

APPENDIX D – TRACKING AND TRACING PROTOCOLS

PROTOCOL 1

GENERAL STATEMENT OF TRACKING AND TRACING

1.01. *Scope and Purpose of Protocols.*

(a) Philip Morris International recognizes that giving the Relevant Administrations the effective and timely ability to track and trace sales of Philip Morris Cigarettes is an important component of its commitment to fight the trade in Contraband Philip Morris Cigarettes. Philip Morris International is committed to a continuous process of dialogue and cooperation with the Relevant Administrations to evaluate and address the trade in Contraband Philip Morris Cigarettes, and to making commercially reasonable efforts to implement product tracking and tracing measures that target, and are reasonably likely to provide the Relevant Administrations with substantial additional assistance in their efforts to combat, the trade in Contraband Philip Morris Cigarettes.

(b) These Tracking and Tracing Protocols set forth the basic tracking and tracing procedures that the Parties believe are appropriate in light of existing market conditions and the current state of Tracking and Tracing technologies, and describe additional steps which the Parties have identified in order to combat Contraband Philip Morris Cigarettes during the term of the Agreement. These provisions, however, do not apply to products which are sold and distributed for any market in promotional packaging so long as the total volume of the Cigarettes using that promotional packaging for any market does not exceed 300 million Cigarettes in any given year. Notwithstanding the immediately preceding, if the total volume of promotional packaging in the Member States and the Designated States in any given year exempted from the applicability of the Tracking and Tracing Protocols by the preceding sentence exceeds one billion Cigarettes, the European Commission and Philip Morris International shall meet and confer to reassess the applicability of these Tracking and Tracing Protocols to promotional packaging, and, unless otherwise agreed at or following that meet and confer, thereafter, these provisions shall apply to any amount of promotional packaging in the Member States and the Designated States in any given year that exceeds one billion Cigarettes and involves a promotional packaging that itself exceeds twenty million cigarettes.

1.02. *Definitions.* Except as otherwise stated herein, the terms used in these Protocols are as defined in Article 1 of the Anti-Contraband and Anti-Counterfeit Agreement and General Release (the “**Agreement**”).

1.03. *Conflict with Other Laws.* Nothing in these Protocols shall require Philip Morris International to act in a way that violates applicable law.

PROTOCOL 2
PACK & CARTON MARKING AND CODING

2.01. *Labeling for Intended Market of Retail Sale.*

(a) The Parties agree that Philip Morris International shall make commercially reasonable efforts to mark Packs and/or Cartons of Philip Morris Cigarettes with markings, codes or other information which permit a determination of the Intended Market of Retail Sale when such Packs or Cartons have those markets identified in Exhibit A-1 as the Intended Market of Retail Sale.

(b) In the event that Philip Morris International begins selling in a new market not covered by Protocols 2.01(a) or 2.02, Philip Morris International shall notify the Representatives of the Relevant Administrations as to the markings that Philip Morris International shall undertake to apply. Such markings shall meet the requirements contained in Protocol 2.03, below, and 2.01(a), above, and such new market shall be added to the Exhibits of this Appendix, if applicable.

(c) On the Execution Date, Philip Morris shall provide OLAF with 20 copies of a manual designed to allow for the determination of the Intended Market of Retail Sale for all Philip Morris Product marked in accordance with Protocol 2.01(a), above. Philip Morris shall update such manuals and Exhibits A-1 and A-2 as needed.

2.02. *Intended Market of Retail Sale: Exceptions.*

(a) The Parties further agree that, as an exception to Protocol 2.01, Packs or Cartons that have as their Intended Market of Retail Sale those markets identified in Exhibit A-2 shall bear the labeling identified in Exhibit A-2, and that no additional, market-specific markings or other labeling shall be required by this Agreement in respect of identifying the Intended Market of Retail Sale.

(b) Philip Morris International may change the labeling of Packs or Cartons subject to the terms of 2.02(a) at any time so long as the new markings, codes or other information would permit a determination of the Intended Market of Retail Sale of such Packs or Cartons. Philip Morris International shall provide notice of such new labeling to Representatives of the Relevant Administrations prior to the introduction of any Philip Morris Cigarettes bearing such new labeling into the retail channel in the Intended Market of Retail Sale, and immediately upon Philip Morris International becoming aware that any Philip Morris Cigarettes bearing such new labeling are otherwise no longer under the control of Philip Morris International.

