



TMA response to the consultation held by the APPG on Illicit Trade

13/04/18

- 1. Please indicate if you are happy for the APPG report to specifically name your company or organisation.**

Yes

- 2. Please indicate if you would like to be considered to give oral evidence to the APPG.**

Yes

- 3. Please indicate if you are happy for the APPG to include your evidence in the APPG report.**

Yes

- 4. Please indicate the name of your organisation and contact details (email and telephone)**

Tobacco Manufacturers' Association

- 5. Please give a short description of your business or organisation (100 words max).**

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).

- 6. Please indicate which industry sector your organisation is predominantly active in.**

Tobacco

- 7. On a scale from one to ten, how important would you consider tackling illicit trade as a priority for your business or organisation (1 = low, 10 = high)?**

10

8. When you consider “illicit trade”, which of the following do you consider the biggest threat to the success of your organisation?
- a. Counterfeit Goods
 - b. Smuggled Goods
 - c. Duty unpaid goods

All of the above

9. When considering the impact of illicit trade on your organisation, how does this manifest?
- a. Market share eroded
 - b. Lost sales
 - c. Lost brand equity and or reputation
 - d. Direct cost
 - e. Lost jobs/employment

All of the above

10. What financial value would you put on the impact of illicit trade on your organisation? (in £ per annum)

As a trade association the illicit trade does not impact the TMA directly, however it greatly affects our members and other associated groups. See response to question 11 for further information.

11. Please give a brief description and details of the impact of illicit trade on your business, industry, consumers or organisation including any statistics. (200 words max)

The illicit trade denies the Treasury very significant tax revenues, hurts legitimate retailers who lose sales and brings crime into the community.

[HMRC's 2016-17 midpoint](#) estimation of the illicit market was that 15% of all cigarettes consumed in the UK and 28% of all hand rolling tobacco was illicit. They also estimated that this equates to a total of £2.5bn tax lost by the Government.

There will be further costs to the Government such as the time of enforcement agencies, courts and prisons interrupting, prosecuting and incarcerating those that engage in the illicit trade.

[The Tobacco Retailers' Alliance](#) has estimated the equivalent retail cost of this to be approximately £3.1bn. They estimate that, on average, approximately £34,000 of revenue was lost by each small retailer in 2016-17 of which approximately 1/5th is due to cross border shopping leaving an illicit trade related loss of approximately £27,000.

The primary criminality is of tobacco duty and VAT fraud but further issues like violence and the threats towards small retailers do occur. Moreover, it is [well known](#) that illicit tobacco is viewed as a financing method by Organised Criminal Gangs for other forms of crime.

12. On a scale of one to ten, what importance do you think the Government places on illicit trade? (1 = low, 10 = high)

13. Please give a reason for your answer. (100 words maximum)

The Government does support some anti-illicit trade activity (such as consulting on stricter sanctions for tobacco duty evasion and the collection of illicit trade statistics), but often its policies and actions raise the demand and supply of illicit tobacco.

For example, tax rises and regulations such as minimum pack sizes and standardised packaging encourage the growth of the illicit trade (see Q15 and Q20), it is well known that Trading Standards is [underfunded at the present time](#) and Border Force has other priorities and [limited resources](#).

Likewise restrictions on industry and government cooperation taken up by some Local Authorities via the Local Government Declaration on Tobacco Control (LGDTC) can seriously hinder the industry's ability to engage enforcement agencies to work together to crack down on the illicit trade.

14. What are the key drivers of illicit trade in your sector? (select all that apply):

- a. High price of goods
- b. Ability to access cheaper goods
- c. Price differentials
- d. Victimless crime
- e. Lack of enforcement
- f. Ease of trade
- g. Inadequate penalties
- h. Over-regulation
- i. Complexity of supply chain
- j. Low barriers to entry
- k. Low political will to intervene

15. Please give a short explanation of what you perceive to be the main drivers of illicit trade. (200 words max)

Government policies have consistently driven consumers to the illicit tobacco market and made it easier for criminals to profit. UK tobacco duties are the highest in the EU (with the occasional exception of Ireland) and this is driven by the tax component which can be [up to 90% of the Recommended Retail Price](#). And since the reintroduction of the tobacco duty escalator in 2010, [HMRC's estimate](#) of the proportion of cigarettes (which produce approximately [85%](#) of all tobacco duty revenues) that are illicit has risen from 10% to 15% of all UK consumption.

Illicit tobacco prices are [typically less than half of legitimate ones](#) and further tax rises only serve to encourage consumers to buy from the illicit market. The introduction of minimum pack sizes as part of the EU's revised Tobacco Products Directive has had a similar effect by increasing out of pocket tobacco prices ([Oxford Economics](#)) estimated this would cost the Government £2.1bn of tobacco duty and VAT (including on other goods not bought due to lower retail footfall).

Simultaneously, standardised packaging has made it easier for criminals to manufacture, distribute and sell counterfeit tobacco packs in the UK as witnessed by the spate of [reports](#) of such products in the media.

