New trends in illicit trade & the ways to combat it: the role of the Protocol to Eliminate Illicit Trade in Tobacco Products

Dr Katharina Kummer Peiry
Senior Legal Officer
WHO FCTC & Protocol Secretariat

Towards an EU-wide traceability of tobacco products
European Parliament, 2 March 2017
Extent of illicit tobacco trade

- Nearly 10% of the global cigarette trade is illicit;

- Significantly higher in low- and middle-income countries, up to 50% and more;
Some consequences of illicit tobacco trade

- Public health
  Increased accessibility, affordability and consumption of tobacco products

- Organized crime
  Profits from illicit trade fund other criminal activities

- Loss in government revenue
  If illicit trade were eliminated, governments worldwide could gain at least USD 30 billion/year in tax revenue.
The solution:

Protocol to Eliminate Illicit Trade in Tobacco Products
Protocol status

- New international treaty, legally linked to the WHO FCTC, based on Article 15 WHO FCTC
- Will enter into force after 40 WHO FCTC Parties have adhered
- Currently 25 Parties, including the EU and 6 of its MS (Austria, France, Latvia, Lithuania, Portugal and Spain)
- Several WHO FCTC are in process of ratification
1) Preventing illicit trade – controlling the supply chain (Part III, Articles 6-13)

2) Law enforcement – establishing unlawful conduct with dissuasive sanctions (Part IV, Articles 14-19)

3) International cooperation – cooperation on technical, administrative, law enforcement and legal matters (Part V, Articles 20-31)
Concerns for Parties

- Pending entry into force; reasons?
  - Ratification and implementation require active involvement of multiple government sectors (public health, trade, finance, customs, foreign affairs, law enforcement and justice) – coordination can be challenging

- Tobacco industry
  - Actively seeking ‘engagement’ with governments for ‘collaboration to fight illicit trade’ based on government-tobacco industry agreements.

- Tracking and tracing systems
  - How to implement pending MOP decisions?
  - Active lobbying by tobacco industry and technology solution providers

- Potential implementation cost to governments
"Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry." (Art. 8.12)

"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.." Article 8. (Art. 8.13)

"Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article. (Art. 8.14)
Assistance to Parties

- **Expert Panel on the Protocol**
  - 12 international experts: 2 experts/WHO region invited by the Secretariat
  - Broad range of experience/expertise, including customs, tax administration, enforcement
  - Assistance during ratification and implementation phase
  - Parties request assistance through the Secretariat
Financial support

- Parties provide financial support to the Secretariat

- Final stages of discussions with European Commission regarding a grant on illicit tobacco trade in Eastern Europe

- Objectives of the project: increase awareness of academic researchers and key decision-makers of the threats of illicit tobacco trade, and the potential of the Protocol and TPD to fight it; accelerate Protocol ratification by EU MS.
Thank you for your attention!

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THE FIGHT AGAINST THE ILLICIT TRADE OF TOBACCO PRODUCTS IN THE EU

Georg Roebling
Head of Unit Customs and Tobacco Anti-Fraud Policy
OLAF D4

European Parliament, 2 March 2017
COMMUNICATION AND PROGRESS REPORT ON THE ILLICIT TRADE OF TOBACCO PRODUCTS

• 2013 Communication “Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy"

• Action Plan with 50 items, implemented in close cooperation with Member States.

• Progress Report underway.
The EU ratified the FCTC Protocol on 24 June 2016.

Commissioner Andriukaitis, Dr Vera Luiza da Costa e Silva (Head, FCTC Secretariat)
Former Vice-President Georgieva, Miroslav Lajčák (SK Minister of Foreign Affairs)
STATUS OF THE FCTC PROTOCOL

- 25 Parties: Austria, Burkina Faso, Comoros, Congo, Ivory Coast, Ecuador, European Union, France, Gabon, Gambia, Iraq, Latvia, Lithuania, Mali, Mongolia, Nicaragua, Panama, Portugal, Saudi Arabia, Senegal, Spain, Sri Lanka, Swaziland, Turkmenistan and Uruguay.

