



PROTECTING CONSUMERS FROM SCAMS, UNSAFE GOODS AND ILLEGAL TRADING

TMA SUBMISSION

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Introduction

1. The Tobacco Manufacturers' Association (TMA) is the trade association for the UK tobacco industry. The TMA's members are British American Tobacco UK Ltd., Imperial Tobacco Ltd. and Gallaher Ltd. (a member of the Japan Tobacco Group of companies).¹
2. The tobacco industry supports the employment of approximately 60,000 high value jobs, either directly or indirectly, throughout the UK. Tobacco manufacturers contribute around £12 billion in taxation (excise duties plus VAT) to the Exchequer each and every year, which equates to £400 for every taxpayer in the UK.²
3. The tobacco industry invests in the region of £158 million per annum in research and development, much of which is dedicated to next generation products like e-cigarettes. The industry also spends approximately £54 million a year in capital expenditure. For every £1 million spent by the tobacco industry, an additional £1.7 million of spending is supported in the UK economy.³

Context

1. The European Commission estimates that the total cost of counterfeiting and piracy to the UK economy could be as high as £30 billion and, as a result, could be responsible for as many as 14,800 job losses.⁴ The City of London Police states that 'Buying fake goods affects legitimate businesses, as counterfeit sales drive the profit away from the genuine manufacturer which could result in job losses and in turn affect the economy.'⁵
2. The trade in counterfeit and other illicitly traded goods negatively affects consumers, as a result of the fact that counterfeit products are ordinarily of a lower quality than legitimate goods. In many cases, such products contain potentially harmful substances. For example, illicit alcohol products, according to Professor Paul Wallace, commonly

¹ <http://www.the-tma.org.uk/about/>

² http://www.the-tma.org.uk/wp-content/uploads/2016/07/TMA-Global_Business-Report-A4_16pp_v10.pdf

³ http://www.the-tma.org.uk/wp-content/uploads/2016/07/TMA-Global_Business-Report-A4_16pp_v10.pdf

⁴ <https://www.pwc.co.uk/assets/pdf/anti-counterfeiting-consumer-survey-october-2013.pdf>

⁵ <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Pages/counterfeit-goods.aspx>

contain 'chemicals used in cleaning fluids, nail polish remover and automobile screen wash, as well as methanol and isopropanol which are used in antifreeze.'⁶

3. HM Treasury data shows that the loss due to illegal tobacco products was the highest of any excisable category in 2015/2016, accounting for £2.4 billion of lost tax revenue.⁷ Further information on the scale of the UK's illicit tobacco problem has been provided by a range of other organisations.

- A 2013 survey study conducted by PricewaterhouseCoopers demonstrates that 81% of respondents believe that counterfeit cigarettes were easy/very easy to purchase in the UK and 13% of respondents have purchased such products.⁸
- Research carried out by the European Anti-Fraud Office in 2015 shows that 21% of consumers have been offered black market cigarettes in the UK and, of those who purchase such products, 70% do so because they are cheaper than their legal counterparts.⁹
- In a report published in 2015 by the Royal United Services Institute, the authors attributed the 'persistence of the illicit tobacco trade...to the high – and increasing – level of tax on tobacco products in the UK, and the differences in price between the UK and countries in continental Europe.'¹⁰
- TMA research, carried out in 2016, suggests that 20 per cent of smokers are aware of illegal tobacco being sold in their area and 71 per cent have purchased 'non-shop', including counterfeit, cross-border and duty free, tobacco products. This research also indicates that the price of 'non-shop' tobacco products is approximately half that of those that are legitimate.¹¹

4. The loss incurred by businesses and the Exchequer as a result of illicit activity has a significant impact on communities across the UK. High streets and public services suffer if illegal traders deprive legitimate businesses of sales income and the taxman of the revenues due on genuine products. In other words, every citizen suffers as a result of illicit activity, not just those who are directly affected by it.

5. There are two principal barriers that prevent consumers from being protected effectively against the sale of illegal tobacco products, which are: the funding of Trading Standards services across the UK, which has been significantly degraded in recent years, and the politicisation of Trading Standards services, which has now reached an unprecedented level.

⁶ <https://www.pwc.co.uk/assets/pdf/anti-counterfeiting-consumer-survey-october-2013.pdf>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470540/HMRC-measuring-tax-gaps-2015-1.pdf

⁸ <https://www.pwc.co.uk/assets/pdf/anti-counterfeiting-consumer-survey-october-2013.pdf>

⁹ http://ec.europa.eu/anti-fraud/sites/antifraud/files/eb_illicit_tobacco_trade_united_kingdom_en.pdf

