The Protocol to Eliminate Illicit Trade in Tobacco Products: Questions & Answers

1. What is the objective of the Protocol and how will this be achieved?

The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products. “Illicit trade” in tobacco products in this context means any practice or conduct related to producing, shipping, receiving, having possession of, distributing, selling or buying tobacco products which is prohibited by law.

In order to prevent this illegal trade, the Protocol aims to secure the supply chain of tobacco products through a series of government measures. It requires the establishment of a global tracking and tracing regime within five years of the Protocol’s entry into force, comprising national and regional tracking and tracing systems and a global information sharing point located within the Secretariat of the WHO Framework Convention on Tobacco Control (WHO FCTC). Other provisions to ensure control of the supply chain include licensing and record-keeping requirements, as well as regulation of Internet-sales, duty-free sales and international transit.

To address the illicit trade, the Protocol establishes offences and addresses liability and seizure payments, as well as the disposal of confiscated products. Other requirements aim to boost international cooperation, with measures on information sharing, technical and law enforcement cooperation, mutual legal and administrative assistance and extradition.

The Protocol’s obligations cover tobacco, tobacco products and manufacturing equipment (that is, machinery to make tobacco products), not all of which are covered by every provision of the Protocol.
2. What is the current status of the Protocol?

As of January 2016, 179 countries plus the European Union have become Parties to the FCTC. Of these 180 Parties, 54 signed the Protocol between 10 January 2013 and 9 January 2014, during which period the Protocol was open for signature. As of January 2016, 13 Parties to the Convention are Parties to the Protocol and many are about to become Parties. The Protocol requires 40 Parties to enter into force.

The WHO FCTC Convention Secretariat will be also the Secretariat to the Protocol once it enters into force, and will be responsible for supporting implementation and servicing the Meeting of the Parties.

3. What actions do countries need to take to become Parties to the Protocol?

Only countries that are Parties to the WHO FCTC can become Parties to the Protocol. The WHO FCTC Secretariat is currently promoting the entry into force of the Protocol, and can assist with further advice. The Secretariat has developed a number of detailed practical guidance documents on the process, which can be found in the Appendices. They are also available on the Secretariat website in the six UN languages.

There are essentially three main elements of the process of becoming a Party, two at the national and one at the international level.

- National level: Enactment of national legislation and implementation of other administrative and institutional measures required to implement the Protocol.
- National level: Approval of the Protocol for ratification or accession (usually by parliament or executive authority).
• **International Level:** Deposit of the instrument of ratification (acceptance/approval)\(^1\) or accession with the United Nations Treaty Section (usually by the ministry of foreign affairs).

The order in which these elements are completed depends on the constitutional system of the country. There are two main constitutional systems:

**System 1**
1. National approval of the Protocol
2. Ratification or accession by deposit of the relevant instrument in the Treaty section of the UN.
3. Enactment of national legislation and other measures

**System 2**
1. Enactment of national legislation and other measures
2. National approval of the Protocol
3. Ratification or accession by deposit of the relevant instrument in the Treaty section in the UN.

The ministry of foreign affairs of each country can advise which system the country adheres to.

**3.1. What must be done at the international level?**

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\(^1\) Ratification, acceptance and approval are equivalent in substance. The difference is in the legal requirements at the national level. The ministry of foreign affairs can advise on this. For simplicity, the term “ratification” will be used in this document.
To become Parties to the Protocol, Parties to the WHO FCTC that signed the Protocol are required to ratify the Protocol according to national requirements.

Parties that did not sign the Protocol may become Parties by means of accession, which has the same legal status as ratification. Appendix A provides details on the process of becoming a Party to the Protocol. Appendix B sets out model instruments of ratification and accession.

This process is determined by international law and is therefore the same for all countries. In most countries, the ministry of foreign affairs is in charge of the international process. Accordingly, the substantive lead ministry for the Protocol may wish to consult the ministry of foreign affairs, and also ensure its close involvement in the national-level process.

