

## **Chairperson's text for a protocol on illicit trade in tobacco products**

1. The Conference of the Parties to the WHO Framework Convention on Tobacco Control decided at its second session (Bangkok, 30 June – 6 July 2007) to establish an intergovernmental negotiating body open to all Parties to draft and negotiate a protocol on illicit trade in tobacco products which will build upon and complement the provisions of Article 15 of the Convention.<sup>1</sup>
2. Decision FCTC/COP2(12) recognized that the template for a protocol on illicit trade, as proposed by the expert group convened in accordance with decision FCTC/COP1(16) of the Conference of the Parties' established a basis for initiating the negotiations. The decision also requested the intergovernmental negotiating body to proceed with its work on the basis of a chairperson's text.
3. In accordance with decision FCTC/COP2(12) and following the first session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products (Geneva, 11–16 February 2008), the Chairperson, Mr Ian Walton-George, with the support of the Convention Secretariat and relevant experts elaborated a chairperson's text.
4. The text is annexed and herewith submitted to the Intergovernmental Negotiating Body for its consideration.
5. Throughout this document, square brackets are used to distinguish those phrases that the Chairperson has identified as needing special consideration by the Intergovernmental Negotiating Body. Such brackets normally indicate that the words enclosed within them can either be included in or excluded from the text.

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<sup>1</sup> Decision FCTC/COP2(12).



ANNEX

**PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS  
CHAIRPERSON'S TEXT**

*Preamble*

*The Parties to this Protocol,*

*Deeply concerned* by the magnitude and pervasiveness of the illicit trade in tobacco products which poses a serious threat to the health and welfare of human beings and to the economies of the Parties;

*Aware* that illicit trade in tobacco products generates huge financial profits funding transnational criminal activity which penetrates, contaminates and corrupts government objectives and legitimate commercial and financial businesses at all levels;

*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 and in manufacturing equipment [and key inputs] used in the manufacture of tobacco products;

*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, illicit manufacturing and counterfeiting, is an essential component of tobacco control;

*Convinced* that supplementing the WHO Framework Convention on Tobacco Control by means of a comprehensive protocol will be a powerful and effective means to counter illicit trade in tobacco products and its grave consequences,

Hereby agree as follows:

**PART I: INTRODUCTION**

*Use of terms*

“carton” means packaging for five or more unit packs of tobacco products;

“cigarette” means any product that contains tobacco and is intended to be burned or heated under ordinary conditions of use, and includes, without limitation, any “roll-your-own” tobacco which, because of its appearance, type, packaging, or labelling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes;

“Conference of the Parties” means the Conference of the Parties established by Article 23 of the WHO Framework Convention on Tobacco Control;

“confiscation”, which includes forfeiture where applicable, means the permanent deprivation of property by a competent authority;

“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 those involved in the commission of the offence;

“Convention Secretariat” means the Secretariat to the WHO Framework Convention on Tobacco Control;

“due diligence” means a reasonable state-of-the-art investigation conducted before the commencement of, or during the course of, a business relationship for the purpose of ascertaining whether a business partner or prospective business partner is complying with, or can reasonably be expected to comply with, their legal obligations;

“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;

[“key inputs” means those inputs specified in Annex 1 that are used in the manufacture of tobacco products;]

“licence” means permission from a competent authority following the requisite submission of an application or other documentation to the competent authority;

“master case” means packaging for about 10 000 cigarettes;

“Party” means, unless the context otherwise indicates, a Party to this Protocol;

“proceeds of crime” means any property derived from or obtained, directly or indirectly, through the commission of a criminal offence;

“seizure” means the temporary prohibition of the transfer, conversion, disposition or movement of property or the temporary assumption of custody or control of property by a competent authority;

“suspicious transactions” means transactions which do not correspond or conform to ordinary commercial practices;

“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;

“tracing” means the re-creation by any competent authority or other person on their behalf of the route or movement taken by tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products through their respective supply chains of manufacture, sale, distribution, storage, shipment, import or export, or any part thereof;

“tracking” means the systematic monitoring by the competent authorities or other person on their behalf of the route or movement taken by tobacco, tobacco products, or manufacturing equipment [or

key inputs] used in the manufacture of tobacco products through their respective supply chains of manufacture, sale, distribution, storage, shipment, import or export, or any part thereof,

*Relationship with the WHO Framework Convention on Tobacco Control  
and other agreements and legal instruments*

1. The provisions of the WHO Framework Convention on Tobacco Control applying to its protocols shall apply to this Protocol to the WHO Framework Convention on Tobacco Control.
2. The relationships of this Protocol with other agreements and legal instruments are governed by Article 2 of the WHO Framework Convention on Tobacco Control. The Parties to the Protocol that have entered into 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.

