The illicit tobacco trade review 2013
JTI POSITION ON THE ILLEGAL TRADE OF TOBACCO

The fight against the illegal tobacco trade is an important business priority for JTI Ireland. Success against this trade requires cooperation between government and the industry, something JTI Ireland is fully committed to.

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In this year’s Illicit Tobacco Trade Review, we seek to analyse and reflect upon the trends that have emerged in the illegal tobacco trade in 2013. The Review aims to highlight where action has been effective but also point out where gaps have emerged in our collective response to the issue. Combating the illegal trade is a key business priority for JTI.

The scale of the illegal tobacco trade continues to be a problem in Ireland and there are several reasons for why this is the case, not least the current economic climate. The Irish economy is beginning to show signs of recovery. Economic indicators, such as capital investment and gross national product (GNP) are starting to point in the right direction. Consumer sentiment rose to a two year high at the end of 2013 while the number of people unemployed fell to a four year low of 12.1%.

However, personal consumption, which accounts for approximately two thirds of domestic demand, fell by 1% in 2013.2 Fundamental shifts in consumer behaviour over the last number of years and the significant reductions in disposable income have meant that consumers have sought out value both in products purchased and retail destinations. Despite the optimistic macro-economic indicators, this trend for consumer downtrading is set to continue for the medium term.

Within this overall economic context, the illegal tobacco trade has continued to flourish. Revenue’s latest estimate puts the level of non-Irish Only Paid tobacco products consumed in Ireland at 30%. Industry estimates, which take account of the growth of the roll your own (RYO) segment, estimate that the Irish Excise Authority fails to collect duty on nearly 1 in 4 of all cigarettes consumed in the State.

Proposals to further regulate the tobacco market, such as the plain packaging of tobacco products, must be assessed in terms of their potential effect on the illegal tobacco trade. In the absence of reliable evidence as to the measure’s efficacy, the potential negative effects on the illegal tobacco trade, on the retail trade and on the Exchequer must be borne in mind.

In April 2014, XPNG published a report on the illegal tobacco trade in Australia, Illicit Tobacco Consumption, which found that between 2012 and 2013 the level of illicit tobacco consumption grew to 13.9% of total tobacco consumption, the highest level recorded to date and 2.1 percentage points higher than in 2012.3

Due to high excise duties, Australia is already a lucrative target for illegal tobacco smuggling. The introduction of plain packaging appears to have exacerbated the problem.

Despite consumption remaining relatively stable, the report also found the overall sales of legal domestic product in the full year 2013 declined by 0.5% from the previous year, a lower decrease compared to an annual fall of 1.6% between 2000 and 2013.

JTI Ireland takes a zero tolerance approach to the illegal tobacco trade. We work closely with law enforcement agencies in Ireland to do everything we can to support them in combating this illegal trade, supplying information in order to facilitate seizures of illegal tobacco.

On an international level, in 2013 JTI supplied information relating to over 4 billion cigarettes in over 80 suspect shipments across Europe to the European Anti-Fraud Office (OLAF). In December 2007, JTI entered into a 15 year voluntary agreement to contribute €400 million to the European Commission to help combat the illegal trade of tobacco into and through Europe. To date, the Commission has distributed €195.7 million of JTI’s contribution in annual installments to EU Member States. The Revenue Customs Service has drawn on this funding programme several times over the last number of years.4

From 2014, European Member States can access funding under the newly endowed Hercule III anti-fraud programme, a financing programme managed by OLAF, which will make €70 million available to fight fraud, corruption and other illegal activities. Law enforcement agencies across Europe will now be able to access 80% of the funding needed to assist in the tackling of the illegal tobacco trade.

In Ireland, illegal whites, cigarettes without any legal market, accounted for more than 60% of all cigarettes seized in 2013.5 These illegal products are manufactured by small indigenous tobacco companies with little or no investment in research & development, aiming to capture the lucrative target for illegal tobacco smuggling. The introduction of plain packaging appears to have exacerbated the problem.

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The unregulated trade imposes enormous revenue losses for governments which directly affect its debt levels and ability to fund socially beneficial programmes such as healthcare or education.

Grant Thornton, An Irish and Global Challenge, March 2014.
Our history
JTI – Japan Tobacco International is the international tobacco division of Japan Tobacco Inc., with a global market share of 11%.
JTI was formed in 1999 when Japan Tobacco Inc. purchased the international tobacco operations of the US multinational R.J. Reynolds.
The further acquisition of UK-based Gallaher in 2007 nearly doubled the size of JTI by adding 11,000 new employees.

Our company
JTI is headquartered in Geneva, Switzerland. A truly international and multicultural business, JTI employs more than 25,000 people around the world.
JTI Ireland is a member of the Western Europe region which is made up of 16 JTI markets: Benelux (Belgium, Luxembourg, Netherlands), Cyprus, France, Greece, Ibiza (Andorra), Canary Islands, Gibraltar, Portugal and Spain, Ireland, Italy, Malta, Switzerland and the United Kingdom.

