

Chair's Text for INB-3

Tracking and Tracing of Tobacco Products

1. This briefing sets out an outline of the tracking and tracing system for tobacco products implied by Article 7 of the Chair's Text for an Illicit Trade Protocol. It also raises key questions and issues likely to arise in the course of negotiations at INB-3.

What is tracking and tracing?

2. Tracking and tracing covers a wide variety of systems used, generally in logistical processes, to determine the current and past locations and other information concerning property in transit. An effective tracking and tracing system allows such information to be uploaded, retained and read in a standardised manner.
3. An example of a common application of tracking and tracing is from shipping and delivery businesses such as UPS and FedEx. Other industries using systems with relevant elements of tracking and tracing systems include airlines (where key passenger information can now be read from electronically generated tickets), and the food, chemicals and pharmaceuticals industries.
4. There are several technologies deployed in tracking and tracing systems, which are various stages of development and standardisation. Two examples are barcode systems, which are ubiquitous, cheap to apply and to read, but relatively restricted in the amount of information that can be stored directly on the product, and radio frequency identification (RFID) systems, which are developing quickly, but are relatively expensive and currently lack agreed international standards.

What the Chair's Text says

5. Article 7 would require Parties to the Protocol to set up a tracking and tracing system, including a *"clearing-house database ... maintained by the Convention Secretariat and accessible to all Parties"* (7.1). For each Party, this should cover *"all tobacco products and manufacturing equipment used in manufacture of tobacco products that are manufactured in or imported onto its territory"* (7.2). The system would require *"unique, secure and non-removable"* markings on all master cases and cartons *"and when technology is sufficiently developed" ... "packs of cigarettes and other tobacco products containing more than one unit manufactured in or imported onto its territory" and "all manufacturing equipment ... manufactured in or imported onto its territory"* (7.3). When scanned by customs and law enforcement officers or other authorised persons in any Party, the unique markings would enable access to key information including details of manufacture, first customer, known subsequent purchasers and shipment (7.4) (7.6) (7.8) (7.9). The information set out in 7.4 would be *"included in an*



appropriate format at a central point on its territory” (7.7) ... and this data would be linked with the international clearing-house database (7.8). Parties would be required to develop and expand the “scope of the applicable tracking and tracing system” to mark and record information “relating to sales by first purchasers, second purchasers and, wherever feasible, subsequent purchasers, and to enable recording and access to such information” (7.10). Parties would cooperate to avoid unnecessary costs and duplication in the system (7.11) and to share and developed improved technologies for tracking and tracing (7.12).

What the Chair’s Text *might* mean in practice

6. It is not easy to work backwards from the current Chair’s text to a practical tracking and tracing system that may be intended by the author(s). However, the following system – **which is not directly set out in the Chair’s Text** - appears to be consistent with the terms of Article 7, and to be both feasible and reasonably practical. However a number of key issues remain to be discussed and determined.
7. In the case of cigarettes, tobacco products and manufacturing equipment produced in Parties, a unique number would be placed on those products before first shipment. In relation to cigarettes and tobacco products, Article 7 would require such a number to be placed on master cases and cartons, and this requirement would be extended to packs as technology develops.
8. The most likely form in which a unique number could be applied is probably through bar codes, although this is not required by the current terms of Article 7. There are a wide variety of barcodes now in use, from GTIN 12 and GTIN 13 systems commonly used in retail, to more complex systems that no longer resemble the traditional series of bars, such as Aztec Code, MaxiCode, and QR Code (see for example en.wikipedia.org/wiki/Bar_codes).
9. The unique number could record:
 - a. The manufacturer/brand
 - b. The specific master case
 - c. The specific carton, and as the system established under Article 7 develops
 - d. The specific pack.The number for the lowest point in the chain (say d above) would refer upwards to the carton, master case and manufacturer.
10. Tobacco manufacturers would place barcodes on their products. They would then load *associated information* into their own computer systems. The numbers from the barcodes and the associated information would then be uploaded to a national computer system under the control of each Party.
11. It would seem most likely that information set out in Article 7.4 a, b, c, d, f and g would be put into the system at point of production, and possibly Article 7.4 e and h information at some subsequent time before the point of export (since for example first intended customers may not always be known at time of production).

12. The national system in each Party would be linked to a central clearing house in Geneva, which Article 7 says would be operated by the Secretariat. The clearing house must be able to *interrogate* each national system but need not necessarily hold all the manufacturer information.
13. An authorised customs officer or law enforcement official in any Parties could contact the clearing house – perhaps by e-mail, or more efficiently through a secure website – and interrogate it by inputting the barcode number. The clearing house would then contact the relevant national system and return the resulting information to the officer. If the officer, for example, inputs a barcode from a carton, this would read to the relevant master case, be associated with and then generate all Article 7.4 information from that case.
14. It should be noted that this system should preclude the tobacco industry from gaining intelligence about the activities of customs and law enforcement officers. This because their requests would be handled through a link from them to the international clearing-house and as appropriate the relevant national database, without any direct link being required to industry systems.
15. In the case of tobacco products imported from a non-Party into a Party, Article 7 would require that a unique number be present at the point of import, and that the required associated information could be obtained from it. This would presumably mean that the information had been loaded up to the international clearing-house; or to the national database in the importing Party; or to a national database in the non-Party. Presumably, manufacturers in non-Parties would in practice and for convenience be likely to put barcodes on products at the point of manufacture. However, the rules required for non-Party to Party contacts under this system are not clear from Article 7 and require further exploration.