2.03. *Pack and Carton Marking.* In addition to the markings required by Protocol 2.01 and with the exception of the facilities and brands set forth in

Exhibit A-3 as of the Execution Date and the exception of Protocol 2.05, Philip Morris International shall mark all Packs or Cartons with embossed codes or other markings to allow for the complete identification of:

- (a) the date of manufacture of the product,
- (b) the manufacturing facility at which the product was manufactured,
- (c) the machine of manufacture, and
- (d) the production shift during which the product was manufactured.

2.04. *Annual Review.* On an annual basis, Philip Morris International and the Representatives of the Relevant Administrations shall meet to determine what, if any, additional or improved markings, labeling, codes or scanning shall be required in general, or which, if any, requirements shall be changed on a market-by-market basis. Philip Morris International shall provide the Representatives of the Relevant Administrations with updates, if any, to Exhibits A-1 and A-2. Philip Morris International agrees to make commercially reasonable efforts to implement such agreed changes within a reasonable period of time, and to notify OLAF of the schedule for implementation thereof. Any such agreement shall be made based on a number of factors, including but not limited to changes in market dynamics, developments in Tracking and Tracing technology, changes in national or local labeling requirements, and, if applicable, increases in Contraband Philip Morris Cigarettes in general or which had as the Intended Market of Retail Sale the market in question.

2.05. *New Manufacturing Facilities.* In the event that Philip Morris International acquires new manufacturing facilities which would be subject to Protocol 2.03, Philip Morris International shall make commercially reasonable efforts to implement the requirements of Protocol 2.03 no later than 12 months after the acquisition.

PROTOCOL 3 MASTER CASE LABELING AND SCANNING

3.01. *Master Case Labeling*

(a) To the extent required by the schedule attached as Exhibit B and the terms of Protocol 3.01(b), and 3.01(c), herein below, Philip Morris International and/or its Contractors shall mark Master Cases with unique, machine scannable barcode labels prior to selling those Master Cases to a First Purchaser. The labels shall contain both the barcode and a human readable translation (i.e., spelled out in letters and numbers) of the barcode and shall be affixed to Master Cases with “non-peelable” adhesive. The labels shall permit Philip Morris International to

link the code to product information, including the date of manufacture of the product, the manufacturing facility at which the product was manufactured, the machine of manufacture, the production shift during which the product was manufactured, and, when scanned pursuant to Protocol 3.02, the identification of the First Purchaser and other information, including, but not limited to, that information identified in Protocol 3.03.

(b) In the event that the First Purchaser is the sole First Purchaser of Philip Morris International for the Intended Market of Retail Sale and that market has Pack or Carton markings satisfying Protocol 2.01, then Philip Morris International and/or its Contractors need not mark Master Cases sold to that First Purchaser for that market with unique barcode labels. Markets meeting these conditions are set forth in Exhibit C-I to these Tracking and Tracing Protocols.

(c) During the term of the Agreement, Philip Morris International shall maintain an ongoing program of research and development concerning methods and technologies for improving the security of Master Case marking. Philip Morris International shall provide a yearly report to the Representatives of the Relevant Administrations concerning new technologies for Master Case markings. In the event that as a result of such research and development, Philip Morris International identifies suitable technologies for the improvement or replacement of machine scannable barcode labels with other Master Case marking technologies that permit unique identification of Master Cases for the purpose of tracking sales to First Purchasers, Philip Morris International may update its Master Case Labeling with such technologies, ensuring that at all times Master Cases required by these Tracking and Tracing Protocols to be marked to permit their unique identification are so marked in accordance with this Protocol 3.01, or are marked so as to provide equivalent tracking and tracing capability.

3.02. *Master Case Scanning.*

(a) To the extent required by the schedule attached as Exhibit C and subject to the exception set forth in Protocol 3.02(b), Philip Morris International and/or its Contractors shall scan Master Cases sold to First Purchasers in order to record the information reflected in the barcode labels applied pursuant to Protocol 3.01, and to link that information in a database with the information described below in Protocol 3.03(a).

(b) Notwithstanding subsection (a), in the event that the First Purchaser is the sole First Purchaser of Philip Morris International for the Intended Market of Retail Sale, and that market has Pack or Carton markings satisfying Protocol 2.01, then Philip Morris International and/or its Contractors need not physically scan Master Cases sold to that First Purchaser for that market. Markets meeting these conditions are set forth in Exhibit C-I to these Tracking and Tracing Protocols.

