The South African illicit cigarette trade: Smoke signals for reform?

Mariska Fourie, Philip Steenkamp, Jacqui-Lyn McIntyre and Clint Oellermann

28484193@nwu.ac.za
philip.steenkamp@nwu.ac.za
jacqui.mcintyre@nwu.ac.za
clint@fraudsmiths.com

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South Africa's illicit cigarette trade (ICT) is not merely large and growing but outperforms the legitimate sale of tobacco products. It is operated by extensive criminal networks, deprives the state of tax revenue and, although the measures are in place to curb the problem, they are proving to be unequal to the task. The inability of South African authorities to effectively regulate this grey market (where the legal and illegal coincide) paired with its outdated approach, is the kindling that feeds this illicit trade's flame. This article describes the current scale and nature of the ICT and evaluates the attempts to combat it in South Africa. We conclude with recommendations on measures the state, commerce and legal authorities could take to confront the problem with a reasonable chance of success.

INTRODUCTION

Cigarettes form part of the wider illicit tobacco trade (ITT) if the distribution, sale or manufacturing thereof is prohibited, alternatively, if the applicable taxes are not paid.[1] In South Africa, the illicit cigarette trade (ICT), presently estimated to make up more than 30 percent of the total tobacco market[2], continues to grow and is estimated to cost the government over ZAR 7 billion in lost revenue every year.[3]

The threat posed by the ICT is multi-faceted and cumulative. For example, due to the accessibility of cheap cigarettes, smoking prevalence increases, which in turn necessitates higher government spending on healthcare and increases smoking-related premature deaths.[4] Moreover, the aforementioned sales can serve as a source of income for criminal syndicates, bolstering their foothold and/or interests in the South African region.[5] It should be recognised that the impact of the ICT is not limited to the loss of tax revenue – the smoke from the illicit cigarettes permeates South African communities.

The risk associated with ICT-related crimes, as perceived by criminals and opportunists alike, is acceptable when compared to the potential profits.[6] Citizens see participation in the trade as a tax-saving, money-earning tactic, often with only minor consequences (in terms of penalties or facing social judgement). The current approach at regulation does little to dissuade such tactics, as illustrated during the COVID-19 pandemic. South Africa temporarily prohibited the sales of legal cigarettes, which led to a massive surge in the ICT, most notably as friends and family stepped in as alternative suppliers.[7] Opportunistic neighbours and family members, alongside the recently unemployed, have readily joined the ICT, with little fear of retribution (especially socially).[8] Thus, the question that arises is what needs to be done or changed to combat South Africa's ICT more effectively?

In this article, the necessary context is initially created by describing the current scale and nature of the ICT and through the evaluation of South Africa's attempts at legislation to combat the ICT (or regulate the associated legal trade). Our interdisciplinary evaluation of the ICT forms the basis for recommendations, that consequently consider best practice measures alongside contributing drivers, such as socio-economic factors. Thus, we conclude with recommendations on measures that the state, commerce and legal authorities could take to confront the problem with a reasonable chance of success.

THE SOUTH AFRICAN TOBACCO MARKET

With a population just short of 60 million, South Africa has over 7 million smokers, consuming an average of 27 billion cigarettes annually.[9] However, South Africans are not just consumers – commercial tobacco farming takes place – on a small scale – at 620 farms, on 4 700 hectares of land. Additionally, the tobacco industry is credited with employing over 108 000 individuals and contributes (by way of tobacco taxes) on average (for the 2019/20 financial year) R40 million per day to the fiscus.[10]

Tobacco products come in two classes: FCT (flue-cured tobacco), mainly exported for use in cigarettes, and ACT (air-cured tobacco), which delivers snuff and pipe tobacco.[11] These products can be either unprocessed or processed. The latter refers to the end of the supply-chain where retailers or suppliers (such as *spaza* shops) sell FCT and ACT to their consumers. Unprocessed leaf is sold to farmer co-operatives and tobacco wholesalers. These products are primarily (90 percent) sold to The South African leg of the listed British American Tobacco (BATSA), that employs 2 100 of the 108 000 South Africans who work in the tobacco trade.[12] BATSA, and other multinationals, have extensive influence (and thus power) in the community.