16. When considering how illicit and counterfeit products reach UK consumers, what are the most prevalent mechanisms that you come across (please put in order of likelihood, 1 being the most likely):

- a. Personal transactions
- b. Internet transactions and direct mailing
- c. Organised crime
- d. Social media

(See q17)

17. Are there any other prevalent mechanisms that illicit and counterfeit products reach UK consumers? (100 words max)

In 2017, 41% of smokers buy tobacco from at least one illicit source and 72.5% when cross border shopping is included. Tobacco was purchased from [these sources](#) by this percentage of smokers:

- Markets or car boot sales (15%)
- Vans (11%)
- Workplace (14%)
- Private 'fag' houses (11%)
- Friends and family (29%)
- Internet (including social media) (13%)
- Non-employee in a pub (16%)
- People in the street (10%)
- Abroad (47%)
- Duty Free (54%)

18. Please give a brief account of how illicit and counterfeit products reach UK consumers (e.g. manufacturing source, movements and retail processes) (200 words max).

As previously noted, organised criminal gangs (OCGs) are often ultimately responsible for illicit tobacco products being sold in the UK, even where the final vendor has little to do with the OCG. OCGs act as manufacturers and distributors and reap enormous profits. The [Tobacco Retailers' Alliance](#) estimated that the illicit tobacco trade had revenues of £1.5 billion in 2016-17. It is also notable that illicit tobacco sales are often used to finance other crimes.

Historically, illicit tobacco was brought into the UK in large containers. However, this has been largely supplanted by other methods. RUSI recently highlighted the growth in 'ant smuggling' where a little tobacco is frequently brought into the country ([from countries with high UK immigrant populations and from UK holiday destinations](#)) by individuals for resale. This exploits the current minimum indicative levels (which the TMA argues should be replaced with fixed limits), UK/EU price differentials and increasingly cheap travel between the UK and Eastern Europe.

19. When considering counterfeit products, what level of sophistication do you generally find? (select one)

- a. Very poor
- b. Generally obvious counterfeit to the public
- c. Generally obvious counterfeit to the trade
- d. Generally obvious counterfeit to the brand owner
- e. Generally obvious counterfeit to enforcement
- f. Requires forensic analysis to distinguish from genuine product

20. Please describe the level of sophistication of counterfeit products you find, whether this varies and if so what causes this to vary. (200 words max)

The quality of counterfeit tobacco products varies. Some will be obvious to the consumer not least because the price is significantly lower than legitimate products, but because they are poor quality or do not comply with UK regulation (e.g. have branded packaging). Some will require more sophistication to detect, but in general this is possible by the brand owner.

The introduction of standardised packaging has exacerbated the issue of identification. With fewer distinguishing features it is significantly easier and cheaper for counterfeiters to manufacture illicit tobacco and harder for consumers, retailers and enforcement to identify them.

Ahead of its introduction in May 2017, the industry and other associated groups warned that standardised packaging would be a boon to the illicit trade. This appears to have been the case as counterfeit standardised packs are [being found](#).

21. What do you feel is the prevalent perception of illicit trade for the public and consumers? (select one)?

- a. Victimless crime
- b. An opportunity to get equivalent goods for lower cost
- c. An opportunity to get inferior goods for lower cost
- d. An opportunity to get genuine goods avoiding duty

22. What perception do you believe the public and consumers have towards illicit goods/trade? (200 words max)

Tobacco consumers, in general seem to care little about the illicit tobacco trade. [88%](#) of smokers believe that tobacco prices are too high and as a consequence feel little compunction in purchasing from the illicit market - [57%](#) say that rising prices makes them more likely to buy from the illicit market. This is exacerbated by regular tax rises and regulatory changes ([45%](#) of smokers say they are more likely to buy untaxed tobacco due to the introduction of standardised packs and minimum pack sizes).

This reinforces the perception that the illicit tobacco trade is a victimless crime. This is reflected in the fact that just [12%](#) of smokers who are aware of illicit tobacco report it to the authorities but [64%](#) of those who do not, fail to because they believe "it is none of their business".

23. Please give a brief description of how your organisation independently attempts to tackle illicit trade including any statistics. (200 words max)

The TMA operates a 5 point plan to tackle the illicit trade.

1. Intelligence – The TMA and industry generates significant intelligence on the illicit markets at an international, national and local level. In 2017, the industry delivered over 1,300 pieces of intelligence and responded to over 1,100 request for assistance from enforcement agencies.
2. Insight – The industry collects and analyse a large amount of information to provide a detailed picture of the illicit market. The TMA’s annual anti-illicit trade polling of 12,000 smokers provides unique insight into smokers’ behaviour attitude and awareness.
3. Technology – The development of technology such as track and trace capabilities allows enforcement to easily identify legitimate and illicit tobacco.
4. Collaborative working – Some efforts have been mentioned but further to this the TMA works with the Scottish Anti-Illicit trade Group, NI IP Crime Group, National Business Crime Solutions and others.
5. Mobilising support – The TMA conducts regular media campaigns across the UK and internationally to raise awareness of the illicit trade and its impacts. In 2017, the TMA placed such messages in international airports, sea ports and on specific Eastern European routes.

