

# RECENT PROGRESS IN THE DEVELOPMENT OF A PROTOCOL ON THE ILLICIT TRADE IN TOBACCO PRODUCTS

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## ABSTRACT

*This article reviews the development to date of the draft Protocol on the Illicit Trade in Tobacco Products currently under negotiation as a supplement to the Framework Convention on Tobacco Control. It suggests that diversion from the licit trade into the illicit trade is the main target of the draft Protocol. It examines the process of development of the draft Protocol from the Expert's Template through the various drafts produced by the International Negotiating Body in Geneva in the first three rounds of negotiations held in 2008 and 2009. The article suggests that the European Community's agreement with the Tobacco Company Phillip Morris International has served as a model for many of the regulatory provisions in the Draft Protocol. The article identifies tracking and tracing, licensing and due diligence as the three main tools to be used to prevent diversion, and sets out the problems and progress of negotiations in regard to each. The article also sets out the main criminal justice*

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*provisions, modelled on existing provisions in crime control conventions, and examines the difficulties around criminalisation of tobacco related offences and the inclusion of a set of complex provisions for international procedural cooperation. Finally, the article speculates on the prospects for successful adoption of a protocol in the final stages of the negotiating process.*

**KEYWORDS:** *illicit trade in tobacco products, tracking and tracing, due diligence, licensing, criminalisation, international procedural cooperation, WHO, FCTC, INB, UN Convention against Transnational Organised Crime*