## **PART II: GENERAL OBLIGATIONS**

*General obligations*

1. Parties shall adopt and implement appropriate measures to control or regulate the supply chain of tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products in order to prevent, detect and investigate illicit trade, and shall cooperate with one another to this end.
2. Parties shall take appropriate measures to increase the effectiveness of customs, police and other relevant regulatory agencies responsible for preventing, deterring, detecting, investigating and eliminating all forms of illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.
3. Parties shall adopt clear and effective measures for technical assistance and financial support, capacity building and international cooperation including measures that assure the availability to, and exchange with, the competent authorities of production and trade data for all forms of tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products originating within their territory.
4. Parties shall 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 offences covered by this Protocol.
5. Parties shall cooperate and communicate with relevant organizations and bodies in the exchange of information covered by this Protocol.
6. In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall, within means and resources at their disposal, cooperate to raise financial resources for effective implementation of this Protocol through bilateral and multilateral funding mechanisms.

### PART III: SUPPLY CHAIN CONTROL

#### *Licence*

1. With a view to eliminating illicit trade in tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products and in light of the public health objectives of the WHO Framework Convention on Tobacco Control, each Party shall prohibit the conduct of any of the following activities by any legal or natural person except pursuant to a licence to conduct such activities granted by a competent authority:

- (a) selling more than *X* tonnes of tobacco per year;
- (b) manufacturing tobacco products;
- (c) manufacturing the manufacturing equipment [or key inputs] used in the manufacture of tobacco products; and
- (d) commercial import or export of more than *X* tonnes of tobacco per year, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.

2. With a view to ensuring an effective licensing system, each Party shall:

- (a) designate or establish an agency or set of agencies to issue, renew, suspend and cancel licences to conduct the activities specified in paragraph 1 of this Article to all applicants that satisfy the requirements in this Article, regardless of nationality or residency. The designated agencies may include customs agencies, revenue authorities, public health authorities or any other competent authority;
- (b) require that each licence application contains all the requisite information about the licensee, including:
  - (i) where the applicant is a natural person, information regarding his or her identity, including but not limited to, full name, business registration number (if any), date and place of birth and applicable tax registration numbers and copy of his or her official identification;
  - (ii) where the applicant is a legal person, information regarding its identity, including, but not limited to, full name, business registration number, date and places of incorporation, corporate capital, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, the names of its officers and directors, and the name of any designated representatives, including but not limited to the representatives' complete names, and copies of their official identification;
  - (iii) location of manufacturing unit(s) and production capacity of business run by the applicant;
  - (iv) details of the tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products covered by the application such as product description, name, registered trade mark, if any, design, brand, model or make;

- (v) documentation regarding any offences committed or charges filed by government agencies;
  - (vi) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details;
  - (vii) a description of the intended use and intended market of retail sale of tobacco, tobacco products, [or key inputs used in the manufacture of tobacco products], with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand; and
  - (viii) a description of where manufacturing equipment for use in the manufacture of tobacco products will be installed and used.
- (c) monitor and collect any licence fees as may be levied and allow for their use in the effective administration and enforcement of the licensing system or for any other related activity, including for public health;
  - (d) enact or strengthen legislation, with appropriate penalties and remedies, against contravention of relevant laws;
  - (e) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
  - (f) undertake measures such as periodic review, renewal, inspection or audit of licensees;
  - (g) establish a time frame for expiration of licences and subsequent requisite reapplication or updating of application information; and
  - (h) suspend or cancel a licence for a period of not less than five years, and prohibit the licensee from re-applying for a licence during that period, when a licensee has contravened or has facilitated the contravention of relevant laws or provisions.
3. Each Party shall, as appropriate and in accordance with national laws, enact provisions regarding mergers and acquisitions of licensed entities and assignability or transferability of licences.

#### *Customer identification and verification*

1. Each Party shall obligate all natural and legal persons engaged in selling more than X tonnes of tobacco per year or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products, excluding the final retailer and persons importing tobacco products for their personal consumption, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products to conduct due diligence with respect to any such natural or legal person with which they engage in a commercial transaction, and to require that any such natural or legal person who sells, distributes or ships tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products to further natural or legal persons requires such further persons to conduct due diligence on the persons (other than final consumers) to which they subsequently sell, distribute or ship tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.

