

# FCTC Protocol Fighting Illicit Trade: Tracking and Tracing



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# Executive Summary: Tracking & Tracing

**Illicit trade is a serious and growing threat to society.** Through smuggling, counterfeit and tax evasion, governments are losing billions in lost tax revenues, legitimate businesses are being undermined, and consumers are being exposed to poorly made and unregulated products. Today, tobacco is one of the most common illegally traded goods in the world, with as much as 10 percent of global cigarette consumption sourced from the black market, according to the WHO<sup>1</sup>.

Philip Morris International (PMI) is leading a transformation in the tobacco industry to create a smoke-free future, and ultimately replace cigarettes with smoke-free products to the benefit of adults who would otherwise continue to smoke, society, the company and its shareholders. Illicit trade makes cheap, unregulated tobacco products easily accessible, undermining efforts to reduce smoking prevalence and protect youth from smoking. Securing our supply chain and fighting illicit trade is an integral part of our efforts to drive operational excellence and build a sustainable future.

The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products (the Protocol) is a milestone in tackling the global issue of illegal tobacco. We have long been supporting the objective of the Protocol and we have welcomed its entry into force.

One of the key provisions in the Protocol is tracking and tracing (T&T), which is the ability

to record the forward movement of products and trace backwards their history along the supply chain.<sup>2</sup> Tobacco manufacturers have to mark and track tobacco products, as a means to secure the supply chain. PMI has long supported the implementation of a global T&T regime, which can have a material impact on the illicit trade in tobacco. With a global T&T regime, all manufacturers will be held to the same standards in securing their supply chains. We believe that an effective, global T&T system has to be independent, interoperable and based on internationally recognised open standards. Digital T&T systems allow interoperability, facilitate innovation and the optimization of enforcement activities. We support independent, cost-effective solutions that do not disrupt the manufacturing and distribution environment, allowing manufacturers to perform daily operations and implement such solutions in their factories and across the supply chain.

In this paper we share our point of view of what we believe, and what we have found to be effective in implementing the global T&T of our products.

1. WHO: <https://www.who.int/news-room/fact-sheets/detail/tobacco>

2. GS1, *Business Process and System Requirements for Full Supply Chain Traceability*, Issue 1.3.0, November 2012: "Traceability is the ability to track forward the movement of products through specified stage(s) of the extended supply chain and trace backward the history or location of the product which is under consideration" (accessed April 2020).

# About the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products

T&T is one of the provisions in the Protocol. While the Protocol is an international treaty on its own right, it builds upon and complements Article 15 of the FCTC, which recognizes that the elimination of all forms of illicit trade in tobacco products is an essential component of tobacco control. Article 15 is part of the supply reduction measures of the FCTC. As the main global initiative to tackle illicit trade in tobacco products, the WHO describes the Protocol

as a global solution to a global problem.<sup>3</sup> Illicit trade damages society, resulting in lost tax revenues, increased criminality, and enhanced access to tobacco products by youth. PMI has long been supporting the measures proposed by the Protocol and has welcomed its entry into force. We are very encouraged by the prospect of joining forces with new international stakeholders, and other legitimate tobacco manufacturers, to fight illicit tobacco trade together.



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3. See [https://www.who.int/fctc/protocol/illicit\\_trade/protocol-publication/en/](https://www.who.int/fctc/protocol/illicit_trade/protocol-publication/en/)

# *Tracking and Tracing: Introduction*

T&T is the ability to record the forward movement of products and trace backwards their history along the supply chain. Effective T&T processes are key in preserving the integrity of the supply chain.

When implemented and enforced worldwide, T&T regimes help reduce contraband, as well as the growing problem of 'illicit whites' or 'cheap whites', which are tobacco products that are generally legally produced in a market and smuggled into another market where they have limited or no legal distribution.

