



## **Inquiry into tobacco smuggling and the trade in illicit tobacco**

We are grateful to the Committee for launching an inquiry into tobacco smuggling and the trade in illicit tobacco. We welcome the opportunity to debate the nature and scale of tobacco smuggling and the Government's response to it.

Please find enclosed the Government's written submission. Should you require any further information or evidence on any issues, we would be pleased to provide it.

This written evidence has been provided by the following government departments with responsibility for tackling tobacco smuggling.

### **1. HM Revenue and Customs (HMRC)**

HMRC have policy responsibility for the effective collection and administration of taxes and have overall responsibility for the strategy to reduce the illicit market in tobacco. HMRC are also responsible for inland and overseas delivery of the strategy; criminal investigation of fiscal offences and prosecution and other sanctions.

### **2. Border Force, Home Office**

Border Force is responsible for the seizure of illicit tobacco and the collection of revenue at the border. In his role as Director Border Revenue, the Director General Border Force is directly accountable to the Chancellor of Exchequer in respect of customs and revenue controls at the border.

Mark Harper MP, Minister for Immigration  
Jeremy Browne MP, Minister for Crime Prevention  
Sajid Javid MP, Economic Secretary to the Treasury

## ***Introduction***

1. This paper sets out the Government evidence to the Home Affairs Select Committee inquiry into tobacco smuggling and the trade in illicit tobacco. It has been prepared in consultation with officials from HM Revenue and Customs (HMRC) and specifically seeks to address the following areas / questions.

### ***Why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years***

2. The number of tobacco arrests and prosecutions have shown an overall increase over the past three years, with conviction numbers broadly stable, as illustrated below.

|                            | <b>10/11</b> | <b>11/12</b> | <b>12/13</b> |
|----------------------------|--------------|--------------|--------------|
| <b>Arrests<sup>1</sup></b> | <b>143</b>   | <b>115</b>   | <b>156</b>   |
| <b>Prosecutions</b>        |              |              |              |
| Organised Crime Cases      | 133          | 62           | 51           |
| Volume Crime Cases         | 81           | 105          | 214          |
| <b>Prosecutions Total</b>  | <b>214</b>   | <b>167</b>   | <b>265</b>   |

<sup>1</sup> There is no direct correlation between arrest and prosecution numbers as many cases are progressed using information & summons rather than arrest.

|                          |            |            |            |
|--------------------------|------------|------------|------------|
| <b>Convictions</b>       |            |            |            |
| Organised Crime Cases    | 78         | 52         | 37         |
| Volume Crime Cases       | 82         | 104        | 122        |
| <b>Convictions Total</b> | <b>160</b> | <b>156</b> | <b>159</b> |

3. During the above period, HMRC changed its approach to investigations which recognised an alternative to prosecutions designed to disrupt Organised Criminal Gangs (OCGs). This involved an end-to-end strategy whereby upstream activity in conjunction with partner agencies sought to attack the overseas supply chain of illicit tobacco. Coupled with the increased use of civil powers inland, HMRC was able to deploy organised crime criminal investigation resources more efficiently.

4. Criminal investigation and prosecution plays a key role in the delivery of HMRC's strategy. HMRC seeks prosecution where that is seen as the most effective intervention on the criminal trade – both to punish criminals and to deter others from becoming involved in the trade. Prosecution is not appropriate in every case as it is often neither the most efficient nor effective means of disrupting criminal activity.

5. Over the last three years, HMRC has sought to increase the quality of its organised crime casework – targeting resource against the greatest threats. At the same time, the department has taken on a significant number of smaller tobacco cases, as part of its 'volume crime' initiative to increase deterrence against fraud in the tax and duty systems. This approach saw an increase in the number of Volume Crime prosecutions, disrupting a greater number of smugglers across all levels of criminality, whilst the number of OCG prosecutions fell. This more efficient deployment of investigation resource delivered an overall increase in the amount of revenue protected from criminal investigation work from £281 million in 2010/11 to £378 million in 2012/13.

***Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13***

6. Border Force works in partnership with HMRC overseas officers and inland teams to jointly interdict illicit tobacco en route to the UK market. Whilst Border Force faced a broad range of challenges in 2012/13, not least the London Olympics, resource was allocated proportionately and in line with the Border Force Control Strategy which balances all of Border Force's operational priorities including efforts against Class A drug smuggling.

7. Border Force tobacco targets for 2012/13 were derived from Border Force's agreed contribution to the joint 2011 HMRC/UKBA Tackling Tobacco Smuggling strategy. They reflect the strategic priorities that are agreed annually with Treasury Ministers.

8. The seizure targets for 2012/13 were re-calculated using the 2010/11 outturn and uplifted to reflect the expected benefits for SR10 investment. The Border Force targets for cigarettes and hand-rolling tobacco (HRT) were also re-calibrated to reflect the large volumes of HRT seized at the border. The overall Border Force and HMRC tobacco volume targets were increased. The Border Force cigarette target was decreased by 9% to 558 million sticks and the HRT target was increased by 54% to 524 tonnes.

9. In 2010/11 650 million cigarettes were seized at the border. Since then, there has been a consistent shortfall of cigarettes seized against volume targets. There was small increase in the number of cigarettes seizures made at the border in 2011/12 and 2012/13.

10. HRT seizure volumes have also fluctuated over the last three years between 315 and 508 tonnes, although seizure *numbers* have shown a small increase.

11. Border Force believe that that the following factors are significant in explaining changing seizure patterns:

- HRT and cigarette smuggling through postal traffic reduced significantly from 2011/12 when substantial seizures were made.
- Changing methods of smuggling, particularly by OCGs, in response to the combined enforcement activities of HMRC and Border Force overseas and at the border. One example is a trend of smaller and more frequent consignments.
- Increased quantities of tobacco seized upstream, with 1,272 million cigarettes and 55.7 tonnes HRT seized in 2012-13. This represents a 28% increase for cigarettes since 2010/11 and a significant increase in HRT from 8 tonnes in 2011/12.

12. To inform targeting to improve seizure levels Border Force and HMRC have undertaken a number of joint initiatives and exercises over the past year to develop intelligence and increase our understanding of the threat.

13. Border Force and HMRC recognise that the nature of tobacco fraud continues to evolve and we keep our approach under constant review to ensure that the balance and application of our responses are applied to maximum effect. HMRC and Border Force are currently refreshing the joint Tobacco Strategy (from April 2011) taking into account the change in risk / threat and modus operandi, along with lessons learned from the current strategy. This work will help us to understand how the overseas and inland activity impacts on seizures at the border.

#### ***Whether the current sanctions and penalties for tobacco smuggling are appropriate***

14. We have a comprehensive and effective range of sanctions available to deter people involved in all aspects of tobacco fraud and tailored to fit the seriousness of the offence. Tobacco smuggling ranges from individuals abusing cross-border shopping rules through to highly organised, trans-national OCGs smuggling containers of illicit product from across the globe. HMRC and Border Force's Tobacco Strategy aims to maximise impact across all levels of criminality, capitalising on the wide range of civil and criminal sanctions and penalties available. The strategy has been successful in reducing the illicit market share of overall tobacco consumption in the UK from 21% in 2000 to 9% for cigarettes and from 65% to 38% for HRT. We regularly review our strategy ensure that we have the appropriate sanctions and penalties available to respond to changes in the risks we face. Current sanctions include:

- Civil sanctions primarily used to tackle small-scale smuggling. This includes assessments for duty due, plus penalties of up to 100% of the duty for anyone handling illicit goods; seizure of illicit goods and any vehicles used to transport them. Between 2011/12 and 2012/13 HMRC issued 1,875 assessments and 1,089 penalties with a combined value of over £20m.
- Sanctions targeted at intermediaries in the illicit supply chain include: revocation of licences for hauliers involved in the movement of illicit goods; fines of up to £5000, a 6 month prohibition on the sale of tobacco products, removal of any Lotto terminal, and revocation of any alcohol licence for retailers who sell illicit goods. HMRC also publishes details of people or companies deliberately evading duty of more than £25,000 or convicted of a criminal offence.
- Tobacco manufacturers face penalties of up to £5m for facilitating smuggling. The deterrent effect of these penalties has resulted in supplies of cigarettes to high risk markets dropping by 64%, and HRT by 32.5% since 2008.
- Large scale smuggling, along with cases of strategic importance or repeated non-compliance are investigated to a criminal standard and referred to the relevant Prosecution Service. Conviction for the fraudulent evasion of excise duty carries a maximum sentence of seven years. The length of any sentence is a matter for the Courts. However concerns over the unduly lenient sentencing for excise fraud offences in

Northern Ireland which do not reflect the seriousness of the crime are the subject of a Department of Justice (NI) consultation exercise.

- Criminal and civil asset recovery interventions are used to recover the Proceeds of Crime. This includes the forfeiture of cash suspected of being the proceeds of crime. Where conviction is successful, confiscation orders are pursued.

15. In addition to the sanctions available to HMRC and Border Force, Trading Standards Officers have additional sanctions and penalties for contraventions of labelling and packaging requirements, age of sale restrictions, and trade mark offences.

***The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect on each other and the implications of the restrictions on National Crime Agency operations in Northern Ireland***

16. The most significant difference between Great Britain and Northern Ireland criminality is the make-up of the OCGs and their potential links to paramilitaries. We deal with this further in paragraph 26 below.

17. Another major difference in tobacco smuggling is the existence of the Irish land boundary. There is a high incidence of smuggling cigarettes into the Republic of Ireland and then overland delivery into Northern Ireland – often with ‘cooling off’ points or lorry „switches“ taking place close to (either side of) the land boundary.

18. A further difference is the existence of hostile areas of Northern Ireland where law enforcement activity is both difficult and dangerous. Again, the criminals exploit these areas as ‘drop’ sites and onward distribution hubs.

19. Product brands, however, tend to be very similar to mainland Great Britain, so a ready market exists for onward shipment of illicit cigarettes to Great Britain.

20. Recent investigations have unearthed clear evidence of Irish criminals smuggling cigarettes directly into Great Britain from mainland Europe and further afield.

21. HMRC remains entirely consistent in its approach to all organised criminals, irrespective of their political or violent affiliations. Caution is exercised in developing operational risk assessments where such affiliations are known or suspected, but all available investigation techniques are deployed - either alone, or in collaboration with other law enforcement agencies - to bring criminals before the courts and to deprive them of their criminal assets. HMRC has no operational remit in matters of national security, but where any individuals are suspected of HMRC offences, they are investigated accordingly.

22. The National Crime Agency will operate UK-wide, including in Northern Ireland. In Northern Ireland the Agency will be able to operate in relation to matters that are not devolved, including investigations into smuggling by organised criminal groups importing illicit commodities. The Agency will continue to support Border Force and HMRC activity to tackle tobacco smuggling, as the Serious Organised Crime Agency does now. Furthermore the Agency will also continue to be able to take forward civil recovery investigations in Northern Ireland, albeit with restrictions. Civil recovery investigations related to tobacco smuggling for example, which is a reserved matter, will be unaffected.

23. The restrictions on the Agency’s operations in Northern Ireland, as a result of the Northern Ireland Executive’s failure to agree to take forward a legislative consent motion, prevents the National Crime Agency undertaking activities which relate to transferred matters. National Crime Agency Officers in Northern Ireland will still be able to be designated with the powers of an officer of revenue and customs and the powers of an immigration officer.

***The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK***

24. There is no data available to predict the potential impact in the UK of the introduction of standardised packaging in Ireland. Standardised packaging has only been introduced in Australia and there is very little intelligence available on the criminal response. Whereas the nature of the licit and illicit markets in the UK and Ireland bear many similarities, the markets in the UK and Australia and proximity to other countries differ. As such, the lessons learnt from the introduction of standardised packaging in Australia may not necessarily translate to the UK.

25. If standardised packaging leads to any change in the risk to the illicit trade in Ireland, it is possible that there could be an increase in illicit product transiting through the UK. The extent to which that impacts on the UK illicit market would be considered as part of our continuous assessment of the risks and threats which underpin our strategic approach to tackling tobacco smuggling. The HMRC/Border Force Tobacco Strategy would adapt to any changes in risks as it has done over many years, successfully reducing the illicit market to its lowest levels since 2000.

***The relationship between tobacco smuggling, organised crime and paramilitary activity***

26. Overall, this is a particularly difficult issue to judge with any degree of confidence. Former and current National Security suspects do engage in a wide range of criminality – including tobacco smuggling. Apart from the situation in relation to Northern Ireland, we do not see direct links between tobacco smuggling and terrorism or paramilitary activity; although it would be naive to ignore such a possibility.

27. Turning to Northern Ireland specifically, the majority of OCGs investigated to date have either a direct or tenuous link with one or more individuals who are (or have been) the subject of alleged paramilitary connections. This makes it all the more difficult to establish any clear discrimination between 'affiliated' or 'unaffiliated' OCGs. The simple fact is that many of these people are involved in a broad range of significant crime and it is extremely difficult to assess the split between personal profits and the desire to fund paramilitary activity.

28. Moreover, there is clear evidence that OCGs with presumed loyalist and nationalist affiliations are prepared actively to trade contraband cigarettes with each other, with one group smuggling, and then selling to the other for onward distribution. This further blurs any clear delineation of criminal activity according to particular factions / groups.

***Home Office and HM Revenue & Customs  
August 2013***

Written evidence from Terence E Rowe [TOB01]

Good afternoon,

It occurs to me that present and previous governments attitude to tobacco has been, too much influenced by the anti smoking lobby. The policy of continuously increasing prices above inflation is as far as smuggling is counter productive. It's prohibition by stealth. If you recall prohibition in the 1920's America led to the birth off and spread of gangsters. This high moral, creeping prohibition is in effect encouraging the ever increasing growth of smuggling gangs. So in my mind lawlessness is being encouraged. So in the words of Tony Blair be tough on the crime and THE CAUSE'S OF CRIME which I think Westminster is the guilty party. Why criminalise people give them FREEDOM to smoke if that's what they want. Why moralise?

I my opinion there is far to much of trying to tell people what they should be. Allow people to be themselves, after all this is supposed to be the land of the FREE.

Yours a concerned member of the public, who smokes and see's smuggling rife and accepted.

Mr Terence E. Rowe  
20 August 2013

Written evidence from Jonathan Isaby, TaxPayers Alliance [TOB02]

1. The TaxPayers' Alliance fights to reform taxes, cut spending and protect taxpayers, and has over 75,000 supporters across the United Kingdom. The illicit trade has a direct impact on UK tax revenue and therefore not only on rates of taxation on tobacco products, but also on other taxes which may be raised to recoup lost revenue.
2. The Committee asks what could and should be done (i) to reduce tobacco smuggling; and (ii) to disrupt the illegal trade in tobacco within the UK.
3. Your Committee chairman was utterly correct to highlight in the call for evidence on tobacco smuggling that the UK has "one of the highest rates of tobacco duty in the EU" and to link this to the fact that this makes our country "one of the most lucrative markets for smugglers".
4. *Measuring tax gaps* is HMRC's annual report looking at how much tax revenue is lost to the black market and in the most recent edition<sup>1</sup>, it estimates that up to £11.6 billion of tax revenue (in duty and VAT) was lost through illicit sales of cigarettes between 2006-07 and 2010-11, while as much as £4.3 billion was lost through illicit sales of hand-rolling tobacco over that same period. It is worth noting that this annual report almost always underestimates the losses in revenue, which are more often than not then revised upwards in the following year's edition. The 2012 report estimates that the black market in cigarettes could now account for as much as 16 per cent of the total market, with illicit sales of hand-rolling tobacco representing *at the very least* one third of the total market and potentially up to 44 per cent of the entire UK market.
5. At £5.40 per pack of twenty, the UK has the second highest tax burden per packet of cigarettes in the EU, lagging slightly behind Ireland<sup>2</sup>. The Irish Office of Revenue Commissioners released a report in February 2011<sup>3</sup> that modelled the cigarette market in Ireland, which acknowledged that when the price rises, rather than consumption falling, smokers simply switch to the illicit market. It should therefore be a salutary lesson to British politicians that in his Budget for 2010, the then Minister for Finance, Brian Lenihan, froze the duty on cigarettes, saying<sup>4</sup>:

<sup>1</sup> HMRC, *Measuring tax gaps 2012* <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf>

<sup>2</sup> TMA, EU cigarette prices <http://www.the-tma.org.uk/tma-publications-research/facts-figures/eu-cigarette-prices/>

<sup>3</sup> Office of Revenue Commissioners, *Economics of tobacco: Modelling the market for cigarettes in Ireland*, February 2011

<sup>4</sup> Brian Lenihan T.D., *Financial Statement of the Minister for Finance*, 9 December 2009



*“I have decided not to make any changes to excise on tobacco in this Budget because I believe the high price is now giving rise to massive cigarette smuggling. My responsibility as Minister for Finance is to protect the tax base.”*

6. The speech was a frank acknowledgement that the high duty on cigarettes had not necessarily curbed consumption but had led consumers to purchase substitute illicit goods instead.
7. There are plenty of other studies looking at the effect of price on the consumption of cigarettes and its relation to illicit trade. For example, Cullum and Pissarides found that:

*“The increased complexity of the market for tobacco products means that earlier studies of the UK duty-paid segment of the market... struggle to predict the impact of price changes on demand. Normally, price increases would lead to reduced consumption. However, more recently the effects of higher prices have become more uncertain as consumers may switch their consumption to other sources or lower quality cigarettes.”<sup>5</sup>*

8. In a 2010 Australian study, PricewaterhouseCoopers found that the most common reason for using illegal tobacco was cheaper prices.<sup>6</sup> Geis, in another Australian study, acknowledged World Bank research that suggested tax increases bring more revenues and reduce smoking even with high rates, but went on to say that such research leaves:

*“[unanswered] questions about the consequences for smuggling... what results might ensue if the tax reached what the public believes is an unacceptable level.”<sup>7</sup>*

9. Gabler and Katz, meanwhile, carried out a study in Canada and their findings were stark:

*“Contraband cigarettes are perceived to be a near-perfect substitute for lawfully purchased cigarettes. As such, contraband tobacco use neutralises the deterrent effect of higher taxes”.<sup>8</sup>*

<sup>5</sup> Cullum, P. & Pissarides, C. A., *The Demand for Tobacco Products in the UK*, Government Economic Service, Working Paper No. 150, 2004

<sup>6</sup> PricewaterhouseCoopers, *Australia’s illegal tobacco market: Counting the cost of Australia’s black market*, February 2010

<sup>7</sup> Geis, G., *Chop-Chop: The Illegal Cigarette Market in Australia*, Australian National University Working Paper No. 48, 2005

<sup>8</sup> Gabler, N. & Katz, D. *Contraband Tobacco in Canada: Tax Policies and Black Market Incentives*, Studies in Risk and Regulation, Fraser Institute, 2010

10. They also highlighted that previous governments in Canada had been aware of these effects, with varying results:

*“This dynamic was recognised by government officials in the mid-1990s, and tobacco excise taxes were reduced in order to weaken incentives to purchase, manufacture, distribute, and smuggle contraband tobacco. But the federal government began to raise tobacco taxes again in the early 2000s. Predictably, the higher taxes stimulated trade in contraband tobacco, resulting in a flourishing black market that now constitutes an estimated 27 per cent share of the overall tobacco market”.*<sup>9</sup>

11. It is therefore indisputable, as demonstrated by hard facts and international evidence – as well as academic research – that high taxes increase the extent of outright tax evasion. A larger shadow economy is part of the price that all taxpayers pay for the high taxes and burdensome regulations imposed by politicians, and this is clearly the case as far as the tobacco trade is concerned. The significant loss of revenue resulting from the illicit market in tobacco inevitably leads to higher taxes elsewhere for ordinary families as a way of making up the shortfall.
12. As far as disrupting the illegal tobacco trade goes, the introduction of standardised packaging would be a gift to counterfeiters and smugglers, and therefore a further blow to both the taxman (through additional lost revenue) and taxpayers (through higher taxes elsewhere to recoup that lost revenue).
13. The boost to the illicit trade that plain packaging would bring is backed up by former senior law enforcement officials. Roy Ramm, former Commander of Specialist Operation at New Scotland Yard, is unequivocal about the effect that plain packaging would have on the illicit trade. He wrote in article published on the *Huffington Post* website that:<sup>10</sup>

*“It would be easy to say dealing with this situation is one that just requires increased law enforcement, monitoring and intelligence operations, and that there is no connection between a potential increase in smuggling and the government's plans for plain packaging of cigarettes. But this is not the case. First, plain packaging will be easier to counterfeit than branded packs. Once you've forged one packet with the name of the product on it, you've forged them all. Secondly, if it is easier to fake the packet, then it will be encouragement for organised crime groups to produce more and more fake tobacco to contain within them. If there is a natural barrier put on the numbers of cigarettes you can fake, because of the multiple*

<sup>9</sup> Ibid.

<sup>10</sup> [http://www.huffingtonpost.co.uk/roy-ramm/plain-cigarette-packaging-government-plans-for-plain\\_b\\_1637528.html](http://www.huffingtonpost.co.uk/roy-ramm/plain-cigarette-packaging-government-plans-for-plain_b_1637528.html)

*numbers of brands in the marketplace that need to be counterfeited, then there is no limit put upon smugglers and organised crime groups if the carton – and content – are [sic] the same.”*

14. Existing police officers are also sceptical about plain packaging, according to a poll conducted by Populus. When asked whether standardised packs would make it easier to produce or sell counterfeit cigarettes, 86 per cent said it will. 68 per cent said that plain packs would lead to an increase in black market cigarettes. 70 per cent of the officers asked said that they believe the Government would lose tax revenue and 60 per cent even said that plain packs would cause children to turn to the black market.<sup>11</sup>

15. Multiple brands with different packet designs are a costly barrier for counterfeiters wishing to replicate them. Plain packs would be far easier to copy. Official seals or embossed ‘duty-paid’ symbols may be of use to a customs official, but if they are roughly copied on counterfeit tobacco products it is unlikely that consumers – or even retailers – would be able to tell the difference. Indeed, this is a point that has been made by Brandon Lewis MP (then a backbencher, now a member of the Government) in a Westminster Hall debate:<sup>12</sup>

*“I am not a cigarette smoker, but surely one potential problem with plain packaging is not whether experts and officials can check a code to see whether the product is illegal but whether the public who buy the packs can spot it easily.”*

16. Roy Ramm echoed this sentiment:<sup>13</sup>

*“It would be disastrous if the government, by introducing plain-packaging legislation, removes the simplest mechanism for the ordinary consumer to tell whether their cigarettes are counterfeit or not.”*

17. Research by Transcrime has found that brands are far harder to counterfeit than deterrents which have already been put in place:

*“The presence of pictorial health warnings has not to date discouraged counterfeiting, and health warnings are easier to counterfeit than specific brands and features.”<sup>14</sup>*

<sup>11</sup> Populus, *UK Law Enforcement Views on Illegal Tobacco and Plain Packaging*, fieldwork date: 21 June 2012 – 25 June 2012

<sup>12</sup> Westminster Hall Debate, *Illegal Alcohol and Tobacco Sales*, Column 317WH, 27 March 2012

<sup>13</sup> [http://www.huffingtonpost.co.uk/roy-ramm/plain-cigarette-packaging-government-plans-for-plai\\_b\\_1637528.html](http://www.huffingtonpost.co.uk/roy-ramm/plain-cigarette-packaging-government-plans-for-plai_b_1637528.html)

<sup>14</sup> Transcrime - Joint Research Centre on Transnational Crime, Università Cattolica del Sacro Cuore di Milano, Università degli Studi di Trento, *Plain packaging and illicit trade in the UK*

18. Contraband and counterfeit cigarettes are a significant threat because the informal economy in general is so large and very adaptable. Recent research found that it is likely to make up around 22 per cent of global GDP.<sup>15</sup>
19. Schneider has also produced influential literature on the informal economy. In a paper from 2011, for example, he concluded that “the most influential factors on the shadow economy and/or shadow labor force are tax policies and state regulation, which, if they rise, increase both.”<sup>16</sup>
20. In a 2013 paper for the Institute of Economic Affairs, Schneider and Williams found that the shadow economy constitutes around 10 per cent of GDP in the UK. Given that tax policies are the main driver of the shadow economy, there is significant scope to reduce the tax burden and bring more trade back into the formal economy.<sup>17</sup>
21. At a time when politicians are especially looking for the economy to grow and reduce unemployment, it is also worth remembering that many jobs are lost as a result of the illicit trade in cigarettes and hand-rolling tobacco. Frontier Economics released a report which estimated that 2.5 million jobs have been lost in the G20 countries alone because of the illicit trade.<sup>18</sup>
22. This adds to pressure on the budgets of various public sector bodies including local authorities. According to the Local Government Group, 87 per cent of all English councils surveyed were undertaking activities related to illicit tobacco. An estimated 4,300 premises were visited by councils across England in 2010-11 in relation to illicit tobacco products.<sup>19</sup> This means that local authorities already spend a significant amount of time and resources dealing with illicit tobacco. If the trade were boosted further by the introduction of plain packs then even more money would be spent to try and curb that trade, at a time when councils should be looking to prioritise their frontline services.
23. We believe that the law enforcement agencies and customs officers are already over-burdened by the amount of illicit tobacco in circulation and the number of smugglers they are trying to track. This has been made worse in recent years by continuous above-inflation tax hikes, and the introduction of plain packaging would stretch officers even more as it would be far easier to imitate legitimate brands.

<sup>15</sup> Elgin & Oztunali, *Shadow economies all around the world: Model-based estimates*, Working Papers 2012/05, Bogazici University

<sup>16</sup> Schneider, F. *The shadow economy and shadow economy labor force: What do we (not) know?* Institute for the Study of Labour, 2011

<sup>17</sup> Schneider, F. & Williams, C, *The shadow economy*, Institute of Economic Affairs, 2013

<sup>18</sup> Frontier Economics, *The Impact of Counterfeiting on Governments and Consumers*

<sup>19</sup> Local Government Group, *Tobacco Control Survey*, England 2010/11, p. 7

24. The focus of politicians should be on making the work of those responsible for enforcing the rules easier, not harder. So in trying to ascertain what would reduce tobacco smuggling and disrupt the illegal trade in tobacco, they should bear in mind that imposing ever higher taxes on tobacco and/or the introduction of plain packaging would only be to encourage the illicit trade, giving succour to the smugglers and making life even harder for the authorities charged with trying to deal with them.

Relevant recent pieces of TaxPayers' Alliance research from which this submission is drawn include:

*Tax Gap: How cracking down on illicit trade could fund a 1p cut in the basic rate of Income tax*, April 2012

<http://www.taxpayersalliance.com/taxgaps.pdf>

*The Single Income Tax, Final report of the 2020 Tax Commission*, specifically Section 7.1.1. Higher taxes lead to a larger black market and broadly increase tax evasion, May 2012

<http://2020tax.org/2020tc.pdf>

*First, do no harm: How politicians can make tax evasion worse*, October 2012

<http://www.taxpayersalliance.com/firstdonoharm.pdf>

Jonathan Isaby, TaxPayers Alliance  
20 August 2013

## Written evidence from Transcrime [TOB03]

1. Transcrime has noted the call from the Home Affairs Select Committee for submissions with regard to their Inquiry into the trade in illicit tobacco. As the Committee may be aware, Transcrime is an independent academic research centre, based in Milan, with an established research experience in the field of crime, crime control and crime prevention.
2. As part of our work Transcrime published The Factbook on the Illicit Trade in Tobacco Products in the United Kingdom last year. The report is an on-going research project developed by Transcrime to provide an in-depth analysis of the illicit trade in tobacco products (ITTP) across a number of different countries. This report gives the country profile for the UK, where the ITTP has become an important concern since the 1990s, and focuses on the key drivers to illicit trade here in the UK, the global relevance of the illicit trade in tobacco products and the strategies available to prevent it.
3. The report identifies **five key factors** influencing the ITTP in the UK:
  - **Affordability:** the price of illicit tobacco products, and particularly the relative price compared to legal products.
  - **Availability:** the accessibility to illicit tobacco products.
  - **Profitability:** the income generated by the ITTP compared to operational costs.
  - **Risk:** the threat of detection, accusation, conviction as well as the imposable sanctions.
  - **Opportunity:** the opportunities by which society, the legal market, and law enforcement are exploited by the ITTP.
4. The **conclusions of the report:**
  - The ITTP is a complex and multifaceted phenomenon. It comprises a number of different activities which are caused by different socio-economic and regulatory conditions.
  - Analysis of the illicit trade should consider the different causes of the problem in order to gain better understanding of its mechanisms. The results of this study indicate that further research is needed on the ITTP in the UK.

- The ITTP cannot be addressed exclusively through law enforcement and criminal justice policy. In fact, it is extremely reactive to enforcement strategies, and strong law enforcement efforts tackling large-scale smuggling have partially resulted in displacement to new emerging forms of illicit trade. The additional adoption of alternative prevention strategies, such as anti-ITTP campaigns that may increase consumer awareness of the risks associated with illicit tobacco, have proved to be effective in curbing illicit trade, based on evidence collected from different countries.
  - The results of this report suggest that the ITTP should be tackled with comprehensive strategies. Such strategies should include criminal law measures, administrative measures, and other approaches aimed at reducing opportunities for crime, also known as situational crime prevention.
5. The full report can be downloaded from the Transcrime's website at the following address: <http://transcrime.cs.unitn.it/tc/1104.php>  
We hope the Committee considers this report a useful resource.

6. **Declaration of Interests**

- As a concerned stakeholder in the fight against the illicit trade in tobacco products, Philip Morris International (PMI) welcomed Transcrime's initiative to develop the Factbook on the ITTP, with financial support and the provision of relevant information. However, Transcrime retained full control and stands guarantor for the independence of the research and its results.

Ernesto U Savana

21 August 2013

Written evidence from the Royal College of Physicians [TOB04]

1. The RCP and the UK Centre for Tobacco Control Studies (UKCTCS) are grateful for the opportunity to respond to the Home Affairs Committee inquiry into tobacco smuggling. We wish to make the following joint response in relation to questions 3 and 5 of the 6 issues specified by the Committee. Thereafter we make a number of general points relevant to the main aim of the Committee's inquiry and provide context for the specific questions raised.
2. Inquiry question 3.

*Whether the current sanctions and penalties for tobacco smuggling are appropriate.*

In our view they are not. Tobacco smoking is powerfully addictive and kills half of all lifelong users. Illicit tobacco allows price-sensitive smokers who would otherwise quit to remain smokers, and provides a low cost and completely unregulated entry product for children and young people. Although legal in the UK, long-term tobacco is more hazardous than all widely used illicit drugs, yet sentencing for illicit supply is extremely lax relative to that for other drug offences. New sentencing guidance for drug offences indicates, for example, sentences of 14 years for people convicted of a leading role in the smuggling of large quantities of Class A drugs [1]. Whilst a search of the Sentencing Council website does not produce any documentation at all, recent cases cited on the HMRC website provides examples of sentences for leading roles in major tobacco smuggling operations of 3 and 5 years (see <http://press.hmrc.gov.uk/Press-Releases/Ringleaders-jailed-for-12-5m-cigarette-smuggling-attempt-68b69.aspx>); 3 years (<http://press.hmrc.gov.uk/Press-Releases/Cigarette-smuggling-gang-jailed-68d9d.aspx>); and 6.5 years (<http://press.hmrc.gov.uk/Press-Releases/Cigarette-fraudster-told-to-cough-up-criminal-profits-68a98.aspx>). This much lower level of sentencing for tobacco relative to other illicit drugs surely makes tobacco smuggling a far more attractive option to the criminal than illicit drugs.

It would also appear that the "supplementary payments" (fines) that the tobacco companies are required to make as part of the deals reached with the European Commission may be inadequate to deter on-going industry involvement in the illicit trade. For example, as part of the deal reached with Philip Morris International (PMI) following civil action filed by the European Community in New York PMI and RJ Reynolds (now part of Japan Tobacco International, JTI), PMI pay five times the tax value of genuine products seized but only for seizures of over 90,000 cigarettes. On smaller seizures they pay only the tax that is due. As is estimated that only 1 in 10 smuggled cigarettes will be seized [2] fines would have to be at least 10 times the value due to make it financially disadvantageous to smuggle. Furthermore, the Project Star report shows that seizures significantly underestimate PMI contraband, further suggesting that the fines are unlikely to be adequate. In line with this we note evidence of fairly recent TTC involvement in illicit trade [3, 4,5] and failure to control its supply chain in such a way that cigarettes are then likely to leak to the illicit market [6].

In addition, we feel that a registry and licensing system for tobacco retailers would help to ensure that retailers are deterred from engaging in the illicit tobacco trade (as in the illicit trade protocol (see below).

[1] Sentencing Council. Drug Offences Definitive Guideline. Sentencing Council: [http://sentencingcouncil.judiciary.gov.uk/docs/Drug\\_Offences\\_Definitive\\_Guideline\\_final\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Drug_Offences_Definitive_Guideline_final_(web).pdf); 2012 (accessed 30 July 2013)



- [2] Rowell A, Abrams F. "It Just Fell Off the Back of a White Van, Focus Smuggling: It's all very odd: British Tobacco Companies Export Billions of Cigarettes to Countries Where they Know They Have no Market. Why?" *Independent*, 24 September 2000.
- [3] Skafida, V., et al., *Change in tobacco excise policy in Bulgaria: the role of tobacco industry lobbying and smuggling*. Tobacco Control, 2012.
- [4] Holland J, Jovanovic B, and Dojcinovic S. *Big Trouble at Big Tobacco*. 2011 18 November 2011]; Available from: [http://www.reportingproject.net/troubles\\_with\\_big\\_tobacco/](http://www.reportingproject.net/troubles_with_big_tobacco/)
- [5] "EU Probes Cigarette Deal That May Have Aided Syria." *The Wall Street Journal*, August 21 2012. <http://online.wsj.com/article/SB10000872396390444233104577595221203321922.html> (subscription required) [Accessed 15 April 2013]
- [6] Lavrov, V., *Ukraine's 'Lost' Cigarettes Flood Europe*, 2009, International Consortium of Investigative Journalists.

### 3 Inquiry question 5.

*The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK*

There are data available on the relationship between standardised packaging and the illicit tobacco trade, although these data are not specific to developments in Ireland. However, they provide a useful insight into how smuggling may or may not be affected by changes in packaging. This is important as a common assertion made by the tobacco industry is that standardised packaging will increase smuggling. The industry have spent considerable sums on advertising campaigns that seek to make the link between tobacco smuggling and plain packaging, and have funded other organisations and individuals to put forward the argument that plain packaging will increase the illicit trade. Recently leaked PMI documents show that the argument that standardised packaging will increase illicit trade was one of four main arguments to be used against the policy.

The most recent source of information on this topic is a report prepared by Luk Joossens, a Belgian researcher for Cancer Research UK and published in November 2012 [1].

The key findings from Joossens report were that: those that make counterfeit cigarettes find all existing packs easy to forge; counterfeit packs are extremely cheap to make – so cheap that they cannot easily become cheaper and affect the retail price; and government action has been successful in reducing illicit trade in the UK and this type of action needs to be continued and strengthened.

Most of the illicit tobacco market in the UK is not made up of legitimate products 'smuggled' across borders but instead by counterfeit (fake) cigarettes and 'illicit whites' – foreign brands manufactured for the explicit aim of smuggling. The tobacco industry states that plain packs will be easier to forge, but ignores the fact that existing branded packs provide no barrier at all to counterfeiters. Joossens argues that the cost of manufacturing a pack of counterfeit cigarettes is currently 10-15p and about a third of this is packaging. All existing packs are easy to forge. Counterfeit packaging is already so cheap that there is no feasible way that cheaper packaging would have an effect on profitability or retail price. Thus plain packaging will not make counterfeit cigarettes either easier to make or more affordable.

Joossens also states that the tobacco companies are not credible commentators on the issue of plain packaging and smuggling (see below) and it is important that their claims about the links

between the two are addressed. The key to addressing tobacco smuggling is effective government enforcement, with or without plain packaging.

In addition to the points made by Joossens, UK organisations including the Trading Standards Institute [2] have said that standardised packaging will have little or no impact on tobacco smuggling.

- [1] Joossens, L (2012) The tobacco industry, smuggling and plain packs, Cancer Research UK, London.  
[http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@new/@pre/documents/generalcontent/smuggling\\_execsummary.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@new/@pre/documents/generalcontent/smuggling_execsummary.pdf)
- [2] Trading Standards Institute (2012) Standardised packs should be introduced without delay, <http://www.tradingstandards.gov.uk/policy/policy-pressitem.cfm/newsid/949>

#### 4. General points

##### ***Protocol on illicit trade***

Effective action on tackling smuggling requires a comprehensive strategy spanning from actions at the international level through actions at a regional and national level, to actions at regional and local levels. The UK has implemented effective national strategies to reduce tobacco smuggling, but an additional step is required to ensure an international comprehensive tracking and tracing regime; the UK should ratify the illicit tobacco protocol as part of the World Health Organisation's Framework Convention on Tobacco Control [1].

##### ***Regional and local activities***

In addition, regional and local activities to reduce illicit tobacco should be supported. An example of this is the 'North of England Tackling Illicit Tobacco for Better Health' Programme [2]. The Programme aimed to reduce the demand as well as the supply of illicit tobacco and the findings suggest that addressing demand for illicit tobacco is also important alongside penalties and sanctions [3].

##### ***Credibility of tobacco industry on illicit tobacco***

The credibility of the tobacco industry in debates of the illicit tobacco trade is highly suspect. There is overwhelming evidence of the transnational tobacco companies (TTCs) long history of involvement in the global illicit tobacco trade [4-8]. In the UK in the 1990s, for example, TTCs found to be deliberately over-supplying their brands to countries where there was no demand for them in the knowledge that these cigarettes would then be smuggled back into the UK [6]. Although the nature of the illicit tobacco market has since changed substantially [6], emerging evidence suggests the TTCs have continued to be involved in the illicit trade and failed to control their supply chain [9-12] despite signing agreements to this address both these issues [see 11]. For example, cigarette smuggling to and through Bulgaria continued after the deals reached with the European Union [5] and Japan Tobacco International (JTI) is currently under investigation by the European Anti-Fraud Agency, OLAF, following evidence that its involvement in illicit continued until recently [9].

In the UK, Her Majesty's Customs and Excise (HMRC) estimated that for 2011 the aggregate supply of certain brands of roll your own tobacco (RYO) to some countries exceeded legitimate demand by 240 per cent [11] suggesting that TTCs may be re-using their 1990 cigarette export practices on RYO. Similarly, massive TTC overproduction of cigarettes in Ukraine has been shown to fuel the illicit market in Europe [12], a finding supported by a recent pan-European survey showing that illicit tobacco use was greatest in those living in countries which shared a land or sea border with Ukraine, Russia, Moldova or Belarus [13]. Furthermore, Philip Morris

International's (PMI) own data suggest that in 2010 around a quarter of illicit cigarettes in Europe are PMI's own brands [14].

### ***TTC arguments and data on illicit tobacco***

Despite historical instances of involvement in the illicit trade and current allegations of complicity as outlined above, TTCs continue to use the threat of illicit tobacco to argue against key tobacco control policies in numerous jurisdictions [15-17]. For example, it has been shown that TTCs consistently and misleadingly argue that tobacco tax and price rises will increase the illicit tobacco trade [15], even in jurisdictions, including the UK and Ireland, where much of the price increases have been shown to be directly attributable to industry price increases rather than tax increases [18,19].

This argument was widely used in Australia (the first country to introduce standardised packaging for tobacco products in December 2012 [eg 20,21]). Despite the publicity achieved, evidence indicates that the tobacco industry and those working on its behalf exaggerated the scale of the illicit tobacco problem and misleadingly suggested the trend was upwards. For example, a report by accountancy firm Deloitte prepared for the three large Australian cigarette firms claimed that the market share of illegal cigarettes had increased from 6% in 2007 to 15.9% in 2010 [21]. In contrast government data suggested it was 3% and steady [22]. Economists examining trends in use of legal cheap cigarette brands, the closest competitor to illicit, showed their market share was steady thereby indicating that the claimed increase in illicit was highly unlikely [17].

Similar data and arguments are now being propagated by the tobacco industry in the UK [23-25].

Recent unpublished work (which we would be happy to share with the committee in confidence) examining the veracity of the industry data on illicit tobacco and press coverage thereof raises a number of concerns. One such concern is that TTCs have deliberately sought to solicit press coverage on the illicit tobacco trade in the UK using their 'empty pack surveys' which involve the collection of discarded cigarette packs to determine their authenticity. These surveys have a number of limitations. These include methodological issues such as appropriate sampling techniques and the representativeness of the settings where the surveys take place (such as close to borders or within football grounds) and the fact that they can only measure non-domestic product which includes both illicit and cross border sales. As such they can exaggerate the scale of the illicit tobacco trade in the UK. Secondly, press coverage citing such industry data on illicit appeared to coincide with the government consultation on standardised packaging, a period when discussions about whether to proceed with standardised packaging were taking place. Both the press coverage and recently published industry data appear intended to stress that levels of illicit are high and increasing. Yet this apparent increase is not seen in all available independent data which show continuing declines [26, 27]. Evidence of industry data delivering higher estimates of the illicit trade compared with independent estimates is available elsewhere [28]. Furthermore, in the UK, a clear upward trend in the market share of ultra-low price cigarettes [29], the closest competitor to illicit cigarettes also casts doubt on the veracity of industry claims that illicit is increasing. Finally, the tobacco industry routinely misreports HMRC data, citing the HMRCs upper estimate rather than the more likely mid-estimate, thereby exaggerating the scale of the problem [eg 30].

[1] See: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4-a&chapter=9&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4-a&chapter=9&lang=en)

[2] See: [www.illicittobacconorth.org](http://www.illicittobacconorth.org)

[3] McNeill A, Iringe-Koko B, Bains M, Bauld L, Siggens G, Russell A. *Countering the demand for, and supply of, illicit tobacco : an assessment of the 'North of England Tackling Illicit*

- Tobacco for Better Health' Programme*. Tobacco Control Published Online First: 19<sup>th</sup> August, 2013. doi:10.1136/tobaccocontrol-2013-050957
- [4] Gilmore A and McKee M, *Moving East: how the transnational tobacco industry gained entry to the emerging markets of the former Soviet Union - part I: establishing cigarette imports*. *Tob Control*, 2004. 13: p. 143-150.
- [5] Skafida, V., et al., *Change in tobacco excise policy in Bulgaria: the role of tobacco industry lobbying and smuggling*. *Tobacco Control*, 2012.
- [6] Joossens, L. and M. Raw, *From cigarette smuggling to illicit tobacco trade*. *Tob Control*, 2012. 21(2): p. 230-4.
- [7] Lee, K. and J. Collin, "Key to the Future": *British American Tobacco and Cigarette Smuggling in China*. *PLoS Med*, 2006. 3(7): p. e228.
- [8] LeGresley, E., et al., *British American Tobacco and the "insidious impact of illicit trade" in cigarettes across Africa*. *Tob Control*, 2008. 17(5): p. 339-346.
- [9] Holland J, Jovanovic B, and Dojcinovic S. *Big Trouble at Big Tobacco*. 2011 18 November 2011]; Available from: [http://www.reportingproject.net/troubles\\_with\\_big\\_tobacco/](http://www.reportingproject.net/troubles_with_big_tobacco/)
- [10] KPMG, *Project Star 2010 Results*, 2011.
- [11] Comptroller and Auditor General, *Progress in Tackling Tobacco Smuggling*, 2013, National Audit Office.
- [12] Lavrov, V., *Ukraine's 'Lost' Cigarettes Flood Europe*, 2009, International Consortium of Investigative Journalists.
- [13] Joossens, L., et al., *Illicit cigarettes and hand-rolled tobacco in 18 European countries: a cross-sectional survey*. *Tobacco Control*, 10 Dec 10. [Epub ahead of print]
- [14] Gilmore, A., et al., *Towards a Greater Understanding Of The Illicit Tobacco Trade In Europe: A Review Of The PMI Funded, KPMG Authored "Project Star" Report*. *Tobacco Control*, Unpublished.
- [15] Smith, K., E. Savell, and A. Gilmore, *What is known about tobacco industry efforts to influence tobacco tax? A systematic review of empirical studies*. *Tobacco Control*, 2013. 22:e1 Published Online First: 12 August 2012 doi:10.1136/tobaccocontrol-2011-050098.
- [16] Fooks, G.J., S. Peeters, and K. Evans-Reeves, *Illicit trade, tobacco industry-funded studies and policy influence in the EU and UK*. *Tobacco Control*, 2013.
- [17] Clarke, H. and D. Prentice, *Will Plain Packaging Reduce Cigarette Consumption?* *Economic* <http://tobaccocontrol.bmj.com/content/early/2013/07/10/tobaccocontrol-2013-051048>
- [19] Howell, F., *The Irish tobacco industry position on price increases on tobacco products*. *Tobacco Control*, 2012. 21(5): p. 514-516.
- [20] PricewaterhouseCoopers, *Australia's illegal tobacco market - counting the cost of Australia's black market*, 2010.
- [21] Deloitte, *Illicit trade of tobacco in Australia*, 2011.
- [22] House of Representatives Standing Committee on Health and Ageing (2011), 'Advisory Report on the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011'. August 2011, ACT, Canberra.
- [23] Imperial Tobacco, *Bad for business; bad for consumers; good for criminals; Standardised packaging is unjustified, anti-competitive and anti-business; A response to the UK Department of Health consultation on standardised packaging of tobacco products*, 2012.
- [24] Japan Tobacco International, *Response to the Department of Health's Consultation on the Standardised Packaging of Tobacco Products*, 2012, Japan Tobacco International.
- [25] Philip Morris, *Standardised tobacco packaging will harm public health and cost UK taxpayers billions: A response to the Department of Health consultation on standardised packaging of tobacco products*, 2012, Philip Morris.
- [26] Her Majesty's Revenue & Customs (HMRC).. *Measuring tax gaps 2011. September 2011 (revised)* Available from: <http://www.hmrc.gov.uk/statistics/measuring-tax-gaps.pdf>.

