

# New Zealand and the Protocol to Eliminate Illicit Trade in Tobacco Products

2015

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Consultation document

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# 1 Introduction

## 1.1 Purpose

Smoking is the single largest cause of preventable death and disease in New Zealand. Approximately 4500–5000 New Zealanders die each year from their own smoking or exposure to the smoke of others. Smoking is a leading cause of cancer, serious respiratory diseases and cardiovascular disease, including strokes and heart attacks.

Smoking is a priority issue for the nation’s public health and is one of the Government’s key health targets. The Government has set an aspirational long-term goal of making New Zealand essentially a smokefree nation by 2025.<sup>1</sup>

The Ministry of Health, on behalf of the Government, seeks to consult stakeholders on the following question:

Should New Zealand become a party to a new international agreement aimed at preventing illicit trade in tobacco products?

Since 2005 New Zealand has been a party to an international treaty that aims to prevent harms from tobacco use, developed by the World Health Organization (WHO): the Framework Convention on Tobacco Control (WHO FCTC).

The Protocol to Eliminate Illicit Trade in Tobacco Products, negotiated under this Treaty, aims to provide a global response to the illicit trade in tobacco products. New Zealand participated in the negotiations of the Protocol, and the Government is undertaking consultation to inform decision-making as to whether it should agree to become a party to it. The appendix provides more information about the WHO FCTC and development of the Protocol.

This consultation document puts forward two options for consideration:

- **Option 1:** New Zealand does not become a party to the Protocol and continues with its current approach to preventing illicit trade in tobacco products.
- **Option 2:** New Zealand becomes a party to the Protocol and makes the necessary changes to meet the mandatory requirements of the Protocol.

New Zealand’s existing laws already comply with many of the obligations in the Protocol. However, if New Zealand became a party to the Protocol, some legislative reforms would probably be needed, along with new systems, processes and initiatives to support them. This consultation paper explores these implications. In summary, the main changes needed would include:

- establishing a tracking and tracing system for tobacco products
- introducing ‘due diligence’ requirements for some steps in the supply chain for tobacco products and tobacco manufacturing equipment

<sup>1</sup> In March 2011 the Government agreed to a long-term goal of reducing smoking prevalence and tobacco availability to minimal levels by 2025. The term ‘smokefree’ is intended to communicate an aspirational goal, and not a commitment to banning smoking altogether by 2025. See *Government Response to the Report of the Māori Affairs Committee on its Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori (Final Response)*, presented to the House of Representatives in accordance with Standing Order 248, March 2011, page 4.

- establishing supply chain controls for tobacco product manufacturing equipment
- creating new offences to support new laws.

The Ministry of Health will use information obtained from the consultation to develop a national interest analysis that will consider whether it is in New Zealand's best interest to become a party to the Protocol; this will be tabled in Parliament. After that, the usual process is for a parliamentary select committee to consider the matter and report back to Parliament.

## **1.2 Making a submission**

The closing date for submissions is: **5 pm Friday 12 June 2015.**

Submitters are encouraged to make submissions by email, using the response form available at the end of this document

tobacco@moh.govt.nz

A copy of this form is also available on the Ministry's website: [www.health.govt.nz](http://www.health.govt.nz):

Alternatively, your completed form can be mailed to:

Illicit Trade Protocol Consultation  
Tobacco Control Team  
Ministry of Health  
PO Box 5013  
Wellington 6145.

### **1.2.1 Protection of commercially sensitive information**

Public reporting on this consultation will seek to avoid prejudice to the commercial position of respondents who provide commercially sensitive information. Submitters are therefore asked to clearly indicate any information they wish to have treated as confidential commercially sensitive information.

### **1.2.2 Declaration of interest**

In setting and implementing public health policies with respect to tobacco control, New Zealand has obligations under the WHO FCTC to protect those policies from commercial and other vested interests.<sup>2</sup> All respondents are therefore requested to disclose any direct or indirect links to the tobacco industry, or whether they receive any funding from the industry. The Ministry will still carefully consider responses accompanied by any such disclosures as part of the consultation process.

## **1.3 Areas of interest for stakeholders**

This document contains a series of questions for stakeholders including government agencies (particularly those with health, border control, law enforcement, and tax collection responsibilities), non-government organisations (NGOs) working to prevent the harms from tobacco use, and those involved in the supply chain (eg, tobacco companies, importers, wholesalers and retailers).

<sup>2</sup> Article 5.3 of the WHO FCTC.

While submitters are welcome to comment on all questions, the Ministry acknowledges that not all questions will be relevant to all stakeholders. The language of the Protocol itself is often technical or specialised; this consultation paper reflects that. Table 1 summarises the key components of the Protocol, identifies stakeholders who may be interested in those various components and lists relevant sections of this consultation document for each.

The full text of the Protocol is available online.<sup>3</sup>

**Table 1: Components of the Protocol**

Topic or area of the Protocol	Stakeholders who could be interested	Consultation document section
<b>General obligations on parties (Parts I and II).</b> This part sets out the purpose, key terms, obligations of parties.	Any stakeholder interested in preventing illicit trade in tobacco products who wants to understand the Protocol	4.2.1
<b>Core controls on the tobacco supply chain (Part III) in the following areas:</b> <ul style="list-style-type: none"> <li>• licensing</li> <li>• due diligence</li> <li>• tracking and tracing</li> <li>• record-keeping</li> <li>• security and preventative measures</li> <li>• sale by internet, telecommunication and other evolving technologies</li> <li>• free zones</li> <li>• international transit</li> <li>• duty free sales.</li> </ul> Some of these measures involve machinery or equipment used to manufacture tobacco products.	All those in the supply chain (eg, tobacco growers, importers, manufacturers, wholesalers, retailers and distributors) Government agencies charged with administering or enforcing the controls NGOs and researchers interested in tobacco control initiatives focused on supply control, including Māori and Pacific tobacco control bodies or groupings The wider public Those that use, import, sell or make machinery used to manufacture tobacco products	4.2.2–4.2.7
<b>Offences (Part IV).</b> This Part describes behaviours to be regarded as unlawful conduct or criminal offences. It also contains provisions covering liability, prosecution and sanctions, seizure payments and disposal/destruction of confiscated products.	All those in the supply chain Government agencies charged with administering or enforcing the controls NGOs and researchers interested in tobacco control initiatives focused on supply control	4.2.8
<b>Provisions to encourage and mobilise international cooperation (Part V).</b> These provisions cover information sharing; assistance and cooperation; mutual, technical, administrative and legal assistance; and extradition.	Government agencies that lead such work and administer and enforce such provisions The tobacco industry NGOs that interact with counterparts in other countries	4.2.9
<b>Reporting and other provisions (Parts VI–X).</b> These provisions set out requirements on the government to report on progress to implement the Protocol; how information is to be exchanged; governance and other institutional arrangements; and financial and procedural matters (eg, dispute resolution, voting rights and how countries can join or withdraw from the Protocol).	Government agencies	4.2.10

<sup>3</sup> <http://treaties.un.org/doc/source/signature/2012/CN699E.pdf>.

# **2 Problem definition**

## **2.1 Summary**

The illicit trade of tobacco products is potentially harmful in a number of ways. The main concern for the Ministry of Health is the potential adverse impact it has on the achievement of public health objectives.

Illicit tobacco products are usually sold more cheaply than their legal counterparts. This can reduce the effect of increasing the price of tobacco products through tax increases, which many countries have found to be one of the most successful interventions to cut smoking rates.

Other negative impacts from the illicit trade in tobacco include:

- lost government revenues through evasion of taxes on tobacco products – including GST, excise duty (payable on domestically manufactured tobacco products), tariff duty and excise-equivalent duty (payable on imported tobacco products)
- reduced confidence in the ability of law enforcement to detect, deter and punish tax evasion
- greater levels of criminal activity, if such activity is funded or sustained by illicit trade.

Illicit trade in tobacco products does not appear to be as significant a problem in New Zealand as it is in other parts of the world (such as parts of Europe and Asia). Recent estimates of the size of the illicit market in New Zealand by Action on Smoking New Zealand (ASH) and the tobacco industry itself have found that it comprises approximately 2–3 percent of the tobacco market (see section 2.2 below).

The absence of land borders in New Zealand limits the international movement of tobacco products to and from New Zealand to sea and air transport. There are no large-scale domestic commercial growers in New Zealand. However, limited growing for personal use is permitted, and there have been anecdotal reports of tobacco produced in this way entering the illicit market. Most tobacco used in New Zealand is imported. The New Zealand Customs Service's import and export clearance processes, and systems for collecting duty on tobacco products, provide sound supply-chain controls.

However, there are wider issues to consider. New Zealand was involved in the negotiations of the text of the Protocol through to its adoption. As a signatory to the WHO FCTC, we need to give due consideration as to whether or not to become a party to the Protocol. Issues such as the need for a global response to the tobacco epidemic, New Zealand's international reputation, and our ongoing commitment to tobacco control efforts are also material to this decision.

## **2.2 The size of the illicit tobacco market in New Zealand**

### **2.2.1 ASH's research**

In September 2014 ASH New Zealand released its report, *Update of Illicit Trade in Tobacco Products in New Zealand 2013*,<sup>4</sup> which gives the most recent estimation of the scale of illicit tobacco consumption in New Zealand.

ASH estimated consumption of illicit tobacco (including cigarettes and loose-leaf tobacco) to comprise between 1.8 and 3.9 percent of total tobacco consumption in New Zealand, based on data from 2010 to 2013 (see Table 2).