FCA position and key issues

16. FCA strongly supports the establishment of an effective global tracking and tracing system for tobacco products. To fight illicit trade effectively requires authorities to monitor the movement of lawfully manufactured tobacco products, and, upon seizure of such products, to access information to assist in recreating the movement of products through the supply chain.
17. FCA broadly supports the overall approach taken in draft Article 7, particularly the application of obligations to both products manufactured in a Party's territory for the domestic market and imported products. However, FCA does not agree that obligations should not apply with respect to individual packs of tobacco products. Technology exists (and is already in use in Brazil, California and other jurisdictions) to uniquely mark individual packs so as to allow linking from the individual pack to information held with respect to the carton or other packaging unit in which individual packs are packaged, for example through a barcode system as set out above.

18. The system set out in the previous section of this note appears to be feasible and reasonably practicable. It would allow considerable flexibility in the systems operated by Parties – for example, any records kept of interrogations to the central point.
19. It has been suggested that Parties might opt for a system that allows manufacturers to input data directly to the clearing house in Geneva, without the need for a national database. FCA believes that this should not be an option under Article 7, since it would add to the complexity of the clearing house and hence the costs of maintaining it, and would also establish a highly undesirable direct link between the WHO/Secretariat and the tobacco industry. It is also essential that national databases are operated by governments or by agencies under government control.

Costs

20. The system set out above would require all Parties to operate barcode readers or equivalent and an appropriate IT system to hold a national database, but searches of relevant suppliers suggest that this would not be an unreasonably expensive commitment even for low and middle income countries, and could be readily recovered through tobacco taxation.
21. The main costs of the system would be met by the manufacturers, since they would be required to place unique numbers on products and upload relevant information. However, it is not clear what the costs of the international clearing-house system would be. It is likely that, although only a relatively small proportion of total costs, it would still be a significant commitment by Parties relative to their current contributions to the Secretariat.

Limits

22. The system implied by Article 7 would not, at least at first, provide information beyond the first point of export. A fully functioning tracking and tracing system would need to be developed so that subsequent information could be added to the system, so that for example information about subsequent customers and points of transfer could be included. The Article requires the subsequent development of the system but does not specify how this should be achieved.
23. It is likely that in the future alternative technologies will be required for the system to develop properly. For example, a system based on RFID would enable information to be added to RFID chips placed directly on tobacco products as they move through the supply system (the most likely format for this is called Write Once Read Many – WORM – which allows data to be added to RFID chips repeatedly but prevents subsequent alteration or deletion). At some point RFID or other systems may become sufficiently inexpensive and standardised to be preferable to the initial system established under Article 7. There needs to be some process for ensuring that technologies, systems, best practice, training and support continue to be discussed and disseminated to inform future negotiations that may be required to progress the full application of Article 7. Once the terms

of Article 7 are agreed, there may be a need for a continuing technical group to be established under the aegis of the Secretariat to carry out or supervise the necessary work.

Data accuracy and security

24. The system would depend on manufacturers and importers entering information accurately and honestly, and this would need to be enforced by Parties. There is also a need to ensure data security, including provisions to prevent records of system use being accessed by the tobacco industry in order to gain intelligence about law enforcement activities.
25. It is important that requests to the central system could be answered in a timely manner, preferably as close to immediately as possible and in an automated fashion.
26. The system will need to be sufficiently secure to discourage or prevent fraudulent substitution of unique identifying numbers.

Questions

27. The following questions go to the issue of what practical tracking and tracing system is implied by the current form of Article 7, what the rules of operation of such a system would be, and whether the system indicated above is in fact what is intended.
28. The intention of the terms “*appropriate format*” for the “*inclusion*” and “*transfer*” of information proposed in draft Articles 7.7 and 7.8 needs to be clarified and there needs to be an agreed process for developing the appropriate format or formats.
29. There needs to be a clear understanding about how information is to be transferred from the ‘central point’ in each territory to the international ‘clearing-house database’, as proposed in draft Article 7.8, and about what level of interoperability of systems this will require between individual Parties’ central points and the international clearing-house.
30. The option of direct uploading of manufacturer data to the Geneva clearing house needs to be rejected.
31. Article 7.9 implies that the markings required by one Party to the protocol will need to be understandable or readable in all other Parties. This would seem to require that there be some standardisation of technology so that competent authorities in any Party will be able to read or understand the marking in order to be able to make a request for information ‘*based on*’ the marking. Parties need to be clear about what is implied by the article in this respect.

32. There would need to be clarity about the means required under draft Article 7.9 for the making of a request by a competent authority to the “*central point*” in its territory and the obtaining of information in response to such a request, and particularly how requests are to be “*passed on*” to the clearing-house database and how information is to be obtained from the clearing-house database.

Working Group

33. In order to expedite discussions and improve the chances of a successful conclusion being reached at INB 3, FCA would recommend that a working group on Article 7 be established at INB-3 to examine and clarify these and any other related issues and to report back before the conclusion of the INB. This working group should be mandated to propose any changes to the text that might be considered necessary after the clarification of relevant issues.