

**FCTC**WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL**Conference of the Parties****Intergovernmental Negotiating Body on a
Protocol on Illicit Trade in Tobacco Products**Third session
Geneva Switzerland, 28 June – 5 July 2009**FCTC/COP/INB-IT/3/3
23 April 2009****Revised 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 would build upon and complement the provisions of Article 15 of the Convention.¹
2. Decision FCTC/COP2(12) recognizes that the template for a protocol on illicit trade 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 requests 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, elaborated a chairperson's text with the support of the Convention Secretariat and relevant experts. The Intergovernmental Negotiating Body discussed the text² at its second session (Geneva, 20–25 October 2008).
4. The Negotiating Body requested that the Chairperson elaborate a revised text for consideration at its third session, taking into account the discussions and proposals made at the second session, including the texts and opinions submitted by its committees and the Working Group and the results of the expert reviews and legal advice requested by the Negotiating Body. It noted that the Chairperson would be supported by the Convention Secretariat, the Bureau and experts, as necessary.

¹ Decision FCTC/COP2(12).

² Document FCTC/COP/INB-IT/2/3.

5. The Negotiating Body submitted a report¹ to the third session of the Conference of the Parties (17–22 November 2008, Durban, South Africa). The Conference of the Parties took note of the report and decided that the third session of the Intergovernmental Negotiating Body should be held from 28 June to 5 July 2009 in Geneva. The Conference further decided that the Negotiating Body could decide to hold a fourth session in 2010, if necessary, for the purpose of completing the text of a draft protocol on illicit trade in tobacco products for submission to the fourth session of the Conference of the Parties.²
6. The Chairperson also elaborated an explanatory note on the principal revisions made to the text following the second session of the Intergovernmental Negotiating Body.³
7. The revised Chairperson's text is annexed and herewith submitted to the Intergovernmental Negotiating Body for its consideration.

¹ Document FCTC/COP/INB-IT/2/4 Rev.1.

² Decision FCTC/COP3(6).

³ FCTC/COP/INB-IT/3/INF.DOC./2.

ANNEX

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

Preamble

The Parties to this Protocol,

Considering that on 21 May 2003, the Fifty-sixth World Health Assembly adopted by consensus the WHO Framework Convention on Tobacco Control, which came into force on 27 February 2005;

Recognizing that the WHO Framework Convention on Tobacco Control is one of the United Nations' most rapidly ratified treaties and a fundamental tool for attaining the objectives of the World Health Organization;

Noting that at the first session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, which was held in Geneva on 6–17 February 2006, the "Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control" were adopted by consensus;

Determined to protect and assure the enjoyment of the highest attainable standard of health as a fundamental right of every human being without distinction of race, religion, political belief, economic or social condition;

Determined also to give priority and security to their right to protect public health;

Deeply concerned that the magnitude and pervasiveness of illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

Recognizing further that illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the accessibility and affordability of tobacco products;

Concerned by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on the health and well-being of young people, the poor and other vulnerable groups;

Seriously concerned about the disproportionate economic and social implications of illicit trade in tobacco products on developing countries and countries with economies in transition;

Aware of the need to develop scientific, technical and institutional capacity to plan and implement appropriate national, regional and international measures to eliminate all forms of illicit trade in tobacco products;

Acknowledging that access to resources and relevant technologies is of great importance for enhancing the ability of the Parties, particularly in developing countries and countries with economies in transition, to eliminate all forms of illicit trade in tobacco products;

Acknowledging also that, although free-trade areas are established to facilitate legal trade, they have been used to facilitate the globalization of the illicit trade in tobacco products, both in relation to the illicit transit of smuggled products and in the manufacture of illicit tobacco products;

Recognizing also that illicit trade in tobacco products undermines and adversely affects the economies of the Parties and threatens their stability, security and sovereignty;

Also aware that illicit trade in tobacco products generates huge financial profits that are used to fund transnational criminal activity, which penetrates, contaminates and corrupts government objectives and legitimate commercial and financial businesses at all levels;

Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

Mindful of Article 6.2 of the WHO Framework Convention on Tobacco Control, which encourages Parties to prohibit or restrict, as appropriate, sales to and/or importation by international travellers of tax- and duty-free tobacco products, which are often diverted into illicit trade;

Recognizing in addition that tobacco and tobacco products in transit find a channel for illicit trade;

Taking into account that effective action to prevent and combat illicit trade in tobacco products requires a comprehensive international approach to, and close cooperation on, all aspects of illicit trade, including, as appropriate, illicit trade in tobacco and in manufacturing equipment used in the manufacture of tobacco products;

Recognizing still further the importance of other international agreements, such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption;

Intending to build strong links between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime and other bodies, as appropriate;

Recalling Article 15 of the WHO Framework Convention on Tobacco Control, in which Parties recognize, inter alia, that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacture and counterfeiting, is an essential component of tobacco control; and

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

Hereby agree as follows:

PART I: INTRODUCTION

Article 1

Use of terms

1. "Carton" means packaging for five or more unit packs of tobacco products.
2. "Cigarette" means any product that contains tobacco and is intended to be burnt or heated under ordinary conditions of use; the term includes, without limitation, any "roll-your-own" tobacco, which, because of its appearance, type, packaging or labelling is suitable for use by and likely to be offered to or purchased by consumers as tobacco for making cigarettes.
3. "Conference of the Parties" means the Conference of the Parties established by Article 23 of the WHO Framework Convention on Tobacco Control.
4. "Confiscation" means the permanent deprivation of property by a competent authority and includes forfeiture, where applicable.
5. "Controlled delivery" means allowing illicit or suspect consignments to pass out of, through or onto the territory of one or more States with the knowledge and under the supervision of their competent authorities, with a view to investigating an offence and identifying those involved in commission of the offence.
6. "Convention Secretariat" means the Secretariat to the WHO Framework Convention on Tobacco Control.
7. "Due diligence" means conducting a reasonable, state-of-the-art investigation 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 his or her legal obligations under this Protocol.
8. "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.
9. "Licence" means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.
10. "Master case" means packaging for about 10 000 cigarettes.
11. "Party" means, unless the context indicates otherwise, a Party to this Protocol.
12. "Proceeds of crime" means any property derived from or obtained, directly or indirectly, through the commission of a criminal offence under this Protocol.
13. "Seizure" means temporary prohibition of the transfer, conversion, disposition or movement of property or temporary assumption of custody or control of property by a competent authority.

14. "Serious crime" means conduct constituting an offence punishable by maximum deprivation of liberty for at least four years or a more serious penalty.
15. "Suspicious transactions" means transactions that do not correspond or conform to ordinary commercial practices.
16. "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.
17. "Tracing" means the re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by tobacco, tobacco products or manufacturing equipment 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.
18. "Tracking" means systematic monitoring by competent authorities or any other person acting on their behalf of the route or movement taken by tobacco, tobacco products or manufacturing equipment 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.

Article 2

Relationship between the Protocol and other agreements and legal instruments

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.
2. The Parties to the Protocol that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.
3. Parties to this Protocol that are also Parties to the United Nations Convention against Transnational Organized Crime shall ensure the full application of the provisions of the latter Convention that are relevant to illicit trade in tobacco products. Parties to this Protocol that have not become Parties to the United Nations Convention against Transnational Organized Crime shall consider applying the relevant provisions of that Convention, as appropriate, to cases of illicit trade in tobacco products. In particular, they shall consider application of Articles 5, 6, 8, 10–13, 15, 16 and 18 of the United Nations Convention against Transnational Organized Crime.
4. Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, in particular under, but not limited to, the United Nations Convention against Transnational Organized Crime.

Article 3

Scope of the Protocol

This Protocol shall apply, in accordance with its terms, to the prevention, deterrence, detection, investigation and prosecution of illicit trade in tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products.

