Cancer Research UK Briefing: Illicit Tobacco

Illicit tobacco products undermine the effect that price (achieved through taxation) can have on reducing tobacco consumption and smoker initiation as well as leading to higher levels of cessation. Implementing a comprehensive strategy to tackle illicit tobacco is as much an issue of public health as it is tax avoidance.

Despite cumulative tax rises in the period, the illicit market share for cigarettes has more than halved since 2000-01, and for rolling tobacco reduced by more than a third, since 2004-05.

While there are added dangers from the production of tobacco products in unregulated environments, messaging must not undermine the fact that there is no such thing as a ‘safe’ cigarette whether legally or illegally manufactured.

Recommendations:

- Introduce a levy on tobacco manufacturers and importers, based on market share (clearances) with the money being hypothecated to fund tobacco control activities; including gold standard stop smoking services, mass media campaigns and initiatives to tackle the illicit trade.
- The UK must implement an anti-illicit strategy, coordinated with activity at both the EU and the global level, including through the ratification of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products (ITP).
- Tobacco companies found to be complicit in facilitating the illicit trade should be held accountable. This should include the use of punitive fines against the culpable parties.
- Implement a tracking and tracing system which is wholly independent of the tobacco industry.

Background:

The illicit tobacco market is made up of three categories of products, these are:

- **Counterfeit**: Illegally manufactured copies of well-known and established brands.
- **Illicit Whites**: Legally manufactured products - often in Eastern Europe and China – that are intended to be illegally exported (smuggled) to other countries.
- **Contraband**: Contraband products are legally manufactured by tobacco companies and are usually smuggled in large quantities from countries where duty has been paid, into a destination with higher tobacco duties.

Tobacco industry figures often couple illegally smuggled tobacco, and legally imported tobacco from cross-border shopping, under a single category of UK Non-Duty Paid. This means that, for example, tobacco being brought back by holiday makers within the allowed quota is captured within the measure of the illicit market – thus inflating the figures and clouding the reality of the issue.

**There is no such thing as a ‘safe cigarette’**

While there are specific concerns relating to the production of tobacco products in an unregulated environment, messaging must not undermine the fact that there is no such thing as a ‘safe cigarette’ whether illegally or legally manufactured. Reducing the availability of unregulated and untaxed tobacco products must be a cornerstone of efforts to reduce the burden of tobacco use. But this must not be done in a way which detracts from the realities of the harm caused by all tobacco products. We are concerned that tobacco industry campaigns which place an emphasis on the dangers of illicit tobacco, risk undermining the message that any tobacco product – licit or illicit – will kill up to 2 in 3 long-term smokers from a smoking related cause. The tobacco industry has used the problem of illicit tobacco as a ‘Trojan Horse’ to oppose tobacco control measures in the UK, such as tax escalators and standardised packaging of tobacco products. The tobacco industry’s own complicity in tobacco smuggling is well documented, and as such they should not be considered a reliable source of information on this subject.

**The tobacco industry’s role in smuggling**

The tobacco industry has claimed that the illicit trade is “booming”, which an inquiry by the All Party Parliamentary Group on Smoking & Health noted was, “…contrary to the available statistics”. The tobacco industry has a poor record on smuggling and strict curbs on its activities, coupled with effective enforcement by responsible agencies, has led to a substantial decrease in the size of the UK’s illicit market over the last 15 years. Increased scrutiny in 1990s and 2000s, including a major inquiry from the Public Accounts Committee, led to UK tobacco manufacturers signing a series of Memorandums of Understanding (MoU) beginning in 2003-04. These MoUs were followed by the inclusion of provisions to fine companies up to £5 million for facilitating the evasion of tobacco duty, in the UK Finance Act 2006.
HM Revenue & Customs (HMRC) have highlighted that oversupply by manufacturers continues to play a part in facilitating tobacco smuggling; for example they estimate that the aggregate actual supply of some brands of rolling tobacco to some countries exceeded legitimate demand by 240 per cent in 2011. On this point, the Home Affairs Select Committee concluded: “It is astonishing that no UK tobacco manufacturer has ever been fined for the oversupplying of products to high-risk overseas markets.” Since this report was published, British American Tobacco were fined £650,000 for its role in oversupplying cigarettes to Belgium, where tobacco taxes are substantially lower than in the UK.

Within the European Union (EU), between 2004 and 2010, the European Anti-Fraud Office (OLAF) signed legally binding and enforceable agreements with the world’s four largest tobacco manufacturers. Within these agreements the companies agreed to pay a collective total of USD2.15 billion to the EU and participating member states, and committed to tighter control on their supply chain.

However, OLAF are understood to be continuing an investigation relating to allegations that Japan Tobacco International breached sanctions against the Syrian regime by selling large quantities of cigarettes to a business owned by relatives of the Syrian president. The failure to provide an update on the progress of this case has been raised in the European Parliament. Also, in August 2014, a US court of appeal upheld a decision which will allow the EU to pursue a case against RJ Reynolds Tobacco Co, relating to the company’s alleged involvement in a criminal money-laundering and cigarette smuggling scheme.