The South African market's context shifted in 2010.[13] A spike in local manufacturing saw a steady decline in the market share of multinational companies (such as BATSA, the unchallenged price leader); this due to lower-priced brands, including Gold Leaf Tobacco, offering more attractive alternatives to the South African community.[14] The increased market share changed the competitive environment allowing small firms to offer substantially cheaper products, while also reducing the power of multinationals to raise retail prices.[15]

A fivefold increase in excise taxation, more stringent tobacco control interventions, along with steep bi-annual price increases by the multinationals, reduced smoking prevalence from a third of the adult population to a fifth between 1994 and 2012.[16] However, the discretionary price increases of multinationals largely halted in the more competitive post-2010 period, due to the multinationals no longer being positioned to shift the brunt of an increased tax burden to the consumer.[17] This change in consumer behaviour also benefited the ITT.[18]

This illicit trade further poses a multi-dimensional threat to South Africans – [19; 20]

- ITT threatens public health by opening the market up to consumers, previously deterred by high prices or lack of availability (specific brands or types).
- The youth and poor are especially susceptible to the lure of the ITT's low prices. The poor are also disproportionately impacted, as their high consumption exacerbates poverty and tobacco-related diseases.
- The ITT negatively impacts public welfare by *inter alia* decreasing tax revenue and subsequent investments in programs such as employment schemes. Consequently, combatting the ITT, and related corruption and organised crime groups (OCGs), could improve governance, overall tax administration, compliance and enforcement capabilities.
- The ITT provides the tobacco industry with the opportunity to spread misinformation (distorted facts and inflated estimations of the ITT). This can be used to sway public opinion and unduly influence public policy (specifically related to health and excise tax initiatives). For example, BATSA indicated

to the media in August 2022[21], that a study conducted by Ipsos revealed that 70 percent of all cigarettes consumed in South Africa are illicit. Subsequent research[22] conducted to verify the veracity of the claim indicated that the estimate was not a national average, instead it reflected that 70 percent of the stores sampled in Gauteng, sold cigarettes below the minimum tax threshold.

The number one seller in South Africa is the Remington Gold brand (manufactured by Gold Leaf Tobacco Corporation) – which 89 percent of the time retails below the tax-threshold. [23] Cigarettes sold at a price below the minimum tax threshold, albeit not illegal due to its low price (as no regulation stipulates a minimum price for cigarettes), could form part of the ICT. This is due to the below tax threshold price's being indicative of illegality, specifically tax evasion, in the manufacturing process, distribution and/or sale of the cigarettes.

A judgment[24] from the Eastern Cape High Court cited the following rationale: "It is not realistically possible" to sell a pack of cigarettes priced below the minimum tax threshold, because VAT and other basic costs, such as transportation, still need to be added to the excise tax payable to the fiscus. Consequently, almost 90 percent of the top-seller's sales could be regarded as illicit, based on its below-threshold price.[25] Some of these packs are priced for as little as R5,00, with popular loose (single) sticks selling at R0,50 each, for a period during which excise tax and VAT amounted to R16,30 per pack.[26]

Additional or alternative identifiers of illicit cigarettes include lack of health warnings or the diamond-shaped excise markings, 'reduced ignition propensity' not appearing on the pack, missing or incorrect help-line numbers, and readings exceeding 12 mg tar or 1.2 mg nicotine.[27] All these identifiers, specifically pricing, are to some extent an indication that costs were spared at the expense of best practise requirements and to the detriment of smokers' wellbeing.

Naturally, companies are enticed to explore more profitable avenues, even in South Africa, where production costs can be as low as R2,00 per 20-pack.[28] South African companies are primarily responsible for producing 'genuine' contraband as opposed to counterfeit goods.[29] The former refers to cigarettes (cheap whites) produced by registered brands, in registered factories – its illicit nature comes from the subsequent tax evasion.[30] This illustrates how the legal and illegal are intertwined within the ICT.