**Table 2: Legal and estimated illegal amounts of tobacco consumed in New Zealand from 2010 to 2013**

	<b>Minimum (million stick)</b>	<b>Maximum (million stick)</b>
Estimated total illegal tobacco consumption	61.2	134.7
Estimated total tobacco consumption	3406	3479
Illegal tobacco as proportion of total tobacco consumption	1.79%	3.87%

This estimate represents an increase on ASH's 2010 estimate of the size of the illicit market as being between 0.7 and 2.0 percent of total tobacco consumption.<sup>5</sup> ASH attributes the increase to higher figures for interceptions of illegally imported loose-leaf tobacco in sea and air cargo and for interceptions of small quantities via international mail. ASH noted that these higher interceptions may indicate either that there is higher volume of illicit tobacco entering the country or that there has been more success with border interceptions (or most likely a combination of both).

Overall, ASH concluded in its report that the scale of illicit tobacco trade remains relatively low in New Zealand compared to global rates. It noted the difficulty in accurately estimating the scale of illicit trade. Accurate information on sales and purchases of illicit tobacco at the retail level is scarce; small-scale evasion of the law through misuse of duty free personal allowances (ie, resale or gifting) can only be estimated. Use of illegally grown tobacco is also hard to quantify given the complicating factor of it being legal to grow for personal use (up to 15 kg per year).

To come up with its estimate of the scale of the illicit tobacco market in New Zealand, ASH used a framework that considered both legal product and illicit product. This framework is useful, as it clearly illustrates the different avenues of the tobacco supply chain.

<sup>4</sup> U E, Ajmal A. 2014. *Update of Illicit Trade in Tobacco Projects in New Zealand 2013*. Auckland: ASH New Zealand.

<sup>5</sup> Paynter J, U E, Joosens L. 2010. *Illicit Tobacco Trade: Monitoring and Mitigating Risk in New Zealand*. Auckland: ASH New Zealand. URL: [www.ash.org.nz/wp-content/uploads/2013/01/Research\\_commissioned\\_by\\_ASH/Illicit\\_Tobacco\\_Trade.pdf](http://www.ash.org.nz/wp-content/uploads/2013/01/Research_commissioned_by_ASH/Illicit_Tobacco_Trade.pdf) (accessed 23 March 2015).

**Table 3: ASH's framework for considering the tobacco trade in New Zealand (adaptation)**

<b>Legal tobacco products (cigarette sticks and loose leaf tobacco)</b>	<b>Illicit tobacco products (cigarette sticks and loose leaf tobacco)</b>
<b>Excise duty paid</b> Legal tobacco for domestic market (imported or manufactured domestically)	
<b>No excise duty paid</b> Legal personal allowances:	
<ul style="list-style-type: none"> <li>• duty-free product within the legal personal use allowance</li> <li>• home-grown tobacco for personal use (15 kg per year)</li> </ul>	<b>Illicit tobacco smuggling:</b> <ul style="list-style-type: none"> <li>• detained contraband (ie, product that is detained by Customs – after being intercepted or surrendered voluntarily)<sup>6</sup></li> <li>• contraband (ie, product not picked up by Customs that enters the country and domestic market illegally)</li> <li>• duty-free product thereafter misused (ie, unlawfully gifted/resold without payment of duty).</li> </ul> <b>Illegal tobacco manufacturing:</b> <ul style="list-style-type: none"> <li>• home-grown tobacco in excess of allowable amount.</li> </ul>

ASH's estimates for the purposes of its report covered both cigarette sticks and loose-leaf tobacco. To come up with an overall estimate of the size of the illicit tobacco market, ASH converted volumes of loose tobacco (initially measured in tonnes) into equivalent numbers of cigarette sticks, by estimating that an average of 0.5 grams of leaf was equivalent to one stick. This conversion was added to the estimations of cigarette sticks to produce the total numbers of sticks given in Table 2 above.

Table 4 breaks down some of ASH's data. It shows that, for cigarettes, misuse of duty-free sources made up the largest proportion of the estimated illicit supply chain and, for loose-leaf tobacco, contraband tobacco leaf (ie, smuggled tobacco not detained by Customs) and locally grown illicit tobacco (ie, amounts grown in excess of the personal use allowance) made up the two largest proportions.

**Table 4: Legal and estimated illegal amounts of tobacco consumed in New Zealand (average consumption from 2010 to 2013)**

	Cigarettes (million sticks)		Loose tobacco (tonnes)	
	Minimum	Maximum	Minimum	Maximum
Legal tobacco sales	2057	2057	641	641
Illicit tobacco smuggling:				
<ul style="list-style-type: none"> <li>• Detained contraband</li> <li>• Contraband</li> <li>• Misused duty-free</li> </ul>	1	1	2.3	2.3
	1.2	1.7	9.5	25
	24.5	28.5	2.8	4.9
Illegal manufacturing:			5	22
<ul style="list-style-type: none"> <li>• Locally grown illegal tobacco</li> </ul>				
<b>Estimated total consumption</b>	<b>2084</b>	<b>2088</b>	<b>661</b>	<b>695</b>

<sup>6</sup> Such tobacco is only released for public consumption once any applicable excise duty has been paid.

## **2.2.2 The tobacco industry's research**

The tobacco industry's most recent assessment of the New Zealand illicit tobacco market dates from 2010, when Ernst & Young released *Out of the Shadows*, a report commissioned by British American Tobacco New Zealand to profile the market. This report argued that illicit tobacco represented about 3.3 percent of total tobacco consumption in New Zealand.

The report suggested that illegal tobacco product was made up of illicit tailor-made cigarettes (TMC) primarily sourced from duty-free product and consumed illegally, and roll-your-own (RYO) tobacco primarily illicitly grown in New Zealand. The Ernst & Young report concluded that the concentration of illicit tobacco was greater for RYO products (forming 7.5 percent of the total RYO consumption) than for TMC products (forming 1.0 percent of total TMC consumption).<sup>7</sup>

Table 5 summarises the Ernst & Young analysis.

**Table 5: Ernst & Young's estimation of lost Government revenue due to illicit tobacco (2009)**

	<b>Domestic consumption</b>	<b>Excise duty (excluding GST)</b>	<b>GST*</b>	<b>Excise duty and GST</b>
Illicit TMC	18–31 million cigarettes	\$6m–\$10m	\$1m–\$2m	\$7m–\$11m
Illicit RYO	69–84 tonnes	\$27m–\$33m	\$5m–\$6m	\$32m–\$39m
Lost revenue		<b>\$32m–\$42m</b>	<b>\$6m–\$8m</b>	<b>\$39m–\$50m</b>

\* Includes GST on excise duty and on the non-excise duty components of tobacco products. Note: totals may not add due to rounding.

## **2.3 Causes of illicit trade of tobacco products**

Cigarettes are among the world's most traded illegal goods. They are often highly taxed and are easy to transport (particularly across land borders), and their illicit trade entails a potentially profitable risk-to-reward ratio under most countries' regulations. The tobacco industry has argued that illicit trade arises primarily because of high taxation; however, World Bank analysis has found that, even in countries with high rates of smuggling, 'tax increases bring greater revenues and reduce consumption. Therefore, rather than foregoing tax increases, the appropriate response to smuggling is to crack down on criminal activity'.<sup>8</sup>

<sup>7</sup> Ernst & Young. 2010. *Out of the Shadows: An independent report of New Zealand's illicit tobacco market*. URL: [http://www.parliament.nz/resource/en-nz/49SCMA\\_EVI\\_ooDBSCH\\_INQ\\_9591\\_1\\_A38235/32da6b17b31b2cf76a4b70179fe75160199c9b3c](http://www.parliament.nz/resource/en-nz/49SCMA_EVI_ooDBSCH_INQ_9591_1_A38235/32da6b17b31b2cf76a4b70179fe75160199c9b3c) (accessed 18 March 2015).

<sup>8</sup> World Bank. 1999. *Curbing the Epidemic: Governments and the Economics of Tobacco Control*, page 9. Washington DC: World Bank. URL: [www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/08/02/000094946\\_99092312090116/Rendered/PDF/multi\\_page.pdf](http://wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/08/02/000094946_99092312090116/Rendered/PDF/multi_page.pdf) (accessed 18 March 2015).

While avoiding tobacco tax is a key factor, studies have observed that the scale of illicit trade is actually higher in countries with lower taxes than it is in countries with higher taxes. This suggests that other factors are at play; for example, informal distribution networks and organised crime, levels of industry participation in illicit trade and countries' general level of corruption.<sup>9</sup>

Analysis undertaken in 2013 by the All Party Parliamentary Group (APPG) in the United Kingdom noted that government action against illicit trade aims to reduce the incentive to smuggle tobacco products by increasing costs associated with the:

- risk of being caught dealing in illicit trade
- sanctions likely to be applied
- difficulty of selling illicit product without detection.<sup>10</sup>

The APPG found that targeted public spending to reduce illicit trade had proven to be highly cost-effective. The United Kingdom Government currently spends around £94 million a year tackling tobacco smuggling, and it has been estimated that a decline in illicit market share since 2001 has resulted in approximately £1 billion a year additional revenue for the Exchequer. This is a gross return on investment of about 10 to 1.

The illicit cigarette market in the United Kingdom reduced from 21 percent to 11 percent between 2000 and 2011, and from 61 percent to 49 percent for hand-rolling tobacco over the same period.<sup>11</sup> These statistics are supported by information from the European Anti-Fraud Office (OLAF) that suggests that the proportion of illicit trade that is diverted legitimate product has declined in recent years.

