



F C T C

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**

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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/COP/5/6;

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.

(First plenary meeting, 12 November 2012)

ANNEX

PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

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 well-being, 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.¹

(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.

¹ Parties may include reference to the Harmonized Commodity Description and Coding System of the World Customs Organization for this purpose, wherever applicable.

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.¹
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 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.

¹ Where appropriate, national or domestic will refer equally to regional economic integration organizations.

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 secure¹ 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.

¹ 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.

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.

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) mis-declaring 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 the 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 90th 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 90th 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 90th day following the date of deposit of the 40th 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.

FCTC/COP5(2) Applications for the status of observer to the Conference of the Parties

The Conference of the Parties (COP), in accordance with Rule 30 of its Rules of Procedure,

Having considered the applications for observer status submitted by two intergovernmental organizations contained in document FCTC/COP/5/3,

DECIDES:

- (1) to grant to the South Centre the status of observer to the COP;
- (2) to defer consideration of the application for observer status submitted by the International Criminal Police Organization (INTERPOL); and to mandate the Bureau of the COP to liaise with INTERPOL to seek clarification on considerations relating to its application for observer status, taking account Rule 30 of the Rules of Procedure of the COP, in particular in relation to Article 5.3 of the WHO FCTC; and to submit a report to the next regular session of COP.

(First plenary meeting, 12 November 2012)

FCTC/COP5(3) Election of the officers of Committees A and B

The following officers were elected to Committees A and B, pursuant to Rule 28 of the Rules of Procedure of the Conference of the Parties:

Committee A: Chairperson Professor Nuntavarn Vichit-Vadakan (Thailand)

Vice-Chairpersons Dr Frank Niggemeier (Germany)
Dr Jawad Al-Lawati (Oman)

Committee B: Chairperson Mr Masudi Ngeywo (Kenya)

Vice-Chairpersons Dr Ganglip KIM (Republic of Korea)
Mr Leandro Viegas (Brazil)

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(4) Credentials of the Parties

The Conference of the Parties,

RECOGNIZES the validity of the credentials of the representatives of the following Parties:

Afghanistan, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium Benin, Bhutan, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Democratic Republic of the Congo, Djibouti, Ecuador, Egypt, Equatorial Guinea, Estonia, European Union, Fiji, Finland, France, Gabon, Gambia, Germany, Greece, Guatemala, Honduras, Hungary, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao Peoples Democratic Republic, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Montenegro, Myanmar, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Seychelles, Singapore, Slovakia, Solomon Islands, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Viet Nam, Yemen, and Zambia.

The representatives of following Parties were entitled to participate provisionally in the session with all rights in the Conference pending arrival of their formal credentials:

Botswana, Bulgaria, Denmark, Georgia, Ghana, Guinea, Guinea-Bissau, India, Iraq, Marshall Islands, Namibia, Papua New Guinea, Paraguay, Peru, Qatar, Samoa, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Sudan, Syrian Arab Republic, Uzbekistan, and Venezuela (Bolivarian Republic of).

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(5) Seoul Declaration

Noting the report of the Convention Secretariat on global progress in implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC);¹

Recalling decision FCTC/COP4(5) adopting the Punta del Este Declaration on the implementation of the WHO FCTC;

Welcoming the political declarations of the First Ministerial Conference on Healthy Lifestyles and Noncommunicable Disease Control held in April 2011, the High-level Meeting of the United Nations General Assembly on Prevention and Control of Non-communicable Diseases held in September 2011,² and the World Conference on Social Determinants of Health held in October 2011, the political outcome document of the United Nations Conference on Sustainable Development held in June 2012,³ and the resolution of the Economic and Social Council on United Nations system-wide coherence on tobacco control adopted in July 2012;⁴

Acknowledging that the global burden and threat of noncommunicable diseases constitutes one of the major challenges for sustainable development, and recognizing the critical importance of reducing the level of exposure of individuals and populations to risk factors including tobacco use and exposure to tobacco smoke;

Recognizing the contribution of tobacco control efforts to improving public health and supporting the fundamental right of every human being to the enjoyment of the highest attainable standard of health;

Emphasizing the call of the international community to accelerate the implementation by Parties to the WHO FCTC and the encouragement to countries that have not yet done so to consider acceding to the Convention;

Noting with concern that the most frequently reported barrier to effective implementation of the WHO FCTC is interference by the tobacco industry;

Recalling the fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests;

Reiterating their determination to give priority to their right to protect public health;

The Parties to the WHO FCTC declare:

1. Their commitment to accelerate implementation of the Convention in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.

¹ Document FCTC/COP/5/5.

² Resolution A/RES/66/2.

³ Resolution A/RES/66/288.

⁴ Resolution E/RES/2012/4.

2. Their determination to support, at the national, regional and international levels, comprehensive, multisectoral and coordinated approaches to tobacco control, recognizing that effective noncommunicable disease prevention and control requires whole-of-government approaches.
3. Their commitment to continue efforts to mobilize the financial and technical resources needed to support tobacco control activities, especially in developing countries and countries with economies in transition.
4. Their resolve to strengthen action to protect tobacco control policies from commercial and other vested interests of the tobacco industry, as required by Article 5.3 of the Convention and consistent with the guidelines for its implementation.
5. Their determination not to allow tobacco industry interference to slow or prevent the development and implementation of tobacco control measures in the interests of public health and in accordance with the Convention and consistent with its guidelines.
6. Their commitment to cooperate with each other and with the Convention Secretariat and other competent international bodies, consistent with Article 22 of the Convention, to strengthen their capacity to fulfil the obligations arising from the Convention and in efforts to counteract tobacco industry interference.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(6) Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC (*Regulation of the contents of tobacco products and Regulation of tobacco product disclosures*)

The Conference of the Parties,

Taking into account Article 7 (*Non-price measures to reduce the demand for tobacco*), Article 9 (*Regulation of the contents of tobacco products*) and Article 10 (*Regulation of tobacco product disclosures*) of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Recalling its decision FCTC/COP1(15) to establish a working group to elaborate guidelines for implementation of Article 9 and Article 10 of the WHO FCTC, and its decision FCTC/COP2(14) to extend the work of the working group to include product characteristics, such as design features, to the extent that they affect the objectives of the WHO FCTC;

Recalling its decision FCTC/COP4(10) to adopt partial guidelines for implementation of Article 9 and Article 10 of the WHO FCTC and to mandate the working group to continue its work in elaborating guidelines in a step-by-step process, to submit draft guidelines on addictiveness and toxicity to future sessions of the Conference of the Parties for consideration, to continue to monitor areas such as dependence liability and toxicology, and to examine the regulation of cigarette ignition propensity, as a product characteristic;

Noting Annex 3 of the report of the working group to the Conference of the Parties at its fifth session (document FCTC/COP/5/9) entitled *Background paper on tobacco addictiveness reduction*,

1. ADOPTS the further partial guidelines for implementation of Article 9 and Article 10 of the WHO FCTC contained in the Annex to this decision;
2. WELCOMES the report of WHO's Tobacco Free Initiative to the Conference of the Parties on the work in progress in relation to Articles 9 and 10 of the WHO FCTC (document FCTC/COP/5/INF.DOC./1);
3. REQUESTS the Convention Secretariat:
 - (a) to make accessible, via a web site, the studies, research and other reference material used in the development of the further partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC;
 - (b) to invite WHO to:
 - (i) continue the validation of the analytical chemical methods for testing and measuring cigarette contents and emissions in accordance with the progress report (document FCTC/COP/3/6) and to inform the Conference of the Parties through the Convention Secretariat on a regular basis of the progress made;
 - (ii) prepare a comprehensive report that, based on a review of the scientific and medical literature, identifies measures that would be likely to reduce the toxicity of both smoked and smokeless tobacco products and describes the evidence supporting the effectiveness of such measures, and that examines the experience of Parties on the matter for consideration at the sixth session of the Conference of the Parties;

(iii) monitor and follow closely the evolution of new tobacco products, including products with potentially “modified risks” and to report to the Conference of the Parties on any relevant development;

(iv) direct some of its activities towards section 12 of the background paper (Annex 3 of document document FCTC/COP/5/9), which outlines aspects of addictiveness (or dependence liability) of both smoked and smokeless tobacco products that remain to be studied;

(v) develop draft fact sheets on measures recommended in the *Partial guidelines on the implementation of Articles 9 and 10 of the WHO FCTC* to provide support to effective implementation and raise awareness of their benefits among Parties;

(vi) monitor and research the country experience and scientific development with respect to reduced ignition propensity cigarettes; and

(vii) compile, make available for Parties and update a non-exhaustive list of toxic contents and emissions of tobacco products, and advise about how such information could be best used by Parties;

4. INVITES Parties, international, regional and subregional organizations, international financial institutions and/or other development partners to assign resources to the conduct of research that would support Parties in implementing Articles 9 and 10 of the WHO FCTC;

5. DECIDES to mandate the working group to:

(a) continue to monitor areas such as dependence liability and toxicology;

(b) continue its work in elaborating guidelines in a step-by-step process, and to submit draft partial guidelines or a progress report on the testing and measuring of contents and emissions using the analytical chemical methods validated by WHO to the next session of the Conference of the Parties;

