

TURNING OFF THE TAP

An update on cigarette smuggling in the UK and Sweden,
with recommendations to control smuggling

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Turning off the tap: executive summary

The key to controlling cigarette smuggling is to control the tobacco manufacturing industry and its exporting practices.

Trying to control cigarette smuggling by stopping cigarettes coming into the country is like trying to stop your house flooding - because a bathroom tap has been left running - by bailing out the water with buckets but leaving the tap running.

The tobacco industry have argued that tobacco smuggling is caused by market forces, by the price differences between countries, which create an incentive to smuggle cigarettes from 'cheaper' to 'more expensive' countries, and so urged governments to solve the problem by reducing taxes which will also, they say, restore revenue. Although market forces have some effect, in fact smuggling is more prevalent in 'cheaper' countries, and where taxes have been reduced consumption has risen and revenue has fallen, with disastrous consequences for public health.

Tobacco smuggling is a critical public health issue because it brings tobacco onto markets cheaply thus stimulating consumption. Globally, one third of legal cigarette exports disappear into the contraband market. British Customs and Excise estimate that up to 22% of the domestic cigarette market is now of smuggled cigarettes, for sale at one third to one half of the official price.

Spain has tackled smuggling successfully without reducing tobacco tax. They reduced the market share of smuggled cigarettes from 15% in 1995 to 5% in 1999, and increased tax revenue, by concerted action at national and European levels. This included close collaboration between the authorities in Spain, France, Britain, Ireland, Andorra and the European Anti Fraud Office (OLAF).

Cigarette smuggling has become a huge problem in the UK, as mainly domestic brands have been made available to smuggling networks outside the UK, who bring them illegally back into the country. British Customs and Excise estimate that the cigarette contraband market increased from 3% in 1996-97 to 22% in 2000 and the lost revenue of tobacco smuggling to £3,800 million in 2000. Bootlegging of cigarettes only accounts for 20% of this. The vast majority, 80%, is container smuggling - the disappearance onto the contraband market of container loads of cigarettes exported by the tobacco industry.

The UK government has invested over £200 million to reduce smuggling, including a network of scanners for container detection, prominent fiscal marks on packs, increased punishment, more customs officers and a campaign to increase public awareness. By their own admission however they hope to contain rather than eliminate the problem.

The nature of UK cigarette smuggling is illustrated by two Imperial Tobacco brands, *Regal* and *SuperKings*, whose combined market share in Britain has gone from 3% in 1996 to 12% in 2000, following a massive increase in exports of British cigarettes to Cyprus (where they have no market) during the same period, and a huge increase in Imperial's international profits. During this period they have become the most seized cigarettes at UK borders as well as prominent in seizures in Netherlands, Belgium, Germany, Russia and Italy. In fact *Regal* and *SuperKings* were the most confiscated cigarettes brands in the European Union in 1999.

Sweden, like Canada, had high cigarette prices that became even higher as a result of tax increases over a short period, resulting in resistance from Swedish consumers and an increase in smuggling. Confiscations by customs authorities rose from 17 million cigarettes in 1996 to 39 million in 1997. While the price was rising tax revenue increased and consumption decreased. However the Swedish government responded to concerns about smuggling and consumer complaints by reducing tax. The result has been loss of revenue but not, unfortunately, the disappearance of smuggling. Once smuggling networks are in place, they have a tendency to remain.

The key to understanding cigarette smuggling is understanding the role of the tobacco industry. The EU is now accusing RJR and Philip Morris that they “jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate the smuggling of cigarettes into the European Community.” Guildford archive papers show how tobacco companies use smuggling as a strategy for increasing market share, but more than that, how they in reality exercise almost total control on the markets in which they sell their cigarettes – of price, quality, packaging. This control is exercised not only over legal sales but also over the contraband market.

In a meeting held in Bagshot, England on the 5th August 1992 between Philip Morris and BATCo, BAT expressed concern about the growth of the DNP (smuggled) market segment in Venezuela and said that “this would, if allowed to spread, destabilise the industry throughout the region.” Philip Morris “agreed with this stance”. The meeting report then states: “BATCo suggested an aggressive price increase to be negotiated at a local level for DNP to be implemented if possible by the end of August” and later “Following action on DNP PMI suggested we should pursue a DP price increase. PMI wanted linkage between the DNP increase.”

Finally, the tobacco industry regard the health warning as a useful marketing tool in many markets. A 1973 letter from Philip Morris Asia Pacific to New York says that a client in Hong Kong “has requested 100 or 200 cases of Marlboro with the American Health Warning Notice on the packs, so that he can assure his customers that the cigarettes are of genuine American origin” and “The thought occurs to me that practically the whole world now knows that both British and American cigarettes carry a warning notice.” “.... consumers might smoke more of these health notice cigarettes, because they are assured by the notice that they are American made.” “As Marlboro has such a small proportion of sales in this market at the present time, I think it well worth the chance of improving sales with the health notice ... ”.

Conclusions and recommendations

No other consumer product in the world is so dangerous when used as intended. Therefore tobacco must be treated as a special case in trade liberalization talks and treaties. If it is not, trade liberalization will increase tobacco consumption and deaths, and that ought not to be acceptable in a civilised world. There are precedents, with other legal products subjected to quite strict controls, some by international treaty, for example arms and chemical waste.

Tobacco exports should be subjected to strict controls which require the equivalent of what in the arms trade are called “end user certificates”. All exports should go to end markets specified by the manufacturers, who should have to prove that they do go there, and who should be liable if they do not.

Other more detailed recommendations include:

- require manufacturers, exporters and importers, wholesalers, transporters, warehouses and retailers to be licenced: conditions would be attached to the licences which would reinforce anti-smuggling programmes;
- chain of custody marking: require manufacturers to print legibly on all packages of tobacco products a unique serial number which would identify manufacturer and date and location of manufacture, and another identifier which would show the chain of custody – wholesaler, exporter, distributor, end market;
- place the onus on the manufacturer (through record keeping and tracking systems) to prove that the cigarettes that leave the factory arrive in their intended end market;
- customs and excise should ensure that all seizures of cigarettes are properly recorded, including quantities, sub-brand, brand, manufacturer, language of health warning, counterfeit or legitimate;
- increase penalties: at the moment the benefits are greater than the risks; for example for every pack seized, fine the original manufacturer or their agent at least three times the lost duty (in line with United States' racketeering legislation);
- the anti smuggling strategy within countries should be extended to engage the police and trading standards officers, so that small scale 'retail' distribution is disrupted;
- support the WHO Framework Convention on Tobacco Control: if tobacco smuggling is to be tackled successfully it will require international collaboration and the likeliest mechanism for achieving this is the WHO Framework Convention currently being negotiated; the current text on tobacco smuggling proposes end market pack markings, warnings in national languages of the end market, a ban on duty free sales and mandatory licensing; all relevant government departments are urged to give this convention its whole-hearted support.

Trying to control cigarette smuggling by stopping cigarettes coming into the country is like trying to stop your house flooding - because a bathroom tap has been left running - by bailing out the water with buckets but leaving the tap running. (1)

Introduction

The tobacco industry have argued that tobacco smuggling is caused by market forces, by the price differences between countries, which create an incentive to smuggle cigarettes from 'cheaper' to 'more expensive' countries. They have urged governments to solve the problem by reducing taxes which will also, they say, restore revenue. The facts contradict all these assertions. In fact smuggling is more prevalent in 'cheaper' countries, and where taxes have been reduced (in Canada and Sweden for example) consumption has risen and revenue has fallen. However there are countries that have solved the problem by better control, Spain being the most impressive example to date, and the new WHO Framework Convention may at last promote control of tobacco smuggling at the level at which it must be tackled - globally.