PART II: GENERAL OBLIGATIONS

Article 4

General obligations

In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall,

1. adopt and implement appropriate measures to control or regulate the supply chain of tobacco, tobacco products and manufacturing equipment 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. 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 used in the manufacture of tobacco products;
3. adopt clear and effective measures for technical assistance and financial support, capacity building and international cooperation in order to 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 used in the manufacture of tobacco products originating within their territory;
4. 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. cooperate and communicate with relevant organizations and bodies in the exchange of information covered by this Protocol; and
6. within the 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

Article 5

Licence or equivalent approval system

1. In light of the public health objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products, each Party shall prohibit the conduct of any of the following activities by any legal or natural person except pursuant to a licence or equivalent approval (hereafter "licence") to conduct such activities granted by a competent authority:
 - (a) manufacturing tobacco products;

- (b) manufacturing the manufacturing equipment used in the manufacture of tobacco products;
 - (c) commercial import or export or wholesaling, brokering, warehousing or distribution of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
 - (d) transporting commercial quantities of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products; and
 - (e) primary processing of tobacco.
2. Each Party shall endeavour to license, to the extent considered appropriate, any legal or natural person engaged in commercial growing or retailing of tobacco and tobacco products.
3. With a view to ensuring an effective licensing system, each Party shall:
- (a) designate or establish a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, irrespective of the nationality or residence of the licensee, to conduct the activities specified in paragraph 1 of this Article;
 - (b) require that each application for a licence contains all the requisite information about the licensee, which should include but is not limited to:
 - (i) when 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, applicable tax registration numbers and copy of his or her official identification;
 - (ii) when the applicant is a legal person, information regarding its identity, including but not limited to full name, business registration number, date and place of incorporation, corporate capital, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its officers and directors and the names of any designated representatives, including but not limited to the representatives' complete names and copies of their official identification;
 - (iii) precise business location of the manufacturing unit(s) and production capacity of the business run by the applicant;
 - (iv) details of the tobacco, tobacco products and manufacturing equipment 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) a description of where manufacturing equipment for use in the manufacture of tobacco products will be installed and used;
 - (vi) documentation regarding any offences committed or charges filed by government agencies, including criminal records;

- (vii) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and
 - (viii) a description of the intended use and intended market of retail sale of the tobacco or tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;
- (c) monitor and collect any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity;
 - (d) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
 - (e) undertake measures such as periodic review, renewal, inspection or audit of licensees;
 - (f) establish a time frame for expiration of licences and subsequent requisite reapplication or updating of application information; and
 - (g) oblige licensed or equivalently approved manufacturers of tobacco products and manufacturing equipment used in the manufacture of tobacco products to inform the competent authority six months in advance of any change of location of their business.
4. Each Party shall ensure that no licence shall be assigned and/or transferred without prior approval from the designated or established competent authority.
5. Each Party shall endeavour to adopt and apply control and verification measures to the international transit of tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products in conformity with the provisions of this Protocol in order to prevent illicit cross-border trade in such products.

Article 6

Customer identification and verification

1. Each Party shall:
- (a) obligate all natural and legal persons engaged in:
 - (i) selling commercial quantities of tobacco 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, and/or
 - (ii) the manufacture, sale, distribution, storage, shipment, import or export of equipment used in the manufacture of tobacco products,
- to conduct due diligence with respect to any natural or legal person ("first purchaser") with which they engage in a commercial transaction; and

(b) require that any first purchaser who sells, distributes or ships tobacco, tobacco products, or equipment used in the manufacture of tobacco products to further natural or legal persons shall also require such persons to conduct due diligence on the persons (other than final consumers) to which they subsequently sell, distribute or ship tobacco, tobacco products, or equipment used in the manufacture of tobacco products.

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

(a) establishing that the legal or natural person holds a valid licence in accordance with Article 5, if applicable;

(b) when 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, applicable tax registration numbers and copy of his or her official identification;

(c) when the customer is a legal person, information regarding its identity, including but not limited to full name, business registration number, date and place of incorporation, corporate capital, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its officers and directors and the names 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 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 the location 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 periodically on their compliance with the obligations for customer identification and verification.

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 while taking account of any unnecessary burden on small or medium-sized businesses and on Parties' administrations.