24. Please indicate the annual economic cost to UK plc you perceive illicit trade to contribute (in £ per annum)

See question 10/11.

The [Tobacco Retailers’ Alliance](#) has also estimated that almost the illicit and cross border trade results in 12,000 fewer jobs through lower revenues in the small retail sector alone. There are undoubtedly further employment losses in large retailers and in associated sectors such as manufacturing, wholesale and haulage.

25. On a scale of 1 to 10, how would you describe the relationship and collaboration of other organisations to tackle illicit trade (1 = poor, 10 = excellent):

8

26. Please give a brief description of how your organisation works with other organisations (for example the private, third or public sector) to tackle illicit trade. (200 words max)

The TMA’s members have in place memorandums of understanding with HMRC to address the illegal trade. The TMA co-chairs joint working groups with HMRC which covers a broad range of issues such as intelligence sharing, insights, campaigns and communications.

The TMA is a member of various groups including the National Markets Group, which looks at physical markets and tackling illicit trade online as well as devolved groups such as the Scottish Anti-Illicit Trade Group and Northern Ireland IP Crime Group which both place a strong focus on collaboration and intelligence sharing. All of these groups have demonstrated notable successes in tackling illicit trade. The TMA is also a member of the recently established National Anti-Illicit Trade industry sub-group.

The TMA does work with other parts of Government to a limited extent (for example through the development of the National Anti-Illicit Trade Group as well the forums that exist at a devolved level). However, the misinterpretation of the Local Government Declaration on Tobacco Control means that often the TMA finds it difficult to engage with local trading standards teams in parts of England and Wales. This hinders all of our efforts to combat the illicit tobacco trade.

27. When considering how your organisation works with the public and/or consumers, what methods do you use to engage with the public to tackle illicit trade (select all that apply)

- a. Marketing campaigns
- b. Public helpline
- c. Forensic service
- d. Social media
- e. Supply chain engagement
- f. Public events

28. Please give a brief description of how your organisation works with the public and/or consumers to tackle illicit trade.

See question 23/26

29. Please give a brief description of what more (if anything) you believe the Government or its agencies could do to tackle illicit trade. (200 words max)

- Remove the tobacco duty escalator (automatic duty increases) which raises price differentials between UK and EU tobacco and pushes smokers to buy illicit tobacco.
- Acknowledge the failings of standardised packaging to achieve its aims and look to repeal the regulation.
- Remove regulation on minimum pack sizes which push smokers to the illicit market.
- Introduce the stricter sanctions for tobacco duty fraud which were consulted on in 2017 and take them further to consider the role of social media in the illicit trade.
- Introduce fixed limits for personal tobacco imports to reduce 'ant smuggling' and to make the work of Border Force easier.
- Review the LGDTC and its detrimental impact on combatting the illicit trade through tobacco industry exclusion.

30. Please give a brief description of what more (if anything) you believe the private and third sectors could do to tackle illicit trade. (200 words max)

The private and third sectors do a great deal to combat the illicit trade but are ultimately not responsible for the existence and problem of the illicit trade (which is primarily driven by Government high tax policies). It is in everyone's interest that the illicit trade is countered effectively, but it is incredibly difficult for this to happen while the Government undermines these efforts through its policies.

To that end, the private and third sectors should continue to work together in the partnerships that currently exist and develop new ones to coordinate action against the illicit trade, but it is also vital that they work together to highlight the issue of illicit trade and its negative impacts to the national and devolved Governments.

31. When considering Brexit, which elements of Britain's relationship with Europe do you think are important to keep in order to tackle illicit trade (rank in order that you would prioritise):

- a. Cross-border intelligence sharing 1
- b. Policy cooperation/coordination 3
- c. Shared enforcement activities 2
- d. Technology development and standardisation 4
- e. Institutions such as OLAF 5

32. Are there any others aspects of Britain's relationship with Europe that you think are important to keep in order to tackle illicit trade? (100 words max)

The UK should not keep the minimum indicative levels for personal imports and should instead have fixed limits.

The current rules allow unlimited imports for personal use with certain amounts (e.g. 800 cigarettes) used as guidelines for what should be considered suspicious and potentially being brought back for resale. This requires enforcement officers to make difficult judgements and is subject to much abuse as individuals bring back cheap tobacco claiming it is for personal use before selling it on illegally.

33. Do you have any additional comments or issues you believe the APPG should consider during this inquiry?

Case Study: Cheetham Hill

In 2015-16, the tobacco industry played a considerable role in the disruption of the illicit tobacco trade in Cheetham Hill, Manchester, the '[counterfeit capital](#)' of the UK. The industry delivered intelligence to enforcement agencies as part of a broader clampdown on illegal counterfeit goods. In total around £5m of counterfeit goods were seized and led to the closure of more than 30 premises.