this trafficking closely cooperate with regional terrorist groups.”

*Source: World Customs Illicit Trade Report 2012.*

*Link: <http://www.wcoomd.org/en/media/newsroom/2013/june/~media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Illicit%20Trade%20Report%202012/WCO%20REPORT%202013%20-%20BR.ashx>*

- Allows mutual interests to be exploited;
- Allows appropriate tactics to be shared;
- Capitalizing on increased capacities;
- Access to resources and knowledge;
- Access to pre-established organizational infrastructure and enhancing the same; and
- Expanded geographical reach.

In understanding the motivations of terrorist organizations who engage in organized crime, one must also keep in mind the complexity of drawing distinctions at times between terrorist organizations and organized criminal groups.

Historically there has been a clear separation between the two groups and their range of activity, their reach, and their motivations. This is perhaps no longer the case and the distinctions that once existed have now become increasingly blurred. Now organizational crime groups and terrorist groups are evolving, converging, transforming, or altering their ideological motivations and organizational compositions and the two once distinct groups have become similar. Belmokhtar, for example, was heavily criticized by Al-Qaeda in the Islamic Maghreb (AQIM), when he was part of their group, for being too focused on the financial benefits and less on the religious and political ideologies of the group. For this he was dismissed from the group. He then began his own terrorist organization, Katibat El-Moulathamoune (the Signed-In-Blood Battalion), and continued his engagement in illicit trade activity (*see box 13, “Case study: Mokhtar BELMOKHTAR”*).

Some experts also consider that groups such as AQIM and other Al-Qaeda inspired groups (e.g. Movement for Unity and Jihad in West Africa) are better described as “the instigators of the past decade's upsurge in regional criminality rather than as a united 'franchise' in pursuit of Islamist goals”<sup>26</sup>. This is demonstrated by the long involvement of such groups in criminal activity in the West African region, particularly in the smuggling activity of varying commodities.

Other cases involving cigarette smuggling to fund extremist activity involve the funding of the Real IRA through ITTP. Professor Louise Shelley, renowned for her work on criminal and civil cases in US courts, has studied this topic in depth. She highlights that the illicit trade in cigarettes generated significant profits for organizations listed as terrorist organizations in US<sup>27</sup>. One such case, outlined the prosecution of a Hezbollah cell operating out of Charlotte, North Carolina. This cell trafficked cigarettes from North Carolina to Michigan profiting from the tax differentials between the two States. It was found that profits obtained from the cigarette trafficking was sent to members of Hezbollah back in Lebanon<sup>28</sup>.

There are various international taskforces currently undertaking projects to establish the nexus between the two on a solid evidentiary basis, such as the Organization for Economic Cooperation and Development's (OECD) Taskforce on Charting Illicit Trade and the World Economic Forum's Global Agenda Council on Illicit Trade.

**Box 13: Case study: Mokhtar BELMOKHTAR**

It is alleged that Mokhtar Belmokhtar (AKA Mr. Marlboro) and his group Katibat el-Moulathamoune (the Masked Brigade) was responsible for the terrorist attack on 16 January 2013, against the international Tiguentourine gas plant in Aménas, Algeria, where more than 800 people were taken hostage and 41 foreign national workers were killed. Belmokhtar also claimed responsibility for a terrorist attack on 23 May 2013, against a French-owned uranium mine in Arlit, Niger, as well as a military base 150 miles away in Agadez, which were attacked by suicide bombers and truck bombs.

In 2003, he kidnapped 33 European tourists which he then ransomed, the money allowing him to establish a complex trading business throughout Saharan Africa. Belmokhtar used the ancient salt route also used by the Tuareg tribesmen to transport goods from the continent's west coast through to Timbuktu in Mali, and across Niger before arriving in the Algerian south. He secured close links with the Tuareg tribesmen through marriages to the daughters of four of their most prominent families, and made big profits for AQIM, the Algeria-based terrorist organization he was part of at the time, through smuggled cigarettes, arms, drugs and people, charging protection fees to the smugglers. He is also known throughout the Sahara as “Mr Marlboro”, due to running massive cigarette smuggling operations in the Sahel region.

Currently, INTERPOL has issued two red notices (international arrest warrants) against Belmokhtar, one requested by Canada and the other Algeria. Canadian authorities charged him with and convicted him in absentia of taking two of their citizens hostage for the benefit of, or, at the direction of or in association with a terrorist group. Algerian authorities charged him with and found him guilty of, amongst a myriad of offences, creation, management and organization of a terrorist group with a view to spreading terror among the population, possession and use of illegal ammunitions and explosives, kidnapping for obtaining a ransom, terrorist attacks against State security and murder and aggravated theft.

Belmokhtar (QI.B.136.03) was listed on the UN's 1267 Committee's Al-Qaida Sanctions List on 11 November 2003 pursuant to paragraphs 1 and 2 of resolution 1390 (2002) as being associated with Al-Qaida, Usama bin Laden or the Taliban for “participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf, or in support of” and “recruiting for” the Organization of Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01). Under its summary of reasons for his listing the UN Security Council provides additional information stating that “Mokhtar Belmokhtar is a former Algerian soldier with experience in training camps in Afghanistan. He is the longest serving active group leader and is the head of the southern zone for Katibat el Moulathamoune, a part of the Organization of Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01). His family connections with local tribes allow the group to capitalize on criminal opportunities in the southern Maghreb, such as smuggling, to finance terrorism.”

*Source: UN's 1267 Committee's Al-Qaeda Sanctions list*

*Links: <http://www.un.org/sc/committees/1267/NSQI13603E.shtml>  
<http://www.un.org/sc/committees/1267/pdf/AQList.pdf>*

**Box 14: UNODC Digest of  
Terrorist Cases**

The United Nations *Digest of Terrorist Cases* has dedicated Chapter IV to the Relationship between terrorism and other forms of crime. It specifically looks at terrorism and corruption, narcotics trafficking and organized crime.

**Source:** UNODC

**Available languages:** Arabic, Chinese, English, French, Russian, Spanish.

**Link:**<https://www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html>

At the national level, the US is one of a number of countries that has established links between cigarette smuggling and the financing of terrorism. The US Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) claims that organized criminal groups, including those with ties to terrorist organizations are engaged in illegal trafficking in alcohol and tobacco products, including counterfeit tobacco products.

In a press release, "Cigarette Smuggling – States lose millions in tax revenue", dated 18 March 2008, the ATF discusses two successful tobacco diversion investigations which resulted in convictions for material support to a terrorist organization (Hezbollah in both cases)<sup>29</sup>. One of these cases relating to Mohammed Hammoud is discussed below (see box 15, "Case study: United States v Mohamad Hammoud").

**Box 15: Case study: United States v Mohamad Hammoud**

The first large-scale cigarette trafficking case tied to terrorism was prosecuted in North Carolina, USA, in 2002. Mohamad Youssef Hammoud, born in Lebanon, along with two of his brothers and 22 others, were indicted in 2000 in a U.S. District Court in the Western District of North Carolina on numerous criminal counts which included the charge of providing material support to a designated foreign terrorist organization, Hezbollah.

From April to June 2002, Hammoud and one of his brothers, Chawki Hammoud, were tried before a federal jury in Charlotte. At trial, both were convicted of providing material support to Hezbollah, and on numerous other criminal counts, including conspiracy, cigarette smuggling, money laundering, racketeering, and immigration fraud. The guilty verdicts were delivered by the jury at the end of the five-week trial on June 21, 2002, after three days of deliberation.

On February 28, 2003, trial Judge Graham C. Mullen sentenced Mohamad Hammoud to 155 years in prison, which he later appealed, and through a three-year appeal process which ultimately carried the case to the U.S. Supreme Court, the U.S. Fourth Circuit Court of Appeals upheld all convictions however vacated Justice Mullen's original sentence. The Appeals Court remanded the case back to the U.S. District Court for the Western District of North Carolina for reconsideration of the original sentence. The resentencing hearing was held in order to give Mohamad Hammoud and the government the opportunity to argue a variance in U.S. sentencing guidelines.

According to the court record, Mohamad Hammoud led a cigarette smuggling organization which was responsible for the illegal smuggling of over \$8 million worth of cigarettes from North Carolina to Michigan during the late 1990s. The group took advantage of the fact that Michigan imposes a tax of \$7.50 per carton of cigarettes, while the North Carolina tax is only 50¢. It is estimated that the conspiracy involved a quantity of cigarettes valued at roughly \$7.5 million and that the state of Michigan was deprived of \$3 million in tax revenues. Testimony and trial evidence showed that some of the profits from the cigarette sales were sent to Hezbollah in Lebanon by Hammoud. The 2002 trial was the first in the country of a federal "material support to a designated terrorist organization" charge.

In January 2011, Mohamad Hammoud was resentenced to 30 years in the terrorism financing case. In 2012, Hammoud again appealed to the United States Court of Appeals for the Fourth Circuit which, having found no reversible error, on June 21, 2012, affirmed the judgment of the District Court. Hammoud was initially sentenced to 155 years in prison, which after appeal was reduced to 30 years.

Approximately 50 defendants tied to the operations faced charges ranging from cigarette smuggling and money laundering to material support of terrorists. Evidence presented found that the clandestine operations made millions of dollars, some of which was traced back to Hezbollah leaders in Lebanon.

**Source:** UN's 1267 Committee's Al-Qaeda Sanctions list

**Link:** <http://www.un.org/sc/committees/1267/pdf/AQList.pdf>



**Box 16: Further reading on ITTP and the connection with terrorism**

Chatham House reports on terrorism in the West African Region

**Link:** <http://www.chathamhouse.org/>

The Jamestown Foundation's publications on Islamist militants in North Africa

**Link:** <http://www.jamestown.org>

Maarten van Dijck, "The Link between the Financing of Terrorism and Cigarette Smuggling: What Evidence is There?", HUMSEC Journal, Issue 1, June 2007

**Link:** <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=110401>

Unpublished judgment from the United States District Court for the Western District of North Carolina, decided 21 June 2012 (appeal)

**Link:** <http://www.ca4.uscourts.gov/Opinions/Unpublished/114164.U.pdf>

See also:

U.S. Immigration and Customs Enforcement, News Release of January 27th 2011.

**Link:** <http://www.ice.gov/news/releases/1101/110127charlotte.htm>

United States v. Hammoud, United States District Court for the Western District of North Carolina 381 F.3d 316 (4th Cir. 2004)

**Link:** <http://www.ca4.uscourts.gov/Opinions/Published/034253.P.pdf>

United States v. Hammoud, United States Court of Appeals for the Fourth Circuit, No. 11-4164.

**Link:** <http://www.gpo.gov/fdsys/pkg/USCOURTS-ca4-11-04164/pdf/USCOURTS-ca4-11-04164-0.pdf>

John Rollins & Liana Sun Wyler, "Terrorism and Transnational Crime: Foreign Policy Issues for Congress", Congressional Research Service, 11 June 2013.

**Link:** <http://www.fas.org/sgp/crs/terror/R41004.pdf>

Shelley, L., Melzer, S., "The Nexus of Organized Crime and Terrorism: Two Case Studies in Cigarette Smuggling", *International Journal of Comparative and Applied Criminal Justice*, Spring 2008, Vol. 32, No. 1.

**Link:** [http://tracc.gmu.edu/pdfs/publications/illicit\\_trade\\_publications/Shelley\\_Melzer.pdf](http://tracc.gmu.edu/pdfs/publications/illicit_trade_publications/Shelley_Melzer.pdf)

## Part II

# THE INTERNATIONAL LEGAL FRAMEWORK



## 2. The international legal framework

### 2.1. Overview

Illicit trade in tobacco products:

- Is a **multi-faceted phenomenon**, including various activities as have been enumerated in table 1 (smuggling, counterfeiting, diversion of genuine and counterfeit tobacco products, and illicit whites);
- Is **transnational** in nature; and
- Involves a **multiplicity of jurisdictions** (countries of origin, transit and destination).

As such there is an increased necessity for international cooperation to help come to terms with the issues involved and to implement effective strategies to tackle the problem.

A number of multilateral legal instruments, whether sector-specific treaties or overarching criminal law treaties, can be used to address illicit trade. Countries have supported the adoption of these treaties, which have resulted in the creation of international standards and the harmonization of national laws in their respective sectors and subject areas.

Careful analysis of the international legal framework dealing with illicit trade across sectors and across criminalities demonstrates the **interconnection between international treaties** covering various aspects of illicit trade and promotes a treatment of the issue which is all-inclusive and targeted at the primary illicit trade-related offence (in this case the ITTP) as well as its predicate crimes.

Knowing and understanding the international legal framework is vital in any discussion of how to combat the ITTP, not only because it offers solutions that when used together can be quite effective, but also on a more basic level. Indeed, it:

- Gives a **common understanding of concepts** on an international platform;
- Creates **minimum standards**; and
- Requires the **harmonization of national legislation**, creating channels for international cooperation.

The international legal framework relevant to fighting ITTP is made up of various legal instruments. Any sound implementation strategy will have to take all these instruments into account as a “package”. Designing an implementation strategy for one treaty will have direct consequences on the implementation of other treaties. For instance, States that have already implemented the United Nations Convention against Transnational Organized Crime (UNTOC) will most likely find it easier to implement the Tobacco Protocol as this latter draws heavily on provisions contained in UNTOC. Further, States that are planning to ratify/implement UNTOC should seriously consider engaging in the parallel or at least closely coordinated ratification/implementation of the Tobacco Protocol, as much legislative change to be made under the framework of the former will almost automatically benefit the latter.

Table 2 lists the most relevant multilateral legal instruments that should be considered (if and when they enter into force for each individual country) to treat illicit trade in tobacco products. Each one will be analyzed in turn to provide a more complete picture of what the instrument covers and how it can be utilized to address the ITTP, either in isolation or in connection with other treaties.

Table 2: International legal framework to use for ITTP	
<b>Cross-sectoral criminal justice treaties</b>	United Nations Convention on Transnational Organized Crime, 2000
	United Nations Convention Against Corruption, 2003
	United Nations Convention for the Suppression of the Financing of Terrorism, 1999
<b>Treaties on the protection of intellectual property</b>	Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994
<b>Sector-specific treaties</b>	Framework Convention on Tobacco Control, 2003
	Protocol to Eliminate Illicit Trade in Tobacco Products, 2012

## 2.2. Cross-sectoral criminal justice treaties

When criminals engage in ITTP, they do not just engage in this conduct solely but engage in many related criminal/illicit conducts to facilitate the offence, such as:

- **Bribery** (e.g. cigarette smugglers may bribe customs officials to ensure consignments pass customs controls);
- **Money laundering** (this is necessary for proceeds of crime to be used by criminals);
- **Corruption** (accepting or offering bribes, abusing a position of power to allow illicit cigarettes to enter a jurisdiction without the necessary checks, assisting groups in forging documents, or issuing clearance documents for a criminal group in return for a financial benefit etc.);
- **Participating in an organized criminal group** (organized crime groups may be responsible for specific cigarette smuggling activity); and
- **Obstruction of justice** (Members of a criminal group may intimidate witnesses, threaten judges, etc. in order to evade the consequences of justice).

Further, the proceeds derived from engaging in the ITTP may be used by some criminals to finance terrorist organizations and terrorist activities (*see section 1.9, “Involvement of terrorist groups in the ITTP”*).

A number of international treaties exist that provide the legal framework for addressing such conducts. These are referred to as **cross-sectoral criminal justice treaties**. Although they were not specifically conceived to address ITTP, they do provide important mechanisms to tackle the ITTP from a criminal justice perspective. The key features of these treaties are:

- An obligation to **criminalize certain conduct**;
- **Expanded jurisdiction** for domestic courts;
- Obligations to **freeze and confiscate** instrumentalities and proceeds of crime; and
- **Legal bases** and mechanisms to facilitate **international cooperation**, especially through extradition and mutual legal assistance.

This section will focus on the **United Nations Convention against Transnational Organized Crime (UNTOC)**, the **United Nations Convention against Corruption (UNCAC)** and the **International Convention for the Suppression of the Financing of Terrorism**, as these appear to be the three most important and globally applicable criminal justice treaties with direct relevance in the context of the ITTP.



### Box 17: The criminal justice approach: the added value of regional and bilateral instruments

Several provisions of UNTOC and UNCAC directly recognize the importance of States parties cooperating in criminal matters through **regional and bilateral instruments**

For example, in the anti-corruption area, a number of treaties are in force at the **regional level**. To name but a few:

#### African Union

- African Union Convention on Preventing and Combating Corruption, 2003

*Link to the text of the treaty:* <http://www.au.int/en/content/african-union-convention-preventing-and-combating-corruption>

#### Council of Europe

- Criminal Law Convention on Corruption, 1999

*Link to the text of the treaty:* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=173>

- Additional Protocol to the Criminal Law Convention on Corruption, 2003

*Link to the text of the treaty:* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=191>

- Civil Law Convention on Corruption

*Link to the text of the treaty:* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=174>

- Model Code of Conduct for Public Officials\*
- Agreement Establishing the Group of States against Corruption\*
- Twenty Guiding Principles for the Fight against Corruption \*
- Council of the European Union framework decision on combating corruption in the private sector\*

#### Economic Community of West African States (ECOWAS)

- Economic Community of West African States Protocol on the Fight against Corruption\*
- Economic Community of West African States Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security\*

#### European Union

- Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union\*
- Convention on the protection of the European Communities' financial interests\*
- Protocol to the Convention on the protection of the European Communities' financial interests\*
- Second Protocol to the Convention on the protection of the European Communities' financial interests\*

#### Organization of American States

- Inter-American Convention against Corruption, 1996

*Link to the text of the treaty:* <http://www.oas.org/juridico/english/treaties/b-58.html>

#### Organisation for Economic Co-operation and Development (OECD)

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 2003

*Link to the text of the treaty:* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=191>

- Revised Recommendation of the Council of the Organization for Economic Cooperation and Development on Combating Bribery in International Business Transactions\*

#### Southern African Development Community (SADC)

- Southern African Development Community Protocol against Corruption\*

*\*Link to the text of these treaties: "Compendium of International Instruments against Corruption", at [http://www.unodc.org/documents/corruption/publications\\_compendium\\_e.pdf](http://www.unodc.org/documents/corruption/publications_compendium_e.pdf)*

Whereas these instruments have a narrower, geographically-limited scope of application than UNCAC, they can offer alternative cooperation channels and solutions that are tailor-made to the characteristics and dynamics of specific regions.

In addition, an important role is played by **bilateral treaties**, which often deal with the general relationship between two countries in the area of law enforcement cooperation, extradition and mutual legal assistance. These instruments normally cover the most serious offences set forth in the legislation of both States. It is up to policy-makers and practitioners in each State to make an inventory of all bilateral instruments in criminal matters in force and assess, on a case by case basis, whether investigations and proceedings in illicit trade related conducts can benefit from their application.

### 2.2.1. United Nations Convention on Transnational Organized Crime (UNTOC)

One of the most important cross-sectoral criminal justice treaties that provides a means of combatting the ITTP is the United Nations Convention on Transnational Organized Crime (UNTOC). As already mentioned, OCGs are becoming more and more involved in the ITTP. This necessitates the implementation of an effective and robust international legal framework to address the criminal law aspects of the problem. In this respect, UNTOC is a key convention for developing this legal framework and is indeed a primary element of it.

UNTOC is the first globally applicable instrument aimed at repressing the phenomenon of organized crime on a transnational scale in its most diverse manifestations. While previous international instruments in criminal matters adopted in the UN context, such as the 1988 Drug Convention, focus on the need to suppress specific conducts, UNTOC seeks to deal with **organized crime understood as a “process”,** or “method” for the commission of crimes.

The specificity of UNTOC lies in the identification of the structure and dimensions acquired by modern OCGs as the true element of dangerousness and having set up a strategy aimed at hitting them at the root. Such an approach explains the applicability of UNTOC to an indefinite number of offences defined as **“serious crimes”**. These are identified in art. 2(b) with reference to the fact that they are punishable with a maximum deprivation of liberty of at least four years or a more serious penalty.

Besides “serious crimes”, UNTOC applies to the “prevention, investigation and prosecution” of:

- Offences established by the Convention, notably:
  - Participation in an organized crime group (art. 5);
  - Laundering of proceeds of crime (art. 6);
  - Corruption (art. 8); and
  - Obstruction of justice (art. 23).
- Conditions for the applicability of UNTOC are that:
  - The offence is **transnational** in nature; and
  - An **organized criminal group** is involved.

#### United Nations Convention against Transnational Organized Crime

**Adopted:** 15 November 2000

**Opened for signature:** 12 December 2000-12 December 2002

**Entry into force:** 29 September 2003

**Status:** *Signatories:* 147 *Parties:* 179

**Latest accession:** Thailand, 17 October 2013

**Depositary:** Secretary-General of the United Nations

**Link to the text of the Treaty and its Protocols:**  
<http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext>

**Link to the current status of the Treaty:**  
[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)

*(As of June 2014)*

The phrase “transnational in nature” is interpreted broadly to cover crimes that are:

- Committed and/or prepared, planned, directed or controlled in more than one State party;
- Committed in one State but have substantial effects in another; and
- Committed in one State but involving an organized criminal group in another (art. 3.2).

The Convention defines an “organized criminal group” as:

- A structured group of three or more persons;
- Existing for a certain period;
- Acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the convention; and
- In order to obtain, directly or indirectly, a financial or other material benefit (art. 2(a)).

The definition of an “organized criminal group” provided by UNTOC does not define what type of “structure” applies to the group, thus appearing to recognize that those criminal groups involved are dynamic, adaptable, opportunistic, and sometimes of a temporary nature, taking into account the range of serious crimes engaged in by these groups as well as their fluidity. This is important as it will allow prosecutors to meet evidentiary burdens associated with proving the elements of the charge.

Neither transnationality nor involvement of an organized criminal group must be made elements of these offences in domestic law (art. 34.2). This means that alleged offenders can be prosecuted for counterfeiting/smuggling cigarettes, laundering proceeds of those offences, etc., without the need for the prosecution to prove that the offence was transnational in nature and involved an OCG. However, in order to rely on the mutual legal assistance (MLA) provisions of UNTOC, States parties will have to show on the basis of “reasonable grounds” that an OCG acting transnationally is indeed involved.

Crucially, States will be able to use UNTOC to combat the ITTP:

- Where one or more offences established by UNTOC itself have been committed as part of the ITTP; or
- Where engagement in the ITTP is established as a serious criminal offence domestically, i.e. in order to fall within the scope of UNTOC, an offence of counterfeiting/smuggling cigarettes would need to be a criminal offence with a penalty of at least four years imprisonment.

#### Box 18: UNTOC highlights

- Extends its scope of application to all “serious crimes” committed by organized criminal groups acting transnationally (art. 3).
- Describes the constituent elements of four basic conducts which States parties are required to criminalize.
- Outlines a broad legal framework for the identification, tracing, freezing and confiscation of **instrumentalities and proceeds of crime** (art. 12).
- Requires States parties to hold **legal persons** liable, whether criminally, civilly or administratively (art. 10).
- Provides for extensive provisions covering **extradition, mutual legal assistance** and **law enforcement cooperation** (arts. 16-18, 27).
- Encourages States parties to set up **joint investigation teams** and utilize **special investigative techniques** (arts. 19-20).
- Sets forth a legal framework for **witness protection** and to provide **collaborators of justice** with mitigated punishment (arts. 24-25).
- Establishes a **Conference of the Parties** to monitor the implementation of UNTOC (arts. 32-33).

Organizing the smuggling of cigarettes from country A to country B will normally necessitate the involvement of more than 3 people. It will require those involved to *act in concert* and the aim would be to smuggle cigarettes without paying the owed duties and taxes, which could constitute a serious crime (a penalty of more than 4 years imprisonment), to obtain a *financial benefit*. This group will probably have existed for *a period of time*, as one cannot plan smuggling activity overnight.



### Box 19: UNTOC Legal resources

#### Digest of Organized Crime Cases

UNODC and INTERPOL have developed a compilation of cases and good practices related to organized crime with the aim of promoting the implementation of the Convention and its Protocols; and to assist policymakers, judicial officials, central authorities and judicial and investigative police in conducting efficient investigative and prosecutorial action.

It contains relevant case law and legal commentaries on cases involving organized crime from different countries and for both, traditional and new and emerging forms of crime. It provides a set of “lessons learned” about problematic and challenging aspects of the criminal justice response in six areas: criminalization; investigation and prosecution; international law enforcement and judicial cooperation; proceeds of crime; specific offences; and prevention.

Source: UNODC

Available languages: English, French, Italian, Spanish

Link: <http://www.unodc.org/unodc/en/organized-crime/digest-of-organized-crime-cases.html>

#### Legislative database (SHERLOC)

Through its Sharing Electronic Resources and Laws against Organized Crime (SHERLOC), UNODC has developed a database of legislation containing national laws against organized crime.

The collected legislation can be searched by country; UNTOC article; crime type; liability of legal persons; jurisdiction and international cooperation; law enforcement measures; and measures to protect witnesses and victims.

Source: UNODC

Link: <https://www.unodc.org/cld/index-sherloc-leg.aspx>

#### Model Legislative Provisions against Organized Crime

This model law provides an assistance tool to States in the process of becoming party to, or implementing UNTOC and the Protocols thereto.

It facilitates the review and amendment of existing legislation and the adoption of new legislation, focusing on the implementation of articles 2, 3, 5, 10, 11, 15, 17 and 19-31.

Source: UNODC

Available languages: Arabic, Chinese, English, Russian

Link: [http://www.unodc.org/unodc/en/organized-crime/tools-and-publications.html#Model\\_Laws\\_and\\_Treaties](http://www.unodc.org/unodc/en/organized-crime/tools-and-publications.html#Model_Laws_and_Treaties)

#### Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime

This compendium of good practices intends to serve as a reference tool to achieve effective and sustainable programmes for the protection of witnesses and to ensure the safety of individuals giving testimony in a judicial setting or cooperating with law enforcement investigations.

Source: UNODC

Available language : English

Link: <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

#### Legislative Guides for the United Nations Convention against Transnational Organized Crime and the Protocols thereto

The UNODC has developed this explanatory tool to assist policymakers and legislators in the ratification and implementation of UNTOC and its Protocols.

The guide lists items that are mandatory or optional for States parties and relates each article and provision to other regional or international instruments and to examples of how States with different legal traditions might address provisions of UNTOC.

Source: UNODC

Available languages: Arabic, Chinese, English, French, Russian, Spanish

Link: <http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>

### 2.2.2. United Nations Convention Against Corruption (UNCAC)

Corruption is a fundamental element and facilitator of the ITTP.

Bribery can be resorted to at different phases of the tobacco supply chain. For example, bribes can be offered to customs officials to permit the cross-border movement of smuggled cigarettes. When counterfeiting operations are involved, bribes might be given to law enforcement officials to allow the operation of an illegal manufacturing facility. Corruption can also play a role in the process of obtaining various types of permits and licenses from national authorities. While traditionally *bribery* has involved giving undue advantages to public officials, increasing attention is being devoted to corruption practices affecting the private sector. In the context of illicit trade, for example, one could imagine an employee of a legitimate company being bribed in order to divert goods otherwise destined for the regular market.

The United Nations Convention Against Corruption (UNCAC) is the first global, legally binding instrument against corruption.

While UNTOC requires that States parties criminalize corruption in its classical form (active and passive bribery of national public officials), UNCAC goes much further. It defines a much wider range of “**corruption-related**” **conducts**, notably:

- Bribery of national public officials (art. 15)
- Bribery of foreign public officials, officials of public international organizations (art. 16)
- Embezzlement, misappropriation or other diversion of property by a public official (art. 17)
- Abuse of functions, purpose of obtaining undue advantage (art. 19)
- Bribery and embezzlement in private sector (arts. 21 & 22)
- Laundering of proceeds of crime (art. 23)
- Concealment of property (art. 24)
- Obstruction of justice (art. 25)

Unlike UNTOC, its scope of application is broader in that it is independent from the involvement of an organized criminal group. UNCAC provisions can therefore be utilized to support criminal proceedings against individuals acting by themselves or groups that do not fulfil the requirements of an “organized criminal group” set forth in UNTOC.

#### United Nations Convention against Corruption

**Adopted:** 31 October 2003

**Opened for signature:** 9 December 2003 - 9 December 2005

**Entry into force:** 14 December 2005

**Status:** Signatories: 140 Parties: 171

**Latest accession:** State of Palestine, 2 April 2014

**Depositary:** Secretary-General of the United Nations

**Link to the text of the Treaty:**

<http://www.unodc.org/unodc/en/treaties/CAC/>

**Link to current status of the Treaty:**

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-14&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en)

(As of June 2014)

Last but not least, UNCAC is the first and only international instrument to contain extensive provisions on asset recovery (arts. 51-59). These aim at facilitating the return of assets exported abroad through corruption practices. **Asset recovery** is defined as a “fundamental principle” of the Convention (art. 1(b)), and is of particularly acute concern for several developing countries which have been deprived of their national wealth through the corrupt practices of their leaders. Chapter V of UNCAC attempts to reach a delicate balance between the legitimate goal of countries seeking to recover their assets and the legal and procedural safeguards in force in countries from which assistance is sought.

#### Box 20: UNCAC highlights

- Offers a particularly broad definition of “**public official**” focused on the functions performed by the incumbent rather than the “nominal title”. The definition includes, in particular:
  - (i) any person holding a legislative, executive, administrative or judicial office of a State party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;*
  - (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State party and as applied in the pertinent area of law of that State party;*
  - (iii) any other person defined as a “public official” in the domestic law of a State party. [...] (art. 2)*
- Identifies a number of areas that are key in the development of effective policies and practices to prevent corruption, notably:
  - The creation of **national anti-corruption bodies** which shall be afforded the necessary independence to carry out their functions “effectively and free from any undue influence” (art.6).
  - The adoption of systems for the recruitment, hiring, retention, promotion and retirement of civil servants and non-elected public officials “based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude” (art.7).
  - The promotion of **codes of conduct for public officials** (art. 8).
  - The establishment of transparent and objective **public procurement processes** and the sound and accountable management of public finances (art. 9).
  - The promotion of various measures to grant civil society an enhanced role in corruption prevention by strengthening its contribution to decision-making processes and ensuring public access to information (art.13).
- Sets forth various types of conducts which States parties are either required to criminalize or to consider for criminalization.
- Deals with the elements needed to support the correct functioning of the criminal justice process in corruption-related cases. These include: the **liability of legal persons**; a legal framework for States parties to take **freezing, seizing and confiscation measures**, measures for the **protection of witnesses and reporting persons** (so called “whistle blowers”), the establishment of **bodies specialized in combating corruption through law enforcement**, access to **bank information** and **criminal records**, etc. (arts. 26, 31, 32, 33, 36, 40, 41).
- Sets forth a broad legal framework for cooperation through extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques (arts. 43-50).
- Establishes **the Conference of the States parties** as a forum to promote and review the implementation of UNCAC. To assist in these tasks, the Conference has established an **intergovernmental review mechanism** based on the “peer review” principle. According to such mechanism, the anti-corruption policies and legal framework of each State party is examined by two other States parties with the technical and logistical support of the UNODC Secretariat (arts. 63-64).



## Box 21: UNCAC Legal resources

### Asset Recovery Handbook: A Guide for practitioners

The **Asset Recovery Handbook** is a tool developed by the World Bank and UNODC to improve the recovering of assets stolen through corruption practices.

The Handbook is a tool for practitioners, including law enforcement officials, investigating magistrates, and prosecutors, asset managers and policy makers in civil and common law jurisdictions.

It points at the differences across jurisdictions in the terminology applied, the authorities entitled to conduct investigations, specific procedures, etc.; and highlights how different concepts or practices may offer similar solutions to the same challenges.

It is divided in 9 chapters to guide the reader in the different aspects of an asset recovery process, including establishing a relationship with foreign counterparts for international cooperation, techniques used to trace assets, provisional measures to secure assets prior to confiscation, etc.

*Source: World Bank*

*Available languages: Arabic, English, French, Korean, Russian, Spanish, Thai*

*Link: <http://star.worldbank.org/star/publication/asset-recovery-handbook>*

### Legislative Guide for the Implementation of the United Nations Convention against Corruption

Like the Legislative Guides for UNTOC, this guide has been drafted mainly for policymakers and legislators in States preparing for the ratification and implementation of the Convention but can also provide a basis for bilateral technical assistance projects. It can be applied in different legal traditions with a focus on those provisions which will require legislative change and/or action prior to or at the time the Convention becomes applicable to the State party concerned.

The Guide identifies the legislative measures that States Parties are *required to take* –i.e. mandatory requirements-, those that they are *required to consider* –i.e. optional requirements- and those that they *may wish to consider* –i.e. optional measures.

The content is not authoritative and the guide is not intended to provide definitive legal interpretation of the articles of the Convention.

*Source: UNODC*

*Available languages: Arabic, Chinese, English, French, Russian, Spanish*

*Link: <https://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html>*

### Technical Guide to the United Nations Convention against Corruption

The Technical Guide has been developed by the Division for Treaty Affairs of the UNODC to assist anti-corruption practitioners and authorities in their efforts to implement the UNCAC.

It complements the Legislative Guide –which is addressed more specifically to legislators – through the inclusion of best practices, policy options and technical and legal advice.

*Source: UNODC*

*Available languages: Chinese, English, French, Russian, Spanish*

*Link: <http://www.unodc.org/unodc/en/treaties/CAC/technical-guide.html>*

### Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses

MESICIC, the Anti-Corruption Mechanism of the Organization of American States (OEA), has adopted a model law to improve the fight against corruption and related crimes.

This tool can support States in the implementation of international instruments against corruption by facilitating the mechanism of reporting acts of corruption and protecting those who either give information or who act as witnesses in a corruption case.

*Source: OAS*

*Available languages: English, Spanish*

*Link: [http://www.oas.org/juridico/english/model\\_laws.htm](http://www.oas.org/juridico/english/model_laws.htm)*



### Box 21: UNCAC Legal resources (continued)

#### Legal Library against Corruption

UNODC provides access to adopted national legislation around the world against corruption. This tool facilitates the process of searching information because it offers the possibility to find legislation related to each specific article of the United Nations Convention against Corruption, including the criminalization of bribery, embezzlement, abuse of functions, money laundering, obstruction of justice, among others.

*Source: UNODC*

*Link: <http://www.track.unodc.org/LegalLibrary/Pages/home.aspx>*

#### StAR Corruption Cases Search Center

The Stolen Asset Recovery Initiative (StAR), a joint initiative between The World Bank and UNODC, offers a range of databases including completed and ongoing asset recovery related cases. The databases contain an extensive list and description of cases involving large-scale corruption; provides links to judicial processes and their final decisions; and gives further information on which articles of the Convention are involved in each case.

*Source: STAR*

*Link: <http://star.worldbank.org/corruption-cases/?db=All>*

### Box 22: OECD's instruments and initiatives

The OECD has been playing a leading role in the fight against corruption over the past 15 years by developing anti-corruption standards and normative principles that govern the conduct and activities of the public and private sectors (the latter focusing on multinational enterprises). In addition to being instrumental in the adoption of the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the OECD has intensified its fight against corruption by adopting measures with respect to the operation of export credits, tax deductibility, transparency and accountability, especially in the public sector.

**OECD's Guidelines for Multinational Enterprises** are particularly interesting. They are non-binding Government recommendations to multinational enterprises, providing voluntary principles and standards for responsible business conduct in a variety of areas. Specific steps have been taken to promote implementation of the Guidelines, including establishing national contact points (government offices responsible for the implementation and promotion of the Guidelines). The Guidelines are one of the first international instruments recognizing multinational enterprises as international actors. The recommendations contained therein are particularly relevant to the fight against the ITTP as they apply directly to the manufacturers of tobacco products.

*Available languages: English, French*

*Link: <http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>*

### 2.2.3. International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)

The 1999 Terrorist Financing Convention aims to facilitate the prosecution of persons accused of involvement in the financing of terrorist activities by obliging States parties to prosecute them or extradite them. States parties are also required to take a number of measures to prevent and counteract the financing of terrorism, so as to prevent the commission of terrorist acts by **“drying up” terrorists’ sources of financing.**

The Terrorist Financing Convention requires the criminalization of **acts of providing or collecting funds** “directly or indirectly, unlawfully and willfully [...] with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out”:

- An act which constitutes an offence under one of the previous nine “sectoral” terrorism-related conventions listed in the annex to the Convention; or
- “Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act” (art. 2.1).

For the purposes of the Convention, “Funds” are defined as:

“Assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.”

Crucially, the above definition of “funds” appears broad enough to include tobacco products, whenever they are provided or collected with the intention that they should be used, or with knowledge that they will be used to carry out terrorist activity. Thus those engaged in ITTP activity could be prosecuted under the relevant provisions relating to the financing of terrorism whereby the supply of the cigarettes themselves ended up supporting/enabling terrorist activity, regardless of whether or not the terrorist act is eventually committed.

Where States manage to make the necessary connections between cigarette smuggling and the financing of terrorist activity, this convention can be particularly useful in terms of assisting States for the purposes of international cooperation against the ITTP. Case studies shown in boxes 13 and 15 (“*Mokhtar Belmokhtar*” and “*United States v Mohamad Hammoud*”) illustrate two scenarios in which the Financing Convention might find ideal application.

#### International Convention for the Suppression of the Financing of Terrorism

**Adopted:** 9 December, 1999  
**Opened for signature:** 10 January 2000 – 31 December 2001  
**Entry into force:** 10 April 2002  
**Status:** Signatories: 132 Parties: 186  
**Latest accession:** Timor-Leste, 27 May 2014

**Depositary:** Secretary-General of the United Nations

**Link to the text of the Treaty:**

[https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2\\_en.xml](https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml)

**Link to current status of the Treaty:**

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=XVIII-11&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-11&chapter=18&lang=en)

(As of June 2014)

## 2.3. Treaties on the protection of intellectual property (IP)

Counterfeit products are products that generally breach intellectual property (IP) laws protecting trademarks, although they may also involve breaches of copyright, industrial designs, patents and undisclosed information. As reflected in the report of the expert group convened by the Conference of the Parties to the Framework Convention on Tobacco Control (*see chapter 3*), counterfeit tobacco products pose a significant challenge to eliminating illicit trade in tobacco products<sup>30</sup>.

### Box 23: Trademarks

Trademarks are words, names, symbols, devices or combinations of these, used by manufacturers and merchants to identify their goods and distinguish them from the products of their competitors.

The international legal framework on IP rights involves a multiplicity of multilateral and regional instruments. The World Intellectual Property Organization (WIPO) classifies those instruments into three categories:

- **Standard-setting treaties** which define agreed minimum standards for the protection of IP rights (for example, the 1883 Paris Convention for the Protection of Industrial Property);
- **Global protection system treaties** which ensure that the registration of IP rights in one jurisdiction takes effect in all States parties (for example, the 1891 Madrid Agreement concerning the International Registration of Marks); and
- **Classification treaties** which create systems for the organization of information relating to inventions, trademarks and industrial designs into indexed, manageable structures for easy retrieval (for example, the 1957 Nice Agreement concerning the International Classification of Goods and Services for the purpose of registration of Marks).

The treaties falling within the above categories represent the cornerstone of the legal framework for the protection of IP rights. They define the scope of IP rights, set forth standards and procedures to create, manage and protect IP rights against infringements. At the same time, the only international instrument currently in force which contains some basic provisions for the protection of IP rights through criminal laws and procedures is **the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement)**.

### 2.3.1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was negotiated under the auspices of the World Trade Organization (WTO). It sets minimum standards of protection for IP by encompassing all of the main areas of IP law, including those relevant to counterfeit tobacco products.

It sets forth four broad categories of enforcement measures to be put in place at the national level:

- **Civil and administrative procedures and remedies:** The Agreement deals with access by right holders to civil judicial procedures in Member States' jurisdictions. It authorizes the judiciary to impose certain remedies for parties whose rights have been infringed, such as injunctions, ordering infringers to pay damages to the right's holder, and to destroy or dispose of the illicit goods and the materials and implements used to produce them outside the channels of commerce (Part III, section 2).
- **Provisional measures:** Judicial authorities can order provisional measures to prevent an infringement from occurring and to preserve evidence regarding alleged infringements. Judicial authorities may require the applicant to provide reasonably available evidence to satisfy them to a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent (Part III, section 3).
- **Border measures:** Right holders are allowed to request the competent authority to suspend, through customs authorities, the free circulation of goods suspected of infringing trademark and copyright regulations (Part III, section 4).
- **Criminal procedures and penalties:** The Agreement provides for criminal procedures and penalties to be applied **at least in cases of** wilful trademark counterfeiting and copyright piracy on a commercial scale (Part III, section 5).

#### **Criminal remedies include:**

- Imprisonment;
- Monetary fines (sufficient to act as deterrents);
- Seizure, forfeiture and destruction of infringing goods; and
- Seizure, forfeiture and destruction of materials and implements used predominantly to commit the offence (Part III, section 5).

#### Agreement on Trade-Related Aspects of Intellectual Property Rights

**Adopted:** 15 April 1994

**Entry into force:** 1 January 1995

**Status:** *Parties:* 159

**Depositary:** World Trade Organization

**Latest ratification:** Tajikistan, 2 March 2013

**Link to the text of the Convention:**

[http://www.wipo.int/wipolex/en/other\\_treaties/details.jsp?group\\_id=22&treaty\\_id=231](http://www.wipo.int/wipolex/en/other_treaties/details.jsp?group_id=22&treaty_id=231)

**Link to the status of ratification:**

[http://www.wipo.int/wipolex/en/other\\_treaties/parties.jsp?treaty\\_id=231&group\\_id=22](http://www.wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=231&group_id=22)

*(As of June 2014)*



## Box 24: TRIPS Agreement Legal Resources

### WIPO Legislative Database and Country Profiles

The World Intellectual Property Organization (WIPO) has two databases of national legislation:

**a. WIPO Lex** is a **legislative database** of Member States' IP laws.

*Link:* <http://www.wipo.int/wipolex/en/>

**b. Country Profiles** provide information on WIPO Member and non-Member States. It includes **national legislation**, points of contact and national statistics.

*Link:* <http://www.wipo.int/directory/en/>

### Handbook on the TRIPS Agreement

Published in 2012 by the WTO, this Handbook provides the background for a better understanding of the text of the TRIPS Agreement.

It contains non-technical explanations of the **provisions contained in the Agreement** and information about current policy issues and later instruments.

*Source:* WTO

*Available language:* English

*Link:* [http://onlinebookshop.wto.org/shop/article\\_details.asp?id\\_Article=795&lang=EN](http://onlinebookshop.wto.org/shop/article_details.asp?id_Article=795&lang=EN)

Several tools have been developed in order to facilitate the understanding and the implementation of the TRIPS Agreement. Mentioned below are the most important ones, developed in the framework of the WTO and a joint project between the United Nations Conference on Trade and Development (UNCTAD) and the International Centre for Trade and Sustainable Development (ICTSD).

### World Trade Organization

**-Analytical index – Guide to WTO Law and Practice:** The analytical index is a “comprehensive guide to the interpretation and application of the WTO agreements by the **Appellate Body**, dispute settlement panels and other WTO bodies. It contains extracts of key pronouncements and findings [...] including panel reports, Appellate Body reports, **arbitral decisions** and awards, and decisions of WTO committees, councils and other WTO bodies.

*Link:* [http://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/analytic\\_index\\_e.htm](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/analytic_index_e.htm)

### United Nations Conference on Trade and Development (UNCTAD)

A joint project was developed by the United Nations Conference on Trade and Development (UNCTAD) and the International Centre for Trade and Sustainable Development (ICTSD) on Intellectual Property Rights and Sustainable Developments in order to address the concerns raised by certain developing countries about the implementation of the TRIPS Agreement as well as other trade-related instruments containing dispositions on Intellectual Property Rights.

Within this framework, a number of tools and documents were published, particularly:

**-Resource Book on TRIPS and Development:** This book is directed at negotiators and policy makers. It provides guidance and technical information on the main issues addressed by the TRIPS Agreement, including States parties' obligations, the enforcement, acquisition and maintenance of rights, interpretation and dispute settlement.

*Link:* <http://www.iprsonline.org/unctadictsd/ResourceBookIndex.htm>

**-Regional Research Agenda:** This document contains a number of policy-oriented research papers on Intellectual property written by regional experts. It aims at contributing to national and regional policy-making. The Regional Research Agenda is divided into five regions: Latin America, Southern and Eastern Africa, Pacific, Asia; and the United States and Canada.

*Link:* [http://www.iprsonline.org/unctadictsd/regional\\_research.htm](http://www.iprsonline.org/unctadictsd/regional_research.htm)

**Box 25: Anti-Counterfeiting Trade Agreement (ACTA)**

ACTA opened for signature in 2011. In October 2011, Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, and the United States signed it. In 2012, Mexico, the European Union and 22 of its member states signed as well. Only one signatory (Japan) has ratified the ACTA, which requires six ratifications before entering into force.

ACTA negotiations sought to find specific solutions to the proliferation of counterfeit and pirated goods<sup>\*</sup>. It strives to establish effective and appropriate **means for the enforcement** of intellectual property rights. In doing so, it is supposed to complement the TRIPS Agreement.

In comparison with the TRIPS Agreement, it contains more extensive and detailed provisions on criminal law and procedures. It foresees that criminal proceedings and penalties will apply in cases of wilful infringement of IP rights on a commercial scale. For the purpose of this Agreement, “acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage”<sup>\*\*</sup>.

During its negotiation and afterwards, various concerns were raised about the fact that ACTA could seriously jeopardize civil liberties, in particular freedom of expression and privacy. Also, it was argued that the negotiations were carried out behind a veil of secrecy that prevented developing countries and the general public from contributing to its development.

*\*Introduction to TRIPS Agreement, Japan Patent Office, Asia-Pacific Industrial Property Center, 2008/ \*\* Art. 23(1) ACTA.*

## 2.4. Sector-specific treaties

Two specific treaties adopted under the auspices of the World Health Organization deal with the ITTP, namely:

- **The Framework Convention on Tobacco Control, 2003.**
- **The Protocol to Eliminate Illicit Trade in Tobacco Products, 2012.**

Although the latter is not yet in force, it constitutes the most comprehensive attempt by the international community to condense into one dedicated legal instrument all the measures necessary to eliminate the ITTP by means of a criminal justice approach. As the Tobacco Protocol will require a major effort by its States parties in order to implement its varied provisions, it will be the object of extensive analysis and policy recommendations at chapter 4 (*“Protocol To Eliminate Illicit Trade In Tobacco Products”*).

### 3. Framework Convention on Tobacco Control (WHO FCTC)

The WHO FCTC is an international legal instrument establishing broad commitments in the health sector and a general system of governance. Its relevance for the ITTP stems from article 15, under which States parties “recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national laws, in addition to subregional, regional and global agreements, are essential components of tobacco control” (para. 1).

Subsequent paragraphs require the following:

- Adoption of effective measures for the “marking” of unit packets and packages of tobacco products and any outside packaging with a view to determining the origin of tobacco products and their points of diversion (paras. 2 and 3).
- Considering the development of “**tracking and tracing**” regimes to secure the distribution system and assisting in the investigation of illicit trade (para. 2(b)).
- Taking measures in the areas of **monitoring and collecting data on cross-border trade in tobacco products**, criminal legislation, destruction of confiscated equipment and illegal tobacco products (para. 4(a)(b)(c)).
- Enabling the **confiscation of proceeds** from illicit trade (para. 4).
- Broadly promoting **international cooperation** in relation to investigations, prosecution and proceedings (para. 6).
- Endeavoring to adopt measures aimed at **preventing illicit trade**, including through **licensing**.

Crucially, art. 15 of the WHO FCTC set forth in an embryonic form the basic obligations and requirements that were subsequently developed by the Protocol to Eliminate Illicit Trade in Tobacco Products.

Article 23 establishes a **Conference of the Parties (COP)**, the governing body of the WHO FCTC and comprised of all Parties to the Convention. It is responsible for the regular review of the implementation of the WHO FCTC. It is able to make decisions relating to effective implementation of

#### WHO Framework Convention on Tobacco Control

**Adopted:** 21 May 2003

**Opened for signature:** 16 June 2003-29 June 2004

**Entry into force:** 27 February 2005

**Status:** Signatories: 168 Parties: 178

**Depositary:** Secretary-General of the United Nations

**Latest accession:** Ethiopia, 25 March 2014

**Link to the text of the Convention:**

[http://www.who.int/fctc/text\\_download/en/index.html](http://www.who.int/fctc/text_download/en/index.html)

**Link to status of ratification:**

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4&chapter=9&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&lang=en)

(As of June 2014)

the WHO FCTC, and can adopt Protocols, annexes and amendments to the Protocol. A Convention Secretariat was tasked with the secretariat functions specified by the Convention at article 24. The Rules of Procedure<sup>31</sup> govern the work of the COP. Regular sessions are held every two years.



**Box 26: Further reading on the FCTC**

For publications of the Convention Secretariat and official documentation of the COP please refer to the website of the WHO FCTC. Documents include COP and INB documents, and other FCTC and Protocol related publications.

**Link:** <http://www.who.int/fctc/publications/en/index.html>

Access to the database of available resources to assist in implementation of the WHO FCTC is available to Parties to the FCTC upon request to the General Secretariat.

**Link:** <https://extranet.who.int/fctcresources/>

## 4. Protocol to Eliminate Illicit Trade in Tobacco Products (Tobacco Protocol)

### 4.1. Background

In the *Preamble* to the WHO FCTC, the States parties recognize that cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting. Under article 15 of the WHO FCTC, States parties recognize that “the elimination of all forms of illicit trade in tobacco products” is an ‘essential component’ of tobacco control and undertake obligations towards this end. Article 15 forms the **legal basis** of the Protocol to Eliminate Illicit Trade in Tobacco Products, a Protocol to the WHO FCTC solely dedicated to combatting the ITTP. Article 15 begins Part IV of the WHO FCTC “Measures Relating to the Reduction of the Supply of Tobacco”.

In light of the focus of the WHO FCTC on the ITTP, it is no surprise that the first Protocol to be adopted under it relates to the issue of illicit trade.

The table that follows provides a brief overview of article 15 (Illicit Trade in Tobacco Products) and where its provisions have been elaborated within the Protocol.

**Table 3: WHO FCTC Part IV: Measures relating to the reduction of the supply of tobacco (art. 15)**

Article 15 Paragraph	Related Tobacco Protocol Provisions
1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.	Art. 2 relationship between this Protocol and other agreements Art. 3 Objective Art. 4 General obligations
2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:  (a) Require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market	Art. 8 Tracking and tracing  Art. 8 (4)(1) outlines the type of information that is required to be available as part of the global tracking and tracing regime, including intended market of retail sale, warehousing and shipping details inter alia.

### Protocol to Eliminate Illicit Trade in Tobacco Products

**Adopted:** 12 November 2012

**Opened for signature:** 10 January 2013-9 January 2014

**Will enter into force:** The 90<sup>th</sup> day following the deposit of 40 instruments of ratification, acceptance or approval of the Parties to the WHO Framework Convention on Tobacco Control

**Status:** Signatories: 54 Parties: 1

**Latest ratification:** Nicaragua, 20 December 2013

**Depositary:** Secretary-General of the United Nations

**Last signatories:** Togo & Austria, 9 January 2014

**Link to the text of the Convention:**

[http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246_eng.pdf)

**Link to status of ratification:**

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4-a&chapter=9&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&lang=en)

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<p>carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)" or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and</p> <p>(b) Consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.</p>	
<p>3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this article shall be presented in legible form and/or appear in its principal language or languages.</p>	
<p>4. With a view to eliminating illicit trade in tobacco products, each Party shall:</p> <p>(a) Monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;</p> <p>(b) Enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;</p> <p>(c) Take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;</p> <p>(d) Adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and</p> <p>(e) Adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.</p>	<p>Art. 9 Record keeping, Art. 8 Tracking and tracing, Art. 20 General information sharing, Art. 21 Enforcement information, Art. 27 Law enforcement cooperation</p> <p>Part IV Offences, Art. 14 Unlawful conduct, including criminal offences</p> <p>Art. 18 Disposal or destruction</p> <p>Art. 12 Free zones and international transit Art. 13 Duty free sales</p> <p>Art. 6 Licensing (3)(b)(vii) complete identification of bank accounts and other relevant payment details, Art. 27 (1(c)) law enforcement cooperation relating to movement of proceeds of crime or property derived, and property, equipment or other instrumentalities used or intended for use in the commission of ITTP offences.</p>
<p>5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with article 21.</p>	
<p>6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.</p>	<p>Art. 19 Special investigative techniques Part V: International Cooperation (Art. 20 – 31)</p>
<p>7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.</p>	<p>Art. 6 Licence, equivalent approval or control system Art. 7 Due diligence Art. 9 Record keeping Art. 10 Security and preventive measures Art. 11 Sale by internet, telecommunication or any other evolving technology Art. 17 Seizure payments</p>

### Box 27: History of the Intergovernmental Negotiating Body (INB)

At the first meeting of the COP of the FCTC in February 2006, the decision was made to establish an Expert Working Group to prepare a template for a Protocol to the FCTC on suppressing the illicit trade in tobacco products. This expert group met in late 2006, and produced a template, the main aim being the prevention of diversion of tobacco products from licit trade. The template introduced two main components in the treatment of the problem:

- A series of **measures to regulate the supply chain** so it did not feed the illicit trade; and
- **Deterrent measures** mainly against the criminals involved in the illicit trade such as criminal offences, legal assistance and law enforcement cooperation measures.

At its second session in July 2007, the COP established an Intergovernmental Negotiating Body (INB) to draft and negotiate a Protocol on Eliminating Illicit Trade in Tobacco Products which would build upon and complement Article 15 of the WHO FCTC. The template produced by the Expert Working Group formed the basis of the negotiations for the Protocol.

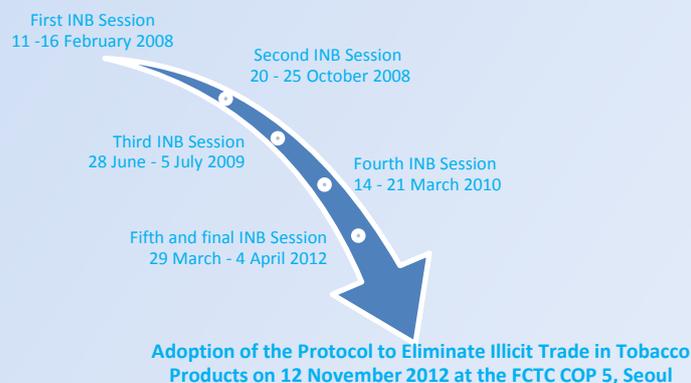
Following the first INB session the Chairperson of the INB delivered a first draft text. The second session started the negotiations on the draft text presented at the INB1. The third INB session concluded with a decision to establish two drafting groups to work on the draft provisions of the Protocol before the INB4. The fourth INB session took account of the proposals of the two drafting groups, and consensus was achieved on some but not all of the provisions of the draft Protocol. The COP at its fourth session (Punta del Este, Uruguay, 15–20 November 2010) acknowledged the progress made by the INB on the Protocol during the four sessions of the INB that had been held up to that point. The COP extended the mandate of the INB to a final session which was held in early 2012. The INB was requested to submit the text of a draft Protocol to eliminate illicit trade in tobacco products for consideration by the COP at its fifth session.

The COP also decided to establish an Informal Working Group to work prior to the final session of the INB. The COP mandated the Informal Working Group to:

- Develop possible text for those articles in Part III (Supply Chain Control) of the draft Protocol that had not yet been agreed;
- Make proposals with regard to the method of financing the Protocol;
- Make proposals with regard to the question of whether the provisions on mutual legal assistance and extradition needed to be retained in the draft Protocol;
- Make proposals with regard to the question of how to cover the issue of protection of personal data in the draft Protocol; and
- Make proposals with regard to the question of how the text of the draft protocol, and its implementation, could best complement existing relevant agreements and arrangements, including the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC), in order to maximize synergy and to avoid duplication. Within this, a particular issue was where the global information sharing focal point would be organizationally located.

The informal working group, comprised of 30 Party representatives (five Parties from each WHO region), held two meetings in Geneva, on 4–8 July and 19–23 September 2011. Representatives of States non-Parties, intergovernmental organizations and nongovernmental organizations accredited as observers to the COP and with specific expertise in the matters under the mandate of the working group also participated in the meetings. It reported on its work to the fifth INB Session, as requested\*.

After four years of negotiations, on 4 April 2012, the INB agreed on a draft text for the Protocol. The text was submitted to the COP at its fifth session in Seoul, Republic of Korea, and adopted on 12 November 2012, and is the first Protocol to the WHO FCTC.



- \*See the report titled "Informal Working Group on the draft protocol to eliminate illicit trade in tobacco products: Outcome of the Two Meetings of the Working Group", FCTC/COP/INB-IT/5/3, 24 October 2011.
- **Link:** [http://apps.who.int/gb/fctc/PDF/it5/FCTC\\_COP\\_INB-IT5\\_3-en.pdf](http://apps.who.int/gb/fctc/PDF/it5/FCTC_COP_INB-IT5_3-en.pdf)

#### 4.1.1. How the Protocol Deals with the ITTP

While it is connected to the WHO FCTC through article 15, the Protocol heavily relies on the United Nations Convention on Transnational Organized Crime (UNTOC), which is the main reference for provisions dealing with criminal law, law enforcement and international cooperation.

The Protocol uniquely spans different disciplines, reflecting the development at an international level of approaching problems such as illicit trade all-inclusively, bringing together all the relevant stakeholders and linking relevant processes. It also contains different measures aimed at the prevention of the ITTP and at the improvement of law enforcement cooperation and international cooperation.

A key feature of the Protocol is the **regulatory regime** it seeks to impose on legitimate tobacco trade. Particular provisions of this regulatory regime include:

- Licensing, due diligence, and record-keeping;
- A “track and trace” national system and international track and trace regime;
- Provisions control of the sale of tobacco products over the internet and through duty-free sales; and
- Control on the manufacture of and transactions in tobacco products in free-trade zones.

To complement the regulatory regime, the Protocol provides **a list of unlawful conduct** for States to establish as unlawful (whether through criminal or administrative penalties attached) under their domestic law, and a detailed framework dealing with international cooperation, especially through extradition and mutual legal assistance.

#### Box 28: The cooperation agreements between the EU and the tobacco industry

Four legally binding and enforceable cooperation agreements are in effect between the EU, all 27 of its Member States, and the four leading tobacco manufacturers (Philip Morris International, Japan Tobacco International, British American Tobacco and Imperial Tobacco International). Their importance in the context of this handbook lies in the fact that they represented a blueprint for the subsequent negotiation of the Tobacco Protocol. They are designed to combat smuggling in genuine tobacco products and prove most useful tools in decreasing the extent of illicit trade in the EU. They outline a long-range and comprehensive framework for national Governments, the EU, and the four tobacco companies named above to work together to combat illicit trade, they provide for industry commitment to track and trace tobacco products, implement a “know your customer” policy, anti-money laundering provisions, transparent payment procedures as well as to supply markets commensurate to local demand. The agreements also set forth a comprehensive process in case of seizures and for close cooperation between the European Anti-Fraud Office (OLAF), the law enforcement authorities of the EU and the four tobacco companies.

Key terms of all Agreements include:

- Sales and distribution practices implemented to ensure that cigarettes are sold, distributed, stored and shipped in accordance with all legal requirements.
- Due diligence provisions to ensure a complete understanding of the identity of tobacco customers.
- Anti-money laundering initiatives.
- Record-keeping requirements.
- Implement a tracking system to assist law enforcement authorities to identify when cigarettes are traded illegally.
- Cigarettes to be sold in brands and amounts consistent with legitimate demand in the intended market.
- In the event of future seizures of genuine products in the EU, manufacturers agreed to examine seized products to determine whether they are counterfeit or genuine, to provide documentation and examination results, and to provide relevant information relating to seized contraband products.
- Supplementary payments to be made in the event of seizures of genuine tobacco products equaling the amount of duties and taxes due on the smuggled cigarettes seized. If the number of cigarettes seized in a year exceeds a predefined baseline amount, the supplementary payments will include an additional amount based on a significant multiplication of the duties and taxes due on the seized cigarettes.

*Link: [http://ec.europa.eu/anti\\_fraud/investigations/eu-revenue/cigarette\\_smuggling\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-revenue/cigarette_smuggling_en.htm)*

## 4.2. Overview, scope and objectives of the Protocol

### 4.2.1. Overview

The text of the Protocol is divided into 10 parts (*see table 4*). However, the **core** of the Protocol is contained in Part III (supply chain control), Part IV (offences) and Part V (international cooperation).

*Table 4: Overview of the structure of the Protocol*

Structure of the Protocol	
I Introduction	VI Reporting
II General Obligations	VII Institutional Arrangements and Financial Resources
III Supply Chain Control	VIII Settlement of Disputes
IV Offences	IX Development of the Protocol
V International Cooperation	X Final Provisions

### 4.2.2. Scope of the Protocol

The Protocol requests that States parties adopt and implement effective measures to control or regulate the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods.

The “supply chain” is defined within the Protocol and its scope is quite broad so as to be comprehensive. It specifies the **goods** that fall under its ambit of control and various **activities** involved in international trade.

The scope of the Protocol covers the following products:

- Tobacco products<sup>32</sup>; and
- Manufacturing equipment<sup>33</sup>.

**Key inputs** (not defined by the Protocol but referring to acetate tow, cigarette paper, cigarette filters and inputs essential for the manufacture of tobacco products) do not fall within the scope of the Protocol, though an obligation is created under article 6(5) to conduct research on key components five years following the entry into force of the Protocol (*see section 4.3.3, “Key Inputs”*).

The Protocol also contains provisions dealing with the following activities, subject to differing levels of control:

- The manufacture of tobacco products and manufacturing equipment;
- The import or export of tobacco products and manufacturing equipment;

- The retailing of tobacco products;
- The growing of tobacco, **except for** traditional small-scale growers, farmers and producers;
- The transporting of commercial quantities of tobacco products or manufacturing equipment;  
and
- The wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

#### 4.2.3. Objectives of the Protocol

The objective, as prescribed in article 3 of the Protocol, is *to eliminate all forms of illicit trade in tobacco products*, in accordance with the terms of article 15 of the WHO FCTC.

To achieve its objectives the Protocol aims to implement a **dual approach targeting prevention and suppression** of ITTP. The provisions aimed at prevention are contained in Part III Supply Chain Control, and those aimed at suppression within Part IV Offences.

The prevention provisions, at Part III: Supply Chain Control, are where much of the administrative regime in controlling and monitoring the licit manufacture and distribution of tobacco products and manufacturing equipment is established. The Protocol requires that:

- States assess participants involved in the tobacco trade through licensing;
- Participants assess those they deal with through the adoption of due diligence processes;  
and
- Products in which licensed participants deal are tracked and traced by authorities.

The aim of dealing with all key players in the supply chain in this way is to ensure that, if diversion occurs, steps can be taken to prevent recurrence and ensure action will be possible against criminals as well licit participants in the process who are responsible for not adequately protecting the supply chain. The provisions on supply chain control are complemented by Part IV of the Protocol which identifies certain conduct as unlawful, and Part VI which iterates accepted standards on law enforcement cooperation and international cooperation.

The Protocol provides a range of complex provisions which countries will be required or recommended to implement if they become a State party to the treaty. This will require thorough analysis and capacity to ensure that administrative, legal and technical requirements are met.

## 4.3. Supply Chain Control (Part III of the Protocol)

### 4.3.1. What is a “Supply Chain”?

A supply chain involves a system consisting of organizations, information, people, activities and resources involved in the movement of a product or service from the supplier to the consumer. The supply chain is the flow of the product through various stages before reaching the consumer.

The supply chain is usually made up of three components:

- The **supply of raw materials** to a manufacturer through various means depending on the location of the manufacturer;
- The **manufacturing**, using the raw material to produce a finished product; and
- The **distribution** of the finished product, whether it be for use in another manufacturing process, or directly to the consumer of the finished product, through a network of distributors, warehouses and retailers.

In the tobacco sector, the supply chain involves the sourcing of the raw tobacco from growers, as well as other components required to manufacture cigarettes such as the cigarette paper, the acetate tow for the cigarette filter, or a pre-made cigarette filter, the flavorings, the packaging material, etc. The manufacturer then manufactures the tobacco products and relies on distributors, transporters, brokers, wholesalers etc. to move the goods along the supply chain to the end consumer. In between the manufacturer and the consumer there are intermediaries who can purchase the finished products and on sell them before they enter the retail market. The finished products are either exported, imported by various players in the supply chain, and sold to numerous customers before the final consumer of the product. A main consequence of having many actors involved in the supply chain is that more “entry points” are available in a particular market, and therefore more opportunities exist to divert or smuggle the product. For a diagram on how the legal supply chain works in the tobacco industry, see figure 1 (“*Legal supply chain*”).

The Protocol at article 1(12) (“Use of terms”) states:

*The “supply chain” covers the manufacture of tobacco products and manufacturing equipment; and import or export of tobacco products and manufacturing equipment; and may be extended, where relevant, to one or more of the following activities when so decided by a Party:*

*(a) retailing of tobacco products;*

*(b) growing of tobacco, except for traditional small-scale growers, farmers and producers;*

*(c) transporting commercial quantities of tobacco products or manufacturing equipment;  
and*

*(d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.*

According to the Protocol, the applicability of its provisions to the supply chain are limited to manufacturers, importers and exporters of tobacco products and manufacturing equipment and will only be extended to other players such as retailers, growers, distributors, transporters, etc., if a State party decides to exceed the minimum threshold set by the Protocol.

Part III Supply Chain Control (articles 6 – 13), establishes a regime aimed at the **prevention** of the illicit tobacco trade by securing the legitimate supply chain. Members of the legitimate supply chain would be required to take measures to prevent diversion of tobacco products and manufacturing equipment into illicit trade channels. Securing the supply chain would allow enforcement authorities to more easily detect the point of diversion of the products and identify the subjects dealing in the illicit trade.

The aspects of the supply chain included within the ambit of Part III of the Protocol attempt to provide a comprehensive regime for securing the legitimate supply chain. The main measures introduced to prevent the diversion of tobacco products are shown in figure 4.

Controlling the supply chain in this way assists law enforcement authorities in identifying illegitimate actors, in gathering intelligence in relation to the processes used by them to carry out their illegitimate activity and in interrupting these networks and dismantling them. Thus Part III of the Protocol is key to its functionality and the achievement of the Protocol's aims.

*Figure 4: Outline of supply chain control provisions*

*The effectiveness of these measures will depend upon their practical enforcement.*



#### 4.3.2. Licence, equivalent approval or control system (art. 6)

In article 1(7) of the Protocol, “**licence**” is defined as permission from a competent authority following submission of the requisite application or other documentation to the competent authority. Article 6 distinguishes between “**tobacco**” and “**tobacco products**”, defining the latter as products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used in smoking, sucking, chewing or snuffing. The term “tobacco” is not defined but presumably refers to leaf tobacco.

Article 6 is elaborated from article 15(7) of the WHO FCTC. The aim of the licensing provisions and those provisions pertaining to Supply Chain Control are to assist in the **prevention** of the ITTP. A licensing regime will specifically aid in the identification and control of legitimate market operators. However, the effectiveness of such a licensing system will depend on effective enforcement and deterrent penalties to ensure that:

- Only bona fide and legitimate businesses are engaged in the manufacture, import, and export of tobacco products and manufacturing equipment, and even their distribution and sale;
- Licensees can be monitored, reviewed and be subject to fees and renewal processes to ensure on-going legitimacy in their businesses; and
- All industry entities trade in tobacco products and manufacturing equipment only with other entities operating legally in any given jurisdiction (licensed or otherwise approved).

For success on the second point, a proper implementation of the due diligence provisions (art. 7) within the Protocol will also be essential.

##### a. The scope of the licence

*At a minimum*, article 6 calls for natural and legal persons engaged in the activity of manufacture, import or export of tobacco products and manufacturing equipment to do so pursuant to a licence. Article 6 does not however provide guidance to States parties on what the scope of licenses to be issued should be.

- Should States parties issue a **general licence** to cover all activities requiring a licence For example, one licence would cover manufacturing, importing, exporting and other related activities; or
- Should **multiple licences** be issued for each activity requiring a licence? For example, persons would require one licence for manufacturing and one for exporting etc.

The ‘general licence’ approach might have the benefit of reducing the administrative burden on the competent government authority responsible for the licensing regime. Multiple licences would have the advantage of more control over the system, though it would come with an administrative encumbrance.

Article 6 also provides some ‘high level’ guidance on certain aspects of the additional administrative processes necessary to implement and maintain an effective licensing system, which are outlined in table 5. Individual States will need to consider the full set of administrative requirements in support such as: design of forms to capture requisite information; risk criteria for approval; sets of conditions/restrictions to reduce risk, length of licence validity; range of breaches and sanctions etc.

