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2013/0260 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, in so far as the provisions of the Protocol are concerned which fall under Title V of Part III of the Treaty on the Functioning of the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The World Health Assembly adopted in 2003 the Framework Convention on Tobacco Control (FCTC), which aims at reducing tobacco-related deaths and diseases around the world in a comprehensive manner. To date the FCTC has been ratified by 176 Parties. The EU concluded the FCTC by Council Decision 2004/513/EC of 2 June 2004 ([1]).

The FCTC recognises in its Article 15 that the elimination of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, is an essential component of tobacco control, and obliges Parties to adopt and implement effective measures to eliminate illicit trade. Article 33 of the FCTC provides for the possibility for the Conference of the Parties to adopt protocols to the Convention. On the basis of these Articles, the Conference of the Parties (COP) to the FCTC, at its second session in June-July 2007 decided to establish an Intergovernmental Negotiating Body (INB) to negotiate and draft a protocol to eliminate illicit trade in tobacco products (hereinafter referred to as 'the Protocol').

The Council authorised the Commission to negotiate the Protocol on behalf of the EU in its Decision of 20 December 2007. This Decision amended the negotiating directives for the FCTC with regard to the Protocol. The directives for the FCTC were adopted by the Council on 22 October 1999 and supplemented on 21 April 2001. After its fifth session, the INB decided to recommend that the draft Protocol on which a consensus was obtained be considered at the fifth COP of the FCTC. Accordingly, the fifth COP held in Seoul, Republic of Korea, adopted the Protocol on 12 November 2012.

According to Article 43, the Protocol is open for signature by the Parties to the FCTC in New York until 9 January 2014. The EU should sign the Protocol as soon as possible.

The Protocol consists of core provisions on the control of the supply chain of tobacco products and of equipment for manufacturing those products (Part III: Supply Chain Control). It requires the introduction of a licensing, equivalent approval or control system by a competent authority for any natural or legal person involved in the manufacturing and in the import and export of tobacco products and manufacturing equipment (Article 6 — Licensing). It furthermore requires all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to conduct due diligence with regard to their customers (Article 7 — Due diligence). It provides for the establishment of a global tracking and tracing regime, within five years of the entry into force of the Protocol, consisting of national tracking and tracing systems controlled by the Parties for all tobacco products manufactured in or imported into their territory (Article 8 — Tracking and tracing).

Those articles are complemented by provisions on record-keeping and security and preventive measures, including anti-money-laundering measures, and reporting of suspicious transactions (Articles 9 and 10). Further provisions concern sales by Internet, telecommunication or any other evolving technology (Article 11), duty free sales of tobacco products and the obligation to implement effective controls on tobacco and tobacco products in the free zones, including not mixing tobacco products with non-tobacco products at the time of removal from a free zone (Article 12).

Part IV of the Protocol defines the conduct to be established as unlawful under the Parties' legislation (Article 14) and obliges the Parties to ensure that natural and legal persons are held liable for such unlawful conduct, including criminal offences (Articles 15 and 16). Further

[1] OJ L 312, 15.6.2004, p. 8.

provisions concern seizure payments (Article 17), the handling of confiscated tobacco (Article 18) and special investigative techniques (Article 19). Part V of the Protocol contains provisions for the exchange of relevant information between the Parties (Articles 20 to 22), cooperation and mutual assistance (both administrative and legal in relation to criminal matters – Articles 23 and 24, and Articles 27 to 29), jurisdiction (Article 26) and extradition (Articles 30 and 31).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

Coordination with Member States throughout the negotiations took place in the Council Working Party on Customs Union and in local coordination meetings during the sessions of the Intergovernmental Negotiating Body and the Intersessional Working Groups.

The European Parliament was informed about the outcome of the negotiations.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Protocol contains a complex set of measures and rules. The main objective of the Protocol is to contribute to the overall tobacco control efforts by combatting all forms of illicit trade in tobacco products and manufacturing equipment. This objective is pursued through several sets of measures which are equally important and complementary to each other. These measures fall into different areas of EU activity which may be subdivided as follows:

(a) the manufacture, presentation and sale of tobacco products,

(b) harmonised taxation and related rules,

(c) customs controls and cooperation including through mutual administrative assistance in customs matters,

(d) approximation of criminal offences, judicial cooperation in criminal matters and police cooperation.

Individual provisions usually fall under one or, in a few cases, more of those headings. As a consequence, the EU has external competence to deal with these matters. In some cases this competence is of an exclusive nature, in accordance with Article 3 of the Treaty on the Functioning of the European Union TFEU.