DRIVERS FOR SOUTH AFRICA'S ICT

The ICT is a result of demand (from smokers) and supply (from legal and illegal manufacturers). Smokers are generally attracted to the ICT as it offers cheaper cigarettes or specialist brands or types that are otherwise not available. Likewise, existing suppliers normally enter the ICT to maximise profits and increase their market share.[31]

Furthermore, individuals may engage in illicit trade when legal markets are blocked, and social institutions are weak. Inequality and economic deprivation could in turn lead to crime as citizens aim to alleviate poverty. Alternatively, the low prioritisation of deterrence efforts by law enforcement may attract illicit opportunists (such as OCGs).[32]

The related environment's context may create opportunities that are enticing for illicit role-players looking to expand.[33] Such catalysts or drivers can be classified as either price or non-price factors. Non-price factors often relate to the context in which the illicit market is operated; it is influenced by the strength of the regulatory frameworks, and the social acceptability of the illicit practise, as well as the prevalence of the informal distribution channels. Price factors, naturally, relate to elements that have a direct influence on the price of the underlying goods.[34]

Existing literature differs on the identified drivers; for example, Aziani, Calderoni and Dugato noted lower affordability of licit products, proximity to cheap cigarette source countries, high income inequality, large population, and the prevalence of illicit cigarettes in neighbouring countries.[35] The study additionally stated the importance of non-price factors such as the ease and cost of operating in the country, the probability of being caught, subsequent punishment, levels or corruption, and the sophistication of criminal networks present.[36] Another study, by Almenar, Sánche and Sapena, considered the tax burden, enforcement capabilities, labour force traits, regulations, trust in government and morality.[37] Other studies focused on inflation, the strength of the licit sector (including the strength of official institutions), the country's Gross Domestic Product (GDP), opportunities for sub-contracting to the illicit market, incentives to seek cheaper alternatives, and the opportunity cost of producing underground.[38] The World Bank Group concluded on drivers including corruption, ineffective tax administration, and weak enforcement and judicial systems. Furthermore, access to the illicit market (for example, via OCGs), the expected benefits offered by the ICT, and the ICT in bordering countries.[39]

This study will focus on both price and non-price factors, deemed most appropriate in the South African context.

Price factors

Taxation

In South Africa, as of February 2021, R21,40 of tax is levied on a 20-pack of cigarettes. This is the highest tax rate (52 percent) among the Southern African Customs Union (SACU) member countries. However, South Africa's tax ratios, while close to the world average, are still far below the recommended best practice of at least 70 percent.[40] Consequently, cigarettes in the South African region retail at a price that is low compared to the international community.[41]

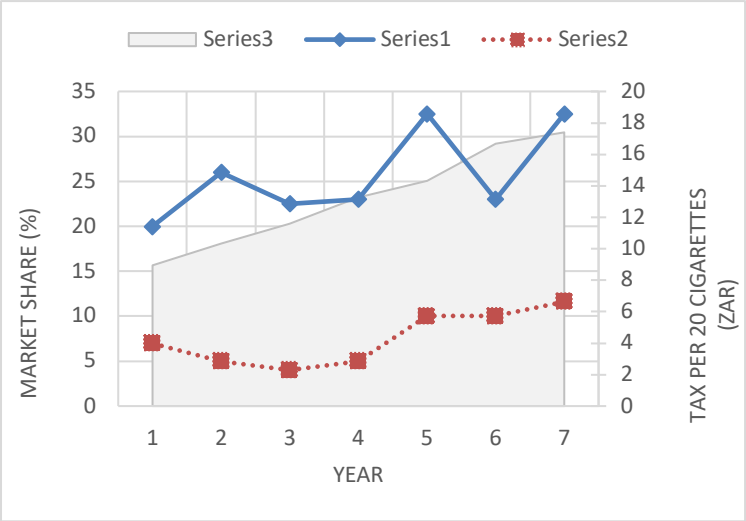
The success of a taxation strategy however is not necessarily indicated by tax rate levels, rather the effectiveness of underlying tobacco control policies. Filby identified barriers that hinder the success of South Africa's tobacco taxation systems. These barriers predominantly relate to a lack of consideration during the establishment or increasement of taxation. South Africa's policy makers appear to ignore the price and income elasticity of the demand for tobacco products, and fluctuations in household income. [42]