3.03. *Database.*

(a) Philip Morris International shall make commercially reasonable efforts to maintain First Purchaser Databases (“**First Purchaser Databases**”) searchable by customer order or Master Case barcode number for all markets in which it has implemented Master Case labeling and scanning pursuant to the requirements of Protocols 3.01 and 3.02. For all shipments of Philip Morris Cigarettes where Master Case Barcode Labels are scanned pursuant to Protocol 3.02(a) and where the product shipped is produced 30 days or more after the Execution Date, the information contained in the First Purchaser Databases shall include:

- (i) First Purchaser name and order number,
- (ii) shipment date,
- (iii) destination of shipment,
- (iv) point of departure from the final Philip Morris International factory or warehouse,
- (v) the consignee to whom the product was shipped, and
- (vi) the Intended Market of Retail Sale;

provided however that in no event shall the First Purchaser Databases be required to include any of the foregoing information with respect to shipments of product produced less than 30 days after the Execution Date.

(b) With respect to all shipments encompassed by Protocol 3.03(a), Philip Morris International shall maintain any additional records necessary to identify the sales price and the Intended Market of Retail Sale, including, but not limited to, the sales invoice, for at least five years.

(c) Electronic records created in the First Purchaser Databases pursuant to Protocol 3.03(a) shall be kept for at least five years.

(d) OLAF and Philip Morris International shall meet annually in accordance with Protocol 2.04 to discuss new technologies relating to the First Purchaser Databases in order to determine whether it is appropriate to expand upon the information listed in subsection (a) above, or otherwise make changes to the First Purchaser Databases.

(e) Within 3 months of the implementation of First Purchaser Databases in a market pursuant to Protocol 3.03(a) and the schedule set forth in Exhibit C(II)—(III) to these Tracking and Tracing Protocols, Philip Morris International

shall provide the Relevant Administrations through their duly designated authorized representatives and law enforcement authorities with automated Query-Only Access (“**Query-Only Access**”) privileges to the data in the First Purchaser Databases necessary for them to determine from complete barcode level information, the information in clauses (i) through (vi) of Protocol 3.03(a). Philip Morris International shall make commercially reasonable efforts to provide said automated Query-Only Access 24 hours a day, seven days a week. Philip Morris International may except nights and weekends from this schedule as needed for the purposes of systems maintenance and updating information. Philip Morris International shall make commercially reasonable efforts to address any technical difficulties that may arise.

(f) In the event that Philip Morris International cannot provide the Relevant Administrations with automated Query-Only Access to its First Purchaser Databases as provided for by Protocol 3.03(e) due to good faith technical difficulties, the Relevant Administrations or their duly authorized representatives may request, via fax, telephone, or any other means, that Philip Morris International provide First Purchaser Database information to OLAF. Philip Morris International shall comply with such a request by sending OLAF a fax or other electronic communication containing the requested First Purchaser Database information by the close of the next business day at the latest.

(g) The Parties agree that the information contained in the First Purchaser Databases is highly sensitive and confidential business information. Accordingly, such information (1) shall be used by the Relevant Administrations solely for the purposes specified in this Agreement, and for no other purpose, and (2) subject to the exceptions set forth in this Protocol 3.03(g), shall be kept secret and confidential and shall not be disclosed to third parties, except as required by law. Without limiting the generality of the foregoing, the Parties agree that access to and use of this information shall be governed by the following terms:

(i) OLAF, on behalf of the Relevant Administrations, shall designate up to 5 specific services, agencies and/or departments of each of the Relevant Administrations who shall each have up to 5 authorized members (“Database Designees”) who shall have automated Query-Only Access to the First Purchaser Databases. Only Database Designees shall have active, password protected access to the First Purchaser Databases on behalf of the Relevant Administrations. If, for operational reasons, a designated service, agency or department of the Relevant Administrations requires more than 5 Database Designees, OLAF will request additional access and passwords from Philip Morris International for that designated service, agency or department, and such request shall not be unreasonably refused. OLAF shall provide Philip Morris International upon request, with a list of the services, agencies and departments of the Relevant Administrations whose personnel have been designated as Database

Designees, and the number of Database Designees in each service, agency or department.