2. Due diligence pursuant to paragraph 1 of this Article shall include requirements for customer identification, which shall include requirements to obtain information relating to, but not limited to, the following, to the extent reasonably available:

(a) confirmation that the legal or natural person holds a valid licence in accordance with Article XX (*Licence*), if applicable;

(b) where the customer is a natural person, information regarding his or her identity, including but not limited to, full name, business registration number (if any), date and place of birth and applicable tax registration numbers and copy of his or her official identification;

(c) where the customer is a legal person, information regarding its identity, including, but not limited to, full name, business registration number, date and places of incorporation, corporate capital, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, the names of its officers and directors, and the name of any designated representatives, including but not limited to the representatives' complete names, and copies of their official identification;

(d) documentation regarding any offences committed or charges filed by government agencies;

(e) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details;

(f) a description of the intended use and intended market of retail sale of the tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand; and

(g) a description of where manufacturing equipment for use in the manufacture of tobacco products will be installed and used.

3. Each Party shall obligate all natural and legal persons referred to in paragraph 1 of this Article to conduct further due diligence, including the requirements in paragraph 2 of this Article, in order to verify and update customer information whenever there is a material change in circumstances.

4. Each Party shall obligate all natural and legal persons referred to in paragraph 1 of this Article to report on their compliance with the customer identification and verification obligations on a periodic basis.

5. Each Party shall take all necessary legislative, administrative and other measures to ensure that all natural and legal persons referred to in paragraph 1 of this Article comply with the above provisions.

6. Each Party shall require that all natural and legal persons referred to in paragraph 1 of this Article terminate business relations, including the supply of tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products, with any customer upon a competent authority providing such legal and natural persons with, or those persons otherwise coming into possession of, sufficient evidence that such customer has knowingly engaged in the sale, distribution, storage, or shipment of tobacco, tobacco products, or manufacturing equipment

[or key inputs] used in the manufacture of tobacco products in contravention to provisions of this Protocol or any other activity contrary to the provisions of this Protocol. Thereafter, such customer shall be a blocked customer.

7. With regard to blocked customers, each Party shall require that:
  - (a) all natural and legal persons referred to in paragraph 1 of this Article maintain a list of blocked customers;
  - (b) once so designated, a customer will remain “blocked” for a period of five years following the termination of a business relationship in accordance with paragraph 6 of this Article;
  - (c) all blocked customers shall be barred from conducting business, directly or indirectly, with the natural and legal persons referred to in paragraph 1 of this Article relating to the manufacture, sale, distribution or storage of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products; and
  - (d) if a blocked customer does not engage in illicit sale, distribution, storage, or shipment of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products or any other activity contrary to the provisions of this Protocol during the five-year period, the “blocked” designation shall be lifted and the customer shall again be subject to the customer identification and verification provisions.
8. Each Party shall require all natural and legal persons referred to in paragraph 1 of this Article to monitor their customers’ purchases to ensure that the quantities of such purchases are commensurate with the demand for such products within the intended market of sale or use.

#### *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, each Party shall establish a tracking and tracing system for all tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products that are manufactured in or imported into its territory, based on available best practices.
2. With a view to enabling effective tracking and tracing, each Party shall, within three years of entry into force of this Protocol for that Party, require that unique machine-scannable and human readable markings are affixed to:
  - (a) all master cases and cartons of cigarettes manufactured in or imported into its territory;
  - (b) all packages that contain more than one unit pack of tobacco products, other than cigarettes, that are manufactured in or imported into its territory; and
  - (c) all manufacturing equipment [or key inputs] used in the manufacture of tobacco products, that are manufactured in or imported into its territory.
3. Each Party shall, as part of its tracking and tracing system, require that the unique markings affixed, pursuant to paragraph 2 of this Article, to each master case and carton of cigarettes, each package of other tobacco products containing more than one unit pack, and piece of manufacturing

equipment [or key inputs] used in the manufacture of tobacco products permit, when scanned pursuant to this Protocol, the determination of the following information:

- (a) date of manufacture;
- (b) manufacturing facility;
- (c) machine of manufacture, where possible;
- (d) production shift of manufacture;
- (e) first purchaser name, invoice/order number and payment record;
- (f) the intended market of retail sale or of installation or use, as appropriate;
- (g) product description;
- (h) any warehousing and shipping;
- (i) the identity of any known subsequent purchaser; and
- (j) the shipment date, shipment destination, point of departure, and consignee.

4. Each Party shall, as part of its tracking and tracing system, require, within three years of entry into force of this Protocol for that Party, that the information set out in paragraph 3 of this Article is recorded, using scanning technology, at the time of first shipment by the manufacturer in a tracking and tracing database.

5. Each Party shall establish the means by which its designated authorities are able to obtain the information set out in paragraph 3 of this Article, including an obligation on licensees to provide the information as required.

6. Each Party shall require that a central point is established in its territory through which all the information contained in paragraph 3 of this Article can be made accessible or available to the competent authorities upon any seizure within its territory of cigarettes, other tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.