Our brands
Our eight Global Flagship Brands constitute the core of JTI’s brand portfolio, which includes four of the top ten worldwide cigarette brands: Winston, Mevius, LD and Camel.
Our key cigarette brands in Ireland are Silk Cut, Benson & Hedges (representing the No.1 and No.2 brands in the market respectively), Camel, Mayfair and Winston.
We are also market leaders in the growing RYO (Roll Your Own) segment with Amber Leaf, Ireland’s No.1 RYO brand.

Our engagement
JTI’s view is clear: tobacco products carry risks to health. Appropriate and proportionate regulation of the tobacco sector is both necessary and right. JTI believes that:

• Minors should not smoke, and should not be able to obtain tobacco products. It is central to our Code of Conduct, our marketing practices, our operational policies and the way JTI does business;

• Adult smokers should be appropriately reminded about the health risks of smoking.

Reinforcing the age limit in retail stores is imperative to help prevent minors from gaining access to tobacco products. In this regard since 2010, JTI Ireland has proactively invested in and promoted its youth access prevention programme ‘Show Me I.D – Be Age OK’. The programme, supported by Retail Associations, Vintners, Chambers of Commerce and the Irish Tobacco Manufacturers Advisory Committee (ITMAC), was developed specifically to assist Ireland’s retailers in preventing sales of tobacco products and other age restricted products to minors. The campaign includes an annual Awareness Week which will take place from the 30 June – 6 July this year. This comprises a nationwide media campaign and in-store promotions in over 2,000 retail outlets across the country. Visit www.showmeid.ie for further information.

It is important that adult smokers are reminded of the risks associated with tobacco products. Our consumer information initiative, No Safe Cigarette, addresses this by giving consumers more information about the risks associated with smoking. It is a voluntary action by JTI to better inform consumers about our products. Its aim is to explain clearly that no cigarette is safe. All JTI cigarette packs in Ireland carry the web address, www.nosafecigarette.com. Please consult this website for further information.

25,000 employees
We employ over 25,000 people across 90 offices, 24 factories, 6 R&D centres and 5 tobacco processing facilities worldwide.
120 offices
We operate in more than 120 countries around the world.
90 nationalities
We combine the multicultural diversity of over 90 nationalities.

Our worldwide locations
• JTI offices
• JTI factories

Our Company at a Glance
Our Company at a Glance
Irish criminal gangs are making about €3 million a week in selling illegal cigarettes.  

**An International Problem**

Levels of non-domestic duty paid tobacco (inclusive of illegal trade and legitimate cross border trade).

Source: Industry figures* Euromonitor 2013 **

**An Established Criminal Network**

“The illegal tobacco industry is a global industry invariably and it amasses large amounts of money for organised crime gangs.”

Assistant Commissioner Derek Byrne, An Garda Síochána, Oireachtas Health Committee Hearing, 23rd January 2014.

**Low Penalties**

87 convictions and €2,800 in fines for smuggling or keeping for sale or delivery of illicit cigarettes in 2013.

**High Tobacco Taxation**

“Ireland, which has exceptionally high tobacco taxes and tobacco prices, has a significant problem.”

Gerard Moran, Assistant Secretary, Revenue Commissioners, Oireachtas Health Committee Hearing, 23rd January 2014.

“Every country with high tobacco taxes has an illegal tobacco problem.”

Gerard Moran, Assistant Secretary, Revenue Commissioners, Oireachtas Health Committee Hearing, 23rd January 2014.

High taxes lead to smuggling!

Why the illegal tobacco market exists
The illegal tobacco trade is a serious issue that affects many countries across the globe depriving Governments of much needed revenue streams while funding organised crime gangs.

**International growth**

The illegal tobacco market is growing across the globe, with a 4% growth rate, excluding China, recorded in 2012. The illegal tobacco market at 12% holds a greater percentage of the total global market, excluding China, than JTI. Some countries have a recorded illegal market share of well above 50%. Estimates put the potential figure of illegal cigarettes sold on the world market by 2017 at 828 billion cigarettes.

Reducing the availability of illegal tobacco products is a serious challenge for all Governments. Not only does it undermine an important source of State revenue, it also circumvents national health policies aimed at the reduction of tobacco consumption. Studies assert that annual losses in tax revenues resulting from the illegal trade in cigarettes alone amounts to USD 40.6 billion. There are a number of key drivers that contribute to the growth of illegal tobacco within a jurisdiction.

**Drivers of Illegal Tobacco in Ireland**

- **Demand for Illegal Tobacco**
  - There are various organised crime groups operating in Ireland. Established smuggling and distribution networks for drugs and arms provide opportunities for the trafficking of cheap illegal tobacco.
- **Regulation/Taxation**
  - The tobacco tax incidence in Ireland at 82% is the third highest in Europe. This has created an environment where organised crime gangs can generate huge profits at little risk.
- **Crime Environment**
  - There are various organised crime groups operating in Ireland. Established smuggling and distribution networks for drugs and arms provide opportunities for the trafficking of cheap illegal tobacco.
- **Enforcement**
  - Adequate penalties are essential if organised crime groups are to be discouraged from supplying the demand for illegal tobacco products. Despite the focus that Ireland’s law enforcement agencies have brought to bear on this issue, the frequency and severity of sentencing remains low.
- **Society and Economy**
  - The recession Ireland has experienced since 2008 has severely impacted the disposable income of consumers and therefore created a strong motivation for adult smokers to purchase cheaper alternatives to the legal tobacco market.