¹⁰ https://rusi.org/sites/default/files/201412_whr_on_tap.pdf

¹¹ TMA AIT Survey 2016

Reduced Funding

6. The poor level of funding available to Trading Standards services is well-understood within government. In March 2015, the Department for Business, Innovation and Skills published a report entitled *The Impact of Local Authority Trading Standards in Challenging Times*.¹² One of the major objectives of this report was to build an evidence base on the impact of budget cuts to local trading standards services in recent years”.¹³
7. The authors of this report noted that there ‘have been significant cuts to trading standards departments over the past five years’. Indeed, their research demonstrates that between 2011/12 and 2014/15, the average reduction in Trading Standards services’ budgets across England was more than 18% (though this is based on a limited number of authorities’ responses). However, this average covers a larger degree of variation amongst different authorities. For example, the budget of two Trading Standards services increased over the period in question, of which the largest increase was 9.7%. By contrast, the largest reduction in an authority’s Trading Standards budget was 56.5%.¹⁴
8. Moreover, they concluded that ‘decisions about budget cuts have often been based on monetary considerations rather than an understanding of the performance, outcomes and impact of the work of trading standards.’¹⁵ In other words, budget cuts have been made in order to satisfy short term targets and not as part of a process of reorienting Trading Standards services’ strategic direction.
9. The authors found that Trading Standards services’ diminishing resource base had resulted in ‘a shift from proactivity and prevention to a more reactive and responsive approach. The tradition of routine inspections and sampling work to check compliance levels among businesses has largely given way to a work pattern that is much more driven by referred complaints from consumers and other intelligence reports.’¹⁶ The authors also found that reduced resources had resulted in ‘much loss of expertise and experience through voluntary redundancy programmes, departments have lost much of their resilience, and there is less emphasis on specialisation.’¹⁷
10. The consequence of the diminishing level of resources and expertise that Trading Standards services are able to access was clear to the authors of the report. They

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

interviewed a number of serving Trading Standards officers and ‘several officers pointed out that, when they did not make inspection visits, they almost inevitably found instances of non-compliance, mostly fairly minor, but nevertheless, indicating to them that standards were slipping as a result of the new reality that most businesses were now not seeing a trading standards officer from one year to the next.’¹⁸

11. Research conducted by the Local Government Association (LGA) suggests that the average budget cut across all Trading Standards services in the UK between 2010 and 2015 was 40%. The LGA research emphasised that ‘there is a need for more honesty - locally, but especially nationally - about the fact that no service can deliver what it used to when it experiences cuts of the order trading standards has’.¹⁹
12. ‘Put simply,’ the author of the LGA report continued, ‘current levels of resources cannot sustain the same level of protection, across the same number of areas, as was the case previously.’ Moreover, the LGA’s report stated that the ‘Government must do more to acknowledge that capacity at local level is already fully stretched, and shift away from its default approach of making trading standards responsible for all manner of enforcement activity.’²⁰

Politicisation

13. Tobacco manufacturers and other associated groups have significant resources and invest heavily in insight research and intelligence gathering in regard to illegal tobacco. Tobacco manufacturers also have well-developed brand enforcement teams, which participate in anti-illicit trade activities in conjunction with law enforcement officers. Furthermore, the tobacco industry conducts behaviour change campaigns that aim to reduce the demand for illegal tobacco products by demonstrating the potential consequences associated with it.
14. The tobacco industry works with Trading Standards services where it is able to. However, it has become increasingly difficult to do so in recent years as a result of the politicisation of many Trading Standards services. Partly, this is a result of the genesis Local Government Declaration on Tobacco Control, which is a voluntary agreement undertaken by councils to disengage from the tobacco industry and organisations associated with it.²¹ As a result of this agreement, to which approximately 80 councils are signatories, tobacco manufacturers are prevented from working with local councils and the services, such as Trading Standards, that are at their disposal.

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420218/bis-15-139-the-impact-of-local-authority-trading-standards-in-challenging-times-r2.pdf

¹⁹ <http://local.gov.uk/documents/10180/7632544/LGA+trading+standards+review+-summary+report+%28January+2016%29.pdf/3348eefc-b690-4005-9210-15f9a180d84c>

²⁰ <http://local.gov.uk/documents/10180/7632544/LGA+trading+standards+review+-summary+report+%28January+2016%29.pdf/3348eefc-b690-4005-9210-15f9a180d84c>

²¹ <http://www.smokefreeaction.org.uk/declaration/>

15. In the present context, disengagement from the tobacco industry is counterproductive. Manufacturers and public bodies at all levels should be improving their degree of co-ordination in regard to illegal tobacco in order to reduce its scale and impact. Specifically, Trading Standards services should welcome the commitment the tobacco industry consistently shows to tackling this problem and make use of the resources that manufacturers offer them.
16. Where public bodies do engage with private sector organisations on a consistent basis, real progress has been made in tackling the trade in illegal products. A good example of this is the Scottish Anti-Illicit Trade Group (SAITG). The SAITG is a forum that brings together public and private sector bodies with an interest in the illegal trade in a variety of products, such as pharmaceuticals, tobacco and alcohol. It facilitates the sharing of information, intelligence and best practice between businesses and between businesses and enforcement agencies. It also allows businesses to share concerns about particular illegal trade hotspots with law enforcement bodies. Interaction between public and private sector bodies in the SAITG has led to concrete enforcement action against criminal traders.

Conclusion

17. The TMA and its members are concerned that enforcement bodies with responsibility for enforcing regulations in regard to the supply and sale of illegal tobacco, particularly Trading Standards services, lack the funding and resources necessary to enforce the relevant laws effectively. The TMA and its members are also concerned that the capabilities of enforcement bodies, such as Trading Standards, have been further degraded as a result of their politicisation, which, in many cases, prevents them from cooperating with tobacco manufacturers.
18. In order to reverse the recent increase in the scale and cost of the illegal tobacco market in the UK, it is essential that the Government provides enforcement bodies with the resources required to tackle this issue. Equally, such services should cooperate to the fullest extent possible with tobacco manufacturers and other private sector organisation in order to ensure that there is a consistent approach to reducing the trade in illegal goods, including tobacco, across the UK.