Tobacco smuggling has become a critical public health issue. It affects public health because it brings tobacco onto markets cheaply, making cigarettes more affordable and thus stimulating consumption, consequently increasing the burden of ill-health caused by its use. It is not a small phenomenon. We estimated in an earlier paper that globally, one third of legal cigarette exports disappear into the contraband market (2). This is an extraordinary proportion, resulting in the second key effect of smuggling: the loss of thousands of millions of dollars of revenue to government treasuries. We also showed in our earlier studies that tobacco smuggling defies apparent economic logic. Common sense might suggest that cigarettes would be smuggled from countries where they are cheap (southern Europe for example) to countries where they are expensive (northern Europe for example), and that this is due simply to price differences between these countries, which is what the tobacco industry claim. Although this does happen, it is not the largest type of smuggling and in Europe, there is far more smuggling from north to south not the reverse (3).

In fact, cigarette smuggling occurs in all parts of the world, even in regions where taxes are low. One internal document of the tobacco company BATCO (4) estimated that 324 billion or nearly 6% of world cigarette sales of 5,400 billion were DNP (duty not paid) cigarettes, an industry term for contraband (see on). Eastern Europe and the Asia-Pacific region accounted

for the majority of this at about 85 billion each, though Western Europe was also significant at about 50 billion. In relation to total market sales, DNP volumes are largest in Eastern Europe (about 13%), Africa and the Middle East (ca 12%), but are also significant in Latin America (ca 9%) and Western Europe (ca 7%). Western Europe has the highest prices in the world, in 1996 four to five times higher than in Africa, the Middle East or Eastern Europe (5), yet despite these high prices, smuggling is on average lower than in other regions of the world. In other words, cigarette smuggling is not caused principally by “market forces”. It is supply driven, caused mainly by fraud through the illegal evasion of taxes.

Yet the tobacco industry have lobbied governments to reduce tobacco tax, arguing that to do so will solve the smuggling problem and increase government revenues. This is not true. When the Canadian government reduced cigarette tax in response to industry pressure the results were disastrous. The real significance of tobacco smuggling is that it not only makes tobacco available cheaply, but sabotages national tobacco taxation and tobacco control strategies. British Customs and Excise estimate that up to 22% of the domestic cigarette market is now of smuggled cigarettes, for sale at one third to one half of the official price (6). This will have an enormous impact in stimulating demand and undermining smokers’ efforts to stop (7). Its key characteristic is not cross border shopping and bootlegging, which account for 20% of UK cigarette smuggling (6), but large scale container fraud in which millions of cigarettes evade duty and appear on the contraband market. The main beneficiaries are the tobacco industry (3). In this report we suggest solutions to combat smuggling which follow logically from a true understanding of its cause.

Methods

Smuggling is illegal trade, which means that statistics are often not reliable. Customs and Excise authorities do make estimates, but often don’t publish them. Apart from figures quoted from published articles our source for estimates of smuggled cigarettes have been customs authorities and for tax revenue tax and health authorities. Often these are based on conversations, exchanges at conferences, or documents unofficially handed to us, but they are rarely “published” or otherwise in the public domain. It is also extremely difficult to get specific data on brand shares. Customs and Excise only give general national data, even though we believe they have data or estimates of – for example – exports of particular brands. Unfortunately they do not share these data. So research on smuggling requires much piecing

together of indirect evidence and interpretation. It is also slow. Acquiring new evidence from the Guildford archives has proved extremely time consuming. Time in the archives has to be booked in advance and the procedures for getting documents are cumbersome. Documents are not on the website, access to the building is only between 10am and 4pm, copies often take more than three months to arrive, and the search of key words is not easy.

The consequences of the Canadian tax reduction

During the 1980s Canada had a tobacco control policy which included progressive price increases, with the result that by the early 1990s a pack of 20 Canadian cigarettes cost about US\$4.7. Canadian policies were successful in reducing consumption, resulting in a fall in per capita adult consumption of almost 40% from 1982 to 1991 (8). However the United States has one of the lowest levels of tax on cigarettes in the developed world (about 50 cents per pack in 1994). Consequently the price difference between Canadian and American cigarettes became the largest in the world. By 1991 the prices were respectively about US\$4.7 and 1.7, an almost threefold difference. The result was a massive increase in smuggling, from an estimated 1,270 million cigarettes in 1990 to 14,210 million in 1993 (8). The Canadian tobacco industry lobbied fiercely for a reduction in tax, which they suggested was the only real solution to the problem. There was concern about loss of government revenue and loss of business in Canada. For a variety of political reasons, including concern about increased smuggling, the Canadian government gave in to industry pressure and lowered taxes in 1994.

The negative consequences for public health and tax revenue are now well documented. Following the tax reduction the real price of cigarettes fell by a third. Teenage smoking prevalence increased from 16% to 20% and prevalence also increased in the population as a whole (9). Federal tax revenues fell by Ca\$1,200 million, more than twice as much as predicted (10).

Canada is important for another reason. The key to the story was the export by Canadian manufacturers of Canadian cigarettes to New York State (where there is no market for them as US smokers mainly smoke US brands), from where they were smuggled back into Canada. At the very least the tobacco industry could be said to have facilitated the smuggling by supplying the cigarettes. In fact, in 1998, for the first time, a tobacco company was convicted for assisting in a smuggling operation. An affiliate of RJR Nabisco pleaded guilty to charges

of helping smugglers illegally re-route export cigarettes into Canada. The affiliate, Northern Brands Inc, agreed to pay US\$15 million in criminal fines and forfeitures for its involvement in these illegal activities. In 1999 the Canadian federal government launched a US\$1 billion lawsuit in Syracuse, NY against RJ Reynolds companies and the Canadian Tobacco Manufacturers' Council, alleging the cigarette makers ran a vast illegal-smuggling operation. An employee of Northern Brands, to which the cigarettes were exported, pleaded guilty of being in charge of selling 8 billion contraband cigarettes into Canada, but RJR continues to deny it played a role in encouraging it (11,12).

It is clear that more and more governments now feel that the tobacco industry has a case to answer in relation to tobacco smuggling. BAT is now under investigation by the UK government's Department of Trade and Industry over tobacco smuggling and in recent years Canada, Colombia, Ecuador, the European Union (EU) and ten EU member states (Italy, Germany, Spain, France, Finland, Belgium, Netherlands, Portugal, Greece and Luxembourg), and Honduras and Belize have filed lawsuits against international tobacco companies for smuggling. In July 2001 a US federal judge dismissed the cigarette smuggling lawsuit filed by the European Commission, but a new lawsuit was filed in August 2001 on behalf of the European Union and 10 EU countries (13).