(c) identify which other analytical chemical methods for the testing and measuring of cigarette contents and emissions, or ingredients, need to be validated and/or to identify the methods for which validation should be extended to include tobacco products other than cigarettes;

(d) continue work on definitions in the area of product regulation;

(e) examine how Parties may address possible false, misleading or deceptive conduct and/or representations with respect to tobacco products contents, characteristics and/or performance, and possibly produce text on this matter to be included in the partial guidelines;

6. ALSO DECIDES, in accordance with decision FCTC/COP4(10):

(a) to request the Convention Secretariat to provide assistance and make the necessary arrangements, including budgetary arrangements, for the working group to continue its work, and to ensure, in consultation with the Bureau of the Conference of the Parties, that Parties have

access to the draft text (for example, via a protected web site) and can provide comments before the circulation of the draft guidelines to the Conference of the Parties;

(b) to adopt the timeline set out below:

Draft report made available by the Secretariat for comments by the Parties	At least six months before the opening day of the sixth session of the Conference of the Parties
Submission of the final report by the working group to the Secretariat	At least three months before the opening day of the sixth session of the Conference of the Parties
Circulation to the Conference of the Parties	At least 60 days before the opening day of the sixth session of the Conference of the Parties in accordance with Rule 8 of the Rules of Procedure of the Conference of the Parties

ANNEX

PUBLIC DISCLOSURE – TOXIC CONSTITUENTS AND EMISSIONS

**TEXT TO BE INSERTED INTO THE PARTIAL GUIDELINES FOR IMPLEMENTATION
OF ARTICLES 9 AND 10 OF THE WHO FCTC AS ADOPTED
BY THE COP AT ITS FOURTH SESSION**

INSERT after heading “1.2.3 Disclosure to the public”

Pursuant to Article 10, the primary objective of public disclosure of information about the toxic constituents and emissions of tobacco products is to inform the public of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke. This information may also assist the public in contributing to the development and implementation of relevant policies, activities and regulations.

INSERT after heading “2.7 Confidentiality in relation to disclosure to the public”

Parties should disclose information about the toxic constituents and emissions of tobacco products to the public in a meaningful way. Parties may determine in accordance with their national laws the information about the toxic constituents and emissions of tobacco products that should not be disclosed to the public.

INSERT after heading “3.5 Disclosure to the public”

3.5.1 Background

Many people are not fully aware of, misunderstand or underestimate the risks for morbidity and premature mortality attributable to tobacco use and exposure to tobacco smoke. Complementing other measures relating to the reduction of demand for tobacco, Article 10 of the WHO FCTC requires that each Party shall adopt and implement effective measures for public disclosure of information about the toxic constituents of tobacco products and the emissions that they may produce. As stated in Article 4.1 of the WHO FCTC, Parties shall be guided by the principle that every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke.

3.5.2 Scope and means of public disclosure

3.5.2.1 Public access to information disclosed to governmental authorities

Detailed information about the toxic constituents and emissions of tobacco products is difficult to comprehend, and public disclosure of such information might not directly promote or protect public health. However, such information may assist other members of civil society, particularly academic institutions and nongovernmental organizations, in contributing to tobacco control policy.

In addition, other information disclosed to governmental authorities in accordance with these guidelines, such as information on ingredients, product characteristics and the market, may also contribute to raising public awareness and advancing tobacco control policy.

Recommendation:

Parties should consider, in accordance with their national laws, making information about the toxic constituents and emissions of tobacco products and other information disclosed to governmental

authorities in accordance with these guidelines publicly accessible (e.g. via the Internet, or by request to a governmental authority) in a meaningful way.

3.5.2.2 Public disclosure of constituents and emissions in the context of Articles 11 and 12 of the WHO FCTC

Information on how public disclosure is linked to Articles 11 and 12 of the WHO FCTC can be found in section 7, “LINKS TO OTHER ARTICLES OF THE WHO FCTC”.

INSERT after heading “7 LINKS TO OTHER ARTICLES OF THE WHO FCTC”

7.1 Packaging suggesting the presence of a prohibited or, where appropriate, restricted ingredient

INSERT after paragraph “7.1 Packaging suggesting the presence of a prohibited ingredient”

7.2 Information on relevant constituents and emissions on tobacco packaging

Tobacco product packaging and labelling are an effective means of public communication about constituents and emissions of tobacco products, as recognized in Article 11 of the WHO FCTC. Parties should refer to Article 11 and the guidelines for its implementation.

7.3 Information on relevant constituents and emissions in education, communication, training and other public awareness programmes

Parties should consider including messages about constituents and emissions of tobacco products in education, communication, training and other public awareness programmes. Such messages may reinforce efforts to inform the public of the health consequences, addictive nature and mortal threat posed by tobacco use and exposure to tobacco smoke in programmes established in accordance with Article 12 of the WHO FCTC and the guidelines for its implementation.

**PRODUCT CHARACTERISTICS IN RELATION TO FIRE-RISK
(REDUCED IGNITION PROPENSITY)**

**TEXT TO BE INSERTED INTO THE PARTIAL GUIDELINES FOR IMPLEMENTATION
OF ARTICLES 9 AND 10 OF THE WHO FCTC AS ADOPTED
BY THE COP AT ITS FOURTH SESSION**

INSERT after heading “3.3.2 Regulation”

3.3.2.1 Cigarettes – Regulation in relation to fire-risk (reduced ignition propensity)

(i) Background

Lit cigarettes that are laid down and left unattended smoulder and can ignite upholstery, other furniture, bedding and other textiles, or other material. This has been observed most often in cases of smoking in bed or smoking while under the influence of alcohol, illicit drugs or medication. Every year a considerable number of people around the world are injured or die (e.g. from burns or smoke gas poisonings) as a result of fires caused by cigarettes.

In order to prevent a significant number of such injuries and deaths, cigarettes can be designed in a way that the cigarette self extinguishes when not puffed or left unattended and thereby has a reduced risk of starting fires. These cigarettes are known as reduced ignition propensity cigarettes (RIP cigarettes).

Reductions in the number of cigarette fires and related victims have been observed in some jurisdictions that have mandated the replacement of conventional cigarettes with RIP cigarettes. Although RIP cigarettes do not self-extinguish in every case, they are expected to reduce the risk of a fire being ignited, and thus the risk of injuries and deaths. It is important to note that mandating an RIP standard is aimed at reducing the number of fires caused by lit cigarettes; it will not eliminate them.

There have been claims that RIP cigarettes may have a different toxicity than conventional cigarettes. Research suggests that RIP cigarettes are just as toxic as conventional cigarettes and equally dangerous to human health.

(ii) Regulating the ignition propensity of cigarettes

In regulating the ignition propensity of cigarettes, governmental authorities usually take a performance-based approach by adopting provisions that prescribe the test method to be used, and then provisions that set the pass/fail criteria (performance standard) applicable to the results obtained after conduct of the test (see Appendix 4).

In a number of cases, governmental authorities have also laid down requirements related to a specific technique for achieving RIP, namely banded paper technology, and requirements related to certification (see Appendix 5).

(iii) Recommendations

(i) Parties should require that cigarettes comply with an RIP standard, taking into account their national circumstances and priorities.

(ii) When implementing recommendation (i) of this paragraph, Parties should consider setting a performance standard that corresponds at a minimum to the current international practice, regarding the percentage of cigarettes that may not burn their full length when tested according to the method described in Appendix 4.

(iii) Parties should not allow any claims to be made suggesting that RIP cigarettes would be unable to ignite fires.

INSERT instead of “4.4 Deadline – prohibited or restricted ingredients”

4.4 Deadlines

4.4.1 Prohibited or restricted ingredients

(Text remains the same as in the current paragraph 4.4)

4.4.2 Reduced ignition propensity

Parties should specify a deadline following which the tobacco industry and retailers must only supply cigarettes that comply with the required RIP standard.

INSERT instead of “4.6 Sampling and testing – prohibited or restricted ingredients”

4.6 Sampling and testing

4.6.1 Prohibited or restricted ingredients

(Text remains the same as in the current paragraph 4.6)

4.6.2 Reduced ignition propensity

Parties should consider having samples of cigarettes collected from manufacturers, importers or retailers. These samples should then be tested to ascertain whether they comply with the required RIP performance standard. Both sampling and testing should be carried out according to the method described in Appendix 4.

Appendix 4

Performance standard for reduced ignition propensity (RIP) cigarettes and related standard test methods

The performance standard for RIP cigarettes has been expressed as the percentage of cigarettes that, when ignited and laid down on a pre-determined substrate, do not burn through their whole length.

As of 2012, international practice is to require a not-burn-through rate of no less than 75% by testing on 10 layers of filter paper.

As of 2012, available standard test methods for sampling and verifying the conformity of cigarettes with the required not-burn-through rate include: ISO 12863:2010 “Standard test method for assessing the ignition propensity of cigarettes”; EN ISO 12863:2010 “Standard test method for assessing the ignition propensity of cigarettes”; AS 4830-2007 “Determination of the extinction propensity of cigarettes”; NZS/AS 4830:2007 “Determination of the extinction propensity of cigarettes”; and ASTM E2187-09 “Standard Test Method for Measuring the Ignition Strength of Cigarettes”.