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Why the Illegal Tobacco Market Exists

The scale of illegal tobacco in Ireland

Empty Pack Survey (EPS)

In 2012, the joint industry Empty Pack Survey (EPS) indicated that the level of non-Irish duty paid (NIDP) tobacco in Ireland was at 28.3%, a marginal increase on the 28.2% recorded in 2012. This is in line with trends over the past three years which have shown a consistent gradual increase.25

The EPS estimates the proportion of non-Irish duty paid (NIDP) cigarettes consumed in Ireland at a given time over two waves per year in May and November. This includes contraband, illegal whites, duty free and cross-border purchasing.

The objective of the EPS is to detect early trends in the illegal tobacco trade and provide an indication on the incidence of non-domestic or counterfeit cigarettes consumed in Ireland. This industry accepted methodology, is implemented by KPMG and shared with OLAF.

Drivers of the illegal tobacco trade in Ireland

High Taxation

In most countries, tobacco is considered to be an ideal product for taxation revenues as demand is relatively inelastic. Today all countries impose at least one tax on tobacco products which are in the vast majority of cases due to be paid in the country of consumption. Tobacco taxes provide Governments with a secure, predictable and easy source of revenue.

Ireland has the highest tobacco prices among the European member states with 80% of the retail selling price of every packet of cigarettes sold in the legitimate retail trade going to the Exchequer in VAT and excise. As Revenue has set out, a high tax incidence will increasingly displace consumers from the legitimate trade to the illegal trade. The illegal tobacco trade deprives Governments with a secure, predictable and easy source of revenue.

In 2009, the Government introduced legislation to remove all tobacco branding from the point of sale in retail outlets selling tobacco products thereby giving sellers of illegal tobacco products an additional competitive advantage in the retail trade. This has in effect created a two tier tobacco market where highly regulated legitimate retailers compete against criminal organisations operating outside all forms of statutory oversight, offering cheaper priced products to consumers.

In 2013, Euromonitor International stated that, over time, Ireland has become one of the more restrictive countries with regard to its tobacco control legislation with smoking bans in public places, blanket bans on tobacco advertising and steadily increasing tobacco taxation. Successive Governments have continued to implement increasingly restrictive regulation on the legitimate tobacco market and the retail trade. This has in effect created a two tier tobacco market where highly regulated legitimate retailers compete against criminal organisations operating outside all forms of statutory oversight, offering cheaper priced products to consumers.

In 2013, the Joint Industry EPS Survey 2011 - 2013 highlighted the potential impact on the illegal tobacco trade. Legislation must therefore be considered in light of its potential impact on the illegal tobacco trade.

Government Excise Receipts 2009 - 2013

| Government policy of sustainable excise increases over the past two budgets has seen moderate excise increases of 10c being levied on tobacco products. Given the fact that Ireland has the highest prices for tobacco products among the European member states, this policy of moderate increases has helped ensure that tobacco receipts have remained largely stable.

In this context, a long term sustainable approach to tobacco taxation that sets out moderate and predictable increases over a fixed period of time would provide the most advantageous method of tobacco tax collection for the State. This would allow Government to accurately predict excise receipts in the short to medium term and help offset potential losses to the illegal tobacco market.

Highly Regulated Market

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Established illegal distribution network

Illegal drug use in Ireland is relatively high when compared with international counterparts. This demand is supplied by organised crime groups with the capacity and capability to import and distribute illegal products. These illegal distribution networks have also provided opportunities for the illegal smuggling of tobacco products. As recently stated by Assistant Commissioner, Derek Byrne of An Garda Síochána, cigarette smuggling has been identified as a low risk/high profit enterprise for organised crime groups within the European Union. Well established organisations engaged in a wide variety of criminal activity can therefore generate significant returns by using the illegal tobacco trade as a low risk source of funding. Retail Ireland state that criminal gangs are generating approximately €3 million per week from illegal tobacco sales. Since 2005, Ireland has seen the proportion of non-Irish duty paid tobacco products as a percentage of the total tobacco market increase.

This has necessitated an extensive distribution network evidenced by the variety of distribution channels uncovered by Revenue Customs and An Garda Síochána during 2013. Revenue Customs have stated that criminal gangs have been moving away from very large consignments in favour of smaller volumes, often transported in conjunction with legal products. This is as a result of the number of large seizures being made throughout the EU, including in Ireland.

Tobacco prosecutions in 2013

In 2013, the Revenue Customs Service secured convictions against eighty-seven people for smuggling or other illegal tobacco offences. The courts imposed 37 custodial sentences, 19 of which were suspended, ranging from 2 months to 3 years. This equates to average fines for tobacco related excise offences of €2,800.