There is evidence that tobacco companies overseas have played a role in illicit trade. One such example is from Canada, where in July 2008 and April 2010 five tobacco companies pleaded guilty and admitted 'aiding persons to sell or be in possession of tobacco products manufactured in Canada that were not packaged and were not stamped in conformity with the Excise Act'.<sup>12</sup>

## 2.4 The Māori Affairs Select Committee inquiry

In September 2009 the Māori Affairs Select Committee initiated an inquiry into the tobacco industry in New Zealand and the consequences of tobacco use for Māori. This resulted in a report to Parliament in November 2010 containing a number of recommendations. A major outcome of this report was the setting of the goal for New Zealand to be 'smokefree' by 2025.

The Māori Affairs Select Committee's report argued that that the term 'smokefree' was intended to communicate an aspirational goal and not a commitment to the banning of smoking

<sup>9</sup> Joossens L, Merriman D, Ross H, et al. 2009. *How Eliminating the Global Illicit Cigarette Trade would Increase Tax Revenue and Save Lives*. Paris: International Union Against Tuberculosis and Lung Disease, page 2.

<sup>10</sup> All Party Parliamentary Group on Smoking and Health. 2013. *Inquiry into the Illicit Trade in Tobacco Products*. London: All Party Parliamentary Group on Smoking and Health, page 18. URL: [www.ash.org.uk/APPGIllicit2013](http://www.ash.org.uk/APPGIllicit2013) (accessed 18 March 2015).

<sup>11</sup> HM Revenue & Customs. 2011. *Tackling Tobacco Smuggling – Building on our Success: A renewed strategy for HM Revenue & Customs and the UK Border Agency*. London: HM Revenue & Customs.

<sup>12</sup> Canada Revenue Agency. 2010. *Federal, Provincial, and Territorial Governments conclude Landmark Settlements with Tobacco Companies*. URL: [http://news.gc.ca/web/Dha.do?fileName=574\\_20100413145639\\_en\\_nr100413-eng.pdf](http://news.gc.ca/web/Dha.do?fileName=574_20100413145639_en_nr100413-eng.pdf) (accessed 18 March 2015).

altogether by 2025. On that basis, the Government agreed with the goal of reducing smoking prevalence and tobacco availability. Two recommendations in the report specifically covered illicit trade, as Table 7 shows.

**Table 7: Māori Affairs Select Committee recommendations about the illicit trade of tobacco in New Zealand, and Government responses**

Recommendation	Government response
The Government should increase monitoring of the illicit trade in both home-grown and imported tobacco products in New Zealand	'The Government is aware of the risk that tobacco control initiatives could increase the incentives for illicit trade in both home-grown and imported tobacco products, and has taken appropriate steps to address this. The New Zealand Customs Service continues to monitor illicit tobacco and liaises with the New Zealand Police'
The Government should increase support for the international development of comprehensive systems for detecting smuggled and contraband tobacco products in alignment with Article 15 of the WHO FCTC	The Government will address this issue within the context of international work on an illicit trade protocol being developed to give effect to Article 15 of the WHO FCTC

This consultation is a key step in giving effect to these Government responses.

### Consultation questions

- 1 Have you or your organisation encountered any illicit tobacco products in New Zealand?
- 2 Are you or your organisation affected by illicit trade in tobacco products? If so, please explain how.
- 3 To what extent do you think there is scope for reducing illicit trade in tobacco products in New Zealand? Please explain your reasons and provide any views you have on how this could be achieved.
- 4 Are you or your organisation currently doing anything to help prevent the illicit tobacco trade? If so, please explain, and provide any information you have to help quantify the costs of any such activities (in \$NZD).

# 3 Policy objectives

To help achieve its smokefree 2025 goal, New Zealand has in place a comprehensive tobacco control programme, incorporating:

- legislation (restricting the advertising, sale and use of tobacco products)
- taxation (increasing the price of tobacco products)
- health promotion (encouraging changes in attitude and behaviour)
- smoking cessation services (helping smokers to quit).

The principal approach used by the New Zealand Government to reduce the affordability of tobacco products is to increase taxation on those products. The availability of illicit tobacco much more cheaply undermines this approach.

Combined with the existing measures, the Protocol provides an opportunity to pursue the following objectives.

- **Objective 1:** Reducing tobacco consumption in New Zealand and contributing to the achievement of the *Smokefree 2025* goal. A sub-objective of this is to reduce current levels, and prevent increases in the future, of illicit trade in tobacco in New Zealand in order to:
  - maintain the effectiveness of public health policies to reduce smoking prevalence through reducing the affordability of tobacco products
  - protect against loss of Government revenue
  - contribute to the maintenance of law and order.
- **Objective 2:** Contribute to the international efforts to reduce illicit trade in tobacco.
- **Objective 3:** Maintain New Zealand's commitment to the WHO FCTC and ensure New Zealand meets its international obligations.

## Consultation questions

- 5 Which of the policy objectives outlined above do you support, and why? Please also state any other objectives you think are relevant.
- 6 To what extent do you think that New Zealand becoming a party to the Protocol would contribute to each of the objectives?

# 4 Policy options

The Ministry of Health has identified two policy options to achieve the policy objectives set out in Part 3 and to answer the core question of whether or not New Zealand should become a party to the Protocol.

- **Option 1:** New Zealand does not become a party to the Protocol and continues with its current approach to preventing illicit trade in tobacco products.
- **Option 2:** New Zealand becomes a party to the Protocol and makes the necessary changes to meet the mandatory requirements of the Protocol.

This section further discusses these options.

## 4.1 Option 1: Retain the status quo for combating illicit trade in tobacco products

Under **Option 1** New Zealand would not become a party to the Protocol and essentially maintain the status quo in the immediate term with respect to its current legislative framework, systems and policies, and programmes to combat illicit trade in tobacco products.

There is no single agency that has responsibility for preventing illicit trade in tobacco products in New Zealand – a number of government agencies play a part. Likewise, there is no piece of legislation that specifically focuses on preventing illicit trade in tobacco – a number laws are relevant, but they have a wider focus than illicit tobacco trade.

The following paragraphs summarise the roles of some of the key agencies with an interest in tobacco control and/or preventing illicit trade in tobacco products, and describe associated laws and operational activities, which would continue to apply under this option. Some of these laws and administrative systems and processes are explained in more detail in the discussion about option 2.

The Ministry of Health has overall responsibility for tobacco control policy and service delivery. The Ministry coordinates efforts to ensure New Zealand complies with the WHO FCTC and was involved in the international negotiations to develop the Protocol. The Ministry is currently leading the work to inform a government decision on whether to become a party to the Protocol, but is just one of a number of interested government agencies.

At the local level, district health boards employ smoke-free enforcement officers, who undertake health promotion, compliance and enforcement activities relating to the smoke-free environments legislation. However, preventing illicit trade in tobacco products is not really a core function of such officers' day-to-day work. Likewise, other government agencies such as the Health Promotion Agency and the Health Research Council have an interest in some aspects of tobacco control as they undertake (or fund) health promotion and research activities, but prevention of illicit trade in tobacco has historically not been a focus of their work programmes.

There are a number of non-government organisations who work to reduce harms from smoking. The National Tobacco Control Working Group coordinates tobacco control activities across a number of these organisations. In general, such non-government organisations have an interest in preventing illicit trade in tobacco given its negative impact on public health policies designed to reduce smoking rates. As described in section 2, one of these organisations, ASH, recently undertook research to estimate the size of the illicit tobacco market in New Zealand.

The Smoke-free Environments Act 1990 is the main piece of tobacco control legislation in New Zealand and is administered by the Ministry of Health. The Act and supporting Smoke-free Environments Regulations 2007 contain a number of measures to reduce harm from smoking. However, the legislation does not have a focus on preventing illicit trade, and does not currently contain many provisions that are directly relevant to the implementation of the Protocol.

A number of other government agencies have key functions or responsibilities that are relevant to, or coincide with, the prevention of illicit trade in tobacco. This includes policy-making, administration of legislation, and operational activity in areas such as border control, excise collection, crime prevention, international development, and international relations.

For example, the New Zealand Customs service has a key role monitoring and controlling imports and exports of goods (including tobacco products) at the border. Customs monitors the amount of tobacco products being manufactured in New Zealand, imported or exported and helps ensure that the applicable taxes and duties on excisable goods (such as tobacco products) are paid in accordance with the law.

Customs has well established import and export entry processes and undertakes risk-based compliance and enforcement activity. This includes monitoring and screening goods moving across the border, making interceptions and seizures, issuing of approvals (eg, licensing of areas to manufacture tobacco products), auditing licensees, and preparation of guidance and advice to promote voluntary compliance. Customs collaborates with border control and enforcement colleagues in other countries, shares information and intelligence, works with domestic law enforcement agencies, and undertakes training and capacity-building initiatives with other countries.

Customs administers and enforces the Customs and Excise Act 1996 and supporting regulations and rules.<sup>13</sup> Such legislation is arguably more directly relevant to the Protocol than New Zealand's smoke-free legislation as it provides the framework for collecting taxes levied on tobacco products before they enter the domestic market (including both domestically manufactured and imported product), contains offence provisions (eg, for those seeking to evade payment of excise duty or smuggle goods), and provides a range of powers to customs officers to assist them to carry out their functions.

The excise tax on tobacco products has been regularly increased under this legislation. In Budget 2012, the Government announced it would raise tobacco excise by 10 percent each year between 2013 and 2016 as a means to increase rates of quitting and reducing rates of uptake, especially among smokers living in low socioeconomic areas. Tobacco excise revenues in New Zealand have amounted to approximately \$1.2 billion in each of the last three years. This represents around 2 percent of total tax revenues. Approximately 75 percent of the approximate \$1.6 billion spent each year on legal tobacco products is accounted for by taxation (including GST as well as tobacco taxes).

<sup>13</sup> These include the Customs and Excise Regulations 1996, the Customs (Application for Customs Controlled Area Licences) Rules 2014, the Customs (Excisable Goods Entry) Rules 1997, the Customs (Import Entry) Rules 1997 and the Customs (Export Entry) Rules 1997.