- [27] NEMS Market Research (2009,2010,2011,2013)*North of England and South West Regional Illicit Tobacco Surveys*.
- [29] Gilmore A, Tavakoly B, Taylor G, Reed H. Understanding tobacco industry pricing strategy and whether it undermines tobacco tax policy: the example of the British cigarette market. *Addiction* 2013;108(7):1318-26 doi: 10.1111/add/.12159
- [30] Japan Tobacco International, *The Billion Pound Drop - The impact of tobacco smuggling and cross-border shopping in the UK*, 2012

Linda Cuthbertson  
27 August 2013

## Written evidence from Will O'Reilly [TOB05]

### **Submission to the Home Affairs Committee inquiry into tobacco smuggling and the trade in illicit tobacco**

*Will O'Reilly is a former Scotland Yard Detective Chief Inspector. Since November 2011, he has been conducting research on behalf of tobacco manufacturer Philip Morris International in order to gain intelligence and understanding of the illicit trade in cigarettes and other tobacco products across the United Kingdom and the Republic of Ireland.*

1. Since 2011 my role as a consultant for Philip Morris International has been to conduct extensive research into the illicit trade in tobacco products and to act as a spokesperson on the subject. Every year the main tobacco manufactures commission a joint survey, where empty discarded cigarette packs are collected from public streets and easy access bins across the main towns and cities in the UK. A similar survey takes place in the Republic of Ireland. The latest published survey, the period Q4 2012, saw 12,700 packs collected from 105 cities across the UK. It makes for depressing reading with a non-domestic incidence rate of 26.4% compared with 19.3% for the same period the year before. Gillingham in Kent had the unenviable record of having the highest incidence rate of 54.5%. Overall London and the southeast were the highest areas at 34.8% and 33.3% respectively.

#### **UK Mainland Test Purchase Project**

2. On the back of these figures I conducted additional research concentrating on the cities and towns which had recorded some of the highest rates, taking into account a reasonable geographic spread. In the UK mainland, in the period February to July 2013, thirteen towns and cities were targeted. The methodology involved working with law enforcement and other sources seeking to obtain a better picture of the issues and obtaining wherever possible current intelligence on the outlets for illicit products. Intelligence was obtained from a number of sources such as HMRC, Trading Standards and the Police, retailer and consumer groups, covert human intelligence sources or in some cases self-generated. This intelligence could be very specific relating to a particular venue or person, or at other times very vague, perhaps referring to areas of the city or a number of streets. However, in the main Trading Standards were the primary source of current actionable intelligence, certainly for local outlets for illicit tobacco products. One Senior Trading Standards Manager described the situation in their area as chronic. Once this intelligence, if available, was obtained it would form part of the risk assessment for targeted test purchase operations. It would also act as a basis for a formal report at the conclusion of each city deployment focusing on:

distribution, product availability, organised crime involvement and law enforcement activity.

3. A minimum of four test purchasers would be normally be deployed, working in pairs for safety and corroboration. Test purchases were conducted over a three-day period in each city. Only illicit tobacco products were targeted, these can normally be detected by price. All the test purchasers used had previous law enforcement experience; many were fully trained ex-police undercover officers. All the purchases were made to evidential standards, but in relation to the UK mainland the information gained was for intelligence and media purposes only. In all cases the results were shared with the provider of the intelligence, normally the local Trading Standards for future action. Often this resulted in substantial seizures. In one recent case Trading Standards acting on our information seized over 67,000 cigarettes and 4.5 kgs of Hand Rolling Tobacco.
  
4. In the 13 cities and towns in the UK mainland we made 226 successful purchases of illicit tobacco products. In fact purchases of illicit tobacco products were made in all the areas we visited. Generally we purchased two packs of cigarettes or Hand Rolling Tobacco (HRT) from each venue when they were offered. The aim as normal was to purchase cheap illicit cigarettes of any brand and/or HRT. In total 452 packs of cigarettes, 25 pouches of HRT and two loose bags of cut leaf tobacco were purchased. All the cigarette products were illicit and comprised of counterfeits of well known brands, non-domestic or contraband, often with foreign labeling and health warnings, or 'illicit white' cigarettes made solely for smuggling.

### **Prices**

5. The cheapest illicit whites found were 'Palace' and 'Jin Ling' at £2.50 per pack of 20 together with non-domestic Russian variant 'Fest' and 'Minsk' made in Belarus also at £2.50p. UK normal domestic brand names, mainly Polish and Lithuanian variants, were being sold between £4.00p and £5.00p. Other genuine but non-domestic brands slightly cheaper with counterfeit versions cheaper again. Very recently we have seen substantial amounts of illicit menthol and slim cigarettes, again normally East European variants. Hand Rolling Tobacco (HRT) also varied widely on prices from as low as £2.50p per 50 g pouch, which generally were poorly made and more than likely counterfeit to £8 - £9 for pouches probably genuine non-domestic smuggled versions. We also purchased some HRT brands not normally sold in the UK but widely available elsewhere in Europe.

### **Venues**

6. Most of our purchases were made from retail premises, normally either 'corner' type shops or mini markets, especially those selling a variety of cultural foodstuffs. The illicit cigarettes were kept in many places such as under the counter, above ceiling tiles, in the back storeroom, from vehicles parked outside, under specially built trap doors with push button releases, from the pockets of the shop assistants, behind genuine stock on display, under display cabinets often in the middle of the shop and even from within meat carcasses hanging in a cold room in the butchery area. We also bought from market stalls, people selling in public houses and on street corners. However as a guide to the availability of illicit tobacco this work only scratched the surface as studies have shown that most illicit tobacco is bought from friends, family or individuals operating so called 'fag or tab' houses on some of the large housing estates or those running regular supply rounds to order. In the case of the later controlled drugs can also often be purchased at the same time.

**Of Note were:**

- One shopkeeper told the test purchasers he would not sell before 7pm because the shop is busy and it was not worth his while to sell single packs, only cartons.
- In one venue we formed part of a queue of four customers all of whom were buying illicit cigarettes with what appeared to be Russian health warnings for £5. The test purchaser asked for "something cheaper" and was served Jin Ling at £2.50p.
- Often we were shown various illicit brands to choose from. Some dealers had these wrapped together in cling-film like a well-known variety cereal pack to display to customers to choose from.
- A number of the areas targeted in this project also featured in a similar exercise in 2011/12. Many times we found that the same shops that we successfully purchased in before were still selling illicit tobacco.
- On more than one occasion we were offered stolen goods such as mobile phones and credit cards, drugs and other counterfeit products such as DVD's and alcohol
- In one town a dealer could told us he could sell as much HRT as we wanted, suggesting that it would be cheaper for bulk buys of 1000 pouches which he could supply straight away for as little as £2.20 per pouch. As for cigarettes he said he would have to arrange these, but can get 100 or 200 cartons almost immediately.
- In a public house in a main university city a dealer was seen to target students selling them loose tobacco in bags, which he stated, were "each about 50g" at £5.00p each. The dealer who was also taking orders on his mobile phone described the tobacco as 'student mix'.



- In one instance we were directed to a young girl with baby in a pram. She dealt illicit cigarettes to the test purchaser from a stash kept under the baby's mattress.
- We were even offered single cigarette sticks by one retailer, clearly aimed towards young children into parting with their pocket money.

### **Availability**

7. An interesting finding was that where there had been recent law enforcement activity in an area, particularly if accompanied by good media coverage, we found it more difficult to find unscrupulous retailers willing to sell illicit tobacco products. We also often found that the same brands, even batch numbers were being sold in a number of outlets in particular areas clearly suggesting an organised supply chain. This was most apparent in one city where only one illicit brand was available with shopkeepers quoting the same - that they were expecting a delivery soon. In some areas where law enforcement had been particularly proactive the fear of future action and the subsequent consequences was high, in others there seemed to be little enforcement and therefore any deterrent was very minor.

### **Northern Ireland Project**

8. A similar project has been undertaken in Northern Ireland covering the entire Province. In this instance we worked closely with the Organised Crime Task Force of the PSNI, although for the purposes of the project all the intelligence was self generated and we were not in any way tasked by the police. If anything we found the illicit tobacco situation in Northern Ireland more widespread and open than the rest of the United Kingdom. The aim of this project was to get a better picture of illicit trade in counterfeit tobacco in Northern Ireland so the intention in the first place was to buy cheap versions of normal domestic brands. If these were not available to purchase illicit tobacco of any kind.
9. Using the same methodology as the UK project, fourteen visits were made to Northern Ireland. Illicit tobacco was available in all the areas we visited. In total 344 packs of illicit cigarettes were purchased and 20 pouches of HRT. In fact we bought illicit tobacco products from over 120 different venues. Because we were looking at the availability of counterfeit brands, if a recognised domestic brand was purchased repeat visits were normally made. What was very surprising and unexpected was that normal UK domestic brands, either counterfeit or non-domestic variants, were relatively hard to find. Illicit whites as a category were by far the most common type available and made up 78% of all the purchases. The availability of these, which are mass-produced purely for smuggling on a large scale, is good evidence of the

involvement of organised crime. In total 22 different illicit white brands were purchased.

### **Prices and Products**

10. Prices paid for the tobacco products in Northern Ireland were broadly similar to the UK mainland. Illicit whites prices ranged from £3.00 to £3.50p. As we were working in Northern Ireland a new brand started to appear called Email. This, in both blue and red versions, soon became the illicit brand most widely available, even being mentioned on social media as “all over East Belfast”. All the legitimate brands named products were sent to the individual manufactures for analysis. This work is not yet complete but the majority have shown to be counterfeit unlike the UK mainland where the majority are smuggled non-domestic legitimate brands.

### **Venues**

11. Most of our purchases were made in retail shops, but unlike the mainland these were normally run by indigenous white Northern Ireland shopkeepers. We were particularly successful in some of the staunch republican and loyalist areas. Some shops appeared to stock very little legitimate stock and the whole purpose seemed to be as outlets for illicit goods of all kinds. Normally if we were successful in one shop, others in the same chain were found to sell exactly the same brands at the same price. We were often told that they did not know what brands were coming until the evening deliveries that were made most days. We also made purchases of illicit tobacco in fruit and veg shops, pet shops, mobile snack vans, public houses, car boot fairs, from a street cleaner, even a farm shop. In the major cities we also found that some mini-cab firms were selling illicit tobacco products with sales from both the reception staff and drivers. We saw drivers carrying a selection of brands and cheap alcohol in their vehicles. In Londonderry intelligence pointed us to the shipping containers converted to shops that appear on most of the large housing estates. We visited 21 separate containers; from each of them without fail the test purchasers were sold illicit tobacco products. In some cases obviously illicit cigarettes such as some illicit white brands were on open display.

### **Republic of Ireland Project**

12. During the same period we also mounted a similar project in the Republic of Ireland covering 15 areas. The findings were:

- Illicit tobacco products were purchased in all 15 areas visited
- In total illicit tobacco products were purchased on 59 different occasions
- 298 packs of cigarettes were bought
- 13 pouches of HRT were purchased

- The cheapest illicit white were Minsk and Email at 4 Euro per pack
- The cheapest illicit whites per carton was shared by Beverley, Excellence, palace and Golden Eagies all purchased at street markets for 35 Euro
- 21 of the 59 purchases were made from East Europeans
- The largest sales by volume were made in the markets of Balbriggan, Dundalk and Moore Street Dublin.

## Venues

13. In the Republic of Ireland we found that hardly any retail shops sold illicit tobacco products, certainly those run by indigenous Irish shopkeepers. However, some owned or operated by East Europeans are central to the supply of Polish and Lithuanian variant cigarettes. Those rouge traders that do sell are supplied in small amounts by 'ant smugglers' including close friends and family making visits back home. Often the profit margins can pay for the transport costs. On many occasions even if the shopkeeper was not trading in illicit products, or had run out of stock, they knew someone who was holding supplies and they facilitated the sale. There were also instances of people advertising when they were in possession of illicit tobacco by placing a card advert in their own language on a shop notice board, or on the internet.
14. Another main source of illicit tobacco in the Republic were markets, there it was clear both on the intelligence we received and from our own observations, that the trade in illicit tobacco is overt and widespread. But in one previously notorious market the installation of CCTV by the owner had driven out the rouge traders.
15. We also witnessed many incidents of cross border smuggling both ways. The benefits for tobacco cross border smugglers are very dependent on the incremental tax rises imposed by the UK and Irish governments, the current exchange rate and the location where large shipments of smuggled produce are landed. For instance very soon after we saw Email cigarettes in the North we witnessed them being sold in the Republic, even as far south as Cork. We also witnessed organised crime groups with dissident republican connections smuggling illicit tobacco and alcohol North to South on a regular basis.

## Select Committee Questions

16. At street dealing level I have found that there are great inconsistencies amongst the 200 plus Trading Standards teams in the UK. Much is dependent on resources allocated by the particular Local Authority and also the priorities imposed. Another factor is the willingness for local authorities to bear the costs of mounting a prosecution. In Scotland it is easier to deal with unscrupulous retailers through the registration process. My personal view is that licensing or registration should be considered for the rest of the UK. Also of benefit would be improved intelligence sharing between law

enforcement and an obvious and publicised single means whereby the public can report intelligence about illicit tobacco.

17. My view is that adequate penalties, if the courts impose them, currently exist for counterfeit products. In relation to contraband and illicit whites the situation is less clear. Smuggling and evasion of tax are well catered for but at retailer level possession and trading in these categories fall into labeling offences under consumer laws with miniscule penalties and little deterrent. This is particularly relevant in illicit whites, the contents of which are unregulated and have shown to far dangerous to consumers than legitimate products. In relation to retail shops I am aware that Trading Standards sometime struggle to find evidence to prosecute an absent owner and shop assistants change regularly. In one city we bought from a shop that had been successfully raided 3 times in the previous 12 months and with staff going through the court process for selling illicit tobacco. Again perhaps a form of registration or licensing with fixed penalties for violations would if properly policed be a better deterrent.
18. Standardised or plain packaging will in my view make the situation even worse. Instead of over 260 different brands currently on sale in the UK with their own unique designs, the counterfeiter has only to produce one. Removing security measures such as trademarks and logos will just make it easier, allowing cigarettes to be filled with unregulated products. I firmly believe it will fuel the black market trade and in fact could have the opposite effect to what is intended and expose more children to tobacco products of all sorts.
19. From my own observations and research and from speaking to colleagues in law enforcement the link between tobacco smuggling and organised crime is a growing one, fuelled by low risk and small penalties. In Northern Ireland for instance we found illicit tobacco widely available in shops in notorious republican and loyalist areas. These shops appeared to sell nothing but illicit products and were guarded by 'heavy' types and lookouts. Working in Ireland in the North and South we also came across more than one organised supply chain of illicit tobacco and alcohol products operating with the blessing and backing of paramilitary groups.

**Will O'Reilly**  
**26 August 2013**

## Introduction

1. ACS welcomes the opportunity to respond to this important inquiry into tobacco smuggling. ACS is a trade association, which represents over 33,500 stores across the UK, including Spar UK, Nisa Retail, Costcutter and thousands of independent stores. Tobacco represents an important category for the convenience market, and ACS advocates the responsible sale of tobacco products through vigorous age verification policies within our members' stores.
2. Illicit sales of tobacco products create significant burdens to both convenience store retailers and the Government. The availability of cheap, illicit tobacco within communities harms legitimate retailers who sell products legally and in a responsible manner through implementing age restriction policies within their stores. Businesses not only lose direct sales of tobacco to illicit traders, but also sales of other products by customers who stop coming into their shop. For this reason, ACS is eager to play a part in helping the Government towards its objectives in reducing the prevalence of the illicit tobacco trade, particularly in tackling value (small-scale inland activity) crime.
3. It is also important to note the unintended consequences that the introduction of additional regulation of tobacco products, such as the tobacco display ban, or an increase in tobacco duty, might have on the growing prevalence of the illicit tobacco trade. For instance, the most price-sensitive consumers living in lower-income areas might be deterred from purchasing legal tobacco products from legitimate retailers if they feel out-priced by increased prices, or a customer could experience longer queues and transaction times when the tobacco display ban is introduced in small stores in 2015, which could also discourage them from purchasing tobacco from legitimate sources.
4. As operational targets for tobacco seizure have been missed in 2012-13, priority should instead be given to growing activity and regulation against the illicit trade to avoid undermining the progress already made by the Government and legitimate retailers to lower the number of smokers and to ensure that underage children cannot access these products. Illicit traders target those living in lower-income areas, particularly children, who are not only attracted by the lower price of illicit products, but also by the ease of access to them, owing to a lack of age restriction enforced by this market.
5. ACS welcomed the National Audit Office's recent report into HMRC's progress in implementing its tobacco smuggling strategy, which highlighted HMRC and UK Border Force's failings in meeting their operational targets. In reaction to this report, ACS has called on the Government to make more resources available to police, Trading Standards and health officials working in local authorities to be able to identify and prosecute tobacco smugglers. When these targets are missed, tens and thousands of legitimate retailers will suffer from being undercut by unregulated smugglers.
6. ACS also welcomed the Public Accounts Committee's evidence sessions into tobacco smuggling, which again indicated that further work is needed in tackling inland volume (lower level) crime.

7. Our submission to this inquiry will focus on the following terms of reference:

*Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13*

*Whether the current sanctions and penalties for tobacco smuggling are appropriate*

8. ACS would be willing to provide oral evidence to the Committee's inquiry.

### **Declaration of Links to the Tobacco Industry**

9. ACS is open and transparent about the commercial relationship between our organisation and tobacco manufacturers. As part of our efforts to ensure this, ACS has notified the Department of Health detailing the nature of our commercial relationship. A copy of our letter is attached in Annex A and is available on our website.
10. As stated in the attached letter, tobacco companies and other tobacco manufacturers have no influence over ACS policy positions. These are decided by members through the ACS Management Board and policy committees upon which no tobacco companies are represented.

### **Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13**

11. Although HMRC has made significant progress in tackling the illicit trade at UK borders, the lack of focus on the growth of volume crime on the ground in communities has meant that inland illicit activity has been able to thrive in our most vulnerable communities, and has contributed to the failure of HMRC to reach its operational targets in 2012-13.
12. This is evident from HMRC's own statistics on prosecutions. The proportion of prosecutions for inland seizures compared with those on the border and overseas is extremely low, and targets have also been missed in this area. For instance, only 5% of cigarettes seized in 2010-2011 and 14% of Hand Rolling Tobacco were seized inland<sup>1</sup>.
13. Government-led responsibility for tackling smuggling lies with HMRC; however local agencies have the network and the people to identify illegal tobacco sales in the community, particularly in the case of low-level volume crime. There are currently limited links between these agencies, and there is a pressing need for a more co-ordinated approach between local and national enforcement. Clear responsibilities should be outlined for Trading Standards and local police in this area; they should not serve as merely a supporting partner of HMRC.
14. In addition to a defined remit of enforcement to local bodies, funds need to be made available to dedicate sufficient resource on the ground. ACS believes that a 3 year budget allocation should be given to Trading Standards and the police specifically for enforcement activity against the illegal sale and supply of illicit tobacco in communities.

<sup>1</sup> HMRC Tackling Tobacco Smuggling

15. One example of where such partnership working has yielded success is the 'North of England Tackling Illicit Tobacco for Better Health Programme', which combined greater partnerships between health and enforcement officers and HMRC with consumer campaigns to achieve a greater awareness and ability to tackle the prevalent illicit trade within the region. In its evaluation of the programme, the UK Centre for Tobacco Control Studies said that it had led to a reduction of demand for illicit tobacco and that it had led to a "greater coordination of activities" to reduce the supply of illicit tobacco in the region<sup>2</sup>.
16. Although the 'North of England Tackling Illicit Tobacco for Better Health Programme' and other existing partnerships have shown promising results, it is disappointing that such programmes have not yet reached other parts of the country because of funding constraints<sup>3</sup>.

#### Recommendations:

- Forge closer relationships between HMRC and local Trading Standards and police
- Provide local Trading Standards departments and local police with clearly defined responsibilities to tackle tobacco smuggling in their areas
- Allocation of 3 year budget to Trading Standards and police specifically for enforcement activity against the illegal sale and supply of illicit tobacco in communities
- Build on the success of previous local schemes through forging more partnerships and building consumer awareness

#### **Whether the current sanctions and penalties for tobacco smuggling are appropriate**

17. ACS believes that current sanctions against tobacco smugglers, particularly those who operate on the ground within communities, are not strong enough and do not target the correct people. Current activities, such as the use of UK Duty 'fiscal mark' detector and banning orders do not target illicit traders who trade in locations such as vans and tab houses, but instead impose further regulatory burdens on legitimate retailers.
18. In addition to additional resources for Trading Standards and local police to be able to bring action against illicit tobacco traders, new and harsher penalties to deter these sellers should also be introduced. ACS believes that the current structure of sanctions is counter-productive and needs to be tackled. Current sanctions are also too complicated and time-consuming for HMRC to pursue.

<sup>2</sup> Tackling Illicit Tobacco for Better Health: Final Evaluation Report

<sup>3</sup> Progress in Tobacco Smuggling, pp.6

19. A suite of new and easy to administer penalties targeted at sellers of smuggled tobacco products should be introduced, including:
- Sentencing guidelines for magistrates, ensuring that offenders caught selling stocks of illegal tobacco, with sanctions starting from a fine escalating to imprisonment for the most serious offences.
  - Parity with the penalties for dealing category C drugs, as stated in Schedule 4 of the Misuse of Drugs Act (1971). Currently, the punishment for smuggling tobacco is half that of smuggling Class C drugs, as it is seen as a lucrative and less risky option for criminals.
20. Although prosecutions for volume crime have been gradually increasing, HMRC has not set targets for the number of prosecutions for tobacco fraud in cases of volume crime in tobacco smuggling<sup>4</sup>; there are targets for volume crime across all regimes, but this is not specific to the sale of tobacco. A clear target for the number of volume crimes for tobacco smuggling should be set in order for HMRC to be able to further increase the number of prosecutions for volume tobacco crimes and to track progress. The National Audit Office's report also highlights that the application of civil penalties against volume crime offenders was delayed because of recruitment delays and legal considerations<sup>5</sup>, which again hampers the progress that can be made to tackle illicit traders who operate at the heart of our communities.

Recommendations:

- More powers for local Trading Standards and police to bring action against illicit tobacco traders
- A suite of new and easy to administer penalties targeted at tobacco smugglers
  - New sentencing guidelines for magistrates
  - Parity with the penalties for dealing Class C drugs
- HMRC should introduce a target for volume crime offences

Mair Roberts

27 August 2013

<sup>4</sup> Progress in Tobacco Smuggling

<sup>5</sup> Progress in Tackling Tobacco Smuggling, pp.26



## **Introduction**

1. The National Federation of Retail Newsagents (NFRN) would like to thank the Committee for the invitation to make a written submission on the issue of tobacco smuggling.
2. The NFRN is one of Europe's largest trade associations, representing over 16,000 fee paying members from approximately 18,000 independent newsagents and convenience stores across the UK, Channel Islands and the Republic of Ireland. We are a membership led organisation that is democratically structured; policy is made by annual conference and its implementation is overseen by National Council.
3. The NFRN assists the independent retailer to compete more effectively in today's highly competitive market through the provision of practical help and assistance, commercial support, deals and buying opportunities, training, expertise and services, it also represents its members' interests at governmental and parliamentary level, as well as within the news and magazine industry.

## **General remarks**

4. The NFRN recognises that there have been a number of high profile and high value raids and seizures of illicit cigarettes in recent months. Notably in July 2013, officers from HMRC arrested five people during raids across the Peterborough and Spalding areas as part of an investigation into a suspected case of £6 million worth of cigarette smuggling fraud<sup>1</sup>.
5. The NFRN also acknowledges the recent publication of the National Audit Office's report into the progress of HMRC's implementation of its tobacco smuggling strategy. However it was evident from the report that given HMRC's estimate that tobacco smuggling cost the Exchequer £1.9bn in lost revenue over the 2010-11 period, and that it did not meet any of its "more stretching" targets in 2012-13, further action is required to tackle the problem accordingly<sup>2</sup>.
6. The consequences of tobacco smuggling have a direct and far-reaching impact on the businesses of our members. The availability of cheaper, but illicit tobacco can result in cash-strapped consumers purchasing tobacco from alternative sources, at the expense of responsible and legitimate retailers. Such behaviour not only impacts on the finances of businesses and the Treasury, but most importantly, on the health of consumers who consume the illicit products.
7. It is also worth noting that smuggling also impacts on the under-age consumption of tobacco products. Unlike responsible retailers, sellers of illicit tobacco will not ask

<sup>1</sup> <http://www.mynewsdesk.com/uk/hm-revenue-customs-hmrc/pressreleases/five-arrested-in-suspected-ps6m-cigarette-smuggling-investigation-888154>

<sup>2</sup> National Audit Office, Progress in Tackling Tobacco Smuggling, HC 226, Session 2013-14, 2013

for I.D from customers who appear under-age. Therefore tobacco smuggling provides an accessible avenue for those who wish to obtain tobacco products whilst under-age.

8. Counterfeit cigarettes often pose additional health risks to those traditionally associated with smoking, due to the variety of ingredients used. A BBC investigation in 2012 discovered that illicit cigarettes sold for purchase in Sussex, contained levels of cancer-causing chemicals that were far higher than those found in the legal, regulated products<sup>3</sup>. The NFRN would recommend that greater promotion of the dangers of dubious ingredients and potential health impacts of counterfeit cigarettes should be undertaken, in order to educate and discourage people from purchasing such products.

9. Whilst the NFRN supports the government in its aim to reduce the number of people who smoke and to prevent young people from starting the habit, it must be acknowledged that recent legislation such as the tobacco display ban could potentially result in unintended and undesirable consequences. When the ban comes in to force in small stores in 2015, it raises the possibility that consumers may turn away from legitimate retailers to illicit sources, as a consequence of legal transactions being made more difficult. Alternatively, for those customers unaware of the tobacco display ban, a belief that their local store no longer stocks tobacco may encourage them to seek out more convenient but illegal sources.

10. The NFRN also considers the link between tobacco smuggling and organised crime to be a major concern. An attempt to smuggle 30 million cigarettes into the UK through the Port of Southampton in March 2013, highlights both the scale and professionalism of some smuggling operations that take place<sup>4</sup>. As a consequence of the findings of the NAO report, it would be desirable for HMRC to be equipped with all of the necessary resources in order to tackle this problem efficiently.

11. The NFRN are campaigning actively on a number of issues relating to smuggling, including the Tobacco Products Directive (TPD). The upcoming vote on the TPD is a potential further complication in the fight against tobacco smuggling as the NFRN fears that if the directive is agreed, the prohibition of ten packs, menthol cigarettes, slims, and the introduction of combined warnings (picture plus text) of 75% on both sides of the tobacco packet will only serve to encourage smuggling and counterfeiting, as packets may be easier to copy and some products such as menthols will only be available via illicit sources. As the directive will leave the door open for the government to bring in plain packaging for tobacco products in the UK, the NFRN is concerned that the packaging will be simpler and easier to counterfeit, resulting in a further influx of illicit tobacco. Similarly, those who wish to purchase the outlawed items may feel tempted to buy them illicitly.

<sup>3</sup> <http://www.bbc.co.uk/news/uk-england-sussex-16786358>

<sup>4</sup> <https://www.gov.uk/government/news/border-force-stubs-out-cigarette-smuggling-attempt>

12. The following terms of references will be focused upon in our submission to this inquiry:

- *Whether the current sanctions and penalties for tobacco smuggling are appropriate*
- *The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK*

### **Declaration of interests**

13. In 2012 the NFRN reorganised with the separation of the not-for-profit trade association from its commercial operations, NFRN Commercial Ltd.

### **The NFRN**

14. The NFRN, while working with tobacco manufactures on issues of mutual concern, has no financial links or arrangements with any tobacco manufacturer.

15. The NFRN does work with the Tobacco Retailer Association, Tobacco Manufacturers Association and campaign groups such as “Hands Off Our Packs” and “No Thank EU” on matters of common interest. In August 2013 the NFRN assisted in arranging the distribution of campaign and information packs from the “No Thank EU” campaign to NFRN members across the country.

16. The NFRN does not receive any funding from, nor does it fund, any of these groups.

17. NFRN policy is set by members at its Annual Conference. Members of staff, including those who deal with tobacco manufacturers and campaign groups, are not permitted to take part in the policy debates at the Annual Conference.

18. In the Republic of Ireland, Transatlantic Public Affairs, who also work for Philip Morris, have provided no cost public affairs advice to the local NFRN district. Such advice is monitored by the Head Office Public Affairs team to ensure compliance with the aims and objectives of the NFRN.

19. The Public Affairs team works for the NFRN and does not have sight of commercial agreements between the NFRN, NFRN Commercial Ltd and third parties, whether they be tobacco manufacturers or not.

### **NFRN Commercial Ltd**

20. NFRN Commercial Ltd, a wholly owned subsidiary operated at arm’s length from the NFRN, maintains commercial relationships with most tobacco manufacturers. As a result of these relationships an amount of £28,000 pa is spent by tobacco manufacturers on advertising and sponsorship.

21. As these relationships are with NFRN Commercial Ltd, the companies have no influence over NFRN policy.

22. Senior management have received a modest amount of hospitality from tobacco manufacturers. All such hospitality is recorded and is available for inspection. As members of staff, they do not have any say in the adoption or revision of NFRN policy.

### **Newtrade Publishing Ltd**

23. The NFRN also owns Newtrade Publishing Ltd, publishers inter alia of Retail Newsagent and Retail Express. Newtrade Publishing Ltd is operated as an arm's length organisation, with contact limited to senior NFRN management and the Communications and Public Affairs teams who deal with Newtrade Publishing Ltd staff as normal press contacts. Newtrade Publishing Ltd publications have carried advertising from tobacco manufacturers but this is unrelated to the work of the NFRN.

### **General Principles**

24. While the NFRN, NFRN Commercial Ltd and Newtrade Publishing Ltd believe that it is perfectly legitimate to have business relationships with the manufacturers of legal tobacco products, they are aware of the sensitivity of the sector and the potential for reputational risk. The NFRN and NFRN Commercial Ltd therefore take a conservative approach to these relationships, ensuring that relationships are focused towards achieving the aims and objectives of the NFRN and that all commercial arrangements are proportionate to the service being provided.

### **Whether the current sanctions and penalties for tobacco smuggling are appropriate**

25. Currently, the NFRN considers that the sanctions and penalties for tobacco smuggling are not a sufficient deterrent. Given that 1.7 billion cigarettes were reportedly seized in the period 2010-11<sup>5</sup>, it would appear that the financial incentives of cigarette smuggling are continuing to outweigh the risks of receiving a sanction and/or penalty.

26. This view is endorsed by Andrew Leggett, Deputy Director for Indirect Tax at HMRC, who gave evidence on the EU cigarette strategy to the House of Lords Select Committee on the European Union - Home Affairs, Health and Education (Sub-Committee F), which was held on Wednesday 24<sup>th</sup> July 2013.

27. Leggett admitted that large amounts of money could be made from illicit cigarette sales, highlighting that a pack of "20 cigarettes is twice the price of an illicit pack of

<sup>5</sup> National Audit Office, Progress in Tackling Tobacco Smuggling, HC 226, Session 2013-14, 2013

20 cigarettes” and considered that “at the moment the **balance of risk and reward is a good one for tobacco [smuggling] globally**”<sup>6</sup>.

28. It is important to note that whilst the NFRN would like stronger deterrence’s for cigarette smugglers, it would not support measures which would place further burdens on those who are legitimate sellers of tobacco products.

29. The NFRN suggests that attention also needs to be given to the different methods of deterring the consumer from purchasing illicit tobacco. For example, in the Quebec region of Canada, they have opted to criminalise consumers of illicit tobacco through the Tobacco Tax Act, a policy the NFRN would encourage the committee to examine during its inquiry.

30. Furthermore as mentioned previously in paragraph 6, the NFRN would encourage raising awareness of the ingredients and potential health implications that can result from the consumption of illicit tobacco products, as a potential means to reduce the level of tobacco smuggling.

### **The possible impact of the introduction of standardized packaging in Ireland on the quantity and availability of illegal tobacco in the UK**

31. The NFRN disagrees with the introduction of standardised packaging for cigarettes in Ireland. Whilst the intention to make tobacco less attractive to consumers is a laudable aim, we consider that the policy could have unintended negative effects on consumers. It is worth noting that since the introduction of the display ban in Ireland, smoking has not decreased but the proliferation of illicit tobacco has increased.

32. One unintended consequence of the policy if introduced could be that the number of counterfeit cigarettes could increase. As tobacco products would be subject to specific and generic packaging design requirements as set out by statute, there is a risk that essentially, a “how to” manual for counterfeiters is being produced. This combined with the fact that packs will be simpler in design, suggests that counterfeiting process will become easier, potentially leading to an increase in illicit tobacco.

33. HMRC have also conceded that “the simpler you make a package, the easier it is to counterfeit it”, however they did state their belief that there was not the evidence available to “to quantify the extent to which those risks would materialise<sup>7</sup>”.

<sup>6</sup> [http://www.parliament.uk/documents/lords-committees/eu-sub-comf/tobaccosmuggling/Corrected%20transcript%20\(CSS%20enhanced%20scrutiny%20-%20HMRC\)%20QQ22-39%20240713.pdf](http://www.parliament.uk/documents/lords-committees/eu-sub-comf/tobaccosmuggling/Corrected%20transcript%20(CSS%20enhanced%20scrutiny%20-%20HMRC)%20QQ22-39%20240713.pdf)

<sup>7</sup> [http://www.parliament.uk/documents/lords-committees/eu-sub-comf/tobaccosmuggling/Corrected%20transcript%20\(CSS%20enhanced%20scrutiny%20-%20HMRC\)%20QQ22-39%20240713.pdf](http://www.parliament.uk/documents/lords-committees/eu-sub-comf/tobaccosmuggling/Corrected%20transcript%20(CSS%20enhanced%20scrutiny%20-%20HMRC)%20QQ22-39%20240713.pdf)

34. In addition, if the policy is implemented and it does lead to an increase in illicit tobacco as the NFRN believes, this will have a knock on effect for legitimate retailers who provide a valuable service to communities, potentially putting some of our members out of business and detrimentally impacting upon the health of consumers.

35. The lack of evidence currently available is a further reason why the NFRN considers the decision on plain packaging in Ireland should be delayed. It would be sensible to wait until further data from Australia is published, so that there can be sufficient analysis and a fuller understanding of the potential consequences of the policy.

## **Conclusion**

36. Whilst the NFRN acknowledges the steps HMRC have taken to reduce tobacco smuggling, the volume of the illicit market is still far too high. This is to the detriment of both the consumer's health and the finances of hard-working, independent businesses in the retail and convenience sector. With the upcoming vote on the TPD rapidly approaching and the potential effects of the directive if passed on tobacco smuggling, the NFRN welcomes the committee's decision to launch an inquiry into this issue.

**Emma Thomas**  
**29 August 2013**

## Written evidence from Action on Smoking and Health [TOB08]

### Interests

1. Action on Smoking and Health (ASH) is a campaigning health charity set up in 1971 by the Royal College of Physicians to work towards eliminating the harm caused by tobacco. ASH is transparent about its activities and its funding. For its campaigning work, funding comes from Cancer Research UK and the British Heart Foundation.
2. ASH provides the Secretariat for the All Party Parliamentary Group on Smoking and Health, which has conducted an Inquiry into the illicit trade into tobacco products. A copy of the APPG report is attached with this Memorandum.

### Questions Addressed in this Memorandum

3. This memorandum primarily addresses questions seven and eight in the list provided on the Select Committee web page, specifically:
  - *“the similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect on each other”,* and
  - *“the possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK”.*
4. Finally, it offers some observations on the scope of the inquiry, as suggested by the provided list of questions; and on the involvement of the tobacco industry in policy making on public health and the UK’s international obligations in this regard.
5. ASH would be pleased to give oral evidence, if requested.

### List of Recommendations

6. The Committee should:
  - welcome HMRC’s decision to collect and publish more up to date estimates of illicit trade, as HMRC data is the most reliable available measure of the extent of illicit trade in the UK
  - recommend that the UK should sign and ratify the Illicit Trade Protocol as soon as possible
  - recommend that HMRC and United Kingdom Border Agency and OLAF should continue to develop their co-operation in tackling the trade, and the UK Government should press through the EU for OLAF to continue to give a high priority to tackling the illicit tobacco trade
  - recommend that the strategic partnership between HMRC and UKBA should be further developed, with regular reporting and updating, and that the UK Government should ensure that spending by HMRC on tackling illicit trade does not fall as a result of overall budget reductions planned for 2015-16 in the next spending round (SR 11)

- recommend that the Government should continue to encourage the development of regional partnerships, with a commitment to active engagement from relevant Government departments and agencies (including HMRC, Border Force where appropriate, Department of Health and police), consider funding of such partnerships to support their work, and encourage local authorities to ensure that strategic action against the illicit tobacco trade is taken by all relevant parts of each authority, including trading standards officers and Directors of Public Health
- recommend that any future UK legislation requiring standardised packaging of cigarettes and tobacco products should empower the Secretary of State to ensure that appropriate security features are included in the regulations specifying the form of standard packaging.
- The Committee should also seek specific information on any financial assistance, either directly, indirectly or by sponsorship, to any organisation or individual giving written or oral evidence to the Inquiry, in addition to its welcome stated requirement that witnesses should declare their interests.

## Patterns of Tobacco Smuggling in the UK

### Types of Illicit Trade

7. In relation to tobacco products, “illicit trade” can cover a wide range of activities, and it is important to distinguish between them, since they all require a specific policy and operational response. Key categories include:
  - **Smuggling.** This covers the unlawful movement of tobacco products from one jurisdiction to another, without applicable tax being paid. A special category of tobacco smuggling involves **Cheap/Illicit Whites:** cigarettes are lawfully produced in one country but intended for smuggling into countries with higher tax rates where there is no lawful market for them.
  - **Counterfeiting.** This covers the illegal manufacturing of a product, with apparent “trademarks”, but without the owners’ consent.
  - **Bootlegging.** This covers cases where tobacco products are legally bought in one country and then transported to another with a higher tax rate, in amounts beyond those reasonable for personal use.
  - **Illegal Manufacturing.** This covers cases where tobacco products are manufactured without declaration to the relevant authorities. In some cases, they may be manufactured in approved factories, unbooked and/or out of normal hours, in others they will be manufactured in unlawful covert operations.
8. It is notable that reports, surveys and other publications from the tobacco industry and the organisations that it funds generally focus largely if not entirely on counterfeiting in relation to illicit trade. One reason for this is that this is the only form of illicit trade that leads to direct financial losses to licit tobacco manufacturers and retailers; another is that it enables the industry to gloss over the long history of its own facilitation of illicit trade.<sup>1</sup>

### Extent of Illicit Trade

9. In 2010, the global tobacco market is estimated to have been worth about £450 billion.<sup>2</sup> In 2010, the UK tax paid tobacco market was worth about £17.7 billion, and some market analysts have estimated that this



figure could rise to £19.0 billion by 2015. The UK tobacco market is dominated by cigarettes, which in 2010 represented 86.6% of sales by value, followed by hand rolled tobacco (HRT), which represented 11.5%. Cigars, pipe tobacco and other niche tobacco products represented 1.9% of the market.<sup>3</sup>

10. By definition, the global illicit trade in tobacco products is hard to measure with accuracy. However, a 2009 study estimated that 11.6% of the global cigarette market was illicit.<sup>4</sup> This is equivalent to 657 billion cigarettes a year, and means a loss of tax revenues of about \$40.5 billion. Illicit trade is therefore a global problem, requiring a global as well as national, regional and local response.
11. The UK has high cigarette prices relative to the rest of Europe. In the absence of countervailing measures, that price difference could provide an incentive for illicit trade. However, the attractiveness of the UK market to illicit traders is not simply a function of the difference between the cost of production/purchase and distribution of illicit tobacco products and their licit tax paid price. It is also affected by the difficulty of getting illicit product into the UK without seizure, or of manufacturing illicit product inside the UK, the risks of being caught breaking the law in this way, the sanctions likely to be applied, and the difficulty of selling illicit product without detection. These can be considered as additional non-monetary “costs” to smugglers, and a key purpose of action against illicit trade by government and public agencies is to increase these costs and hence reduce the incentive to engage in illicit trade.
12. In recent years, the best available data shows the level of illicit trade has fallen in the UK, as countervailing measures have been taken at every level from the international to the local. HM Revenue and Customs have estimated that in 2000 about 1 in 5 cigarettes smoked in the UK were smuggled, costing over £3 billion a year in lost tax revenue.<sup>5</sup> The proportion of HRT that was smuggled in 2000 was as high as 60%. However, HM Revenue and Customs (HMRC) data suggests that by 2010/11 (the latest year for which this information is available) the illicit market in cigarettes had fallen to around 9% of the UK market, and in HRT to around 38% of the market.
13. There have been changes over time in the proportion of illicit cigarettes seized in the UK between genuine UK brands, non-UK brands and cheap/illicit whites, and counterfeit. In 2002/3 almost a third of all reported large seizures were of genuine UK brands, diverted into illicit channels. By 2009/10, this had fallen to 6%.<sup>6</sup> Although large seizures are not necessarily representative of the nature of the illicit market as a whole, combined with the decline in the overall size in the illicit market, this does indicate that measures to reduce the smuggling of genuine UK brands have been successful.
14. In general, high income countries have better resourced and more effective customs and law enforcement agencies, and tend to have lower levels of illicit trade than low income countries, even though the average price of licit tobacco is much higher.<sup>7</sup>
15. Routinely, the tobacco industry and the organisations it funds claim that the level of illicit trade is rising, not falling. Such assertions are often based on industry-funded ‘empty pack surveys’ which involve the collection of discarded cigarette packs to determine whether they are licit. These surveys are methodologically dubious, because the results can be biased by the choice of locations for the surveys (for example, collections in poorer communities will tend to produce a higher level of illicit tobacco than collections in richer communities).

## Policy Responses

16. A Protocol to Eliminate Illicit Trade in Tobacco Products, the first Protocol to be negotiated under the World Health Organisation Framework Convention on Tobacco Control (FCTC), was adopted on 12 November 2012, and is currently open for signature by the Parties.<sup>8</sup> The UK is a Party to the FCTC. The Protocol contains a series of important obligations in relation to supply chain controls over the tobacco industry. These include obligations on Parties to ensure that companies engaged in the tobacco trade keep accurate records, and conduct due diligence in relation to their customers, as well as obligations for Parties to provide each other with mutual assistance in relation to investigations, enforcement and penalties in relation to tobacco smuggling and illicit manufacture. The Protocol also contains a specific provision (Article 8) requiring the establishment within five years of the Protocol coming into force of an international tracking and tracing system for tobacco products.
17. The European Union has also been engaged in work against the illicit tobacco trade since at least 1994, when the Commission established a “Task Group Cigarettes” (TGC) as part of the EU anti-fraud office OLAF. In July 2004, OLAF negotiated a legally binding and enforceable agreement with Philip Morris International (PMI), while litigation between the parties was pending. Subsequent agreements were signed with JTI (in 2007) and with BAT and ITL (both in 2010).<sup>9</sup> Under these agreements, the manufacturers were required to pay a collective total of \$2.15 billion to the EU and countries participating in the agreement, in view of previous tax losses and to make substantial compensation payments in future if their products are seized in illicit channels.<sup>10</sup>
18. At UK level, HMRC and the UK Border Agency have agreed and implemented a detailed and regularly updated joint strategy to tackle tobacco tax evasion,<sup>11</sup> and the UK Government protected resources provided to HMRC for this purpose during the last public spending review (SR10). It is clear that the partnership between HMRC and UKBA has contributed significantly to reducing the level of illicit trade in the UK, and that targeted public spending to reduce illicit trade is highly cost effective.
19. However, in evidence to the Public Accounts Committee on 24<sup>th</sup> June 2013, Jennie Granger, Director General of Enforcement and Compliance at HMRC, reported that total HMRC spending on tackling illicit tobacco fell from £69 million in 2011/12 to £67 million in 2012/13. The Chancellor announced in his spending review announcement on 27<sup>th</sup> June 2013 that HMRC’s overall budget will be reduced by 5% in 2015/16.<sup>12</sup>
20. Across the UK local and regional partnerships have developed to fight illicit trade. Such partnerships need to include HMRC, police, trading standards and health professionals to be fully effective. As the North of England partnership has demonstrated,<sup>13</sup> such partnerships can be highly effective not only in helping to co-ordinate action to disrupt the supply of illicit tobacco, but also in reducing public demand for the product. Local partnerships on illicit trade should also be facilitated by the transfer of the public health function to local authorities.