Minors’ access to tobacco products

The illegal tobacco trade circumvents one of the key objectives of public health policy i.e. preventing minors’ access to tobacco products. The Irish retail trade is strictly regulated in this regard with the Department of Health and Children conducting regular inspections to assess compliance. In relation to sales to minors legislation, 1,452 inspections were conducted from 2009 to end September 2012 with 14 convictions. This equates to 0.96% inspections resulting in a conviction. Within the illegal trade no such control exists and tobacco products are sold to minors and by minors on a regular basis. Detective Superintendent George Kyne of the National Bureau of Criminal Investigation recently referred to reported instances of where children were being used as runners by cigarette gangs. Since 2010, an industry supported programme, Show Me I.D – Be Age Ok, has sought to assist retailers in ensuring that all of their staff comply with the laws regarding sales of tobacco products to minors. However, such initiatives are consistently undermined by the easy access to tobacco products created by the illegal tobacco trade.

Non-Irish duty paid - tobacco rates in Europe

<table>
<thead>
<tr>
<th>Country</th>
<th>EU</th>
<th>Non-EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>28.3%</td>
<td>11.4%</td>
</tr>
<tr>
<td>Finland</td>
<td>21.2%</td>
<td>15.6%</td>
</tr>
<tr>
<td>Germany</td>
<td>21.7%</td>
<td>19.3%</td>
</tr>
<tr>
<td>Lithuania</td>
<td>28.9%</td>
<td>11.4%</td>
</tr>
<tr>
<td>Spain</td>
<td>28.3%</td>
<td>19.3%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>21.2%</td>
<td>19.3%</td>
</tr>
</tbody>
</table>

We have come across instances where children are used as runners by cigarette gangs.38


<table>
<thead>
<tr>
<th>Year</th>
<th>Government Loss</th>
<th>Retailer Loss</th>
<th>Criminal Gain</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>€250m</td>
<td>€450m</td>
<td>€150m</td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td></td>
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</tbody>
</table>

Disposable incomes declined in Ireland by 18% since 2008.
The illicit tobacco trade in Ireland has grown to its current level because the environment has facilitated it. Measures taken with regard to the legitimate tobacco trade and external macro-economic factors have provided incentives for a growing numbers of consumers to turn to the illegal trade in tobacco. Despite the current depth of penetration, there is considerable potential for further growth of the illegal tobacco market.

Current economic climate

Ireland is getting back on its feet after a severe banking and fiscal crisis. Determined structural reforms and considerable fiscal consolidation have helped to rebalance the economy, which is recovering gradually. Consumption and spending are expected to increase in 2014 driven by reductions in unemployment, inflationary pressures and positive sentiment. However, the economic crisis has left a legacy of unemployment and debt, amongst the highest in the OECD and disposable incomes have declined by 18% since a peak in 2008. Allied to fundamental shifts in consumer behaviour, the trend among consumers towards downtrading to value products that emerged over the past number of years continued during 2013.

Consumer confidence increases

In 2013, the total Irish grocery market was worth just under €8.98 billion. Households continued to employ a variety of strategies to cope with reduced disposable incomes including downtrading in both their choice of product and store. This trend highlights the continued incentive for Irish consumers to exit the legitimate trade in favour of low priced, illegal alternatives.
The European Commission did not include plain packaging in the draft revised Tobacco Products Directive (TPD) put forward in 2012. A European Parliament amendment to introduce plain packaging into the Directive was then rejected in October, 2013. On 18 December 2013, the EU Council of Ministers stated that any Member State considering the introduction of plain packaging will need to justify such a measure.45 Article 24 of the TPD would require Ireland to justify the need for plain packaging:

"on grounds of public health, taking into account the high level of protection achieved through this Directive" and plain packaging will be required to be: "proportionate (and) not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

Moreover Ireland, in its submission to the revision of the TPD consultation in 2010, stated:

"that the introduction of generic or plain packaging must be on the basis of robust evidence. If such a measure is to be introduced, it should be mandatory and there should be a harmonized approach across Europe." 46

For Ireland to proceed now with plain packaging in the absence of official evidence flies in the face of the 2010 submission.

Australia is the only country in the world to have introduced plain packaging. No credible evidence has emerged from Australia, where plain packaging has been in place for over a year, showing that plain packaging has had any positive health impacts.

The whole concept of plain packaging is based on outdated notions of smoking behavior. Regulators and academics tell us that there are many reasons why children start smoking including peer pressure, family and parental influence or access and availability of cheap tobacco products. It may be a combination of all of these factors, but not because of the actual packaging of cigarettes.

Legislation as a driver of the illegal trade

As set out earlier, Ireland has one of the most highly regulated legitimate tobacco markets in the world which is forced to compete with an entirely unregulated one which comprises over one quarter of the total tobacco market.44 Certain proposed legislative measures have the potential to further exacerbate this issue.

Revised EU Tobacco Products Directive

On 3 April 2014, the Presidents of the European Parliament and Council signed the agreed text of the revised EU Tobacco Products Directive (TPD). The Directive is expected to enter into force in May 2014. The revised Directive regulates the manufacture, sale and distribution of tobacco products within the European Union.

