

ALL PARTY PARLIAMENTARY GROUP ON SMOKING AND HEALTH

Chair: Stephen Williams MP
Secretary: Bob Blackman MP
Treasurer: Ian Mearns MP

Vice-Chairs:
Rt Hon Kevin Barron MP
Baroness Finlay
Baroness O'Cathain
Lord Patel
Lord Rennard
John Robertson MP

Sir Cyril Chantler
Independent Review Chair
c/o King's College London
Room 1.2
Hodgkin Building
Guy's Campus
London SE1 1UL

12 February 2014

Dear Sir Cyril

Standardised Packaging and its Effects on Illicit Trade in Tobacco Products

I am writing to you as Chair of the All Party Parliamentary Group on Smoking and Health in connection with your review on the public health evidence on the standardised packaging of cigarettes and other tobacco products. We are strongly supportive of standardised packaging and believe that the evidence of the public health benefit this measure will bring is clear. However, in this letter we wish to focus in particular on the key argument being advanced by the tobacco industry; that legislation on standardised packaging will necessarily result in an increase in the level of the illicit tobacco trade in the UK, on a scale which would negate the public health advantages of the measure. We understand that you have already been given a copy of the APPG's report on its inquiry into the illicit trade in tobacco products.¹

In preparing this letter we have considered, and are responding to, the written evidence submitted to your review by British American Tobacco, Japan Tobacco International and Imperial Tobacco. All three documents place strong emphasis on the argument that standardised packaging will increase illicit trade. However it is notable that the companies give no adequate context to the issue. For example they do not look at trends over time in illicit tobacco in the UK market, they all rely on tobacco-industry funded research to the exclusion of other evidence, and they do not consider policy developments that could be expected to mitigate any problems arising from the introduction of standardised packaging.

Different Types of Illicit Product

The illicit trade in tobacco in the UK is made up of three categories of product:

- Counterfeit versions of UK brands

¹ The Inquiry report is available online at <http://www.ash.org.uk/APPGillicit2013>

- Licit brands that have been diverted into illicit channels, generally because they have been smuggled from a lower to higher tax jurisdiction
- “Cheap white” brands, that are known brands but with no legitimate market in the country where they are sold.

The tobacco industry submissions, in common with their other public statements on the issue, focus almost exclusively on the first category. Given that the industry’s position is that branded pack design is vital in differentiating licit from illicit product (which we reject for the reasons given below), then logically the industry should also accept that standardised packaging would if anything have a positive impact on the illicit trade in the second two categories, since cigarettes in both these categories would continue to be contained in branded packs, which could be distinguished from licit standardised packs on sight. Their silence on this point is revealing.

Industry Involvement in Illicit Trade

The tobacco industry submissions also fail to note that there is evidence that the major manufacturers are still facilitating smuggling by over-supplying its products to some markets, with the result that at least a proportion of these products are then diverted into illicit channels. The National Audit Office reported (in June 2013), that *“HMRC’s latest estimate, for 2011, is that the aggregate supply of hand rolling tobacco to some countries exceeded legitimate demand by 240 per cent”*.² This is despite the introduction in 2006 of tough legislation to require tobacco manufacturers to control their supply chains.³

Industry Measures of Illicit Trade are Not Reliable

The tobacco industry submissions do not acknowledge that the level of illicit trade has been declining in the UK since 2000, with a small uptick in 2012/13, as measured by HM Revenue and Customs’ annual tax gap estimates. We consider these to be a much more reliable indicator of the actual level of illicit trade than those produced by industry funded research, which have consistently, and increasingly, suggested levels of illicit trade in the UK in excess of those measured by HMRC. It should be noted that the industry has increasingly relied on the threat of illicit trade as an argument against tobacco control policy, including tax rises and restrictions on advertising and promotion, around the world. In the UK, the industry argued that the point of sale display ban would increase illicit trade, and that tax rises would increase illicit trade, but neither has proved to be true.

The industry submissions generally rely on industry-funded measures to claim a rise in illicit trade, particularly in Australia since the introduction of standardised packaging there in December 2012. However there is growing evidence that tobacco industry funded studies do not provide reliable measures of illicit trade. For example, they rely heavily on empty packs surveys which cannot in fact measure illicit. What they actually measure is non-duty paid product, which includes illicit plus legal non-duty paid product such as duty free and cross-border sales and product brought in by tourists. Growing evidence suggests that their empty pack

² National Audit Office *HM Revenue and Customs: Progress In Tackling Tobacco Smuggling* 6 June 2013

³ The Finance Act 2006, amending the Tobacco Products Duty Act 1979, and the Tobacco Products (Amendment) Regulations 2006, amending the Tobacco Products Regulations 2001.