3.2. What must be done at the national level?

The relevant national processes are determined by national law, and are therefore different for each country. The lead ministry for the Protocol should liaise with all relevant national authorities on the steps to be followed. This should be done early in the process to avoid procedural confusion and unnecessary delays. In most countries, the multisectoral nature of the Protocol requires the involvement of the national authorities for health, customs, justice, trade, law enforcement and finance. To assist national authorities with this process, the Secretariat has developed a checklist of steps required at the national level, which appears in Appendix C.

National approval of the Protocol

Prior to submitting the instrument of ratification (acceptance/approval) or accession, the Protocol must be approved by the competent political authority of the country. In many countries, this is the legislature or an equivalent national authority and/or the executive (head of government and/or head of state).
Enactment of national legislation and other measures

In order for a Party to fulfill its legal obligations under the Protocol, the necessary legislation and other measures must be enacted. Depending on the constitutional system of the country, this is done either before or after national approval of the Protocol and deposit of the instrument of ratification or accession (see above).

To determine the measures required, a gaps analysis between the existing measures, including the legal, regulatory and policy frameworks, and the different provisions of the Protocol is recommended. This allows an action plan for the implementation of the Protocol to be established. The detailed self-assessment checklist developed by the Secretariat, set out in Appendix D, is intended to assist Parties in this respect. A document compiled by WHO, “Steps to eliminate illicit trade factsheet”, can also support this assessment as shown in Appendix E. These two documents may serve as useful tools for Parties in conducting the gap analysis.

It is worth noting that according to the information obtained from Parties’ reports submitted to the Conference of the Parties through the Convention Secretariat on their implementation of the WHO FCTC, many Parties have already instituted some measures to combat illicit trade in accordance with their legal obligations under Article 15 of the WHO FCTC. Therefore, to a certain extent, many Parties to the WHO FCTC may have already taken steps to implement the Protocol.

After the existing measures are considered and gaps are identified, Parties may rely on best practices and examples from other governments on the different approaches to combat the illicit trade.

Several mechanisms and tools are available to assist Parties in the process of enacting and implementing national legislation and other measures. Firstly, the Convention Secretariat, WHO FCTC is in the process of establishing Knowledge Hubs (KHs) in all WHO Regions to generate and share expertise, information and knowledge and provide training, regionally and globally, to strengthen the capacity of Parties to meet their obligations.
under the WHO FCTC, including the Protocol. The KH based at the University of Cape Town (South Africa) provides assistance to Parties on matters related to the illicit trade, in particular in measuring the magnitude of the illicit market. Parties wishing to receive such assistance may contact the Convention Secretariat (protocolfctc@who.int).

Secondly, as requested by COP 6, a panel of experts on the different aspects of the Protocol is being established by the Convention Secretariat; its members will be available upon request to support the implementation of the Protocol, including governance aspects. Parties interested in receiving such advice may wish to contact the Convention Secretariat (protocolfctc@who.int).

4. What are the possible roles and responsibilities of government agencies in implementing the Protocol?

The Protocol comprises 47 Articles; the substantive key provisions in Part III (Articles 6-13) deal with supply chain control, offences, international cooperation and finances. Under the Protocol, “the supply chain” mainly focuses on the manufacture, import or export of tobacco products and manufacturing equipment. Key provisions on the supply chain include the issuance of licenses, conducting due diligence, establishing tracking and tracing schemes, instituting a record-keeping system, developing security and preventive measures, prohibiting or applying all obligations under the Protocol to sales by internet, telecommunication or any other evolving technology, establishing control measures within free zone and international transit, and prohibiting or applying all obligations under the Protocol to duty-free sales. Click here to read an overview of the Protocol.

Based on the above outline of the key provisions of the Protocol, it becomes clear that fulfilling these obligations requires the involvement of several government agencies. Governing systems may vary widely between Parties. In order to determine the roles and responsibilities of different government agencies, it may be useful to establish a multi-sectoral mechanism, composed of potentially relevant government sectors, to review the existing mandate of each sector and determine the roles and
responsibilities under the obligations prescribed in the Protocol. As an alternative to establishing a new mechanism, a practical approach could be to assign this task to the national coordinating mechanism established under Article 5.2(a) of the WHO FCTC. According to the report submitted to the Conference of the Parties, many Parties reported that supply-chain control is a responsibility of the finance, customs and/or trade sectors.