Appendix 5

Reduced ignition propensity cigarettes – additional information

(a) Design of the cigarette paper

Where Parties have required banded paper technology, one of the practices with respect to both filter and non-filter cigarettes is for one band surrounding the tobacco column to be located not less than 15 mm from the lighting end of the cigarette, and for a second such band to be located not less than 10 mm from the filter end or, in the case of non-filter cigarettes, not less than 10 mm from the labelled end of the tobacco column.

The above-mentioned approach should not be understood as precluding the future use of other technologies at least as effective in reducing the ignition propensity of cigarettes.

(b) Certification approach

Where a self-certification approach has been adopted, the practice is to require the tobacco industry to file with the appropriate governmental authority a statement of conformity and/or declaration of truth, with the required RIP standard. An alternative approach would be to mandate third-party certification.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(7) Set of guiding principles and recommendations for implementation of Article 6 of the WHO Framework Convention on Tobacco Control (*Price and tax measures to reduce the demand for tobacco*)

The Conference of the Parties,

Taking into account Article 6 (*Price and tax measures to reduce the demand for tobacco*) of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Recalling its decision FCTC/COP4(13) to establish a working group to elaborate guidelines for implementation of Article 6 of the WHO FCTC;

Having considered the report of the working group contained in document FCTC/COP/5/8;

Emphasizing that the aim of this set of guiding principles and recommendations is to assist Parties in implementing provisions under Article 6 of the WHO FCTC;

Mindful of the provisional nature of this set of guiding principles and recommendations and the possible need for reassessment in light of further work on the draft guidelines,

1. ADOPTS the set of guiding principles and recommendations for implementation of Article 6 of the WHO FCTC contained in the Annex to this decision;
2. DECIDES to establish an open-ended intersessional drafting group to continue the work of elaborating guidelines for implementation of Article 6 of the WHO FCTC and present a complete draft for consideration by the sixth session of the Conference of the Parties;
3. ALSO DECIDES, in accordance with decision FCTC/COP4(13):
 - (a) to request the Convention Secretariat to provide assistance and make the necessary arrangements including budgetary arrangements for the continued work, and to ensure, in consultation with the Bureau of the Conference of the Parties, that Parties have access to the draft text (for example, via a protected web site) and can provide comments;

(b) to adopt the timeline set out below:

Draft report made available by the Secretariat for comments by the Parties	At least six months before the opening day of the sixth session of the Conference of the Parties
Submission of the final report by the drafting group to the Secretariat	At least three months before the opening day of the sixth session of the Conference of the Parties
Circulation to the Conference of the Parties	At least 60 days before the opening day of the sixth session of the Conference of the Parties in accordance with Rule 8 of the Rules of Procedure of the Conference of the Parties

(c) to invite Parties, by 31 January 2013, to confirm to the Convention Secretariat their intention to participate in the work of the drafting group.

ANNEX

**SET OF GUIDING PRINCIPLES AND RECOMMENDATIONS FOR
IMPLEMENTATION OF ARTICLE 6 OF THE WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL****1. Guiding principles****1.1 Determining tobacco taxation policies is a sovereign right of the Parties**

All parts of the guidelines respect the sovereign right of the Parties to determine and establish their taxation policies, as set out in Article 6.2 of the WHO FCTC.

1.2 Effective tobacco taxes significantly reduce tobacco consumption and prevalence

Effective taxes on tobacco products that lead to higher real consumer prices (inflation-adjusted) are desirable because they lower consumption and prevalence, and thereby in turn reduce mortality and morbidity and improve the health of the population. Increasing tobacco taxes is particularly important for protecting young people from initiating or continuing tobacco consumption.

1.3 Effective tobacco taxes are an important source of revenue

Effective tobacco taxes contribute significantly to State budgets. Increasing tobacco taxes generally further increases government revenues, as the increase in tax normally outweighs the decline in consumption of tobacco products.

1.4 Tobacco taxes are economically efficient and reduce health inequalities

Tobacco taxes are generally considered to be economically efficient as they apply to a product with inelastic demand. Low- and middle-income population groups are more responsive to tax and price increases; therefore consumption and prevalence are reduced in these groups by greater magnitudes than in higher-income groups, resulting in a reduction in health inequalities and tobacco-related poverty.

1.5 Tobacco tax systems and administration should be efficient and effective

Tobacco tax systems should be structured to minimize the costs of compliance and administration while ensuring that the desired level of tax revenue is raised and health objectives are achieved.

Efficient and effective administration of tobacco tax systems enhances tax compliance and collection of tax revenues while reducing tax evasion and the risk of illicit trade.

1.6 Tobacco tax policies should be protected from vested interests

The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies, as required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation as well as from any other actual and potential conflicts of interests.

2. Taxation and affordability (income elasticity)

Recommendation

When establishing or increasing their national levels of taxation Parties should take into account – among other things – both price elasticity and income elasticity of demand, as well as inflation and changes in household income, to make tobacco products less affordable over time in order to reduce consumption and prevalence. Therefore, Parties should consider having regular adjustment processes or procedures for periodic revaluation of tobacco tax levels.

3. Structure of tobacco taxes (ad valorem, specific, mixture of both, minimum taxes, other taxes on tobacco goods)

Recommendation

Parties should implement the simplest and most efficient system that meets their public health and fiscal needs, and taking into account their national circumstances. Parties should consider implementing specific or mixed excise systems with a minimum specific tax floor, as these systems have considerable advantages over purely ad valorem systems.

4. Level of tax rates to apply

Recommendation

Parties should establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time.

Tax rates should be monitored, increased or adjusted on a regular basis, potentially annually, taking into account inflation and income growth developments in order to reduce consumption of tobacco products.

5. Comprehensiveness/similar tax burden for different tobacco products

Recommendation

All tobacco products should be taxed in a comparable way as appropriate, in particular where the risk of substitution exists.

Parties should ensure that tax systems are designed in a way that minimises the incentive for users to shift to cheaper products in the same product category or to cheaper tobacco product categories as a response to tax or retail price increases or other related market effects.

In particular, the tax burden on all tobacco products should be regularly reviewed and, if necessary, increased and, where appropriate, be similar.

6. Authorization/licensing

Recommendation

Parties should ensure that transparent licence or equivalent approval or control systems are in place.

7. Warehouse system/movement of excisable goods and tax payments

Recommendation

Parties are urged to adopt and implement measures and systems of storage and production warehouses to facilitate excise controls on tobacco products.

In order to reduce the complexity of tax collection systems, excise taxes should be imposed at the point of manufacture, importation or release for consumption from the storage or production warehouses.

Tax payments should be required by law to be remitted at fixed intervals or on a fixed date each month and should ideally include reporting of production and/or sales volumes, and price by brands, taxes due and paid, and may include volumes of raw material inputs.

Tax authorities should also allow for the public disclosure of the information contained within the reports, through the available media, including those online, taking into account confidentiality rules in accordance with national law.

8. Anti-forestalling measures

Recommendation

In anticipation of tax increases Parties should consider imposing effective anti-forestalling measures.

9. Fiscal markings

Recommendation

Where appropriate, Parties should consider requiring the application of fiscal markings to increase compliance with tax laws.

10. Enforcement

Recommendation

Parties should clearly designate and grant appropriate powers to tax enforcement authorities.

Parties should also provide for information sharing among enforcement agencies in accordance with national law.

In order to deter non-compliance with tax laws, Parties should provide for an appropriate range of penalties.

11. Use of revenues – financing of tobacco control

Recommendation

Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenue to tobacco-control programmes, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control.

12. Tax-free/duty-free sales

Recommendation

Parties should consider prohibiting or restricting the sale to and/or importation by international travellers, of tax-free or duty-free tobacco products.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(8) Economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO Framework Convention on Tobacco Control)

The Conference of the Parties,

Taking note of the report on global progress in implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC), submitted by the Convention Secretariat to the fifth session of the Conference of the Parties, which revealed significant advances in implementation of the Convention;

Reaffirming its decision FCTC/COP3(16) establishing a working group on economically sustainable alternatives to tobacco growing in relation to Articles 17 and 18 of the WHO FCTC;

Recalling the report of the working group on economically sustainable alternatives to tobacco growing to the Conference of the Parties at its fifth session (document FCTC/COP/5/10);

Noting that the WHO FCTC does not aim to penalize tobacco farmers, but aims to promote economically viable alternatives for tobacco workers, growers, and as the case may be, individual sellers;

Considering that the success of the WHO FCTC will result in reducing consumption, and bearing in mind that Article 17 of the WHO FCTC is aimed at increasing the number of livelihood options, with a view to assisting tobacco farmers and workers;

Taking into account that the farmers who live in a situation of poverty are those most vulnerable to the dependency cycle, which in some cases is linked to tobacco production;

Noting that up to the fifth session of the Conference of the Parties there was still a need to further develop and share sound, economically viable alternatives presented in the form of policy options and recommendations with a view to offering support to tobacco growers and workers;