Spain and Andorra

Spain is one of the few countries in the world which has tackled smuggling successfully. It did not do so by reducing tobacco tax. Despite Spanish cigarettes being among the cheapest in the EU smuggled cigarettes had a market share of 15% in 1995 (3). One of the sources of smuggled cigarettes in Spain and the EU was Andorra. In 1997 there was concerted action at national and European levels to reduce the supply of contraband cigarettes. Close collaboration between the authorities in Spain, France, Britain, Ireland, Andorra and the European Anti Fraud Office (OLAF) reduced the supply of smuggled cigarettes from Andorra. Actions included sealing the Andorran border, civil guard brigades taking over the valleys and hills to make smuggling more difficult, and political pressure on the Andorran government by the EU and its member states, which forced it to create new legislation making it illegal to smuggle tobacco into neighbouring countries (14). As a result contraband cigarettes, which accounted for 12% of the Spanish market in early 1997, only held 5% by mid 1999 (15). Legal cigarette sales increased from 78 billion in 1997 to 89 billion in 1998

and tax revenue increased by 25% in the same year (16). According to the Spanish customs authorities, their success was not due to controlling distribution at street level, which is almost impossible, but by reducing the supply into the country at ‘container level’, through intelligence, customs activity and cooperation, and technology (15).

Excise revenue from tobacco sales in Spain (billion Pesetas)	
1996	447
1997	522
1998	653
1999	676

Source: Spanish Customs and Excise

Andorra is important because it illustrates the role of the tobacco industry. Andorra was not only supplying illegal cigarettes to the Spanish market but also to the British market. Exports from the UK to Andorra increased from 13 million cigarettes in 1993 to 1,520 million in 1997. Since few of these cigarettes were legally re-exported, the population of Andorra is 63,000, and Andorran smokers do not generally smoke British brands, then either each Andorran (including children and nonsmokers) was smoking 60 a day in 1997 or these UK cigarettes were being smuggled out of Andorra. It seems obvious that the companies would know what was happening to their cigarettes. In a BBC programme a Gallaher spokesperson said: “We will sell cigarettes legally to our distributors in various countries. If people, if those distributors subsequently sell those products on to other people who are going to illegally bring them back into this country, that is something outside of our control ...” In response to the question “I suggest it is within your control, because you could stop supplying them” the spokesperson said: “That would do nothing to influence the degree of smuggling. Because the smugglers would just bring back somebody else’s product” (17).

The rise of smuggling in the UK

Tobacco smuggling has become a problem in the UK relatively recently, and has been driven by the increased price of cigarettes in the UK compared with the continent (over £4 or US\$6 a packet), the strong pound, and the speed with which smugglers have taken advantage of these conditions. As with Canada, smuggling became a problem as mainly domestic brands became

available to smuggling networks outside the UK, who brought them illegally back into the country. British Customs and Excise estimated that the contraband market increased from 3% in 1996-97 to 18% in 1999-2000 and to 22% in 2000, and the lost revenue from £680 million in 1996 to £2,700 million in 1999 and £ 3,800 million in 2000 (6,18). Again the tobacco industry have argued that this is due to market forces. Again however the main problem is not 'tourist' cross border shopping and bootlegging but container fraud – that is – the disappearance onto the contraband market of container loads of cigarettes exported by the tobacco industry, as illustrated by Andorra. UK Customs and Excise estimate that in 1999 £50 million of revenue were lost from air passenger smuggling, £340 million from cross channel bootlegging, and £1,400 million from container smuggling (18). This is essentially because containers hold 5-10 million cigarettes, rather than a few thousand, and have higher profit margins because the cigarettes are exported duty unpaid (rather than duty paid but from a cheaper country). Thus a container of 10 million transit cigarettes (DNP) can be bought for US\$200,000 and sold for around US\$2 million, a hugely attractive profit margin. Customs and Excise estimates for 2000 make the point very clearly. Total lost revenue due to cigarette smuggling was £2,890 million. However only £590 million or 20% of this is cross channel smuggling or air passengers. The vast majority, 80%, is container smuggling (6).

The UK government responded by announcing measures which include a network of scanners for container detection, prominent fiscal marks on packs, increased punishment, more customs officers and a campaign to increase public awareness. By their own admission however they hope to contain rather than eliminate the problem (18). Given the clear incentive of the tobacco industry to make cigarettes available to smugglers, a real crack down on smuggling will require controls on cigarette transport, something that will require concerted action at international level.

The huge increase in smuggling noted in British Customs and Excise's estimates quoted above - to 18% in 1999-2000 with lost revenue of £2,700 million in 1999 – has continued, to 22% and £3,800 million in 2000 (6). The government's estimates of the impact of their anti smuggling measures suggest that for the £209 million invested in anti smuggling measures £2,300 million in lost revenue will be saved over three years, an extremely effective and cost effective investment (18). Nevertheless the increase in the smuggling has continued, and to an extremely high level, yet the control measures have made no attempt to control the problem at source, by controlling cigarette exports. In effect the approach is akin to controlling flooding

in the basement of a house caused by a bath tap that has been left running, by baling out water from the basement but leaving the tap running.

There are strong parallels between what happened in Canada and what is happening in the UK now, in particular the sudden surge of exports of British cigarette brands to countries where they have no market, and the subsequent smuggling of these cigarettes back in to the UK. The phenomenon is illustrated by the huge increase in British exports to Andorra from 1993 to 1997, and then, when Andorra was closed down, to a new country, Cyprus. The phenomenon remains the same.

UK cigarette exports to Andorra

1993	13 million
1994	57 million
1995	208 million
1996	716 million
1997	1,520 million

(source European Anti Fraud Unit)

UK cigarette exports to Cyprus

1996	89 million
1997	698 million
1998	979 million
1999	2515 million
2000	5404 million

(source Eurostat)

Imperial Tobacco's *Regal* and *Superkings*

In 1996 *Regal* had a market share in Britain of 2.1% and *Superkings* less than 1% (19). From 1998 to 1999 Imperial Tobacco's overall exports increased by 40% to 16,500 million (20). In their 2000 Annual Report (21) Imperial Tobacco report an increase in international operating profit from £79 million in 1997, to £117m in 1998, £188m in 1999, a 61% increase, and £231m in 2000, a 23 % increase.. So from 1998 to 1999, while overall UK cigarette exports to Cyprus were increasing by 157%, Imperial's exports were increasing by 40% and their international profits by 61%. In parallel with these increases the market shares rose to 5.3% for *Regal* and 5.1% for *Superkings* in 1999 and a combined share of 12% in 2000.

Regal and *Superkings* are the most seized (from containers coming into the UK in which they were hidden) cigarette brands in the UK. They make up almost half of all seized cigarettes during the first 8 months of 2000, representing 540 million cigarettes (22). Typically the cigarette cartons are buried underneath other products (for example paper towels, shoes, furniture, clothes, pizzas), the containers officially being declared full of pizzas (18). Further back in the journey from the UK to Cyprus back to the UK, seizures of these brands were extremely high also in the Netherlands, Belgium, Germany, Russia and Italy.

Regal, *Superkings* and *B&H* make up 48% of the 250 million cigarette brands seized in 1999 in the Netherlands (23). *Regal*, *Superkings* and *B&H* are the main brands amongst the 284 million cigarettes seized in Belgium in 2000 (24) Again these were containers entering these countries which were stopped and checked. They were passing through the Netherlands and Belgium on their way to the UK. Most cigarettes seized in Germany are destined for the UK, Danish and Dutch markets (25). Sixteen tons of cigarettes were seized in Marseille on 8 December 2000, principally *Regal* with the label "Made in England" (26). £2.5 million worth *Regal* and *Superkings* were seized in St Petersburg in November 2000 (27). Most of the cigarettes seized in France in 1999 were destined for the UK market (28). According to investigators of the European Anti-Fraud Office (OLAF), 40 to 45% of all cigarettes seized on the Adriatic coasts since 1997 were British cigarettes on their way (back) to the UK. The main brands were *Regal* and *Superkings* (29). In 2000-01, Customs seized 2,8 billion cigarettes: 1,9 billion in the UK and 0,9 billion en route to the UK through joint operations with overseas agencies. 25% of total seizures were *Regal* and 24% *Superking* / *Superking Blue* (30).