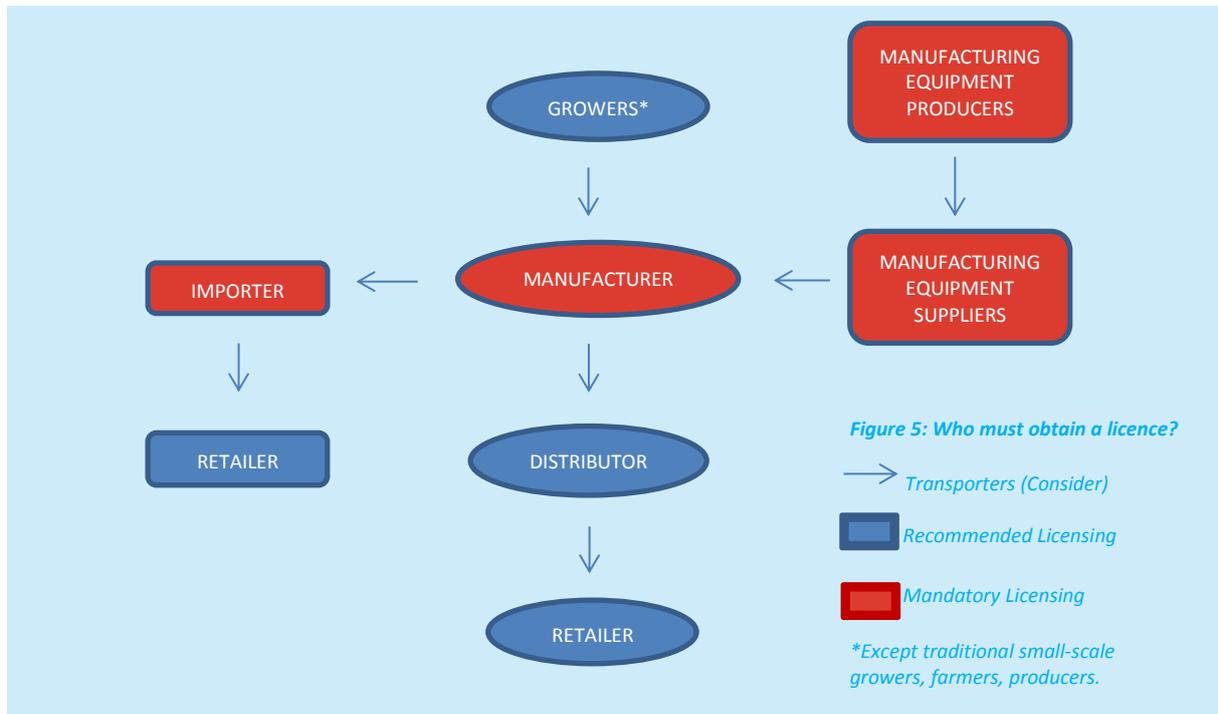
*Table 5: Licence, equivalent approval or control system (art. 6)*

Article 6: Licence, equivalent approval or control system		
Obligations (Protocol Provisions)	Recommendations (Protocol Provisions)	Comments
<p>1. Each party shall prohibit:</p> <p>(a) Manufacture of tobacco products and manufacturing equipment; and</p> <p>(b) Import or export of tobacco products and manufacturing equipment</p> <p>By any natural or legal person except pursuant to a licence</p>	<p>2. Shall <b>endeavour</b> to license, to the extent considered appropriate:</p> <p>(a) <b>Retailing</b> of tobacco products;</p> <p>(b) <b>Growing</b> of tobacco, <i>except</i> for traditional small-scale growers, farmers and producers;</p> <p>(c) <b>Transporting commercial quantities</b> of tobacco products or manufacturing equipment; and</p> <p>(d) <b>Wholesaling, brokering, warehousing or distribution</b> of tobacco/tobacco products or manufacturing equipment.</p>	<p>Article 6(1) is a substantive provision imposing a positive obligation (requiring regulation by the State) on States to implement a licensing system for the manufacture, import and export of tobacco products and manufacturing equipment.</p> <p>To the extent that a decision is made to licence retailers under article 6(2), the following assessments will have to be made: e.g. which retailers will fall under the regime, tobacco specific retailers, non-tobacco specific retailers such as supermarkets and newsagents. This will also need to be tied to the regime regarding packaging of tobacco products to ensure that appropriately packaged products are sold in compliance with relevant legislation.</p> <p>Legislative measures to this effect will need to be taken by States, and penalties enshrined for those who engage in these activities without the necessary licence/approval.</p>
<p>3. Each party shall:</p> <p>(a) Establish / designate a competent authority/-ies to issue, renew, suspend, revoke and/or cancel licences relating to the manufacture/import or export of tobacco products and manufacturing equipment.</p> <p>(b) Require that each application for a licence contains all the requisite information about the applicant which should include the information listed in (i) – (viii).</p> <p>(c) Monitor and collect any licence fees that may be levied.</p>	<p>3. (b)(i) Where the applicant is a <b>natural</b> person, information regarding identity: full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;</p> <p>(ii) When the applicant is a <b>legal</b> person, information regarding its identity: full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;</p>	<p>The main obligation for State parties will be to allocate/create a competent authority to control/monitor the licensing regime. Currently, most countries have an allocated authority to deal with such a requirement, especially in States where such a system exists.</p> <p>The allocated authorities will require enforcement and auditing capabilities (already predominantly held by Customs and Revenue authorities). Where countries desire a new established licensing authority they will need to connect its functions to the entities responsible for tobacco control,</p>

<p>(d) Take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;</p> <p>(e) Undertake measures such as periodic review, renewal, inspection or audit of licences where appropriate;</p> <p>(f) Establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;</p> <p>(g) Oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;</p> <p>(h) Oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and</p> <p>(i) Ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.</p>	<p>(iii) Precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;</p> <p>(iv) Details of the tobacco products / manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;</p> <p>(v) Description of where manufacturing equipment will be installed and used;</p> <p>(vi) Documentation or a declaration regarding any criminal records;</p> <p>(vii) Complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and</p> <p>(viii) A description of intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with <i>reasonably</i> anticipated demand;</p> <p>(c) Consider using licence fees levied in effective administration and enforcement of the licensing system, or public health, or related activity.</p>	<p>particularly measures arising from the WHO FCTC.</p> <p>While the use of “shall” in article 3 implies the obligatory nature of the provision, many of the provisions use <b>qualifiers</b> such as “where appropriate” and thus leave it to the discretion/interpretation of States as to the extent of the implementation of the provision.</p> <p>When setting the <b>license fee</b> States may wish to consider:</p> <ul style="list-style-type: none"> <li>• The cost for an effective administration and enforcement of the licensing system;</li> <li>• The activity for which a license is sought; and</li> <li>• The scope of the licence.</li> </ul> <p>The Protocol encourages use of the fees for the effective administration and enforcement of the licensing system. Once the system is operational, the costs may be supplemented, to the extent necessary, by any fines collected for license violations. While according to the Protocol States parties might allocate the revenues generated from payment of licence fees to public health or related activities, one could imagine other objectives, such as the pursuit of law enforcement efforts, research into illicit trade, etc.</p>
<p>4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.</p>		<p>This provision recognizes the reality of genuine business activity, without weakening the control of the government authority over the licensing regime and its enforcement.</p>

## b. Who will be required to obtain a licence to carry out their business activity? (art. 6)

Figure 5 outlines the obligations imposed by the Protocol on States as to which actors in the supply chain process must obtain licences to conduct their activities, and recommendations to States regarding which actors, also part of supply chain, should be required to fall within the licensing regime. Further, the Protocol recommends that States consider licensing the transport of commercial quantities of tobacco products and manufacturing equipment.



## c. Policy Considerations

- States parties will have to consider which State authority to nominate as the “**Competent Authority**”.
- States parties will need to decide whether they wish to **go beyond the minimum requirements** of the Protocol and licence:
  - Growing tobacco;
  - Wholesale, distribution, dealing, broking in tobacco products;
  - Retailing tobacco products

if they do not already do so, and to what extent.
- States parties should consider whether **registration** could be an alternative where licensing certain activities is not yet possible. For example, a State could require the registration of retailers of tobacco products in place of licensing.

- According to article 6(2) States parties are required to endeavor to licence certain activities including the growing of tobacco, *except for* traditional small-scale growers and farmers. State parties will need to determine how “**small scale traditional grower**” is defined, and whether this exception will create loopholes in the licensing regime for undeclared production.
- At national level, States:
  - Must designate a competent national authority.
  - May levy licensing fees.
  - May consider licensing tobacco/tobacco products’ transporters and distributors.
  - May consider licensing transporters and distributors of manufacturing equipment.
  - May consider registration/licensing of retailers, growers, brokers, wholesalers and warehousing.
  - May require the declaration of bank accounts intended to be used in the relevant transactions, payment currency and institutions by applicants of a licence.
  - May require disclosure location of production facilities and capacity of the business by applicants of a licence.
  - May require a licence for duty-free sales of tobacco products.
  - May require the provision of market information to Governments .
- States will need to decide which administrative aspects will require implementation:
  - Fees (structure).
  - Length of the licence.
  - Conditions for obtaining the licence and for its renewal, suspension, cancellation.
  - Monitoring of activities of licence holders.
  - Verification of information received by applicants, cross-checked against information received from related applicants.
  - Penalties for operating outside the terms of the licence, such as loss of licence, for how long, variation of penalties depending on the severity of the breach.
  - Training of staff of the competent authority particularly in relation to the peculiarities of the ITTP.
  - Capacity of the competent authority to implement what the Protocol requires at its minimum.

- States should consider whether a **regional standard for licensing** is necessary, and whether there are inter-regional intergovernmental groups to assist with implementation. The regional standard will be a measure to ensure that there are no 'weak links' in the tobacco supply chains.
- The following aspects could perhaps be achieved regionally:
  - Standards to determine the integrity of the applicant;
  - Which aspects of the supply chain should be licensed and monitored.
- Regional approaches should seriously be considered given that we are concerned with a transnational activity (the trade of tobacco products) and countries will need to cooperate in cases of infringements and offences committed on various levels. If similar systems and standards are in place, at least regionally, this will simplify investigation and the meeting of thresholds for prosecutions to be successful. It will also help create common regional standards.

#### d. Challenges

There are a number of challenges for States parties that will need to be considered:

- There may be **significant implementation costs** for the introduction of a number of requirements of the Protocol, whether a State party has already implemented a licensing scheme that will merely require expansion, or have to create the entire scheme. These costs will not merely be borne by governments but market operators and citizens will also incur expenses. Governments will incur significant financial and human resource costs. Countries with limited resources may need to be perceptive to this.
- **Lack of capacity** in developing countries – technical cooperation in training, sharing of experience and transfer of technology
- The **risks of corrupt and fraudulent practices** that article 6 creates will also need to be assessed by countries. For example, bribing authorities to issue licences, forgery of licences, falsification of the licensing requirements by market operators in circumstances including the rejection of applications. This will need to be taken into account more by countries with a former low level of enforcement against the ITTP.
- An **informal Sector** existing in countries will need to be taken into account. For example, where business activities go unrecorded, taxes are not paid, opportunities for corruption exist, and many citizens are not able to participate in public policy-making. Thus many engage in business activities informally. In this context, and to increase the effectiveness of the licensing provision within the Protocol, governments must at least attempt to deal with the informal sector and merge it with the formal economy. Governments may consider offering incentives that encourage entrepreneurs to formalize their business, such as a simplified business registration process, operating alongside the licensing regime.

- **Countries without a developed infrastructure** will need to consider how to implement the recommended licensing for the activities of retailing, growing, transporting of commercial quantities, and wholesaling, brokering, warehousing and distribution.
- Keep in mind any **loopholes** created by article 6. For example, at 6.2(d) where traditional small-scale growers, farmers and producers are exempt from falling under an extended licensing regime. Such exceptions may be exploited for illicit purposes, particularly as relates to counterfeit cigarettes and cheap whites. Bear in mind that article 6.2 leaves States parties to apply discretion as to which actors in the supply chain will require licences and which will not, depending on the diverse licensing systems of various States parties.

### 4.3.3. Key Inputs (art. 6(5))

#### Box 29: Key inputs

In essence, “key inputs” refer to the important components required for the manufacture of cigarettes such as cellulose acetate tow, ready-made cigarette filters, cigarette paper, cigarette tubes, reconstituted tobacco leaf.

Article 6(5) of the Protocol requires that five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any **key inputs** exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.

The term “key inputs” is not defined in the Protocol so as not to restrict any research to be carried out.

The most important component for the manufacture of cigarettes is of course tobacco which falls within the scope of the Protocol. The concept is akin to that of the monitoring and control of the trade in drug precursors in the context of international drug control treaties. Controlling the supply of key inputs would assist in effectively combatting illicit manufacturing of tobacco products, which supplies the ITTP.

#### a. The obligation created by article 6(5)

Article 6(5) does not create any legal obligation to include “key inputs” within the scope of the Protocol. At best, the obligation it creates is to reexamine the issue **within five years** of the entry into force of the Protocol at the next session of the Meeting of the Parties and then to consider appropriate action.

However, from the first session of negotiations for the Protocol in 2008, to its adoption in November 2012, the inclusion of “key inputs” within the scope of the Protocol has been advocated heavily by tobacco control groups and the tobacco industry and there is general consensus within the wider international community that “key inputs” essential to the manufacture of tobacco products do in fact exist, can be identified and can be subjected to an effective control mechanism.

The hesitation for States in including “key inputs” in the scope of the Protocol was linked to imposing regulations on other industries whose products perhaps had multiple uses, and were not singularly used for the manufacture of tobacco products. Several States parties argued that “key inputs” needed to be *essential* to the manufacture of tobacco products and *identifiable* if they are to be controlled. Cigarette paper and cellulose acetate tow appear to meet these requirements (*see figure 6*).

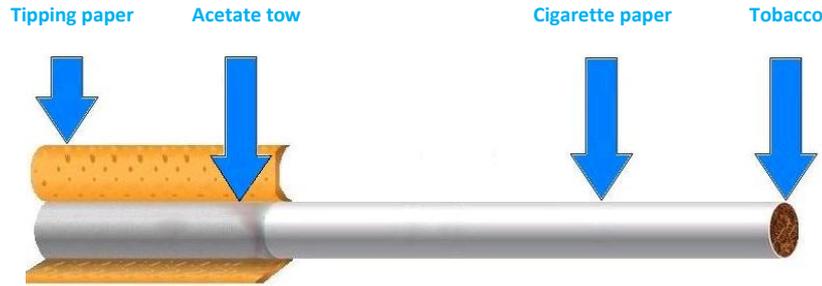


Figure 6: Key components of a cigarette

For key inputs to fall within the scope of the Protocol:

- The relevant evidence-based research will need to be undertaken to determine whether there are **key inputs essential** to the manufacture of tobacco products, they are **identifiable** and can be **subject to an effective control mechanism**;
- If States parties agree with the research, they can opt to include key inputs within the scope of the Protocol via an amendment to the Protocol in the context of the COP.

#### b. Cigarette paper and Cellulose Acetate Tow

Both cigarette paper and cellulose acetate tow are listed in the harmonized tariff schedules of the EU, Canada, Brazil, China and the United States, **evidencing their ability to be identified**, though this list is not exhaustive.

##### Box 30: Harmonized Tariff System and the WCO

The Harmonized Commodity Description and Coding System, known as the "Harmonized System" or simply "HS," is a multipurpose international product nomenclature (a standardized system of names and numbers for classifying traded products) developed and maintained by the WCO. It comprises about 5,000 commodity groups, each identified by a six digit code, arranged in a legal and logical structure, and supported by well-defined rules to achieve uniform classification. The system is used by more than 200 countries and economies as a basis for their customs tariffs and for the collection of international trade statistics. More than 98 percent of the merchandise in international trade is classified in terms of the HS.

The Harmonized System Committee (representing the Contracting Parties to the International Convention on the Harmonized Commodity Description and Coding System) is an international body with the mandate to make classification decisions in order to ensure uniformity in the interpretation and application of the HS. The Committee considers the classification of articles on a case-by-case basis.

Cigarette papers are required to have specific properties for their use in cigarette production. This is in order to control factors such as density, porosity, and burn rate. Cigarette papers are known to be used only in the manufacture of cigarettes due to their specificity. 4813 is the unique **Harmonized Tariff Code** for **cigarette papers**. Cigarette paper is further divided in the tariff schedule into three subcategories:

- Cigarette paper in the form of booklets or tubes (HTS 48131000);
- Cigarette paper in rolls of a width not exceeding 5 cm (HTS 48132000); and
- Cigarette paper, whether or not cut to size (HTS 48139000).

**Cellulose acetate** is used to make acetate tow for cigarette filters. Its unique Tariff Code is 5502 (Man-made staple fibers – Artificial filament – Tow). This code is used by most jurisdictions and acetate tow manufacturers to classify acetate tow. HS Code 3912 (Cellulose and its Chemical Derivatives, not elsewhere Specified or Included, in Primary Forms) appears to also be available for use, though in practice is not. Current HS codes for key inputs of tobacco products would benefit from a review focused on simplification and rationalization.

Cellulose acetate is a good candidate to be selected by States as a “key input” due to the following industry characteristics: a) It is a capital intensive industry so the barrier to entry is high, as a result there are a limited number of players to be included in the control mechanism; and b) the industry is, to a large extent, vertically integrated which has as an advantage the fact that supply of the main base component, “high alpha pulp”, is controlled by the same actors.

Although cellulose acetate has several industrial uses, **cellulose acetate tow** is used in very few products. More than 80% of world tow production is used in the manufacture of cigarettes. There are only a handful of companies worldwide that manufacture acetate tow; six are members of the Global Acetate Manufacturers Association (GAMA).

Today most cigarettes are filtered using acetate tow as the main material. Despite the presence in the market of different materials, acetate tow remains the dominant technology for the manufacture of cigarette filters. There is currently no acceptable and qualified alternative filtration technology for cigarettes which can fully or partially replace acetate tow.

If “key inputs” could be included within the scope of the Protocol, there would be greater chance of combatting the illicit trade in not only genuine smuggled tobacco products but also counterfeit and illicit white products, the profits from the sale of which also contribute to the increase of and continuation in illicit trade activity. While this process unfolds, States parties are encouraged to develop national legislation that could fill the gap and provide a concrete and effective tool to fight against the illicit trade in tobacco products.

### c. What is GAMA?

GAMA was founded in Brussels on 27 January 2000, by member companies that manufacture cellulose acetate tow, filament and flake. Its mission is to advance, develop and promote cellulose acetate, and to jointly address the challenges faced by the industry. The current GAMA members are Celanese, Daicel, EASTMAN, Mitsubishi, Rhodia Acetow, and Sichuan Push Acetati Co. Ltd<sup>34</sup>.

### d. GAMA’s Know Your Customer Compliance Certificate

In 2005, GAMA established a “Know Your Customer Compliance Certificate” (KYC) Program with all its members “to support public authorities and cigarette companies in combatting the counterfeit cigarette trade”. Members of GAMA engage in the KYC Program on an entirely voluntary basis. Participating companies are independently audited to evaluate their compliance with the GAMA KYC standard. The following are the possible levels of implementation that can be awarded:

- **Good implementation:** Exceeds the basic requirements of the GAMA-standard. Only a limited number of minor deficiencies were identified.
- **Satisfactory implementation:** Meets most of the basic requirements of the GAMA-standard. Only an acceptable number of deficiencies were identified. There is still room for improvement.
- **Deficient implementation:** Does not meet the basic requirements of the GAMA-standard. One or more significant deficiencies and/or deficiencies were identified, which, in the aggregate, leads to a material weakness. There is room for significant improvement.
- **No implementation:** No substantial attempts are made to implement the GAMA-standard.

#### Box 31: Know your Customer (KYC)

International obligations to enact KYC obligations on persons engaged in licit activities vulnerable to criminal activity is common, such as in Article 14 of the United Nations Convention against Corruption (UNCAC).

KYC schemes typically require:

- Identification procedures
- Monitoring
- Suspicious transaction reporting
- Adequate record keeping of communications
- Control systems

KYC is a major component of the Financial Action Taskforce (FATF) recommendations adopted in the context of money laundering and terrorist financing. KYC obligations are also enshrined in other international treaties such as the Terrorist Financing Convention.

No open source information could be found which details the criteria upon which GAMA bases its KYC Standard. GAMA has also released official statements acknowledging the seriousness of and its opposition to illicit trade and noting that it has a KYC standard.

#### e. Manufacturing Equipment and the Scope of the Protocol

Machinery for the manufacture of cigarettes and other tobacco products is found in Chapter 84 of the Harmonized System, while some relevant machine parts are found in Chapter 82. Classification of machinery depends on its function and operational principle<sup>35</sup>.

States parties negotiating the provisions of the Protocol evidently (given the inclusion of manufacturing equipment within the scope of Protocol) found that:

- There was identifiable manufacturing equipment used for the manufacture of tobacco products and/or parts thereof;
- The Harmonized System contains a number of classifications that include such machinery;
- Some machinery used for the manufacture of tobacco products can also be used for other purposes; and
- Conversely, machinery not identifiable as being for the manufacture of tobacco products may be used for the manufacture of such products.

Most of the equipment may be disassembled into smaller components that may be difficult to identify under HS classifications or with specificity in terms of its function. However, the fact that the

Harmonized System contains references to machines used for the manufacture of tobacco products asserted their ability to be identified and illustrated that there are some machines that are used for this purpose.

Manufacturing equipment falls within the scope of the Protocol. The fact that it has a Harmonized Tariff Code, and is complex as it can be divided into many components, shows that certain key inputs (at the least acetate tow and cigarette paper) should be able to be subjected to an effective control mechanism, i.e. the Protocol, such as for manufacturing equipment<sup>36</sup>.

**Box 32: Chapter 84 of the Harmonized System**

In Chapter 84, there are three tariff headings under which the equipment listed may be considered to be important for the manufacture of tobacco products.

1. Tariff heading 84.41: **“Other machinery for making up paper pulp, paper or paperboard**, including cutting machines of all kinds”. Machines under this heading can be used for many purposes, including working with cigarette paper. These machines can also be traded and transported in pieces with various functionalities indicated.
2. Tariff heading 84.78: **“Machinery for preparing or making up tobacco**, not specified or included elsewhere in this Chapter”. This is an “umbrella” heading that would cover any machinery for preparing or making up tobacco that has not already been specified by or included under another heading. Under this heading, two specific pieces of machinery are listed that are used in the manufacture of tobacco products:
  - (i) Tobacco **leaf stripping or cutting machines** (produced, traded and transported under heading 84.78 of the HS). However, machines which can be used for other agricultural products, such as tea, can also be used for tobacco plants. As such, leaf stripping or cutting machines are widely used and therefore not unique to the manufacture of tobacco products.
  - (ii) **Cigar- or cigarette-making machines**, whether or not equipped with an auxiliary packaging device (produced, traded, transported in many different types and forms and with many different capabilities). Large industrial manufacturers make use of specifically designed, high production machines, which are usually composite machines that meet the needs of the manufacturer. Parts of the composite, or integrated, machines include equipment to transport the tobacco, sometimes to cut it, transport the paper and the filter material, fill the tubes, dose the tobacco, glue the paper, cut the filter, transport the cigarettes, and package them in boxes. Printing can be included, as well as other steps, such as the addition of flavours. Similar results at lower speed can be obtained with various small machines. In addition, all such machines can be disassembled, traded and shipped in pieces.
3. Tariff heading 82.08: **Lists machinery parts**. Under item (5)(b) of this heading, reference is made to “Blades and knives for machines for cutting paper, textiles, plastics, etc.; for tobacco shredding machines, etc.”. However, the equipment parts listed under this heading are not unique to the manufacture of tobacco products.

#### 4.3.4. Due diligence (art. 7)

##### Box 33: Due diligence (art. 7)

All natural/legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment are **required** to:

- **Conduct due diligence before** the commencement of and **during** the course of a business relationship.
- **Monitor sales** to customers to ensure quantities are commensurate with demand within the intended market of sale or use.
- **Report to the competent authorities** any evidence that the customer is engaged in activities in contravention of its obligations arising from the Protocol.
- **Obtain information for customer identification** from the customer, which *may include* documentation/declaration of criminal records, and identification of bank accounts intended to be used in transactions.
- **Take measures to ensure compliance** with the obligations arising from the Protocol, which *may include* designating customers as blocked customers in accordance with national law.

Under securities legislation, brokers are allowed the defense of having taken *all reasonable steps* to discover the financial health of the company whose shares they are selling when charged with inadequate disclosure. It is from this legislation that the notion of due diligence originated. Now is it used in situations where the law stipulates an obligation to take **reasonable care** in doing something.

The concept of due diligence for inclusion in the Protocol was elaborated from the EC-PMI Agreement. Under article 7 of the Protocol, natural and legal persons engaging in the supply chain of tobacco, tobacco products and manufacturing equipment, are required to conduct due diligence with regard to their customers. This article is **complementary to article 6**.

Pragmatically speaking, there are various practices engaged in by tobacco manufacturers when interacting with their customers depending upon their legal obligations and due diligence standards in a particular market. At the lowest level, no due diligence at all is conducted and some manufacturers may be content to provide their product to any client as there is no obligation to engage in due diligence. Moving along the continuum, there would be companies that conduct at least minimum to thorough checks on their customers depending on the obligations imposed on them e.g. as part of a condition for a licence tobacco manufacturers must ensure that information in relation to their clients is up to date, or they must retain records of their clients for a prescribed period of time.

##### a. Policy Considerations

- As article 7 stands, it will have to be closely aligned with the regulatory framework surrounding the licensing regime established by States parties. States parties will need to consider whether they have a licensing regime. If so, they will need to determine what components of due diligence obligations can be imposed under the application of the licensing regime. Where countries do not yet have a licensing regime in place they should consider due diligence obligations arising out of the Protocol as part of this regime.

- An INB 4 document states that, “the notion of “blocked customer” should be included as well, but subject to national legislation. In addition, customer blocking should be an administrative procedure, managed by a “competent authority”, but only after a court has found the person guilty of having committed an offence”<sup>37</sup>.
- The bearing of article 6 of the Protocol on article 7 is particularly relevant for article 7(4) and will depend on how national administrations will define a “**blocked customer**”, and under which provisions of the Protocol. Countries will need to determine what criteria will need to be met before a customer becomes a blocked customer. States parties should consider whether customers will be blocked for any unlawful conduct engaged in or will a higher threshold be established such as the requirement of a criminal conviction before a customer is blocked. Will blocked customers be able to be reinstated and how? What penalties will apply?
- Sanctions will be an important part of the licensing regime. States will necessarily need to consider the **range of penalties available** for those responsible for conducting due diligence and failing to do so. Where possible, national legislation could perhaps treat these aspects as well, at the very least such obligations for manufacturers should be decreed in the regulations of the country.
- States parties are required to **monitor all licensees** and, in view of article 7, the customers of manufacturers, importers, and exporters of tobacco, tobacco products and manufacturing equipment whether or not they are required under the national regime to obtain a licence or register their activity themselves. This is a binding obligation and will depend on the national requirements and domestic framework in place.
- States parties will also need to decide what **type of “evidence”** they will require/accept from those engaged in the supply of tobacco, tobacco products and manufacturing equipment, a process of receipt of such evidence, how it will be verified and consider consequences for the provision of such information, such as security of the provider of the evidence.
- Another important aspect of this article is monitoring sales to **ensure quantities are commensurate with demand** in the intended market of sale. There are three specific provisions in the Protocol that will need to be considered in light of each other, each requiring that the supply of product be commensurate to demand in the intended market of sale. Essentially all three provisions create obligations on the tobacco manufacturer/those subject to licence, to ensure that:
  - Relevant information is notified to the licensing authority regarding a description of the intended market of sale/use;
  - Sales to their customers are monitored to ensure that market supply is commensurate to demand; and
  - Necessary measures are taken to prevent diversion of tobacco products into illicit trade channels, by supplying amounts commensurate with demand only.

- Those subject to a licence will therefore be required to conduct research into the markets they supply, particularly regarding legitimate and legal supply amounts. States parties should consider having information available as well in this regard so that in the event of a discrepancy, authorities are able to verify information themselves. In the event of market verification, countries will be able to utilize channels for mutual administrative assistance, on the basis of the framework provided by the Protocol at article 29.
- It may be necessary in some cases to develop industry guidelines on what measures should be used to establish a market size and what ‘commensurate’ means in this context. The guidelines may suggest timeframes over which a market is identified, or may need to be justified shipment by shipment.

*Table 6: Protocol provisions regarding supply commensurate with demand*

Article	Supply commensurate with demand
Article 6.3(b)	<p>With a view to ensuring an effective licensing system, each State party shall: require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:</p> <p>(viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;</p>
Article 7.1(b)	<p>Each State party shall require, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment:</p> <p>(b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use;</p>
Article 10.1(b)	<p>Each State party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that all natural and legal persons subject to article 6 take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, inter alia:</p> <p>(b) supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.</p>

### 4.3.5. Tracking and Tracing (art. 8)

#### Box 34: Tracking and tracing

“Tracking and tracing” means systematic monitoring and recreation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in article 8 of the Protocol (art. 1(14)).

For the purpose of article 8, the meaning of “cigarette” also includes fine cut “roll your own” tobacco for the purposes of making a cigarette (art. 1(2)).

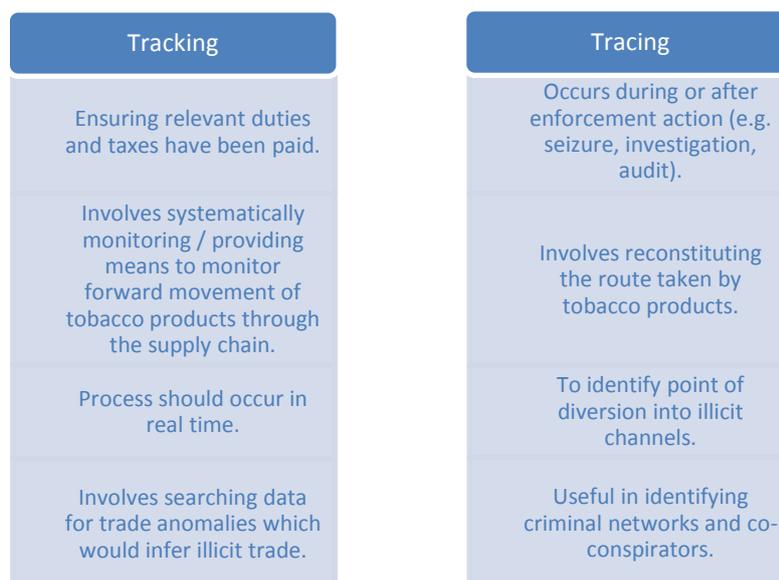
#### a. Overview

Originally, tracking and tracing was a response aimed at **securing the legitimate supply chain** in order to combat the smuggling of genuine tobacco products, most prevalent in the 1990s. The scope of illicit trade has grown over the last decade, and the illegal manufacturing of tobacco products and legal or illegal manufacturing of inexpensive brands has increased (*see section 1.6, “From large-scale smuggling to counterfeits and illicit whites”*).

When studied in this light, tracking and tracing as a tool against the ITTP will not eliminate illicit tobacco trade. What it will do, however, is assist in the control and monitoring of tobacco products produced legally. It will only be effective where the manufacturing of tobacco products is strictly controlled (as is envisaged by Part III of the Protocol). It is unable to monitor the production of tobacco products by illegal manufacturing facilities, such as “under-ground factories” and counterfeit product manufacturers. Components of track and trace could be used by States to ensure that the relevant duties and taxes owed are paid (tax verification) and States will be able to conduct tax verification once the scope of track and trace is expanded under article 8.10.

Tracking and tracing is made up of two distinct components, each with unique functions.

Figure 7: Functions of tracking and tracing



**Box 35: The use of track and trace in other sectors**

Some existing treaties and agreements contain obligations for tracking-and-tracing, such as the Convention on the Marking of Plastic Explosives 1991, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, a Protocol to the United Nations Convention against Transnational Organized Crime. Under the Firearms Protocol Parties are obliged to require **unique** markings to be placed on firearms in order to identify and trace them. This Protocol was adopted in 2001 by the UN General Assembly and entered into force in 2005. Significantly, the Firearms Protocol recognizes that various systems exist and allows Parties to adopt their own systems, as long as Parties agree to share the required information in the prescribed manner.

Other industries such as food, pharmaceuticals and postal shipments can be drawn upon as examples of tracking systems, though to date, a fully operative international track and trace regime, with international standards, has yet to be developed.

At its fourth INB session from 14 – 21 March 2010, INB4 issued information document FCTC/COP/INB-IT/4/INF.DOC./1, dated 22 February 2010, titled “Analysis of the available technology for unique markings in view of the global track-and-trace regime proposed in the negotiating text for a protocol to eliminate illicit trade in tobacco products”. The table below, outlining various marking solutions across various sectors, is derived straight from this INB report. The report noted particularly the effort employed by industries to harmonize available marking technologies, and that although industries sometimes use proprietary solutions there has been a shift towards globally recognized standards being used, such as GS1<sup>1</sup> (see section 4.3.5.f, “Global track and trace regime”).

**Comparison of unique industry marking solutions**

	Industry				
	Pharma- ceutical	Consumer products	Logistics/ postal service	Airline	Firearms
<b>Criteria</b>					
Marking systems used	2D DataMatrix second generation (Gen-2) electronic product code (EPC) <sup>2</sup> RFID	1D DataBar 2D DataMatrix Gen-2 EPC RFID	1D DataBar 2D DataMatrix Proprietary marking	1D DataBar 2D DataMatrix	Proprietary markings
Human-readable?	Yes – serial number is always printed in plain text	Yes – serial number is always printed in plain text	Yes – serial number is always printed in plain text	Yes – serial number is always printed in plain text	Yes
Machine readable?	Yes	Yes	Yes	Yes	No
Unique identification?	Yes – serialized number	Yes – serialized number	Yes – serialized number	Yes – serialized number	Yes
Use of standard codes	GS1 codes: Serialized Global Trading Identification Number (SGTIN) <sup>3</sup> etc.	GS1 codes: SGTIN, SSCC, etc.	GS1 codes: SSCC Proprietary coding schemes	IATA proprietary coding	National proprietary coding systems

1. GS1 is a global organization which designs and implements global standards with regard to supply and demand chains globally and across sectors.

2: An EPC is a unique number used to identify a product at item level. It is electronically recorded in an RFID tag.

[3: SGTIN is Serialized Global Trading Information Number standard, an internationally recognized coding standard]\*

\*Source: Analysis of the available technology for unique markings in view of the global track-and-trace regime proposed in the negotiating text for a protocol to eliminate illicit trade in tobacco products. Note by the Convention Secretariat

Link: [http://apps.who.int/gb/fctc/PDF/it4/FCTC\\_COP\\_INB\\_IT4\\_ID1-en.pdf](http://apps.who.int/gb/fctc/PDF/it4/FCTC_COP_INB_IT4_ID1-en.pdf)

## **b. The Protocol's Relationship to article 15 of the WHO FCTC and the Agreements with the tobacco industry**

Article 15(2)(b) of the WHO FCTC specifically requires each State party to consider, as appropriate, developing a practical tracking and tracing regime which would further secure the distribution system of tobacco products, including cigarettes and assist in the investigation of illicit trade.

The Agreements between the EC, together with, currently, 27 of the Member States of the EU, and the four major tobacco companies Philip Morris International, British American Tobacco, Japan Tobacco International and Imperial Tobacco, administered by OLAF, contain specific tracking and tracing provisions requiring the:

- Marking of certain “master cases” of cigarettes (a master case contains 10 000 cigarettes), cigarette cartons and packs;
- Establishment of a **master-case database** and schedules for the implementation of programmes to scan information into that database, and provide instant access for designated EC and Member State officials to information in the master case database concerning seized master cases;
- Conducting of additional research on the enhancement of existing tracking and tracing technologies and the development of new ones and to apply new scanning and coding technologies as they become feasible; and
- The ultimate aim is to identify customers in the supply chain who are responsible for diverting cigarettes to the illicit market, so that appropriate action can be taken by enforcement agencies. The Agreements have mechanisms to exclude such customers from the distribution chain.

## **c. Protocol Requirements for a Tracking and Tracing Regime**

According to art. 8(1) of the Tobacco Protocol, the **purpose** of having a global tracking and tracing system is:

- To secure the supply chain; and
- To assist in the investigation of ITTP.

**Table 7: Obligations, interdictions and recommendations under art. 8 of the Tobacco Protocol**

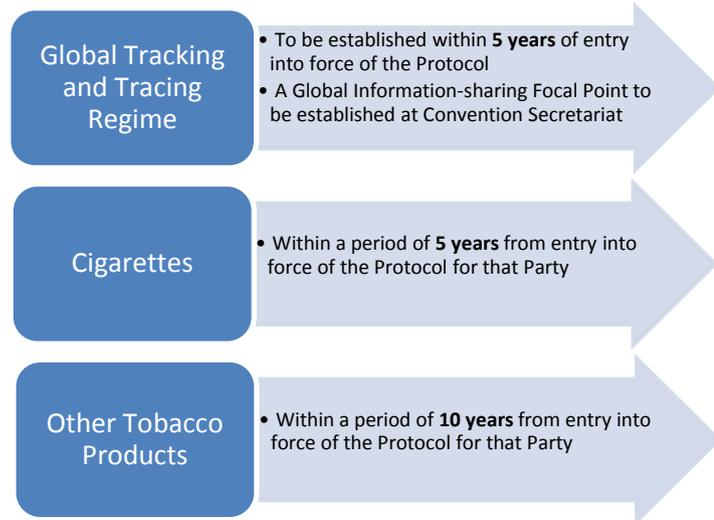
Obligations (mandatory provisions)	
Broad Provision	Detail
Parties agree to establish a global tracking and tracing regime (art. 8(1)):	<ul style="list-style-type: none"> <li>• Comprising national/regional tracking and tracing systems;</li> <li>• A global information-sharing focal point located at the Convention Secretariat of the WHO FCTC; and</li> <li>• Accessible to all States parties to make enquiries and receive relevant information.</li> </ul>
Parties shall establish a tracking and tracing system for all tobacco products <b>manufactured in</b> or <b>imported</b> onto its territory (art. 8(2)).	
Each Party shall require that unique, secure and non-removable identification markings (unique identification markings (UIM)), such as codes or stamps, are affixed to all unit packets and packages and any outside packaging of cigarettes (art. 8(3)):	<ul style="list-style-type: none"> <li>• For cigarettes, 5 years following entry into force of the Protocol for that Party;</li> <li>• For other tobacco products, 10 years following entry into force of the Protocol for that Party.</li> </ul>
Each Party shall require the following information be available (art. 8(4)):  Note that 8(4)(a), 8(4)(b), 8(4)(g) and where applicable 8(4)(f), shall form part of the UIMs.	<ul style="list-style-type: none"> <li>a) Date and location of manufacture;</li> <li>b) Manufacturing facility;</li> <li>c) Machine used to manufacture tobacco products;</li> <li>d) Production shift or time of manufacture;</li> <li>e) The name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;</li> <li>f) The intended market of retail sale;</li> <li>g) Product description;</li> <li>h) Any warehousing and shipping;</li> <li>i) The identity of any known subsequent purchaser; and</li> <li>j) The intended shipment route, the shipment date, shipment destination, point of departure and consignee.</li> </ul>
Parties shall require the information in paragraph 4 to be recorded at time of production or first shipment by any manufacturer or at time of import (art. 8(5)).	
Parties shall ensure information is accessible by means of a link with the UIM and in an authorized format (Art. 8(6) and (8(7))).	
Parties shall ensure information is accessible to global information-sharing point upon request, through a standard electronic secure interface with its national/regional central point (art. 8(8)).	
Each party shall (Art. 8(9)):	<ul style="list-style-type: none"> <li>a) Have access to information by making query of global information-sharing focal point;</li> <li>b) Request information;</li> <li>c) Not unreasonably withhold information;</li> <li>d) Answer information requests; and</li> <li>e) Treat exchanged information as confidential.</li> </ul>
Parties shall require the further development and expansion of the scope of the applicable tracking and tracing system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control (art. 8(10)).	
Parties shall cooperate with each other and with competent international organizations to (art. 8(11)):	<ul style="list-style-type: none"> <li>a) Facilitate the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;</li> <li>b) Support training and capacity-building programmes for Parties that express such a need; and</li> <li>c) Further develop the technology to mark and scan unit packets and packages of tobacco products to make accessible the information listed.</li> </ul>
Parties shall ensure that its competent authorities interact with the tobacco industry and their representatives only to the extent strictly necessary in the implementation of this article (art. 8(13)).	
Interdictions	
Assigned obligations shall not be performed by tobacco industry (art. 8(12)).	
Parties shall not delegate assigned obligations to tobacco industry (art. 8(12)).	
Recommendations	
Parties may require the tobacco industry to bear any associated costs (art. 8(14)).	

#### d. A national system and a global regime

The Protocol asks for tracking and tracing capabilities to be created at two levels: a **global** track and trace regime and a **national** track and trace system.

Despite the timelines shown in figure 8, some States have already procured some aspects of tracking and tracing systems (see table 9).

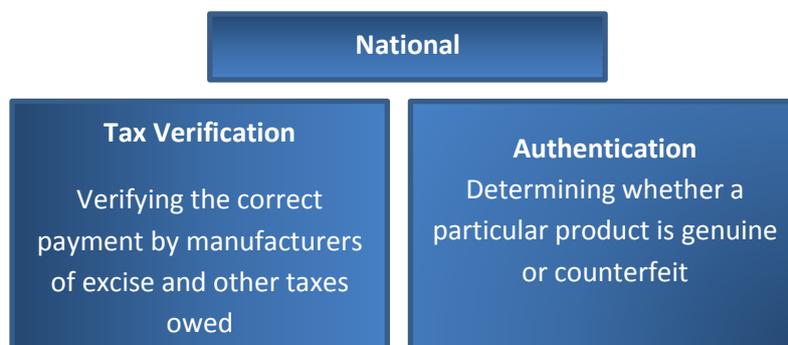
Figure 8: Tracking and tracing timelines



#### e. National track and trace system

Nationally, a track and trace system seeks to address both **tax revenues**, ensuring relevant duties and taxes owed are paid, and **authentication** of the products for law enforcement purposes. For this to be effective, other measures of control as outlined in the Protocol, such as a licensing, due diligence, record-keeping, security and preventive measures, will need to be implemented.

Figure 9: Requirements at a national level



A track and trace system will be established to control licit trade to uncover points of diversion but will not be able to assist in addressing the issue of counterfeiting. The functioning of an efficient international track and trace regime will rely on established national and regional systems. For this reason, national systems will require efficient regulation and processes which take into account the need to ensure the interoperability of their systems with the international regime.

States parties to the Protocol are required to established a track and trace system for all tobacco products that are:

- Manufactured in; or
- **Imported** onto their territory.

States parties shall require markings be affixed that are:

- Unique;
- Secure; and
- Non-removable identification markings.

on all:

- Unit packets (cigarette packs);
- Packages (pallets, master cases, cartons); and
- Outside packaging.

This implies a necessary **hierarchy** to exist between all unit packets and packages. In tobacco manufacture, this refers to pallets (made up of master cases for a shipment/500 000 cigarettes), master cases (made up of cartons/10 000 cigarettes), cartons (made up of cigarette packs/200 cigarettes), cigarette packs and their packaging. As the Protocol requires markings on each packaging unit (pallet, master case, carton, pack), this will require that the marking system chosen by States parties to the Protocol keep track of “aggregation events”. Aggregation refers to the parent-child relationship that exists between different packaging units which is a necessary requirement of article 8. Each time a package is unpacked, this will be an aggregation event that must be recorded. e.g. a master case is unpacked and individual cartons on sold.

When this aggregation event occurs each individual carton will need to be scanned and the necessary information recorded. This information will link the carton to the master case it originated from, and provide information about the next customer in the supply chain. Thus each packaging unit is connected via the information held by the marking on each unit. This will ensure that cigarette packs can be identified as coming from a particular carton, and that carton in turn can be linked to a particular master case, which can be linked to a particular pallet. This is especially useful for tracing purposes, and will assist in identifying the point of diversion, especially where products are disassembled for illicit trade purposes.

#### - Manufacturing Countries

While the track and trace system is to be established by manufacturing and importing countries under the scope of article 8, it will fall to manufacturing countries to ensure that marking requirements under article 8 are realized.

Markings will be affixed to products during the manufacturing process, thus by manufacturers, which manufacturing countries will need to legislate for when implementing article 8 of the Protocol.

### - Requirements for Marking Technologies

The INB4 Report FCTC/COP/INB-IT/4/INF.DOC./1 specifies requirements for marking technologies that will need to be taken into account in order for States parties to meet the objectives of the Protocol in relation to track and trace. These are:

- Human-readability.
- Uniqueness – unique identity given to every single tobacco product.
- Security – indecipherable.
- Integration – products subject to tax require a unique, serialized identity that can be exchanged electronically, along the supply chain, beginning with the manufacturer and continuing preferably to the retailer.
- Compliance – must comply with national/regional regulations.
- Size – must respect space limits on products such as packs and fit within these limits.
- Ease of production – must be able to be placed quickly on products to meet production speeds of today’s fast moving consumer goods.
- Cost effectiveness – to account for interoperability with an international regime, so that countries with limited resources can also implement article 8.

#### Box 36: INB4 report on available track and trace technology

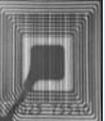
INB 4 report (FCTC/COP/INB-IT/4/INF.DOC./1) titled “Analysis of the available technology for unique markings in view of the global track-and-trace regime proposed in the negotiating text for a protocol to eliminate illicit trade in tobacco products”, is a key document containing much useful information for countries on track and trace technology and requirements for marking systems.

Link:[http://apps.who.int/gb/fctc/PDF/it4/FCTC\\_COP\\_INB\\_IT4\\_ID1-en.pdf](http://apps.who.int/gb/fctc/PDF/it4/FCTC_COP_INB_IT4_ID1-en.pdf)

### - Requirements for Unique Identification Markings (UIM)

Markings can take a number of different forms. The table below summarizes the information contained in the INB4 Analysis Report and has been reproduced in its entirety from this Report<sup>38</sup>.

*Table 8: Available marking technologies*

Marking Technology	Description
Printed serialization number (21)274877906943	Unique, human-readable, printed on product, can be combined with other marking technology.
ID Databar 	Machine readable where information is stored in the spacing between parallel lines and their width. The GS1 Databar is the global standard.
2D Datamatrix 	Machine readable, printed as a square or rectangles and made up of dots and squares. GS1 is again the global standard for such codes.
RFID Tag 	A microchip attached to an antenna, containing a unique serial number and can contain additional information. EPC is the industry standard.

The INB4 Report further outlines specific requirements that a number system used for unique identification numbers (UIM) should meet:

- Unique identification numbers (UIM);
  - Built on international standards
  - Human-readable
  - Extensible
  - Unique (not predictable and never used more than once)
  
- Marking technologies;
  - Type of technology to be used will depend on manufacturing capability (technical and production capacity).
  
- Aggregation;
  - Important to be able to create traceability of events without having to scan products individually, where products are stored one inside the other.
  - Assists with identifying counterfeit products as counterfeiters will not be able to recreate aggregation events.
  - It is the manufacturer's responsibility to record the relationship information in their database and record any changes made.
  
- Data to be captured (requirements under Art. 8.4, at a minimum those bolded items);
  - Date and location of manufacture;
  - Manufacturing facility;
  - Machine used to manufacture tobacco products;
  - Production shift or time of manufacture;
  - The name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;
  - The intended market of retail sale;
  - Product description;
  - Any warehousing and shipping;
  - The identity of any known subsequent purchaser; and
  - The intended shipment route, the shipment date, shipment destination, point of departure and consignee.

- Supply chain events; and
  - The shipping and receipt of goods will need to be recorded throughout the supply chain by those distributing and receiving items along the way from the origin of the goods to their final destination. This will occur through the scanning or manual recording of the information contained in the unique identification marking.
- Data transfer
  - Data will be exchanged throughout the supply chain, between manufacturer and the customers in the supply chain.
  - National authorities will need to collect the available data through the supply chain in databases controlled by the national authorities.
  - The information collected by national authorities will need to be available for use by the global information-sharing focal point as part of the global track and trace regime.

Finally, the INB4 Report concludes that the following are KEY elements for an effective **national** and **international** track and trace regime:

- Serialization of all tobacco products to the level of the smallest saleable unit;
- Common numbering standards for serialization;
- Human-readable printing/labelling of serialization numbers on all traded units;
- Establishment of parent–child relationships between different packaging units (aggregation);
- Recording of any changes in the parent–child relationship along the supply chain;
- Recording of any shipping and receiving events along the supply chain from origin to destination;
- Recording of relevant data by supply-chain partners;
- Establishment of query interfaces between the databases of the supply-chain partners and national/international authorities;
- A standard as a protocol for transferring queries and data, such as EPCIS (a global standard for information sharing between trading partners)<sup>39</sup>.

The INB4 Analysis Report clearly outlines that for the Protocol’s objectives to be achieved **global harmonized standards should be adopted in place of proprietary solutions**, so that national solutions can effectively interact with the global regime to be created. This will be essential for the effective implementation of article 8 and the creation of the global regime depends on harmonized standards being used by States parties to the Protocol when they develop their national systems.

The tobacco product supply chain, like many other products, is global and involves many different stakeholders: manufacturers, third party logistics service providers, distributors, retailers etc. Most of these stakeholders already track and trace various kinds of products (including tobacco) using widely

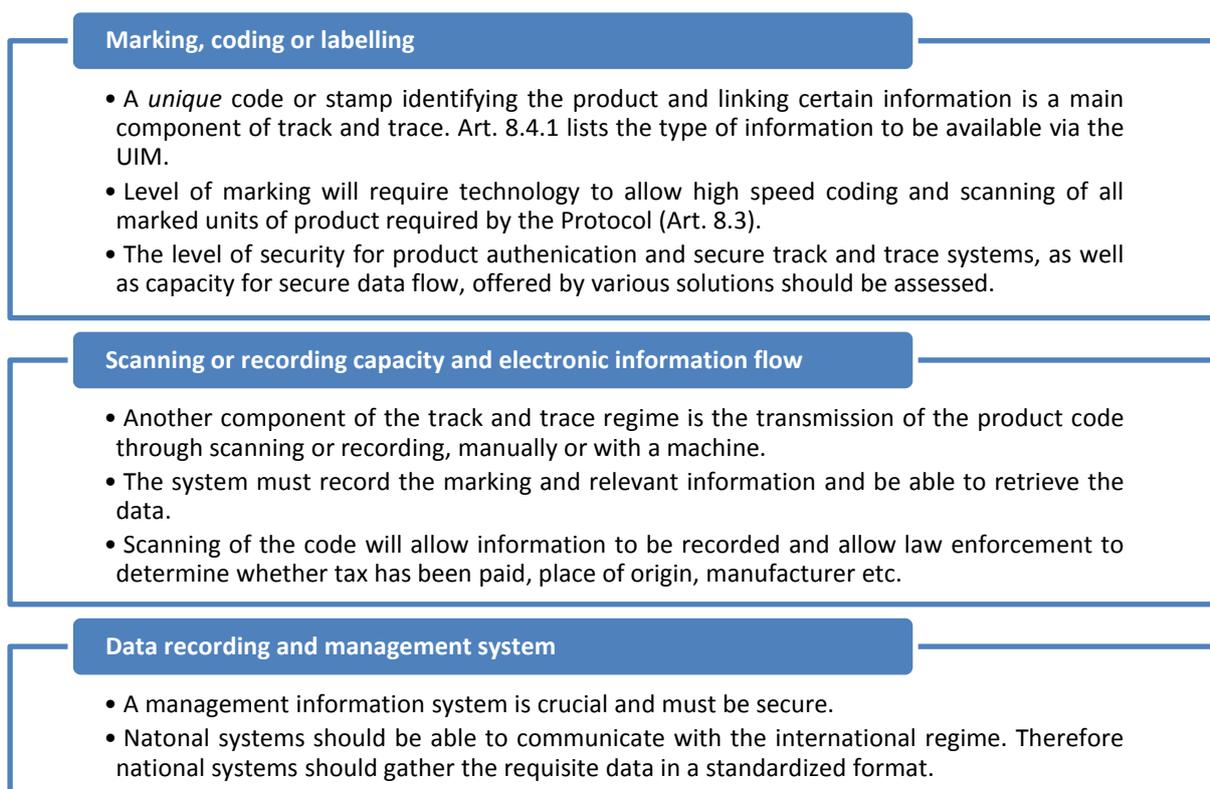
available standardized and harmonized tools. Thus it will be imperative for States parties to the Protocol to put in place product marking technologies that support the use of global standards by supply chain participants, and systems which support interoperability in order to enable the exchange of information between these participants, national authorities and the international track and trace regime.

#### f. Global track and trace regime

The main aims in implementing a **global** track and trace **regime** are:

- To secure the supply chain;
- To assist in combatting the diversion of genuine tobacco products into the illicit market;
- To assist in the investigation of illicit trade;
- To encourage the sharing of information between the authorities of different States parties; and
- To encourage tracking and tracing as far through the supply chain as possible.

*Figure 10: Elements of a global track and trace regime*



## - The Requirements of a Global Track and Trace Regime

Cost effectiveness is an important consideration for the implementation of a global track and trace regime. For effective implementation of the Protocol's provisions on track and trace for a global regime, countries with low resource capability will need to be considered, and thus the global regime should be based on international standards, and should **not** require any particular proprietary technology, method or system. This was a significant point made by the WHO Expert Review on the Feasibility of an International Track-and-Trace Regime for Tobacco Products, FCTC/COP/INB-IT/3/INF.DOC./5.

National track and trace systems may be based on a particular technology or system, as determined by the State party according to their economic, technical, enforcement and legislative capacities. The international track and trace regime called for by the Protocol must allow for different available secure systems at national or regional levels, that can be upgraded by States parties when required. The sharing of information with other countries and their competent authorities is an essential part of the global regime and thus countries must adopt technological solutions that will enable them to share information with other States parties efficiently and expediently.

Utilizing technology with common, identifiable, core **global standards** (see box 37) is advantageous for the following reasons:

- Technically able to build upon existing practices, without the need to purchase, create or integrate new systems (also cost effective).
- Neutral and common language used for such standards that is internationally acceptable.
- Assists in anticipating progress in technology and techniques, in order that the regime stays current.
- The global regime will be grounded on flexible standards at the international level allowing for change and advancement.

### Box 37: Global standards

Article 8 clearly defines the basic requirements and procedural modalities to be followed in designing and implementing a track and trace system (the **national** requirement), including:

- Identification of actors involved in the supply chain.
- Nature and type of data to be captured and collected.
- Record keeping, archiving, data storage.
- Communication.
- Information sharing, retrieval and search.

### Prerequisites

Generally, the selling unit for the tobacco industry is the master case (which contains usually 50 cartons or 10 000 cigarettes). Therefore, tracking and tracing at the master case level is a prerequisite.

As law enforcement authorities began to seize more and more loose cartons or packs of cigarettes, tracking & tracing was extended to the carton level by the four main tobacco manufacturers under the EC Agreements. This allows first and subsequent purchasers of cartons to be identified. The Protocol requires that markings be placed on **all** unit packs (cigarette packets) and packages (master cases and cartons) and outside packaging, and so tracking and tracing will extend down the hierarchical structure of the products through to individual packets. This is called **aggregation**, which

establishes a parent-child relationship between pallets, master cases, cartons and cigarette packets. An advantage of this is that other actors will now be identifiable in the supply chain further down the chain, such as wholesalers and retailers.

Therefore, **serialization** is a prerequisite for track and trace, i.e. unique identification of each pack, carton and master case, which will enable actors in the supply chain to register product movements with standard tools that are widely available.

It is important to note that a fully implemented and operational master case tracking and tracing system is necessary to allow carton and pack tracking and tracing. Any system chosen will have to be suitable for an industry with high production speed (up to 1000 packs per minute).

### Using the GS1 Traceability Standard

Examples of open standards<sup>40</sup> are those set by GS1, an international standards organization. These standards have been endorsed by the International Organization for Standardization (ISO) and the European Committee for Standardization. The INB 3 encouraged the adoption of the GS1 traceability standard, which is compatible with ISO standard 22005, and stated that it would ensure *maximum interoperability among traceability systems throughout the supply chain*. The GS1 traceability standard is a process standard describing the traceability process independent from the choice of enabling technologies.

Essentially, the GS1 traceability standard defines business rules and minimum requirements to be followed when designing and implementing a traceability system.

#### Box 38: What is GS1?

GS1 is a neutral, not-for-profit organization dedicated to the design and implementation of global standards, technologies and solutions aimed at improving the efficiency of supply and demand chains by adding useful information to any exchange of goods or services. It was formed from the joining together of EAN International and the Uniform Code Council (UCC), and is today the most widely used supply chain standards system in the world.



#### Box 39: Further reading on track and trace

GS1 Traceability Standard

**Link:** <http://www.publications.gs1.fr/Publications/GS1-Traceability-Standard>

GS1 Traceability Standard: What you need to know

**Link:** <http://www.publications.gs1.fr/Publications/GS1-Traceability-Standard.-What-you-need-to-know>

See WHO Export Reports on various aspects of track and trace, including:

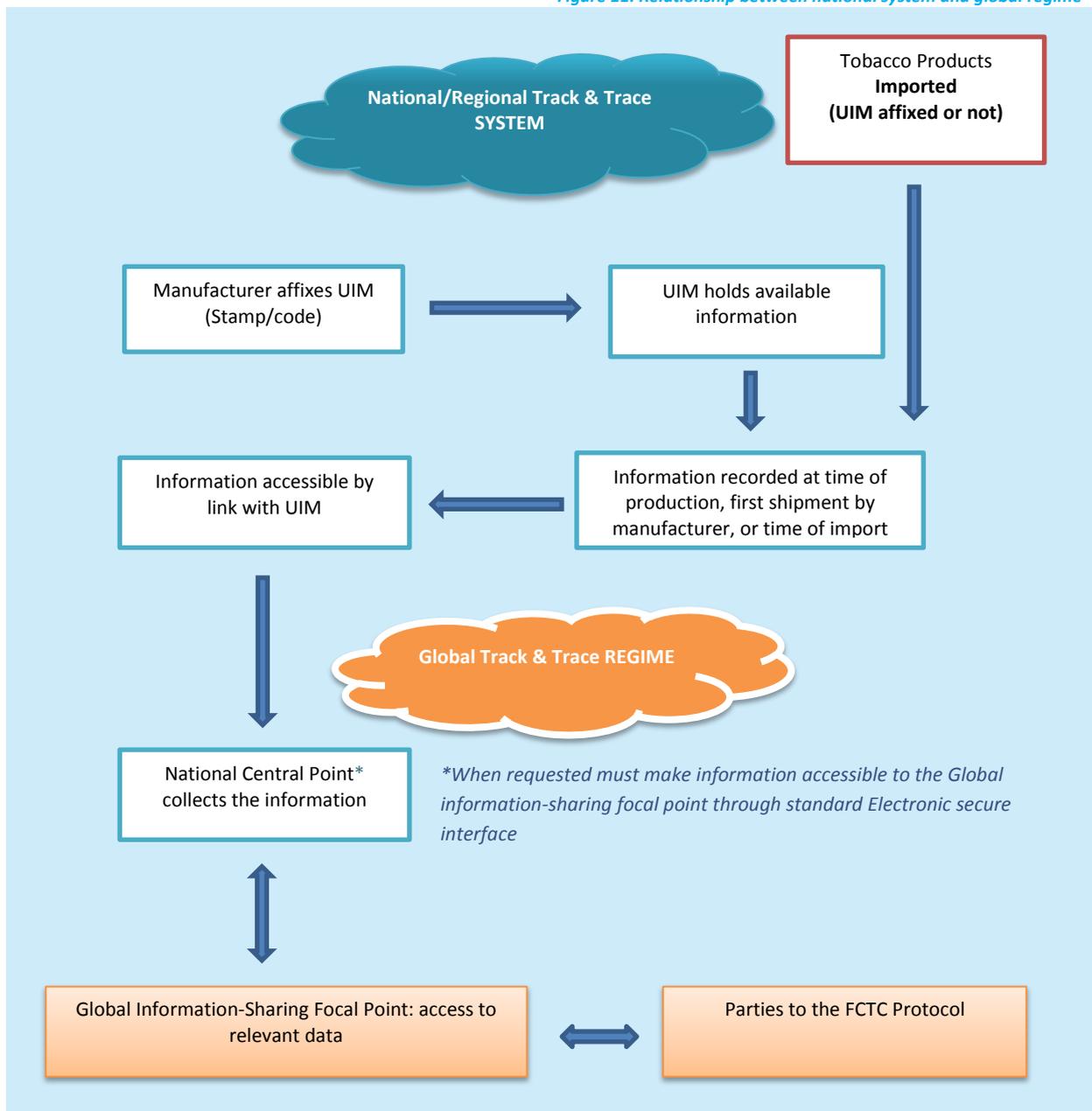
- Document FCTC/COP/INB-IT/3/INF.DOC./5 Expert review on the feasibility of an international track-and-trace regime for tobacco products
- Document FCTC/COP/INB-IT/3/INF.DOC./5 Assessment of potential requirements at national level for an international tracking and tracing system for tobacco products
- Document FCTC/COP/INB-IT/4/INF.DOC./1 Analysis for the available technology for unique markings in view of the global track and trace regime proposed in the negotiating text for a protocol to eliminate illicit trade in tobacco products

**Link:** <http://apps.who.int/gb/fctc/E/index.html>

### g. The interaction between the Global Regime and the National System

The provisions of the Protocol require States parties to establish their own **national** tracking and tracing systems (Art. 8.2) where Unique Identification Markings (UIM), containing required and necessary information (Art. 8.4), are to be affixed to all unit packets and packages (Art. 8.3). This information will be available by link with the UIM, must be recorded and will form part of the global regime. Countries shall establish a national/regional central point which will hold the information and which will be connected to the global information-sharing focal point through a secure electronic interface for the exchange of information. Collecting this information is a necessary part of the national track and trace system.

Figure 11: Relationship between national system and global regime



## h. Policy Considerations

### National Central Points

- The national central point would function similarly to the global information-sharing focal point. The Convention Secretariat states that it could design and build a generic (for the national central point and global information-sharing focal point) application for use by States parties at no cost. States parties will need to consider their economic and technical capabilities.
- Proper information technology infrastructure, stable internet connection, a few servers and staff, are minimum requirements for the establishment of national central points.

### Unique Identification Markings

- Manufacturing countries would require UIMs to be printed by manufacturers on unit packets and packages and outside packing of cigarettes at the time of manufacture. In some cases this may require legislation or an amendment to existing legislation to require this UIM to be placed on a product and specify where and how it is to be placed (*see tables 10 and 11 on available solutions*).
- In cases of products imported into the territory, States parties will need to decide who is required to mark the products and how information will be collected and obtained. The Protocol requires that the information set out in art. 8.4 be recorded at the time of production, first shipment by the manufacturer or at the time of import onto its territory. If States parties are importing from non-Parties to the Protocol, they will need to develop a process to have the necessary information available and recorded to meet their obligations under the Protocol.
- States parties should consider whether markings are required to be **human-readable** (to be able to trace the product across borders) or involve graphical markings, e.g. two dimensional barcodes read by a machine. It is more difficult to counterfeit products only read by means of an electronic device, though this would increase implementation cost for States parties to the Protocol, so a human-readable element is advisable. These considerations may have more bearing for States parties with limited resources.
- States parties should consider whether their requirements for UIMs are indecipherable (data elements cannot be deduced), which is a prerequisite for a secure system. If a numeric identifier is used, it, or part of it, should be randomly generated to avoid easy guessing.
- Observing a seemingly valid identifier does not automatically ensure the product is genuine. Counterfeiters may be in a position to copy valid markings and it will not be immediately evident if the product is genuine or counterfeit, unless the same identifier is discovered to have been used a number of times.

### **Access to data nationally and globally**

- In manufacturing countries, the national central point would collect information directly from the manufacturer. States parties should consider the access they have to information and how their national central points would obtain that information.
- Manufacturers print the marking on the product which will link the product to certain information.
- National central point should consider the collection of information from a number of data sources, including manufacturers, importers, national customs authorities, distributors and national central points.
- Data from imported products should be available through the global information-sharing focal point, as the manufacturing country would be obliged to collect that data and provide it upon request to the global information-sharing clearing house. This is important to note for States parties who are not manufacturing countries. These States parties will need to consider their interaction with the global information-sharing focal point, both technically and as a matter of diplomacy.
- The track and trace system is to be implemented by States parties to the Protocol for products manufactured in or imported into their territory. Imported products manufactured in a non-Party country may not have been marked, nor their information recorded at the global information-sharing focal point. The system will rely on the quality of the information able to be obtained from data sources within a country and the obligations imposed on them in relation to disclosure (e.g. on manufacturers, distributors, wholesalers, importers etc.). Thus it is vital that the information listed at Art. 8.4 is legislated for and acquired by those obliged to obtain it, such as manufacturers, and in cases of importing countries, customs, and importers.
- It may be unproductive capturing information at the time of import as products may already have been diverted, and legislation may be needed to ensure the importer has required their offshore supplier to have marked the products at the time of manufacture.

### **Accuracy of information**

- The national central point will need to verify that the information provided by data sources is correct. This will depend on when the information is captured in the distribution chain. The sooner it is captured, the easier it will be to verify it.

### **Language**

- States parties will need to agree on the language to be used for the sharing of information.

### **Country Resources**

- Depending on the system chosen, the costs for countries will vary. In the most simplest of systems, the manufacturer is responsible for marking the products and providing the information to the national central point. The national central point may use generic software provided by the Convention Secretariat or other entities to fulfil their obligations to make requested information available.
- Other types of systems will require additional costs to States parties: e.g. States parties develop their own software, use markings that are not human-readable requiring scanners to read the information.
- States parties' obligations will vary depending on whether they are a manufacturing country, an importing country, and whether they collect information from different data sources at different points of the distribution chain.

### **Development of scope**

- States parties to the Protocol are obliged to develop and expand the scope of the track and trace system to being able to determine that taxes have not been evaded, and other obligations have been discharged, throughout the supply chain from manufacture, import or release from customs/excise control. This means the track and trace system may be extended beyond the first customer.

Table 9: Select countries and their level of use of track and trace components

COUNTRY	Protocol signed	Marking system used	Tax stamp	Human-readable	Machine readable	Unique identification	Use of standard codes	Additional remarks
Australia	<input checked="" type="checkbox"/>							
Brazil	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	no	SICPA, not readable outside Brazil, need to provide specific scanners to be readable outside the country – no tracking and tracing functionality. Tracking and Tracing with Codentify implemented since 2008 –tracking and tracing functionality as codes are human readable and can be read outside the country.
Canada	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	no	SICPA, not readable outside of Canada – no tracking and tracing functionality.
China	<input checked="" type="checkbox"/>						n/a	
France	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	yes	Codentify*
India	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	yes	Codentify*
Indonesia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> local supplier	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Codentify* (master case level, further roll-out down to pack level starting 2014).
Iraq	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				Codentify*
Italy	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Codentify* (Tracking to first customer).
Kenya	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Malawi	<input checked="" type="checkbox"/>							
Malaysia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			SICPA – ink taggant.
Morocco	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		SICPA
Nigeria	<input checked="" type="checkbox"/>							
Panama	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Codentify
Paraguay	<input checked="" type="checkbox"/>							

COUNTRY	Protocol signed	Marking system used	Tax stamp	Human-readable	Machine readable	Unique identification	Use of standard codes	Additional remarks
Philippines	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Poland	<input checked="" type="checkbox"/>							
Russia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Codentify - yes	EGAIS, Codentify
Singapore	<input checked="" type="checkbox"/>							
South Africa	<input checked="" type="checkbox"/>							
Switzerland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Codentify - industry implementation to comply with existing legal reporting requirements.
Thailand	<input checked="" type="checkbox"/>							
Togo	<input checked="" type="checkbox"/>							
Turkey	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Sicpa	<input checked="" type="checkbox"/> Codentify	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Sicpa - no (proprietary, incompatible system)	SICPA, tax stamps are for domestic use only, and only readable using SICPA scanners (not human-readable) – no tracking and tracing functionality. Codentify - Tracking and tracing functionality.
Ukraine	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Codentify - yes	EDAPS Consortium tax stamp system, Codentify is used already for tracking and tracing.
UAE	<input checked="" type="checkbox"/>							
United Kingdom	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>			
United States*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		* Suppliers include Xerox, Red Bear Stamp, Authentix, 3M, and SICPA (only in the States of CA and MA).
Uruguay	<input checked="" type="checkbox"/>							
Vietnam	<input checked="" type="checkbox"/>							

\*Voluntarily introduced by manufacturers.

Countries using Codentify include: Belgium, Colombia, Dominican Republic, Ecuador, Germany, Guatemala, Italy, Lebanon, Mexico, Netherlands, Peru, Portugal, San Marino, Spain and Sweden.

