



POLICY BRIEFING

This document relates to item 5.2 of the provisional agenda and corresponds to document FCTC/MOP/1/6

First session of the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products,
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Tracking and Tracing (T&T)

Key Recommendations

- MOP should establish a Working Group on T&T implementation process with access to international experts that can advise the ITP Secretariat on the state and progress of the ITP implementation process.
- Adequate standards that individual national T&T regimes have to meet have to be developed. Measures need to be taken to ensure that small and low-capacity countries have access to adequate funding and expertise when purchasing a national T&T solution.
- ITP Parties, in particular small and LICs, could improve their negotiation position by pooling their capital. MOP will need to establish a Working Group that can develop measures that would improve their bargaining position and assist with the procurement and implementation process.
- The Secretariat should work towards making expert advisors available to ITP Parties that are developing sub-regional arrangements.
- MOP needs to put in place provisions to ensure that information with regards to the Protocol is handled securely. It is highly recommended to use existing structures of law enforcement or customs agencies instead of establishing a brand new system.

Why this is important

According to Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products (ITP) all Parties will need to establish a national tracking and tracing (T&T) system that could be linked into a global T&T regime. With the ITP into force now, the Parties have five years to establish a control system that can monitor and verify the authenticity of manufactured or imported tobacco products on its territory. It is up to the Parties to choose and purchase a system that best fits its specific regional needs. However, for some of the low-income countries (LIC) and countries with a small market for tobacco products that are Party to the ITP, this may represent as substantial financial hurdle and lack of expertise is a grave concern.



Background

Any national T&T system will need to record (or provide access through Party systems) key information to include according to Article 8 ITP:

- Date and location of manufacture;
- Production shift or time of manufacture;
- Manufacturing facility and product description;
- Machine used to manufacture the tobacco products;
- Name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;
- Intended market of retail sale; intended shipment route, the shipment date, shipment destination, point of departure and consignee;
- Any warehousing and shipping;
- Identity of any known subsequent purchaser.

This is a large and complex technical and administrative challenge. It is most unlikely that a single proprietary IT system will be appropriate for all Parties, and it is certain that their administrative and enforcement arrangements will differ. A single IT system is not in fact required by the ITP: therefore a key issue is what standards and specifications should be set for the global system, which Parties will then need to meet when they make decisions about appropriate systems at the national level. Article 8 of the Protocol provides the necessary framework for such standards and specifications to be set, but does not provide full details.

Need for intersessional work

Therefore intersessional work between MOP1 and MOP2 will be required, involving the Parties, to agree detailed standards and specifications and present recommendations to MOP2 in 2020 (coinciding with COP9). Currently, the essential minimum requirements for the global tracking and tracing system (applying to both decisions made at national level by all Parties and to international arrangements) are:

- A system of identifiers as required by the Protocol, that is unique, secure and unpredictable and not under the control or influence of the tobacco industry. A data carrier that includes unique identifiers and contains all the information required in Article 8.4.1 (summarised above)
- Recording of national information on secure servers, not operated by the tobacco industry and with access by the industry strictly limited and controlled, so that, for example, the industry cannot obtain significant information about investigations and enforcement activity
- Persons authorised by Parties, and independent from the tobacco industry, to have access to information about the international supply chain of tobacco products via a secure, usable and well-maintained global information-sharing focal point international data point.

These general provision need to be developed further and Parties need to be given clear guidance how to implement a national T&T system. Standards and supporting the T&T implementation process should be set up. A good basis for discussion are the technical documents¹ published as part of the Report of the Panel of Experts on the Protocol to Eliminate Illicit Trade in Tobacco Products. In order to ensure that this work advances in a timely manner during the intersessional period, a Working Group should further elaborate on the roadmap to implement a T&T system compliant with the Protocol. In addition, a costed plan and timeline for the rollout of a global T&T regime needs to be developed. Currently, it is unclear which technical suggestions of the Panel of Experts are supposed to be taken up by MOP, as the cost of the proposals of the Report by the Expert Panel are currently not referred to in the draft MOP budget. In addition, it needs to be highlighted that as of 1 October 2018, the technical documents of the Report of the Expert panel were available only in English. Given the scope and relevance of the proposals made by the Expert Panel, the ITP Secretariat urgently needs to provide these materials in the remaining UN languages.