In answer to a parliamentary question from Belgian MEP Bart Staes, Commissioner Schreyer said that the most confiscated cigarettes brands in the European Union in 1999 were *Regal*, *Super Kings*, *West* and *Benson Hedges*, in that order. Of cigarette brands produced outside the EU the most confiscated cigarette brand was Marlboro (31). European customs authorities estimate that in 1999 25% of all confiscated cigarettes in Europe were *Regal* and *Superkings*, representing approximately 1,500 million cigarettes. If the seizure rate is 10% this would mean that almost all the cigarettes exported by Imperial Tobacco in 1999 (16,500 million) were destined for the smuggling market.

In summary, during the late 1990s there was a massive increase in the export of British cigarettes to Cyprus, in which they have essentially no market. At the same time there was a huge increase in Imperial Tobacco's exports and international operating profits, and two Imperial brands, *Regal* and *Superkings* featured amongst the most seized contraband cigarettes in the European Union (*Regal* is not even a national brand in the UK; it is smoked mainly in the north of England). The impact of this on the market share of these two brands in the country **from** which they were exported was that they increased to 5.3% for *Regal* and 5.1% for *Superkings* in 1999 and a combined share of 12% in 2000 (32).

The key question about these British cigarettes seized on the continent is – if they are made in Britain for the British market, what are they doing there? Why are they exported in the first place?

The similarity of the UK now to Canada in 1994

UK

Canada

1) Increased tax used as tool to decrease prevalence

Increased tax used as tool to decrease prevalence

2) UK cigarette brands mainly smoked in the UK

Canadian cigarette brands mainly smoked in Canada

3) Lower prices in neighbouring countries, but majority of smuggling, (80%), is of duty-not-paid cigarettes, not cross border bootlegging of legally bought cigarettes

Lower prices in the USA, but the majority of smuggling, (80%), is of duty-not-paid cigarettes, not cross border bootlegging of legally bought cigarettes

4) Tobacco industry protest they are strongly against smuggling (but in fact profit hugely from it)	Tobacco industry protest they are strongly against smuggling (but in fact profit hugely from it)
5) Sudden massive increase in exports of container loads of cigarettes, which are smuggled back into the country	Sudden massive increase in exports of container loads of cigarettes, which are smuggled back into the country
6) The increased exports are to countries where there is no market for the cigarettes: eg. Andorra, Cyprus	The increased exports are to countries where there is no market for the cigarettes: USA
7)	Large tax decrease in response to industry pressure, leading to increased prevalence, and loss of revenue

The table shows a pattern: the exporting of national cigarette brands to countries where they have no market, with no duty paid on them, followed by their being smuggled back into their home market. The tobacco industry protest that they are opposed to smuggling but in fact are the greatest beneficiaries. They also try to pressure governments to reduce tax on cigarettes, arguing that this will solve the smuggling problem.

The third point in the table is critical in understanding cigarette smuggling, and will receive more attention in the recommendations. The key point is that smuggling is not a result primarily of “market forces”, as the tobacco industry claim, although they play their part. If it was then the main problem would be tourist cross border shopping and bootlegging, which has in Britain been dubbed the “white van trade” - the purchase of cheap (because of low local tax levels) duty paid cigarettes for transport, legal or smuggled, back into Britain.

We have already seen that British Customs and Excise’s figures show bootlegging to account for 20% of the problem, large scale container fraud 80%. The key points about container fraud are that it is highly organised and that the cigarettes are supplied to the illegal market, by the tobacco manufacturers, through (legal) exports to countries where they have no market. They are transported from these countries (often by circuitous and complex routes) back into the country from which they were exported to be sold illegally, in pubs and clubs, at half to one third of the legal price. If tobacco companies stopped exporting to these phantom markets, supplies to the smugglers would be cut off and the problem would in principle be solved.

The Swedish tax reversal

We commented above on the disastrous results of the Canadian tax reduction: increased consumption and lost revenue. Unfortunately Sweden, like Canada, also reduced tax on cigarettes in response to pressure from people complaining about the price increases, widely reported in the media.

Like the other Scandinavian countries, Sweden has high cigarette prices and had a very low level of smuggling. The Swedish National Police attempted to quantify the size of the tax-not-paid market in Sweden, including cigarette smuggling. They found that the tax-not-paid cigarette market in Sweden probably amounted to 2% of the total cigarette market in 1996, a low level of smuggling despite the fact that the level of cigarette prices in Sweden in 1996 was considerably higher than the European Union average (33).

However two successive tax increases in December 1996 and August 1997 raised the price of a packet of cigarettes from 31 SEK (\$4) to 44.5 SEK (\$5.8). From an already high level the price of a pack of cigarettes was increased by 43% in a period of eight months. This increased tax revenue and reduced cigarette smoking in Sweden, but was not popular with Swedish smokers, and several articles in the media reported an increase in smuggling, as confiscation by customs authorities rose from 17 million cigarettes in 1996 to 39 million in 1997 (34). New research published in 1999 showed that the number of smuggled cigarettes effectively increased from 200 million in 1996 to 500 million in the spring of 1998 (35).

Swedish tobacco tax revenue (million Swedish Crowns (SEK))	
1996	7,084
1997	7,694
1998	7,507
1999	7,385

Source: National Institute of Public Health, Stockholm

Tax revenue (excise duty) in Sweden

Year	SEK (millions)
1995	6300
1996	6126
1997	6496
1998	5842
1999	6099

Source: Commission of the European Communities

The two tables show the increase in tax revenue and excise duty following the tax increases. The second large tax increase was in August 1997 and the increased income can be seen in the figures for the complete year of 1997. Revenue from excise duty also increased from 1996 to 1997 as the tax was increased.

The next table shows the fall in smoking prevalence in 1997 following the tax increases. Data from an annual survey among 6,000 people indicated a significant reduction of smoking prevalence during 1997. Some 17 % of men were daily smokers (compared to 21 % in 1996). Among women, 22 % were daily smokers (compared to 23 % in 1996). In the youngest age group (16-24), 12 % of the men were daily smokers (compared to 16 % in 1996), whereas 19% of the young women smoked daily (compared to 23 % in 1996) (36).

Percentage of adult daily smokers in Sweden

year	men	women	all
1990	26	26	26
1991	26	24	25
1992	25	27	26
1993	23	23	23
1994	22	24	23
1995	22	24	23
1996	21	23	22
1997	17	22	20
1998	17	21	19
1999	19	19	19

(Source: Statistics Sweden)

Cigarette sales in Sweden

Year	numbers (millions)
1995	8123
1996	8278
1997	5999
1998	5739
1999	6784
2000	7067

Source: Swedish match

The cigarette sales table shows the decrease in cigarette consumption following the tax increases in December 1996 and August 1997 and large increase in consumption when tax was reduced in 1998.