Source: Framework Convention Alliance, 31 March 2012

Table 10: Select Governmental control solutions

AVAILABLE SOLUTIONS	Events tracked along supply chain	Aggregation	Serialization	Data control by government	Data storage by government	Tax stamp	Printed tax code	Unique identifier	Link to national authorities	International serialization standards
3M	no	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	?				
ATOS	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
ArjjoWiggins	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Authentix	no						?			?
Axway	?			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Bundesdruckerei	?						?			?
Codentify	yes	<input checked="" type="checkbox"/> (digital)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
DELARUE	no									?
EDAPS	no	no				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Giesecke&Devrient	no		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	?			?
IBM	no (pure data storage for track and trace systems)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		N/A			<input checked="" type="checkbox"/>
SAP GBT	yes		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		N/A	<input checked="" type="checkbox"/>	?	<input checked="" type="checkbox"/>
SICPA	no (no full aggregation and tracking available)	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	?	<input checked="" type="checkbox"/>	?	no

Table 11: Data capture required by art. 8(4)

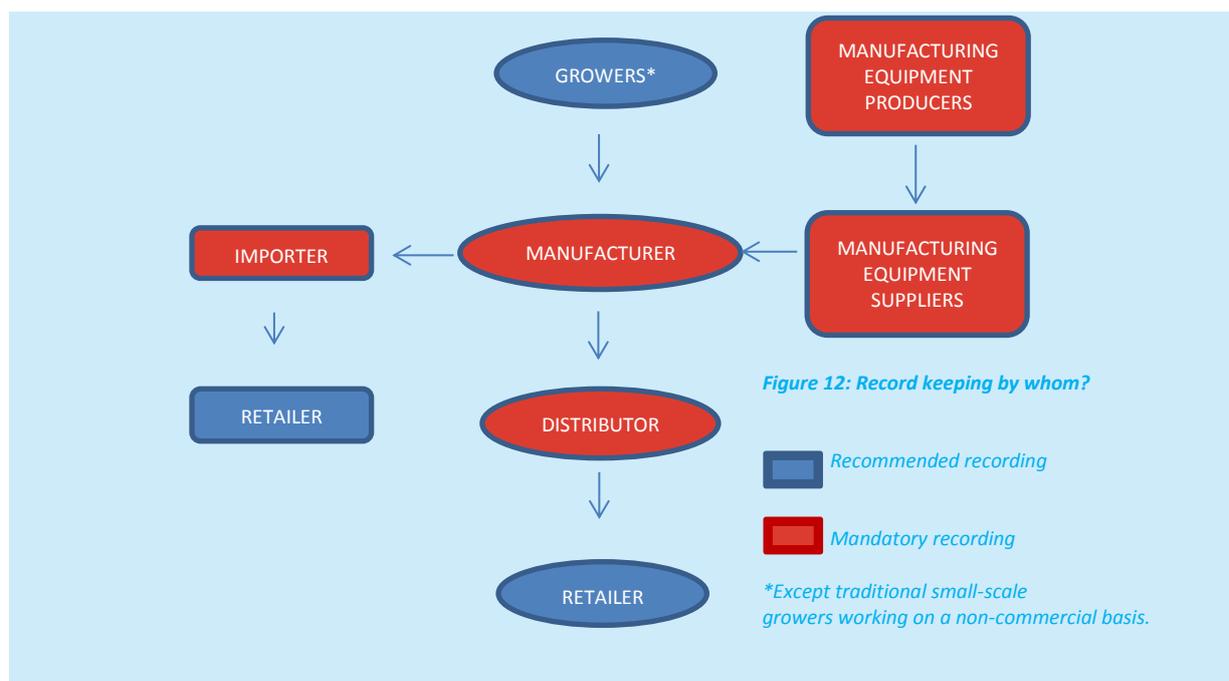
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AVAILABLE SOLUTIONS	Date of manufacture	Manufacturing facility	Machine used to manufacture tobacco products	Production shift or time of manufacture	First customer data	Intended market of retail sale	Product information	Warehousing	Identity subsequent purchaser	Shipment data
3M	no	no	no	no	no	yes	no	no	no	no
ATOS	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
ArjjoWiggins	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Authentix	no	yes	no	no	no	yes	no	no	no	no
Axway	?	?	?	?	no	yes	no	no	no	no
Bundesdruckerei	no	yes	no	no	no	yes	no	no	no	no
Codentify	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
DELARUE	no	yes	no	no	no	yes	no	no	no	no
EDAPS	no	yes	no	no	no	yes	no	no	no	no
Giesecke&Devrient	no		no	no	no	yes	no	no	no	no
IBM	N/A (data storage/track and trace provider)		N/A (data storage/track and trace provider)	N/A (data storage/track and trace provider)	N/A (data storage/track and trace provider)	N/A	no	N/A	N/A	N/A
SAP GBT	N/A (data storage/track and trace provider)		N/A (data storage/track and trace provider)	N/A (data storage/track and trace provider)	N/A (data storage/track and trace provider)	N/A	no	N/A	N/A	N/A
SICPA	Yes, if activated/ no if pre-activated for imports	Yes, if activated domestically /no if pre-activated for imports	Yes, if activated/ no if pre-activated for imports	Yes, if activated/ no if pre-activated for imports	no	yes	no	no	no	no

### 4.3.6. Record Keeping (art. 9)

#### a. Who will be required to keep records?

Figure 12 outlines the obligations imposed by the Protocol on States as to which actors in the supply chain process must keep adequate records of their activities, and recommendations to States regarding which actors, also part of supply chain, should be required to keep records.



#### b. Obligations

During Protocol negotiations, many delegations reiterated the need for the inclusion of strong obligations for this provision highlighting the benefits governments would receive from having access to information of the kind outlined by the Protocol. It was considered important to impose robust obligations, particularly on manufacturers and distributors and so we have article 9 as it is adopted in the Protocol (see table 12).

**Table 12: Obligations (mandatory provisions) for art. 9**

Provision	Detail
Parties to require all natural and legal persons engaged in the supply chain of: <ul style="list-style-type: none"> <li>• Tobacco;</li> <li>• Tobacco products; and</li> <li>• Manufacturing equipment</li> </ul> to maintain complete and accurate records of all relevant transactions. (Art. 9.1)	Records must allow for full accountability of materials used in the production of tobacco products.
Parties shall adopt effective legislation, executive, administrative or other measures requiring records: (Art. 9.5)	<ul style="list-style-type: none"> <li>• Are maintained for at least 4 years;</li> <li>• Made available to competent authority; and</li> <li>• Maintained in the required format.</li> </ul>

### c. Recommendations

Advantages for States parties adopting the recommendations contained within article 9 (see table 13) are:

- Improves the monitoring of tobacco products and manufacturing equipment in transit.
- States parties can benefit from industry data collection in relation to market trends which will help States parties survey affected markets. This could assist in States parties' ability to act ahead instead of reactively. This will also assist with provisions of the Protocol regarding ensuring supply of tobacco products is commensurate to demand.
- If States parties have access to this type of information it will help in the identification of suspicious transactions.
- Most importantly, it will assist in more control over legal trade of tobacco products and manufacturing equipment and will only increase transparency.

*Table 13: Recommendations within art. 9*

Provision	Detail
Parties to have licensees provide information on request regarding (Art. 9.2):	<ul style="list-style-type: none"> <li>• General information on market volumes, trends, forecasts and other relevant information; and</li> <li>• Quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under transit or transshipment or duty suspension.</li> </ul>
Parties to require licensees, as appropriate, to provide on request specific information for tobacco products and manufacturing equipment sold or manufactured for export, or subject to duty-suspended movement in transit or transshipment, to the competent authorities in the country of departure, <b>at the time of departure from their control</b> Art. 9.3).	<p>Information required under article 9.3:</p> <ul style="list-style-type: none"> <li>• Date of shipment of products from last point of physical control</li> <li>• Details concerning shipped products (brand, amount, warehouse)</li> <li>• Intended shipping routes</li> <li>• Intended destination</li> <li>• Identity of recipient of products (natural/legal person)</li> <li>• Mode of transportation</li> <li>• Identity of transporter</li> <li>• Expected date of arrival of shipment at intended destination</li> <li>• Intended market of retail sale or use</li> </ul>
Parties can extend reporting obligations to retailers and growers, except traditional tobacco growers working on a non-commercial basis (Art. 9.4).	
Establish system for sharing details contained in all records kept with other Parties (Art. 9.6).	
Parties shall endeavour to cooperate together and with competent international organizations, in sharing and developing improved record-keeping systems (art. 9(7)).	

#### d. Policy Considerations

- Record-keeping obligations should extend to all participants in the supply chain where possible and should be regulated.
- Records must show **full accountability for materials** used in production. The term “*materials*” is not defined, however the intention is that a manufacturer should be able to reconcile their production quantities with the inputs they use in production – thereby providing confidence no unrecorded or illicit production has occurred. This provision will need to be considered with article 6(5) on key inputs. States parties can begin to determine themselves which materials they consider as key inputs (particularly with regard to cellulose acetate tow and cigarette paper) and how manufacturers should account for the use of key inputs in production. Obligations should also be imposed on suppliers of key inputs to supply commensurate to demand.
- Excluding traditional growers working on a non-commercial basis may create loopholes and may provide incentives for abuses of the system and fraud to be engaged in to avoid the obligation. States parties will need to ensure they define what **a traditional grower working on a non-commercial basis** means, and establish ways of inspecting those that fall within this category in their jurisdiction, to minimize loopholes.
- Domestic legislation will need to be detailed in relation to which entity involved in the supply chain will keep records of what information. Thus “**all relevant transactions**” will need to be defined. Further, the type of information to be retained and then given to competent government authorities upon request will need to be detailed in relation to the role of the natural/legal person in the supply chain. For example, manufacturers will have different information from distributors, from growers, from importers. The process will be more effective if the connections between each are well established from the information retained and transferred to authorities upon request.
- There may need to be a policy on the timing of such requests and these may be different for each of the transactions. For example, for tax suspended and export transactions, the details required under article 9(3) could be requested prior to the goods leaving to a licensed place and such goods not being permitted to move until the Competent Authority so permits. For information on “quantities produced and on hand” under article 9(2) this could be provided on a monthly basis within a specified timeframe at the end of the accounting month in question.
- Where the Protocol calls for a system to be established (art. 9(6)) for **sharing details contained in all records kept with other States parties**, the following steps will be prerequisites:
  - States parties will need to legislate for manufacturers and other participants in the legal supply chain to mandatorily retain specific information and records.
  - The designated competent authority, at a national level, will need to be able to request this information, and record it themselves in some form, electronically where feasible, to

assist with sharing the information with other States parties. Perhaps this could form part of the information technology solutions developed for data capture under the track and trace obligations created by the Protocol.

- States parties are able to share this information with other States parties, either upon request by other States parties or upon their own initiative (e.g. where goods are being exported to an intended destination, that State party could be informed in advance).
- If the purpose for the creation of the system is to ensure that countries cooperate and coordinate on known shipment departures and arrivals, this will require a real-time ability to share the information and coordinate action. This will then also mean that manufacturers and other actors involved in the supply chain will need to share this information quickly with the competent authority **before** goods are shipped.
- As it is, the provision creates no obligations on States parties to inform intended destination countries of the export. There is nothing to prevent States parties from implementing such a system, though of course it should not be too much of an administrative burden on States parties.
- This provision ties in to the provisions on international cooperation at Part V of the Protocol, more formally, where the same information can be shared, for various purposes such as law enforcement cooperation, mutual administrative assistance and mutual legal assistance.

#### 4.3.7. Security and Preventive Measures (art. 10)

##### Box 40: Security and preventive measures (art. 10)

- Parties shall require licensees to take necessary measures to prevent diversion of **tobacco products** into illicit trade channels, including:
  - Reporting to the competent authorities the cross-border transfer of cash, or cross-border payments in kind, and all “suspicious transactions”; and
  - Supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand in the intended market of retail sale or use (art. 10(1)(a) – 10(1)(b)).
- Payments for **transactions** and for **materials** used for the manufacture of tobacco products, carried out by natural or legal persons subject to Art. 6, should only be made in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market, and not operated through any other remittance system (art. 10(2) - 10(3)).
- Contravention of these requirements shall be subject to criminal, civil or administrative sanctions, including suspension or cancellation of a licence (art. 10(4)).

This article applies specifically to the prevention of the **diversion of tobacco products** into illicit trade channels. A major component of this article is the requirement that States parties oblige all licensees to take the measures necessary to ensure that their supply of tobacco products and manufacturing equipment is in amounts commensurate with demand in the intended market of sale. Refer to section 4.3.4 (“*Due diligence*”) for other provisions within Protocol requiring supply to be commensurate with demand.

Article 10(1)(b) was included within this provision of the Protocol so that it would be easier to recognize extreme cases, for instance where a producer of manufacturing equipment proposed to export large quantities of machinery to a country where it was evident that the domestic market could not absorb the quantity of tobacco products which that machinery could produce. This would allow States parties to keep count of such events.

Article 10 is based on previous agreements at a national and regional level between government authorities and the tobacco industry.

##### a. Policy Considerations

- The scope of article 10 relates to tobacco products primarily, though it has been extended by article 10.1(b) to apply to manufacturing equipment as well, for the purpose of that particular provision. States parties should consider how they will require licensees to determine that the supply of manufacturing equipment is commensurate to demand. States parties will need to consider such instances as upgrading of facilities by manufacturers. Further, States implementing this article should consider accompanying it by legislation and regulations regarding the seizure and/or destruction of manufacturing equipment in criminal matters or administrative matters where licences have been cancelled or revoked, and what will happen to equipment disused after an upgrade by a manufacturer. The resale of such manufacturing equipment domestically should also fall within the regulatory framework, and be connected to obligations imposed on licensees.

- States parties would need to consider any **accompanying obligations** for such requirements, such as **offering legal protection to informants** who provide information on criminal matters, and consider the application of laws relating to defamation, data protection, and privacy to this provision.
- States parties should be aware of **current trading practices** regarding methods of payments transnationally in international business transactions where different currencies are used and payments are made subject to currency conversion through legitimate financial institutions. These practices will need to be adapted to fit the requirements of the Protocol that payments are made in the currency and amount of the invoice.
- The measures contained in article 10 are to be applied to all licensees. At a minimum this will oblige manufacturers of tobacco products and manufacturing equipment, depending on the State party concerned. By extension, these provisions should apply to all actors involved in the tobacco supply chain, which would connect this provision with article 6 (licensing).
- States parties will need to define what amounts to a **“suspicious transaction”** as the Protocol does not define this term. Guidance can be obtained though from the reporting obligations outlined under other provisions of the Protocol, such as under article 6 and 9. The INB5 anticipated that “suspicious transactions” would require definition and thus it was left in inverted commas in the text of the Protocol.
- There has also been no definition provided for **“financial institution”**. It was suggested by the Australian delegate at the INB5, from 29 March – 4 April 2012<sup>41</sup>, that the definition provided by the Financial Action Task Force might be useful in this regard<sup>42</sup>.
- The article, at 10.2, also assumes that States parties have a pre-established **national framework for anti-money laundering**. National anti-money laundering laws should be consulted so that legislation in respect of this provision remains consistent with existing national legislation, particularly where anti-money laundering legislation and national obligations are concerned (*see section 4.4.1.d, “Framework for money-laundering”. See also section 5.2.7.c of INTERPOL’s Countering Illicit Trade in Goods: A Guide for Policy-makers” for further discussion on money-laundering*).

#### 4.3.8. Sale by Internet, telecommunication or any other evolving technology (art. 11)

**Box 41: Sale by Internet, telecommunication or any other evolving technology (art. 11)**

- Parties shall require those engaged in **any** transaction regarding tobacco products through internet, telecommunication or any other evolving technology-based mode of sale to comply with all relevant obligations covered by the Protocol.
- Parties **shall consider** banning retail sales of tobacco products through the internet, telecommunication, or any other evolving technology-based modes of sale.

The Internet exacerbates the illicit trade problem as sellers of illicit products find simplified means and additional “low risk” channels of distribution in the virtual world to promote and sell these products, while protecting their anonymity (*see section 1.6 of INTERPOL’s Countering Illicit Trade in Goods: A Guide for Policy-makers” for more information on Internet channels of distribution of goods*).

Of course, generally, Internet sales are an increasingly important part of commerce and provide an ease by which goods can be bought and sold around the world. In many countries, cigarettes and other tobacco products can be bought over the Internet.

##### a. Policy Considerations

- Countries will need to consider how they will regulate internet sales to ensure that:
  - There is reliable **age verification**;
  - That the product is in compliance with all **applicable product regulations** (e.g. local health warnings); and
  - All applicable **duties and taxes** are paid.
- Countries may wish to determine where other protocol provisions will be applicable to internet sales and incorporate these into national legislation. Starting from the premise that all Protocol provisions will apply is a useful way of approaching this task, and then noting specific instances where certain provisions will not apply. This will ensure that retailers and distributors over the internet will be encapsulated by all relevant provisions pertaining to them and that national legislation does not exclude important measures. Of course, for this provision to have maximum effect, it should be married with other regulatory measures such as licensing, due diligence, track and trace, record keeping, security and preventive measures and offences.
- The Protocol contains no obligation to ban Internet retail sales of tobacco products. A decision to introduce such a ban would be entirely the prerogative of individual States parties, who are best placed to take into account local characteristics of wholesale and retail channels. Moreover, such decision would need to be made in consideration of trade obligations States parties to the Protocol have with other countries and within the World Trade Organization framework. The General Agreement on Tariffs and Trade 1994 (GATT) and General Agreement on Trade in Services (GATS) are relevant agreements creating obligations for its States parties.

- Countries will need to consider **which entities will be controlled**: all entities offering tobacco products for internet sale, content hosts who control interconnected-computer servers on which the content is stored, content navigators who facilitate the location of content by users of communication services such as search engines, access providers who provide end-user access to communication services such as internet service providers and mobile telephone companies, and financial entities involved in the payments for internet sales of tobacco products<sup>43</sup>.
- States parties will need to consider how to and whether they should establish jurisdiction over the mere availability of content online within their territory. The *Expert Review on a possible ban of internet sales* undertaken by the INB highlights that this is the case in some areas of law, such as defamation, irrespective of where the content originated and endorses the application of similar principles to the internet sale of tobacco products, though it advises States parties to specify that *the operation is extra-territorial*.



**Box 42: Further reading on Internet sales**

International Trademark Association's paper, "Addressing the sale of Counterfeits on the Internet", September 2009.

**Link:** <http://www.inta.org/Advocacy/Pages/Anticounterfeiting.aspx>

See also: Revised Chairperson's text on a protocol on illicit trade in tobacco products, and general debate: Expert review on a possible ban on Internet sales of tobacco products, 7 May 2009, FCTC/COP/INB-IT/3/INF.DOC./4.

**Link:** [http://apps.who.int/gb/fctc/PDF/it3/FCTC\\_INB\\_IT3\\_ID4-en.pdf](http://apps.who.int/gb/fctc/PDF/it3/FCTC_INB_IT3_ID4-en.pdf)

#### 4.3.9. Free zones and international transit (art. 12)

**Box 43: Protocol provisions regarding FZs (art. 12)**

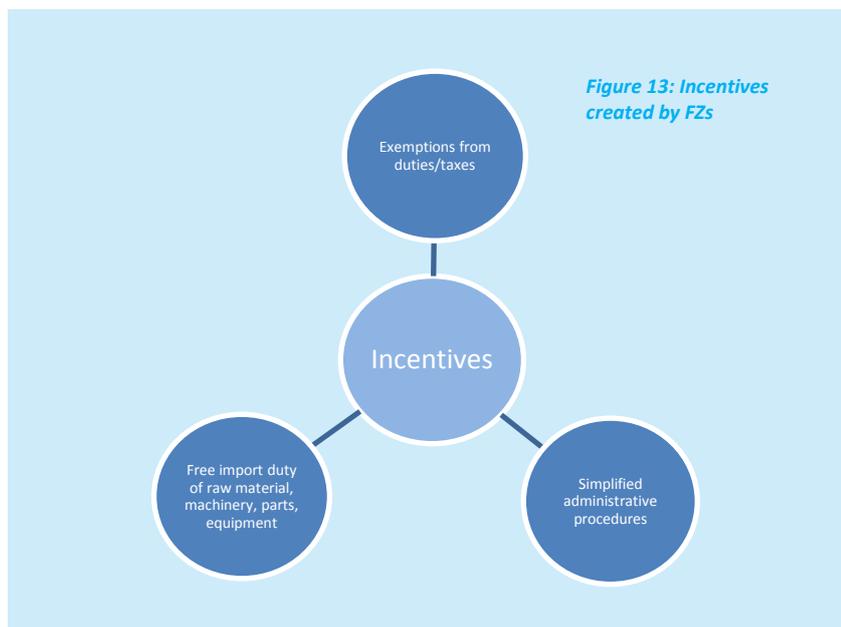
1. Within three years of the entry into force of the Protocol, free zones **shall** be subject to effective controls on all manufacturing of and transactions in tobacco and tobacco products, and to the relevant measures of the Protocol.
2. The intermingling of tobacco products with non-tobacco products in a single container at the time of removal from free zones **shall** be prohibited.
3. International transit or transhipment of tobacco products and manufacturing equipment **shall** be subject to control and verification measures, within a Party's territory.

Free Zones (FZs) play a central role in the globalization of the world economy. The development of FZs has thus progressed and is reflected through the range of types of FZs specifically tailored to reduce barriers and facilitate global free trade while providing important economic stimuli to national and local economies.

##### a. What are Free Zones?

The International Convention on the Simplification and Harmonization of Customs Procedures (known as the Revised Kyoto Convention) defines FZs as “a part of the territory of a contracting party where any goods introduced are generally regarded, **insofar as import duties and taxes are concerned**, as being outside the Customs territory”. The Protocol adopts the same definition of FZs. Essentially this means that certain geographic areas within countries are designated to fall within the ambit of special and minimal regulatory and tax measures applied to certain trade-related products and services. These measures are generally incentives to support the development of:

- Exports.
- Foreign direct investment (FDI).
- Local employment.



Currently, there are approximately 3 000 FZs in 135 countries around the world.

Due to their special status, FZs are often regarded as being extra-territorial (remaining outside a country’s jurisdiction) and thus falling outside customs’ jurisdiction nationally.

While FZs encourage national economies, global trade, and legitimate business, the lax controls in place (reduced regulation, lack of transparency, confusion over customs jurisdiction within FZs, ability to manufacture products out of sight, easy access to exporting goods etc.) make them highly appealing for illicit actors/criminals who take advantage of the relaxed oversight and exploit their vulnerabilities.

*Table 14: Types of FZs*

Type of FZ	Description
<b>Free Trade Zones (FTZs)</b>	Fenced in duty free areas offering warehousing, storage and distribution facilities for trade, transshipment and re-export of products.
<b>Export Processing Zones (EPZ)</b>	Industrial areas focusing on assembly and manufacturing of intermediate imports, primarily though not exclusively aimed at foreign markets. Promotes links with the domestic economy by encouraging technology transfer and innovative industrial strategies.
<b>Hybrid EPZs</b>	Combine the traditional focus of an EPZ with a sub-divided area in which non-export oriented activities can occur.
<b>Enterprise Zones</b>	Economic development areas intended to revitalize specific urban or rural areas where they are located through tax incentives and financial grants.
<b>Freeports</b>	The largest of all the zones accommodating all types of activities including tourism, retail sales, on site residence. Differing from FTZs in that they are not export drivers, they promote overall economic growth linking the zone with the overall economy of the nation.
<b>Single Factory EPZ Schemes/Sub-zones in the US</b>	They are not a zone at all although they provide incentives similar to EPZs. They are a single factory located anywhere in the country receiving the special duty free privileges of FTZs.
<b>Foreign Trade Zones</b>	Specially designated zones in the US, established in or adjacent to a port of entry where all types of goods may be held exempt from US customs duties and other taxes.
<b>Special Economic Zones (SEZ)</b>	Extend relaxed tax and administration characteristics of FTZs to investment arrangements, labor laws, management practices, and wage rate policies in specific areas of the country.
<b>Bonded Warehouses</b>	Specially designated storage warehouses that have the authorization of customs authorities.
<p><i>These definitions have been derived directly from FATF’s Report titled “Money Laundering Vulnerabilities of Free Trade Zones” of March 2010. See this report for more detailed information on the different types of zones.</i></p>	

The way FZs are organized and established under investment laws rather than customs laws, and, including the fact that they are also now largely privatized, exposes them to a number of vulnerabilities including, inter alia:

- **Relaxed oversight and lack of transparency**

- Goods are not subject to the usual customs controls where customs intervention is intermittent, absent or applied only if goods leave the FZ for the domestic market.
- Goods pass through various economic operations including assembly, manufacturing, processing, warehousing, re-packaging, storage, transshipment, export, re-export.
- Lack of clarity regarding regulations covering the responsibility and control of FZs.
- Lack of clarity regarding customs' jurisdiction over potentially illegal activities within the FZ.
- Disruption in the monitoring of the legal supply chain due to lenient/absent controls.
- Ease of setting up legal companies in an FZ where company formation services are available from zone operating authorities, and little ownership information about the company is required.

- **Lack of interoperability of national systems**

- FZ transactions must be reported to both zone authorities and customs authorities in theory, which involves two differing and non-integrated systems, relying on both paper and software. Data to authorities overseeing the zone may relate to ensuring levels of investment related activity are maintained, whilst data for customs relates to revenue protection and preventing unlawful activity.
- Lack of a clear standard related to customs clearance makes it a difficult system to monitor.
- Lack of integrated systems creates difficulties in analyzing trends related to specific ports, zones, regions or businesses.
- The use of paper based systems and computer software systems that are not integrated, in the same jurisdiction as well as regionally, also compounds the problems arising from a lack of coordination between systems, within an FZ itself and transnationally.

- **Vulnerability of Certain Types of Goods**

- Certain types of goods are particularly vulnerable to misuse due to their value, size, high tariff rate, volume of trade and potential for IPR violations. Examples are cigarettes, alcohol, luxury goods and other goods most often used in IPR violation, electronic items, and other high duty goods.
- IPR violations are difficult to detect and substantiate at the time of inspection. It is easy to take advantage of a system where there are few inspections and large cargo entering and exiting, relaxed oversights regarding importing, re-packaging, re-labelling, and exporting.

- Repackaging in FZs is a common method employed by criminals to cut ties between the real country of origin or destination.
- Re-issuing commercial documentation is also possible for goods which are imported to the FZ as tobacco products, but can be exported with a different goods description under different owner names.

These vulnerabilities are discussed in detail in the FATF Report, “Money-laundering vulnerabilities of free trade zones” of March 2010.

## b. Current applicable international legal framework

Existing international conventions containing customs-related provisions include:

### - World Customs Organization’s Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention (RKC)).

The **RKC** covers FZs for control of goods, such as the right of customs to enter and inspect goods in the zone for tariff and non-tariff conformance to laws and regulations. Provisions covering FZs are in a specific annex that is not mandatory for RKC contracting parties or all members of the WCO.

The WCO adopted the **Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework)** in 2005, encouraging the complete functionality of customs within FZs. The framework involves compliant traders, or Authorized Economic Operators (AEOs), receiving beneficial customs treatment, including fewer or no inspections on goods imported or exported by or via the AEO, if companies self-regulate to meet certain standards, resulting in quicker customs clearance and lower operator transport costs. FZs and the companies in the zones can join in receiving these types of benefits only if customs is fully functional inside FZs. This framework supports customs interaction with private entities and also customs to customs interaction, whereby national customs’ administrations cooperate and mutually recognize each other’s AEOs.

#### Box 44: Customs’ authority in FZs

“When Customs authorities are unable to exercise their due responsibilities in FZs, bad practices proliferate. This problem is acute where goods are beyond the reach of Customs authorities and other law enforcement bodies while transiting, in-transit, or in free-zone status. As a consequence, violators are free to act without fear of legal sanction.” BASCAP, *Controlling the Zone*

### - World Trade Organization’s Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

The **TRIPS Agreement** provides comprehensive requirements for the protection of intellectual property, including border measures. but does not specifically address FZs. Additionally, some of its more stringent provisions are not mandatory for WTO Members.

### c. Policy Considerations

Protocol provisions aim to address the key vulnerabilities identified for the manufacture and distribution of tobacco products. If this article is implemented by States parties to the Protocol it will go a long way in assisting reducing the availability of counterfeit cigarettes, illicit whites and in the diversion of genuine tobacco products.

- States parties will need to balance the economic benefits of FZs including foreign direct investment and job creation with the vulnerabilities of FZs, which impact globally. Given commitments existing under various international conventions in the area, the balance should not be too difficult to find, but it will be a matter of the political will of the State. States parties will need to interact with their various departments and ministries responsible for their foreign affairs and trade relations, as well as customs and border control authorities and determine their obligations under various international trade related treaties, as well as any customs' treaties they are party to.
- States parties should consider if there are any specific goods which should be excluded from admission into their FZ, and whether national legislation delineates this clearly. Legislation enacted should allow for monitoring of goods entering the FZ.
- One exceptionally important consideration for States parties is whether their national customs administrations are empowered to control FZs. Usually customs laws will provide control over goods entering and leaving a FZ, but it often less clear if customs laws cover processing, manufacture, repackaging, relabeling and other procedures impacting on raw materials or finished goods, as well as the businesses authorized to operate in FZs. States parties should ensure that customs' jurisdiction within the FZ is clearly enunciated in the national legislation and regulations, outlining customs' right to control the goods stored in FZs at any time, the businesses operating therein, and the activities taking place within an FZ. States parties should note that goods are generally regarded as being outside of customs' control only so far as import duties and taxes are concerned, which is iterated in the definition of FZs provided by the RKC, because of the very fact that goods in FZs are mostly in transit.
- As part of the above consideration, States parties will need to ascertain what control regimes exist within their jurisdiction, whether they are enforced on a regular basis or at all, and whether their customs authorities actually exercise any right of control over FZs. More often than not, control mechanisms are in place, but given the misconceptions surrounding customs' jurisdiction, they are not normally abided by.
- In effect, customs' staff will have their usual roles expanded into FZs in terms of identifying and checking the true origin of goods being processed within the FZ, and the verification of documentation and the goods themselves, as well as training on the specific controls that apply to FZs such as goods admission and delivery, accounting for losses and wastage, changes of goods classification, etc.

- Where customs are empowered to grant authorization for FZs, such authorization should define all the activities that may take place in the FZ. States parties where customs do not have the requisite authorization to define activities within the FZ should consider broadening the scope of their customs' jurisdiction to allow for such control. One significant vulnerability of FZs lies in the various goods passing through various economic operations (assembly, manufacturing, processing, warehousing, re-packaging, storage, transshipment, export, re-export) and there being no control over these activities. Requiring controls over these activities will go some way to identifying counterfeit products, illicit whites and genuine tobacco products diverted from legitimate channels. Controls put in place will only serve to alert authorities to any unauthorized and suspicious behavior, and make more of an impact towards achieving the objectives of the Protocol.
- States parties will need to ascertain whether their FZs have specific zone operators, what powers of control the zone operator has, and whether this role interacts and/or overlaps with the customs function. Understanding the role of various participants is essential for achieving clarity regarding what controls are in place and who exercises those controls.
- States parties should also ascertain whether any current controls apply to measures for the control and verification of tobacco products and manufacturing equipment in international transit or in transshipment, and if not consider legislating specifically for the control of tobacco products and manufacturing equipment. This is particularly relevant given article 12(2) of the Protocol requiring States parties to prohibit the intermingling of tobacco products with non-tobacco products in a single container or other similar transportation unit.

Since the purpose of FZs is to promote legitimate global trade, there is even greater justification for customs administrations to exercise their authority in order to identify and eliminate illicit trade, such as counterfeiting and smuggling, without over-burdening legitimate trade. The lack of control on goods in transit is a critical issue with serious implications. It affects public security because it allows infringers and organized criminal networks to profit and prosper, especially from illicit trade of tobacco products.



**Box 45: Further reading on FZs**

The Financial Action Taskforce (FATF), “Money-laundering Vulnerabilities of Free Trade Zones”, March 2010

**Link:** <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>

FAFT Guidance Document, “International Best Practices: Detecting and Preventing the Cross-Border Transportation of Cash by Terrorists and Other Criminals, 12 February 2005.

**Link:** [http://www.imolin.org/pdf/imolin/International\\_BPP\\_Detecting\\_and\\_Preventing\\_illicit\\_cross-border\\_transportation\\_SR\\_IX\\_COVER\\_2012.pdf](http://www.imolin.org/pdf/imolin/International_BPP_Detecting_and_Preventing_illicit_cross-border_transportation_SR_IX_COVER_2012.pdf)

See the 2012 FATF Recommendations, including the conversion table from the old Recommendation to the new FATF Recommendation.

**Link:** [www.fatf-gafi.org/](http://www.fatf-gafi.org/)

World Economic Forum’s Report, “Free Trade Zones as Enablers of Organized Crime: Exploiting International Commercial Transactions”, 2012.

**Link:** <http://reports.weforum.org/organized-crime-enablers-2012/>

See Business Action to Stop Counterfeiting and Piracy (BASCAP) Report, “Controlling the Zone: Balancing facilitation and control to combat illicit trade in the World’s Free Trade zones”, May 2013.

**Link:** <http://www.iccwbo.org/advocacy-codes-and-rules/bascap/international-engagement-and-advocacy/free-trade-zones/>

#### 4.3.10. Duty free sales (art. 13)

##### Box 46: Duty free sales (art. 13)

- Parties shall take **effective** measures to subject any duty free sales to all relevant provisions of the Protocol.
- No later than **five years** following the entry into force of the Protocol, evidence-based research shall be conducted to ascertain the extent of illicit trade in tobacco products related to duty-free sales of such products. On the basis of such research, appropriate further action shall be considered.

##### a. Duty free trade in tobacco products

Duty-free trade in tobacco products occurs legally when a departing international traveler purchases such products without paying the internal duties or taxes that would ordinarily apply in the country of purchase and then imports them into the country of destination without paying any customs duties (import tariffs) or taxes that might otherwise apply in that country. Like FZs, duty-free trade in tobacco products relies on exceptions to the usual tax and customs rules in individual countries.

Under the Protocol, the COP undertakes to research the question of the extent of ITTP arising out of duty free sales no later than five years following the entry into force of the Protocol. In the meantime, States parties to the Protocol are encouraged to extend relevant Protocol provisions to duty free sales (*see box 46*).

##### b. Diversion of duty-free tobacco products

In relation to consumer products, taxes are generally imposed on goods intended for domestic consumption such as *goods and services tax*, or *value added tax* and *excise tax* imposed on excisable goods' manufacturers. In principle, the concept of duty free sales originated from the premise that goods intended for consumption in another jurisdiction should not be subject to domestic consumption taxes. Tobacco products intended for duty free sale also benefit from the duty-free system, and thus these products are susceptible to diversion into the illicit market. Controlling duty free sales is considered a way of averting the diversion of tobacco products intended for duty free sale.

This is an aspect of tobacco control that was discussed but not firmly decided on by the INB during negotiations of the Protocol, in the same way as no common agreement could be reached on key inputs. Due to this, article 13 merely creates an obligation to conduct evidence-based research to ascertain the extent of ITTP related to duty free products.

Legitimate duty-free trade is currently regulated and the supply chain of duty free products is supervised by national customs authorities. For example, duty-free retail stores are normally established under Government control, with duty free retailers often paying concession fees to Governments. Sometimes the government themselves owns the duty free establishment.

### c. Policy Considerations

- Once the requisite research has been undertaken by the Meeting of the Parties (MOP) the MOP will decide what further action should be taken, whether that includes a ban on duty free products, such as for internet sales. This will depend on the extent of diversion found to take place through duty free channels, after the research is undertaken and submitted to the MOP.
- Counterfeiters often insert the label “duty free” on packages of tobacco products to assist in avoiding controls on the products. States parties should keep this in mind when legislating in this area. This does not necessarily mean that duty free sales are not subject to illicit trade nor does it mean that there is significant illicit trade in duty free products. The research to be conducted by the MOP will be most helpful in this regard. In saying this, States can always ensure that this channel of sale is also sufficiently considered and controlled so as not to provide any loopholes to criminals engaged in the ITTP.
- States parties will need to determine what legislation governs duty free establishments within their jurisdiction. A further part of this will then be to determine obligations in place for duty free operators as regards the creation of the establishment, the fees paid to the government, the business practices engaged in, the reporting requirements in place, and the information collected from duty free operators as regards their suppliers. Duty free operators should be obliged to have transparent business practices and sound compliance and ethics mechanisms in place. Due diligence practices are a key component of this and governments should verify that stringent legislative provisions are in place requiring sound business practices from duty free operators. If there is a lack of compliance, penalties should be in place within the national regulatory framework.

Article 13 of the Protocol does not provide guidance as to what *effective* measures should be taken to subject duty free sales to the relevant provisions of the Protocol, and what constitutes *effective* measures. Given that duty free shops have in their custody tax suspended tobacco products it would be reasonable to look at applying the same key supply chain measures to duty free shops as would be applied to importers, warehouses and exporters in terms of licensing (art. 6), due diligence (art. 7) and record keeping (art. 9). The other option is for States parties to treat duty free operators as they would other retailers, and thus they should be subjected to provisions that they would apply to retailers, however, given many of these articles are not requirements for retailers the risk of duty free shops with their tax suspended tobacco products cannot be mitigated.

- States parties should also consider whether their national laws and processes allow for a link between the manufacturers’ obligations when supplying duty-free operators. In light of this, States parties will need to connect manufacturers’ obligations under article 6, 7, and 9 of the Protocol to their duty free clients. Manufacturers should be subject to due diligence procedures such as know-your-customer procedures and track and trace systems targeting diversion of tobacco products distributed via this channel and report relevant information, including of their duty free customers to the relevant authorities. States parties will need to consider the necessary links when legislating in this regard.
- States parties should be aware of restrictions already in place in their jurisdictions, particularly as regards age and maximum allowance restrictions relating to duty free products.

**Table 15: Commented overview of Part III of the Protocol to Eliminate Illicit Trade in Tobacco Products – Supply Chain Control**

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**Article 6 - Licensing**

Paragraph	Scope	Mandatory	Policy Questions	Checklist and Considerations
1a	Manufacture tobacco products or tobacco manufacturing equipment	Yes	How to prohibit manufacturing activity (unless licensed)?  What legislative measures will need to be taken and what options exist?  What penalties will be available for lack of compliance?	Need to identify all operations within a jurisdiction.  Explore the current links with customs and excise laws already in place.  Penalties should be enshrined for non-compliance.
1b	Import or export of tobacco products and tobacco manufacturing equipment	Yes	How to prohibit import and export activity (unless licensed)?  What legislative measures will need to be taken and what options exist?  What penalties will be available for lack of compliance?	Need to identify all operations within a jurisdiction.  Explore the current links with customs and excise laws already in place.  Penalties should be enshrined for non-compliance.
2a	Retailing tobacco products	Shall endeavour	Should retail activity be licensed?	Need to identify and analyze all relevant factors in addressing the policy question: consider which types of retailers will fall under the regime, those selling only tobacco, or others such as supermarkets, etc.
2b	Growing tobacco (except small scale traditional)	Shall endeavour	Should growing be licensed?  What does “small scale traditional” mean?	Need to identify and analyze all relevant factors in addressing the policy question.  Need to understand the traditional products industry and assess appropriate size production for the exemption.  Ensure licensing regime does not create ‘loopholes’ for undeclared production.

Paragraph	Scope	Mandatory	Policy Questions	Checklist and Considerations
2c	Transporting commercial quantities of tobacco products or manufacturing equipment	Shall endeavour	Should transport activities be licensed?  What is a “commercial quantity”?	Need to identify and analyze all relevant factors and risks from the transport sector in addressing the policy question.  Ensure licensing regime does not create unnecessary high risk areas for illicit trade.
2d	Wholesaling, warehousing, broking, dealing or distributing tobacco products or manufacturing equipment	Shall endeavour	Should some or all of these activities be licensed?	Need to identify and analyze all relevant factors in addressing the policy question.  Ensure licensing regime does not create unnecessary high risk areas for illicit trade.
3a	Competent Authority	Yes	Which agency shall oversee the licensing regime?	Consider any current licensing of any tobacco related activities such as production, import, etc. that may apply.  Designate a competent authority to control and monitor the licensing regime.
3b	Applications for a licence to require certain information	Yes	What information is required for an application for a licence?  <ul style="list-style-type: none"> <li>• Confirmation of identity</li> <li>• Confirmation of legal status</li> <li>• Location of premises</li> <li>• Products and manufacturing equipment</li> <li>• Criminal record (fit and proper)</li> <li>• Bank account details for transaction</li> <li>• Analysis of the market</li> </ul>	Consider what are the existing licensing regimes available relating to production, import, export and distribution, and best practice theory, within the jurisdiction, and decide whether it meets the requirements of the Protocol or will need to amended.  Countries creating a licensing regime should look to other jurisdictions for examples on the models available and assessment of effectiveness of the regime in that jurisdiction.  An effective licensing regime will require that this information be mandatory for all licensees, and will be necessary for implementation and management of the regime by the Competent Authority.

Paragraph	Scope	Mandatory	Policy Questions	Checklist and Considerations
3b				<p>Develop a 'benchmark' licensing regime consisting of aspects such as:</p> <ul style="list-style-type: none"> <li>• Requisite questions for applicants to answer mandatorily</li> <li>• Risk criteria for vetting applicants</li> <li>• Restrictions and conditions to attach to all or certain licences e.g. activities, changes, records, etc.</li> <li>• Fee structure</li> <li>• Licence validity timing and renewal process</li> <li>• Audit program</li> <li>• Sanction options for breaches of licence conditions and/or restrictions</li> </ul>
3c	Monitor and collect licence fees to enhance administration	Fees may be levied	What fee structure applies?	<p>As per 3b</p> <p>Consider the cost of effective administration and enforcement of the licensing regime, the activity for which the license is sought, the scope and length of the license.</p> <p>The use of fees will supplement the cost of creating the system. Costs can later be supplemented by fines obtained for non-compliance.</p>
3d	Measures to prevent, detect and investigate licence breaches	Yes (take appropriate measures)		<p>As per 3b.</p> <p>Competent Authorities will require enforcement and auditing capabilities.</p>
3e	Periodic reviews, audits and inspections of licenses	Yes		As per 3b
3f	Licence expiry time-frame, renewal/reapplication process	Yes (establish where appropriate)		As per 3b

Paragraph	Scope	Mandatory	Policy Questions	Checklist and Considerations
3g	Licensees required to inform of changes	Yes		As per 3b
3h	Licensees required to inform of acquisition or disposal of equipment	Yes		As per 3b
3i	Destruction of tobacco products to be supervised by Competent Authority	Yes		As per 3b
4	Licenses not to be issued without all information as required in the application, and only by Competent Authority	Yes		As per 3b
5	5 years after the Protocol comes into effect the Meeting of Parties will review any evidence based research on key inputs and advise.	Yes		States parties can consider bringing some key inputs within the scope of their regimes, such as cellulose acetate <b>tow</b> and cigarette paper, where they find that these are primarily used for the manufacture of tobacco products, and can be subjected to effective control mechanisms ( <i>see section 4.3.3, "Key Inputs"</i> ).

**Article 7 – Due diligence**

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
1a	Suppliers of tobacco, tobacco products and tobacco manufacturing equipment to conduct due diligence before starting and during a business relationship	Yes	What elements are to be satisfied to complete due diligence?	Confirming bona fides of customers.  Identify what guidelines already exist for industries obliged to implement due diligence.
1b	Suppliers of tobacco, tobacco products and tobacco manufacturing equipment to monitor sales to customers to ensure they are commensurate with market	Yes	How to establish or confirm market sizes and appropriateness of purchase volumes/capacities?	Confirming appropriateness of purchases in the context of the current and future market.  Identify the current obligations for suppliers to identify and forecast current and future market activities.
1c	Suppliers of tobacco, tobacco products and tobacco manufacturing equipment to report any customers they believe are in breach of the Protocol	Yes	What will the nature and form of reporting by suppliers be?	Consider the type of data required for system to be effective.  Propose data capture format.
2	Establish a Customer Identification System	Shall, as appropriate	How will this be integrated into the licensing regime?	Consider the links to the licensing regime.  Establishing the entity holds a licence under article 6 (if required)  For natural persons, information regarding identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of official identification is required. For legal persons, information regarding identity, including full name, trade name, business registration number, date and place of incorporation, corporate HQs and place of business, applicable tax registration, copies of articles of incorporation, corporate affiliates, names of directors and legal representatives,

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
2				<p>and verification of official identification is required.</p> <p>Description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment is an important component.</p> <p>Description of the location where manufacturing equipment will be installed and used is an important component.</p>
3	Customer Identification to include other information	May include (subject to national law)	What other information is envisaged?	<p>Need to identify and analyze all relevant factors in collecting (and making available) this type of information:</p> <ul style="list-style-type: none"> <li>• Criminal record details (if any)</li> <li>• Bank account details for transactions</li> </ul>
4	List of “blocked customers” compiled from supplier reporting	Shall	<p>What is a “blocked” customer?</p> <p>What criteria needs to be met before a customer is “blocked”?</p>	<p>Consider whether unlawful conduct will need to be engaged in before a customer is “blocked” or a higher threshold, such as a criminal conviction, will be required.</p> <p>Consider the nature and form of reporting such customers.</p>

**Article 8 – Tracking and tracing**

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
1	Within 5 years of the Protocol coming into effect establish a global track & trace regime comprising regional and national systems with a global information-sharing focal point at WHO Convention Secretariat	Agree to establish	How is this achievable?  What needs to occur in that timeframe to enable this agreement to be reached?	Consider: <ul style="list-style-type: none"> <li>National and regional track and trace system components that already exist</li> <li>Software systems on a national level that are available</li> <li>The feasibility of linking these national systems to create the global regime</li> </ul>
2	Establish a national track and trace system for all tobacco products that are manufactured in or imported into its territory taking into account national or regional specific needs and available best practice	Yes	What are the minimum requirements for such a system?  How will this be established, keeping in mind interoperability with the global regime to be created?  What are the key elements of such a system?	Do a gap analysis between fiscal marking, authentication, tracking systems already in place and what a national track and trace systems requires.  Consider the differences in implementation required for manufacturing countries and importing countries, such as manufacturing countries requiring UIMs to be placed on all unit packages.  Importing countries should consider how they are to require that those countries they import from have the requisite markings in place, especially if they are importing from countries not party to the Protocol.  Key elements of such a system include: <ul style="list-style-type: none"> <li>Serialization of all tobacco products to the smallest saleable unit</li> <li>Common number standards for serialization</li> <li>Use global standards for serialization, such as GS1</li> <li>UIMs being human and also machine readable, and incorporation of serialization numbers on all traded units</li> <li>Allow for aggregation between products (parent-child relationships established</li> </ul>

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
2				<p>between each pallet, master case, carton and cigarette packet)</p> <ul style="list-style-type: none"> <li>Record all activity along the supply chain from origin to destination</li> <li>Record relevant data by supply chain participants</li> <li>Information recorded to be available to national authorities</li> <li>Use a global standard for information sharing e.g. EPCIS</li> </ul>
3	<p>Unique, secure and non-removable identification markings such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol</p>	Yes	<p>What form will the UIM take?</p> <p>What are the specific requirements UIMs should meet?</p>	<p>Gap analysis between fiscal marking systems today and requirements of the unique identification mark</p> <p>Consider the minimum requirements for security and quality in a fiscal or similar stamp, or other modes of marking products. Consider especially the following requirements for UIMs:</p> <ul style="list-style-type: none"> <li>Human-readable</li> <li>Built on international standards</li> <li>Can develop over time</li> <li>Unique (never used more than once)</li> <li>Be serialized</li> </ul>
4.1, 4.2 & 4.3	<p>The tracking and tracing regime, should have information available, either directly or accessible by means of a link, to assist globally in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status. This information to be on the unique identification marking.</p>	Yes	<p>What information should be available?</p> <ul style="list-style-type: none"> <li>Date and location of manufacture</li> <li>Manufacturing facility</li> <li>Machine used to manufacture tobacco products</li> <li>Production shift or time of manufacture</li> <li>Name, invoice, order number and payment records of the first customer who is not affiliated with the manufacture</li> <li>Intended market of retail sale</li> <li>Product description</li> </ul>	<p>The nature and format of a common data set to be incorporated in UIM and applied by the State party. Consider adopting the same common solution within the region to be implemented and enforced by national Competent Authorities.</p> <p>Research existing track and trace solutions or options that could be adapted nationally and regionally, including specification and operations of these types of systems and how they can be applied.</p>

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
4.1, 4.2 & 4.3	Where the intended market of retail sale is not known, then information as per article 15.2(a) of the WHO FCTC.		<ul style="list-style-type: none"> <li>Any warehousing and shipping</li> <li>Identity of any known subsequent purchaser</li> <li>Intended shipment route, the shipment date, shipment destination, point of departure and consignee</li> </ul>	Information gathered and analysis conducted to assist policy makers to: <ul style="list-style-type: none"> <li>Recommend track and trace needs nationally</li> <li>Be able to integrate track and trace systems regionally when required</li> <li>Develop terms of reference for tender documentation</li> <li>Examine funding models for running a track and trace system</li> <li>Select service providers</li> </ul>
5	Information on the unique identification mark is to be recorded at time of production, time of first sale by manufacturer or time of import	Yes	Who will be responsible for recording the information?  Can other participants in the supply chain be obliged to record information too?  How will subsequent customers after the first customer be recorded?	As with 4.1-4.3 above
6	Information recorded under 5 above is to link with unique identification mark	Yes		As with 4.1-4.3 above
7	The information required and the unique identification mark should be set out in a format by the Competent Authority	Yes	Which competent authority will be responsible? Will it fall under the Customs' mandate?	As with 4.1-4.3 above
8	The information on the unique identification mark should be accessible by the global focal point, and electronically	Yes	Interoperability with the global regime	As with 4.1-4.3 above
9	The Competent Authority shall: <ul style="list-style-type: none"> <li>Have access to the information on the unique identification mark in a timely manner by querying the global information-sharing focal point</li> </ul>	Yes	How will the national system be Interoperable with the global regime?  How will the sharing of information with other States parties occur?  How will requests for information from other States parties take place?	As with 4.1-4.3 above

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
9	<ul style="list-style-type: none"> <li>Request such information only for the purpose of detection or investigation</li> <li>Not unreasonably withhold information</li> <li>Answer the requests in relation to information in accordance with national law</li> <li>Protect and treat as confidential, as mutually agreed, any information that is exchanged</li> </ul>			
10	Further develop and expand the scope of the applicable track and trace system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control	Yes	<p>What technology is to be used?</p> <p>Is it interoperable with systems used in the region?</p> <p>Does it follow global standards for technology of this type? (<i>see section 4.3.5.f, "Using the GS1 Traceability Standard"</i>).</p>	As with 4.1-4.3 above
11	International cooperation on sharing and developing best practice track and trace systems.	Shall as mutually agreed	<p>Is your jurisdiction able to provide required assistance?</p> <p>How can national solutions and technology be shared to assist other States parties in their implementation of article 8?</p>	Assistance can involve capacity building and training programmes for States parties that request it.
12, 13 & 14	<p>Tobacco industry</p> <ul style="list-style-type: none"> <li>No obligations under the Protocol to be assigned to the tobacco industry</li> <li>Only deal with industry to implement when necessary</li> <li>To bear costs associated with obligations under Protocol</li> </ul>	<p>Shall not</p> <p>Shall</p> <p>May</p>	<p>What are the national regulations in place currently which the industry needs to abide by?</p> <p>What solution does the industry currently use?</p> <p>Does it change according to jurisdiction?</p>	As with 4.1-4.3 above

**Article 9 – Record keeping**

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
1	Tobacco manufacturers and tobacco manufacturing equipment producers to keep complete and accurate records and be fully able to account for <b>materials used in production</b>	Yes	How is accountability checked?  Who is the competent authority responsible for ensuring requirements for record keeping are met?  What does “materials” mean?	Consider different examples where record keeping is mandatory that could be used for the control regime.  Link this provision with article 6(5) on key inputs. States parties can begin to determine themselves which materials they consider as key inputs and how manufacturers should account for use of key inputs in production.  Obligations should also be imposed on suppliers of key inputs to supply commensurate to demand.
2	Licensees on request to be able to provide the following: <ul style="list-style-type: none"> <li>• General information on market volumes, trends, forecasts and other relevant information</li> <li>• Quantities of tobacco products and manufacturing equipment in possession, custody or control in stock, in bonded warehouses under the regime of transit or transshipment or duty suspension as at the day of request.</li> </ul>	Yes	How will this information be verified?	
3	For tobacco products and manufacturing equipment sold or manufactured for export, or subject to duty-suspended movement in transit or transshipment – licensees, upon request, provide to the Competent	Shall as appropriate	Will other participants beyond the manufacturer require a licence?  In which situations will such requests be made?	Need to identify and analyze all relevant factors in addressing policy questions.  To be able to follow the route information from point of origin to point of arrival it will be necessary to implicate other participants in the

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
3	<p>Authority in the country of departure at the time of departure, the following information:</p> <ul style="list-style-type: none"> <li>• Date of shipment from the last point of physical control of the products</li> <li>• Details concerning the products shipped (including brand, amount, warehouse)</li> <li>• Intended shipping routes and destination</li> <li>• Identity of the natural or legal person(s) to whom the products are being shipped</li> <li>• Mode of transportation, including the identity of the transporter</li> <li>• Expected date of arrival of the shipment at the intended shipping destination</li> <li>• Intended market of retail sale or use.</li> </ul>			supply chain, such as distributors, wholesalers, retailers, growers etc. If a State party only relies on manufacturers for such information entire supply chain routes will not be able to be followed via collection of records and information. This will necessarily tie in to the track and trace solution implemented by States parties to the Protocol. It will also necessitate thinking regionally.
4	Retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage	If feasible	<p>Should retail and growing activities be licensed?</p> <p>What does “traditional working on a non-commercial basis” mean?</p>	<p>Need to identify and analyze all relevant factors in addressing policy question.</p> <p>Need to understand traditional products industry and assess appropriate size production for exemption as non-commercial.</p>
5	<p>Adopt effective legislative, executive, administrative or other measures to require that all records are:</p> <ul style="list-style-type: none"> <li>• Maintained for a period of at least four years</li> <li>• Made available to Competent Authority on request</li> <li>• Maintained in a format, as required by Competent Authority</li> </ul>	Yes	<p>What format is to be adopted for record keeping?</p> <p>How to ensure consistency with existing customs and tax law record keeping requirements?</p>	Develop a ‘benchmark’ for record keeping and access the regime based on existing customs and tax laws to assist national implementation.

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
6	Subject to national law, establish a system for sharing details contained in all records kept in accordance with this article with other States parties.	Shall, as appropriate	What type of system should be utilized?	<p>Consider the level of commercial detail permissible to share with other jurisdictions.</p> <p>Depending on States parties' technical and economic capabilities the system envisaged for the sharing of track and trace information could also be extended for use to share recorded information between States parties to the Protocol.</p>
7	Cooperate with other jurisdictions and with competent international organizations, in progressively sharing and developing improved systems for record-keeping.	Shall endeavour		<p>Consider the level of commercial detail permissible to share with other jurisdictions and other international organizations e.g. WCO, INTERPOL, UNODC.</p>

**Article 10 – Security and preventive measures**

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
1	<p>Require licensees to take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including by:</p> <ul style="list-style-type: none"> <li>• Reporting to the Competent Authority the cross-border transfer of cash in amounts stipulated in national law or of cross-border payments in kind</li> <li>• All “suspicious transactions”</li> <li>• Supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.</li> </ul>	Shall where appropriate and consistent with national law	<p>What will the nature and form of reporting be if permitted under national laws</p> <p>What is a “suspicious transaction”?</p> <p>How will States parties establish or confirm market sizes and appropriateness of purchase volumes/capacities for reporting variances?</p> <p>How will the supply commensurate to demand requirement be determined for manufacturing equipment?</p>	<p>Need to understand what national laws permit in terms of reporting such information.</p> <p>Develop, define and set guidelines on what the criteria will be for “suspicious transactions”, and how these should be reported, keeping in mind accompanying issues such as protection of those providing such information.</p> <p>Consider scenarios where manufacturing equipment will be acquired, such as opening a facility, updating a facility, and consider how this will impact on the determination of supply commensurate to demand with manufacturing equipment, and what will be done with old manufacturing equipment in the event of an upgrade.</p>
2	Require that payments for transactions carried out by licensees be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.	Shall where appropriate and consistent with national law	<p>Are there are other areas where this occurs?</p> <p>What are current methods of payment transnationally?</p>	<p>Need to understand what national laws currently permit in terms of requirements.</p> <p>Need to understand current trading practices that currently exist and methods for payments transnationally.</p>
3	Payments carried out by licensees for materials used for the manufacture of tobacco products in its jurisdiction be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on	May	<p>Who requires a licence? Only manufacturers or others in the supply chain?</p> <p>What is a financial institution?</p>	<p>Consider this provision in light of article 6, and extend obligations to others in the supply chain. This will further assist in strengthening supply chain control mechanisms.</p> <p>States parties can look to FATF recommendations regarding <i>International</i></p>

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
3	the territory of the intended market and shall not be operated through any other alternative remittance system.			<i>Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation</i> , February 2012.
4	Breaches of the requirements of this article are subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, suspension or cancelation of a licence.	Shall	Will breaches be dealt with civilly, administratively or criminally? What penalties will apply?	As per 3b above.

**Article 12 – Free zones and international transit**

Paragraph	Scope	Mandatory	Policy questions	Checklist and Considerations
1	Within three years of the entry into force of this Protocol for the Party, implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones, by use of all relevant measures as provided in this Protocol.	Yes	<p>Will relevant supply chain control provisions be extended to include Free Zones for tobacco products?</p> <p>What are the powers of zone operators and Customs within the Free Zone?</p> <p>Is there interoperability between the two systems and their requirements?</p>	<p>Need to understand current Customs powers and practices relating to Free Zones.</p> <p>What are existing obligations under international conventions in the area:</p> <ul style="list-style-type: none"> <li>• Revised Kyoto Convention</li> <li>• WCO SAFE Framework</li> <li>• TRIPS</li> <li>• ACTA</li> </ul> <p>Consider controls applying to various economic operations conducted within the Free Zone.</p>
2	Intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones shall be prohibited.	Yes	<p>What is the extent of this practice currently?</p> <p>What is the feasibility of implementing this provision?</p>	As per 1 above.
3	Adopt and apply control and verification measures to the international transit or transshipment, within its territory, of tobacco products and manufacturing equipment in conformity with the provisions of this Protocol	Shall in accordance with national law	<p>What are the current customs' and zone operators' powers to verify and control zone operations?</p> <p>What practices will need to change to widen the scope?</p>	<p>As per 1 above.</p> <p>Need to assess current powers to control of customs and zone operators.</p>

## 4.4. Offences (Part IV of the Protocol)

Part IV of the Protocol provides for the legislative and enforcement aspects of dealing with the illicit trade problem and its **suppression**. Specifically, Part IV provides a list of **unlawful conduct**, including criminal offences, and elaborates on the definition of the ITTP provided for by article 1 of the WHO FCTC and the Protocol. It outlines guidance for Governments in terms of measures to deal with unlawful conduct including prosecutions and sanctions for criminal activity as well as liability. It also covers seizure payments, destruction of seized products and investigative techniques.

Part IV is *fundamental* in the framework of the Protocol as it provides a practical/operational definition of the ITTP, and lays down a number of measures of substantive and procedural criminal law.

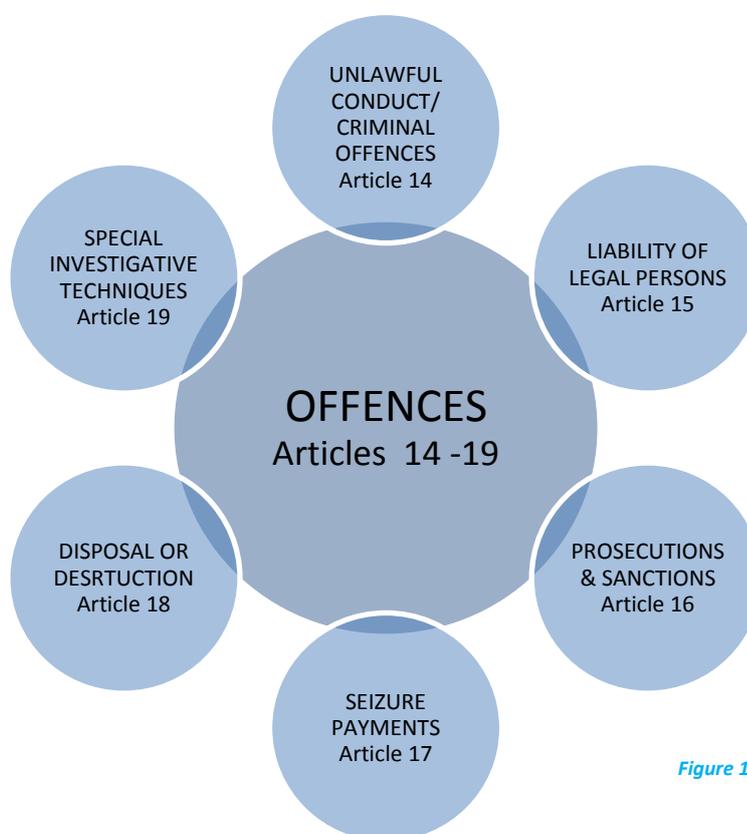


Figure 14: Overview of Protocol Part IV: Offences

Article 14 is the most controversial provision in this part as States had such difficulty in agreeing on its final form. This article also poses one of the most serious problems for the implementation of the Protocol in that **article 14 provides a list of unlawful conduct but not does provide a list of core conduct that all States parties shall criminalize.**

#### 4.4.1. Unlawful Conduct including Criminal Offences (art. 14)

##### a. Overview

The list of unlawful conduct provided under article 14 is the outcome of the inability of the INB to come to an agreement on which conducts shall be criminalized and which ones shall be classified as administrative offences. Hence, the Protocol leaves this decision entirely to the discretion of States parties. However, **all contraventions** of the positive substantive obligations imposed by the Protocol must be considered unlawful and subject to administrative or criminal penalties according to the classified seriousness of the offence.

Unlawful conduct is not defined in the Protocol but refers to conduct infringing a law, an administrative regulation or a decision taken by a competent authority.

Through the implementation of the Protocol into domestic law, States have an opportunity to harmonize law relating to illicit trade of tobacco products by identifying core unlawful conduct that is already criminalized in some States and could be in others. Harmonization of existing laws and the creation of new laws will need to be accompanied by appropriate sanctions that are commensurate with the seriousness of identified unlawful criminal conducts to ensure penalties are sufficiently deterrent.

Whether an offence will be criminalized or dealt with administratively will depend on the level of seriousness attributed to the unlawful conduct within the domestic legal framework. More serious offences may be classed as criminal and less serious offences as administrative, as a starting point. Of course, one must account for the escalation of the severity of offences within each category which can be dealt with through escalating measures. There will be criminal offences considered as ranging in seriousness, and appropriate penalties attached. The same will apply for administrative offences and appropriate sanctions will be attached to the range of offences and whether they are considered more or less serious within the same category.

Where provisions in the Protocol are already part of domestic law, States parties can maintain their legislation and are not required to amend it.

The table below outlines the provisions contained in article 14(1), and provides some preliminary commentary. This table is then followed by a more thorough analysis with policy considerations.

*Table 16: List of unlawful conduct provided by art. 14(1)*

Paragraph	Commentary
<p><b>(a) Manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this protocol</b></p>	<p>That is, engaging in the listed activities without the requisite licence/authorization under article 6. This includes smuggling/ attempted smuggling offences (importing/exporting without the required authorization), and offences of manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, and shipping without the required authorization.</p> <p>States parties are likely to consider the smuggling offences as the most serious ones amongst the offences listed, thus requiring tougher treatment than the other unlawful conduct listed, in terms of the categorization of the offence as either criminal or administrative, and in terms of determined penalties.</p> <p>The smuggling offence, where criminalized, will also be a predicate offence for other related criminality. As a result, it will have to be added to a State party's list of predicate offences for money laundering.</p>
<p><b>(b) (i) Manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels</b></p>	<p>Contrary to requirements under article 8.</p> <p>This will particularly cover illicit manufacturing offences where national track and trace requirements are not met, and will also encompass smuggling and attempted smuggling offences, where duties and taxes are not paid.</p> <p>Predicate smuggling offence (where criminalized will also have to be added to list of predicate offences for money laundering).</p> <p>Tax evasion.</p> <p>(NB: Smuggling and tax evasion are expected to already be offences under national laws).</p>
<p><b>(b) (ii) Any other acts of smuggling or attempted smuggling of tobacco, tobacco products or manufacturing equipment not covered by paragraph (b)(i);</b></p>	<p>Predicate smuggling offence (where criminalized shall be added to list of predicate offences for money laundering).</p> <p>This provision envisages other acts such as crossing of a border that is not a customs border, e.g. travelling between EU borders.</p>
<p><b>(c) (i) Any other form of illicit manufacture of tobacco, tobacco products or manufacturing equipment, or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels;</b></p>	<p>This provision foresees counterfeiting activity, being <i>any other form of illicit manufacture</i>, as well as the counterfeiting of fiscal stamps.</p>

<p><b>(c) (ii) Wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;</b></p>	<p>Counterfeiting activity would also fall within the scope of this provision where reference is made to illicitly manufactured tobacco, etc. and products bearing counterfeit fiscal stamps (false fiscal stamps).</p>
<p><b>(d) Mixing of tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products;</b></p>	<p>Addresses methodology of engagement in illicit trade.</p>
<p><b>(e) Intermingling of tobacco products with non-tobacco products in contravention of article 12.2 of this protocol;</b></p>	<p>See article 12 – Free zones and international transit and the prohibition on intermingling.</p>
<p><b>(f) Using internet, telecommunication, or any other evolving technology-based modes of sale of tobacco products in contravention of this protocol;</b></p>	<p>See article 11 – Sales by Internet.</p>
<p><b>(g) Obtaining, by a person licensed in accordance with article 6, tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed in accordance with article 6;</b></p>	<p>States will have to compare the inclusion of this offence against the list of activities requiring licences in their jurisdictions. If distribution, wholesaling, brokering, transporting, growing, retailing etc. does not require a licence, this unlawful conduct will have no effect.</p> <p>Licensed persons will also be under due diligence obligations so it will need to be decided whether this will be an administrative or criminal offence. If it is made a criminal offence, the intent of the person obtaining the products will be relevant unless the offence is made a strict/absolute liability offence.</p>
<p><b>(h) Obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;</b></p>	<p>UNTOC and UNCAC require that States parties establish offences relating to the obstruction of justice, including interfering with witnesses and with judicial, law enforcement and other public officials. States parties should reference their obligations under these treaties and criminal offences already established and applicable to ITTP under these treaties.</p>

<p><b>(i) (i) Making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;</b></p>	<p>Consider such offences as being strict/absolute liability offences if criminalizing this offence.</p>
<p><b>(i) (ii) Misdeclaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to:</b></p> <p style="padding-left: 40px;"><b>(a) Evade the payment of applicable duties, taxes and other levies, or</b></p> <p style="padding-left: 40px;"><b>(b) Prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;</b></p>	<p>Fits within broad category of Economic crimes such as fraud and tax evasion, where such unlawful conduct is criminalized. Such conduct normally points to the commission of a larger offence, usually a criminal offence, thus being part of criminal conduct.</p> <p>Here also, if the unlawful conduct is criminalized, the fault element (intention, knowledge, recklessness, negligence) is relevant, unless the offence is a strict/absolute liability offence.</p>
<p><b>(i) (iii) Failing to create or maintain records covered by this protocol or maintaining false records; and</b></p>	<p>Contrary to article 9 – Record Keeping of the Protocol.</p>
<p><b>(j) Laundering the proceeds of unlawful conduct established as a criminal offence under paragraph 2.</b></p>	<p>This is the only offence States parties agreed unequivocally shall be criminalized.</p> <p>UNTOC and UNCAC require that States parties establish money laundering as a criminal offence under domestic law. States parties should reference their obligations under these treaties and whether money laundering is a criminal offence already established and applicable to ITTP under these treaties.</p> <p>To the extent that States parties decide to criminalize unlawful conduct described in paragraph 1(a) and (b), such conduct shall be added to their list of predicate offences to money laundering.</p>

The list of unlawful conducts provided at **article 14(1)(a) and 14(1)(b)** provides for what States are likely to consider as the most serious offences contained in the list of unlawful conducts, aside from 14(1)(j) establishing the money laundering offence as criminal. Paragraphs (1)(a) and (1)(b) are broad and envisage a range of illicit activity. At paragraph (1)(a), States parties are to establish the following as unlawful:

- Manufacturing,
- Wholesaling,
- Brokering,
- Selling,
- Transporting (commercial quantities Art. 6(2)(c)),
- Distributing,
- Storing,
- Shipping,
- Importing or
- Exporting

tobacco, tobacco products or manufacturing equipment contrary to the provisions of the Protocol.

The substantive positive obligations imposed by the Protocol under article 6 are specifically in relation to the **manufacture, import and export of tobacco products and manufacturing equipment** which are **prohibited** activities except pursuant to a licence. Article 14 requires States to take *legislative and other measures* to establish this conduct as unlawful. However, article 14 is silent as to how States should do this and does not specifically require criminalization.

Under article 6(2) States parties are to *endeavour to licence* retailing, growing of tobacco (except for traditional, small scale growers, farmers and producers), transporting commercial quantities, wholesaling, brokering, warehousing, or distribution of tobacco products or manufacturing equipment. Countries that require licences for activities extending beyond manufacture, import and export, will need to consider whether they will criminalize the engagement in these activities without the necessary authorization.