(ii) The Database Designees shall query and search the First Purchaser Databases solely for the purpose of law enforcement inquiries related to the Parties' mutual goal of combating the trade in Contraband Philip Morris Cigarettes.

(iii) Prior to making any query, the Database Designee shall verify that administratively reasonable steps have been taken to ensure that the Master Case barcode label to be queried is genuine. For the purposes of making such verification, the Database Designee may query the First Purchaser Databases only after representing that the barcode label to be queried was obtained as part of a single seizure of three or more Master Cases.

(iv) The Database Designees shall not attempt to copy or download the First Purchaser Databases, such as customer lists, or utilize the database for any purpose other than that set out in this Agreement.

(v) The Database Designees shall protect the confidentiality of any information obtained from the First Purchaser Databases.

(vi) The Database Designees shall not disclose to any unauthorized personnel any passwords or other security features designed to protect the First Purchaser Databases.

(vii) The Database Designees shall not share information obtained from the First Purchaser Databases with any third parties or entities except with duly authorized law enforcement authorities who are actually engaged in inquiries related to the seizures which led to the specific query, who have an actual need to know such information, and who shall use such information only in connection with the relevant ongoing inquiries.

(viii) In the event that the Relevant Administrations need to make public information obtained from the First Purchaser Databases as part of a criminal proceeding, or are otherwise legally required to disclose such information, the Relevant Administrations shall notify Philip Morris International prior to such disclosure to the extent permitted by law and make a good faith attempt to provide Philip Morris International an opportunity to seek a protective order or other appropriate remedy.

(ix) In the event that the Relevant Administrations seek to disclose information obtained from the First Purchaser Databases under circumstances not covered by Protocols 3.03(g)(vii) and (g)(viii) above,

they may only do so with the written consent of Philip Morris International, which shall not be unreasonably withheld.

(h) The Parties agree that OLAF is responsible for making all reasonable efforts to train and inform the Database Designees about the handling and importance of the secrecy and confidentiality of the passwords, security features and information contained in the First Purchaser Databases. The Parties further agree that, in the case of a knowing and willful breach of Protocol 3.03(g) by any Database Designee or duly authorized law enforcement authorities, or other agent or representatives who receive information pursuant to Protocol 3.03(g), other than a person acquiring the data through compulsory legal process, Philip Morris International may setoff any demonstrable and significant loss or damage to it resulting from any claims made against Philip Morris International as a result of damages sustained as a direct result of the unauthorized use of passwords, security features or information contained in the First Purchaser Databases from any Appendix C payments owed to the Relevant Administrations as provided for in Section 4.01 of the Agreement. The Parties agree that the mere fact that information provided to the Relevant Administrations has been made public shall not, in and of itself, constitute conclusive evidence of a breach of Protocol 3.03(g). Any dispute as to (i) whether the breach was knowing and willful, (ii) whether Philip Morris International has suffered demonstrable loss or damage resulting from the unauthorized use of passwords, security features or information contained in the First Purchaser Databases, (iii) whether such a loss is significant or *de minimis*, or (iv) the amount of such loss or damage, shall be settled by the Arbitrators in accordance with Section 12.02 of the Agreement.

PROTOCOL 4 SECOND AND SUBSEQUENT LAYER TRACKING

4.01. *Purpose of Second or Subsequent Layer Tracking.* Philip Morris International and the Relevant Administrations recognize that in certain circumstances effective tracking and tracing to prevent the trade of Contraband Philip Morris Cigarettes can be enhanced when First Purchasers of Philip Morris International maintain databases that are similar to First Purchaser Databases regarding their customers (“**Second Layer Tracking**”) and/or their customers’ customers (“**Subsequent Layer Tracking**”). For this purpose, Philip Morris International has developed Second Layer Tracking Kits which include a laptop computer, a scanner, and a database application (“**Second Layer Tracking Kits**”).

4.02. *Deployment of Second and Subsequent Layer Tracking.* Philip Morris International agrees and undertakes to make Second Layer Tracking Kits reasonably available to any First Purchaser or Subsequent Purchaser where (i) Philip Morris International and OLAF agree to do so pursuant to Protocol 6.01(f)

of these Tracking and Tracing Protocols; (ii) Philip Morris International is required to do so by the Arbitrators pursuant to Protocol 6.01(g) of these Tracking and Tracing Protocols; or (iii) a First Purchaser or a Subsequent Purchaser requests Second Layer Tracking Kits so that it may carry out a voluntary Second or Subsequent Layer Tracking program consistent with this Protocol.