Interestingly, sales data of OTC nicotine replacement therapy (NRT) show that demand for NRT rose following the August 1997 tax increase, from 1.26 million daily doses to 1.52 million, a 20% increase and the NRT manufacturers ran out of supplies. The data show a similarly large increase following the December 1996 tax increase (1.22 to 1.47) but in that case were confounded by the new year period. When the government announced in April 1998 that they were going to reduce tobacco tax, there was an immediate fall in NRT sales, from 1.33 million daily doses in April to 1.25 million in May, a 6% fall (37).

Cigarette confiscations in Sweden

year	number (millions)
1993	6
1994	5
1995	6
1996	17
1997	39
1998	46
1999	32
2000	45

Source: Swedish Customs

However the confiscations table shows the huge increase in confiscations following the price rises. The government became concerned that smuggling was increasing, and becoming a problem, and there was also lack of public support for the tax increases. As result, the parliament decided in 1998 to lower the taxes to the July 1997 level of 36.5 SEK (or US\$4.8, still one of the highest rates in Europe). The results of the tax reduction seem subtler so far in Sweden than elsewhere, however there is a clear trend.

Prevalence increased in men following the price reduction but not in women. However overall prevalence did increase very slightly: it was 19% in 1998 (the tax reduction was August 1998) and 19.3% the following year, so data from later years will be needed to see if this is a trend. The data on sales show a clear reversal with sales peaking in 1996 before the tax increases, falling dramatically from 1997 to 1998 following the tax increases, and then rising sharply from 1999 onwards. Overall tax revenue fell following the 1998 reduction and excise duty fell from 1997 to 1998.

What happened in Sweden can be summarized by saying that tax increases are effective in reducing consumption and they do increase tax revenue. However tax policies need a degree of public support to be effective and it was probably unwise to introduce such large price increases over such a short period (43% over 8 months). The reduction in tax reduced revenue and increased consumption and so was damaging in its effects. The data on confiscations show that the smuggling problem does not disappear when tax levels are reduced and suggest that the damage done by trying to solve cigarette smuggling by reducing tax may prove rather enduring. The level of confiscated cigarettes in 2000 is almost the same as the level in 1998. The results from a December 2000 survey of Swedish smokers also showed that the smuggling problem was not solved. It showed that 10% said they smoked smuggled cigarettes during the last month (38).

The problem is that once the smuggling networks are in place, when governments then improve control measures, dealers may simply look to other suppliers and continue their activities. We will comment further on this later. The Swedish experience certainly does not support the tobacco industry's argument for controlling smuggling by reducing tax.

The role of the tobacco industry

The proportion of smuggled cigarettes in the Spanish market was reduced dramatically, and revenue was increased, without lowering taxes, a policy which produced such disastrous results in Canada and looks to have increased consumption and reduced revenue also in Sweden. The situation in the UK now is similar in most respects to that in Canada, except that the British government appear to accept the evidence that tax reductions do not solve the smuggling problem. Even in Britain however the problem is being contained rather than solved. Governments need to go one step further however by acknowledging the evidence that the tobacco industry supply cigarettes to smugglers and exercise a large degree of control over their end markets, both legal and illegal, as testified to by many documents from the Guildford archives. What would follow logically from this was action to cut off the supply of cigarettes **to** the smugglers, action against the tobacco manufacturers.

It seems obvious that the tobacco companies would know what was happening to their cigarettes. When the Gallaher spokesperson who said *“We will sell cigarettes legally to our distributors in various countries. If those distributors subsequently sell those products .. to other people who illegally bring them back into this country, that is outside of our control”* responded to the journalist’s question *“I suggest it is within your control, because you could stop supplying them”* with *“That would do nothing to influence the degree of smuggling. Because the smugglers would just bring back somebody else’s product.”* he seemed to be admitting that stopping the supply **would** have an effect. If it would stop his company supplying the smuggling market, by stopping them exporting to phantom markets, then presumably in principle it would stop all companies doing so. The really intriguing question is why governments do not take such action, as they have attempted to do with arms through export controls.

The EU complaint

Extracts from the charges in the EU lawsuit against Philip Morris, R.J. Reynolds and Japan Tobacco (39), filed on 3 November 2000 in New York under the U.S Racketeering Influenced and Corrupt Organization Act (RICO), show that the EU alleges that the tobacco industry is guilty of, in effect, controlling the entire smuggling operation:

“ [...] The RJR Defendants and the Philip Morris Defendants, jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate the smuggling of cigarettes into the European Community in a variety of ways, including but not limited to the following:

- The Defendants sell cigarettes directly to persons or entities they know, or have reason to know, are smugglers, or to distributors who they know, or have reason to know, are selling the cigarettes to smugglers.
- The Defendants sell large quantities of cigarettes to entities and/or destinations even though the Defendants know, based on their own marketing studies, that the legitimate demand for cigarettes from those entities and/or destinations cannot possibly account for the orders made and the massive quantities delivered. Under these circumstances, the Defendants know that their cigarettes are being sold for illegal purposes.
- The Defendants knowingly label, mislabel, or fail to label their cigarettes so as to facilitate and expedite the activities of the smugglers.
- The Defendants provide marketing information to the distributors and to the smugglers so that the smugglers will order, purchase, sell, and distribute the cigarettes manufactured by the Defendants that are in greatest demand in the area of ultimate consumption of the smuggled cigarettes.
- The Defendants generate false or misleading invoices, bills of lading, shipping documents, and other documents that expedite the smuggling process.
- The Defendants engage in a pattern of activity by which they ship cigarettes designated for one port knowing that in fact the cigarettes will be diverted to another port so as to be smuggled.
- The Defendants make arrangements by which the cigarettes in question can be paid for in such a way as to be virtually untraceable.
- The Defendants make arrangements for the smuggled cigarettes to be paid for into foreign accounts including Swiss corporations and/or Swiss bank accounts in an attempt to improperly utilize Swiss banking and privacy laws as a shield to protect the smugglers from government investigations concerning their activities.
- The Defendants have formed, financed, and directed the activities of industry groups, in order to disseminate false and misleading information to Plaintiff and the public. ”

If these charges are true the real solution to smuggling must involve stopping tobacco companies exporting cigarettes to phantom markets like Andorra and Cyprus, forcing them to demonstrate which markets their exports end up in, and making them individually responsible (and liable) for cigarettes diverted from those markets. The UK data on *Regal* and *Superkings* show a relationship between **exports** of DNP cigarettes followed by an increase in market share of the brands in their **home** market. Data from the Guildford archives appear to confirm that DNP sales – smuggling – are used as a market entry strategy, and that in reality the

tobacco industry control most aspects of the marketing of their cigarettes from production right down to their end market - the price at which they sell – even of smuggled cigarettes, to whom they supply, and so on.