7. Each Party shall require that a link is established between the central point established in its territory and the equivalent central points established in the territories of other Parties or a central point of contact for all Parties so that the information contained in paragraph 3 of this Article can be obtained in relation to a seizure in the territory of another Party of cigarettes, other tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.

8. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system to require the marking and recording of information relating to sales by first purchasers, second purchasers and, wherever feasible, subsequent purchasers, and to enable Parties and their designated authorities to have access to such information.

9. Parties shall cooperate with each other, with the objective to establish a global tracking and tracing system, to ensure that as far as possible the tracking and tracing systems established in their

territories avoid unnecessary costs and duplication of requirements being imposed on manufacturers of cigarettes, other tobacco products, and manufacturing equipment [or key inputs] used in the manufacture of tobacco products. Where a tracking and tracing system already exists in another Party, it shall be taken into account when establishing any system in a Party which does not currently have such a system.

10. The Parties shall endeavour to cooperate, with each other and with competent international organizations, in sharing progressively and developing, or requiring licensees to develop, improved technologies for tracking and tracing. Such cooperation shall include:

- (a) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;
- (b) facilitation of the sharing between Parties of tracking and tracing information stored in databases, in accordance with paragraphs 2 and 3 of this Article;
- (c) support for training and capacity building programmes to Parties that express a need for such capacity building initiatives; and
- (d) further development of the technology to mark and scan cigarette packs and unit packs of other tobacco products to provide the information contained in paragraph 3 of this Article.

#### *Record-keeping*

1. Each Party shall require that all natural and legal persons engaged in selling more than X tonnes of tobacco per year or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products, maintain complete and accurate records of all transactions relevant to the object and purposes of this Protocol.

2. Each Party shall require persons licensed in accordance with Article XX (*Licence*) to provide to the competent authorities, on request, the following information:

- (a) general information on market volumes, trends, forecasts, and other relevant information; and
- (b) quantities of tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products in the licensee's possession, custody or control kept in stock in tax and customs warehouses under the regime of transit or duty suspension as of the date of the request.

3. With respect to tobacco, tobacco products, and manufacturing equipment [and key inputs] used in the manufacture of tobacco products sold or manufactured in the territory of the Party for export outside the territory of the Party, or subject to duty-suspended movement in transit in the territory of the Party, each Party shall require that persons licensed in accordance with this Protocol provide the competent authorities in the country of departure (electronically where the appropriate infrastructure exists) at the time of departure from their control, the following information:

- (a) date of shipment from the last point of physical control of the products of the person licensed in accordance with this Protocol;

- (b) details concerning the products shipped (including brand, amount, warehouse);
  - (c) intended shipping destination;
  - (d) identity of the person to whom the products are being shipped;
  - (e) mode of transportation, including the identity of the transporter;
  - (f) expected date of arrival of the shipment at the intended shipping destination; and
  - (g) intended market of retail sale or use.
4. Wherever feasible, and subject to national laws, each Party shall require that tobacco growers and retailers maintain complete and accurate records of all relevant transactions in which they engage.
5. For the purposes of implementing paragraph 1 of this Article, each Party shall adopt effective measures to require that all records are:
- (a) maintained for a period of not less than five years;
  - (b) made available to the competent authority or authorities; and
  - (c) as far as feasible, kept in a common format.
6. Each Party shall, as appropriate and subject to national laws, establish a system for contemporaneously sharing all records kept in accordance with this Article with other Parties.

#### *Security and preventive measures*

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to require that all natural and legal persons engaged in selling more than X tonnes of tobacco per year or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products take all reasonably practicable measures to prevent the diversion of tobacco products into illicit trade channels.
2. Each Party shall ensure that any contravention of the measures adopted pursuant to paragraph 1 of this Article is subject to appropriate criminal, civil and/or administrative procedures and effective, proportionate and dissuasive sanctions, including, as appropriate, suspension or cancellation of a licence and prohibition of the licensee from re-applying for a licence during a five-year period.
3. Each Party shall adopt and implement effective legislative, executive, administrative and/or other measures to require that tobacco products are not intermingled with non-tobacco products during the progression through the supply chain of tobacco products, including during storage, warehousing, transit, transportation, import and export.
4. Parties should require that individuals and businesses engaged in trade of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

5. Parties should require that payments for transactions relating to the manufacture, sale, distribution, storage, shipment, import or export of tobacco products and manufacturing equipment [or key inputs] used in the manufacture of tobacco products be allowed only in the currency and same amount as the invoice for those products, and only by wire or cheque from financial institutions located in the territory of the intended market of retail sale of the tobacco products.

6. Each Party shall require that all natural and legal persons engaged in selling more than *X* tonnes of tobacco per year or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products shall supply such products only in amounts that are commensurate with legitimate consumption or use in the intended market of use or retail sale and shall refuse to supply in amounts that exceed such consumption or use.