Remembering that developing economically viable options depends on identifying viable alternative crops, adequate policy requirements and appropriate mechanisms of implementation, according to potentialities, at the national and local level, as applicable; and

Reaffirming the need to safeguard the livelihoods of tobacco farmers and workers,

1. DECIDES:

(1) to request the working group established by decision FCTC/COP3(16) to continue to work within the new mandate and to conclude this work by its sixth session, delivering draft policy options and recommendations based on the findings produced by the implementation of a standardized methodological framework in the pilot projects and other relevant experiences;

(2) that the standardized methodological framework be centred, inter alia, on the following elements:

(i) participatory identification of agrarian systems of tobacco growers (natural resources; availability of means of production; socioeconomic determinants) and identification of alternative crops;

- (ii) pilot projects and other relevant experiences to identify the specificities of a given tobacco growing area;
- (iii) information exchange between cooperating parties;
- (iv) lessons drawn (analysis and findings); and
- (v) policy options based mainly on the following policy instruments: (a) technical assistance; (b) social and economic organization; (c) infrastructure and services; (d) rural credit; (e) price assurance; (f) crop and income insurance; (g) food acquisition programme;

(3) to develop policy options to address specific tobacco-linked environmental and health issues, especially in regard to green leaf sickness;

(4) to invite Parties, by 31 January 2013, to confirm to the Convention Secretariat their intention to continue as members of the working group or their intention to join the working group;

2. ALSO DECIDES:

(1) to request the Secretariat to support and make the necessary arrangements, including budgetary provisions, for the working group to complete its work, prioritizing the tasks mandated by subparagraphs (1)(a), (1)(b) and (1)(c) of decision FCTC/COP3(16);

(2) to request the Secretariat to facilitate the promotion of collaboration with relevant intergovernmental and nongovernmental organizations, primarily FAO, the World Bank and others, for the accomplishment of the tasks prioritized above;

(3) to request the Secretariat to promote cost-effective measures to allow the working group to accomplish these tasks, including virtual meetings as appropriate;

(4) to adopt the timeline set out below:

1	To standardize the methodological framework in a meeting with rural development specialists and delegates from the working group	First meeting in the first trimester of 2013
2	Application of the agreed-upon standardized methodological framework in the pilot project and other relevant experiences	Nine months
3	Data analysis and summary of conclusions	Two months
4	Draft of set of policy options and recommendations due to be presented to the Parties at the sixth session of the Conference of the Parties	Two months, culminating in a broad meeting involving all the working group members

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(9) Implementation of Article 19 of the WHO FCTC: “Liability”

The Conference of the Parties,

Taking note of the report by the Convention Secretariat on liability contained in document FCTC/COP/5/11,

DECIDES, subject to the prioritization of work by the Conference of the Parties:

- (1) to establish an expert group on liability comprising no more than three experts per WHO region; one observer per region with specific expertise in the area of the expert group may be invited by the Convention Secretariat;
- (2) to invite Parties to nominate members to the expert group, in a manner to be decided by the Bureau of the Conference of the Parties, taking into account appropriate technical representation;
- (3) to mandate the expert group to:
 - (a) identify, examine and collect existing best practices for civil and criminal liability including compensation;
 - (b) identify obstacles that impede effective action in the areas of civil and criminal liability, in particular, in the context of civil liability, including compensation, and provide options to address them;
 - (c) identify available options for developing legislation for Parties to consider, in the areas of civil and criminal liability, in particular in the context of civil liability;
 - (d) to provide options for technical support, international cooperation and the exchange of information for the effective implementation of Article 19 of the WHO FCTC; and
 - (e) to report on facts, information and options to the sixth session of the Conference of the Parties;
- (4) The group of experts should make maximum practical use of electronic communications and other methods to minimize the expenditures necessary for travel, and should conclude its work in sufficient time to allow the Parties to study its report prior to the sixth session of the Conference of the Parties.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(10) Control and prevention of smokeless tobacco products and electronic nicotine delivery systems, including electronic cigarettes

The Conference of the Parties,

Noting the reports of the Convention Secretariat contained in documents FCTC/COP/5/12 and FCTC/COP/5/13,

DECIDES to request the Secretariat to invite WHO to:

- (1) identify, examine and collect existing best practices on prevention and control of smokeless tobacco (SLT) products;
- (2) collate existing research, explore the research gap and identify the research areas that need to be focused upon;
- (3) identify options for the prevention and control of SLT products and electronic nicotine delivery systems (ENDS);
- (4) examine emerging evidence on the health impacts of ENDS use; and report on the outcome to the sixth session of the Conference of Parties.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(11) Reporting arrangements under the WHO FCTC

The Conference of the Parties,

Recalling decision FCTC/COP1(14), which provided the basis for the reporting arrangements under the WHO Framework Convention on Tobacco Control (WHO FCTC), as well as decisions FCTC/COP2(9) and FCTC/COP3(17) concerning further development of the reporting instrument;

Also recalling decision FCTC/COP4(16), by which the Conference of the Parties further harmonized and standardized reporting arrangements under the Convention, and also requested the Convention Secretariat to provide recommendations for: taking into account in the reporting instrument key measures contained in the guidelines adopted by the Conference of the Parties; further standardizing definitions and indicators; and facilitating regular review of progress in implementation of the Convention;

Concerned that more than 15 Parties have not yet submitted any reports on the implementation of the WHO FCTC since the Convention entered into force;

Having considered the report of the Secretariat, *Reporting arrangements under the WHO FCTC*, as contained in document FCTC/COP/5/14, and the conclusions and recommendations therein;

Also noting the report of the Secretariat, *Global progress in implementation of the WHO FCTC: key findings*, as contained in document FCTC/COP/5/5,

DECIDES:

- (1) to mandate the Convention Secretariat to update the reporting instrument, as appropriate, in consultation with the Parties, to facilitate the voluntary submission of information by the Parties on the use of the guidelines adopted by the Conference of the Parties;
- (2) to mandate the Secretariat, in cooperation with competent authorities within WHO, to develop a WHO FCTC Indicator Compendium, as described in paragraphs 13 to 16 of document FCTC/COP/5/14, to further facilitate standardization of indicators and their use by Parties, including relevant definitions and sources of information, and to make the Compendium available to Parties for comments by 1 July 2013, in consultation with the Bureau, and provide a final version of the Compendium by 15 September 2013 for the use by Parties in the 2014 reporting cycle;
- (3) to mandate the Secretariat to utilize the first four measures described in paragraph 21 of document FCTC/COP/5/14 to facilitate reporting arrangements under the Convention;
- (4) to request the Secretariat to prepare recommendations, for consideration by the sixth session of the Conference of the Parties, on the establishment of a mechanism to facilitate review of Parties' reports by the Conference of the Parties. Such recommendations should help to define the composition, scope, timing, desired outcomes, administrative and financial implications of an efficient and effective mechanism.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(12) Impact assessment of the WHO FCTC

The Conference of the Parties,

Taking into consideration that in 2015 it will be 10 years since the WHO Framework Convention on Tobacco Control (WHO FCTC) came into force;

Welcoming the global progress reports on implementation of the WHO FCTC prepared by the Convention Secretariat for the current and previous sessions of the Conference of the Parties, based on Parties' reports;

Acknowledging a need to examine the impact of the Convention as a tool in promoting public health in general and tobacco prevention in particular;

Further acknowledging a need to conduct, based on previous reporting and other relevant sources of information, an overall assessment and analysis of the long-term trends in prevalence of tobacco use, as well as implementation levels of comprehensive tobacco control legislation, policies and programmes,

DECIDES to request the Convention Secretariat to prepare a report outlining a limited number of options with attached cost implications for conducting an impact assessment of the WHO FCTC after its 10 years of operation for consideration at the sixth session of the Conference of the Parties.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(13) Promoting South–South cooperation for implementation of the WHO FCTC

The Conference of the Parties,

Recalling its decision FCTC/COP4(19), which requested the Convention Secretariat to actively work in the areas of South–South and triangular cooperation for promoting implementation of the Convention, and to present a comprehensive report on this matter to the fifth session of the Conference of the Parties;

Welcoming the report of the Secretariat contained in document FCTC/COP/5/17, which identifies, *inter alia*, challenges and opportunities for cooperation among developing countries and development partners in different areas of the Convention;

Noting the emerging challenges relating to tobacco control in low- and lower-middle-income countries in particular, and at the same time potential opportunities for cooperation in implementation of the demonstration projects as identified in paragraph 24 of the report;

Further noting that developing countries will face an increasing burden of tobacco use in the short-, mid- and long-term, and that interventions that meet their specific needs are required in order to assist them in making progress in implementation of the Convention,