Many of the measures, including the menthol ban and restriction on pack sizes and formats, could lead to a growth in the illegal trade.

The Minister for Health, James Reilly TD, is pursuing his plan to introduce plain packaging for tobacco products in Ireland. Plain packaging, if introduced, would require a standardised appearance for all tobacco packaging, with only the brand name in a specified standard typeface, colour and size.

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Tobacco products carry risks to health, and therefore appropriate and proportionate regulation is both necessary and right.42 Regulation must be based on a sufficiently robust evidential base as certain measures may have unintended consequences such as providing a competitive advantage to criminal operators to grow their trade.43 Regulation must be based on a sufficiently robust evidential base as certain measures may have unintended consequences such as providing a competitive advantage to criminal operators to grow their trade.43
Introducing plain packaging would increase the illegal trade by giving criminals the opportunity to sell tobacco products in the branded packaging that its legitimate owners cannot longer use and by making counterfeit products easier to make, distribute and sell. With plain packaging, criminals would be effectively given a blueprint of how to make every pack.

The level of non-Irish duty paid tobacco consumed in Ireland is already amongst the highest in the EU. Plain packaging, by increasing the amount of the illegal tobacco trade, may also make illegal products more accessible to children. Criminals who sell illegal tobacco products do not discriminate who they sell to, and often target children or adults from lower socio-economic backgrounds.

The best way to help avoid this is to maintain a well-regulated legitimate market where tobacco can be legally sold. But also to stamp out the selling of untaxed and unregulated tobacco by organised criminals.

From personal experience, I know that the money made by criminals and subversives from illegal involvement in the tobacco trade is very substantial and continues to grow.

Tony Holohan, former Assistant Commissioner of An Garda Síochána, Sunday Independent, 2 March 2014.

Due to high excise duties, Australia is already a lucrative target for illegal tobacco smuggling. The introduction of plain packaging appears to have exacerbated the problem. Also of significance, the overall sales of legal domestic product in the full year 2013 declined by 0.5% from the previous year: a lower decrease compared to an annual fall of 1.6% between 2000 and 2013.

In October 2013, Australian law enforcement made one of the largest illegal tobacco seizures on record, seizing 80 million cigarettes and 70 tonnes of loose tobacco.

**KPMG Report on Australia**

In April 2014, KPMG published a report on the illegal tobacco trade in Australia, Illicit Tobacco in Australia, which found that the level of illicit tobacco consumption had grown to 13.9% of total consumption, 2.1 percentage points higher than in 2012. Additionally, the consumption of illegal whites continued to be a growing issue and accounted for more than 2.3% of total manufactured cigarette consumption in 2013. "Manchester" is currently the largest illegal white brand in Australia. If it were sold legally in Australia it would have 1.4% of the market.

Despite the potential negative impacts associated with the introduction of plain packaging, no evidence from Australia, the only country where the policy has been implemented, has emerged that plain packaging has changed the rate of decline in smoking or has had any positive impact on smoking behaviour. The Australian Department of Health and Ageing has announced that it will undertake an assessment on the impact of plain packaging in December 2014. The Irish Government should await and examine these results before making any decision on whether to proceed with the policy.
The introduction of plain packaging will hugely undermine the protection of intellectual property rights and branding in Ireland. Going this route will introduce a fundamental element of doubt and unpredictability to Ireland’s business environment. It will unjustifiably infringe fundamental legal rights to property, freedom of expression and trade that are protected under Irish, EU and international law, and potentially jeopardise Ireland’s international obligations under World Trade Organisation (WTO) law, which in turn, could give rise to legal challenges.

International intellectual property organisations such as the International Chamber of Commerce, the European Community Trademark Association and Marques, the European Trade Mark Right Owners Association have expressed their concern that the measure would adversely affect country’s economies through facilitating and escalating counterfeiting and piracy.52

The Government’s plans to introduce plain packaging for tobacco products has been read by many in the industry as an indication that high-sugar and high-fat products could be next on the agenda. Do you think this will be the case? 53

- 41.5% Yes, and it’s only a matter of time
- 25.4% No, but there is a need to address this issue
- 9.3% No, there is no need
- 23.7% Yes, but not in the short to medium term

Source: Checkout Conference 2014.

Wide ranging restraints on the use of branding, including colours, distinctive pack, product sizes and shapes would set a dangerous precedent.51

The introduction of plain packaging for tobacco products will also set a precedent for other sectors e.g. the food and drinks industries where there is already discussion in other countries on the possible introduction of plain packaging on those products.

Also, it is worth noting that Ireland would likely become embroiled in international disputes similar to the World Trade Organisation (WTO) disputes that Ukraine, Honduras, Cuba, the Dominican Republic and Indonesia have all initiated against Australia, claiming that the Australian plain packaging legislation breaches international trade obligations. A final ruling is not expected before 2015.

The introduction of plain packaging for tobacco products will also set a precedent for other sectors e.g. the food and drinks industries where there is already discussion on the possible introduction of plain packaging on those products.