When criminalizing such conduct, consideration will have to be given to the **physical elements** to be proved and the accompanying **fault element** (intention, knowledge, recklessness or negligence). This will be especially necessary for activities following manufacturing, such as distributing, transporting etc. For example whether the transporter knew the goods being transported were illicit will be relevant, and whether they should have known will be relevant. States will have recourse to defenses available under their domestic legal frameworks.

### - Illegal manufacturing (operating without the requisite authorization)

As already stated, operating without a licence to manufacture, import or export is a prohibited activity under article 6(1). As such, States should consider criminalizing this conduct to give effect to the weight of the obligation contained in article 6(1).

Many jurisdictions have criminalized illegal manufacturing in some form. As illegal manufacturers are an important source of illicit cigarettes for smugglers, they are themselves inextricably linked to the larger criminal networks they provide.

If illegal manufacturers were criminally liable it would assist in:

- Making clear that participation in illicit manufacturing is considered a serious offence as opposed to if the offence was purely treated administratively;
- The risk to profit ratio would be compounded ensuring that those engaging in illicit manufacturing are aware of the increased risk of their participation;
- Making available tougher penalty options, such as imprisonment;
- Disrupting the activities of organized crime groups by depriving them of their source of illicit goods; and
- Depriving organized crime groups of their profits in the long run.

Criminal prosecution of illegal manufacturers should not neglect to include the forfeiture of illegal product and the manufacturing equipment used and these aspects should be included in the legislation dealing with these offences.

In many jurisdictions, the illegal manufacture of tobacco products is criminalized primarily through anti-counterfeiting and fraud/tax legislation. This approach suffers from some weaknesses:

- The offence is generally deemed criminal only when a certain *damage threshold* amount is reached which depends on the quantity of illegal cigarettes produced. The disadvantage of such an approach is that there is no middle ground. If the threshold is not reached, criminal prosecution is not allowed;
- There is no specific offence of “illegal manufacturing”;
- Penalties against IP crime (trademark infringements) are usually lenient and IP offences are not normally considered serious offences; and

#### Box 47: Illegal manufacturing: examples of legislation

##### Austria

The criminal offence of illegally manufacturing tobacco products is committed when someone intentionally and **without proper authorization** commercially manufactures tobacco products. The illegal manufacture of tobacco products is also considered to have occurred if facilities, sites, equipment, appliances, raw or auxiliary materials, intermediate products, or packaging are used to facilitate an offence.

##### Canada

Under sections 226-228 of the *Canadian Excise Act*, every person who manufactures tobacco products **without a license** commits an offence punishable by a minimum of CAN\$10,000. If the fine is not paid, a term of imprisonment up to 12 months can be imposed. Persons found to have violated sections 226 or 227 of the Act will be liable for penalties equal to triple the amount of excise duty and the original license fee that should have been paid.

- Prosecuting under tax laws does not assist in dismantling the organized crime groups involved.

Some countries have criminalized illegal manufacturing as a separate offence where offenders are generally prosecuted irrespective of the quantity of illegal cigarettes they produced.

**Examples**

The data reported in the table below indicates the penalty range that can be applied to trademark infringements in various jurisdictions. As shown, the period of imprisonment ranges from 2 months (Egypt) to 12 years (Philippines). This lack of consistency between the legislation of different jurisdictions could hamper international cooperation.

*Table 17: Trademark infringements and penalty ranges in a selection of countries*

Country	Sanctions for trademark infringement (available)							
	Container seizure		Factory/Warehouse raids		Printing facilities		Retail	
	Fine/Others	Imprisonment	Fine/Others	Imprisonment	Fine/Others	Imprisonment	Fine/Others	Imprisonment
<b>Egypt</b>	Minimum fine of EGP 5,000 (approx. USD 830) up to EGP 20,000 (approx. USD 3320)	Imprisonment for not less than 2 months or both – fine and imprisonment	Minimum fine of EGP 5,000 (approx. USD 830) up to EGP 20,000 (approx. USD 3320)	Imprisonment for not less than 2 months or both – fine and imprisonment	Minimum fine of EGP 5,000 (approx. USD 830) up to EGP 20,000 (approx. USD 3320)	Imprisonment for not less than 2 months or both – fine and imprisonment	Minimum fine of EGP 5,000 (approx. USD 830) up to EGP 20,000 (approx. USD 3320)	Imprisonment for not less than 2 months or both – fine and imprisonment
<b>Germany</b>	- A monetary fine - Confiscation of illegally manufactured goods, materials and production equipment	Up to 5 years of imprisonment	- A monetary fine - Confiscation of illegally manufactured goods, materials and production equipment	Up to 5 years of imprisonment	- A monetary fine - Confiscation of illegally manufactured goods, materials and production equipment	Up to 5 years of imprisonment	- A monetary fine - Confiscation of illegally manufactured goods, materials and production equipment	Up to 5 years of imprisonment
<b>Philippines</b>	Fine of PHP 50-10,000 (approx. USD 1.25-250)	Imprisonment of 5 days up to 12 years	Fine of PHP 50-10,000 (approx. USD 1.25-250)	Imprisonment of 5 days up to 12 years	Fine of PHP 50-10,000 (approx. USD 1.25-250)	Imprisonment of 5 days up to 12 years	Fine of PHP 50-10,000 (approx. USD 1.25-250)	Imprisonment of 5 days up to 12 years
<b>UAE</b>	Minimum fine of AED 5000 (approx. USD 1362); and/or Closure of the commercial establishment	Imprisonment – the law does not provide for a range of imprisonment term; not applied in practices	Minimum fine of AED 5000 (approx. USD 1362); and/or Closure of the commercial establishment	Imprisonment – the law does not provide for a range of imprisonment term; not applied in practices	Minimum fine of AED 5000 (approx. USD 1362); and/or Closure of the commercial establishment	Imprisonment – the law does not provide for a range of imprisonment term; not applied in practices	Minimum fine of AED 5000 (approx. USD 1362); and/or Closure of the commercial establishment	Imprisonment – the law does not provide for a range of imprisonment term; not applied in practices
<b>France</b>	-Fine of EUR 400,000; -Fine of EUR 500,000, if committed by an organized crime group	Up to 4 years of imprisonment; Up to 5 years of imprisonment, if committed by an organized crime group	-Fine of EUR 400,000; -Fine of EUR 500,000, if committed by an organized crime group	Up to 4 years of imprisonment; Up to 5 years of imprisonment, if committed by an organized crime group	-Fine of EUR 400,000; -Fine of EUR 500,000, if committed by an organized crime group	Up to 4 years of imprisonment; Up to 5 years of imprisonment, if committed by an organized crime group	-Fine of EUR 400,000; -Fine of EUR 500,000, if committed by an organized crime group	Up to 4 years of imprisonment; Up to 5 years of imprisonment, if committed by an organized crime group

### **- Illicit importation (smuggling)**

The illicit importation of tobacco products is a highly organized criminal activity in many jurisdictions.

States have a number of different ways of dealing with the smuggling offence. Some treat it administratively and accord it administrative penalties, some criminalize the conduct and institute criminal penalties, and others adopt quasi-criminal frameworks. Sometimes penalties are purely administrative fines and other times the criminal sanction of imprisonment is imposed. Sometimes the matter is brought before a criminal court, or customs authorities are charged with prosecutions with the right to refer the matter to the police.

Essentially, this shows the lack of consistency applied to ITTP and the lack of agreement between States as to the level of seriousness of the illicit conduct. Another effect is that the transnational nature of the offence is not highlighted making international cooperation efforts more difficult, particularly where one country treats smuggling as a criminal offence and another does not. States parties to the Protocol should aim at implementing and enforcing legislation that will assist in disrupting the criminal networks involved from suppliers to end customers, transnationally.

This is one area that could be considered regionally and countries decide together whether certain offences should be criminalized or not.

### **- Distribution, purchase and possession**

The Protocol does not provide guidelines as to how to deal with those in possession of illicit goods. In this regard, States parties could consider the distribution, purchase and possession of commercial quantities of illicit cigarettes as offences, whether administrative or criminal, and attach appropriate penalties to the unlawful conduct. This would not include the end consumer of the product but would rather target the middle men responsible for the distribution of the product. It may be an effective measure in deterring distributors, sellers and buyers from engaging in the illicit trade in tobacco products. France, for example, in article 1810, 10° of the *General Tax Code* punishes manufacturing, *possessing for the purpose of sale*, and transporting non-duty-paid tobacco with up to one year in prison and/or confiscation of vehicles and other machinery used in the trade of the tobacco products.

### **b. Failure to identify core list of conduct to be criminalized: effects on international cooperation**

The provisions of article 14 operate to accommodate the variability of the treatment of unlawful conduct in different jurisdictions. Keep in mind the phrases “*subject to the basic principles of its domestic law*” and “*legislative and other measures as may be necessary*”, allowing States to apply their discretion.

Certainly there will be legal consequences for failing to identify a list of core conduct that all States parties should criminalize. For example, if a majority of States have a number of the same offences in place, then a State that decided not to criminalize those same offences would not be able to effectively cooperate with the others in criminal matters. This means that mechanisms provided for

under Part V of the Protocol regarding mutual legal assistance and extradition will not be available for that State party. Also, for extradition purposes the offence needs to be a criminal offence in the requesting and requested country for extradition to occur. Under UNTOC, for extradition to occur the crime needs to be a serious offence with a maximum penalty of at least four years imprisonment.

As a result, international cooperation between law enforcement agencies and judicial authorities could be adversely affected.

Further, investigations and other measures referred to in subsequent articles of the Protocol would be very difficult to implement except under criminal law.

### **c. Guidance from international obligations under UNTOC and UNCAC**

Guidance can be garnered from examining the criminal offences listed under UNTOC and UNCAC.

Those States, party to UNTOC and UNCAC, in compliance with their obligations under these Treaties would already have criminalized the following and have in place the requisite mechanisms to deal with these crimes.

As mentioned in section 2.2 (*“Cross-sectoral criminal justice treaties”*), the criminal conducts in UNTOC are:

- Criminalization of participation in an organized criminal group (art. 5)
- Criminalization of the laundering of the proceeds of crime (art. 6)
- Criminalization of corruption (art. 8)
- Criminalization of the obstruction of justice (art. 23)

and the criminal conducts in UNCAC are:

- Bribery of national public officials (art. 15)
- Bribery of foreign public officials, officials of public international organizations (art. 16)
- Embezzlement, misappropriation or other diversion of property by a public official (art. 17)
- Abuse of functions, purpose of obtaining undue advantage (art. 19)
- Bribery and embezzlement in private sector (arts. 21, 22)
- Laundering of proceeds of crime (art. 23)
- Concealment of property (art. 24)
- Obstruction of justice (art. 25)

Where States have criminalized or will criminalize smuggling of tobacco, tobacco products or manufacturing equipment, this could be a predicate offence for money laundering and transnational organized crime offences. Thus there will always be an interaction between the Protocol and UNTOC and UNCAC, even where some States do not choose to criminalize certain unlawful conduct.

#### d. Prerequisites for the implementation of the Protocol and article 14

There are a number of measures that the Protocol simply “assumes” that States have or will have in place, short of explicitly recommending them to adopt such measures. These measures, however, are “prerequisites” for the effective implementation of the Protocol.

Framework for money laundering (art. 14(1)(j) & 14(4))

Confiscation regime (art. 18)

IP crime regime (art. 14(1)(c)(i) & 14(1)(c)(ii))

Tax regime (art. 14(1)(b)(i) & 14(1)(b)(ii))

##### - Framework for money laundering

The Protocol, at article 14(1)(j) and article 14(4), requires the establishment of a “laundering offence” in relation to proceeds derived from engagement in unlawful conducts which States parties have specifically decided to criminalize.

The Protocol, however, does not identify the constituent elements of this offence which is crucial for the ability of criminals to engage in illicit trade activity. States’ competent authorities may nevertheless refer to several international conventions, including regional ones, for guidance. In light of the Protocol’s heavy reliance on UNTOC, it is advised to refer to article 6 of this latter instrument (*criminalization of the laundering of proceeds of crime*) which specifies the elements of the laundering offence, and adapt it to suit Protocol requirements.

##### - Confiscation regime

Another key prerequisite for countries wishing to effectively implement the Protocol is the need to have an effective regime in place for the confiscation of proceeds of crime (supported by freezing/seizure measures as provisional measures). While the WHO FCTC mentions the obligation for States parties to “adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products” (article 15(4)(e)), the Protocol only refers to the need to dispose of confiscated tobacco, tobacco products and manufacturing equipment at article 18.

The **confiscation of proceeds of crime** therefore is an area about which the Protocol remains silent. In terms of prosecutions, confiscation of proceeds is an issue that should be considered from the outset in all cases where such a regime exists and extends to tobacco-related offences - it should not be treated as a mere “optional add-on” to sentence proceedings or to the conduct of a prosecution, where the applicable domestic legal framework allows it. In most jurisdictions with confiscation regimes, confiscation may be available in many differing types of cases, including, for example, some drug offences, bribery and “contract” bashings, “contract” killings, and ITTP and smuggling offences.

States parties will need to consider what regime they have implemented, if there is a regime at all, whether it is conviction or non-conviction based, what types of orders are available and when. For example, restraining and ancillary orders (which preserve property for possible future confiscation) are normally sought before charges are laid or pecuniary penalty orders (for non-drug offences) and forfeiture orders which are normally only available after conviction. States parties should also consider whether they need to implement a regime for the confiscation of proceeds of crime.

States parties will have to have recourse to international legal texts other than the Protocol (such as UNTOC and UNCAC) where policy-makers/legislators could find guidance (*see INTERPOL's Countering Illicit Trade in Goods: A Guide for Policy-makers*).

#### - Intellectual property crime regime

A regime dealing with IP crime which talks of:

- “Any other form of illicit manufacture of tobacco etc. bearing false fiscal stamps etc.”; and
- “Wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured products bearing false fiscal stamps” (art. 14(1)(c)(i) – 14(1)(c)(ii)).

is another prerequisite for the implementation of the Protocol.

Article 14(1)(c)(i) and 14(1)(c)(ii) are broad but envisage conduct involving the counterfeiting of fiscal stamps and their use on counterfeit tobacco products, illicit tobacco products that may be genuine and on illicit whites. The question is the strength of the framework a country has in place in relation to IP Crime. Some countries may have laws established for IP infringements, and some countries may not. At any rate, an assessment of the relevant laws will need to take place to ensure they meet the requirements of the Protocol. Note also, that usually offences concerning the falsification of tax stamps and currency is found in the Criminal Codes of most countries.

#### - Tax regime

Another assumed prerequisite for States is the tax regime referred to at art. 14(1)(b):

- Engaging in trading of tobacco products without payment of applicable duties; and
- Smuggling and attempted smuggling.

These provisions seek to enforce the tax laws of States but the Protocol is silent on instituting tax laws or standards (art. 14(1)(b)(i) - 14(1)(b)(ii)).

#### - Conclusions

- Countries with these regimes already in place will be in a better position to:
  - Meet their obligations under the Protocol; and
  - Decide which unlawful conducts to criminalize and which to treat as administrative offences based on what already exists in their relevant jurisdictions.

- Countries with some or none of these regimes in place (though it is assumed that all countries have at least a tax regime) will have to create the relevant mechanisms to treat the unlawful conducts outlined so that they meet their obligations under the Protocol, or they will risk not being able to meet their obligations. If Protocol obligations are only half met this will undermine the instrument and its force and will create difficulties in international cooperation.
- Given that certain frameworks are already assumed by the Protocol, this removes the need for countries to implement the Protocol by merely incorporating its text in its entirety into a piece of legislation. The exercise will be more complex and will necessarily involve countries assessing which legislation already covers certain aspects of the Protocol and for which provisions of the Protocol legislation needs to be adopted and/or amended.

#### e. Policy considerations

- Some of the conducts set forth in art. 14 are presented as broad and rather general provisions. In order to incorporate these conducts into their domestic legal systems, especially if States parties will establish certain conducts as criminal offences, legislators will have to pay particular attention to applicable national and international requirements on **criminal law drafting** (see *INTERPOL's Countering Illicit Trade in Goods: A Guide for Policy-makers*). For example, the elements of the offences should be sufficiently precise, etc. Art. 14(1)(h) talks about “obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco”. The provision is so broad that it might lend itself to abuses unless its scope is better defined. The same applies to the provision at art. 14(1)(f) which generically refers to Protocol offences being committed “using Internet-, telecommunication- or any other evolving technology-based modes of sale [...]”; and at art. 14(1)(i) “failing to provide any required information to any public officer [...] in the performance of duties relating to the prevention [...] of illicit trade in tobacco [...]”. The type of conduct envisaged by these provisions and other such provisions should be enumerated and detailed in the relevant national legislation/regulation.
- To be able to better define the scope of unlawful conduct that may fall within the ambit of the broad provisions in art. 14(1), the role of those involved in each aspect of the supply chain may be considered when drafting legislation relating to specific conduct and appropriate penalties mandated according to their place in the supply chain. To successfully complete such an assessment all participants in the supply chain, from manufacturers to distributors to consumers, should be evaluated and each step along the legitimate supply chain and the illicit supply chain should be considered. Incentives, risks and vulnerabilities unique to each participant should be considered carefully.
- Art. 14 of the Protocol sets forth a wide range of conducts involving tobacco products and manufacturing equipment, to be established as unlawful conducts (it covers the areas of smuggling, counterfeiting, laundering, obstruction of public officers, corruption etc., modes of concealment such as intermingling and means of distribution, such as when violations of the Protocol are committed through the Internet). Such conduct dealing with behavior that facilitates (such as obstruction of justice, money laundering etc.) the commission of the primary unlawful conduct, for example the illicit manufacturing of cigarettes, has been included in the

lists of unlawful or criminal conduct of other international conventions under which States parties to these conventions have certain obligations. From the list of unlawful conduct provided in the Protocol, States parties will need to conduct an assessment of:

- Their obligations under relevant international treaties, such as UNTOC and UNCAC; and
  - Other obligations that need to be fulfilled under the Protocol: e.g. by establishing a criminal offence of smuggling of tobacco, tobacco products, or manufacturing equipment, will this criminal offence need to be included under a State party's obligations under UNTOC, particularly where mutual legal assistance, mutual administrative assistance or extradition provisions come into play.
- In deciding whether or not to criminalize Protocol-based conducts relating to the counterfeiting of tobacco products, States parties to the Protocol who are also parties to the TRIPS agreement should bear in mind that under TRIPS any **“wilful trademark counterfeiting” committed on a “commercial scale”** will have to be criminalized with “imprisonment and/or monetary fines sufficient to provide a deterrent”. Although the notion of what constitutes an offence committed on a “commercial scale”, as decreed by the Protocol, is subject to interpretation, TRIPS appears to “limit” to some extent the discretion that States parties to the Protocol have to exclude certain Protocol conducts from the criminal domain.
  - According to art. 2(1)(d) of the 1969 Vienna Convention on the Law of Treaties, a reservation is a “unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”. Under the Vienna Convention, States are allowed to formulate reservations unless reservations are prohibited by the treaty in question. In the case of the Tobacco Protocol, article 40 provides that no reservations may be made to the Protocol. This has a direct and practical consequence on the implementation of article 14. The fact that no reservation is possible under the Protocol means that States parties to it will have no possibility to declare (through a reservation) that they will not establish one or more conducts listed in article 14 as unlawful. All such conducts will have to at least be established as unlawful under their legal systems.
  - For those States parties with obligations under various other international conventions, it is likely that most conducts facilitating the primary offence, whether it be smuggling, illicit manufacture, etc. will already be incorporated in several different pieces of domestic legislation (criminal or not, special IP laws, etc.). A thorough analysis of domestic legislation will therefore be necessary to determine:
    - Which unlawful conducts from the list are already criminal offences under their domestic law;
    - Which unlawful conducts are already administrative offences under their domestic law;
    - Where in their domestic legislation would be the best place to incorporate those offences that do not yet exist; and
    - Whether there is any legislation targeting consumers for purchasing illicit tobacco products. This possibility could be considered by States depending on the particular

jurisdiction. This assessment should be made in light of any legislation or intention to adopt legislation on distribution, purchase and possession.

States parties should also consider what countries in the region have adopted as criminal offences and administrative offences, as this will impact upon international cooperation arising with the Protocol as the legal basis. States parties should seek to achieve harmonization in this regard.

- States will have to determine whether the Protocol offences should be established as stand-alone offences or be grouped with others. For example, States could create a specific article/section of their criminal legislation on counterfeiting of tobacco products, or they could introduce/amend a general provision on counterfeiting of various goods and ensure that the counterfeiting of tobacco products is implicitly included within its general scope of application.
- Certainly, the gravity of offences will need to be determined, and this is likely to differ across jurisdictions, whereby administrative penalties are expected to be imposed for less serious offences, reserving criminalization for those offences considered more serious. As a further consideration, the **penalties** attributed to criminal conduct should be commensurate with the determined seriousness of the offence and create the necessary deterrent effect when applied and enforced.

The gravity of the offence is especially important in relation to Part V, article 30 Extradition, of the Protocol. At art. 30(1)(c) the Protocol establishes that the offence must be *punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral or multilateral treaties or other international agreements.*

- It is worth noting that the offence must be a criminal offence for **international cooperation purposes** where extradition is concerned. Also, where States parties meet the requirement of an offence punishable by a maximum penalty of at least four years imprisonment, they will be able to use the Protocol as the legal basis for international cooperation, specifically extradition requests (*see section 4.5.8, "Extradition and measures to ensure extradition"*). To achieve this, States parties will have to go through a process of identifying the relevant unlawful conduct that will be criminalized, outline the range of criminal offences and their seriousness, and attribute appropriate penalties keeping mind the consequences for international cooperation if penalties are too low, or where some unlawful conduct is not criminalized.
- In determining applicable penalties when new offences are introduced, States should be aware that if offences are punishable with a maximum penalty of less than two years imprisonment, international cooperation in relation to mutual legal assistance (MLA) will be affected. This could occur when a request for MLA is made from another State party, the requested State may refuse to execute the request according to art. 29(14)(d) which provides that *where the request involves a crime where the maximum penalty in the requested party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime.*

International cooperation is a key factor to keep in mind when deciding on the seriousness of the unlawful conduct, whether it should be criminalized and what penalties should be adopted. As ITTP is transnational in nature, the objectives of the Protocol to eliminate ITTP will not be met unless States cooperate effectively to dismantle the organized networks involved in illicit trade. International cooperation plays a major role in States abilities to identify individuals involved in these networks, to gather the relevant evidence, and to effectively prosecute.

- On the **fault (*mens rea*) elements** of the offences set forth in article 14, the Protocol is not explicit as to whether or not those conducts have to be committed willingly/intentionally. The Protocol limits itself to saying at art. 16(3) that the “legal principles controlling the lawfulness of conduct” are left to each State party. Again, this is an additional issue for States to determine. The definition of the type and degree of “intention” would have to be addressed depending on whether or not the relevant conducts are incorporated as administrative or criminal offences.

If the criminalization option is chosen, States parties will need to consider the fault elements of intention, knowledge, recklessness and negligence. Particular problems in terms of defining the required *mens rea* will concern such conducts as transporting/shipping illicitly manufactured products. What will be the required level of knowledge of couriers? Will they have to know that they are transporting illicit goods? Would it be enough if they had reasonable doubts to suspect that this is the case but they decided to proceed without checking? What obligations are imposed on them to ensure any necessary checks are made? Etc. States will have to be very careful when decision-making in this area, striking a delicate balance between the need to fight smuggling/counterfeiting operations and the need to protect innocent/unaware transporters from being held criminally responsible. States will also have to consider the obligations they impose regarding licensing and due diligence for those involved further in the supply chain, such as transporters, and what this would mean for the fault element of the offence. Where a transporter is always required by a State to conduct due diligence checks (depending on what these checks are<sup>44</sup>) and does not and ends up transporting illicit tobacco products, what will this mean?

- States should also consider whether some offences in art. 14 will be **strict liability or absolute liability offences**. These types of offences have no *mens rea* requirement and the prosecution does not have to prove the *mens rea* of the offence. Keep in mind that strict liability offences are usually minor in nature, and due to their severity, absolute liability offences are not that common.

Finally, States parties should turn their mind to what **defenses** are available and applicable and in what circumstances. There are no allowable defenses for absolute liability offences. Honest and reasonable mistake of fact is only an available defense for a strict liability offence.

- When legislating, and taking into account deterrent penalties, States parties to the Protocol should also consider **enforcement requirements**. Consistent enforcement is central to reducing illicit trade. States parties will need to consider the enforcement requirements that may be necessary and should adopt new powers and responsibilities in dealing with tobacco related crime accordingly. They will need to understand what enforcement requirements are necessary to enforce offences within criminal codes targeting such criminal activity. To ensure efficiency

and effectiveness, judges and prosecutors could be trained on the new or relevant provisions, and how they operate in relation to ITTP offences. This will ensure that relevant actors charged with implementation, and in whose hands outcomes lie, feel confident operating under such provisions.

- Article 14 of the Protocol is silent on the issue of **the involvement of organized criminal groups** in the commission of the relevant offences. States parties might, for example, decide to increase the penalties in the event an organized crime group is involved in the commission of the offence, including through the inclusion of this as an aggravating factor for sentencing purposes. States may also consider, where they have decided to sanction certain conducts only with administrative penalties, to apply criminal sanctions if the same conduct is committed within the framework of an organized crime group.
- The Protocol requires that States establish as unlawful such conducts as the manufacturing, selling, distributing, etc. of 1) tobacco products and 2) manufacturing equipment, contrary to the provisions of the Protocol. The Protocol does not technically require the inclusion of so called **“key inputs”** (i.e. products that are essential to the manufacture of tobacco products, notably acetate tow and cigarette paper) within the scope of application of the illicit conduct. Nevertheless, States can certainly decide to go beyond Protocol requirements and include them. On the other hand, States cannot establish offences with a narrower scope of application than the minimum required by the Protocol.
- Likewise, the Protocol does not require that States parties criminalize conduct relating to **“attempts”** (except for para (1)(b)(i)) or **“preparations”** to commit the relevant offences. Each State will have to decide the extent to which they wish to link art. 14 conducts to those of “attempt” and “preparation”, and, more broadly, to those parts of criminal law statutes/ criminal codes outlining generally applicable provisions on the perpetration of offences, the role of accomplices, instigators, the exclusion of criminal responsibility, etc.

Acts of “aiding and abetting” the commission of offences and other forms of involvement in facilitating them should also be considered. For example, someone who promotes the sale of counterfeit tobacco products (including through advertising, or by donating them/giving them for free) without actually being the one who sells them or even possesses them.

- States may decide not to criminalize certain, less serious conducts listed in article 14. Nevertheless, they may consider it appropriate to qualify them as criminal whenever a number of **aggravating circumstances** are present. Such aggravating factors could be:
  - Results in death or serious injury;
  - Affects or is likely to affect the health of a large number of people;
  - The operation has resulted in significant monetary gain;
  - The perpetrator is an authorized operator (manufacturer, retailer, other);
  - The offence has been committed by an organized criminal group and defined in national legislation.

#### 4.4.2. Liability of legal persons (art. 15)

##### Box 48: Liability of legal persons (art. 15)

1. Parties **shall** adopt measures to establish liability of legal persons for the unlawful conduct including criminal offences established under article 14.
2. The liability of legal persons may be criminal, civil or administrative.
3. Such liability **shall** be without prejudice to the liability of natural persons who have engaged in unlawful conduct including criminal offences.

##### a. Overview

Provisions regarding the liability of legal persons were introduced in domestic legislation to account for the difficulty in identifying those natural persons responsible for certain unlawful conduct, and to target perpetrators of serious criminal offences who engaged in criminal activity through using corporations as fronts. In this way, also, assets of the corporation could be pursued and confiscated (*see INTERPOL's Countering Illicit Trade in Goods: A Guide for Policy-makers*”).

The term *legal person* is not, however, defined in the Protocol. The definition will be a matter left to the legislature of each State party to the Protocol and will depend on the corporations law regime in the State. Not all jurisdictions ascribe the liability of legal persons through criminal law, and some only do so through the civil or administrative laws of the country. For this reason, the Protocol requires that liability over legal persons be asserted by States parties to the Protocol criminally, civilly or administratively.

Ensuring the liability of legal persons is especially important for combatting the ITTP since many criminal organizations operate through legal persons, whether they be legitimate corporations engaging in illicit over-production and supply of tobacco products, or corporations created to hide illicit activity, such as illicit manufacture of counterfeit tobacco products.

##### b. Policy considerations

- It is worth noting that this article applies to all unlawful conduct including criminal offences established in accordance with article 14 of the Protocol.
- Reference should be made to article 16 which deals with prosecutions and sanctions for natural **and** legal persons. Procedural issues relating to the prosecution of legal persons will need to be accounted for.
- States should keep in mind the issue of **negligence** when legislating for the corporate criminal responsibility, whereby a legal person may be held liable on account of negligence only, i.e. the negligent commission of any criminal offence when one of the actors is negligent with regard to his/her supervision or control.

- States should also be mindful of whether prosecuting a natural person for their participation in/commission of a criminal offence precludes the prosecution of the legal person for the same offence and vice versa. A natural person may be subsequently prosecuted even where a legal person has been held criminally responsible for the same offence or has even been acquitted. Note that no issues of *ne bis in idem* (double jeopardy) arise as the legal person and natural person are different and double jeopardy applies only to one particular person being prosecuted twice for the same offence.
- States will also need to have recourse to obligations arising under Part 3 of the Protocol for legal persons, for example operating under a licence, conducting due diligence before or during business relationships etc., and create the requisite liability for legal persons so that they can be held responsible.
- As criminal liability of legal persons is not a globally accepted concept, States parties to the Protocol will have to create legal liability administratively, civilly and/or criminally. States parties will need to understand their domestic laws by way of corporate responsibility.



**Box 49: Further reading on liability of legal persons**

For general information about **liability of legal persons**, refer to section 5.2, “Are illicit trade related offences in place? Are they subject to the appropriate sanctions?” of INTERPOL’s “Countering Illicit Trade in Goods: A Guide for Policy-makers”.

*Link:* <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance>

### 4.4.3. Prosecutions and sanctions (art. 16)

#### Box 50: Prosecutions and Sanctions (art. 16)

1. Parties **shall** adopt measures as may be necessary to ensure natural and legal persons held liable for the unlawful conduct including criminal offences established under Article 14 are subjected to:
  - Effective
  - Proportionate
  - Dissuasivecriminal sanctions, including monetary sanctions.
2. Parties to ensure discretionary legal powers under domestic law are exercised to maximise the effectiveness of law enforcement measures in respect of unlawful conduct including criminal offences, and with regard to deterrence.
3. Legal defences and other legal principles controlling the lawfulness of conduct shall be prosecuted and sanctioned under domestic laws of States Parties.

#### a. Overview

The main basis for prosecution is the domestic law of the States parties and not the Protocol itself.

**Article 16(3)** refers to the general criminal law of the State party, under which various legal defenses would remain applicable even if the State party had implemented the Protocol by establishing certain offences under a special part of its criminal law. Thus States parties will not lose any power.

#### b. Policy considerations

##### - Criminal offences covering illicit trade

There are already a number of different ways jurisdictionally an offence with the same facts can be treated, with many possibilities and interacting relationships. Regarding illicit trade activity countries will often have an interplay between the arena in which a particular offence can be dealt with:

- **Customs**
- **Intellectual Property**
- **Criminal**

Essentially, within a country there are different ways of dealing with the same unlawful conduct, where it amounts to criminal behavior. Countries will need to look broadly across their various frameworks when beginning to implement Part IV and particularly article 14, to ascertain which unlawful conducts they have already dealt with and under which framework and whether this treatment meets the requirements and obligations imposed by the Protocol.

##### - Types of charges that can be laid

- Fraud:
  - Obtaining property or a financial advantage by deception
  - Conspiracy to defraud
  - General dishonesty – obtaining a gain/causing a loss

- Obtaining financial advantage
- Tax evasion
- Making false/misleading statements: in applications and in documents
- Unwarranted demands: with menaces, of public officials or made by the public officials
- Bribery and related offences:
  - Bribery of national public official
  - Corrupting benefits given to, or received by public official
  - Abuse of public office
- Forgery and related offences:
  - Using forged document
  - Possessing forged document
  - Possession, making or adaptation of devices etc. for making forgeries
  - Falsification of documents
  - Giving information derived from false or misleading documents
- Criminal associations and organizations: associate in support of serious organized crime activity
  - Support criminal organization
  - Commit offence for benefit of, or at the direction of, a criminal organization
  - Direct activities of a criminal organization
- Money laundering
  - Conversion or transfer of property, knowing property is proceeds of crime, to conceal or disguise illicit origin
  - Concealing, disguising true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing property is proceeds of crime
  - Acquisition of property, knowing property is proceeds of crime
  - Establish widest range of predicate offences

Substantive charges are preferable to conspiracy where possible (the elements of conspiracy are more difficult to prove); however, there will be occasions when a charge of conspiracy is appropriate by reason of the facts and/or the need adequately to address the overall criminality of the conduct alleged. States parties may need to introduce substantive charges for ITTP involvement if they have not already done. Organized crime provisions also provide a charge that adequately addresses the overall criminality of offences related to ITTP.

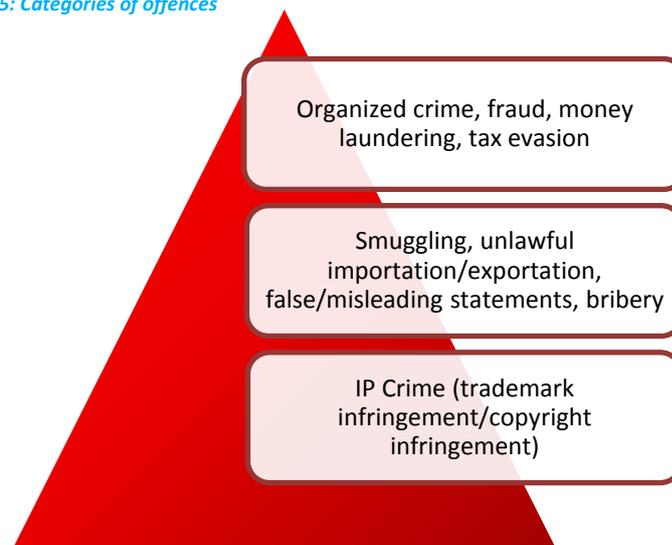
States parties will need to check domestic legislation particularly their Customs Acts, Criminal Codes and IP Crime legislation.

Successful prosecution should be a key aim. Without it offenders engaged in the ITTP continue to operate, and the high profit low risk ratio continues to be appealing, encouraging more organized crime groups to engage in ITTP, and effectively nullifying the investment of law enforcement in the field.

But how is successful prosecution achieved? Offenders should be pursued for the range of activity in which they engage, without deciding to curb certain “lesser” charges because there are more serious charges on the indictment. Serious charges carry with them weightier evidentiary burdens and the elements of the offences are more cumbersome to prove. Pursuing lesser charges will mean that offender can be prosecuted, and where the evidence perhaps does not satisfy the evidentiary burden for a more serious crime, it can satisfy it for a lesser offence. This will mean in turn that an offender will now have this offence noted on their criminal record, which can be relevant for sentencing procedures. It can also mean that evidence of this offence may be used to strengthen cases against other accused for more serious offences, and that perhaps the offender may serve a sentence without being acquitted and immediately released. All these factors will need to be weighed when deciding the charges to pursue for prosecution.

The Figure below ranks the various categories of offences that could be prosecuted generally, those at the bottom evidently having lesser penalties attributed, and those at the top with heavier associated penalties reflecting their perceived level of objective seriousness. Keep in mind that this is general and may vary across jurisdictions.

*Figure 15: Categories of offences*



## - Sanctions

The lack of deterrent criminal penalties in many jurisdictions is considered one of the main barriers to effectively fighting the illicit trade in tobacco products and current criminal penalties are often perceived as too weak. Another significant barrier is the gap between the written law and its enforcement, often because the courts are unwilling or unable to apply sufficient and effective sentences.

When prosecuting matters in court, and lacking perhaps specific provisions dealing with the smuggling of tobacco products, police and prosecutors will need to be conscious of:

- The need to target the organized criminal activity as smuggling activity necessarily involves more than one person to coordinate the trade;
- Those participants involved at all points through the illicit supply chain (this will be difficult for players outside the jurisdiction, but at least the necessary connections will need to be made for those participants involved within the jurisdiction);
- The need to dismantle the groups involved otherwise various players will be easily replaceable and the activity allowed to continue;
- Pursuing charges with a significant deterrent effect;
- Ensuring sentencing is vigorously pursued after the trial or guilty plea is received so that enforcement of the penalties provided for by the legislature occurs;
- Seizure orders and destructions orders are applied for before a judge.

## - Other key factors to complement the prosecution

- Sentencing proceedings are crucial in convincing courts to impose deterrent penalties.
- Prosecutors need to seek the forfeiture of the assets that criminals derive from engaging in the illicit trade in tobacco products and having a robust and legally solid confiscation of proceeds of crime procedure is essential for States to remove the incentive for criminals to engage in the ITTP.
- Prosecutors/police or the responsible authority must remember to seek from the Court the disposal/destruction of seized illicit goods. Where countries do not have solid frameworks in place for destructions/disposal, they will need to assess their frameworks and amend them accordingly.

## - Other considerations

Prosecutors must be aware of the risk of hearings being complex and/or lengthy (although complexity and/or length in some cases may be unavoidable, necessary or otherwise appropriate). It is likely to be the case with ITTP offences, especially where prosecutors are pursuing the involvement of organized crime groups in the ITTP. This should not deter prosecutors from proceeding with charges on indictment that target the organized crime group, even though the trial may become more lengthy or complex. It is only by pursuing such trials that they will become easier to run, and expertise will be built by both prosecutors and judiciary hearing the cases.

In many countries, efforts to fight the trade in counterfeit tobacco products also face the problem of judiciaries that do not have adequate knowledge of and experience in matters involving intellectual property law, serious organized crime offences, and international law. This challenge could be overcome through training courses covering these topics, both for judges and prosecutors. Such training is provided by international organizations such as INTERPOL, and the United Nations Office of Drugs and Crime (UNODC).

### Box 51: INTERPOL's Legal Assistance and Services

Countering illicit trade and IP crime calls for dynamic and creative legal solutions. Justice operators need to constantly keep up with non-stop criminal evolution. In order to keep them abreast of the highest international legal standards and requirements, INTERPOL's Office of Legal Affairs provides legal advice, assists in the reform of domestic laws and delivers capacity building and training gathering international specialists from all relevant sectors.

These services are tailored to the needs and requests of individual countries and are carried out in close coordination with national law enforcement entities and ministries (Foreign Affairs, Interior, Justice, Security, etc.), relevant international organizations and affected private sector entities.

**Link to INTERPOL's website:** <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance>

#### 4.4.4. Seizure payments (art. 17)

##### Box 52: Seizure payments (art. 17)

Parties **should**, in accordance with their domestic law, consider adopting such legislative and other measures as may be necessary to authorise competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco products and/or manufacturing equipment.

##### a. Overview

This provision allocates further discretionary powers to States parties to introduce seizure payments made to governments by producers, manufacturers, distributors, importers or exporters of seized tobacco products. Article 17 is akin to provisions found in the EU agreements with the four major cigarette manufacturers, PMI, JTI, BAT and ITI to address situations where illicit tobacco products have been seized in the market without direct knowledge as to who has diverted those products into the market. The provision places greater responsibility on the manufacturers to undertake proper due diligence on their sales and customers to lower the risk of such diversion.

##### b. Policy considerations

- States parties will need to consider how this provision will operate alongside other sanctions and penalties for administrative/criminal offences that are committed by natural and legal persons.
- Consideration will have to be made as to how this provision may operate within the tobacco control regime proposed by the Protocol, namely:
  - Mandatory licensing for various actors in the supply chain;
  - A requirement that actors in the supply chain maintain adequate fiscal compliance policies and procedures, including both anti-contraband and anti-counterfeit product tracking and tracing capabilities;
  - A requirement that, in certain circumstances, actors involved must provide a report detailing their fiscal compliance policies in certain markets and certifying their compliance with those policies;
  - The possibility of an independent third party auditing a manufacturer's compliance with its local fiscal obligations; and
  - Fines could be levied on an actor involved in the supply chain for repeated failure, without reasonable cause, to comply with its fiscal compliance obligations.
- If States parties decide that the imposition of **financial penalties** will be fault-based and/or conditioned on specific offences or wrongful conduct, they will need to determine what will be the case for actors in the supply chain who have complied substantially with all domestic legal requirements. Advantages of a fault based system include:

- Companies have an incentive to take steps to curb the sales of illicit cigarettes;
  - Clearer assessment of local factors will be taken into account to determine why some companies were more successful than others in securing their supply chains, such as tax-driven price differentials between neighboring markets.
- States should take **local factors** into account.
  - Issues to consider include the defined degree of culpability, seizure thresholds, auditing requirements and availability of legal recourse for those considered liable.
  - States will need to ensure that a focus on a seizure based system does not deter from pursuit of investigating the smuggling activity further, so that illicit trade networks responsible are identified and prosecuted.
  - An administrative system may need to be adopted to deal with seizure payments, as they will need to be recorded and reported to a central authority, as well as reported to the stakeholder and the products authenticated. Perhaps this could be tied in to the central authority responsible for licensing, or it could be a particular function tied to customs authorities in States.
  - States should consider multinational companies that operate in many countries and local stakeholders that have a single market of operation. States must understand the various forms of illicit trade, such as illicit manufacture, smuggling of legitimate product, counterfeiting, illicit whites, etc. For example, some domestic entities have emerged as a predominant source of illicit product and have the potential to hinder international control efforts, such as those entities producing illicit whites. States will need to decide whether requirements will apply to local and regional actors that often do not operate in the countries of seizure, and how this will apply.

#### 4.4.5. Disposal or destruction (art. 18)

##### Box 53: Disposal or destruction (art. 18)

All confiscated tobacco, tobacco products and manufacturing equipment **shall** be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of **in accordance with national law**.

##### a. Overview

The destruction of confiscated tobacco, tobacco products and manufacturing equipment is vital in securing the legal market and legal supply chains, protecting from the re-entry of these products into the illicit market or for use in manufacturing illicit cigarettes, and assisting in curbing the ITTP.

It must be made clear that this provision refers to the seizure and confiscation of tobacco, tobacco products and manufacturing equipment, and their destruction/disposal and not the regime that applies to the confiscation of the proceeds of crime.

##### b. Policy considerations

- It will be important to conduct **an assessment of the legislation in place** in each jurisdiction relating to confiscation and destruction/disposal of the products themselves.
- There are two main processes that will need to be considered:
  - Customs' seizures of tobacco, tobacco products and manufacturing equipment and how destruction/disposal provisions of national legislation apply to them; and
  - Prosecutions and court orders relating to confiscation and destruction/disposal.
- It is also important to consider whether the scope of the national legislation encompasses goods (tobacco, tobacco products and manufacturing equipment) whether they are imported, exported or in-transit, to ensure that goods passing through the supply chain are also dealt with if interrupted while on course to the final destination.
- Another serious consideration when legislating for confiscation and destruction/disposal, is **the timeframe** within which confiscated goods must be destroyed/disposed of. In an area such as the ITTP, time is of the essence, and time considerations come into play especially at the border and given obligations customs authorities have regarding the quick turnover of goods from ports. Destruction/disposal of confiscated goods must occur quickly, before such goods are dealt with, or forgotten, and re-enter the market either through theft or other means. A legal framework within which States parties can operate in this respect can be derived from obligations States parties have under other international treaties, particularly the TRIPS agreement, which provides for civil and criminal remedies allowing for destruction of IP infringing goods (see Part III, section 2 of TRIPS). Customs agreements and regional

legislation governing the movement of goods and goods in transit is also relevant e.g. European Commission's Transit Manual.

- Other methods of disposing of goods, such as sale (auction) of the goods by the government, would appear to counter the aims of the Protocol, being to eliminate ITTP. Items such as manufacturing equipment should not be on sold in order to eliminate the chances of its acquisition by those engaged in illicit manufacture of tobacco products. Furthermore, sale of counterfeit tobacco products, or contraband tobacco and tobacco products would allow circulation of illicit products.
- Where legislation does not prescribe for destruction/disposal by either customs authorities or courts, this creates problems in adequately addressing the ITTP and eliminating it. Countries should aim to legislate for destruction/disposal of confiscated tobacco, tobacco products and manufacturing equipment if they lack such laws.

#### 4.4.6. Special investigative techniques (art. 19)

##### Box 54: Special investigative techniques (art. 19)

1. Parties **shall** allow for appropriate use of controlled delivery and other special investigative techniques such as electronic or other forms of surveillance and undercover operations, if permitted by the basic principles of its domestic legal system.
2. Parties are **encouraged** to conclude appropriate bilateral or multilateral agreements/arrangements for using the techniques referred to in paragraph 1 in the context of international cooperation.
3. In the absence of such agreements as prescribed in paragraph 2, decisions to use such special investigative techniques at the international level shall be made on a case by case basis.
4. Parties recognize the importance of, and need for, international cooperation and **shall** cooperate with each other and with international organizations, in developing capacity to achieve the goals of this Article.

##### a. Overview

This article completes Part IV of the Protocol and forms an important link to Part V, International Cooperation. Special investigative techniques are encouraged to be utilized, particularly through engagement with other States parties in the form of bilateral or multilateral agreements.

As the very nature of illicit trade offences is that they are transnational offences, it is imperative that countries work together to target operational, organized criminal networks. There are various ways of achieving this goal, using the Protocol as the legal basis, for example, or entering into such bilateral or multilateral agreements/arrangements.

Along with the criminalization of certain unlawful conduct, and determining the necessary sanctions for administrative and criminal offences, an initial step is ensuring that law enforcement authorities have the requisite powers to effectively utilize special criminal investigative techniques domestically for successful outcomes in court and to ease international cooperation.



##### Box 55: Further reading special investigative techniques

For general information about **special investigative techniques**, refer to section 5.3.3, “Enhancing law enforcement ability to gather and use evidence to support criminal charges” of INTERPOL’s “Countering Illicit Trade in Goods: A Guide for Policy-makers”.

*Link to INTERPOL’s website: <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance>*

## 4.5. International cooperation (Part V of the Protocol)

Part V creates a foundation for improving international cooperation against the ITTP. The Protocol calls on all States parties to cooperate with competent international organizations, as mutually agreed, in sharing a wide range of enforcement information and best practices and with regional organizations to provide training and technical assistance in scientific and technological matters.

Part V was heavily inspired by the United Nations Convention Against Transnational Organized Crime (UNTOC) to the point that several key provisions are virtually identical in the two instruments. As a result, a number of legal tools developed to assist States in the implementation of UNTOC can be of direct relevance for the implementation of the Protocol (*see box 19, "UNTOC Legal resources"*).

The term **international cooperation** includes all interactions occurring between two or more States where those States are working together to assist each other. International cooperation is founded by two or more States either on the basis of an international treaty to which both States are party, or on the basis of bilateral or multilateral agreements or arrangements entered into. International cooperation can occur directly among States or through the involvement and assistance of international organizations and through other mechanisms created by States.



Figure 16: International cooperation provisions

#### 4.5.1. General and enforcement information sharing, its confidentiality and protection (arts. 20-22)

##### Box 56: General and enforcement information sharing, its confidentiality and protection (arts. 20-22)

###### Article 20:

1. Parties **shall** report relevant information as part of the WHO FCTC reporting instrument.
2. Parties **shall** cooperate with each other and competent international organizations to build the capacity of Parties to collect and exchange information.
3. The exchanged information is deemed to be confidential and for Parties' use only, unless otherwise stated by the transmitting Party.

###### Article 21:

1. Parties **shall** exchange information at their own initiative or at the request of a Party justifying why such information is necessary for detecting or investigating illicit trade in tobacco, tobacco products or manufacturing equipment.
2. Information received is to be used exclusively to meet the objectives of the Protocol, and Parties may specify that that information not be shared without their consent.

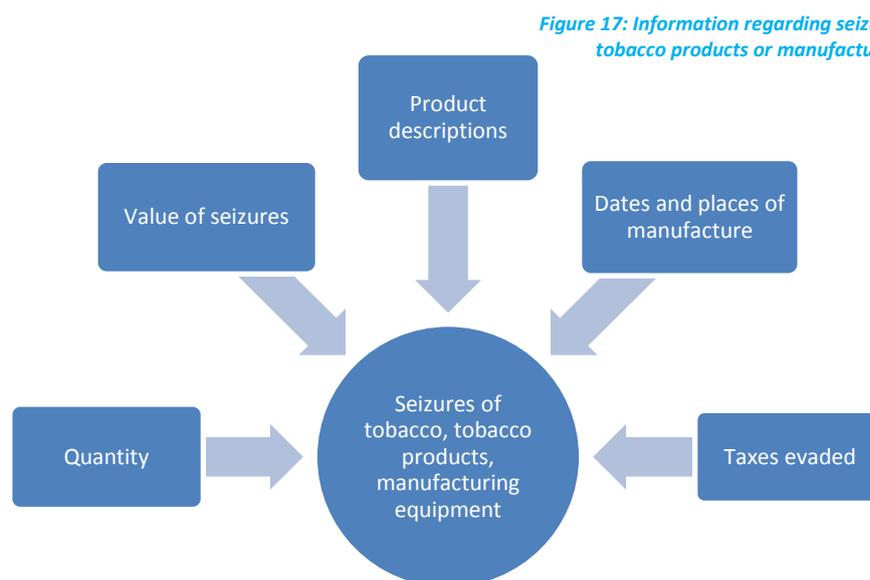
###### Article 22:

1. Parties **shall** designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat.
2. Exchange of information under the Protocol is subject to domestic law and confidentiality and privacy.

##### a. Article 20 (1)

States parties shall report relevant information, in aggregate form, as part of the WHO FCTC reporting instrument:

- Detailing **seizures** of tobacco, tobacco products or manufacturing equipment (art. 20(1)(a)) (see *figure 17*);



- Information on (art. 20(1)(b)):
  - Import, export, transit;
  - Tax-paid and duty-free sales;
  - Quantity or value of productionof tobacco, tobacco products or manufacturing equipment.
- Information on (art. 20(1)(c)):
  - Trends;
  - Concealment methods;
  - Modi operandiused in illicit trade in tobacco, tobacco products or manufacturing equipment.
- Other relevant information as agreed by the States parties (art. 20(1)(d)).

#### Box 57: INTERPOL's i24/7 Network

INTERPOL has particular expertise in data and information exchange, and provides its members countries with its secure I-24/7 Global Communications Network. This allows the continuous exchange of sensitive information to law enforcement all around the world (including access by immigration and customs authorities to limited relevant databases). INTERPOL also provides continuous support to policing and law enforcement.

INTERPOL developed the I-24/7 global police communications system to connect law enforcement officers in all its member countries. It enables authorized users to share sensitive and urgent police information with their counterparts around the globe, at any time.

I-24/7 is the network that enables investigators to access INTERPOL's range of criminal databases. Authorized users can search and cross-check data in a matter of seconds, with direct access to a number of databases. It also provides a secure information exchange platform for police information.

The I-24/7 network underpins all INTERPOL operational activity. From routine checks at border crossings to targeted operations against different crime areas, and from the deployment of specialized response teams to the search for international fugitives, I-24/7 is the foundation of information exchange between the world's police.

#### b. Article 21

The *relevant information* for exchange for the purposes of **article 21**, enforcement information sharing, includes, inter alia:

- Records of licensing (natural/legal persons);
- Information for identification, monitoring, prosecution of natural/legal persons involved in illicit trade;
- Records of investigations and prosecutions;
- Records of payment re import, export, duty-free sales; and
- Details of seizures, modi operandi

where that information is to assist with the detection and investigation of illicit trade in tobacco, tobacco products and manufacturing equipment. Essentially, this applies to the exchange of information by law enforcement where a criminal offence has been committed.

#### c. Article 22

Designated competent national authorities shall be supplied the data referred to in articles 20, 21 and 24. Exchange of information under the Protocol is subject to domestic law and confidentiality and privacy.

#### d. Policy considerations

- States parties will need to consider how the relevant information is to be exchanged. There has been discussion at the level of the WHO FCTC Secretariat of the creation of a database for this purpose. One must keep in mind developing countries and their technological capabilities, as the gathering and uploading of such information will be complicated.
- Other organizations that already capture such data will need to be kept in mind as a useful resource, such as the WCO which already collects information on routes, seizures, reported quantities of goods imported, exported and in-transit, on their database.
- Similarly, international organizations that have a ready-made and already utilized means of secure information exchange should also be used for this purpose, such as INTERPOL.
- States parties will have to consider which domestic agencies will be responsible for the collection and sharing of the information. Information will need to be gathered from various agencies involved such as customs, police, tax authorities, tobacco licensing and control bodies.

#### 4.5.2. Cooperation through international and regional organizations (arts. 23-24)

##### Box 58: Cooperation through international and regional organizations (arts. 23-24)

Article 23:

1. Parties **shall** cooperate with each other and through competent or regional organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters.
2. Parties may, as appropriate, enter into bilateral, multilateral or other agreements or arrangements to promote training, technical assistance and cooperation in scientific, technical and technological matters, taking into account the needs of developing country Parties or Parties with economies in transition.
3. Parties **shall** cooperate, **as appropriate**, to develop and research the possibilities of identifying the exact geographical origin of seized tobacco and tobacco products.

Article 24:

1. Parties **shall**, in accordance with their domestic law, take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of natural or legal persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment.
2. Each Party **shall** ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment (including, where permitted under domestic law, judicial authorities) cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law.

##### a. Overview

The assistance and cooperation envisaged by **article 23** is for the purpose of providing training, technical assistance and cooperation in **scientific, technical and technological matters** through competent international and regional organizations, and with each other.

The Protocol envisages the following types of assistance, inter alia:

- **Transfer of expertise and**
- **Transfer of appropriate technology**

in the areas of information gathering, law enforcement, tracking and tracing, information management, protection of personal data, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.

**Article 23(2)** also foresees States parties cooperating through entering into bilateral or multilateral arrangements to promote training, technical assistance and cooperation in scientific, technical and technological matters, taking into account the needs of developing-country States parties and those States parties with economies in transition.

**Article 24** provides for the same cooperation and assistance to be sought from other States parties through multilateral, regional and bilateral agreements for the *prevention, detection, investigation, prosecution and punishment of natural or legal persons* engaged in the ITTP. States parties to the Protocol undertake to cooperate and exchange relevant information at national and international levels for the aforementioned purpose. The cooperation and assistance envisaged by this article is not limited to criminal offences but can be exercised for administrative offences as well.

## b. Policy considerations

- States parties will need to assess what bilateral and multilateral agreements are already in place and whether they stemmed from other international conventions, particularly those whose legal basis is derived from UNTOC.
- States parties who have such arrangements in place, outside of UNTOC framework, can draw on these instruments and ascertain whether the Protocol's provisions also applies under these treaties, or whether their scope can be broadened to include the implementation of the Protocol for article 23.
- States parties requiring assistance should consider the international organizations that could provide such assistance, particularly those to which their country is a member country.
- States parties should consider utilizing the expertise of those international/regional organizations already working in the area of illicit trade, particularly the ITTP, such as those previously mentioned in this toolkit (WCO, INTERPOL, OLAF and EUROPOL with specific groups attached to illicit tobacco trade).
- Article 24 is also tied to MLA provisions at article 29 of the Protocol, though can be relied on in place of MLA provisions which might be cumbersome in some instances. For example, if certain information is required to assist with an investigation and is not necessarily to be used as evidence in a prosecution, this provision could form the basis of cooperation between countries and would be more expedient. Where coercive measures requiring court orders are necessary, however, then formal MLA procedures will need to be utilized. Importantly, this provision does not appear to be limited to criminal offences, as is the case with article 29 of the Protocol (MLA). Another alternative to article 24 is article 27 of the Protocol, law enforcement cooperation, which explicitly stresses at art. 27(2) that in the absence of bilateral or multilateral agreements, or direct cooperation between law enforcement agencies, States parties may consider the Protocol as the legal basis for mutual law enforcement cooperation.
- Further, the strengthening of cooperation by multilateral, regional or bilateral arrangements, called for by the provision could refer to use of pre-existing agreements or the forming of new agreements and arrangements with the aims of the Protocol in mind.

### 4.5.3. Protection of sovereignty (art. 25)

#### Box 59: Protection of Sovereignty (art. 25)

1. Parties **shall** carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of States.
2. Nothing in the Protocol entitles a Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 25 Protection of sovereignty, is a standard clause used in international conventions. This article has been taken verbatim from article 4 of UNTOC, with the goal of remaining consistent with customary international law and the UN Charter.

### 4.5.4. Jurisdiction (art. 26)

#### Box 60: Jurisdiction (art. 26)

Article 26:

1. Parties **shall** adopt measures as may be necessary to establish jurisdiction over the criminal offences established in accordance with article 14 when:
  - a. The offence is committed in the territory of that Party; or
  - b. The offence is committed on board a vessel flying the flag of that Party or an aircraft registered under the laws of that Party at the time the offence is committed.
2. Parties may also establish jurisdiction of any such criminal offence when:
  - a. The offence is committed against that Party;
  - b. The offence is committed by a national of that Party or a stateless person who has his or her habitual residence on its territory; or
  - c. The offence is one established in accordance with article 14 and committed outside the territory of the Party with a view to the commission of an offence established in accordance with article 14 within its territory.
3. Parties **shall** adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with article 14 when the alleged offender is present on its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Parties may adopt measures as may be necessary to establish jurisdiction over the criminal offences established in accordance with article 14 when the alleged offender is present on its territory and it does not extradite him or her.
5. Parties exercising jurisdiction under paragraphs 1 or 2 that have been notified, or otherwise learn, that one or more Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to the norms of international law, this Protocol does not exclude the exercise of any criminal jurisdictions established by a Party in accordance with its domestic law.

Article 26 Jurisdiction, is a standard clause used in international treaties in criminal matters. This article has been taken verbatim from article 15 of UNTOC, with the goal of remaining consistent with customary international law and the UN Charter.

Article 26 limits itself to criminal offences established in accordance with article 14, though the INB negotiations did have discussions on the point of article 14 referring to unlawful conduct including criminal offences. This article is only applicable to the extent that States parties have criminalized certain offences and only vis-à-vis those offences. As some of the unlawful conduct under article 14 will be established as criminal offences in some jurisdictions, States parties will establish jurisdiction over those offences which they have criminalized.

#### 4.5.5. Law enforcement cooperation (art. 27)

##### Box 61: Law Enforcement Cooperation (art. 27)

1. Parties **shall** adopt effective measures to:
  - a. Enhance/establish communication between agencies for the rapid exchange of information relating to criminal offences;
  - b. Ensure effective cooperation among competent authorities, agencies, customs, police and other law enforcement agencies;
  - c. Cooperate with other Parties in conducting enquiries regarding:
    - i. Identity, whereabouts, activities of suspected persons
    - ii. Movement of proceeds of crime or property derived
    - iii. Movement of property, equipment or instrumentalities used
    - d. Provision of items/substances for analytical or investigative purposes;
  - e. Facilitate effective coordination among agencies, promote exchange of personnel/experts, posting of liaison officers;
  - f. Exchange relevant information on means and methods used to commit such offences e.g. routes, conveyances, false identities or documents, means of concealing activities; and
  - g. Exchange information, coordinate administrative or other measures for early identification of criminal offences.
2. Parties **shall consider** entering bilateral/multilateral agreements on direct cooperation between their law enforcement agencies. This Protocol can be considered the basis for mutual law enforcement cooperation, in the absence of agreements between Parties. Parties shall make full use, wherever possible, of agreements/arrangements, including international or regional organizations, to enhance cooperation.
3. Parties **shall endeavour** to cooperate within their means to respond to transnational illicit trade of tobacco products through the use of modern technology.

##### a. Overview

The aim of this article is to achieve enhanced cooperation between law enforcement agencies of the States parties to the Protocol. It creates a platform for an international framework addressing the need for international cooperation in combatting the ITTP. Through such a provision, the Protocol recognizes that law enforcement cooperation is vital for the attainment of its goals. Without the direct involvement of law enforcement agencies and a strong commitment on their part to promote anti-illicit trade measures, the Protocol will be of little use.

Enhanced cooperation of law enforcement agencies will mean an ability to anticipate future operational requirements stemming from the Protocol's implementation. These agencies need to keep abreast of progress in this area, know the legal requirements for successful prosecutions, and be able to use the tools of the Protocol to enforce it effectively.

##### b. Policy considerations

- Policy makers should consider law enforcement cooperation as part of a larger, targeted enforcement strategy to reinforce a State party's anti-illicit trade strategy.
- At country level, the main enforcement bodies usually include customs authorities, police and specialized police units. Targeted discussions with these agencies is suggested, so that their views are considered as to how cooperation between law enforcement can be

effectively enhanced. These agencies are often well aware of the difficulties encountered in practice when performing their law enforcement duties and can play a fundamental role in advising legislators and sharing their expertise to ensure that the provisions of the Protocol are adapted to local contexts.

- Governments need to recognize that without effective law enforcement cooperation, tackling the ITTP will be impossible. Given the transnational nature of the activity, coordinated responses and the sharing of information are necessary. As offenders are not limited by borders, in this respect, governments will need to be educated as to the gravity of these types of offences and why effective strategies should be in place to combat the ITTP. A necessary step is the empowering of law enforcement nationally to more effectively perform their roles, and to have more successful outcomes.
- Law enforcement success will of course impact success for prosecutions and generally imply success for a country's overall aims of combatting illicit tobacco trade.

### c. Available international and regional arrangements

#### - INTERPOL

Assisting with international law enforcement cooperation is INTERPOL's mandate. INTERPOL's central role is law enforcement cooperation among policing bodies globally and its activities assist in executing this central role. INTERPOL is competent to assist States parties to the Protocol, its Member States, to fully meet their obligations set out under article 27 of the Protocol.

Over the past 13 years, INTERPOL has conducted operational training seminars to train police, investigators, regulatory authorities and customs officials about the transnational reach of trafficking in illicit goods, to identify and share successful investigative techniques, to increase the number of specialists in member countries and to encourage participation in INTERPOL operations. Consistent with training provided, INTERPOL also coordinates tactical operations in conjunction with local authorities, facilitating proactive cross-industry law enforcement cooperation between various States for multi-disciplinary enforcement action.

INTERPOL's data exchange infrastructure has been discussed above (*see box 57 "INTERPOL's i24/7 Network"*), outlining its i-24/7 communications system allowing for secure information exchange and access to its many databases collating police information.

#### - WCO

The **World Customs Organization (WCO)** is the international intergovernmental organization in charge of customs matters<sup>45</sup>. It was founded in 1952 and represents 179 customs authorities. Its mission is to improve the efficiency of customs authorities worldwide and to assist them in securing the international trade supply chain. In order to do so, the Organization has developed a number of activities in several key areas<sup>46</sup> (*see box 62*).

#### Box 62: WCO activities to improve the efficiency of Customs authorities worldwide

##### Harmonization

The WCO sets and **implements international standards** to facilitate cross-border trade as well as international cooperation against illicit trade in areas such as:

- Customs procedures
- International goods nomenclature
- Harmonized rules of Origin

##### Enforcement

The WCO contributes to strengthening the international trade supply chain by :

- Providing training to Customs authorities;
- Managing secure communication tools for the exchange of intelligence and information;
- Facilitating international law enforcement operations;
- Managing a global network of regional intelligence liaison offices;
- Putting together analyses of illicit cross border activities' trends.

##### Cooperation

The WCO offers its Members a **forum for dialogue and for sharing experiences**. It encourages and facilitates cooperation between Customs authorities, promotes coordinated border management as well as the exchange of information and intelligence.

The Organization **sponsors or administers a number of international Conventions and Agreements** that provide legal bases for international cooperation, such as the bilateral or multilateral exchange of information among customs administrations when it is required.

The WCO also actively cooperates with other international organizations in areas of mutual interest, such as INTERPOL in fighting against the traffic of illicit goods and counterfeits.

##### Assistance

The WCO provides assistance to its members in the form of capacity building, training and technical assistance. It notably supports the modernization of national administrations and processes in order to enhance the national and international response to illicit trade while facilitating licit trade.

#### - Regional arrangements

Regional and sub-regional arrangements may also be utilized for the purposes of enhanced law enforcement cooperation. Examples include EUROPOL, OLAF, the South African Regional Police Chiefs Cooperation Organization (SARPCCO), the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO), and the Mercado Común del Sur (MERCOSUR).

#### 4.5.6. Mutual Administrative Assistance (art. 28)

##### Box 63: Mutual Administrative Assistance (art. 28)

The Protocol provides that Parties **shall** provide each other, either on request or at their own initiative, with information to ensure proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combatting of illicit trade in tobacco, tobacco products or manufacturing equipment.

##### a. Overview

Mutual administrative assistance (MAA) typically refers to the type of assistance provided by one country's customs authorities to another's and includes assistance in the prevention, investigation and combating of customs offences. Such assistance, and in particular the exchange of information referred to in article 28 among customs administrations, requires a legal basis in the form of international treaty provisions, or either a bilateral or multilateral arrangement.

However, it does not have to be limited to customs and there is the possibility of States parties to the Protocol using this provision to ensure cooperation amongst other agencies more broadly, such as the authority responsible for licensing, IP agencies and other national administrative authorities.

The information envisaged to be provided includes, inter alia:

- New customs/other enforcement techniques of demonstrated effectiveness;
- New trends, means or methods in engaging in the ITTP;
- Goods known to be the subject of the ITTP: details of description, packaging, transport, storage and methods used in respect of these goods;
- Natural or legal persons known to have committed or be party to the commission of an ITTP offence; and
- Other data to assist designated agencies in risk assessment for control and enforcement purposes.

A good source of this type of information is held in the WCO's Regional Intelligence Liaison Offices (RILOs). States parties should be ensuring that they take the opportunity to seek such information regularly through WCO RILO bulletins and regular contact point meetings. Where States parties are feeding in generic data on significant seizures (as is sought) to their respective WCO RILO office, then this enhances the quality of the information that can be circulated.

##### b. What is MAA?

MAA is not the same as mutual legal assistance, which is usually provided in the context of formal proceedings, where information is for example required in criminal proceedings for evidentiary purposes. MAA does not fall within the scope of formal criminal or court procedures.

MAA refers to the exchange of information and the provision of other types of assistance, intended to ensure the proper application of customs laws and to prevent, combat and investigate customs offences, including illicit trafficking in tobacco products. MAA is not a new concept and is seen in a wide range of common international cooperative activities, such as those mentioned throughout the Protocol including enhanced law enforcement and technical assistance.

As with other agencies, customs administrations function on the basis of their national legislation which grants them broad powers but only within their jurisdictions, for domestic purposes. Globally, legal frameworks and customs administrations' competencies can differ widely among States. It follows that practices in administrative and legal assistance related to customs matters also differ, thereby complicating the exchange of information between countries. Such exchange requires a legal basis, and an instrument for bilateral or multilateral cooperation is often required to facilitate the exchange.



**Box 64: International, regional and bilateral instruments on Mutual Administrative Assistance (MAA)**

Some legal instruments on MMA, adopted by international and regional organizations and bodies, include:

**International**

**World Customs Organization (WCO)**

**- International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, 1977**

*Status of ratification: 52 Contracting parties (as of June 2012)*

*Link to the text of the treaty: <http://www.wcoomd.org/en/about-us/legal-instruments/~media/574B25F13D9C4D4BA44AB4CD50A967C5.ashx>*

*Link to the status of ratification: <http://www.wcoomd.org/en/about-us/legal-instruments/conventions.aspx>*

**- Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters (June 2004)**

This legal instrument contains model provisions including, inter alia:

- Exchange of information
- New enforcement techniques proved effective
- New trends or methods of tobacco smuggling
- Transport and storage methods used in smuggling
- People known to have engaged in ITTP activity or suspected of engagement
- Other data for risk assessment/control purposes

*Link to the text of the model bilateral treaty: <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/DFAAF3B7943E4A53B12475C7CE54D8BD.ashx>*

Arrangements are already in place under custom's administrations and under the WCO. WCO members can seek to cooperate through the existing framework where it is sufficient for the purposes of art. 28 of the Tobacco Protocol.

**Regional**

**South Asian Association for Regional Cooperation (SAARC)**

**- Agreement on Mutual Administrative Assistance in Customs Matters, 2005**

- Parties' customs' administrations provide each other with administrative assistance
- Information and intelligence for the proper application of customs law and for the prevention, investigation and combating of customs offences
- New enforcement techniques proven effective
  - New trends, means, methods for commission of customs offences
  - Goods the subject of customs offences (transport/storage methods)
  - People known to have committed an offence or suspected of being about to commit an offence
  - Other data for risk assessment control and facilitation purposes

*Link to the text of the treaty:*

*[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.saarc-sec.org%2Fuserfiles%2FFinalAgreementonCustomsMatters.doc&ei=6poZU\\_yWA62v7AbYj4GgDA&usg=AFQjCNFsf\\_H0eEROfGFvjQLCNktZfvYV1A&bvm=bv.62578216,d.bGQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.saarc-sec.org%2Fuserfiles%2FFinalAgreementonCustomsMatters.doc&ei=6poZU_yWA62v7AbYj4GgDA&usg=AFQjCNFsf_H0eEROfGFvjQLCNktZfvYV1A&bvm=bv.62578216,d.bGQ)*

**European Anti-Fraud Office (OLAF)**

**- OLAF**

- Is responsible for preventing, detecting and investigating customs frauds affecting the European Union budget
- Interacts regularly with customs authorities worldwide
- Has formal cooperation agreements with a number of countries and also ad hoc operational arrangements to ensure rapid and secure exchange of information
- Office's Cigarettes Task Group uses agreements on Customs cooperation and MAA for their investigations into cigarette smuggling.
- Council Regulation (EC) No 515/97 enables EU Member States to exchange information both among themselves and with the European Commission for anti-fraud purposes, including the smuggling of contraband and counterfeit cigarettes.

