



# ASH Scotland Tobacco smuggling

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## Key points:

- little is known about the extent of tobacco smuggling in Scotland but good estimates exist for the UK as a whole
- large scale container fraud accounts for the majority of illicit cigarette imports
- counterfeit cigarettes are a growing problem
- tobacco smuggling is linked to organised crime
- tobacco smuggling is an international phenomenon and requires an international solution.

It is estimated that the global illicit cigarette trade accounts for about 10% of total cigarette sales, or at least 600 billion cigarettes<sup>1</sup>.

## Sources of illicit tobacco

There are three main forms of tobacco smuggling<sup>2</sup>:

- **Large scale organised smuggling.** A 40 foot container can hold around 10 million cigarettes. Organised smuggling usually involves the diversion of large consignments of cigarettes onto the black market while the product is in transit. This type of smuggling generally avoids all taxation.
- **Counterfeit cigarettes.** Counterfeit, or fake, cigarettes are smuggled on the same kind of scale as organised smuggling. They are normally produced in illegal factories particularly China or to a lesser extent in Eastern Europe<sup>3</sup>. Often manufactured from tobacco rejected by genuine tobacco companies, the counterfeit cigarettes are smuggled into the UK in containers.
- **Bootlegging.** Bootlegging refers to the process whereby tobacco products are bought in countries with lower tobacco tax rates and then illegally sold on in countries with higher tax rates. While individuals can legitimately bring in up to 3,200 cigarettes to the UK for personal consumption, there is also a considerable volume of illicit bootlegging, often carried out by individuals and small gangs.

Of these three methods, bootlegging may be the most visible to the public eye, but this trade makes up only a small minority of the illicit tobacco trade in the UK. In 2000 HM Customs and Excise estimated that large scale container fraud accounted for between 70% - 80% of illicit cigarette imports, with small scale bootlegging accounting for much of the rest.<sup>4</sup> While smuggling overall has declined since 2000, the proportion of counterfeit tobacco has increased as smugglers turn from genuine products to the more readily available

counterfeit tobacco products.<sup>5</sup> In 2007/08 51%<sup>6</sup> of cigarettes seized by Customs were counterfeit compared to 15% in 2001/02.<sup>7</sup>

A new and emerging development in the UK illicit tobacco market is non-UK brands of cigarettes, particularly cheap whites. Cheap whites are brands produced by small overseas manufacturers who do not legitimately supply the UK with any tobacco products. Cheap whites have been identified as a growing risk area by HM Revenue & Customs, UK Border Agency and multi-national tobacco manufacturers.<sup>8</sup>

### **Impacts of tobacco smuggling**

Tobacco smuggling is not a victimless crime. It undermines the UK Government's policy of using tax to maintain the high price of tobacco in order to reduce smoking, especially among the young. By importing large quantities of tobacco smugglers increase demand for cigarettes and tobacco,<sup>9</sup> particularly among those on low incomes who already suffer significant health inequalities as a result of smoking.<sup>10</sup> There is considerable evidence that smuggled tobacco is targeted at the most vulnerable groups: young people and those on low incomes, and that the cost of tobacco is a major factor in any decision to start or quit, or in relapse.<sup>11</sup> Low cost smuggled tobacco weakens the influence of price on these decisions.

Tobacco smuggling cost the UK Government between £1.7 billion and £3.1 billion in lost tax revenue in 2006/07, money which otherwise would be used to pay for schools, hospitals and other public services.<sup>12</sup>

### **Organised crime and terrorism and smuggling**

Tobacco smuggling has strong links with terrorist and paramilitary organisations, organised crime syndicates and insurgencies. The enormous profits to be made by evading tobacco duties make smuggling an attractive option for unscrupulous criminal interests. The Taliban, al-Qaeda, Hezbollah and the Kurdistan Workers Party (PKK) are involved in smuggling cigarettes as is the Columbian FARC.<sup>13</sup> Both the Provisional IRA<sup>14</sup> and the splinter group the Real IRA<sup>15</sup> have been linked with tobacco smuggling as a way of raising money to fund their activities. Italian Mafia operatives are also involved in the smuggling of tobacco into the UK, as are Russian and eastern European criminal gangs<sup>16</sup>, which have been implicated in smuggling illegal drugs as well as people trafficking. Chinese Triads are central to the traffic to the UK of counterfeit cigarettes produced in highly sophisticated factories in the Far East.<sup>17 18</sup>

The great majority of tobacco smuggled into the UK benefits terrorists, gangsters and highly organised criminal gangs. Anyone who smokes smuggled or counterfeit cigarettes is funding – either directly or indirectly – the activities of these criminals.