## Effects of Standardised Packaging on Illicit Trade

21. The tobacco industry and organisations it funds have repeatedly claimed that the introduction of standardised packaging for cigarettes and other products would lead to an increase in illicit trade. This claim is not supported by the evidence. There are in fact two key reasons why the introduction of standardised packaging is not likely to make a significant difference to the volume of illicit trade.
22. First, the production costs of illicit cigarettes (including packaging) are very low.<sup>14</sup> In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. PMI acknowledges that production costs are low and estimates the cost for a Chinese counterfeit pack at about 15 pence. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. The quality of counterfeit cigarette packs has substantially improved from the 1990s, making it difficult to distinguish counterfeit from genuine cigarette packs. In 2004, HM Customs and Excise reported that the outside pack was the least likely indicator of the carton being counterfeit.<sup>15</sup>
23. Secondly, the existing security systems used on packs would continue to be used on standardised packaging. These include: a covert mark on each licit pack, which can be read by enforcement authorities using a simple scanner to determine whether or not a pack is counterfeit (a solution supported and promoted by the tobacco industry before its introduction in 2007);<sup>16</sup> other security marks that vary between manufacturers, for example the configuration of marks on filter paper; and number codes printed on each pack, which will be developed and standardised through the introduction of the tracking and tracing system mandated under Article 8 of the Illicit Trade Protocol.<sup>17</sup> The tobacco industry already has a preferred coding system to meet the requirement of Article 8, called “Codentify”.<sup>18</sup>
24. Andrew Leggett, deputy director for tobacco and alcohol strategy at HMRC, stated in oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on Wednesday 24<sup>th</sup> July that: *“There are a number of potential factors that weigh on counterfeit packaging if plain packaging was introduced. I think there is a risk there. The extent to which it would materially change the composition of the illicit market in the UK. We’re very doubtful that it would have a material effect.”*<sup>19</sup>
25. In oral evidence to the Inquiry on illicit trade conducted by the All Party Parliamentary Group on Smoking and Health, witnesses from the police, trading standards and the EU anti-fraud office OLAF agreed that by maintaining security markings already in place and with new identifiers included to meet the terms of the Illicit Trade Protocol, the introduction of standardised packaging would be likely to have little or no significant impact on the level of illicit trade.<sup>20</sup> Nicholas Ilet, an investigation director at OLAF, stated in oral evidence to the House of Lords European Union Sub-committee (Home Affairs) on Wednesday 17<sup>th</sup> July 2013 that: *“the quality of counterfeits now is so high that it does not make a great deal of difference whether or not the packs are plain”.*<sup>21</sup> The power to ensure the inclusion of security features in standard packaging should be explicitly included in legislation on the policy.

### **Scope of Inquiry and UK Obligations under Article 5.3 of the FCTC**

26. ASH is concerned about the apparently narrow scope of the Select Committee’s Inquiry, and particularly its focus on the Republic of Ireland’s welcome decision to legislate on standardised packaging, and the absence of any questions specifically concerning the policy response to the illicit trade at global, European, UK and

national level. The Committee is at risk of receiving an incomplete account of the illicit tobacco trade in the UK.

27. Article 5.3 of the Framework Convention on Tobacco Control provides that Parties, in setting and implementing their *'public health policies with respect to tobacco control'*, must *'act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law'*. WHO guidelines for implementation of article 5.3 recognise that fulfilment of the obligation to protect tobacco control policies from tobacco industry interests requires Parties to be accountable and transparent in their dealings with the industry; they should interact *'only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'*, and should ensure that any necessary interactions are conducted transparently.
28. This obligation is particularly important in relation to illicit trade, which the industry wishes to use as a threat to block tobacco control policies, including tax policy and the introduction of standardised packaging. Given its low standing with the public, the industry has adopted sophisticated means of promoting its policy objectives through front groups, use of employed and subsidised experts, and through industry funded research. The extent of this activity was revealed, for example, by the Observer newspaper on 27<sup>th</sup> July 2013, using confidential internal documents from PMI.<sup>22</sup>
29. For example, the tobacco industry has frequently quoted retired senior police officers as raising concerns that standardised packaging could lead to an increase in illicit trade. Peter Sheridan, a former assistant chief constable in Northern Ireland, and Roy Ramm, a former Scotland Yard commander, have written to MPs and Peers supporting this argument, and have given evidence to a House of Lords Committee on the issue. Both men are listed as *"founding members and supporters"* of a group called the Common Sense Alliance,<sup>23</sup> which receives funding from business interests including BAT. The letter to parliamentarians was sent via Goddard Global, a multinational lobbying firm that provides the secretariat for the alliance. A BAT spokesman has confirmed that it employs the lobbying firm. Other former police officers employed directly by the tobacco industry to work on illicit trade include former RUC Chief Constable Sir Ronnie Flanagan, who is now employed by BAT, and former Scotland Yard detective Will O'Reilly.<sup>24</sup>

1 See for example: House of Commons Public Accounts Committee. *Tobacco Smuggling*: Third Report of Session 2002-3

2 British American Tobacco [Annual Report 2011](#)

3 [Key Note. Cigarettes & Tobacco Market Report 2011.](#)

4 Joossens L, Merriman D, Ross H, Raw M. *How eliminating the global illicit cigarette trade would increase tax revenue and save lives*. Paris: International Union Against Tuberculosis and Lung Disease; 2009

5 HM Revenue and Customs, UK Border Agency. *Tackling Tobacco Smuggling - building on our success*. 2011 paragraph 3.2

8 [HMRC. Presentation to Anti-Illicit Tobacco Seminar](#). 31 January 2011

7 Joossens L, Merriman D, Ross H, Raw M. *How eliminating the global illicit cigarette trade would increase tax revenue and save lives*. Paris: International Union Against Tuberculosis and Lung Disease; 2009

8 [English language text of Illicit Trade Protocol](#)

9. OLAF. [European Union legal agreements with tobacco manufacturers](#) .

10 \$1.25 billion for PMI, \$400 million for JTI, \$300 million for ITL, and \$200 million for BAT

11 *Tackling Tobacco Smuggling—building on our success: A renewed strategy for HM Revenue & Customs and the UK Border Agency*, April 2011

12 [Oral evidence from representatives of HMRC and UK Border Force to the Public Accounts Committee](#), 24th June 2013

13 [North of England Tackling Illicit Tobacco for Better Health Partnership](#)

14 Joossens L. Report for Cancer Research UK. *Smuggling, the Tobacco Industry and Plain Packs*. Nov 2012.

- 15 HM Customs & Excise. *Counterfeit cigarettes* 2004.
- 16 [Tobacco Manufacturers Association: media briefing on anti-counterfeit technology](#)
- 17 Details of existing security systems are private information from industry source
- 18 <http://codentify.com/>
- 19 [Evidence of Mr Andy Leggett HMRC](#) House of Lords EU Sub Committee (Home Affairs), 24th July 2013
- 20 All Party Parliamentary Group on Smoking and Health, [Report on the Illicit Trade in Tobacco Products](#) , 2013
- 21 [Evidence of Mr Ilett and Mr Rowan \(OLAF\) to House of Lords EU Sub Committee \(Home Affairs\)](#) 17th July 2013. Question 18
- 22 Doward, J. [Revealed: tobacco giant's secret plans to see off plain cigarette packets](#) The Observer, 28th July 2013
- 23 [The Commons Sense Alliance: supporters](#)
- 24 Ralph, A. [Business big shot: Sir Ronnie Flanagan](#) The Times, 22nd May 2013

Amanda Sandford  
Action on Smoking and Health  
29 August 2013

**Written evidence from  
Fresh Tobacco Free Futures and Smokefree South West [TOB09]**

**Declaration of interests**

1. The Tackling Illicit Tobacco for Better Health partnership is led by Fresh, Tobacco Free Futures and Smokefree South West, the three local authority-commissioned regional tobacco control programmes in the North East, North West and South West of England respectively. It launched in the North of England in 2009 and in the South of England in 2011.
2. The partnership brings together public health partners, HM Revenue & Customs (HMRC), local authority Trading Standards services, the police and UK Border Force with the strategic aims of reducing the demand for, and the supply of, illicit tobacco products. This collaborative approach has made demonstrable progress in achieving these objectives, and has been cited as a blueprint for dealing with the problems caused by illicit tobacco elsewhere.
3. All activity takes place within broader strategies to reduce the harm of tobacco on communities and to reduce smoking prevalence.

**Tobacco is a lethal childhood addiction**

4. Smoking remains the single biggest preventable cause of premature death and preventable disease, accounting for 80,000 deaths in England every year. Smoking is the greatest contributor to health inequalities between the richest and the poorest groups in society. It is responsible for one in five of all deaths in adults aged 35 and over – more than is caused by alcohol, car accidents, suicide, AIDS, murder and illegal drugs combined. Around half of all long-term smokers will eventually die as a result of their addiction. Over 80% of smokers start smoking as children, not adults, and regret ever starting, making smoking a childhood addiction and not an adult choice.
5. Recognition of the rights of people to the highest standards of health led to the development of the World Health Organisation Framework Convention on

Tobacco Control (FCTC)<sup>1</sup>, the first international global health treaty, to which the UK is a party. It came into force in 2005. A Protocol to Eliminate Illicit Trade in Tobacco Products, the first Protocol to be negotiated under the FCTC, was adopted on 12<sup>th</sup> November 2012, and is currently open for signature by the parties to the FCTC. The Protocol will enter into force 90 days after ratification by the 40<sup>th</sup> party. The new treaty aims at eliminating all forms of illicit trade in tobacco products by requiring parties to take measures to control the supply chain of tobacco products effectively and to cooperate internationally on a wide range of matters.

### **Tobacco use is a huge drain on the economy**

6. Smoking costs the NHS in England £2.7 billion every year. However, this isn't the only financial drain. Dealing with smoking-related issues costs the wider economy £13.74 billion every year including:

- (a) NHS costs of £2.7 billion
- (b) Loss of productivity from smoking breaks of £2.9 billion
- (c) Increased absenteeism of £2.5 billion
- (d) The cost of clearing up cigarette butts of £342 million
- (e) The cost of smoking-related house fires of £507 million
- (f) Loss in economic output from the deaths of
  - smokers - £4.1 billion
  - passive smokers - £713 million<sup>2</sup>

### **Illicit tobacco, along with all tobacco, is a concern**

7. Illicit tobacco is a concern for many communities for the following reasons:

- (a) Price is the most effective policy lever to reduce tobacco consumption, with increased prices incentivising smokers to cut down or quit. Illicit tobacco is available at half the price of licit products, encouraging smokers to smoke

<sup>1</sup> [http://www.who.int/fctc/text\\_download/en/index.html](http://www.who.int/fctc/text_download/en/index.html)

<sup>2</sup> <http://www.policyexchange.org.uk/publications/category/item/cough-up-balancing-tobacco-income-and-costs-in-society>

more than if they were paying full price, keeping them hooked on a lethal addiction. And while tobacco companies blame HM Treasury for increasing tobacco prices through taxation, latest research shows that tobacco companies themselves are responsible for half of all price increases<sup>3</sup>.

- (b) Illicit tobacco is available from a range of accessible sources – pubs, shops, private houses (sometimes known ‘tab houses’ or ‘fag houses’), street markets and ice cream vans. Through this, not only are adult smokers presented with increased opportunities to buy, but children can also access it without the protection of regulatory measures including age of sale legislation and mandated graphic pictorial warnings, allowing illicit tobacco sellers to hook children onto a lethal addiction.
- (c) It is also known, as noted by the scope of the inquiry, that the illicit tobacco trade is linked to crime, from low-level offending in communities to organised crime regionally, nationally and internationally.
- (d) The tobacco industry have also historically been involved in the illicit tobacco trade and have been forced to sign legally binding and enforceable agreements with the European Union to compensate for this involvement and to prevent their products from falling into the hands of criminals<sup>4</sup>. Japan Tobacco International is currently being investigated by OLAF, the EU anti-fraud office, over alleged tobacco smuggling links to the Assad regime in Syria<sup>5</sup>.
- (e) The illicit tobacco trade costs the UK tax payer around £1.8 billion in lost revenue every year, which could be spent on hospitals, schools and other vital public services.

<sup>3</sup> Gilmore AB, Reed H. The truth about cigarette price increases in Britain. Tob Control Published, Online First: 12 August 2013 as doi:10.1136/tobaccocontrol-2013-051048

<sup>4</sup> [http://ec.europa.eu/anti\\_fraud/investigations/eu-revenue/cigarette\\_smuggling\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-revenue/cigarette_smuggling_en.htm)

<sup>5</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-009948&language=EN>



8. Tackling illicit tobacco must be viewed within the overall context that all tobacco is lethal: it is the only legal consumer product that when it is used exactly as the manufacturer intends it to be used, will kill half of its long-term users.

### **The illicit tobacco market is declining**

9. The UK has made good progress in reducing the illicit tobacco market: HMRC reports that the illicit cigarette market share has fallen from 21% in 2000/01 to 9% in 2010/11, and hand-rolling tobacco from 61% to 38% over the same period. The results of independent regional surveys have also shown a significant decline in the size of the illicit tobacco market since the partnership began:

#### The North East

10. In January and February 2013 an independent survey of 1,500 smoking and non-smoking adults aged 16 and over and smokers aged 14-15 years old was undertaken across the 12 local authority areas of the North East. Results from this survey were compared against comparable studies from 2009 and 2011.

11. [The results<sup>6</sup> showed](#) that the illicit tobacco market in the North East has declined in terms of the proportion of smokers buying illicit tobacco and the volume consumed. It found:

- (a) The proportion of smokers buying illicit tobacco has reduced from 24% to 17% since 2009
- (b) The overall volume of illicit tobacco is down by 39%, to represent 9% of the region's estimated total tobacco consumption.

12. This is a significant decline especially when considered against the backdrop of sustained economic hardship that would be expected to fuel a demand for illicit tobacco.

#### The South West

<sup>6</sup> [http://www.illicittobacconorth.org/FileUploads/NE\\_Illicit\\_Tobacco\\_Report\\_key\\_findings.pdf](http://www.illicittobacconorth.org/FileUploads/NE_Illicit_Tobacco_Report_key_findings.pdf)

13. In the South West, similar research took place in March and April 2013 amongst 2,000 adults aged 16 and over across all 15 local authorities in the region. The results<sup>7</sup> showed that:

- (a) the proportion of smokers buying illicit tobacco reduced from 20% in 2010 to 16% in 2013
- (b) The illicit market share as a percentage of all tobacco consumed reduced from 11% in 2010 to 7% in 2013.

### The North West

14. A large-scale survey undertaken by Trading Standards in the North West revealed<sup>8</sup>:

- (a) A reduction in the number of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% in 2011 to 27% in 2013
- (b) A reduction in the number of young people who have bought fake cigarettes down from 28% in 2011 to 22% in 2013
- (c) A drop in figures were also seen in the number of single cigarettes bought from 67% in 2011 to 49% in 2013.

15. Despite these reductions, the tobacco industry continues to overestimate the size of the illicit tobacco market using flawed methodology including empty pack surveys<sup>9 10</sup>.

### **The partnership is a case study of good practice**

16. The UK Centre for Tobacco Control Studies published its [independent evaluation](#)<sup>11 12</sup> of the North of England's Tackling Illicit Tobacco for Better Health programme in 2012, reporting that:

<sup>7</sup> Illicit tobacco survey South West, NEMS, 2013

<sup>8</sup> Trading Standards North West Young Persons' Alcohol and Tobacco Survey 2013

<sup>9</sup> <http://www.shieldsgazette.com/news/crime/one-in-five-packs-of-s-tyne-cigs-illegal-1-3665947>

<sup>10</sup> Stoklosa M, Ross H. Tob Control Published Online First: 13 August 2013 doi:10.1136/tobaccocontrol-2013-051099

<sup>11</sup> <http://www.ukctcs.org/ukctcs/research/featuredprojects/illicittobacco.aspx>

<sup>12</sup> <http://tobaccocontrol.bmj.com/content/early/2013/08/28/tobaccocontrol-2013-050957.abstract.html?paperoc>

*“The programme has had a measurable effect on the problem [of illicit tobacco] in the North of England. It was the first programme to develop a comprehensive approach to tackling the demand for and the supply of illicit tobacco... The scheme is an exemplar of partnership working and should now be widely disseminated.”*

17. The programme has been highlighted as good practice in the HMRC/UK Border Agency [tobacco smuggling strategy](#)<sup>13</sup>, as well as in the [National Audit Office report](#)<sup>14</sup> on HMRC’s progress in tackling tobacco smuggling.

### **Tougher sanctions and penalties are needed for tobacco smuggling**

18. There are recent examples where penalties for involvement in the illicit tobacco trade have been lenient in comparison with the potential impact. For example, in the North East, police raided a private house in July 2012 and found 40,000 counterfeit cigarettes and 13.6kg of tobacco. The occupant had been seen standing in the streets with three bags full of the illicit goods. Despite being jailed in 2009 after being caught twice selling illicit tobacco, he was given a suspended prison sentence with supervision and ordered to pay just over £500 costs<sup>15</sup>.

19. In Lancashire in March 2013 operations by trading standards officers led to the successful prosecution of six retailers for selling either counterfeit cigarettes or packs without health warnings. The fines imposed totalled just over £3,000.

20. One approach to improving sentencing has been to provide training for the judiciary on the nature of the trade in illicit tobacco and its implications. This should continue and be rolled out further, and could be enhanced by working with the Sentencing Guidance Council to produce dedicated tobacco control guidance as is available for other offences.

<sup>13</sup>

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_MiscellaneousReports&propertyType=document&columns=1&id=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246)

<sup>14</sup> <http://www.nao.org.uk/wp-content/uploads/2013/06/10120-001-Tobacco-smuggling-Full-report.pdf>

<sup>15</sup> <http://www.chroniclelive.co.uk/news/north-east-news/south-shields-pensioner-caught-running-4037062>

21. A further aid to enforcement and a strong deterrent to those involved in the illicit trade would be the adoption of a robust licensing system, making sales of tobacco without a licence an offence. As a minimum, a retailer registration scheme similar to the scheme in Scotland, should be adopted. A robust licensing system is also a recommendation of the international illicit trade protocol.
22. Experience from the Tackling Illicit Tobacco for Better Health partnership shows that, alongside supply-side measures such as sanctions and penalties, public-facing communications play an important role in reducing demand for illicit tobacco with campaigns such as [Get Some Answers](http://get-some-answers.co.uk/)<sup>16</sup> and [Keep It Out](http://www.keep-it-out.co.uk/)<sup>17</sup> decreasing the public's tolerance of the trade and increasing people's likelihood to report information to Crimestoppers, the police or Trading Standards.

### **Penalties and sanctions must be directed higher up the supply chain**

23. Tougher action should not just target individuals. Those involved higher up the supply chain need also to face tougher sanctions and penalties, including the tobacco manufacturers themselves, who have signed legal agreements with the European Union to prevent their involvement in the illicit tobacco trade. However, the industry continues to exert weak control over the supply chain and at least one tobacco manufacturer, Japan Tobacco International, is currently under investigation by the EU. Tobacco industry involvement was recognised at a hearing of the Public Accounts Committee in June 2013, [whose chair said](http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/tobacco-smuggling-statement/)<sup>18</sup>.

*“Large quantities of UK hand rolling tobacco brands, which far outweigh legitimate demand, are being sold abroad. This is despite legislation introduced 7 years ago to crack down on tobacco manufacturers facilitating smuggling.”*

24. This has echoes of a 2002 Public Accounts Committee hearing when George Osborne MP challenged the then-Chief Executive of Imperial Tobacco:

<sup>16</sup> <http://get-some-answers.co.uk/>

<sup>17</sup> <http://www.keep-it-out.co.uk/>

<sup>18</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/tobacco-smuggling-statement/>

*“One comes to the conclusion that you are either crooks or you are stupid, and you do not look very stupid. How can you possibly have sold cigarettes to Latvia, Kaliningrad, Afghanistan and Moldova in the expectation that those were just going to be used by the indigenous population... and not in the expectation they would be smuggled?”*

### **There is no evidence that standardised packaging will increase the size of the illicit tobacco market**

25. Standardised tobacco packaging would bring about real public health benefits. It is needed because smoking is a childhood addiction not an adult choice; more than 200,000 children start smoking each year; half of all lifelong smokers die from their addiction and current cigarette packs are attractive and misleading, especially to children. It is wanted: the public and public health community support it and there is cross party support at Westminster for the measure. Standardised packaging is also workable: it is cheap and easy to implement; Australia has already introduced it, and there is no evidence it will increase smuggling. Action on Smoking and Health has prepared a parliamentary briefing on the issue<sup>19</sup>.

26. The tobacco industry has repeatedly used the argument that the introduction of standardised packaging will lead to an increase in the illicit tobacco trade. Similar arguments were used in Australia before standardised packaging was introduced in December 2012. A common tactic is to use overinflated statistics on the size of the illicit tobacco market, drawn either from flawed empty pack surveys, or misinterpretation of official HMRC statistics.

27. The [All Party Parliamentary Group on Smoking and Health](#)<sup>20</sup> inquiry into the illicit trade in tobacco products reported in March 2013. It heard evidence from the Tackling Illicit Tobacco for Better Health partnership and OLAF. The evidence concluded that there is little basis for the claims of the tobacco industry for three key reasons: the production costs of illicit tobacco are already low; counterfeiters are already able to produce quality and apparently genuine packaging at low

<sup>19</sup> <http://www.smokefreeaction.org.uk/files/docs/SFACbriefSP13.pdf>

<sup>20</sup> <http://www.ash.org.uk/APPGillicit2013>

prices very quickly, and the existing security systems on packs would continue to be used on standardised packaging.

28. Some retailers support standardised packaging, saying that they do not expect its introduction to increase the illicit tobacco trade, and that selling tobacco makes minimal profit for their business. Retailer John McClurey, who has been an independent newsagent in Newcastle for 30 years, said:

*“As a retailer, I know that introducing plain, standardised tobacco packs into my shop will be very straightforward to implement and will have no impact on my existing customers or trade.*

*“There are already very low profit margins on a packet of cigarettes compared to other products within a store. If a customer decides that today is the day they will quit smoking and, instead of paying nearly £6 for 20 cigarettes, opts to buy a packet of chewing gum for 49p – it’ll mean I’ll make 1p less profit and have a customer with £5.50 spare to spend on other products.”<sup>21</sup>*

29. A common thread which runs through most tobacco industry arguments opposing effective tobacco control measures is that high tobacco prices in the UK, as a result of high levels of taxation, lead to an increase in the size of the illicit tobacco market with smugglers viewing the UK as a prime destination market, and smokers seeking out the cheapest tobacco products. This is inaccurate for at least two reasons:

- (a) inadequate enforcement capability, rather than high tobacco prices, allows the illicit tobacco trade to flourish
- (b) the tobacco industry itself is responsible for half of the price increases on tobacco products, the other half resulting from increased taxation<sup>22</sup>.

### **Standardised packaging will not affect the economy**

<sup>21</sup> <http://www.freshne.com/News-and-Events/Press/Article/tyneside-shopkeeper-and-trading-standards-support-calls-for-tobacco-plain-packaging>

<sup>22</sup> Gilmore AB, Reed H. The truth about cigarette price increases in Britain. Tob Control Published, Online First: 12 August 2013 as doi:10.1136/tobaccocontrol-2013-051048

30. The tobacco industry claims that the introduction of standardised packaging will have an adverse effect on jobs and will harm the economy. The reality is that tobacco use harms the economy, with businesses losing billions of pounds every year as a result of lost productivity and sickness absence rates due to smoking-related illness, and the costs of treating disease placing a huge strain on the public purse. As Jane Evison, Councillor from the East Riding of Yorkshire says:

*“While the health impact of smoking is significant and too often tragic, there is also a considerable burden on the economy and local businesses. For every pound spent on tobacco less than 10p stays in the local economy. What is left is poor health, smaller incomes and greater dependency on the state.”*<sup>23</sup>

### **Tobacco smuggling in the UK and Ireland**

31. It is essential to have cross-border working between jurisdictions in order to tackle the illicit tobacco trade. The Protocol to Eliminate Trade in Tobacco Products was agreed to enhance such cross-border working and to ensure security of the tobacco supply chain.

32. Specifically, in relation to Ireland, it is important to note that in February 2013, [the Irish Revenue Commissioners had to reject as inaccurate](#)<sup>24</sup> a survey conducted for Irish tobacco manufacturers claiming illegal cigarette consumption in Ireland has risen to 28.2%. The figures from Revenue and the Tobacco Control Unit of the Department of Health in Ireland put illicit consumption at 15% of total cigarette sales, and Revenue said its own research was more “robust and comprehensive”.

### **Questions for the committee to consider**

1. What action is being taken nationally and internationally to eliminate the ability of the tobacco industry to facilitate tobacco smuggling?
2. How can misinformation about the size of the illicit tobacco market in the UK and elsewhere best be countered and corrected?

<sup>23</sup> <http://www.ash.org.uk/localtoolkit/docs/cllr-briefings/TopofAgenda.pdf>

<sup>24</sup> <http://www.irishtimes.com/news/revenue-rejects-cigarette-survey-1.1354560>

3. What progress is the UK government making towards ratification of the Protocol to Eliminate the Illicit Trade in Tobacco Products?

The Tackling Illicit Tobacco for Better Health partnership is happy to provide any further information and evidence as needed by the inquiry.

29 August 2013



## Written evidence from the Trading Standards Institute [TOB10]

1. The Trading Standards Institute (TSI) is the UK national professional body for the trading standards community working in both the private and public sectors. Founded in 1881, TSI has a long and proud history of ensuring that the views of our Members are represented at the highest level of government, both nationally and internationally.
2. The Institute welcomes the opportunity to submit evidence to the Home Affairs Committee inquiry into tobacco smuggling. Our evidence is however restricted to two main areas: 1) why arrests, prosecutions and convictions have fallen over the past three years and 2) comment concerning the introduction of standardised packaging and the availability of illicit product. TSI has no evidence to bring forward on the other matters identified by the committee.
3. In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been composed by TSI Lead Officer for Tobacco Jane MacGregor and TSI Lead Officer for Age Restricted Sales Brandon Cook.
4. If you require clarification on any of the points raised in the response, please do not hesitate to contact Jane MacGregor.
5. TSI would be pleased to give oral evidence if requested.

### **Changes to the level of activity to reduce tobacco smuggling over the past three years**

6. Council trading standards are at the front line dealing with the local supply of illicit tobacco from retailers, car boot sales and private domestic properties. It is an important part of the supply chain fulfilling the demand for cheap tobacco which avoids duty and undermines the local economy. The supply also impacts on the efforts to deliver comprehensive tobacco control strategies which are an essential component of improving public health and specifically; the Public Health Outcomes Framework objective: *People are helped to live healthy lifestyles, make healthy choices and reduce health inequalities.*
7. Illicit tobacco is a general term covering: counterfeit cigarettes and hand rolling tobacco (HRT), foreign labelled cigarettes / HRT / niche tobacco (for example shisha), duty free cigarettes / HRT, cheap white cigarettes (non genuine brands). It is common for more than one type of illicit tobacco to be found during an operation.

8. In the case of counterfeit products, Trading Standards have powers to seize the goods as evidence and prosecute the offenders by virtue of The Trade Marks Act 1994 which has a maximum penalty on indictment of 10 years in prison or an unlimited fine. In the case of the other types of illicit tobacco products, whilst Trading Standards may take action for offences relating to the labelling and/or a failure to notify the Secretary of State of the importation of tobacco products; these carry a maximum sentence of six months at a summary hearing or two years on indictment, but more typically a small fine. The more serious and appropriate offence is that of duty evasion which can only be instigated by HMRC officials.

9. To facilitate this work at a local level, Trading Standards work in partnership with HMRC and the UK Border Agency (UKBA) wherever possible. However, it is acknowledged that more could be done to improve these collaborative working arrangements. A revised joint working protocol to deal with tobacco offences between HMRC, TSI, National Trading Standards Board, Association of Chief Trading Standards Officers, Chief Trading Standards Officers in Scotland, and Convention of Scottish Local Authorities was published in February 2013<sup>1</sup>. This sets out the principles to be adhered to in order to develop and maintain effective joint working. TSI intends to discuss with HMRC the delegation of powers to council Trading Standards under the Customs and Excise Management Act 1979, to enable the most appropriate enforcement action to be taken at the local level in respect of non duty paid product. TSI is aware of several examples cited by council Trading Standards where such powers could have enhanced the enforcement outcome. [ Examples can be provided if required ]

10. To demonstrate the role played by Trading Standards in this area, TSI has conducted a survey of council Trading Standards in England in relation to activities undertaken to tackle illicit tobacco supply at local and regional level (in press 2012–13). The survey has previously been conducted by the Local Government Association and provides comprehensive data from 2008–2009 to the present time.

11. Ninety three per cent of councils in England were engaged in this area of work to some degree, visiting a total of 4,330 premises across local authority areas. Forty six councils had undertaken joint operations with HMRC as part of their activity in relation to illicit tobacco products. This is a significant decrease on the 63% of councils who had undertaken joint operations with HMRC in 2010/11. This

<sup>1</sup> Trading Standards Institute 2013 restricted availability via : <https://secure.tslinonline.co.uk/templates/microsites/file-relay.cfm?frmFileID=617> [ Accessed 28<sup>th</sup> August 2013 ]

may support the point in paragraph 13 bullet point 3 below that improvements could be made to the collaborative working and intelligence sharing arrangements between HMRC and Trading Standards. [ A copy of the National Tobacco Control Survey report 2012–13 can be provided upon publication]

12. This illustrates the valuable role played by council Trading Standards at the local level in tackling the supply of illicit tobacco whilst allowing HMRC to tackle the larger seizures which exceed the quantity threshold. However, where confiscation of the product is used as a disruption tactic, there is evidence to show that offenders are prepared to accept the occasional loss and to re-stock – hence the desire by Trading Standards to take robust enforcement action wherever possible using the appropriate powers. There is a concern that this level of activity may be reduced by cuts to staffing levels in the public sector; 15% of the Trading Standards workforce has already been cut with the associated reductions to activities across the board<sup>2</sup>

13. In addressing the issue of why actions have fallen in relation to illicit tobacco, TSI has the following observations to make:

- Specific funding provided by the Department of Health for Trading Standards to undertake tobacco control activities (including tackling supply of illicit products) ceased in 2011; this has impacted on the entire range of comprehensive tobacco control activity undertaken locally.
- Reduced staffing levels within Trading Standards resulting from reduction in cuts in the public sector work force has led to a re-prioritisation of work undertaken.
- Collaborative working and intelligence sharing between HMRC and Trading Standards must be improved at the local level and steps taken to embed the principles and practice of the joint protocol across the HMRC and Trading Standards workforces. Councils have reported varying degrees of success in their collaborative working, but the overall conclusion is that improvements are needed and that more could be done. TSI and HMRC are scheduled to discuss this particular issue in greater detail in September.

### **Effects of Standardised Packaging on Illicit Trade**

<sup>2</sup> Unison 2013 available at <http://www.unison.org.uk/media-centre/loan-companies-preying-on-public-in-tough-times>  
[accessed 28th August 2013]

14. TSI supports the introduction of standardised packaging for cigarettes and challenges statements made primarily by the tobacco industry that such a development would lead inevitably to an increase in the availability of illicit products. Trading Standards have extensive experience of tackling counterfeiting dealing with a wide range of products; everything from GHD hair straighteners to Smirnoff Vodka. Thirty eight per cent of councils that had undertaken work on illicit tobacco in 2012–2013 reported seizing counterfeit cigarettes with a median average of 5,220 cigarettes removed from the supply chain.

15. Typically counterfeiters are able to produce quality counterfeit packaging quickly and cheaply; the way in which counterfeit tobacco product is detected currently is by the identification of covert markings (on the packaging) using a hand held scanner. These and other industry specific markings are applied to the packaging and product itself. These methods will continue to be used and thus the detection of counterfeit products will remain the same for Trading Standards whether the product is supplied in standardised packs or not.

16. TSI cannot comment on the possible impact that the introduction of standardised packaging in Ireland may have on the quantity and availability of illegal tobacco in the UK.

29 August 2013

Written evidence from the Tobacco Manufacturers' Association [TOB11]

1. The TMA represents the interests of its member companies (British American Tobacco, Gallaher Ltd which is a member of the JTI Group of companies and Imperial Tobacco Ltd) in the UK.

**Executive Summary**

2. The TMA and its member companies are committed to the fight against the illicit trade in tobacco and support a range of initiatives to address the problem, including working with governments and authorities around the world to tackle tobacco smuggling and counterfeiting.
3. The illicit trade in tobacco products has been a serious problem for the UK for 20 years, one brought about by high levels of taxation in this country. Advice given to the then Chancellor in 1999 following an independent evaluation of the problem of tobacco smuggling by Martin Taylor, on which the Government's *Tackling Tobacco Smuggling* strategy was largely based, makes this clear. The report<sup>1</sup> states; "The principal cause of the smuggling, of course, is the high level of duty in the UK".
4. The tobacco industry is an important contributor to the UK economy, directly and indirectly supporting over 70,000 jobs, as well as delivering over £12 billion to HM Treasury in excise and VAT in 2012/13 alone. However, latest Government estimates show that up to £2.9<sup>2</sup> billion was lost in 2010/11 to the illicit market and this has wide implications for businesses throughout the supply chain, as well as the impact that illicit trade has on society as a whole.
5. The TMA's approach to tackling illicit trade is primarily through communications, awareness raising and developing strategic partnerships. At a national level, we work with TMA members to raise awareness through the media, campaign on refreshing Government approaches to tackling the illicit trade and work with key stakeholders such as HM Revenue & Customs (HMRC) in developing AIT strategies. At a devolved and regional level we are working with stakeholders to ensure a greater understanding of the issues and by working together we are able to deliver media and/or enforcement led campaigns to address illicit activity<sup>3</sup>. At a local level we provide support for campaigns such as the Real Deal<sup>4</sup> – a campaign for fake free markets, work with the Police and Trading Standards to raise local awareness and are actively driving intelligence to the appropriate authorities.

<sup>1</sup> [http://www.hm-treasury.gov.uk/foi\\_240712.htm](http://www.hm-treasury.gov.uk/foi_240712.htm)

<sup>2</sup> <http://www.hmrc.gov.uk/stats/measuring-tax-gaps.htm>

<sup>3</sup> Anti-Illicit Trade Task Force (Scotland), Scottish Anti-Illicit Trade Group, Government Agency Intelligence Network (GAIN)

<sup>4</sup> <http://www.realdealmarkets.co.uk/>

6. *Persuading smokers not to buy illicit tobacco presents a significant challenge and requires coordinated efforts by all stakeholders. The TMA funds consumer awareness campaigns such as Don't be Tempted, which provides points of contact to report illicit tobacco sales (HMRC Hotline). The TMA supports the Tobacco Retailers' Alliance which helps raise awareness of illicit trade through a network of 26,000 retailers.*
7. We have addressed the individual points raised in the consultation and provided examples of the work that the tobacco industry is undertaking in partnership with law enforcement.

### **TMA response to the Home Office Select Committee questions**

#### **Why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years;**

8. The National Audit Office (NAO) Report<sup>5</sup> on progress in tackling tobacco smuggling indicates that the level of prosecutions against organised crime groups fell in the period 2012/13, yet, despite the fall in prosecutions, revenue loss protection increased, which is welcome.
9. HMRC figures<sup>6</sup> indicate that prosecutions for the evasion of duty increased sharply in 2012/13. In addition to criminal prosecutions, HMRC appear to be using civil penalties (wrongdoing penalties) and we support their use as a deterrent.
10. The 2010 Spending Review (SR) allocated additional funding to tackle fraud<sup>7</sup> and we acknowledged that this would take time to filter through, as well as the training period involved for new criminal investigators. We understood that the funds allocated through SR 2010 were unlikely to have taken effect until 2012/13.
11. The TMA works in partnership with Trading Standards as supporters of the *Real Deal* campaign for fake-free markets and on many local initiatives. We are disappointed that the work to prevent and tackle illicit tobacco is sometimes compromised by individual and/or regional Trading Standards Authorities<sup>8</sup> forces that decline to work

<sup>5</sup> <http://www.nao.org.uk/report/progress-in-tackling-tobacco-smuggling/>

<sup>6</sup> <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130610/text/130610w0002.htm>

<sup>7</sup> <http://www.hmrc.gov.uk/change-programme/>

<sup>8</sup> Operation Lauderdale Overview Report, London Trading Standards Authorities (May 2013)

in partnership with the TMA citing public health concerns, rather than prioritising actual enforcement activities. The recent launch of the Local Government Declaration on Tobacco Control (see Annex)<sup>9</sup> includes the following commitment: *“Protect our tobacco control work from the commercial and vested interests of the tobacco industry by not accepting any partnerships, payments, gifts and services, monetary or in kind or research funding offered by the tobacco industry to officials or employees.”* Whilst several councils have signed up to this pledge, it sends confusing messages when Trading Standards are in frequent contact with the tobacco manufacturers on issues relating to smuggling. Ultimately, tackling tobacco smuggling cuts across a number of government departments and therefore it is particularly important that they work together. If one department chooses not to work with the TMA or TMA members it may undermine the efforts of other enforcement bodies.

### **Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13;**

12. Due to the nature of the fraud we believe that it is difficult to estimate the size and scale of future seizures, as well as when and where the seizures might take place. The NAO report indicates that seizure levels have remained broadly consistent in recent years, which suggests that a significant quantity of illicit tobacco continues to be seized. However, appropriate resources should be available to send a clear message to criminals intending to smuggle into the UK that illicit products are likely to be seized and will be pursued by the appropriate authorities.
  
13. During a recent visit to the Coventry Postal Hub we learned that successful seizures of counterfeit tobacco products (up to 50 tonnes of hand rolling tobacco a month – equivalent to 2x 40ft lorries a day) has led to a significant reduction in activity at Coventry; however, this is likely to have been displaced to other entry points. Given ongoing concerns over departmental budgets, we would stress that resources should be available to Border Force to counter new threats as they emerge.

### **Whether the current sanctions and penalties for tobacco smuggling are appropriate.**

14. Although the current maximum penalties appear to be appropriate, we recommend a greater application at the lowest level to deter criminals who appear to be *‘getting away with it’* and who threaten the viability of legitimate retailers. Applying stiff penalties at the lowest level is extremely important in dissuading shopkeepers who may be tempted to engage in illicit activity in this difficult economic climate. Well

<sup>9</sup> Not published

publicised enforcement activity helps to maintain the flow of intelligence to the authorities, as it provides the reassurance that something is being done. We acknowledge that there are legal issues with HMRC providing direct feedback to intelligence sources, and we are working with HMRC and organisations such as the Tobacco Retailers' Alliance (TRA) to ensure successful enforcement action is appropriately publicised.

15. HMRC could mirror the approach taken by the Police in providing greater transparency with regards criminal cases, for example, highlighting how many cases are ongoing, how are they being taken forward and success rates. This again would provide greater reassurance to stakeholders of the work that is being undertaken by HMRC.
  
16. Retailers face a number of regulations with significant penalties. Under the display ban regulations, fines of up to £5,000 can be imposed for non-compliance<sup>10</sup>, which is greater than some fines for selling illicit tobacco products<sup>11</sup>. Therefore, a shopkeeper may face a greater sanction for leaving the tobacco display open in between selling to adult customers than a criminal selling tobacco products from the back of a car. Whilst there appears to be comparatively modest sanctions for some forms of illicit activity, it is extremely important that these penalties are still imposed, especially when compared to a fine that a legitimate retailer may face for an administrative error.

**The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect on each other, and the implications of the restrictions on National Crime Agency operations in Northern Ireland.**

17. Both the UK and the Republic of Ireland impose high rates of taxation on tobacco products. During the 1990s, the duty escalator in combination with the Single Market led to a dramatic increase in tobacco smuggling and cross border shopping. Tobacco smuggling peaked in 2000/01, when up to 69% of hand rolling tobacco and 24% of cigarettes were estimated by HMRC to be illicit. In 2001, the duty escalator was removed, and supported by the Tackling Tobacco Smuggling strategy led to a gradual reduction in smuggling. In response to the economic crisis, the Government re-introduced the duty escalator in 2010 and as a result non-UK duty paid (NUKDP) tobacco is rising<sup>12</sup>. The experience in Ireland mirrors the UK, when substantial tax increases imposed in the 2000s led to the acceleration in tobacco smuggling. The Irish Government elected to freeze tobacco duty rates during 2009<sup>13</sup> and 2010 and as a result non-Irish duty paid (NIDP) levels began to fall<sup>14</sup>. More recently, the

<sup>10</sup> [http://www.businesslink.gov.uk/Horizontal\\_Services\\_files/DisplayGuidanceFINAL.pdf](http://www.businesslink.gov.uk/Horizontal_Services_files/DisplayGuidanceFINAL.pdf)

<sup>11</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sentencing\\_manual/evasion\\_of\\_excise\\_duty\\_with\\_intent\\_to\\_defraud\\_her\\_majesty/](http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/evasion_of_excise_duty_with_intent_to_defraud_her_majesty/)

<sup>12</sup> Empty Pack Survey (2012)

<sup>13</sup> <http://www.independent.ie/irish-news/tobacco-smuggling-costing-556m-26649456.html>

<sup>14</sup> <http://www.itmac.ie/?content=irish-total-cigarette-market>



Government has imposed significant duty increases on tobacco products and the level of NIDP is rising again.

18. Much like the UK, Irish customs have seized significant quantities of illicit products,<sup>15</sup> both counterfeit and genuine non-domestic products such as illicit whites. Industry empty pack surveys indicate that a significant portion of NUKDP is comprised of product originating in comparatively low price EU member states, similar to what has been seen in Ireland.<sup>16</sup>
19. The Organised Crime Task Force in Northern Ireland plays a vital role in addressing issues such as the illicit trade in tobacco and the movement of illicit goods through the border area.

**The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK; and**

20. Standardised packaging lowers the barrier to entry for criminal gangs who trade in illicit and counterfeit products and would lead to an increase in illicit activity in Ireland. Ireland is a comparatively small market, yet criminal networks have sought to target it, as evidenced by a number of high profile seizures<sup>17</sup> involving products specifically produced for the Irish market. It is difficult to say at this stage what impact standardised packaging in Ireland may have on the UK, but past experience shows that illicit products destined for Ireland have crossed over into Northern Ireland and Scotland, especially in areas where there is an established demand for cheaper illicit tobacco products.
21. It should be noted that Mike Norgrove, Director, Excise, Customs, Stamps and Money, HMRC, told the Northern Ireland Committee, that with regards to plain packaging: *“the obvious danger from our point of view is that the ability to detect counterfeit or illicit material would be made more difficult by a system where there was no difference between one packet and another”*.<sup>18</sup>

<sup>15</sup> Revenue Customs Service

<sup>16</sup> Empty Pack Survey (2012)

<sup>17</sup> <http://www.revenue.ie/en/press/archive/2010/pr-091210-cigarettes.html>

<sup>18</sup> Available at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmniaf/uc556-i/uc55601.htm>

22. For more information on the TMA member companies' views on standardised (or plain) packaging, including in relation to the potential for such measures to exacerbate the issue of illicit trade, please see their respective submissions to the 2012 consultation.<sup>19</sup>

### **The relationship between tobacco smuggling, organised crime and paramilitary activity.**

23. We understand that tobacco smuggling is increasingly linked to organised crime, driven by the high profits and relatively low penalties in relation to other forms of smuggling. The links are highlighted by organisations such as Europol<sup>20</sup>, the World Customs Organisation<sup>21</sup>, but, more specifically the links to paramilitary activity have been identified by the Organised Crime Task Force<sup>22</sup>.

### **Tackling illicit trade**

24. The following examples demonstrate how the TMA and member companies are working with governments and authorities to tackle tobacco smuggling and counterfeiting.

### **The FCTC Illicit Trade Protocol**

25. The TMA's member companies have consistently supported the development of the Illicit Trade Protocol (ITP) and encourage the government to undertake consultations with all relevant stakeholders on its implementation. The scope of the ITP is very broad; it contains measures in the areas of: licensing, due diligence, tracking and tracing, financial controls, record keeping, duty free sales, internet sales, free zones, offences and sanctions, and international cooperation. Many of the controls proposed in the ITP may already exist in the UK. But, due to the transnational nature of the illicit trade in tobacco products, the UK still experiences a high level of illicit trade. Therefore, the ITP must be applied consistently across all signatory countries.

### **OLAF Agreements**

26. The EU is fully aware of the risks posed by the different tax levels applied across the Member States. The Directive setting out the tax rules for tobacco products states: "A certain degree of convergence between the tax levels applied in the Member States would help to reduce fraud and smuggling within the Union".<sup>23</sup>

<sup>19</sup> These are available at: [http://www.bat.com/group/sites/UK\\_3MNFEN.nsf/vwPagesWebLive/DO7J7DCZ?opendocument&SKN=1](http://www.bat.com/group/sites/UK_3MNFEN.nsf/vwPagesWebLive/DO7J7DCZ?opendocument&SKN=1)  
<http://www.jti.com/how-we-do-business/key-regulatory-submissions/>  
<http://www.imperial-tobacco.co.uk/index.asp?page=453>

<sup>20</sup> <https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf>

<sup>21</sup> [http://www.wcoomd.org/valelearningoncustomsvaluation\\_oftobaccoandcigarettesmuggling.htm](http://www.wcoomd.org/valelearningoncustomsvaluation_oftobaccoandcigarettesmuggling.htm)

<sup>22</sup> <http://www.octf.gov.uk/getattachment/655790ee-fd44-4486-ba71-973cf77195bc/Annual-Report---Threat-Assessment-2012.aspx>

<sup>23</sup> DIRECTIVE 2011/64/EU (available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>)

27. The TMA's member companies have all signed individual [agreements with the EU to jointly combat the illicit trade in tobacco](#). The agreements cover general co-operation between the member companies and the Anti-Fraud Office of the European Community (OLAF). The agreements strengthen cooperation in a number of areas and include funding by the member companies over a number of years to support anti-illicit trade initiatives

28. The Government has described these agreements as being: *"an important step forward in the fight against tobacco smuggling. Signing them sends a clear and consistent signal that we are working in step with the EU, other member states and tobacco manufacturers to tackle the illicit trade in tobacco products."*<sup>24</sup>.

### **Memoranda of Understanding (MoUs) and Supply Chain Legislation**

29. One of the cornerstones of the UK Government's Tackling Tobacco Smuggling strategy and the fight against tobacco smuggling is the Memoranda of Understanding (MoU) between the TMA's member companies and HMRC. The first MoU was signed in April 2002 with a revised, common MoU signed in March 2006.

30. *"MoUs between HMRC and the UK tobacco manufacturers have been an important element of the strategy, and have played a crucial role in restricting the availability of genuine cigarettes to smugglers."*<sup>25</sup>

31. The MoU creates a comprehensive framework for co-operation aimed at combating the smuggling of both genuine and counterfeit tobacco products into the UK as well as seeking to deter all aspects of the illicit trade in tobacco products. The TMA member companies have been working with HMRC in developing a revised MoU and this will be officially signed on 5 September 2013.