7. Each Party shall require that all natural and legal persons engaged in the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products report all suspicious transactions to the competent authorities.

#### *Internet and other telecommunication-based modes of sale*

Each Party shall require that all legal and natural persons engaged in selling more than *X* tonnes of tobacco per year or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products conducting business through internet or other telecommunication-based modes of sale comply with all relevant obligations covered by this Protocol.

## **PART IV: ENFORCEMENT**

### *Offences*

1. Each Party shall adopt appropriate legislative and other measures, as may be necessary, to establish the following conduct as unlawful under its domestic law when committed intentionally:

- (a) selling more than *X* tonnes of tobacco per year without a licence;
- (b) manufacturing tobacco products without a licence;
- (c) manufacturing the manufacturing equipment [or key inputs] used in the manufacture of tobacco products without a licence;
- (d) manufacturing, selling, distributing, storing, shipping, importing or exporting of tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products without appropriate labelling, marking or stamping;
- (e) defacing, falsifying, removing, altering or otherwise interfering with labelling, stamping or marking of or for tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products;

- (f) obstructing inspectors, auditors or any other public official from performing their duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products;
  - (g) failing to maintain records covered by this Protocol or maintaining false records;
  - (h) making incomplete or false statements to an inspector, auditor, customs officer or any other authorized official performing his or her duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products;
  - (i) obtaining, by a person licensed in accordance with Article XX (*Licence*), tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products from a person who should be, but is not, licensed in accordance with Article XX (*Licence*);
  - (j) intermingling of tobacco products with non-tobacco products during the progression through the supply chain of tobacco products, including during storage, warehousing, transit, transportation, import and export; and
  - (k) using internet and other telecommunication-based modes of sale of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products, in contravention of the provisions of this Protocol.
2. Each Party shall adopt appropriate legislative and other measures, as may be necessary, to establish the following conduct as criminal under its domestic law when committed intentionally:
- (a) manufacturing, selling, distributing, storing, shipping, importing or exporting of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products without payment of applicable duties, taxes or levies;
  - (b) counterfeiting tobacco products or manufacturing equipment [or key inputs] used in the manufacture of tobacco products or counterfeiting packaging, fiscal stamps, markings or labels;
  - (c) manufacturing, selling, distributing, storing, shipping, importing or exporting counterfeit tobacco products or counterfeit manufacturing equipment [or key inputs] used in the manufacture of tobacco products or counterfeit fiscal stamps;
  - (d) misdeclaring the description, quantity, or value of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products;
  - (e) acquiring, possessing, using, converting or transferring property or engaging in any activity that conceals or attempts to conceal the origin of said property, knowing that such property is the proceeds of an offence or offences covered by this Protocol;
  - (f) concealing or disguising the true nature, source, location, disposition, movement or ownership of, or rights with respect to, property knowing that such property is the proceeds derived from an offence or offences covered by this Protocol;

- (g) conspiring or attempting to commit an offence established in accordance with this paragraph; and
- (h) organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with this paragraph.

#### *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 offences established in accordance with Article XX (*Offences*).
2. Subject to the legal principles of the Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

#### *Sanctions*

1. Each Party shall make the commission of an offence established in accordance with this Protocol liable to sanctions that take into account the gravity of that offence. Each Party shall, in particular, ensure that legal and natural persons held liable for offences established in accordance with Articles XX (*Offences*) are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.
2. Each Party shall ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences relevant to this Protocol are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. Each Party shall, where appropriate and in accordance with domestic law, establish under its domestic law a lengthy statute of limitations period in which to commence proceedings for any offence covered by this Protocol and a lengthier period where the alleged offender has evaded the administration of justice.
4. Nothing contained in this Protocol shall affect the principle that the description of the 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 offences shall be prosecuted and punished in accordance with that law.

#### *Search of premises and seizure of evidence*

Each Party shall adopt such legislative and other measures as may be necessary to authorize competent authorities to search a building, receptacle, means of transport or place for evidence, including tobacco, tobacco products and manufacturing equipment [and key inputs] used in the manufacture of tobacco, with respect to a commission of an offence under Article XX (*Offences*) of this Protocol, and to seize such evidence when found, in accordance with national law.