### **Tobacco industry involvement**

In the past, there have been well documented cases of UK tobacco companies exporting tobacco to countries where there is little market for their product. In 1997, UK companies exported over 1.5 billion cigarettes to

Andorra, a country with a population of only 63,000. Either every man, woman and child in Andorra was smoking over 60 British cigarettes every day, or the cigarettes were going somewhere else.<sup>19</sup>

The apparent complicity of the tobacco industry in smuggling was one of the areas investigated during the House of Commons Health Select Committee's inquiry into the Tobacco Industry and the Health Risks of Smoking in 2000. During the inquiry, it became clear that although all the tobacco companies claimed to be opposed to smuggling, both British American Tobacco (BAT) and Gallahers were complicit in the illicit trade in tobacco to one degree or another.<sup>20</sup>

### **What can be done to combat tobacco smuggling?**

Tobacco smuggling is an international phenomenon, and requires an international solution. Currently a Protocol on the Illicit Trade in Tobacco Products<sup>21</sup> is being negotiated under the Framework Convention on Tobacco Control. Key measures of the protocol are likely to include:

- an international system that enables the tracking and tracing of tobacco products
- licensing schemes for participants in the tobacco business
- 'know your customer' laws, which oblige participants in the tobacco business to identify their customers and keep records of transactions
- obligations for tobacco manufacturers to control their supply chain with penalties for those that fail to do so
- criminal and civil sanctions sufficient enough to deter participation in illicit trade
- programmes to enhance law enforcement.

A cost-benefit analysis of implementing the Protocol on Illicit Trade in Tobacco Products estimates that that it could be worth £5.7 billion to the UK in Net Present Value terms and save 760 lives.<sup>22</sup>

The European Union entered into legally binding agreements on illicit trade with Philip Morris International in 2004 and Japan Tobacco International in 2007. The UK became a signatory to both agreements in 2009<sup>23</sup>. The agreements give both of these companies clear incentives to address the smuggling of their products. The tobacco companies are required to control their distribution systems by approving contractors and by using track and trace measures; they are also required to make payments for any smuggled tobacco products seized.<sup>24</sup> Neither the UK Government nor the European Union have entered into similar agreements with Imperial Tobacco, even though they have a dominant share of the UK cigarette market.

In the UK HM Revenue and Customs (HMRC) produced a Tackling Tobacco Smuggling Strategy in March 2000<sup>25</sup>, which was updated in March 2006<sup>26</sup>. During the first four years of the strategy, the illicit tobacco market share declined from 21% to 16%.<sup>27</sup>

The 2000 smuggling strategy contained measures to deploy almost 1,000 additional front-line and investigative officers, the introduction of fiscal marks on packets of cigarettes and tobacco, harsher punishments for those caught with smuggled tobacco, a national network of x-ray scanners along with a publicity campaign aimed at the general public.

One of the key measures of the 2006 strategy were enhanced Memoranda of Understanding (MoUs) between HMRC and the UK tobacco manufacturers to restrict the availability of tobacco to smugglers. However unlike the EU Agreements the MoUs are not legally enforceable. Other key measures in the updated strategy were legislation to obligate tobacco manufacturers to control their supply chains with penalties of up to £5m for non-compliance, investment in resources and a new publicity campaign to raise awareness of the risks of smuggling.

In 2008 the UK Government published a new joint strategy which outlines how the UK Border Agency (UKBA) and HMRC will work together to tackle tobacco smuggling. HMRC now has overall responsibility for the collection and enforcement of tobacco duties, investigating criminal offences, and disrupting the supply of illicit tobacco inland. The UKBA is responsible for detecting and seizing illicit tobacco at the UK border and arresting those suspected of smuggling. Both bodies are jointly responsible for developing intelligence and reducing revenue losses.

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<sup>3</sup> HM Revenue and Customs and UK Border Agency. *Tackling tobacco smuggling together: an integrated strategy for HM Revenue and Customs and the UK Border Agency* [online]. London: The Stationery Office, 2008. Available from: <http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/tobaccostrat08/tobacco-2800.pdf?view=Binary> [accessed 15 July 2009]

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