It is possible to achieve public health benefits in a proportionate, effective and less restrictive way:

- Firstly, prevent minors from accessing tobacco products. This can be done;
  - by reinforcing the age limit through initiatives such as the industry supported youth access prevention programme, Show Me I.D – Be Age Ok, which has sought to assist retailers in ensuring that all their staff comply with the laws regarding sales of tobacco products to minors;
  - by devising meaningful policies that make it harder for children to get their hands on tobacco, such as punishing adults who knowingly buy tobacco products for children, and;
  - before doing anything else, Government simply must prioritise and focus on stopping children’s access to cheap tobacco products from the unregulated market.

- Secondly, Government should establish targeted, comprehensive programmes in schools to tackle peer pressure which is a key driver of youth smoking.

A worrying precedent

Checkout Magazine Survey of Retail Executives

The Government’s plans to introduce plain packaging for tobacco products has been read by many in the industry as an indication that high-sugar and high-fat products could be next on the agenda. Do you think this will be the case? 53

- 41.5% Yes, and it’s only a matter of time
- 25.4% No, but there is a need to address this issue
- 9.3% No, there is no need
- 23.7% Yes, but not in the short to medium term

Source: Checkout Conference 2014.

Alternative solutions

- Firstly, prevent minors from accessing tobacco products. This can be done;
  - by reinforcing the age limit through initiatives such as the industry supported youth access prevention programme, Show Me I.D – Be Age Ok, which has sought to assist retailers in ensuring that all their staff comply with the laws regarding sales of tobacco products to minors;
  - by devising meaningful policies that make it harder for children to get their hands on tobacco, such as punishing adults who knowingly buy tobacco products for children, and;
  - before doing anything else, Government simply must prioritise and focus on stopping children’s access to cheap tobacco products from the unregulated market.

- Secondly, Government should establish targeted, comprehensive programmes in schools to tackle peer pressure which is a key driver of youth smoking.
"It is incumbent upon government, especially at times of extreme economic difficulties to ensure that the measures they take are balanced and do not bring with them unintended consequences that adversely impact upon business and employment. We believe the plain packaging proposal would have such consequences."

Sharon Higgins, IBEC, Oireachtas Health Committee Hearing
6th February 2014

"The implementation of the proposed legislation will have a profoundly negative effect on our members’ businesses and there is no credible evidence that plain packaging as a policy proposal will lead to a reduction in smoking or prevent youth initiation."

Paul Candon, Topaz and Retail Excellence Ireland, Oireachtas Health Committee Hearings
6th February 2014

"We confirm our strong concerns about legislation precluding – fully or in part – brand owners from making legitimate use of their trademarks… Any such legislation would undermine the economic rise of Least Developed Countries like Malawi, which depend on the manufacture of tobacco products as a key tool for poverty reduction by creating direct and indirect employment and livelihood."

International Intellectual Property Organisations,
28th March 2014

"We are concerned with the legal implications of the concept of plain packaging as such and how it might affect the standing of the intellectual property rights here in Ireland and abroad."

John Shaw, President, The Law Society of Ireland, Oireachtas Health Committee Hearing
13th February 2014

"The production of packaging is a complex process and involves a range of products all produced to exacting standards. Any move to a plain packaging specification will benefit the producer of fake products."

Mike Ridgway, Spokesman for UK Packaging Manufacturers, Shelflife
28th February 2014

"Plain packaging of tobacco products, in my view, will likely lead not to a reduction in smoking but to substitution in favour of cheaper brands and supply alternatives."

Conorainn Gudgeon, Economist Trinity College, Retail News
28th March 2014
The illicit sale of goods and other shadow economy practices are matters that concern me greatly... I believe that the setting up of an informal working group could be a useful additional initiative.54

Assistant Commissioner Derek Byrne, An Garda Síochána, Oireachtas Health Committee Hearing, 23rd January 2014.

Increased Funding

% of European co-financing now available to law enforcement to tackle illegal trade through Hercule III Programme.
WHAT CAN BE DONE TO REVERSE THE ILLEGAL TOBACCO TREND

A number of independent strategies are currently in place to tackle the illegal tobacco trade. The following provides an overview of some actions undertaken in 2013.

Retailer actions - against the illicit tobacco trade

The retail trade right across Ireland continues to work closely with law enforcement and Government to tackle the illegal trade as it directly and negatively impacts their business. One such example is the work of Retailers Against Smuggling.

Retailers Against Smuggling

In 2013, Retailers Against Smuggling (RAS), an organisation established by retailers to combat the illegal trade, launched, in association with Topaz and Applegreen, stopsmuggling.ie to make the public aware that buying goods and products on the black market puts jobs and Irish businesses at risk and supports organised crime by putting money in the pockets of criminals. This is the first public awareness campaign of its kind and calls on retailers and consumers across Ireland to raise their concerns about this criminal activity with their local law enforcement agencies. Only by reporting this crime, can law enforcement effectively tackle it.