Smuggling as a marketing strategy

In their evidence to the House of Commons Health Select Committee, BAT were asked the meaning of DNP. The company chairman, Martin Broughton, answered: “DNP is, or then was and I think still is actually a part of the Argentine market. Part of the Argentine market is DNP and for the sake of Messrs Cambell and Bates, in this case that means smuggled. The fact is that it is part of the market, that it is part of the market dynamics of the country. To have it exploited by others is just not acceptable.” (19) This appears to acknowledge that in Argentina DNP means smuggled. In May 1993 Keith Dunt wrote a letter to clarify BAT’s position on DNP Brazil-Argentina, headed “SUBJECT: DNP BRAZIL – ARGENTINA.” “This note is to clarify the position of BAT Industries in the above business. I am advised by Souza Cruz that the BAT Industries Chairman has endorsed the approach that the Brazilian Operating Group increase its share of the Argentinean market via DNP.” The letter finished “This note is to advise you on the impact the increased DNP volume will have on the results of your Argentinean subsidiary.” (40) In other words, BAT endorsed increasing its share of the Argentinian market through smuggled (in the light of the admission above) cigarettes. The letter shows also that the supply of smuggled cigarettes has to be carefully controlled, so as not to destabilize or damage legal sales. In Argentina the sudden import of smuggled BAT cigarettes from Brazil caused problems for the normal legal BAT sales in Argentina (for example by competing with BAT’s own brands rather than those of the competition).

The nature and importance of end market control

It seems clear that the tobacco industry uses smuggling as a strategy for increasing market share. In fact their interest goes far further than that because they like to control the level of smuggling and the prices of smuggled cigarettes, so that the smuggled cigarettes do not undermine their legal sales or the “quality” of smuggled cigarettes. Obviously if you, as the manufacturer, have nothing to do with smuggling or supplying your cigarettes to smugglers, it will be impossible to control the way the smuggled cigarettes are sold in a market. On the other hand, it is very important to do so in order to maintain stability in the market and not damage your brand name (by low “quality” cigarettes getting into the market).

All of this implies the need for a considerable degree of control over the end market and in fact the industry has been accused of packing cigarette cartons in especially strong boxes if they are destined for the contraband market, because these boxes have to withstand a lot of handling – loading unloading and reloading – on their long and complex journeys (39).

A November 1994 BAT letter discusses the rules for End Market Responsibility and says: “End Market Control in its real sense means: to control the end market from the supplier down to point of sales etc and to take influence on all trade levels ” but then acknowledges that it can be difficult to exercise such control dogmatically in segments like Duty Free and transit (41). Another letter (42) discusses the filling of orders for “contract manufacture” and sets out a list of conditions that must be met for such orders. It illustrates the degree of control exercised by BAT. For example: “End market controls demand that pack coding is specific to customer; also that guarantees are in place to ensure adherence to delivery to market” and “Immediate cancellation clause to become operable if end market not that cited within agreement.” The letter ends: “The procedure, noted herein, has been approved by the BATco Board.” The real significance of these two letters is that they illustrate how little is left to chance in the end market and show that in principle, it should be possible to control the transit of cigarettes from the factory (in Britain for example) to their end market, a goal both the tobacco industry and public health campaigners want. And it is clear from the letter that the industry has the capacity to ensure its cigarettes end up where they are intended to end up.

Companies like stability in markets and the letter mentioned above, in which approval was given to increase Argentinian sales through DNP, went on to warn the companies in Brazil and Argentina of the potential impact of the DNP sales. In a meeting held in Bagshot, England on the 5th August 1992 between Philip Morris and BATCo, BAT expressed concern about the growth of the DNP market segment in Venezuela and said that “this would, if allowed to spread, destabilise the industry throughout the region.” Philip Morris “agreed with this stance”. The meeting report then states: “BATCo suggested an aggressive price increase to be negotiated at a local level for DNP to be implemented if possible by the end of August” and later “Following action on DNP PMI suggested we should pursue a DP price increase. PMI wanted linkage between the DNP increase.” The idea of a tobacco company negotiating the price of smuggled cigarettes, over which they say they have no control, may seem strange in theory but the general tone of the meeting report quoted suggests that this is normal

business strategy. The report ends “Next meeting suggested for late November 1992 with location to be determined – possibly a Caribbean venue” (43,44).

We have noted the importance to the industry of controlling the smuggled market. The overriding reason is consumer preference. A particular brand might be made in different countries sometimes with different blend of leaves, which consumers in a particular market may not like. So the industry cannot allow any smuggled market to get out of hand lest it generates consumer resistance and the brand name is damaged. In Spain the industry dealt with this by actually putting a particular symbol/logo on smuggled cigarettes so that consumers could recognise that they were the ‘real thing’, thus the concept of authorized and unauthorized (by the tobacco industry) smuggling. The final, ironic illustration of this control mechanism is the health warning, which the industry now value as a useful indication of country or origin (especially the US and the UK warnings) and thus of “quality” (45,46).

Authorized and unauthorized smuggling

Spain has been a primary destination for smuggled *Winston* cigarettes for so long that the smugglers are sometimes known as “Winstoneiros”. However as we mentioned above, consumers want to be sure they are getting the genuine product and the company, in this case RJ Reynolds (RJR), want to be sure also so that the brand name is not damaged. As the demand for *Winston* in Spain increased through the 1990s increased numbers of “lower quality” *Winston* from other sources were being smuggled into Spain, interfering with the authorized smuggling. According to the EU complaint (39) RJR took steps to prevent the unauthorized smuggling. They developed a particular presentation of Winston cigarettes known to the Spanish consumer as “patanegra”. The *patanegra* presentation could be distinguished from the other “lower quality” Winstons by having distinctive markings and not having the blue sticker found on most Winston cigarettes. RJR produced the *patanegra* presentation specifically for their best smuggling customers, to insure that they could maintain their competitive advantage over other smugglers and so that RJR could increase their market share (because if you can guarantee good quality you will sell more and increase market share). The *patanegra* presentation was developed specifically for the Spanish market and sold only in Spain (39).

Not only do the industry control the market through labelling and packaging but they also punish unauthorized smugglers when they catch them. The EU complaint alleges that when

RJR were able to identify cigarettes in the marketplace which had been smuggled into the country by unauthorized smugglers, they would identify the distributor from whom the cigarettes had been purchased. They would then buy the entire load of unauthorized RJR cigarettes, return them to the distributor who sold them, and require the distributor to reimburse them for the amount that they had paid on the street for the cigarettes. If they refused they would simply be denied further supplies. If the unauthorized smuggled cigarettes were seized by authorities and sold at auction, RJR would buy them at the auction then require the smugglers to reimburse them for 50% of the price that they had paid for them (39).

The health warning as a mark of quality

Finally, the industry have realised that health warnings, because they have to be written in the language of the consumers they are intended for, can serve as a mark of “quality” by showing that the cigarettes are genuine, usually British or American. A BAT executive in Cameroon observes that one source of cigarettes in Cameroon is “EEC sourced contraband with the EEC warnings” and so suggests that “we should consider, in proposing vhw (voluntary health warning clause) to Govt. agreeing to a EEC type hwc (health warning clause) so as to avoid locally manufactured brands looking like poor relations.” (45)

Philip Morris realised the value of the health warning long before this. A 1973 letter from Philip Morris Asia Pacific to the company in New York says that a new client in Hong Kong “has requested 100 or 200 cases of Marlboro with the American Health Warning Notice on the packs, so that he can assure his customers that the cigarettes are of genuine American origin”. The letter, dated October 1973, goes on: “The thought occurs to me that practically the whole world now knows that both British and American cigarettes carry a warning notice.” “.... consumers might smoke more of these health notice cigarettes, because they are assured by the notice that they are American made.” “As Marlboro has such a small proportion of sales in this market at the present time, I think it well worth the chance of improving sales with the health notice ... ” (46).