- The Protocol will enter into force on the 90th day following the 40th ratification.
PROMOTION OF THE PROTOCOL

• The Commission monitors progress with ratification in Member States.
• The Commission actively promotes the Protocol with 3rd countries, in particular the source and transit countries: More than 30 formal interventions in bilateral Committees and Action Plans only in 2016.
• The Commission supports the work of the FCTC Secretariat.
Special Eurobarometer 443

Public perception of illicit tobacco trade

Publication
July 2016
Fieldwork
November-December 2015
<table>
<thead>
<tr>
<th>Year</th>
<th>JCO Name</th>
<th>Lead by</th>
<th>Cigarettes seized</th>
</tr>
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<tbody>
<tr>
<td>2013</td>
<td>Romoluk</td>
<td>RO, OLAF</td>
<td>23 million</td>
</tr>
<tr>
<td>2013</td>
<td>Warehouse</td>
<td>LT, OLAF</td>
<td>45 million</td>
</tr>
<tr>
<td>2014</td>
<td>Replica</td>
<td>OLAF</td>
<td>130 million</td>
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<tr>
<td>2015</td>
<td>Baltica</td>
<td>PL, OLAF</td>
<td>13 million</td>
</tr>
<tr>
<td>2015</td>
<td>Romoluk II</td>
<td>RO, OLAF</td>
<td>3.74 million</td>
</tr>
<tr>
<td>2016</td>
<td>Magnum</td>
<td>EE, OLAF</td>
<td>11 million</td>
</tr>
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</table>
Cigarettes seized with OLAF support 2011-2015 (in million units)

<table>
<thead>
<tr>
<th>Year</th>
<th>Units (in million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>158</td>
</tr>
<tr>
<td>2012</td>
<td>156</td>
</tr>
<tr>
<td>2013</td>
<td>349</td>
</tr>
<tr>
<td>2014</td>
<td>300</td>
</tr>
<tr>
<td>2015</td>
<td>618</td>
</tr>
</tbody>
</table>
Total cigarettes seized (2005-2015)

Towards an EU system for tracking &
tracing tobacco products:
implementing articles 15 & 16 of the
Tobacco Products Directive (TPD)

DG SANTE
- Dr. Andrzej Rys -
(Director of Health Systems, Medical Products and Innovation)

Brussels, 02 March 2017
• Tobacco is the largest avoidable health threat in the EU
  • Cause of nearly 700,000 premature deaths per year;
  • Half of all smokers die an average of 14 years younger;
  • Tobacco's addictive and harmful characteristics clearly set it apart from other commodities on the market.

• Illicit trade of tobacco products poses severe risks to public health, because they:
  • often do not comply with product regulation and escape tobacco control policy at large; and
  • generate considerable social and economic costs (e.g. higher chance of attracting vulnerable groups, increased burden on healthcare systems, significant loss in tax revenues).

• Illicit trade is a global problem
• Current framework does not enable authorities to effectively
  • track all product movements, and
  • trace a product's diversion into illicit trade.
Towards a system for **traceability** and **security features**

- Establishment of a system of tracking and tracing for tobacco products (Art. 15 TPD);
  - security features for tobacco products (Art. 16 TPD).
- Commission is empowered to adopt secondary legislation to define technical specifications;
- Additional international obligation under WHO *Framework Convention on Tobacco Control (FCTC)* and its *Protocol*;
- Implementation deadline: 20.05.2019 (cigarettes and RYO), 20.05.2024 (other products);
- Procedure follows EU Better Regulation Guidelines.
Past activities:
• Feasibility Study (2015);
• Inception Impact Assessment (2016);
• Consultation of Member States, stakeholders and experts.