Paul Candon, Marketing Director of Topaz: “If it looks like too much of a good deal, then it probably is and should be avoided. Supporting fuel laundering and tobacco smuggling is bad for everyone except criminals”

Government actions - against the illicit tobacco trade

An Garda Síochána ‘Operation Decipher’

In late 2013, An Garda Síochána rolled out Operation Decipher in districts across the country, to target the growing issue of the illegal tobacco trade. Operation Decipher involves the targeting of suspected distribution outlets of the illegal tobacco trade, the carrying out of test purchases and the subsequent seizure of illegal product. Detective Superintendent George Kyne explained how the operation has evolved:

“There have been meetings between retailers and manufacturers to see what we can do to try and assist to investigate and reduce the problem of the illicit tobacco trade. The Organised Crime Unit, Criminal Asset Bureau and Customs are looking at what is going on internationally in order to stop the trucks coming in. This plan will be on-going and long term.”

Revenue Customs Service Multi-Annual Strategy

The Revenue Customs Service has, over the last three years, been guided in their efforts to combat the illegal tobacco trade by their Strategy on Combating the Illicit Tobacco Trade (2011-2013). This strategy is currently being revised in consultation with the relevant stakeholders including JTI. The revised strategy will assist the Revenue Customs Service in continuing to tackle the illegal tobacco trade.

Department of Social Protection

In 2013, the Department of Social Protection continued to implement initiatives designed to combat fraud. In line with the objectives of these initiatives, the Department is committed to enhanced prevention and detection of social welfare fraud.

In collaboration with An Garda Síochána and the Revenue Customs Service, officials at the Department of Social Protection carried out investigations into individuals engaged in the illegal tobacco trade and concurrently claiming social welfare payments. Where evidence emerged of fraud claims, benefit payments were disallowed.

Oireachtas Committee on Jobs, Enterprise and Innovation

The Oireachtas Committee on Jobs, Enterprise and Innovation, led by Chairman Deputy Damien English TD, compiled a report during 2013 on the loss of jobs in Ireland driven by the illegal tobacco trade. Public consultations were held across the country from Mayo to Kilkenny to gauge the public’s view on the issue. The report is due to be published in 2014.

Deputy English has also gained the support of the Minister of Finance, Michael Noonan TD, for the setting up of an informal working group between officials from the Department of Finance, Revenue Customs officials and members of the Oireachtas Committee to examine proposals to reduce the loss of revenue to the State from the illegal sale of goods.

There is a vast cost in terms of jobs and lost revenue to the State (caused by the illicit trade). Government and legislators must avoid any further regulatory burden which incentivises criminal opportunism to the detriment of legitimate retailers.

Deputy Damien English TD, Chairman of the Oireachtas Committee on Jobs, Enterprise and Innovation, Dáil Debates, 16 January 2013.
JTI actions - against the illicit tobacco trade

JTI takes a zero tolerance stand against the illegal tobacco trade. Fighting contraband is our number one priority. JTI does everything in its power to ensure that its commercial operations and brands are not associated with illegal activities and will continue to assist law enforcement to achieve this aim.

Assisting Law Enforcement

One of the key methods for achieving this is through the provision of an early indication of trends in respect of new illegal brands in the market and the promotion of co-operation between JTI and law enforcement. Government and regulatory authorities through liaison and prosecution support.

JTI provides ongoing assistance to law enforcement agencies by confirming the authenticity of JTI brands discovered in seizures.

JTI offers counterfeit recognition training to law enforcement officials with An Garda Síochána and the Police Service of Northern Ireland both having attended sessions over the past year.

All Ireland Illicit Tobacco Trade Bulletin

In 2013, JTI published the All Ireland Illicit Tobacco Trade Bulletin which was distributed to law enforcement agencies both North and South of the Border. The Bulletin aims to keep law enforcement officers appraised of the most current developments in the international and domestic illegal tobacco trade.

Anti Illicit Trade Manager in Ireland

JTI’s commitment to supporting law enforcement and combating the availability of illegal products has been demonstrated by the creation and appointment of a dedicated Anti Illicit Trade position in Ireland.

Codentify

Codentify offers a technological solution to address illegal tobacco and revenue collection issues through:

1. Tracking and tracing – enabling electronic monitoring of products as they move forwards through the supply chain and the tracing backwards of their journey history to identify potential points of diversion into the illegal tobacco market;

2. Product authentication – enabling anyone to immediately verify the authenticity of a product using widely available technologies such as a mobile phone or the internet;

3. Digital tax verification – enabling governments to verify and control (online) the volume of products manufactured to assist the government in calculating the commensurate amount of excise and other taxes due.

The Codentify technology is based on internationally recognised technical standards and is being used by JTI Ireland on the outer packaging of its tobacco products.

Potential solutions to the illegal tobacco trade problem

External factors such as the macro-economic climate, international tobacco consumption trends and domestic regulatory initiatives such as excessive excise tax increases have combined to provide opportunities for criminal organisations to supply a consumer demand. However, several of these factors are within the scope of the Government to control as set out below.

