

The Protocol to Eliminate Illicit Trade in Tobacco Products

Fact sheet 5

The Protocol to Eliminate Illicit Trade in Tobacco Products is being negotiated as a supplementary treaty to the WHO Framework Convention on Tobacco Control (WHO FCTC) and is currently open for ratification, acceptance, approval or accession by the Parties to the WHO FCTC.

The Protocol was adopted on 12 November 2012 at the fifth session of the Conference of the Parties in Seoul, Republic of Korea. When it was closed for signature, the Protocol had been signed by 53 States and the European Union.

In January 2015 six countries (Nicaragua, Uruguay, Gabon, Mongolia, Austria and Spain) had ratified the Protocol. The Protocol will enter into force on the 90th day following the date of deposit of the 40th ratification.

The objective of the Protocol is to eliminate all forms of illicit trade in tobacco products.

Illicit trade is defined in Art. 1.6 as “any practice or conduct prohibited by law and which relates to the production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.”

The Protocol has three parts: measures to control the supply chain, measures to improve law enforcement and measures to enhance international cooperation. The supply chain articles (6 to 13) are often referred as the “heart of the Protocol” and are briefly described below.

Licensing (Article 6): This article obliges Parties to establish a mandatory licensing system for anyone manufacturing,

importing or exporting: tobacco products or manufacturing equipment. Parties must “endeavour to license, to the extent considered appropriate”, any natural or legal person involved in retailing, growing or transporting commercial quantities of tobacco, tobacco products and manufacturing equipment. An exception is foreseen for the traditional small growers.

Due Diligence (Article 7). The Article obliges Parties to conduct due diligence with respect to all natural and legal persons engaged in the supply of tobacco, tobacco products and manufacturing equipment. This includes obtaining information about their business dealings and monitoring 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.

Tracking and Tracing (Article 8). Probably the most important measure of the Protocol. The purpose of a tracking and tracing system is to assist Parties in determining the origin of tobacco products, the point of diversion if applicable, and to monitor and control the movement of tobacco products and their legal status.

According to Article 8, each Party shall require that unique, secure and non-removable identification markings, such as codes or stamps, are affixed to or form part of all unit packets, 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 the Protocol.

Article 8 obliges Parties to establish a global tracking and tracing system within



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five years of the Protocol entering into force, “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”.

Record-keeping (Article 9). The article obliges Parties to ensure that natural or legal persons involved in the tobacco supply chain must keep complete and accurate records for at least four years of all relevant transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.

Security and Preventive Measures (Article 10). The Article obliges Parties “where appropriate” to require that all neutral and legal persons subject to licensing (Article 6) take the necessary measures to prevent the diversion of tobacco products into illicit trade, including reporting of cross-border transfers of cash and all “suspicious transactions”.

Sale by Internet, Telecommunication or Any Other Evolving Technology (Article 11). The Article obliges Parties to ensure that sale of tobacco products via the internet or similar technology should be subject to the provisions of the Protocol.

Free Zones and International Transit (Article 12). The Article obliges Parties to “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”. It also obliges Parties to prohibit the “intermingling of tobacco products with non-tobacco products” in single containers or similar transportation units.

Duty Free Sales (Article 13). The Article obliges Parties to ensure that the duty-free sales of tobacco products are covered by the provisions of the Protocol. Within five years of the Protocol’s entry into force, the Meeting of the Parties must consider on the basis of evidence-based research whether further action is required to control duty free sales.

Articles 14 to 19 deal with investigations and law enforcement. For instance Article 14 contains a catalogue of conduct which each Party shall include in its national legislation as unlawful. Each Party shall decide which unlawful conduct constitutes a criminal offence. Other articles contain provisions on liability, prosecutions and sanctions, seizure payments, special investigative techniques and the disposal and destruction of confiscated products by environmentally friendly methods.

Articles 20 to 31 deal with international capacity-building and cooperation, such as information sharing, law enforcement cooperation, mutual assistance and extradition.

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