PROTOCOL
TO ELIMINATE
ILLICIT TRADE IN
TOBACCO PRODUCTS

MEETING OF THE PARTIES TO THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

FCTC/MOP/3/6
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Provisional agenda item 5.2

Road map, timelines and steps to conduct evidence-based research (Articles 6.5 and 13.2)

Report by the Convention Secretariat

Purpose of the document

In accordance with decision FCTC/MOP2(2), the present report is submitted to the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products as one of the items that were deferred from the Second session of the MOP. The report contains the road map setting out the timelines and steps to conduct evidence-based research foreseen by Article 6.5 and Article 13.2, prepared by the Convention Secretariat pursuant to decision FCTC/MOP1(7).

Action by the Meeting of the Parties

The MOP is invited to consider the road map to conduct evidence-based research in accordance with Articles 6.5 and 13.2 of the Protocol to Eliminate Illicit Trade in Tobacco Products contained in Annex 1 and to adopt the draft decision contained in Annex 2 of the present report.

Contribute to the Sustainable Development Goals (SDGs): All SDGs; in particular SDG 3 and Target 3.a, as well as SDG 16.

Link to Workplan and Budget item: 1.3.1.

Additional financial implications if not included in the Workplan and Budget: None.

Related document(s): None.

BACKGROUND

1. At its first session, the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products considered report FCTC/MOP/1/11 prepared by the Convention Secretariat and discussed key inputs essential to the manufacture of tobacco products ("key inputs") and the extent of illicit trade in tobacco products related to duty free sales ("duty free sales"), considering the provisions of Article 6.5 and Article 13.2 of the Protocol.

2. The MOP adopted decision FCTC/MOP1(7) emphasizing that the Protocol requires that the MOP, five years after entry into force of the Protocol, ensure that evidence-based research is conducted according to Article 6.5 and Article 13.2 of the Protocol. In the decision, the MOP requested the Convention Secretariat: (a) to identify research needs and gaps relevant to Articles 6.5 and 13.2 of the Protocol; and (b) to present, at the Second session of the MOP, a detailed road map setting out the timelines and steps to conduct evidence-based research foreseen by Article 6.5 and Article 13.2, fully respecting Article 4.2 of the Protocol and Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC).

3. To implement decision FCTC/MOP1(7), the Convention Secretariat has conducted a preliminary assessment of existing literature on the subjects of key inputs and duty free sales, and it has interviewed research experts to assess the nature of research needs and gaps and to gather inputs for the development of a road map to conduct research.

RESEARCH NEEDS AND GAPS

4. Existing research on the subjects of key inputs and duty free sales appears insufficient to support an informed discussion on the implementation of Articles 6.5 and 13.2. Data availability and methodological aspects in the estimation of the size and magnitude of illicit trade in tobacco products have been identified as key challenges towards conducting research on the subjects of key inputs and duty free sales.

Key inputs essential to the manufacture of tobacco products

5. The tobacco supply chain has been analysed in detail in academic literature, including its major components: tobacco farming; tobacco curing; primary processing; and secondary processing of tobacco products. A variety of inputs that are used across the supply chain of tobacco products has been identified. Cigarette papers, filters and manufacturing equipment, in particular, are used in the secondary processing stage to manufacture final tobacco products such as cigarettes.

6. However, existing academic literature does not provide a sufficient understanding of the tobacco supply chain to determine whether any "key inputs" exist that would fulfil the criteria set by Article 6.5, namely to be "essential to the manufacture of tobacco products", "identifiable" and that "can be subject to an effective control mechanism".

Duty free sales and illicit trade in tobacco products

7. Notwithstanding the existence of numerous studies estimating the size of the illicit tobacco market at the national, regional and global levels, data on illicit tobacco trade are generally scarce. The relationship between duty free sales and illicit trade in tobacco products has been addressed only incidentally and mostly in the context of studies aimed at estimating illicit tobacco trade at the regional

level. No comprehensive assessment of the extent of illicit trade in tobacco products related to global duty free sales could be found at the time the research was conducted.

8. Moreover, considerable differences exist between methodological approaches used to estimate illicit trade in tobacco products in the context of duty free sales. The absence of standardized indicators to estimate the size of the illicit market for tobacco products, different approaches in data collection and analysis, the restricted geographical focus of most academic studies and different regulatory environments for duty free tobacco products constitute substantial research obstacles.