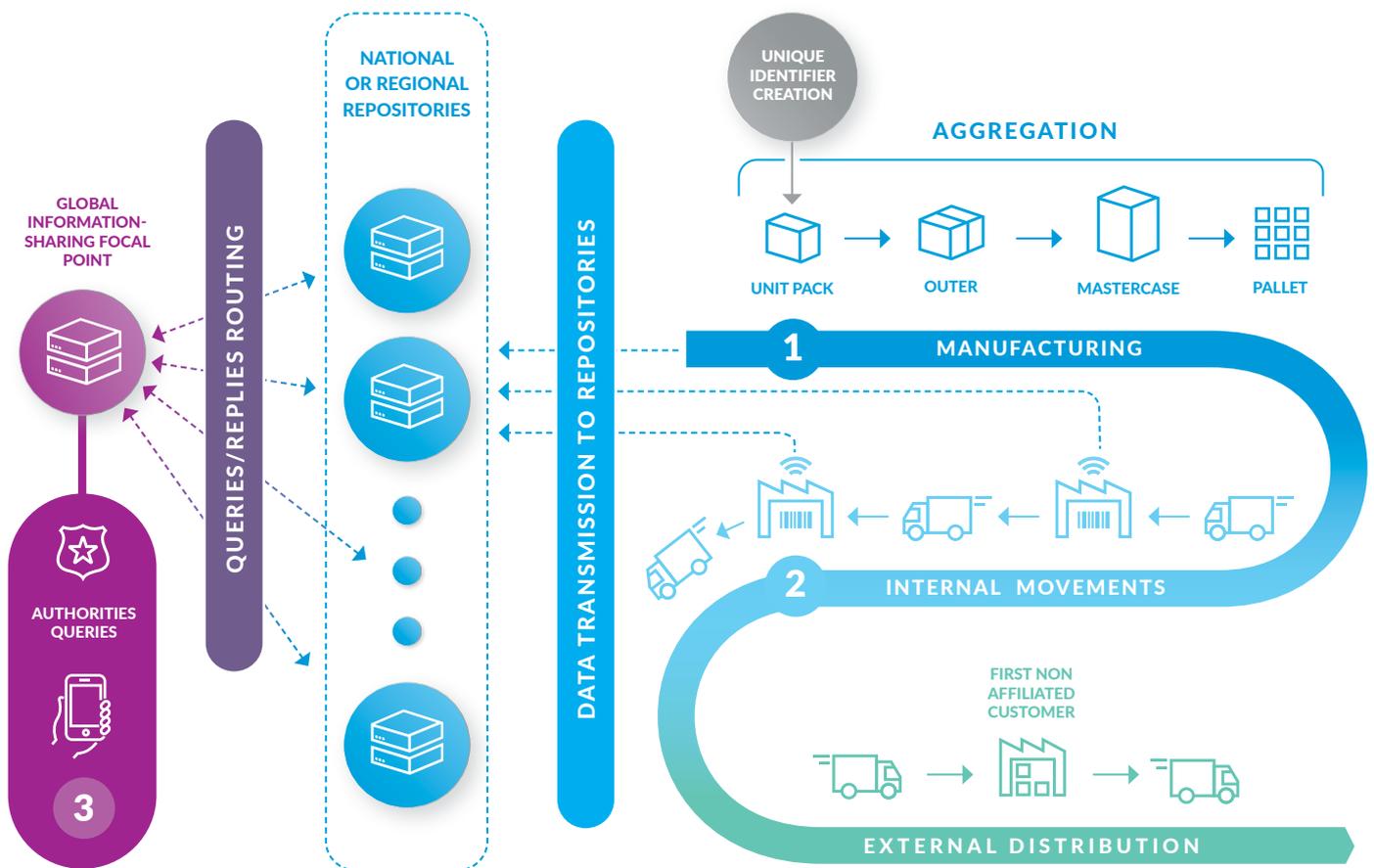
Article 8 of the Protocol covers T&T and is part of the Supply Chain Controls section of the Protocol, along with articles on Licensing, Due diligence, Sales by internet, telecommunication or any other evolving technology, and Duty Free. This section was designed to help policymakers draft laws that preserve the integrity of the tobacco supply chain.

Article 8 requires Parties to establish national or regional T&T systems within five years of entry into force of the Protocol. These systems will exchange information via a global information-sharing focal point, as part of a global T&T regime. Tobacco manufacturers or importers will have to mark cigarettes and other tobacco products with unique, secure and non-removable identification markings.

The solutions anticipated by the Protocol for the tobacco industry are similar to those used by the pharmaceutical, technology, and chemical industries. Having visibility over the supply chain is not only vital for businesses, but it also assists governments and law enforcement authorities in identifying non-compliant products.

# FCTC Protocol Requirements - Article 8, T&T

Parties to the Protocol must implement a T&T regime, comprising national and/or regional T&T systems and a global information-sharing focal point accessible to all Parties.



**1**

Each Party shall require that unique, secure and non-removable identification markings (Unique Identifiers), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes.

Unique identifiers are applied to each product at the manufacturing stage.

**2**

Each Party shall require that the following information be available,

- (a) date and location of manufacture;
- (b) manufacturing facility;
- (c) machine used to manufacture tobacco products;
- (d) production shift or time of manufacture;
- (e) the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;
- (f) the intended market of retail sale;
- (g) product description;
- (h) any warehousing and shipping;
- (i) the identity of any known subsequent purchaser; and
- (j) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.