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 used in the manufacture of tobacco products, with any customer if a competent authority provides such persons with sufficient evidence that the customer has knowingly engaged in the sale, distribution, storage or shipment of tobacco, tobacco products or equipment used in the manufacture of tobacco products in contravention of provisions of this Protocol or any other activity contrary to the provisions of this Protocol. Thereafter, such a customer shall be a "blocked customer".

7. Each Party shall communicate to the Convention Secretariat the identity of the authority that it has designated to maintain the list of blocked customers. The Convention Secretariat shall compile a list of the designated authorities of the Parties and make the list available on a web site.

8. With regard to blocked customers, each Party shall require that:

(a) suppliers immediately communicate the names of blocked customers to the designated authority, which will maintain a list of blocked customers;

(b) this list is made available on demand to all natural and legal persons referred to in paragraph 1 of this Article;

(c) once so designated, a customer will remain blocked for a period of five years following termination of a business relationship in accordance with paragraph 6 of this Article;

(d) 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 used in the manufacture of tobacco products;

(e) if a blocked customer does not engage in illicit sale, distribution, storage or shipment of tobacco, tobacco products or manufacturing equipment 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 provisions for customer identification and verification; and

(f) if a currently or previously blocked customer engages in illicit sale, distribution, storage or shipment of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products or any other activity contrary to the provisions of this Protocol X number of times, the "blocked" designation shall be made permanent.

9. Parties shall recognize "blocked" designations assigned to customers by other Parties to the Protocol.

10. 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.

Article 7

Tracking and tracing

1. For the purposes of further securing the supply chain and to assist in the investigation of illicit trade in tobacco products, the Parties to this Protocol agree to establish a global tracking and tracing system. The system will comprise a clearing-house database containing the information collected by Parties pursuant to this Article, maintained by the Convention Secretariat and accessible to all Parties.
2. Each Party shall establish or, where a relevant system exists, develop a tracking and tracing system for all tobacco products and manufacturing equipment used in the manufacture of tobacco products that are manufactured in or imported onto its territory, taking into account available best practices.
3. With a view to enabling effective tracking and tracing, each Party shall, within three years of accession, acceptance, approval, formal confirmation or ratification of this Protocol for that Party, require that unique, secure and non-removable markings are affixed to:
 - (a) all master cases, cartons and, when technology is sufficiently developed in accordance with paragraph 12(c) of this Article or otherwise, packs of cigarettes and other tobacco products containing more than one unit manufactured in or imported onto its territory; and
 - (b) all manufacturing equipment used in the manufacture of tobacco products that is manufactured in or imported onto its territory.
4. Each Party shall, as part of its tracking and tracing system, require that the unique markings affixed, pursuant to paragraph 3 of this Article, permit, when scanned pursuant to this Protocol, determination of the following information:
 - (a) date and location of manufacture;
 - (b) manufacturing facility;
 - (c) machine used to manufacture tobacco products;
 - (d) production shift of manufacture;
 - (e) the name, invoice, order number and payment record of the first customer who is not affiliated with the manufacturer;
 - (f) the intended market of retail sale or the intended country of installation or use;
 - (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.

5. Each Party shall require, within [three] years of accession, acceptance, approval, formal confirmation or ratification of this Protocol for that Party, that the information set out in paragraph 4 of this Article is recorded, by using an appropriate technology, at the time of first shipment by any manufacturer established on that Party's territory or at the time of import onto its territory of products covered by paragraph 3 of this Article which have not been subject to the provisions of this Protocol.
6. Each Party shall ensure that the information recorded under paragraph 5 of this Article is accessible by means of a link with the unique markings required under paragraph 3 of this Article to be affixed to the manufacturing equipment used in the manufacture of tobacco products, master cases, cartons and, when technology allows, packs of cigarettes and other tobacco products.
7. Each Party shall ensure that the information recorded in accordance with paragraph 5 of this Article, as well as the unique codes rendering such information accessible in accordance with paragraph 6 of this Article shall be included [daily and] in an appropriate format at a central point on its territory.
8. Each Party shall establish a link or interface with the central point referred to in paragraph 7 of this Article and ensure that data are transferred [daily and] in an appropriate format to the clearing-house database.
9. Each Party shall establish the means by which a competent authority on its territory, upon any seizure being made within its territory of cigarettes, other tobacco products or manufacturing equipment used in the manufacture of tobacco products, can make a request based on the unique marking on such seized products to the central point on its territory and shall ensure that such a request is passed on to the clearing-house database to obtain the information listed in paragraph 4 of this Article in relation to that seizure.
10. 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 recording and access to such information in accordance with the provisions of this Article.
11. Parties shall cooperate with each other to ensure that, as far as possible, the tracking and tracing systems established on their territories avoid unnecessary costs or duplication of requirements imposed on manufacturers of cigarettes, other tobacco products and manufacturing equipment 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 that does not currently have such a system.
12. The Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing 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) support for training and capacity-building programmes for Parties that express such a need; and
 - (c) further development of the technology to mark and scan cigarette packs and unit packs of other tobacco products to make accessible the information listed in paragraph 4 of this Article.