On-going and future activities:
• Engagement with external contractor (on-going);
• Continuous discussions with Member States, stakeholders and experts;
• Impact Assessment;
• Adoption of implementing and delegated acts.
Thank you for your attention.
Towards an EU-wide traceability of tobacco products: ensuring an independent and efficient system to fight illicit trade and protect public health

Tracking & tracing:
Key learnings from other industries and international best practices
Can existing T&T technologies be easily transferred to tobacco products?

Brussels, 2nd March 2017

Zbigniew SAGAN
CTO
Expert in Digital & Graphic Authentication
Banknotes, Security Documents and Brand Protection

- Founded in 2003
- HQ in Rueil Malmaison (Paris area)
- 4 subsidiaries, 170 certified integrators worldwide
- ATT is a subsidiary of French group LAMY
- 1200 employees, 970M€ turnover

Subsidiaries
Lausanne (CH)
Shanghai (CN)
Hong Kong (HK)
Bordeaux (FR)

Institutional partners

- Banque de France
- GS1
- World Customs Organization
- Afnor Normalisation
- Moveo
- ISO
- CNRS
- ANRT
- Banque Centrale Européenne
- Eurosysème
ADVANCED TRACK AND TRACE®
Worldwide customers

RP of China
more than 300 Bordeaux wineries
Variety of business cases
A tailor-made solution for each domain

SECURITY DOCUMENTS
(Tax Stamps)
- Authentication
- Production control

BANKNOTES
- Authentication

ID DOCUMENTS
- Biometric Tokens
- Data Protection

WINES & SPIRITS
- Authentication
- Consumer information
- Production control
- Diversion monitoring

COSMETICS
- Authentication
- Production control
- Diversion monitoring

PHARMACEUTICALS
- Production control
- Authentication
- Supply chain control

FOOD INDUSTRY
- Packaging authentication
- Full traceability
- Packaging tamper evidence
Working Group 4
Authenticity, Integrity and Trust for Products and Documents

Ongoing related projects:

ISO 19564 Security and resilience
- Product fraud countermeasures and control - General principles

ISO 19998 Security and resilience
- Requirements for the content, security and issuance of excise tax stamps

ISO 20229 Security and resilience
- Guideline for establishing interoperability among object identification systems to deter counterfeiting and illicit trade
Use Case: Tamper-evident Label - Winery
Based on two ATT’s products: VaryIDs + IDPackLine
Learning Curve

1) External UID generation efficient and easier to implement
   (Manufacturer: reading only + production data upload)

2) For each industrial setup, no available off-the-shelf
technical nor IT interface

3) Data aggregation reliable if under manufacturer responsibility

4) Supply chain T&T
   - strong constraints on actors to reach data consistency
   - many actors concerned – complex operational implementation

Interoperability (TPD requirement) introduces a new cooperation challenge
Thank you for your attention!

z.sagan@att-fr.com

www.att-fr.com
Towards an EU-wide traceability of tobacco products: ensuring an independent and efficient system to fight illicit trade and protect public health
Conference hosted by MEP Gilles PARGNEAUX,
Brussels, 02.03.2017

Leszek Bartłomiejczyk

International Best Practices and Recommendations in Tracking and Tracing of Tobacco Products

About Presenter: Consultant and expert in ICT and tracking and tracing of excise goods,
Seasoned executive at global ICT and government security solutions companies: SICPA, SAP, IBM, UNISYS. d112286@sgh.waw.pl leszek@bartlomiejczyk.pl
• **Track and trace systems** with varying degrees of sophistication have been implemented by several governments around the world, including Turkey, Brazil, Kenya, Malaysia, Albania, Canada, Morocco, Georgia and the Philippines.

• In the United States, limited track-and-trace systems have been implemented in California, Massachusetts, and Michigan.