*Link to the agreements on MAA: [http://ec.europa.eu/anti\\_fraud/about-us/legal-framework/customs\\_matters/index\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/legal-framework/customs_matters/index_en.htm)*

#### 4.5.7. Mutual Legal Assistance (art. 29)

##### Box 65: Mutual Legal Assistance (art. 29)

Parties **shall** afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 14 of the Protocol.

##### a. Overview

This provision has been adopted in its entirety from UNTOC, except 29(14)(d) which has been added. Article 29(14)(d) states that MLA may be refused *where the request involves a crime where the maximum penalty in the requested Party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested Party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime*. It applies solely to criminal offences established in accordance with article 14 of the Protocol.

##### b. What is Mutual Legal Assistance (MLA)?

MLA refers to the formal procedures by which a country requests and provides assistance to facilitate criminal proceedings in the requesting country as numerated in article 29 of the Protocol.

In the context of illicit tobacco trade, the term refers to a broad range of cooperative measures that assist in the enforcement of laws and prosecution of relevant offences established under different domestic legislation. Measures can include the gathering and exchange of information, executing seizures and searches, and assisting in obtaining evidence and taking statements from people.

Most countries have the necessary institutional measures for MLA in place, particularly given their obligations under other international treaties.



##### Box 66: Further reading on MLA

The UNODC website contains model law on international cooperation in criminal matters that may be of assistance.

**Link:** [http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html#International\\_Cooperation](http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html#International_Cooperation)

UNODC also provides an MLA Request Writer Tool to assist in drafting MLA requests.

**Link:** <http://www.unodc.org/mla/introduction.html>

**Table 18: Article 29 – Mutual Legal Assistance (MLA) – checklist of key provisions**

Paragraph	Description
1	Widest measure of MLA to be afforded in investigations, prosecutions and judicial proceedings in relation to criminalized Protocol offences.
2	MLA to be afforded in relation to offences for which legal persons may be held liable.
3	Non-exhaustive list of purposes for which MLA may be afforded: taking evidence or statements from persons, executing searches and seizures, etc. MLA to be afforded for any type of assistance that is not contrary to the domestic law of the requested State party.
4	Art. 29 of the Protocol not to affect obligations States parties have under other treaties.
6	States parties to designate a central authority in charge of receiving and executing or transmitting MLA requests to competent domestic authorities for execution. Head of WHO FCTC Secretariat to be notified of designated central authority. MLA requests to be transmitted between central authorities without prejudice to diplomatic channel if required by the requested State. In urgent circumstances, possibility for States parties (when they agree) to transmit requests through appropriate international organizations.
7	Requests to be made by any means capable of producing a written record. Acceptable languages to be notified to Head of WHO FCTC Secretariat. In urgent circumstances, possibility for requests to be made orally followed by written confirmation.
8	Elements/information to be included in MLA requests: identity of requesting authority, summary of facts, purpose for which the evidence is sought, etc.
10	Requests to be executed in accordance with law of requested State party. To the extent not contrary to law of requested State party, requests to be executed in accordance with the procedures specified in the request.
11	Information transmitted via MLA to be used only for investigations, prosecutions or judicial proceedings stated in the request unless prior consent of requested State party is obtained to use the information in other investigations, prosecutions or judicial proceedings.
12	Confidentiality of the request.

Paragraph	Description
13	Possibility to hear witnesses or experts located in other jurisdictions via video conference.
14	Grounds for refusal of MLA requests. Ex: prejudice to sovereignty, security, "ordre public" or other essential interests of the requesting State; if the request involves a crime where the maximum penalty in the requested State is less than two years of imprisonment, etc.
15	Reasons to be provided for any refusal to execute an MLA request.
16	Prohibition for States parties to decline to render MLA on the ground of bank secrecy.
17	Prohibition to refuse an MLA request on the sole ground that the offence is also considered to involve fiscal matters.
18	States parties' discretion as to whether or not to execute an MLA request when dual criminality principle is not fulfilled.
19	MLA requests to be executed as soon as feasible, progress in their execution to be provided upon request.
20	Possibility to postpone execution of MLA requests in case of interference with ongoing investigations, prosecutions or judicial proceedings.
21	Duties to consult requesting State party before refusing or postponing the execution of a request.
22	Ordinary costs of executing MLA requests to be borne by requested State party, unless otherwise agreed. Extraordinary costs to be shared following consultations.
24	States parties to consider concluding agreements/arrangements with the purpose of giving practical effect to art. 29 of the Protocol.

#### 4.5.8. Extradition and measures to ensure extradition (arts. 30-31)

##### Box 67: Extradition and measures to ensure extradition (arts. 30-31)

1. Article 30 applies to criminal offences established in accordance with Article 14 of the Protocol when:
  - a. The person the subject of the request is located on the territory of the requested Party;
  - b. The criminal offence for which extradition is sought is punishable under the domestic law of both the requesting and the requested Party; and
  - c. The offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements.

##### a. Overview

Extradition is the surrender of a wanted person by one State at the request of another, and relies on formal international cooperation between States to effect the request.

This provision is taken verbatim from UNTOC, except for article 30(1)(c) which refers to a maximum period of imprisonment of at least four years or by a more severe penalty *or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements*.

##### b. Policy considerations

- States parties could consider working regionally when deciding which unlawful conduct to criminalize to make this provision more effective and easier to implement.
- States will need to consider that article 30 will only be available where offences are punishable by a maximum period of imprisonment of at least four years imprisonment for conduct established as criminal offences under article 14.
- The offences established under article 14 should be included in countries' lists of extraditable offences under the Protocol as well as under other treaties that countries are State party to, such as UNTOC.



##### Box 68: Further reading on mutual legal assistance and extradition

For general information about **mutual legal assistance and extradition**, refer to section 5.6, "Are the appropriate channels for international cooperation in place? Are they well-functioning?" of INTERPOL's "Countering Illicit Trade in Goods: A Guide for Policy-makers".

**Link to INTERPOL's website:** <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance>

**Table 19: Articles 30, 31 – Extradition and measures to ensure extradition – checklist of key provisions**

Article and Paragraph	Description
Art. 30(1)	Art. 30 of the Protocol to apply to criminal offences established under the Protocol when: <ul style="list-style-type: none"> <li>a) Sought person is in the territory of the requested State party;</li> <li>b) The offence is punishable under the law of both the requesting and the requested State party;</li> <li>c) The offence is punishable by a maximum deprivation of liberty of at least four years, unless a different agreement or arrangement is reached by the two States parties.</li> </ul>
Art. 30(2)	Criminalized Protocol offences deemed to be included as extraditable offences in existing extradition treaties between the States parties and in future ones.
Art. 30(3)	Possibility for States that make extradition conditional on the existence of a treaty to take the Protocol as the legal basis for extradition.
Art. 30(4)	Obligation for States parties that do not make extradition conditional on the existence of a treaty to consider criminalized Protocol offences as extraditable between themselves.
Art. 30(5)	Extradition subject to procedures and conditions set forth in the law of the requested State party.
Art. 30(6)	States parties to endeavor to expedite extradition proceedings and to simplify evidentiary requirements.
Art. 30(7)	States parties that refuse extradition on the ground that the sought person is their national are obliged to institute domestic criminal proceedings (principle “extradite or prosecute”).
Art. 30(10)	Persons subject to extradition proceedings to be granted fair treatment.
Art. 30(11)	States parties under no obligation to extradite when there are reasonable grounds to believe that the request has been made for discriminatory purposes (on grounds of a person’s sex, race, religion, political opinions, etc.).
Art. 30(12)	States parties not to refuse a request on the sole ground that the offence is also considered to involve fiscal matters.

Article and Paragraph	Description
Art. 30(13)	Duty of consulting the requesting State party before refusing a request.
Art. 30(14)	States parties to seek to conclude agreements or arrangements to enhance the effectiveness of extradition on Protocol offences.
Art. 31(1)	Requested States parties to be in a position to take sought person into custody or take other measures to ensure his or her presence at extradition proceeding.
Art. 31(2)	Measure under para.1 to be notified to the requesting State party.
Art. 31(3)	Right of sought person (whose liberty has been restricted during extradition proceedings) to: <ul style="list-style-type: none"><li>a) Communicate with nearest representative of the State of which he or she is a national;</li><li>b) Be visited by a representative of that State.</li></ul>



## APPENDICES



## Appendix 1: Protocol to Eliminate Illicit Trade in Tobacco Products

### PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

#### FOREWORD

The Protocol to Eliminate Illicit Trade in Tobacco Products is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), and a new international treaty in its own right. It was adopted by consensus on 12 November 2012 at the fifth session of the Conference of the Parties (COP) to the WHO FCTC (Seoul, Republic of Korea, 12–17 November 2012). The Protocol builds upon and complements Article 15 of the WHO FCTC, which addresses means of countering illicit trade in tobacco products, a key aspect of a comprehensive tobacco control policy.

The Protocol was developed in response to the growing international illicit trade in tobacco products, which poses a serious threat to public health. Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. It also causes substantial losses in government revenues, and at the same time contributes to the funding of transnational criminal activities.

The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC.

The Protocol, in particular, aims to secure the supply chain of tobacco products – measures widely considered to be the “heart” of the Protocol. It requires the establishment of a global tracking and tracing regime within five years of entry into force of the Protocol, comprising national and/or regional tracking and tracing systems and a global information sharing point located in the Convention Secretariat. Other provisions to ensure control of the supply chain cover licensing, due diligence, record keeping, and security and preventive measures, as well as measures in relation to Internet- and telecommunication-based sales, duty free sales, and free zones and international transit.

The Protocol also covers important matters concerning offences, with provisions on liability, prosecutions and sanctions, seizure payments and special investigative techniques, as well as the disposal and destruction of confiscated products. Another key group of substantive articles addresses the issue of international cooperation, such as measures on information sharing, technical and law enforcement cooperation, protection of sovereignty, jurisdiction, mutual legal and administrative assistance, and extradition.

The Protocol establishes the reporting obligations of the Parties, linked to the reporting system of the WHO FCTC, as well as the financial and institutional arrangements necessary for its implementation. The Protocol stipulates that the Meeting of the Parties shall be the governing body of the Protocol, and that the Convention Secretariat shall also be the Secretariat of the Protocol.

The Protocol was opened for signature on 10 January 2013 at WHO Headquarters in Geneva. More than 50 Parties participated in this event, during which 12 Parties, representing all six regions, signed the Protocol. The Protocol then remained open for signature at United Nations Headquarters in New York until 9 January 2014.

The Secretary-General of the United Nations is the Depositary for the Protocol (Article 46).

Any Party to the WHO FCTC may become a Party to the Protocol. The Protocol shall enter into force on the 90th day following the deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

The development and adoption of the Protocol is the result of close cooperation between the Parties and multiple sectors of government, demonstrating how a unified stand on a public health subject can benefit important government objectives on health and beyond. Continued intersectoral and international collaboration, including cooperation with relevant international organizations, as called for in the Protocol, will be crucial to its successful implementation.

The Protocol to Eliminate Illicit Trade in Tobacco Products is a milestone in strengthening global action against tobacco and is a new legal instrument in public health. It supplements the WHO FCTC with a comprehensive tool to counter and eventually eliminate illicit trade in tobacco products and to strengthen legal dimensions for international health cooperation.

Dr Haik Nikogosian  
Head, Convention Secretariat

## PREAMBLE

The Parties to this Protocol,

Considering that on 21 May 2003, the Fifty-sixth World Health Assembly adopted by consensus the WHO Framework Convention on Tobacco Control, which came into force on 27 February 2005;

Recognizing that the WHO Framework Convention on Tobacco Control is one of the United Nations' most rapidly ratified treaties and a fundamental tool for attaining the objectives of the World Health Organization;

Recalling the Preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health as a fundamental right of every human being without distinction of race, religion, political belief, economic or social condition;

Determined also to give priority to their right to protect public health;

Deeply concerned that the illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

Recognizing further that illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the accessibility and affordability of tobacco products;

Seriously concerned by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on public health and the wellbeing, in particular of young people, the poor and other vulnerable groups;

Seriously concerned about the disproportionate economic and social implications of illicit trade in tobacco products on developing countries and countries with economies in transition;

Aware of the need to develop scientific, technical and institutional capacity to plan and implement appropriate national, regional and international measures to eliminate all forms of illicit trade in tobacco products;

Acknowledging that access to resources and relevant technologies is of great importance for enhancing the ability of Parties, particularly in developing countries and countries with economies in transition, to eliminate all forms of illicit trade in tobacco products;

Acknowledging also that, although free zones are established to facilitate legal trade, they have been used to facilitate the globalization of illicit trade in tobacco products, both in relation to the illicit transit of smuggled products and in the manufacture of illicit tobacco products;

Recognizing also that illicit trade in tobacco products undermines the economies of Parties and adversely affects their stability and security;

Also aware that illicit trade in tobacco products generates financial profits that are used to fund transnational criminal activity, which interferes with government objectives;

Recognizing that the illicit trade in tobacco products undermines health objectives, imposes additional strain on health systems and causes losses of revenue to the economies of the Parties;

Mindful of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;

Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

Mindful of Article 6.2 of the WHO Framework Convention on Tobacco Control, which encourages Parties to prohibit or restrict, as appropriate, sales to and/or importation by international travellers of tax- and duty-free tobacco products;

Recognizing in addition that tobacco and tobacco products in international transit and transshipment find a channel for illicit trade;

Taking into account that effective action to prevent and combat illicit trade in tobacco products requires a comprehensive international approach to, and close cooperation on, all aspects of illicit trade, including, as appropriate, illicit trade in tobacco, tobacco products and manufacturing equipment;

Recalling and emphasizing the importance of other relevant international agreements such as the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the obligation that Parties to these Conventions have to apply, as appropriate, the relevant provisions of these Conventions to illicit trade in tobacco, tobacco products and manufacturing equipment and encouraging those Parties that have not yet become Parties to these agreements to consider doing so;

Recognizing the need to build enhanced cooperation between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime, the World Customs Organization and other bodies, as appropriate;

Recalling Article 15 of the WHO Framework Convention on Tobacco Control, in which Parties recognize, inter alia, that the elimination of all forms of illicit trade in tobacco products, including smuggling and illicit manufacturing, is an essential component of tobacco control;

Considering that this Protocol does not seek to address issues concerning intellectual property rights; and

Convinced that supplementing the WHO Framework Convention on Tobacco Control by a comprehensive protocol will be a powerful, effective means to counter illicit trade in tobacco products and its grave consequences,

Hereby agree as follows:

## PART I: INTRODUCTION

### ARTICLE 1

#### Use of terms

1. "Brokering" means acting as an agent for others, as in negotiating contracts, purchases, or sales in return for a fee or commission.
2. "Cigarette" means a roll of cut tobacco for smoking, enclosed in cigarette paper. This excludes specific regional products such as bidis, ang hoon, or other similar products which can be wrapped in paper or leaves. For the purpose of Article 8, "cigarette" also includes fine cut "roll your own" tobacco for the purposes of making a cigarette.
3. "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority.
4. "Controlled delivery" means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.
5. "Free zone" means a part of the territory of a Party where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs territory.
6. "Illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.
7. "Licence" means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.
8. (a) "Manufacturing equipment" means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process<sup>1</sup>  
(b) "Any part thereof" in the context of manufacturing equipment means any identifiable part which is unique to manufacturing equipment used in the manufacture of tobacco products.
9. "Party" means, unless the context indicates otherwise, a Party to this Protocol.
10. "Personal data" means any information relating to an identified or identifiable natural person.
11. "Regional economic integration organization" means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters<sup>2</sup>.
12. The "supply chain" covers the manufacture of tobacco products and manufacturing equipment; and import or export of tobacco products and manufacturing equipment; and may be extended, where relevant, to one or more of the following

<sup>1</sup> Parties may include reference to the Harmonized Commodity Description and Coding System of the World Customs Organization for this purpose, wherever applicable.

<sup>2</sup> Where appropriate, national or domestic will refer equally to regional economic integration organizations.

activities when so decided by a Party:

- (a) retailing of tobacco products;
- (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;
- (c) transporting commercial quantities of tobacco products or manufacturing equipment; and
- (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

13. "Tobacco products" means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.

14. "Tracking and tracing" means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in Article 8.

#### **ARTICLE 2**

##### **Relationship between this protocol and other agreements and legal instruments**

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.
2. Parties that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.
3. Nothing in this Protocol shall affect the rights and obligations of any Party pursuant to any other international convention, treaty or international agreement in force for that Party that it deems to be more conducive to the achievement of the elimination of illicit trade in tobacco products.
4. Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, including the United Nations Convention against Transnational Organized Crime.

#### **ARTICLE 3**

##### **Objective**

The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control.

### **PART II: GENERAL OBLIGATIONS**

#### **ARTICLE 4**

##### **General obligations**

1. In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall:
  - (a) adopt and implement effective measures to control or regulate the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;
  - (b) take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;
  - (c) adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;
  - (d) cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol;
  - (e) cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure<sup>3</sup> exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and
  - (f) within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.
2. In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

#### **ARTICLE 5**

##### **Protection of personal data**

Parties shall protect personal data of individuals regardless of nationality or residence, subject to national law, taking into consideration international standards regarding the protection of personal data, when implementing this Protocol.

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<sup>3</sup> A secure exchange of information between two parties is resistant to interception and tampering (falsification). In other words, the information exchanged between the two parties cannot be read or modified by a third party.

**PART III: SUPPLY CHAIN CONTROL**

**ARTICLE 6**

**Licence, equivalent approval or control system**

1. To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:
  - (a) manufacture of tobacco products and manufacturing equipment; and (b) import or export of tobacco products and manufacturing equipment.
2. Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:
  - (a) retailing of tobacco products;
  - (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;
  - (c) transporting commercial quantities of tobacco products or manufacturing equipment; and
  - (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.
3. With a view to ensuring an effective licensing system, each Party shall:
  - (a) establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national law, to conduct the activities specified in paragraph 1;
  - (b) require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:
    - (i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;
    - (ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;
    - (iii) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;
    - (iv) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;
    - (v) description of where manufacturing equipment will be installed and used;
    - (vi) documentation or a declaration regarding any criminal records;
    - (vii) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and
    - (viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;
  - (c) monitor and collect, where applicable, any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity in accordance with national law;
  - (d) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
  - (e) undertake measures such as periodic review, renewal, inspection or audit of licences where appropriate;
  - (f) establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;
  - (g) oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;
  - (h) oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and
  - (i) ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.
4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.
5. Five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.

## **ARTICLE 7**

### **Due diligence**

1. Each Party shall require, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment:
  - (a) conduct due diligence before the commencement of and during the course of, a business relationship;
  - (b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and
  - (c) report to the competent authorities any evidence that the customer is engaged in activities in contravention of its obligations arising from this Protocol.
2. Due diligence pursuant to paragraph 1 shall, as appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, include, inter alia, requirements for customer identification, such as obtaining and updating information relating to the following:
  - (a) establishing that the natural or legal person holds a licence in accordance with Article 6;
  - (b) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;
  - (c) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification;
  - (d) a description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment; and
  - (e) a description of the location where manufacturing equipment will be installed and used.
3. Due diligence pursuant to paragraph 1 may include requirements for customer identification, such as obtaining and updating information relating to the following:
  - (a) documentation or a declaration regarding any criminal records; and
  - (b) identification of the bank accounts intended to be used in transactions.
4. Each Party shall, on the basis of the information reported in paragraph 1(c), take all necessary measures to ensure compliance with the obligations arising from this Protocol, which may include the designation of a customer within the jurisdiction of the Party to become a blocked customer as defined by national law.

## **ARTICLE 8**

### **Tracking and tracing**

1. For the purposes of further securing the supply chain and to assist in the investigation of illicit trade in tobacco products, the Parties agree to establish within five years of entry into force of this Protocol a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems and a global information-sharing focal point located at the Convention Secretariat of the WHO Framework Convention on Tobacco Control and accessible to all Parties, enabling Parties to make enquiries and receive relevant information.
2. Each Party shall establish, in accordance with this Article, a tracking and tracing system, controlled by the Party for all tobacco products that are manufactured in or imported onto its territory taking into account their own national or regional specific needs and available best practice.
3. With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party.
- 4.1 Each Party shall, for purposes of paragraph 3, as part of the global tracking and tracing regime, require that the following information be available, either directly or accessible by means of a link, to assist Parties in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status:
  - (a) date and location of manufacture;
  - (b) manufacturing facility;
  - (c) machine used to manufacture tobacco products;
  - (d) production shift or time of manufacture;
  - (e) the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;
  - (f) the intended market of retail sale;
  - (g) product description;
  - (h) any warehousing and shipping;
  - (i) the identity of any known subsequent purchaser; and
  - (j) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.
- 4.2 The information in subparagraphs (a), (b), (g) and where available (f), shall form part of the unique identification markings.

- 4.3 Where the information in subparagraph (f) is not available at the time of marking, Parties shall require the inclusion of such information in accordance with Article 15.2(a) of the WHO Framework Convention on Tobacco Control.
5. Each Party shall require, within the time limits specified in this Article, that the information set out in paragraph 4 is recorded, at the time of production, or at the time of first shipment by any manufacturer or at the time of import onto its territory.
6. Each Party shall ensure that the information recorded under paragraph 5 is accessible by that Party by means of a link with the unique identification markings required under paragraphs 3 and 4.
7. Each Party shall ensure that the information recorded in accordance with paragraph 5, as well as the unique identification markings rendering such information accessible in accordance with paragraph 6 shall be included in a format established or authorized by the Party and its competent authorities.
8. Each Party shall ensure that the information recorded under paragraph 5 is accessible to the global information-sharing focal point on request, subject to paragraph 9, through a standard electronic secure interface with its national and/or regional central point. The global information-sharing focal point shall compile a list of the competent authorities of Parties and make the list available to all Parties.
9. Each Party or the competent authority shall:
- (a) have access to the information outlined in paragraph 4 in a timely manner by making a query to the global information-sharing focal point;
  - (b) request such information only where it is necessary for the purpose of detection or investigation of illicit trade in tobacco products;
  - (c) not unreasonably withhold information;
  - (d) answer the information requests in relation to paragraph 4, in accordance with its national law; and
  - (e) protect and treat as confidential, as mutually agreed, any information that is exchanged.
10. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control.
11. Parties shall cooperate with each other and with competent international organizations, as mutually agreed, in sharing and developing best practices for tracking and tracing systems including:
- (a) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;
  - (b) support for training and capacity-building programmes for Parties that express such a need; and
  - (c) further development of the technology to mark and scan unit packets and packages of tobacco products to make accessible the information listed in paragraph 4.
12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.
13. Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.
14. Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article.

#### **ARTICLE 9** **Record-keeping**

1. Each Party shall require, as appropriate, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment maintain complete and accurate records of all relevant transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.
2. Each Party shall, as appropriate, require persons licensed in accordance with Article 6 to provide, on request, the following information to the competent authorities:
- (a) general information on market volumes, trends, forecasts and other relevant information; and
  - (b) the quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
3. With respect to tobacco products and manufacturing equipment sold or manufactured on the territory of the Party for export, or subject to duty suspended movement in transit or transshipment on the territory of the Party, each Party shall, as appropriate, require that persons licensed in accordance with Article 6, provide, on request, to the competent authorities in the country of departure (electronically, where the infrastructure exists) at the time of departure from their control with the following information:
- (a) the date of shipment from the last point of physical control of the products;
  - (b) the details concerning the products shipped (including brand, amount, warehouse);
  - (c) the intended shipping routes and destination;
  - (d) the identity of the natural or legal person(s) to whom the products are being shipped;
  - (e) the mode of transportation, including the identity of the transporter;
  - (f) the expected date of arrival of the shipment at the intended shipping destination; and
  - (g) intended market of retail sale or use.

4. If feasible, each Party shall require that retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage, in accordance with its national law.

5. For the purposes of implementing paragraph 1, each Party shall adopt effective legislative, executive, administrative or other measures to require that all records are:

- (a) maintained for a period of at least four years;
- (b) made available to the competent authorities; and
- (c) maintained in a format, as required by the competent authorities.

6. Each Party shall, as appropriate and subject to national law, establish a system for sharing details contained in all records kept in accordance with this Article with other Parties.

7. Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing improved systems for record-keeping.

#### **ARTICLE 10**

##### **Security and preventive measures**

1. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that all natural and legal persons subject to Article 6 take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, inter alia:

(a) reporting to the competent authorities:

- (i) the cross-border transfer of cash in amounts stipulated in national law or of cross-border payments in kind; and
- (ii) all "suspicious transactions"; and

(b) supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.

2. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that payments for transactions carried out by natural or legal persons subject to Article 6 be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

3. A Party may require that payments carried out by natural or legal persons subject to Article 6 for materials used for the manufacture of tobacco products in its jurisdiction be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

4. Each Party shall ensure that any contravention of the requirements of this Article is subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, as appropriate, suspension or cancellation of a licence.

#### **ARTICLE 11**

##### **Sale by Internet, telecommunication or any other evolving technology**

1. Each Party shall require that all legal and natural persons engaged in any transaction with regard to tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale comply with all relevant obligations covered by this Protocol.

2. Each Party shall consider banning retail sales of tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale.

#### **ARTICLE 12**

##### **Free zones and international transit**

1. Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones, by use of all relevant measures as provided in this Protocol.

2. In addition, the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones shall be prohibited.

3. Each Party shall, in accordance with national law, adopt and apply control and verification measures to the international transit or transshipment, within its territory, of tobacco products and manufacturing equipment in conformity with the provisions of this Protocol in order to prevent illicit trade in such products.

#### **ARTICLE 13**

##### **Duty free sales**

1. Each Party shall implement effective measures to subject any duty free sales to all relevant provisions of this Protocol, taking into consideration Article 6 of the WHO Framework Convention on Tobacco Control.

2. No later than five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty free sales of such products. On the basis of such research, the Meeting of the Parties shall consider appropriate further action.

**PART IV: OFFENCES**

**ARTICLE 14**

**Unlawful conduct including criminal offences**

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish all of the following conduct as unlawful under its domestic law:
  - (a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this Protocol;
  - (b) (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;  
(ii) any other acts of smuggling or attempted smuggling of tobacco, tobacco products or manufacturing equipment not covered by paragraph (b)(i);
  - (c) (i) any other form of illicit manufacture of tobacco, tobacco products or manufacturing equipment, or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels;  
(ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;
  - (d) mixing of tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products;
  - (e) intermingling of tobacco products with non-tobacco products in contravention of Article 12.2 of this Protocol;
  - (f) using Internet-, telecommunication- or any other evolving technology based modes of sale of tobacco products in contravention of this Protocol;
  - (g) obtaining, by a person licensed in accordance with Article 6, tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed in accordance with Article 6;
  - (h) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;
  - (i) (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment and when not contrary to the right against self-incrimination;  
(ii) misdeclaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to:
    - (a) evade the payment of applicable duties, taxes and other levies, or
    - (b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;
  - (iii) failing to create or maintain records covered by this Protocol or maintaining false records; and
  - (j) laundering of proceeds of unlawful conduct established as a criminal offence under paragraph 2.
2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 or any other conduct related to illicit trade in tobacco, tobacco products and manufacturing equipment contrary to the provisions of this Protocol shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.
3. Each Party shall notify the Secretariat of this Protocol which of the unlawful conduct set out in paragraphs 1 and 2 that Party has determined to be a criminal offence in accordance with paragraph 2, and shall furnish to the Secretariat copies of its laws, or a description thereof, that give effect to paragraph 2, and of any subsequent changes to such laws.
4. In order to enhance international cooperation in combatting the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.

**ARTICLE 15**

**Liability of legal persons**

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol.
2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with national laws and regulations and Article 14 of this Protocol.

**ARTICLE 16**

**Prosecutions and sanctions**

1. Each Party shall adopt such measures as may be necessary, in accordance with national law, to ensure that natural and legal persons held liable for the unlawful conduct including criminal offences established in accordance with Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct, including criminal offences established in accordance with Article 14, are exercised to maximize the effectiveness of law enforcement measures in respect of such unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences.

3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal offences established in accordance with this Protocol and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a Party and that such unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law.

#### **ARTICLE 17**

##### **Seizure payments**

Parties should, in accordance with their domestic law, consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products and/or manufacturing equipment.

#### **ARTICLE 18**

##### **Disposal or destruction**

All confiscated tobacco, tobacco products and manufacturing equipment shall be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of in accordance with national law.

#### **ARTICLE 19**

##### **Special investigative techniques**

1. If permitted by the basic principles of its domestic legal system, each Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems it appropriate, for the use of other special investigative techniques, such as electronic or other forms

of surveillance and undercover operations, by its competent authorities on its territory for the purpose of effectively combating illicit trade in tobacco, tobacco products or manufacturing equipment.

2. For the purpose of investigating the criminal offences established in accordance with Article 14, Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using the techniques referred to in paragraph 1 in the context of cooperation at the international level.

3. In the absence of an agreement or arrangement as set forth in paragraph 2, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

4. Parties recognize the importance of, and need for, international cooperation and assistance in this area and shall cooperate, with each other and with international organizations, in developing capacity to achieve the goals of this Article.

### **PART V: INTERNATIONAL COOPERATION**

#### **ARTICLE 20**

##### **General information sharing**

1. Parties shall, for the purpose of achieving the objectives of this Protocol, report, as part of the WHO Framework Convention on Tobacco Control reporting instrument relevant information, subject to domestic law, and where appropriate, inter alia, on matters such as:

(a) in aggregate form, details of seizures of tobacco, tobacco products or manufacturing equipment, quantity, value of seizures, product descriptions, dates and places of manufacture; and taxes evaded;

(b) import, export, transit, tax-paid and duty-free sales and quantity or value of production of tobacco, tobacco products or manufacturing equipment;

(c) trends, concealment methods and modi operandi used in illicit trade in tobacco, tobacco products or manufacturing equipment; and

(d) any other relevant information, as agreed by the Parties.

2. Parties shall cooperate with each other and with competent international organizations to build the capacity of Parties to collect and exchange information.

3. Parties shall deem the said information to be confidential and for the use of Parties only, unless otherwise stated by the transmitting Party.

#### **ARTICLE 21**

##### **Enforcement information sharing**

1. Parties shall, subject to domestic law or any applicable international treaties, where appropriate, exchange, on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment, the following information:

(a) records of licensing for the natural and legal persons concerned;

- (b) information for identification, monitoring and prosecution of natural or legal persons involved in illicit trade in tobacco, tobacco products or manufacturing equipment;
  - (c) records of investigations and prosecutions;
  - (d) records of payment for import, export or duty-free sales of tobacco, tobacco products or manufacturing equipment; and
  - (e) details of seizures of tobacco, tobacco products or manufacturing equipment (including case reference information where appropriate, quantity, value of seizure, product description, entities involved, date and place of manufacture) and modi operandi (including means of transport, concealment, routing and detection).
2. Information received from Parties under this Article shall be used exclusively to meet the objectives of this Protocol. Parties may specify that such information may not be passed on without the agreement of the Party which provided the information.

#### **ARTICLE 22**

##### **Information sharing: confidentiality and protection of information**

1. Each Party shall designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat.
2. The exchange of information under this Protocol shall be subject to domestic law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is exchanged.

#### **ARTICLE 23**

##### **Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters**

1. Parties shall cooperate, with each other and/or through competent international and regional organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters, in order to achieve the objectives of this Protocol, as mutually agreed. Such assistance may include the transfer of expertise or appropriate technology in the areas of information gathering, law enforcement, tracking and tracing, information management, protection of personal data, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.
2. Parties may, as appropriate, enter into bilateral, multilateral or any other agreements or arrangements in order to promote training, technical assistance and cooperation in scientific, technical and technological matters taking into account the needs of developing-country Parties and Parties with economies in transition.
3. Parties shall cooperate, as appropriate, to develop and research the possibilities of identifying the exact geographical origin of seized tobacco and tobacco products.

#### **ARTICLE 24**

##### **Assistance and cooperation: investigation and prosecution of offences**

1. Parties shall, in accordance with their domestic law, take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of natural or legal persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment.
2. Each Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment (including, where permitted under domestic law, judicial authorities) cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law.

#### **ARTICLE 25**

##### **Protection of sovereignty**

1. Parties shall carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Protocol entitles a Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

#### **ARTICLE 26**

##### **Jurisdiction**

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when:
  - (a) the offence is committed in the territory of that Party; or
  - (b) the offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.
2. Subject to Article 25, a Party may also establish its jurisdiction over any such criminal offence when:
  - (a) the offence is committed against that Party;
  - (b) the offence is committed by a national of that Party or a stateless person who has his or her habitual residence on its territory; or
  - (c) the offence is one of those established in accordance with Article 14 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 14 within its territory.
3. For the purposes of Article 30, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it

does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it does not extradite him or her.

5. If a Party exercising its jurisdiction under paragraph 1 or 2 has been notified, or has otherwise learnt, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Protocol does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

#### **ARTICLE 27**

##### **Law enforcement cooperation**

1. Each Party shall adopt, consistent with their respective domestic legal and administrative systems, effective measures to:

(a) enhance and, where necessary, establish channels of communication between the competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences established in accordance with Article 14;

(b) ensure effective cooperation among the competent authorities, agencies, customs, police and other law enforcement agencies;

(c) cooperate with other Parties in conducting enquiries in specific cases with respect to criminal offences established in accordance with Article 14 concerning:

(i) the identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) the movement of proceeds of crime or property derived from the commission of such offences; and

(iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(d) provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) facilitate effective coordination among its competent authorities, agencies and services and promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;

(f) exchange relevant information with other Parties on specific means and methods used by natural or legal persons in committing such offences, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities; and

(g) exchange relevant information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the criminal offences established in accordance with Article 14.

2. With a view to giving effect to this Protocol, Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them accordingly. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Protocol as the basis for mutual law enforcement cooperation in respect of the offences covered by this Protocol. Whenever appropriate, Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. Parties shall endeavour to cooperate within their means to respond to transnational illicit trade of tobacco products committed through the use of modern technology.

#### **ARTICLE 28**

##### **Mutual administrative assistance**

Consistent with their respective domestic legal and administrative systems, Parties shall provide each other, either on request or on their own initiative, with information to ensure proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combating of illicit trade in tobacco, tobacco products or manufacturing equipment. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party. Such information may include:

(a) new customs and other enforcement techniques of demonstrated effectiveness;

(b) new trends, means or methods of engaging in illicit trade in tobacco, tobacco products and manufacturing equipment;

(c) goods known to be the subject of illicit trade in tobacco, tobacco products and manufacturing equipment as well as details of description, packaging, transport and storage and methods used in respect of those goods;

(d) natural or legal persons known to have committed or to be a party to an offence established in accordance with Article 14; and

(e) any other data that would assist designated agencies in risk assessment for control and other enforcement purposes.

#### **ARTICLE 29**

##### **Mutual legal assistance**

1. Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 14 of this Protocol.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and

arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 15 of this Protocol in the requesting Party.

3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:

- (a) taking evidence or statements from persons;
- (b) effecting service of judicial documents;
- (c) executing searches and seizures, and freezing;
- (d) examining objects and sites;
- (e) providing information, evidentiary items and expert evaluations;
- (f) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) facilitating the voluntary appearance of persons in the requesting Party; and
- (i) any other type of assistance that is not contrary to the domestic law of the requested Party.

4. This Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

5. Paragraphs 6 to 24 shall, on the basis of reciprocity, apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty or intergovernmental agreement of mutual legal assistance. If the Parties are bound by such a treaty or intergovernmental agreement, the corresponding provisions of that treaty or intergovernmental agreement shall apply unless the Parties agree to apply paragraphs 6 to 24 in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible.

7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

8. A request for mutual legal assistance shall contain:

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;
- (e) where possible, the identity, location and nationality of any person concerned;
- (f) the purpose for which the evidence, information or action is sought; and
- (g) the provisions of the domestic law relevant to the criminal offence and the punishment therefore.

9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay.

12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual

in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party.

14. Mutual legal assistance may be refused:

- (a) if the request is not made in conformity with this Article;
- (b) if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
- (c) if the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) where the request involves a crime where the maximum penalty in the requested Party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested Party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime; or
- (e) if it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

15. Reasons shall be given for any refusal of mutual legal assistance.

16. A Party shall not decline to render mutual legal assistance under this Article on the ground of bank secrecy.

17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party.

19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party regarding progress in its handling of the request.

The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.

20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

21. Before refusing a request pursuant to paragraph 14 or postponing its execution pursuant to paragraph 20, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

23. In the event of a request, the requested Party:

- (a) shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and
- (b) may, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

24. Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article.

## **ARTICLE 30**

### **Extradition**

1. This Article shall apply to the criminal offences established in accordance with Article 14 of this Protocol when:

- (a) the person who is the subject of the request for extradition is located in the territory of the requested Party;
- (b) the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and
- (c) the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements.

2. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies.

4. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable

extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

6. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies.

7. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in

particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

8. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 7.

9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

10. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present.

11. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

12. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

13. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

14. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. Where Parties are bound by an existing treaty or intergovernmental arrangement the corresponding provisions of that treaty or intergovernmental arrangement shall apply unless the Parties agree to apply paragraph 1 to 13 in lieu thereof.

#### **ARTICLE 31**

##### **Measures to ensure extradition**

1. Subject to its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition Proceedings.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.

3. Any person regarding whom the measures in accordance with paragraph 1 are being taken, shall be entitled to:

- (a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and
- (b) be visited by a representative of that State.

#### **PART VI: REPORTING**

#### **ARTICLE 32**

##### **Reporting and exchange of information**

1. Each Party shall submit to the Meeting of the Parties, through the Convention Secretariat, periodic reports on its implementation of this Protocol.

2. The format and content of such reports shall be determined by the Meeting of the Parties. These reports shall form part of the regular WHO Framework Convention on Tobacco Control reporting instrument.

3. The content of the periodic reports referred to in paragraph 1, shall be determined having regard, inter alia, to the following:

- (a) information on legislative, executive, administrative or other measures taken to implement this Protocol;
- (b) information, as appropriate, on any constraints or barriers encountered in the implementation of this Protocol and on the measures taken to overcome those barriers;
- (c) information, as appropriate, on financial and technical assistance provided, received, or requested for activities related to the elimination of illicit trade in tobacco products; and

(d) the information specified in Article 20.

In those cases when relevant data are already being collected as part of the Conference of the Parties reporting mechanism, the Meeting of the Parties shall not duplicate these efforts.

4. The Meeting of the Parties, pursuant to Articles 33 and 36, shall consider arrangements to assist developing-country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.

5. The reporting of information under those Articles shall be subject to national law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is reported or exchanged.

## **PART VII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES**

### **ARTICLE 33**

#### **Meeting of the Parties**

1. A Meeting of the Parties is hereby established. The first session of the Meeting of the Parties shall be convened by the Convention Secretariat immediately before or immediately after the next regular session of the Conference of the Parties following the entry into force of this Protocol.

2. Thereafter, regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, immediately before or immediately after regular sessions of the Conference of the Parties.

3. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting or at the written request of any Party, provided that, within six months of the request being communicated to them by the Convention Secretariat, it is supported by at least one third of the Parties.

4. The Rules of Procedure and the Financial Rules of the Conference of the Parties to the WHO Framework Convention on Tobacco Control shall apply, *mutatis mutandis*, to the Meeting of the Parties unless the Meeting of the Parties decides otherwise.

5. The Meeting of the Parties shall keep under regular review the implementation of the Protocol and take the decisions necessary to promote its effective implementation.

6. The Meeting of the Parties shall decide on the scale and mechanism of the voluntary assessed contributions from the Parties to the Protocol for the operation of this Protocol as well as other possible resources for its implementation.

7. At each ordinary session, the Meeting of the Parties shall by consensus adopt a budget and workplan for the financial period until the next ordinary session, which shall be distinct from the WHO Framework Convention on Tobacco Control budget and workplan.

### **ARTICLE 34**

#### **Secretariat**

1. The Convention Secretariat shall be the Secretariat of this Protocol.

2. The functions of the Convention Secretariat with regard to its role as the secretariat of this Protocol shall be to:

(a) make arrangements for sessions of the Meeting of the Parties and any subsidiary bodies as well as working groups and other bodies established by the Meeting of the Parties and provide them with services as required;

(b) receive, analyse, transmit and provide feedback to Parties concerned as needed and to the Meeting of the Parties on reports received by it pursuant to this Protocol and facilitate the exchange of information among Parties;

(c) provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation, communication, and exchange of information required in accordance with the provisions of this Protocol, and assistance in the identification of available resources to facilitate implementation of the obligations under this Protocol;

(d) prepare reports on its activities under this Protocol under the guidance of and for submission to the Meeting of the Parties;

(e) ensure, under the guidance of the Meeting of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;

(f) enter, under the guidance of the Meeting of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions as secretariat to this Protocol;

(g) receive and review applications by intergovernmental and nongovernmental organizations wishing to be accredited as observers to the Meeting of the Parties, while ensuring that they are not affiliated with the tobacco industry, and present the reviewed applications to the Meeting of the Parties for its consideration; and

(h) perform other secretariat functions specified by this Protocol and such other functions as may be determined by the Meeting of the Parties.

### **ARTICLE 35**

#### **Relations between the meeting of the Parties and intergovernmental organizations**

In order to provide technical and financial cooperation for achieving the objective of this Protocol, the Meetings of the Parties may request the cooperation of competent international and regional intergovernmental organizations, including financial and development institutions.

#### **ARTICLE 36**

##### **Financial resources**

1. Parties recognize the important role that financial resources play in achieving the objective of this Protocol, and acknowledge the importance of Article 26 of the WHO Framework Convention on Tobacco Control in achieving the objectives of the Convention.
2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of this Protocol, in accordance with its national plans, priorities and programmes.
3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for strengthening the capacity of developing-country Parties and Parties with economies in transition in order to meet the objectives of this Protocol.
4. Without prejudice to Article 18, Parties are encouraged, subject to national laws and policies and where appropriate, to use any confiscated proceeds of crime deriving from the illicit trade in tobacco, tobacco products and manufacturing equipment to achieve the objectives set out in this Protocol.
5. Parties represented in relevant regional and international intergovernmental organizations and financial and development institutions shall encourage these entities to provide financial assistance for developing-country Parties and for Parties with economies in transition to assist them in meeting their obligations under this Protocol, without limiting the rights of participation within these organizations.
6. Parties agree that:
  - (a) to assist Parties in meeting their obligations under this Protocol, all relevant potential and existing resources available for activities related to the objective of this Protocol should be mobilized and utilized for the benefit of all Parties, especially developing-country Parties and Parties with economies in transition; and
  - (b) the Convention Secretariat shall advise developing-country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate implementation of their obligations under this Protocol.
7. Parties may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control.
8. Parties shall endeavour, subject to their domestic law, to achieve self-financing of the implementation of the Protocol including through the levying of taxes and other forms of charges on tobacco products.

#### **PART VIII: SETTLEMENT OF DISPUTES**

#### **ARTICLE 37**

##### **Settlement of disputes**

The settlement of disputes between Parties concerning the interpretation or application of this Protocol is governed by Article 27 of the WHO Framework Convention on Tobacco Control.

#### **PART IX: DEVELOPMENT OF THE PROTOCOL**

#### **ARTICLE 38**

##### **Amendments to this Protocol**

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be considered and adopted by the Meeting of the Parties. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the Convention Secretariat at least six months before the session at which it is proposed for adoption. The Convention Secretariat shall also communicate proposed amendments to the signatories of this Protocol and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to this Protocol. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Convention Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two thirds of the Parties.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

#### **ARTICLE 39**

##### **Adoption and amendment of annexes to this Protocol**

1. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
2. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.
3. Annexes to this Protocol and amendments thereto shall be proposed, adopted and enter into force in accordance with the procedure set forth in Article 38.

**PART X: FINAL PROVISIONS**

**ARTICLE 40**  
**Reservations**

No reservations may be made to this Protocol.

**ARTICLE 41**  
**Withdrawal**

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the WHO Framework Convention on Tobacco Control shall also be considered as having withdrawn from this Protocol, with effect as of the date of its withdrawal from the WHO Framework Convention on Tobacco Control.

**ARTICLE 42**  
**Right to vote**

1. Each Party to this Protocol shall have one vote, except as provided for in paragraph 2.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Protocol. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.

**ARTICLE 43**  
**Signature**

The Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at World Health Organization Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

**ARTICLE 44**  
**Ratification, acceptance, approval, formal confirmation or accession**

1. This Protocol shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations that are Party to the WHO Framework Convention on Tobacco Control. It shall be open for accession from the day after the date on which the Protocol is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party without any of its Member States being a Party shall be bound by all the obligations under this Protocol. In the case of organizations one or more of whose Member States is a Party, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the Member States shall not be entitled to exercise rights under this Protocol concurrently.
3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification to the extent of their competence.

**ARTICLE 45**  
**Entry into force**

1. This Protocol shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.
2. For each Party to the WHO Framework Convention on Tobacco Control that ratifies, accepts, approves or formally confirms this Protocol or accedes thereto after the conditions set out in paragraph 1 for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval, accession or formal confirmation.
3. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of that organization.

**ARTICLE 46**  
**Depositary**

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

**ARTICLE 47**  
**Authentic texts**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

## Annexes

### Annex 1:

#### Decision FCTC/COP5(1) – Protocol to Eliminate Illicit Trade in Tobacco Products

The Conference of the Parties,

Deeply concerned that the illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

Taking into account Article 15 of the WHO Framework Convention on Tobacco Control, which recognizes, inter alia, that the elimination of all forms of illicit trade in tobacco products is an essential component of tobacco control;

Recalling its decision FCTC/COP2(12) by which the Intergovernmental Negotiating Body was established, with the objective of drafting and negotiating a protocol on illicit trade in tobacco products, which would build upon and complement the provisions of Article 15 of the WHO Framework Convention on Tobacco Control, and further decisions FCTC/COP3(6) and FCTC/COP4(11) which reflected upon the progress achieved during the negotiations;

Acknowledging the work undertaken by the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products resulting in the draft protocol to eliminate illicit trade in tobacco products, contained in document FCTC/COP5/6; Convinced that supplementing the WHO Framework Convention on Tobacco Control with a comprehensive protocol will be a powerful, effective means to counter illicit trade in tobacco products and its grave consequences,

1. ADOPTS in accordance with Article 33 of the WHO Framework Convention on Tobacco Control the attached Protocol to Eliminate Illicit Trade in Tobacco Products; and
2. CALLS UPON all Parties to the WHO Framework Convention on Tobacco Control, to consider signing, ratifying, accepting, approving, formally confirming or acceding to the Protocol at the earliest opportunity, with a view to bringing the Protocol into force as soon as possible.

### Annex 2:

#### History of the negotiations of the Protocol to Eliminate Illicit Trade in Tobacco Products

As early as 2006, at the first meeting of the Conference of the Parties (COP) following entry into force of the WHO FCTC, the Parties discussed possible protocols to the Convention. One of the areas in which they agreed that a protocol could be established was illicit trade in tobacco products, and accordingly, the COP set up an expert group to prepare a template for a possible protocol in this area. The expert group presented its report to the COP at its second session in 2007.

Recognizing that cooperative action was necessary in order to eliminate the illicit trade, the COP at its second session established an Intergovernmental Negotiating Body (INB), open to all Parties, to draft and negotiate a protocol on illicit trade in tobacco products that would build upon and complement the provisions of Article 15 of the WHO FCTC.

The INB held five sessions, all in Geneva, Switzerland. The first session of the INB was held on 11–15 February 2008. The template for a protocol on illicit trade as proposed by the expert group served as the basis for the negotiations. Mr Ian Walton-George, representing the European Union, was elected as Chairperson of the INB, and Dr J. Al-Lawati (Oman), Dr E. Jaramillo (Mexico), Mr P. Krishna (India), Mrs L. Asiedu (Ghana) and Mr J. Martin (Federated States of Micronesia) as Vice-Chairpersons. Following the first session, Mr Walton-George drafted a “Chairperson’s text”, taking into account the comments made by Parties during the first session.

The second session of the INB was held on 20–25 October 2008, with the Chairperson’s text serving as the basis for negotiations. The INB reported to the third session of the COP (17–22 November 2008, Durban, South Africa) on progress. The Conference requested the INB to continue its work and to submit a draft protocol to its fourth session.

As also requested by the COP, regional consultations were held for all six regions between the second and third sessions of the INB. The consultations took place in Tehran, Islamic Republic of Iran (Eastern Mediterranean Region), Geneva (African and European Regions), Mexico City, Mexico (Region of the Americas), Beijing, China (Western Pacific Region) and Dhaka, Bangladesh (South-East Asia Region).

Expert papers were also prepared by the Secretariat on several technical matters to serve as background documents for the discussions at the third session of the INB: the feasibility of an international tracking and tracing regime; the legal ramifications of a possible ban of sales of tobacco products via the Internet as well as of a possible ban on duty free sales of tobacco products; legal advice on the scope of the protocol; and an assessment of potential requirements at national level for an international track and trace regime.

For the third session of the INB (28 June – 5 July 2009), the Chairperson prepared a revised Chairperson’s text, taking into account the discussions during the second session of the INB, the expert papers, and legal advice.

The revised Chairperson’s text served as the basis for discussions at the third session of the INB. The INB re-elected Mr Walton-George as Chairperson. As Vice-Chairpersons, the INB elected Dr T. Vinit (Papua New Guinea), Mr H. Mohamed (Maldives), Mrs L. Asiedu (Ghana) – replaced by Dr M. Anibueze (Nigeria) at the fourth session of the INB –, Dr E. Al Mansoori (United Arab Emirates) and Dr J. Regalado Pineda (Mexico).

The third session resulted in a negotiating text, which the INB agreed would form the basis for further negotiations.

Two drafting groups established by the INB worked between its third and fourth sessions and proposed text for articles relating to the control of the supply chain and matters of criminal law, mutual legal assistance and extradition, in order to facilitate further negotiations at the fourth session. The groups were chaired by Dr M. Anibueze (Nigeria) and Mrs I. Demuni de Silva (Sri Lanka).

At the fourth session of the INB (14–21 March 2010), the delegations discussed provisions of the negotiating text as well as proposals made by the drafting groups. At the closure of the session, the INB decided to recommend that the draft protocol be considered by the COP at its fourth session. The text of the draft protocol showed the progress made by the INB to this point – consensus had been reached on 26 provisions, while 23 remained under discussion. In particular, consensus had been reached on the tracking and tracing provisions and the great majority of the provisions relating to licensing. However, a number of important and challenging issues remained unsolved. On several matters, the INB sought guidance from the COP, including regarding the method of financing of the protocol.

The COP acknowledged the progress made by the INB and extended the mandate of the INB to a final session in early 2012, requesting the INB to submit the text of a draft protocol to its fifth session for consideration. It also established an informal working group to make proposals and develop possible text, in order to facilitate negotiations at the fifth session of the INB.

The informal working group, comprising representatives of 30 Parties (five Parties per WHO region), held two meetings (Geneva, 4–8 July and 19–23 September 2011) and was chaired by Dr Nuntavarn Vichit-Vadakan (Thailand). In accordance with its mandate, the group developed possible text for those articles in Part III of the protocol, on supply chain control, that had not yet been agreed, and made proposals on the other matters within its mandate, including the method of financing of the protocol and the inclusion of mutual legal assistance and extradition in the draft protocol.

The fifth session of the INB was held from 29 March to 4 April 2012. The INB confirmed Mr Walton-George as Chairperson. Mr A.T. Faireka (Cook Islands) replaced Dr T. Vinit (Papua New Guinea), and Dr M. Kabir (Nigeria) replaced Dr M. Anibueze (Nigeria) as Vice-Chairpersons.

After four years and five sessions of negotiations, on 4 April 2012 the delegations to the fifth session of the INB agreed on a consensus text to be submitted to the COP for consideration at its fifth session. The text of the draft protocol also took account of the comments submitted by Parties on the Arabic, Chinese, French, Russian and Spanish translations of the English text, in line with the decision of the INB.

On 12 November 2012, the Protocol was adopted by consensus at the fifth session of the COP (Seoul, Republic of Korea, 12–17 November 2012). It thus became the first protocol to the WHO FCTC, and a new international treaty in its own right. The Protocol was opened for signature on 10 January 2013 at WHO headquarters in Geneva. More than 50 Parties participated in this event, during which 12 Parties, representing all six WHO regions, signed the Protocol; one more Party signed the following day. The 13 Parties are: China, France, Gabon, Libya, Myanmar, Nicaragua, Panama, Republic of Korea, South Africa, Syrian Arab Republic, Tunisia, Turkey and Uruguay. The Protocol remained open for signature at United Nations Headquarters in New York until 9 January 2014.

The Protocol to Eliminate Illicit Trade in Tobacco Products is a landmark in the strengthening of global action against tobacco and is a new legal instrument in public health. It supplements the WHO FCTC with a comprehensive tool to counter and eventually eliminate illicit trade in tobacco products and to strengthen legal dimensions for international health cooperation.

### **Annex 3:**

#### **Article 15 of the WHO Framework Convention on Tobacco Control Illicit trade in tobacco products**

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.
2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:
  - (a) require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: “Sales only allowed in (insert name of the country, subnational, regional or federal unit)” or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and
  - (b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.
4. With a view to eliminating illicit trade in tobacco products, each Party shall:
  - (a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;
  - (b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;
  - (c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;
  - (d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and
  - (e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.
5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21.
6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.
7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

**Annex 4:**

**Article 33 of the WHO Framework Convention on Tobacco Control Protocols**

1. Any Party may propose protocols. Such proposals will be considered by the Conference of the Parties.
2. The Conference of the Parties may adopt protocols to this Convention.

In adopting these protocols every effort shall be made to reach consensus. If all efforts at consensus have been exhausted, and no agreement reached, the protocol shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For the purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote.
3. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption.
4. Only Parties to the Convention may be parties to a protocol.
5. Any protocol to the Convention shall be binding only on the parties to the protocol in question. Only Parties to a protocol may take decisions on matters exclusively relating to the protocol in question.
6. The requirements for entry into force of any protocol shall be established by that instrument.

## Appendix 2: Protocol Timeline

Subject	Article	Timeframe	Undertaking
<b>KEY INPUTS</b>	Article 6(5)	5 years following entry into force of this Protocol.	Meeting of the Parties (MOP) to ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the MOP shall consider appropriate action.
<b>TRACKING AND TRACING</b>	Article 8(1)	Within 5 years of entry into force of this Protocol.	States parties agree to establish a global tracking and tracing regime, comprising national and/or regional systems and a global information sharing focal point located at the Convention Secretariat of the WHO FCTC and accessible to all States parties, enabling States parties to make enquiries and receive relevant information.
	Article 8(3)	Cigarettes within 5 years of entry into force of this Protocol for that State party and within 10 years of entry into force of this Protocol for that State party for other tobacco products.	States parties shall require that unique, secure, and non-removable identification markings (unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes and other tobacco products.
	Article 8(5)	Within the time limits specified in article 8.	States parties shall require that information set out in art. 8(4) is recorded, at the time of production, or at the time of first shipment by the manufacturer or at the time of import onto that State party's territory.
<b>FREE ZONES AND INTERNATIONAL TRANSIT</b>	Article 12(1)	Within 3 years of entry into force of Protocol for that State party.	States parties shall implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones by use of all relevant measures provided in this Protocol.
<b>DUTY FREE SALES</b>	Article 13(2)	No later than five years following entry into force of this Protocol.	The MOP shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty-free sales of such products. On the basis of such research, the MOP shall consider appropriate further action.
<b>MEETING OF THE PARTIES</b>	Article 33(1)	Following entry into force of this Protocol.	The first MOP shall be convened by the Convention Secretariat immediately before or immediately after regular sessions of the COP.

	Article 33(2)	Thereafter.	Regular sessions of the MOP shall be convened by the Convention Secretariat, immediately before or immediately after regular sessions of the COP.
	Article 33(3)	Within 6 months of the request being communicated to the States parties by the Convention Secretariat.	Extraordinary sessions of the MOP shall be held at such other times as may be deemed necessary by the MOP or at the written request of any State party provided that it is supported by at least one third of the States parties.
<b>AMENDMENTS TO THIS PROTOCOL</b>	Article 38(2)	At least 6 months before the session at which it is proposed for adoption.	Amendments to this Protocol shall be considered and adopted by the MOP. The text of any proposed amendment to this Protocol shall be communicated to the States parties by the COP At least 6 months before the session at which it is proposed for adoption.
	Article 38(4)	90 <sup>th</sup> day after the date of receipt by the Depositary.	An amendment adopted in accordance with art. 38(3) shall enter into force for those States parties having accepted it on the 90 <sup>th</sup> day after the date of receipt by the Depositary of an instrument of acceptance by at least two thirds of the States parties.
	Article 38(5)	90 <sup>th</sup> after date of deposit by State party.	The amendment shall enter into force for any other State party on the 90 <sup>th</sup> day after the date on which that State party deposits with the Depositary its instrument of acceptance of the said amendment.
<b>WITHDRAWAL</b>	Article 41(1)	Any time after 2 years from the date of entry into force of the Protocol for a State party.	State party may withdraw from the Protocol by giving written notification to the Depositary.
	Article 41(2)	Upon expiry of 1 year from date of receipt by the Depositary or such later date as specified in notification of withdrawal.	Any such withdrawal shall take effect after receipt by the Depositary of the notification of withdrawal or as may be specified by the notification.
<b>ENTRY INTO FORCE</b>	Article 45(1)	On the 90 <sup>th</sup> day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.	Protocol shall enter into force.
	Article 45(2)	On the 90 <sup>th</sup> day following the date of deposit of the State party's instrument of ratification, acceptance, approval, accession or formal confirmation.	Protocol shall enter into force for each State party to the WHO FCTC that ratifies, accepts, approves or formally confirms this Protocol or accedes thereto after the conditions set out in art. 45 (1) for entry into force have been fulfilled

## Appendix 3: Assessment Checklist for Countries

### SELF ASSESSMENT CHECKLIST ON THE IMPLEMENTATION OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

General information that should be identified at the outset of the self-assessment checklist:

1. Status of the ratification of UNTOC, UNCAC, Terrorist Financing Convention, TRIPS Agreement, WHO FCTC and any other relevant regional conventions by the country.
2. Description of the legal, institutional and political system of the country.
3. Any assessment at a country level undertaken regarding tobacco control and illicit trade in the country.
4. Tobacco control legislation in place, draft bills, policies and/or other measures implemented.
5. Legislation surrounding intellectual property law and counterfeiting, customs law and smuggling offences, relevant applicable criminal law, legislation regarding seizure, confiscation/forfeiture, destruction and legislation regarding the confiscation of proceeds of crime.

### PART III SUPPLY CHAIN CHECKLIST

#### Article 6: Licence, equivalent approval or control

(i) Identify the following activities which are subject to licensing (check all that apply and provide relevant legislation for all checked boxes):

- Manufacturing tobacco products  
Relevant legislation: .....
- Manufacturing tobacco-manufacturing equipment  
Relevant legislation: .....
- Manufacturing of key inputs (acetate tow, cigarette paper, cigarette filters)  
Relevant Legislation: .....
- Retail sale of tobacco products  
Relevant legislation: .....
- Duty free sales of tobacco products  
Relevant legislation: .....
- Commercial tobacco growing (other than for personal use)  
Relevant legislation: .....  
Definition of *commercial* .....
- Transporting commercial quantities of tobacco products  
Relevant legislation: .....
- Transporting tobacco-manufacturing equipment  
Relevant legislation: .....
- Wholesaling tobacco, tobacco products, tobacco-manufacturing equipment, or key inputs  
Relevant legislation: .....
- Brokering tobacco, tobacco products, tobacco-manufacturing equipment or key inputs  
Relevant legislation: .....
- Warehousing tobacco, tobacco products, tobacco-manufacturing equipment or key inputs  
Relevant legislation: .....
- Distributing tobacco, tobacco products, tobacco-manufacturing equipment or key inputs  
Relevant legislation: .....
- Any internet transactions with regard to tobacco products  
Relevant legislation: .....

- Other activities requiring licenses  
Which activities.....  
Relevant legislation: .....
- None  
Relevant legislation: .....

(ii) Which competent authority (or authorities) is in charge of licensing the activities identified in (i) above, if any?

(iii) What licensing-related activities do the authority identified in (ii) above regulate (check all that apply)?

- Issuance
- Renewal
- Suspension
- Revocation
- Cancellation
- Periodic review
- Inspection or audit of licences
- Other: *Specify*.....
- None

(iv) Describe the process and requirements for obtaining any of the licenses identified in (iii) above.

(v) What licence fees are levied? Where does the money go?

(vi) Are any measures taken to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system? If so, what are they?

(vii) Is there a timeframe of expiration of licences and reapplication?

(viii) Is licensee information updated?

**Article 7: Due Diligence**

(i) Identify the following activities that individuals or companies engaged in the supply chain of **tobacco** must perform (check all that apply and provide relevant legislation for all checked boxes):

- Due diligence before commencement of a business relationship
- Due diligence during a business relationship
- Monitoring sales to customers to ensure that quantities are commensurate with demand within the intend market of sale or use
- Reporting customers' illicit trade activities to authorities
- Obtaining information regarding criminal records
- Obtaining information regarding identification of bank accounts intended to be used in the transaction
- Designation as blocked customer for non-compliant customer

Relevant legislation: .....

(ii) Identify the following activities that individuals or companies engaged in the supply chain of **tobacco products** must perform (check all that apply and provide relevant legislation for all checked boxes):

- Due diligence before commencement of a business relationship
- Due diligence during a business relationship
- Monitoring sales to customers to ensure that quantities are commensurate with demand within the intend market of sale
- Reporting customers' illicit trade activities to authorities
- Obtaining information regarding criminal records
- Obtaining information regarding identification of bank accounts intended to be used in the transaction
- Designation as blocked customer for non-compliant customer

Relevant legislation: .....

(iii) Identify the following activities that individuals or companies engaged in the supply chain of **tobacco-manufacturing equipment** must perform (check all that apply and provide relevant legislation for all checked boxes):

- Due diligence before commencement of a business relationship
- Due diligence during a business relationship
- Monitoring sales to customers to ensure that quantities are commensurate with demand within the intend market of sale
- Reporting customers' illicit trade activities to authorities
- obtaining information regarding criminal records
- obtaining information regarding identification of bank accounts intended to be used in the transaction
- Designation as blocked customer for non-compliant customer

Relevant legislation: .....

(iv) Identify the following activities that individuals or companies engaged in the supply chain of **key inputs** must perform (check all that apply and provide relevant legislation for all checked boxes):

- Due diligence before commencement of a business relationship
- Due diligence during a business relationship
- Monitoring sales to customers to ensure that quantities are commensurate with demand within the intend market of sale
- Reporting customers' illicit trade activities to authorities
- Obtaining information regarding criminal records
- Obtaining information regarding identification of bank accounts intended to be used in the transaction
- Designation as blocked customer for non-compliant customer

Relevant legislation: .....

(v) Describe the process and information required for conducting the due diligence identified in (i)-(iv) above, if any. In each case, you should identify, at a minimum, whether the due diligence process requires:

- A description of the intended use and intended market sale of tobacco, tobacco products, manufacturing equipment or key inputs; and/or
- A description of the location where manufacturing equipment will be installed or used.

Process: .....

**Article 8: Tracking and Tracing**

(i) Is the supply chain of tobacco products manufactured in or imported on to the country's territory subject to tracking and tracing requirements (check "yes" or "no"; if "yes", provide relevant legislation)?

- Yes  
Relevant legislation: .....
- No

(ii) Are unique, secure, non-removable identification markings, such as codes or stamps, for cigarettes, affixed to:

- Unit packets
- Unit packages
- Outside packaging

(iii) Describe the tracking and tracing requirements identified in (i) above, if any.

Requirements: .....

(iv) Are tax stamps, secure ink markings, or other markings used to indicate duty and tax status?

- Tax stamps
- Secure ink markings
- Other markings: *Specify* .....

**Article 9: Record-Keeping**

(i) Complete and accurate records must be maintained by all natural and legal persons engaged in the following activities (check all that apply and provide relevant legislation for all checked boxes):

- Growing of tobacco  
Relevant legislation: .....
- Manufacturing of tobacco and tobacco products  
Relevant legislation: .....
- Import of tobacco, tobacco products and tobacco-manufacturing equipment  
Relevant legislation: .....
- Manufacture of tobacco-manufacturing equipment  
Relevant legislation: .....
- Transport and storage of tax suspended tobacco and tobacco products  
Relevant legislation: .....
- Transport, storage and wholesaling of tobacco and tobacco products  
Relevant legislation: .....
- Export of tobacco, tobacco products and tobacco-manufacturing equipment  
Relevant legislation: .....
- Retailing of tobacco and tobacco products  
Relevant legislation: .....
- None

(ii) Do the records identified in (i) above allow for the full accountability of materials used in the production of tobacco products (check “yes” or “no”; if “yes”, provide relevant legislation)?

- Yes  
Relevant legislation: .....
- No

(iii) Describe the requirements to maintain complete and accurate records by all natural and legal persons identified above, if any.

(iv) What types of records are required to be kept to satisfy customs and tax law obligations? For how long are these records kept?

**Article 10: Security and Preventive Measures**

(i) Do requirements exist that all natural and legal persons subject to licensing take measures to prevent diversion of tobacco products into illicit trade channels (Provide relevant legislation for checked boxes):

- Reporting to competent authorities cross border transfer of cash in amounts stipulated in national law or of cross border payments in kind  
Relevant legislation: .....
- Reporting to competent authorities all “suspicious transactions”  
Relevant legislation: .....
- Supplying tobacco products, manufacturing equipment or key inputs only in amounts commensurate with the demand for such products within the intended market of retail sale or use  
Relevant legislation: .....

- (ii) Are there any cash transaction reporting arrangements in place?
- Yes  
Describe size of cash transaction that needs to be reported:  
.....
- No
- (iii) Which agency administers this arrangement?
- (iv) Are there requirements that payments for transactions carried out by natural or legal persons subject to licensing be allowed (Provide relevant legislation for checked boxes);
- Only in the currency and in the same amount as the invoice  
Relevant legislation: .....
- Only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system  
Relevant legislation: .....
- (v) Are there requirements that payments carried out by natural or legal persons subject to licensing for materials used for the manufacture of tobacco products, be allowed (Provide relevant legislation for checked boxes);
- Only in the currency and in the same amount as the invoice  
Relevant legislation: .....
- Only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system  
Relevant legislation: .....

**Article 11: Sale by Internet, Telecommunication or Any Other Evolving Technology**

- (i) Are retail sales of tobacco products through the internet regulated (If yes, provide relevant legislation)?
- Yes  
Relevant legislation: .....
- No
- (ii) Are retail sales of tobacco products through the internet banned (if yes, provide legislation)?
- Yes  
Relevant legislation: .....
- No

**Article 12: Free Zones and International Transit**

- (a) Who has administrative control over free zones?  
.....
- (ii) Requirements exist to exercise control over the following (check all that apply and provide relevant legislation for all checked boxes):
- Manufacturing of tobacco in free zones
- Manufacturing of tobacco products in free zones
- Transactions involving tobacco in free zones
- Transactions involving tobacco products in free zones
- Intermingling tobacco products with non-tobacco products in a single container at the time of removal from free zones
- Other
- None
- Relevant legislation: .....

(iii) Requirements exist to apply control and verifications measures to the international transit or trans-shipment of the following (check all that apply and provide relevant legislation for all checked boxes):

- Tobacco products
- Tobacco-manufacturing equipment
- Other
- None

Relevant legislation: .....

(iv) Describe the measures used to control illicit trade of tobacco in free zones and the international transit or trans-shipment of tobacco products and tobacco-manufacturing equipment.

#### Article 13: Duty Free Sales

(i) Describe legislation and regulatory framework surrounding duty free sales of tobacco products.  
.....

(ii) Is there any available assessment in the country regarding the extent of illicit trade related to duty free sales of tobacco products?

- Yes  
Describe: .....
- No

#### Other

1. Are there arrangements that allow for movement of goods under bond/duty and tax suspension?

- Yes  
Describe: .....
- No

2. What traditional tobacco products are manufactured and consumed in the country? Do they receive any duty and tax concessions and exemptions?

.....

### PART IV OFFENCES CHECKLIST

1. Is it a criminal offence to engage in the following activities without the requisite licence or authorization for **tobacco** (provide relevant legislation for checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting

Relevant legislation:  
.....

2. Is it a criminal offence to engage in the following activities without the requisite licence or authorization for **tobacco products** (provide relevant legislation for checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting

Relevant legislation:

.....

