



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

WHO Framework Convention on Tobacco Control

and its

Protocol to Eliminate Illicit Trade in Tobacco Products



Outline

- **First protocol** to the WHO FCTC
- **Main parts** of the Protocol and **key provisions**
- Process for **signature, ratification and entry into force**
- Work to be conducted **prior to the entry into force**



First protocol to the WHO FCTC

- **First protocol** to the WHO FCTC
- **Negotiated** from 2008 - 2012 by the Parties to the WHO FCTC
- **Negotiations were chaired** by Ian Walton-George (EU), Director of Investigations and Operations of OLAF
- **Adopted** at 5th session Conference of the Parties to the WHO FCTC in Seoul, Rep. of Korea
- **Status of the Protocol:** open for signature and ratification



Adoption of the Protocol at COP5



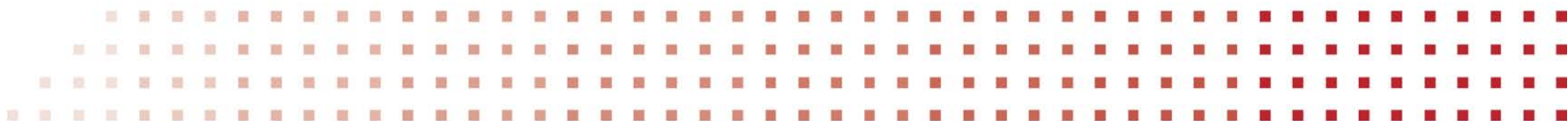
Objective of the Protocol

"to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control."



Illicit trade and tobacco control

- Illicit trade in tobacco products **undermines price and tax measures** designed to strengthen tobacco control and thereby **increases the accessibility and affordability** of tobacco products;
- Increase in accessibility and affordability of illicitly traded tobacco products has **adverse effects on public health and well-being**, in particular of **young people, the poor and other vulnerable groups**;
- Illicit trade in tobacco products has **disproportionate economic and social implications on developing countries and countries with economies in transition.**



WHO FCTC Article 15

- Article 15 of the WHO FCTC was the basis for the negotiations of the Protocol
- Article 15 constitutes a legal obligation (like all of the WHO FCTC) for all Parties to the WHO FCTC, no matter if they have ratified the Protocol or not



WHO FCTC Article 15

Illicit trade in tobacco products

- Parties recognize that eliminating illicit trade is essential for tobacco control
- Parties shall require markings on tobacco products to determine the origin and point of diversion, and to monitor, document and control the movement of these products and their legal status
- Provision for destruction/disposal of confiscated products
- Monitor/control tobacco products under suspension of taxes or duties
- Further measures to prevent illicit trade, incl. licensing



Protocol to Eliminate Illicit Trade in Tobacco Products: Key provisions



Key provisions, overview

- **Supply chain control:**
 - Licensing,
 - Due diligence,
 - Tracking and tracing,
 - Record-keeping,
 - Security and preventive measures,
 - Sale by Internet, telecommunication or any other evolving technology,
 - Free zones and international transit,
 - Duty free sales.



Protocol to Eliminate Illicit Trade in Tobacco Products

**Measures to control the
supply chain**

"Heart of the Protocol"



Licensing and due diligence

- Parties shall establish a mandatory **licensing system** for anyone manufacturing, importing or exporting tobacco products and manufacturing equipment;
- Other activities such as retailing or tobacco growing can be made subject to licensing;
- Any person engaged in the supply chain of tobacco, tobacco products and manufacturing equipment has to **conduct due diligence** (a list provides which information has to be obtained and updated)



Tracking and tracing

- The Parties will establish an **international tracking and tracing (T&T) regime**, comprising national and/or regional tracking and tracing systems and a global information sharing focal point
- Each Party shall establish a **T&T regime**, controlled by the Party, for all tobacco products manufactured in or imported onto its territory
- Within **5 years** of entry into force, Parties shall require that "unique, secure and non-removable identification markings" (like codes or stamps) are affixed to unit packets and packages and outside packaging of **cigarettes**; within 10 years, of other tobacco products



Tracking and tracing, cont'd

- Information to **determine the origin and point of diversion** of tobacco products and to **monitor and control the movement** of tobacco products and their legal status has to be recorded and made available;
- This information includes date and location of manufacture, manufacturing facility, information on the first customer, intended market of retail sale and intended shipment route;
- Parties establish a national or regional central point that will form the link between the national T&T system and the global information sharing focal point



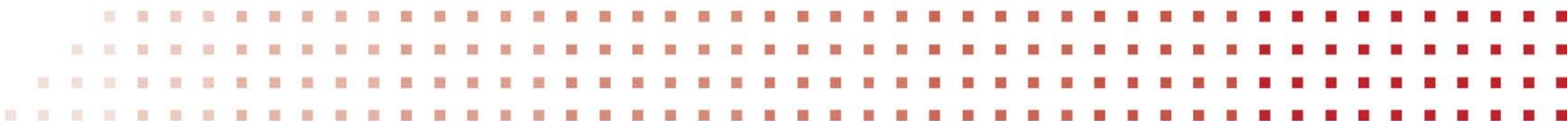
Tracking and tracing – tobacco industry

- Obligations assigned to Parties shall not be performed by or delegated to the tobacco industry.
- Each Party shall ensure that the interaction of its authorities with the tobacco industry shall be limited to the extent strictly necessary in the implementation of Article 8 (T&T).
- Each Party may require the tobacco industry to bear any costs associated with the Party's obligations under Article 8.