ROAD MAP FOR EVIDENCE-BASED RESEARCH

9. A proposed road map to conduct evidence-based research is presented in Annex 1 of the present document. The road map has been developed with consideration of the time-bound nature of the provisions of Article 6.5 and Article 13.2, which require research activities to be completed five years following the entry into force of the Protocol.

10. To address the research needs and gaps described in the paragraphs above, the road map comprises three components: (a) a preliminary step aimed at defining the scope of the research to be conducted; (b) a core research activity based on national case studies; and (c) an optional step to be developed on the basis of the findings of the main research component at step (b).

ACTION BY THE MEETING OF THE PARTIES

11. The MOP is invited to consider the road map to conduct evidence-based research in accordance with Articles 6.5 and 13.2 of the Protocol to Eliminate Illicit Trade in Tobacco Products contained in Annex 1 and to adopt the draft decision contained in Annex 2 of the present report.

ANNEX 1

ROAD MAP TO CONDUCT EVIDENCE-BASED RESEARCH IN ACCORDANCE WITH ARTICLES 6.5 AND 13.2 OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

ACTIVITIES AND TIMELINE (2024–2025)

General considerations

(a) Key inputs

1. Article 6.5 of the Protocol requires that, five years following the entry into force of the Protocol, the Meeting of the Parties (MOP) shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products are identifiable and can be subject to an effective control mechanism.

(b) Duty free sales

2. Article 13.2 of the Protocol requires that no later than five years following the entry into force of the Protocol, the MOP shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty free sales of such products.

(c) Time frame

3. In accordance with the time-bound provisions of Article 6.5 and Article 13.2, the MOP adopted decision FCTC/MOP1(7). The item is being considered at the Third session of the MOP, in accordance with decision FCTC/MOP2(2).

Step 1 – Defining the scope of research: Nine months (January–September 2024)

(a) Key inputs

4. Manufacturing tobacco products for consumer use comprises a series of steps that can be divided into four main categories: tobacco farming and harvesting; tobacco curing; primary processing; and secondary processing. At each step of the manufacturing process, a variety of inputs is used to manipulate the product and prepare it for the next stage of processing.

5. No comprehensive studies have been found to determine whether any of the inputs used in the tobacco manufacturing process constitute “key inputs” in accordance with the criteria set by the text of Article 6.5 of the Protocol, namely to be “essential to the manufacture of tobacco products”, “identifiable” and that “can be subject to an effective control mechanism”.

6. In general terms, three subcategories of inputs have been identified: (a) inputs used solely in the tobacco manufacturing process, including, for example, cigarette paper and filters; (b) dual-use inputs, including, for example, chemical, cellulose and acetate; and (c) tobacco product manufacturing equipment and technology.

7. In consideration of the multiple steps and inputs used in the tobacco product manufacturing process, there is a need to determine which steps and inputs would require further research. Depending on the typology of the input, different control measures can be implemented. To identify the inputs, reference will be made to the respective codes under the Harmonized System.

(b) Duty free sales

8. To conduct an assessment of the extent of illicit trade in tobacco products related to duty free sales, the following aspects need to be defined:

(i) what constitutes illicit trade in the context of duty free sales in relevant jurisdictions;

(ii) what legal and regulatory frameworks are applicable to duty free sales of tobacco products in relevant jurisdictions; and

(iii) which common unit of reference (dollars, millions of units, share of total trade, share of duty free trade, etc.) would be used when estimating the scale of illicit trade in tobacco products for the purpose of facilitating comparisons across jurisdictions.

(c) Preliminary research aspects

9. Parties may wish to consider requesting the Convention Secretariat to partner with relevant international organizations to address the preliminary research aspects regarding the subjects of key inputs and duty free sales.

10. On the basis of the outcome of Step 1, the Convention Secretariat may seek guidance from the MOP Bureau towards implementing the core research activities as described in Step 2.

Step 2 – Core research activities: 16 months (January 2024–April 2025)

11. A practical, case-study-based approach is proposed. The use of case studies will facilitate intelligence gathering in the jurisdictions most affected by illicit trade in tobacco products in its linkages to key inputs and duty free sales. The Convention Secretariat will ensure coordination among consultants who would be engaged to conduct the studies and the focal points of Parties.

12. A tentative timeline is proposed for the research activities. These timelines may be revised, as necessary, under the guidance of MOP Bureau.