3. Is it a criminal offence to engage in the following activities without the requisite licence or authorization for **manufacturing equipment** (provide relevant legislation for checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting

Relevant legislation:

.....

4. Is it a criminal offence to carry out the following activities for **tobacco** without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels (please provide relevant legislation for all checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting
- Other acts of smuggling

Relevant legislation:

.....

5. Is it a criminal offence to carry out the following activities for **tobacco products** without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels (please provide relevant legislation for all checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping

- Importing
- Exporting
- Other acts of smuggling

Relevant legislation:

.....

6. Is it a criminal offence to carry out the following activities for **manufacturing equipment** without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels (please provide relevant legislation for all checked boxes):

- Manufacturing
- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting
- Other acts of smuggling

Relevant legislation: .....

7. Is it a criminal offence to **illicitly manufacture** (counterfeit) tobacco or tobacco products or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels?

- Tobacco
- Tobacco products
- Manufacturing equipment

Relevant legislation:

.....

8. Is it a criminal offence to engage in the following activities for **illicitly manufactured** tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment (provide relevant legislation for checked boxes)?

- Wholesaling
- Brokering
- Selling
- Transporting
- Distributing
- Storing
- Shipping
- Importing
- Exporting

Relevant legislation:

.....

9. Is it a criminal offence to mix tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products (if "yes", provide relevant legislation)?

- Yes

Relevant legislation: .....

- No

10. Is it a criminal offence to intermingle tobacco products with non-tobacco products (if "yes", provide relevant legislation)?

- Yes

Relevant legislation: .....

No

11. Is it a criminal offence to use Internet-, telecommunication- or any other evolving technology based modes of sale of tobacco products without the requisite licence or authorization (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

12. Is it a criminal offence for a licensed person to obtain tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed or authorized under the equivalent approval or control system (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

13. Is it a criminal offence to obstruct any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

14. Is it a criminal offence to make any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment and when not contrary to the right against self-incrimination (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

15. Is it a criminal offence to misdeclare on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to (provide relevant legislation for checked boxes):

Evade the payment of applicable duties, taxes and other levies

Prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment

No  
Relevant legislation: .....

16. Is it a criminal offence to fail to create or maintain records or maintain false records (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

17. Is it a criminal offence to launder proceeds of crime (if “yes”, provide relevant legislation)?

Yes  
Relevant legislation: .....

No

18. Are any of the unlawful conducts provided in 1 - 17 administrative offences (if “yes”, provide relevant legislation and be specific about which conducts and activities are administrative offences)?

Yes  
Administrative offences; .....

Relevant legislation: .....

No

19. Does liability for legal persons exist for the unlawful conducts mentioned in 1 – 17 (if “yes”, provide relevant legislation)?

Yes

Relevant legislation: .....

No

20. For **all** criminal and administrative offences identified, list the sanctions available. Is the sanction linked to the size of the seizure or the amount of duties and taxes evaded?

Available Sanctions: .....

Yes

Relevant legislation: .....

No

21. Are these sanctions enough to allow for international cooperation needs, especially for mutual legal assistance and extradition requests?

Yes

Relevant legislation: .....

No

22. Are there measures in place for the seizure, destruction and disposal of confiscated (provide relevant legislation):

Tobacco

Tobacco products

Manufacturing equipment

Relevant legislation: .....

#### PART V INTERNATIONAL COOPERATION CHECKLIST

1. Identify bilateral and multilateral agreements and arrangements in place regarding mutual legal assistance:

.....

2. Identify bilateral and multilateral agreements and arrangements in place regarding mutual administrative assistance:

.....

3. Identify bilateral and multilateral agreements and arrangements in place regarding extradition:

.....

#### OTHER CONSIDERATIONS FOR SELF-ASSESSMENT CHECKLIST

1. Identify country’s capacity to:

- a. Conduct a successful investigation into a sophisticated cigarette-smuggling ring and prosecute the ring leaders.
- b. Develop a detailed call for tenders for a system of unique markings that meets the criteria of article 8, including the database, scanners and other elements needed to make tracking-and-tracing useful.
- c. Set up a licensing system for manufacturers, importers and exporters, enact and enforce a prohibition on failure to register, and keep the registry of licensees up to date.
- d. Coordinate with other international organization with relevant expertise.
- e. Obtain technical information particularly on tracking and tracing systems.
- Support country mission experts for an international and inter-ministerial cooperation.

## Appendix 4: Table of National Legislation

This table provides information regarding the laws of a random selection of countries (from various regions) relating to key legislative areas which countries will need to explore when implementing the Protocol. These areas include licensing and marking requirements, seizure/destruction of illicit goods and the confiscation of proceeds of crime, intellectual property offences and protections and other available offences (smuggling, tax evasion offences, inter alia) under which States can prosecute ITTP.

Among the tools used to extract this information is the WHO FCTC implementation Database<sup>47</sup> where countries report on the implementation of various provisions of the WHO FCTC. For this purpose, implementation in relation to article 15 of the WHO FCTC was explored. Research was also undertaken on countries' legislation regarding criminal offences under which illicit trade activity could be prosecuted, as well as for the confiscation of proceeds of crime provisions. UNODC's Track Legal Library was used to research country proceeds of crime legislation, derived from their obligations under UNCAC<sup>48</sup>. The WIPO Lex database was used to research countries' intellectual property laws<sup>49</sup>.

This table is meant to provide a ready tool for countries wishing to find preliminary information as to how other jurisdictions have dealt with the same issue. Legislation was easier to find for some countries than others and in some areas over others, and this is reflected in the table below. It is difficult to ascertain whether a lack of ability to find legislation in some areas meant that a country did not have an established legislative regime in that area which could be the case, or whether in fact the legislation was not reported via international platforms. The information provided is not exhaustive.

Country	AUSTRALIA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005. Protocol not signed.
Licensing/ Marking	<b>Excise Act 1901 and Excise Tariff Act 1921</b> - Regulatory regime for licensing manufacturer, producer of tobacco leaf, including production and storage, and dealers to deal in tobacco leaf. In some States retailers required to register their activities free of charge with the licensing authority. - Unit marking to determine origin of product.
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<b>Customs Act 1901</b> – Seizure and disposal by Customs and Border Protection Service. <b>Crimes Act 1914</b> - Provides for search and seizure by Police. <b>Proceeds of Crime Act 2002 (Cth)</b> - Freezing, seizure, confiscation including destruction/disposal provisions. Relates to proceeds generated from commonwealth indictable offences, foreign indictable offences and certain offences against State and Territory law. - Each State has their own Proceeds of Crime legislation in place. - Unexplained wealth laws exist in six Australian jurisdictions (Western Australia, Northern Territory, New South Wales, Queensland, South Australia and the Commonwealth). <b>Excise Act 1901</b> - s.116 - forfeiture of all excisable goods manufactured by person not a licensed manufacturer, all tobacco seed, plant or leaf found on premises where unlawful manufacture of excisable goods is carried on.
Intellectual Property Protections and Offences	<b>Copyright Act 1968 (Cth)</b> (amendment Act No. 13, 2013) – Part V Remedies and Offences, Part VAA unauthorized access to encoded broadcasts and offences at Division 3. <b>Trademarks Act 1995 (Cth)</b> - ss 145-149 – falsifying or removing a registered trademark, falsely applying a registered trademark, making a die etc. for use in trademarks offence, possessing or disposing of things for use in trademarks offence, goods with false trademarks (max. 5 years imprisonment or fine 550 penalty units for an indictable offence (a Federal penalty unit for 2013 is equal to \$170 AUD). For a summary offence the penalty is max. 12 months imprisonment or 60 penalty units). <b>Intellectual Property Law Amendment (Raising the Bar) Act 2012</b> – particularly Schedule 5 – improving mechanisms for trademark and copyright enforcement (Customs seizure, trademark offences and relief for infringement of offences). <b>Signatory to the Anti-Counterfeiting Trade Agreement (ACTA).</b>
Other Offences	<b>Excise Act 1901</b> - s25- only licensed manufacturers to manufacture excisable goods. Penalty: 2 years imprisonment or the greater of: -500 penalty units (1 penalty unit is \$170); and -5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day. - s25(2) operating without a licence – penalty fine 100 penalty units. - s28 – only licensed producers to produce tobacco leaf, penalties as for s25. - s33 – only licensed dealers to deal in tobacco leaf, penalties as for s25. –s117B - unlawful sale of excisable goods, penalty as for s25. - s117H – unlawful sale of tobacco leaf, penalty as for s25. - s117C - unlawful possession of tobacco seed, plant or leaf, penalty as for s25.  - s4D of <b>Customs Prohibited Imports Regulations 1956</b> – Importation of unmanufactured tobacco leaf, penalty 50 penalty units. <b>Customs Act 1901</b> – s233BABAD Smuggling etc. of tobacco products carries a maximum 10 year imprisonment penalty. <b>Criminal Code Act 1995 (Cth)</b> may also apply when offences are prosecuted under fraud or organized crime offences.

**Various State and Territory laws in place as well. See:**

**New South Wales:**

Public Health (Tobacco) Act 2008

- s6 – certain sales prohibited, not to sell tobacco product not in original manufacturing packaging, penalty 100 penalty units for individual, 500 penalty units for corporation.
- s7 – packaging and sale of tobacco product without health warning, penalty 100 penalty units for individual, 500 penalty units for corporation.

**Victoria:**

Tobacco Act 1987

- s11 – person not to sell tobacco prepared for smoking in a package not labelled as per requirements, penalty 120 penalty units for individual, 600 penalty units for corporation.
- s11A – offence for retailers or wholesalers to possess certain tobacco products (smuggled goods, prohibited imports, duty not paid excisable goods), penalty 60 penalty units for individual, or 300 penalty units for corporation.

**South Australia:**

Tobacco Products Regulation Act 1997

- s30 – sale of tobacco products by retail not allowed unless enclosed in compliant packaging, penalty \$5 000 max.
- s31(2) - person who packs tobacco products for retail sale must ensure that packages are compliant with regulations, penalty \$5 000 max.

**Queensland:**

Tobacco and Other Smoking Products Act 1988

- s22 (1) A supplier must sell cigarettes or herbal cigarettes only in a package containing cigarettes or loose tobacco packed by the manufacturer, or importer, penalty 140 penalty units max.
- s23 (1) A supplier must not sell loose tobacco except in a package, penalty 140 penalty units max.
- s23A (1) A supplier must not sell loose smoking blend except in a package, penalty 140 penalty units max.

**Western Australia:**

Tobacco Products Control Act 2006

- s19 - holder of a licence must not sell, or authorise or allow to be sold, a tobacco product by way of retail sale or wholesale sale unless the tobacco product is in a package that is labelled in accordance with the regulations, penalty first offence \$10 000, second and subsequent offence \$20 000 for an individual; first offence \$40 000, second and subsequent offence \$80 000 for a corporation.
- s105 - holder of a licence must not, without reasonable excuse, be in possession or control of any tobacco products that the licence holder knows or ought reasonably to know are prohibited goods or duty not paid excisable goods, penalty first offence \$10 000, second and subsequent offence \$20 000 for an individual; first offence \$40 000, second and subsequent offence \$80 000 for a corporation.

**Tasmania:**

Public Health Act 1997

- s68 - must not supply cigarettes to the public otherwise than in a package, penalty first offence 50 penalty units, second and subsequent offence 200 penalty units.
- s73 - manufacturer or distributor of any tobacco or tobacco product must ensure that the tobacco or tobacco product is packaged and labelled in accordance with any relevant guidelines, penalty first offence 50 penalty units, second and subsequent offence 200 penalty units.

**Northern Territory:**

Tobacco Control Act

- s12 - person must not sell tobacco products unless they are enclosed in a package that displays a prescribed health warning, penalty 100 penalty units for individual, 500 penalty units for corporation.

Country	BRAZIL
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 1 February 2006 Protocol not signed
Licensing/ Marking	Licensing of manufacturers and a national monitoring authority. Marking on the products at unit level to assist in determining origin, legal sale. Digital tax stamp used on cigarette packets. Each pack has a unique code. Manufacturers pay the costs of the marking system under Brazilian law amounting to 1.7 US cents per pack. Scanners for reading the tax stamp codes are developed specifically for the suppliers of the invisible ink used and for each country. Thus law enforcement outside Brazil cannot read the codes unless scanners are supplied by Brazil.
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<b>Law No. 9.279 of May 14, 1996 (Industrial Property Law) relating to counterfeited marks and their seizure and destruction</b> - s.198 - Products bearing counterfeited, altered or imitated marks, or that show a false indication of source may be seized by customs authorities ex officio or at the request of the interested party, during verification procedures. <b>Law No. 9.279 of May 14, 1996 (Industrial Property Law)</b> - ss.201, 202, 210 outline the law in relation to the confiscation of assets and proceeds and destruction in relation to counterfeit products. <b>Art. 125 Código de Processo Penal Decreto Ley N° 3689 (2009) – Freezing, seizure and confiscation.</b> <b>Anti-Money Laundering Law No. 9613 (1998)</b> No specific legislation focused on confiscation of proceeds of crime particularly enabling the confiscation of proceeds derived from ITTP.
Intellectual Property Protections and Offences	<b>Law No. 9.279 of May 14, 1996 (Industrial Property Law)</b> - Reproducing registered trademarks without authorization from the title holder is a criminal offence, with a penalty of imprisonment from 3 months to 1 year, or a fine. - It is also a crime to import, export, sell, offer or display for sale, conceal or have in stock a product bearing a mark illegal reproduced or imitated, or a product of his own industry or commerce, contained in a vessel, container or package that contains the legitimate mark of another person. A penalty of imprisonment from 1 – 3 months or a fine applies.
Other Offences	<b>Offences against tax law (Law No.8137-90)</b> <b>Crimes against the National Financial System (Law No.4792-86)</b> <b>Crimes against contraband and re-routing (art. 334 of the Criminal Code)</b> Brazilian legislation takes into account the type of product, distinguishing “contraband” (the illegal trafficking of illegal substances) from “re-routing” (illegal commerce in legal merchandise). In Brazil, the legal principle of <i>insignificance</i> is applicable to contraband or rerouting of merchandise, including cigarettes. Application of this principle means it is possible that illicit conduct can be considered as being irrelevant under criminal law, including cancellation of any tax due and costs of filing proceedings. Law 9.099/95 allows for conditional suspension of proceedings under certain circumstances, for instance where no other crimes have been committed or there is no evidence of re-offending in cases involving intentional offenses, a criminal record, or the conduct and personality of the individual. Offences against public faith (art. 229 - 311). Offence of receiving illegal goods (art. 180 of the Criminal Code). Art. 334 of the <b>Penal Code</b> and art. 190 of <b>Law No. 9279/96</b> (offences of sale of smuggled and counterfeit goods).

Country	CANADA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol not signed
Licensing/ Marking	<p><b>Excise Tax Act 1985</b></p> <ul style="list-style-type: none"> <li>- Licensing of manufactures, tobacco dealers and warehouses.</li> <li>- Stamping (duty paid), marking (non-duty paid) and package requirements (must include name and address or licence no. of manufacture to determine origin of suspect goods) (see also Stamping and Marking of Tobacco Products Regulations and amendments. Implemented federal tobacco stamping regime in September 2010 where all products entering duty-paid market in Canada must display tax stamp. Provinces or territories can choose to be part of the regime).</li> <li>- s31 – keeping of books (record keeping) – recording all transactions by participants in the supply chain.</li> </ul> <p><b>Customs Act 1985</b> – licensing importers and exporters, customs brokers licence.</p> <p><b>Tobacco Reporting Regulations (SOR/2000-273)</b> – reporting by tobacco industry to government.</p> <p><b>Tobacco Act (S.C. 1997, c. 13)</b> – regulates manufacture, sale, labelling and promotion of tobacco products as well as enforcement of its provisions.</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Federal Tobacco Act (S.C. 1997)</b></p> <ul style="list-style-type: none"> <li>- s39 - seizure and restoration. Inspectors may seize products or other things on belief based on reasonable grounds that the Act has been contravened.</li> <li>- s41 – (1) forfeiture – where no application made for forfeiture within specified timeframe, products are forfeited to Her Majesty and may be disposed of; (2) where person convicted of offence under the Act, tobacco products forfeited to Her Majesty and disposed of; (3) products forfeited to Her Majesty and disposed of with consent of the owner.</li> </ul> <p><b>Federal Excise Act (S.C. 1997)</b></p> <ul style="list-style-type: none"> <li>- s239.1 (1) – absence of stamp required by Act is notice that (a) excise duties have not been paid (b) additional customs duty imposed has not been paid.</li> <li>- s239.1 (2) – tobacco or cigars to be forfeited.</li> </ul> <p><b>Criminal Code ss. 83.08, 83.13, 83.14, 462.32, 462.37, 490.1, and 490.81</b> - freezing, seizure, confiscation.</p> <p><b>Proceeds of Crime and Terrorist Finance Act</b></p> <ul style="list-style-type: none"> <li>- s9.4 – measures to be taken before entering banking relationship with foreign entity, s10 not to enter banking relationship with a shell bank.</li> </ul> <p><b>Mutual Legal Assistance in Criminal Matters Act</b> (enforcement of foreign forfeiture order by Canadian court) <b>and Extradition Act</b> (transfer of seized property to extradition partner) – mechanisms for recovery of property through international cooperation in confiscation.</p>
Intellectual Property Protections and Offences	<p><b>Criminal Code</b> – counterfeiting of trademarks, imprisonment for term not exceeding 14 years.</p> <p><b>Trade-marks Act (R.S.C., 1985, c. T-13)</b></p> <ul style="list-style-type: none"> <li>- s. 53.3 re-exportation of counterfeit wares.</li> </ul> <p><b>Tobacco Act (S.C. 1997)</b></p> <p><b>Tobacco Products Information Regulations (SOR/2000-272)</b> – applies to retail sale of tobacco products concerning information re health implications, toxic emissions and constituents, slide and shell packages, and cartons and kits.</p>
Other Offences	<p>Various offenses applicable to manufacturers and retailers for selling/manufacturing tobacco products that do not comply with the Tobacco Act (generally governing labelling, ingredients, methods of selling, sales to minors, and advertising/promotion) (<b>Federal Tobacco Act, SC 1997, c 13, ss. 43-49</b>)</p> <p><b>Federal Excise Act 2001</b></p> <ul style="list-style-type: none"> <li>- Illegal manufacture of tobacco products, maximum fine of \$10,000, in default of payment of fine imprisonment for not more than 12 months</li> </ul>

	<p>- Smuggling of tobacco products maximum fine of \$50,000 or maximum term of imprisonment 6 months, or both fine and imprisonment, or fine of not more than \$500,000 or imprisonment for maximum of 5 years or both.</p> <p>- s237 – Every person who purchases or receives for sale any manufactured tobacco or cigars from any manufacturer not duly licensed under this Act is guilty of an offence punishable on summary conviction and liable to a fine of \$10 000 max., and in default of payment of the fine to imprisonment for 12 months max., and shall, in addition thereto, forfeit all the manufactured tobacco or cigars so purchased or received for sale, or the full value of the manufactured tobacco or cigars including all duties and taxes that were payable under this Act or any other Act in respect of the manufactured tobacco or cigars.</p> <p><b>Criminal Code (R.S.C. 1985)</b></p> <p>-counterfeiting of trademarks, penalty imprisonment for 14 years max.</p>
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Country	CHINA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 9 January 2006 Protocol signed 10 January 2013
Licensing/ Marking	<p>State exercises monopoly control in relation to tobacco through the State Tobacco Monopoly Administration (STMA).</p> <p><b>Tobacco Monopoly Law, 1991</b> - manages the manufacture, sale, import, export and business of tobacco products, increasing the quality of tobacco products, protecting consumers’ interests, and ensuring state revenue. Licensing is in place from manufacturers to retailers.</p> <p><b>Regulations on the Implementation of the Tobacco Monopoly Law</b>, promulgated by <b>Decree No. 223 of the State Council in July 1997</b>. The regulations elaborate upon a range of provisions in the Tobacco Monopoly Law and address topics such as applications for retail licenses, packaging requirements, and the transportation of tobacco products.</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p>Art. 6, Amendment VI to the <b>Criminal Law of the People's Republic of China</b>, amending art. 191 of the Criminal Law (freezing, seizure and confiscation)</p> <p>Part II, Chpt. 3, s. 8 <b>Criminal Law of the People’s Republic of China</b> – confiscation of property.</p> <p><b>Customs Law of the People’s Republic of China</b> – customs power to seize goods and sell/destroy.</p>
Intellectual Property Protections and Offences	<p><b>Trademark Law of the People's Republic of China</b></p> <p><b>Criminal Law of the People's Republic of China</b> – Part II, Chpt. 3, s.7 Crimes of Infringing on intellectual property rights:</p> <ul style="list-style-type: none"> <li>- Art. 213 – using identical trademark on same merchandise without permission of registered owner, penalty where serious case imprisonment or criminal detention of less than 3 years, and/or fine, more serious case imprisonment 3 -7 years and fine.</li> <li>- Art. 214 - Knowingly selling merchandise under a fake trademark with a relatively large sales volume – penalty imprisonment or criminal detention of less than three years, and/or fine; in cases involving a large sales volume, imprisonment 3 -7 years and fine.</li> <li>- Art. 215 - Forging or manufacturing without authority or selling or manufacturing without authority others’ registered trademarks or identifications – penalty for case of serious nature imprisonment or criminal detention, or restriction for less than three years, and/or fine; for cases of especially serious nature, imprisonment of 3-7 years, and fine.</li> </ul>

<b>Other Offences</b>	<p><b>Criminal Law of the People's Republic of China</b> – Part II, Chpt. III Crimes of Disrupting the Order of the Socialist Market Economy:</p> <ul style="list-style-type: none"> <li>- s.1, art. 140: crimes of production and sale of fake or substandard commodities. Penalty: if the sum obtained through sale between 50,000 - 200,000 Yuan, offender sentenced to fixed-term imprisonment 2 years max. or criminal detention, and/or fine of not less than half of the sum obtained through sale and not more than twice of that. If the sum obtained through sale between 200,000 - 500,000 Yuan, offender sentenced to fixed-term imprisonment 2- 7 years, and fine of not less than half of the sum obtained through sale and not more than twice of that. If the sum obtained through sale between 500,000 - 2,000,000 Yuan, offender sentenced to fixed-term imprisonment of not less than 7 years, and fine of not less than half of the sum obtained through sale and not more than twice of that. If the sum obtained through sale is not less than 2,000,000 Yuan, offender sentenced to fixed-term imprisonment of 15 years or life imprisonment, and fine of not less than half of the sum obtained through sale and not more than twice of that or confiscation of property.</li> <li>- s.2, art. 153 smuggling offences - penalties range depending on the amount of tax evaded, with a maximum of 10 years imprisonment to life if tax due more than 500,000 Yuan and fine of 100-500% of evaded taxes, or forfeiture of property.</li> </ul>
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<b>Country</b>	<b>FRANCE</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol signed 10 January 2013</p>
<b>Licensing/ Marking</b>	<p><b>General Tax Code</b></p> <ul style="list-style-type: none"> <li>- Art. 565 – suppliers, under the conditions set by a decree taken by the Conseil d'Etat may import, introduce and wholesale manufactured tobacco in metropolitan France. Manufacturers, under the conditions set by a decree taken by the Conseil d'Etat may manufacture manufactured tobacco on this same territory. The provisions of articles 570 and 571 shall apply to any such person as the supplier. Retail sales of manufactured tobacco products are reserved to the State. Retailers, pursuant to the fourth paragraph of article 568 are not required to establish themselves as a supplier for the introduction, wholesale sale or, as the case may be, importing of manufactured tobacco. These natural or legal persons must obtain the status of authorized warehouse keeper referred to in article 302 G.</li> <li>- Art. L. 568 – the French administration holds the monopoly on retail sale. Under decree retailers can obtain a licence to sell tobacco products on behalf of the French administration.</li> <li>- Art. L. 570-I-1°- suppliers obliged to deliver products to licensed retailers only.</li> <li>- Art. 575H - no person may be in possession of more than 2 kilograms of manufactured tobacco in warehouses, commercial premises or on board modes of transport (exception suppliers in warehouses, tobacconists in sales outlets, the persons referred to in point 3 of art. 565, the retailers referred to in the fourth paragraph of art. 568).</li> <li>- Art. 302G – authorized warehouse keepers (those receiving, holding, dispatching, reselling manufactured tobacco under excise duty suspension).</li> </ul> <p><b>Ministerial Decision of July 8, 2010</b></p> <ul style="list-style-type: none"> <li>- Art. 2.1 retailer required to – only obtain supplies from suppliers approved by customs and excise tax authorities (list regularly published on the Prime Minister and Customs' websites) and to pay the value of the tobacco according to the payment mode requested by the supplier.</li> <li>- Art. 41 - Apart from the management contract termination or non-renewal measures in art. 2, any violation of the obligations hereof and of the management contract as well as any violation of tax legislation by a tobacco retailer in or during the performance of his duties as the public authorities' representative, subjects him to a disciplinary sanction.</li> </ul> <p>The regional customs and indirect tax director can issue the following disciplinary sanctions:</p> <ul style="list-style-type: none"> <li>- A warning letter;</li> <li>- A fine of up to €4,000</li> <li>- After consultation with the disciplinary commission provided for in art. 44, he can impose a fine of more than €4,000 and up to €8,000.</li> </ul>

Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Framework Decisions by the EU</b></p> <ul style="list-style-type: none"> <li>- 2001/500/JHA</li> <li>- 2003/577/JHA</li> <li>- 2005/212/JHA</li> <li>- 2006/783/JHA</li> <li>- 2007/845/JHA</li> </ul> <p>Art. 414 of the <b>French Customs Code</b> - confiscation of contraband good, transportation means, objects used to cover up the fraud, property and assets resulting directly or indirectly from the offence.</p>
Intellectual Property Protections and Offences	<p><b>Intellectual Property Code</b> (as last amended by Decree No. 2012-634 of May 3, 2012).</p> <p><b>Law of November 28, 2011</b> on Certificates of New Plant Variety, published in the Official Gazette on December 8, 2011 amending the Code of Intellectual Property.</p> <p><b>Law No. 2007-1544 of October 29, 2007</b> against Counterfeiting.</p> <p><b>Law No. 91-7 of January 4, 1991</b> on Trademarks and Service Marks.</p>
Other Offences	<p><b>Code Pénal 1 March 1994</b></p> <p><b>French Customs Code, arts. 399, 414, 417, 426(2)</b></p> <ul style="list-style-type: none"> <li>- s.414 - contraband and undeclared import or export when said offences relate to goods of the same category as those that are prohibited or highly taxed, are liable to a three year prison sentence, the confiscation of the contraband good, the confiscation of transportation means, the confiscation of the objects used to cover up the fraud, the confiscation of the property and assets resulting directly or indirectly from the offence and a fine ranging from once to twice the value of the contraband good.</li> <li>- Art. 1810 General Tax Code - manufacturing of tobacco, fraudulent detention with the purpose of sale, the sale, or fraudulent transportation of manufactured tobacco products, regardless of the type and origin of the tobacco.</li> </ul> <p><b>Ministerial Decree 2010-72:</b></p> <ul style="list-style-type: none"> <li>-Due diligence on retail tobacconists required in France.</li> <li>- Art. 5.2 - Offer good repute and probity guarantees, assessed namely in view of the criminal record “bulletin No 2”.</li> <li>- Art. 46 - Resellers are only authorized to sell tobacco to the customers and users of their business, in addition to the main business activity, and to their employees.</li> <li>- Art. 47 - The reseller only obtains his supplies of manufactured tobacco from the ordinary permanent retail tobacco store nearest to his business, hereinafter referred to as “proximity store”. As an exception, he can obtain his supplies from any other neighbouring ordinary permanent retail tobacco store in the two following cases: <ul style="list-style-type: none"> <li>-Express waiver by the manager of the nearest retail store;</li> <li>-Supply of cigars that are not distributed by the proximity store, with the consent of the manager thereof.</li> </ul> </li> </ul>

Country	INDIA
WHO FCTC & Tobacco Protocol	<p>WHO FCTC signed and ratified – entered into force 27 February 2005</p> <p>Protocol not signed</p>
Licensing/ Marking	<p>Few State Governments (Goa Sikkim Tripura) have used local instruments for licensing of tobacco shops.</p> <p>No marking implemented.</p>

<p>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</p>	<p><b>Customs Act no. 52, 1962</b> Chpt. XIII Searches, Seizures and Arrests: - Art. 110 – seizure of goods, documents and things. Chpt. XIV – Arts. 111 – 127 Confiscation of goods and conveyances and imposition of penalties: - Art. 113 – confiscation of goods attempted to improperly exported. - Art. 115 – confiscation of conveyances. - Art. 118 – confiscation of packages and their contents. - Art. 119 – confiscation of goods used for concealing smuggled goods. - Art. 120 – confiscation of smuggled goods notwithstanding any change in form. - Art. 121 – confiscation of sale-proceeds of smuggled goods.</p> <p><b>The Trade Marks Act, 1999 – IP infringement</b> - Art. 111 - forfeiture of goods, and at (4) court can order destruction of the goods. - Art. 115 – any officer below rank of deputy superintendent, if satisfied offence is being or likely to be committed may search and seize without warrant goods etc., and all articles seized shall be produced before a magistrate as soon as practicable, provided that the opinion of the Registrar is sought on the facts of the case first.</p> <p><b>Art. 212 India Penal Code 1973</b></p> <p><b>Prevention of Money-Laundering Act, Chapters 3, 5</b></p> <p><b>Prevention of Corruption Act, Chapter 5</b></p>
<p>Intellectual Property Protections and Offences</p>	<p><b>The Trade Marks Act, 1999</b> - Art. 29 – infringement of registered trademarks. Chpt. 12 offences, penalties and procedures - Art. 101 – meaning of applying trademarks and trade descriptions. - Art. 102 – falsifying and falsely applying trademarks. - Art. 103 – penalties for applying false trademarks – imprisonment 6 months – 3 years, or fine of 50 000 – 2 lakh rupees. - Art. 104 – penalties for selling goods to which false trademark applied (selling, hiring, exposing for sale, possessing) - imprisonment 6 months – 3 years, or fine of 50 000 – 2 lakh rupees, unless no reason to suspect genuineness of trademark having taken all reasonable steps, or gives information to prosecutor regarding person goods obtained from, or he acted innocently. - Art. 105 – enhanced penalty on second or subsequent conviction – imprisonment 1 – 3 years, and fine 1 lakh – 2 lakh rupees, court has discretion to impose lesser sentence. - Art. 107 – falsely representing trademark as registered – penalty prison up to 3 years and/or fine. - Art. 114 – offences by companies. - Art. 115 – cognizance of certain offences and police search and seizure powers. - Art. 118 – limitation period for prosecution is 3 years after commission of offence charged or 2 years after discovery by Prosecutor.</p> <p><b>The Trade Marks (Amendment) Act, 2010 –amends various articles of the primary Act.</b></p>
<p>Other Offences</p>	<p><b>Indian Penal Code, No. 45, 1860:</b> Chpt. XII – Offences relating to coin and government stamps: - Art. 255 – counterfeiting government stamps – penalty imprisonment up to 10 years and/or fine. - Art. 256 – possession of instrument or material to counterfeit government stamp, penalty imprisonment up to 7 years and fine. - Art. 257 – making, selling instrument for counterfeiting government stamp, penalty imprisonment up to 7 years and fine. - Art. 258 – sale of counterfeit government stamp, penalty imprisonment up to 7 years and fine.</p> <p>Chpt. XVIII Offences relating to documents and property marks:</p>

- Art. 463 – forgery.
  - Art. 464 – false documents.
  - Art. 465 – penalty for forgery imprisonment up to 2 years and/or fine.
  - Art. 472 – making, possessing counterfeit seal etc. with intent to commit forgery.
- And following articles relating to counterfeit devices or marks used for authenticating documents etc.:
- Arts. 481/482 – using false property mark, penalty imprisonment up to 1 year and/or fine.
  - Art. 483 – counterfeiting property mark, penalty imprisonment up to 2 years and/or fine.
  - Art. 486 – selling goods marked with counterfeit property mark, penalty imprisonment up to 1 year and/or fine.

**Customs Act No. 52, 1962**

Chpt. XIV:

- Art. 112 – penalty for improper importation of goods.
- Art. 114 – penalty for attempt to export goods improperly.
- Art. 114A – penalty for short-levy or non-levy of duty in certain cases.
- Art. 116 – penalty for not accounting for goods.
- Art. 117 – penalties for contraventions not expressly mentioned.

Chapt. XVI: Offences and Prosecution:

- Art. 132 – false declarations, false documents – penalty imprisonment up to 6 months and/or fine.
- Art.133 – obstruction of customs officer, penalty imprisonment up to 6 months and/or fine.
- Art. 135 – evasion of duty or prohibitions – penalty where market price exceeds one lakh of rupees, imprisonment for 3-7 years and fine, other cases up to 3 years imprisonment and/or fine.
- Art. 135A – preparation to export goods in contravention of Act, penalty imprisonment of up to 3 years and/or fine.

Country	INDONESIA
WHO FCTC & Tobacco Protocol	WHO FCTC not signed Protocol not signed
Licensing/ Marking	Partial- Tax stamps and Holograms for revenue protection
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Limited Proceeds provisions</b></p> <ul style="list-style-type: none"> <li>- Arts. 18 (confiscation of assets), 19 (interests of 3<sup>rd</sup> parties acting in good faith) &amp; 30 (confiscation of postal consignments etc.) Law on the Commission to Eradicate Criminal Acts of Corruption.</li> <li>- Arts. 84 (reversal of burden of proof) &amp; 85 (presentation of sufficient legal evidence) of the Prevention and Eradication of the Crime of Money Laundering (2010).</li> </ul> <p><b>Law of the Republic of Indonesia No. 10/1995 Concerning Customs Law, amended by Law No. 17, 2006</b></p> <p>Chpt. X - art. 53.3 prohibited/restricted goods destroyed Chpt. XI - Unclaimed Goods, Goods Claimed by the State and Goods that become State Property: Part 3, art. 73 Goods that become State Property Chpt. XII - Authority of the Customs Official, Part 3 Examination:</p> <ul style="list-style-type: none"> <li>- s.3 Search of building and other places.</li> <li>- s.4 Search of transport.</li> </ul>

	<p>Chpt. XIV Penal Provisions:</p> <ul style="list-style-type: none"> <li>- Art. 109 – imported, exported goods (result of criminal Act) and transportation (used in commission of offence) seized for interests of State; (2) Means of transport used to commit the crime as referred to in art. 102 may be confiscated for the State.</li> </ul>
<b>Intellectual Property Protections and Offences</b>	<p><b>Penal Code of Indonesia, amended by Law No. 27, May 1999</b></p> <p>Chpt. XI</p> <ul style="list-style-type: none"> <li>- Arts. 256 and 257 make it an offence to fix false marks on products, penalty max. imprisonment 3 years.</li> <li>- Art. 393 – imports, without obvious intention to re-export, sells, offers for sale, distributes, delivers, possesses, commodities falsely provided with the name, firm or mark to which another has a right, or imitated mark even with slight deviation penalty imprisonment 4 months 2 weeks, or fine 600 rupiahs max.</li> </ul> <p><b>Law No. 15 of August 1, 2001, Regarding Marks</b> –Chpt. 14, Criminal Provisions:</p> <ul style="list-style-type: none"> <li>- Arts. 90-94 apply to the use of marks similar entirely or in essential parts to registered marks deliberately and without right, which carries a maximum penalty of imprisonment of 5 years and a maximum fine of 1 billion rupiahs, or 4 years imprisonment or fine of 800 million rupiahs (mark similar in essential part to the trademark).</li> </ul> <p><b>Law of the Republic of Indonesia No. 10/1995 Concerning Customs Law, amended by Law No. 17, 2006</b> – Chpt. X:</p> <ul style="list-style-type: none"> <li>- Prohibitions and Restrictions of Imports or Exports (art. 53), and</li> <li>- Control of Import or Export of Goods as a Result of Violations Against Intellectual Property Rights (art. 54)</li> </ul>
<b>Other Offences</b>	<p><b>Law of the Republic of Indonesia No. 10/1995 Concerning Customs Law amended by Law No. 17, 2006</b></p> <p>Chpt. XIV Penal Provisions:</p> <ul style="list-style-type: none"> <li>- Art. 102/102A - Any person who imports/exports or attempts to import or export goods, not complying with the provisions of law, penalized for smuggling and shall be punished with imprisonment 1 - 10 years and fine between 50 million – 5 billion rupiah.</li> <li>- Art. 1028 - The violation as meant in art. 102 and art. 102A that results in disturbances of aspects of state economy, is subject to imprisonment 5 - 20 years and monetary charge of between 5 billion – 100 billion Rupiah.</li> <li>-Other offences are listed from art. 103.</li> </ul> <p><b>Penal Code of Indonesia, amended by Law No. 27, May 1999</b></p> <p>Chpt. XXV Fraud:</p> <ul style="list-style-type: none"> <li>- Art. 383 bis – holder of bill of lading has in possession different copies with onerous title in favor of different receivers, penalty imprisonment max. 2 years 8 months.</li> <li>- Art. 384 – if gain not more than 25 rupiahs, penalty imprisonment max. 3 months or fine 60 rupiahs.</li> </ul> <p>Revenue related offences.</p>

<b>Country</b>	<b>IRAQ</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed and ratified – entered into force 15 June 2008</p> <p>Protocol not signed</p>
<b>Licensing/ Marking</b>	<p>No marking system for unit packets and packages to determine origin and whether product legally sold on domestic market.</p> <p>Tax stamp used</p> <p>Anti-Smoking Act No. 19 of 2012</p>

Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Iraqi Penal Code (1969)</b></p> <ul style="list-style-type: none"> <li>-Paragraph 101 – Confiscation – court may order confiscation of particular items acquired as result of the offence and subsequently seized, or were used in commission of the offence. The court must, in all circumstances, order confiscation of particular items that are used to create funds for the commission of an offence.</li> <li>-Paragraph 117 - order for confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offence in itself must be issued even though they do not belong to the accused or the accused has not been convicted. If goods not actually seized at the time of the trial but have been sufficiently identified, their confiscation when they are seized.</li> </ul> <p><b>Anti-Money Laundering Law 2004</b></p> <p><b>Coalition Provisional Order No. 80, Amendments to Law No. 21 of 1957 on Trademarks and Trade Names</b></p> <ul style="list-style-type: none"> <li>- Art. 35(5) – confiscation of infringing products.</li> <li>- Art. 37 – owner of mark can apply to Court before institution of criminal or civil action for seizure of instruments and tools used in the commission of the offence as well as the products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., which bear the mark of the subject matter of the offence. This includes seizure of products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., that are imported from abroad.</li> <li>- Art. 38 – court competent to hear civil order may order seizure and destruction of infringing articles, and materials and instruments used to manufacture counterfeit goods. Charitable donation of such goods not to be authorized without permission of trademark owner. Simple removal of trademark not sufficient to release goods for sale.</li> </ul> <p><b>Customs Law No. 23, 1984</b></p> <ul style="list-style-type: none"> <li>- Art. 27 unspecified contraband declared under real name shall not be seized. Goods declared for entry shall be returned abroad.</li> <li>- Art. 194 (1) (c) - Confiscation of goods subject of smuggling offence or to adjudicate by the equivalent of its value if it is not seized. Transport vehicles, tools and materials used in smuggling may be confiscated, except vessels and aircrafts, unless they are prepared or hired for such purpose, or a judgment for the equivalent of its value should they not be seized.</li> <li>- Art. 195(2) - seized goods may be restored to its owners, partly or wholly after paying the fine as provided in Para 1 of this article and other dues and taxes, provided that the restrictions as stipulated by the laws in force shall be observed.</li> <li>- Art. 196 - the Director General or whoever he authorizes shall order the confiscation of the seized smuggled goods and transport vehicles if the smugglers escape or cannot be found.</li> </ul>
Intellectual Property Protections and Offences	<p><b>Law No. 9 of 2010</b> on Registration Fees for Iraqi, Arab and Foreign Trademarks and Trade Names (2010).</p> <p><b>Coalition Provisional Order No. 80, Amendments to Law No. 21 of 1957 on Trademarks and Trade Names</b></p> <p>-44) Art. 35 is amended to read as follows: “Any person who commits any of the following acts shall be punished by imprisonment of 1 - 5 years and/or fine 50,000,000 - 100,000,000 Dinars:</p> <ol style="list-style-type: none"> <li>1) Whoever counterfeits a trademark, which is lawfully registered or imitates it in such a manner as to mislead the public, or uses mala fide a counterfeited or imitated trademark;</li> <li>2) Whoever unlawfully uses a registered trademark owned by another party;</li> <li>3) Whoever puts, mala fide, a registered trademark owned by another party on that person’s products;</li> <li>4) Whoever knowingly sells or offers for sale or circulation or possesses for the purpose of sale, products bearing a counterfeited or imitated trademark, or a trademark which is unlawfully affixed; or</li> <li>5) Whoever intentionally offers rendering services under a forged, imitated or unlawfully used mark. In all cases, the court shall order the confiscation of the infringing products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., which bear the mark of the subject matter of the offence, the revenue and the returns of such products as well as the implements used in the infringement.</li> </ol> <p>- 46) Art. 36bis added following art. 36 to read as follows: “Any person who commits for the second time one of the offenses mentioned in articles 35 and 36 of this Law, shall be punished by imprisonment of 5 years - 10 years and fine 100,000,000 -200,000,000 Dinars plus closure of the commercial store or enterprise for a period of 15 days - six months, together with the publication of the judgment at the expense of the infringer.</p>

**Other  
Offences**

**Iraqi Penal Code, 1969**

- Paragraph 215 - Any person who produces, imports, exports or obtains a picture, written material or sign with intent to trade, distribute, display or exhibit such material, which, by its nature, endangers the public security or brings the country into disrepute unless he was acting in good faith, penalty detention and/or fine not more than 300 dinars
- Paragraph 216 – participation in criminal conspiracy, penalty life imprisonment or term of imprisonment for number of years.
- Paragraph 217 – person who participates in criminal organization, gang, association, club, organization, and not an employee or in position of leadership, and distances himself from it when instructed by authorities exempt from penalty. May be punished for offences he has committed himself.
- Paragraph 277 – (1) counterfeiting or forging financial stamps, penalty imprisonment 10 years max. (2) using counterfeit or forged stamp, or re-using genuine stamp, with awareness that stamps are forged, penalty detention.
- Paragraph 302 - manufacturing or obtaining a tool, instrument or anything that can be used to imitate or counterfeit seals, bonds or stamps or falsifying any document with intent to make use of it for the purpose mentioned above, penalty imprisonment 7 years max.

**Customs Law No. 23, 1984**

Part 3 Principles for the Application of the Customs Tariff:

- Art. 18 - smuggled goods liable to the tariff being valid on the date where the date of its occurrence, if deterioration thereof or the date of settlement were possible, whichever is the highest.
- Art. 24 - restricted goods, contraband, goods subject to highest rate of duties or the specified contraband shall in no way be conveyed by vessels having a tonnage less than 200 marine tons within the territorial sea.
- Art. 25 - vessels having a tonnage less than 200 marine tons which convey goods of the kinds referred to in art. 24 shall in no way rove or deviate from their direction of voyage inside marine customs belt unless circumstances arise from marine emergencies or force majeure. In such case, masters shall notify a nearest customs office of this without delay.

Part 14 Customs Belt and the Search for Smuggling:

- Art. 183 – customs officials charged to combat smuggling and may halt transport vehicles, examine goods and search persons

Part 15 Customs Offences:

- Art. 188 – fines and confiscations considered civil compensation for customs administration.
  - Art. 188 Chpt. 1 – smuggling offences.
  - Art. 192 – activities from which smuggling can be construed.
  - Art. 193 – criminal liability and requirement of criminal intent.
  - Art. 194 – penalties
    - (1)(a) imprisonment between 1 month – 5 years and/or fine 3000 Dinars max. (1)(b)(1): customs fine (civil):
      - Six-fold value for specified contraband;
      - Three-fold of values and duties together for contraband goods that are suspended or restricted goods;
      - Four-fold of duties for dutiable goods, should it not be contraband, suspended or restricted, provided that it shall not be less than its value;
      - 25% of the value for goods not dutiable which are not contraband, suspended or restricted.
  - Art. 194(2) - judgment by doubling the penalties referred to in subparts “a and b” of Para 1 of this article may be allowed if those being liable for smuggling have past smuggling records.
- Chpt 2 – art. 197 – offences in respect of declarations to put goods for consumption (declaration contrary to kind, origin or source, real value of goods exceed over 5% of what is declared, weight, number or measurements of goods exceed over 5% of what is declared), penalty fine two folds – four folds of the duty.
- Chpt. 5 – offences in respect of the manifest.
- Chpt. 6 – offences in respect of roving and possessions.
- And other offences at the rest of Part 15.

Country	ITALY
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 30 September 2008 Protocol not signed
Licensing/ Marking	<p><b>Ministerial Decree 67/1999</b> – licensing of tobacco retailers (obtained from AAMS)</p> <p><b>Law 50/1994</b></p> <ul style="list-style-type: none"> <li>- Marking of master cases.</li> <li>- Record and keep information regarding any large seizure of tobacco products.</li> </ul> <p><b>Law no. 907/42</b></p> <ul style="list-style-type: none"> <li>- Art. 45 - The manufacture, preparation, introduction and sale of tobacco and tobacco products are subject to a State Monopoly in the Italian State, except for the province of Zara and for the Communes of Livigno and Campione d'Italia. The production, manufacture, preparation, introduction and sale of surrogates of tobacco are forbidden.</li> <li>- Art. 55 - It is also forbidden to build and hold machinery and tools for the production of tobacco, without the authorization of the Administration of State Monopoly.</li> </ul> <p>Track and Trace – id system on packs identifying date and place of production, the machinery, the shift of production, the Country of origin of shipment, the final market of destination and the first buyer of the product.</p> <p><b>Decree 417/1991</b></p> <ul style="list-style-type: none"> <li>- Art. 6 - the manufacturers of tobacco products have to adopt an identification system of products, in order to identify, with regard to tobacco products smuggled into the territory of the State, from a single pack of cigarettes, the date and place of production, the machinery, the shift of production, the Country of origin of shipment, the final market of destination and the first buyer of the product. The manufacturers must communicate such identification system to the Tax Administration within 30 days from the settlement or amendment of the same.</li> </ul>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Anti-Mafia Code</b></p> <p>Art. 146 of the <b>Code of Industrial Property</b> - Administrative authorities are required to seize counterfeit goods and destroy them within 3 months from the seizure in the case of “evident infringement of registered marks, designs and models or systematic and willful counterfeiting of IP rights”.</p> <p>Art. 474 (<b>Law 99/2009</b>), establishes mandatory confiscation not only for goods used to commit the crime or goods that are object of the IP crime, but also of those goods that are the product, price or profit of the crime, whoever they belong to. If the confiscation of such goods is not possible, the judge can order the confiscation of equivalent value.</p> <p>Art. 240 <b>Penal Code</b> - Conviction-based confiscation of assets derived from all criminal offenses.</p> <p><b>Law Rognoni – Law Torre of 1982</b></p> <ul style="list-style-type: none"> <li>- Confiscation of assets of convicted persons who cannot justify the origin of their asset, through the alleviation of the prosecutor’s burden of proof (extended confiscation). Extended confiscation applies to assets: (i) at the disposal of persons convicted for Mafia-type crimes if (ii) the value of such assets is disproportionate from the legitimate income of their owners; and if (iii) the latter cannot demonstrate the relevant legitimate origin. Alleviation of the burden of proof for the prosecutor.</li> <li>- Confiscation of assets in possession of persons belonging to Mafia-type organizations (non-conviction based confiscation) – preventive measure authorizing seizure and confiscation of property and assets of the suspects belonging to mafia type organizations. Suspected <i>mafiosi</i>, as socially dangerous persons, are subject to a set of personal and financial preventive measures, regardless of the proof of a direct link with the commission of a specific offence. Such measures “are non-conviction based, administrative in nature and are enforced outside criminal proceedings by law enforcement authorities under judicial supervision under looser rules of evidence”.</li> </ul> <p><b>Law No. 109/1996</b> regulates the management and destination of seized or confiscated assets, also indicating the type of assets that can be subject to confiscation: i.e. movable assets (e.g. cash, stock and securities, credit, vehicles, etc.); Real estate (e.g. buildings, apartments, allotments, etc.); and businesses.</p> <p><b>Framework Decisions by the EU</b></p> <ul style="list-style-type: none"> <li>- 2001/500/JHA</li> </ul>

	<ul style="list-style-type: none"> <li>- 2003/577/JHA</li> <li>-2005/212/JHA</li> <li>-2006/783/JHA</li> <li>-2007/845/JHA</li> </ul>
<p><b>Intellectual Property Protections and Offences</b></p>	<p><b>Penal Code (P.C.)</b> Arts. 473, 474 and 517 provide for:</p> <ul style="list-style-type: none"> <li>- Imprisonment between six months and three years and a fine of between 2,500 and 25,000 euros for infringement of registered marks (art. 473).</li> <li>- Imprisonment between one and four years, plus a fine of between 3,500 and 35,000 euro for infringement of patents, designs or models (art. 474).</li> <li>- Imprisonment up to two years and a fine of up to 20,000 euro for the importation, possession for business purposes, sale or putting into circulation of goods that bear counterfeit or altered marks or distinctive signs, or otherwise violate other IP rights.</li> <li>- Imprisonment up to two years or a fine of up to 20,000 euro for selling or putting in circulation products which bear marks that may mislead the buyer as to the origin, provenance or quality (art. 517- unregistered marks).</li> </ul> <p><b>Law 99/2009</b> introduced a specific aggravating circumstance in case of infringements committed in large quantities or in a continuous and organized manner, which increases the prison term from two to six years (art. 474 ter P.C.). A prison term of up to two years, plus a fine of up to euro 20,000, also is envisaged for infringements of denominations of origin on agricultural foodstuffs (art.517 quarter P.C.). Administrative sanctions are also envisaged for legal persons, i.e. companies, which having benefited or having an interest in the commission of the counterfeiting offenses.</p> <p><b>Criminal Code</b></p> <ul style="list-style-type: none"> <li>- s473 - for counterfeiting of trademarks – penalty is detention from 6 months – 3 years, or fine between 2500-25000 euros, with aggravating circumstances (use of arms, obstruction of law enforcement, use of special vehicles) imprisonment from 1 – 4 years, and a fine from 2500-25000 euros.</li> <li>- s474 - whoever introduces in the territory of the State, in order to make a profit, industrial products bearing counterfeited or falsified trademarks or other distinctive signs, national or foreign, is punished with the imprisonment from 1 to 4 years and with the fine from 3,500 Euros to 35,000 Euros. Whoever holds for the sale, offers for sale or otherwise put into circulation, in order to make a profit, the products mentioned in the first paragraph is punished with the detention up to 2 years and with the sanction up to 20,000 Euros.</li> </ul>
<p><b>Other Offences</b></p>	<p><b>Law No. 92 of 21 March 2001</b> – entire system of penalties redrafted. The following provisions are of particular importance:</p> <ul style="list-style-type: none"> <li>- A redefinition of the offence of smuggling foreign manufactured tobacco products, which now has a separate position within the Consolidated Customs Law;</li> <li>- More stringent penalties for anyone who imports, acquires or possesses within the State even minimal quantities of foreign manufactured tobacco products;</li> <li>- The inclusion of specific aggravating circumstances, with the addition of conduct (further to that covered by the Consolidated Customs Law) involving the use of: <ul style="list-style-type: none"> <li>-Means of transport whose type-approved features have been changed or modified so as to obstruct police action or pose a threat to public safety;</li> <li>-Partnerships or companies with share capital or financial assets (however constituted) in States which have not ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Strasbourg, 8 November 1990) or which have not concluded and ratified judicial assistance agreements with Italy in regard to smuggling;</li> <li>-Inclusion in the Consolidated Customs Law of the specific offence of "criminal association for the smuggling of foreign manufactured tobacco products", which comes within the sphere of competence of the National Anti-Mafia Prosecutor's Office.</li> </ul> </li> </ul> <p><b>Law 43/1973</b> – art. 291 - whoever introduces, sells, transports, purchases or holds within the State more than 10 kilos of smuggling of foreign tobacco (T.L.E.) is punished with sanction of 5 Euros for each gram of product, as defined by the article 9 of Law no. 76 dated March 7, 1985, and with the detention from 2 to 5 years.</p> <p><b>D.P.R 43/1973</b> – criminal association for the purpose of smuggling foreign tobacco products, penalty is fine of 26 000 euros for every ounce of conventional product and imprisonment from 3 – 7 years.</p> <p><b>Law no. 907/42, art. 45</b></p> <ul style="list-style-type: none"> <li>- s64, 66 – ways of committing smuggling (manufacturing or producing tobacco without authorization of the State Monopoly, unlawfully transporting, storing, holding, selling tobacco.</li> </ul>

	<p>- s72 - Anyone who detains machinery or tools for the manufacturing of tobacco, without the authorization of the State Monopoly commits smuggling, whenever the use of such machinery should be considered pre-arranged to the working of tobacco as to the manner in which the objects are found or from the characteristics of the guilty person or from other circumstances of the fact.</p> <p>- s73 – other cases of smuggling - Besides the cases provided for in the previous articles, anyone who avoid in any way the payment of the tobacco monopoly fees or the price due to the Administration of Monopoly commits smuggling.</p> <p>- s79 - Sanctions for the possession of machinery and tools - anyone who detains machinery and tools for manufacturing of tobacco, according to art. 72, is punished with the fine from 6.000 Liras (3 Euros) to 100.000 Liras (50 Euros).</p>
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Country	KENYA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol signed 29 May 2013
Licensing/ Marking	Marking unit packets and packages to determine origin and whether product legally sold in domestic market, marking all products manufactured in the country as for export or for sale only in Kenya.  Tax stamp
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p>Confiscation and destruction of illicit products</p> <p><b>The Trade Marks Act (As last amended by trademarks Amendment Act 2002)</b> Chpt. 506 – Part XI - Offences, and Restraint of Registration and Use of Certain Marks , art. 58H Forfeiture of Goods</p> <p><b>Penal Code</b> Chpt. 63 of the Laws of Kenya - Chpt. VI - Punishments, art. 29 Forfeiture – if property cannot be found, court as assess value of the property and order sum to be paid. - Chapter XXXVIII - Counterfeiting Trademarks, art. 381(2) persons committing misdemeanor shall forfeit chattels to which counterfeit trademark applied, instruments used to apply trademark.</p> <p><b>Customs and Excise Act</b> Chpt. 472 of the Laws of Kenya Part XIV – Offences: - Art. 174 – officer may seize and detain documents and goods. - Art. 175 – secure buildings, rooms, excisable goods and materials, vehicles and vessels, containers. Part XV – Penalties, Forfeiture and Seizures – art. 196 prohibited, restricted, uncustomed, imported or exported concealed goods liable to forfeiture. - Art. 197 vessels etc. liable for forfeiture. - Art. 198 – packaging and contents of packaging also liable to forfeiture. - Art. 199 – power to seize goods liable for forfeiture. - Art. 200 – procedure on seizure. - Art. 201 – effect of conviction on goods liable to forfeiture – on acquittal good to be released to person from whom seized or to be condemned. - Art. 204 – restoration of seizures.</p> <p><b>Proceeds of Crime and Anti-Money Laundering Act 2009</b>, nothing specific to confiscation of proceeds for ITTP offences.</p>
Intellectual Property Protections and Offences	<p><b>The Trade Marks Act (As last amended by trademarks Amendment Act 2002)</b> Chapter 506 Part XI - Offences, and Restraint of Registration and Use of Certain Marks: - Art. 58C Forgery of registered trademark.</p>

	<p>- Art. 58D Prohibition of forgery of registered trademark: (1) Offences – forging, falsely applying registered trademark, making instruments for purpose of forging registered trademark, making reproduction of registered trademark etc. Penalty fine 200 000 shillings max and/or imprisonment 5 years max. (2) defenses – acted without intent to defraud, employed to make the instruments but not interested in the goods and took reasonable precautions to avoid committing offence charged and at time of commission of offence no reason to suspect trademark not genuine and gave to police all information when asked.</p> <p>- Art. 58E - Prohibition of sale or importation of goods or performance of services with forged registered trade Mark, penalty fine 200 000 shillings max and/or imprisonment 5 years max.</p> <p>- Art. 58F – aiding and abetting offence, penalty fine 200 000 shillings max and/or imprisonment 5 years max.</p> <p>- Art. 58G – Evidence.</p>
<p><b>Other Offences</b></p>	<p><b>Penal Code</b> Chpt. 63 of the Laws of Kenya DIV VII, Chpt. XXXIV Definitions - Forgery, Coining, Counterfeiting and Similar Offences:</p> <p>-Art. 348 - intent to defraud.</p> <p>-Art. 352 – Forgery of, and other offences in relation to Stamps, penalty imprisonment 7 years.</p> <p>Chapter XXXVII – Counterfeit Stamps, art. 378, penalty imprisonment 7 years, and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited.</p> <p>Chapter XXXVIII - Counterfeiting Trademarks, art. 381 – person engaging in forging, counterfeiting trademarks, applying forged/counterfeit trademarks to chattel not intended for trademark etc., guilty of misdemeanor unless can prove acted without intent to defraud.</p> <p><b>Customs and Excise Act</b> Chpt. 472 Part IX – Manufacture of Excisable Goods, art. 90 license to manufacture, penalty imprisonment 3 years max and/or fine 500 000 shillings max., art. 93 power to revoke licence, art. 94 effect of revocation of licence. Section 111 – Provisions relating to manufacture of tobacco. Part XIV – Prevention of Smuggling and Evasion (arts. 179- 194):</p> <p>- Art. 179 - assembling 2 or more persons for contravening Act, penalty imprisonment 5 years max.</p> <p>- Art. 180 – armed violence, penalty imprisonment 20 years max.</p> <p>- Art. 184 – vessels adapted for concealing goods, penalty for vessel less than 250 tons fine 300 000 shillings max. and vessel and goods liable for forfeiture, penalty where vessel more than 250 tons fine of such amount as court deems just and vessel may be seized or detained until fine paid and goods liable to forfeiture and penalty for person in charge of vessel fine 1 500 000 shillings and vessel and goods liable to forfeiture.</p> <p>- Art. 185 – importing restricted/prohibited goods, penalty imprisonment 5 years max. and/or fine 3 times amount of duty and other taxes owed to max. of 1 500 000 shillings.</p> <p>- Art. 186 – importing/export concealed goods.</p> <p>- Art. 187 – offence to make or use false documents, penalty imprisonment 3 years max. and/or fine 1 500 000 shillings max.</p> <p>- Art. 188 –refuse to produce documents.</p> <p>- Art. 189 – use false measures, goods and materials liable to forfeiture.</p> <p>- Art. 190 – interfere with customs property, penalty 120 000 shillings max.</p> <p>- Art. 191 – knowingly buying, having in possession, receiving excisable goods manufactured contrary to provisions of Act, penalty imprisonment 3 years max. and/or fine 1 500 000 shillings max.</p> <p>- Art. 194 – aiding and abetting, penalty punished as though actually committed the offence.</p> <p>Part XV- Penalties, Forfeiture and Seizures – art. 195 where no penalty defined, penalty is fine of 1 500 000 shillings max.</p>

Country	MALAWI
WHO FCTC & Tobacco Protocol	WHO FCTC not signed Protocol not signed
Licensing/ Marking	<p><b>Malawi Customs and Excise Act</b>, Chapter 42:01</p> <ul style="list-style-type: none"> <li>- Art. 64.1. Except as otherwise provided in the customs laws no person shall manufacture any excisable goods either in whole or in part unless authorized by, and in accordance with the conditions of, a valid excise licence issued by the Controller: <ul style="list-style-type: none"> <li>Provided that no such licence shall be required (i) by a private individual in respect of excisable goods, other than spirits, manufactured by him for his own use or for the use of his family and not for sale or disposal for profit; (ii) by a person authorized by the Controller to manufacture excisable goods for experiment purposes and not for sale or disposal for profit subject to such conditions as the Controller may direct.</li> </ul> </li> <li>- Art. 65.2 - No excise licence shall be issued in respect of any premises until an appropriate entry of premises has been made.</li> </ul>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Penal Code</b>, Chapter 7:01 - Chapter VI Punishments, art. 30 Forfeiture</p> <p><b>Malawi Customs and Excise Act</b>, Chapter 42:01</p> <p>Part XVIII - Forfeiture, Seizure, Embargo and Abandonment:</p> <ul style="list-style-type: none"> <li>- Art. 145 – any goods in respect of which offence committed, conveyance used without lawful authority liable to forfeiture, if manufacturer of dutiable goods guilty of offence in respect of goods, all goods and machinery, and packages liable to forfeiture.</li> <li>- Art. 146 - Seizure of goods.</li> <li>- Art. 147 - Detention and disposal of seized goods, goods detained until determination of prosecution.</li> <li>- Art. 148 - Forfeited goods vest in the government and may be destroyed or sold or otherwise disposed of as controller thinks fit.</li> <li>- Art. 149 - Embargo on goods if believe offence committed in respect of goods released from customs control.</li> <li>- Art. 150 - Abandonment of goods.</li> <li>- Art. 151 – Saving.</li> </ul> <p>Part XIX Legal Proceedings</p> <ul style="list-style-type: none"> <li>- Art. 159 - Effect of conviction or acquittal on goods or conveyance liable to forfeiture.</li> <li>- Art. 160 - Proceedings for recovery of goods, etc.</li> <li>- Art. 161 - Owner of conveyance to be heard before forfeiture.</li> </ul> <p><b>Merchandise Marks Act</b>, Chapter 49:04</p> <ul style="list-style-type: none"> <li>- Art. 24 – forfeiture of goods in respect of/by means of which offence committed. (4) goods invested in government and sold or destroyed or appropriated to government</li> </ul> <p><b>Money Laundering and Proceeds of Serious Crime and Terrorist Financial Act, 2006</b></p>
Intellectual Property Protections and Offences	<p><b>Trade Marks Act</b>, Chapter 49:01 (1967)</p> <p>Part XI Offence and Penalties:</p> <ul style="list-style-type: none"> <li>- Art. 68 – false entry in register.</li> <li>- Art. 69 – falsely representing a trademark as registered, penalty fine £50 and imprisonment 6 months.</li> <li>- Art. 70 – deceiving or influencing Registrar or officer.</li> <li>- Art. 71 – witness giving false evidence.</li> <li>- Art. 72 – penalties unless otherwise provided, fine £500 and imprisonment for 3 years.</li> </ul> <p><b>Merchandise Marks Act</b>, Chapter 49:04</p> <p>Part II – Marking of Goods and Prohibitions in relation to Trademarks and Trade Descriptions:</p> <ul style="list-style-type: none"> <li>- Art. 4 – certain acts deemed to be forgery of trademark.</li> <li>- Art. 5 – forgery of trademarks and other prohibited acts.</li> <li>- Art. 6 - Prohibition of sale of goods bearing forged trade mark or false trade description.</li> </ul>

228	<ul style="list-style-type: none"> <li>- Art. 7 - Prohibition of sale of imported goods unless accompanied by indication of origin.</li> <li>- Art. 8 - Prohibition of sale of goods, whether made in Malawi or elsewhere, unless accompanied by indication of origin.</li> <li>- Art. 9 – not to import goods with false trademark or false trade description.</li> <li>- Art. 10 – manner of application of mark.</li> <li>- Art. 11 – marking of goods on importation.</li> <li>- Art. 12 – removal of indication of origin from imported goods is prohibited.</li> <li>- Art. 13 - Indication of origin and compliance with specified standards in the case of certain classes of goods.</li> <li>- Art. 23 – penalties first conviction fine £100 and imprisonment 1 year, second and subsequent conviction fine £200 and imprisonment 2 years.</li> </ul>
Other Offences	<p><b>Penal Code, Chapter 7:01</b> Part 2 Crimes, Division VII Forgery, Coining and Counterfeiting, art. 359 forgery of stamps: -Chpt. XXXVIII – art. 385 Counterfeit Stamps, penalty imprisonment 7 years, and confiscation of die, plate, instrument, paper etc. found in possession shall be forfeited. -Chpt. XXXIX – art. 388 Counterfeit Trademarks misdemeanor, offender forfeits articles to which counterfeited trademark applied, instrument for applying such trademark to government. -Division VIII Attempts and Conspiracies to Commit Crimes and Accessories after the Fact.</p> <p><b>Malawi Customs and Excise Act, Chapter 42:01</b> Part XVII Offences and Penalties: - Art. 132 – offences in respect of persons, including counterfeiting and conspiracy. - Art. 133 – accessories. - Art. 134 – offences in respect of goods, including smuggling. - Art. 135 – offences in respect of documents, books, licences etc., including forgery. - Art. 136 - Offences in respect of conveyances, conveyance adapted to conceal smuggled goods. - Art. 137 – Offences by masters or persons in charge of conveyances, including conveyances used in smuggling or in the carriage of smuggled goods. - Art. 138 – Offences in respect of customs areas. - Art. 139 – Offences by or in relation to officers. - Art. 140 – Special offences in respect of excise, manufacturing excisable goods contrary to customs law. - Art. 141 – Offences by officers of corporation, etc. - Art. 142 – Penalties for certain offences</p> <p>1. Person guilty of offence under Act with intent to defraud the government of duty or evade restriction or prohibition on importation or exportation of goods:</p> <p style="padding-left: 40px;">(a) in case of dutiable goods which are not prohibited goods, fine not less than 3 times the amount of the duty or K2,000 whichever is the lesser and not more than 10 times the amount of the duty or K2,000 whichever is the greater and imprisonment for 3 years; (b) in the case of prohibited goods, fine not less than 3 times the value of the goods or K2,000 whichever is the lesser and not more than 5 times the value of the goods or K2,000 whichever is the greater and imprisonment for 3 years; (c) in the case of an offence punishable under paragraphs (a) or (b), where person previously convicted of such an offence the minimum fine shall be double that otherwise provided for; (d) in the case of goods which are neither dutiable nor prohibited be liable to the penalties provided for in section 143.</p> <p>2. Notwithstanding any other provisions of the customs laws the amount of duty or the value of goods for the purposes of this section and of section 143, 146(5) and 162 may be determined by the Controller, and a certificate of such amount of duty or value under the hand of the Controller shall be prima facie evidence of the amount of duty or the value of such goods.</p> <p>- Art. 143 – General penalty, where no penalty specifically provided fine of K10,000 or to 3 times the value of the goods in respect of which the offence was committed, whichever is the greater, and imprisonment for 3 years.</p>

	<ul style="list-style-type: none"> <li>- Art. 144 – all offences cognizable to police</li> </ul> <p>Part XIX Legal Proceedings:</p> <ul style="list-style-type: none"> <li>- Art. 152 - jurisdiction in respect of claims.</li> <li>- Art. 153 - General immunity from legal proceedings.</li> <li>- Art. 154 - Actions by or against the controller.</li> <li>- Art. 155 - Limitation of proceedings.</li> <li>- Art. 156 - Provisions relating to burden of proof.</li> <li>- Art. 157 - Provisions relating to evidence.</li> <li>- Art. 158 - Provisions relating to witnesses.</li> </ul>
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Country	MALAYSIA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 15 December 2005 Protocol not signed
Licensing/ Marking	Licensing required under Section 3 of the <b>Industrial Co-ordination Act 1975</b> Security mark with visible and invisible feature applied since 2004 on each cigarette pack intended for the domestic market and duty free sales. Markings are not linked to tax stamps.
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Trademark Act (Act 175 of 1976, as last amended by Act A1138 of 2002)</b></p> <ul style="list-style-type: none"> <li>- Art. 70F - secure storage of seized goods.</li> <li>- Art. 70G - notice to importer and applicant that the goods were seized.</li> <li>- Art. 70H - inspection, release, etc., of seized goods by authorization of Registrar to applicant or importer.</li> <li>- Art. 70I - forfeiture of seized goods by consent.</li> <li>- Art. 70J - compulsory release of seized goods to importer on expiration of retention period where applicant has not instituted proceedings.</li> <li>- Art. 70K - compensation for failure to take action. (2) Where the Court is satisfied that the person aggrieved had suffered loss or damage as a result of the seizure of the goods, the court may order the applicant to pay compensation in such amount as the Court thinks fit to the aggrieved person.</li> <li>- Art. 70L - actions for infringement of registered trade mark, court may order seized goods may or may not be released to importer, may order forfeiture of seized goods.</li> <li>- Art. 70M - disposal of seized goods ordered to be forfeited. - If the Court orders that seized goods are to be forfeited, the goods shall be disposed of in the manner as directed by the Court.</li> </ul> <p><b>Trademark Descriptions Act 1972 (Act 87)</b></p> <p>Part VIII Enforcement – art. 28 – power to enter premises and inspect and seize goods and documents. Part IX – art. 32 forfeiture of goods shall occur if proved to satisfaction of court that offence committed under Act and goods were subject matter of or were used in commission of the offence notwithstanding no person convicted of offence. (3) if no prosecution goods taken and deemed to be forfeited after 1 month from date of seizure unless claim made. (7) forfeited goods delivered to assistant controller and disposed of in accordance with his directions (8) where goods perishable or custody involves unreasonable expense or inconvenience goods may be sold and proceeds of sale held to abide by result of prosecution or claim.</p> <p><b>Industrial Co-ordination Act 1975</b></p> <ul style="list-style-type: none"> <li>- s9 – enforcement – (3) if reasonable cause to believe offence committed can issue warrant for search and seizure of products and manufacturing and any other thing in respect of which offence committed (4) if risk of items being removed authorized officer can search and seize without a warrant.</li> </ul>