Controlling the supply chain serves to prevent illicit trade. The Protocol also contains provisions regarding unlawful conduct including criminal offences, international cooperation, and finances. Sectors taking a leading roles in these provisions may therefore include foreign affairs, finance, the police or other enforcement authorities.

5. What are the benefits for Parties to the WHO FCTC in becoming a Party to the Protocol?

The illicit trade in tobacco products has become a pervasive problem reaching all corners of the globe. It threatens the health of the population, causing as many as 6 million deaths annually, as well as fostering criminality and reducing tax revenues. Parties to the Protocol enjoy a wide spectrum of benefits extending from the maintenance of national security, to increasing fiscal revenues and most importantly protecting the health of the population, particularly vulnerable groups.²

It is well recognized that the prevalence of smoking is price sensitive, making illicit products particularly attractive to lower income and younger segments of the population, who constitute most tobacco-product consumers. Eliminating illicit trade in tobacco products ensures the market is composed of taxed tobacco products subject to health regulations and thus reduces tobacco consumption and smoking prevalence, as lower income and younger people find tobacco more expensive and less

attractive. The public health implications are immense, ranging from lowering the rates of chronic diseases to saving considerable funds that would otherwise have been spent on health care, as well as maintaining health equalities.

Moreover, eliminating the illicit trade in tobacco products generates higher revenues from the increase of taxable tobacco products, while upholding and strengthening national tax policies. This fosters improved national security through the eventual destruction of criminal organizations and other criminal activities resulting from the illicit trade, as well as a decline in corruption.

According to the World Customs Organization, the growth in the illicit trade in tobacco remains a worrying worldwide phenomenon and an enduring source of funding for other illicit activities that undermine social order, good governance and the rule of law.³

6. What are the main issues to be considered in responding to the global illicit tobacco trade?

6.1 Illicit tobacco trade requires an efficient coordinated international response

A review of case studies of anti-illicit trade policies by the International Agency for Research on Cancer (IARC) has shown that international cooperative measures, such as information sharing and cooperation in the investigation and prosecution of offences, are essential to deal with the cross-border illicit cigarette trade.⁴ The implementation of the Protocol will require close cooperation between the Parties and international organizations with expertise in the relevant areas (including customs and international crime) and, at the national level, among different sectors of

government. This multisectoral and international collaboration will be crucial to the successful achievement of the Protocol’s objective.

A report entitled The Globalization of Crime: A Transnational Organized Crime Threat Assessment by the United Nations Office on Drugs and Crime, looks at the trafficking of products such as cocaine, heroin, firearms, counterfeit goods and stolen natural resources. One major conclusion is that transnational organized crime markets are global in scale; strategies to address them should also be global.5 The principles of combating transnational organized crime also apply to the illicit tobacco trade: the global scope and multifaceted nature of the illicit tobacco trade require a coordinated international response. The Protocol to Eliminate Illicit Trade in Tobacco Products is the global response of the global tobacco control community. Assuming that most countries that are Parties to the WHO FCTC will ratify the Protocol, it is expected that it will be highly effective and reduce cigarette smuggling by more than 60%.6 Countries differ in their relationship to the illicit tobacco trade: some countries are the source for illicit tobacco products, some play a role in the transit of the illicit products, while others are the destination. In several cases a country may be in more than one of these categories, or change over time from one category to another category.

Based on information collected by international agencies or investigative journalists7, selected countries can be classified as source, transit, transit-destination and destination countries for tobacco products (which are often illicit cigarettes, but can also be waterpipe and smokeless tobacco

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Main countries of origin for illicit cigarettes are China, Paraguay, the Russian Federation, the United Arab Emirates, Ukraine, Belarus, Moldova, Kenya and Zimbabwe.

Main destinations are the European Union, the United States of America, Brazil, Canada, South Africa, Iran, Iraq, Hong Kong and Pakistan.

Main transit and transit-destination countries are Egypt, Tunisia, Algeria, Libya, Mali, Niger, Guinea, Nigeria, Syria, Malaysia, India, Cambodia, Indonesia, Vietnam, Argentina, Chile, Peru, Bolivia, Colombia, Venezuela, Poland, Lithuania, Greece, Montenegro, Turkey and Bulgaria.