Article 8

Record-keeping

1. Each Party shall require that all natural and legal persons engaged in the commercial sale of tobacco or in the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment used in the manufacture of tobacco products maintain complete and accurate records of all transactions relevant to the objectives and purposes of this Protocol.
2. Each Party shall require persons licensed in accordance with Article 5 to provide the following information to the competent authorities, on request:
 - (a) general information on market volumes, trends, forecasts and other relevant information; and
 - (b) the quantities of tobacco, tobacco products and manufacturing equipment 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 used in the manufacture of tobacco products sold or manufactured on the territory of the Party for export outside the territory of the Party or subject to duty-suspended movement in transit on the territory of the Party, each Party shall require that persons licensed or equivalently approved 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 with the following information:
 - (a) date of shipment from the last point of physical control of the products by 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 transport, 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. When feasible, 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 legislative, executive, administrative or other measures to require that all records are:
 - (a) maintained for a period of no fewer than five years;

- (b) made available to the competent authority or authorities; and
- (c) as far as feasible, kept in a common format or as prescribed by the competent authorities.

6. Each Party shall, as appropriate and subject to national laws, establish a system for sharing all records kept in accordance with this Article with other Parties.

7. Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing improved technologies for record-keeping.

Article 9

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 commercial sales of tobacco or in the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment 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 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, transport, import and export.

4. Parties should require that natural or legal persons engaged in trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products report the cross-border transfer of substantial quantities of cash in the amount of at least USD 10 000 or any amount as agreed to in mutual legal assistance treaties or 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 used in the manufacture of tobacco products be allowed only in the currency and in the same amount as the invoice for those products, and only by wire or cheque from financial institutions located on the territory of the intended market of retail sale of the tobacco products and shall not be operated through any other alternative remittance system.

6. Each Party shall require that all natural and legal persons engaged in commercial sale of tobacco or in the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment used in the manufacture of tobacco products shall supply such products only in amounts commensurate with legitimate consumption or use in the intended market of use or retail sale and refuse to supply such items 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 used in the manufacture of tobacco products report all suspicious transactions to the competent authorities.

Article 10

Sale by Internet, telecommunication or any other evolving technology

[Each Party shall require that all legal and natural persons engaged in commercial sales of tobacco or the manufacture, sale, distribution, storage, shipment, import or export of tobacco products or manufacturing equipment used in the manufacture of tobacco products conducting business through Internet-, telecommunication- or any other evolving technology-based modes of sale comply with all relevant obligations covered by this Protocol.]

Or

[Each Party shall ban sales of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale.]

Article 11

Free-trade areas and duty-free sales

Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective measures to prohibit any tax, regulatory or other advantages that apply in free-trade areas from applying to tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products, including tax-reduced and duty-free sales to individual customers.