It should also be noted that some Parties, e.g. the European Union, are already in the process of implementing their own traceability regimes. In the case of the EU this is required under the revised Tobacco Products Directive (2014/40/EU) but could simultaneously lead to first mover advantages when it comes to defining standards. The provisions of the Directive are close but not identical, to the ITP. The EU has already agreed detailed implementing regulations on the traceability system. Countries such as Brazil, Turkey and Kenya also have national solution in place.

Buying T&T systems from vendors

Parties in line to contract a T&T system should be aware that some vendors have been accused of engaging in corrupt practices to win contracts. In this respect, open bidding process should be the rule and Parties should have access to expert advice and share best practice with respect to the tendering process. Calls for tenders should not be specific to an extent that limits the potential selection of T&T systems, impeding required competition in the tender. Parties also need to pay particular attention to not select a solution originally developed by the tobacco industry as those are not fit for purpose.

The ITP intends to establish a global T&T regime for tobacco products but relies on its Parties to set up national solutions that would feed into a global system. The system will only be as good as its weakest link. There are significant capital costs associated with the installation of a T&T system; countries with budget constraints and limited access to financial markets may struggle to put up sufficient funds upfront.

It is crucial to ensure that all ITP countries that do not already have a T&T system in place, purchase adequate and fully functional systems. However, it could prove difficult for small or LICs to reach favourable terms vendors because of (a) their small market size and lack of economies of scale (b) a country's inability/unwillingness to pay upfront for its T&T system should vendors not extend credit

¹ http://www.who.int/fctc/protocol/mop/FCTC_MOP1_Panel_Experts_Technical_Documents_supplementary_EN.pdf

for the installation of all necessary technical equipment, labour etc. MOP will need to establish a Working Group that provides assistance to ITP countries. This purpose of such a group would be to provide expertise and improve the bargaining positions of governments unfamiliar with T&T regimes and assist with the procurement and implementation process.

As per Article 8.14 ITP Parties are, of course, encouraged to make the tobacco industry bear any costs related to the installation and operation of a T&T system (while barring them from operating or influencing the system in any way). However, practically this usually means charging the industry between \$0.01 - \$0.03 US for the security features (e.g. tax stamps) it is required to purchase for every package. Depending on the size of the market of country, the recuperation of the initial upfront costs could take a considerable amount of time.

Additionally, there are several sources of potential complication regarding the installation of a T&T system in a given country. Contracts for T&T systems between vendors and countries are usually long-term. Vendors are typically highly specialised and better informed than many Government Departments (particularly in small or low-income countries (LICs)) that happen to be in charge of purchasing T&T systems for their respective countries for, possibly, the first time.

A bad, uninformed decision could lock countries into inadequate agreements for decades. Moreover, significant capital costs are associated with the installation of a T&T system. Furthermore, some vendors (such as Inexto/Codentify) may be influenced or even controlled by the tobacco industry and push for systems that are in the interest of the industry but not fit for purpose yet offered at a very low price and therefore appealing.

Secure communication

Once the ITP is operational, it will involve the exchanges of sensitive information. A series of matters that could be reported on are identified in Article 8 and 20 §1 a-d. Some of the Information that is to be exchanged between Parties may be highly sensitive and a secure system will have to be developed to protect it from the threat of criminal interests and the tobacco industry itself trying to corrupt and undermine the ITP. Besides ensuring the confidentiality of the communication, procedures to authenticate any party requesting information and validating any information fed into the system need to be put in place. With a view of establishing a global information sharing point, this may require cutting edge encryption technology going beyond a protected website as suggested in §12 of document FCTC/MOP/1/7.²

² http://www.who.int/fctc/protocol/mop/FCTC_MOP_1_10_EN.pdf