Survey methodology is biased to increase the likelihood of finding illicit packs; a fact supported by comparisons with independent data. ⁴

Key Security Features do not Include Pack Design

Crucially, the industry submissions do not acknowledge that the key security features present on a branded pack of cigarettes would continue to be present on standardised packaging. These include:

- a covert mark on each licit pack, which can be read by enforcement authorities using a simple scanner to determine whether or not a pack is counterfeit
- other security marks that vary between manufacturers, for example the configuration of marks on filter paper
- number codes printed on each pack, which should be developed and standardised through the introduction of the tracking and tracing system mandated under Article 8 of the Illicit Trade Protocol (see answer to next question)

In addition the obligations of article 14 of the revised EU Tobacco Products Directive which would come into force in 2019 will require additional security features comprising a unique identifier and a visible and invisible, tamper proof security feature, which shall be irremovably printed or affixed, indelible and in no way hidden or interrupted in any form, including through tax stamps and price marks, or other elements mandated by legislation.

Counterfeiters are known to be able to produce quality and apparently genuine packaging at low prices in a short time. Even the tax stamps with more sophisticated security features used in other parts of the EU are easy to counterfeit. It follows that, as HM Customs and Excise reported in 2004, outside packaging is the least useful indicator of whether a pack of cigarettes is licit or illicit. ⁵

The Industry has a Developed Tracking and Tracing System

Finally, it should be noted that PMI has already developed a coding system called “Codentify”, which the company has licensed for free to JTI, Imperial and BAT. The four tobacco multinationals have set up a “Digital Coding and Tracking Association”, based in Zurich to promote “Codentify”. The “Codentify” system is intended to meet the requirements of Article 8 of the Illicit Trade Protocol, which mandates an international tracking and tracing regime for packaged tobacco products. ⁶ The system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production

⁴ See successive reports by Professor Anna Gilmore et al, University of Bath Tobacco Control Group, e.g. “Towards a greater understanding of the illicit tobacco trade in Europe, a review of the PMI funded “Project Star”, published Wednesday 22nd January 2014.

<http://www.bath.ac.uk/news/2014/01/22/illicit-tobacco> Also see regional surveys of illicit trade by the market research company NEMS, e.g. the North of England Illicit Tobacco Survey 2011

⁵ HM Customs & Excise. *Counterfeit cigarettes 2004*.

⁶ There are other competing tracking and tracing systems, not controlled by the industry, that may also meet the requirements of Article 8

and intended target market. Since the codes are based on a secure algorithm, it would be a simple matter to identify “fake” codes on illicit packaging.

PMI’s promotional material claims that “Codentify” *“makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century”*. Codentify (or any of a number of other possible systems) could be used on standardised packs as easily as on branded ones. Yet “Codentify” is not mentioned in the industry’s submissions to you. It is clear that the tobacco industry is promoting contradictory messages depending on which issue it is addressing: on the one hand it claims to have a robust tracking and tracing system that can be used on any tobacco packaging, and on the other to claim that pack design is vital in combatting illicit trade. These claims are inconsistent.

On these grounds, we would suggest that concerns about the possible effects of standardised packaging on illicit trade are misplaced, and are largely a tobacco industry confection. You should note that the APPG Inquiry took oral evidence from senior representatives of the EU anti-fraud office OLAF, and from a senior serving police officer engaged in work on illicit trade, and neither thought that the introduction of standardised packaging would have a significant effect on illicit trade. Subsequently Andrew Leggett, deputy director for tobacco and alcohol strategy at HMRC, stated in oral evidence to the House of Lords that: *“There are a number of potential factors that weigh on counterfeit packaging if plain packaging was introduced. I think there is a risk there. The extent to which it would materially change the composition of the illicit market in the UK. We’re very doubtful that it would have a material effect.”*⁷ We hope very much that your review will reach the same conclusion.

Please do not hesitate to contact us if we can provide you with any further information.

Yours sincerely



Rt Hon Paul Burstow MP
Chair of the All Party Parliamentary Group on Smoking and Health

⁷House of Lords European Union Sub Committee (Home Affairs) on Wednesday 24th July, Hansard.
<http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/tobaccosmuggling/cHMRCoral.pdf>