Discussion

The Canadian tax reduction had disastrous consequences for public health in Canada (consumption increased) and for government tax revenues (revenue fell). It now looks as if a

similar pattern will be followed in Sweden so that one of the most critical lessons from Canada and Sweden is that reducing tax must not be used as an approach to solving cigarette smuggling. The Swedish experience additionally suggests that in any case it does not solve the problem: once the smuggling systems are in place smuggling will remain even if taxation is reduced. Fortunately the Spanish experience shows that coordinated action at EU level can solve the problem without tax reductions, and in Britain, where considerable resources have been devoted to anti-smuggling measures (more money for customs, scanners, higher penalties, tax markings) the savings of lost revenue have been substantial. The British action plan against smuggling is impressive; no other country around the world has put in place such a well resourced strategy to combat tobacco smuggling.

However these British interdiction measures have only been effective up to a point, partially stemming the flow but doing nothing to control the supply of cigarettes, from British manufacturers, to the smugglers. The government has taken all the necessary steps to combat smuggling except the most important – controlling its own industry. Furthermore, stated government policy, of holding smuggling to only 20% of the market is disappointingly unambitious and bad for health. Twenty percent is still a large proportion of the market, which means a lot of cheap cigarettes, consequent stimulation to consumption and health costs arising from that. Cigarette smuggling will not be controlled until the driving force behind it is tackled, and we have reviewed evidence which clearly shows how the tobacco industry supply cigarettes to the smuggling market, and how it exercises an extraordinary degree of control of end markets. In fact the BAT letter on end market responsibility and the other letters on DNP sales in Latin America suggest that the industry has the ability to control the distribution and price of cigarettes in markets, as well as the suppliers, of legal and illegal (smuggled) cigarettes. The patanegra marking shows the degree to which the industry control the end market, so that many of the measures proposed to make it easier to track where cigarettes go, are already practised by the industry.

The deputy chairman of BAT (a former health minister), the largest European international tobacco company, recently said: “Where any government is unwilling to act or their efforts are unsuccessful, we act, completely within the law, on the basis that our brands will be available alongside those of our competitors in the smuggled as well as the legitimate market.” (47) An editorial in the *Guardian* the following day said that this was an incredible admission, that “He has openly admitted that the company supplies cigarettes knowing that they are likely to end up on the black market” (48). This clear evidence of the complicity of

the industry is the key. Control the supply of cigarettes and you control what happens to them in the markets they end up in.

Tobacco exports should be subjected to strict controls which require the equivalent of what in the arms trade are called “end user certificates”, meaning that all exports should go to end markets specified by the manufacturers, who should have to prove that they do go there, and who should be liable if they do not.

No other consumer product in the world is so dangerous when used normally, ie. as intended by the manufacturers. This is the rationale for tobacco to be treated as a special case in trade liberalization talks and treaties. If tobacco is not treated as a special case, trade liberalization will increase tobacco consumption and deaths, and that ought not to be acceptable in a so-called civilised world. And tobacco can be treated as a special case. There are precedents, with other legal products subjected to quite strict controls, some by international treaty, for example arms and chemical waste (49).

In their enquiry into Customs and Excise the House of Commons Treasury Select Committee said: “We approve of the drive towards a more joined up departmental approach within C&E. We are not convinced, however, that the different parts of C&E are working together as efficiently and effectively as they could be to deal with problems such as tobacco smuggling” (50).

The evidence on the role of the tobacco industry and the importance of controlling exports seems so compelling that it prompts the question of why the British government (or any other) doesn't take action against exports. The answer probably lies in the culture and custom of Customs and Excise, which the Treasury Select Committee's comment courteously hints at. In effect current British policy is to bale out the water but leave the tap on. Customs and Excise have a long tradition of working with industries and it is our impression that they believe that they have a duty not just to intercept and control, but to promote free movement and trade. It is not clear how this culture could be changed but it is clear it needs to be.

Again the Treasury Select Committee have expressed it well: “The Government has not found a policy response to alcohol and tobacco smuggling of appropriate size to deal with the scale of the problem. Tobacco smuggling, in particular, is seriously undermining Government revenue and having a deleterious effect on legitimate retailers”.

Conclusions and recommendations

Given an interpretation of the problem we believe follows from the data we have presented, the essence of the government's response should be to create a liability regime in which the manufacturer is made responsible for the safe transport of cigarettes that leave the factory gate. This could be achieved in principle by making them show where all cigarettes end up, which would happen if the measures proposed below were adopted. It is important also to place responsibility of the tobacco manufacturers. The evidence of their role in smuggling is so compelling that the onus should be placed firmly on them to demonstrate correct behaviour. It would be their responsibility to **prove** that their cigarettes reached intended, legitimate end markets.

This reversal of burden of proof is important. Amongst other things it means that traditional relationships, especially that between customs departments and industries, have to be questioned when the product is tobacco. Tobacco is a special case and must be treated as a special case. It is hard to imagine any other consumer product being allowed to evade tax on such a scale – one third of global exports finding their way to the contraband market. Thus our recommendations fall into three main categories: making the industry liable for what happens to their product (including chain of custody markings and licensing), increasing the penalties substantially, and supporting the WHO Framework Convention on Tobacco Control.

Chain of custody markings, labelling and tracking systems

There should be special packaging and marking of duty-exempt cigarettes to control the transport of tax-free cigarettes better, or, even better, end all duty free sales. They have been successfully phased out within the European Union and there is no compelling rationale for them anyway. In effect they are a subsidy to better off people (51).

Require manufacturers, exporters and importers, wholesalers, transporters, warehouses and retailers to be licenced: conditions would be attached to the licences which would reinforce anti-smuggling programmes; for example British cigarettes with the British health warning found in a warehouse in Cyprus would lead to the warehouse losing its licence.

Chain of custody markings: require manufacturers to print legibly on all packages of tobacco products a unique serial number which would identify manufacturer, and date and location of

manufacture, and another identifier which would show the chain of custody – wholesaler, exporter, distributor, end market. This would in principle stop cigarettes exported to Cyprus arriving back in the UK. Place the onus on the manufacturer (through record keeping and tracking systems) to prove that the cigarettes that leave the factory arrive in their intended end market. Manufacturers should know in advance to which country they export their cigarettes. Most countries have country specific health warnings and/or tax stamps or markings (such as the “ UK duty paid” label). These can only be printed or attached at the place of manufacturing. Manufacturers exporting their products should provide information on the country for which the cigarettes are finally destined, provide evidence that there is a market for these products in that specific country, have prominent markings on the products which show the destination country, provide the list of all intermediate traders and have covert markings which should contain this intermediate traders’ information.

Customs and Excise should ensure that all seizures of cigarettes are properly recorded, including quantities, sub-brand, brand, manufacturer, language of health warning, counterfeit or legitimate. The Treasury should develop a major extension of the current anti-smuggling strategy, which would have the aim of bringing smuggling down to below 5% of the market (the existing strategy is to hold it at 20%, which is too high). Many of the recommendations proposed above would contribute to such a strategy (22).

Penalties

Increase penalties: at the moment the benefits are greater than the risks. For example for every pack seized, fine the original manufacturer or their agent at least three times the lost duty (in line with United States’ racketeering legislation) (22).