**3**

Each Party shall ensure that the information recorded is accessible to the global information-sharing focal point on request, through electronic secure interface. Each Party will have access to the information in a timely manner by making a query to the global information-sharing focal point.

# What we think about Tracking and Tracing (T&T)

## Supporting a Global Solution

**We are fully aware that to achieve a world without cigarettes, we also have to help secure a future without illicit trade. Securing our supply chain and fighting illicit trade is an integral part of our efforts to drive operational excellence and build a sustainable future.**

PMI has long supported the implementation of a global T&T regime, which can have a material impact on the illicit trade in tobacco. We have been at the forefront of using technology to secure our products and our supply chain and we continue to innovate to further propel our anti-illicit trade efforts. All manufacturers should be held to the same standards in securing their supply chains.

PMI is committed to proactively expanding the reach of T&T solutions in our factories and ensuring the compliance of our products with all laws in their destination markets. **We believe that effective T&T systems should be based on a set of important principles.**

## Independence

**We support a regime that enables public authorities to exercise full control over the T&T system.** We think that it is also necessary to take into account the technical and operational constraints of manufacturing and distribution, and that **manufacturers should be allowed to retain the control of the technical equipment installed in their factories.** While economic operators should be responsible for implementing the T&T solutions in their factories and across the supply chain as part of day-to-day operations, authorities are responsible for establishing, controlling, and supervising the T&T system and its correct implementation.

## Interoperability

Interoperability, that results from the use of open standards, allows different national T&T systems to interact in a global regime of a wide range of goods, using off-the-shelf hardware and software. This will make the collection of the tracking data by the various involved economic operators, as well as the usage and the retrieval of information by law enforcement authorities easier and more effective.

## Open Standards

Any successful T&T system must be based on **open and internationally recognized standards and should be neutral as far as technology and supplier are concerned**. Only then can suppliers compete and technologies evolve to design better solutions. Open and internationally recognized standards create an environment that nurtures interoperability and allows tracking and tracing of a wide range of goods using the same hardware and software.

## Digital Systems

**Digital T&T systems allow interoperability, facilitate upgrades, innovation and the optimization of enforcement activities.** Digital codes generated under the control of the government and printed on unit packets and packages allow for: real time application to embed all the required information, interoperability – if complying with existing defined global standards – and further data recording along the supply chain without physically altering the product.

## Coding Structure

Defining a specific and **harmonized unique coding structure**, based on internationally recognized standards, is also fundamental to reduce technical challenges for the implementation of a global T&T system and to secure interoperability. Having each country develop its own coding standards will lead to avoidable complexity and will run the risk of having packs originating from different countries being marked with the same code. Lack of coding standards would significantly affect the interoperability of the different national systems and further complicate the task of the global information-sharing focal point.

## Product Marking

The FCTC Expert Panel Report recommends that unit packets and packages are marked with an external Unique Identifier (UI) generated by an independent UI Issuer.

We support the recommendation that **manufacturers mark unit packets and any unit-level packages (pouch, tin, etc.) with a UI generated by an independent UI issuer.** For the sake of efficiency and interoperability along the entire supply chain and to help enforcement efforts by public authorities, economic operators should use predefined internationally recognized standards, when generating the markings for aggregated-level packaging (carton, master case, pallet) which can be easily read, verified and interpreted.

The format of delivery of the UI, whether electronic (i.e. with a digital code) or physical (i.e. with a stamp/sticker), should be subject to the operational specifications of each manufacturer or importer. **Electronic delivery should be mandatory for all UI issuers.** However, manufacturers should also have an option to request for physical delivery based on their technical readiness and capacity. **Imposing a position for the UI would create a significant operational constraint:** for example, designating where on the pack the UI should be placed or requiring that the UI be placed on a stamp/sticker.

It should be clearly defined how to mark products manufactured for export to **avoid double coding by the destination country**

**and manufacturing country.** Such double coding would create significant complexities at every stage of the T&T process. It would generate confusion in the market place as to which is the legitimate UI for that market as trade actors would not know which UI to register, scan or use for re-aggregation, and law enforcement authorities would not know which UI to read for tracing purposes. The placing of multiple UIs on a single pack is not a viable option. It is contrary to the objective of interoperability and would over-complicate the operation of the global information-sharing focal point.

## Security Features

The Protocol provides that the UI that is to be affixed to or form part of all unit packets and packages should be unique, secure and non-removable. The Protocol requires that the UI be “secure” but does not require the use of “security features”. The security of UIs is guaranteed by several measures such as random serialization, contextualization of the UIs with the information required in the Protocol, completion of the UIs using a time stamp, the use of anti-tampering devices on production lines to verify the correct application of UIs, and the rejection by the T&T system of duplicate UIs as the UIs are reported along the supply chain.