Regarding heading (a), the Protocol contains provisions that are covered by EU legislation based on Article 114 of the TFEU concerning tracking and tracing and sales by Internet, telecommunications and other evolving technology.

Regarding heading (b), the Protocol contains provisions covered by EU legislation on indirect taxation, notably licensing, record-keeping, duty free sales, and administrative cooperation based on Article 113 of the TFEU.

Regarding heading (c), the Protocol contains provisions that are covered by existing EU legislation based on Articles 33 and 207 of the TFEU concerning control and verification measures applicable to the international transit or transhipment of tobacco products and manufacturing equipment, and on international cooperation including mutual administrative assistance.

The Protocol also contains provisions on the definition of unlawful conduct that may be established by the Parties either as a non-criminal or as a criminal offence. As far as non-criminal offences are concerned they fall under EU activity in the fields described under headings (a) to (c).

The above matters fall under Titles II and VII of Part IV and Title II of Part V of the TFEU. Therefore, in so far as its provisions which do not fall under Title V of Part III of the TFEU are concerned, the Protocol should be signed, on behalf of the Union, by means of a separate Council Decision, which is the subject of a separate proposal.

Regarding heading (d), the Protocol contains provisions that are covered by existing EU legislation concerning approximation of criminal offences, law enforcement cooperation and judicial cooperation in criminal matters (respectively Chapters 4 and 5 of Title V of Part III of the TFEU). Title V of Part III of the TFEU is governed by a special regime because Denmark, the United Kingdom and Ireland do not participate in measures under that Title. However, the United Kingdom and Ireland have the possibility to take part in the adoption and application of the measures.

The Protocol contains provisions on the definition of unlawful conduct that may be established by the Parties as a non-criminal or a criminal offence, including establishing the liability of both natural and legal persons. As regards criminal offences, the EU has competence in this area on the basis of Article 83 of the TFEU. The list of unlawful conducts also includes the laundering of proceeds of the unlawful conduct established as a criminal offence. Under Council Framework Decision 2001/500/JHA[2] of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Member States shall ensure that certain money laundering offences are sanctioned by criminal penalties.

The Protocol contains measures concerning judicial cooperation in criminal matters (mutual legal assistance and extradition). The EU has competence in this area based on Article 82 (1) of the TFEU. Under Council Framework Decision 2002/584/JHA[3] of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Member States may issue an arrest warrant for certain offences defined in the Decision, such as fraud and participation in a criminal organisation, if certain conditions are fulfilled. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[4], establishes the rules under which Member States will recognise and execute in their territory a freezing order issued by a judicial authority of other Member States in the framework of criminal proceedings for the purpose of securing evidence or subsequent confiscation of property. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[5] establishes the rules under which Member States shall recognise and execute in their territory a confiscation order issued by a court competent in criminal matters of other Member States. The Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union[6] supplements and facilitates the application of the already existing instruments described in its Article 1. Mutual assistance can be provided in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. Mutual assistance can also be

2 OJ L172, 5.7.2001, p.1.
3 OJ L 190, 18.7.2002, p.1.
4 OJ L 196, 2.8.2003, p.45.
5 OJ L 328, 2.11.2006, p.59.
6 Council Act 2000/C 197/01 of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p.1.

provided in connection with criminal proceedings and proceedings which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

The Protocol provides for measures on police and customs cooperation in criminal matters that fall under EU competence based on Article 87 (2) of the TFEU. Council Decision 2009/917/JHA of 30 November 2009[7] on the use of information technology for customs purposes is the legal basis for the establishment and use of the Customs Information System to assist the Member States in preventing, investigating and prosecuting serious contraventions of national laws. Under Council Act 98/C 24/01 of 18 December 1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations[8], the Member States provide each other with mutual assistance and cooperate with one another through their customs administrations, with a view to preventing and detecting infringements of national customs provisions, and prosecuting and punishing infringements of Community and national customs provisions. Cross-border cooperation is permitted under the Convention for the prevention, investigation and prosecution of infringements in the case of illegal cross-border commercial trade in taxable goods to evade tax or to obtain unauthorised State payments in connection with the import or export of goods, where the extent of the trade and the related risk to taxes and subsidies is such that the potential financial cost to the budget of the European Communities or the Member States is considerable (Article 19).

Council Framework Decision 2006/960/JHA[9] of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ("Swedish Initiative") establishes rules under which Member States' law enforcement authorities may exchange existing information and intelligence effectively and expeditiously for the purpose of conducting criminal investigations or criminal intelligence operations.

