

Briefing Note: Fourth Session of the Intergovernmental Negotiating
Body on an Illicit Trade Protocol
Geneva 14th March to 21st March 2010

Comments on Secretariat Technical Paper on Tracking and Tracing

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Status of Paper

1. It appears from internal evidence that the draft paper, which is described as from the Secretariat, may be a summary of a longer paper (which we have not seen) from the IBM consultants commissioned by the Secretariat.

What Do We Want

2. The following requirements are the essential components of an effective international tracking and tracing system:
 - It should provide timely and accurate information to law enforcement and customs officers in their investigations
 - It should provide at least the minimum information set out in the current draft of Article 7.4 of the Protocol
 - It should be relatively simple for law enforcement and customs officers to use
 - It should be reasonably secure (no IT system can ever achieve complete security: there is always a trade off between costs and benefits, but a good system is subject to continuous review and improvement)
 - It should be capable of development, as technology improves and becomes relatively cheaper, as agreement is reached between Parties on improved standards and systems, and as the reality of illicit trade changes over time
 - It should be based on common international standards.
3. A tracking and tracing system should assist law enforcement and customs administrations in the investigation of illicit tobacco trade and excise tax evasion. It should also be a means to prevent diversion of legitimately manufactured tobacco products and deter tobacco industry participation in the illicit trade. It should raise the “cost” of engaging in illicit trade, where cost is taken to mean not only the difference between the price of products



when bought and when sold, but also the chances of being caught and the possible penalties involved. Tobacco products are not luxury items, profits in both licit and illicit trade depend on mass volumes. Therefore, to be effective, a tracking and tracing system for tobacco products need not necessarily be as expensive or elaborate as a system for fighting counterfeit luxury goods.

What Does the Secretariat Paper Offer

5. The paper essentially proposes a means of establishing an international tracking and tracing system that would allow existing systems in Parties to be incorporated into the system. (In fact the proposed system is more tracing than tracking – it would help reconstruct the supply chain but not to return real time information about the current location of products.)
6. It does this by permitting Article 7.4 information to be recorded using a barcode, data matrix or RFID system, or to be held on computers across the Parties, or some combination of both. In other words, Turkey and Brazil would be able to use their data matrix systems, the EU could use barcodes, and other Parties could rely on identifying numbers alone (see below). It would be open to Parties to require manufacturers in their jurisdictions to use any technology they considered appropriate.
7. In addition, the system would require every pack, carton and master case of cigarettes (and by extension other packaged tobacco products) to be marked with a printed serialisation number. This number would relate pack to carton to master case to (possibly) pallet. So for example, reading a number on any pack would enable an investigator to get information on its related carton, master case and pallet. The serial number would be human readable, unique for each pack and not predictable.
8. There are a variety of international numbering systems that could be used, set out in paragraphs 18 and 19 of the paper. No-one I have spoken to disputes the practical possibility of using a numbering system of this kind, although there are several important concerns, for example it is less secure than other available technology.
9. A law enforcement or customs officer in the field would be able to access all information relating to a particular package by entering the unique number into the international clearing house. This would act as a “portal”, with secure access, that would use the unique number to route enquiries to the database(s) in the relevant Party of origin. The query could be by means of a data reading device or a manual query through a computer portal. The global information-sharing point would return information held in the barcode/data matrix/RFID chip and on reasonable request associated information held in the Party of origin (which might go beyond the minimum requirements set out in Article 7.4 – for example, it might include financial information and other records kept under Article 8). The role of the global information sharing-point in sharing confidential data remains to be clarified.

Advantages

10. The proposed system offers a politically practical compromise, because it allows existing systems to be incorporated into an international system under the Protocol.
11. The paper states quite explicitly that the technology exists to mark at pack level. This makes references in the current draft of Article 7 to “*when technology allows*” redundant and supports FCA’s position on the issue.
12. The proposal does not make a distinction between products manufactured for domestic consumption and products for export, which some Parties are pressing for but which would represent a major loophole in the system.
13. A central feature of the system would be the serial number on the smallest packet unit, which would be unique in each case. In annex 3 to the paper, the authors propose that the manufacturers should apply the numbers but that Governments should control the process through audits. It would be essential that robust arrangements were put in place to ensure independent verification of the numbering system.

Disadvantages

14. The paper states that the Brazilian and Turkish systems use an “invisible and secure” 2d data matrix system. Neither of these systems is currently international in scope (although they could be modified for this purpose). The paper makes it clear that the EU system and possibly others allows data to be stored on manufacturers’ systems rather than those under the direct control of governments, although national databases would be required.
15. The proposed system is insecure, in that it would be easy to remove or change the unique number. However, this would be of only limited help to a smuggler – product without an identifying number could be seized on sight, and a fraudulent number would not return proper information when entered into the clearing house, which would presumably give good grounds for detention and possibly eventual seizure, after further investigation. The paper states explicitly that the number must be constructed so that it cannot be decoded fully without using the global information-sharing point.
16. The global information-sharing point in itself should be reasonably secure, because it would have coded access, although no system of this kind can have complete security (it could be hacked, or access codes could be shared with unauthorised people). The system would prevent any manufacturer with a linked database from knowing the origin of any query, but it is hard to see how it would prevent the manufacturer from being able to discover that a query had been made about a specific number.

17. The list of information that would be captured by unique numbers is set out in paragraph 23 of the paper does not correspond to the minimum set out in Article 7.4.

Other Issues

18. The paper makes it clear that the integrity of the number system depends on “aggregation events” – which means the association of the number on the pack with the relevant carton, master case and pallet. This means that if packages are changed in transit – master cases are repacked with new cartons, for example – this change must be recorded, otherwise the aggregation no longer works. The nature and scope of this obligation would have to be set out clearly in the Protocol – for example it could be applied only to a specific consignment, and not apply where retailers are “unpacking” cartons and master cases at point of sale. Parties would be free to establish national procedures that would require further tracking and tracing obligations at the time of purchase.
19. The paper is at best a compromise option. A really good system would have a single secure technology common to all Parties and manufacturers, which in turn would be relatively simple and cheap for law enforcement and customs officers to use in the field (for example it would require only one type of scanner). The sooner Parties can be persuaded to move in this direction the better. This is why strong development language, establishing a technical committee reporting to future Meetings of the Parties, is essential for Article 7.
20. Any feasible tracking and tracing could be cheated by fraudsters, including manufacturers. No system is completely secure. Therefore there must be strong provisions in the offences and penalties section of the protocol for anyone who provides false information, deletes, alters or creates false markings, or otherwise tries to cheat the system.
21. There is nothing at all in the paper about costs. Is it consistent with the Secretariat paper on resources, and is that paper in turn realistic in relation to the Parties’ willingness to pay? FCA’s position is that the industry should bear the costs of the system wherever possible.

Conclusions

22. The Secretariat paper has been produced late in the negotiating process – it would have formed a very useful basis for discussions at INB 2 or 3 (a paper was actually requested by Parties for INB 3). It will be more difficult to use it to help reach a strong protocol at INB 4, because although helpful it has weaknesses and raises a lot of critical issues.
23. The FCA briefing paper on tracking and tracing would be broadly consistent with the Secretariat paper, provided that the issues in paragraphs 14 to 21 above could be resolved.