A number of agencies with criminal justice and crime prevention responsibilities also have an interest in the Protocol. For example: the Ministry of Justice develops policy and administers laws relating to the provision of mutual assistance between countries, extradition, anti-money laundering, and proceeds of crime. The New Zealand Police has an interest in preventing illicit trade, as such trade could be used to fund other criminal activity or organised crime, and can assist with domestic enforcement. The Organised and Financial Crime Agency New Zealand was established to increase cooperation by government agencies in targeting serious and organised crime.

Laws that are relevant to combatting illicit trade, but which were originally made for other purposes (eg, law and order, crime prevention, protection of rights) include: the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; Criminal Proceeds (Recovery) Act 2009, the Search and Surveillance Act 2012, the Crimes Act 1961, consumer protection legislation, and intellectual property legislation.

Under option 1 New Zealand's existing efforts to engage, collaborate with, and assist other countries to prevent illicit trade would continue to be supported by established legislation (such as the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999). New Zealand would continue to participate in capacity building in the wider Pacific when it decides to do so (eg, border control and law enforcement bilateral and multilateral capacity building activities and participation in regional and international fora).

Industry-led activity also currently occurs, including monitoring and surveillance, due diligence, quality assurance, and security systems and practices, and activity to protect intellectual property rights (eg, undertaking private court actions for breach of intellectual property rights). Under option 1, industry would continue to undertake such activity as it sees fit.

Under Option 1 there would no immediate steps to implement initiatives that would be required under the Protocol. Key gaps would include:

- gaps in the existing licensing framework
- the lack of controls on tobacco product manufacturing equipment
- limited legislative due diligence requirements (although the Ministry understands that the private sector undertakes some due diligence activity now as a part of its commercial business practices)
- the lack of a track and trace system for tobacco products
- gaps in the recommended enforcement framework (eg, various offences suggested in the Protocol).

This option does not rule out New Zealand deciding to become a party to the Protocol at a later date. Decisions on any potential new policies, programmes, laws, or other initiatives to reduce illicit trade would be made over time following the usual governmental processes, as need arises. This process could also involve deciding to implement certain interventions specified within the Protocol (for example, a track and trace system, or the strengthening of existing licensing requirements). Such decisions would be made on a case-by-case basis according to what was most appropriate to New Zealand's needs at the time.

## **4.2 Option 2: Accede to the Protocol and make the required changes to meet its mandatory aspects**

If New Zealand became a party to the Protocol it would need to make any necessary legislative, regulatory and administrative reforms to ensure compliance, and then lodge an instrument of accession with the United Nations.

This section focuses on reforms that would be required to implement the mandatory requirements of the Protocol (that New Zealand does not currently comply with). The Protocol also contains a number of requirements that are more discretionary in nature; parties can decide whether or not to implement them. For example, a number of measures involve ‘supply-chain’ controls. The Protocol specifically defines ‘supply chain’ as covering manufacturers, importers and exporters of tobacco products and tobacco product manufacturing equipment as a minimum. Parties have the discretion to include other supply-chain players (eg, retailers, growers, transporters, wholesalers, brokers, warehousers or distributors) in any laws or systems they implement.

Under this option any discretionary measures in the Protocol that have not already been implemented in New Zealand would not be considered at this stage, but would be issues for potential consideration in the future via the usual policy development processes. Such issues are not immediately material to any decision on whether to become a party to the Protocol.

This section introduces the core requirements in the Protocol, highlights New Zealand’s existing compliance status and broadly outlines what would be required to bring New Zealand into compliance.

### **4.2.1 Parts I and II: Introduction and general obligations**

Part I of the Protocol provides introductory information, sets out the objective of the Protocol and defines key terms, including the following.

- **Licence** means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.
- **Illicit trade** means any practice or conduct prohibited by law and that relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.
- **Manufacturing equipment** means machinery that is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process.
- **Tobacco products** means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.
- **Tracking and tracing** means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in Article 8.
- **Supply chain** covers the manufacture of tobacco products and manufacturing equipment, and import or export of tobacco products and manufacturing equipment. Should they choose to, countries have the discretion to extend the supply chain to cover:

- retailing of tobacco products
- growing of tobacco, except for traditional small-scale growers, farmers and producers
- transporting commercial quantities of tobacco products or manufacturing equipment
- wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

Article 3 states the objective of the Protocol is: ‘to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC’.

Part II sets out general obligations, which are discussed in more detail in other Articles in the Protocol. Article 5 covers the protection of personal data, requiring parties to ‘protect personal data of individuals regardless of nationality or residence, subject to national law, taking into consideration international standards regarding the protection of personal data’. This is a significant consideration; however, the phrase ‘subject to national law’ provides some flexibility.

Initial analysis has found that New Zealand currently complies with Parts I and II of the Protocol, but would need to continue to work to implement them. The protection of personal data is an issue that would likely need to be worked through when developing further Protocol-related controls.

#### **4.2.2 Part III: Supply chain controls**

During negotiations, Part III was often referred to as the ‘heart of the protocol’. It covers supply chain control measures such as licensing; due diligence; track and trace systems; record-keeping; security and preventive measures; sale by internet, telecommunication or any other evolving technology; free zones and international transit; and duty-free sales.

Part III is likely to have the greatest potential impact on countries’ decisions on whether to become a party to the Protocol. This is because implementation of its specified controls is likely to require legislative change, and would have a financial impact on stakeholders (including government agencies and industry).

This document focuses on the following Articles of Part III:

- Article 6: Licence, equivalent approval or control system
- Article 7: Due diligence
- Article 8: Tracking and tracing
- Article 9: Record-keeping.

#### **4.2.3 Article 6: Licence, equivalent approval or control system**

Article 6 requires parties to the Protocol to prohibit manufacture, import or export of tobacco products and/or manufacturing equipment except with a licence or equivalent approval from a competent authority, or otherwise under a control system implemented by a competent authority in accordance with national law. The Article sets out components of the required licensing/approval schemes, including the application process, designation of a competent authority, ability to require key information from applicants, restrictions on the ability to transfer a licence, expiry, renewal, fees, prevention of fraud, conditions and disposal/destruction of stock.

Parties have the discretion to widen the licensing requirements to cover other parts of the supply chain, such as those involved in retail sale, wholesale, brokering, distributing and growing.

## Current compliance

Initial analysis has found that New Zealand is largely compliant with Article 6 with respect to the manufacture, import and export of *tobacco products*. However, to fully comply, there is likely a need for some reform around controls on tobacco product *manufacturing equipment*. The rationale for this position is explained below.

### Manufacture, import and export of tobacco products

The Smoke-free Environments Act 1990 does not specify any licensing requirements for the manufacture, import or export of tobacco products, or for other stages in the supply chain.

New Zealand's compliance with the mandatory aspects of Article 6 is largely met through the provisions of the Customs and Excise Act 1996 and its supporting regulations and administrative framework. The Ministry regards this as a 'licensing or equivalent approval system'.

Excise duty is levied on domestically manufactured tobacco products, and tariff duty and excise-equivalent duty is levied on imported tobacco products. Customs has sound systems and procedures to track the movement of goods across the border and to ensure duty is correctly calculated and paid. This minimises the chances of product being diverted into the illicit market.

All manufacturing of tobacco products in New Zealand must occur within a manufacturing area licensed by Customs,<sup>14</sup> and products cannot be released from such areas into the domestic market without payment of excise duty. Those wanting to manufacture tobacco products need to apply to Customs and provide certain information (including a diagrammatic plan of the area to be used for manufacturing tobacco products, where excisable goods will be stored and the security processes). Customs visits premises intended to be manufacturing areas and inspects them for suitability and security. If satisfied, Customs will issue a licence, with a procedure statement that sets out any terms or conditions.

All importations of tobacco products must be reported to Customs for the payment of customs duty (comprising GST, excise-equivalent duty and tariff duty). Simplified reporting procedures apply to small-quantity/value importations (eg, by passengers through international airports and by private individuals through international mail and couriers). In the case of commercial-scale importations (ie, consignments with a value of NZ\$1,000 or more), Customs' import processes require importers to lodge an import entry covering the particulars of their goods, and pay any applicable duty.

Import entries contain information including: details about the importer, whether a customs-controlled area is needed for excisable goods, permit and documentation, shipping/flight information, origin of the goods, port of loading, carrier information, weight of goods, invoicing details from the supplier, currency used in the transaction, freight information, container and pallet information, Ministry for Primary Industries quarantine information, type and number of packages, a description of the goods, tariff classification, applicable charges and duties, unique identifiers for goods, date marking, lot numbers and intended use information.

<sup>14</sup> There is an exemption in the Customs and Excise Act for the manufacture in one's own home of tobacco products for personal use. The tobacco leaf used to manufacture such products must have been grown on the person's own property, and the quantity manufactured must not exceed 15 kilograms in a year.

Goods exported from New Zealand need to be cleared with Customs prior to export or they will not be permitted to be loaded for export. An export clearance refers to the procedure where the details of the exported goods are provided to Customs, the necessary risk screening and actions are completed and the goods are authorised to leave New Zealand. As with imports, simplified procedures apply to small quantity/value exports.

Commercial exports of tobacco products (consignments valued greater than NZ\$1,000) require the submission of an export entry to Customs prior to export. This can be done via an online system or via a Customs broker. If exporters of tobacco products do not complete an export entry, they will not be able to export their tobacco products. All consignments on which a claim for drawback of duty is being made (for example, tobacco products that have been imported and for which duty has been paid, and which are then subsequently exported) must be cleared via an export entry. In a similar process to that it uses for licensing manufacturing areas, Customs licenses businesses that import tobacco products into New Zealand for subsequent export, or for duty-free sale to departing and arriving international passengers. Licensees are permitted to import and supply tobacco products free of duty. The systems provide Customs with the ability to monitor tobacco products for export.