Articles 82 (1), Article 83 and Article 87 (2) therefore constitute the legal basis under Title V of Part III of the TFEU for the EU to sign the Protocol.

[7] OJ L 323, 10.7.2009, p.20.
[8] OJ C 24, 23.01.1998, p.1.
[9] OJ L 386, 29.12.2006, p.89

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 82(1), Article 83 and Article 87(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 22 October 1999, the Council authorised the Commission to negotiate, in the context of the World Health Organisation (WHO), a Framework Convention on Tobacco Control (FCTC) and related protocols. This authorisation was amended by the Council on 21 April 2001 and in relation to the Protocol to Eliminate Illicit Trade in Tobacco Products (hereinafter referred to as the 'Protocol') on 20 December 2007. Negotiations were conducted by the Commission within the negotiating directives adopted by the Council and were successfully finalised by the adoption of the Protocol at the fifth Conference of the Parties to the WHO FCTC on 12 November 2012, in Seoul, Republic of Korea.

(2) The conclusion of the FCTC was approved on behalf of the Community by Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO Framework Convention on Tobacco Control([10]), which is a condition for the European Union to become a Party to the Protocol.

(3) The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products which constitutes an essential component of tobacco control.

(4) [In accordance with Articles 1, 2, 3 and 4 of the Protocol (No 21) on the position of the United Kingdom in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.] OR [Without prejudice to Article 4 of the Protocol (No 21) on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]

(5) [In accordance with Articles 1, 2, 3 and 4 of the Protocol (No 21) on the position of Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on

[10] OJ L 312, 15.6.2004, p. 8.

European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Decision.] OR [Without prejudice to Article 4 of the Protocol (No 21) on the position of Ireland in respect of the area of freedom, security, and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]

(6) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(7) In so far as the provisions of the Protocol which fall within the scope of Title V of Part III of the Treaty on the Functioning of the European Union are concerned, the Protocol should be signed on behalf of the European Union.

(8) In so far as the provisions of the Protocol which do not fall within the scope of Title V of Part III of the Treaty on the Functioning of the European Union are concerned, the Protocol should be signed on behalf of the European Union on the basis of a separate Decision of the Council,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control is hereby approved on behalf of the European Union, subject to the conclusion of the said Protocol.

The text of the Protocol to be signed is attached to this Decision.

Article 2

This Decision shall apply in so far as the provisions of the Protocol fall within the scope of Title V of Part III of the Treaty on the Functioning of the European Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Protocol, subject to its conclusion, for the person indicated by the negotiator of the Protocol.

Article 4

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

Annex

PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

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;

Recalling the Preamble to the Constitution of the World Health Organization, which states that 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 to their right to protect public health;

Deeply concerned that the 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;

Seriously concerned by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on public health and the well-being, in particular 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 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 zones are established to facilitate legal trade, they have been used to facilitate the globalization of 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 the economies of Parties and adversely affects their stability and security;

Also aware that illicit trade in tobacco products generates financial profits that are used to fund transnational criminal activity, which interferes with government objectives;

Recognizing that the illicit trade in tobacco products undermines health objectives, imposes

additional strain on health systems and causes losses of revenue to the economies of the Parties;

Mindful of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;

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;

Recognizing in addition that tobacco and tobacco products in international transit and transhipment 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, tobacco products and manufacturing equipment;

Recalling and emphasizing the importance of other relevant international agreements such as the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the obligation that Parties to these Conventions have to apply, as appropriate, the relevant provisions of these Conventions to illicit trade in tobacco, tobacco products and manufacturing equipment and *encouraging* those Parties that have not yet become Parties to these agreements to consider doing so;

Recognizing the need to build enhanced cooperation between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime, the World Customs Organization 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 and illicit manufacturing, is an essential component of tobacco control;

Considering that this Protocol does not seek to address issues concerning intellectual property rights; 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 “Brokering” means acting as an agent for others, as in negotiating contracts, purchases, or

sales in return for a fee or commission.

2. “Cigarette” means a roll of cut tobacco for smoking, enclosed in cigarette paper. This excludes specific regional products such as bidis, ang hoon, or other similar products which can be wrapped in paper or leaves. For the purpose of Article 8, “cigarette” also includes fine cut “roll your own” tobacco for the purposes of making a cigarette.

3. “Confiscation”, which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority.

4. “Controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

5. “Free zone” means a part of the territory of a Party where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs territory.