4.03. *Training by Philip Morris International.* Philip Morris International shall make commercially reasonable efforts to appropriately train all recipients of Second Layer Tracking Kits. Such training shall cover the appropriate use of the Second Layer Tracking Kits under these Protocols. However, due to the fact that Second and Subsequent Layer Tracking involve data being provided by persons who are not employed by Philip Morris International, the Parties agree that Second or Subsequent Layer Tracking data entered into the Database by third parties shall not be a basis for any allegation by the Relevant Administrations of breach or non-compliance with the requirements of the Agreement or these Appendices thereto.

4.04. *Access to Second Layer Tracking Information.* Philip Morris International agrees and undertakes that participants in any Second or Subsequent Layer Tracking shall be required to provide any Second or Subsequent Layer Tracking information collected by the participant to Philip Morris International. To the extent Philip Morris International receives such information, it shall maintain the information in the same manner as the First Purchaser Database. The Relevant Administrations shall be afforded access to any such Second or Subsequent Layer Tracking information in the same manner and subject to the same rules and conditions as the First Purchaser Database as provided for in Protocol 3 of these Tracking and Tracing Protocols.

4.05. *Information on Second and Subsequent Layer Tracking Developments.* Philip Morris International agrees to provide OLAF at its written request with quarterly reports on developments in Second or Subsequent Layer tracking. Such updates shall include lists of participating First and Subsequent Purchasers, details on the kits provided, and information and discussion on any issues that may have arisen during the preceding period.

PROTOCOL 5

NEW MASTER CASE CODING AND SCANNING TECHNOLOGIES

5.01. *Research and Development.* Philip Morris International and the Relevant Administrations recognize that research, development and implementation or enhancement, as appropriate, of new tracking and tracing technologies is an important component of ensuring the continued effectiveness of Philip Morris International's tracking and tracing initiatives.

5.02. *Research of New Master Case Labeling and Scanning Technologies.*
As set forth in Protocol 3.01(c), Philip Morris International shall maintain an ongoing program researching alternative or enhanced methods for marking Master Cases with machine scannable or human readable (i.e., spelled out in letters and numbers) codes, and shall meet with representatives of the Relevant Administrations on an annual basis, in accordance with Protocol 2.04 to determine if, how and when any new technology should be implemented.

PROTOCOL 6
ADDITIONAL MEASURES

6.01. *Notice of Interest*

(a) If, during any 12 month period after the Execution Date, OLAF learns of at least 7 seizures, each totaling at least 4 million Contraband Philip Morris Cigarettes, that have a particular market as the Intended Market of Retail Sale (the “**Market of Interest**”), it may provide Philip Morris International with information regarding these incidents (a “**Notice of Interest**”). A Notice of Interest shall provide historical data for seizures of Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale, including the number of seizures of such Philip Morris Cigarettes for the previous twelve months, and for each such seizure OLAF shall make best efforts to provide:

- (i) the date and location of the seizure;
- (ii) the brand of seized Cigarettes indicated on the packaging;
- (iii) the amount of seized Cigarettes;
- (iv) any Identification Markings that appear on the Master Cases or Cartons of seized cigarettes;
- (v) a brief statement outlining the basis for OLAF’s belief that the seized Cigarettes are Contraband Philip Morris Cigarettes as opposed to Counterfeit Philip Morris Cigarettes; and
- (vi) if available, samples of the seized Cigarettes (to the extent possible), in the condition they were in at the time of seizure, unless Philip Morris International has already inspected the seizure under Article 4.01(b) of the Agreement.

(b) Promptly upon receiving a Notice of Interest, Philip Morris International shall conduct an internal review in order to determine whether, on the basis of the information available to it, it is possible to determine whether there has been trade in Contraband Philip Morris Cigarettes that have the Market

of Interest as the Intended Market of Retail Sale as outlined in the Notice of Interest provided to Philip Morris International by OLAF under Protocol 6.01(a) above, and, if so, the cause and source of such trade, and what measures should be taken to address that trade.

(c) If OLAF has provided Philip Morris International with samples of the seized Cigarettes, Philip Morris International shall, as part of the internal review described in subsection (b) above, examine the samples in order to determine, in accordance with the factors set forth in Appendix F to this Agreement, whether the seized Cigarettes are Counterfeit Philip Morris Cigarettes or Philip Morris Cigarettes.

