



PROTOCOL
TO ELIMINATE
ILLCIT TRADE IN
TOBACCO PRODUCTS



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

SECRETARIAT



What is the Protocol?

The Protocol to Eliminate Illicit Trade in Tobacco Products is a global solution to a global problem. The Protocol is an international treaty with the objective of eliminating all forms of illicit trade in tobacco products through a package of measures implemented by countries in cooperation with each other. This is the first protocol adopted under the WHO Framework Convention on Tobacco Control (WHO FCTC) and is an international treaty in its own right.

The Protocol was developed in response to the growing concern of Parties to the WHO FCTC regarding illicit trade in tobacco products and the role of this trade in fuelling the tobacco epidemic. The Protocol builds on and complements Article 15 of the WHO FCTC which requires Parties to implement measures to counter illicit trade in tobacco products and to further control the supply chain.

The Protocol was adopted by consensus on 12 November 2012 by the Conference of the Parties (COP) to the WHO FCTC at its fifth session in Seoul, Republic of Korea.

The Protocol entered into force on 25 September 2018, following the deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession by Parties to the WHO FCTC.¹

¹ For an updated list of Parties to the Protocol, see: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&clang=en



Why is it so important to prevent illicit trade in tobacco products?

The illicit trade in tobacco products poses a serious threat to global public health, security and government revenues. The World Customs Organization (WCO) reports that over 3.49 billion illicit cigarettes were seized in 2019 (compared with 2.3 billion in 2018).² According to available estimates, the size of the market in illicit tobacco varies between countries but amounts to around 11.6% of the global market.³

- ▲ Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. Increased access to (often cheaper) tobacco products chiefly affects vulnerable groups, including low-income populations and young people. It is estimated that, if illicit trade in tobacco products were eliminated globally, a million premature deaths would be avoided every six years due to higher average cigarette prices and lower consumption.
- ▲ Organized crime groups profit from their direct involvement in the illicit tobacco trade, while terrorist organizations, armed rebels and insurgent groups have been shown to use illicit tobacco as a source of funding for their activities.^{4,5,6}
- ▲ Illicit trade in tobacco products causes substantial losses to government revenues since excise duty and taxes are not collected.⁷ On the basis of a recent estimate, the elimination of illicit cigarettes could yield a potential annual global revenue of some US\$ 47.4 billion.⁸

2 *Illicit trade report 2019*. Brussels: World Customs Organization; 2019 (http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2019_en.pdf?db=web, accessed 27 January 2022).

3 Joossens L, Merriman D, Ross H, Raw M. The impact of eliminating the global illicit cigarette trade on health revenue. *Addiction*. 2010;105:1640–95.

4 Titeca K, Joossens L, Raw M. Blood cigarettes: cigarette smuggling and war economies in central and eastern Africa. *Tob Control*. 2011;20(3):226–32.

5 Edwards C, Jeffray C. *On tap: Organised crime and the illicit trade in tobacco, alcohol, and pharmaceuticals in the UK*. London: Royal United Services Institute; 2015 (<https://rusi.org/explore-our-research/projects/on-tap-uk-organised-crime-and-the-illicit-trade-in-tobacco-alcohol-and-pharmaceuticals#project-outputs>, accessed 27 January 2022).

6 *Confronting illicit tobacco trade: a global review of country experiences*. Washington (DC): The World Bank; 2019 (<https://documents1.worldbank.org/curated/en/677451548260528135/pdf/133959-REPL-PUBLIC-6-2-2019-19-59-24-WBGTobaccoIllicitTradeFINALvweb.pdf>, accessed 27 January 2022).

7 WHO technical manual on tobacco tax policy and administration. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>, accessed 27 January 2022).

8 Goodchild M, Paul J, Iglesias R, Bouw A, Perucic A-M. Potential impact of eliminating illicit trade in cigarettes: a demand-side perspective. *Tob Control*. 2022;31:57–64 (<https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2020/11/03/tobaccocontrol-2020-055980.full.pdf?with-ds=yes>, accessed 27 January 2022).