In addition, free trade zones have also been used in the illicit tobacco trade in the UAE, Singapore, the Philippines, Malaysia, Panama, Greece and Egypt.

Fifty four (54) parties have signed the Protocol. Among them are major players in the global illicit tobacco products trade, such as China, the EU, France, Germany, the United Kingdom, Spain, South Africa, Kenya, Iran, Panama and Colombia. If most of the source, transit and destination countries ratify the Protocol, the illicit cigarette market is expected to be reduced significantly.8

6.2 Combating illicit trade requires a better understanding of its scope

Parties should not rely on tobacco industry estimates for measuring the illicit market in their country. Those estimates are often unreliable and alarmist.9 Parties should be encouraged to collect data on the illicit trade

8 Johnson, ibid.
9 Gilmore AB, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in
and undertake an analysis of the characteristics of confiscated tobacco products such as the product type, brand name, place of seizure, modus operandi, intended destination, counterfeit or not, quantity and weight. In addition, Parties should be encouraged to undertake a study on the magnitude and characteristics of the illicit tobacco trade which could be based on the comparison of tax-paid sales and individually reported consumption data, a survey of tobacco users’ purchasing behaviour or observational data collection by examining tax stamps, health warnings and other markings on tobacco-product packaging. A methodological guide for understanding and measuring cigarette-tax avoidance and evasion was developed in 2015 by Tobacconomics and may help Parties to undertake such reports.10

6.3 The tobacco industry is not a partner in implementing the Protocol

In the Preamble to the Protocol, Parties are reminded “to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products”. The tobacco industry is not a partner in eliminating the illicit trade in tobacco products, although some contacts with tobacco companies to implement a tracking and tracing system are unavoidable. Some information, in the data carrier for instance, should be provided by the industry, such as place and date of production. However, contacts with

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the tobacco industry should be limited and transparent. According to article 5.2 of Protocol, “Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry”. The Protocol clearly defines that the obligations of the tracking and tracing system shall not be delegated to the tobacco industry. For instance, it is stipulated in article 8 §2 that the tracking and tracing system is “controlled by the Party”. In addition, it was emphasized in article 8 §12 that obligations assigned to a Party shall not be performed by or delegated to the tobacco industry and in article 8 §13 that each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.

7. What might be the main challenges to implementing the Protocol when ratified?

In most countries implementing the Protocol will require legislative, regulatory and administrative reforms. These will vary from country to country. In New Zealand, for instance, a governmental consultation document outlines the core provisions of the Protocol, the status of compliance by current New Zealand legislation and the necessary changes needed to comply with the Protocol.¹¹

One of the most significant challenges to implementation of the Protocol is the tracking and tracing system (see next question 8). It is advisable to work in regional bases to establish a tracking and tracing regime in a regional context. The adoption of standards for the identification markings should be based on international standards to facilitate the exchange of

data between countries. These standards should, if possible, be prepared in consultation with staff with expertise in information technology.

Other challenges for implementation could be interference by the tobacco industry and their front groups, such as the International Tax and Investment Center (ITIC)\textsuperscript{12}, the promotion of the industry-controlled track and trace technology known as Codentify, the lack of a regulatory and legislative framework for tobacco products and the tobacco industry, the lack of enforcement mechanisms, insufficient financial resources and expertise, a high level of corruption, political unrest, conflicts and unprotected or porous borders. Those problems will not disappear overnight, but might be reduced through international cooperation facilitated by implementing the Protocol.

8. What needs to be known about tracking and tracing systems?

8.1 What is required by the Protocol under its tracking and tracing provisions?

One of the core measures of the Protocol is a global tracking and tracing regime (Article 8). 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 outer packaging of cigarettes within a period of five years,

\textsuperscript{12} http://www.who.int/fctc/mediacentre/iticreminder/en/
and other tobacco products within a period of 10 years of entry into force of the Protocol.

- In addition, each Party shall require that the following information be available, either directly or through a link, to assist Parties in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status:
  (a) date and location of manufacture;
  (b) manufacturing facility;
  (c) machine used to manufacture tobacco products;
  (d) production shift or time of manufacture;
  (e) the name, invoice, order number and payment records of the first customer not affiliated to the manufacturer;
  (f) the intended market of retail sale;
  (g) product description;
  (h) any warehousing and shipping;
  (i) the identity of any known subsequent purchaser; and
  (j) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.