### **Working in partnership**

32. In April 2011, the Government published its refreshed [Tackling Tobacco Smuggling strategy](#). The strategy includes a clear additional commitment from HMRC and UKBA to establish a new Anti-Illicit Joint Working Group (A-IT JWG) with the UK tobacco manufacturers and the TMA with the aim of proactively developing an improved and shared understanding of the illicit market in the UK.

<sup>24</sup> Justine Greening, then Economic Secretary to the Treasury; Hansard HC Deb 23 November 2010: Column 272W

<sup>25</sup> Reinforcing the Tackling Tobacco Smuggling Strategy 2006

33. The overarching A-IT JWG, which formalises long-standing interactions between HMRC and the Industry, provides an open forum for the Tobacco Industry and HMRC experts to meet bi-annually to share insight and experience, examine issues, and explore opportunities for the industry and/or HMRC to tackle **the illicit market and emerging threats**. The A-IT JWG supports and complements the Memoranda of Understanding between HMRC and the tobacco manufacturers and/or the EU Co-operation agreements.
34. Other work streams identified include intelligence sharing and communications, with a communications framework already in place that sets out that the TMA, Philip Morris UK & HMRC will jointly work together to develop more effective marketing and communications around illicit tobacco.
35. The TMA are also working on a number of partnership projects to tackle illicit trade, incorporating stakeholders such as the Police, Trading Standards, the Intellectual Property Office, and other rights holders.

#### **Codentify®**

36. The Codentify® technology has been developed by the four major tobacco companies<sup>26</sup> to enable law enforcement and other officials to distinguish between genuine and counterfeit products. The Codentify® technological solution can also deliver, tracking and tracing and digital tax verification. Full implementation of Codentify® in the UK is expected in late 2014/early 2015. It is fully compliant with the provisions contained in the FCTC Anti-illicit Trade Protocol. The revised EU Tobacco Products Directive contains provisions that would undermine the use of Codentify® and we have strongly recommended that these provisions are not taken forward by the Commission. Further details on Codentify® are available in the Annex.

#### **Covert Markings**

37. Since 1st October 2007 all cigarettes manufactured for the UK market by our member companies and Philip Morris International carry covert technology to allow the easy identification by law enforcement officers of genuine/counterfeit product in the retail network. This was extended to hand rolling tobacco from 1st October 2008. The anti-counterfeiting (reader) device used to detect illicit counterfeit product is being used across the UK by HMRC and Trading Standards Officers.

#### **Conclusion**

38. The illicit trade in tobacco products continues to cost HM Treasury £ billions in lost revenues but there are encouraging signs from HMRC that the increase in

<sup>26</sup> BAT, ITG, JTI & PMI

enforcement activity is delivering more prosecutions. The TMA welcomes a more open approach by HMRC to ensure stakeholders throughout the supply chain are aware of the work that is being done. A greater deterrent is required at the local level to ensure that perceived small scale illicit activity is not tolerated.

39. The TMA's member companies work extensively with a number of enforcement agencies in the UK and across the world to tackle the illicit trade. The manufacturers have been at the forefront in developing technological solutions which provide greater supply chain security as well as delivering the means for enforcement agencies to detect illicit products.

40. With increasingly higher levels of tobacco taxation and prevailing economic conditions, the ability to tackle illicit trade effectively is made much more difficult, as consumers are increasingly incentivised by above inflation excise increases to seek NUKDP products. By adopting a more measured approach to tobacco taxation, the Government would address head on the key driver of the illicit trade in tobacco products.

Jaine Chisholm Caunt, Secretary General

Tobacco Manufacturers' Association

August 2013

**Annex**

### **Codentify®**

In 2011 the four major tobacco companies<sup>27</sup> founded the Digital Coding and Tracking Association (DCTA) with the aim to promote cost effective industry standards and supporting technology solutions to tackle illicit trade. The Codentify® technological solution can deliver product authentication, tracking and tracing and digital tax verification.

Codentify® product authentication enables law enforcement and other officials to distinguish between genuine and counterfeit products. The system uses unique alphanumeric codes so there will be no need for dedicated scanning devices or specialist training. Codentify is in the process of being rolled out across the UK, with full implementation expected in late 2014/early 2015.

<sup>27</sup> BAT, ITG, JTI & PMI

Codentify® track and trace will enable stakeholders to monitor and secure the distribution of products worldwide. A unique code is securely applied directly onto every packaging unit.

As products move along the supply chain between different trading partners, the unique codes are scanned, creating a complete record of its journey history.

These unique codes, together with Codentify® track and trace data exchange and reporting formats, are based on international standards. This enables all stakeholders throughout the supply chain to use standard equipment and processes to track and trace product movements within and across national borders.

Codentify® track and trace enables law enforcement authorities to retrieve information about the product, its manufacture, distribution and legal status, including products in transit.

Codentify® track and trace provides law enforcement authorities with the visibility needed to accurately identify national and international illicit trade patterns and assist criminal investigations.

Codentify® digital tax verification enables governments to protect tax revenues by strengthening recovery capabilities and reducing opportunities for evasion.

Licensed manufacturers apply to government for permission to produce online via a secure internet connection. On approval, production can begin under real-time government control. A unique, secure code is applied onto every packaging unit. Once printed, these codes are counted and encrypted production information is immediately and securely communicated to government. Using this information enables governments to accurately calculate and reconcile due taxes.

Codentify® track and trace will enable stakeholders to monitor and secure the distribution of products worldwide and is fully compliant with the provisions contained in the FCTC Anti-illicit Trade Protocol.

# Local Government Declaration on Tobacco Control

## We acknowledge that:

- Smoking is the single greatest cause of premature death and disease in our communities;
- Reducing smoking in our communities significantly increases household incomes and benefits the local economy;
- Reducing smoking amongst the most disadvantaged in our communities is the single most important means of reducing health inequalities;
- Smoking is an addiction largely taken up by children and young people, two thirds of smokers start before the age of 18;
- Smoking is an epidemic created and sustained by the tobacco industry, which promotes uptake of smoking to replace the 80,000 people its products kill in England every year; and
- The illicit trade in tobacco funds the activities of organised criminal gangs and gives children access to cheap tobacco.

## As local leaders in public health we welcome the:

- Opportunity for local government to lead local action to tackle smoking and secure the health, welfare, social, economic and environmental benefits that come from reducing smoking prevalence;
- Commitment by the government to live up to its obligations as a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC) and in particular to protect the development of public health policy from the vested interests of the tobacco industry; and
- Endorsement of this declaration by the Department of Health, Public Health England and professional bodies.

## We commit our Council from this date .....to:

- Act at a local level to reduce smoking prevalence and health inequalities and to raise the profile of the harm caused by smoking to our communities;
- Develop plans with our partners and local communities to address the causes and impacts of tobacco use;
- Participate in local and regional networks for support;
- Support the government in taking action at national level to help local authorities reduce smoking prevalence and health inequalities in our communities;
- Protect our tobacco control work from the commercial and vested interests of the tobacco industry by not accepting any partnerships, payments, gifts and services, monetary or in kind or research funding offered by the tobacco industry to officials or employees;
- Monitor the progress of our plans against our commitments and publish the results; and
- Publicly declare our commitment to reducing smoking in our communities by joining the Smokefree Action Coalition, the alliance of organisations working to reduce the harm caused by tobacco.

## Signatories

Leader of Council

Chief Executive

Director of Public Health

## Endorsed by

Anna Soubry, Public Health Minister,  
Department of Health

Duncan Selbie, Chief Executive,  
Public Health England

Professor Dame Sally Davies, Chief Medical  
Officer, Department of Health

Dr Janet Atherton, President, Association  
of Directors of Public Health

Dr Lindsey Davies, President, UK Faculty  
of Public Health

Graham Jukes, Chief Executive, Chartered  
Institute of Environmental Health

Leon Livermore, Chief Executive, Trading  
Standards Institute



## Executive summary and Declaration of Interest

1. Philip Morris International Inc. (“PMI”) is the leading international tobacco company. Its products which include the world’s number one cigarette brand Marlboro are sold in more than 180 countries. PMI operates in the UK and Ireland through its subsidiary Philip Morris Limited (“PML”).
2. Fighting the illicit trade in tobacco is a top priority for PML. We invest significant resources in combating the illicit trade, and cooperate with government and law enforcement at every level, both in the UK and internationally.
3. Although the UK’s legal framework provides adequate penalties for tobacco smuggling, deterrence is weakened by the difficulty of detection, and relatively low tariffs linked to current sentencing guidelines.
4. Smuggling and the illicit trade takes different forms:
  - *Counterfeit*

Cigarettes bearing trademarks that are manufactured without the trademark owner’s permission.
  - *Contraband*

Cigarettes that enter or are sold in a market in violation of fiscal/customs laws.
  - *Illicit Whites*

Cigarettes that are produced in one market and primarily smuggled into and sold in another where they have no legal distribution.
5. It ranges from small scale smuggling (often involving criminals gangs), colloquially known as ‘ant smuggling’, to large container shipments involving organised crime. Both the UK and Ireland face similar problems shaped by common drivers of supply and demand. Irish ports are seen as a ‘back door’ to the UK and the illicit trade is frequently linked to paramilitary groups in Northern Ireland.
6. The UK and Irish illicit markets are intricately linked. As plain packaging inevitably increases the ease of supply of illicit tobacco, the prospect of Ireland introducing this policy will inevitably impact the UK.

### *Recommendations*

7. **The UK should continue to invest in combating the illicit trade, with dedicated funding to help facilitate co-ordination across law enforcement agencies.**



8. **Law enforcement needs a co-ordinated multi-agency approach to deterring small scale smuggling.** This includes greater focus on preventing illicit tobacco entering the UK, more effort to disrupt inland distribution networks, and heavier penalties, including aggressive pursuit of asset forfeiture opportunities, when offenders are identified. More generally the Government should consider whether current penalties provide significant deterrence.
9. **The Government should prioritise tackling the problem of factories in overseas free trade zones where local oversight is lax.** These are frequently located in jurisdictions with which the UK and EU enjoy close ties, but provide a key source for organised crime groups including paramilitaries. Political engagement by senior levels of government and efforts to leverage EU influence would complement the successes of HMRC's overseas network of Fiscal Crime Liaison Officers.
10. **The UK must prepare a strategy to adapt to changes in the illicit trade arising from the Irish Government's proposed introduction of plain packaging.** This would include even closer cooperation between UK and Irish law enforcement agencies. The illicit markets of both countries are closely related, and since plain packaging is highly likely to increase the supply of illicit tobacco into Ireland, the policy will inevitably impact the UK (in the same way that its introduction in Scotland would impact England and Wales).
11. **Finally, the UK should limit further tax increases to inflation, and avoid any sudden or excessive rises.** The UK (with Ireland) has the highest tobacco taxes in the EU. Consumers' resistance to ever higher taxes and their willingness to switch to easily available alternatives that are unlicensed, unregulated and untaxed lie at the heart of this problem.

## **Introduction**

12. PMI has a global Illicit Trade Strategies & Prevention team dedicated to fighting illicit trade with several initiatives:
  - Monitoring the incidence and identifying trends through research studies;
  - Investigating the production, distribution and sale of illicit tobacco including extensive co-operation with law enforcement leading to global actions against illegal factories, shipments of illicit cigarettes and prosecution of the criminal gangs involved;
  - Raising awareness and educating the public and business partners (e.g., retailers) on the negative consequences of the illicit trade; and
  - Implementing technology solutions for tracking and tracing, product authentication and tax verification. This includes Codentify, an authentication feature based on a unique encrypted alphanumeric code printed online onto products that also provides volume control and tracking and tracing capabilities.

### *Scale of the illicit tobacco problem*

13. Illegal cigarettes are a global problem that requires global action. While much of the UK's contraband originates from within the EU, counterfeit and illicit whites are often sourced from a range of countries, including some within the EU, China, the Russian Federation, Belarus, the UAE and Ukraine. Free trade zones in e.g., Singapore and Dubai also pose particular issues.<sup>1</sup>
14. The 2012 KPMG Star Report estimated that the illicit market represented 16.4% in the UK (and the UK also experienced the largest annual increase in the EU).<sup>2</sup> OLAF estimates that illicit tobacco costs the EU €10 billion a year in lost revenue,<sup>3</sup> while HMRC estimates the UK loss at nearly £2 billion.<sup>4</sup> The full cost is likely to be even higher than this due to broader consequences, notably:
  - Fuelling organised crime and terrorism;
  - Economic loss for legitimate businesses, particularly small retailers, and
  - Adverse public health outcomes, including undermining youth smoking prevention (the illicit trade is unregulated and often targets under-18s).
15. The illicit trade has changed rapidly in recent years, as acknowledged by a recent National Audit Office report.<sup>5</sup> Cross-border smuggling of UK tobacco brands and to a lesser extent counterfeit have decreased relative to illicit whites which have risen rapidly. In 2012 the UK consumed an estimated 1 billion illicit white cigarettes, a 49% increase on 2011.<sup>6</sup>

### *Co-operation with governments*

16. PMI assists law enforcement at every level, from the local to international. Globally, INTERPOL, with its presence across 190 countries is ideally placed to lead this effort. In 2012 PMI pledged €15m to INTERPOL's global initiative against illicit goods trafficking, 'Fund for a Safer World'.<sup>7</sup> This programme seeks to dismantle the organised crime networks that traffic a range of illicit goods and identify the routes they use (which are often also used by human traffickers and drug smugglers).
17. PMI works closely with European authorities. PMI signed a Cooperation agreement with the European Commission in 2004, to which the UK, Ireland and

<sup>1</sup> Communication from the Commission to the Council and the European Parliament 'Stepping up the fights against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU strategy' at page 6.

<sup>2</sup> Project Star report op cit. at page 15.

<sup>3</sup> Communication op cit. at page 4.

<sup>4</sup> National Audit Office report 'Progress in tackling tobacco smuggling' at page 4 available at <http://www.nao.org.uk/wp-content/uploads/2013/06/10120-001-Tobacco-smuggling-Full-report.pdf>

<sup>5</sup> Ibid at paragraph 1.4.

<sup>6</sup> Project Star report 2012, at page 28, available at [http://www.pmi.com/eng/media\\_center/media\\_kit/documents/project\\_star\\_2012\\_final\\_report.pdf](http://www.pmi.com/eng/media_center/media_kit/documents/project_star_2012_final_report.pdf)

<sup>7</sup> 'INTERPOL targets organized crime with global initiative against trafficking in illicit goods', 22 June 2012, available at <http://www.interpol.int/News-and-media/News-media-releases/2012/PR050>

all other Member States are also party.<sup>8</sup> The agreement established regular exchanges of information between PMI, OLAF<sup>9</sup> and the Member States regarding seizures of counterfeit and genuine cigarettes. This information underpins Project Star, an annual EU wide study of tobacco consumption that PMI commissions from KPMG. The results are presented to both OLAF and representatives of all EU Member States and allows PMI and law enforcement to identify EU wide trends more quickly. The Cooperation agreement also established a range of supply chain control measures including enhanced 'Know Your Customer' checks, sales volume monitoring, and tracking and tracing obligations.

18. In the UK PML participates with the rest of the industry and HMRC in an anti-illicit trade working group, and also invests significant resources in commissioning research and gathering intelligence on the nature and extent of the illicit trade. PMI, along with other industry players, is party to an Intelligence Sharing Protocol with HMRC (with extensive intelligence sharing with HMRC's FCLO network) and further work is continuing on finalising a broader MOU between HMRC and industry participants.

### **Current sanctions and penalties**

19. The scale of tobacco smuggling, the difficulty of detecting it, the involvement of organised crime, and the wider costs to society make it essential that there is adequate deterrence.
20. Detecting tobacco smuggling is often difficult as a significant proportion is imported into the UK by small scale smugglers, a method increasingly used by organised criminals with networks of 'mules'. This is especially true of the East European variants (both counterfeit and contraband).
21. The penalty for smuggling tobacco into the UK carries a maximum sentence of seven years.<sup>10</sup> Additionally, counterfeiters face sentences of up to ten years for improper use of trademarks,<sup>11</sup> and any criminal proceeds can be recovered under the Proceeds of Crime Act 2002.
22. However, tobacco smugglers rarely face the maximum penalty, and Trading Standards have recommended that the Sentencing Guidelines issued to the courts be reviewed.<sup>12</sup> Since 2010/11 approximately 43.5% of sentences in England and Wales were non-custodial or suspended sentences, and in Northern Ireland this figure was much higher.<sup>13</sup> Indeed, a recent Court of Appeal judgment handed

<sup>8</sup> Information on the PMI and EU Cooperation Agreement is available at [http://www.pmi.com/eng/tobacco\\_regulation/illicit\\_trade/pages/ec\\_agreement.aspx](http://www.pmi.com/eng/tobacco_regulation/illicit_trade/pages/ec_agreement.aspx)

<sup>9</sup> The European Commission Anti-Fraud Office.

<sup>10</sup> S.170(3) of the Customs and Excise Management Act 1979.

<sup>11</sup> S.93 Trade Marks Act 1994.

<sup>12</sup> All Party Parliamentary Group on Smoking and Health Inquiry into the Illicit Trade in Tobacco Products, Memorandum from: Trading Standards Institute Tobacco Focus Group, November 2012 available at [http://www.ash.org.uk/files/documents/ASH\\_888.pdf](http://www.ash.org.uk/files/documents/ASH_888.pdf)

<sup>13</sup> Department of Justice Northern Ireland consultation 'Extension of Unduly Lenient Sentencing Provisions to Fraudulent Excise Evasion For Fuel and Tobacco', May 2013, at paragraphs 2.2-2.3,

down in relation to excise evasion on tobacco backed the need for stronger sentencing.<sup>14</sup>

23. Further inhibiting effective deterrence is the different approach to enforcement across the country. One success story has been in Liverpool, where the city's Trading Standards' Alcohol and Tobacco Unit was set up in 2008. Funded until 2015 by a further injection of £400,000, it has five full time staff and always prosecutes for illicit tobacco seizures, even for cases involving as few as 200 cigarettes. This stance has seen a significant drop in seizures and positive test purchase operations from a peak in 2008-2009 when first formed. However, this level of commitment is exceptional.<sup>15</sup>

### **Similarities and differences in tobacco smuggling in the UK and Ireland**

24. The illicit trades in the UK and Ireland share many characteristics and are closely connected. The 2012 KPMG Star Report estimated that the illicit market represented 16.4% in the UK (the highest annual increase throughout the EU) and 19.1% in Ireland.<sup>16</sup> It is caused by several factors including high profits for relatively low risk, well organised criminal networks, the relatively high price of tobacco (the UK and Ireland have the highest tobacco taxes in the EU), and increasing price sensitivity among consumers hit by economic hardship (which has led to a wider pattern of down trading to legal cheaper tobacco products).
25. In both countries test purchasing indicates that illicit tobacco is readily available through a variety of channels, including market stalls, pubs, retail outlets as well as door-to-door sales, private houses, and via online ads.<sup>17</sup>

#### *Small scale smuggling*

26. The UK and Ireland are both vulnerable to small scale smuggling, facilitated by cheap and direct transport connections to eastern EU Member States with lower prices, large diaspora communities, and associated retail outlets that often act as distribution networks.
27. One of the most popular means of small scale smuggling into the UK is via large van and minibus operators that make daily trips from the main Baltic cities to the UK. Smugglers are able to load unaccompanied suitcases filled with contraband for a small fee. These are dropped off at pre-arranged meeting points in the UK.<sup>18</sup>

available at <http://www.dojni.gov.uk/index/public-consultations/current-consultations/unduly-lenient-sentencing-for-excise-fraud.pdf>

<sup>14</sup> *R v Grew and McLaughlin* and *R v Mackle, Mackle and Mackle*, [2011] NICA 31.

<sup>15</sup> Information based on research commissioned by PMI from independent consultant Will O'Reilly.

<sup>16</sup> Project Star report op cit. at page 15.

<sup>17</sup> Will O'Reilly op cit. See also 'The Factbook on the Illicit Trade in Tobacco Products 3 – Ireland', Transcrime Joint Research Centre on Transnational crime at page 61, available at <http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Factbook-Ireland%20v.5.pdf>.

<sup>18</sup> Will O'Reilly op cit.

### *Larger scale smuggling*

28. At the other end of the spectrum criminals with sophisticated clandestine networks for importing and distributing illicit goods are attracted to smuggling tobacco by the relatively low penalties and chances of detection.
29. Organised criminals are heavily implicated in the UK and Irish trades. A recent annual survey of Trading Standards' experience of IP crime has shown the strong link between illicit tobacco and organised crime.<sup>19</sup> Similarly during recent test purchasing fieldwork commissioned by PML, Trading Standards regularly pointed to the relationship between drugs trafficking and illicit tobacco.<sup>20</sup> Indeed, Deputy Government Chief Whip Lord Newby recently stated in the House of Lords:

*"The people who smuggle cigarettes do, indeed, tend to smuggle other things, typically drugs, and sometimes even more dangerous things than that. I do not have an exact breakdown, but a lot of this smuggling is carried out on a large scale by criminal gangs who are looking to smuggle anything they can with a high value, of which cigarettes typically are only one component."*<sup>21</sup>

### **The relationship between tobacco smuggling, organised crime and paramilitary activity**

30. Northern Ireland is responsible for a disproportionate share of the UK gangs involved in tobacco fraud,<sup>22</sup> partly due to the activities of paramilitary groups. One hallmark of their involvement is the prevalence of illicit whites, which tend to be imported in bulk and afford larger profits. These accounted for 78% of the illicit tobacco acquired during recent test purchases, an exceptionally high figure.<sup>23</sup>
31. The role of paramilitary groups has been well documented. In 2012 the PSNI and Garda warned that tobacco smuggling was generating significant sums of money for the Real IRA and the Continuity IRA.<sup>24</sup> It helps fund criminal activity spanning drugs, firearms, human trafficking and bomb attacks.
32. Tobacco products from the Far East are often smuggled into Northern Ireland and the UK after being landed at ports in Ireland. These have been described as a 'back door' to the UK, making Ireland a "huge target" according to the head of Irish Customs' criminal investigations branch.<sup>25</sup>
33. In recognition of this dynamic, law enforcement from both countries work closely together. The Cross Border Tobacco Fraud Enforcement Group (CBTFEG) was

<sup>19</sup> IP Crime Group's IP Crime Annual Report 2012-13 at pages 79-80.

<sup>20</sup> Will O'Reilly op cit.

<sup>21</sup>Hansard 16 May 2013, Column 529 available at

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130516-0001.htm>

<sup>22</sup> Transcrime Ireland op cit. at page 76.

<sup>23</sup> Will O'Reilly op cit.

<sup>24</sup> Transcrime Ireland op cit. at page 62.

<sup>25</sup> <http://www.independent.ie/irish-news/cigarette-smugglers-will-have-assets-seized-and-cars-crushed-26609342.html>

established in May 2010 to combat cigarette smuggling within the island of Ireland. It aims to identify and disrupt key criminal gangs involved in cigarettes smuggling on both sides of the Irish land border.<sup>26</sup>

### **The possible impact of standardised (or plain) packaging in Ireland on the quantity and availability of illegal tobacco in the UK**

34. Plain packaging risks fuelling the illicit tobacco trade, as 24 former senior police officers in the UK have warned.<sup>27</sup> Given that large scale smugglers view the UK and Ireland as a single market,<sup>28</sup> any increase in the supply of illicit tobacco to Ireland will inevitably flow through to the British mainland.
35. Plain packaging fuels the illicit trade in three ways.<sup>29</sup> First, demand for branded contraband will increase. Introducing plain packaging will not erase branded tobacco, it will just hand a monopoly to criminals who already provide a cheaper product.
36. Second, it will facilitate counterfeiting, as multiple experts have warned.<sup>30</sup> Economies of scale make it cheaper for counterfeiters to imitate a single plain packet design than multiple different brands.
37. Third, by removing branding, the policy will weaken brand loyalty and hasten the current trend towards down-trading. Making tobacco a commoditised product with competition based purely around price will play into the hands of organised criminals. Legitimate brands will not be able to compete on price against untaxed and unregulated illicit whites.
38. Illicit whites are already a major and fast-growing problem, attracting the most price-sensitive smokers. An empty pack survey in Q4 2011 found 68 different illicit white brands in the UK, but over 450 have been identified worldwide.<sup>31</sup> Popular demand is proven: plain packaging will make Ireland (and the UK) a target for increased supply. Already 'baggies' (illicit unbranded cigarettes sold cheaply in sealed transparent plastic bags) and unbranded loose tobacco are

<sup>26</sup> Cross Border Organised Crime Assessment 2010, available at <http://www.octf.gov.uk/getattachment/7029767f-4016-4cee-bf71-3d7b13c4db37/Cross-border-crime-assessment-2010.aspx>.

<sup>27</sup> Letter to the Editor 'Plain packets and tobacco smuggling', The Times, 28 June 2012, available at <http://www.thetimes.co.uk/tto/opinion/letters/article3458446.ece>

<sup>28</sup> Healy, Deirdre 2013 "Interview", referenced in Transcrime Ireland op cit. at page 76.

<sup>29</sup> 'Plain Packaging and the Illicit Trade in the UK', Transcrime, at page 18, available at [http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain packaging and illicit trade in the UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain%20packaging%20and%20illicit%20trade%20in%20the%20UK.pdf)

<sup>30</sup> See for example (referenced in PMI's 'Standardised tobacco packaging will harm public health and cost UK taxpayer billions: A response to the Department of Health consultation on standardised packaging of tobacco products', 9 August 2012): the letter of Andreas Blaschke, President, European Carton Makers Association 'Plain packaging for cigarettes will ease counterfeiting', 10 May, 2012, (also available at <http://www.europeanvoice.com/article/imported/plain-packaging-for-cigarettes-will-ease-counterfeiting/74307.aspx>); the comments of Giovanni Kessler, the Director General of OLAF, during 6 June 2012 session of Italian Parliament (Chamber of Deputies) Committee of Inquiry on Counterfeiting and Piracy, and more than 85% of current UK police officers completing a survey.

<sup>31</sup> Based on PMI Empty Pack Surveys.

common in many countries. The situation in the UK and Ireland could easily deteriorate further.

39. If, as anticipated, plain packaging leads to price reductions and therefore increases in tobacco excise to compensate, the price difference between the legal and illicit products will increase. This will increase the profit for tobacco smugglers and further incentivize them to target the Irish market. For the reasons discussed above, any increase in supply to Ireland will flow through to the UK.
40. New data on the illicit tobacco trade in Australia, the only country to have introduced plain packaging, will be available by the end of September. PML intends to share this information with the Committee before the Inquiry closes.

**29 August 2013**

## Written evidence from Cancer Research [TOB13]

- I. Why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years;
- II. Why Border Force failed to meet its operational targets for tobacco seizure in 2012-13;
- III. Whether the current sanctions and penalties for tobacco smuggling are appropriate;
- IV. The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect on each other, and the implications of the restrictions on National Crime Agency operations in Northern Ireland;
- V. The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK; and
- VI. The relationship between tobacco smuggling, organised crime and paramilitary activity.

### Declaration of interest(s): about Cancer Research UK<sup>1</sup>

Every year around 300,000 people are diagnosed with cancer in the UK and more than 150,000 people die from cancer. Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, our vision is to bring forward the day when all cancers are cured. We support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2012/13, we spent £351 million on research in institutes, hospitals and universities across the UK. The charity's pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no government funding for our research.

Both genuine and counterfeit cigarettes are extremely toxic products. There are no safe cigarettes and there is no level of safe smoking<sup>2</sup>. Health damage to smokers is not only determined by the content of the cigarette, but also by the way they are smoked and how deeply they are inhaled. Both genuine and counterfeit cigarettes are extremely toxic products. Highlighting the dangers of counterfeit cigarettes may risk communicating an unintended message that genuine cigarettes are normal and safe. According to British American Tobacco Nigeria for instance, "Tobacco use is risky, but counterfeit cigarettes are lethal"<sup>3</sup>.

Cancer Research UK is currently campaigning for the introduction of standardised packaging of tobacco products, through our own campaign "Setting the Standard" [formerly "The answer is plain"], as well as through the Smokefree Action Coalition.

### Comments on structure of inquiry

We are concerned that the selection of questions for the purpose of the inquiry does not fully address the root causes of tobacco smuggling. The narrative of the inquiry addresses the valid issues surrounding enforcement and border controls. It does not however address the critical issue of supply-chain controls and the role of tobacco manufacturers themselves who have previously been found to be complicit in tobacco smuggling at various stages of the chain (see Public Accounts Committee, 2003<sup>4</sup>). As our submission develops below, evidence of continued involvement by



tobacco manufacturers in tobacco smuggling continues to emerge, at a time when the tobacco industry are undertaking a large campaign against the possible introduction of standardised packaging. Accordingly of particular concern is the question regarding; *The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK*. In our submission below we explain why Cancer Research UK rejects this explicit link between standardised packaging and the illegal tobacco trade.

### **Prosecutions and convictions for tobacco smuggling have fallen over the past three years**

1. The Lords EU Sub-Committee F – Home Affairs, Health and Education recently heard evidence from Officials from the European Anti-Fraud Office (OLAF), and HM Revenue & Customs (HMRC)<sup>5</sup> as part of their further scrutiny work into the EU cigarette smuggling strategy.
2. In the oral evidence session the witnesses from OLAF cited a successful tobacco smuggling prosecution in Germany<sup>6</sup>, whereby on March 11 2013, a German-Russian criminal was sentenced to 9 years imprisonment following an investigation co-ordinated by OLAF. More than €50 million in taxes were evaded by the gang while smuggling 1,200 tonnes of tobacco from 2006. OLAF Director-General Giovanni Kessler said: “Crimes carried out in several countries by multi-national gangs are difficult for law enforcement authorities to investigate. Successful conviction requires close co-operation and sharing of sensitive information by police and customs authorities”.<sup>7</sup>
3. International co-operation and information sharing through HMRC’s network of Fiscal Crime Liaison Officers (FCLOs) reflects the necessity to address tobacco smuggling (and the resulting revenue losses) both at source (supply) as well as destination (demand).
4. In 2011 HMRC and the Trading Standards Institute (TSI) updated their joint working protocol to ensure better information sharing and co-operation in tackling the illicit tobacco trade<sup>8</sup>. We welcome initiatives which are linking national and local activities, toward a shared programme of success.
5. In 2000, HM Customs & Excise (HMCE, now HMRC) published their first strategy document on illicit tobacco smuggling, *“Tackling Tobacco Smuggling”*.<sup>9</sup> It included a chart showing the rise in “market share of smuggled cigarettes”. For 1996-97 the level was estimated at around 3%, rising to 21% by 2000-01. For hand-rolled tobacco (HRT), HMCE estimated that the market share of smuggled HRT had risen from around 2% in 1991 to 78% in 1999.
6. At that time, HMCE estimated that, without further policy developments, the market share of smuggled cigarettes would rise to 36% by 2003-04. They also estimated that the new tobacco smuggling strategy could keep smuggling broadly at the 2000-01 level, even with an annual rise in duty of 5% over inflation.
7. Thanks to better enforcement by government agencies<sup>10</sup> and strict curbs on the tobacco industry’s own activities<sup>11</sup> - which included UK tobacco manufacturers signing a series of

Memoranda of Understanding from 2003-04 and the implementation of the UK Finance Act 2006<sup>12</sup> - the latest HMRC figures<sup>13</sup> show that cigarette smuggling has more than halved to 9% (2010-11), from its peak of 21% (2000-01).

8. Successes at the national level are paralleled through local programmes such as the North of England Tackling Illicit Tobacco for Better Health<sup>14</sup> initiative, where the illicit market has been driven down to record low-levels in the region.
9. On June 24 2013 The Public Accounts Committee heard evidence of officials from HMRC, UK Border Force (uncorrected transcript)<sup>15</sup> following the National Audit Office report: *Progress in tackling tobacco smuggling* (June 2013)<sup>16</sup> We would agree with many of the findings of this report regarding the evolutionary and multi-faceted nature of the illicit trade; the emphasis that should be placed on supply chain controls and the potential for significant returns on investment in tackling the illicit trade.

### **The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK**

10. The tobacco industry and its associated front groups have repeatedly argued that the introduction of 'plain', standardised packaging of tobacco products would result in an increase in smuggling.
11. The Advertising Standards Authority (ASA) recently adjudicated against Japan Tobacco International's (JTI's) adverts opposing standard packaging that make this claim for being misleading<sup>17</sup>.
12. Standardised packaging will have no bearing on the Governments' success in tackling the illicit tobacco trade. Trading Standards officials and Senior Police officers in the UK as well OLAF officials at the EU level, say that the introduction of standardised packaging is likely to have little or no significant impact on the level of illicit trade<sup>18,19,20</sup>.
13. The Government should show its strong commitment to effective, coordinated action on the illicit tobacco trade by signing and ratifying the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) 'Protocol to Eliminate Illicit Trade in Tobacco Products' which is currently open for signatures<sup>21</sup>.
14. The claims that effective measures designed to reduce rates of smoking will result in an increase in the illicit trade is not supported by experience and evidence to date. The falling illicit tobacco market has coincided with a decade of progress in implementing more comprehensive tobacco control measures including, the advertising and promotion restrictions, removal of point of sale displays, the removal of tobacco vending machines and tax increases. It has also coincided with a steady decline in smoking prevalence rates.

### **The relationship between tobacco smuggling, organised crime and paramilitary activity**

15. Article 5.3 of the WHO FCTC, of which the UK is a party, is designed to ensure that public health policies are protected from the commercial and other vested interests of the tobacco industry. Principle 3 of the adopted guidelines for the implementation of article 5.3 states that “Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent”<sup>22</sup>.
16. Tobacco industry funded groups such as the Common Sense Alliance (who are supported through funding from British American Tobacco (BAT)) host on their website stories regarding links between paramilitary organisations, such as the Real IRA<sup>23</sup> and tobacco smuggling. BAT have also produced videos which link the illicit tobacco trade with acts of terrorism.<sup>24</sup>
17. Former-police officers, acting on behalf of the Common Sense Alliance<sup>25</sup> have stated their opposition to standardised packaging and the risk of an increase in the illicit trade they claim would result. In written evidence submitted to the Lords Sub-Committee Inquiry into the Tobacco Products Directive (TPD), these police officers did not declare the links between themselves, and the tobacco industry funded Common Sense Alliance<sup>26</sup>. As was reported in The Observer newspaper, the (former) officer’s letter stated that “*plain packaging would increase illicit trade and fund terrorist organisations*”<sup>27</sup>.
18. Cancer Research UK is concerned that these claims are being made without the necessary transparency by these spokespeople about their acting as representatives of a tobacco industry funded organisation, and the clear conflict of interest this creates.

### **Whether the current sanctions and penalties for tobacco smuggling are appropriate**

19. The tobacco industry’s own activities<sup>28,29</sup> demonstrate a poor record on smuggling. In the last decade, despite legislative changes at the UK-level and agreements put in place by OLAF at the EU level (as well as memoranda of understanding being signed in both jurisdictions), there is still evidence of tobacco industry involvement in smuggling (see paragraphs 22-24) which would suggest these sanctions are not having the intended effect on deterring smuggling.
20. The UK Finance Act 2006<sup>30</sup> put legal provisions in place, including fines of £5m, for tobacco manufacturers who failed to clamp down on smuggling.
21. In an attempt to address the problem of the illicit tobacco trade, between 2004 and 2010 OLAF signed legally binding and enforceable agreements with the world’s four largest tobacco manufacturers<sup>31</sup>. Within these agreements the four companies agreed to pay a collective total of \$2.15 billion to the EU and countries participating in the agreement and tighter control on their supply chain.
22. In 2009 however, it was reported that all the four big manufacturers in the UK have over-supplied the Ukraine fuelling a \$2billion black market that reached across the EU<sup>32</sup>. In 2012,

JTI was accused of smuggling activities in the Middle East and is now under official investigation by OLAF<sup>33,34</sup>.

23. HMRC's latest estimate, for 2011, is that the aggregate actual supply of some brands of hand-rolling tobacco to some countries exceeded legitimate demand by 240 per cent. Supply of genuine products to high-risk markets remains higher than HMRC's analysis of local demand, particularly for certain brands of hand-rolling tobacco – this is disputed by manufacturers<sup>35</sup>.
24. The Times reported<sup>36</sup> that BAT's agent for cigarette sales in the Horn of Africa of almost 25 years is being pursued by officials in Djibouti, having been accused of clandestinely shipping BAT's Benson & Hedges cigarettes into the country from Somalia without paying duty.

### **Why Border Force failed to meet its operational targets for tobacco seizure in 2012-13**

25. The adoption of an effective 'tracking and tracing' system to help control the supply chain is critical to tackling illicit trade. This is at the heart of the WHO FCTC 'Protocol to Eliminate Illicit Trade in Tobacco Products' and would enable the monitoring of tobacco products from production to sales.
26. We are concerned that a tobacco industry developed system (see paragraphs 27-28) would be neither the most effective or pragmatic option, if the operational targets for enforcement officials are to be met in the future.
27. In July 2012, INTERPOL 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.
28. At the same time, INTERPOL said it would work with BAT, Imperial Tobacco Group (ITG), JTI, and Philip Morris International (PMI (specifically PMI's Digital Coding and Tracking Association)) to make the tobacco industry's supply chain control system, Codentify, accessible via the IGR4. Research papers have raised concerns that Codentify is an inadequate tracking and tracing system, and with regard to a conflict of interest presented by Interpol having previously accepted funds from PMI in July 2011 that increased its overall budget by 8%<sup>37,38</sup>.

### **The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect on each other, and the implications of the restrictions on National Crime Agency operations in Northern Ireland**

29. The UK and Ireland have made similar progress in implementing tobacco control measures in the last 15 years, including the mutual adoption of the European Union Tobacco Products Directive in 2001. However, increases on tobacco excise and other tobacco control

measures - including the possible introduction of standardised packs (see paragraph 32) do not impact on efforts to combat the illicit trade. Moreover any similarities or differences in tobacco smuggling across the UK and Ireland should not attempt to be extrapolated from tobacco industry figures (see paragraphs 30-31).

The price of duty-paid tobacco products is *not* the most important factor in determining levels of illicit trade. Research shows that other factors – principally sharing a border with certain countries where operating an illicit trade is easier – are what is influencing illicit rates<sup>39</sup>. The Republic of Ireland has the highest rate of tobacco duty in the EU, followed by the UK<sup>40</sup>. The UK has some of the highest tobacco taxes in the world, with tax accounting for up to 88% of the RRP on some brands<sup>41</sup>. The falling rate of the illicit market has continued despite rising tobacco taxes and consequent high prices in the same period.

30. After the March 2010 Budget, the Tobacco Manufacturers Association (TMA) predicted that because the UK Government had "imposed the largest tax increase on tobacco products in ten years" it would "only provide further stimulus to those who seek to profit from the illicit trade in tobacco"<sup>42</sup>. After the March 2011 Budget, the TMA complained that the "Government has today increased tobacco duties by 2% above inflation which clearly demonstrates a complete lack of joined-up-thinking as taxation is the acknowledged driver of the illicit tobacco trade"<sup>43</sup>. More recently, however even the TMA has accepted that the consumption of illicit tobacco in the UK is falling<sup>44, 45</sup>.
31. Tobacco industry funded, commissioned or conducted studies consistently report higher rates of illicit trade, than official figures (e.g. HMRC) and non-tobacco industry affiliated academics reports. For example the tobacco industry funded KMPG *Project Star* in 2012 reported that: "For the sixth year in a row, the illegal trade in cigarettes in the European Union reached a new record high...In 2012 the levels rose to 11.1%,"<sup>46</sup>. The same report found that the consumption of illegal cigarettes in the UK reached 16.4%. By contrast, academic research from a number of experts in the illicit tobacco trade, including those who have advised the World Bank and World Health Organisation, found that the identification of an illicit pack (IIP), used to determine levels of the illicit trade was less than 7% across the 18 European countries surveyed<sup>47</sup>. The research paper acknowledges that "Transparent public data on tax evasion [includes the purchase of smuggled and illicitly manufactured tobacco products] are limited and, in many countries, non-existent." Despite this, tobacco industry-commissioned studies have been able to produce what they claim to be comprehensive findings. The difference between the 16.4% consumption of illegal cigarettes in the UK reported in 'Project Star', and the 9% illicit cigarette market HMRC recorded (midpoint estimate 2012) highlights how these major statistical differences occur at both EU and domestic level. In 2010 alone the TMA estimate of the illicit tobacco trade was 19%, compared with a *Project Star* estimate of 13.2% and HMRC mid-point estimate of 11% (2009/10).
32. Cancer Focus Northern Ireland has stated that tobacco industry arguments linking standardised packaging and the illicit tobacco trade do not make sense<sup>48</sup>. A joint statement from the Irish Cancer Society and Irish Heart Foundation also stated that: "The tobacco industry is keen to overstate the rate of smuggling as a high level of illicit trade is used in

arguments to reduce the price of tobacco in Ireland. This argument is completely disingenuous given that it's the tobacco industry that raises the price of cigarettes every year, regardless of whether Government does or doesn't<sup>49</sup>.

33. The North South Ministerial Council meets to make decision on common policies, which includes health policy as one of its 12 areas of remit, and as such could be an appropriate body to coordinate cross-border harmonisation of any changes to tobacco packaging<sup>50</sup>.

## References

- 1 Registered charity in England and Wales (1089464), Scotland (SC041666) and the Isle of Man (1103)
- 2 Joossens L; Smuggling, the tobacco industry and plain packs; Available at, [http://www.cancerresearchuk.org/cancer-info/publicpolicy/ourpolicypositions/prevention/tobaccocontrol/ssLINK/SMUGGLING\\_FULLREPORT](http://www.cancerresearchuk.org/cancer-info/publicpolicy/ourpolicypositions/prevention/tobaccocontrol/ssLINK/SMUGGLING_FULLREPORT)
- 3 Cover Tobacco Control April 2005, vol14, nr; Available at, <http://tobaccocontrol.bmj.com/content/14/2.toc>
- 4 UK Public Accounts Committee on industry sales to Afghanistan, Moldova and Kaliningrad, (March 2003). Available at: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/143/2061915.htm>
- 5 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f-publications/>
- 6 Evidence of witnesses Nicholas Ilett and Austin Rowan: House of Lords: The Select Committee on the EU; Home Affairs, Health and Education (Sub-Committee F). Inquiry of Enhanced Scrutiny: EU Cigarette Smuggling Strategy. [Corrected transcript of oral evidence](#) 17 July 2013
- 7 Tough sentence for cigarette gang leader on German court; 11 March 2013; [http://ec.europa.eu/anti\\_fraud/media-corner/press-releases/press-releases/2013/20130308\\_01\\_en.htm](http://ec.europa.eu/anti_fraud/media-corner/press-releases/press-releases/2013/20130308_01_en.htm)
- 8 House of Commons Hansard. Written Answers to Questions. 11 October 2011. Column 332W. Accessed at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111011/text/111011w0001.htm>
- 9 HM Customs & Excise (HM Treasury); 'Tackling tobacco smuggling'. (March 2000)
- 10 HMRC/UKBA. 'Tackling Tobacco Smuggling—building on our success' (April 2011). Available at, [http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_031246)
- 11 HMRC/UKBA. 'Tackling Tobacco Smuggling—building on our success' (April 2011). Available at, [http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_031246)
- 12 <http://www.legislation.gov.uk/ukpga/2006/25/part/1>
- 13 HMRC: Measuring Tax Gaps (2012). Available at <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf>
- 14 More information is available at, <http://www.illicittobaccoorth.org/>
- 15 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/uc297-i/uc29701.htm>
- 16 National Audit Office; Progress in tackling tobacco smuggling; 6 June 2013; Available at <http://www.nao.org.uk/wp-content/uploads/2013/06/10120-001-Tobacco-smuggling-Full-report.pdf>
- 17 The Advertising Standards Authority. Adjudications: ASA adjudication on Gallaher Ltd (Complain ref:A12-210929) Available at, [http://www.asa.org.uk/Rulings/Adjudications/2013/4/Gallaher-Ltd/SHP\\_ADJ\\_210929.aspx](http://www.asa.org.uk/Rulings/Adjudications/2013/4/Gallaher-Ltd/SHP_ADJ_210929.aspx)
- 18 APPG on Smoking & Health; inquiry into the illicit trade into tobacco products; March 2013; accessed at [www.ash.org.uk/APPGillicit2013](http://www.ash.org.uk/APPGillicit2013)
- 19 Trading Standards Institute. 'Standardised tobacco packs should be introduced without delay'. 15 August 2012. <http://www.tradingstandards.gov.uk/policy/policy-pressitem.cfm/newsid/949>
- 20 Greater Manchester Police and Crime Commissioner; *Commissioner backs plain cigarette packaging proposals*; 22 April 2013, accessed at <http://www.gmpcc.org.uk/news/commissioner-backs-plain-cigarette-packaging-proposals/>
- 21 More information is available about *the Protocol to Eliminate Illicit Trade in Tobacco Products* at <http://www.who.int/fctc/protocol/about/en/>
- 22 More information is available at, [http://www.who.int/fctc/guidelines/adopted/article\\_5\\_3/en/](http://www.who.int/fctc/guidelines/adopted/article_5_3/en/)
- 23 The Common Sense Alliance: News & Views; 6th June 2013. Accessed at, <http://thecommonsensealliance.com/2397/cigarette-smuggling-millionaires/>
- 24 British American YouTube Channel. 'This is the man', Available at, <http://www.youtube.com/watch?v=1NSgPzYJzcs&feature=c4-overview-vl&list=PLF5551D055791D2A5>
- 25 The Common Sense Alliance: Supporters. Accessed at, <http://thecommonsensealliance.com/supporters/founding-members/>
- 26 University of Bath: Tobacco Control Research Group; Tobacco Tactics; *The Common Sense Alliance*; Available at, [http://www.tobaccotactics.org/index.php/The\\_Common\\_Sense\\_Alliance#.E2.80.99\\_presented\\_to\\_the\\_House\\_of\\_Lords\\_.E2.80.93\\_No\\_Mention\\_of\\_the\\_Alliance](http://www.tobaccotactics.org/index.php/The_Common_Sense_Alliance#.E2.80.99_presented_to_the_House_of_Lords_.E2.80.93_No_Mention_of_the_Alliance)
- 27 Jamie Doward; Plain packaging lobbyists under fire over links to tobacco company; The Observer. 28 April 2013. Available at, <http://www.theguardian.com/business/2013/apr/28/plain-packaging-lobbyists-links-tobacco-company>

28 'Bootleg Britain' (7 March 1999) Sunday Times, London.