Customs' compliance, monitoring and enforcement activity uses a risk-based approach involving the production of guidance to ensure voluntary compliance, an audit programme, monitoring of import and export entries, on-site inspections and checks, and cooperation and intelligence-sharing with international counterparts and other enforcement agencies.

### **Manufacture, import and export of tobacco product manufacturing equipment**

There is no formal licensing system for the manufacture, import or export of tobacco product manufacturing equipment in New Zealand. However, the Ministry considers that New Zealand is partially compliant with the requirements in Article 6 of the Protocol concerning importation and exportation of such machinery via the same import and export entry procedures under the Customs and Excise Act 1996 that apply to tobacco products (described above). These can be considered as a system of 'equivalent approval'.

Tobacco manufacturing equipment attracts an import duty, and is classified in Chapter 84 of the Tariff of New Zealand. New Zealand is not a noted importer or exporter of tobacco product manufacturing equipment; the Ministry understands that there is only one manufacturer of tobacco products in the country. However, some movement of a small amount of tobacco product manufacturing equipment in and out of the country has been recorded under the applicable tariff code. This is likely to include manufacturing equipment being sent for refurbishment, parts, and new and old equipment being imported and exported.

New Zealand does not have any approval process to cover the manufacture of tobacco manufacturing equipment. Such machinery is not an excisable good like tobacco products are in their own right. Therefore, the Customs controls applying to tobacco products described above do not also extend to cover tobacco manufacturing machinery. It is unclear whether there is any manufacturing equipment actually produced in New Zealand.

## **What is needed to comply?**

New Zealand would need to establish a form of licensing or equivalent approval system to cover the manufacture of tobacco product manufacturing equipment to fully comply with Article 6. However, the lack of such a system is not thought to be a significant problem for New Zealand. Given the minor nature of this non-compliance, any new scheme would need to be as simple and efficient as possible. The Smoke-free Environments Act 1990 (or other laws) could be amended to establish such a system, or an administrative system could be established. The Government would need to decide which agency would be responsible for administering such a system.

### **4.2.4 Article 7: Due diligence**

Article 7 requires, consistent with a party's national law and the objectives of the WHO FCTC, those in the supply chain (ie, manufacturers, importers and exporters at a minimum) for tobacco, tobacco products and tobacco product manufacturing equipment to conduct due diligence in business relationships, including by:

- establishing bona fides, including that customers hold the appropriate licence under Article 6
- identifying the intended use and market of sale of tobacco products and manufacturing equipment
- describing the intended location of manufacturing equipment.

Parties have the discretion to also require due diligence to include checking criminal history and identification of bank accounts.

Article 7 also requires those in the supply chain (ie, manufacturers, importers and exporters at a minimum) to:

- monitor sales to ensure that quantities are commensurate with demand
- report to the competent authorities any evidence that a customer is engaged in activities in contravention of Protocol obligations.

The Article also includes a provision noting that measures to ensure compliance may include the designation of certain customers as 'blocked' from participation in the market.

## **Current compliance**

There is no specific requirement in New Zealand legislation requiring those in the supply chain to conduct due diligence as defined by the Protocol.

Neither is there a requirement for those in the supply chain to monitor sales to ensure that quantities are commensurate with demand. However, some requirements in New Zealand law are consistent with the broad intent of Article 7. These include the requirements in the Smoke-free Environments Act 1990 (and supporting regulations) for manufacturers and importers of tobacco products to submit annual returns to the Ministry of Health about their products (see discussion of Article 9 below). However, there are no equivalent reporting obligations on exporters of tobacco products, and the requirements do not cover manufacturing equipment.

The lack of specific legislative requirements does not preclude the industry undertaking its own due diligence, monitoring and voluntary reporting. For example, those in the industry can notify the Ministry about retailers selling illicit tobacco products or violations of the Smoke-free Environments Act if it becomes aware of any such activity.

### **What is needed to comply?**

To fully comply with Article 7, New Zealand would need to amend the Smoke-free Environments Act (or other legislation) to specifically require those in the supply chain (ie, manufacturers, importers and exporters at a minimum) to:

- conduct due diligence before the commencement of and during the course of a business relationship
- monitor sales to their customers to ensure quantities are commensurate with legitimate demand
- report to competent authorities any evidence that their customers are engaging in activities in contravention of obligations arising from the Protocol.

Regulations could prescribe further detail. An appropriate offence for failing to undertake due diligence obligations would also likely need to be created. A government agency such as the Ministry of Health (if the Smoke-free Environments Act was used) would need to be responsible for administering the new system and undertaking compliance and monitoring activity.

### **4.2.5 Article 8: Tracking and tracing**

If New Zealand became a party to the Protocol, compliance with Article 8 would likely require the most significant changes for both industry and government. The intent of this Article is to establish a global track and trace regime to facilitate the availability and exchange of information about the origin of tobacco products and their movement through the supply chain. Central to this is the requirement for each party to establish their own track and trace system for tobacco products made in, or imported into, their country.

#### **Current compliance**

New Zealand, like most other countries, does not currently have a government-controlled track and trace system for tobacco products that complies with the requirements of Article 8.

While Customs legislation and policies provide for collecting excise and excise-equivalent duty for the import, export and manufacture of tobacco products, and therefore provide some checks and balances on the supply chain, these are not sufficient in their own right to meet the requirements of Article 8.

### **What is needed to comply?**

Meeting the requirements of Article 8 will be the biggest issue for the New Zealand Government to work through to ensure it complies with the Protocol. New Zealand would need to amend the Smoke-free Environments Act or pass new legislation to set up a track and trace system. The details for implementation would need to be prescribed in regulations, and responsibility for administration (including compliance and monitoring responsibilities) would need to be defined.

Parties to the Protocol need to implement their track and trace systems within five years from the date the Protocol enters into force for cigarettes, and within ten years for other tobacco products. Further, to meet the requirements of the Protocol, such systems need to:

- require unique, secure and non-removable identification markings, such as codes or stamps, to be affixed to or form part of all unit packets and packages and any outside packaging

- require that these markings include the date and location of manufacture, manufacturing facility, product description and intended market of retail sale, and allow for determination of: the machine and production shift or time of manufacture; the name, invoice, order number and payment records of the first customer not affiliated with the manufacturer; any warehousing and shipping; the identity of any known subsequent purchaser; and the intended shipment route, date, destination, point of departure and consignee
- ensure that the above information is recorded at the time of production, first shipment or import
- ensure that the above information is made accessible to the New Zealand Government by means of a link with the markings, and is recorded in such a way that it can be made accessible on request (through a standard electronic secure interface) to a global information sharing focal point established under the Protocol.

Under Article 8.11, the New Zealand Government would be required to respond to requests for information through the global information sharing focal point in a timely manner, in accordance with national law. (Information can only be requested where necessary for the purpose of detection or investigation of illicit trade, and must be protected and treated as confidential.)

Articles 8.12 and 8.13 specify that parties' obligations cannot be delegated to the tobacco industry, and that interaction with the industry in relation to the tracking and tracing regime only occurs to the extent strictly necessary.

Article 8.14 notes that parties may require the tobacco industry to bear the costs of implementing the system.

Further in-depth policy work to determine which type of track and trace system is right for New Zealand will be needed should the Government decide to become a party to the Protocol. The long lead-in period for implementation of track and trace requirements, provided for by the Protocol, would allow such decisions to be made in the context of work still to be undertaken by the Meeting of the Parties on the global tracking and tracing regime.

To date no countries have yet implemented a track and trace system specifically to meet the Protocol requirements. The World Customs Organisation and the WHO FCTC Secretariat have also officially stated that they have not endorsed any specific track and trace system that is currently in operation.

Two of the systems that are in use for tobacco products internationally include SICPATRACE, which is run by a private organisation, and Codentify®, which is run by the tobacco industry.<sup>15</sup> Other track and trace systems for other products include those used by airlines; courier delivery organisations; and the food, chemical and pharmaceutical industries. The main systems fall into the following categories:

- coding technology, such as barcodes, data matrix codes and radio-frequency identification (RFID)
- digital encrypted tax stamps affixed to products.

<sup>15</sup> Framework Convention Alliance. 2008. *The Use of Technology to Combat the Illicit Tobacco Trade*. URL: [www.fctc.org/media-and-publications/fact-sheets/illicit-trade/201-inb-2factsheetuseoftechnology](http://www.fctc.org/media-and-publications/fact-sheets/illicit-trade/201-inb-2factsheetuseoftechnology) (accessed 23 March 2015).

Track and trace systems can have a range of design features and this can include providing controls at different stages throughout the supply chain – from initial growing or manufacture through to sales to consumers. Track and trace systems could include:

- a system of secure marking on packaging that takes place during production
- other forms of control at the production stage (eg, monitoring the amount of product produced)
- controls at the point that the product is distributed between players in the supply chain (eg, manufacturers, transporters, storage providers, wholesalers and retailers)
- controls at the border when products move across jurisdictions (import and export)
- inspection checks and audit checks (eg, to compare actual product with records)
- security features that are accessible only by authorised officials
- a data management system controlled by the authorities.

#### **4.2.6 Article 9: Record-keeping**

Article 9 of the Protocol covers record-keeping requirements for those in the supply chain (importers, exporters and manufacturers of tobacco products and manufacturing equipment as a minimum). It allows parties some discretion in the extent to which they choose to comply, stating that, ‘as appropriate’, parties shall require:

- those in the supply chain to maintain complete and accurate records of all relevant transactions
- licensees to provide information on request (eg, on market trends, stock volumes and stock for export)
- records to be kept regarding tobacco products and manufacturing equipment intended for export (eg, intended shipping routes and markets)
- retailers and growers to keep records, if feasible.