- Each party shall require the further development and expansion of the tracking and tracing system up to the point that all duties and relevant taxes have been discharged. The objective of the Protocol is to have information through the whole supply chain until duties are paid or other obligations discharged. The objective was not to include the retail outlet, which was considered as too complex in many countries.

- Article 8 of the Protocol obliges Parties to establish a global tracking and tracing system within 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”.

- Each Party may require the tobacco industry to bear any costs associated with a tracking and tracing system.

8.2 What are the key elements in an effective tracking and tracing regime for tobacco products?

Tracking and tracing regimes for tobacco products would require the following elements:

- A serialized unique identifier for each package of tobacco products. The unique identifiers are a distinctive combination of numbers, letters or both that are unique for each pack/item. They cannot be used twice and are not predictable. For instance, passports use a combination of letters and numbers that is unique for each person. The attribution of this combination identifies each person and is not predictable (for example incrementing numbers such as 1,2,3,4,5). Digital Mass Encryption is a widely used method to make codes less predictable and prevent unauthorized access by establishing a very large population of possible codes, of which only a proportion are valid and used. Valid codes can only be generated if mathematic formula (algorithms) and secret keys that are used for their creation are known. Generation and encryption that is part of a tobacco industry patent should be excluded. The representation of the identifier on the package can be human readable (letters or numbers) or machine-readable (barcodes).

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In addition to the serialized unique identifier, a data carrier is also required with a serialized unique identifier and other information available at the time of manufacturing, such as place and time of manufacture. The data carrier should comply with quality standards (to avoid extracting incorrect data or to access the data even if a portion of the carrier is damaged), be readable by authorized agencies of any Party to the Protocol and suitable for high-speed production lines. Two-dimensional bar codes, for instance, are an open standard technique, suitable for use on high-speed production lines, readable by inexpensive equipment (including handheld scanners and smart phones) and widely used on many consumer products in an international environment.

A link and parent-child relationships (called aggregation) between different packaging units that allow, for instance, traceability of pallets without scanning all master cases, cartons and packs that are inside the pallet. In Brazil, for instance, a parent-child relationship exists for the packs and cartons of exported cigarettes.

Recording of any shipping and receiving events along the supply chain, for instance the departure of a pallet from the manufacturing site and its arrival at trader X in country Y. International standards from the International Organization for Standardization should be recommended for the capture and exchange of data and events.

International standards are recommended for key information (such as the manufacturing facility, product description, time of manufacture, intended retail market) that are encoded in the data carrier (Article 8§4.2 of the Protocol). For example, a Global Trade Item Number (GTIN) is a unique and internationally recognized identifier for a product. The GTIN may be eight to 14
digits long and is encoded in the data carrier to reveal the product description when scanned.\textsuperscript{14}

- The storage of data and events along the supply chain in an independent database controlled by competent government authorities. At global level, we expect a multitude of national and/or regional databases that should be interconnected to facilitate international inquiries by competent authorities. Similarly, access to and retrieval of this data should also be independent of the industry, traders and distributors.

### 8.3 What are the costs of implementing a tracking and tracing scheme and who funds its development?

The cost of the track and trace system in Brazil has been estimated at US$ 0.016 per pack\textsuperscript{15} and in Kenya at US$ 0.023 per pack.\textsuperscript{16} In both countries, legislation stipulates that costs will be borne by the tobacco industry; this is in line with Article 8 (Track and Trace), paragraph 14 of the Protocol. In Brazil, the manufacturers only pay for maintenance after the system is installed and working. The manufacturers can deduct the US$ 0.016 from their federal tax bill. The maintenance cost of the system represents less than 1% of the retail price of the cigarettes.

If governments consider bearing the costs, they can be reduced by using solutions available from multiple suppliers.

### 8.4 What falsehoods on tracking and tracing are endorsed by the tobacco industry?

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\textsuperscript{14} For more information: \url{www.gs1.org}

\textsuperscript{15} Marcelo Fish, Brazil Scorpions. System for Control, Track and Trace Cigarette Production, Federal Revenue Secretariat - Brazil, April 2014.