(a) Key inputs

13. Parties will be invited to consult at the regional level to identify one or two Parties in each World Health Organization (WHO) region interested in participating in the case studies. (January–March 2024)

14. Organizational and logistical arrangements will be made to conduct case studies in the jurisdiction of Parties that express interest. Consultants will be engaged to carry out interviews with customs and law enforcement officials and obtain expert opinions to assess the extent to which trade in key inputs contribute to fuelling illicit tobacco in the respective jurisdictions. (April–June 2024)

15. A questionnaire will be developed to facilitate the work of researchers in the interview process. The questionnaire will focus on gathering evidence on cross-border flows of illicit inputs (for example,

by reference to seizures), mapping the market for inputs (including understanding the actors involved, either local commercial entities or importers) and assessing existing control measures implemented locally to control specific inputs.

16. A maximum of 12 case studies to be completed. (July–December 2024)

(b) Duty free sales

17. Parties will be invited to consult at the regional level to identify one or two Parties in each WHO region interested in participating in the case studies. (January–March 2024)

18. Organizational and logistical arrangements will be made to conduct case studies in the jurisdiction of Parties that expressed interest. Consultants will be engaged to conduct on-site activities to gather quantitative data, if available, and qualitative information, including via face-to-face interviews with government representatives and local law enforcement officials, with particular attention to the reported source of duty free tobacco products. (April–June 2024)

19. Data acquired in the context of the case studies will be compared against available information on duty free sales, for example, by reference to available air traffic data or cross-border sales, and existing estimates on the size of the global market for illicit tobacco products in order to produce a first estimate of the relationship between duty free sales and illicit tobacco trade globally, using the standardized unit of reference as adopted in Step 1.

20. A maximum 12 case studies to be completed. (July–December 2024)

(c) Final reporting

21. Consultants will submit to the Convention Secretariat a final report detailing activities conducted and findings from the case studies on the subjects of key inputs and duty free sales. (January–March 2025)

22. The report will be finalized and made available to Parties via the Convention Secretariat's website, six months in advance of the Fourth session of the MOP (MOP4). (April–May 2025)

Step 3 – Global study: 24 months (following MOP4)

23. In view of the challenges in estimating the size of the illicit tobacco market globally, Parties may wish to consider using data, methodologies and preliminary findings acquired in the context of the core research activities to initiate the development of more comprehensive studies on illicit trade in tobacco products.

24. Parties may further wish to consider requesting the Convention Secretariat to work in partnership with relevant international partners and selected experts to define a common methodology to estimate illicit trade in tobacco products regionally and at the domestic level.

25. The methodology would build upon existing approaches to estimate illicit trade in tobacco products (such as discarded packs analysis, trade data analysis, longitudinal and cross-sectional surveys, and analysis of illicit tobacco seizures) and incorporate a standardized set of indicators and data collection practices. Consideration would be given to existing methodologies developed by Parties

ANNEX 2

DRAFT DECISION: ROAD MAP TO CONDUCT EVIDENCE-BASED RESEARCH IN ACCORDANCE WITH ARTICLES 6.5 AND 13.2 OF THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

The Meeting of the Parties (MOP),

Recognizing that the Protocol to Eliminate Illicit Trade in Tobacco Products requires that the MOP, five years after entry into force of the Protocol, ensures that evidence-based research is conducted according to Article 6.5 on key inputs essential to the manufacture of tobacco products that can be subject to an effective control mechanism, and according to Article 13.2 on the extent of illicit trade in tobacco products related to duty free sales of such products;

Recalling decision FCTC/MOP1(7), in which the MOP requested the Convention Secretariat to identify research needs and gaps relevant to Articles 6.5 and 13.2 of the Protocol, and to present to the MOP a detailed road map setting out the timelines and steps to conduct the evidence-based research foreseen by Articles 6.5 and 13.2 of the Protocol, fully respecting Article 4.2 of the Protocol and Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Considering the report contained in document FCTC/MOP/3/6 prepared by the Convention Secretariat,

1. ADOPTS the road map to conduct evidence-based research in accordance with Articles 6.5 and 13.2 of the Protocol to Eliminate Illicit Trade in Tobacco Products, contained in Annex 1 of document FCTC/MOP/3/6;

2. REQUESTS the Convention Secretariat:

(a) to actively seek and receive Extra-budgetary Contributions from Parties and other international donors, including competent international and regional intergovernmental organizations and financial and development institutions, for the implementation of the road map, taking into consideration the provisions of Article 5.3 of the WHO FCTC and Article 4.2 of the Protocol;

(b) to report on the outcomes on implementation of the road map to the Fourth session of the Meeting of the Parties.

(XXX plenary meeting, XX November 2023)

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