The Article requires such records to be kept for four years, and states that they must be made available to the appropriate authorities when requested. Parties also need to ensure they have a system for sharing records with other countries.

#### **Current compliance**

The Smoke-free Environments Act 1990 does not require those in the supply chain to keep records for ‘relevant transactions’. However, it does require manufacturers and importers to submit annual returns to the Ministry in the form and manner prescribed in the Smoke-free Environments Regulations. The returns must include information about:

- the weight of tobacco and of all additives used in the manufacture of each product sold during the previous year
- the quantity of each brand or brand variant sold during the previous year
- the recommended price of each brand and brand variants sold during the previous year.

They do not need to include forecast or trend information.

Customs legislation also requires that certain records be kept to enable the assessment and recovery of duty and to support Customs compliance and enforcement activity. For example, under the Customs and Excise Act 1996, records must be kept of all goods entering Customs-controlled areas, being manufactured or consumed therein, and all goods leaving Customs-controlled areas. This includes all manufacturing, purchase and sales records as well as stocktake inventories. Clear documentation must be available for Customs to audit.

Section 95 of the Customs and Excise Act covers business records. It requires licensees, importers and exporters or their agents to keep records as prescribed in regulations. These businesses must make such records available to Customs on request; provide copies of records as required; and answer any questions relevant to matters arising under the Customs and Excise Act. Section 205 of the Customs and Excise Act creates an offence for failure to keep records as required by Section 95.

The import and export entry processes also require records to be generated for manufacturing equipment coming in and out of the country. There are no record-keeping requirements for the manufacture of tobacco manufacturing equipment.

### **What is needed to comply?**

New Zealand appears to be largely compliant with Article 9, if the processes and requirements outlined above are considered ‘appropriate’ record keeping for the purposes of the Protocol.

Through a combination of customs and health legislation, the New Zealand government can currently require some of the specific information mentioned in Article 9 about quantities of tobacco products. It can also request voluntary provision of other types of information (eg, trend forecasts), but companies may choose not to provide it.

If New Zealand wanted to introduce additional record-keeping requirements to strengthen existing requirements and cover-off some of the discretionary provisions in Article 9 (eg, requiring information about market trends or forecasts) then legislative changes would likely be needed. At this stage, no additional reforms are proposed.

## **4.2.7 Articles 10, 11, 12 and 13 (further supply controls)**

### **Article 10: Security and preventative measures**

Article 10 sets out a range of measures that parties can consider taking to help prevent the diversion of tobacco products into illicit channels. This includes encouraging those licensed<sup>16</sup> according to Article 6 (that is, exporters, importers and manufacturers of tobacco products) to:

- report cross-border transfer of cash in amounts set by national law, or cross-border payment in kind
- report all ‘suspicious transactions’
- supply tobacco products and manufacturing equipment only in amounts appropriate for the retail sale demand.

The Article states that parties could also, where appropriate, impose restrictions on payment modes for transactions by persons and entities subject to licensing or equivalent control under Article 6 (eg, requiring payment for transactions to be in the currency, and for the same amount, as described on the invoice).

<sup>16</sup> Or at least subject to a form of ‘equivalent approval’ system, as discussed in section 4.2.3 above.

New Zealand legislation does not currently require tobacco exporters, importers and manufacturers to undertake any of these measures.

The lack of such specific measures would not automatically mean that New Zealand would be non-compliant with Article 10 if it became a party to the Protocol. This is because Article 10 provides some discretion in its wording – it encourages countries to adopt such measures if they consider it ‘appropriate’ to do so. Given the small size of the illicit tobacco market in New Zealand, and existing systems and processes to prevent illicit trade, the Ministry does not consider that these measures are needed at this stage. This position could be revisited in the future if illicit tobacco trade in New Zealand became a more significant problem and the need for further controls was considered necessary.

Other existing legislative controls in New Zealand of more generic application may have some relevance to preventing diversion into illicit channels. These laws were created to better address serious and organised crime rather than as a specific response to prevent the illicit tobacco trade. For example, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 requires people who move more than \$10,000 in cash into or out of New Zealand, or will receive that amount from outside the country, to complete a ‘border cash report’ (unless they have been exempted from having to do so). The Act contains offences for failing without reasonable cause to make the required cash report; making cash reports knowing they are false/misleading; and wilfully obstructing or failing to answer questions from Customs officers.

The same Act requires financial institutions (such as banks) to notify the Commissioner of Police of suspicious transactions. These requirements do not apply directly to tobacco importers, exporters and manufacturers.

The Criminal Proceeds (Recovery) Act 2009 empowers the Crown to confiscate property from those who have committed, or profited from, significant criminal activity. However, for this mechanism to be invoked an existing offence needs to have been established under other legislation that carries a penalty of at least five years’ imprisonment. Some current offences relating to illicit trade – for example, making a false Customs declaration knowing it to be false<sup>17</sup> – would not trigger this threshold.

If the Government decided that further action was required to prevent the diversion of tobacco products into the illicit market (such as creating new or increasing existing offences to trigger the criminal proceeds confiscation provisions noted above), then legislative change would be required. However, at this stage no such proposals are being considered.

### **Article 11: Sale by internet, telecommunication or any other evolving technology**

Article 11 requires all internet, phone and other technology-based transactions with regard to tobacco products to meet relevant requirements of the Protocol. Research has indicated that internet sales have the capacity to undermine the public health benefits of higher cigarette prices.<sup>18</sup>

<sup>17</sup> This is an offence under section 204 of the Customs and Excise Act 1996, and carries a potential penalty for individuals of \$10,000 or six months’ imprisonment.

<sup>18</sup> Kim AE, Ribisi K, Delnevo CD, et al. 2006. Smokers’ beliefs and attitudes about purchasing cigarettes on the Internet. *Public Health Reports* 121(5): 594–602.

New Zealand appears to currently meet the obligations of Article 11. All importation and exportation of tobacco products (whether purchased via the internet or otherwise) are subject to Customs controls – such as the import or export entry requirements under Article 6 discussed at section 4.2.3 above, including personal import allowances.

Internet sales of tobacco products are allowed under New Zealand legislation. The Ministry will monitor this situation and consider recommending further action if appropriate.

### **Article 12: Free zones and international transit**

Article 12 requires parties to implement effective controls on manufacturing of and transactions in tobacco products in free zones, and to prohibit intermingling of tobacco products with non-tobacco products at the time of removal from free zones. It also requires them to apply control and verification measures, in accordance with national law, to international transit or transhipment of tobacco products and manufacturing equipment.

New Zealand appears to meet the obligations of Article 12. The country has no free zones. While there are no specific New Zealand laws addressing the intermingling of tobacco products with other goods, the current legislation on fraudulent declarations would apply. Moreover, Customs is provided with ship manifests, and uses a risk-based approach for determining the need for further scrutiny.

### **Article 13: Duty-free sales**

Article 13 requires parties to implement effective measures to ensure that all duty-free sales meet the requirements of the Protocol. New Zealand appears to be compliant with this Article. From 1 November 2014, the duty-free limit for tobacco brought into the country dropped from 200 to 50 cigarettes or 50 grams of tobacco products. The gift concession was also removed; anyone sent tobacco from overseas has to pay duty and GST on the entire amount on arrival.

## **4.2.8 Article 14: Unlawful conduct including criminal offences**

Article 14 requires Parties to the Protocol to ensure they have in place appropriate legislative and other measures, subject to national law, to establish behaviours that are contrary to the Protocol as unlawful. These behaviours include: acts of smuggling including evading taxes/duties; illicit manufacture; fraudulent conduct; money-laundering; obstructing public officials in the performance of relevant duties; and a range of other activities contrary to the regulatory requirements of the Protocol.

### **Current compliance**

New Zealand appears to be partially compliant with the requirements of Article 14. For example, under current Customs legislation, it is an offence to:

- manufacture tobacco products without a Customs-controlled area licence
- fail to pay excise and excise-equivalent duty
- make declarations or statements that are erroneous, or submit documents that are not genuine or are erroneous
- wilfully obstruct or fail to answer questions from Customs officers
- move stock without making appropriate duty payments.

It is an offence under the Smoke-free Environments Act to fail to submit an annual return.

## **What is needed to comply?**

To fully comply with the Protocol, some new offence provisions would likely be needed, specifically in regard to Articles 7 (due diligence) and 8 (tracking and tracing). During the policy processes to pursue such reform, consideration of appropriate offences and penalties will need to occur. See discussion in sections 4.2.4 and 4.2.5 above.

There may also be a need for offences to be created regarding new tobacco product manufacturing equipment requirements.

### **4.2.9 Articles 15–19: Other enforcement provisions**

Articles 15–19 outline provisions relating to enforcement matters. These include establishing the liability of ‘legal persons’ (companies) for unlawful conduct, ensuring that those held liable for unlawful conduct are subjected to effective sanctions, disposing of confiscated stock and manufacturing equipment, and use of special investigative techniques (eg, covert surveillance and controlled deliveries).

The Ministry is not aware of any legislative reform that is needed for New Zealand to comply with these Articles. For example, enforcement agencies can use controlled deliveries when the need arises, and covert surveillance is regulated under laws such as the Search and Surveillance Act 2012.

### **4.2.10 Parts V–X of the Protocol**

Parts V–X provide for cooperation between parties and institutional arrangements for the Protocol. Consideration of New Zealand’s current system indicates that there is no need for any legislative or regulatory changes to ensure compliance with these Parts.