\textsuperscript{16} Caxton Masudi Ngeywo, Kenya Revenue Authority. Kenya's experience in implementing and financing a tracking and tracing system. Presentation at the WCTOH, Abu Dhabi. 17 March, 2015
The tobacco industry’s solution for tracking and tracing is misleading and ineffective.

The industry solution is called Codentify. In fact, Codentify is not a tracking and tracing system, but is a code generator system installed at the production line that creates unique codes on packs. Codentify uses elements of production-related information (such as production line and time of production) to generate with a secret “key” an unpredictable and unique encrypted 12-character combination of letters and numbers to identify and authenticate a pack of cigarettes. The number, linked to a digital signature, can be read by a human or by a computer. By capturing the human-readable code or scanning a machine-readable code, a code verification computer program will determine whether the code is correctly formed or not. If the code is correctly formed, the program can retrieve associated trace information from a database (e.g. details of first customer). Cartons, master cases and pallets use unique non-encrypted codes to identify the packages, rather than Codentify codes. This combination of Codentify codes on the packs and other codes on the secondary package units is presented as a tracking and tracing system and is endorsed by the major transnational cigarette companies.

Codentify was invented and developed by Philip Morris International, but has been endorsed by the three other Transnational Tobacco companies, BAT, JTI and Imperial Tobacco, since 2010. The Codentify system is not a transparent or open source system and might have features that only the tobacco industry is aware of. It serves the tobacco industry’s interests, is managed and controlled by the tobacco industry and protected by a tobacco industry patent. Opting for Codentify would be opting for a “black box” system with no guarantee that it is under the control of the Parties. According to the WHO FCTC Secretariat, the Codentify system conflicts with the FCTC Protocol and does not meet the requirements of

17 Joossens L, Gilmore AB. The transnational tobacco companies’ strategy to promote Codentify, their inadequate tracking and tracing standard. Tob Control 2013; tobaccocontrol – 2012-050796. doi:10.1136/tobaccocontrol-2012-050796
Article 8.2 that the tracking and tracing system should be “controlled by the Party”.

The Codentify system was designed by the industry to address the issue of counterfeit tobacco, a minor part of the illicit trade problem. The issue of tax evasion by tobacco industry or cross-border smuggling form a larger proportion of the illicit trade than counterfeit tobacco. Unlike issues of counterfeit pharmaceuticals, all forms of tobacco are harmful to human beings including counterfeit tobacco. Even in its limited role with counterfeiting, Codentify is an ineffective means of authentication because the codes are visible and easy to forge. In fact the so-called validity codes generated by this system can be easily cloned, recycled or migrated, particularly if the tobacco industry itself was involved in the illicit trade.

Civil society groups have voiced their concerns in this regard and additional information can be found in two fact sheets.

8.5. What is international best practice in tracing and tracking tobacco packs?

Tracking and tracing tobacco products refers to the determination of past and current locations and recording the future location of all tobacco packaging such as packs, cartons, master cases and pallets through the chain supply, until duties are paid or other obligations discharged.

Multiple track and trace solutions exist for a wide variety of products, but concerns have been raised about the feasibility and cost of tracking and tracing systems. Brazil, Turkey and Kenya have already implemented specific marking systems for tobacco products. For example, in 2007 Brazil

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18 FCTC. 6th Conference of the Parties to the WHO Framework Convention. Secretariat study of the basic requirements of the tracking and tracing regime to be established in accordance with Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products. Executive Summary, White Paper. Moscow: 2014.
introduced a control and monitoring system and required a digital tax-stamp system capable of identifying each individual pack. The digital stamp uses invisible ink and features a unique, covert code with data for each pack. These codes contain product data for each cigarette pack, which is uploaded to a Data Manager Server under the control of the Ministry of Finance.

The Brazilian control and monitoring system was updated in 2011. Federal law requires that every pack of cigarettes produced in Brazil for export has to be marked with a unique identification code at the production lines to determine the origin of the products and to control their movement. The marking regime applied to cigarettes for export is a visible two-dimensional matrix code (instead of an invisible code for the domestic products) on the packs and the cartons. At the end of the numeric code, the letters BR will be added, indicating that the cigarettes were produced in Brazil. Through a link with the Internet, enforcement officials will have access to information (such as date and place of manufacture and country of destination) to trace the pack by entering its numeric code.