Cross-Governmental Strategy

The illegal trade of goods touches on many different aspects of Government policy in Ireland. The functions performed by the Department of Finance, the Department of Health and Children, the Department of Justice and Equality, the Department of Jobs, Enterprise and Innovation and the Department of Social Protection are all negatively impacted by the growth of this trade. Therefore a comprehensive and effective solution will by necessity involve a co-ordinated and strategic response from all relevant Departments. This will only be possible with the establishment of an Interdepartmental Committee focused solely on the issue of the illegal trade of goods.

The Minister for Finance, Michael Noonan, has recently supported a call by the Chairman of the Oireachtas Committee on Jobs, Enterprise and Innovation, Deputy Damien English TD for the establishment of an informal working group to include amongst others, representatives from the Office of the Revenue Commissioners, Members of the Committee and representatives from the Department of Finance, to examine proposals to reduce the loss of revenue to the State from the impact of the illegal sale of goods.53

Proportionate Regulation

Evidence-based policy is public policy informed by rigorously established credible evidence. Credible evidence and analysis plays a useful, even decisive, role in informing policy-makers’ judgments leading to considerable economic benefits. The European Commission has estimated that administrative costs in Ireland were some 2.4% of GDP (3.9% at EU level) i.e. some €4.5 billion and that a 25% reduction in these costs would boost Ireland’s GDP by 7%.54 A recent report by EPS Consulting, Smart Regulation: A Driver of Irish Economic Recovery, found that over the last three years the impact of legislation was assessed in only 42% of the 139 Bills introduced in Ireland.55 Regulation must be based on a sufficiently robust evidential base as certain measures may have unintended consequences such as providing a competitive advantage to criminal operators to grow their illegal trade.

In the instance of the proposal to introduce plain packaging into Ireland, no credible evidence has been advanced that plain packaging would lead to any actual positive public health impacts.
Increased Support for Law Enforcement

The acquisition of the Scan Van and other new baggage scanners was funded by Revenue with assistance from the European Union Hercule Programmes.61


The illicit tobacco trade review 2013
What can be done to reverse the illegal tobacco trend

Moderate and Predictable Excise Increases
In order to ensure continued stability of Exchequer returns on tobacco excise receipts, the Government must continue with its policy of moderate excise increases. This could be further enhanced by putting in place a system of multi-annual, incremental tax increases that would result in greater predictability in excise receipts.

For example, Japanese policy makers have implemented a policy of modest tax increases over a set period of time. This has avoided any disruption to the legitimate market for cigarettes and has led to steadily increasing tax revenues in real terms while smoking prevalence has fallen from 34% in 1999 to 29% in 2005 and 21% in 2012. Critically, government tobacco tax policy objectives were not undermined by illegal trade as it is negligible. In contrast, countries such as the UK and Ireland, which have in the past raised tobacco taxation sharply, have seen both revenues and health objectives undermined as illegal trade has expanded sharply.60

Tobacco excise tax rates and revenues (2012 prices)

<table>
<thead>
<tr>
<th>Country</th>
<th>Excise Rates – JPY per pack</th>
<th>Excise Revenues – JPY billion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>120.6</td>
<td>2,239</td>
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<tr>
<td></td>
<td>244.9</td>
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<td>Difference</td>
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<td>12</td>
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<tr>
<td>UK</td>
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<tr>
<td></td>
<td>4.62</td>
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<tr>
<td>Difference</td>
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<td>-6</td>
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<tr>
<td>Ireland</td>
<td>3.37</td>
<td>Excise Rates* – € per pack</td>
</tr>
<tr>
<td></td>
<td>5.49</td>
<td></td>
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<tr>
<td></td>
<td>Excise Rates* – € billion</td>
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<td></td>
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<td>1.11</td>
</tr>
<tr>
<td>Difference</td>
<td>63</td>
<td>-8</td>
</tr>
</tbody>
</table>

* Most popular price category

Source: JTI Statistics

Inferno III Programme
European Member States can now access funding under the newly endorsed Hercule III anti-fraud programme, a financing programme managed by OLAF, the European Anti-Fraud Office, which will make €70 million available to fight fraud, corruption and other illegal activities.

Under the Hercule III programme, the EU will co-finance activities including technical assistance, the purchase of equipment such as scanners, and specialised training up to 80% of the eligible projects. This is an increase from the previous funding programme which only allowed funding of 50% of projects. For Member States facing higher risks, the co-financing rate can be up to 90% of the total cost.63

In July 2012, with funding assistance from the previous European Union Programme, Hercule II, a scan van was acquired by the Revenue Customs Service. During 2013, Revenue drew on the fund to assist in the purchasing of three modern replacement baggage x-ray scanners.

European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud, Algirdas Šemeta stated about Hercule III: “an important area under this (new) programme will continue to be the fight against cigarette smuggling. Through the financing of X-ray scanners and sniffer dogs in harbours and airports, for example, it can greatly boost Member States’ capacity to stamp out this costly and criminal activity.”64
REFERENCES


29 International Tax and Investment Centre. The Illicit Trade in Tobacco Products and how to Tackle it. 2011. Pg 16.


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