29HMRC and UKBA. 'Tackling Tobacco Smuggling—building on our success' (April 2011) available at, [http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_031246)

30 The Finance Act 2006 Legislation is available at, <http://www.legislation.gov.uk/ukpga/2006/25/part/1>

31 OLAF: Investigations; EU revenue: Cigarette smuggling; Available at, [http://ec.europa.eu/anti\\_fraud/investigations/eu-revenue/cigarette\\_smuggling\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-revenue/cigarette_smuggling_en.htm)

32 Lavrov V. *Big Tobacco's Overproduction Fuels \$2 Billion Black Market*. Organised Crime and Corruption Reporting Project. (Accessed 23 February 2013) [https://reportingproject.net/underground/index.php?option=com\\_content&view=article&id=8:ukraineslost-cigarettes-flood-europe&catid=3:stories&Itemid=21](https://reportingproject.net/underground/index.php?option=com_content&view=article&id=8:ukraineslost-cigarettes-flood-europe&catid=3:stories&Itemid=21)

33 Solomon J, EU probes cigarette deal that may have aided Syria, The Wall Street Journal, August 21, 2012. <http://online.wsj.com/article/SB10000872396390444233104577595221203321922.html>

34 John Holland, Bojana Jovanović and Stevan Dojčinović 'Big trouble at big tobacco' (accessed 28 March 2013) [https://reportingproject.net/troubles\\_with\\_big\\_tobacco/](https://reportingproject.net/troubles_with_big_tobacco/)

35 National Audit Office; Report by the Comptroller and Auditor General; HC 226, Session 2013-14; HM Revenue & Customs; *Progress in tackling tobacco smuggling*; (6 June 2013)

36 Alex Spence. BAT refused to sever ties with exile accused on pocketing £50m. The Times. 4 June 2013. Accessed at, <http://www.thetimes.co.uk/tto/business/industries/consumer/article3781719.ece> (Paywall)

37 Joossens, L et al; The transnational tobacco companies' strategy to promote Codentify, their inadequate tracking and tracing standard. January 2013. First published 12 March 2013 as *Tob Control* doi:10.1136/tobaccocontrol-2012-050796. Accessed at, <http://tobaccocontrol.bmj.com/content/early/2013/03/11/tobaccocontrol-2012-050796.extract?paperoc>

38 <http://www.fctc.org/index.php/news-blog-list-view-of-all-214/illlicit-trade/976-industry-interpol-deal-signals-challenges-to-illicit-trade-protocol>

<sup>39</sup> Joossens L, et al. Illicit cigarettes and hand-rolled tobacco in 18 European countries: a cross-sectional survey. October 2012. Tobacco Control online. First, published on December 10, 2012 as 10.1136/tobaccocontrol-2012-050644

40 Manufactured tobacco rates III (as of July 2013); Available at, [http://ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/tobacco\\_products/rates/](http://ec.europa.eu/taxation_customs/taxation/excise_duties/tobacco_products/rates/)

41 Tobacco Manufacturers Association. *Taxation*, <http://www.the-tma.org.uk/policy-legislation/taxation>

42 Double tobacco tax hike will delight the smugglers. *Tobacco Manufacturers Association* press release, March 24 2010. Accessed at, <http://www.the-tma.org.uk/2010/03/double-tobacco-tax-hike-will-delight-the-smugglers>

43 The Government risks undermining its own Tackling Tobacco smuggling strategy. *Tobacco Manufacturers Association* press release. March 23 2011. Accessed at, <http://www.the-tma.org.uk/2011/03/tma-response-to-the-budget-%E2%80%93-the-government-risks-undermining-its-own-tackling-tobacco-smuggling-strategy>

44 Tobacco Manufacturers Association. *UK Tobacco Market Summary*. (Accessed 4 February 2013)

45 Tobacco Manufacturers Association; written evidence to the APPG Smoking & Health inquiry into the illicit tobacco trade (19 Dec 2012) Available at, [http://www.ash.org.uk/files/documents/ASH\\_885.pdf](http://www.ash.org.uk/files/documents/ASH_885.pdf)

46 Philip Morris International. Star Report 2012. Accessed at, [http://www.pmi.com/eng/media\\_center/media\\_kit/pages/star\\_report\\_2012.aspx](http://www.pmi.com/eng/media_center/media_kit/pages/star_report_2012.aspx)

47 Joossens L, et al. Illicit cigarettes and hand-rolled tobacco in 18 European countries: a cross-sectional survey. October 2012. Tobacco Control online. First, published on December 10, 2012 as 10.1136/tobaccocontrol-2012-050644

48 Cancer Focus Northern Ireland, Blog: World No Tobacco Day, (29 May 2013) accessed at <http://cancerfocusni.org/2013/05/world-no-tobacco-day/>

49 Irish Cancer Society and Irish Heart Foundation. Joint statement, Tobacco smuggling figures overstated in Retail Ireland Report; 20 August 2012, accessed at <http://www.cancer.ie/content/tobacco-smuggling-figures-overstated-retail-ireland-report>

50 North South Ministerial Council; Health; Available at, <http://www.northsouthministerialcouncil.org/index/areas-of-co-operation/health.htm>

29 August 2013

## Written evidence from Imperial Tobacco Limited [TOB14]

### Executive Summary

1. Imperial Tobacco is pleased that the Home Affairs Select Committee has decided to commence an inquiry into tobacco smuggling and the growing trade in illicit tobacco. We oppose illicit trade and are committed to working pro-actively with governments and law enforcement agencies worldwide to tackle the problem. Illicit trade creates a market that is uncontrolled and unaccountable. As a result, children can more easily obtain tobacco products, governments are deprived of tax revenues and the livelihoods of retailers and their employees are threatened.
2. Measuring the illicit tobacco trade is always difficult. It comprises counterfeit, so-called “illicit whites” and contraband, and is sometimes also referred to as “non-duty paid”. The problem with the concept of labelling all non-duty paid as illicit tobacco is that an immeasurable proportion of it comprises product that has been legally purchased in other countries, with duty properly paid (and often to another EU Member State). In the Project Star report for 2012, KPMG concluded that 16.4% of cigarettes consumed in the UK in 2012 were counterfeit and contraband (up from 10.1% in 2011), with “illicit whites” making up a major part of the latter. A further 2.7% comprised legitimate cross-border purchases made outside the UK. Looking at the issue another way, the latest Government estimates conclude that up to £2.9 billion revenue was lost in 2010/2011. Either way, the numbers are far too high.
3. No inquiry in the UK into tobacco smuggling can reasonably ignore the fact that the problem is substantially driven by the very high tobacco excise rates. The UK has the second highest tobacco excise rate in the EU, and tax accounts for over 80% of the retail price of our UK cigarette brands. A typical pack of 20 premium brand king size cigarettes costs around £8 in the UK, £3.90 in Spain and £2.90 in Poland. Within this context, against a background of economic downturn and unemployment, the pre-conditions for smuggling have been established. Many smokers simply cannot afford to smoke UK duty-paid tobacco products, and many of these, in turn, are making the decision to switch to an affordable, but illicit product. The problem we face is that once that decision has been taken, it is difficult to persuade those



**smokers to re-enter the duty paid market. For this reason, the issues under review in this inquiry are of paramount importance.**

### **Declaration of interests**

4. Imperial Tobacco Group PLC (“**ITG**”) is a FTSE 30 company, an international business and the second largest European tobacco company. ITG has sales in over 160 countries worldwide and is the world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors.
5. Imperial Tobacco UK (“**ITUK**”, and, together with ITG, “**Imperial Tobacco**”) is the trading operation of ITG which distributes Imperial Tobacco’s products to the UK market. ITUK is market leader, holding approximately 45 per cent market share. Our cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal, and our roll-your-own brands include Golden Virginia. ITUK also distributes tobacco products on behalf of Philip Morris Ltd.
6. Imperial Tobacco has its headquarters in Bristol with manufacturing and distribution facilities in Nottingham. It employs over 1,600 people in the UK and last year collected around £5.8 billion for the Exchequer in duties and other taxes. Imperial Tobacco has around 26,000 shareholders with 53 per cent of issued shares held in the UK.
7. Imperial Tobacco is a member of the Tobacco Manufacturers’ Association, and we endorse their Response.

### **Questions**

8. **Why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years?**
9. We do not know why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years, and we hope this pattern is reversed. We work closely with law enforcement agencies in the UK and elsewhere and provide them with intelligence concerning the illicit tobacco trade. These sometimes result in arrests,

prosecutions and convictions, although in our experience there are challenges. For example, we perceive the current enforcement infra-structure may create obstacles. Enforcement is split in responsibility between the Border Force, HMRC, Trading Standards and the Police. We perceive that difficulties arise as information is not shared as effectively as it could be between the different agencies, with the consequence that they lose the benefit of consolidating intelligence to obtain a more complete picture. The involvement in the UK of several agencies in connection with combatting the illicit tobacco trade is a major advantage. This advantage can be outweighed, however, by a lack of co-operation, co-ordination and sharing of information between those agencies. We believe that by improving the enforcement infra-structure, to create a more joined-up approach whereby all intelligence is shared quickly and effectively between the relevant agencies, the arrest, prosecution and conviction rates against tobacco smugglers would improve.

10. We have many years' experience in compiling intelligence, analysing data and briefing law enforcement agencies on our findings. We have been central to the break-up of several sophisticated criminal gangs, including those who operate on an international scale, during the past several years (see paragraph 34.) We understand that to track and break down these types of gangs is resource-intensive. We have absolutely no doubt that all stakeholders need to work together to tackle these gangs, and we encourage the agencies to work as closely with us, and the other major international tobacco companies, as they can.
11. **Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13?**
12. The role of the Border Force is vital in combatting the inflow of illicit tobacco products. For example, their work at the Royal Mail sorting office at Coventry involving the detection and seizure of incoming parcels of loose tobacco, empty counterfeit tobacco pouches, tax stamps and seals seems to have been successful, with a substantial reduction in seizures of loose tobacco from 50 tonnes per month to zero, and a corresponding reduction in the number of parcels from China from c. 150,000 per month to c. 40,000. Much of this was due to the provision of high quality fixed scanning equipment. We consider this to be a significant success, although the sheer scale of the problem cannot be under-estimated and we fear the inflow has already or will find an alternative route into the UK, including via

other international carriers as well as the small parcel post facility at Langley. The UK has the second highest tobacco excise rates in the EU, and that fact will always incentivise criminals to exploit opportunities for financial gain. Given that working environment, the Border Force should be given sufficient resources to operate effectively and to meet its operational targets.

13. We are not aware that appropriate screening of parcels from abroad is carried out by international courier firms who are involved in the inflow of significant numbers of parcels coming into the UK on a daily basis. We have no idea how much loose tobacco, empty counterfeit pouches or other products may be smuggled into the UK through this route, but given the Border Force's experience at Coventry, it would be reasonable to conclude that it is considerable. This supply route is hard to quantify and not included in most estimates of illicit tobacco, but we believe that this is a potential "trojan horse" which could be addressed.
14. **Whether the current sanctions and penalties for tobacco smuggling are appropriate?**
15. Given that the latest Government estimates show that up to £2.9 billion was lost in 2010/2011 to the illicit tobacco market, it is reasonable to conclude that the current sanctions and penalties are not achieving their role of deterrence. The very high level of tobacco excise in the UK compared with other countries has created an opportunity for well-organised criminals to generate material profits. For example, a pack of 20 cigarettes costs about £1 in Belarus; in the UK, a pack of 20 premium brand cigarettes costs about £8 (of which c. 80% is tax). We estimate that the criminal profits generated by a shipping container of cigarettes being smuggled from Belarus to the UK could be in the region of £1 million. To properly combat smuggling of this nature (and of this profitability), the perpetrator needs to understand the risks he is running and the losses he could suffer, when he is caught. We fear that the current sanctions and penalties are not delivering this understanding.
16. We also fear that tobacco smuggling at the end-point in the supply chain is regarded by many of the perpetrators as low risk. When the fine for non-compliance with the display ban regulations can be greater than the fine for selling illicit tobacco, a confused and

confusing message is being delivered. We believe strongly that a clear and unambiguous message is required: involvement in the illicit tobacco trade has serious penalties.

**17. The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect each other, and the implications of the restrictions on National Crime Agency operations in Northern Ireland?**

18. The UK has the second highest tobacco excise rate in the EU. Ireland has the highest rate. The two countries also have amongst the highest levels of non-duty paid consumption, including illicit trade, in the EU. *Res ipsa loquitur*. Given this pattern, law enforcement agencies need strong support and proportionate funding from central government if they are to meet their remit.

**19. The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK?**

20. Any possible impact of the introduction of standardised or plain packaging in Ireland on the UK must be speculation, although in our experience Ireland has been utilised by criminals as an entry point for illicit tobacco found in Northern Ireland, and onwards to mainland UK. In our view, plain packaging will lead to increased levels of illicit trade as packs become easier to counterfeit and “branded” illicit products appear more legitimate. At the very least, the legitimate market in Ireland and Northern Ireland will be confused by the availability of a broad range of product packaging: legitimate plain packs, counterfeit plain packs, branded illicit packs, branded legitimate packs (from travel retail) and so forth. This market place confusion is likely to spread into the UK, making the roles of the Border Force, Trading Standards, HMRC and the Police even more difficult than they currently are. Consequently, we anticipate that the revenues lost to the Government would increase over £2.9 billion.

21. Even more threatening than the introduction of further packaging restrictions in Ireland is the predictable consequence of several proposed regulatory changes under the EU Tobacco Product Directive (EUTPD). Under the EUTPD proposals, menthol-flavoured cigarettes would be banned across the EU. To believe that the estimated one million UK menthol smokers will simply stop smoking or switch to non-menthol cigarettes would be naïve, at best. It is inevitable that many of those menthol-smokers will want to continue to

enjoy menthol cigarettes, and it would be equally naïve to believe that the demand will not be met by criminals presented with yet another opportunity to generate profits by smuggling menthol cigarettes to the UK from outside the EU. Similarly, there is a proposed ban on packs of 10 cigarettes. Should “10s” be banned, a large cohort of smokers is likely to switch to illicit tobacco on the basis that they simply cannot afford a duty-paid pack of 20 cigarettes. In both cases, the Government revenues will suffer as the causes and drivers for tobacco smuggling in the UK are made worse.

**22. The relationship between tobacco smuggling, organised crime and paramilitary activity?**

23. This relationship, which all law enforcement agencies recognise, should be of great concern to everybody, and all stakeholders should work relentlessly and collaboratively to combat it.

**Our commitment in practice**

24. Imperial Tobacco is firmly opposed to illicit trade and is committed to pro-actively working with governments and law enforcement agencies worldwide. Some examples of this commitment in practice are set out below.

25. In the UK, we are part of the AIT Joint Working Group, which comprises HMRC and the major tobacco companies and provides a working forum for experts to work collaboratively on a number of key issues. We have been working with the HMRC to combat illicit trade within the infra-structure of a Memorandum of Understanding (MoU) for a decade. A revised MoU will officially be signed on 5 September 2013. We regard the MoU as a serious attempt by the parties to work more closely to tackle illicit trade in all its forms. The Department of Health and various Non-Governmental Organisations (NGOs) seemingly attempt to prevent this co-operation by incorrectly quoting the Framework Convention on Tobacco Control (FCTC) Article 5.3. We accept and comply with the requirements of Article 5.3, that public health policies with respect to tobacco control should be protected “from commercial and other vested interests of the tobacco industry in accordance with national law”. Our work with HMRC and other agencies, including Trading Standards, is not related to health policy, is open and transparent and we have clearly demonstrated to HMRC and others the value we can contribute.

26. The collaborative approach needed to effectively tackle illicit trade is undermined by attempts to block dialogue and intelligence sharing between tobacco companies and Government. Tobacco companies are excluded from debates on illicit trade despite having more relevant expertise, experience and information than the NGOs who are invited. Looking ahead, if the implementation in the UK of the FCTC Anti-Illicit Trade Protocol is to be successful, tobacco companies need to be fully involved. Their exclusion would be counter-productive to the stated intention of combatting illicit tobacco.
27. We currently pay for sniffer dogs to help some Trading Standards authorities in their work to track down illicit tobacco. Unfortunately, some authorities will not accept this form of support because they erroneously argue it would contravene Article 5.3. This type of approach is both regrettable and counter-productive, and merely serves to undermine the efforts of tobacco companies which want to support authorities with whom there is common cause.
28. In the EU, we initiated an agreement with the European Commission (EC) which was signed by ourselves, the EC and each Member State in September 2010. Through this 20 year partnership we work with the EC through the European Anti-Fraud Office (OLAF), together with the law enforcement authorities in the Member States, to tackle the smuggling and counterfeiting of tobacco products. The agreement strengthened existing joint initiatives to combat illicit trade, and included investment from Imperial Tobacco of c£200 million over 20 years. We are proud of this partnership and invest time and resource to make it work effectively.
29. One of the key contributions we endeavour to make is through the provision of strong intelligence. Intelligence is the key to effective enforcement. Sourcing of illicit tobacco is global and an international network is essential for gathering intelligence on shipments to the UK. Imperial Tobacco is proud to work closely in partnership with HMRC and through shared intelligence some major seizures have been made including "Machine 18", a notorious cigarette counterfeiting machine that is estimated to have produced over seven billion counterfeit cigarettes for the UK market. The machine was seized in Eastern Europe late last year.

30. The following table lists significant seizure events from 2013 that occurred as a direct or indirect result of our work, and which would likely have impacted the UK. The largest of the seizures by volume was in Hamburg, in May 2013. We passed intelligence to OLAF on a suspect shipping container – declared as a consignment of towels – that had been generated from our port monitoring programme in Jebel Ali. OLAF notified German Customs, which led them to identifying six containers of illicit whites. In total, 53 million cigarettes were seized, the destination for which was believed by German Customs to be the UK.

| <b>Date</b><br><b>2013</b> | <b>Country of</b><br><b>seizure</b> | <b>Town</b>          | <b>Counterfeit</b><br><b>Imperial brands</b><br><b>or non-Imperial</b> | <b>Quantity –</b><br><b>cigarette</b><br><b>equivalent</b> |
|----------------------------|-------------------------------------|----------------------|--|--|
| <b>January</b>             | Romania                             | Manesti village      | Non-ITL  | 15,000,000   |
| <b>April</b>               | UK                                  | Southampton          | GV   | 12,400,000   |
| <b>May</b>                 | Germany                             | Hamburg              | Non-ITL  | 53,000,000   |
| <b>May</b>                 | Belgium                             | Zaventem             | Non-ITL  | 8,000,000  |
| <b>May</b>                 | Poland                              | Poznan               | GV   | 900,000  |
| <b>May</b>                 | Greece                              | Piraeus              | Embassy<br>(& non-ITL)   | 8,520,000  |
| <b>June</b>                | Poland                              | Poznan               | GV (& non-ITL)   | 6,800,000  |
| <b>June</b>                | Ukraine                             | Odessa               | Super Kings  | 7,200,000  |
| <b>July</b>                | Netherlands                         | Rotterdam            | Non-ITL  | 6,000,000  |
| <b>July</b>                | Lithuania                           | Paliune              | Regal & West   | 1,353,980  |
| <b>August</b>              | China                               | Shenzhen,<br>Longgan | GV   | 10,000,000   |

31. We are also investing heavily in technology. Whilst not a silver bullet to illicit trade, technology is a key tool in securing the legal supply chain, and in providing credible and robust information to help Customs and law enforcement agencies to combat illicit trade. We are currently implementing Codentify technology at pack level for all UK domestic cigarettes and roll-your-own tobacco with the aim of complete market coverage by end 2014. The unique code on each pack will allow enforcement agencies, particularly HMRC, to quickly determine genuine tobacco products from counterfeit, using mobile phone and

SMS or App technology. Information gained from this technology should prove invaluable in assisting UK enforcement agencies to fulfil their remit, and we look forward to working closely with them to maximise its potential effectiveness.

## **Conclusion**

32. We oppose illicit trade and are committed to working with governments and enforcement agencies to tackle it. In the UK, up to £2.9 billion revenue was lost in 2010/2011 as a result of tobacco smuggling, the primary driver for which is the very high UK excise rates. These rates create both affordability barriers for many smokers and opportunities for criminals to generate profits. The situation is already bad and it will be made worse by several proposed regulations with foreseeable adverse consequences. Within this environment, in our view HMRC, the Border Force and other enforcement agencies need to be appropriately resourced and they need to be fully aligned, to enable them to fulfil their function even more effectively. Unambiguous messages need to be delivered that involvement in the illicit trade has serious penalties. Finally, a more measured approach to tobacco taxation is essential. Without altering the dynamic of the root cause, the problem is unlikely to be resolved.

**Imperial Tobacco Limited**

**29 August 2013**



## Written evidence from Japan Tobacco International [TOB15]

### **Organisation name**

Japan Tobacco International (*JTI*).

JTI is part of the Japan Tobacco group of companies, a leading international tobacco product manufacturer.

JTI's UK headquarters is in Weybridge, Surrey, and its manufacturing facility is in Lisnafillan, Northern Ireland, where it has a long-standing and significant presence. JTI's cigarette brand portfolio includes Benson & Hedges, Silk Cut, Winston, Camel, Mayfair, Sterling, Sovereign and more, as well as a number of other tobacco products including cigars (such as Hamlet), roll-your-own tobacco (such as Amber Leaf) and pipe tobacco (such as Condor).

Gallaher Limited is the registered trading company of JTI in the UK.

### **Confidentiality**

JTI is happy for this response to be made public

## Introduction

1. JTI welcomes the Home Affairs Committee's (the **Committee**) inquiry into tobacco smuggling and the illicit trade in tobacco within the UK (the **Inquiry**).<sup>1</sup>
2. The illicit trade in tobacco directly threatens the jobs of more than 1,800 people who work for JTI in the UK. This threat strengthens our resolve in the fight against the problem. In that regard, we are committed to partnering HM Revenue & Customs (**HMRC**) through its *Tackling Tobacco Smuggling* strategy.
3. JTI agrees with the Rt Hon Keith Vaz MP that tobacco smuggling is a significant threat to UK tax revenues. We also consider that the illicit trade in tobacco is a threat to the viability of many retailers, and undermines efforts to prevent sales of tobacco products to the underage.
4. Our assessment of non-UK duty paid (**NUKDP**) cigarette consumption, of which smuggling is one element, is that it is on the rise across the UK.<sup>2</sup> JTI estimates that NUKDP cigarette consumption increased from 17% in 2011 to 21% in 2012. NUKDP hand-rolling tobacco (**HRT**) decreased from 50% of total consumption in 2011 to 47% in 2012. Overall, we estimate that the total NUKDP figure for tobacco consumption (including cigarettes and HRT) rose from 29% in 2011 to 31% in 2012.
5. The smuggling of cigarettes and HRT across the whole of the UK leads to a substantial loss of revenue to the Government - as much as £34 billion in the last 10 years according to HMRC.<sup>3</sup> In addition, over this period there is an implied revenue loss through cross-border shopping in tobacco products of up to £14 billion.
6. It has long been understood that the high level of taxation on tobacco, the differential in duty rates between neighbouring countries and the role of organised criminal gangs (**OCGs**) are significant factors in encouraging the illicit trade in tobacco in the UK. For example, the 1999 Taylor Report on Tobacco Smuggling found that "*[t]he principal cause of the smuggling, of course, is the high level of duty in the UK*".<sup>4</sup>
7. JTI sets out its answers to the Committee's stated lines of inquiry below.<sup>5</sup>

## Why the number of arrests, prosecutions and convictions for tobacco smuggling have fallen over the past three years

8. The number of prosecutions for tobacco related fraud in 2012/13 has in fact reached its highest level in recent times.<sup>6</sup> Nevertheless, JTI does not believe that enough prosecutions are pursued given the scale of the tobacco smuggling problem, and we agree with both Lin Homer (Chief Executive, HMRC) and Sir Charles Montgomery (Director General, UK Border Force) that more could be done in this regard.<sup>7</sup> If the Government wants to better tackle tobacco smuggling, it should make available additional funds that will allow HMRC and UK Border Force to pursue the more costly option of seeking criminal prosecutions.
9. JTI is encouraged by HMRC's use of VAT and Excise wrongdoing penalties to deter and punish those involved in smuggling illicit tobacco. We recommend a greater application of such penalties for the lowest level of offences because they are the most cost and deterrent effective options (as opposed to arrests and prosecutions). We hope, however, that adequate resources are being committed to the collection of such fines.

## Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13

10. JTI agrees with the following reasons suggested by Sir Charles Montgomery:<sup>8</sup>
  - (a) Methods of smuggling tobacco into the UK are varied and variable, making detection and seizure a challenging process.
  - (b) Seizures outside of the UK have gone up and Sir Charles suggests that this should mean less illicit tobacco is making its way into the UK. In this regard, we note that work undertaken by HMRC outside the UK through its network of Fiscal Crime Liaison Officers has prevented illicit tobacco products from reaching UK borders. Overall cigarette seizures, regardless of where they take place (e.g. inland, border and overseas), have remained consistently high at between 1.7 and 1.9 billion cigarettes per annum over the past five years. There has also been an upward trend in the amount of HRT seized over the same period.
  - (c) Two UK Border Force initiatives failed to deliver as anticipated.
11. Further, we note that due to the very nature of the illicit trade in tobacco, it is difficult to predict how much illicit tobacco will be detected and seized by whom and in what locations for any given period.

## Whether the current sanctions and penalties for tobacco smuggling are appropriate

12. OCGs are attracted to tobacco smuggling as it is considered a high profit, low-risk activity incurring less severe sentences than other forms of illegal activity. Nevertheless, the maximum penalty for excise fraud (up to seven years imprisonment) is severe, and JTI's concern lies in the small number of convictions for serious cases of tobacco related excise evasion and the high percentage of non-custodial sentences for such offences in the UK.<sup>9</sup>
13. JTI believes that the serious criminal nature of the illegal importation and sale of illicit tobacco should be brought to the attention of sentencing judges, to the extent that is not already being done, through formal channels (such as by prosecution evidence and submissions and in the course of judicial training).
14. We note that the Department of Justice for Northern Ireland has recently consulted on adding offences involving excise evasion in relation to fuel and tobacco to the list of offences which can be referred from the Crown Court to the Court of Appeal where the Director of Public Prosecutions considers the sentence to be unduly lenient. We support this proposal.
15. We also welcome the introduction of tougher penalties for those caught selling tobacco products to children. Evidence indicates that the illicit market is a major source of tobacco products for the underage.<sup>10</sup> We also believe that retailers caught selling illicit tobacco products should be banned from selling tobacco.
16. Trading Standards also have an important role to play in combating the illicit trade in tobacco. Currently, they are unable to impose fines on those involved in the illicit trade in tobacco and instead rely on prosecuting infringements of the Trade Marks Act 1994, advertising regulations, requirements for health warnings on tobacco packaging and product safety issues. In many cases, these avenues are not appropriate or proportionate, or Trading Standards are not adequately resourced to pursue them. We suggest Trading Standards be empowered to issue a 'penalty notice' in appropriate circumstances to quickly and effectively punish those caught selling illicit tobacco.

## **The similarities and differences in patterns of tobacco smuggling in the UK and Ireland, how they affect each other, and the implications of the restrictions on National Crime Agency operations in Northern Ireland**

17. The UK and Ireland both have high levels of tobacco smuggling and cross-border shopping because they each have high-tax led prices - this is nothing new. As far back as 1995, the European Commission noted that: *"The United Kingdom and Ireland have experienced significant increases in the quantities of hand-rolled tobacco being brought back from other Member States (typically Belgium and the Netherlands) and ultimately being resold illegally on their domestic markets. This occurs because the difference in retail prices between the UK and Ireland on one the hand and their near neighbouring Member States is such that duty-paid products can be purchased in those neighbouring Member States and resold at a price well below the normal (duty-inclusive) retail price in the UK and Ireland."*<sup>11</sup>
18. In that regard, the Cross-Border Organised Crime Assessment 2012,<sup>12</sup> produced with the help of, among others, the Serious Organised Crime Agency and HMRC, states that OCGs take advantage of the rising price of cigarettes and HRT in the UK and Ireland by smuggling illicit tobacco. The Assessment also notes that OCGs on both sides of the border are known to work closely together in the trafficking of counterfeit/contraband cigarettes.
19. Once fully operational, we consider that the expertise of the National Crime Agency would likely assist in providing an overarching framework for fighting the criminal activity linked to the illicit trade in tobacco. In this regard, it is regrettable that the National Crime Agency will not be working at full capacity in Northern Ireland.

## **The possible impact of the introduction of standardised packaging in Ireland on the quantity and availability of illegal tobacco in the UK**

20. JTI considers that it is difficult to accurately predict the magnitude of this threat given that:
  - (a) Illicit trade is inherently difficult to measure (both in terms of existing levels, changes over time and the causes of those changes).<sup>13</sup>
  - (b) Australia is the only country in the world which has plain packaging in place and it is too early to assess in a meaningful sense the impacts of plain packaging there.
  - (c) There is, as far as JTI is aware, no established/recognised research base on the actual impacts (in terms of illicit trade or otherwise) on a neighbouring state of another having such a measure in place. It is right therefore that this Committee has called for evidence in respect of "the possible impact" of the introduction of plain packaging in Ireland on the illicit trade in tobacco in the UK and JTI has provided below its best assessment of such impacts.

### **Reduced costs burdens for illicit traders**

21. As JTI has recently drawn to the attention of the Irish Taoiseach, plain packaging will create economies of scale in production for criminal gangs: once one plain pack brand is faked, the counterfeiter can reproduce packaging of each brand on the market with minimum effort since the only difference on each pack is the brand name, which can only appear in a mandated font/size.

22. A uniform pack design in Ireland removes the need to keep up with manufacturers' evolving pack innovations and developments and, therefore, reduces the cost burden on counterfeiters since there will be no additional investment necessary until there is a further change in the law.
23. The 2012 report of Professors Zimmerman and Chaudhry entitled "*The Impact of Plain Packaging on the Illicit Trade in Tobacco Products*"<sup>14</sup> (the **Zimmerman Report**) explains that plain packaging for tobacco products will worsen the illicit trade in tobacco products as it would open a number of new opportunities for illicit traders while making it more difficult for consumers, retailers and law enforcement agencies to differentiate between genuine and fake packs. It goes on to conclude:
- "[P]lain packaging is highly likely to aggravate the existing negative impacts of the already serious and socially damaging trade in illicit tobacco. Since illicit products are often more accessible to those underage and those from low income groups, plain pack laws risk undermining a key objective of plain packaging: to reduce smoking by these groups."*<sup>15</sup>
24. A senior HMRC official has expressed similar concerns.<sup>16</sup>

## The pre-existing impact of Irish illicit trade on the UK

25. The high level of tax on tobacco in the UK already renders it vulnerable to the illicit trade in tobacco. The land border between the UK and Ireland (which has the highest tobacco prices in the EU and 28% of cigarettes in Ireland were non-Irish duty paid in 2012<sup>17</sup>) is one of various avenues that smugglers use to smuggle illicit tobacco into the UK.
26. The trade in illicit tobacco is already a crime of choice for Ireland's OCGs as a result of the perceptions set out in paragraph 12 above. Further, it is generally accepted that criminals are using the revenue generated from illicit tobacco sales to fund further criminal activity such as terrorism, gun and drug crime and human trafficking.
27. UK government authorities have long recognised this problem. In giving evidence to another Parliamentary Committee of this House, the Assistant Chief Constable of the Police Service of Northern Ireland (the **PSNI**) stated:
- "[Crime groups] have already recognised a porous land border, and that is a weakness that we in law enforcement have to eradicate. We have a huge challenge on the island of Ireland as a whole, particularly around organised crime and serious harm, be it drugs or human trafficking in all its guises."*<sup>18</sup>
28. The Head of the PSNI Organised Crime Branch explained to that Committee:
- "... once you have established a route that you are confident you can use, in essence it does not much matter what the commodity is. Whether it is people, firearms, cigarettes or fuel, if the route is secure, then anything can be smuggled."*<sup>19</sup>
29. As a result, near perfect market dynamics are already in place which will be exploited further by criminal gangs on both sides of the border if, as expected, plain packaging worsens the illicit trade in Ireland.

## Anticipated impact on the quantity and availability of illegal tobacco in the UK

### New smuggling opportunities for criminals

30. For the reasons explained above, plain packaging in Ireland will open up paradoxical marketing opportunities for counterfeiters at all levels of sophistication. For instance, those

counterfeiters with fewer financial resources will benefit because the cost of their operations will be reduced for counterfeiting plain packs. The counterfeiters who already possess the skill to manufacture existing branded packs will continue with their illicit operations.

31. The illicit tobacco products manufactured to satisfy market demand in Ireland are at risk of ending up in the UK, either because the porous border between these neighbouring countries makes this inevitable or certain criminal groups decide upon a 'cross-border' sales strategy. The likelihood of this happening will increase if the comparative price of lawful product between Ireland and the UK shifts (for example as a result of FX changes between EUR/GBP), such that legitimate product becomes comparatively even more expensive in the UK. The Zimmerman Report notes<sup>20</sup> in this context:

*"In December 2009, the Irish Minister of Finance announced that the government: "decided not to make any changes to excise on tobacco in this Budget because [the Minister of Finance] believe[s] the high price is now giving rise to massive cigarette smuggling"."*

### **Increased consumer complicity**

32. An increase in consumer complicity in illicit trade in Ireland driven by plain packaging cannot be 'ring fenced' and it will almost inevitably impact on societal norms outside Ireland. There are two obvious reasons why this poses a real risk to changing attitudes about illicit trade in the UK which are not just more tolerant of it, but demonstrate increased complicity in it.
33. First, some of those willing to purchase illicit trade products will move elsewhere (even if only temporarily). There has always been a significant movement of people from Ireland to the UK (whether to Northern Ireland or the mainland) to take advantage of, for example, job opportunities and this is likely to have only increased given the serious economic difficulties in Ireland since the 'Celtic tiger' period.<sup>21</sup>
34. Second, the 'normalisation' of illicit trade in Ireland will have an indirect impact (irrespective of emigration issues) as social media, which has no regard for national borders, is used by those perpetuating the myth that the purchase of illicit tobacco is a victimless crime, as popular opinion suggests. As noted in the Zimmerman Report, it has been said that, for many smokers, buying the product without paying duty casts the seller in the light of a benefactor rather than a criminal - 'the Robin Hood syndrome'.<sup>22</sup>
35. Put simply, if Irish smokers will become more immune to/complicit in this illicit trade, they might be more inclined to seek them out in the UK and perhaps even introduce their friends to such products as the stigma about illicit trade erodes.

### **The impacts of increased criminality in the UK**

36. Even if none of the illicit tobacco product manufactured for sale ends up in the UK (as unlikely as that is), there remains serious risks of negative impacts on the UK. One obvious example of this is the potential for increased criminality in the UK as a result of criminal gangs based in/operating out of the UK seeking to satisfy the Irish demand for illicit tobacco after plain packaging. This is particularly so given the recent trend (a recent NAO report stated: "*Illegal products are also manufactured in the UK, primarily counterfeit hand-rolling tobacco*"<sup>23</sup>).
37. The negative impacts of any increase in criminal activity in the UK (or it being used as a staging post for criminal activities elsewhere) will be very familiar to this Committee, but JTI has specific concerns about children and young people being left exposed to criminality as a result, noting, for example, that:

*"Children who buy cheap tobacco can come into contact with criminals. Some children are talked into selling cheap cigarettes on to school mates. People selling cheap tobacco are more likely to be selling other things illegally (DVDs, alcohol), exposing our children to more dangers."*<sup>24</sup>

# The relationship between tobacco smuggling, organised crime and paramilitary activity

38. Further to paragraphs 26 to 29 above, we agree with the observation in the Organised Crime Task Force's latest report that: "*local criminals operating in this area [i.e. illicit trade] will have links to international OCGs and it is not unusual for these established importation networks to be used to import other goods as well, such as drugs or firearms*".<sup>25</sup>
39. The 2012 Cross-Border Organised Crime Assessment recognises that such criminal networks extend to paramilitaries.<sup>26</sup>
40. JTI finally notes in this regard that the links the illicit trade has to broader illegal activity, including terrorism, demand that government policy in this area is firmly focussed on tackling the existing problem and not, as plain packaging would, providing improved opportunities for further criminal enterprise.

## Conclusion

41. We hope that the Committee will take into consideration our concerns about this problem during the course the Inquiry. We would be happy to provide the Committee with further details regarding these concerns in the form of oral evidence or further written submissions.

JTI

29 August 2013

<sup>1</sup> Given the limitation on the length of submissions to the Inquiry, JTI have sought only to address the specific questions raised by the Committee. JTI notes, however, that there are diverging views about the current illicit trade in tobacco products and how plain packaging risks exacerbating it, as reflected by criticism of JTI's related 2012 media campaign by certain tobacco control groups which were, in part, upheld by the ASA. JTI disagrees with the ASA's conclusions and remains of the view that these adverts provide an important contribution to the political debate.

<sup>2</sup> Based on Empty Pack Surveys (**EPS**). The EPS involves the physical collection of discarded empty cigarette packs. Upon collection, samples are either sent to independent or manufacturer laboratories for analysis as to their authenticity. In 2012, around 25,000 packs were collected from 105 sample points across the UK.

<sup>3</sup> £34.66 billion for the years 2001/2 to 2010/11 based on HMRC's upper estimates.

<sup>4</sup> The Taylor Report on Tobacco Smuggling was prepared by Martin Taylor for the then Chancellor, Gordon Brown.

<sup>5</sup> Separately, JTI have produced a number of documents that address the issue of illicit trade in more detail and we would be happy to provide the Committee with copies of these. Such documents include our "Response to the Department of Health's Consultation on the Standardised Packaging of Tobacco Products", July 2012 (available at [http://www.jti.com/files/4013/4149/4323/Packaging\\_Response.pdf](http://www.jti.com/files/4013/4149/4323/Packaging_Response.pdf)), and "The Billion Pound Drop", October 2012 (available at [http://www.jti.com/files/2413/5220/4070/The\\_Billion\\_Pound\\_Drop\\_website\\_version.pdf](http://www.jti.com/files/2413/5220/4070/The_Billion_Pound_Drop_website_version.pdf)). JTI has also commissioned expert evidence to assess the impacts of plain packaging on tobacco products: "The Impact of Plain Packaging on the Illicit Trade in Tobacco Products, June 2012" (available at [http://www.jti.com/files/5113/4150/5828/Impact\\_on\\_illicit\\_trade.pdf](http://www.jti.com/files/5113/4150/5828/Impact_on_illicit_trade.pdf)) by Professors Peggy Chaudhry and Zimmerman (the **Zimmerman Report**). Further details on our anti-illicit trade programme are also available here: <http://www.jti.com/how-we-do-business/anti-illicit-trade/overview/>.

<sup>6</sup> Hansard, 10 June 2013, Col. 38W.

<sup>7</sup> Oral evidence before the PAC, 24 June 2013, HC 297.

<sup>8</sup> Oral evidence before the PAC, 24 June 2013, HC 297.

<sup>9</sup> Customs and Excise Management Act 1979.

<sup>10</sup> A recent survey conducted in the North West of England found that 36% of underage smokers had bought cigarettes with foreign language health warnings (Trading Standards North West. Young Persons' Alcohol and Tobacco Survey 2013. Mustard, June 2013).

<sup>11</sup> COM (95) 285, p.18.

<sup>12</sup> Cross-Border Organised Crime Assessment 2012, An Garda Síochána, The Police Service of Northern Ireland, published by the Department of Justice and the Department of Justice and Equality, produced with the help of, inter alia, the Serious Organised Crime Agency (SOCA) and HMRC, available at <http://www.justice.ie/en/JELR/doj-cross-border-threat-assessment.pdf/Files/doj-cross-border-threat-assessment.pdf>.

<sup>13</sup> As noted in the Zimmerman Report "*In general, attempting to measure the global value of illicitly traded products is inherently difficult, and there are no reliable global statistics.*" Professors Chaudhry and Zimmerman conclude that: "*Policy makers should be aware that plain packaging will, in our expert opinion, make the illicit trade in tobacco worse and these policy makers should therefore be exceptionally careful to ensure that such regulations do not inadvertently undermine anti-illicit trade programs and initiatives.*", pp. 10 and 3.

<sup>14</sup> Alan Zimmerman is Professor of International Business and leads the International Business Programme at City University of New York, College of Staten Island, New York, United States of America. Peggy Chaudhry is an Associate Professor of International Business at the Villanova School of Business, Villanova, Pennsylvania, United States of America. They are the co-authors of "The Economics of Counterfeit Trade" and have been involved in an extensive set of research projects examining various aspects of the global trade in illicit products.

<sup>15</sup> The Zimmerman Report, Executive Summary (page 2).

<sup>16</sup> Mike Norgrove, Director, Excise, Customs, Stamps and Money, HMRC, appearing before Northern Ireland Affairs Committee, 5 September 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmniaf/uc556-i/uc55601.htm>.

<sup>17</sup> Source: Empty Pack Survey.

<sup>18</sup> *Fuel laundering and smuggling*, Oral Evidence before HC Northern Ireland Affairs Select Committee, Q179 and Response of Assistant Chief Constable Drew Harris of the Police Service of Northern Ireland, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmniaf/uc1504-iv/uc150401.htm>.

<sup>19</sup> *Ibid*, see Q159.

<sup>20</sup> The Zimmerman Report, footnote 292. Professors Zimmerman and Chaudhry go on to note (at paragraph 228) that "*Due to the hike in excise duty over this period, the price of a pack of 20 cigarettes in Ireland reached the highest in the EU at €8.45 a pack in 2009, €2 more than the EU country with the second highest prices. As at the date of this report, the exchange rates and the increase in duty mean that the UK is the most expensive market in the EU.*"

<sup>21</sup> "*Northern Ireland has witnessed an unprecedented wave of international migration... In the process, Northern Ireland has moved from a position of net migration loss to one of annual population gain.*" Northern Ireland Assembly Research and Information Service Research Paper, February 2012, Dr Raymond Russell "Migration in Northern Ireland: an update", NIAR 10-12, <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/general/3112.pdf>. "*According to the Republic of Ireland's Central Statistics Office (CSO) 42,000 Irish people left the country in 2011. The 2011 Irish census showed 20,000 people emigrated from Ireland to the UK, although the statistics available do not distinguish between Irish nationals and foreign nationals.*" <http://www.bbc.co.uk/news/uk-northern-ireland-20821292>.

<sup>22</sup> The Zimmerman Report, paragraph 187.

<sup>23</sup> Paragraph 1.5, page 12, *Progress in tackling tobacco smuggling, Report by the Comptroller and Auditor General*, 4 June 2013, <http://www.nao.org.uk/wp-content/uploads/2013/06/10120-001-Tobacco-smuggling-Full-report.pdf>.

<sup>24</sup> "What is cheap or illegal tobacco," UK Department of Health and Smokefree South West 2011, accessed at <http://www.stop-illegal-tobacco.co.uk/illegal-tobacco.aspx>.

<sup>25</sup> Annual Report & Threat Assessment 2013. Organised Crime Task Force, June 2013.

<sup>26</sup> The report notes that: "*dissident republican groups remain largely dependent on organised crime to fund their activities and are suspected of involvement in a range of criminality including, among others, fuel and cigarette smuggling, extortion, armed robbery, burglary and counterfeit currency.*"



Written evidence from the Asian Media and Marketing Group [TOB16]

1. Asian Trader represents a readership of over 200,000 and we regularly speak out on behalf of our readers to voice their concerns, not just through Asian Trader but also, on their behalf to Members of Parliament. This readership includes over 47,000 convenience stores and newsagents nationwide, which make a huge contribution to the UK economy, and not just financially - they are often the heartbeat of their community.
2. The Asian community owns over 75% of all convenience stores/newsagents nationwide. As such convenience retailing, and the struggles independent store owners face, is a key concern of ours and one we regularly write about. Only to frequently do we cover the impact of the illicit tobacco trade on our honest retailers and their local communities.
3. In our experience, counterfeiting and smuggling is already having a devastating effect on small retailers. In addition to the illicit trade costing the taxpayer almost £2bn according to the recent National Audit Office report - and this is conservative as these are HMRC figures based on 2011 data - the average convenience retailer loses more than £40,000 every year through illegal tobacco sales. Illicit traders - often part of criminal gangs - continue to lurk in street corners across the UK with no regard to who buy their products.
4. The inability of HMRC to control the illicit trade in tobacco products gives smugglers and counterfeiters a platform to expand their illegal activities. It is clear from the recent National Audit Office report that not enough is being done by HMRC and Government to tackle the illegal trade in Roll Your Own (RYO) and cigarette smuggling. According to the report, non-duty paid product for RYO and cigarettes represent 38% and 9% of UK sales - our readers have told us this is more like 49% and 14% respectively.
5. Furthermore the majority of stores are run by families where ladies are at the till and are being exposed to threats and violence by criminal gangs.
6. The Police are unable to respond in time and often will not attend unless blood has been spilled.
7. These stores are at the heart of their local community and play an integral part on the High Street.
8. Whilst many areas of this inquiry are out of scope for our comment, on behalf of our readers we wanted to thank the Home Affairs Select Committee for launching this inquiry. The Government needs to crackdown on the illicit trade, and introduce more severe penalties for criminals who knowingly sell illegal product to smokers.
9. As an organisation we are happy to play our part in assisting with this where we can; and we will continue to work with Asian Trader retailers to encourage them to report any illegal activity in their area to the relevant authorities in order to protect their livelihoods. In our experience, retailers are often best placed to do so, however they suffer from the lack of joined up working between local police and Trading Standards services.
10. I felt it may be useful to include some of the recent cuttings from Asian Trader on this topic which highlight just some of the concerns of our retailers - you can find these attached.
11. In the interests of transparency, Asian Media and Marketing Group regularly receives funding from tobacco companies both for marketing and campaigning purposes. However, the views expressed represent the legitimate concerns of our contributing retailers and readership. We stand as guarantors of this.
12. If I can be of any further assistance please don't hesitate to let me know

29 August 2013

## **Introduction**

The Scottish Grocers' Federation (SGF) welcomes the opportunity to respond to this important inquiry into tobacco smuggling. SGF is the national trade association for the Convenience Store sector in Scotland. The sector in Scotland provides upwards of 40,000 jobs across more than 5,000 Convenience Stores – there are more Convenience Stores in Scotland per head of population than in the rest of the UK.