#### **Part V: International cooperation**

Part V is focused on encouraging parties to the Protocol to work together to combat illicit trade in tobacco products. Within it, Articles 20–31 contain provisions covering:

- information sharing between parties and competent international authorities (eg, on details of seizures and illicit activity uncovered, trends observed and concealment methods uncovered)
- information sharing with other countries to assist with enforcement
- respecting confidentiality and privacy
- cooperation and assistance between countries regarding law enforcements, investigation and prosecution of offences, and technical matters
- providing mutual legal and administrative assistance according to parties’ existing laws
- extradition.

The Ministry considers that implementing the provisions of Part V might require action by government agencies, but that this would be consistent with New Zealand’s existing laws and administrative arrangements. As such Part V of the protocol is unlikely to require any legislative reforms to ensure compliance with the Protocol.

Legislation such as the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999 currently provide a framework for formal assistance between New Zealand and foreign governments in the investigation and prosecution of crime. Such legislation interacts closely with New Zealand's international legal obligations.

The Mutual Assistance in Criminal Matters Act 1992 covers both requests for assistance made by New Zealand to other countries and requests made by other countries to New Zealand. Common forms of mutual assistance include the identification and location of persons; the obtaining of evidence, documents or other articles; the production of documents and other articles; the making of arrangements for persons to give evidence or assist investigations; the service of documents; the execution of requests for search and seizure; the forfeiture or confiscation of tainted property; the recovery of pecuniary penalties in respect of offences; the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated; and the location of property that may be forfeited, or used to satisfy penalty orders. New Zealand also provides more informal police-to-police assistance with other countries, and border agencies such as Customs cooperate with their colleagues in other jurisdictions.

The Extradition Act 1999 governs the removal from, and return of, people to New Zealand who have been accused of an offence. Such offences must be 'extraditable' and carry a maximum penalty of not less than one year's imprisonment in the requesting country, and involve behaviour that would have been criminal had it occurred in New Zealand and would have carried a similar penalty. When an extradition request is made, a court hearing is held to determine if there is a strong case and to make sure the respective treaty and the law have been complied with. Extradition can be refused on a number of grounds, including offences of a political character, offences that carry the death penalty and double jeopardy.

The Law Commission is currently reviewing the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999 to ensure such law remains fit for purpose.

## **Part VI: Reporting**

Part VI requires parties to share information on their implementation of the Protocol by providing reports through the Secretariat, as part of their regular reporting under the WHO FCTC. Reports would cover issues such as measures taken for implementation, barriers to implementation, and financial or technical assistance requested or provided for implementation. The reporting provisions require action by government agencies, but are unlikely to have an impact on business.

## **Parts VII–X: Institutional arrangements and final provisions**

Parts VII–X outline the institutional arrangements for the Protocol, including designating the Secretariat and establishing a Meeting of the Parties to oversee implementation.

These Parts of the Protocol also contain final provisions covering such matters as signature and entry into force of the Protocol and procedures for amendments and settlement of disputes. These provisions would require some action by government agencies if invoked (eg, if New Zealand has a dispute with another party), but are unlikely to have an impact on business.

# 5 Impacts

This section identifies some potential impacts on stakeholders if New Zealand decided to become a party to the Protocol and made the changes identified in section 4.2 to ensure compliance.

The potential impacts identified here are based on the assumption that becoming a party would help achieve the objectives described in section 3, and contribute to the reduction of illicit trade of tobacco.

This section provides *qualitative* descriptions of potential impacts. It does not seek to quantify the potential impacts in financial (or other) terms. The size of the impacts will depend factors such as the amount of illicit trade occurring in New Zealand now and in the future. The next step in the consultation process, a cost-benefit analysis, will include a quantitative estimation of the net impact of New Zealand becoming a party to the Protocol.

Table 8 lists potential impacts for various stakeholders. A number of impacts from implementing the Protocol will be generic, arising from the Protocol as a whole rather than a specific requirement. Others will be more specific.

**Table 8: Potential impacts of implementing the Protocol**

Positive impacts	Negative impacts
<b>Government</b>	
<ul style="list-style-type: none"><li>Reduced availability of cheaper illicit tobacco could help reduce smoking rates due to affordability reasons</li><li>Reductions in public health and social welfare costs associated with longer and healthier working lives</li><li>If successful, could initially lead to an increase in taxes, duties and GST as consumers currently using illicit tobacco move to taxed tobacco to continue smoking. However, this may not be sustained as such people may be price sensitive and quit as the intended impact of the tax works</li><li>Implementation of tracking and tracing has been shown to reduce illicit trade in some settings (Article 8)</li><li>Reputational benefits to New Zealand – being regarded as a part of the international community’s efforts to combat illicit tobacco – and associated positive impacts on other areas of international cooperation</li><li>Potential for efficiencies in regional cooperation (assuming other countries become parties to the Protocol)</li><li>Complement other law and order objectives (where illicit trade in tobacco funds criminal activity)</li><li>Promotion of the rule of law, which would have national efficiency impacts (eg, on enforcement costs)</li><li>Reduction in risk of erosion of the tax base</li><li>Greater availability of information gathered under the Protocol on tobacco product manufacturers, importers and exporters, to inform future policy and programme development</li></ul>	<ul style="list-style-type: none"><li>Costs of designing, introducing and enforcing new regulatory schemes (particularly to comply with Articles 6, 7 and 8)</li><li>Costs of creating additional technical capacity for regulatory agencies</li><li>Costs of establishing new offences to comply with Parts III and IV</li><li>Fiscal and resource costs relating to the analysis of current international agreements and subsequent development and agreement with other Parties to meet new requirements identified (Protocol Part V)</li><li>Costs of collating information and preparing necessary reports for the Secretariat (ie, on progress to implement the Protocol) under Part VI</li><li>Increased cost of providing old age income support associated with increasing survival rates as a result of lower tobacco consumption</li></ul>

Positive impacts	Negative impacts
<p>Government (continued)</p> <ul style="list-style-type: none"> <li>Greater availability of information gathered under the Protocol on the tobacco industry, to improve audit, monitoring and enforcement activities</li> <li>Increased knowledge on the impact of tobacco control policies</li> <li>Alignment with the Māori Affairs Select Committee recommendation that Government increase support for the international development of comprehensive systems for detecting smuggled and contraband tobacco products</li> </ul>	
<b>Large tobacco companies<sup>19</sup></b>	<ul style="list-style-type: none"> <li>Less potential for revenue loss from sales lost to the illicit market</li> <li>Possible reduction in trade competition if smaller tobacco manufacturers/importers fail to comply with regulations and are subsequently forced out of the market</li> <li>Potential for increased profitability as large incumbent companies can typically defray increased costs more efficiently</li> <li>Increased confidence in the supply chain (ie, less concern about diversion of legitimate products into the illicit market)</li> <li>Increased confidence that illicit tobacco products are not able to be produced in New Zealand on a large scale, due to manufacturing equipment restrictions (Article 6)</li> <li>Greater knowledge of products and trends across the supply chain through information collected to comply with the track and trace and record-keeping provisions (Articles 8 and 9)</li> </ul>
<b>Small tobacco companies<sup>20</sup></b>	<ul style="list-style-type: none"> <li>Less potential for revenue loss from sales lost to the illicit market. However, some niche products may not have the same illicit trade concerns as the more mainstream cigarette market</li> <li>Increased confidence in the supply chain (ie, less concern about diversion of legitimate products into the illicit market)</li> <li>Greater knowledge of products and trends across the supply chain through the increased information collected in response to the track and trace and record-keeping provisions (Articles 8 and 9)</li> </ul>
<b>Growers/wholesalers/distributors/retailers</b>	<ul style="list-style-type: none"> <li>Potential for greater business from large and smaller tobacco companies, if their sales increase because the illicit market shrinks</li> <li>Increased confidence in the supply chain (ie, less concern about diversion of legitimate products into the illicit market)</li> <li>Assuming these stakeholders are not included in the supply chain controls introduced (ie many controls are only mandatory for importers, exporters, and manufacturers) there will be little impact on their activities</li> </ul>

<sup>19</sup> British American Tobacco New Zealand, Imperial Tobacco New Zealand and Philip Morris New Zealand.

<sup>20</sup> Mostly tobacco product importers including duty-free stores, niche tobacco retailers and organisations who supply goods and provisions to vessels that travel in international waters (provedores).

Positive impacts	Negative impacts
<p><b>Smokers</b></p> <ul style="list-style-type: none"> <li>Increased exposure to, and benefits from, the public health messages on legitimate tobacco products (eg, health warnings, etc), which are often not on illicit products</li> <li>Greater confidence in products being legitimate</li> </ul>	<ul style="list-style-type: none"> <li>Increased costs for smokers of illicit tobacco who switch to legal products</li> <li>Costs incurred by the tobacco industry for establishing or complying with new systems may be passed onto the consumer, with a subsequent flow on affect to their family members</li> </ul>
<p><b>The non-smoking public</b></p> <ul style="list-style-type: none"> <li>Reduced smoking rates due to less availability of cheaper illicit tobacco; consequently, health benefits for former smokers and spill-over benefits for smokers' families and communities</li> <li>If successful, could have a positive effect on law and order as it would impact on criminal activity due to decreased income from illicit trade</li> <li>Consumers who quit smoking would have more disposable income to spend on other goods and services</li> <li>Reduction in the tax burden for non-smokers, as smokers pay more tax through purchasing tobacco products from the legitimate market</li> </ul>	<ul style="list-style-type: none"> <li>Non-smokers in households with smokers may bear some of the costs of the smokers switching to higher priced legal tobacco (eg, less household disposable income to spend on other goods)</li> </ul>

## Consultation questions

- 7 Do you support either:
  - Option 1 (retaining the status quo); or
  - Option 2 (New Zealand becoming a party to the Protocol)?
 Please provide your reasons.
- 8 What impacts would the Protocol's supply control measures (as described in sections 4.2.1–4.2.7 of this document) have on you or your organisation?
- 9 Are you aware of any existing track and trace models that you believe comply with the Article 8 of the Protocol? Please provide information regarding the nature of any such systems, and an estimate of the likely costs associated with their implementation in New Zealand, if known.
- 10 Would Part IV (Articles 14–19) of the Protocol have any impacts on you or your organisation? If so, can you quantify any such impacts (in \$NZD)?
- 11 Would Part V (International cooperation) of the Protocol have any impacts on you or your organisation? If so, can you quantify any such impacts (in \$NZD)?
- 12 Would Parts VI–X of the Protocol have any impacts on you or your organisation? If so, can you quantify any such impacts (in \$NZD)?