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**Examples of reference solutions and best practices used in analysis.**

- **Comprehensive solution** including:
  - Licensing of all elements of the supply-chain from the manufacturer to the retailer;
  - Product Markings,
  - Enforcement

**Turkey 2007**
- **First comprehensive tobacco T&T implementation:**
  - Tobacco tax revenues rose by 31.5% within the first year of implementing the system while overall cigarette consumption in Turkey has fallen.
  - Including *end consumers* to verify that a product is legitimate using a smartphone app, Supported by public education programs.
  - Audit/controlling handheld devices allowing authentication and capture tracing information
  - Multilayer security

**Brazil 2008**
- **Successful combination of legislation and technology** resulting in reducing tobacco consumption and increasing tax revenue.
  - Brazil mandated licensing of its manufacturers;
  - Non-compliance with the law or failure to pay taxes could lead to withdrawal of a license and closure of a factory.
  - Automatic cigarette production counters at each production line with possible video surveillance.

**Kenya 2013**
- **Integration of T&T with export control system** (electronic cargo monitoring system):
  - Export vehicles are sealed
  - Bilateral information sharing:
    - RFID electronic seals to secure the container or truck doors,
    - GPS/GPRS technologies
  - Any deviation in excess of 50 meters on either side of the route or tampering with the seal generates an alert.
  - Has reduced the size of the illicit cigarette market and substantially increased tax revenue
Track and trace systems to secure and control supply chain

Tracking is the concept of marking products with a unique identifier so they can be monitored from the point of production up to the point of sale to the customer, including each step of the process, creating a time and location history for every step.

Tracing is the ability to identify the past or current location of an item. Where an item is intercepted, tracing allows to verify the products route back to its origin, and allows to retrieve a specific product’s time and location history.

Components of traceability system:
1. Item Identification, creating unique identifier for each product item. The unique identifier has to be inextricably linked to product itself. Features of identifier shall assure identification of the product item along supply chain.
2. Data Capture and Storage,

Immanent part of track and trace is security. Security features are needed to ensure that:
1. The right product is monitored
2. its identifier remains unchanged and non-manipulated during the movement of a product along whole supply chain.
3. To recognize if product is genuine

BEST PRACTICES & RECOMMENDATIONS:
Real time (registration and transmitting and accessing information on all events immediately without delay), otherwise T&T can be counterproductive and used to allow crimes. Interoperability and use of Open standards/publicly accepted in Logistics like GS1, EPCIS and ISO.`
Range of T&T - supply chain covering

The Protocol to Eliminate Illicit Trade in Tobacco Products (FCTC ITP)

In view of the Protocol the considered term “supply chain” covers manufacture and import or export of tobacco products and also manufacturing equipment.

European Tobacco Products Directive (EU TPD)

According to Art.15.2.(i), T&T covers supply chain “from manufacturing to the first retail outlet, including all warehouses”.

RECOMMENDATION:
For its effectiveness T&T shall cover full supply chain „end to end“ from tobacco leaves thru manufacturers to final retail points.
Comprehensive, flexible and „fitting all” solution of effective Track & Trace System

<table>
<thead>
<tr>
<th>Small producer</th>
<th>Big producers</th>
</tr>
</thead>
<tbody>
<tr>
<td>National interest</td>
<td>International cooperation</td>
</tr>
<tr>
<td>Ministry of Health (public health)</td>
<td>Ministry of Finance (tax and trade dev.)</td>
</tr>
<tr>
<td>Control and Enforcement</td>
<td>Ease of trade</td>
</tr>
<tr>
<td>Producers inside EU</td>
<td>Producers outside EU</td>
</tr>
<tr>
<td>Production for local market</td>
<td>Production for export</td>
</tr>
<tr>
<td>Costs</td>
<td>Effects</td>
</tr>
<tr>
<td>Current technology</td>
<td>Progress</td>
</tr>
<tr>
<td>Government supervision</td>
<td>Participation of general public</td>
</tr>
</tbody>
</table>