What are the key provisions of the Protocol?⁹



In order to prevent the diversion of licit products into the illicit market and vice versa, as well as to avoid the emergence of illicit manufacturing, Part III of the Protocol provides for a series of measures to be implemented by Parties in order to secure the supply chain of tobacco products (Articles 6–13). These measures include requirements of licensing and record-keeping, security and preventive measures. Part III of the Protocol also provides for the application of measures to transactions involving tobacco products in free zones, including during international transit and duty-free sales, as well as sales over the Internet and other telecommunication means and any other evolving technology-based modes of sale. A key component of the Protocol is the establishment of a global tracking and tracing regime within five years of the Protocol's entry into force. This regime comprises national and/or regional tracking and tracing systems, with a global focal point for information-sharing located in the Secretariat of the WHO FCTC which also serves as the Secretariat for the Protocol. The aim of the global tracking and tracing regime is to secure the supply chain of tobacco products and to equip national authorities with a platform for exchange of information to determine the origin, transportation route, intended market of sale and potential point of diversion of the products.

Part IV of the Protocol covers important issues concerning **the legal framework applicable to offences** related to illicit trade in tobacco products (Articles 14–19) – including provisions on liability, prosecution and sanctions, seizure payments and special investigative techniques, as well as the disposal and destruction of confiscated tobacco, tobacco products and manufacturing equipment. The Protocol establishes which conduct should be made unlawful under national legislation – including in particular the manufacture, sale, transportation and distribution of tobacco products in violation of the provisions of the Protocol, and other activities related to illicit trade in tobacco products. Each Party must also decide which unlawful conduct constitutes a criminal offence.

⁹ For a detailed overview on the Protocol and its articles, see: <https://fctc.who.int/publications/m/item/the-protocol-an-overview> (accessed 27 January 2022).

Part V incorporates a key group of substantive articles addressing **international cooperation** (Articles 20–31). These include measures on information-sharing, cooperation on technical issues and law enforcement, the protection of sovereignty, jurisdictions, and mutual legal and administrative assistance and extradition. In view of the cross-border nature of the illicit trade in tobacco products, Parties may need to exchange information to facilitate the detection and/or investigation of the illicit trade. The Protocol includes provisions to ensure mutual legal and administrative assistance among Parties and to encourage them to implement the necessary legal frameworks for enforcement.

The Protocol establishes the **reporting** obligations of the Parties (Article 32), which are linked to the reporting system of the WHO FCTC, as well as the institutional and financial arrangements (Articles 33–36) which are necessary for the Protocol’s implementation.

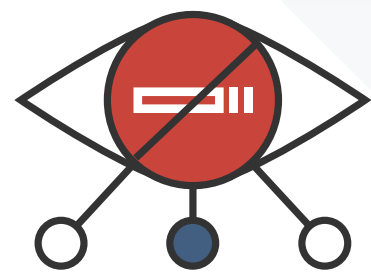
To ensure full implementation of the Protocol’s provisions, it is of key importance to achieve **multisectoral cooperation** between health, finance, customs, law enforcement, trade and other relevant sectors and agencies at both national and global levels.

Governance of the Protocol

The Protocol establishes the Meeting of the Parties (MOP), which comprises all Parties to the Protocol, as its governing body (Article 33).

Following a MOP decision,¹⁰ sessions of the MOP are convened immediately after the sessions of the Conference of the Parties (COP) of the WHO FCTC.

The First session of the MOP (MOP1) was held in Geneva from 8 to 10 October 2018¹¹ and the Second session (MOP2) was held virtually from 15 to 18 November 2021.¹² The Rules of Procedure of the MOP were adopted at the First session.¹³



10 *Decision FCTC/MOP1(11). Coordination among the governing bodies of the WHO Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products. Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, First session, Geneva, 8–19 October 2018. Geneva: World Health Organization; 2018 ([https://fctc.who.int/publications/m/item/fctc-mop1\(11\)-coordination-among-the-governing-bodies-of-the-who-framework-convention-on-tobacco-control-and-the-protocol-to-eliminate-illicit-trade-in-tobacco-products](https://fctc.who.int/publications/m/item/fctc-mop1(11)-coordination-among-the-governing-bodies-of-the-who-framework-convention-on-tobacco-control-and-the-protocol-to-eliminate-illicit-trade-in-tobacco-products), accessed 27 January 2022).*