In December 2014 HM Treasury launched a consultation on the potential design for a levy on tobacco manufacturers and importers. Based on a principle that the tobacco industry should be accountable for the negative externality they create, a levy on tobacco manufacturers and importers based on market share (clearances) provides a mechanism to source new funding for gold standard stop smoking services, mass media campaigns and efforts to tackle the illicit trade. We believe that the levy should operate to a target of £500m per annum, which equates to approximately one pence per cigarette sold.

**Standardised packaging and the illicit tobacco market**

The tobacco industry has claimed that the introduction of standardised packaging of tobacco products would result in an increase in the illicit trade. However, independent experts involved in tackling the illicit trade believe the introduction of standardised packaging is likely to have no significant impact on the level of illicit trade. International tobacco smuggling expert, Luk Joossens, who has advised the World Bank, the European Commission and the WHO on the issue concluded that: “Plain [standardised] packaging will not make any difference to the counterfeit business.” An impact assessment on the effect of standardised packaging written by HMRC, reported: “We have seen no evidence to suggest the introduction of standardised packaging will have a significant impact on the overall size of the illicit market or prompt a step-change in the activity of organised crime groups.”

The House of Commons Home Affairs Select Committee stated in their June 2014 report that the decision on standardised packaging should be made on health grounds, noting the conclusions of Sir Cyril Chantler, who dismissed tobacco industry research which claimed that illicit trade had increased in Australia since the measure’s introduction in December 2012. Research published in the BMJ Open which looked at the use of illicit tobacco since the introduction of standardised packaging in Australia, found that the use of illicit tobacco had not increased in the period during which the measure was implemented (2011-13).

**A comprehensive anti-illicit trade strategy**

HMRC figures show the illicit market share for cigarettes has more than halved since 2000-01, and for rolling tobacco reduced by more than a third, since 2004-05 despite tobacco taxes having increased in real terms over the last 15 years. The reduction in the market share of illicit tobacco is due in large part to the implementation of successive Government strategies to curb the illicit trade through better enforcement by customs and borders staff, in addition to greater penalties, acting as deterrents. Targeted regional activity such as the North of England Tackling Illicit Tobacco for Better Health programme - which has been a driving force behind the illegal tobacco market hitting a record low in the region - is an example of how effective action can be delivered at a local level.

In March 2015, the Government launched a new illicit tobacco strategy, *Tackling illicit tobacco: from leaf to light*. Alongside this new strategy other initiatives were announced in the 2015 Budget, including the introduction of a registration scheme for users and dealers in raw tobacco and new measures to tighten anti-forestalling rules, including penalties for non-compliance. In implementing its illicit tobacco strategy, the UK must ensure proper coordination with partners at both an EU and global level, including through the ratification of the WHO FCTC ITP.
The WHO FCTC was the first treaty negotiated under the auspices of the WHO and was developed in response to the globalization of the tobacco epidemic. The UK is one of 180 Parties to this unique agreement. In 2012 the ITP was adopted by the Parties, demonstrating how the FCTC continues to be a standard bearer for international tobacco control. The ITP requires Parties to introduce a number of initiatives to combat the illicit trade through coordinated global action.

**Fig 1: The illicit tobacco market in the UK has fallen substantially over the last 15 years**

![Graph showing the market share of illicit cigarettes and rolling tobacco in the UK from 2000-01 to 2013-14. The market share of illicit cigarettes fell by 55%, and the market share of the illicit rolling tobacco market also fell by 37% between its peak in 2004-05 and 2013-14.]

**Tracking and tracing systems for tobacco products**

Article 8 of the ITP requires the implementation of a tracking and tracing system. There is an important differentiation between the tracking and tracing elements. **Tracking**, or ‘systematic monitoring’, where the marked tobacco products are surveyed through the supply chain (ideally in real time), could involve activities such as searches of new delivery addresses or scrutinising the credentials of transport used to move tobacco products. **Tracing** takes place during or after enforcement actions, and may involve re-tracing a product supply chain to identify the point at which the legal supply chain was broken.

For Parties to the ITP who are also EU member states, Articles 15 and 16 of the Tobacco Products Directive (TPD) also requires the introduction of a tracking and tracing system to a fixed deadline of 20 May 2019; which will be ahead of the ITP. It is vital that an independent system is used to meet the requirements for tracking and tracing in these agreements, and not the tobacco industry developed Codentify system. A report from the Framework Convention Alliance has noted its concerns: ‘Many technical questions remain unanswered regarding Codentify’ – a system developed so that the tobacco industry could “…police itself…”.

In July 2012, INTERPOL (the world’s largest international police organisation) announced a new Global Register (IGR4), stating it would focus on products that were threatened by illicit trade and provide tools to help law enforcement and the public determine a product's authenticity. At the same time, INTERPOL stated its intention to work with the tobacco industry through their Digital Coding and Tracking Association to make the Codentify system accessible via the IGR4. INTERPOL previously accepted funds from Philip Morris International in July 2011, raising their overall budget by 8%.

As a result of this relationship, INTERPOL’s operational independence in relation to the tobacco industry is of concern.

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