1. DECIDES to request the Parties to actively engage in promoting South–South and triangular cooperation for implementation of the Convention, including through demonstration projects as referred to in paragraph 2, in cooperation with relevant development partners, and further strengthen international cooperation aimed at addressing specific needs of the Parties, including in regional and subregional context;
2. DECIDES to request the Convention Secretariat:
 - (1) to continue to work in promoting South–South and triangular cooperation for implementation of the Convention, in cooperation with relevant organizations and bodies;
 - (2) to implement demonstration projects as described in paragraph 24 of document FCTC/COP/5/17, and merging, as necessary, the proposed projects concerning tobacco packaging into one project on promotion of implementation of Articles 11 and 13 in relation to packaging and labelling of tobacco products; and
 - (3) to further refine and develop the elements of a proposed action plan on South–South and triangular cooperation, based on experience gained in implementation of the demonstration projects, and submit the action plan together with an implementation report to the sixth session of the Conference of the Parties.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(14) Financial resources, mechanisms of assistance and international cooperation for strengthening sustainable implementation of the WHO FCTC

The Conference of the Parties,

Recalling its decisions FCTC/COP1(13), FCTC/COP2(10) and FCTC/COP4(17) on financial resources, mechanisms of assistance and international cooperation;

Recalling also the Punta del Este Declaration on the implementation of the WHO FCTC (decision FCTC/COP4(5)) in which the Parties to the Convention declared the need to urge the United Nations Ad Hoc Interagency Task Force on Tobacco Control to support multisectoral and interagency coordination for the strengthening of the implementation of the Convention within the whole United Nations system;

Having considered the reports of the Convention Secretariat on financial resources and mechanisms of assistance, cooperation with international organizations and bodies, and South–South cooperation for strengthening implementation of the WHO FCTC contained in documents FCTC/COP/5/15, FCTC/COP/5/16, and FCTC/COP/5/17, respectively;

Welcoming the important global developments that have taken place since the previous session of the Conference of the Parties, i.e. the Moscow Declaration adopted by the First Global Ministerial Conference on Healthy Lifestyles and Noncommunicable Disease Control, the Political Declaration adopted by the High-level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases, and the Rio Political Declaration on Social Determinants of Health, which call for comprehensive implementation of the WHO FCTC and recognize the Convention's significant role in the prevention and control of noncommunicable diseases and in the context of social determinants of health;

Noting also the report of the United Nations Secretary-General to the 2012 substantive session of the Economic and Social Council (ECOSOC), and the resolution adopted by ECOSOC calling for United Nations system-wide coherence on tobacco control (resolution E/2012/L.18);

Noting the progress made on integrating support to implementation of the WHO FCTC into the United Nations Development Assistance Framework (UNDAF) at the country level, which promotes a sustainable and long-term interagency implementation assistance mechanism;

Emphasizing the potential contribution that development partners can make in assisting implementation of the WHO FCTC in developing country Parties and Parties with economies in transition;

Taking note of the fact that the *2012 global progress report on implementation of the WHO FCTC* reveals that a continuing lack of technical and financial resources is one of the most important obstacles to the full implementation of the Convention;

Taking note of the further development of the Secretariat's database on available resources and its potential contribution to assisting Parties in need in implementing the WHO FCTC;

Recognizing the need for sustainable and predictable resources for implementation of the Convention, including through voluntary assessed contributions, and the importance of such contributions in this regard,

1. DECIDES:

(1) to establish a working group on sustainable measures to strengthen implementation of the WHO FCTC, and to mandate the working group to:

- prepare a report on barriers and successful experiences in mobilizing the range of resources in implementing the WHO FCTC at the country level, including through existing bilateral and multilateral mechanisms of assistance;
- provide recommendations on how resources can be accessed for the WHO FCTC implementation and best practice can be shared;
- provide recommendations to strengthen South–South and triangular cooperation as well as North–South cooperation for implementation of the WHO FCTC, contributing to capacity building in Parties;
- review existing tools and mechanisms of assistance to the Parties to ensure they meet the needs of the Parties;
- identify new tools to support Parties to implement Article 5.2 of the WHO FCTC;
- identify and recommend best practices to access international resources for tobacco control through bilateral and multilateral cooperation and other opportunities in development cooperation;
- examine possibilities of using modern technologies for the exchange of information, cooperation between Parties, and to promote the effective implementation of the WHO FCTC;
- provide recommendations on how to promote the WHO FCTC in wider international fora.

(2) to request the Convention Secretariat to invite observers under rule 29 of the Rules of procedure of the Conference of the Parties with specific expertise in these areas to actively participate in the working group;

(3) to establish initial membership of the working group as follows;¹

(4) to set 28 February 2013 as the deadline for Parties to announce to the Secretariat their participation as partners or Key Facilitators in the working group;

(5) to make the necessary arrangements, including budgetary arrangements, for the performance of the work of the working group;

¹ Membership was not established at the fifth session of the Conference of the Parties.

2. FURTHER DECIDES to request the Convention Secretariat to:
- (1) continue to actively work in accordance with Article 24.3(e) of the Convention, in cooperation with relevant departments and offices of WHO, in facilitating support by relevant stakeholders and development partners for implementation of the WHO FCTC to Parties in need;
 - (2) continue to mobilize resources required under the Conference of the Parties workplan and to provide support to developing Parties and Parties with economies in transition;
 - (3) actively engage with WHO in the convening of annual meetings of the United Nations Ad Hoc Interagency Task Force and contribute to the resulting report of the Secretary-General to the ECOSOC, and continue to engage, as appropriate, with the ECOSOC to further facilitate multisectoral support to Parties in implementation of the WHO FCTC;
 - (4) facilitate within its mandate support to Parties in strengthening comprehensive, multisectoral national tobacco-control strategies, plans and programmes as called upon in ECOSOC resolution E/2012/L.18;
 - (5) further facilitate mechanisms of assistance under the Convention enumerated in paragraph 23 of document FCTC/COP/5/15, particularly to developing Parties and Parties with economies in transition.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(15) Cooperation between the Convention Secretariat, the World Health Organization, the World Trade Organization and the United Nations Conference on Trade and Development

The Conference of the Parties,

Recalling its decision FCTC/COP4(18) requesting the Convention Secretariat to cooperate with the World Trade Organization (WTO) Secretariat with the aim of information sharing on trade-related tobacco control issues, to monitor trade disputes regarding WHO FCTC-related tobacco control measures and other trade-related issues of relevance to the implementation of the Convention, to facilitate information sharing on trade-related issues between Parties, and to communicate regularly with the relevant WHO offices on tobacco control issues raised at WTO committees and report regularly on these activities to the Conference of the Parties;

Having considered the report by the WHO Secretariat on Cooperation with the WTO on trade-related tobacco control issues (document FCTC/COP/5/18);

Taking note of the paper entitled *Confronting the tobacco epidemic in a new era of trade and investment liberalization*, produced by WHO in 2012 as an update to the 2001 paper entitled *Confronting the tobacco epidemic in an era of trade liberalization*;

Welcoming the initial efforts of the Convention Secretariat and the WHO Secretariat to facilitate information sharing on trade-related tobacco control issues and provide support to Parties in cooperation with the WTO Secretariat and the United Nations Conference on Trade and Development (UNCTAD);

Mindful of the need for closer collaboration and exchange of information as illustrated by the fact that tobacco control measures taken by WTO Members that are also Parties to the WHO FCTC are discussed in the WTO, in particular in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) and the Committee on Technical Barriers to Trade (TBT Committee);

Recalling that WHO has observer status to, and participates in, the meetings of the TRIPS Council and the TBT Committee;

Noting that organizations with which the Convention Secretariat cooperates operate within the scope of their respective mandates,

REQUESTS the Convention Secretariat to:

- (1) continue its information sharing activities involving the WHO Secretariat, the WTO Secretariat and UNCTAD in relation to tobacco control, international trade and investment issues, including the provision of information on tobacco control and the WHO FCTC to WTO Members in relevant bodies;
- (2) continue to cooperate with the WHO Secretariat, the WTO Secretariat and the UNCTAD Secretariat to provide technical support to Parties;

- (3) in coordination with the WHO Secretariat, continue to facilitate information sharing on trade-related issues particularly between Parties to the WHO FCTC having similar problems;
- (4) continue to encourage communication and information sharing between trade and health officials of Parties to the WHO FCTC;
- (5) continue to monitor tobacco control-related trade issues and report regularly to the Conference of the Parties on these activities and any developments of relevance to the implementation of the Convention.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(16) Interim performance report for the 2012–2013 workplan and budget

The Conference of the Parties,

Having considered the interim performance report for the financial period 2012–2013 contained in documents FCTC/COP/5/20 and FCTC/COP/5/20 Add.1,

DECIDES:

- (1) to note the report and to acknowledge the progress made in implementation of the workplan and budget for the biennium 2012–2013;
- (2) to request the Convention Secretariat to facilitate, as appropriate, a meeting of the open-ended intersessional drafting group on Article 6 in 2013, supported by extrabudgetary contribution;
- (3) in relation to additional activities related to the preparation for entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products contained in Annex 2 of document FCTC/COP/5/20, to request the Convention Secretariat:
 - (a) to implement the activities referred to in items (a), (b) and (c) under paragraph 7 of the above-mentioned Annex in 2014 as part of the workplan and budget for 2014–2015 adopted by the Conference of the Parties at its fifth session;
 - (b) taking into account the importance of early commencement of activities referred to in items (d), (e) and (f) under paragraph 7 of the above-mentioned Annex, to implement these activities as early as possible in 2013 and to raise funds accordingly;
 - (c) to report to the sixth session of the Conference of the Parties on the progress and outcome of the implementation of the activities referred to in paragraphs (3)(a) and (3)(b) of this decision.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(17) Arrears in the payment of assessed contributions