11 *First Session of the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, 8–19 October 2018. Geneva: World Health Organization; 2018 (<https://fctc.who.int/protocol/governance/meeting-of-the-parties-of-the-parties/first-session-of-the-meeting-of-the-parties>, accessed 27 January 2022).*

12 *Second Session of the Meeting of the Parties (MOP2) to the Protocol to Eliminate Illicit Trade in Tobacco Products, 15–18 November 2021. Geneva: World Health Organization; 2021 (<https://fctc.who.int/protocol/governance/meeting-of-the-parties/second-session-of-the-meeting-of-the-parties>, accessed 27 January 2022).*

13 *Rules of Procedure of the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products. Geneva: World Health Organization; 2019 (<https://www.who.int/fctc/protocol/mop/WEB-MOP-EN.pdf?ua=1>, accessed 27 January 2022).*

Protection from the interests of the tobacco industry



Building on Article 5.3 of the WHO FCTC, the Protocol refers explicitly to the necessity for Parties to protect tobacco control policies from commercial and other vested interests of the tobacco industry. In addition, Article 8 of the Protocol specifically stipulates that the obligations assigned to a Party in relation to setting up and maintaining a tracking and tracing system shall not be performed by or delegated to the tobacco industry. Furthermore, MOP1 decided that implementation of the Protocol should also be protected against the vested interests of economic and commercial actors whose main business is related to the implementation of the Protocol.

BECOMING A PARTY TO THE PROTOCOL

The Protocol is 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 FCTC (Article 44).

Ratification, acceptance and approval are international acts by which States that have signed the Protocol establish at international level their consent to be bound by it. Formal confirmation is the equivalent of ratification for international organizations, such as regional economic integration organizations.

The Protocol was open for signature until 9 January 2014 (Article 43). A State that did not sign the Protocol by that date may nonetheless become a Party by means of accession. Accession has the same legal effect as ratification, acceptance or approval.

The Secretary-General of the United Nations (UN) is the depositary for the Protocol (Article 46). The official date of deposit of a State's treaty action is the date of receipt of the instrument of ratification, acceptance, approval, formal confirmation or accession by the UN Treaty Section which performs the depositary function on behalf of the Secretary-General.

RESOURCES AND ASSISTANCE

MOP2 agreed to strengthen international cooperation to ensure greater assistance between Parties – a step that is expected to accelerate the adoption of best practices and support the introduction of innovations. The same Meeting also adopted a strategy for mechanisms of assistance and mobilization of financial resources to strengthen the implementation of the Protocol.

How will the implementation of the Protocol be funded?

The Protocol provides Parties with various means to mobilize financial resources to achieve the Protocol's objectives (Articles 6.3(c) and 36) – including through licence fees, the utilization of bilateral, multilateral and regional channels, and by making the tobacco industry bear the costs related to setting up and maintaining a track and trace system. At national level, each Party must – in accordance with its national plans, priorities and programmes – generate and secure finances in respect of its national activities for achieving the objectives of the Protocol. Implementing the requirements of the Protocol will increase the ability of Parties to collect taxes on products that would otherwise be traded illicitly and therefore be untaxed.



The Parties will cooperate with each other directly and/or through competent international and regional organizations to implement the Protocol by providing training and technical assistance and by cooperating in scientific, technical and technological activities.

The Convention Secretariat shall actively seek and receive extrabudgetary contributions from Parties and other international donors – including competent international and regional intergovernmental organizations and financial and development institutions – for the implementation of the Strategy for mechanisms of assistance adopted by MOP2.¹⁴ At MOP2, Parties also decided to launch an Investment Fund to support implementation of the Protocol.¹⁵

¹⁴ Decision FCTC/MOP2(11). *Financial resources and mechanisms of assistance. Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, Second session, Geneva, 17 November 2021* (https://untobaccocontrol.org/downloads/mop2/decisions/FCTC_MOP2_11_EN.pdf, accessed 27 January 2022).

¹⁵ Decision FCTC/MOP2(8). *Investment Fund for implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products. Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, Second session, Geneva, 16 November 2021* (https://untobaccocontrol.org/downloads/mop2/decisions/FCTC_MOP2_8_EN.pdf, accessed 10 February 2022).



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