**BEST PRACTICES AND RECOMMENDATIONS:**

- **Simplified online solution for small producers** but with strong online control (incl. reconciliation of supplies).
- **Online solution to monitor production and marking for non-EU producers exporting to EU**.
- **Coordination and cooperation with Ministry of Finance/Customs and Tax Agencies for controlled applying of secure tax stamps on products produced abroad**.
- **Make Ministry of Finance responsible** for implementation and operation of T&T system.
- **Flexible infrastructure enabling use of new and updated technology**.
- **Periodic review of approved security features, carrier and communication standards and interoperability**.
- **Strong legislation, enforcement and wide general public participation** are key for effective implementation of T&T.
Security features

BEST PRACTICES:

Multilayer security:

- **Overt** (holograms, color shifting) for general public, customers;
- **Semi-covert** (UV, fluorescent, polarized) for stakeholders in the supply chain (producers, wholesalers, distributors);
- **Covert** with **secure unique identifier** (security ink) exclusively for tax authority during random field verification;
- **Forensic** (taggants) to support prosecution;
- **Tamper-proof** (micro-cuts, frangible substrate) to protect against manipulation.

Secure unique identifier (encrypted and covert) placed on all tobacco packs and outside packaging:

- On **tax stamps** for domestic market;
- **Directly on pack** for export (alongside with visible identifier for logistics purposes).

BEST PRACTICES and RECOMMENDATIONS:

- Trustworthy and independent real time control on all production lines with real time data transmission to Government.
- Not intrusive controlling solution. SLA with financial responsibility of T&T solution provider for exceeding the agreed level of interfering with production.
- Code activation on production line.
- Secure and controlled delivery of tax stamps.
- Track and trace and/or other control of machinery and key supplies: tobacco leaves but also filters etc.
BEST PRACTICES and RECOMMENDATIONS:

• Trustworthy and independent **real time control of aggregation** on **all production lines** with data transmission to Government.
• Linking **SKU** and **code**.
• Linking **label** and **logistic codes**.
• Use of **secure ID** on pack and **all outside packaging**.
• Use of **RFID** on external packages where justified by cost.
• Controlled **disaggregation**.
Controlling, auditing and reporting

**BEST PRACTICES and RECOMMENDATIONS:**

- Producers/Importers are responsible for controlling own supply chain, distributors/retailers for checking all products.
- **One push-button handheld device** for Inspectors for authentication of fiscal marks, verification of tracing info online and offline. Upload information for reporting of audit results, with anti-corruption feature. Business Intelligence for control typing.
- Wide participation of general public (customers) in controlling by smartphone apps.
Integration with Customs and Excise Systems and support of carrousel fraud identification

Track & Trace and Customs and Excise Systems integration allows for export control and can help fight carousel fraud

- Customs and Excise Systems (like EMCS in EU) are documentary (practically declarative) processes,
- T&T offer the means for physical control of the products in circulation and in that way can enhance excise systems capabilities.

RECOMMENDATION: Integration of Track & Trace with EMCS (Excise Movement and Controlling System) to reduce VAT carrousel frauds by confirmation of physical goods movements.
Integration with Online Invoicing and Cash Register Reporting Systems

Track & Trace integrated with National Invoicing System and Online Cash Registers Reporting System strengthens security and integrity of whole Licit Supply Chain, allowing for:

- **Real time confirmation** of all real transactions.
- **Verification of invoices**: Strengthening of declarative invoicing system by strong verification and confirmation mechanism of real goods movements.
- **Detection and elimination** of illicit products from legal supply chain.
- **Full visibility** of legal trade.
- **Enhanced control** of production and trade from manufacturer to consumer not only on volume level but on product unit level.
- **Collection of appropriate taxes**.

Recommendation:
For its effectiveness T&T shall be integrated with Online Invoicing Systems and retailers’ Cash Registers Systems.
CONCLUSIONS AND RECOMMENDATIONS

Control of the whole legal supply chain, from tobacco leaves thru manufacture to final point of sales, including retails is crucial for combatting illicit trade. T&T shall cover end to end supply chain.