	<p><b>Customs Act 1967, Act 235</b> Part XII – inspection, investigation, search, seizure and arrest: - 114. Seizure of goods the subject of an offence. - 115. Return or disposal of movable property.</p> <p><b>Anti-Money Laundering Act</b></p>
<p><b>Intellectual Property Protections and Offences</b></p>	<p><b>Trademark Act (Act 175 of 1976, as last amended by Act A1138 of 2002)</b> - Art. 70D - restriction on importation of counterfeit trade mark goods – up to the owner of the registered trademark to submit an application to the Registrar that counterfeit goods are expected to be imported and that he objects to the importation. If the Registrar approves he shall take the necessary action to prohibit any person from importing goods identified in the notice, not being goods in transit, and shall seize and detain the identified goods. - Art. 70E - security - Art. 70N - insufficient security. - Art. 70O - ex-officio action. - Art. 70P - regulations relating to border measures. - Art. 81 - falsely representing a trademark as registered, penalty fine 500 ringgit max. and/or imprisonment 2 months max.</p> <p><b>Trademark Descriptions Act 1972 (Act 87)</b> Part II – art. 3 – prohibition of false trade descriptions. Part IV – art. 16 – trade mark infringement and passing off action, court may make order declaring that infringing trade or other mark is a false trade description. Such an order is called a trade description order. Part V – art. 17 – prohibition of importation of goods bearing false indication of origin. Part VI – art. 18 – penalties for offences fine 100 000 ringgit max. and/or imprisonment 3 years max., second or subsequent offence fine 200 000 ringgit max. and/or imprisonment 6 years max. Body corporate guilty of offence – fine 250 000 ringgit max. and for second and subsequent offence fine 500 000 ringgit max.</p>
<p><b>Other Offences</b></p>	<p><b>Industrial Co-ordination Act 1975</b> - s3 – licence required for manufacturing activity, penalty fine 2000 ringgit max. or imprisonment 6 months max. and further fine of 1000 ringgit for everyday during which default continues. - s4 – application for and issue and conditions of licence . - s6 revocation of a licence if manufacturer has not complied with conditions of issue of licence, is no longer engaged in manufacturing activity for which licence issued, or made false statement in application for licence.</p> <p><b>Penal Code 1997 Act 574</b> Chpt. XII Offences relating to coins and government stamps: - Art. 255 counterfeiting government stamp, penalty imprisonment up to 20 years and fine. - Art. 256 - having possession of an instrument or material for the purpose of counterfeiting a Government stamp, penalty imprisonment 7 years max. and fine. - Art. 257 - making or selling an instrument for the purpose of counterfeiting a Government stamp, penalty imprisonment 7 years max. and fine. - Art. 258. sale of counterfeit Government stamp, penalty imprisonment 7 years max. and fine. - Art. 259 - having possession of a counterfeit Government stamp, penalty imprisonment 7 years max. and fine. - Art. 260 - using as genuine a Government stamp known to be counterfeit, penalty imprisonment 7 years max. and/or fine. - Art. 261 - effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government, penalty imprisonment 3 years max. and/or fine. - Art. 262 - using a Government stamp known to have been before used, penalty imprisonment 2 years max. and/or fine. - Art. 263 - erasure of mark denoting that stamp has been used, penalty imprisonment 3 years max. and/or fine.</p>

<b>Customs Act 1967, Act 235</b>	<p>Part XIII Provisions as to trials and proceedings. Part XIV Offences and Penalties - art. 133 - Penalty on making incorrect declarations and on falsifying documents, penalty fine 500 000 ringgit max. and/or imprisonment 5 years max.</p> <ul style="list-style-type: none"> <li>- Art.134 - penalty on refusing to answer questions or on giving false information, penalty imprisonment 6 months max. and/or fine 1000 ringgit max.</li> <li>- Art. 135 - penalty for various smuggling offences: (1)(a) importing, exporting, (b) shipping, unshipping, delivering uncustomed or prohibited goods, (c) illegally removing or withdrawing goods from customs control, (d) harbouring, concealing, keeping, possessing or causing such of uncustomed or prohibited goods, (e) knowingly conveying, removing, depositing, or dealing with dutiable, uncustomed or prohibited goods with intent to defraud the government of any duties owed or evade any provisions of Act, (g) fraudulent evasion of customs duty: Penalties for dutiable goods first offence fine not less than 10 times the amount of the customs duty or 50 000 ringgit, whichever is lesser, and not more than 20 times the amount of customs duty or 100 000 ringgit, whichever is greater, and/or imprisonment for 3 years max., second or subsequent offence fine of not less than 10 times the amount of customs duty or 100 000 ringgit, whichever is lesser, and not more than 40 times the customs duty or 500 000 ringgit, whichever is greater, and/or imprisonment 5 years max. Where amount of customs duty cannot be ascertained, penalty may be fine 500 000 ringgit max. and/or imprisonment 5 years max.</li> <li>- Art. 136 - penalty for assaulting or obstructing officers of customs and rescuing goods, penalty first offence imprisonment 3 years max. and/or fine 10 000 ringgit, second or subsequent offence imprisonment 5 years max. and/or fine 20 000 ringgit max.</li> <li>- Art. 137 - penalty for offering or receiving bribes, penalty imprisonment 5 years max. and/or fine 10 000 ringgit max.</li> <li>- Art. 138 - penalty for offences not otherwise provided for, e.g. breach of licence conditions, penalty fine 20 000 ringgit max. and/or imprisonment 5 years max.</li> <li>- Art. 139 - attempts and abetments, penalty same as if committed the offence.</li> <li>- Art. 140 - offences by bodies of persons and by servants and agents.</li> <li>- Art. 141 – rewards, director general may grant rewards to any services rendered in connection with smuggling offences and seizures made.</li> </ul>
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<b>Country</b>	<b>MOROCCO</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed on 16 April 2004 but not ratified Protocol not signed</p>
<b>Licensing/ Marking</b>	Tax stamp
<b>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</b>	<p><b>Code des Douanes et Impôts Indirects approuvé par le dahir portant loi n° 1-77-339 du 9 octobre 1977 (Customs and Indirect Taxation Code)</b> The Code provides for confiscation of goods the subject of the offence or used in the offence, as well as conveyances, vessels etc. used where offence proven.</p> <p><b>Law No. 17-97 on the Protection of Industrial Property (promulgated by Dahir No. 1-00-91 of 9 Kaada 1420 (February 15, 2000))</b></p> <ul style="list-style-type: none"> <li>- Art. 206 - customs detention procedures, and seizure procedures. Customs and Indirect Tax Administration may, upon application filed by registered trademark owner, suspend circulation of goods being counterfeit, or bear similar marks causing confusion with authentic goods. When customs knows or suspects imported or in transit goods are counterfeit, it automatically suspends them from circulation.</li> <li>- Art. 228 - Court may order destruction of counterfeit goods that are the property of the counterfeiter and all equipment used to manufacture the counterfeit products following a criminal or civil proceedings where offence proven to be committed.</li> <li>- Art. 224 - in case of infringement, holder of exclusive right can ask court to issue a descriptive seizure order. Applicant of such order to pay bond to court to cover any damage suffered by defendant should action prove groundless. Rights holder has 30 days from execution of seizure in which to file an infringement action with the court. Remedies – following successful civil action or criminal prosecution, infringing goods and equipment used in their manufacture will be destroyed.</li> </ul>
<b>Intellectual Property</b>	<p><b>Law No. 17-97 on the Protection of Industrial Property (promulgated by Dahir No. 1-00-91 of 9 Kaada 1420 (February 15, 2000))</b> Chpt. V – Factory Marks, Trade Marks and Service Marks:</p>

<b>Protections and Offences</b>	<p>- Art. 225 - counterfeiting is a criminal offence and subject to penalties including fines and imprisonment. Penalties range from 1 – 6 months imprisonment and/or 50 000 – 500 000 dirhams in fines if fraudulently affix mark belonging to another, using mark without authorization, held goods which bore fraudulently affixed mark, or infringing mark, and deliver and supply good other than one requested under registered trademark.</p> <p>- Art. 226. The following shall be punishable by 1 - 6 months' imprisonment and/or fine of 25,000 to 250,000 dirhams max.:</p> <p>(1) those who, without infringing a registered mark, have made a fraudulent imitation thereof which is liable to deceive the buyer or who have used a fraudulently imitated mark;</p> <p>(2) those who have used a registered mark bearing indications liable to deceive the buyer as to the nature, substantive qualities, composition or content in terms of useful components, the kind or origin of the article or good designated;</p> <p>(3) those who have held without legitimate grounds goods which they knew bore a fraudulently imitated mark or those who knowingly sold, placed on sale or offered to supply goods or services under such a mark.</p> <p>- Any person infringing a manufacturer's trademark may be prosecuted ex officio by the public prosecutor without the need for the rights holder or third party to file a complaint.</p> <p><b>Law No. 13-99 creating the Moroccan Industrial and Commercial Property Office</b> (promulgated by Dahir No. 1-00-71 of 9 Kaada 1420 (February 15, 2000)).</p>
<b>Other Offences</b>	<p><b>Penal Code (promulgated by Dahir no. 1-59-413 of 26 November 1962) (28 Jumada II 1382)</b></p> <p>Chpt. VI Des Faux, Contrefaçons Et Usurpations, Section II de la contrefaçon des sceaux de l'état et des poinçons, timbres et marques (arts. 342 – 350). Penalties range from confinement of 5 – 20 years for counterfeiting or falsifying Government stamps, or using counterfeit or falsified Government stamps. If the deed is not too serious, penalty is imprisonment 1 – 6 months and/or fine 200 – 1000 dirhams. More serious offences penalties are imprisonment 1 – 5 years and fine of 250 – 10 000 dirhams.</p> <p><b>Code des Douanes et Impôts Indirects approuvé par le dahir portant loi n° 1-77-339 du 9 octobre 1977 (Customs and Indirect Taxation Code)</b></p> <p>Titre VIII Impôts Indirects -Taxes Intérieures de Consommation Relevant de L'Administration, art. 182, 1° The administration is responsible for the liquidation and recovery of internal consumption taxes applicable to the following categories of imported goods and works or products on the territory subject to the tax : - manufactured tobacco.</p> <p>Titre IX : Contentieux, Section II -Peines et mesures de sûreté en matière d'infractions douanières</p>

<b>Country</b>	<b>NIGERIA</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed and ratified – entered into force 18 January 2006</p> <p>Protocol not signed</p>
<b>Licensing/ Marking</b>	<p><b>Customs and Excise Management Act 2004</b></p> <p>- s115 – (1) No person shall manufacture any description of tobacco subject to a duty of excise unless, he holds an excise licence as a tobacco manufacturer.</p> <p>- s116 – (1) The Minister may make regulations (a) regulating the manufacture of tobacco by a tobacco manufacturer; (b) for securing the excise duties on tobacco.</p> <p>(2) Any person contravening or failing to comply with any regulation made under this section shall be liable to a fine of four hundred naira and any goods or article in respect of which the offence was committed shall be forfeited.</p> <p>Part IX. —Excise Licences, Entries, etc. ss121-127 general provisions covering excise licences.</p> <p>Two tobacco bills waiting to be enacted; a 2012 bill (to repeal Tobacco Control Act 1990) sponsored in the Senate by Senator Ifeanyi Okowa and a recent 2013 bill raised in the House of Representatives, sponsored by Senator Yacoob Bush-Alebiosu.</p> <p>A third bill on tobacco regulation has also been initiated at the executive level and is being redrafted by the Federal Ministry of Health.</p> <p>The 2012 bill seeks to provide a legal framework for the control of the production, manufacture, sale, labelling, advertising, promotion, sponsorship, use of tobacco products and exposure to tobacco smoke. The bill states that any person convicted of an offence under the Act for which no other penalty is provided shall be liable to a fine not exceeding N500,000 or a prison term not exceeding 6 months. For corporate offenders, the fine is N2,000,000.</p>

<b>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</b>	<p>No single legal framework. Law and practice varies and depends on the type of crime and statute being enforced. Several pieces of legislation authorize forfeiture and property subject to forfeiture is the subject matter or constitutes evidence of the offence (s.47 Corrupt Practices and Other Related Offences Act); property confiscated to compensate for loss arising from fraud; instrumentalities of crime confiscated; all property of offender seized or confiscated; forfeiture of proceeds of crime.</p> <p>Some limited authorization of non-conviction based forfeiture of proceeds under some statutes e.g. Advance Fee Fraud Act 2006 and Corrupt Practices and Other Related Offences Act 2000.</p> <p><b>Customs and Excise Management Act 2004</b></p> <ul style="list-style-type: none"> <li>- s46 - forfeiture of goods improperly imported.</li> <li>- s63 - forfeiture of goods improperly exported, etc.</li> </ul> <p><b>Money Laundering (Prohibition) Act 2011</b></p> <ul style="list-style-type: none"> <li>- s115(2), s116(2) – forfeiture of goods in respect of which an offence is committed.</li> </ul> <p>Part XI, ss144-169 – general powers of customs officers for search, forfeiture of goods where mark or seal placed on goods by the customs officer if broken without permission, search, seize, detain (s147).</p> <p>Part XII Forfeiture and Legal Proceedings, ss167-175 – officer can seize or detain thing liable for forfeiture, including ships, aircraft and vehicles.</p> <p><b>The following Acts deal with asset recovery and confiscation of proceeds in various sectors:</b> Banks and Other Financial Institutions Decree, Criminal Procedure Act, Economic and Financial Crimes Establishment Act, Corrupt Practices and Other Related Offences Act 2004, Prevention of Terrorism Act 2011, National Drug Law Enforcement Agency Act 1990</p>
<b>Intellectual Property Protections and Offences</b>	<p><b>Trade Marks Act</b> (Chapter 436) 1990- Offences and restraint of use of Arms of Nigeria</p> <ul style="list-style-type: none"> <li>- s61 (1) Any person who makes a representation: <ul style="list-style-type: none"> <li>(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or</li> <li>(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered; or</li> <li>(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered; or</li> <li>(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right, shall be liable on summary conviction to a fine not exceeding two hundred naira.</li> </ul> </li> </ul> <p><b>Criminal Code Act</b> (Chapter 77) - Division 3 Forgery and Like Offences, s465 – making false document, counterfeiting seal or mark, penalty is imprisonment for 7 years.</p>
<b>Other Offences</b>	<p><b>Criminal Code Act</b> of the Federation of Nigeria 1990 (Chapter 77 )</p> <p>Chpt 10 – Unlawful Assemblies: Breaches of the Peace:</p> <ul style="list-style-type: none"> <li>- s78 - Any persons who assemble together to the number of three or more, armed with firearms, bows and arrows, spears, swords, knives, or other dangerous or offensive weapons, in order to effect or aid in effecting any of the following purposes: <ul style="list-style-type: none"> <li>(a) the unlawful shipping, unshipping, loading, moving, or carrying away of any goods the importation of which is prohibited, or any goods liable to customs duties, which duties have not been paid or secured;</li> <li>(b) the rescuing or taking of any such goods from any person authorised to seize them, or from any person employed by him, or assisting him, or from any place where any such person has put them;</li> <li>(c) the rescuing of any person who has been arrested on a charge of any offence relating to the customs;</li> <li>(d) the prevention of the arrest of any person guilty of any such offence, or of any person aiding in effecting any of the purposes in this section mentioned;</li> </ul> </li> </ul> <p>are guilty of a felony, and each of them is liable to imprisonment for seven years.</p> <ul style="list-style-type: none"> <li>- s79 - Any persons who are found assembled together, to the number of six or more, having with them any goods liable to forfeiture under any law relating to the customs, and carrying firearms, bows and arrows, spears, swords, knives, or other dangerous or offensive weapons, or disguised, are guilty of a felony, and each of them is liable to imprisonment for seven years.</li> </ul> <p>Chpt 12 – Corruption and abuse of office offences.</p> <p>Chpt 18 – Miscellaneous Offences against Public Authority, s194-196 offences against customs officers engaged in their duty. Penalties range from life imprisonment for shooting at a vessel which is in use by a customs official or shooting at a customs official, to 3 years imprisonment for assaulting or resisting a customs official employed for the prevention of smuggling.</p>

**Customs and Excise Management Act 2004**

- s47 - penalty for improper importation/evasion of duty or concealment of goods holding a different description- 5 years imprisonment without option of a fine.
- s64 - penalties for improper exportation of goods, etc. 5 years imprisonment without option of a fine.
- Part VII Tobacco, s115 (2) If any person manufactures any such tobacco otherwise than under and in accordance with an excise licence, he shall be liable to a fine of one thousand naira and any such tobacco so manufactured by him or in his possession, and any plant and materials in his possession capable of being used in the manufacture of such tobacco, shall be forfeited.
- s116 (3) - if at any time the proper officer finds that the quantity of tobacco in the factory of a tobacco manufacturer differs from the quantity which ought to be therein according to any books or other documents kept by the tobacco manufacturer in pursuance of any regulations made under this section and such difference cannot be accounted for to the satisfaction of the Board, then:
  - (a) if the quantity in the factory exceeds the quantity which ought to be therein, the excess shall be forfeited.
  - (b) if the quantity in the factory is less than the quantity which ought to be therein, the tobacco manufacturer shall be liable to a fine of double the excise duty at the highest rate on a quantity of manufactured tobacco equal to the quantity of the deficiency.
- s117 (1) - Subject to subsections (2) and (3) of this section, the excise duty chargeable on manufactured tobacco shall excise become due and payable by the tobacco manufacturer on delivery of such tobacco from the factory. (2) The Board may allow payment of the duty to be deferred upon such terms as it sees fit: Provided that the date of payment shall not be later than the 21st day of the month next following that in which the duty became due. (3) The Board may, subject to such conditions as it sees fit to impose, allow manufactured tobacco to be delivered from a tobacco manufacturer’s factory for exportation or loading as stores in accordance with the customs laws without payment of the excise duty chargeable thereon.
- General offences:
  - s160 – excise duty not paid, penalty fine twice the amount of customs duty or 600 naira whichever is greater.
  - s161 – making document or statement untrue in any material particular, knowingly or recklessly, penalty fine of 1000 naira and/or imprisonment 2 years.
  - s162 – counterfeiting/falsifying document, seal, signature, other mark, penalty fine of 1000 naira and/or imprisonment 2 years.
  - s163 – using false or unjust scales, penalty fine of 400 naira and scales forfeited.
  - s164 If any person
    - (a) knowingly and with intent to defraud the Federal Government of any duty payable thereon, or to evade any prohibition with respect thereto, acquires possession of, or is in any way concerned in the carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or Government warehouse or which are chargeable with a duty which has not been paid, or with respect to the importation, exportation or carriage coastwise of which any prohibition is for the time being in force; or
    - (b) is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion of any duty chargeable thereon or of any such prohibition as aforesaid or of any provision of this Act applicable to those goods,
 he shall be liable to a fine of 6 times the value of the goods or 400 naira, whichever is the greater, and/or two years imprisonment.

<b>Country</b>	<b>PANAMA</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol signed 10 January 2013
<b>Licensing/ Marking</b>	<b>Tobacco Control Law N. 13 (24 January 2008)</b> Partial- unit packets and packages marked to determine origin, date of production and expiration and exact place where the product will be sold. The bar code on the product shall not be adulterated or have tags attached above. Tax stamps and markings for the purposes of tracking are not required. Regulatory regime for licensing Tobacco dealers. Importers and wholesalers of tobacco leaf and equipment for production shall only sell to licensed producers.

Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p>No confiscation of proceeds derived from ITTP</p> <p><b>Law No. 30 of 8 November 1984</b> allows the confiscation of the instruments and effects of smuggling.</p> <p>Article 75 of the <b>Panama Criminal Code</b> allows for confiscation of the instruments and effects of crime. <i>(The judicial interpretation of art. 75 in order to extend the confiscation to crime proceeds has been quite limited and quite restrictive).</i></p> <p><b>Anti- Money Laundering laws No. 45 (2002) and No. 12 (2005)</b></p> <p><b>Law No. 35 of May 10, 1996 on Industrial Property</b> Title VII - Of the Unlawful Use of Industrial Property Rights: - Art. 166 – in case of unlawful use of Industrial Property Rights seizure of goods and machinery used shall be effected and donated to charity after removing all distinctive marks. If removal of marks not possible and owner does not consent to donation goods shall be destroyed by proper authorities.</p>
Intellectual Property Protections and Offences	<p><b>Law No. 35 of May 10, 1996 on Industrial Property</b> Title VII - Of the Unlawful Use of Industrial Property Rights: - Art. 164 – covers various activities such as manufacturing and possessing, knowingly selling distributing infringing goods, falsifying or altering trademarks, trade names. - Art. 165 – penalties include fines ranging from 10 000 – 200 000 balboas; if operating in FTZ fine equivalent to 25% of monthly commercial activity of company and shall not be more than 75 000 balboas; (2) suspension of right to engage in activity for 3 months; (3) suspend or cancel operation code or permit issued by administration of the Colon Free Zone. Suspension applied for minimum of 3 months. In case of repeat offenders penalties shall be applied for 1 year and fines can be up to 4 times the maximum.</p> <p><b>Executive Decree No. 7 of February 17, 1998</b> regulating Law No. 35 of May 10, 1996 on Industrial Property - Title VII Of Unlawful Use of Industrial Property Rights</p>
Other Offences	<p><b>Law No. 30 of 8 November 1984</b> on smuggling and customs fraud, including tax evasion. These offences carry a penalty/fine from 1 to 5 times the value of the infringing products.</p> <p><b>Customs Act No. 1 (13 February 2008)</b> article 100. Protection of intellectual property rights as established in the basic principles of the WTO.</p> <p><b>Penal Code of the Republic of Panama adopted by Law No. 14, May 18, 2007</b> - Title VII, Chapter VI on crimes against intellectual property carries a maximum 6 years imprisonment penalty. - Title IX, Chapter IV on crimes against public health carries a maximum 10 years imprisonment penalty. - Title IX, Chapter VII on organized crime carries a maximum 5 years imprisonment penalty. - Title X, Chapter I/II, on corruption and offences against the public administration and public faith carries a maximum 10 years imprisonment penalty.</p>

Country	<b>PARAGUAY</b>
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 25 December 2006 Protocol not signed
Licensing/ Marking	No markings on unit packets and packages to determine origin of product and legal domestic market. In bidding process for the tracking system of tobacco products.

Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Paraguayan Criminal Code</b></p> <ul style="list-style-type: none"> <li>- Art. 86 - allows for confiscation of the instruments and effects of crime, only when they may be dangerous for the community or may be used to commit other crimes.</li> <li>- Art. 90 - allows the 'special' confiscation of crime proceeds under specific circumstances.</li> </ul> <p><b>Article 196 of the Paraguayan Criminal Code on Anti-Money Laundering.</b></p> <p>In relation to IP – See <b>Law No. 1.294/1998 on Trademarks</b> - Title IV - Chapter I – Civil and Criminal Proceedings for Infringement, art. 85- (c) the attachment or confiscation of the infringing products, resulting from the infringement, as well as materials and devices mainly used to commit the infringement; (e) the measures required to prevent the continuation or repetition of the infringement, including the destruction of the products, materials or devices used for this purpose.</p>
Intellectual Property Protections and Offences	<p><b>Law No. 3.440/2008</b> amending various provisions of Law No. 1.160/1997, Criminal Code including Article 184 on crimes against intellectual property, copyright and other related rights.</p> <p><b>Law No. 1.294/1998 on Trademarks</b></p> <p>Title IV - Chapter I – Civil and Criminal Proceedings for Infringement:</p> <ul style="list-style-type: none"> <li>- Art. 89 - the following shall be liable to an obligatory term of 1-3 years in prison and a minimum fine of 1000 - 3000 days' wages: <ul style="list-style-type: none"> <li>(a) persons who falsify or adulterate a registered mark;</li> <li>(b) persons who fraudulently imitate a registered mark;</li> <li>(c) persons who knowingly stock, put on sale, sell or offer for sale or distribute products or services bearing a mark that is falsified, fraudulently imitated or unlawfully affixed;</li> <li>(d) persons who, with fraudulent intent, affix or cause to be affixed on a product or service a declaration or any false designation regarding the nature, quality, quantity, number, weight or measure, the manufacturer's name, the place or country in which the product or service has been manufactured or supplied; and</li> <li>(e) persons who knowingly put on sale, sell or offer for sale products or services bearing any of the false declarations mentioned above.</li> </ul> </li> <li>- Art. 90 - penalty defined in the preceding article shall also apply to persons who make fraudulent use of a trade name.</li> <li>- Art. 91 - For offence to have occurred, it shall not be necessary for the falsification, imitation or fraudulent affixing of the mark to apply to all the goods, affixing on a single specimen shall suffice.</li> <li>- Art. 93 – offences in Arts. 89 and 90 liable to public criminal proceedings.</li> <li>- Art. 94 – period of limitation is 2 years</li> </ul>
Other Offences	<p><b>Customs Act No. 2.422/04</b> - art. 336 - crime against smuggling carries a maximum 5 years imprisonment penalty.</p> <p><b>Penal Code of the Republic of Paraguay</b></p> <ul style="list-style-type: none"> <li>- Art. 195 - offence of receiving illegal goods carries a maximum 10 years imprisonment penalty.</li> <li>- Art. 239 - organized crime carries a maximum 5 years imprisonment penalty.</li> <li>- Art. 250 - 253 - crimes against public faith carries a maximum 5 years imprisonment penalty.</li> <li>- Art. 261 - tax evasion carries a maximum 5 years imprisonment penalty.</li> <li>- Art. 300 - 303 - corruption carries a maximum 10 years imprisonment penalty.</li> </ul> <p><b>Excise Tax Act, Law No. 2421/04</b> - Sanctions and fines against tax infraction.</p>
Country	PHILIPPINES
WHO FCTC & Tobacco Protocol	<p>WHO FCTC signed and ratified – entered into force 4 September 2005</p> <p>Protocol not signed</p>

Licensing/ Marking	<p><b>National Internal Revenue Code (Republic Act no. 10351)</b></p> <ul style="list-style-type: none"> <li>- s6(1) – internal revenue, non-removable fusion stamps.</li> <li>- s6(2) – importation or manufacture of cigarette paper without permit prohibited. Only registered manufacturers authorized to buy from permit holders, but cigarette paper seller must secure written authority from Commissioner of Internal Revenue, plus written confirmation of the buyer. Manufacturers to keep manufacturer’s cigarette paper registry book detailing debit entries (date of receipt of paper, date of authority of Commissioner, contact details of person from whom received, number, brand, color of bobbins/rolls received showing length in meters), credit entries (date of disposal/use, number, brand, color of bobbins/rolls disposed of/used, length in meters). Local manufacturers of cigars and cigarettes to keep subsidiary books (inventories of imported leaf tobacco volume and value, inventories of local tobacco volume and value, cost of manufacture of each brand of cigarettes, inventories of cigarettes produced on a per brand basis volumes and values).</li> </ul> <p><b>Tobacco Regulation Act of 2003 (Republic Act No. 9211)</b> - an Act regulating the packaging, use, sale distribution and advertisements of tobacco products, smoking bans in public places, minimum age sales, retailer compliance with respect to self-service etc. Penalties for infringements include revocation of licenses and permits.</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Intellectual Property Code of the Philippines (Republic Act No. 8293)</b> – s157 – Court can order that infringing material be destroyed. (2) For counterfeit goods simple removal of affixed trademark is not sufficient to permit release of goods into channels or commerce other than in exceptional cases.</p> <p><b>The Revised Penal Code (Act No. 3815 of December 8, 1930)</b></p> <ul style="list-style-type: none"> <li>- s186 – property mentioned liable to be forfeited to government.</li> </ul> <p><b>Tariff and Customs Code of the Philippines</b></p>
Intellectual Property Protections and Offences	<p><b>Intellectual Property Code of the Philippines (Republic Act No. 8293)</b> – s155 using/reproducing without consent of owner reproductions, counterfeits, copies or colorable imitations of registered marks, penalties 2 – 5 years imprisonment and fine of 50 000 – 200 000 pesos.</p> <ul style="list-style-type: none"> <li>- s156 – action, damages and injunction for infringement.</li> <li>- s157 – court can order infringing goods to be disposed of, without harm to rights holder, or destroyed.</li> <li>- s169 – false Designations of Origin; False Description or Representation.</li> <li>- s170 – penalties imprisonment from 2 - 5 years and a fine ranging from 50 000 – 200 000 pesos.</li> </ul>
Other Offences	<p><b>Tariff and Customs Code of the Philippines as amended by Republic Act N°4712</b></p> <ul style="list-style-type: none"> <li>- s102 – prohibited importations – e) machines for distribution of cigars and cigarettes.</li> </ul> <p>Part 3, Penal Provisions:</p> <ul style="list-style-type: none"> <li>- s3601 - unlawful Importation - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of 600 pesos min. – 5 000 pesos max. and imprisonment for 6 months - 2 years max. and, if the offender is an alien, he shall be deported after serving the sentence.</li> <li>- s3602 – fraudulent practices against customs revenue - makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, false statement, written or verbal, or any false or fraudulent practice whatsoever, or shall be guilty of any willful act or omission by means of whereof the Government might be deprived of the lawful duties, taxes and other charges, or any portion thereof, accruing from the article or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, shall, for each offense, be punished by a fine of between 600 – 5 000 pesos and imprisonment from 6 months - 2 years and if the offender is an alien, he shall be deported after serving the sentence.</li> <li>- s3605 – concealment or destruction of evidence of fraud, penalty fine 2000 pesos max. and/or imprisonment 1 year max.</li> <li>- s3607 – alteration of Marks on Any Package of Warehoused Articles placed by customs, penalty fine 1000 pesos max.</li> <li>- s3608 – fraudulent Opening or Entering of Warehouse, penalty fine 1000 pesos max. and/or imprisonment 1 year max.</li> <li>- s3609 – fraudulent Removal or Concealment of Warehoused Articles, penalty fine 2000 pesos max. and/or imprisonment 1 year max.</li> <li>- s3610 – violation of Tariff and Customs Laws and Regulations in General — Any person who violates a provision of this Code or regulations pursuant thereto, for which delinquency no specific penalty is provided, shall be punished by a fine of not more than four hundred pesos or by imprisonment for not more than six months, or both.</li> </ul> <p><b>The Revised Penal Code (Act No. 3815 of December 8, 1930)</b></p>

	<p>Title 4 Crimes Against Public Interest – counterfeiting of coins, forgeries, false testimony, frauds</p> <ul style="list-style-type: none"> <li>- Art. 186 - monopolies and combinations in restraint of trade, penalty correctional imprisonment for minimum period and/or fine of 200 – 6 000 pesos.</li> <li>- Art. 188 - subsisting and altering trade-mark, trade-names, or service marks, penalty correctional imprisonment in its minimum period and/or fine from 50 – 2 000 pesos.</li> </ul>
<b>Country</b>	<b>POLAND</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed and ratified – entered into force 14 December 2006</p> <p>Protocol not signed</p>
<b>Licensing/ Marking</b>	<p><b>Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001</b> on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (J. of EU Laws of 18 July 2001)</p> <p><b>Act of 9 November 1995 on protection of health against the effects of using tobacco and tobacco products (as amended) (J. of Laws 96.10.55)</b> - Marking of unit packages to assist in determining origin and whether product legally sold in domestic market</p>
<b>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</b>	<p><b>Polish Penal Fiscal Code</b></p> <ul style="list-style-type: none"> <li>- Art. 22 – forfeiture, destruction of machinery and components used for illicit manufacturing.</li> <li>- Art. 33 and 41.2-4 – obligatory forfeiture of proceeds of crime and obligation to repay due tax.</li> <li>- Art. 232a – securing and destruction of crucial material evidence.</li> <li>- Art. 291 – investigating and securing defendant’s assets.</li> </ul> <p><b>Industrial Property Law 2007</b></p> <ul style="list-style-type: none"> <li>- Art. 306 - forfeiture, sale, destruction of machinery and components used for illicit manufacturing.</li> </ul> <p><b>Criminal Code 1997</b></p> <p>Chpt 5:</p> <ul style="list-style-type: none"> <li>- Art. 44 – forfeiture of items obtained as a result of offence, items used or intended to be used to commit the offence.</li> <li>- Art. 45 - § 1. If the perpetrator has obtained, even if indirectly, a financial benefit from the commission of an offence, the court may decree its forfeiture or the forfeiture of its equivalent. The forfeiture shall not be decreed, in part or in whole, if the benefit or its equivalent is to be returned to the wronged person or to another entity. § 2. In the case of sentencing a perpetrator referred to in article 65 or a perpetrator who has obtained a substantial benefit from the commission of an offence, the court shall decree the forfeiture of the benefit obtained or its financial equivalent. The provision of § 11, sentence two, shall apply accordingly.</li> </ul> <p>Chpt 10:</p> <ul style="list-style-type: none"> <li>- Art. 100 – forfeiture.</li> <li>- Art. 229 - § 7 (61) – in the event of a conviction for an offense specified in § 1 or 2, the court decides the forfeiture of items derived directly or indirectly from the crime, as well as the benefits of this crime, or their equivalent, even if they did not constitute property of the perpetrator. Forfeiture is not predicated in whole or in part if the object, benefit or its equivalent shall be repaid the victim or other entity.</li> </ul> <p><b>Code of Criminal Procedure 1997</b> – relating to forfeiture and recovery of assets -Chpt 25, art. 217 – 236 – search and seizure - Tax Intelligence Agency responsible for investigating unexplained wealth</p>
<b>Intellectual Property Protections and Offences</b>	<p>Law of June 30, 2000 on Industrial Property 2007 (as last amended by Law of 23 January 2004, and Law of June 29, 2007).</p>

<b>Other Offences</b>	<p><b>Criminal Code of the Republic of Poland 1997</b></p> <ul style="list-style-type: none"> <li>- Art. 313 – (1) counterfeiting official mark of value, penalty imprisonment 3 years max. (2) trading in counterfeit or altered official mark of value, penalty imprisonment 3 years max.</li> <li>- Art. 315 – tampering with measuring devices, penalty restriction of liberty or imprisonment 2 years max.</li> <li>- Art. 316 – forfeiture of the items and the instruments used to carry out the offence</li> </ul> <p><b>Polish Penal Fiscal Code</b></p> <ul style="list-style-type: none"> <li>- Art. 65 § 1 - Anyone who acquires, stores, transports, transmits, or transfers duty-not-paid cigarettes, or who aids and abets in any of these activities, shall be subject to a fine of up to 720 times the daily rate (with each daily rate varying from PLN 50 to PLN 20,000) and/or imprisonment for a period of up to 3 years.</li> <li>- Art. 69 and 69a – tobacco product manufacture.</li> <li>- Art. 99 – excise duty rates.</li> </ul>
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<b>Country</b>	<b>RUSSIAN FEDERATION</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	WHO FCTC acceded to 3 June 2008 Protocol not signed
<b>Licensing/ Marking</b>	Adopted measures requiring marking of unit packages of tobacco products to determine origin and that the product is legally sold on the domestic market. <b>Technical Regulations for Tobacco Products, Federal Law No. 268-FZ</b> - covers a range of topics including, but not limited to, definitions of several key terms; ingredients; packaging and labeling; and compliance and enforcement. Tax stamp
<b>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</b>	<b>The Customs Code Of The Russian Federation 2003</b> Chpt 38 – measures applied with regard to specific goods, suspending goods release, cancellation of goods release resolution. Chpt 41 – disposal of goods and means of transport.
<b>Intellectual Property Protections and Offences</b>	<b>Civil Code of the Russian Federation (as last amended on December 8, 2011)</b> Section VII Rights to the Results of Intellectual Activities and Means of Individualization, Chapter 69. General Provisions: - Art. 1225 – trademarks and service marks enjoy legal protection. - Art. 1250 - the Protection of Intellectual Rights. 1. Intellectual rights shall be protected by the remedies envisaged by the present Code, with account taken of the essence of the right violated and of the consequences of the infringement of the right. 2. The remedies set out in the present Code for intellectual rights shall be applicable at the request of right holders, organizations managing rights on a collective basis, and also other persons in the cases established by law. 3. The lack of fault of an infringer shall neither render him free of the duty to stop infringement of intellectual rights nor preclude the imposition of the sanctions on the infringer to protect the rights. For instance, the publication of a court's decision on an infringement committed (Sub-item 5 of Item 1 of article 1252) and the stopping of the actions infringing the exclusive right to the result of intellectual activity or means of individualization or creating the threat of infringement of the right shall take place irrespective of the infringer's fault and at the expense of the infringer.

	<p>- Art. 1252. Protecting Exclusive Rights:</p> <ol style="list-style-type: none"> <li>1. The protection of the exclusive rights to the result of intellectual activity and means of individualization shall be, inter alia, carried out by means of presenting a claim for:             <ol style="list-style-type: none"> <li>(1) recognition of the right: to a person that denies or otherwise does not recognize the right and by doing so violates the interests of the right holder;</li> <li>(2) stopping the actions that infringe the right or create the threat of infringement thereof: to a person committing such actions or making the necessary preparations for such actions;</li> <li>(3) payment of damages: to a person that has illegally used the result of intellectual activity or means of individualization without concluding an agreement with the right holder (use without a contract) or otherwise has violated the right holder's exclusive right and inflicted a damage thereon;</li> <li>(4) seizure of a material medium in accordance with Item 5 of the present article: to its manufacturer, importer, keeper, carrier, seller, another distributor or non-bona fide acquirer;</li> <li>(5) publication of a court decision on the infringement committed with reference to the actual right holder: to a violator of the exclusive right.</li> </ol> </li> <li>In the arrangement of provision of security for a claim in a case of infringement of exclusive rights the material media, equipment and materials that are allegedly involved in an infringement of the exclusive right to the result of intellectual activity or means of individualization may be subjected to the security measures established by the procedural legislation, for instance, seizure of material media, equipment and materials.</li> <li>3. In the cases envisaged in the present Code for certain types of results of intellectual activity or means of individualization when an exclusive right is infringed the right holder is entitled to claim compensation from the infringer for the infringement of the said right. The compensation shall be collected if the fact of infringement is proven. In this case, the right holder that has applied for a remedy shall be relieved from the duty to prove the amount of damage inflicted thereon. The amount of compensation shall be determined by the court within the limits set by the present Code, depending on the nature of the infringement and of the other circumstances of the case with due regard to the requirements of reasonability and justice.</li> </ol> <p>- Art. 1477 – recognizing exclusive right to a trademark or service mark.</p> <p>- Art. 1515 – liability for the Illegal Use of a Trademark:</p> <ol style="list-style-type: none"> <li>1. The goods, labels, packaging of goods on which a trademark or a designation similar thereto to the extent of confusion has been illegally placed are counterfeit.</li> <li>2. The right holder is entitled to claim withdrawal from transactions and destruction of the counterfeit goods, labels, packaging of goods on which the illegally used trademark or a designation similar thereto to the extent of confusion has been placed at the expense of the infringer. If the placing of these goods in transactions is required for the public interest the right holder is entitled to demand removal at the infringer's expense of the illegally used trademark or a designation confusingly similar thereto that has been placed on the counterfeit goods, labels and packages of goods.</li> <li>3. A person that has infringed an exclusive right to a trademark while carrying out works or providing services shall remove the trademark or a designation confusingly similar thereto from the materials involved in the performance of such works or the provision of such services, including from documents, advertisements and billboards.</li> <li>4. The right holder is entitled to demand at his/it discretion that the infringer pay compensation in place of reimbursement of damages: 1) in the amount of 10,000 to 5,000,000 roubles at the court's discretion on the basis of the nature of the infringement; 2) in the amount equal to double the value of the goods on which the trademark has been illegally placed or double the value of the right of using the trademark assessed on the basis of the price normally charged in comparable circumstances for the legal use of the trademark.</li> </ol> <p><b>Customs Code of the Customs Union</b> (Appendix to the Treaty On the Customs Code of the Customs Union adopted by resolution of the interstate council of the Eurasia economic community no. 17 of November 27, 2009) - legal regulation of relations pertaining to the moving of goods across the customs border of the Customs Union, their transportation across the single customs territory of the Customs Union under customs control, temporary storage, customs declaring, release and use in accordance with customs procedures, customs control, transfer of customs payments, as well as authoritative relations between the customs bodies and parties implementing the rights of possession, use and disposal of the mentioned goods.</p>
<p><b>Other Offences</b></p>	<p><b>The Administrative Offences Code of the Russian Federation</b>, No. 195-FZ of December 30, 2001 - identifies several violations of smoke free policies on means of transport (including railway and water transport), states the penalties for such violations, and designates the officials authorized to hear cases concerning these administrative offenses.</p> <p><b>The Labour Code of the Russian Federation, Law No. 197-FZ of December 30, 2001</b> - provides the definition of "workplace." Law No. 87-FZ, the principal tobacco control law, bans smoking in workplaces, unless in a designated area. However, unlike the Labour Code, Law No. 87-FZ does not include a definition of "workplace." The law has been amended several times, most recently in November of 2009.</p>

**Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996 (as last amended on March 1, 2012)**

- Arts. 146, 147, 180 – liability for the infringement of copyrights, trademarks and patents.

- Art. 171 – Illegal Enterprise

1. Exercising business activities without registration or without a licence where such licence is obligatory, if this deed has inflicted a major damage upon citizens, organizations' or the State or is connected with deriving profits on a large scale, penalty fine 300 000 thousand roubles max., or in the amount of the wage or salary, or any other income of the convicted person for 2 years max., or by compulsory works for 480 hours max., or by arrest for a term of up to 6 months.

2. The same deed: a) committed by an organized group; b) attended by profit-making on a especially large scale, penalty from 100 000 - 500 000 roubles, or in the amount of the wage or salary, or any other income of the convicted person for 1 – 3 years, or with compulsory labour for 5 years max., or by deprivation of liberty for 5 years, with a fine of 80 000 roubles max., or in the amount of the wage or salary, or any other income of the convicted person for a period of 6 months, or without any fine.

- Art. 171.1

(1) Large scale production, purchase, storage, or transportation with the aim of the sale of unmarked goods and products subject to mandatory marking with excise tax marks, by special marks, or marks of conformance, forgery-proof, if perpetrated on a large scale, penalty fine 200 000 roubles max., or in the amount of salary or any other income of the convicted person earned over 18 months max., or with compulsory labour for 3 years max., or by the deprivation of liberty 3 years max. with a fine of 80 000 roubles max. or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 6 months.

(2) The same deeds, if committed a) by an organized group; b) abolished c) on a specially large scale, penalty fine from 100 000 to 300 000 roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of 1 to 2 years, or with compulsory labour 5 years max., or by the deprivation of liberty for 6 years max. with or without a fine 1 million roubles max. or in the amount of the wage or salary, or any other income of the convicted person for a period of 5 years max.

- Art. 180 – (1) illegal use of a trademark – penalty fine 200 000 roubles max., or in the amount of the wage or salary, or any other income of the convicted person for 18 months max., or by compulsory works for a term of up to 480 hours, or by corrective labour for a term of up to 2 years. (3) if committed by group of persons of previous concert or organized crime group, penalty fine 500 000 to 1 million roubles or in the amount of a wage/salary or other income of the convicted person for a period of 3-5 years, or by compulsory labour for a term of up to 5 years, or by deprivation of freedom for a period of up to 6 years with a fine in the amount of up to 500 000 roubles or in the amount of a wage/salary or other income of the convicted person for a period of up to 3 years or without such.

- Art. 325 - Theft or Damage of Documents, Stamps, and Seals or the Stealing of Excise Tax Marks, Special Marks or Marks of Conformance, penalty fine 200 000 roubles max., or in the amount of a wage/salary or any other income of the convicted person for a period of 18 months max., or with obligatory labour for a term of up to 480 hours, or with corrective labour for a term of up to 2 years, or with compulsory labour for a term of up to 1 year, or with an arrest for a term of up to 4 months, or with deprivation of liberty for a term of up to 1 year. (3) stealing of excise tax marks fine 200 000 roubles max., or in the amount of a wage/salary or any other income of the convicted person for a period of up to 18 months, or with compulsory labour for a term of up to 2 years, or with deprivation of liberty for the same term.

- Art. 327.1

1. Production with the purpose to realize or the realization of forged marks of excise tax, special marks or marks of conformance, all forgery-proof, penalty fine in the amount of 100 000 to 300 000 roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of 1 to 2 years, or with compulsory labour for a term of up to 3 years, or with deprivation of liberty for the same term.

2. Knowing utilization of forged marks of excise tax, special marks or marks of conformance, all forgery-proof, shall be punishable with a fine in the amount of 100 000 to 500 000 roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of 1 to 3 years, or with compulsory labour for a term of up to 5 years, or with deprivation of liberty for the same term.

**The Customs Code Of The Russian Federation 2003**

Part III, Chpt 27, art. 320 - 4. In case of the illegal exportation of goods and means of transport across the customs border, jointly responsible for the payment of customs duties and taxes levied on to goods and means of transport shall be the persons who have illegally conveyed the goods and means of transport across the border, as well as the persons who have participated in said conveyance if they were aware or were supposed to be aware of the illegal nature of said conveyance; in the instance of illegal importation, responsible for the payment of customs duties and taxes levied on to goods and means of transport shall be the persons who have owned or come in possession of the illegally imported goods and means of transport if at the time of the purchasing transaction they were aware, or were supposed to be aware of the illegal nature of said importation, which fact was duly certified by the procedures stipulated by law of the Russian Federation. Said persons shall also be responsible for the payment of customs duties and taxes equivalent to those payable by the declarant of the illegally imported or exported goods.

Country	SINGAPORE
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol not signed
Licensing/ Marking	<p><b>Customs Act (revised 2004) and Customs Regulations</b></p> <ul style="list-style-type: none"> <li>- s63 Customs Act –</li> <li>1) No person shall manufacture any dutiable goods, except under and in accordance with the provisions of a license granted by the Director-General and at the place or places of manufacture, specified in the license.</li> <li>(2) Such license shall, on payment of such fee as may be prescribed, be granted at the discretion of the Director-General for such period as may be prescribed and subject to: <ul style="list-style-type: none"> <li>(a) such conditions as may be prescribed; and</li> <li>(b) such further conditions as the Director-General may direct to be endorsed on the license in any particular case.</li> </ul> </li> <li>- s39 of the Customs Regulations (revised 2009) stipulates that every application for a license to manufacture dutiable goods under s63 shall be in writing to the Director-General providing certain required information. –s114 of the Customs Regulation - License period is 1 year, or other period as approved by Director-General.</li> <li>- Part XI Licensed Tobacco Factories – ss68-74</li> <li>- Part XII – Claims to Drawback on Tobacco</li> <li>- Part XIV Assessment of Duty –s110 cigarettes, s111 beedies, s112 cigars</li> <li>- Part XV - fees</li> </ul> <p><b>Control of Manufacture Act:</b></p> <ul style="list-style-type: none"> <li>- s3 – manufacture of goods prohibited except on registration.</li> <li>- s5 – registration</li> </ul> <p><b>Control of Manufacture Rules –</b></p> <ul style="list-style-type: none"> <li>- s2 – applications for registration, detailed information required.</li> <li>- every single cigarette to be marked “SDPC” and have a series of vertical bars around the stick to indicate duties have been paid.</li> </ul> <p>Licensing of importing, wholesaling, distributing, and retailing, control measures under Tobacco (Control of Advertisements and Sale) Act and Tobacco (Control of Advertisements and Sale) (Licensing of Importers, Wholesalers and Retailers) Regulations 2010</p> <p>No marking of products to determine origin or whether product legally sold on domestic market.</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Singapore Customs Act 2004 (Chapter 70)</b></p> <ul style="list-style-type: none"> <li>- s54 – power to open and examine goods or packages</li> <li>- s55 – detention of goods where doubt exists</li> <li>- s69 – power to enter licensed premises</li> <li>- s94 – proper officer of customs may take samples</li> <li>- Part XIII, s101-112 – search, seizure and arrest</li> <li>- s110 – seizure of goods subject of an offence</li> <li>- s122 – all goods liable to seizure, liable to forfeiture</li> <li>- s123 – court to order disposal of seized goods</li> <li>- s124 - Goods seized in respect of which there is no prosecution, deemed to be forfeited if not claimed within one month</li> </ul> <p><b>Customs Regulations (revised 2009):</b></p> <ul style="list-style-type: none"> <li>- s116 disposal of forfeitures</li> </ul>

	<p><b>Trade Marks Act (Chapter 332) (2005):</b> - s53 – forfeiture and destruction of goods on conviction</p> <p>Corruption, Drug Trafficking and Other Serious Crime (Confiscation of Benefits) Act 1992 – dealing with the proceeds of crime, penalty of fine of \$500 000 max. and/or imprisonment 7 years max., penalty for legal persons is fine of \$1 million max.</p>
<p><b>Intellectual Property Protections and Offences</b></p>	<p><b>Trade Marks Act (Chapter 332) (2005)</b> -Part VI Offences: - s46 – counterfeiting a trademark, penalty fine \$100 000 max. and/or imprisonment 5 years max. - s47 – falsely applying registered trademark to goods or services, penalty fine \$100 000 max. and/or imprisonment 5 years max. - s48 – making or possessing of article for committing offence, penalty fine \$100 000 max. and/or imprisonment 5 years max. - s49 – importing, selling, possessing goods with falsely applied trademark, penalty fine \$10,000 for each goods or thing to which the trade mark is falsely applied (but not exceeding in the aggregate \$100,000) and/or imprisonment for 5 years max. - s50 – falsification of register, penalty fine \$50 000 max. and/or imprisonment 5 years max. - s51 – falsely representing trademark as registered, penalty fine \$10 000 max.</p> <p><b>Intellectual Property Office of Singapore Act (Chapter 140) (2001)</b></p>
<p><b>Other Offences</b></p>	<p><b>Penal Code 1871 (revised 2008) (Chapter 224)</b> - Chpt V ss107-120 – abetment - Chpt VA ss120A-B – criminal conspiracy - s255 – counterfeiting government stamp, penalty imprisonment which may extend to 10 years and be liable to a fine - s256 - Having possession of an instrument or material for the purpose of counterfeiting a Government stamp, penalty imprisonment which may extend to 7 years and be liable to a fine - s257 - Making or selling an instrument for the purpose of counterfeiting a Government stamp, penalty imprisonment which may extend to 7 years and be liable to a fine - s258 – sale of counterfeit stamp, penalty imprisonment which may extend to 7 years and be liable to a fine - s259 – having possession of a counterfeit government stamp (knowing it to be counterfeit), penalty imprisonment which may extend to 7 years and be liable to a fine - s260 – using as genuine a government stamp known to be counterfeit, penalty imprisonment which may extend to 7 years and/or a fine - s261 - Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government, penalty imprisonment which may extend to 3 years and/or a fine - s262 – using government stamp known to have been used before, penalty imprisonment which may extend to 2 years and/or a fine - s263 – erasure of mark denoting that stamp has been used, penalty imprisonment which may extend to 3 years and/or a fine</p> <p><b>Customs Act (Revised 2004) (Chapter 70)</b> - s52 – dutiable goods imported into Singapore to be deposited in free trade zone or government warehouse - s60 – dutiable goods for transshipment to be deposited in free trade zone to await arrival of a vessel in which they are to be transshipped. - s78 – drawback on imported tobacco manufactured in Singapore - Part XV Offences and Penalties: - s128 – offences in relation to making or signing untrue or incorrect or incomplete declarations, certificates and documents - s128A –offences in relation to falsifying documents - s128B – offences in relation to failure to make declarations - s128C – offences in relation to failure to produce trade documents - s128D – offences in relation to fraudulent evasion - s128E – offences in relation to goods found in person’s baggage or upon his person - s128F - offences in relation to importation of uncustomed or prohibited goods - s128G - offences in relation to exportation of uncustomed or prohibited goods</p>

- s128H - offences in relation to shipping, unshipping, loading, unloading etc., of uncustomed or prohibited goods
- s128I - offences in relation to possession, storage, conveying and harbouring of goods
- s128J - offences in relation to duty free allowances
- s128K - offences in relation to illegal removal or goods from customs control, etc., and carrying of certain activities without licence
- s128L – penalty for various offences:
  - for manufacturing, trading and possession of illegal cigarettes, on the first conviction, a fine of not less than 10 times the amount of duty or tax or S\$5,000 whichever is lesser, and of not more than 20 times the amount of duty or tax or S\$5,000 whichever is greater, except where the amount of duty or tax cannot be ascertained the penalty may amount to a fine not exceeding \$5,000;
  - on the subsequent convictions to such fine or to imprisonment not exceeding 2 years or to both;
  - where the goods consist of tobacco products exceeding 2 kg in weight — on the first conviction to both a fine of not less than 15 times the amount of duty or tax, subject to a minimum of \$1,000; and not more than 20 times the amount of duty or tax or S\$10,000 whichever is greater, or to imprisonment not exceeding 3 years or to both; and
  - where having been convicted on a previous occasion of an offence under this section involving goods consisting of tobacco products exceeding 2 kg in weight, and again convicted of such offence — to a fine of not less than 30 times the amount of duty or tax, subject to a minimum of \$2,000; and not more than 40 times the amount of duty or tax or S\$20,000 whichever is greater, or to imprisonment for a term not exceeding 6 years or to both.

**Customs Regulations (revised 2009)**

- s117 penalties - Any person who contravenes any of the provisions of these Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

**Goods and Services Tax Act (Chapter 117A)**

- s52 – smuggling, penalty 3 times the amount of tax which has or would have been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected, and a fine of \$10 000 max., and/or imprisonment for 5 years max.

Country	SOUTH AFRICA
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 18 July 2005 Protocol signed 10 January 2013
Licensing/ Marking	<p>No marking required to determine origin of product of whether goods sold legally in domestic market.</p> <p>Licensing – registration of manufacturers and licensing of tobacco importers</p> <p><b>Customs and Excise Act 91 of 1964</b></p> <ul style="list-style-type: none"> <li>- s19 – warehouses may be licensed for the storage or manufacture of dutiable goods</li> <li>- s35A – special provisions regarding cigarettes and cigarette tobacco, (1) Commissioner may prescribe size and type of containers used by manufacture for pack of cigarettes and tobacco, (2) stamp impression must be made on containers before removal of products from warehouse, (3) No cigarettes or cigarette tobacco shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in partly or completely manufactured condition except in accordance with the provisions of this Act, (4) No person shall-                     <ul style="list-style-type: none"> <li>(a) counterfeit or make any facsimile of any die or impression stamp determined under subsection (2);</li> <li>(b) be in possession of, use or offer for sale or for use (i) any die or impression stamp counterfeited in contravention of paragraph (a); or</li> <li>(ii) any facsimile of any die or impression stamp made in contravention of that paragraph.</li> </ul> </li> <li>- s36A – any owner or manufacturer of excisable goods shall license premises as a special customs and excise warehouse for the purposes of excise duty</li> <li>- s54 – special provisions regarding importation of cigarettes, imported cigarettes must be packed in prescribed manner and impression of stamp made on containers</li> <li>- s61 – customs and excise warehouse licenses</li> </ul>

	<p><b>Regulations relating to the Labelling, Advertising and Sale of Tobacco Products 1994</b> issued pursuant to s6 of that Tobacco Products Control Act 83 of 1993.</p> <p><b>Tobacco Products Control Act</b> - The Act provides, inter alia, for the regulation of the sale and advertising of tobacco products and sets out the requirements for plain packaging and the appearance of tobacco products, the presentation of brand names and trademarks on tobacco products and packaging. It also prohibits false or misleading labeling and packaging for tobacco products (Sections 3(6), (7) &amp; Section 6(v)).</p>
<p>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</p>	<p><b>Customs and Excise Act 91 of 1964</b></p> <ul style="list-style-type: none"> <li>- s16 – opening of packages in absence of importer or exporter</li> <li>- Chpt IV - Customs and Excise Warehouses; Storage and Manufacture of Goods in Customs and Excise Warehouses (ss 19-37)</li> <li>- s81 – goods subject of offence liable to forfeiture</li> <li>- s83 – goods subject of offence liable to forfeiture</li> <li>- s84 – goods subject of offence liable to forfeiture</li> <li>- s86 – goods subject of offence liable to forfeiture</li> <li>- s87 – goods irregularly dealt with liable to forfeiture, (1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to the provisions of this Act or in respect of which any offence under this Act has been committed (including the containers of any such goods) or any plant used contrary to the provisions of this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in possession of whomsoever found, (2) ship, vehicle used in carriage of goods liable to forfeiture</li> <li>- s88 – seizure</li> <li>- s89 – notice of claim by owner in respect of seized goods</li> <li>- s90 – disposal of seized goods</li> <li>- s93 – remission or mitigation of penalties and forfeiture (payment of outstanding duties, fines etc.)</li> <li>- s109 – destruction of goods or detention of ships or vehicles (for public safety)</li> <li>- s113 – prohibitions and restrictions (8) (a) An officer may, for the purposes of any law other than this Act or at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.</li> </ul> <p><b>Prevention of Organized Crime Act no. 121 of 1998</b></p> <ul style="list-style-type: none"> <li>- s6 – proceeds of crime</li> </ul> <p><b>Criminal Procedure Act 1977</b>, Chapter 2, articles 19-36 search warrants, entering of premises, seizure, forfeiture and disposal of property connected with offences:</p> <ul style="list-style-type: none"> <li>- Art. 31 - Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings</li> <li>- Art. 32 - Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid</li> <li>- Art. 34 - Disposal of article after commencement of criminal proceedings</li> <li>- Art. 36 - Disposal of article concerned in an offence committed outside the Republic</li> </ul> <p><b>Counterfeit Goods Act 37 of 1997</b></p> <ul style="list-style-type: none"> <li>- s4 – inspector’s powers in relation to counterfeit goods, seizure, entering premises, collecting evidence etc.</li> <li>- s5 – extent of inspector’s powers in relation to counterfeit goods – take steps reasonably necessary to stop manufacturing of counterfeit goods</li> <li>- s6 – provisions relating to issue and execution of warrant</li> <li>- s7 – duties of inspector following seizure of goods</li> <li>- s9 - Seized goods to be released if criminal investigation or criminal or civil proceedings not contemplated against suspect</li> </ul>
<p>Intellectual Property Protections and Offences</p>	<p><b>Counterfeit Goods Act 37 of 1997 as amended by Counterfeit Goods Amendment Act 25 of 2001</b></p> <p>Concerns all counterfeited goods -2(1) expressly prohibits importing, distributing, selling, bartering, exchanging, offering or exposing counterfeit goods or possessing them for trade purposes, penalty fine R100 million max. or imprisonment 30 years max.</p> <ul style="list-style-type: none"> <li>- 2(2) – acquiring, using or possessing goods that are proceeds of crime, penalty fine R 100 million max. or imprisonment 30 years max.</li> </ul>

	<p><b>Trade Marks Act No. 194 of December 22, 1993</b></p> <ul style="list-style-type: none"> <li>- s34 – infringement of registered trademark</li> <li>- Part XVI – Offences:</li> <li>- s60 – fraud in relation to registers, penalty fine or imprisonment 12 months max.</li> <li>- making false statements or influencing registrar or other officer, penalty fine or imprisonment 12 months max.</li> <li>- s62 – falsely representing trademark as registered, penalty fine or imprisonment 12 months max.</li> </ul>
<p><b>Other Offences</b></p>	<p><b>Customs and Excise Act 91 of 1964</b></p> <ul style="list-style-type: none"> <li>- Chapter XI – Penal Provisions:</li> <li>- s78 – offences not expressly mentioned - (1) Any person who contravenes any provision of this Act or who fails to comply with any such provision with which it is his duty to comply, shall, even where such contravention or failure is not elsewhere declared an offence, be guilty of an offence. (2) penalty – fine R8 000 max., or treble value of goods in respect of which offence committed, whichever is greater, and/or imprisonment 2 years max.</li> <li>- s79 – less serious offences (1)(a) – any person who: <ul style="list-style-type: none"> <li>(a) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still being made or made, imported, used, set up or in the possession or custody of any person without lawful authority;</li> <li>(e) falsely holds himself out to be an officer;</li> <li>(f) resists or hinders an officer in the exercise of his powers or the performance of his functions under this Act; or</li> <li>(g) rescues any persons apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence, shall be guilty of an offence, penalty fine R8 000 max. and/or imprisonment 2 years max.</li> </ul> </li> <li>- s80 – serious offences - (1) Any person who- <ul style="list-style-type: none"> <li>(a) has upon his premises or in his custody or under his control, or purchases, sells or otherwise disposes of any illicit goods knowing the same to be illicit goods;</li> <li>(b) not being a licensed manufacturer or dealer, without lawful authority has in his possession or custody or under his control any partly manufactured excisable goods or fuel levy goods or excisable goods or fuel levy goods upon which duty has not been paid;</li> <li>(c) removes or assists in or permits the removal of goods in contravention of any provision of this Act;</li> <li>(e) removes or breaks or interferes with any lock, meter, gauge, rod, seal, mark or fastening placed on or fitted to any warehouse, vessel, package, container or other article, place or plant, by an officer under any provision of this Act;</li> <li>(f) damages, destroys or disposes of any goods to prevent the securing or seizure thereof under the provisions of this Act by any officer or other person authorized to secure or seize the same, or takes back any goods which are being detained or have been seized;</li> <li>(h) without lawful excuse (the proof of which shall lie upon him), brings into the Republic, produces or has in his possession any blank or incomplete invoice or any billhead or other similar document capable of being completed and used as an invoice for goods from outside the Republic;</li> <li>(i) makes improper use of a licence, permit or other document issued in respect of goods to which this Act relates;</li> <li>(j) claims or receives any rebate, drawback, refund or payment or sets off any amount in terms of the provisions of section 77 (a) to which he knows he is not entitled under this Act;</li> <li>(k) not being authorized to do so, gives or promises to give, directly or indirectly, any reward to an officer or any person employed by the Government, in respect of the performance or non-performance by any such officer or person of his duty or employment under this Act or agrees with or proposes to any such officer or person to do or permit anything in contravention or evasion of this Act;</li> <li>(l) being an officer or a person employed by the Government, demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of his duty or employment under this Act or by any wilful act, neglect or default does or permits or agrees to do or permit anything in contravention or evasion of this Act;</li> <li>(m) attempts to commit or assists in committing any offence mentioned in this section;</li> <li>(n) from any goods made from or containing excisable goods or fuel levy goods extracts or recovers such excisable goods or fuel levy goods in contravention of the provisions of this Act;</li> <li>(o) contravenes the provisions of section 18 (13), 18A (9), 20 (4)bis, 35A (4), 37 (9), 37A (4) (a), 60 (1), 63 (1), 75 (7A), 75 (19), 88 (1) (bA), 113 (2), 113 (8) (c) or 114 (2A); or</li> <li>(p) fails to comply with any condition determined under section 107 (2) (a), shall be guilty of an offence, penalty fine R20 000 max. or treble the value of the goods in</li> </ul> </li> </ul>

respect of which such offence was committed, whichever is the greater, and/or imprisonment 5 years max.

- s81 – non-declaration in respect of certain goods, offence not to comply with s15, penalty fine R8 000 max. or treble the value of the goods in question, whichever is the greater, and/or to imprisonment 2 years max., and the goods in question and any other goods contained in the same package as well as the package itself shall be liable to forfeiture.
- s82 – any person having in their control or possession stamp used by authority of Commissioner or imprint identical to or resembles imprint of stamp used under authority of commissioner or any government al authority without lawful excuse, is guilty of an offence, penalty fine and/or imprisonment 5 years max. (2) manufacturing or having in control or possession stamps or imprints of foreign companies, firms or businesses, without lawful excuse, guilty of offence, penalty fine and/or imprisonment 5 years max.
- s83- irregular dealings with goods, penalty fine R20 000 max. or treble the value of the goods in respect of which such offence was committed, whichever is the greater, and/or to imprisonment 5 years max., and the goods in respect of which such offence was committed shall be liable to forfeiture.
- s84 – false documents and declarations, penalty fine R40 000 max. or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, and/or imprisonment 10 years max., and the goods in respect of which such false statement was made or such false declaration or document was used shall be liable to forfeiture.
- s86 – certain specified offences, penalty fine R40 000 max. or treble the value of the goods, whichever is the greater, and/or imprisonment 10 years max., and the goods in respect of offence liable to forfeiture.
- s113 – prohibitions and restrictions, (1) (b) cigarettes with a mass of more than 2 kilograms per 1 000 cigarettes; unless imported under permit issued by the Board of Trade and Industries.

(7) The Commissioner may by rule prohibit or restrict the coastwise carriage or the transit carriage through the Republic of any goods referred to in subsection (1) or of any other goods in respect of which he considers any such prohibition or restriction necessary in the public interest.

(9) No person shall manufacture cigarettes the mass of the tobacco of which exceeds 2 kilograms per 1 000 cigarettes.

**Standard Operating Procedure:**

- para 2.9.4 – all licensees required to maintain and keep records on (i) all raw materials initially received, used in production and/or removed. (ii) yield from raw materials (iii) production (iv) stock on hand (v) receipts of bonded product (vi) removal of bonded product (vii) removal of rebated product (viii) removal for home consumption (ix) returns of duty-paid stock (x) exports.

Check the Penal Code for other offences.