The racketeering (RICO) action brought by the European Commission, with 10 EU countries including Spain, France, Germany and Italy, against RJ Reynolds and Philip Morris seeks to hold these companies responsible for orchestrating excise fraud - and to recover lost excise revenues with penalties. This approach should be adopted and placed on a statutory basis. This approach is not unprecedented: under the Liability and Compensation of the Basel Convention on Transboundary Movement of Hazardous Wastes, the exporter is held liable for the costs associated with repairing environmental damage associated with illegal trade or dumping of toxic waste at any point before final disposal overseas (50).

The anti smuggling strategy within countries should be extended to engage the police and trading standards officers, so that small scale 'retail' distribution is disrupted.

Support the Framework Convention on Tobacco Control

If tobacco smuggling is to be tackled successfully it will require international collaboration and the likeliest mechanism for achieving this is the WHO Framework Convention currently being negotiated. The current text on tobacco smuggling proposes end market pack markings, warnings in national languages of the end market, a ban on duty free sales and mandatory licensing. (50). We urge all relevant government departments to give this convention their whole-hearted support.

References

- 1 Paraphrased from Clive Bates, Ash.
- 2 Joossens L, Raw M, Smuggling and cross border shopping of tobacco in Europe, British Medical Journal, 1995, 310:1393-7.
- 3 Joossens L, Raw M, Cigarette smuggling in Europe: who really benefits, 1998, Tobacco Control 7:66-71.
- 4 [BATCo Global Five-year Plan 1994-1998](http://www.ash.org.uk/smuggling/048.pdf), BB0153/DEP0274/500018206/
www.ash.org.uk/smuggling/048.pdf
- 5 Market Tracking International, World Tobacco File 1998, London: Market Tracking International , 1998
- 6 Primarolo, Dawn. Tobacco and alcohol smuggling. Parliamentary answer. Hansard, 7 March 2001, column 230W
- 7 ASH Scotland. Tobacco taxation and smuggling in Scotland. Edinburgh, Ash. July 2001.
- 8 Health Committee Second Report Session 1999-2000, The tobacco industry and the health risks of smoking, 27-1, House of Commons, London, 14 June 2000.
- 9 Health Canada, Survey on smoking in Canada, Cycle 1 Fact Sheets, Ottawa: Health Canada, 1994

- 10 Sweanor D, The smuggling of tobacco products, Ottawa: Smoking and Health Foundation, 1997
- 11 Marsden W, Tobacco insider talks majors firms were deeply involved in cross-border smuggling, former executive says, The Gazette, 18 December 1999.
- 12 Attorney General of Canada, Complaint for damages and injunctive and declaratory relief, United States District Court for the Northern District of New York, New York, December 1999.
- 13 Anonymous. EU refiles suit against US Tobacco. Associated Press, 6 August 2001
- 14 Commission of the European Communities, Protecting the communities' financial interests and the fight against fraud – Annual report 1998, Brussels, 17 December 1999, COM (1999) 590 final
- 15 Ignacio Garcia, Customs & Excise, Madrid, personal communication
- 16 Jesus Lauzurica, Customs & Excise, Madrid, personal communication
- 17 BBC. Money Programme. London, BBC, 8 November 1998.
- 18 HM Treasury/ HM Customs & Excise, Budget 2000. Tobacco smugglers told - your time is up. London, 22 March 2000.
- 19 House of Commons Health Select Committee Second Report 1999-2000. The tobacco industry and the health risks of smoking. London, House of Commons, 14 June 2000.
- 20 Gareth Davis. Operating Review, Imperial Tobacco Group, 1999.
www.imperial-tobacco.com/CorpReview/OpReview99_4.asp
- 21 Imperial Tobacco Group. 2000 Annual Report.
www.imperial-tobacco.com/AnnualReport2000/html/intro.html
- 22 Rowell A, Bates C. Tobacco Smuggling in the UK. London, ASH, October 2000.
<http://www.ash.org.uk/html/smuggling/html/uksmuggling.html>.
- 23 Van Driel. Miljoenen illegale sigaretten gepakt. De Volkskrant, 20 Januari 2000.
- 24 Lamfalussy C. Anvers sur la voie des contrabandiers. La Libre Belgique, 19 Januari 2001, 5.
- 25 K-H Mathias, German Customs, 23 March, personal communication
- 26 Anonymous. 16 tonnes de cigarettes saisies à Marseille. La Libre Belgique, 16-17 December 2000.
- 27 Anonymous. Huge cigarette shipment seized. St. Petersburg Times, 17 November 2000.
- 28 Anonymous. Saisie de cigarettes : + 40% en 1999. Revue de tabacs, nr 465, p39, Mai 2000.

- 29 Buttice A, EU Anti Fraud Office. Communication with Andy Rowell. September 2000.
- 30 HM Customs and Excise, Tackling indirect tax fraud, HM Treasury, London, November 2001.
- 31 Commissioner Schreyer. Parliamentary answer to Belgian MEP Bart Staes, 22 May 2001.
- 32 Anonymous. Where there's smoke there's crime. The Times, 1 November 2000.
- 33 Persson LGW, Andersson J. Cigarette smuggling. Stockholm, Swedish National Police College, 1997.
- 34 Wendleby M, Nordgren P. Balancing the price: Sweden. In Lipponen S, Hara M, Waller M, Piha T. (editors). *Non-Taxable Imports of Tobacco*. Helsinki, Ministry of Social Affairs and Health, 1998.
- 35 Persson LGW, Anderson J, Cigarette smuggling, Swedish National Police College, Stockholm, 1999
- 36 Nordgren P. Personal communication, May 2001
- 37 Nordgren P. Personal communication, October 2001.
- 38 Swedish Cancer Society and Pharmacia. Unpublished survey data. Stockholm, December 2000.
- 39 EU complaint against Philip Morris, RJR [and Japan Tobacco International](http://www.nyed.uscourts.gov/pub/rulings/cv/2000/00cv6617cmp.pdf). <http://www.nyed.uscourts.gov/pub/rulings/cv/2000/00cv6617cmp.pdf>
- 40 Dunt K, BAT Co Ltd. DNP Brazil – Argentina. Letter, 18 May 1993.
- 41 Tomat HA, BAT (Deutschland) Export GmbH. Letter to Rembiszewski J headed WEITNAUER/BASLE, 10 November 1994.
- 42 Dunt K, BAT Co Ltd. To all General Managers. CONTRACT MANUFACTURE. 2 February 1993.
- 43 Secret, File Note, MEETING WITH PHILIP MORRIS REPRESENTATIVES at Pennyhill Park, Bagshot on 5 August 1992. These are the minutes of a meeting between BAT and Philip Morris.
- 44 Anonymous. Tobacco. The price is not quite right. The Economist, 7 July 2001, pp 64-66.
- 45 Rowe, R. BAT CAMEROUN SA. Implementation of VHWC. Yaounde, 22nd January 1993
- 46 Blumberg LM, Vice President Philip Morris Asia Pacific. American Health Warning Notice. Letter to PM New York, 19th October 1973.

- 47 Clarke K, Dilemma of a cigarette exporter, The Guardian, 3 February 2000
- 48 Editorial, A dirty business, The Guardian, 4 February 2000
- 49 “Public health, international trade and the Framework Convention on Tobacco Control”, prepared for participants of a roundtable discussion of international trade issues and the FCTC 13.02.01
- 50 House of Commons Treasury Select Committee, Second Report Session 1999-2000. HM Customs & Excise, 5 February 2000.
- 51 ASH. Tobacco taxation in the 2001 budget. Memorandum from Action on Smoking and Health. London, Ash, February 2001.