The Conference of the Parties,

Taking note of the report by the Convention Secretariat (document FCTC/COP/5/21), including the fact that while arrears in payments have been reduced since the fourth session of the Conference of the Parties a substantial amount of voluntary assessed contributions is still outstanding;

Taking into account the fact that some Parties have not paid any voluntary assessed contributions;

Mindful of the need to change this situation so that necessary funding can be made available to implement the WHO FCTC and to maintain the spirit of solidarity,

DECIDES:

- (1) that the Convention Secretariat should provide Parties with efficient methods of payment of their contributions, including through the WHO country offices;
- (2) to mandate the Secretariat to ask Parties with arrears in payments to present the Secretariat with a proposal including time frame for settling such arrears;
- (3) to request the Secretariat to draw up a report on the feasibility of changing from voluntary assessed contributions to assessed contributions and other possible incentives for Parties that continue to have arrears in payments, and to present it to the sixth session of the Conference of Parties for its consideration.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(18) Harmonization of travel support available to Parties to the WHO Framework Convention on Tobacco Control in line with current World Health Organization administrative policies for travel support

The Conference of the Parties,

Recalling World Health Assembly resolution WHA 50.1;

Recalling its decision FCTC/COP4(21) taken at the fourth session of the Conference of the Parties;

Reaffirming the decision to harmonize the travel support available to Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC) in line with current WHO administrative policies for travel support in favour of least developed countries,

1. DECIDES nevertheless to finance the per diem of least developed countries from voluntary assessed contributions on the same basis until and including the sixth session of the Conference of the Parties;
2. DECIDES moreover to continue to finance travel for low- and lower-middle-income countries on the budget financed by voluntary assessed contributions, and to cover the costs of the corresponding per diem with resources available in the extrabudgetary funds until and including the sixth session of the Conference of the Parties;
3. RETAINS the right to review these decisions at the sixth session of the Conference of the Parties;
4. REQUESTS the Convention Secretariat:
 - (1) to seek the extrabudgetary funds for the per diem for low- and lower-middle-income countries as the highest priority;
 - (2) to take account of this decision in its proposal of the workplan and the budget for the financial period 2016–2017;
 - (3) to prepare a report to the sixth session of the Conference of the Parties containing all available information on the travel support to the Parties since the entry into force of the WHO FCTC, including the amount of the budgets and expenditures, the number of Parties receiving travel support and the actual participation of those Parties.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(19) Workplan and budget for the financial period 2014–2015

The Conference of the Parties,

Reaffirming its decision FCTC/COP1(9) on the adoption of the Financial Rules of the Conference of the Parties to the WHO Framework Convention on Tobacco Control;

Recalling its decision FCTC/COP4(20) on the workplan and budget for the financial period 2012–2013;

Having considered the workplan and budget for the financial period 2014–2015 submitted by the Convention Secretariat (document FCTC/COP/5/23),

DECIDES:

(1) to adopt the budget for the financial period 2014–2015 as follows:

	US\$ thousand
1. Activity costs, including:	
1.1 Conference of the Parties	1 830
1.2 Protocols, guidelines and other possible instruments for the implementation of the Convention	1 665
1.3 Reporting arrangements under the Convention	285
1.4 Assistance to Parties in implementation of the Convention, with particular focus on developing country Parties and Parties with economies in transition	2 830
1.5 Coordination with international and regional intergovernmental organizations and bodies	370
1.6 Administration and management, and other arrangements and activities	295
Subtotal	7 275
2. Staff costs	8 026
3. Programme support costs (13%)	1 989
Total	17 290

(2) to adopt the workplan for the financial period 2014–2015, as indicated in the Annex to this decision, taking into account the decisions taken by the Conference of the Parties at its fifth session;

(3) to establish the total amount of voluntary assessed contributions of Parties for the financial period 2014–2015 at the level of US\$ 9 100 000;

(4) to request the Secretariat, in coordination with the Bureau, to communicate the scale of assessment of voluntary assessed contributions for 2014–2015 to Parties by 1 April 2013 following adoption of the scale of assessment by the United Nations General Assembly in late 2012;¹

(5) to authorize the Secretariat to request the payment of voluntary assessed contributions, including from countries that may become a Party to the Convention between the fifth and sixth

¹ Based on the corresponding WHO scale of assessment for 2014–2015 and taking into account the difference of membership of WHO and that of the Convention.

sessions of the Conference of the Parties, in line with the scale of assessment as indicated in paragraph 4 of this decision;

(6) to request the Head of the Secretariat to implement the budget and workplan adopted by the Conference of the Parties, and to submit to the Conference of the Parties:

(a) an interim performance report on the workplan and budget for the financial period 2014–2015, along with a final performance report on the workplan and budget for the financial period 2012–2013, at its sixth session; and

(b) a final performance report on the workplan and budget for the financial period 2014–2015 at its seventh session;

(7) to authorize the Secretariat to seek and receive voluntary extrabudgetary contributions for activities in line with the workplan;

(8) to encourage Parties to the Convention to provide extrabudgetary contributions for meeting the objectives of the workplan;

(9) to adopt the proposed efficiency measures to facilitate the work of the Convention in relation to official communication and documentation, as contained in paragraphs 6, 13 and 22 of Annex 2 of document FCTC/COP/5/23;

(10) to call on the Head of the Secretariat to keep the Bureau regularly updated on the status of budgets and workplans agreed by the Conference of the Parties.

ANNEX

WORKPLAN AND BUDGET FOR THE FINANCIAL PERIOD 2014–2015

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
1. Conference of the Parties¹					
1.1	Sixth session of the Conference of the Parties (COP6)	1 560	130	(a) Preparing and convening COP6 (b) Finalizing and disseminating decisions and other post-session documentation	COP6 prepared and convened on time Decisions and other post-session documents sent to Parties within four months of the session
1.2	Work of the Bureau of the COP	140		(a) Preparing and convening the Bureau meetings (b) Following up on decisions of the Bureau	Up to three intersessional meetings of the Bureau prepared and convened, along with meetings immediately before and during COP6 and video/teleconferences as required
Subtotal for Area of work 1		1 700	130		
2. Protocols, guidelines and other possible instruments for implementation of the Convention²					
2.1	Protocol to eliminate illicit trade in tobacco products – work required for preparing the entry into force of the protocol				
	(i) Technical assistance and reports in preparation of entry into force and the first Meeting of the Parties		700	(a) Providing technical assistance through intercountry workshops (four face-to-face and two online workshops, potentially back-to-back with WHO FCTC implementation)	Technical assistance provided, cooperation with relevant international organizations established and the reports and studies developed as per the guidance provided by

¹ In line with Article 23 and Article 24.3(a), and relevant decisions of the COP.

² In line with Article 7, Article 23.5(f) and (h), Article 24.3(a) and (g) and Article 33, and relevant decisions of the COP.

	Area of work*	Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
	(MOP1)			workshops), country-specific missions, and expert papers for use globally on selected provisions of the protocol (b) Establishing coordination with and engaging the potential of relevant international organizations with specific expertise on protocol-related matters (c) Promoting the use of studies on the requirements of the future tracking and tracing system and the global information sharing point, including analysis of best practices in Parties and scoping the needs for technical assistance to and capacity building in developing country Parties	COP5
	(ii) First Meeting of the Parties	345		Preparing and convening MOP1 (immediately before or immediately after COP6)	MOP1 convened as decided by COP5
2.2	Intergovernmental working groups				
	(i) Working group on Articles 9 and 10 (<i>Regulation of the contents and disclosures of tobacco products</i>)	65	15	One meeting of Key Facilitators, and up to two representatives per region, in combination with intersessional work of the Convention Secretariat and online communication with the members of the working group	Report of the working group submitted to COP6
	(ii) Working group on economically sustainable alternatives to tobacco growing (Articles 17 and 18)	115	15	One meeting of the working group, in combination with intersessional work of Key Facilitators and the Convention Secretariat	Report of the working group submitted to COP6
	(iii) Working group on sustainable implementation of the WHO FCTC		260	Two meetings of the working group, in combination with intersessional work of Key Facilitators and the Convention Secretariat	Report of the working group submitted to COP6

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
2.3	Expert group (ii) Expert group on Article 19 (<i>Liability</i>)	75	75	Two meetings of the expert group along with technical support by the Convention Secretariat as requested	Report to COP6 on mandated activities
Subtotal for Area of work 2		600	1 065		
3. Reporting arrangements under the Convention¹					
3.1	Reports of Parties and global progress reports on implementation of the Convention	25	40	(a) Receiving and analysing the periodic reports of Parties on implementation of the Convention; maintaining and updating the web-based database of reports; and providing feedback to Parties on reports (b) Preparing the 2014 global progress report based on analysis of Parties' reports (c) One expert meeting to support the process	Increased proportion of reports received on time and in compliance with the reporting instrument Global progress report prepared and submitted on time
3.2	Support to Parties in fulfilling their reporting obligations		170	(a) Organizing training on the reporting instrument and preparation of reports, and developing a web-based training tool ² (b) Providing advice and assistance to individual Parties on request (c) Developing the WHO FCTC Indicator Compendium (d) Further promoting the use by Parties of the web-based information platform currently under development	At least 6 training sessions organized to cover all regions in conjunction with relevant regional events, and a web-based training tool developed and operational Technical assistance provided to Parties upon request The Compendium finalized and made available to Parties The impact of the information platform on improving information exchange under the WHO FCTC, and feedback by Parties, reflected in the 2014 global progress report

¹ In line with Article 20.5, Article 21, Article 23.5 (a), (b) and (d), and Article 24.3(b) and (c), and relevant decisions of the COP.