6. “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.

7. “Licence” means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.

8. (a) “Manufacturing equipment” means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process.[11]

(b) “Any part thereof” in the context of manufacturing equipment means any identifiable part which is unique to manufacturing equipment used in the manufacture of tobacco products.

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

10. “Personal data” means any information relating to an identified or identifiable natural person.

11. ”Regional economic integration organization” means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters.[12]

12. The “supply chain” covers the manufacture of tobacco products and manufacturing equipment; and import or export of tobacco products and manufacturing equipment; and may be extended, where relevant, to one or more of the following activities when so decided by a Party:

(a) retailing of tobacco products;

(b) growing of tobacco, except for traditional small-scale growers, farmers and producers;

(c) transporting commercial quantities of tobacco products or manufacturing equipment; and

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[11] Parties may include reference to the Harmonized Commodity Description and Coding System of the World Customs Organization for this purpose, wherever applicable.

[12] Where appropriate, national or domestic will refer equally to regional economic integration organizations.

(d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

13. “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.

14. “Tracking and tracing” means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in Article 8.

Article 2

Relationship between this 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. Parties 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. Nothing in this Protocol shall affect the rights and obligations of any Party pursuant to any other international convention, treaty or international agreement in force for that Party that it deems to be more conducive to the achievement of the elimination of illicit trade in tobacco products.

4. Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, including the United Nations Convention against Transnational Organized Crime.

Article 3

Objective

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

PART II: GENERAL OBLIGATIONS

Article 4

General obligations

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

(a) adopt and implement effective measures to control or regulate the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;

(b) take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;

(c) adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;

(d) 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 unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol;

(e) cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure[13]1 exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and

(f) within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.

2. In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

Article 5

Protection of personal data

Parties shall protect personal data of individuals regardless of nationality or residence, subject to national law, taking into consideration international standards regarding the protection of personal data, when implementing this Protocol.

PART III: SUPPLY CHAIN CONTROL

Article 6

Licence, equivalent approval or control system

1. To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

(a) manufacture of tobacco products and manufacturing equipment; and

(b) import or export of tobacco products and manufacturing equipment.

2. Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:

(a) retailing of tobacco products;

[13] A secure exchange of information between two parties is resistant to interception and tampering (falsification). In other words, the information exchanged between the two parties cannot be read or modified by a third party.

(b) growing of tobacco, except for traditional small-scale growers, farmers and producers;

(c) transporting commercial quantities of tobacco products or manufacturing equipment; and

(d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

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

(a) establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national law, to conduct the activities specified in paragraph 1;

(b) require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:

(i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;

(ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;

(iii) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;

(iv) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;

(v) description of where manufacturing equipment will be installed and used;

(vi) documentation or a declaration regarding any 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 sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;

(c) monitor and collect, where applicable, 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 in accordance with national law;

(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 licences where appropriate;

(f) establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;

(g) oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;

(h) oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and

(i) ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.

4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.

5. Five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.

Article 7

Due diligence

1. Each Party shall require, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment:

(a) conduct due diligence before the commencement of and during the course of, a business relationship;

(b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and

(c) report to the competent authorities any evidence that the customer is engaged in activities in contravention of its obligations arising from this Protocol.

2. Due diligence pursuant to paragraph 1 shall, as appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, include, inter alia, requirements for customer identification, such as obtaining and updating information relating to the following:

(a) establishing that the natural or legal person holds a licence in accordance with Article 6;

(b) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;

(c) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its

corporate affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification;

(d) a description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment; and

(e) a description of the location where manufacturing equipment will be installed and used.

3. Due diligence pursuant to paragraph 1 may include requirements for customer identification, such as obtaining and updating information relating to the following:

(a) documentation or a declaration regarding any criminal records; and

(b) identification of the bank accounts intended to be used in transactions.

4. Each Party shall, on the basis of the information reported in paragraph 1(c), take all necessary measures to ensure compliance with the obligations arising from this Protocol, which may include the designation of a customer within the jurisdiction of the Party to become a blocked customer as defined by national law.

Article 8

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 agree to establish within five years of entry into force of this Protocol a global tracking and tracing regime, 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 and accessible to all Parties, enabling Parties to make enquiries and receive relevant information.

2. Each Party shall establish, in accordance with this Article, a tracking and tracing system, controlled by the Party for all tobacco products that are manufactured in or imported onto its territory taking into account their own national or regional specific needs and available best practice.