*Confiscation and seizure*

1. Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
  - (a) proceeds of crime derived from criminal offences covered by this Protocol or property the value of which corresponds to that of such proceeds;
  - (b) property, equipment or other instrumentalities used in or destined for use in criminal offences covered by this Protocol.
2. Parties shall adopt such measures as may be necessary to enable the identification, tracing or seizure of any item referred to in paragraph 1 of this Article for the purpose of eventual confiscation.
3. If proceeds of crime have been transferred, transformed or converted, in part or in full, into other property or to another person who has knowledge or should have knowledge of the commission of offences covered by this Protocol, such property shall be liable to the measures referred to in this Article instead of the proceeds.
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.
6. For the purposes of this Article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized and to hear/adjudicate civil claims of another Party against any licensee. Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy or any common law revenue rule or its equivalent.
7. Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.
9. Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.
10. Without prejudice to the provisions of this Article, Parties may allow retention of the property, equipment or other instrumentalities used in or destined for use in criminal offences covered by this Protocol for training and law enforcement purposes, provided that the confiscated materials are destroyed following such use.

*Seizure payments*

For the purpose of eliminating illicit trade in tobacco products, the Parties shall consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount equivalent to lost taxes and duties from the producer or manufacturer of seized tobacco, genuine tobacco products or genuine manufacturing equipment (or genuine key inputs) used in the production of tobacco products.

*Destruction*

1. Tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products confiscated by a Party pursuant to Article XX (*Confiscation and seizure*) shall be destroyed by the Party upon completion of any legal process in relation thereto.
2. Without prejudice to the provisions of paragraph 1 of this Article, Parties may allow retention of the confiscated tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products for training and law enforcement purposes, provided that the confiscated goods are destroyed following such use.

*Special investigative techniques*

1. Each Party shall, subject to its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.
2. For the purpose of investigating the offences covered by this Protocol, Parties are encouraged to conclude appropriate bilateral or multilateral agreements or arrangements for using the techniques referred to in paragraph 1 of this Article in the context of cooperation at the international level.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this Article, 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. The Parties recognize the importance of, and need for, international cooperation and assistance in this area and shall endeavour to cooperate, with each other and with international organizations, in developing capacity to achieve the goals of this Article.

## PART V: INTERNATIONAL COOPERATION

### *Information sharing: Statistical data*

1. The Parties shall, for the purpose of achieving the objectives of this Protocol, exchange relevant information on matters such as:
  - (a) details of seizures of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products, including case reference information where appropriate, quantity, value of seizure, product description, description of entities involved, date and place of manufacture; modi operandi including means of transport, concealment, routing and detection; counterfeit and genuine brands; 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 [or key inputs] used in the manufacture of tobacco products;
  - (c) data on the agricultural production of tobacco;
  - (d) information on trends, concealment methods, and modi operandi used in the illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products; and
  - (e) any other relevant information, as agreed by the Parties.
2. The information referred to in paragraph 1(b-e) of this Article shall be placed in a secure, central, automated database managed by XXX. Information referred to in paragraph 1(a) of this Article shall be included in the database if it is non-nominal.
3. The communication of information by a Party to the central automated database shall be subject to that Party's legal and administrative provisions.
4. The Parties shall cooperate with each other and competent international organizations to build capacity of Parties to collect and exchange information.

### *Information sharing: Operational data*

The Parties shall exchange, on their own initiative or on request where the requesting Party 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 [or key inputs] used in the manufacture of tobacco products, the following information, subject to national law:

- (a) licensing records of the concerned legal and natural persons;
- (b) information for identification, monitoring and prosecution of legal or natural persons involved in illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products;
- (c) records of investigations and prosecutions; and

- (d) payment records of import, export, duty free sales of tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.

*Information sharing: Confidentiality and protection of information*

1. Each Party shall designate the domestic authority to which the operational and statistical data are supplied and notify the Parties to this Protocol of such designation through the Convention Secretariat.
2. The exchange of information under this Protocol shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

*Assistance and cooperation: Training, technical assistance and cooperation in scientific, technical and technological matters*

1. The Parties shall cooperate, with each other and competent international organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters, in order to achieve the objectives of this Protocol. Such assistance may include the transfer of expertise or state-of-the-art technology in the areas of intelligence collection, law enforcement capacity, tracking and tracing, information management, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.
2. Parties shall enter into bilateral, multilateral or any other agreements or arrangements in order to promote cooperation and technical assistance and to stimulate discussion on issues and needs of mutual concern, including the special needs of developing-country Parties and Parties with economies in transition.

*Assistance and cooperation: Investigation and prosecution of offences*

1. The Parties agree to take all necessary measures to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those engaged in illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products.
2. Each Party shall, without prejudice to provisions of this Protocol, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a designated authority to serve as a national centre for the collection, analysis and dissemination of information among the other authorities and with other Parties.

*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.

#### *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 XX.2 (*Offences*) 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 XX (*Protection of sovereignty*), 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 in its territory; or
- (c) the offence is:
  - (i) one of those established in accordance with Article XX.2 (*Offences*) and is committed outside its territory with a view to the commission of a crime within its territory;
  - (ii) one of those established in accordance with Article XX.2 (*Offences*) and is committed outside its territory with a view to the commission of an offence established in accordance with Article XX.2 (*Offences*) within its territory.