Other measures to control the supply chain

- All persons engaged in the supply chain shall be obliged to:
 - maintain complete and accurate records;
 - take measures to prevent the diversion of tobacco products into illicit trade channels, such as reporting of cross-border transfers of cash to the competent authority;
- Transactions with regard to tobacco products via internet, telecommunication or other evolving technology are subject to all relevant Protocol provisions.
- Parties shall consider banning retail sales of tobacco products through these modes of sales.



Free zones and duty free sales

- **Effective control measures** regarding manufacturing of and transactions in tobacco and tobacco products **in free zones** shall be implemented within 3 years of entry into force of the Protocol
- **Intermingling** of tobacco products with non-tobacco products at time of removal from free zones shall be **prohibited**.
- **Duty free sales** shall be subject to all relevant provisions of the Protocol;
- Evidence-based **research** is to be conducted **to ascertain the extent of illicit trade related to duty free sales** (no later than 5 years after entry into force)



Protocol to Eliminate Illicit Trade in Tobacco Products

Other provisions



Other Protocol provisions include

- **Offences**, including unlawful conduct and criminal offences, seizure payments, disposal/destruction of confiscated products;
- **International cooperation**, including information sharing, and mutual administrative and legal assistance and extradition;
- **Financing** of the Protocol, governance and other institutional matters



Cooperation with international entities

- Parties take "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.."
- The Protocol makes specific reference to enhanced cooperation between the **Convention Secretariat** and the **UN Office on Drugs and Crime (UNODC)** and the **World Customs Organization (WCO)** and other bodies, as appropriate



Protocol governance

- **Meeting of the Parties** established as governing body of the Protocol;
- Sessions of the Meeting of the Parties (MOP) shall be convened **immediately before or immediately after** the sessions of the Conference of the Parties (COP);
- **First session of the MOP** is to be convened immediately before or after the next regular session of the COP following the entry into force of the Protocol;
- Secretariat of the WHO FCTC will also be the Protocol Secretariat;



Process of signature, ratification and entry into force



Signature

- The Protocol is open to signature and ratification by **all Parties to the WHO FCTC**.
- **Signature** is an act expressing **political approval of the treaty concerned**, and raises an expectation that the signatory will in due course take the appropriate domestic actions to become a Party.
- By signing, a State does not become a Party to the Protocol.
- A signatory is under an **obligation to refrain from acts which would defeat the object and purpose** of the treaty.



Signature

- Opened for signature on **10 January 2013** at WHO headquarters in Geneva.
- **15 Signatories** (13 March 2013):
Burkina Faso, China, Colombia, France, Gabon, Libya, Myanmar, Nicaragua, Panama, Republic of Korea, South Africa, Syrian Arab Republic, Tunisia, Turkey and Uruguay.
- The Protocol will remain open for signature at UN headquarters in New York **until 9 January 2014**.



Opening for signature





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Protocol to Eliminate Illicit Trade in Tobacco Products

Opening for signature
10 January 2013



WHO FRAMEWORK
CONVENTION ON
TOBACCO CONTROL

CONVENTION-CADRE
DE L'OMS POUR
LA LUTTE
CONTRE
LE TABAC

CONVENIO MARCO
DE LA OMS PARA EL
CONTROL DEL TABACO



Ratification

- Ratification is an international act by which States which have already signed (signatories) the Protocol **establish on the international level their consent to be bound by it.**
- Before ratifying, governments follow their internal procedure required under their respective constitutional systems to become a Party to a treaty.
- By **depositing their instrument of ratification** with the Depositary (the Treaty Section of the United Nations), States establish their consent to be bound by the Protocol.



Entry into force of the Protocol

- In order for the Protocol to enter into force, 40 Parties of the WHO FCTC have to ratify it.
- The Protocol will **enter into force** on the 90th day following the date of deposit of the 40th instrument of ratification.



Secretariat assistance in signing and ratifying

- Model instruments of ratification are available for download on the website:
http://www.who.int/fctc/protocol/protocol_sign/
- WHO FCTC Parties wishing to sign and or ratify the Protocol can contact the Convention Secretariat with any questions (protocolfctc@who.int).



Work prior to entry into force

- Raising awareness and promoting entry into force (webinars, regional workshops, technical and legal advice),
- Coordination with international organizations with expertise in protocol-related matters (such as WCO),
- Study of the basic requirements of a tracking and tracing regime,
- Development of self-assessment checklist for Parties and scoping of technical assistance and capacity building needs of Parties;
- Country missions, on request, to provide technical assistance,
- Expert papers.





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More information:

http://www.who.int/fctc/protocol/illicit_trade/en/

**For questions, please contact the
Secretariat:**

protocolfctc@who.int





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Thank you!