We work closely with our partner organisation in England, the Association of Convenience Stores (ACS). Several of the key points made in our submission will affirm key points from ACS's own submission to the Committee. We will also include information specific to Scotland, which we hope the committee will find useful.

Tobacco represents an important category for the convenience market, and we advocate the responsible sale of tobacco products through vigorous age verification policies within our members' stores.

All of our members accept that tobacco must be controlled and regulated but this can only be done if tobacco products are made by legitimate manufacturers and sold by responsible retailers.

Illicit sales of tobacco products create significant burdens to both convenience store retailers and the Government. The availability of cheap, illicit tobacco within communities harms legitimate retailers who sell products legally and in a responsible manner through implementing age restriction policies within their stores. Businesses not only lose direct sales of tobacco to illicit traders, but also suffer a drop in footfall (and therefore an overall drop in sales) from customers who stop coming into their shop.

As the Committee will be aware, the UK Government has indicated that it will not proceed with any measures to introduce standardised packaging of tobacco products until evidence of the impact of this policy from Australia can be gathered and analysed. Additionally, the Environment and Public Health Committee of the European Parliament recently voted against adopting measures on standardised packaging in the revision of the European Tobacco Products Directive. However, the Scottish Government has indicated that it intends to press ahead with its own plans to introduce standardised packaging. We have a strong concern that this will simply be a boost to the illegal trade. Evidence from empty pack surveys suggests that currently about 13% of tobacco products used in Scotland are illicit in one form or another. It is vital that this problem is not exacerbated through ineffective policies such as standardised packaging. Additionally such a measure is likely to create a problem of cross border smuggling within the UK. A wider issue the Committee may wish to consider is whether or not the Scottish Government has the power to legislate for these measures.

As operational targets for tobacco seizure have been missed in 2012-13, priority should instead be given to growing activity and regulation against the illicit trade to avoid undermining the progress already made by the Government and legitimate retailers to lower the number of smokers and to ensure that underage children cannot access these products. Illicit traders target those living in lower-income areas, particularly children, who are not only attracted by the lower price of illicit products, but also by the ease of access to them, owing to a lack of age restriction enforced by this market.

## **Why Border Force failed to meet its operational targets for tobacco seizure in 2012–13**

Although HMRC has made significant progress in tackling the illicit trade at UK borders, the lack of focus on the growth of volume crime on the ground in communities has meant that inland illicit activity has been able to thrive in our most vulnerable communities, and has contributed to the failure of HMRC to reach its operational targets in 2012-13.

This is evident from HMRC's own statistics on prosecutions. The proportion of prosecutions for inland seizures compared with those on the border and overseas is extremely low, and targets have also been missed in this area. For instance, only 5% of cigarettes seized in 2010-2011 and 14% of Hand Rolling Tobacco were seized inland<sup>1</sup>.

Government-led responsibility for tackling smuggling lies with HMRC; however local agencies have the network and the people to identify illegal tobacco sales in the community, particularly in the case of low-level volume crime. There are currently limited links between these agencies, and there is a pressing need for a more co-ordinated approach between local and national enforcement. Clear responsibilities should be outlined for Trading Standards and local police in this area; they should not serve as merely a supporting partner of HMRC.

## **Whether the current sanctions and penalties for tobacco smuggling are appropriate**

The Committee may find it useful to know that since 2011 anyone who wishes to sell tobacco in Scotland must be registered on the Scottish Government's Tobacco Retail Register – the scheme currently has approximately 11,000 registered sellers. SGF's members have on the whole been very positive about the register – they are willing to be seen as responsible and legitimate retailers. A key factor in the high levels of registration is that there is no charge attached to registering and it can be done through a fairly simple on-line process.

There are serious consequences for retailers who are not in compliance with the new smoking legislation. The Tobacco and Primary Medical Services (Scotland) Act 2010 gives powers to Trading Standard Officers to issue fixed penalty notices for offences, including selling tobacco to under 18s and not being on the Retailer Register. If a retailer is found to be in breach of tobacco sales legislation three times within a two year period, a Local Authority can apply to the courts to have the retailer banned from selling tobacco.

For the first time under tobacco sales laws, those found to be selling tobacco illicitly by not being on the Register can be fined up to £20,000 and sent to prison for six months. Scotland is the only nation of the UK to have such a scheme in place. The registration scheme gives a wider range of tools to Trading Standards which will help them in enforcing age restriction laws. However, we have a concern that offences against the scheme are not being prosecuted with sufficient force possibly due to a lack of resources on the ground as public spending continues to be cut back. Our understanding is that in 2011-2012 there were no prosecution for offences relating to the Register.

As with our colleagues from ACS, we believe that current sanctions against tobacco smugglers, particularly those who operate on the ground within communities, are not strong enough and do not target the correct people. Current activities, such as the use of UK Duty 'fiscal mark' detector and banning orders do not target illicit traders who trade in locations

<sup>1</sup> HMRC Tackling Tobacco Smuggling

such as vans and tab houses, but instead impose further regulatory burdens on legitimate retailers.

In addition to additional resources for Trading Standards and local police to be able to bring action against illicit tobacco traders, new and harsher penalties to deter these sellers should also be introduced. The current structure of sanctions is counter-productive and needs to be tackled. Current sanctions are also too complicated and time-consuming for HMRC to pursue.

A suite of new and easy to administer penalties targeted at sellers of smuggled tobacco products should be introduced, including:

- Sentencing guidelines ensuring that offenders caught selling stocks of illegal tobacco, with sanctions starting from a fine escalating to imprisonment for the most serious offences.
- Parity with the penalties for dealing category C drugs, as stated in Schedule 4 of the Misuse of Drugs Act (1971). Currently, the punishment for smuggling tobacco is half that of smuggling Class C drugs, as it is seen as a lucrative and less risky option for criminals.

We hope the Committee will find this submission helpful. We would be very willing to engage further with the Committee in whichever way is most useful.

John Lee, Public Affairs Advisor

Scottish Grocers' Federation

28<sup>th</sup> August 2013.

## Written evidence from Petrol Retailers Association [TOB18]

### 1. Introduction:

1.1 The Petrol Retailers Association (PRA), part of the Retail Motor Industry Federation (RMI), represents 5,500 independent fuel retailers across the UK, many of whom are small rural filling stations. The retail sector makes a key contribution to the British economy, supporting jobs in communities across the United Kingdom. Forecourt retailing is one of the UK's most regulated industries and tough economic times, alongside wave after wave of new regulation, are making such businesses financially stressed. Another 175 forecourts have closed across the UK in the last year alone and 6,000 have closed since 1998.

1.2 The PRA welcomes any request to give oral evidence to the Home Office Select Committee relating to this submission.

### 2. Declaration of Interests:

2.1 The PRA supports openness and transparency and are therefore willing to disclose that we have some tobacco manufacturers/suppliers amongst our wide range of associates and retail members. The views within this response are widely shared by our members and as such the PRA would hope that the Government give this submission equal treatment as with all other legal, legitimate and law abiding participants

### 3. Our Concerns:

3.1 Tobacco is a legal product and is a vital part of the independent forecourt shop sales, contributing between 30 to 50% share of overall revenue – 79% of our retailers think that tobacco is directly important to their bottom line.<sup>1</sup>

3.2 The forecourt sector is already hit hard by the illicit trade in terms of both fuel and tobacco. The illicit trade of tobacco undermines the responsible retailer business and is wholly detrimental to those working within the confines of the law. Not only do retailers suffer financial loss at the hands of illegal traders, the Treasury cannot afford to compromise tax revenues at a time when the economy can ill afford any further costs or losses of revenue.

3.3 The high profits and low risk involved in smuggling and counterfeiting tobacco allows criminals to make considerable returns by undercutting legitimate retail sales with products that have been known to contain asbestos, dead flies and faeces. Therefore, illicit tobacco undermines small retailers such as our members by depriving them of key earnings whilst having a detrimental effect on general footfall as consumers do not enter their shops to buy other groceries. The social cost of the illicit trade is also extensive, with revenue from the sale of illicit tobacco directly funding all manner of criminal activity that could overflow into the local community, where our members' businesses are located.

3.4 A report from KPMG<sup>2</sup> in April 2013 showed the UK has the fastest growing problem with illicit tobacco in the entire EU – with contraband and counterfeit production increasing by 6.4% in the last year. The same report shows that the illicit trade in the UK is the fourth highest in the EU, behind only Lithuania, Republic of Ireland and Finland. Unregulated products are being manufactured for the sole purpose of being smuggled to the UK where they are sold on the streets, in markets and by gangs at pocket money prices.

<sup>1</sup> Populus (November 2012) Philip Morris International, Poll of UK Petrol Retail Association Members

<sup>2</sup> KPMG, (2013), Project Star 2012 Results

[http://www.pmi.com/eng/media\\_center/media\\_kit/documents/project\\_star\\_2012\\_final\\_report.pdf](http://www.pmi.com/eng/media_center/media_kit/documents/project_star_2012_final_report.pdf)

3.5 In a poll<sup>3</sup> at the end of last year nearly two-thirds of our members stated that illicit tobacco is having an impact on their business with 34% being aware of illicit products being sold in their area and nearly half believing it is easy to buy them. In addition to this 64% of retailers believe the illicit tobacco trade has a detrimental impact on their business.

3.6 Certain initiatives for discouraging smoking proposed in the UK, Europe and around the world may in fact be fuelling the 'black market', having the opposite effect than that intended. In the early 1990s this was seen in Canada when attempts at controlling tobacco use resulted in a surge in illicit tobacco that ultimately culminated in a reverse in Government policy and the rescinding of a string of policy proposals. As such we remain concerned about the impact of excessive regulations on the UK's already significant (and growing) illicit trade problem. For example:

- Proposals for Scotland and Northern Ireland to move ahead with plain packaging of tobacco products are likely to lead to a growth of the illicit trade across the UK and Northern Ireland region by making the area more attractive to criminals.
- The European Union's proposals for a revised Tobacco Products Directive include complete bans on menthol, slims and 10-packs of cigarettes. With menthol taking approximately 8% of the UK market, and 10-packs 20% this could make the illicit trade even more attractive to consumers who want to smoke their product of choice.

#### 4. Conclusion:

4.1 In summary the PRA is concerned that proposed government measures, at both a UK and European level, could increase the illicit tobacco trade and accelerate the already worrying trend of independent petrol forecourt closures. Whilst we welcome government plans to stall the proposed implementation of standardised packaging for tobacco in England we are worried that the scheme could adversely impact our members in Northern Ireland and Scotland, who could see both retail sales and general footfall decrease as a result. It is clear that government need to gain better control of the illicit tobacco trade, but the PRA urge them to turn attention to disrupting illegal supply chains and increasing the amount of arrests, prosecutions and convictions as opposed to penalising the tobacco retailer industry as a whole.

Petrol Retailers Association

August 2013

<sup>3</sup> Populus (November 2012) Philip Morris International, Poll of UK Petrol Retail Association Members

## Written evidence from SICPA UK [TOB19]

1. I am writing to you in order to contribute to the evidence which you are considering in the course of your inquiry into tobacco smuggling and the trade in illicit tobacco. In this letter we seek to explain how the UK could make progress in combating the illicit trade in tobacco products and increase tax revenues through the application of the latest secure tracking and tracing technology. We stand ready to provide additional information as required.

### **Our expertise**

2. SICPA is the leading international provider of security inks to central banks and high security printers for the production of bank notes. SICPA is also a **major independent supplier to governments of secure track and trace systems** which can be used for supply chain control **supporting the collection of excise and other taxes**. The company's SICPATRACE® platform is the basis for a number of successful national systems which have significantly raised tax revenues and reduced levels of fraud. Systems covering a range of products have been implemented in a diverse range of countries across the globe including e.g. Turkey (since 2007), Brazil (since 2008), the states of California and Massachusetts. Currently almost 80bn units of product are being marked and controlled by our systems annually. In consequence the company has extensive firsthand experience of the daily problems faced by governments and enforcement agencies in their efforts to combat the illicit trade in tobacco products and to maximise tax revenue collected.

3. Since its inception and initial deployment the SICPATRACE® platform has been continually developed in order to broaden the range of solutions available to our government clients. Attention has also been given to ensuring minimal interference with the activities of manufacturers and other stakeholders and to assure a level playing field for large and small manufacturers alike. The latest innovations and developments take full account of the requirements of the World Health Organisation's Framework Convention on Tobacco Control (WHO FCTC) including the provisions of the Protocol to Eliminate the Illicit Trade in Tobacco products (IPT) adopted in late 2012 in Seoul and which requires the introduction of a global tracking and tracing regime as a means of combating the illicit trade.

### **The UK**

4. No single system is likely to be able to completely eliminate the illicit trade in the UK given its different component parts, but SICPA believes that implementation of a **Government controlled independent system exploiting secure authentication and tracing and tracking functionality** would have significant positive impact and should be part of a comprehensive approach.

In summary this positive impact would result from:

- The **real-time ability to differentiate** genuine tax paid product from non-tax paid and/or counterfeit product
- The ability to do this in a way that provides **evidential level proof** that can be used to support criminal prosecution and civil sanctions, increasing the success rate and making prosecutions easier and cheaper

- The provision of **business intelligence** refined to meet the needs of the UK enforcement agencies enabling them, through e.g. better profiling and allocation of resources, to achieve a better hit rate
- **Inter-operability with multiple government systems** (health, customs, VAT etc) enabling data exchange and best data usage
- The ability to **connect to foreign national and multi-lateral control systems** as they come on line, further improving the intelligence flow and stemming cross-border flows, a multiplier effect.

### What is a secure track and trace system?

5. A secure track and trace system begins by securely marking a unit of product (e.g. a pack of cigarettes) and assigning to it a unique identity which is stored in a government owned and controlled database. This can be done in such a way as to provide a fully reliable test of authenticity and to be information rich (linked to data about e.g. product type, time and place of manufacture, intended market of sale et al). The unique identity and the database are the building blocks of a tracking capability which allows the unit to be followed throughout the supply chain - if required up to the point of sale to the consumer. They also provide the means to trace backwards in real-time to point of origin/manufacture etc. at anytime during the product lifecycle. **A properly secure system is essential to meet the challenge of ever more sophisticated organised crime groups.**

### The key components

6. The **quality of the marking system is key**. Marks that are properly secure and well-designed to meet the needs of the different stakeholders, such as those recommended by SICPA, are easy to use, make counterfeiting virtually impossible and provide information that enables enforcement. We assess that the current UK protection system (which we understand combines an easy-to-copy black ink 'UK tax paid' mark combined with a material-based feature on the tear tape) to be relatively weak. Moreover illicit cigarettes in high quality counterfeited packaging are difficult for enforcers to identify in real-time and need to be verified by manufacturers, which can cause inconvenience and delay.

7. SICPA recommends a **multi-layered approach combining material-based security features** (security inks which are both visible and invisible), **IT security features** (2D secure matrix, visible and/or invisible) and **forensic features**. Secure overt features can be seen by consumers thus encouraging good citizenship; additional semi-covert features can be made available to e.g. retailers so they can protect themselves from unscrupulous suppliers; covert features can be verified by enforcers using bespoke checking equipment and used as evidence.

8. Both domestically produced (including for export if required) and imported product can be marked, but by definition it is only possible to mark product which is produced in a declared/legitimate manufacturing facility and/or legitimately imported. This does not mean (as some manufacturers might claim) that the implementation of such a system has no impact on the black and grey markets (where product moves between illegitimate and legitimate channels). Illegal product (i.e. produced illegally such as 'illicit whites' or illegal by virtue of being non-tax paid) would be immediately



identifiable to all stakeholders by the absence of the appropriate secure mark. Checks by enforcers (linked back in real-time to the national database and able to share with and interact with other government databases) produce data not only to answer the question *'is this genuine or not?'* but to other enquiries such as *'Is this supposed to be coming here?'* and *'What tax has been paid?'*

## **Business intelligence**

9. Techniques for exploiting data are progressing every day and, as more data is collected over-time, become ever more powerful. Data analysis and automated comparison of different data sets can identify patterns and anomalies which allow enforcers to make interventions against targets that would otherwise not have been spotted and to identify changes in criminal behaviours. It also allows performance management of enforcer interventions (e.g. by locality or type) clarifying which interventions worked best.

## **International agreements**

10. The UK was an adopting party to the Protocol of the WHO FCTC to 'Eliminate the Illicit Trade in Tobacco Products' in Seoul in November 2012. As on so many topics where the UK has taken the lead, what the UK does in relation to the Protocol will be watched by other countries and followed by them. Much of the UK's problem has its origin overseas ('upstream') and proper implementation in these countries would positively impact on the UK.

11. The Protocol recognises the crucial global dimension of the illicit trade in tobacco products and the need to ensure international co-operation and joint working. Among the measures agreed is, in Article 8 of the Protocol, **the requirement to implement national track and trace systems which are globally inter-operable**. The Protocol foresees a five year period after coming into force for compliant national systems to be in place. In order to maximise value for money and longevity it is important that any system foreseen in the UK takes full account of the provisions of the Protocol, which includes the requirement that any system be **fully controlled by government and independent of the tobacco manufacturers**.

12. Having followed the process of negotiation with care and adapted our Research and Development programme to take account of it, we are conscious that implementing the spirit as well as the letter of the Protocol in an efficient way will not be a straight forward exercise e.g. it requires accurate aggregation (linking a single unit to higher level packaging i.e. a pack of cigarettes to its carton, and a carton to its mastercase et al) which requires high-level technical and engineering expertise as well as advanced IT. In this area, as in others, SICPA is a patent holder.

## **Common approaches between Ireland and UK**

13. The Committee has specifically noted its interest in the interrelationship between Ireland and the UK. Ireland currently has a tax stamp containing security features but no track and trace functionality. We believe that in the absence of a decision in the UK to follow suit, the implementation of standardised packaging in Ireland is likely to have little short term impact in the UK. Irish tax paid product (in

contrast to tax paid product in some other EU countries) is at least as expensive as UK tax paid product and not attractive to illicit traders. It is possible that implementation of standardised packages may encourage a rise in counterfeit product which imitates the standardised packs but this is likely to be essentially an Irish problem. These packs could be traded in Northern Ireland and other parts of the UK, but they would be clearly identifiable as non-UK tax paid. In the longer term and in view of proximity, current smuggling routes and the WHO FCTC IPT requirements, there would however be advantage in ensuring joint or fully compatible implementation of compliant control systems in Ireland and the UK.

### **Declaration of interests**

14. SICPA is a privately owned company with its HQ in Lausanne, Switzerland and subsidiaries/joint ventures in 30 countries including the UK. The company is a commercial supplier of track and trace systems to a range of governments on different continents. The company is listed in the World Customs Organisation databank of Advanced Technology with the following descriptive: *“Building on the heritage and the global experience of its security ink business SICPA Government Security Solutions has established itself as the provider of a new security standard that integrates ink-based covert features and sophisticated track and trace technology for product authentication and excise tax enhancement. SICPA has Product Security operational centres in Switzerland, the United States, Turkey, Brazil, Malaysia and Spain. To date, it is the only organisation in the world to have successfully installed secure track and trace systems that are independently run and controlled by governments only. These systems monitor hundreds of tobacco and beverage production lines worldwide, which results in more than 77 billion individual consumer products secured by SICPA Government Security Solutions S.A. every year.”*

Christine Macqueen, Director Corporate Affairs  
SICPA UK  
August 2013

## Written evidence from Irish Cancer Society [TOB20]

### Contents

Part 1: Recommendations for a national smuggling strategy

Part 2: The illicit tobacco market in Ireland

Part 3: Smuggling and standardised packaging

### Introduction

1. The Irish Cancer Society (the Society) welcomes the opportunity to provide information to the Home Affairs Committee's inquiry on tobacco smuggling and the trade of illicit tobacco.
2. While there are a range of questions posed by the Home Affairs Committee, the Irish Cancer Society is best placed to provide some general observations about tobacco smuggling in Ireland and to address the claim that standardised packaging in Ireland could impact on the 'quantity and availability of illegal tobacco in the UK'.
3. We hope that the information we provide will be considered as part of the Home Affairs Committee's inquiry into tobacco smuggling.
4. Smuggled tobacco costs the Exchequer €240 million in lost taxation (excise and VAT)<sup>1</sup> which deprives the general public of services that are beneficial to everyone. Furthermore, the availability of smuggled tobacco undermines health legislation that is designed to stop people smoking.
5. Tackling tobacco smuggling is a key Government and health objective. We believe that a new Tobacco Smuggling Strategy that recognises the potential of a partnership approach between health and revenue objectives is needed. The two are not mutually exclusive – in the UK there is considerable evidence that if enforcement of smuggling laws is adequate, the price of cigarettes can be increased significantly on an annual basis without concerns about any impact on smuggling rates.
6. The Revenue Commissioners, Irish Customs Service and other agencies, including the Naval Service and the Gardaí, play a fundamental role in the seizure of contraband cigarettes and tobacco in Ireland. Their work is essential in reducing the smuggling of contraband, which has serious implications, not only on public health but also for the Exchequer.<sup>2</sup> However, these enforcement bodies are under significant staffing pressures and have increasing workloads. For example, the Revenue Commissioners have reduced their staff numbers from 6,581 in January 2009 to 5,962 in January 2012<sup>3</sup>.
7. We want Ireland to follow the example provided by the UK which cut its smuggling rate from 21% in 2001 to 9% in 2011, whilst imposing such substantial increases in tobacco taxation that premium brand cigarettes are more expensive in the UK than in Ireland.

<sup>1</sup> Dail Eireann – Parliamentary Questions, 8 May 2013, Department of Finance, Illicit Trade in Tobacco.

<http://www.kildarestreet.com/wrans/?id=2013-05-08a.219&s=illicit+trade+in+tobacco>

<sup>2</sup> In July 2010, the Revenue Commissioners initiated a programme of nationwide blitz-type tobacco operations, which concentrated additional Revenue resources at ports, airports and at various retail points for the purpose of identifying and seizing illicit tobacco products. Three such operations were mounted in 2010, resulting in the seizure of more than 15 million cigarettes and 370kgs of tobacco (Revenue Commissioners' 2010 Annual Report). The overall value of combined seizure of cigarettes and tobacco for 2010 was €76.4 million.

<sup>3</sup> Revenue Commissioners (Feb. 2012) 'Revised Action Plan for the Revenue Commissioners under the Public Service /Croke Park Agreement', [www.revenue.ie/en/about/publications/revised-action-plan-2012.pdf](http://www.revenue.ie/en/about/publications/revised-action-plan-2012.pdf)

8. In this document, we provide information on our recommendations to the Irish Government and how some of these may be relevant in the UK as it considers the extent and availability of smuggled tobacco on its economy.

## **PART 1:**

### **RECOMMENDATIONS FOR NATIONAL SMUGGLING STRATEGY**

9. The Irish Cancer Society believes that the trade of smuggled tobacco can be addressed by the adoption of a comprehensive smuggling strategy. In our recommendations to the Irish Government, we have included the following proposals:

10. *Commit to reduce the illicit market by a specified target by 2016*

The Revenue Commissioners and the Government should set and publish a quantified objective by which it aims to reduce the market share of illicit cigarettes and hand-rolled tobacco. We believe a 1% annual reduction is possible (based on the UK's success) if resources are directed to this effort.

11. *Develop an inter-sectoral anti-smuggling strategy*

The UK's comprehensive National Anti-Smuggling Strategy hinges on a multi-layered collaborative approach across Government Departments, law enforcement agencies and community partnerships.

12. *Provide necessary resources – staffing and equipment*

We want better enforcement measures so that it is harder to bring illegal tobacco into Ireland. Ireland needs two additional scanners at Irish ports in the short term and this should be increased to six over the medium to long term. Funding from the tobacco industry for scanners should not be accepted.<sup>4</sup>

13. *Supply-side controls and sanctions*

Reduce the minimum indicative levels for travellers to the smallest amount allowable under EU rules.

Ensure sanctions for smugglers and sellers of illicit tobacco are comprehensive.<sup>5</sup>

14. *Demand-side controls and sanctions*

Legislation should be drafted that makes it illegal to buy non-duty paid tobacco. This would bring tobacco in line with the penalties for the purchase of other smuggled goods.

15. *Supply chain controls*

Introduce financial penalties on tobacco companies whose product is smuggled. In the UK, the Government has made it a legal duty for tobacco manufacturers not to facilitate smuggling and companies which fail to take sufficient steps to prevent their products being smuggled into the UK face fines of up to £5 million.<sup>6</sup>

<sup>4</sup> See Cigarette Consumption Surveys of the Revenue Commissioners.

<sup>5</sup> HM Revenue & Customs and UK Border Agency (2011) Tackling Tobacco Smuggling – building on our success.

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_Miscellaneous\\_Reports&propertyType=document&columns=1&id=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_Miscellaneous_Reports&propertyType=document&columns=1&id=HMCE_PROD1_031246)

<sup>6</sup> See, UK Finance Act 2006, see <http://www.legislation.gov.uk/ukpga/2006/25/section/2>.

- a. A recent answer to a Parliamentary Question<sup>7</sup> to Finance Minister, Mr. Michael Noonan, shows that tobacco companies have had to make substantial payments because contraband cigarettes are still finding their way onto the market:

**16. Figure 1: Payments to Ireland under international tobacco agreements**

| Year | Total Payments Received € |
|------|---------------------------|
| 2008 | 959,703                   |
| 2009 | 907,329                   |
| 2010 | 1,224,025                 |
| 2011 | 1,325,364                 |
| 2012 | 694,558                   |

- a. This represents a poor return in comparison to the tax being lost to the State each year through the smuggling of tobacco industry products.

*17. International activities*

The Government should sign and ratify the Framework Convention on Tobacco Control (FCTC) Illicit Trade Protocol as soon as possible, and begin consideration of how its provisions will be brought into effect in the Irish market.

Government should consider how the tracking and tracing provisions of the FCTC Illicit Trade Protocol can be implemented. In particular they must assess whether the Codentify system promoted by the major tobacco manufacturers meets the terms of Article 8 of the Protocol; whether it allows for effective tracking and tracing throughout the supply chain; and whether it could compromise the integrity and independence of enforcement action by public agencies.<sup>8</sup>

*18. Limit contact with the tobacco industry*

The Government should ensure, as far as possible, that the costs of implementing the provisions of the Protocol on Illicit Trade are borne by the tobacco industry, in line with Article 36.7 of the Protocol.

Government should limit their interaction with the tobacco industry as per Article 5.3 of the FCTC. Meetings with the industry should only occur at official level and only on issues directly related to the *regulation* of the industry. Any such meetings should be open and transparent, with all minutes made publicly available.

*19. Data*

We are concerned with the methodology, data collection and reporting practices used in tobacco industry-funded or commissioned reports about the illicit tobacco trade. We encourage policy makers to publically challenge tobacco industry figures when the industry goes to the media seeking support for their anti-health policies.

*20. Promote appropriate public health messages*

Government strategies should not include the view that counterfeit tobacco is more dangerous to health than manufactured tobacco. This is a view which is promoted by the tobacco industry.

- a. It is inappropriate and inaccurate to imply that manufactured tobacco products are somehow healthier, or safer.

<sup>7</sup>Parliamentary Question, Minister for Finance, 14<sup>th</sup> May 2013, 'Tobacco Control Measures'. Available at: [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/dail~20130514/\\$File/Daily%20Book%20Writtens%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/($vLookupByConstructedKey)/dail~20130514/$File/Daily%20Book%20Writtens%20Unrevised.pdf?openelement)

<sup>8</sup> See, All Party Parliamentary Group on Smoking and Health (2013) 'Inquiry into the illicit trade in tobacco products'. <http://www.ash.org.uk/APPGillicit2013>

## **PART 2**

### **THE ILLICIT TOBACCO MARKET**

21. Tobacco must be made less desirable, accessible and affordable. Price has been identified as the most effective barrier to smoking. However, the illicit tobacco market is seriously undermining efforts to reduce smoking prevalence further since illicit tobacco is sold at approximately half the price of legal tobacco.

#### **(A) Causes of smuggling**

22. *Smuggling is not about high price*

Research from the World Bank (summarised by Merriman, 2002) suggests that the main factors leading to increased smuggling are:

- The tobacco industry's own role in facilitating smuggling;
- Unlicensed distribution of cigarettes and other tobacco;
- Lax anti-smuggling legislation;
- Weak enforcement of anti-smuggling legislation;
- Official corruption;
- The existence of entrenched smuggling networks.

23. The World Bank suggests four general categories of policies to combat smuggling including:

- Reducing incentives for smuggling by harmonising tax and pricing policies;
- Reducing the supply of smuggled tobacco by regulating transport and retail sales;
- Reducing demand for illicit tobacco by influencing consumers not to purchase smuggled products;
- Increasing the certainty and severity of punishment through enhanced law enforcement and prosecution.

24. As with other countries around the world, smuggling does not arise in Ireland because the price of cigarettes is high. A high priced market is certainly an incentive for criminal gangs to try and find channels to smuggle cheaper tobacco into the country and undercut the legal trade, but if they are successful it is because these channels are open to exploitation and because of enforcement issues.

25. Tobacco manufacturers and their front groups lobby against tax increases every year prior to Budget day. Yet, while the tobacco industry actively lobbies against tobacco tax increases, arguing they lead to increased smuggling, they simultaneously increase their own prices year on year.

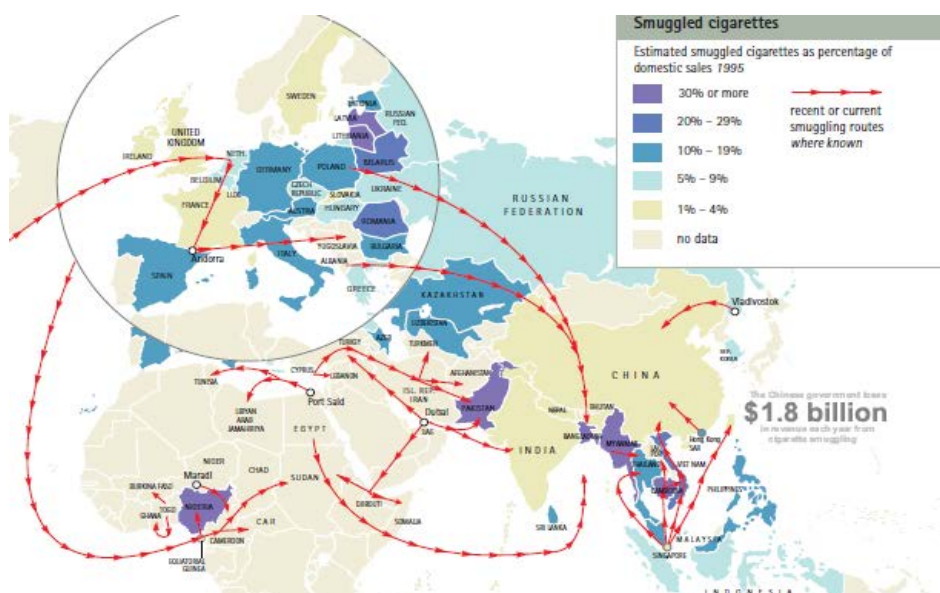
26. Figures just published in the Journal of Tobacco Control<sup>9</sup> shows that tobacco companies have driven around half of the price hike in UK cigarettes. The researchers analysed data from market research firm Nielsen and found that almost half (48 per cent) of the total increase in cigarette prices between 2006 and 2009 was as a result of tobacco firms. The remaining 52 per cent was caused by tax rises. The authors also say industry claims that tax increases are responsible for increased tobacco smuggling are misleading:

<sup>9</sup> Gilmore AB, Reed H. Tob Control Published Online First: [ August, 2013] doi:10.1136/tobaccocontrol-2013-051048

27. "These claims are made despite evidence of the far more complex supply-side drivers of the illicit tobacco trade (including tobacco industry involvement), recent survey evidence showing that price was unrelated to levels of illicit tobacco use across Europe, and data from her Majesty's Revenue and Customs showing that levels of illicit cigarettes in the UK have declined steadily to reach an estimated nine per cent by 2010-11... Should the industry be genuinely concerned that price increases fuel illicit tobacco use, it would surely not increase prices to this extent, particularly given its very large profit margins, which significantly outstrip those of consumer staple companies.'

28. The authors conclude that: 'Our findings are entirely consistent with evidence from Ireland<sup>10</sup> which showed that between 2000 and 2010, 36% of the price increase in cigarettes was imposed by the industry, despite its claims at every budget that tax (and thus price) increases would lead to smuggling.'

29. The final blow to the argument that high price leads to smuggling is that European countries with the lowest price have the highest smuggling rates. For instance, in Latvia, Lithuania and Romania, the smuggling rate is over 30% but the price of a packet of cigarettes is between €0.89 and €2.49.



### 30. UK success in reducing smuggling rates

The UK – with comparable tobacco prices to Ireland – has drastically reduced the size of the illicit tobacco market, while increasing taxation revenue from tobacco products. The level of cigarette smuggling in the UK has fallen from 21% in 2001 to 9% in 2011, despite considerable increases in cigarette prices over the last decade.

| Year   | £ RRP per pack of cigs <sup>11</sup> | Illicit market <sup>12</sup> | Total tax take (m) <sup>13</sup> |
|--------|--------------------------------------|------------------------------|----------------------------------|
| 2000/1 | 4.22                                 | 21%                          | 7,648                            |
| 2001/2 | 4.39                                 | 20%                          | 7,754                            |
| 2002/3 | 4.51                                 | 16%                          | 8,055                            |
| 2003/4 | 4.65                                 | 18%                          | 8,093                            |
| 2004/5 | 4.82                                 | 16%                          | 8,103                            |
| 2005/6 | 5.05                                 | 16%                          | 7,959                            |
| 2006/7 | 5.33                                 | 15%                          | 8,149                            |

<sup>10</sup> Howell F. (2012) 'The Irish tobacco industry position on price increases on tobacco products.' Tobacco Control, 21, 514–6.

<sup>11</sup> UK Tobacco Manufacturers Association, <http://www.the-tma.org.uk/tma-publications-research/facts-figures/uk-cigarette-prices/>

<sup>12</sup> HM Revenue and Customs, *Measuring Tax Gaps 2012*. <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf>

<sup>13</sup> HM Revenue and Customs Tobacco Bulletin, September 2012.

|                    |      |     |       |
|--------------------|------|-----|-------|
| 2007/8             | 5.44 | 14% | 8,094 |
| 2008/9             | 5.67 | 13% | 8,219 |
| 2009/10            | 6.29 | 11% | 8,813 |
| 2010/11            | 6.63 | 9%  | 9,144 |
| 2011/12            | 7.09 |     | 9,551 |
| From 21 March 2012 | 7.47 |     |       |

## (B) The Illicit Tobacco Market in Ireland

31. Smuggled tobacco accounts for 15% of the cigarette market in Ireland. This is calculated by the volume of cigarettes rather than by the number of smokers who smoke smuggled tobacco.
32. Contraband tobacco makes up 13% of total tobacco consumption in Ireland (calculated by volume). 'Illicit whites' and counterfeit cigarettes each make up 1% of the tobacco market but this is where the tobacco industry wants Government to focus its enforcement efforts. We need to focus on how branded tobacco is ending up on the illegal market.
33. Tobacco smuggling results in a loss of revenue which is vital to the Government's operations and can undercut health policies and the public service. Tobacco smuggling has become one of the most profitable forms of organised crime and is also a critical business for organised criminal gangs. A key issue in relation to the level of tobacco smuggling is the resources available for enforcement and the propensity for criminal activity.
34. The tobacco industry uses the issue of smuggling to argue against the introduction of health legislation designed to protect young people from tobacco marketing.

## (C) Measures to tackle the illicit tobacco trade

35. *FCTC Illicit Trade Protocol*
36. The WHO Framework Convention on Tobacco Control (FCTC) was first established in 2003 in response to the growing burden of tobacco-related diseases on society. In November 2012, the Protocol to Eliminate Illicit Trade in Tobacco Products, which is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), became a new international treaty in its own right.
37. Since the Protocol is the 'gold standard' in tackling smuggling, we believe that Governments should use it as a benchmark for where illicit trade has been effectively tackled and where it has not.
38. Given that the main source of smuggled tobacco is the tobacco industry itself (87% of smuggled tobacco is contraband), more efforts need to be made to restrict the industry's ability to flood cheap tobacco jurisdictions with product which they know will be smuggled into other European countries.
39. These export practices came under scrutiny in the UK Parliament's Public Accounts Committee hearings in May and June 2002, when members of the committee questioned tobacco industry executives committee member George Osborne MP said:

*"One comes to the conclusion that you are either crooks or you are stupid, and you do not look very stupid. How can you possibly have sold cigarettes to Latvia, Kaliningrad, Afghanistan and Moldova in the expectation that those were just going to be used by the indigenous population or exported legitimately to neighbouring countries, and not in the expectation they would be smuggled? You must know - you only have to read a newspaper every day, a member of the public could tell you - these are places which are linked to organised crime, that the drugs trade passes through all of these countries, that prostitution passes through all these countries. Did you not know that?"*



40. As recognised by the European Commission in its 2013 Communication on the illicit tobacco trade (p.10)<sup>14</sup> there is a need for tobacco manufacturers to better manage their own supply chains:

*“In light of the clear incentives for criminals to engage in illicit trade, measures to control the tobacco supply chains, either by authorities or by economic operators themselves, are largely insufficient.”*

*A part from existing agreements with the main manufacturers, there are so far no legal measures at EU level that oblige economic operators engaged in the tobacco supply chain to conduct due diligence during the course of their activities. There is also, at this stage, no general legal obligation in place for producers or importers to monitor the movement of cigarettes and other tobacco products through their supply chain (tracking). In the absence of such measures, it is very difficult (even impossible) for the authorities to determine at which point a product was diverted into the illicit trade (tracing). Considering the context of the trends and incentives outlined above, the current requirements on economic operators to control supply chains must, despite some success with regard to contraband of main brands, clearly be considered insufficient.”*

### **PART 3**

#### **SMUGGLING AND STANDARDISED PACKAGING**

41. The tobacco industry claims that the introduction of standardised packaging will increase the level of illicit trade. Why would this be the case? Standard packs are no easier to counterfeit. The covert security markings will still be on the packs and the tobacco industry themselves use measures other than branding to differentiate their product from counterfeit cigarettes. In Australia, the decision was taken by legislators that additional security markings were not needed when standardised packaging was introduced last year because they acknowledged that smuggling arises from enforcement issues rather than as consequence of new pack design.
42. So it is instantly clear that smuggling only occurs because there an opportunity to smuggle exists. It has nothing to do with counterfeiting standardised packs. It is worth reiterating that the size of the counterfeit market in Ireland is consistently overstated by the tobacco industry. In reality, it only makes up 1% of the total tobacco market whereas contraband cigarettes are 13% of the market.
43. While smuggling is an issue of concern to all stakeholders working to achieve a smoke-free environment for future generations, we need to disassociate it from health policy. Smuggling is an issue for Government enforcement agencies to address and need to be well resourced to be able to do so.

Irish Cancer Society  
August 2013

<sup>14</sup> P. 10 Communication from the Commission to the Council and the European Parliament (2013) 'Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy'

## Declaration of interests and scope of written submission

1. Action on Smoking and Health (ASH) Scotland is an independent Scottish charity that works to reduce the harm caused by tobacco. Our vision is of a healthier Scotland, free from harm and inequality caused by smoking. ASH Scotland was founded in 1973 under the auspices of the Royal College of Physicians of Edinburgh, and became a separate national organisation in 1993.
2. We conduct a range of work on smoking and health, including campaigning for more effective regulation of tobacco, designing and delivering training, coordinating tobacco control alliances and partnerships; providing a free expert information service; and by working with youth groups and those who experience health inequality as a result of tobacco. Our work includes the development of alliances of public health and enforcement partners to tackle illicit tobacco in Scotland<sup>1</sup>. Our campaigning work is funded by Cancer Research UK and the British Heart Foundation.
3. This written submission will highlight in 'recommendations' issues we believe are central in the consideration of what could and should be done to reduce the illicit trade of tobacco products in the UK, followed by a brief rationale behind these recommendations. We would be happy to provide more detail to the Committee about any issue raised in this document in any form it sees fit.

## Recommendations

4. We believe the Committee should:
  - recommend the UK sign and ratify the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) Illicit Tobacco Protocol as soon as possible - the Illicit Trade Protocol requires parties to take effective measures to control the supply chain of tobacco products, and fosters international cooperation to tackle this international problem
  - recommend continued joint work between HMRC, the UK Border Agency, and OLAF to effectively combat the illicit trade, and that funding supporting HMRC and UKBA work does not fall in the next spending round
  - recommend the Government should foster the development of local multi-agency partnerships to take strategic action against the illicit trade, containing representation from all relevant parts of each local authority (e.g. health, enforcement)
  - recommend that any future introduction of standardised packaging should include appropriate security and tracking features in such legislation, in accordance with the FCTC Illicit Trade Protocol and best evidence
  - in line with Article 5.3 of the WHO FCTC and associated guidelines<sup>2</sup>, obtain information from those providing oral or written evidence to this inquiry on any financial support, current or in the past, received from bodies involved in the manufacture, promotion or sale of tobacco products, received either directly or indirectly

<sup>1</sup> e.g. Scottish Tobacco Control Alliance. STCA Illicit Tobacco Initiative. Available from: <http://www.ashscotland.org.uk/what-we-do/scottish-tobacco-control-alliance/stca-meetings-and-events/stca-illicit-tobacco-initiative.aspx> [Accessed 28 August 2013]

<sup>2</sup> World Health Organisation. 2008. Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Available from: [http://www.who.int/fctc/guidelines/adopted/article\\_5\\_3/en/](http://www.who.int/fctc/guidelines/adopted/article_5_3/en/) [Accessed 28 August 2013]

- encourage reporting of up-to-date and frequent estimates of the illicit trade by HMRC, and recommend HMRC investigate the feasibility of publishing estimates of the illicit tobacco trade at sub-national level (e.g. for UK regions, including Scotland and Northern Ireland).

## Rationale

5. Tobacco smuggling is an international issue and requires an international response. A protocol to eliminate illicit trade in tobacco products was adopted under the WHO FCTC in November 2012 - the UK is a party to the WHO FCTC. The protocol contains important measures including the establishment of an international tracking and tracing system for tobacco products, and places a duty on manufacturers to act with due diligence relating to the supply chains of their products. This is important as tobacco manufacturers have a history of facilitation of the illicit trade through over-supply of tobacco products to jurisdictions with weak border control and taxation policies<sup>3</sup>, whereby such products become part of the illicit market as they are subsequently smuggled across borders.
6. It must be noted that, in recent years, the best evidence from HMRC demonstrates that the action taken to reduce the illicit tobacco market share has been very successful. It has fallen substantially over the last decade, with most recent data (2010/11<sup>4</sup>) showing that mid-point estimates for the illicit market in cigarettes stands at around 9%, with the illicit market in hand-rolled tobacco at around 38%. The success we have seen to date in tackling the illicit trade in the UK is result of strong multi-agency activity by enforcement and health organisations - this work should continue. Claims by tobacco manufacturers that the illicit tobacco trade market share is growing are constant. However these are based on 'pack pickup' surveys that are never presented in enough methodological detail to determine their validity. We strongly recommend that such sources should not be relied upon to make policy decisions, by the Committee or others, till results and methodologies are published in full, and verified independently outside of the tobacco industry.
7. Tobacco manufactures raise the illicit trade as a reason to oppose nearly every public health measure designed to reduce tobacco consumption (and as a consequence, their sales volumes). Because of this, public authorities should act in accordance with the WHO FCTC Article 5.3 and associated guidelines - on protecting their public policies from the commercial and other vested interest of the tobacco industry. Hence it is appropriate to obtain information on funding or support received from tobacco manufactures from those who submit evidence to inquiries such as this one.
8. There is likely to be variation in the prevalence and composition of the illicit trade in the UK by geographic region, and underlying population demographics. It would be beneficial, in order to effectively inform enforcement activity and monitor outcomes, if estimates of the illicit trade could be expanded to include sub-national estimates of market share. In Scotland, we currently have no estimates of the local prevalence of illicit tobacco, aside from those obtained through tobacco industry empty pack surveys, which are, as has already been described, inadequate. We would expect that Northern Ireland could benefit similarly to Scotland from the availability of robust estimates of illicit tobacco prevalence.
9. There have been frequent and repeated claims by tobacco manufacturers and allied groups that standardised packaging for tobacco products will invariably lead to an increase in the illicit trade. This claim is speculative, lacks an evidential basis, and is undermined by a logical appraisal of how the illicit market currently operates and what interventions are effective

<sup>3</sup> Joossens L, Raw M. Progress in combating cigarette smuggling: controlling the supply chain. *Tob Control*. 2008 Dec;17(6):399-404. Available from: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2590905/> [Accessed 28 August 2013]

<sup>4</sup> HM Revenue & Customs. *Measuring Tax Gaps 2012*. 18 October 2012. Available from: <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf> [Accessed 28 August 2013]

against it.