(d) Within 60 days of receiving a Notice of Interest, Philip Morris International shall provide a written response to OLAF detailing the findings of its internal review and, if necessary, the steps it has taken, or will be taking, to address the issues raised in the Notice of Interest. The response shall include the findings as to whether the Cigarettes seized are Philip Morris Cigarettes or Counterfeit Philip Morris Cigarettes and, if Counterfeit Philip Morris Cigarettes, examination results demonstrating that conclusion. Any dispute as to whether the Cigarettes are Counterfeit Philip Morris Cigarettes shall be settled in accordance with Section 4.01(j) of the Agreement.

(e) If OLAF takes issue with the response of Philip Morris International, it may request in writing that Philip Morris International undertake one or more of the following measures:

(i) make commercially reasonable efforts to implement Second or Subsequent Layer Tracking for selected First Purchasers of Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;

(ii) request that the First Purchaser who sells to a Subsequent Purchaser whose products have been the subject of at least two of the seizures that gave rise to the Notice of Interest, request that such Subsequent Purchaser implement Second or Subsequent Layer Tracking, if such Subsequent Purchaser is a direct customer of the First Purchaser. In the event that the First Purchaser refuses to honor such request, Philip Morris International will cease supplying Philip Morris Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor. If such Subsequent Purchaser is not a direct customer of a First Purchaser, then Philip Morris International shall request that the First Purchaser make commercially reasonable efforts to require that such Subsequent Purchaser implement Second or Subsequent Layer Tracking. In the event that the First Purchaser refuses to take such steps, Philip Morris International will

cease supplying Philip Morris Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor.

(iii) implement new Master Case coding technologies, or accelerate the schedule for implementation of the labeling and scanning requirements, such that such implementation occurs as soon as practicable, for relevant sales of Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale or for relevant First Purchasers of Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale; or

(iv) remove the Market of Interest from Exhibits C-1 and A-2 (if applicable), add the Market of Interest to the Exhibits, as appropriate, and otherwise make such Market of Interest subject to Pack Marking, Master Case Labeling and Master Case Scanning, according to Protocols 2.01(a), 3.01(a) and 3.02(a), as appropriate, for a period of five years.

(f) Within 30 days of Philip Morris International receiving a written request from OLAF under subsection (e) above, Philip Morris International and OLAF shall meet and confer in good faith in order to determine whether any of the measures set forth in subsection (e) above should be implemented. If the dispute has not been resolved within 60 days of Philip Morris International receiving OLAF's written request, such dispute shall be settled by the Arbitrators in accordance with Section 12.02 of the Agreement.

(g) In any proceeding brought under Protocol 6.01(f) of these Tracking and Tracing Protocols, the Arbitrators may require Philip Morris International to implement one or more of the measures set forth in subsection (e) above only where it has been proven by the greater weight of the evidence that:

(i) in the 12 month period referred to in the Notice of Interest, there have been at least 7 seizures each totaling at least 4 million Contraband Philip Morris Cigarettes, that have the Market of Interest as the Intended Market of Retail Sale;

(ii) measures that Philip Morris International has adopted for Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale are insufficient to combat the trade in Contraband Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;

(iii) the measure(s) to be implemented from subsection (e) above are achievable through commercially reasonable efforts and are an effective response to the trade in Contraband Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;

(iv) the implementation of the measure(s) from subsection (e) above are reasonably likely to materially reduce the amount, or materially improve the prevention or detection, of Contraband Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale; and

(v) where the measure to be implemented from subsection (e) above is a new Master Case coding technology, it has been demonstrated that it is, or would be, effective and its implementation is reasonably targeted at the elimination, prevention or detection of Contraband Philip Morris Cigarettes that have the Market of Interest as the Intended Market of Retail Sale.

(h) Nothing in this Protocol 6 shall preclude Philip Morris International from adopting (either unilaterally or at the request of OLAF or the Relevant Administrations) the measures set forth in subsection (e) for Cigarettes with a particular Intended Market of Retail Sale.

PROTOCOL 7

NEW CARTON AND PACK CODING AND SCANNING TECHNOLOGIES

7.01. Research of Carton and/or Pack Coding Technologies.

(a) Philip Morris International shall maintain an ongoing program of researching, developing, enhancing and implementing technologies for marking Cartons and/or Packs with unique scannable codes.