² Including, if possible, training for WHO regional surveillance focal points.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
3.3	Expert group nominated by Parties to facilitate the review of Parties' implementation reports by the COP.	50		One meeting of the expert group (two representatives per region)	Report submitted to the COP.
Subtotal for Area of work 3		75	210		

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
4. Assistance to Parties in implementing specific provisions of the Convention, with particular focus on developing country Parties and Parties with economies in transition¹					
4.1	Advice and support on compilation and communication of information on treaty matters, and promotion of transfers of expertise and technology		950	<p>(a) Strengthening of regional/subregional networks and institutions to assist Parties with information exchange and the transfer of expertise and technology in treaty implementation matters</p> <p>(b) Organizing intercountry workshops to identify achievements, challenges and best practices to enhance cooperation in treaty implementation within and between regions</p> <p>(c) Providing advice on treaty-specific matters</p> <p>(d) Disseminating and raising awareness of treaty instruments, through workshops and country-specific advice as required</p> <p>(e) Promoting transfer of expertise and technology between the Parties, in line with Article 22</p>	<p>Cooperation mechanisms among networks and institutions operationalized to facilitate transfer of expertise and technology</p> <p>At least 6 intercountry treaty implementation workshops organized covering all regions</p> <p>Parties assisted with advice and information upon request</p> <p>Parties assisted with transfer/receipt of expertise and technology through appropriate cooperation and assistance mechanisms upon request</p> <p>Upon request of Parties, agreements / exchanges of letters with or among Parties facilitated, and provision of expertise and technology achieved</p>
				(f) Supporting Parties in preparations for COP6 with the provision of necessary information and by facilitating information exchange on the COP6 agenda, documentation and proceedings	Support provided as requested, and feedback by Parties analysed and utilized in the next intersessional period

¹ In line with Article 22.2, Article 23.5(e), Article 24.3(c) and (g) and Article 26.5, and relevant decisions of the COP.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
				(g) Studies and publications covering issues pertinent to treaty instruments, international multisectoral cooperation, technical support and best practices, and region-specific studies based on the outcomes of intercountry workshops	Studies and publications accomplished and disseminated among Parties. At least 4 global and 4 region-specific studies and publications, and 4 best practice packages accomplished
4.2	Needs assessments and promotion of access to available resources and mechanisms of assistance, with a view to promoting harmonization and alignment of tobacco-control policies at country level		1 880	<p>(a) Needs assessments and related implementation assistance to strengthen country capacity and multisectoral implementation mechanisms in meeting obligations under the Convention</p> <p>(b) Preparing country-specific assistance profiles to advise developing country Parties on appropriate and feasible funding/assistance options</p> <p>(c) Assist developing country Parties in meeting needs identified in relation to Articles 5.1 and 5.2 given the overarching potential of those provisions to achieve full implementation of the Convention¹</p> <p>(d) Integrating WHO FCTC implementation within national development and health strategies and within the UN Development Assistance Framework (UNDAF) at country level in line with the principles of aid effectiveness, harmonization and alignment and national ownership¹</p>	<p>At least 20 Parties identified upon request and needs assessment missions (with a multisectoral component) undertaken</p> <p>At least 20 Parties supported in meeting immediate needs as well as preparing project and programme proposals for funding from existing donor and development sources in view of expected larger and/or longer-term needs for further assistance</p> <p>At least 30 developing country Parties provided with assistance upon request</p> <p>At least 30 Parties assisted to align WHO FCTC implementation with national development and health strategies/policies, including, where appropriate, through the UNDAF</p>

¹ Emerging area of priority that will require additional extrabudgetary contributions and fundraising.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
				(e) Updating and disseminating the database on resources available internationally for implementation of the Convention	The database is regularly updated and disseminated for Parties' use
Subtotal for Area of work 4			2 830		
5. Coordination with international and regional intergovernmental organizations and other bodies¹					
5.1	Establishment and extension of cooperation and coordination with relevant international and regional intergovernmental organizations and other bodies	110		<p>(a) Operationalization of action plan of cooperation with members of the UN Ad Hoc Interagency Task Force on Tobacco Control (IATF) in accordance with the report of the Secretary-General and ECOSOC resolution²</p> <p>(b) Concluding cooperation arrangements with intergovernmental organizations and bodies with technical expertise and potential to support implementation of the WHO FCTC</p> <p>(c) Supporting the convening of annual meetings of the IATF in supporting implementation of the Convention</p> <p>(d) Further consolidating the Secretariat's work in establishing a multisectoral framework for WHO FCTC implementation at country, regional and global levels, in accordance with the guidance provided by the COP on international cooperation and coordination</p>	<p>Cooperation with members of the IATF resulting in achievement of multisectoral support to the Parties, through mechanisms such as needs assessments, intercountry workshops, technical support at country level and publication of technical tools</p> <p>At least 5 cooperation arrangements concluded with relevant international organizations</p> <p>Report on the outcome of the meeting of the Task Force prepared and submitted to COP6, and feedback provided to ECOSOC through contribution to the Secretary-General's report on IATF activities to ECOSOC</p> <p>Overall consolidation of work related to integration of WHO FCTC implementation within the UNDAF at country level; progress demonstrated through increasing number of UNDAFs incorporating treaty implementation</p>

¹ In line with Article 23.5(g), Article 24.3(e) and Article 25, and relevant decisions of the COP.

² Document E/2012/70 and resolution E/2012/L.18, respectively.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
				(e) Strengthening cooperation with relevant treaty bodies of the UN system, including human rights treaties, to strengthen the legal dimension in implementation of the Convention in response to the needs of vulnerable groups such as children, young girls and women ¹	Country-level response integrated into national policies and strengthened through contribution of relevant treaty bodies and UN entities, such as UNWOMEN
5.2	Promotion of South–South cooperation in the exchange of scientific, technical and legal expertise as relevant to the implementation of the Convention		260	(a) Convening a stakeholder meeting to review achievements and experience gained and to develop recommendations for strengthening this area of work beyond COP6 (b) Interested South–South frameworks and institutions assisted in utilizing their potential in regard to WHO FCTC implementation and strengthening South–South and triangular cooperation, where appropriate (c) Review of demonstration projects implemented thus far (at least 3), followed by relevant publications and further demonstration projects (d) Prospecting and mobilizing resources from interested development partners from South and North with a view to promoting triangular cooperation	Stakeholder meeting convened and recommendations prepared and made available to Parties South–South and triangular cooperation framework for WHO FCTC implementation identified and a matrix/action plan for potential cooperation developed and presented to Parties at COP6 Needs emerging from demonstration projects identified and met. Further demonstration projects identified and implemented (at least 3) Report submitted on progress in this area of work to COP6
5.3	Review of accreditation of nongovernmental organizations in line with Rule 31.3 of the Rules of Procedure of the COP			Conducting the review and presenting the outcome to the COP, through the Bureau of the COP	Report submitted on time to COP6
Subtotal for Area of work 5		110	260		

¹ Emerging area of priority that will require additional extrabudgetary contributions and fundraising.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
6. Administration and management, and other arrangements and activities¹					
6.1	General administration and management	135		(a) General administration, staff and finance management (b) Providing updates to the Bureau on the status of implementation of the workplan and budget for the biennium, development of the workplan and budget for the subsequent biennium to be submitted for adoption by the COP (c) Resource mobilization (d) Preparing and submitting to the COP the Secretariat's report on its activities	Workplans and administrative arrangements customized and run within WHO's global management system Payment of voluntary assessed contributions facilitated with the aim of close to 100% collection by the end of the biennium Fund-raising mechanism in the Convention Secretariat further advanced, and extrabudgetary contributions for fulfilling the 2014–2015 workplan promoted and received Report of the Secretariat prepared and submitted on time
6.2	Advocacy, communication, participation in professional meetings	85	75	(a) Communication activities to ensure increased public and political awareness of the Convention, particularly in relation to meetings of the COP and its subsidiary bodies, and key developments such as adoption of protocol and guidelines, and global progress reports (b) Issuing and disseminating publications on treaty instruments and implementation, and providing relevant information through the WHO FCTC web site	Awareness of the treaty and treaty work increased internationally Decisions of the COP, as well as documents of particular technical importance, such as the global progress reports and implementation guidelines, published in all 6 languages and actively disseminated Web site of the Convention is up to date

¹ In line with Article 24.3(d), (f) and (g), and relevant decisions of the COP.