10. A central claim is that standardised packaging will reduce financial barriers to entry for counterfeiters due to simplified design. However, counterfeiters are already able to copy existing brands remarkably well, and the costs to produce existing packs are already extremely low - a counterfeit pack of 20 cigarettes costs about 15 pence, of which around 5 pence is packaging<sup>5</sup>. Requiring standardised packaging will not meaningfully reduce the costs of counterfeiting, and pack design and complexity will be maintained through mandated markings such as graphic warnings and both covert and overt security features. In evidence received by the All Party Parliamentary Group on Smoking and Health's inquiry on the illicit trade<sup>6</sup> from OLAF, the police, and trading standards, there was agreement that current and prospective (to be introduced by the FCTC Illicit Trade Protocol) security markings would mean that standardised packaging is likely to have little to no impact on the illicit trade. Hence powers to include such security features should be introduced along with any change in legislation to introduce standardised packaging.
11. The Scottish Government has announced<sup>7</sup> that it intends to take forward standardised packaging for tobacco products in the Scottish Parliament once it has identified an appropriate legislative timetable. As this process goes ahead, we would expect the Scottish Government, acting in accordance with the evidence, to use the opportunity to seek to introduce anti-illicit security measures of agreed effectiveness in parallel with the introduction of standardised packs. The most harmonious solution for the UK tobacco market, and that which would most benefit health, would be to introduce all these measures across the UK at the same time. Introducing standardised tobacco packaging through a (potentially) staggered implementation across the UK, or if it is adopted by some UK nations and not others, may result in an unnecessarily complex set of circumstances for detection and enforcement of the illicit trade. Requiring standardised packaging across all UK nations would also reduce compliance costs for the manufacturers of tobacco, who would not be required to make packaging to two or more different specifications for the UK market.

Action on Smoking and Health (ASH) Scotland  
August 2013

<sup>5</sup> Joossens, L., 2012. Smuggling, the Tobacco Industry, and Plain Packs. Cancer Research UK. Available from: [http://www.cancerresearchuk.org/prod\\_consump/groups/cr\\_common/@nre/@pol/documents/generalcontent/smuggling\\_fullreport.pdf](http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/smuggling_fullreport.pdf) [Accessed 28 August 2013]

<sup>6</sup> All Party Parliamentary Group on Smoking and Health, 2013. Inquiry into the illicit trade in tobacco products. Available from: <http://www.ash.org.uk/APPGillicit2013> [Accessed 28 August 2013]

<sup>7</sup> The Scottish Government. 12 July 2013 News Release: Standardised Tobacco Packaging. Available from: <http://news.scotland.gov.uk/News/Standardised-tobacco-packaging-267.aspx> [Accessed 28 August 2013]

## Written evidence from Federation of Wholesale Distributors [TOB22]

### Introduction

1. The Federation of Wholesale Distributors (FWD) are responding to this inquiry as tobacco crime is a serious and growing problem in the wholesale distribution sector, which includes both cash and carry and distribution to business customers.
2. In particular, the trade in illicit tobacco has a strong adverse impact on our members, and it is regarding this trade that we are primarily responding to this inquiry. We are less qualified to comment on the smuggling of tobacco, although clearly inasmuch as smuggled tobacco fuels the trade of illicit tobacco, it does have a direct adverse impact on our members' sales.
3. Our members' primary concern is that they are frequently targeted by criminal gangs seeking to steal large quantities of legitimate tobacco products, often by violent means. Legitimate product stolen from wholesalers then forms a key constituent of the trade in illicit tobacco on the black market. It is blended with smuggled and illicit products, and sold on by organised gangs. As a consequence, the black market trade in tobacco directly undercuts our members' businesses and that of their customers, legitimate retailers.
4. We hope that our evidence is of interest to the Committee. We would of course be delighted to provide further explanation or additional information if that would be of use.
5. By way of brief background, the Federation of Wholesale Distributors represents food and drink distributors across the UK. Our members work with the largest brands to provide storage and delivery infrastructure to ensure that stock can reach both large and small retailers, caterers and private businesses. More than a third of members' £28bn turnover is in tobacco.

### Tobacco theft in the wholesale sector – The scale of problem

6. The wholesale distribution sector is particularly vulnerable to theft due to the large amount of tobacco stock held at cash and carry or distribution centres and depots. Since January 2012 there have been at least 350 crimes against wholesalers and retail customers, leaving their employees under constant threat of physical violence. A retailer in Croydon, for example, required plastic surgery following an attack. In another recent case, a retailer was killed during a tobacco robbery at a cash and carry.
7. Given the nature of tobacco products – high value and low in weight – they are the most sought after product by criminals.
8. The average value of these crimes is £2,000, but many are significantly higher. In fact, the total value of goods stolen in the 350 thefts and robberies since 2012 is equivalent to 4.2 million cigarettes being stolen by criminal gangs for sale on the black market, with a street value of more than £1 million.

9. These legitimate products are often blended on the black market with tax paid tobacco and non-tax paid tobacco from other countries, as well as counterfeit cigarettes and illicit whites, which are cigarettes manufactured for the purpose of smuggling.

**Case Study: £111,000 of goods and £27,000 in cash stolen from Tamworth wholesale business**

In January 2013, staff in Tamworth were attacked by a professional gang after they had opened their wholesale depot. Once inside, the offenders forced staff to open the tobacco room and stole tobacco valued at £111,000. They also stole £27,000 from the cash office. The police made two arrests, but the offenders were released on bail.

### **Tobacco theft in the wholesale sector – Implications**

10. The negative implications of tobacco theft for the wholesale distribution sector are severe. For example, in 2010 one Scottish cash and carry chain was the victim of 14 burglaries which resulted in a total of £3.2 million in lost sales, repairs, guarding costs and other associated costs.
11. Furthermore, there is a real threat of cash and carry retailers ceasing to trade due to the threat of violence, which results in lower sales. For example, a retailer in Sidcup was attacked on his way home from a cash and carry, and £2,000 in tobacco was stolen. A second attack occurred after he was followed home from the cash and carry, threatened outside his shop and forced to hand over £4,500 in tobacco.
12. Many FWD members have highlighted that the constant need to divert considerable financial and human resources to dealing with the threat of tobacco related crime is unwelcome. Indeed, the need to divert finances in this manner means that our members are unable to invest resource in order to grow their business and to employ new members of staff. This is particularly difficult at a time when the country is desperate to find economic growth.

### **Public Health**

13. The flood of illicit tobacco onto the black market has implications both for underage access and public health more widely. The distribution of these products outside the responsible supply chain of legitimate wholesalers and retailers severely undermines the Government's aim of controlling access through pricing, display regulations and age restrictions.
14. Moreover, illegally sold tobacco products are often of poor quality due to criminals blending the products with other illicit tobacco.

### **Recommendations**

15. Given the growing problem of crime in the wholesale sector, the FWD continues to call for the following immediate policy responses:
16. **Police forces should mobilise more resources and draw up appropriate strategies to tackle business crime.** In this vein, the FWD believes that the advent of elected Police Commissioners presents an opportunity to ensure that area policing strategies to tackle business crime include measures to address crime against wholesalers. These should be properly developed alongside meaningful local business engagement and consultation. More attention should also be paid to the role that serious organised crime plays in fuelling criminal activity against wholesale, particularly in cases of theft of tobacco products.
17. **A joined up approach among neighbouring police forces, by sharing information and interacting more effectively.** Often in cases of vehicle theft in which the criminal target is in transit crossing different police force boundaries there is confusion as to which force is ultimately responsible. Furthermore, without effective cooperation it is difficult for different police forces to recognise patterns when crimes are committed in different policing authorities.

#### **About FWD Members**

18. FWD members make an extensive contribution to the UK economy generating economic activity through the management and distribution of goods worth around £28billion per annum. FWD member organisations include: P&H; Bestway; 3663; Brakes; Costco (wholesale); Blakemore; Booker; Landmark Wholesale; Today's Group. These members have 800 regional depots which employ 70,000 people up and down the country, serving every UK postcode, every day.
19. In 2012 the wholesale sector was valued at £27.2bn, comprised of £6.5bn in delivered food services, £11.6bn in 'cash & carry', and £9.1bn in delivered groceries. The wholesale sector is predicted to grow to £31bn in 2017, an increase of 13.8%.
20. Wholesale, when considered as one unit, is the second largest group in the grocery delivery market beating all of the major supermarket chains except for Tesco. Wholesalers have developed their own brands of high street stores, known as 'symbol stores'. There are now 17,000 around the country, a type of store forecast to increase in number by 28% by 2017.

Federation of Wholesale Distributors  
August 2013

## Written evidence from Center for Regulatory Effectiveness [TOB23]

1. On 23 July 2013, you said, “Tobacco smuggling is a significant threat to UK tax revenues and to public health.”
2. On 16 August 2013, the Associated Press reported<sup>1</sup> on the federal sentencing in the State of Virginia of the last of ten defendants in a \$20 million cigarette trafficking ring.
3. I note the above recent news items because they demonstrate that the illegal trafficking in tobacco products is a blight that harms public health in both of our countries.
4. The AP news story is particularly illustrative of this common threat because the article goes on to explain that the convicted ringleader “also transferred money to a money launderer in London and traveled to China to buy counterfeit cigarettes as part of the conspiracy....”
5. I am writing in response to the Committee’s tobacco smuggling inquiry in order to provide results from several years of research my organization has performed on the public health threat from contraband tobacco.
6. By way of introduction, I served as a senior regulatory official in five consecutive Presidential Administrations, [http://thecre.com/ombpapers/OMB\\_Officials.htm](http://thecre.com/ombpapers/OMB_Officials.htm). An interview conducted by the National Archives in which I discuss the development of centralized regulatory review across several Administrations is available here, [http://thecre.com/video/National\\_Archive.html](http://thecre.com/video/National_Archive.html) while a broader overview of my regulatory experience is available here, [http://www.thecre.com/emerging/Jim\\_Tozzi\\_Bio.html](http://www.thecre.com/emerging/Jim_Tozzi_Bio.html).
7. The Center for Regulatory Effectiveness (CRE) is a non-partisan regulatory watchdog which focuses on ensuring that regulators comply with the “good government” laws<sup>2</sup> that regulate the American regulatory process. Our activities specific to contraband tobacco include operating the Counterfeit Cigarette Enforcement Forum, an interactive website that provides news and findings regarding the global trade in illicit tobacco, <http://www.thecre.com/cc/>.
8. CRE’s work also includes performing our own studies of the various public health harms from tobacco trafficking. Our research shows that there are three distinct types of public health dangers from the illegal trafficking in tobacco products:
  - 8.1. ***Extreme Toxicity of Counterfeit Cigarettes.*** Measured levels of lead, cadmium, and other heavy metals in counterfeit tobacco products are magnitudes higher than found in their legal counterparts.
  - 8.2. ***Underage Sales of Contraband Tobacco.*** Tobacco traffickers do not adhere to minimum sales age restrictions and thus increase underage smoking and addiction.
  - 8.3. ***Tobacco Traffickers Fund Terrorist Organizations.*** Some of the greatest public health threats from contraband cigarette sales are from the traffickers themselves and the violent criminal organizations they fund.

<sup>1</sup> Associated Press, “Last cigarette trafficking conspirator sentenced to seven years,” August 16, 2013, available at [http://www.tricitities.com/news/local/article\\_a74e1600-0686-11e3-b46f-0019bb30f31a.html](http://www.tricitities.com/news/local/article_a74e1600-0686-11e3-b46f-0019bb30f31a.html).

<sup>2</sup> See, <http://www.thecre.com/insurance/?p=357>. CRE’s Declaration of Interest is at the end of this letter.



9. CRE's findings on these issues are summarized in two studies we prepared and provided to the US Food and Drug Administration (FDA) and which are publicly available on the FDA's website:
  - 9.1. *An Inquiry into the Nature, Causes and Impacts of Contraband Cigarettes*;<sup>3</sup> and
  - 9.2. *The Countervailing Effects of Contraband Cigarettes*.<sup>4</sup>
10. In accordance with the Committee's requirement that a hard copy be included of previously published materials which are referenced, complete copies of both studies are attached to the original of this letter which is being delivered to the Committee via Federal Express.
11. I am also attaching a complete copy of the working draft of a study that is currently available for public comment on our website, *Counterfeit Products, Genuine Harm: How Intellectual Property Theft Fuels Organized Crime While Undermining American Communities* which provides a broader societal perspective on the threats to public health from counterfeit consumer products.
12. The *Counterfeit Products, Genuine Harm* paper was presented at a conference on illicit tobacco trafficking which enjoyed participation by government, industry and academia.<sup>5</sup>
13. As with all CRE work products, the work is transparently sourced based on US and UK government documents, peer reviewed scientific studies, and reports published by the major media.

#### ***Extreme Toxicity of Counterfeit Cigarettes***

14. Researchers at the US Centers for Disease Control and Prevention (CDC) measured the levels of lead, cadmium, and thallium in counterfeit and legal cigarettes and concluded that "[m]ainstream smoke levels of all three metals were far greater for counterfeit than the authentic brands, in some cases by an order of magnitude."<sup>6</sup>
15. Based on the data in the Pappas study, CRE prepared charts illustrating the difference in lead levels between counterfeit and legally-made cigarettes. In keeping with the Committee's

<sup>3</sup> Available at, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM243625.pdf>.

<sup>4</sup> Available at, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM263564.pdf>.

<sup>5</sup> Conference Agenda available at [http://www.tma.org/tmalive/Upload/LeftFrameFiles/2013\\_illicit-trade/illicit-trade-agenda.pdf](http://www.tma.org/tmalive/Upload/LeftFrameFiles/2013_illicit-trade/illicit-trade-agenda.pdf).

<sup>6</sup> R.S. Pappas, G.M. Polzin, C.H. Watson, D.L. Ashley, Food and Chemical Toxicology 45 (2007) 202–209, pp. 202–209, Abstract, available at <http://www.thecre.com/scur/wp-content/uploads/2011/02/Pappas-Cadmium-lead-and-thallium-in-smoke-particulate-from-counterfeit-cigarettes-compared-to-authentic-US-brands.pdf>.

instructions to use as little color in written submissions as possible, I refer the Committee to Charts 1 – 3 on pp. 6-7 on the attached *Inquiry* paper.

16. When evaluating the public health relevance of the charts, the following statement from the Pappas study should be kept in mind,

- 16.1. *“it is probable that exposure of children or adults to tobacco smoke with higher particulate levels of cadmium and lead such as those found in these counterfeit cigarettes could translate to higher heavy metal blood levels.”*<sup>7</sup>

17. CRE also evaluated a study by W. E. Stephens of the University of St. Andrews and his colleagues which measured the differences between counterfeit and legally-made cigarettes with respect to ten metals.<sup>8</sup> Stephens found that arsenic levels in counterfeit cigarettes were sharply higher than in legal product. The team also measured cadmium levels in counterfeit cigarettes and found the levels to be almost 500% higher than in authentic products, the lead levels in counterfeit cigarettes that measured to close to 600% higher. A graphic analysis of the Stephens data is available on p. 8 of CRE’s *Inquiry* paper.

18. In addition to measuring metal levels in cigarettes, Stephens places the data in a context meaningful to policy leaders grappling with the public health implications of the illicit trade in tobacco:

- 18.1. *“The main purchasers of counterfeit cigarettes are dominantly those on low incomes, either young people who then become addicted to smoking or the socially disadvantaged for whom so many other factors impact negatively on their state of health that the addition of another factor is potentially very serious. The extent of the U.K. market share now claimed by counterfeits means that an issue once considered marginal is rapidly becoming a major problem. The health risks described above as well as social implications means that early awareness of these issues is important if remedial action is to have significant impact.”*<sup>9</sup> [Emphasis added.]

19. The Stephens paper is discussed on p. 1 and on p. 5 of CRE’s *Countervailing Effects* paper.

### ***Underage Sales of Contraband Tobacco***

20. Researchers at the University of Toronto’s Dalla Lana School of Public Health found that,

- 20.1. *“cheap, illicit cigarettes...constituted a substantial proportion (~43%) of all cigarettes smoked by Ontario high school daily smokers, and this situation may*

<sup>7</sup> Pappas, p. 207.

<sup>8</sup> Stephens, W.E., Calder, A., Newton, J., 2005. “Source and health implications of high toxic metal levels in illicit tobacco products,” *Environ. Sci. Technol.* 39, 479–488.

<sup>9</sup> Stephens, W.E., Calder, A., Newton, J., 2005. “Source and health implications of high toxic metal levels in illicit tobacco products,” *Environ. Sci. Technol.* 39, 479–488, p. 486.

*undermine key tobacco control policies such as accessibility restrictions and taxation strategies designed to reduce youth smoking.”<sup>10</sup>*

21. After reviewing the literature on contraband tobacco and underage smoking, including studies by Callahan, CRE concluded in the *Inquiry* that:
  - 21.1. The contraband market is a key tobacco supply source for underage smokers.
  - 21.2. An expansion of the contraband market would increase adolescent participation in the illegal trafficking in contraband tobacco.
  - 21.3. Counterfeit cigarettes are often higher in nicotine than legal products. Since underage smokers disproportionately purchase more addictive counterfeit cigarettes, an increase in counterfeit cigarette supplies could lead to more adolescents who experiment with tobacco becoming regular smokers.

### ***Tobacco Traffickers Fund Terrorist Organizations***

22. The contraband cigarettes that financed the murders of Sappers Mark Quinsey and Patrick Azimkar were smuggled through Florida. The international financing of violent criminal organizations through tobacco trafficking is a public health threat to the citizens of both our countries and beyond.
23. The public health threats from tobacco smuggling go well beyond contraband-financed violence. Cigarettes smugglers and sellers broadly threaten public health by using their illicit proceeds to support narcotics trafficking and other health menaces. In our *Counterfeit Products, Genuine Harm* paper, CRE quoted the Former Assistant Chief Constable, Head of Organised Crime in Northern Ireland stating that
  - 23.1. *“organised crime gangs and terrorist groups turned smuggling tobacco into a multi-million pound black market business, funding prostitution and drug trafficking.”*
24. In recognition of the extraordinary threats these criminal groups pose to American security, President Obama signed Executive Order 13581 blocking the control of property by transnational crime organizations. In the Order, the President made a formal determination that,
  - 24.1. *“significant transnational criminal organizations constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.”*
25. CRE explained in *Counterfeit Products, Genuine Harm* that the President’s Order included an Annex which listed examples of transnational criminal organizations including Los Zetas, the violent, Mexican-based criminal syndicate which is heavily involved in the narcotics trafficking, Camorra, and Yakuza. A government report prepared by the inter-agency National

<sup>10</sup> Russell C. Callaghan, Scott Veldhuizen, et al., “Contraband cigarette consumption among adolescent daily smokers in Ontario, Canada,” *Tobacco Control*, published October 21, 2010 in advance of print.

Intellectual Property Rights Coordination Center<sup>11</sup> stated that these criminal groups were involved in cigarette counterfeiting.

26. The connection between cigarette smuggling and violent transnational organized is recognized by Congress as well as by the White House. To illustrate Congressional leadership in combatting tobacco smuggling, CRE's paper quoted the Chairman of the House of Representatives Subcommittee on Counterterrorism and Intelligence, Rep. Peter T. King (NY), stating,

- 26.1. *“Yet every day, the failure to strongly combat the growing crime of contraband cigarette smuggling deprives governments of billions of dollars in tax revenues — siphoned off by terrorist and criminal organizations. ...*

- 26.2. *Disturbingly, the financial loss and budget effect are only part of the problem. Often the state's loss is terrorist organizations' gain. In 2008, under my leadership, a House Homeland Security Committee investigation found a terrifying nexus between cigarette smuggling and terrorism.”*

27. The conclusion from our research on tobacco smuggling is:

- 27.1. In addition to stealing government revenues, tobacco traffickers steal public health and safety.

28. **CRE recommends** that the Home Affairs Committee:

- 28.1. Specifically evaluate the public health threat posed by contraband tobacco; and

- 28.2. Inform the United States Food and Drug Administration of its findings.

Attachments

### **Declaration of Interests**

29. The Center for Regulatory Effectiveness is a regulatory watchdog. CRE receives funding from virtually every industrial sector including the tobacco industry.

Jim J Tozzi, Ph.D. Member, Board of Advisors  
Center for Regulatory Effectiveness  
August 2013

<sup>11</sup> For more information see, <http://www.iprcenter.gov/about-us>.

It is important to note that the illicit trade in tobacco is not just a result of smuggled product. Illicit trade and subsequent tax losses can be a result of smuggling, re-direction, false declaration, and theft; of either counterfeit or genuine product.

### **1. Illicit trade in tobacco in the UK**

There is much debate surrounding tax losses and health issues caused by the illicit trade of tobacco in the UK each year. There is undoubtedly clear activity in the illicit market but until the UK implements a program to identify and manage the tobacco supply chain; losses will only be estimated, uncontrolled and illicit trade will continue and most likely rise.

Studies regarding illicit trade of tobacco in the UK show varied results but they all broadly mirror the global situation. Although since 2000 the Government's action has successfully reduced the market share of illicit tobacco, the UK illegal market still remains above the average of other EU Member States<sup>1</sup>. Estimations made between 2009 to 2012 by HMRC, Euromonitor, KPMG and the TMA place the UK illicit trade market in tobacco to be the region of 10% and 20%<sup>2</sup>

The above estimated losses of £2 billion per year are reflected in a recent study by KPMG in 2012, which estimated the UK illicit trade market at 16.4%<sup>3</sup>

### **2. Impact of illicit trade on the UK**

The illicit trade in tobacco products is a global issue and impacts UK government revenues, funds criminal and potentially terrorist activity and has the capacity to seriously affect the health of UK citizens through access to cheap cigarettes and highly toxic counterfeit products.

### **3. World Health Organisation Framework Convention on Tobacco Control**

<sup>1</sup> KPMG 2011, Ernesto U. Savona, The Factbook on the Illicit Trade in Tobacco Products, Pg 15

<sup>2</sup> Ernesto U. Savona, The Factbook on the Illicit Trade in Tobacco Products, Pg 59

<sup>3</sup> [http://www.pmi.com/eng/media\\_center/press\\_releases/pages/201304170400.aspx](http://www.pmi.com/eng/media_center/press_releases/pages/201304170400.aspx)

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first international treaty negotiated by the WHO. It was adopted by the World Health Assembly on 21 May 2003 and entered into force on 27 February 2005.

The WHO FCTC was developed in response to the globalisation 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>4</sup>

The UK signed the WHO FCTC treaty on the 16<sup>th</sup> June 2006 and is now welcomed to adopt Protocols to the convention. The Protocol to Eliminate Illicit Trade in Tobacco Products, the first Protocol to the Convention, was adopted on 12 November 2012 at the fifth session of the Conference of the Parties in Seoul, Republic of Korea, and is currently open for signature by the Parties to the WHO FCTC. So far 22 countries have signed the Protocol and this is increasing at a rate of approximately one per week, the UK has not yet signed.

This Protocol aims at eliminating all forms of illicit trade in tobacco products by requiring Parties to take measures to control the supply chain of tobacco products effectively and to cooperate internationally on a wide range of matters. With a view to enabling tracking and tracing of tobacco products to curb illicit trade, the Protocol recommends that unique, secure and non-removable identification markings such as codes or stamps are affixed to tobacco products. Furthermore the Protocol requires that these obligations are not performed by the tobacco industry, but by an independent third party.

#### **4. Recommendations on how to fight illicit trade in tobacco**

A Government Revenue Solution, commonly known as a 'Tax Stamp' involves marks applied to cigarettes packaging and alcohol that provide evidence that tax has been paid and helps to authenticate the product. The stamp or mark helps governments to confirm the likelihood of authenticity quickly and easily. In addition to a physical mark, a digital solution is implemented so that UK Government can interrogate and validate the data provided.

<sup>4</sup> <http://www.who.int/fctc/about/en/index.html>

In line with the Protocol requirements these programmes offer a unique code that can be interrogated in real-time and provide a complete history of the stamp and product. Furthermore the program will assist in the management and control of the supply chain and enable enforcement agencies like Border Force to meet operational targets.

Statistics show that implementing a Government Revenue Solution will meet Protocol requirements and help curb the illicit trade in tobacco. A technical report by the WHO's Tobacco Free Initiative, states that in order to minimize tax evasion, up-to-date technologies should be adopted, and in particular a state-of-the-art monitoring, tracking and tracing system, including tax stamps<sup>5</sup>.

The World Bank also recommends the use of tax stamps or markings amongst other initiatives....” governments can adopt effective policies to control smuggling. Such policies include prominent tax stamps and local-language warnings on cigarette packs, as well as the aggressive enforcement and consistent application of tough penalties to deter smugglers”<sup>6</sup>

In order to determine how best to tackle the issue of illicit trade in tobacco, De La Rue recommends that the UK Government should review and consider implementation of the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products. In addition, the UK Government should consider the wide range of programmes already implemented in other countries with evidenced benefits.

Outside of the Protocol many countries have existing programs for tobacco, alcohol and pharmaceuticals. In 2011 there were over 120 billion tobacco stamps in use, with over 70 governments having tobacco tax stamp programmes in place to fight their specific issue of illicit trade.<sup>7</sup>

Our experience is that the introduction of a Government Revenue Solution, combined with the steps proposed below, reduces illicit trade by an average of 10%, sometimes many times more.

<sup>5</sup> WHO Tobacco Free Initiative, Technical report on price and tax policies, Pg 8, 2010

<sup>6</sup><http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTHEALTHNUTRITIONANDPOPULATION/EXTETC/0,,contentMDK:20365226~menuPK:478891~pagePK:148956~piPK:216618~theSitePK:376601,00.html#7>

<sup>7</sup> Astrid Mitchell, Reconnaissance International, Tax Stamp Forum, June 2013

There are a number of ways to achieve this in a strategic and coordinated approach:

**a. Tax policies and processes**

- Ensuring that tax policies do not inadvertently create a market for illicit products

**b. Licensing & controls**

- Preventing “leakage” from illicit markets into the genuine supply chain
- Ensuring that only authorised operators are involved

**c. Reducing demand**

- Removing the incentive to start smoking and providing cessation programmes

**d. Law enforcement**

- Providing law enforcement teams with the frameworks, resources, technologies and intelligence required to target illicit operators
- Ensuring that the penalties for illicit trade act as a deterrent
- A coordinated approach that incorporates the latest policy thinking and technologies will help to reduce illicit trade.

Each of the above would have different costs and also revenue and social ramifications. De La Rue would not to seek to advise on some of the above.

**5. De La Rue & relevant services it can offer**

De La Rue is the world’s largest commercial banknote printer and is a trusted partner of governments, central banks, issuing authorities and commercial organisations around the world. In recent years, the Group has been involved in the design or production of over 150 national currencies and a wide range of security documents including passports, driving licences, authentication labels and tax stamps. In addition, the Group manufactures sophisticated, high speed cash sorting and inspection equipment.



De La Rue also offers a range of specialist services and digital software solutions including government identity schemes, government revenue solutions such as tax stamp tracking and tracing authentication systems for a number of countries.

Headquartered in Basingstoke, UK – De La Rue employs approximately 4,000 people worldwide and is listed on the London Stock Exchange.

## 6. De La Rue's Relationship with HMG

De La Rue currently supplies the following government departments and agencies:

- **Her Majesty's Passport Office:**  
UK Biometric Passport Production and Personalisation Service
- **Foreign and Commonwealth Office:**  
Emergency Travel Document
- **Royal Mail:**  
Postage stamps

The Company is also the supplier of printed sterling banknotes to the Bank of England and currently prints all banknotes for issuing banks in Scotland, Northern Ireland, The Crown Dependencies and UK Overseas Territories.

## 7. De La Rue's Strengths

- Celebrating its 200<sup>th</sup> anniversary in 2013, De La Rue's reputation is founded on 150 years of supply to public sector entities around the world
- Confidentiality and security of our contractual work is a reputational requirement
- De La Rue sells some product or service to more than 150 countries round the world, including banknote paper, printed banknotes, cash processing systems and the products and services listed above. The company is a UK export champion
- The Company is an established innovator and received the Queen's Award for Enterprise, 2013. This is the twelfth such award
- The Company is listed on the FTSE 250, is a UK headquartered company and pays corporation tax in the UK.
- Nearly half of the Company's 4,000 strong workforce is UK based

- We operate manufacturing facilities in the developing world, but have manufacturing facilities distributed in the North East, North West, West, East and South East of England
- Close cooperation with HMG, including as a supplier and recognised as a key industry stakeholder to HMRC
- Already delivers world class programmes which also reflect well on HMG ( For example , the UK Biometric Passport Issuing programme and the Iraq emergency banknote supply contract 2003–2004)

## 8. Declaration of interest

De La Rue has a Government Revenue Solutions business unit that helps government agencies in their efforts to prevent illicit trade in tobacco and other products. We have provided technical and project expertise to over 20 governments worldwide in this area and would like to assist the UK Government.

Our Tax Stamp solutions assist in the implementation of the 4 stages detailed above (4. a,b,c&d) using the following methods:

- High security tax stamps that provide early evidence of counterfeit and smuggled goods
- Unique marks and codes which can contain product, tax payment, manufacturer and intended market of sale data
- Secure database systems with simple user interfaces and authentication tools that help law enforcement officials verify products in the field
- Training for law enforcement and border agencies on product and stamp authentication techniques
- Forensic laboratory analysis of suspect stamps for evidence gathering and prosecution. This is delivered by a team of experts in anti-counterfeit technologies, government databases, project management and manufacturing operations.

Our interest is to consult further, advise and propose a solution to help the UK Government tackle the problem of illicit trade in tobacco. Our vast experience in this industry means our programs increase genuine trade and raise tax revenues;

whilst implementing on time, in budget and with limited impact to the existing supply chain and tobacco manufacturers.

De La Rue is confident as an existing trusted supplier of HMG it can offer both trusted partnership and security whilst delivering a first class tax stamp program that tackles illicit trade and raises revenues. We would welcome an opportunity to discuss further with the Committee and request we are invited to provide evidence in front of the Committee.

De La Rue

August 2013

1. **INTRODUCTION**

- 1.1 The following submissions are made on behalf of British American Tobacco UK Limited ("**BATUK**") in relation to the inquiry into tobacco smuggling announced by the Home Affairs Committee ("**HAC**") on 23 July 2013 (the "**Inquiry**").
- 1.2 According to the public statements made by the HAC, the Inquiry will consider what could and should be done to reduce tobacco smuggling and to disrupt the illegal trade in tobacco within the UK, with a particular focus on UK sanctions and enforcement, the incidence of illicit trade in Northern Ireland, the effects of tobacco-related legislation in the Republic of Ireland and the relationship between tobacco smuggling, organised crime and paramilitary activity.
- 1.3 Addressing illicit trade is a real focus of the BAT group of companies ("**BAT**") both in its end markets and at the highest levels of management. BAT attempts to combat the illicit tobacco trade in all of its manifestations, not least because BAT's commercial objectives are undermined by the proliferation of illicit product.
- 1.4 Illicit trade causes BAT to suffer direct revenue losses due to the proportion of the market taken by illegal product (described in section 2 below). Further, illicit trade affects BAT's business in more indirect ways:
- (a) Competition in the market is distorted since legal brands will be competing with much cheaper illegal product.
  - (b) Additional employees are required to monitor and counter the trade.
  - (c) Costs are increased, first to secure distribution networks and secondly to ensure that networks are free from involvement in illicit trade.
  - (d) Counterfeit products result in a dilution of brand equity.
  - (e) The legitimate tobacco industry as a whole is undermined by the erosion in consumer confidence.
- 1.5 BAT is also concerned about the effects of illicit trade on society more generally. In particular, it notes that the market for illicit product is outside the control of governments, regulators and legitimate, responsible manufacturers and distributors. Both the public purse and public confidence are undermined, as the funds of the criminals who orchestrate the illicit market are swelled.
- 1.6 These submissions are structured as follows. BATUK will first describe the steps BAT takes, both globally and in the UK to tackle illicit trade. It will then describe the work of

BAT's Anti Illicit Trade Intelligence Unit ("**AITIU**"). Finally it will address each of the specific questions raised by the HAC.

## 2. **THE ILLICIT TOBACCO PROBLEM**

- 2.1 The illicit trade in tobacco products manifests itself in three main ways: smuggled (including "illicit whites"), counterfeit and local tax-evaded products. It is a global problem. Given that, in the UK, on average, 83% of the cost of a single pack of cigarettes is accounted for by tax, there are significant incentives for the consumer to seek out cheaper products and this encourages criminals to seek to fulfil this demand by evading tax. The incentives are so great that the illicit trade in tobacco products is presently a mainstay of organised crime.
- 2.2 Euromonitor International has recently estimated that, in 2011, 570 billion illicit cigarettes were consumed; equivalent to 11.5% of world cigarette consumption.<sup>1</sup> On this basis, national governments are losing an accumulated estimated total of US \$34 billion a year in tobacco taxes.<sup>2</sup> HMRC<sup>3</sup> has estimated that, in 2010-2011, illicit cigarettes and hand-rolling tobacco ("**HRT**") accounted for approximately £1.86 billion in lost revenue for the UK alone.<sup>4</sup>
- 2.3 To put this in context, if Illicit Trade were a multinational tobacco company, its global market share (excluding China) would be 14%.<sup>5</sup> By way of comparison this would be just below BAT's market share (at 18%) and comparable to JTI's (at 14.3%) and greater than Imperial Tobacco's (at 7.6%).
- 2.4 The ITIC<sup>6</sup> have found that the primary drivers for illicit trade are twofold:
- (a) consumers seeking to save money; and
  - (b) criminals seeking to make money.

They have also identified the following as contributing factors to the problem of illicit trade:

- (i) an unbalanced fiscal policy;
- (ii) disparities in tax driven prices between jurisdictions;
- (iii) protectionist policy measures;

<sup>1</sup> "*Illicit Trade in Tobacco Products 2012: Will the new protocol prove effective?*" Euromonitor International "Passport" presentation dated March 2011, p5.

<sup>2</sup> "*Illicit Trade in Tobacco Products 2012: Will the new protocol prove effective?*" Euromonitor International "Passport" presentation dated March 2011, p5.

<sup>3</sup> In this note, "HMRC" refers to Her Majesty's Revenue and Customs and its forebears.

<sup>4</sup> "*Progress in tackling tobacco smuggling*", National Audit Office, dated 6 June 2013, paragraph 1.8

<sup>5</sup> "*Illicit Trade in Tobacco Products 2012: Will the new protocol prove effective?*" Euromonitor International "Passport" presentation dated March 2011, p5.

<sup>6</sup> The International Tax and Investment Center, in their report "*The Illicit Trade in Tobacco Products and How to Tackle It*", p4.

- (iv) corruption;
- (v) weak enforcement;
- (vi) lack of robust controls in free trade zones and on goods in transit;
- (vii) inadequate legislation and sanctions;
- (viii) growth in illegal distribution networks; and
- (ix) public tolerance of the illicit trade in tobacco products.

2.5 The prevalence of illicit trade is closely linked to economic conditions. In tougher economic times increasing numbers of people are likely to seek cheaper tobacco products. Further, where legitimate tobacco products are becoming more expensive, the combination makes it even more likely that people will seek cheaper product. High taxation on tobacco products thus exacerbates illicit trade.

2.6 The prevalence of illicit trade is also linked to the robustness of law enforcement agencies to challenge organised crime. Without organised crime networks, large-scale smuggling and counterfeiting operations cannot function. Both OLAF<sup>7</sup> and HMRC have recently emphasised the rapidly changing nature of the illicit market and the speed with which organised crime groups involved in illicit trade adapt to new developments in the demand for tobacco products and respond to evolving investigative techniques and procedures.<sup>8</sup>

2.7 The tobacco industry cannot, by its actions, positively affect global or national economies (except insofar as it continues to flourish as an employer and taxpayer). Nor can BAT, in isolation, combat organised crime. However, it is ready and willing to offer appropriate support to national and supranational law enforcement bodies to aid their efforts in combatting illicit trade.<sup>9</sup>

### 3. **BAT'S USE OF INTELLIGENCE TO COMBAT ILLICIT TRADE**

3.1 BAT has a dedicated group, fully integrated within the business, to combat illicit trade. Its head sits on BAT's Global Legal Board.<sup>10</sup> A multi-functional anti-illicit trade ("AIT") Steering Group has been established. AIT Regional Managers are supported by employees in all end markets, with dedicated AIT Managers in the most important markets for AIT.

<sup>7</sup> The European Anti-Fraud Office

<sup>8</sup> APPG Report, p36. See also their respective oral submissions to the House of Lords EU Select Committee (Sub-Committee F – Home Affairs, Health and Education) on, respectively, 17 and 24 July 2013.

<sup>9</sup> By way of example, British-American Tobacco (Holdings) Limited entered into a legally enforceable cooperation agreement with the EU Commission and 27 Member States on 15 July 2010. Further, BAT has entered into Memoranda of Understanding with national tax authorities in more than 30 countries, including the UK. BAT also assists law enforcement bodies through the work of its AITIU on a regular basis.

<sup>10</sup> The Global Legal Board is headed by a member of the Management Board.

- 3.2 BAT's AITIU operates at and above market level and has a global scope for its range of specialist operations. The Unit conducts investigations into all forms of illicit trade and provides intelligence on illicit production, supply and movement of illicit product and the criminals involved to law enforcement agencies around the world. Operating to agreed business priorities and upon legal advice,<sup>11</sup> the AITIU cooperates with police and customs officials to bring enforcement action against illicit traders. The AITIU is based at BAT's London head office, and its activities are controlled through four geographical regions (Turkey, Africa and Middle East, Americas, Asia/Pacific and Europe). The AITIU also has a dedicated laboratory for forensic analysis located in Southampton.
- 3.3 The AITIU has developed particularly strong relationships with prominent law enforcement authorities and delivers presentations and other training to customs officials in numerous countries across the globe.
- 3.4 In the realm of intelligence-sharing, the tobacco industry's relationship with HMRC is particularly constructive; a matter reflected in the National Audit Office's report dated 6 June 2013<sup>12</sup> and in HMRC's evidence to the House of Lords EU Select Committee.<sup>13</sup> In February 2013, the major tobacco multinationals agreed an Intelligence Sharing Protocol with HMRC, which has been incorporated within a newly agreed Memorandum of Understanding, to be signed in September.
- 3.5 BAT's AITIU has a firmly established working relationship with HMRC's Risk and Intelligence Service, especially regarding intelligence leading to the interception overseas of illicit product destined for the UK. In this regard BAT's end market AIT Managers fully cooperate with HMRC's FCLOs (Fiscal and Criminal Liaison Officers).
- 3.6 BAT recently engaged Sir Ronald Flanagan, former Chief Constable of the RUC<sup>14</sup> and PSNI<sup>15</sup> and former HM Chief Inspector of Constabulary, as an external consultant and advisor on tackling illicit trade.<sup>16</sup> Following his distinguished career in the police force, which included 32 years of service in Northern Ireland, Sir Ronnie is now a recognised global expert in policing, organised crime and counter terrorism strategy. Given the terms of reference for the Inquiry, it may assist the Inquiry to understand Sir Ronnie's views. BATUK therefore appends to these submissions a letter from Sir Ronnie.

<sup>11</sup> For the avoidance of doubt, this is not intended to waive privilege.

<sup>12</sup> "Progress in tackling tobacco smuggling", National Audit Office, dated 6 June 2013, paragraphs 2.46 and 2.48.

<sup>13</sup> House of Lords Select Committee on European Union (Sub-Committee F – Home Affairs, Health and Education): Inquiry on Enhanced Security – EU Cigarette Smuggling Strategy, Wednesday 24 July 2013, Question 29.

<sup>14</sup> Royal Ulster Constabulary

<sup>15</sup> Police Service of Northern Ireland

<sup>16</sup> See [http://www.bat.com/group/sites/uk\\_3mfnfnsf/vwPagesWebLive/DO97VLKE](http://www.bat.com/group/sites/uk_3mfnfnsf/vwPagesWebLive/DO97VLKE).

4. **WHY THE NUMBER OF ARRESTS, PROSECUTIONS AND CONVICTIONS FOR TOBACCO SMUGGLING HAVE FALLEN OVER THE PAST THREE YEARS**

4.1 BATUK is not in a position to address this question directly as this is a matter for the legislating, prosecuting and judicial authorities and those involved in the allocation of resources and budgets in this sphere. BAT cooperates and intends to continue to cooperate with HMRC and other enforcement authorities to ensure that the trade in illicit tobacco is effectively tackled. BAT's AITIU regularly liaises with HMRC, sharing its intelligence whenever possible.

4.2 BATUK takes the view that the falling trend in the numbers of arrests, prosecutions and convictions should be reversed as soon as possible. The illicit trade in tobacco remains a significant issue. Even in present economic conditions, where resources are limited, the illegal tobacco trade should be a focus of law enforcement bodies. Tobacco smuggling is not a victimless crime. The trade in illicit tobacco is predominantly controlled by organised criminals and the considerable profits are often used to fund other illegal operations. Further, with tobacco in the hands of criminals, rather than responsible manufacturers, distributors and retailers, there is no control of the sale of such products to children, nor are there controls on the constituent materials used in the counterfeit products, illicit whites and unbranded, loose tobacco/cut rag that are prevalent in the illicit market.

4.3 Furthermore, BAT's intelligence suggests that, worryingly, because of the economic conditions, more previously law-abiding people are becoming tempted to transport, sell and/or purchase illicit tobacco. In some communities the practice is becoming endemic such that such criminality has been normalised and is no longer a taboo. This is a matter that requires the active focus of the enforcement authorities.

5. **WHY BORDER FORCE FAILED TO MEET ITS OPERATIONAL TARGETS FOR TOBACCO SEIZURE IN 2012-13**

5.1 Again, BATUK is unable to make substantive submissions in respect of this question. To the extent that this is a question of resource, it refers to its submissions made in section 4 above.

5.2 BATUK notes that in the EU, there is an inherent conflict between the overarching principles of the free movement of goods and people that bind the Union and the notion of differential tax rates between Member States, which are exploited by smugglers. It is only when a smuggler brings legitimately purchased product across a border, typically from a lower tax country to a higher tax country, without paying the necessary duties and with the intention of selling them on, that the product can be classed as illicit. The difficulty in distinguishing between legitimate cross-border movement and smuggling thus presents a considerable enforcement challenge.



5.3 BATUK also notes that tobacco smugglers are sophisticated criminals, whose intent is to avoid detection from the authorities. Their *modi operandi* are constantly evolving and it is doubtless difficult for Border Force to anticipate their moves. Nevertheless, BATUK suspects that a disjointed approach to intelligence sharing is assisting the smugglers. In the UK, the police, HMRC, Border Force, SOCA/NCA, Trading Standards and the postal service may all have intelligence that, if shared in an appropriate forum, would assist the operations of Border Force and more effective enforcement generally.

5.4 BAT also recommends greater mutuality in the sharing of intelligence between the public and private sectors. This would enhance the effectiveness of AIT operations.

## 6. **ARE THE CURRENT SANCTIONS AND PENALTIES FOR TOBACCO SMUGGLING APPROPRIATE?**

6.1 BATUK notes that the 2011 HMRC and UK Border Agency joint strategy paper on tobacco smuggling set out a range of "*hard-hitting sanctions*" to deter smugglers.<sup>17</sup> BATUK fully supports the implementation of these measures.

6.2 BATUK supports stringent penalties and sanctions for tobacco smugglers. It notes the maximum penalty that can be levied against a tobacco manufacturer for breaches of s7A Tobacco Products Duty Act 1979<sup>18</sup> is a penalty of up to £5 million and would recommend that sanctions for individuals and organisations that are found guilty of smuggling offences to be similarly severe.

6.3 Saying this should not detract from BATUK's view that the Inquiry should primarily be focussing on the minimum sanction levels. By increasing the minimum level sanctions, the deterrent for low level smuggling increases. It will similarly deter those businesses (including retailers and distributors) tempted to become involved, in the current difficult economic climate, in illicit activity. Further, legitimate retailers and other businesses engaged in the legitimate supply chain (on whose profits illicit trade is having a real effect) will be assured that the Government and enforcement authorities are tackling the illicit tobacco trade.

## 7. **THE SIMILARITIES AND DIFFERENCES IN PATTERNS OF TOBACCO SMUGGLING IN THE UK AND IRELAND, HOW THEY AFFECT EACH OTHER, AND THE IMPLICATIONS OF THE RESTRICTIONS ON NATIONAL CRIME AGENCY OPERATIONS IN NORTHERN IRELAND**

7.1 The AITIU's understanding of illicit trade in Ireland is that illicit tobacco enters the country both direct from outside the British Isles and from the UK, where it has either been locally

<sup>17</sup> "*Tackling Tobacco Smuggling – building on our success*", April 2011, paragraphs 4.16-4.21.

<sup>18</sup> Under subsection 7A(1) TPDA, a manufacturer must, so far as is reasonably practicable, avoid:

(a) supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the UK;

(b) supplying cigarettes or hand-rolling tobacco in circumstances where the nature of the supply makes it likely that they will be resupplied to persons who are likely to smuggle them into the UK; or

(c) otherwise facilitating the smuggling into the UK of cigarettes or hand-rolling tobacco.

"Smuggling" is defined at subsection 7A(3) TPDA as importing into the UK without payment of the requisite duty.

manufactured or travelled in transit. Illicit product, of which the majority is understood to be illicit whites, enters Dublin by ship, by plane, across the border with Northern Ireland and by post.