3. For the purposes of Article XX (*Extradition*), each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences covered by this Protocol when the alleged offender is present in 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 covered by this Protocol when the alleged offender is present in its territory and it does not extradite him or her.

5. If a Party exercising its jurisdiction under paragraph 1 or 2 of this Article has been notified, or has otherwise learned, 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.

*Joint investigations*

Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The Parties involved shall ensure that the sovereignty of the Party in whose territory such investigation is to take place is fully respected.

*Law enforcement cooperation*

1. Each Party shall adopt effective measures to:
  - (a) enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences covered by this Protocol;
  - (b) cooperate with other Parties in conducting inquiries with respect to criminal offences covered by this Protocol 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.
  - (c) provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
  - (d) facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;
  - (e) exchange 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;
  - (f) exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Protocol.
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. 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 committed through the use of modern technology.

#### *Mutual administrative assistance*

Parties shall provide each other, either on request or on their own initiative, with information that helps to ensure proper application of customs and other relevant law and in the prevention, detection, investigation, prosecution and combating of illicit trade in tobacco, tobacco products, or manufacturing equipment [or key inputs] used in the manufacture of tobacco products. Such information may include:

- (a) new customs and other enforcement techniques that have demonstrated their effectiveness;
- (b) new trends, means or methods of committing offences, listed in Article XX;
- (c) goods known to be the subject of offences, listed in Article XX, as well as description, packaging, transport and storage details and methods used in respect of those goods;
- (d) persons known to have committed an offence listed in Article XX or suspected of being about to commit such an offence;
- (e) any other data that can assist designated agencies with risk assessment for supply chain control and other enforcement purposes.

#### *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 the criminal offences covered by this Protocol as provided for in Article XX.2 (*Offences*) and shall reciprocally extend to one another similar assistance where the requesting Party has reasonable grounds to suspect that the offence referred to in Article XX.2 (*Offences*) is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested Party.

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 a legal person may be held liable in accordance with Article XX.2 (*Offences*) 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 of assets;
- (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 the 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. Without prejudice to domestic law, the competent authorities of a Party may, without prior request, transmit information relating to criminal matters to a competent authority in another Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter Party pursuant to this Protocol.

5. The transmission of information pursuant to paragraph 4 of this Article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving Party shall notify the transmitting Party prior to the disclosure and, if so requested, consult with the transmitting Party. If, in an exceptional case, advance notice is not possible, the receiving Party shall inform the transmitting Party of the disclosure without delay.

6. The provisions of this Article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this Article shall apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty of mutual legal assistance. If those Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 9 to 29 of this Article in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. Parties shall not decline to render mutual legal assistance pursuant to this Article on the ground of bank secrecy.

9. 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.

10. A person who is being detained or is serving a sentence in the territory of one Party whose presence in another Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Protocol may be transferred if the following conditions are met:

- (a) the person freely gives his or her informed consent;
- (b) the competent authorities of both Parties agree, subject to such conditions as those Parties may deem appropriate.

11. For the purposes of paragraph 10 of this Article:

- (a) the Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the Party from which the person was transferred;
- (b) the Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both Parties;
- (c) the Party to which the person is transferred shall not require the Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) the person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the Party to which he or she was transferred.

12. Unless the Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this Article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each Party 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 the competent authorities for execution. Where 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. The Head of the Convention Secretariat shall be notified of the central authority designated for this purpose at the time each Party deposits its instrument of ratification, acceptance or approval of or accession to this Protocol. Requests for mutual legal assistance and any communication related thereto shall be transmitted to 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 diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.)

14. 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 that Party to

establish authenticity. The Head of the Convention Secretariat shall be notified of the language or languages acceptable to each Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Protocol. In urgent circumstances and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. 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 functions of the authority conducting the investigation, prosecution or judicial proceeding;
  - (c) a summary of the relevant facts, except in relation to 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.

21. Mutual legal assistance may be refused:
- (a) if the request is not made in conformity with the provisions of 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) if it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.
22. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
23. Reasons shall be given for any refusal of mutual legal assistance.
24. 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 on progress of its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.
25. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
26. Before refusing a request pursuant to paragraph 21 of this Article or postponing its execution pursuant to paragraph 25 of this Article, 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.
27. Without prejudice to the application of paragraph 12 of this Article, a witness, expert or other person who, at the request of the requesting Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting Party or, having left it, has returned of his or her own free will.
28. 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 fulfil 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.

29. 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;
  - (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.
30. 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.