**The purpose of security features is to assist authorities and consumers in determining the authenticity of a product. They are not a component of T&T solutions and are not a Protocol requirement.**

## Open Bidding Process and Timing of Implementation

When governments select third party suppliers for the implementation of a T&T system, such selection should be based on **open bidding and transparent procurement processes**. Costs should be fair and proportionate, and it is also paramount that tobacco manufacturers are able to retain **operational control over the technical equipment** installed in their factories.

Implementing a T&T system is very complex as it involves multiple stakeholders including various public authorities, private entities,

supply chains operators and technical providers (as seen with the implementation of the EU Tobacco Products Directive).

Governments should consider a **sufficient time frame for implementation** to ensure a proper piloting and onboarding of all operators. A reasonable recommendation is that the launch of T&T systems should not take place less than 18 to 24 months after the publication of the technical specifications and the appointment of the solution provider. The more complex the system, the more time is needed for an orderly execution, realization of technical solutions and awareness building.

### Learning from experience: the EU TPD

The European Union took decisive action against illicit trade by issuing the Tobacco Product Directive (TPD), which includes provisions on T&T.

The TPD is the first regional T&T system worldwide which is based on open standards and encourages competition amongst solution providers.

PMI welcomed the entry into force of the first ever EU-wide T&T system for tobacco products under the TPD. This is a positive step for the prevention of illicit tobacco trade in the EU, and it is the first

time that a technology-driven, multi-layer T&T system is implemented across all Member States.

The TPD (similar to the Protocol) provides that all unit packets of tobacco products manufactured or placed on the market in the EU must be marked with a UI. Information related to the production and movements of tobacco products will then be transmitted to, and stored by, independent data repositories, allowing for full data access to law enforcement authorities.

The independence of the T&T system from the tobacco industry was one of the key concerns of the EU. The TPD ensures this through the independent generation of UI by ID Issuers appointed by Governments, the use of third-party supplied anti-tampering devices on production lines to verify the correct application of UIs, and the provision of repository services by a third party. The providers of these services need to comply with the strict independence criteria provided by the EU Commission.

### One size does not fit all

While the EU T&T system provides Parties to the Protocol with a framework on how to implement a T&T system, each Party has different priorities and different infrastructures. More countries will be encouraged to ratify or accede to the Protocol if they see that the implementation of the T&T system by the Parties is respectful of regional and national differences. Wide-spread ratification or accession will allow the Protocol to truly serve as the world's best practice in T&T of any type of goods.

### Scope of T&T

The Protocol requires that tobacco products be tracked until the first

customer not affiliated with the manufacturer. Parties shall also require the extension of the scope of the T&T system “up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control”. It is important to assess and understand the goals pursued by authorities when implementing a T&T system to ensure proportionate and realistic solutions are adopted. Other targeted anti-illicit trade measures, such as licensing for certain categories of supply chain operators, can be considered as an alternative to the extension of the T&T system along the supply chain.

A one-size-fits-all approach cannot be recommended. Extending the scope beyond the original requirement, i.e. first customer not affiliated with the manufacturer, requires the assessment of the feasibility, complexity, impact on infrastructure, and cost of compliance for different actors in the supply chain in individual countries. If extending the scope for traceability is feasible and appropriate, a phased implementation is recommended to minimize the impact on the supply chain and the trade and to ensure an orderly preparation by all stakeholders.

# Conclusion

The Protocol is the most comprehensive anti-illicit trade regulatory framework. Because of this, **we embrace the Protocol and encourage countries to ratify or accede to it.**

Fighting illicit trade in tobacco is a complex task. The implementation of a T&T system will not solve this issue without the support of other measures proposed by the Protocol that aim at securing the supply chain, such as due diligence or record-keeping.

We believe in T&T solutions **that ensure interoperability, are independently controlled, and do not disrupt the manufacturing and distribution environment.** The effectiveness of the Protocol will require collaboration between all relevant stakeholders, including the tobacco industry and the other economic operators involved in the supply chain, using a combination of strict controls and innovative technologies.

National authorities must not only ratify or accede to the Protocol, but ensure that it is enforced. In parallel to the supply chain control section of the Protocol, meaningful enforcement and effectiveness will greatly depend on imposing deterrent sanctions on criminals involved in illegal activities.

Securing our supply chain and fighting illicit trade is an integral part of our efforts to drive operational excellence and to achieve a smoke-free future. **We are ready to cooperate with public authorities and any solution provider in order to ensure the implementation of an effective T&T system as required by the Protocol.**



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