A review of the effectiveness of case studies to address illicit tobacco trade is presented in the University of Cape Town report.20

9. What are the lessons learned?

In several WHO regions much progress has been made to mark and trace consumer products. Tracking and tracing of tobacco products is possible, but needs the implementation of internationally recognized standards, for instance, for the recognition, recording and exchange of data. Data reading and recording equipment should be recommended as suitable for use in an international context, such as for applications on smart phones. Undoubtedly, the tobacco industry will offer their help in setting up a

20 Ross H, Controlling Illicit Tobacco Trade: International Experience, Economics of Tobacco Control Project, University of Cape Town, 2015.
tracking and tracing system. Delegating tracking and tracing obligations to the tobacco industry conflicts with the Protocol. Similarly, agreements with the tobacco industry, such as the agreements with the EU and INTERPOL, are in conflict with the WHO FCTC as they serve the interests of tobacco companies and are threatening progress in tobacco control. A critical analysis of such agreements may be found in a published article by Luk Joossens et al. 21

Conclusions

Substantive evidence indicates that smoking kills, with the latest estimates of six million deaths annually. Combating this major threat to public health requires a comprehensive effort on tobacco control, with the elimination of the illicit trade recognized as an integral element of national and international strategies. The WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products provides the mechanism to eradicate illicit tobacco products. The benefits gained from becoming a Party to the Protocol far outweigh the financial costs to the Party.

Eliminating the illicit trade offers a wide range of benefits. The availability of cheap, illicit cigarettes increases consumption and thus future tobacco-related deaths. Consumption falls if the illicit trade is eliminated because, in most countries, illicit cigarettes are much cheaper than their legal, fully taxed equivalent. As the illicit trade is reduced, the overall average price of cigarettes goes up, and consumption consequently goes down. Research estimates project that governments would gain US$ 31 billion annually by eliminating illicit trade, and reduce by one million the premature deaths attributable to tobacco products every six years, mostly in middle- and low-income countries. 22

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21 Joossens L, Gilmore A, Stoklosa M, Ross H, Assessment of the European Union’s illicit trade agreements with the four major Transnational Tobacco Companies, Tob Control doi:10.1136/tobaccocontrol-2014-052218

Parties should be aware of the tobacco industry interference in the Protocol process, which undermines Article 5.3 of the WHO FCTC. The tobacco industry instigated efforts to present itself as a legitimate player in the Protocol process even before the Protocol was adopted at COP5. Interference by the tobacco industry takes two major forms; (1) dissemination of false information on the magnitude of the illicit trade and the impact of the tobacco-product tax rises in stimulating the illicit trade, and (2) intensive lobbying to promote its own tracking and tracing system (Codentify) as the internationally recognized standard. Effective implementation of the Protocol therefore requires Parties to reject false claims by the tobacco industry and prevent their participation and involvement in any related activities.

Many Parties to the WHO FCTC have instituted a marking system on tobacco products. However, countries that established a comprehensive track and trace system with full control of the supply chain as prescribed in the Protocol experienced a decrease in illicit trading and an increase in revenues. Nevertheless, eliminating the illicit trade requires a global effort. Worldwide implementation of the Protocol may lead to a significant reduction in illicit trade and eventual benefits in revenue generation and more importantly, the health of the population. Therefore, it is imperative that Parties to the WHO FCTC become Parties to the Protocol for the future of the next generation.

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List of Appendices:

A. **Becoming a Party to the Protocol to Eliminate Trade in Tobacco Products** (international process)
B. **Model instruments of ratification/acceptance/approval and accession**
   Second document
C. **Steps required at the national level for ratification, accession, approval or acceptance of the Protocol to Eliminate Illicit Trade in Tobacco Products:** Checklist
D. **Protocol to Eliminate Illicit Trade in Tobacco Products: Self-assessment checklist** (for gaps analysis)
E. **WHO Steps to Eliminate Illicit Trade Factsheet**