3. With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party.

4.1 Each Party shall, for purposes of paragraph 3, as part of the global tracking and tracing regime, require that the following information be available, either directly or accessible by means of 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 who is not affiliated with 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.

4.2 The information in subparagraphs (a), (b), (g) and where available (f), shall form part of the unique identification markings.

4.3 Where the information in subparagraph (f) is not available at the time of marking, Parties shall require the inclusion of such information in accordance with Article 15.2(a) of the WHO Framework Convention on Tobacco Control.

5. Each Party shall require, within the time limits specified in this Article, that the information set out in paragraph 4 is recorded, at the time of production, or at the time of first shipment by any manufacturer or at the time of import onto its territory.

6. Each Party shall ensure that the information recorded under paragraph 5 is accessible by that Party by means of a link with the unique identification markings required under paragraphs 3 and 4.

7. Each Party shall ensure that the information recorded in accordance with paragraph 5, as well as the unique identification markings rendering such information accessible in accordance with paragraph 6 shall be included in a format established or authorized by the Party and its competent authorities.

8. Each Party shall ensure that the information recorded under paragraph 5 is accessible to the global information sharing focal point on request, subject to paragraph 9, through a standard electronic secure interface with its national and/or regional central point. The global information sharing focal point shall compile a list of the competent authorities of Parties and make the list available to all Parties.

9. Each Party or the competent authority shall:

(a) have access to the information outlined in paragraph 4 in a timely manner by making a query to the global information sharing focal point;

(b) request such information only where it is necessary for the purpose of detection or investigation of illicit trade in tobacco products;

(c) not unreasonably withhold information;

(d) answer the information requests in relation to paragraph 4, in accordance with its national law; and

(e) protect and treat as confidential, as mutually agreed, any information that is exchanged.

10. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control.

11. Parties shall cooperate with each other and with competent international organizations, as mutually agreed, in sharing and developing best practices for tracking and tracing systems including:

(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 unit packets and packages of tobacco products to make accessible the information listed in paragraph 4.

12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.

13. 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.

14. Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article.

Article 9

Record-keeping

1. Each Party shall require, as appropriate, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment maintain complete and accurate records of all relevant transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.

2. Each Party shall, as appropriate, require persons licensed in accordance with Article 6 to provide, on request, the following information to the competent authorities:

(a) general information on market volumes, trends, forecasts and other relevant information;

and

(b) the quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transhipment or duty suspension as of the date of the request.

3. With respect to tobacco products and manufacturing equipment sold or manufactured on the territory of the Party for export, or subject to duty-suspended movement in transit or transhipment on the territory of the Party, each Party shall, as appropriate, require that persons licensed in accordance with Article 6, provide, on request, to the competent authorities in the country of departure (electronically, where the infrastructure exists) at the time of departure from their control with the following information:

(a) the date of shipment from the last point of physical control of the products;

(b) the details concerning the products shipped (including brand, amount, warehouse);

(c) the intended shipping routes and destination;

(d) the identity of the natural or legal person(s) to whom the products are being shipped; (e) the mode of transportation, including the identity of the transporter;

(f) the expected date of arrival of the shipment at the intended shipping destination; and

(g) intended market of retail sale or use.

4. If feasible, each Party shall require that retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage, in accordance with its national law.

5. For the purposes of implementing paragraph 1, each Party shall adopt effective legislative, executive, administrative or other measures to require that all records are:

(a) maintained for a period of at least four years;

(b) made available to the competent authorities; and

(c) maintained in a format, as required by the competent authorities.

6. Each Party shall, as appropriate and subject to national law, establish a system for sharing details contained in 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 systems for record-keeping.

Article 10

Security and preventive measures

1. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that all natural and legal persons subject to Article 6 take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, inter alia:

(a) reporting to the competent authorities:

(i) the cross-border transfer of cash in amounts stipulated in national law or of cross- border payments in kind; and

(ii) all “suspicious transactions”; and

(b) supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.

2. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that payments for transactions carried out by natural or legal persons subject to Article 6 be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

3. A Party may require that payments carried out by natural or legal persons subject to Article 6 for materials used for the manufacture of tobacco products in its jurisdiction be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.

4. Each Party shall ensure that any contravention of the requirements of this Article is subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, as appropriate, suspension or cancellation of a licence.

Article 11

Sale by Internet, telecommunication or any other evolving technology

1. Each Party shall require that all legal and natural persons engaged in any transaction with regard to tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale comply with all relevant obligations covered by this Protocol.