Area of work*		Activity cost (in US\$ thousand)		Main components/activities	Expected results and indicators
		Covered by voluntary assessed contributions	Covered by extrabudgetary funds		
				(c) Holding meetings with permanent missions of the Parties in Geneva and government officials; producing the Secretariat's Newsletter (d) Participating in and presenting at key professional meetings to promote treaty awareness and implementation internationally	On average 2 meetings per year held with permanent missions of Parties in Geneva, and on average 3 issues of the Newsletter per year published and disseminated Presentations in at least 6 international meetings during the biennium
6.3	Coordination with relevant departments and offices of WHO			Holding regular technical coordination meetings, and reviewing and promoting cooperation with relevant departments of WHO, maintaining regular communication with focal points in WHO regional offices	Coordination within WHO for promoting the Convention further strengthened. Cooperation with relevant departments of WHO across at least 4 clusters, including for NCDs and health systems, and all regional offices
Subtotal for Area of work 6		220	75		
Total activity costs for all areas of work¹		2 705	4 570		

* This includes associated tasks.

¹ Total costs for implementing the workplan, which, in addition, include staff costs and programme support costs (13%, payable to WHO), are presented in the Appendix.

APPENDIX

Total budget (US\$ thousand)

	Covered by voluntary assessed contributions	Covered by extrabudgetary funds	Total
1. Activity costs	2 705	4 570	7 275
<i>Regular</i>	2 360	3 870	6 230
<i>Protocol-related</i>	345	700*	1 045
2. Salary costs	5 348	2 678	8 026
<i>Regular</i>	5 153	1 209	6 362
<i>Protocol-related</i>	195	1 469*	1 664
3. Total direct costs (1+2)	8 053	7 248	15 301
<i>Regular</i>	7 513	5 079	12 592
<i>Protocol-related</i>	540	2 169	2 709
4. Programme support costs (13%)	1 047	942	1 989
<i>Regular</i>	977	660	1 637
<i>Protocol-related</i>	70	282	352
5. Grand total (3+4)	9 100¹	8 190	17 290
<i>Regular</i>	8 490	5 739	14 229
<i>Protocol-related</i>	610	2 451	3 061

* Indicative cost subject to availability of extrabudgetary funds.

(Fourth plenary meeting, 17 November 2012)

¹ Including an additional contribution of US\$ 300 000 as a one-time exception. This is to facilitate funding for projected expenditure through additional voluntary assessed contributions.

FCTC/COP5(20) Role of the Bureau of the Conference of the Parties to the WHO Framework Convention on Tobacco Control

The Conference of the Parties,

Recalling its decision FCTC/COP4(24), *Review of the role of the Bureau of the Conference of the Parties*;

Taking note of document FCTC/COP/5/25, *Process for appointment of the Head of the Convention Secretariat*;

Recalling also the Rules of Procedure of the Conference of the Parties, in particular Rules 6, 9, 19, as well as Rules 21–24 concerning the Officers of the Conference of the Parties;

Having considered the proposals contained in document FCTC/COP/5/24 and acknowledging the need to clarify the role and functions of the Bureau, in particular those between sessions of the COP,

1. DECIDES that the functions of the Bureau shall include the following in addition to those described in Rules 6, 9, 19 and 21–24 of the Rules of Procedure of the Conference of the Parties, and in line with the relevant decisions of the COP:
 - (a) to make recommendations to the Director-General of WHO regarding the appointment of the Head of the Secretariat, and undertake the performance evaluation on matters related to delivery of treaty and technical activities for possible renewal of the Head of the Secretariat's term of office, in accordance with arrangements that may be decided by the COP;
 - (b) to facilitate the process for nominations to subsidiary bodies of the COP;
 - (c) to provide guidance to the Convention Secretariat on implementation of the workplans and budgets adopted by the COP;
 - (d) to provide guidance to the Secretariat, as necessary, in the preparation of reports, recommendations and draft decisions to be submitted to the COP;
 - (e) to propose the date and venue of sessions of the COP and its subsidiary bodies;
 - (f) to review the applications of nongovernmental organizations that apply for the status of observer to the COP and make recommendations in that regard to the COP;
 - (g) to provide other guidance to the Secretariat as requested by the COP;
2. FURTHER DECIDES that the functions described in paragraph 1 above shall be carried out within the budget allocated to the work of the Bureau in the biennial workplans and budgets adopted by the COP;
3. REQUESTS the members of the Bureau to liaise and consult with the Parties of their respective regions between the sessions of the COP with a view to informing the work of the Bureau and keeping Parties informed of the Bureau's work;

4. REQUESTS the Secretariat to prepare formal agendas, papers, summary records and minutes of intersessional meetings of the Bureau, to be published on a protected website in a timely way so that Parties have the opportunity to provide input to the work of the Bureau;
5. ENCOURAGES Parties to actively participate in the intersessional consultations to enhance the work of the COP;
6. CALLS UPON the Parties to give due consideration to the process for nomination of the members of the Bureau by their respective regional groups, in line with Rule 21 of the Rules of Procedure of the Conference of the Parties, in order to ensure that the nominations by the regional groups can be finalized before the opening of the regular session of the Conference of the Parties at which the Bureau shall be elected.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(21) Appointment and renewal of the term of office of the Head of the Convention Secretariat

The Conference of the Parties,

DECIDES:

To mandate the Bureau of the Conference of the Parties, in consultation with the Parties, to finalize the process for appointment and renewal of the term of office of the Head of the Secretariat on a provisional basis, taking into account document FCTC/COP/5/25 and the debate during the fourth Plenary meeting of COP5 on item 8.7.

In this connection, the Bureau shall arrange for the participation of the regional coordinators in this process.

Furthermore, the Bureau shall, in a timely way, inform the Parties of the outcome of this process and report thereon to the sixth session of the Conference of the Parties, with recommendations for any further action, as necessary.

(Fourth plenary meeting, 17 November 2012)

FCTC/COP5(22) Accreditation of nongovernmental organizations with the status of observer to the Conference of the Parties

The Conference of the Parties,

Recalling 17th and 18th preambular paragraphs and Article 5.3 of the Convention;

Recalling decisions FCTC/COP2(6) and FCTC/COP4(23);

Having considered the proposals contained in document FCTC/COP/5/26,

1. DECIDES, pursuant to Rule 31 of the Rules of Procedure of the Conference of the Parties, to adopt the application form contained in Annex 2 to document FCTC/COP/5/26 to be used by international and regional nongovernmental organizations wishing to apply for observer status to the Conference of the Parties;
2. FURTHER DECIDES to adopt the proposed process contained in document FCTC/COP/5/26¹ for its future reviews of accreditation of nongovernmental organizations pursuant to Rule 31.3 of the Rules of Procedure of the Conference of the Parties;
3. REQUESTS the Convention Secretariat to:
 - (h) make available the application form in Annex 2 to document FCTC/COP/5/26 on the web site of the WHO FCTC;
 - (i) analyse the applications received for observer status and to prepare a report for review by the Bureau to enable it to make recommendations to the Conference of the Parties;
4. FURTHER REQUESTS the Convention Secretariat to analyse the reports received from nongovernmental organizations and prepare a report thereon for the Bureau for its review with a view to the Bureau making recommendations to the Conference of the Parties at its next regular session on whether to maintain, suspend or discontinue the observer status of accredited nongovernmental organizations.

(Fourth plenary meeting, 17 November 2012)

¹ Paragraphs 14–16.

FCTC/COP5(23) Election of the President and the five Vice-Presidents of the Conference of the Parties to the WHO Framework Convention on Tobacco Control

The Conference of the Parties, pursuant to Rule 21 of its Rules of Procedure,

1. ELECTS the following officers to constitute the Bureau of the Conference of the Parties:

President: Professor Chang jin Moon (Republic of Korea)

Vice-Presidents:¹ Dr Oleg Salagaj (Russian Federation)
Mr Amal Pusp (India)
Mr Yahia Bouzo (Syrian Arab Republic)
Mr Denis Choinière (Canada)
Ms Dorcas Kiptui (Kenya)

2. DECIDES that, of the five Vice-Presidents, the following should act as Rapporteur:

Rapporteur: Ms Dorcas Kiptui (Kenya)

(Fourth plenary meeting, 17 November 2012)

¹ In accordance with Rule 24 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, lots were drawn to determine the order in which the Vice-Presidents would serve in the place of the President. The order presented in this list is the order in which the lots were drawn.

FCTC/COP5(24) Date and place of the sixth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control

The Conference of the Parties, in accordance with Rules 3 and 4 of its Rules of Procedure,

DECIDES:

- (1) to accept the offer of the Russian Federation to host its sixth session in 2014 in Moscow, Russian Federation, subject to the conclusion of an appropriate host agreement between the Russian Federation and the Convention Secretariat;
- (2) the exact venue and dates will be decided by the Bureau of the Conference of the Parties after receiving confirmation by the Convention Secretariat of the conclusion of a host agreement.

(Fourth plenary meeting, 17 November 2012)