Wide involvement of Customers in controlling tobacco products thru visible security features and by smartphone application to read semi covert security feature and accessing info about product itself.

Multilayer security: overt, semi covert, covert, forensic and tamper-proof security features. Secure unique identifier (encrypted and covert) on all tobacco packs and outside packaging.

Automatic cigarette production counters at each production line with possible video surveillance. Code activation on production line. Real time control on all production lines with real time data transmission to Government.

Real time (registration and transmitting information to government on all events immediately without delay). Interoperability and use of open standards like GS1 EPSIC and ISO

Comprehensive solution including: Licensing of all elements of the supply-chain from the manufacturer to the retailer, effective enforcement and prosecution, public campaign, Tracking/controlling also machinery, tax stamps and supply materials.

Integration of Track & Trace with National Invoicing System and Online Cash Registers Reporting System to strengthens security and integrity of whole Licit Supply Chain

Track & Trace and Customs and Excise Systems integration to enable export control and help fighting carousel fraud. T&T can confirm physical export and import of goods for enhancing declarative EMCS
Bibliography


• Joosens, L. (2011), PPACTE Deliverable 5.2: *Illicit tobacco trade in Europe: issues and solutions (With a special focus on the tracking and tracing systems)*, European Commission Seventh Framework Programme Grant Agreement HEALTH-F2-2009-223323


Towards an EU-wide traceability of tobacco products: ensuring an independent and efficient system to fight illicit trade and protect public health
Conference hosted by MEP Gilles PARGNEAUX, Brussels, 02.03.2017

THANK YOU!

International Best Practices and Recommendations in Tracking and Tracing of Tobacco Products

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Many thanks to all of you for participating in this event. First of all to Gilles Pargneaux, but also to all speakers and collaborators, and of course, to all who have made this event possible.

Tobacco is the leading cause of preventable disease and mortality in Europe, causing 700,000 deaths every year. This is without factoring in all the suffering and disability, as well as the enormous financial burden on health systems across the European Union.

The tobacco industry has the sole responsibility for all this and tobacco is a product like no other. It is highly addictive, it is highly toxic, it is highly damaging. Therefore, Member States have an obligation and a duty to protect their citizens from this substance and its harmful effects.

We know that Governments have put in place a system of taxes in order to make tobacco less accessible and less affordable, especially for children and young people – the potential smokers of tomorrow. Taxes are also a great source of revenue for Member States in order to address the health, social and environmental burden of tobacco in our societies.

But this can only be beneficial for all, governments and citizens, if illicit trade is tackled effectively. And one solution would be to put an effective traceability system, which is under the Tobacco Product Directive and therefore mandatory.

We know that behind the contraband are often organized criminal groups. However, on many occasions, as it has been recorded in numerous trials, the tobacco industry itself was GUILTY of this criminal activity. The tobacco industry, for which it was so easy, so convenient and of course so profitable to place their own lethal products on the black market.

This is the exact reason that WE - the EU Commission, MEPs, National Governments, NGOs, the general public – SHOULD NOT CONSENT to a traceability system, behind which the tobacco industry can have control, directly or indirectly.

World leading organisations such as WHO have already expressed their concerned on this issue and strongly recommended to keep the industry out. They are part of the problem. In fact THEY ARE THE PROBLEM. So please do not be fooled. The tobacco industry is NOT PART of the solution - of ANY SOLUTION.

Therefore ladies and gentlemen, in the forthcoming months, in the many discussions that are about to happen, on behalf of the tobacco control community and everyone who works with us, I would use WHO Director General Margaret Chan’s words and urge you to see the wolf in sheep’s clothing and keep this industry, its dirty tricks and dirty laundry, out of the way as it is not fit to advise us on any part of tobacco control or public health!

Ladies and gentlemen, please do not allow foxes to be appointed and look after our chickens!