- 7.2 The AITIU is aware of large quantities of illicit product entering Ireland from a range of 'source' countries (e.g. China, the Philippines, Eastern Europe and the Canary Islands)<sup>19</sup> via a host of other 'transit' countries (e.g. Vietnam, Malaysia, UAE, Panama, Greece). The Unit also believes that illicit product is being manufactured locally. There is a proliferation of illegal enterprises involved in the trade, from criminal cells with terrorist links to dual (part legitimate/part illegitimate) businesses. Such enterprises tend to be well organised and sophisticated.
- 7.3 At the same time, the available statistics appear to demonstrate that the Irish authorities are experiencing difficulties in controlling and combatting illicit trade. By way of illustration only, 11,157 kg of HRT was seized in 2011, falling to 5,277 kg HRT in 2012. This year, between January and June 2013, the Irish Revenue has seized approximately only 950 kg HRT.<sup>20</sup> Yet this fall cannot be attributed to falling incidence.<sup>21</sup> BAT is unaware of a single conviction for tobacco smuggling in Ireland in recent years.
- 7.4 Although BATUK understands the Irish revenue authorities estimate illicit cigarettes to comprise approximately 13% of total cigarette consumption in Ireland,<sup>22</sup> BAT's estimates are much higher (28-30%).<sup>23</sup> For HRT, BAT estimates that figure to be as high as 40%. Comparable estimates for the UK would be in the region of 9-15% (cigarettes) and 38% (HRT).<sup>24</sup>
- 7.5 As with the UK, anecdotal evidence suggests there is a troubling increase in the proportion of the Irish population that accepts the sale, purchase and consumption of illicit tobacco as legitimate, or at least commonplace, conduct.
- 7.6 Further, BAT believes that a significant proportion of illicit product entering Ireland is destined for the UK market. Brands of illicit whites that have been seized by Irish authorities do not tally with the favoured Irish brands for consumption identified by empty pack surveys in Ireland. Certain seized brands such as "Golden Eagle", "Master", "Jim" and "Capital" tend not to be smoked in Ireland but are popular in the UK. The presence of such brands in seizures suggests that such cargoes were intended for the UK market.

<sup>19</sup> "The Factbook on the Illicit Trade in Tobacco Products, Issue 3 Ireland", Transcrime (2013), p68.

<sup>20</sup> "The Factbook on the Illicit Trade in Tobacco Products, Issue 3 Ireland", Transcrime (2013), p57.

<sup>21</sup> Only the Irish Revenue's figures suggest a decline in the size of the illicit market. All the other major surveys suggest an increase in this market in recent years: "The Factbook on the Illicit Trade in Tobacco Products, Issue 3 Ireland", Transcrime (2013), p65.

<sup>22</sup> "The Factbook on the Illicit Trade in Tobacco Products, Issue 3 Ireland", Transcrime (2013), pp15 and 65.

<sup>23</sup> BAT's figures are supported by Euromonitor's estimates (29.7%) (see *Ibid.*)

<sup>24</sup> Note that the most recently available UK figures are figures for the year 2010/11: "The Factbook on the Illicit Trade in Tobacco Products, Issue 1 UK", Transcrime (2013), pp 58 and 61.

7.7 It is noted that a recent national newspaper article stated that, even now, Senior Gardai and Customs officers estimate that between 150 and 200 million cigarettes of illicit cigarettes are smuggled by organised criminal networks from Ireland into the UK each year.<sup>25</sup>

7.8 Illicit trade in tobacco is a real problem in Ireland and we would urge the UK and Irish authorities to cooperate to deal most effectively with it.

## 8. **THE POSSIBLE IMPACT OF THE INTRODUCTION OF STANDARDISED PACKAGING IN IRELAND ON THE QUANTITY AND AVAILABILITY OF ILLEGAL TOBACCO IN THE UK**

8.1 It is difficult to hypothesise at this premature stage about the possible effects of standardised packaging in Ireland on the UK. BATUK therefore can merely identify potential risks. In this regard BATUK notes that HMRC also appreciates that there are significant potential risks that the introduction of Plain Packaging, at least in the UK, will negatively impact levels of illicit trade (albeit they consider that those risks are not insurmountable).<sup>26</sup>

8.2 Ireland, like the UK, is a high tax jurisdiction compared with the rest of Europe. Also, the geographical position of Ireland as an island off mainland Europe is similar to that of the UK. It is reasonable, therefore, to expect the introduction of Plain Packaging in Ireland to have similar effects to that expected to be occasioned by its possible introduction in the UK.

8.3 In BATUK's responsive submissions to the UK Standardised Packaging Consultation, BATUK explained that Plain Packaging (as defined in those submissions) would drive growth in all segments of the illicit market,<sup>27</sup> more easily facilitate counterfeiting and smuggling and thereby the distribution of products through unregulated, untaxed criminal networks,<sup>28</sup> and stimulate both legal and illegal cross border trade.<sup>29</sup> It also noted the particular stimulus Plain Packaging would give to the trade in illicit whites.<sup>30</sup>

8.4 BATUK understands that the demand for illicit whites in Ireland is already growing rapidly and anticipates that the introduction of Plain Packaging would only encourage such demand further. Increased demand will lead to increased supply. An increased amount of product coming from overseas direct into Ireland is likely to spill over across the Northern

<sup>25</sup> <http://www.dailymail.co.uk/news/article-2336865/IRAs-cigarette-smuggling-millionaires-Former-terrorists-flooding-UK-potentially-lethal-fakes-cheating-taxpayers-billions.html>

<sup>26</sup> House of Lords Select Committee on European Union (Sub-Committee F – Home Affairs, Health and Education): Inquiry on Enhanced Security – EU Cigarette Smuggling Strategy, Wednesday 24 July 2013, Question 37.

<sup>27</sup> "UK Standardised Packaging Consultation: Response of British American Tobacco UK Limited", 8 August 2012, paragraph 9.2

<sup>28</sup> "UK Standardised Packaging Consultation: Response of British American Tobacco UK Limited", 8 August 2012, paragraph 8.1

<sup>29</sup> "UK Standardised Packaging Consultation: Response of British American Tobacco UK Limited", 8 August 2012, paragraph 10

<sup>30</sup> "UK Standardised Packaging Consultation: Response of British American Tobacco UK Limited", 8 August 2012, paragraph 9.2

Irish border and elsewhere into the UK. There may also be increased levels of illicit product in transit through the UK to Ireland, which may result in some of the illicit cargo leaking into the UK market.

8.5 Further, the increased demand may also lead to an increase in illicit product manufactured in the UK.

8.6 Systemic links between the illicit tobacco trade in Ireland and organised crime further raise the prospect of higher rates of illicit product entering the UK market. Where there is considerable profit to be made in a market so close to home and penetrable, it is very likely that criminals will seek to exploit that further market.

## 9. THE RELATIONSHIP BETWEEN TOBACCO SMUGGLING, ORGANISED CRIME AND PARAMILITARY ACTIVITY

9.1 BATUK understands that some significant individuals involved with tobacco smuggling in Ireland are members of terrorist groups. BAT's intelligence is supported by recent articles in the national and Irish press concerning the links between former members of the IRA and the illicit trade in tobacco.<sup>31</sup> The matter has also been addressed in the international press<sup>32</sup> and in a recent Transcrime report.<sup>33</sup>

9.2 BATUK would urge the Inquiry to ensure that whatever can be done to reduce the illegal tobacco trade in Ireland and Northern Ireland is done and BAT commits to continue to assist the authorities in this regard. As ex-PSNI deputy chief constable Alan McQuillan is quoted as saying: "*On every level this is a crime that damages the public purse, funds terrorism and crime and damages health*".<sup>34</sup>

## 10. CONCLUSION

10.1 In summary, BAT takes a proactive stance to combatting the illicit tobacco trade in all its forms and allocates a significant amount of resource in this regard. BATUK supports the objectives of the Inquiry (to consider what can be done to reduce tobacco smuggling and to disrupt the illegal trade in tobacco in the UK) and urges the Inquiry to make positive recommendations to improve detection and prosecutions in this sphere, to ensure

<sup>31</sup> See, for example:  
<http://www.dailymail.co.uk/news/article-2336865/IRAs-cigarette-smuggling-millionaires-Former-terrorists-flooding-UK-potentially-lethal-fakes-cheating-taxpayers-billions.html>

<http://www.thesun.ie/irishsol/homepage/news/4962410/Real-IRA-use-Chinese-ships-to-smuggle-cigs-worth-80m-a-year.html>

<http://www.independent.ie/irish-news/no-prosecutions-in-record-50m-cigarette-seizure-29330923.html>

<http://www.irishmirror.ie/news/irish-news/crime/cigarette-smuggling-irishmirrorie-exposes-multi-million-1985351>

<sup>32</sup> See, for example:

"*Dit is het Gevaarlijkste Gebeid van West Europa*" P-Magazine (The Netherlands) dated 9 July 2012.

"*Terrorfags' explosive merchandise*", De Telegraaf (The Netherlands), 8 June 2013.

"*The Factbook on the Illicit Trade in Tobacco Products, Issue 3 Ireland*", Transcrime (2013), p62.

<sup>33</sup> <http://www.dailymail.co.uk/news/article-2336865/IRAs-cigarette-smuggling-millionaires-Former-terrorists-flooding-UK-potentially-lethal-fakes-cheating-taxpayers-billions.html>

<sup>34</sup>

sanctions (particularly at the lower levels) are sufficient and appropriately applied by the courts, and to address intelligence sharing amongst key public bodies.

- 10.2 It also is pleased that the Inquiry seeks to investigate further the impact of illicit trade in Ireland on the UK, given Ireland's suspected role as a gateway for illicit product to enter the UK market and urges the UK Government to work with its Irish counterparts in this regard. Finally, BATUK reaffirms BAT's commitment to working with the UK authorities in its AIT endeavours.

## **British American Tobacco UK Limited**

**August 2013**

**Annex**

### **Letter to the Committee from Sir Ronald Flanagan, 28 August 2013**

#### TOBACCO SMUGGLING

I am aware of the decision of the Home Affairs Select Committee to conduct an investigation into the effects of illicit trade in the tobacco industry. I have read the online remit published by the Committee and I write to offer my views in this area to the extent they may be of interest or considered of value to the Committee's work.

I am currently resident in the United Arab Emirates; my present role being the policing and security adviser to the offices of the Deputy Prime Minister and Minister of Interior. I have held this position since December 2008 and, in this capacity, I keep in close contact with the major investigative and enforcement bodies across the world, including in the United Kingdom. I, therefore, feel my views and perspectives are informed and based on current knowledge and experience.

Prior to taking up my current post, I was Her Majesty's Chief Inspector of Constabulary for England, Wales and Northern Ireland, having been appointed to the Inspectorate in April 2002. Before then, I was the first Chief Constable of the Police Service of Northern Ireland (PSNI), having overseen implementation of the reforms in policing in Northern Ireland which brought about the transition to the PSNI of the Royal Ulster Constabulary (George Cross). Throughout my career in the Royal Ulster Constabulary and PSNI, I held a wide variety of operational posts and gained much experience of how paramilitary groups of all political persuasions sought to gain from racketeering of all types, including trading in illicit tobacco. I am a graduate of the FBI Academy and I have advised policing and enforcement organisations throughout Europe, and in such places as North and South America, Iraq, Mongolia, New Zealand and Australia.

Since April of this year, I have additionally acted as an advisor to British American Tobacco (BAT) in respect of the development and application of their anti-illicit tobacco trade strategy. My role in assisting BAT in this regard is confined strictly to the anti-illicit trade and I do not consider myself, in any sense, to be an advocate for the tobacco industry. I simply seek to assist, to the extent that I can, in reducing the ability of organised crime groups and indeed terrorist organisations to profit from such illegal business and their use of such profits in other areas of criminality, including terrorism, drug-dealing, human trafficking and money-laundering. I have seen the submission to you from BAT UK Ltd and I agree with and endorse its content.

Broadly, I believe that the key to greater success in combatting the evils fostered by profits of the illicit tobacco trade lie in much greater collaboration (including intelligence-sharing) between private industry and public investigative and enforcement bodies. Whilst I appreciate that the Committee's focus in this instance is on illicit tobacco trade, in my experience the same criminal/terrorist groups do not confine themselves to single fields of racketeering, so I believe that greater collaboration across a wide range of affected industries is also required. There also needs to be appropriate communication strategies to reduce what I see as a growing risk of public tolerance of such activity.

I believe that the public needs to realise that illicit trade is not simply a matter of profit-loss to commercial companies. Rather, it contributes to a massive loss to the nation's revenue, which would otherwise be spent on the 'public good'. The public also needs to be made more aware of the other dreadful criminal activity (referred to briefly above), which is funded by profits in this illicit trade. Currently I believe that criminals see this area (illicit dealing in tobacco), as being of 'high profit' and relatively 'low-risk'. I feel this attitude too must be changed through appropriate enforcement and punishment.

Sir Ronnie Flanagan  
28 August 2013.

1. Derbyshire County Council welcomes the opportunity to comment on the inquiry into tobacco smuggling and whilst we cannot answer all of the questions posed, we do think that our experiences in Derbyshire are relevant to this inquiry. This response is from Councillor Dave Allen, Cabinet Member, Health and Communities who has responsibility for Derbyshire Trading Standards Service.
2. Whilst HMRC and UK Border Agency colleagues take the lead with regard to the manufacture, illegal importation and supply of illicit tobacco, it is left to the local authority trading standards service to take the lead at a local level. There has been a significant increase in the sale of illicit tobacco (counterfeit and/or non-duty paid cigarettes and hand rolling tobacco (HRT)) from short-lease shop premises in market towns throughout Derbyshire. In 2011/12 there were 52 reports, in 2012/13 there were 110 and so far in this financial year there have been 84.
3. The main purpose of these shops appears to be as a front for the sale of illicit tobacco, which is typically sold for significantly less than the legitimate retail price (£3 per pack of 20 compared to average price of c£8 for the genuine product). This represents a significant and unfair competitive advantage compared to local legitimate retailers. It has been reported that one illegal business was making between £3,000 and £4,000 profit per week and consequentially, income for local legitimate businesses has been adversely affected – so much so that some businesses have been faced with closure.
4. As well as a loss of revenue to the exchequer from non-duty paid and counterfeit cigarettes, it also means that smoking prevalence is likely to be higher as smokers have access to a cheaper – albeit unregulated – product. These shops tend to be in urban areas thus widening health inequalities. The non-duty paid cigarettes are usually legitimate products manufactured abroad and thus labelled in a foreign language. They therefore do not have the appropriate warnings – such as ‘Smoking Kills’ - in a legible format for the UK market. Counterfeit cigarettes also pose a serious safety concern following an East Midlands house fire fatality linked to counterfeit cigarettes without ‘Reduced Ignition Propensity’ – or ‘self-extinguishing’ ‘speed bumps’ in the cigarette paper.

<http://www.lincolnshire.gov.uk/news/lincolnshire-trading-standards-crackdown-on-dangerous-cigarette-sellers/116013.article>

5. There is also a higher risk that young people will be able to purchase cigarettes under-age as the business operators are less likely to comply with age-restrictions when selling their illegal product.
6. The problem in Derbyshire appears to have spread from Derby and other urban centres. It was reported in the Derby Telegraph on 13<sup>th</sup> March this year that a survey of discarded cigarette packets during the last three months of 2012 found that 29% of cigarettes were either illegal or purchased outside of the UK. This compared with 17.8% for the same period the previous year.

<http://www.thisisderbyshire.co.uk/Nearly-10-cigarettes-smoked-city-illicit/story-18323395-detail/story.html#axzz2VzY1RZtg>

7. The amount of illegal tobacco seized by Derbyshire trading standards has increased ten-fold in the past six months. In 2012/13 approximately 62,000 cigarettes and 26 kg of HRT were seized by trading standards staff. This equates to a 'high street' value of over £30,000. In the first five months of 2013/14 Derbyshire Trading Standards Service has already seized over 600,000 cigarettes and approximately 700kg of HRT. With Police support and the services of a specially trained sniffer dog, officers have conducted 19 raids on 12 shops since January this year. There have been 25 arrests and 14 search warrants executed on shops or domestic houses associated with the business. 14 industrial storage units have also been searched. It is estimated that the illicit tobacco seized this year has a 'street value' of approximately £500,000. As well as the illicit tobacco, c£12,000 cash has been seized as well as three cars and 43 mobile phones together with 2 satellite navigation systems – all of which will require forensic examination at a further cost to the rate payer.
8. We are currently at varying stages in the investigations of 15 individuals relating to illicit tobacco seizures from shops and a 'fag house', two of which have been completed by way of prosecution. We believe that a number of the individuals responsible for the shops are linked forming an 'Organised Crime Group' (OCG). It is understood that Derbyshire is the first trading standards service in the UK to have had an OCG 'mapped' by the Police which means that we are recognised as being the 'lead agency' for this particular group of organised criminals.
9. It is often difficult to identify and/or get sufficient evidence of the identity of the persons running the illegal businesses. The recent pattern has been that the person in the shop at the time of the raid is understood to be of Middle Eastern ethnicity with a poor command of English, who claims not to know the owner of the business, but is simply 'helping out for cash'. Consequently it is necessary to seize any phone or computer equipment to have them forensically analysed to seek to identify the 'directing mind' of the business. This is relatively expensive – both in terms of analytical and also investigative expenditure - costing approximately £160 per phone and £450 per computer for the analysis.
10. The shops generally hold relatively small stocks of cigarettes and are 'topped up' on a regular basis. We are seeking intelligence to identify local storage facilities but such enquiries tend to be resource intensive to organise and are dependent upon other agencies. As previously stated, the persons behind these retail operations are organised criminals. Despite enforcement action and the threat – and actuality – of prosecution of the individual found 'minding the store' at the time of the raid, it is more difficult to identify the person(s) who form the operating mind of the criminal enterprise and the shops continues to trade with different personnel 'fronting' the sales.
11. There is a variety of legislation most of which the local authority has a duty to enforce and falls within the compass of the trading standards service. Counterfeit products are illegal copies of a branded product and are in breach of the Trades Mark Act. Non-duty paid cigarettes which have been manufactured abroad and thus do not have the appropriate labelling as required by UK law, are in breach of Regulations made under the Consumer Protection Act (see below).
12. This legislation gives trading standards staff the power to seize non-compliant goods but does not include the power for the local authority to shut an illegal business down.



13. As the Home Affairs Committee will be aware, the lead agency for illicit tobacco is Her Majesty's Custom and Revenue (HMRC) who have a responsibility for collecting the duty on tobacco. HMRC operate at a national and regional level and their primary objective is to disrupt and intervene at the highest level possible. They are less able to engage at a local level and the type of illegal activity we are detecting seems to fall below their threshold for prosecution. It is also fair to say that their willingness to liaise and share intelligence with other enforcement agencies is at best, variable. We have received excellent support from Derbyshire Police, but it is the local authority – i.e. Derbyshire County Council – which has a duty to enforce – and bear the costs at a local level of seeking compliance with the above mentioned legislation.
14. Derbyshire Trading Standards works closely with trading standards east midlands (TSEM) colleagues and has recently agreed to support, in partnership with Public Health colleagues throughout the east midlands, a regional illicit tobacco and alcohol coordinator. Colin Martin will take up this position on 2<sup>nd</sup> September. The main purpose of this role is to more effectively engage with HMRC colleagues to quantify the extent of the problem and to better coordinate and collate activity to tackle the criminality. This is an additional financial burden on the local authority, but it is seen as imperative to address the harm both to public health, but also to local legitimate businesses that are faced with the unfair competition from these illegal products.
15. Following the execution of a warrant (raid) and seizure of illicit tobacco, the authority has a number of enforcement options ranging from advice and guidance to formal caution and prosecution. In cases like these, where the illegal acts are deliberate, a prosecution is likely to follow. See recent example.<sup>1</sup>
16. Once a prosecution for selling counterfeit tobacco has been successfully completed, the authority can also initiate a 'proceeds of crime' investigation. This requires identification of the amount of financial gain from the criminal activity and can prove a significant additional punishment when used against the individuals who have profited from illegal activity. It also places an additional financial burden on the local authority as proceeds of crime hearings are held at the Crown Court thus necessitating the engagement of barristers by the authority to present the case. As a 'private prosecutor' the local authority does not have access to the Crown Prosecution Service.
17. Derbyshire Trading Standards Service has been exploring other ways to put a stop to these businesses. One of the issues is that local towns are clearly keen to avoid empty retail premises and thus provide incentives for 'pop up' shops. Often the owner of the premises is not local and the property agent is desperate to gain a rental income from the property. Once alerted to the criminal activity, some landlords/agents have been cooperative (others less so) and willing to terminate lease agreements – which may include a termination clause if there is evidence of illegal activity.
18. We have also been made aware that HMRC could invoke a sub-section of the Tobacco Products Duty Act 1979 whereby, on the successful prosecution of an individual for a breach of this act, they could apply to the court for an order prohibiting the use of the premises ... for a period specified in the order (up to six months).

<sup>1</sup> [http://www.derbyshire.gov.uk/council/news\\_events/news-updates/2013/may/news\\_items/hefty\\_fine\\_for\\_illegal\\_tobacco\\_seller.asp](http://www.derbyshire.gov.uk/council/news_events/news-updates/2013/may/news_items/hefty_fine_for_illegal_tobacco_seller.asp)

19. Below is the relevant legislation enforced by local authority trading standards services and a case study involving an example of an illegal business in Chesterfield, Derbyshire.

## **20. Summary**

1. There has been a significant increase in illicit tobacco being sold in market towns throughout Derbyshire.
2. The counterfeit and non-duty paid tobacco poses a serious health risk to local consumers as the low price encourages an increase in smoking prevalence.
3. The unfair competition from illegal cigarettes is seriously affecting the income of local legitimate high street businesses.
4. This has placed an additional burden on local authority trading standards services.
5. Derbyshire trading standards has had some considerable success in detecting, seizing and prosecuting local retailers selling illicit tobacco.
6. However, it is more difficult to identify and get sufficient evidence to tackle the organised crime groups responsible for running the illegal high-street operations.
7. Better sharing of intelligence about illicit tobacco suspects and activities by HMRC and willingness to conduct joint operations would be extremely helpful to local authorities.
8. As would transferring the specific power under Section 8H of the Tobacco Products Duty Act 1979 to local authorities to enable them to apply to the courts to ban retail premises from selling tobacco for six months. Or alternatively to amend existing trading standards legislation to provide this power to local trading standards authorities.
9. Trading Standards and Public Health Services in the East Midlands have recently appointed a tobacco and alcohol enforcement co-ordinator, initially on a three year fixed term contract, in response to the emerging threat to local communities from illicit alcohol and tobacco and to foster a better relationship with regional HMRC colleagues. However, this is an additional financial burden on local rate payers.
10. It is also recommended that a duty of care be placed on the owners of retail properties, landlords and their agents to ensure the legitimacy of individuals and businesses seeking to set up trade in high street premises to carry out 'due diligence' on the parties responsible for the business and to fully cooperate with the local authority should there be prima facie evidence of a breach of any regulatory requirement.

Councillor Dave Allen  
Cabinet Member – Health and Communities  
Derbyshire County Council  
August 2013

## **Legislation**

Trade Marks Act 1994

Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002  
made under the Consumer Protection Act 1987

## **Case Study Bzee Shop, Cavendish Square, Chesterfield**

On 14 January 2013, following complaints to the trading standards service regarding the alleged sale of illicit/counterfeit tobacco, an officer of the Department undertook a 'test purchase' from the above shop in Chesterfield. This resulted in the sale of cigarettes which, on further examination by the brand holder, were found to be counterfeit.

As a result, on 30<sup>th</sup> January, the shop was searched and a quantity of counterfeit cigarettes (approximately 31,000) and tobacco (approximately 16kg) was found on the premises, all of which has been confirmed as counterfeit or illicit. These goods were found hidden in an outside store, linked to the premises, and under the counter. The assistant in the shop at the time was arrested, interviewed in custody and bailed pending our on-going enquiries.

Following further reports that the shop was continuing to sell, a second visit was carried out on 20<sup>th</sup> March 2013, with police and Trading Standards Officers again in attendance. A prior test purchase was conducted on the day which resulted in a sale.

On this occasion the goods were hidden inside a security door (which we believe had been constructed since the last raid) and in the empty tank of a disused water heater. In total 4,680 cigarettes and 2.15 kg of tobacco were found. On this occasion the shop assistant was arrested, questioned, detained (as he provided no definitive address) and prosecuted in Chesterfield Magistrates Court on the following day, having pleaded guilty to the 'sale' charges for the test purchase. Our enquiries continue following this subsequent enforcement.

It is worth noting that the person working in the shop has been different on the three occasions our officers have attended (overtly or covertly) - and we do not believe that they are acting in isolation of some greater degree of control from a 'directing mind'.

We have had reports again since our visit that the shop has reopened and is continuing to sell illegal goods. The reports have been direct and via the local police, and often emanate from local shopkeepers who state that they are losing significant trade due to the illegal activities of the Bzee shop.

The local authority has no power to close down premises breaching either the Trade Marks Act 1994 or the Consumer Protection Act 1987 which are enforced by the Trading Standards division. Our experience is that the shops restock and are up and running within a day/a few hours of our enforcement, and consider our intervention an 'occupational hazard'

It could be argued that the get up of the shop, the concealment of illegal stock, the lack of legitimate cigarettes and tobacco (and other stock) and the alterations undertaken to facilitate this trade (security door and water heater), as well as the conduct of the shop workers, all give rise to the conclusion that the main purpose of the shop is the supply of counterfeit cigarettes and tobacco.

Tobacco worth £15,000 seized in raid against counterfeit suppliers: Your council - Derbyshire County Council.<sup>2</sup>

Sniffer dog used in latest raids to target counterfeit tobacco suppliers: Your council - Derbyshire County Council<sup>3</sup>

<sup>2</sup> [http://www.derbyshire.gov.uk/council/news\\_events/news-updates/2013/february/news\\_items/tobacco\\_worth\\_15000\\_seized\\_in\\_raid\\_against\\_counterfeit\\_suppliers.asp](http://www.derbyshire.gov.uk/council/news_events/news-updates/2013/february/news_items/tobacco_worth_15000_seized_in_raid_against_counterfeit_suppliers.asp)

<sup>3</sup> [http://www.derbyshire.gov.uk/council/news\\_events/news-updates/2013/march/news\\_items/sniffer\\_dog\\_used\\_in\\_latest\\_raids\\_to\\_target\\_counterfeit\\_tobacco\\_suppliers.asp](http://www.derbyshire.gov.uk/council/news_events/news-updates/2013/march/news_items/sniffer_dog_used_in_latest_raids_to_target_counterfeit_tobacco_suppliers.asp)

## Written evidence from Len Tawn [TOB27]

- 1) I would like to take the opportunity to add my voice in a small but I believe significant way to the debate your are having regarding tobacco smuggling and illegal product sales. By way of background my wife and I run a small specialists tobacconists amongst our other businesses, not ignoring the health issues it is important that small legal outlets survive because the alternative is much more dangerous for the health of those who are unable for whatever reason to quit smoking. The product we sell whilst harmful is far less harmful than the product that is undermining our business, it is not constrained by quality control. Everything we sell has UK taxes paid which puts us at severe price disadvantage in the eyes of our customers.
- 2) It is human nature, especially in this country, to get something for nothing and as long as contraband goods are freely available then customers will always be happy to purchase them despite the risks, more needs to be done to stop the goods arriving here in the first place, more powers of search, arrest and seizure of stock need to be given to whichever authority is ultimately responsible, the cost of extra officers would be more than met by the increase in legal UK tax paid sales that would result as less contraband becomes available.
- 3) By way of example one outlet in Hereford openly sells illegal product and has been visited on a number of occasions, in the last 3 years goods have been seized with a market value in the thousands, within hours the shop is openly trading again with more illegal product, this clearly demonstrates that the deterrent is by nowhere near effective enough and the profit margin great enough to weather the inconvenience of disruption. Whilst this shop is trading illegally our business suffers by a reduction of 1/3 of our sales, multiply that across the country and the loss of revenue in taxes becomes a significant figure notwithstanding the detrimental effect on the health of the users of the illegal tobacco putting additional pressure on the Health Service.
- 4) I would urge this committee to place a much stronger emphasis on prevention of the product entering the country in the first place and much stronger penalties for offenders, the ability to close down persistent offenders would be a step in the right direction.

Len Tawn  
Retailer, Hereford  
**August 2013**

The North East Trading Standards Association, NETSA, is a partnership of the following Local Authority Trading Standards Services:

Darlington, Durham, Gateshead, Hartlepool, Middlesbrough, Newcastle-upon-Tyne, North Tyneside, Northumberland, Redcar and Cleveland, South Tyneside, Stockton on Tees and Sunderland

1. The above Trading Standards Services are active participants in the Tackling Illicit Tobacco for Better Health partnership, which is led by Fresh, Tobacco Free Futures and Smokefree South West, the three local authority-commissioned regional tobacco control programmes in the North East, North West and South West of England respectively, launched in the North of England in 2009, followed in 2011 by the South of England.
2. The partnership brings together public health representatives, regulators such as HM Revenue & Customs (HMRC), local authority Trading Standards services, the police and UK Border Force with two strategic aims:
  - (a) To reduce the supply of illicit tobacco products
  - (b) To reduce the demand for illicit tobacco products.
3. All activity takes place within broader strategies to reduce the harm of tobacco in our communities and to reduce smoking prevalence. Trading Standards Services are the lead regulators for a wide range of tobacco control measures, including under age sales, point of sale displays, health warning labelling and niche tobacco products. We work closely with our colleagues in Environmental Health particularly in relation to smokefree legislation and have close links with Local Authority Licensing Services, who have a role to play in this area.

### **Illicit tobacco, along with all tobacco, is a real concern**

4. We welcome the Home Affairs Select Committee inquiry into tobacco smuggling and the focus it will provide on this particular topic. Illicit tobacco is a real concern for many communities. Price is the single most effective policy lever to reduce tobacco consumption, with increased prices incentivising smokers to cut down or quit. However, illicit tobacco is available at up to half the price of licit products, presenting smokers with the opportunity to buy and smoke more tobacco than they would if they were paying full price
5. Illicit tobacco is available from a range of accessible sources – pubs, shops, private houses (known in the North East as ‘tab houses’), street markets, even ice cream vans. This availability means that not only are adult smokers presented with increased opportunities to buy illicit tobacco, but disturbingly very young children too can access it without the restrictions of age of sale legislation, allowing illicit tobacco sellers to also hook children onto a lethal addiction. After our ‘Keep it Out’ campaign in 2012 local people report examples of children accessing cigarettes in this way:
  - Teesside, sales to 16 year olds, singles for 25p and lighters

- Durham area, sales to 8 -10 year olds, a 13 year old sold singles for 50p
  - Wearside, sales to 10 year olds of singles for 25p plus lighters
6. It is also known, as noted by the scope of the inquiry, that the illicit tobacco trade is linked to crime, our work with local Police Forces has confirmed this, the National Illegal Money Lending Team, hosted by Birmingham Trading Standards has also found links between sales of illicit tobacco and illegal money lending. This type of criminality covers the range from low-level offending in communities to organised crime regionally, nationally and internationally, the approach of the partnership using the skills and powers of different regulators has enhanced our enforcement capacity.
  7. Trading Standards is responsible for many areas of product regulation, including consumer product safety and we would stress that, illicit tobacco as an issue must be viewed within the overall context that all tobacco products are dangerous: cigarettes are for example the only legal consumer product that when used exactly as the manufacturer intends, will kill half of their long-term users.

### **The illicit tobacco market**

8. The UK has made good progress in reducing the illicit tobacco market. Based on statistics from HMRC, the illicit cigarette market share has fallen from 21% in 2000/01 to 9% in 2010/11.
9. Trading Standards has benefited throughout the life of the partnership from high quality information and research the results of independent regional surveys have shown a significant decline in the size of the illicit tobacco market since the partnership began.
10. In January and February 2013 a survey among 1,500 smoking and non-smoking adults (aged 16 and over) and smokers aged 14-15 years old was undertaken across the 12 local authority areas of the North East. Results from this survey were compared against a comparable benchmark study undertaken in 2009, and a second wave of interviewing in 2011.
11. The results showed that the illicit tobacco market in the North East has continued to decline both in terms of the proportion of smokers buying illicit tobacco and the volume consumed. Prevalence of purchasing duty free tobacco has reduced notably, likely to be attributable to a reduction in frequency of foreign travel as a result of ongoing economic hardship. The proportion of smokers buying illicit tobacco has reduced from 24% to 17% since 2009 and the overall volume of illicit tobacco is down by 39%, to represent 9% of the region's estimated total tobacco consumption, a substantial decline especially when considered against the backdrop of sustained economic hardship that would be expected to fuel a demand for illicit tobacco.
12. However, illicit tobacco is still a major problem in some of the most deprived areas in the UK, and comprehensive partnership activity is required to continue to achieve this downward trend in the size of the illicit tobacco market, smoking rates of all forms of tobacco products, licit and illicit are worryingly high in some of our communities, contributing to wide health

inequalities a major concern for Local Authorities with their new lead role in public health provision.

### **The partnership is a case study of good practice**

13. The UK Centre for Tobacco Control Studies published its independent evaluation of the North of England's Tackling Illicit Tobacco for Better Health programme in 2012, reporting that:

*"The programme has had a measurable effect on the problem [of illicit tobacco] in the North of England. It was the first programme to develop a comprehensive approach to tackling the demand for and the supply of illicit tobacco... The scheme is an exemplar of partnership working and should now be widely disseminated."*

14. The full report can be accessed [here](#).<sup>1</sup>

15. The programme has also been highlighted as good practice in the [joint tobacco smuggling strategy](#)<sup>2</sup> of HMRC and the UK Border Agency, as well as in the [National Audit Office report](#)<sup>3</sup> on HMRC's progress in tackling tobacco smuggling. The recent Public Accounts Committee hearing also heard that the partnership has been successful and members suggested that it be rolled out further.

### **Tougher sanctions and penalties are needed for tobacco smuggling**

16. We welcome the inquiry's interest in whether the current sanctions and penalties for tobacco smuggling are appropriate. There have been several examples across our region where penalties for involvement in the illicit tobacco trade have been lenient in comparison with the crime that was committed. For example, in the North East, police raided a private house in July 2012 and found 40,000 counterfeit cigarettes and 13.6kg of tobacco. The occupant of the house had also been seen standing in the streets with three bags full of the illicit goods. However, despite being previously jailed in 2009 after being caught twice selling illicit tobacco, he was given a suspended prison sentence with supervision and ordered to pay just over £500 costs. He is under investigation again for repeat offences.

17. One of the approaches to improving sentencing has been by providing training of the judiciary in the North East; this could be enhanced by working with the Sentencing Guidance Council to produce dedicated tobacco control guidance as is available for other offences.

18. A further aid to enforcement and a strong deterrent to illicit sales would be the adoption of a robust licensing system, making sales of tobacco without a license an offence deterring sales of these products from private houses and other informal outlets.

<sup>1</sup> <http://www.ukctcs.org/ukctcs/research/featuredprojects/illicittobacco.aspx>

<sup>2</sup>

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_MiscellaneousReports&propertyType=document&columns=1&id=HMCE\\_PROD1\\_031246](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246)

<sup>3</sup> <http://www.nao.org.uk/wp-content/uploads/2013/06/10120-001-Tobacco-smuggling-Full-report.pdf>

## Standardised packaging

19. We note the inquiry's interest in the possible impact of the introduction of standardised tobacco packaging in Ireland on the quantity and availability of illegal tobacco in the UK. The Trading Standards Service nationally and regionally is in strong support of standardised packaging as we recognise that current packs are attractive to young people, who are extremely brand conscious. We have seen no evidence that suggests that the illicit market will increase if standardised packaging was introduced. The service enforces the law on copyright and trade Marks legislation, in our experience no matter what the product illegal copies can be produced that require specialised techniques or equipment to separate the genuine from the fake, tobacco products currently carry covert marking to enable identification, if standardised packaging was introduced these marking would still be required. It must also be remembered that the illicit tobacco market goes beyond counterfeit versions of UK brands, illicit whites easily recognised by buyers as being not from the UK. HMRC figures from 2010/11 show that 53% of large seizures were illicit whites an increase from 28% since 2002/3
20. The success of Tackling Illicit Tobacco for Better Health partnership has been the result of commitment from a wide range of stakeholders including Local Authority regulators, law enforcement bodies and health professionals, by adopting a coordinated approach to all aspects of tobacco control Trading Standards Services have achieved a great deal in reducing the harm caused by tobacco products, a continued focus supported by further resourcing will enable this good work to continue.
21. NETSA represents local authority Trading Standards Services and takes no funding from tobacco companies or front groups.

Richard Ferry. NETSA Tobacco Control Project Manager  
North East Trading Standards Association  
September 2013



## **Written evidence from National Asian Business Association [TOB29]**

1.0 This submission is on behalf of the NABA, an umbrella body representing the following British Asian business organisations:

LABA – Leicestershire Asian Business Association  
ABDN- Asian Business Development Network (Yorkshire)  
IAB – Institute of Asian Businesses – Birmingham  
HABA- Hertfordshire Asian Business Association  
BABA – Bedfordshire Asian Business Association  
BACBA- Black Country Asian Business Association – Dudley  
NeABA- Newcastle Asian Business Association  
ABA – Asian Business Association – London  
YABA – Yorkshire Asian Business Association (Leeds)

### **2.0 NABA and Declaration of Interests**

2.1 NABA has nine constituent organisations across the UK with a total membership of around 50,000, of which approximately 10,000 are tobacco retailers. NABA’s membership includes both retailers who sell tobacco, wholesalers and manufactures.

2.2 However, NABA’s policy positions and the information contained within this submission are our own and we stand as guarantor of that. We work alongside a wide range of organisations in order to protect and enhance the interests of the 50,000 members whom we represent but we maintain our independence at all times.

2.3 Specifically NABA aims:

- To continually monitor the needs of its members and the broader business community and effectively respond to the changing needs of its members which the business environment generates;
- To effectively represent its members at all levels within the business community by actively driving forward relevant business issues and seeking clarification of issues which may, do or will affect its members;
- To actively seek partnerships with other organisations which can assist in the attainment of NABA’s mission;
- To communicate and inform members of issues and initiatives which can assist in the better management of their operations;
- To facilitate opportunities where effective networking can occur for its members, and
- To engage, lobby and influence policy and strategy roll-out with each of the three political parties in the UK

### **3.0 Context**

3.1 There are 33,000 small newsagents and retailers across Britain working, on average, 16 hours a day to service their communities. Between them they serve over 5 million customers a day.

3.2 Smoking is harmful and should not be encouraged but tobacco is a legal product that accounts for approximately 22% of annual turnover for retailers. This figure can be as high as 40% for some retail stores, with much evidence to suggest that many non-tobacco sales are in fact additional purchases made by adult smokers coming in store to buy tobacco.

### **4.0 Concerns**

4.1 The illicit trade in tobacco products has, in the experience of our members, grown significantly in recent years. Any type of illicit trade, whether counterfeit or contraband, deprives responsible retailers of much needed revenue and only benefits criminal gangs who are less scrupulous as to who they sell cigarettes to. The illicit trade in tobacco also deprives the Government of much needed revenues with HMRC estimating the loss to be nearly £2billion.<sup>1</sup>

4.2 At the same time as our members have seen the illicit market growing, law enforcement agencies and local authorities have experienced cuts to their budgets. In our view, this has led to an 'enforcement-gap' on the ground. Combine this with the lack of coordination and cooperation between HMRC, Trading Standards and local police forces, we have seen the effectiveness of law enforcement and local authorities significantly diminish in recent years.

4.3 As an organisation we would like to see this addressed as a priority for Government and we welcome the conclusion of the recent Public Accounts Committee report which makes clear that more must be done by the law enforcement agencies to provide a co-ordinated approach to tackling the flow of illicit tobacco within our borders.

4.4 However, the experience of our members is that a large amount of the volume of illicit tobacco coming into the UK is cigarettes known as 'illicit whites'. As we understand it, these products are being manufactured legally in other countries purely to be smuggled into the UK and other countries. We would urge the government to see if anything can be done to stem this flow to protect small retailers and also their own revenues.

## **5.0 Potential Impact of Plain Packaging in Ireland**

5.1 NABA does not have the expertise to provide a comprehensive view on the impact on the UK of plain packaging in Ireland. However, we believe the views we submitted as part of the UK consultation on plain packaging are equally applicable in this instance; or indeed to the prospect of plain packaging in Scotland.

5.2 It is clear that the impact of any prohibitive legislation at the UK border will have an impact on the quantity and availability of illicit tobacco within our borders. The natural effect of plain packaging is to make cigarettes easier to counterfeit. The consequent growth in the illicit trade and the likely increase in smuggled branded cigarettes will place extra pressure on HMRC officers at the Irish border and ports and airports serving Ireland at a time when resources – as set out above – are stretched.

## **6.0 Current sanctions and penalties**

6.1 Combined with the lack of sufficient enforcement, our members have also frustration at the apparent lack of adequate penalties and sanctions. All too often the threat to the retailer comes from organised criminal gangs in their areas. The profits available to be made and the lack of adequate penalties means these gangs can thrive with perceived little risk.

6.2 We understand that Trading Standards have recommended that the Sentencing Guidelines issued to the courts be reviewed.<sup>2</sup> NABA would support their call.

## **7.0 Request for further information**

<sup>1</sup> Measuring tax gaps' 2012 at pages 20-21 available at <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf>

<sup>2</sup> All Party Parliamentary Group on Smoking and Health Inquiry into the Illicit Trade in Tobacco Products, Memorandum from: Trading Standards Institute Tobacco Focus Group, November 2012 available at [http://www.ash.org.uk/files/documents/ASH\\_888.pdf](http://www.ash.org.uk/files/documents/ASH_888.pdf)

7.1 As Chair of NABA I would be willing to appear before the committee to expand upon my Evidence.

National Asian Business Association  
August 2013

### **Written evidence from Cllr Paul Rone [TOB30]**

The very concerning issue regarding illicit tobacco sales in Herefordshire is obviously mirrored throughout the country and therefore affects all of us.

Much of the under the counter sales of tobacco in Herefordshire is duty avoided, that is, a legally manufactured product that has been smuggled into the country and in so being, has avoided all duties and taxes. This situation is very damaging financially on two fronts Firstly the loss of revenue to the country in duty and taxes payable are vast and Secondly, the loss of profit on cigarette and tobacco sales by bona fide retailers is severely damaging to their business' especially the small corner shop retailers - establishments synonymous within these Isles.

Of greater concern though is the selling of counterfeit tobacco products, that is, cigarettes and hand rolling tobacco that is manufactured goodness knows where, by goodness knows who, using goodness knows what.

The threats to health are frightening- does this counterfeit product contain chemicals that will in 2,5 or 10 years cause an as yet unseen medical condition that will in turn have a huge cost effect for the health service? In my experience the main age group that would be affected is the under 30's and as the product gets cheaper so the appeal and affordability to young people goes up.

A packet of counterfeit cigarettes now sells in Hereford for £2-50, sold in shops to anyone that has the money. The seller does not ask for i.d. - is not the slightest bit concerned at the age of the purchaser as long as they have the money.

Organised crime is obviously the backbone of these supply chains, and as long as HMRC have no teeth to punish them with and EHTS nationally can only prosecute for the actual loss of duty on the packets seized on the premises or, ludicrously, for not having a health warning displayed on the packet then this damaging practice will continue.

Cllr Paul Rone  
St Martins & Hinton Ward, Hereford

September 2013

## Written evidence from Herefordshire Council [TOB31]

### TOBACCO SMUGGLING – CONSULTATION RESPONSE

Thank you for the opportunity to respond to this consultation which is of considerable interest to both my local authority and to my trading standards service. My comments are as follows:-

1. We like many other local authorities within England are experiencing a serious problem with the supply and sale of illicit tobacco especially from so called 'bona fide' established high street retail premises.
2. The profits that can be achieved are immense and the risks are low. It is estimated that a fully stocked standard ISO freight container of illicit tobacco is worth in excess of £1m at retail level. There is a ready market for the product and as the price point is relatively low [circa£3], there is no financial disincentive to dissuade people especially children / juveniles from taking up smoking and then getting addicted. This is likely to have serious repercussions on the future health of the population. Analysis of illicit tobacco has shown that it often contains noxious ingredients over and above those found in legitimate product.
3. In Herefordshire we found that our initial seizures were quite high with circa 300k cigarettes being recovered at one premise alone. Although invariably it is the case now, that seizures at retail level generally tend to be in their low hundreds. This does not mean that the problem is diminishing; it is merely a reflection that such premises are now countering the risk of being raided and having their illicit tobacco seized, by keeping their stock levels low and by getting supplied on a regular basis.
4. Although enforcement action is taken at a local level to curb and disrupt the supply of illicit tobacco which also involves key partners such as the Police and HMRC, the problem is not abating and in our view it is getting worse. We have also received information that indicates more premises are selling than previously.

5. Local authority prosecutions are typically against the actual seller of the illicit product who are normally low down in the 'pecking order' and invariably the premise owner(s) and or masterminds behind the operation remain undetectable and untouchable. We are informed by HMRC that the importation & supply of this product is undertaken by highly organised gangs but local authorities do not have the resources to tackle at this level.
6. I understand that HMRC will not now deploy staff to assist local authorities unless the quantity of illicit tobacco involved is above a certain threshold. It would also appear that those local authorities on the periphery of major conurbations or who are rural, will by default, have less engagement with them. There is more than enough work within major conurbations to fully engage HMRC to full capacity and consequently there is little or none to spare for those non-metropolitan authorities. It is not however, solely about a resources issue, although there is a pressing need to deploy more resources at all levels.
7. is my view that targeted action is required to tackle this problem in three key areas –
  - 7.2 (Level1) At point of entry into the UK ;
  - 7.3 (Level2) at wholesale distribution level and;
  - 7.4 (Level3) at retail level.
8. Levels (1) and (2) should be the remit of Border Agency/HMRC and or SOCA and become a key priority for these services.
9. Local authority trading standards services could tackle this problem more effectively at retail level (3) if they are given greater powers – please see recommendations below.

## 10. Recommendations

- 10.1 Improved collection and sharing of data and intelligence between respective agencies.
- 10.2 A tsar to co-ordinate action between respective Government departments and agencies as responsibility is currently divided between a number of

different bodies and there is a perception that no one leads on this key issue.

- 10.3 Strengthen the powers available to local authority trading standards services to enable them to close down retail premises where there is evidence of selling illicit tobacco. If illicit tobacco is found on say two occasions – then local authorities should be able to apply to a magistrate’s court for a closure order and then be able to physically close a premise if necessary.

Mike Pigrem, Head of Trading Standards & Licensing  
Economy, Community & Corporate Directorate  
Herefordshire Council  
September 2013