Country	SWITZERLAND
WHO FCTC & Tobacco Protocol	WHO FCTC signed on 25 June 2004 but not ratified Protocol not signed
Licensing/ Marking	<b>Ordinance on Tobacco Products and Products Containing Tobacco By-Products Intended for Smoking of 27 October 2004</b> - Section 3- Manufacture of Tobacco Products - Section 4 – Labelling – art. 11 – producer country, name of manufacturer, specific designation
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<b>Federal Law of August 28, 1992 on the Protection of Trademarks and Indications of Source (status as of August 1, 2008)</b> - 68 – confiscation in criminal proceedings, article 58 of the Swiss Penal Code <sup>30</sup> shall apply; however, the court may, notwithstanding paragraph (2) of that provision, order that an object unlawfully bearing a trademark or an indication of source shall be confiscated as a whole.  <b>Swiss Criminal Code 1937 (as amended 2012)</b> - ss69 -72 – conviction based confiscation of proceeds of crime – is mandatory and supplementary to primary penalty imposed by Court, and subject to statutory limitation of 7 years

	<p>- ss 69, 70B – non-conviction based confiscation against property in rem - s249 – forfeiture</p> <p><b>Swiss Criminal Procedure Code of 5 October 2007</b> - Chpt 7 Seizure, arts. 263-268 - Chpt 5, section 3, arts. 376-378- separate forfeiture proceedings</p>
<p><b>Intellectual Property Protections and Offences</b></p>	<p><b>Federal Law of August 28, 1992 on the Protection of Trademarks and Indications of Source (status as of August 1, 2008)</b> - s61 – (1) At the request of the injured party, any person who intentionally infringes the trademark rights of another person by: (a) usurping, counterfeiting or imitating such a trademark; (b) placing goods on the market or providing services under the usurped, counterfeit or imitated trademark, offering such goods or services or advertising them, shall be liable to imprisonment of up to one year or a fine of up to 100,000 francs. (2) Any person who refuses to state the origin of objects bearing a usurped, counterfeit or imitated trademark, which are in his possession, shall be liable, at the request of the injured party, to the same penalties. (3) Where the person committing an offense acts by way of trade, he shall be prosecuted ex officio. The penalty shall be imprisonment and a fine of up to 100,000 francs. - s62 – fraudulent use, imprisonment or fine up to 100 000 francs. (2) Where the person committing an offense acts by way of trade, he shall be prosecuted ex officio. The penalty shall be imprisonment of up to five years and a fine of up to 100,000 francs. (3) Any person who imports, exports or stores goods in the knowledge that they are intended to deceive while being offered or placed on the market, shall be liable, at the request of the injured party, to detention or a fine of up to 20,000 francs. -65 - Any person who intentionally infringes the provisions on producer identification signs shall be liable to a fine of up to 20,000 francs.</p> <p><b>Swiss Criminal Code 1937 (as amended 2012)</b> - s155 – counterfeiting of goods, (1) Any person who with a view to deceiving another in trade or business manufactures a product which appears to have a higher commercial value than its true commercial value, in particular by being an imitation or counterfeit version of another product, or imports, stores or markets such a product, is liable, provided the act is not subject to a more severe penalty under another provision hereof, to a custodial sentence not exceeding 3 years or to a monetary penalty. (2) If the offender acts for commercial gain, he is liable, provided the act is not subject to a more severe penalty under another provision hereof, to a custodial sentence not exceeding 5 years or to a monetary penalty. - s245 – forgery of official stamps, Forgery of official stamps (1) Any person who forges or falsifies official stamps, and in particular postage stamps, revenue stamps or fee stamps, in order to pass these off as genuine or non-falsified, any person who gives cancelled official value stamps the appearance of being valid in order to pass them off as such, is liable to a custodial sentence not exceeding 3 years or to a monetary penalty. The offender is also liable to the foregoing penalties if he committed the act abroad, has entered Switzerland and is not being extradited, (2) Any person who passes off forged, falsified or cancelled official stamps as genuine, non-falsified or valid is liable to a custodial sentence not exceeding 3 years or to a monetary penalty. - s246 – forgery of official marks, Any person who forges or falsifies an official mark which the authorities affix to an object to confirm the result of an inspection or the granting of authorization such as hallmarks, or marks stamped on goods by meat inspectors or customs officials, with the intention of passing the mark off as genuine, any person who passes off such forged or falsified marks as genuine or non-falsified, is liable to a custodial sentence not exceeding three years or to a monetary penalty. - Art. 247 - Counterfeiting equipment and unlawful use of equipment, any person who constructs or acquires equipment for the forgery or falsification of coins, paper money, bank notes or official stamps in order to make unlawful use of such equipment, any person who makes unlawful use of equipment which is used for the production of coins, paper money, bank notes or official stamps, is liable to a custodial sentence not exceeding 3 years or to a monetary penalty.</p>

<b>Other Offences</b>	<p><b>Customs Act 1925</b> – see for smuggling laws, seizure and disposal</p> <p><b>Swiss Criminal Code 1937 (as amended 2012)</b></p> <p>- Art. 251 Forgery of a document (1) Any person who with a view to causing financial loss or damage to the rights of another or in order to obtain an unlawful advantage for himself or another, produces a false document, falsifies a genuine document, uses the genuine signature or mark of another to produce a false document, falsely certifies or causes to be falsely certified a fact of legal significance or, makes use of a false or falsified document in order to deceive, is liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p>(2) In particularly minor cases, a custodial sentence not exceeding 3 years or a monetary penalty may be imposed.</p> <p>- Art. 252 - Forgery of certificates, any person who with the intention of furthering his own position or that of another, forges or falsifies identity documents, references, or certificates, uses such a document in order to deceive another, or uses a genuine document of this nature but which does not apply to him in order to deceive another, is liable to a custodial sentence not exceeding 3 years or to a monetary penalty.</p> <p>- Art. 253 - Obtaining a false certificate by fraud , any person who by fraudulent means causes a public official or a person acting in an official capacity to certify an untrue fact of substantial legal significance, and in particular to certify a false signature or an incorrect copy as genuine, or any person who makes use of a document obtained by fraud in this way in order to deceive another as to the fact certified therein, is liable to a custodial sentence not exceeding 5 years or to a monetary penalty.</p> <p>- Art. 260 - Criminal organization</p> <p>(1) Any person who participates in an organization, the structure and personal composition of which is kept secret and which pursues the objective of committing crimes of violence or securing a financial gain by criminal means, any person who supports such an organization in its criminal activities, is liable to a custodial sentence not exceeding 5 years or to a monetary penalty.</p> <p>(2) The court has the discretion to mitigate the penalty imposed (art. 48a) if the offender makes an effort to foil the criminal activities of the organization.</p> <p>(4) The foregoing penalties also apply to any person who commits the offence outside Switzerland provided the organization carries out or intends to carry out its criminal activities wholly or partly in Switzerland. Article 3 paragraph 2 applies.</p> <p>- Title Seventeen: Felonies and Misdemeanors against the Administration of Justice, arts. 303-311</p> <p>- Title Nineteen – Bribery, art. 322</p>
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Country	THAILAND
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol not signed
Licensing/ Marking	<p><b>Tax stamp on pack – Ministerial Regulation 27, Ministry of Finance</b>, value of stamp is 79% of the price of the cigarette pack</p> <p><b>Tobacco Product Control Act BE 2535, 1992</b> governing packaging and labeling of tobacco products and advertising and promotion</p> <p><b>Thailand Customs Act BE 2469, 1926</b></p> <p>- s97 septem - In the case of the importation of goods into the Kingdom or the taking of raw materials within the Kingdom into a duty free zone for producing, mixing, assembling, packing, or processing of the goods in any manner with the object of exportation from the Kingdom, the goods shall be exempted from the application of the law where related to the control of standards or quality, the affixation of any mark or sign, which shall be in accordance with the regulations prescribed by the Director-General.</p> <p><b>Tobacco Act BE 2509 (1966)</b></p> <p>- s27 – importation and exportation of tobacco seeds, tobacco plants, tobacco leaves, plug tobacco, shredded tobacco and tobacco is prohibited except by license of the Director-General of the Excise Department. Licenses have only been granted to the Thai Tobacco Monopoly, which has imported cigarettes on only three occasions since 1966, namely in 1968-70, 1976 and 1980.</p>

<p>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</p>	<p><b>Trademark Act B.E. 2534 (1991) (consolidated as of 2000)</b> - s115 - All goods which are imported for distribution or had in possession for distribution in violation of this Act shall be confiscated whether or not anyone has been convicted of the offence.</p> <p><b>Thailand Customs Act BE 2469, 1926</b> - Chapter 4 examination of goods and prevention of smuggling, - s14- customs official may examine goods and take sample - s15 – customs official may embark any vessel and inspect any documents relating to goods on that vessel, may place a lock, seal, mark on any goods on board, penalty for interference with lock or seal is 100 000 baht max. - s16 – removal and storage of goods not duly cleared through customs - ss17-18 – powers to search - s19 – power to search where reasonable suspicion that smuggled goods are on board, penalty for refusing or obstructing search is 50 000 baht max. - s20 – power to arrest without warrant any person found committing or attempting to commit or employing or aiding or inciting any person to commit an offence under the provisions of this Act. - s24 - Any article liable to forfeiture under this Act may be seized at any time and any place by the customs official, administrative or police official. If claim not lodged within specified time articles will be considered ownerless and become property of the State irrespective of whether criminal prosecution brought. - s27ter - Any goods related to an offence committed under this section shall be forfeited, irrespective of whether any person is liable to a penalty. - s30 – goods subject of offence shall be forfeited. - s32 - Any type of vessel, not exceeding 250 tons burden, and any vehicle, cart, conveyance, packages, carriage, used or for use in the removal, concealment, or carriage of any tax unpaid, restricted, or prohibited goods, shall be forfeited irrespective of whether any person is liable to a penalty and if other goods are contained in a package or tax unpaid, restricted, or prohibited goods founding in the carriage, vessel, vehicle, cart or conveyance, such other goods shall also be liable to forfeiture. If a vessel exceeding 250 tons burden is used or is for use under paragraph one, the Court shall have the power to forfeit such vessel as appropriation for the offence. - s32bis - In the case where the forfeited goods in respect of an offence committed under this Act does not belong to the offender, the Court shall have the power to order the forfeiture if the owner knows or has reasonable grounds to suspect that an offence is committed or will be committed but does nothing to prevent the commission of offence or, its completion or to take care of such goods from being involved in the offence. - s37ter – goods subject of offence shall be forfeited. - s37quinque - In the case where there are reasonable grounds to suspect that smuggling has been committed or about to be committed or an offence in accordance with this Act has been committed in the contiguous sea, the customs official shall have the power to stop or compel to the master to take the vessel to any place to examine, search, arrest or take legal proceedings. - s61 – destruction of overtime goods. - s89 – warehoused goods to be kept in original packages, if not can be forfeited.</p> <p><b>Thailand Penal Code</b> - The penal code authorizes confiscation of only direct proceeds from corruption; not applicable to indirect proceeds (e.g. converted or laundered). The Anti-Money Laundering Act 1999 provides for a civil forfeiture of proceeds from a number of predicate offences one of which is corruption.</p> <p><b>Organic Act on the Prevention and Suppression of Corruption 1999</b> allows for civil recovery of property derived from an “unusual increase of assets” and “unusual wealth”.</p>
<p>Intellectual Property Protections and Offences</p>	<p><b>Trademark Act B.E. 2534 (1991) (consolidated as of 2000)</b> - s107 – making false statement in application for registration etc., penalty imprisonment 6 months max. and/or a fine of 10 000 baht max. - s108 – counterfeiting trademark etc., penalty imprisonment 4 years max. and/or a fine of 400 000 baht max. - s109 – imitating trademark etc., penalty imprisonment 2 years max. and/or a fine of 200 000 baht max. - s110 - Any person who: (1) imports, distributes, offers for distribution or has in possession for distribution</p>

	<p>goods bearing a counterfeit trademark, service mark, certification mark or collective mark under s108 or an imitation trademark, service mark, certification mark or collective mark under s109, or</p> <p>(2) gives or offers a service under a counterfeit service mark, certification mark or collective mark under s108 or an imitation service mark, certification mark or collective mark under s109, shall be liable to the penalties provided in those Sections.</p> <p>- s111 - Any person who:</p> <p>(1) represents as registered in Thailand a trademark, service mark, certification mark or collective mark which is not so registered,</p> <p>(2) distributes or has in possession for distribution goods bearing a trademark or certification mark under (1) which he knows to be falsely represented, or</p> <p>(3) gives or offers a service under a service mark, certification mark or collective mark under (1) which he knows to be falsely represented, shall be liable to imprisonment 1 year max. and/or fine of 20 000 baht max.</p> <p>- s112 - Any person who violates s90 shall be liable to a fine of 20 000 baht max.</p> <p>- s112bis(24) - Any person who obstructs the Registrar or Competent officer in the exercise of his functions under s106bis shall be liable to imprisonment 1 year max. and/or a fine of 20 000 baht max.</p> <p>- s112ter(25) - Any person who fails to provide convenience to the Registrar or competent officer in the exercise of his functions under s106bis shall be liable to imprisonment of 1 month max. and/or a fine of 20 000 baht max.</p> <p>- s113 - The penalty for an offence under this Act committed within 5 years from the date of passing the punishment for another offence under this Act shall be doubled.</p> <p>- s114(26) - In the event an offender liable under this Act is a juristic person, if the offence is committed by an order, act, failure to give an order or failure to act as required by his duties as a director, manager or any person responsible for the operation of such juristic person, shall also be liable to the penalty prescribed for such offence.</p> <p>- s116 - If there is clear evidence someone is committing or is about to commit an act under ss108, 109 or 110, the owner of the trademark, service mark, certification mark or collective mark may apply to the court to stop or refrain from such act.</p> <p><b>Thailand Penal Code:</b></p> <p>- Title VII – Offences Relating to Counterfeit and Alteration</p> <p>- ss250 -263 – offences relating to seals, stamps, and tickets, penalty imprisonment from 5 - 20 years and fine from 10 000 – 40 000 Baht.</p> <p>- ss264-269 – offences relating to documents, penalty imprisonment 3 years max. and/or fine of 6 000 Baht max.</p>
<p><b>Other Offences</b></p>	<p><b>Thailand Penal Code</b> – see for offences relating to bribery, etc.</p> <p><b>Thailand Customs Act BE 2469, 1926</b></p> <p>- s27 – bringing into kingdom duty-unpaid goods, or avoiding payment of duty owed with intention to defraud the government, penalty fine of 4 times the amount of price of the goods including duty and/or to imprisonment for 10 year max.</p> <p>- s27bis - Any person whoever assists in concealing, disposing or making away with, purchases, takes in pledge or otherwise receives any goods, knowing that such goods are tax unpaid or restricted or prohibited goods is guilty of an offence, penalty imprisonment for 5 years max. and/or a fine equal to quadruple the duty-paid value of the goods.</p> <p>- s27ter - No vessel shall discharge any goods outside the limits of the port without reasonable grounds or without the permission of the competent official. Penalty imprisonment for 2 years max. and/or a fine of 3 times the price of the goods or 100 000 Baht, whichever is higher.</p> <p>- s29 - If any vessel shall be found to have on board any secret or disguised place or any device adapted for smuggling goods, the master shall be liable to a fine of 500 000 baht max. However, the master shall not bear punishment unless there are reasonable grounds to believe that he failed to exercise proper vigilance to prevent, or was involved in or privy to the construction, adaptation, placing, or using such place or device. The place or device shall be destroyed or rendered harmless to the satisfaction of the competent official.</p> <p>- s30 - If any vessel is found to have on board goods in packages of a size or character contrary to the directions of this Act or any other law or Notifications, the master shall be liable to a fine of 500 000 baht max. and such goods shall be forfeited.</p> <p>- s31 - If any person loads or permits the loading or is involved with the loading in or unloading from any vessel, at sea or river or canal, goods which are subject to tax payment or which are restricted or prohibited, which forfeited supports the cheating and fraud of state revenue, the avoidance of prohibitions, such person shall be liable to the penalties as prescribed in section 27.</p> <p>- s33 - If there is a smuggling offence involving a vessel of exceeding 250 tons burden, and the master is not able to prove that he has taken all possible steps to discover</p>

	<p>and prevent such offence, the master shall be liable to a fine of 500 000 baht max.</p> <ul style="list-style-type: none"> <li>- s93 – clandestinely opening warehouse, penalty imprisonment for 6 months max. and/or a fine 100 000 baht max. for each offence.</li> <li>- Chapter XBis – Duty Free Zone</li> <li>- Chapter XII – False Declarations, penalty imprisonment for 6 months max. and/or a fine of 500 000 baht max.</li> </ul>
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Country	TOGO
WHO FCTC & Tobacco Protocol	<p>WHO FCTC signed and ratified – entered into force 13 February 2006</p> <p>Protocol signed 9 January 2014</p>
Licensing/ Marking	<p>No marking on unit packages or products to determine origin but does have marking for whether product legally sold in domestic market.</p> <p><b>Tobacco Control Law, Law Concerning the Production, Sale and Consumption of Tobacco and its Derivative Products, 2010</b></p> <p><b>Decree No. 2012-071</b> Concerning Regulation of Points of Sale of Tobacco and its Derivative Products in Togo, which regulates points of sale of tobacco and tobacco products</p> <p><b>Decree No. 2012-046</b> Concerning the prohibition of smoking in public places</p> <p><b>Decree No. 2012 – 047</b> Concerning modalities for the implementation of rules concerning packaging and labeling of tobacco and its derivative products</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Law No. 61-38 of December 28, 1961 on Trademarks (1961)</b></p> <p>Title III:</p> <ul style="list-style-type: none"> <li>- Art. 12 – confiscation of products subject of the offence and the instruments used to make them, and destruction of counterfeit and imitated marks.</li> <li>- Art. 13 – confiscation of products subject to offence in art. 9</li> </ul> <p><b>Tobacco Control Law, Law Concerning the Production, Sale and Consumption of Tobacco and its Derivative Products, 2010</b></p> <ul style="list-style-type: none"> <li>- Arts. 22, 23 and 24 – seizure, destruction of products not compliant with provisions of the Act.</li> </ul> <p><b>Customs Code, Law No. 66-22 of December 23, 1966</b></p> <p>Chapter 3 (arts. 42 – 50) – powers of customs officers:</p> <ul style="list-style-type: none"> <li>- Section 1 – right to enter premise</li> <li>- Section 2 – right to search goods</li> <li>- Art. 157 – destruction of goods in deposit</li> <li>- Art. 161 – sale of goods on deposit</li> <li>- Art. 197 - 2) Those who find a customs offense have the right to enter any property liable to confiscation, to withhold shipments and all other documents relating to the items seized.</li> <li>- Art. 202 – seizures based on false documents</li> <li>- Arts. 260 – 263 – confiscation, disposal, destruction of goods</li> <li>- Art. 286 – object of fraud liable to confiscation</li> <li>- Arts. 301, 305 – forfeiture of goods regardless of other penalties</li> </ul>
Intellectual Property Protections and Offences	<p><b>Law No. 61-38 of December 28, 1961 on Trademarks (1961) title III</b></p> <ul style="list-style-type: none"> <li>- Art. 7 – (1) counterfeiting or using counterfeited mark, (2) fraudulently placing such mark on products, (3) selling counterfeited or fraudulently affixed mark, penalty imprisonment from 3 months – 3 years and/or fine from 100 000 – 10 000 000 francs</li> <li>- Art. 8 – using imitation mark to fraudulently trick the buyer, penalty imprisonment 2 months – 1 year and/or fine of 100 000 – 5 000 000 francs.</li> <li>- Art. 9 – those who do not affix a required mark to their products, penalty imprisonment 15 days – 6 months and fine of 100 000 – 2 000 000 francs.</li> </ul>

	<p>- Art. 10 – for offences under arts. 7, 8 and 9, penalty will be doubled in case of recidivism</p> <p><b>Customs Code, Law No. 66-22 of December 23, 1966</b></p> <p>- Art. 24 – prohibitions relating to protection of trademarks and of indications of origin</p>
<b>Other Offences</b>	<p><b>Criminal Code of Togo</b></p> <p>Part II- Chapter VII – Offences against the Treasury and the National Economy:</p> <ul style="list-style-type: none"> <li>- Distribution of counterfeit or altered tickets, penalty 5 – 10 years imprisonment</li> <li>- Art. 202 – abuse of public property, penalty 5 – 10 years imprisonment</li> <li>- Art. 208 – extortion and corruption, penalty 1 – 5 years imprisonment</li> <li>- Art. 216 - whoever manufactured, sold, distributed, purchased or knowingly used instruments for measuring weight and giving false information, by any means whatsoever, penalty 2 – 5 years imprisonment. False instruments will be forfeited and their destruction ordered.</li> </ul> <p><b>Customs Code, Law No. 66-22 of December 23, 1966</b></p> <ul style="list-style-type: none"> <li>- Art. 120 – products excluded from warehouse include counterfeits, foreign goods bearing false mark of manufacture in Togo etc.</li> <li>- Title VIII – Traffic and Detention of Goods</li> <li>- Art. 287 – smuggling offense committed by 3 to 6 people, penalty imprisonment 3 months – 1 year and unpaid tax to be paid</li> <li>- Art. 288 – object of the fraud shall be liable to the confiscation, confiscation of the means of transport of objects used to hide the fraud, a fine equal to quadruple the value of objects confiscated and a imprisonment of 6 months - 3 years where:             <ol style="list-style-type: none"> <li>1) the offense of smuggling is committed by more than 6 individuals.</li> <li>2) The offenses of smuggling by aircraft, by vehicle coupled or self-propelled, by ship or sea boat of less than 100 tons net or by river boat.</li> </ol> </li> <li>- Art. 289 – smuggling contraband</li> </ul>

<b>Country</b>	<b>TURKEY</b>
<b>WHO FCTC &amp; Tobacco Protocol</b>	<p>WHO FCTC signed and ratified – entered into force 31 March 2005</p> <p>Protocol signed 10 January 2013</p>
<b>Licensing/ Marking</b>	<p>Tax stamp</p> <p><b>Law on Prevention and Control of Hazards of Tobacco Products, Law No. 4207 amended by Law No. 5727 of 2008</b></p> <p><b>Regulation on Methods and Essentials concerning the Manufacture Type, Labeling and Surveillance for the Protection from the Damages of Tobacco Products</b> sets forth packaging and labeling requirements, with additional specifications set forth in Decision No. 4721 of the Tobacco &amp; Alcohol Market Coordination Committee (TAPDK).</p>
<b>Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime</b>	<p><b>Turkish Customs Code No. 5911 (harmonized with EU):</b></p> <ul style="list-style-type: none"> <li>- simplified destruction procedure regarding goods which are suspected of infringing an intellectual property right in the Turkish Customs Code. Rights holder to inform authorities within 10 days that goods infringe an IP right and provide authorities with a declarant from owner of goods abandoning the goods for destruction.</li> </ul> <p><b>Law N 5549 On Prevention of Laundering of Proceeds of Crime, 2006</b></p> <p><b>Criminal Code of the Republic of Turkey No. 5237, 2004</b></p> <ul style="list-style-type: none"> <li>- Art. 54 – seizure of property may be adjudicated by court provided that it does not belong to a third party</li> <li>- Art. 55 – confiscation of income</li> <li>- Art. 70 – statutory period for confiscation - The decision for conviction may not be executed after lapse of 20 years as of the date of final decision.</li> </ul>

<b>Intellectual Property Protections and Offences</b>	<p><b>Law No. 4128 of November 7, 1995 on the Amendments to the Decree-Laws No. 551, 552, 554, 555, 556 and 560</b>  Three kinds of conditions and penalties have been defined as follow for each of the industrial property rights (patents, industrial designs, geographical signs and trademarks):</p> <ul style="list-style-type: none"> <li>- False declaration and removing the signs: fine and 1-2 years imprisonment.</li> <li>- Extension of the rights without authorization: fine and 2-3 years imprisonment.</li> <li>- Infringement: fine and 2-4 years imprisonment, closing the enterprise for minimum 1 year. The above-mentioned provisions, which are in line with article 41 of the TRIPS Agreement, took place in: <ul style="list-style-type: none"> <li>- Article 73 of Decree-Law No. 551 of June 24, 1995 on the Protection of Patent Rights</li> <li>- Article 48 of Decree-Law No. 554 of June 24, 1995 on the Protection of Industrial Designs</li> <li>- Article 24/A of Decree-Law No. 555 of June 27, 1995 on the Protection of Geographical Indications</li> <li>- Article 61/A of Decree-Law No. 556 of June 24, 1995 on the Protection of Trademarks.</li> </ul> </li> </ul> <p><b>Law No. 5833 of January 1, 2009 on the Amendment of the Decree-Law No. 556 of June 24, 1995 on the Protection of Trademarks (2009)</b>  Art. 2 changes art. 61 of Decree-Law No. 556 as follows:</p> <ul style="list-style-type: none"> <li>- Art. 61 - The following acts shall be considered infringements of a trademark: <ol style="list-style-type: none"> <li>a) using the trademark as stated in the art. 9, without any consent of proprietor of the trademark.</li> <li>b) the use of an identical or confusingly similar trademark without the consent of the proprietor of the trademark.</li> <li>c) the sale, distribution, putting to commercial use or importation, or to place at the customs area, is subjected to a process or a usage, which had been approved by the customs for such purposes, of goods bearing a trademark that is known or should be known to be an unlawful imitation, by using of an identical or confusingly similar trademark.</li> <li>d) extending or transferring the rights, which had been granted a license by the proprietor of the trademark, to the third parties without the consent.</li> </ol> </li> <li>- Art. 3 amends art. 61 as follows:  Art. 61/A Criminal Provisions:  The person, who is producing, carrying or selling goods or services, as infringing with confusion or quoted to someone else’s trademark right, penalty imprisonment 1 - 3 years and fines up to 20 000 days.  The person who without authority, removes the sign which indicates the trademark protection that had been placed on the goods or packages, shall be imprisoned 1 - 3 years and shall be fined up to 5 000 days  The person who makes savings by selling, transferring, leasing or pledging, on someone else’s trademark right without authority is punished with imprisonment between 2 - 4 years and fines up to 5 000 days.  In case of the crimes defined in the paragraphs above, are committed under activities of legal persons, also the specific security measures shall be judged for them.</li> </ul>
<b>Other Offences</b>	<p><b>Criminal Code of the Republic of Turkey No. 5237, 2004</b></p> <ul style="list-style-type: none"> <li>- Art. 78 – organized groups – engaging in management of such groups, penalty imprisonment 10 - 15 years, participating in group membership, penalty imprisonment 5 – 10 years.</li> <li>-Fourth section – Offences against Public Confidence: <ul style="list-style-type: none"> <li>- Art. 199 – (1) counterfeiting valuable stamps, penalty imprisonment 1 – 5 years and imposed punitive fine.</li> <li>(2) Any person who accepts counterfeit valuable stamp knowingly is punished with imprisonment from 3 months - 1 year, and punitive fine.</li> <li>(3) Any person who accepts counterfeit valuable stamp unknowingly but puts this stamp in circulation being aware of this fact is punished with imprisonment from 1 – 6 months.</li> </ul> </li> <li>- Art. 200 - Instruments used in production of money and valuable stamp, penalty imprisonment 1 – 4 years and fine.</li> <li>- Art. 204 – counterfeiting official documents, penalty imprisonment 2 – 5 years</li> <li>- Art. 220 – forming organized crime group with intention of committing a crime, penalty imprisonment 2 – 6 years.</li> <li>- Art. 252 – public official taking bribe, penalty imprisonment 4 – 12 years.</li> <li>- Art. 281 – laundering of assets acquired as result of offence, penalty imprisonment 2 – 5 years and fine of 20 000 days.</li> </ul>

Country	UKRAINE
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 4 September 2006 Protocol not signed
Licensing/ Marking	Marking of unit packets and packages to determine origin of product and whether product legally sold on domestic market.  <b>Law of Ukraine No. 2899-IV</b> on Measures to Prevent and Reduce the Consumption of Tobacco Products and Their Harmful Influence on the Population’s Health (Law on Tobacco Control) is the primary law governing smoke free places and packaging and labeling.  Use of tax stamp  Licensing
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<b>Criminal Code 2001</b> - Art. 51 – forfeiture of property is type of punishment - Art. 59 - Forfeiture of property: 1. The punishment of forfeiture consists in forceful seizure of all, or a part of, property of a convicted person without compensation in favor of the State. Where a part of property is to be forfeited, a court shall specify which part is to be forfeited or name the things to be forfeited. 2. Forfeiture of property shall be imposed for grave and special grave offenses and shall only be applied in cases specifically provided for in the Special Part of this Code. 3. The list of property exempt from forfeiture shall be determined by the law of Ukraine.  <b>Customs Code 2002</b> No measures enabling confiscation of proceeds derived from illicit trade in tobacco products.  - N 1506-VI on the Fundamentals of Preventing and Counteracting Corruption amended 2010 – art. 30 – deals with assets derived from corruption offences.
Intellectual Property Protections and Offences	<b>Law on Protection of Rights to Marks for Goods and Services 1994:</b> - Section VI – Protection of Rights – art. 20 - Infringement of Rights of Certificate Proprietor: 1. Any offence against rights of the proprietor of a certificate that are defined in article 16, including the actions that shall be agreed upon with the proprietor of the certificate but are carried out without his consent as well as a preparation for such actions, shall be considered to be an infringement of the rights of the proprietor of the certificate. The use of the marks and designations specified in item 5 of article 16 in domain names without the certificate proprietor’s consent shall be also considered an infringement of the proprietor’s rights. 2. On the request of the proprietor of the certificate, the said infringement shall be terminated, and the infringer shall indemnify the actual damage to the proprietor of the certificate. The proprietor of the certificate may also request to remove illegally used mark or sign from goods or goods package, which is so much similar to the mark that the mark and the sign may be confused, or to liquidate the produced reproductions of the said mark or the sign, which is so much similar to it that they may be confused. The person who was granted a license shall be also entitled to the right to require the restoration of the affected rights of the proprietor of the certificate by the certificate owner’s consent. - Art. 21 - Methods of Protecting Rights: 1. The protection of rights to a mark is provided in courts or under other procedure determined by the legislation. 2. The jurisdiction of courts covers all legal relations arising in connection with the use of the present Law. The courts, according to their competence, shall resolve disputes regarding: - Determination of the certificate owner; - Conclusion and execution of licensing agreements; - Infringement of the certificate owner rights.

Other  
Offences

**Criminal Code 2001**

- Art. 201 - Smuggling

1. Smuggling, that is the movement of goods across the customs border of Ukraine bypassing the customs control or by concealing from the customs control, if committed in respect of large amounts, and also illegal movement of historic and cultural values, poisonous, strong, radioactive or explosive substances, weapons and ammunition (except smoothbore hunting guns and ammunition thereto), special technical means for illegal obtaining of information, and also smuggling of strategically important basic commodities, export of which outside Ukraine is regulated by appropriate rules established by law, (Paragraph 1 of article 201 as amended by Law No 2338-VI (2338-17) of 15.06.2010) shall be punishable by imprisonment for a term of three to seven years with the forfeiture of smuggled items.

2. The same actions committed by a group of persons upon their prior conspiracy, or by a person previously convicted of the criminal offense under this article, shall be punishable by imprisonment for a term of five to twelve years with the forfeiture of smuggled items and forfeiture of property.

Note: Smuggling of goods is committed in respect of large amounts if the value of such goods equals or exceeds 1000 tax-free minimum incomes (article 201 as amended by Law No 1071-V (1071-16) of 24.05.2007).

- Art. 204 - Unlawful manufacturing, storage, sale or transportation for selling purposes of excisable goods

1. Unlawful purchase or storage for selling purposes, or sale, or transportation for selling purposes of illegally manufactured alcohol, tobacco or any other excisable goods, shall be punishable by a fine of 500 to 1050 tax-free minimum incomes, or restraint of liberty for a term up to three years, with the forfeiture of illegally manufactured goods and manufacturing equipment.

2. Illegal manufacturing of alcohol, tobacco and other excisable goods by establishing clandestine shops or use of equipment for mass production of such goods, or where it was committed by a person previously convicted under this article, shall be punishable by a fine of 1000 to 2000 tax-free minimum incomes, or by imprisonment of 3 to 5 years, with forfeiture of goods so produced and manufacturing equipment.

3. Illegal manufacturing of goods specified in paragraphs 1 and 2 of this article using raw material of poor quality which pose threat to human life and health, or illegal sale of such products, where it caused poisoning of people or any other grave consequences, shall be punishable by imprisonment for a term of five to ten years with forfeiture and destruction of goods so manufactured and forfeiture of manufacturing equipment.

- Art. 212 - Evasion of taxes, fees or other compulsory payments:

1. Willful evasion of taxes, fees or other compulsory payments which are part of the taxation system established by law, by an official of an enterprise, institution or organization of any ownership status, or by any unincorporated entrepreneur, or by any other person liable to pay such taxes, fees or other compulsory payments, where such actions resulted in actual non-receipt of significant amounts of funds by budgets or special state funds, shall be punishable by a fine of 300 to 500 tax-free minimum incomes, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to 5 years.

2. The same actions, if committed by a group of persons upon their prior conspiracy, or where they resulted in actual non-receipt of large amounts of funds by budgets or special state funds, shall be punishable by a fine of 500 to 2,000 tax-free minimum incomes, or correctional labor for a term of two years, or restraint of liberty for a term of five years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for by paragraph 1 or 2 of this article, if committed by a person previously convicted of evasion of taxes, fees, or other compulsory payments, or where they resulted in actual non-receipt of especially large amounts of funds by budgets or special state funds, shall be punishable by imprisonment of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with the forfeiture of property.

4. A person who committed an act provided for by paragraph 1 of this article for the first time shall be discharged from criminal liability if he/she paid taxes, fees (compulsory payments) and indemnified the State for the damage caused by late payment (fiscal penalties, fines) prior to the institution of a criminal case against him/her.

Note: A significant amount of funds means any amount of taxes, fees or other compulsory payments which equals or exceeds 500 tax-free minimum incomes as established by law; a large amount of funds means any amount of taxes, fees or other compulsory payments which equals or exceeds 3,000 tax-free minimum incomes as established by law; an especially large amount means any amount of taxes, fees or other compulsory payments which equals or exceeds 5,000 tax-free minimum incomes as established by law.

- Art. 216 - Illegal production, counterfeiting, use or sale of illegally produced, acquired or counterfeit documentary stamps or check stamps

1. Illegal production, counterfeiting, use or sale of illegally produced, acquired or counterfeit documentary stamps or check stamps for labeling of packages of copies of audiovisual works and phonograms, or holographic protection elements, shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to four years.

	<p>2. The same actions, if repeated, or committed by a group of persons upon prior conspiracy, shall be punishable by a fine of 300 to 1000 tax-free minimum incomes, or restraint of liberty for a term of three to five years, with the forfeiture of goods labeled with counterfeit labels or holographic protection elements (article 216 in version of Law No 1098-IV (1098-15) of 10.07.2003).</p> <p>- Art. 229 - Illegal use of trade mark Illegal use of a trade (or service) mark, registered trade name, product marking, where it involved making of significant profits, shall be punishable by a fine of 100 to 200 tax-free minimum incomes, or community service for a term of 100 to 200 hours, or correctional labor for a term up to two years. Note: Significant profits are made if they equal or exceed 300 tax-free minimum incomes.</p> <p>Code of Ukraine on Administrative Offenses – deals with the administrative offences of smoking on public transport (see arts. 110, 115, 117, 119) and smoking in prohibited places (art. 175-1).</p>
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Country	UAE
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 5 February 2006 Protocol not signed
Licensing/ Marking	Marking of packets and packages to determine origin and whether product legally sold in domestic market.
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Federal Law No. 37 of 1992 on Trademarks amended by Law No. 19 of 2000 and Law No. 8 of 2002</b></p> <p>- Art. 41 - The owner of a trade mark may at any time, even before any civil or penal action is filed, obtain upon a petition accompanied by an official certificate indicating the registration of such mark an order from the competent court for taking the necessary precautionary measures, in particular the following :</p> <ol style="list-style-type: none"> <li>1. To make a report enumerating and describing in detail the machines and tools being used or have been used in committing any of the offenses stated in this Law as well as the local or imported products or goods, the addresses of shops, the envelopes, the papers or others on which the mark or the note subject of the offense may have been placed.</li> <li>2. To place a garnishment on the objects stated in the above article after the applicant provides a deposit estimated by the Court to compensate the garnishee if required. The court may assign one or more experts to assist in the execution of the precautionary measures. Owners of renowned trademarks shall be exempted from the submission of a certificate that evidences the registration of the mark.</li> </ol> <p>- Art. 43 - The competent court may rule the confiscation of the object attached or to be attached later and the deduction of its price from the fines or compensations or disposition thereof in any other way deemed expedient by the court. The court may also order to destroy the illegal marks or, when necessary, to destroy the products, envelopes, packing, tools and any such other objects bearing such marks or illegal data as well as the machines and tools used specifically in the forging operation. It may likewise order all the foregoing even in case of acquittal. The court may further order that the judgment be published in the bulletin or in an Arabic daily at the cost of the judgment debtor.</p>
Intellectual Property Protections and Offences	<p><b>Dubai Intellectual Property Law - Federal Law No. 37 of 1992 on Trademarks amended by Law No. 19 of 2000 and Law No. 8 of 2002</b></p> <p>- Chapter VI – Sanctions – art. – 37 – penalty imprisonment and/or a fine of at least Dh. 5000:</p> <ol style="list-style-type: none"> <li>1. Any person who forges a trade mark registered according to law or imitates same in a way misleading the public and any person who uses with bad faith a forged or imitated trade mark.</li> <li>2. Any person who places with bad faith on his products a registered trade mark owned by a third party, or uses such mark without right.</li> <li>3. Any person who deliberately sells, offers for sale or negotiation or acquires for sale products having a forged, imitated or illegally placed trade mark, the same applies to any person who deliberately provides or offers the provision of services under a forged, imitated or illegally placed trade mark.</li> </ol> <p>- Art. 38 – penalty imprisonment for 1 year max. and/or to a fine of Dh. 5000 - Dh. 10,000:</p>

258	<p>1. Any person who uses a Trade Mark which may not be registered as provided for in Clauses 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 14 of article (3) hereof .</p> <p>2. Any person who illegally notes on his mark or commercial papers statements</p> <p>- Art. 39 – repeat offenders of the offenses stated in Articles 37 and 38, shall be punished with the same penalty in addition to closing the commercial premises or the exploitation project for a period of 15 days -6 months and publishing the judgment at the cost of the party adjudged pursuant to the procedures indicated in the Executive Regulations.</p>
Other Offences	<p><b>Federal Law No. 3 of 1987 on the Penal Code for the United Arab Emirates (the “Penal Procedure”)</b></p> <p>- Art. 211 - A punishment of temporary imprisonment shall be inflicted on any person who, personally or through a third party, counterfeits or forges the seal of the State, the seal or the signature of the President of State or of any of the Emirates Rulers, or their crown princes or representatives, or any of the seals, stamps, or emblems of the Government, its departments, administrations or any of the authorities mentioned in article 5 above, or any seal, signature or mark of any of its public officers, or the governmental hallmarks pertaining to gold and silver or to other heavy or precious metals. The same punishment shall be inflicted on any person who makes use of any of the above-mentioned objects, or who brings it in the State while being aware that it is counterfeited or forged.</p> <p>- Art. 213 - Shall be punished with confinement any individual who unlawfully makes use of the seal of the State, the President of State or any of the Emirates Rulers; or any of the seals, stamps, marks or emblems of the Government, its departments, administrations or any of the authorities mentioned in article 5 above, or the seal of any of its public officers, if such act has contributed to prejudice any public or private interest</p> <p>- Art. 423 - Without prejudice to any more serious penalty, detention and a fine or one of these two penalties shall be imposed upon any one who cheats a party contracting with him in the genuineness, nature, or substantial qualities of goods, the elements of their composition, or the quality or origin of goods in cases where such things are considered basic causes of contracting, or in the quantity, number, measurement, scale, weight, capacity or in the goods themselves, if the items delivered are different from those contracted upon.</p> <p>The same penalty shall apply to any one who imports, buys or circulates such goods for trading purposes, knowing their reality.</p>

Country	UNITED KINGDOM
WHO FCTC & Tobacco Protocol	<p>WHO FCTC signed and ratified – entered into force 16 March 2005</p> <p>Protocol signed 17 December 2013</p>
Licensing/ Marking	<p><b>Customs and Excise Management Act 1979</b></p> <p>- s101 – excise licenses</p> <p>- s103 – renewal of license</p> <p>All packets manufactured in the UK must bear a covert security feature that verifies authenticity (Codentify).</p> <p><b>The law specifically concerned with tobacco products duty and fiscal marks:</b></p> <p>- Tobacco Products Duty Act 1979</p> <p>- Tobacco Products Regulations 2001 - requires tobacco products to carry a ‘UK Duty Paid’ marking and any retailers failing to comply are liable to a fine of up to 500 pounds.</p> <p>- Tobacco Products (Description of Products) and Excise goods (Amendment) Regulations 2006</p> <p>- The Excise Goods (Holding, Movement &amp; Duty Point) Regulations 2010</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Trade Marks Act 1994)</b></p> <p>- s97 – forfeiture of counterfeit goods</p> <p>- s98 – forfeiture in Scotland</p> <p><b>Customs and Excise Management Act 1979</b></p> <p>- s49 – forfeiture of goods improperly imported</p> <p>- ss88-91 – forfeiture of ships for certain offences</p>

	<p>- s100F – powers of search in free zones. Officer may enter building and inspect it and goods within in free zone.          - ss108-111 – entry of premises          - Part IX – s138 – detention of persons          - s139 –detention, seizure and condemnation of goods - gives officers the power to seize goods that are liable to forfeiture under customs and excise acts.          - s141 – forfeiture of ships etc. used in connection with goods liable to forfeiture.</p> <p><b>Tobacco Products Duty Act 1979</b>          - s7(2) - provides that any goods in respect of which any person fails to comply with the regulation made by the Commissioner will be liable to forfeiture.          In the case of counterfeit tobacco that does not bear the fiscal mark HMRC can seize the product on the basis that duty has not been paid at the time of the manufacture or importation or at any subsequent duty point.</p> <p>No specific destruction powers.</p> <p><b>Serious Crimes Act 2007</b> - This Law makes provisions about serious crime prevention orders, offences in respect of the encouragement or assistance of crime, transfer of functions to the Serious Organized Crime Agency and also amends the Proceeds of Crime Act 2002. This Law is structured into 4 Parts and 14 Schedules. Schedule 1 makes provisions about serious offences and sets out in paragraph 2 that an offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (c. 26) (unauthorized use of trade mark etc.) shall be considered as serious offences in England and Wales.          Fraud, money laundering, offences in relation to public revenue, corruption, bribery, counterfeiting considered serious offences under Schedule 1 of the Act.</p> <p><b>Proceeds of Crime Act 2002</b> - Among the offences listed in Schedule 2 of POCA are offences concerned with copyright and trademarks. Specifically, cl.7 refers to an offence under the provisions of Copyright, Design and Patents Act 1988 which prohibit the making or dealing in an article which infringes copyright; making or possessing an article designed or adapted for making a copy of a copyright work; making or dealing in an illicit recording; making or dealing in unauthorized decoders or an offence under section 92 of the Trade Marks Act 1994 concerning the unauthorized use of trademark.</p> <p><b>Customs and Excise Management Act 1979</b></p>
<p><b>Intellectual Property Protections and Offences</b></p>	<p><b>Trade Marks Act 1994)</b>          - Art. 89 - Importation of infringing goods, material or articles – may be treated as prohibited goods. Proprietor of registered trademark or license may give notice to Commissioner of Customs and Excise in writing that infringing goods about to enter UK.          - s92 – unauthorized use of trademark in relation to goods - (1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—              (a) Applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or              (b) Sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or              (c) Has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).          (2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—              (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used—                  (i) For labelling or packaging goods,                  (ii) As a business paper in relation to goods, or                  (iii) For advertising goods, or              (b) Uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or              (c) Has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).          (3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor—              (a) Makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or              (b) Has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.</p>

260	<p>(4) A person does not commit an offence this section unless—</p> <p style="padding-left: 20px;">(a) The goods are goods in respect of which the trade mark is registered, or</p> <p style="padding-left: 20px;">(b) The trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.</p> <p>(5) It is a defense for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark.</p> <p>(6) A person guilty of an offence under this section is liable—</p> <p style="padding-left: 20px;">(a) On summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;</p> <p style="padding-left: 20px;">(b) On conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.</p> <p>- s94 – falsification of register, (3) penalty (a) on conviction on indictment, imprisonment for a term not exceeding two years and/or a fine;</p> <p>(b) on summary conviction, imprisonment for a term not exceeding six months and/or a fine not exceeding the statutory maximum.</p> <p>- s95 – falsely representing trademark as registered, (3) penalty on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p><b>Fraud Act 2006</b> (Penalty max 12 month)</p>
Other Offences	<p><b>Customs and Excise Management Act 1979</b></p> <p>- s11 – assistance to be rendered by police</p> <p>- s50 – improper importation of goods, penalty for (2) or (3) offences, summary conviction – prescribed sum or of 3 times the value of the goods, whichever is greater, and/or imprisonment 6 months max., conviction on indictment – penalty of any amount and/or imprisonment 7 years max.</p> <p>- s67 – offences in relation to exportation of goods – goods retained and unloaded in UK, penalty 3 times value of goods or level 3 of standard scale whichever is greater.</p> <p>- ss81 – 87 – prevention of smuggling provisions.</p> <p>- s87 – offering goods for sale as smuggled goods – penalty 3 times value of goods or level 3 of standard scale whichever is greater and person may be detained.</p> <p>- s170 – fraudulent evasion of duty – penalty summary conviction – prescribed sum or of 3 times the value of the goods, whichever is greater, and/or imprisonment 6 months max., conviction on indictment – penalty of any amount and/or imprisonment 7 years max.</p> <p>- s170A – handling goods subject to unpaid excise duty, penalty under s9 of the Finance Act 1994 calculated by reference to the amount of unpaid duty.</p> <p>- s170B – offence of taking preparatory steps for evasion of excise duty, penalty summary conviction – prescribed sum or of 3 times the value of the goods, whichever is greater, and/or imprisonment 6 months max., conviction on indictment – penalty of any amount and/or imprisonment 7 years max. Goods liable to forfeiture.</p> <p>- s171 – general provisions as to offences and penalties.</p> <p><b>UK Finance Act 2001</b> - Provisions in the Act set out rates of duty on tobacco products.</p> <p><b>The Finance Act 2006 (Tobacco Products Duty: Evasion) Order 2006</b> - this Order imposes a duty on tobacco manufacturers to avoid supplying cigarettes or hand-rolling tobacco to persons likely to smuggle them into the UK.</p> <p><b>The Tobacco Products (Amendment) Regulations 2006</b> - set out the obligations of tobacco companies not to facilitate smuggling. In the case of seized goods, tobacco manufacturers are required to supply detailed information about the products such as the intended customer and destination.</p> <p><b>Fraud Act 2006</b> - has offences for making false representations, penalty imprisonment 12 months max.</p> <p><b>Tobacco Products Duty Act 1979, Chapter 7</b> - This sets out the duty of tobacco manufacturers not to facilitate smuggling and is the primary law supporting the 2006 Tobacco Products (Amendment) Regulations.</p>

Country	UNITED STATES
WHO FCTC & Tobacco Protocol	WHO FCTC signed on 10 May 2004 but not ratified Protocol not signed
Licensing/ Marking	<p>Jurisdiction rests with States regarding tobacco control. E.g. California has had digital tax stamps in place since 2005.</p> <p>Both Federal (Alcohol and Tobacco Tax Bureau, US Department of the Treasury), and State licensing (e.g. California Cigarette &amp; Tobacco Products Licensing Act of 2003 for manufacture, import, retailers and distributors).</p> <p><b>Family Smoking Prevention and Tobacco Control Act</b> in 2006 authorized the Food and Drug Administration (FDA) to regulate tobacco products: - Title III - deals with tobacco smuggling and has new requirements for labeling (e.g. 'Sale only allowed in the US'), inspection and records to track merchandise and redirect the Comptroller General to conduct a study of cross-border tobacco trade. It also requires manufacturers and distributors to report known or reasonably suspected tobacco smuggling or tax evasion.</p> <p>The Federal Trade Commission enforces the Fair Packaging and Labeling Act, which requires information on packages and labels to be accurate and also regulates package warnings and tobacco advertising.</p> <p>U.S. Customs and Border Protection collects taxes and fees, imposes record keeping requirements, and enforces other anti-smuggling laws such as a requirement that imports be marked with the name of the country of origin. American-made cigarettes designated for export cannot be brought back into the United States by anyone except the original manufacturer or a warehouse proprietor it has authorized to do so. There is no federal license to sell tobacco products, but TTB must approve manufacturers and importers.</p> <p>Smuggled Tobacco Prevention Act of 2011 which has not yet been enacted. It would introduce tracking and tracing, amongst other measures.</p>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p>2011 US Code, Title 18 Crimes and Criminal Procedure: - Chapter 25 s492 – forfeiture of counterfeit paraphernalia - Chapter 46, ss981-987 forfeiture, possibility for civil (s981) and criminal (s982) forfeiture - Chapter 113 s2323 forfeiture, destruction and restitution.</p> <p><b>Federal Racketeer Influences and Corrupt Organizations</b> supplemented by the <b>Civil Asset Forfeiture Reform Act 2000</b> - which makes forfeitable the proceeds from any of the crimes upon which a money laundering or RICO prosecution might be based.</p>
Intellectual Property Protections and Offences	<p><b>2011 US Code</b>, Title 18 Crimes and Criminal Procedure: - Chapter 25 Counterfeiting and Forgery, ss470 – 514. - Chapter 113 s2320 – trafficking in counterfeit goods or services, using counterfeit mark, penalty fine and/or imprisonment for 10 years max. for individual. If person convicted of another offence under Act, penalty fine and/or imprisonment 20 years max.</p> <p>Party to the <b>Anti-Counterfeiting Trade Agreement (ACTA)</b></p>
Other Offences	<p><b>2011 US Code, Title 18 Crimes and Criminal Procedure:</b> - Chapter 27 ss541 – 555 – Customs – s545 smuggling goods into the US – knowingly or willingly with intent to defraud the US smuggles or clandestinely introduces merchandise which should have been invoiced etc. or fraudulently or knowingly imports merchandise contrary to law, penalty fine and/or imprisonment for 20 years max. - Chapter 47ss1001 - 1040 – fraud and false statements - Chapter 96 ss1961 - 1968 – Racketeer Influenced and Corrupt Organizations - 1962 – prohibited activities – unlawful to use income derived from racketeering activity to invest in foreign commerce/purchase of securities on open market. -unlawful to obtain interest/ control in enterprise engaged in foreign commerce</p>

262	<p>Penalties – fine and/or imprisonment 20 years</p> <p>- Chapter 114 ss2341 - 2346 - Trafficking in Contraband Cigarettes and Smokeless Tobacco, 2344 Penalties - any contraband cigarettes or contraband smokeless tobacco involved in any violation of this chapter shall be subject to seizure and forfeiture, and destruction as per the Internal Revenue Code of 1986. Whoever knowingly violates section 2342(a) of this title shall be fined under this title or imprisoned not more than five years, or both.</p> <p>-Title 26 Internal Revenue Code – s5763 Tobacco product possessed with the intent to defraud; tobacco taxes</p> <p><b>Prevent All Cigarette Trafficking Act 2009</b></p> <p>- Applies reporting requirements for tobacco taxes to sales, advertising of sales, and the shipping and transporting of cigarettes and smokeless tobacco, including shipment into a state, city, town, or Native American reservation that taxes the product being shipped.</p> <p>Sellers who mail tobacco products to customers must pay the relevant taxes, comply with the laws in force at their customers’ location, register with and make periodic reports to the state, and verify customer age at both purchase and delivery. They cannot ship goods weighing more than 10 pounds and must keep records of all deliveries for four years.</p> <p>- Penalties for violations of the Act include fines and up to 3 years in prison. Civil penalties are 2 percent of annual gross sales of tobacco products or \$5000 for a first violation and \$10,000 for further offenses, whichever is greater.</p> <p>(The Act is enforced mostly by ATF, although other agencies, such as the U.S. Postal Service, are also involved. It authorizes the ATF to inspect the records and products of delivery sellers).</p> <p>18 USC 545 Smuggling goods into the US</p>
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Country	URUGUAY
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 27 February 2005 Protocol signed 10 January 2013
Licensing/ Marking	No marking on unit packets or packages  <b>Law No. 18256 on Smoking Control Regulations</b> , article 12. The Executive Branch shall adopt and apply the methods needed to oversee, document and control the storage and distribution of tobacco products which are in or moved within the country under a system whereby customs taxes or rights are suspended  <i>(implementing regulation not available)</i>
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	Yes seizure, destruction, disposal. See <b>Law No. 17.011 of September 25, 1998, Establishing Provisions on Trademarks</b> - art. 84 - trademarks together with instruments used to carry them out shall be destroyed or rendered unusable. Infringing merchandise that has been seized shall be confiscated and destroyed except where, in view of their nature, they may be allocated to public or private charitable institutions.  <b>Law No. 18256 on Smoking Control Regulations</b> , article 12The Executive Branch shall stipulate the human and material resources necessary with the aim of eliminating all forms of illicit trade in tobacco products. It shall therefore take the appropriate steps to guarantee that all counterfeit or smuggled cigarettes and tobacco products and all their seized manufacturing equipment are destroyed by applying, whenever feasible, methods innocuous to the environment.  <b>Law No, 18494 of 23 September 2004 on Anti- Money Laundering.</b>
Intellectual Property Protections and Offences	<b>Law No. 17.011 of September 25, 1998, Establishing Provisions on Trademarks</b> - Chpt XIV – Civil and Penal Actions - Art. 81- any person who for profit or to cause damage, uses, manufactures, falsifies, adulterates or imitates a trademark entered in the Register in the name of another person shall be liable to imprisonment of between 6 months and 3 years. - Art. 82- any person who fills incorrect products into packaging bearing another’s trademark shall be liable to imprisonment of between 6 months and 3 years.

	<p>- Art. 83 - any person who knowingly manufactures, stocks, distributes or markets merchandise bearing trademarks as referred to in the preceding articles shall be liable to imprisonment of between 3 months and 6 years.</p> <p>- Art. 86 - the offences laid down in this Law shall be liable to prosecution, at the request of an interested party, in accordance with articles 11 et seq. of the Code of Penal Procedure.</p> <p>- Art. 89 – period of limitation is 1 year from date of knowledge of trademark owner of infringement, or 4 years after commission or repetition of the offence.</p> <p><b>Penal Code</b>, article 252 on crimes against trademarks and commerce.</p>
<b>Other Offences</b>	<p><b>Penal Code of the Republic of Uruguay adopted by Law No. 9155</b></p> <p>- Article 157/8 on corruption carries a maximum 6 years imprisonment penalty.</p> <p>- Article 221 on sale of dangerous substances for health without habilitation carries a maximum 10 years imprisonment penalty,</p> <p>- Articles 236/250 on crimes against public faith carries a maximum 6 years imprisonment penalty,</p> <p>- Article 257 on smuggling.</p> <p><b>Law of 26 March of 1877 and Law No. 13318 of 26 December 1964</b> on smuggling.</p> <p><b>Law. No. 12804 of 30 November 1960</b> on tax evasion.</p> <p><b>Law No. 18362 of 15 October 2008</b> (art. 414) on the creation of specialized Tribunals on organized crime.</p> <p><b>Laws related to organized crimes:</b> No. 17016 of 22 October 1998, No. 17835 of 23 September 2004 (articles 14 to 16), No. 15294 of 23 June 1982, No. 14095, of 17 November 1972, No.2.230 of 2 June 1893, No. 17835 of 23 September 2004.</p>

Country	VIET NAM
WHO FCTC & Tobacco Protocol	WHO FCTC signed and ratified – entered into force 17 March 2005 Protocol not signed
Licensing/ Marking	Marking on unit packets and packages to determine origin and legal market of sale
Seizure/ destruction of Illicit Goods, Confiscation of Proceeds of Crime	<p><b>Penal Code</b></p> <p>s.41 - 1. The property confiscation for State funds shall apply to: a) Tools and means used for the commission of crimes; b) Objects or money acquired through the commission of crime or the trading or exchange of such things; c) Objects banned from circulation by the State. 2. Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers. 3. Things and/or money of other persons, if these persons are at fault in letting offenders use them in the commission of crimes, may be confiscated for State funds.</p> <p><b>Law No. 50/2005/QH11 of November 29, 2005, on Intellectual Property</b> – Part V, Chpt XVIII, art. 214.2 - Depending on the seriousness of the infringement other penalties include confiscation of goods, raw materials, materials and means used mainly for production or trading of counterfeit goods, and suspension of business activities where infringements committed for a definite time. Art. 214.3 - Destruction or distribution for non-commercial purposes of infringing goods, raw materials and means of production.</p>
Intellectual Property Protections and Offences	<p><b>Law No. 50/2005/QH11 of November 29, 2005, on Intellectual Property</b> (promulgated by the Order No. 28/2005/L-CTN of December 12, 2005, of the President of the Socialist Republic of Vietnam) –Part III Industrial Property Rights (s.4 marks, s.5 trade names); Part V Protection of IP Rights, Chpt. XVIII, S.1 Handling of infringements of IP Rights with Administrative and Criminal Remedies, Control of IP Related Imports and/or Exports – administrative sanctions apply to producing, importing, transporting or trading counterfeit goods (art. 211). Forms of administrative sanctions (art. 214) include at clause 1. cautions and fines. 2. Confiscation and 3. Destruction or distribution of infringing goods.</p>

	<p>- s.2 Control of IP Imports and/or Exports.</p> <p><b>Law No. 36/2009/QH12 of June 19, 2009, Amending and Supplementing a Number of Articles of the Law on Intellectual Property</b> (promulgated by the Order No. 12/2009/L-CTN of June 29, 2009 of the President of the Socialist Republic of Vietnam)</p> <p><b>Criminal Code</b> – Chpt. XVI Crimes of Infringing Upon the Economic Management Order</p> <ul style="list-style-type: none"> <li>- Art.156 – manufacturing or trading in fake goods equivalent to the quantity of genuine goods valued between thirty million - one hundred and fifty million dong, or under thirty million dong but causing serious consequences</li> <li>- Art. 171 - (1) infringing upon industrial property rights including trademarks – penalty fine 20 million - 200 million dong or non-custodial reform for up to two years. (2) Committing crime more than once or in organized manner or causing serious consequences – penalty fine 10 million - 100 million dong, or a ban from holding certain posts, practicing certain occupations or doing certain jobs for 1-5 years.</li> </ul>
<p><b>Other Offences</b></p>	<p><b>Circular No 02/2010/TT-BCT:</b> guides cigarette import activities for duty free trading. <b>Planning No 14/PA-BCĐ</b> to control illicit cigarette trading in domestic market.</p> <p><b>Customs Law No. 29/2001/QH10 of June 29, 2001</b> - prescribes State management over customs with regard to exported, imported or transited goods, transport means on exit, entry and in transit, of foreign and domestic organizations and individuals; and the organization and operation of the customs service.</p> <p><b>Law no. /2013/qh10 Customs Law Draft</b> - Chpt. V - updates the former Customs Law of 2001, but not yet in force. Customs given powers to prevent and combat smuggling or the illegal transport of goods across borders.</p> <p><b>Criminal Code</b> – Chpt. XVI Crimes of Infringing Upon the Economic Management Order</p> <ul style="list-style-type: none"> <li>- Art. 153 Smuggling- penalty imprisonment 6 months-3 years, or fine of 10million – 100 million dong</li> <li>- Art. 154 – illegal cross-border transportation of goods or currencies – penalties non-custodial reform of up to 2 years, or imprisonment of 3 months – 2 years or fine 5 million – 20 million dong</li> <li>- Art.159 – conducting business illegally, i.e. without registration or license as required by law – penalty fine of five million - fifty million dong or noncustodial reform for up to two years.</li> <li>- Art. 161 – (1) tax evasion in the amount of fifty - one hundred and fifty million dong – penalty fine of between one time and five times the evaded tax amount or to non-custodial reform for up to two years. (2) Evading tax in the amount of one hundred million- five hundred million dong or repeating such crime, the offenders shall be subject to a fine of between one time and five times the evaded tax amount or to a prison term of 6 months – 3 years. (3) Evading tax more than five hundred million dong or in other particularly serious circumstances, penalty imprisonment 2-7 years. (4) offenders may also be subject to a fine of between one time and three times the evaded tax amount.</li> <li>- Art.162 – deceiving customers</li> <li>- Art.164 – counterfeiting/trading in stamps/tickets - fine 5 million - 50 million dong or imprisonment 6 months - 3 years.</li> </ul>

## Appendix 5: International Agencies and Contacts

This table indicates agencies and their contacts that Governments may contact to receive technical assistance or advise on issues directly or indirectly related to the implementation of policies in the field of countering illicit trade in tobacco products.

1. INTERNATIONAL ORGANIZATIONS		
<p><b>International Monetary Fund (IMF)</b> Fiscal Affairs Department 1900 Pennsylvania Ave NW Washington, DC, 20431 Tel: + 1 (202) 623-7000 Fax: + 1 (202) 623-4661 Website: <a href="http://www.imf.org">www.imf.org</a></p>	<p><b>INTERPOL</b> General Secretariat Trafficking in illicit goods 200, quai Charles de Gaulle 69006 Lyon France Fax: +33 (0)4 72 44 71 63 Website: <a href="http://www.interpol.int">www.interpol.int</a></p>	<p><b>Organization for Economic Cooperation and Development (OECD)</b> 2, rue André Pascal 75775 Paris Cedex 16 France Tel: +33 1 45 24 82 00 Fax: +33 1 45 24 85 00 Website: <a href="http://www.oecd.org">www.oecd.org</a></p>
<p><b>United Nation Office of Drugs and Crime (UNODC)</b> Vienna International Centre PO Box 500 A 1400 Vienna Austria Tel: + (43) (1) 26060 Fax: + (43) (1) 263-3389 Email: <a href="mailto:info@unodc.org">info@unodc.org</a> Website: <a href="http://www.unodc.org/unodc/en/organized-crime/emerging-crimes.html">http://www.unodc.org/unodc/en/organized-crime/emerging-crimes.html</a></p>	<p><b>World Bank</b> 1818 H Street, NW Washington, DC 20433 USA Tel: (202) 473-1000 Fax: (202) 477-6391 Website: <a href="http://www.worldbank.org">www.worldbank.org</a></p>	<p><b>World Customs Organization (WCO)</b> Enforcement and compliance Rue du Marché, 30 B-1210 Brussels Belgium Tel: +32 (0)2 209 92 11 Fax: +32 (0)2 209 92 62 Website: <a href="http://www.wcoomd.org">www.wcoomd.org</a></p>
<p><b>World Economic Forum (WEF)</b> 3 East 54th Street, 18th Floor, New York, NY 10022, USA Contact Numbers: Tel: +1 212 703-2300 Fax: +1 212 703-2399 Email: <a href="mailto:forumusa@weforum.org">forumusa@weforum.org</a> Website: <a href="http://www.weforum.org">www.weforum.org</a></p>	<p><b>World Health Organization (WHO)</b> Avenue Appia 20 1211 Geneva 27 Switzerland Tel: + 41 22 791 21 11 Fax: + 41 22 791 31 11 Website: <a href="http://www.who.int">www.who.int</a></p>	<p><b>World Intellectual Property Organization (WIPO)</b> 34, chemin des Colombettes CH-1211 Geneva 20, Switzerland Tel: +41 22 338 9111 Website: <a href="http://www.wipo.int">www.wipo.int</a></p>
	<p><b>World Trade Organization (WTO)</b> Intellectual Property Division Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva 21, Switzerland. Tel: +41 (0)22 739 51 11 Fax: +41 (0)22 731 42 06 Email: <a href="mailto:enquiries@wto.org">enquiries@wto.org</a> Website: <a href="http://www.wto.org">www.wto.org</a></p>	

## 2. REGIONAL ORGANIZATIONS

### African Union Commission

Trade and Industry  
Roosevelt Street W. 21 K. 19  
P.O. Box: 3243  
Addis Ababa, Ethiopia  
Tel: + (251) 011 5 18 29 02  
Fax: + (251) 0115 18 29 70  
E-mail: [acylf@africa-union.org](mailto:acylf@africa-union.org)  
Website:  
<http://www.au.int/en/commission>

### European Anti-Fraud Office (OLAF)

OLAF - European Commission  
Rue Joseph II, 30  
1000 Brussels  
Tel: +32-2-299.11.11  
Website: [ec.europa.eu/dgs/olaf](http://ec.europa.eu/dgs/olaf)

### Organization of American States

General Secretariat Building  
Department of Economic & Social  
Development  
1889 F Street, N.W.,  
Washington, D.C. 20006,  
United States of America  
Tel: +1 (202) 370-5000  
Website:  
<http://www.oas.org/en/default.asp>

### Unión de Naciones Suramericanas

Secretaría General  
Consejo Suramericano en materia de  
Seguridad Ciudadana, Justicia y  
Coordinación de Acciones contra la  
Delincuencia Organizada Transnacional  
Avenida 6 de Diciembre N24-04 y  
Presidente Wilson  
Quito - Ecuador  
Tel: +593 2 4010400  
Website: <http://www.unasursg.org/>

### Association of Southeast Asian Nations

Trade & Facilitation Division  
Secretariat  
70A Jl. Sisingamangaraja  
Jakarta 12110  
Indonesia  
Tel: (6221) 7262991, 7243372  
Fax : (6221) 7398234, 7243504  
Website:<http://www.aseansec.org/>

### European Union's law enforcement agency (EUROPOL)

P.O. Box 908 50  
2509 LW The Hague  
The Netherlands  
Tel: +31 70 302 5000  
Fax: + 31 70 345 5896  
Website:  
<https://www.europol.europa.eu/>

### Southern African Development Community (SADC)

SADC House  
Plot No. 54385  
Central Business District  
Private Bag 0095  
Gaborone  
Botswana  
Tel: +267 395 1863  
Fax: +267 397 2848 or +267 318 1070  
Website: <http://www.sadc.int/>

### United Nations Interregional Crime and Justice Research Institute (UNICRI)

Viale Maestri del Lavoro, 10  
10127 Turin,  
Italy  
Tel: (+39) 011 6537 111  
Fax: (+39) 011 6313 368  
Website: <http://www.unicri.it/>

### Economic Community of West African States (ECOWAS)

101, Yakubu Gowon Crescent,  
Asokoro District  
P.M.B. 401 Abuja  
Nigeria  
Tel: (234) (9) 31 47 647-9,  
Fax : (234) (9) 31 43 005, 31 47 646  
Website:<http://www.ecowas.int/>

### Organization for Economic Cooperation and Development (OECD)

Centre for Tax Policy and  
Administration  
2, rue André Pascal  
75775 Paris Cedex 16  
France  
Tel: +33 1 45 24 82 00  
Fax: +33 1 45 24 85 00  
Website: <http://www.oecd.org/>

### Southern African Regional Police Chiefs Cooperation Organization (SARPCCO)

Corner Mother Patrick and  
Belvedere Road  
Harare  
Zimbabwe  
Tel: +263 4 707215; 707270;  
707321  
Fax: +263 4 252676  
Website: <http://sarpcco.org/>

### 3. NON-GOVERNMENTAL ORGANIZATIONS (NGOS) AND ACADEMIC/ RESEARCH INSTITUTIONS

#### Framework Convention Alliance (FCA)

Rue Henri-Christiné 5  
Case Postale 567  
CH-1211 Geneva 4  
Switzerland  
  
Representative office:  
Framework Convention Alliance  
c/o ASH International  
701 4th Street NW, 3rd floor  
Washington, DC 20001  
USA  
Tel: 1 202 289 7155  
Fax: 1 202 289 7166  
Email: [fca@fctc.org](mailto:fca@fctc.org)  
Website: [www.fctc.org](http://www.fctc.org)

#### International Tax and Investment Center (ITIC)

1800 K Street, NW  
Suite 718  
Washington, DC  
20006 United States  
Tel: 1 202 530 9799  
Fax: 1 202 530 7987  
Email: [Washington@iticnet.org](mailto:Washington@iticnet.org)  
Website: [www.ITICnet.org](http://www.ITICnet.org)

#### Transcrime

Via Rosmini 70, 38122 Trento  
Via Inama 5, 38122 Trento  
Tel: + 39 0461 282304/3108  
Fax: +39 0461 282303  
Largo Gemelli 1, 20123 Milano  
Tel. +39 02 7234 3715/3716  
Fax +39 02 7234 3721  
Website:  
<http://www.transcrime.it/en/>

### 4. BUSINESS ORGANIZATIONS

#### Business Action to Stop Counterfeiting and Piracy (BASCAP)

BASCAP, ICC Headquarters  
33-43 Avenue du Président Wilson  
75116 Paris,  
France  
Tel: +33 1 49 53 28 27  
Website: [www.bascap.com](http://www.bascap.com)

#### European Communities Trademark Association (ECTA)

Rue des Colonies 18/24, 9th Floor  
BE - 1000 Brussels, Belgium  
Tel: + 32/2-513 5285  
Fax: + 32/2-513 0914  
Email: [ecta@ecta.org](mailto:ecta@ecta.org)  
Website: <http://www.ecta.org/>

#### International Trademark Association (INTA)

655 Third Avenue, 10th Floor  
New York, NY 10017, USA  
Tel: +1-212-642-1700  
Fax: +1-212-768-7796  
Email: [info@inta.org](mailto:info@inta.org)  
Website: [www.inta.org](http://www.inta.org)



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## Abbreviations and acronyms

AQIM	Al-Qaeda in the Maghreb
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives (US Department of Justice)
BAT	British American Tobacco
COP	Conference of the Parties
DNP	Duty Not Paid
EAPCCO	Eastern Africa Police Chiefs Cooperation Organization
EC	European Commission
EPZ	Export Processing Zone
EU	European Union
WHO FCTC	Framework Convention on Tobacco Control
FDI	Foreign Direct Investment
FTZ	Free Trade Zone
FZ	Free Zone
ICTSD	International Centre for Trade and Sustainable Development
INB	Intergovernmental Negotiating Body
ISO	International Organization for Standardization
ITI	Imperial Tobacco International
ITTP	Illicit Trade in Tobacco Products
JTI	Japan Tobacco International
MERCOSUR	Mercado Común del Sur
MLA	Mutual Legal Assistance
NGO	Non-Governmental Organization
OCG	Organized Crime Group
OECD	Organization for Economic Cooperation and Development
OLAF	European Anti-Fraud Office
PMI	Philip Morris International
RKC	Revised Kyoto Convention
SADC	South African Development Community
SARPCCO	South African Regional Police Chiefs Cooperation Organization
SEZ	Special Economic Zone
UCC	Uniform Code Council
UIM	Unique Identification Markings
UNCAC	United Nations Convention against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office of Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
WHO	World Health Organization



## Endnotes

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- <sup>20</sup> *Asia-11 Illicit Tobacco Indicator 2012*, International Tax and Investment Center and Oxford Economics, September 2013, p. 24-29; op. cit., Allen, p. 20.
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- <sup>26</sup> Dr Spencer, Claire, "Combatting Terror Across the Sahel", 22 January 2013. Available at <http://www.chathamhouse.org/media/comment/view/188675>
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- <sup>32</sup> Part I, Art. 1(13) of the Protocol states: “Tobacco products” means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.
- <sup>33</sup> Part I, Art. 1(8)(a) of the Protocol states: “Manufacturing equipment” means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process.
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- <sup>36</sup> Import declarations to customs are ‘self-assessed’ and post clearance compliance work which uncovers an undeclared cigarette making machine is the ‘fall back’.
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- <sup>39</sup> *Idem*, p.10 (Taken verbatim from the Report).
- <sup>40</sup> Open standards are publically available standards with associated usage rights.
- <sup>41</sup> See *Summary Records of FCTC/COP/INB-IT/5/REC/1*. Available at [http://apps.who.int/gb/fctc/PDF/it5/FCTC\\_COP\\_INB-IT5\\_REC1.pdf](http://apps.who.int/gb/fctc/PDF/it5/FCTC_COP_INB-IT5_REC1.pdf)
- <sup>42</sup> FATF Recommendations regarding International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation, February 2012. Available at <http://www.fatf-gafi.org/>
- <sup>43</sup> Each of these categories are outlined at Annex 2, in the *Expert review on a possible ban on Internet sales of tobacco products* (FCTC/COP/INB-IT/3/INF.DOC./4), discussed during the INB3.
- <sup>44</sup> Due diligence by transporters may only include that they checked the customer has a license and may not extend to making inquiries about the tax status of the products.
- <sup>45</sup> WCO website. Available at <http://www.wcoomd.org>
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- <sup>48</sup> UNODC’s Track Legal Library . Available at <http://www.track.unodc.org/LegalLibrary/Pages/home.aspx>
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