2. Each Party shall consider banning retail sales of tobacco product through Internet-, telecommunication- or any other evolving technology-based modes of sale.

Article 12

Free zones and international transit

1. Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones, by use of all relevant measures as provided in this Protocol.

2. In addition, the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones shall be prohibited.

3. Each Party shall, in accordance with national law, adopt and apply control and verification measures to the international transit or transhipment, within its territory, of tobacco products and manufacturing equipment in conformity with the provisions of this Protocol in order to prevent illicit trade in such products.

Article 13

Duty free sales

1. Each Party shall implement effective measures to subject any duty free sales to all relevant provisions of this Protocol, taking into consideration Article 6 of the WHO Framework Convention on Tobacco Control.

2. No later than five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty free sales of such products. On the basis of such research, the Meeting of the Parties shall consider appropriate further action.

PART IV: OFFENCES

Article 14

Unlawful conduct including criminal offences

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish all of the following conduct as unlawful under its domestic law:

(a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this Protocol;

(b) (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;

(ii) any other acts of smuggling or attempted smuggling of tobacco, tobacco products or manufacturing equipment not covered by paragraph (b)(i);

(c) (i) any other form of illicit manufacture of tobacco, tobacco products or manufacturing equipment, or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels;

(ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;

(d) mixing of tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products;

(e) intermingling of tobacco products with non-tobacco products in contravention of Article 12.2 of this Protocol;

(f) using Internet-, telecommunication- or any other evolving technology-based modes of sale of tobacco products in contravention of this Protocol;

(g) obtaining, by a person licensed in accordance with Article 6, tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed in accordance with Article 6;

(h) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;

(i) (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment and when not contrary to the right against self-incrimination;

(ii) mis-declaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to:

(a) evade the payment of applicable duties, taxes and other levies, or

(b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;

(iii) failing to create or maintain records covered by this Protocol or maintaining false records; and

(j) laundering of proceeds of unlawful conduct established as a criminal offence under paragraph 2.

2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 or any other conduct related to illicit trade in tobacco, tobacco products and manufacturing equipment contrary to the provisions of this Protocol shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.

3. Each Party shall notify the Secretariat of this Protocol which of the unlawful conduct set out in paragraphs 1 and 2 that the Party has determined to be a criminal offence in accordance with paragraph 2, and shall furnish to the Secretariat copies of its laws, or a description thereof, that give effect to paragraph 2, and of any subsequent changes to such laws.

4. In order to enhance international cooperation in combatting the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.

Article 15

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 unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol.

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 liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with national laws and regulations and Article 14 of this Protocol.

Article 16

Prosecutions and sanctions

1. Each Party shall adopt such measures as may be necessary, in accordance with national law, to ensure that natural and legal persons held liable for the unlawful conduct including criminal offences established in accordance with Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct, including criminal offences established in accordance with Article 14, are exercised to maximize the effectiveness of law enforcement measures in respect of such unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences.

3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal 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 unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law.

Article 17

Seizure payments

Parties should, in accordance with their domestic law, consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products and/or manufacturing equipment.

Article 18

Disposal or destruction

All confiscated tobacco, tobacco products and manufacturing equipment shall be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of in accordance with national law.

Article 19

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems it appropriate, 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.

2. For the purpose of investigating the criminal offences established in accordance with Article 14, Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using the techniques referred to in paragraph 1 in the context of cooperation at the international level.

3. In the absence of an agreement or arrangement as set forth in paragraph 2, 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. 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

General information sharing

1. Parties shall, for the purpose of achieving the objectives of this Protocol, report, as part of the WHO Framework Convention on Tobacco Control reporting instrument relevant information, subject to domestic law, and where appropriate, inter alia, on matters such as:

(a) in aggregate form, details of seizures of tobacco, tobacco products or manufacturing equipment, quantity, value of seizures, product descriptions, dates and places of manufacture; 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;

(c) trends, concealment methods and modi operandi used in illicit trade in tobacco, tobacco products or manufacturing equipment; and

(d) any other relevant information, as agreed by the Parties.

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

3. Parties shall deem the said information to be confidential and for the use of Parties only, unless otherwise stated by the transmitting Party.