(b) During the term of the Agreement, Philip Morris International shall maintain an ongoing program of research and development concerning methods and technologies for improving Carton and Pack Coding technologies. Philip Morris International shall provide a yearly report to the Representatives of the Relevant Administrations concerning new technologies for Carton and/or Pack coding.

7.02. Implementation of Carton and/or Pack Coding Technologies. In recognition of the principles of the Agreement, once Carton and/or Pack Coding technologies are commercially feasible, Philip Morris International agrees and undertakes to implement Carton and/or Pack Coding technologies in accordance with the conditions set forth below. Philip Morris International shall make commercially reasonable efforts to make modifications to the First Purchaser Database and Second and Subsequent Layer Tracking databases to include notation of Carton codes, as appropriate and technically feasible.

(a) Philip Morris International shall implement Carton and/or Pack Coding technologies for Philip Morris Cigarettes that have a market listed under Tier I Markets in Exhibit D of these Tracking and Tracing protocols as the Intended Market of Retail Sale, if:

(i) the implementation of Carton and/or Pack Coding for Philip Morris Cigarettes that have that Tier I market as the Intended Market of Retail Sale is achievable through commercially reasonable efforts;

(ii) the effectiveness of the Carton and/or Pack Coding technology has been demonstrated to be appropriate for industrial application; and

(iii) the implementation of Carton and/or Pack Coding is reasonably likely to significantly reduce the amount of Contraband Philip Morris Cigarettes that have that Tier I market as the Intended Market of Retail Sale.

(b) Philip Morris International shall implement Carton and/or Pack Coding technologies for Philip Morris Cigarettes that have a market listed under Tier II Markets in Exhibit D of these Tracking and Tracing protocols as the Intended Market of Retail Sale, if:

(i) in the previous year, there have been at least 7 seizures, each totaling at least 4 million Contraband Philip Morris Cigarettes, that have that Tier II market as the Intended Market of Retail Sale;

(ii) measures that Philip Morris International has adopted for Philip Morris Cigarettes that have that Tier II market as the Intended Market of Retail Sale are insufficient to combat the trade in Contraband Philip Morris Cigarettes that have that Tier II market as the Intended Market of Retail Sale;

(iii) the implementation of Carton and/or Pack Coding is reasonably targeted at the elimination, prevention and/or detection of Contraband Philip Morris Cigarettes that have that Tier II market as the Intended Market of Retail Sale;

(iv) the implementation of Carton and/or Pack Coding is achievable through commercially reasonable efforts and is an effective response for Philip Morris Cigarettes that have that Tier II market as the Intended Market of Retail Sale;

(v) the effectiveness of the Carton and/or Pack Coding technology has been demonstrated to be appropriate for industrial application; and

(vi) the implementation of Carton and/or Pack Coding is reasonably likely to significantly reduce the amount of Contraband Philip Morris Cigarettes that have that Tier II market as the Intended Market of Retail Sale.

(c) Beginning 180 days after the Execution Date, OLAF may provide written notice to Philip Morris International that either the criteria of subsection (a) have been met for Philip Morris Cigarettes that have a particular Tier I market as defined in Exhibit D as the Intended Market of Retail Sale, or the criteria of subsection (b) have been met for Philip Morris Cigarettes that have a particular Tier II market as defined in Exhibit D as the Intended Market of Retail Sale, and request that Philip Morris International implement Carton and/or Pack Coding for those Philip Morris Cigarettes. If Philip Morris International disagrees with OLAF's written request, Philip Morris International and OLAF shall meet and confer in good faith within 30 days of Philip Morris International receiving such a request from OLAF in order to determine whether the criteria of subsection (a) or (b) above have been met and whether Carton and/or Pack Coding should be implemented for Philip Morris Cigarettes that have the market in question as the Intended Market of Retail Sale. If the dispute cannot be resolved within 60 days of Philip Morris International receiving OLAF's written request, such dispute shall be settled by the Arbitrators in accordance with Section 12.02 of the Agreement and by application of the criteria set forth in subsections (a) or (b) above as applicable.

(d) Nothing in this Protocol 7 shall preclude Philip Morris International from adopting (either unilaterally or at the request of OLAF or the Relevant Administrations) measures set forth in subsections (a) or (b), above, for Cigarettes with a particular Intended Market of Retail Sale.