PART IV: OFFENCES AND SANCTIONS

Article 12

Offences

1. 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, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products without the appropriate licence, payment of applicable duties, taxes levies, bearing applicable fiscal stamps, markings or labels;
 - (b) counterfeiting tobacco products or manufacturing equipment used in the manufacture of tobacco products or counterfeiting packaging, fiscal stamps, markings or labels;
 - (c) manufacturing, selling, transporting, distributing, storing, shipping, importing or exporting counterfeit tobacco products or counterfeit manufacturing equipment used in the manufacture of tobacco products or counterfeit fiscal stamps;

- (d) mis-declaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
- (e) defacing, falsifying, removing, altering or otherwise interfering with labelling, stamping or marking of or for tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;
- (f) acquiring, possessing, using, converting or transferring property or engaging in any activity that conceals or attempts to conceal the origin of the said property, knowing that such property is the proceeds of an offence or offences covered by this Protocol;
- (g) 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;
- (h) conspiring or attempting to commit an offence established in accordance with this paragraph; and
- (i) organizing, managing, financing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with this paragraph.

2. 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) 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 used in the manufacture of tobacco products;
- (b) failing to maintain records covered by this Protocol or maintaining false records;
- (c) 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 used in the manufacture of tobacco products;
- (d) obtaining, by a person licensed or equivalently approved in accordance with Article 5, tobacco, tobacco products, or manufacturing equipment used in the manufacture of tobacco products from a person who should be, but is not, licensed or equivalently approved in accordance with Article 5;
- (e) intermingling 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
- (f) using Internet-, telecommunication- or any other evolving technology-based modes of sale of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products, in contravention of the provisions of this Protocol.

Article 13

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 12.
2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

Article 14

Sanctions

1. Parties shall ensure that offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty are considered as serious crime.
2. Each Party shall make the commission of an offence established in accordance with this Protocol liable to criminal or non-criminal 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 Article 12 are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.
3. 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.
4. 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 when the alleged offender has evaded the administration of justice.
5. 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.

Article 15

Search of premises and seizure of evidence

Each Party shall adopt such legislative, executive, administrative 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 used in the manufacture of tobacco products, with respect to a commission of an offence under Article 12.1 of this Protocol, and to seize such evidence when found, in accordance with its national law.

Article 16

Confiscation and seizure of assets

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 offences covered by Article 12.1 of 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 offences covered by Article 12.1 of this Protocol.
2. Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing 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 ought reasonably to have known 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 or adjudicate civil claims of another Party against any licensee. Parties shall not decline to act under the provisions of this paragraph on the grounds of bank secrecy or any common law revenue rule or its equivalent.
7. Parties may consider the possibility of requiring that a person under investigation 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 and the provisions of Article 18, 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 by using environmentally friendly methods following such use.

Article 17

Seizure payments

For the purpose of eliminating illicit trade in tobacco products, the Parties may 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, manufacturer, importer or exporter of seized tobacco, genuine tobacco products or equipment used in the production of tobacco products.

Article 18

Destruction

1. All confiscated manufacturing equipment, tobacco, counterfeit and contraband cigarettes and other tobacco products shall be destroyed. Such destruction shall be by using environmentally friendly methods upon completion of any legal process in relation to the tobacco products in question.
2. Confiscated material other than tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products may be retained for the purposes of training and other law enforcement purposes.
3. Parties shall take necessary measures for the early destruction of seized tobacco and tobacco products and for the admissibility as evidence of duly certified samples of small quantities of such substances.

Article 19

Special investigative techniques

1. Each Party shall, subject to the fundamental principles of its legal system, take the necessary measures to allow for the appropriate use of controlled delivery at national and international levels and for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities on its territory for the purpose of effectively combating illicit trade in tobacco, tobacco products or manufacturing equipment 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 cooperate, with each other and with international organizations, in developing capacity to achieve the goals of this Article.

PART V: INTERNATIONAL COOPERATION

Article 20

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 used in the manufacture of tobacco products, including case reference information where appropriate, quantity, value of seizure, product description, 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 used in the manufacture of tobacco products;

(c) data on the agricultural production of tobacco;

(d) trends, concealment methods and modi operandi used in illicit trade in tobacco, tobacco products or manufacturing equipment 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 X and exploiting existing systems. The information referred to in paragraph 1(a) of this Article shall be included in the database if it is non-identifiable personal information.

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. Parties shall cooperate with each other and with competent international organizations to build the capacity of Parties to collect and exchange information.

5. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party.