#### *Extradition*

1. This Article shall apply to criminal offences covered by this Protocol.
2. If the request for extradition includes several separate criminal offences, some of which are not covered by this Protocol, the requested Party may apply this Article also in respect of the latter offences.
3. Each of the offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a Party, for which extradition is 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 the legal basis for extradition in respect of any offence to which this Article applies.
5. Parties for which extradition is conditional on the existence of a treaty shall:
  - (a) at the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Protocol, inform the Head of the Convention Secretariat whether they will take this Protocol as the legal basis for cooperation on extradition with other Parties to this Protocol;
  - (b) if they do not take this Protocol as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other Parties to this Protocol in order to implement this Article.
6. Parties for which extradition is not conditional on the existence of a treaty shall recognize offences to which this Article applies as extraditable offences between themselves.
7. 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.
8. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this Article applies.

9. Subject to the provisions of 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.
10. A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an 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 grave 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.
11. 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 10 of this Article.
12. 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.
13. Any person regarding whom proceedings are being carried out in connection with any of the 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.
14. 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.
15. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. 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.
17. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

## **PART VI: REPORTING**

### *Reporting and exchange of information*

1. Each Party shall submit to the Meeting of the Parties, periodic reports on its implementation of this Protocol, through the Convention Secretariat.
2. The reporting mechanism shall be determined by the Meeting of the Parties.
3. The Meeting of the Parties shall determine the content of the periodic reporting, referred to in paragraph 1 of this Article, which should include 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 its implementation of this Protocol, and on the measures taken to overcome these barriers;
  - (c) information, as appropriate, on financial and technical assistance provided or received for activities related to the elimination of illicit trade in tobacco products; and
  - (d) information specified in Articles XX, XX, XX, XX and XX.

In those cases where relevant data are already being collected as part of the Conference of the Parties reporting mechanism, the Meeting of the Parties shall not duplicate efforts.

4. The Meeting of the Parties, pursuant to Articles XX and XX, 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 this Article shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is reported.

## **PART VII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES**

### *Meeting of the Parties*

1. A Meeting of the Parties to this Protocol is hereby established. The first session of the Meeting of the Parties shall be convened by the Convention Secretariat not later than one year after the entry into force of this Protocol.
2. Thereafter, regular sessions of the Meeting of the Parties may be convened by the Convention Secretariat, wherever possible and desirable, in conjunction with sessions of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.
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. Funds required for the operation of this Protocol, including the funds required for secretariat services, shall be charged against contributions from the Parties. The Convention Secretariat is authorized to receive voluntary extrabudgetary contributions for matters relating to this Protocol.

5. The Rules of Procedure and the Financial Rules of the Conference of the Parties to WHO Framework Convention on Tobacco Control shall apply, *mutatis mutandis*, to the Meeting of the Parties.

6. Article 23.5 of the WHO Framework Convention on Tobacco Control shall apply *mutatis mutandis* to this Protocol, subject to any modifications decided by the Meeting of the Parties.

#### *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 and mechanisms established by the Meeting of the Parties and provide them with services as required;

(b) receive, analyse, transmit and provide feedback to Parties concerned and to the Meeting of the Parties on reports received by it pursuant to this Protocol;

(c) provide advice and support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation, communication and exchange of information, and in identifying and accessing available resources and mechanisms to facilitate the implementation of their 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 enter into official relations with the Meeting of the Parties, in order to present the 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.

*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.

*Financial resources*

1. The Parties recognize the important role that financial resources play in achieving the objective of this Protocol.
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. 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.
5. The 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 objectives 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 the implementation of their obligations under this Protocol.

**PART VIII: SETTLEMENT OF DISPUTES**

*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

### *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 of this Article shall enter into force for those Parties having accepted it on the [XX] day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to this Protocol.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

### *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 XX (*Amendments to this Protocol*).

## PART X: FINAL PROVISIONS

### *Reservations*

No reservations may be made to this Protocol.

### *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 such withdrawal from the WHO Framework Convention on Tobacco Control.

### *Right to vote*

1. Each Party to this Protocol shall have one vote, except as provided for in paragraph 2 of this Article.
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.

### *Signature*

The Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at *place to be determined* from *date to be determined*.

### *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 which becomes a Party to this Protocol without any of its Member States being a Party shall be bound by all the obligations under this Protocol. In the case of those organizations, one or more of whose Member States is a Party to this Protocol, 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 in the extent of their competence.

*Entry into force*

1. This Protocol shall enter into force on the XX day following the date of deposit of the XX 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 of this Article 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 the organization.

*Depositary*

The Secretary-General of the United Nations shall be the Depositary of this Protocol and amendments thereto adopted in accordance with Article XX (*Amendments to this Protocol*).

*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.

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