Article 21

Enforcement information sharing

1. Parties shall, subject to domestic law or any applicable international treaties, where appropriate, 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, the following information:

(a) records of licensing for the natural and legal persons concerned;

(b) information for identification, monitoring and prosecution of natural or legal persons involved in illicit trade in tobacco, tobacco products or manufacturing equipment;

(c) records of investigations and prosecutions;

(d) records of payment for import, export or duty-free sales of tobacco, tobacco products or manufacturing equipment; and

(e) details of seizures of tobacco, tobacco products or manufacturing equipment (including case reference information where appropriate, quantity, value of seizure, product description, entities involved, date and place of manufacture) and modi operandi (including means of transport, concealment, routing and detection).

2. Information received from Parties under this Article shall be used exclusively to meet the objectives of this Protocol. Parties may specify that such information may not be passed on without the agreement of the Party which provided the information.

Article 22

Information sharing: confidentiality and protection of information

1. Each Party shall designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat.

2. The exchange of information under this Protocol shall be subject to domestic law regarding confidentiality and privacy. 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. Parties shall cooperate, with each other and/or through competent international and regional organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters, in order to achieve the objectives of this Protocol, as mutually agreed. Such assistance may include the transfer of expertise or appropriate technology in the areas of information gathering, law enforcement, tracking and tracing, information management, protection of personal data, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.

2. Parties may, as appropriate, 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, as appropriate, 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. Parties shall, in accordance with their domestic law, take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of natural or legal persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment.

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 (including, where permitted under domestic law, judicial authorities) cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law.

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 in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

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 14 when:

(a) the offence is committed in the territory of that Party; or

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

2. Subject to Article 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 one of those established in accordance with Article 14 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 14 within its territory.

3. For the purposes of Article 30, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 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 established in accordance with Article 14 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 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

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 established in accordance with Article 14;

(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 established in accordance with Article 14 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 criminal offences established in accordance with Article 14.

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 28

Mutual administrative assistance

Consistent with their respective domestic legal and administrative systems, 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 manufacturing equipment. 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 engaging in illicit trade in tobacco, tobacco products and manufacturing equipment;

(c) goods known to be the subject of illicit trade in tobacco, tobacco products and manufacturing equipment as well as details of description, packaging, transport and storage and methods used in respect of those goods;

(d) natural or legal persons known to have committed or to be a party to an offence established in accordance with Article 14; and

(e) any other data that would assist designated agencies in risk assessment for control and other enforcement purposes.

Article 29

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 criminal offences established in accordance with Article 14 of this Protocol.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 15 of this Protocol in the requesting Party.

3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:

(a) taking evidence or statements from persons;

(b) effecting service of judicial documents;

(c) executing searches and seizures, and freezing;

(d) examining objects and sites;

(e) providing information, evidentiary items and expert evaluations;

(f) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) facilitating the voluntary appearance of persons in the requesting Party; and

(i) any other type of assistance that is not contrary to the domestic law of the requested Party.

4. This Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

5. Paragraphs 6 to 24 shall, on the basis of reciprocity, apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty or intergovernmental agreement of mutual legal assistance. If the Parties are bound by such a treaty or intergovernmental agreement, the corresponding provisions of that treaty or intergovernmental agreement shall apply unless the Parties agree to apply paragraphs 6 to 24 in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to

require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible.

7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

8. A request for mutual legal assistance shall contain:

(a) the identity of the authority making the request;

(b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;

(c) a summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) a description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;

(e) where possible, the identity, location and nationality of any person concerned;

(f) the purpose for which the evidence, information or action is sought; and

(g) the provisions of the domestic law relevant to the criminal offence and the punishment therefore.

9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay.

12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the

hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party.

14. Mutual legal assistance may be refused:

(a) if the request is not made in conformity with this Article;

(b) if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) if the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) where the request involves a crime where the maximum penalty in the requested Party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested Party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime; or

(e) if it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

15. Reasons shall be given for any refusal of mutual legal assistance.

16. A Party shall not decline to render mutual legal assistance under this Article on the ground of bank secrecy.

17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party.

19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party regarding progress in its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.

20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an on-going investigation, prosecution or judicial proceeding.

21. Before refusing a request pursuant to paragraph 14 or postponing its execution pursuant to paragraph 20, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the

terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

23. In the event of a request, the requested Party:

(a) shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and

(b) may, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

24. Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article.

Article 30

Extradition

1. This Article shall apply to the criminal offences established in accordance with Article 14 of this Protocol when:

(a) the person who is the subject of the request for extradition is located in the territory of the requested Party;

(b) the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and

(c) the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements.

2. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. 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 consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies.

4. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

6. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies.

7. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

8. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 7.

9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

10. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present.

11. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

12. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

13. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

14. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. Where Parties are bound by an existing treaty or intergovernmental arrangement the corresponding provisions of that treaty or intergovernmental arrangement shall apply unless the Parties agree to apply paragraph 1 to 13 in lieu thereof.

Article 31

Measures to ensure extradition

1. Subject to its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition

proceedings.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.

3. Any person regarding whom the measures in accordance with paragraph 1 are being taken, shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and

(b) be visited by a representative of that State.

PART VI: REPORTING

Article 32

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 format and content of such reports shall be determined by the Meeting of the Parties. These reports shall form part of the regular WHO Framework Convention on Tobacco Control reporting instrument.

3. The content of the periodic reports referred to in paragraph 1, shall be determined having regard, inter alia, to 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 the implementation of this Protocol and on the measures taken to overcome those barriers;

(c) information, as appropriate, on financial and technical assistance provided, received, or requested for activities related to the elimination of illicit trade in tobacco products; and

(d) the information specified in Article 20.

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 these efforts.

4. The Meeting of the Parties, pursuant to Articles 33 and 36, 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. Parties shall protect, as mutually agreed, any confidential information that is reported or exchanged.

PART VII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES

Article 33

Meeting of the Parties

1. A Meeting of the Parties is hereby established. The first session of the Meeting of the Parties shall be convened by the Convention Secretariat immediately before or immediately after the next regular session of the Conference of the Parties following the entry into force of this Protocol.

2. Thereafter, regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, immediately before or immediately after regular 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. The Rules of Procedure and the Financial Rules of the Conference of the Parties to the WHO Framework Convention on Tobacco Control shall apply, mutatis mutandis, to the Meeting of the Parties unless the Meeting of the Parties decides otherwise.

5. The Meeting of the Parties shall keep under regular review the implementation of the Protocol and take the decisions necessary to promote its effective implementation.

6. The Meeting of the Parties shall decide on the scale and mechanism of the voluntary assessed contributions from the Parties to the Protocol for the operation of this Protocol as well as other possible resources for its implementation.

7. At each ordinary session, the Meeting of the Parties shall by consensus adopt a budget and workplan for the financial period until the next ordinary session, which shall be distinct from the WHO Framework Convention on Tobacco Control budget and workplan.

Article 34

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

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

(c) provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation, communication, and exchange of information required in accordance with the provisions of this Protocol, and assistance in the identification of available resources to facilitate implementation of the 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 be accredited as observers to the Meeting of the Parties, while ensuring that they are not affiliated with the tobacco industry, and present the reviewed 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 35

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 36

Financial resources

1. Parties recognize the important role that financial resources play in achieving the objective of this Protocol, and acknowledge the importance of Article 26 of the WHO Framework Convention on Tobacco Control in achieving the objectives of the Convention.

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. Without prejudice to Article 18, Parties are encouraged, subject to national laws and policies and where appropriate, to use any confiscated proceeds of crime deriving from the illicit trade in tobacco, tobacco products and manufacturing equipment to achieve the objectives set out in 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. 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.

7. Parties may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control.

8. Parties shall endeavour, subject to their domestic law, to achieve self-financing of the implementation of the Protocol including through the levying of taxes and other forms of charges on tobacco products.

PART VIII: SETTLEMENT OF DISPUTES

Article 37

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 38

Amendments to this Protocol

1. Any Party may propose amendments to this Protocol.

2. Amendments to this Protocol shall be considered and adopted by the Meeting of the Parties. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the Convention Secretariat at least six months before the session at which it is proposed for adoption. The Convention Secretariat shall also communicate proposed amendments to the signatories of this Protocol and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to this Protocol. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Convention Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 shall enter into force for those Parties having accepted it on the 90th day after the date of receipt by the Depositary of an instrument of acceptance by at least two thirds of the Parties.

5. The amendment shall enter into force for any other Party on the 90th day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 39

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 38.

PART X: FINAL PROVISIONS

Article 40

Reservations

No reservations may be made to this Protocol.

Article 41

Withdrawal

1. At any time after two years from the date on which this Protocol has entered into force for a

Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.

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

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

Article 42

Right to vote

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

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 43

Signature

The Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at World Health Organization Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

Article 44

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 without any of its Member States being a Party shall be bound by all the obligations under this Protocol. In the case of organizations one or more of whose Member States is a Party, 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 45

Entry into force

1. This Protocol shall enter into force on the 90th day following the date of deposit of the 40th 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 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 46

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 47

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.