# **6 Next steps**

## **6.1 National interest analysis**

Once the consultation period has closed, officials from several government departments, including the Ministry of Health, the New Zealand Customs Service, the Ministry of Justice, Treasury, and the Ministry of Foreign Affairs and Trade will consider the results and develop advice for the Government.

The Ministry of Health will use information obtained from the consultation to develop a national interest analysis report that will consider whether it is in New Zealand's best interest to become a party to the Protocol. The Government will then make a decision about whether to become a party to the Protocol.

This report will be tabled in Parliament. After that, the usual process is for a parliamentary select committee to consider the matter and report back to Parliament.

## **6.2 Implementation, monitoring, evaluation and review**

If New Zealand decides to become a party to the Protocol, a number of key planning and implementation issues would need to be further worked through during subsequent policy and decision-making processes. If new legislation or regulations were progressed during implementation, then further consultation may need to occur. Specific areas of implementation would likely include:

- the details of policy and legislative reform addressing specific elements such as how to treat manufacturing equipment, a track and trace system, and new due diligence requirements
- the interface of the track and trace system with the global information sharing focal point
- consideration of potential cost recovery for initiatives implemented under the Protocol or consequent legislation development
- agreeing the roles and responsibilities of the relevant government agencies under the Protocol (eg, in terms of policy development, administering new legislation, enforcement and compliance, and monitoring and review)
- confirming the degree to which it is appropriate to involve the tobacco industry in the implementation of Protocol requirements. In this regard, provisions in WHO FCTC Article 5.3 and Protocol Articles 8.12 and 8.13 about interactions with industry need to be considered
- the resources, capacity and capability that implementation would require of government agencies
- administrative systems and processes required for implementation of new legislation
- further/ongoing research (eg, on the size and composition of the illicit trade market)
- reasonable transition times for new requirements

- considering whether New Zealand needs to expand its current role and efforts in assisting other countries to reduce illicit trade (including those countries that may be sources of illicit trade into New Zealand)
- agreeing a compliance and enforcement approach to support the Protocol and any new legislative requirements
- assessing how compliance with the Protocol would be monitored and reviewed. This may include any evaluation of the effectiveness of any measures implemented under the Protocol.

# Appendix: Background to the Protocol

This appendix provides some background information on the Protocol.

## The WHO FCTC

The WHO FCTC was the first international treaty negotiated under the auspices of the WHO.<sup>21</sup> It was adopted by the World Health Assembly on 21 May 2003. New Zealand signed it in January 2004, and has been a party since it entered into force on 27 February 2005.<sup>22</sup>

The WHO FCTC was developed:

... in response to the globalization of the tobacco epidemic and is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The Convention represents a milestone for the promotion of public health and provides new legal dimensions for international health cooperation.<sup>23</sup>

The WHO FCTC commits parties to implement a range of tobacco control measures focused on reducing the demand for tobacco products, including tobacco price and tax measures (Article 6); comprehensive bans on tobacco advertising, promotion and sponsorship (Article 13); labelling with prominent health warnings (Article 11); protecting against exposure to second-hand smoke (Article 8); supporting smoking cessation interventions (Article 14), and education and public awareness activities (Article 12). Parties also commit to measures addressing the supply of tobacco products, including action to combat illicit trade in tobacco products (Article 15).

New Zealand is compliant with its obligations under the WHO FCTC.

## Development of the Protocol

The Protocol builds on the WHO FCTC, and is the first protocol developed under that Convention.<sup>24</sup> It was developed by an intergovernmental negotiating body established by the WHO FCTC Conference of the Parties (COP) in 2007. After five years of negotiations, the Protocol was adopted by the COP at its fifth session, held in Seoul between 12 and 17 November 2012.

New Zealand was involved in the negotiations of the text of the Protocol through to its adoption. The Protocol was initially open for signature by all parties to the WHO FCTC from 10 January 2013 to 9 January 2014.

<sup>21</sup> Available at [www.who.int/fctc/en/](http://www.who.int/fctc/en/).

<sup>22</sup> WHO. *Parties to the WHO Framework Convention on Tobacco Control*. URL: [www.who.int/fctc/signatories\\_parties/en/](http://www.who.int/fctc/signatories_parties/en/) (accessed 23 March 2015).

<sup>23</sup> WHO. *About the WHO Framework Convention on Tobacco Control*. URL: [www.who.int/fctc/about/en/index.html](http://www.who.int/fctc/about/en/index.html) (accessed 23 March 2015).

<sup>24</sup> WHO. *Protocol to Eliminate Illicit Trade in Tobacco Products*. URL: [www.who.int/fctc/protocol/en](http://www.who.int/fctc/protocol/en) (accessed 23 March 2015).

Although the period for signature has now closed, the Protocol remains open for ratification, acceptance, approval or accession by state parties to the WHO FCTC, and for formal confirmation or accession by regional economic integration organisations that are parties to the Convention. As at 23 March 2015, 54 Parties had signed the Protocol, including four (Austria, Nicaragua, Uruguay and Mongolia) that have deposited instruments of ratification, one (Gabon) that deposited an instrument of acceptance, and one (Spain) that deposited an instrument of accession.<sup>25</sup>

The Protocol will enter into force on the 90th day after the deposit of the 40th instrument (of accession, approval, acceptance or ratification). For New Zealand to become a party to the Protocol, it needs to deposit an instrument of accession at the United Nations Headquarters in New York.

However, the usual process prior to the ratification of such a protocol is for the Government to pass or amend legislation or regulations required to align New Zealand's domestic laws with its obligations. This process also usually involves administrative reforms such as the development of new or amended policies, processes and systems to help ensure compliance.

<sup>25</sup> See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4-a&chapter=9&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&lang=en) (accessed 23 March 2015).



# Submission form

The closing date for submissions is: **5 pm Friday 12 June 2015.**

Submitters are encouraged to make submissions by email, using this response form, to:  
[tobacco@moh.govt.nz](mailto:tobacco@moh.govt.nz)

Alternatively, your completed form can be mailed to:

Illicit Trade Protocol Consultation  
Tobacco Control Team  
Ministry of Health  
PO Box 5013  
Wellington 6145.

A copy of this form is also available on the Ministry's website: [www.health.govt.nz](http://www.health.govt.nz):

## **1.2.1 Protection of commercially sensitive information**

Public reporting on this consultation will seek to avoid prejudice to the commercial position of respondents who provide commercially sensitive information. Submitters are therefore asked to clearly indicate any information they wish to have treated as confidential commercially sensitive information.

## **1.2.2 Declaration of interest**

In setting and implementing public health policies with respect to tobacco control, New Zealand has obligations under the WHO FCTC to protect those policies from commercial and other vested interests.<sup>26</sup> All respondents are therefore requested to disclose any direct or indirect links to the tobacco industry, or whether they receive any funding from the industry. The Ministry will still carefully consider responses accompanied by any such disclosures as part of the consultation process.

<sup>26</sup> Article 5.3 of the WHO FCTC.

# Consultation questions

1. Have you or your organisation encountered any illicit tobacco products in New Zealand?

2. Are you or your organisation affected by illicit trade in tobacco products?

Yes

No

If so, please explain how.

3. To what extent do you think there is scope for reducing illicit trade in tobacco products in New Zealand? Please explain your reasons and provide any views you have on how this could be achieved.

4. Are you or your organisation currently doing anything to help prevent the illicit tobacco trade?

Yes

No

If so, please explain, and provide any information you have to help quantify the costs of any such activities (in \$NZD).

5. Which of the policy objectives outlined above do you support, and why? Please also state any other objectives you think are relevant.

6. To what extent do you think that New Zealand becoming a party to the Protocol would contribute to each of the objectives?

7. Do you support either:

- Option 1 (retaining the status quo); or  
 Option 2 (New Zealand becoming a party to the Protocol)?

Please provide your reasons.

8. What impacts would the Protocol's supply control measures (as described in sections 4.2.1–4.2.7 of this document) have on you or your organisation?

9. Are you aware of any existing track and trace models that you believe comply with the Article 8 of the Protocol?

- Yes  
 No

Please provide information regarding the nature of any such systems, and an estimate of the likely costs associated with their implementation in New Zealand, if known.

10. Would Part IV (Articles 14–19) of the Protocol have any impacts on you or your organisation?

Yes

No

If so, can you quantify any such impacts (in \$NZD)?

11. Would Part V (International cooperation) of the Protocol have any impacts on you or your organisation?

Yes

No

If so, can you quantify any such impacts (in \$NZD)?

12. Would Parts VI–X of the Protocol have any impacts on you or your organisation?

Yes

No

If so, can you quantify any such impacts (in \$NZD)?

If you wish to provide additional information, you are welcome to include this with your submission.