Article 21

Information sharing: operational data

The Parties shall exchange, on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products, the following information, subject to national law:

- (a) records of licensing for the legal and natural persons concerned;
- (b) information for identification, monitoring and prosecution of legal or natural persons involved in illicit trade in tobacco, tobacco products or equipment used in the manufacture of tobacco products;
- (c) records of investigations and prosecutions; and
- (d) records of payment for import, export or duty-free sales of tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products.

Article 22

Information sharing: confidentiality and protection of information

1. Each Party shall designate the domestic authority to which 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.

Article 23

Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters

1. The Parties shall cooperate, with each other and/or through 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 appropriate technology in the areas of intelligence collection, law enforcement, tracking and tracing, information management, protection of personal data, 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 training, technical assistance and cooperation in scientific, technical and technological matters taking into account the needs of developing-country Parties and Parties with economies in transition.
3. Parties shall cooperate to develop and research the possibilities of identifying the exact geographical origin of seized tobacco and tobacco products.

Article 24

Assistance and cooperation: investigation and prosecution of offences

1. The Parties agree to take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of legal or natural persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products.

2. Each Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products (including, where permitted under domestic law, judicial authorities) can cooperate and exchange relevant information at 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.

Article 25

Protection of sovereignty

1. Parties shall carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Protocol entitles a Party to undertake on the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 26

Jurisdiction

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 12.1 when:

- (a) the offence is committed on the territory of that Party or
- (b) the offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.

2. Subject to Article 25, a Party may also establish its jurisdiction over any such criminal offence when:

- (a) the offence is committed against that Party;
- (b) the offence is committed by a national of that Party or a stateless person who has his or her habitual residence on its territory; or

- (c) the offence is:
- (i) one of those established in accordance with Article 12.1 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 12.1 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 12.1 within its territory.
3. For the purposes of Articles 31 and 33, 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 on its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the criminal offences covered by this Protocol when the alleged offender is present on its territory and it does not extradite him or her.
5. If a Party exercising its jurisdiction under paragraph 1 or 2 of this Article has been notified, or has otherwise learnt, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Protocol does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Article 27

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 on the territory of which such investigation is to take place is fully respected.

Article 28

Law enforcement cooperation

1. Each Party shall adopt, consistent with their respective domestic legal and administrative systems, effective measures to:
- (a) enhance and, where necessary, establish channels of communication between the competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences covered by this Protocol;
 - (b) ensure effective cooperation among the competent authorities, agencies, customs, police and other law enforcement agencies;

- (c) cooperate with other Parties in conducting enquiries in specific cases with respect to criminal offences 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;
- (d) provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
- (e) facilitate effective coordination among its competent authorities, agencies and services and promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;
- (f) exchange relevant information with other Parties on specific means and methods used by natural or legal persons in committing such offences, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities; and
- (g) exchange relevant information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the 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 accordingly. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Protocol as the basis for mutual law enforcement cooperation in respect of the offences covered by this Protocol. Whenever appropriate, Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. Parties shall endeavour to cooperate within their means to respond to transnational illicit trade of tobacco products committed through the use of modern technology.

Article 29

Mutual administrative assistance

Parties shall provide each other, either on request or on their own initiative, with information to ensure proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combating of illicit trade in tobacco, tobacco products or equipment used in the manufacture of tobacco products. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party. Such information may include:

- (a) new customs and other enforcement techniques of demonstrated effectiveness;

- (b) new trends, means or methods of committing offences, listed in Article 12;
- (c) goods known to be the subject of offences, listed in Article 12, as well as details of description, packaging, transport and storage and methods used in respect of those goods;
- (d) persons known to have committed or to be a party to an offence listed in Article 12 or suspected of being about to commit such an offence; and
- (e) any other data that would assist designated agencies in risk assessment for supply chain control and other enforcement purposes.

Article 30

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 in Article 12.1.
2. Under the conditions provided for in its national law, the Party on the territory of which a crime set out in Article 12.1 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.
3. Whenever a crime set out in Article 12.1 has been committed, any Party that has information concerning the victim and circumstances of the crime shall transmit such information, under the conditions provided for in its national law, fully and promptly to the State or States concerned.

Article 31

Measures to ensure prosecution or extradition

1. When the circumstances so warrant, the Party on the territory of which the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.
2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to:
 - (a) the State in which the crime was committed; and
 - (b) the State or States of which the alleged offender is a national or, if such person is a stateless person, on the territory of which that person has his or her habitual residence.

Article 32

Prosecution of alleged offenders

The Party on the territory of which the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent

authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 33

Extradition of alleged offenders

1. To the extent that the crimes set out in Article 12.1 are not extraditable offences in any extradition treaty existing between Parties, they shall be deemed to be included as such therein. Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
2. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option consider this Protocol as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the State to which the request is made.
3. Parties that do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves, subject to the conditions provided in the law of the requested State.
4. Each of those crimes shall be treated, for the purposes of extradition between Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of Article 26.

PART VI: REPORTING

Article 34

Reporting and exchange of information

1. Each Party shall submit to the Meeting of the Parties, through the Convention Secretariat, periodic reports on its implementation of this Protocol.
2. The frequency and format of such reports shall be determined by the Meeting of the Parties.
3. The Meeting of the Parties shall determine the content of the periodic reports 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 those 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) the information specified in Articles XX, XX, XX, XX and XX.

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

Article 35

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, in conjunction, whenever possible and desirable, with sessions of the Conference of the Parties.
3. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting or at the written request of any Party, provided that, within six months of the request being communicated to them by the Convention Secretariat, it is supported by at least one third of the Parties.
4. Funds required for the operation of this Protocol, including those required for secretariat services, shall be charged against contributions from the Parties. The scale and mechanism of such contributions as well as of other possible resources for implementation of the Protocol shall be decided by the Meeting of the Parties.
5. The Rules of Procedure and the Financial Rules of the Conference of the Parties 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.

Article 36

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 and to establish and maintain a clearing-house mechanism in a manner to be decided by the Meeting of the Parties to facilitate the exchange of information among Parties;
- (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.

Article 37

Relations between the Meeting of the Parties and intergovernmental organizations

In order to provide technical and financial cooperation for achieving the objective of this Protocol, the Meetings of the Parties may request the cooperation of competent international and regional intergovernmental organizations, including financial and development institutions.

Article 38

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 are encouraged to use any confiscated proceeds of crime as well as other proceeds of the implementation of this Protocol to achieve the objectives set out under this Protocol.
5. Parties represented in relevant regional and international intergovernmental organizations and financial and development institutions shall encourage these entities to provide financial assistance for developing-country Parties and for Parties with economies in transition to assist them in meeting their obligations under this Protocol, without limiting the rights of participation within these organizations.
6. 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 objective of this Protocol should be mobilized and utilized for the benefit of all Parties, especially developing-country Parties and Parties with economies in transition; and
 - (b) the Convention Secretariat shall advise developing-country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate implementation of their obligations under this Protocol.

PART VIII: SETTLEMENT OF DISPUTES

Article 39

Settlement of disputes

The settlement of disputes between Parties concerning the interpretation or application of this Protocol is governed by Article 27 of the WHO Framework Convention on Tobacco Control.

PART IX: DEVELOPMENT OF THE PROTOCOL

Article 40

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 Depository, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depository. 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 Depository 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 Depository its instrument of acceptance of the said amendment.

Article 41

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 40.

PART X: FINAL PROVISIONS

Article 42

Reservations

No reservations may be made to this Protocol.

Article 43

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 Depository.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the WHO Framework Convention on Tobacco Control shall also be considered as having withdrawn from this Protocol, with effect as of the date of its withdrawal from the WHO Framework Convention on Tobacco Control.

Article 44

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.

Article 45

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*.

Article 46

Ratification, acceptance, approval, formal confirmation or accession

1. This Protocol shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations that are Party to the WHO Framework Convention on Tobacco Control. It shall be open for accession from the day after the date on which the Protocol is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party 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 to the extent of their competence.

Article 47

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 that organization.

Article 48

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Protocol and amendments thereto adopted in accordance with Article 40.

Article 49

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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