Furthermore, South Africa's taxation policy offers deferred payment of duties, whilst the other SACU countries require payment at the time of declaration. This creates the opportunity for tax evasion due to over-reliance on tobacco companies for self-declaration, coupled with insufficient audit resources to do the necessary follow-up.[43] South Africa also provides for a duty-free allowance of 200 cigarettes, 250-gram pipe tobacco and 20 cigars. [44] These sales can erode the effects of tax and price measures that reduce the demand for tobacco products. Additionally, it opens another portal for exploitation, specifically by foreign diplomats who buy these products, only to resell it later.[45]

Policy can however also be influenced by external factors, such as powerful multinationals and their political clout. Filby explains that 'the current taxation strategy is based on a formula that gives the tobacco industry significant power in determining the quantum of the excise tax change'.[46] Thus, another facet that warrants attention is the tobacco industry interference. The power granted to the multinationals (influence over the taxation strategy) inadvertently provides influence over the related public health strategies (aimed at reducing smoking) – it represents a conflict of interest. [47]

Another cause of concern is that a price-focused taxation strategy may also have inherent flaws. A positive correlation between higher price (higher taxation) and increased consumption of smuggled cigarettes can be drawn.[48] Thus, increasing cigarette prices through taxation, which forms the foundation of smoking reduction policies, could potentially stimulate the related illicit market.[49] *Figure 1* below, plots the South African ITT against the excise tax on a 20-pack of cigarettes at the specific period. Additionally, the international ITT is indicated to account for the general trajectory of the ITT.

FIGURE 1: ITT growth comparison[50]



However, recent literature has indicated that increased taxation does not necessarily result in a higher ITT presence.[51] According to Thinng and Nor, 'numerous studies have also debunked the purported claims made by the tobacco industry about high taxes and prices as the primary determinant of illicit cigarette trade.'[52] Additionally, the complexity of the drivers (factors) behind the ICT would most probably indicate that suggestions of drastic price changes would not result in an equally drastic shift in the ICT. This phenomenon can be illustrated by looking at Pakistan and New Zealand.

In Pakistan, in 2018, a 20-pack retailed for around R5,23[53] (RPK 48,00)[54], yet the ICT's share of the cigarette trade was around 35 percent; New Zealand sold a 20-pack for R218,55[50] (NZD 23,90)[51] and its ICT represented less than 5 percent of its market, also in 2018.

Consequently, the ICT (and by effect the broader ITT) may not only be a result of market forces, thus exploring non-price factors, such as the existing legal frameworks and the fear of punishment, could prove valuable.[55]

Non-price factors

Geography and politics

South Africa is the main destination country of illicit cigarettes that are smuggled from source points, such as Zimbabwe.[56] Neighbouring countries, such as Lesotho, have customs and excise controls that are perceived to be relatively weak. Thus, these countries can be used as a destination market for round tripping, which involves creating fake destinations (exports) for products that are kept and most probably sold locally.[57]

Roundtripping involves, for example, cigarettes that are exported tax-free from South Africa to Lesotho and then smuggled back into South Africa. Alternatively, cigarettes are declared for export to Lesotho but diverted back to the local South African market before exiting the country. These illicit cigarettes can subsequently be sold on the local market without paying duties. [58]

The extensive South African border (1840 km in length) poses an enforcement challenge as it is estimated to have around 96 illegal points of entry – of which more than half are with Zimbabwe.[59] Hence, border provinces (or points of entry) generally face a higher risk of being used for smuggling operations, whether to facilitate physical transport or be used as a false destination on paperwork. The Beitbridge border (situated between South Africa's Limpopo-river and Zimbabwe) is a significant gateway for tobacco contraband.[60] South African seizure-data indicated that Zimbabwe's Pacific Cigarette Company, previously known as Savanna Tobacco, produces the contraband.[61] This contraband includes the Gold Leaf brands, which produces the most popular seller in South Africa's ICT.

The contraband enters South Africa (from Zimbabwe) through two general types of smuggling operations: small-scale entrepreneurial operations or organised smuggling networks (of which some enjoy political protection). The small-scale operations make use of informal border-crossing points in the bush – which are abundant at the abovementioned Limpopo River border. These points of entry are crossed by runners (mostly unemployed men) between midnight and 03:00 a.m. These runners use backpacks or plastic bags to transport the contraband, and when border patrol officials are encountered, a bribe is often offered to avert any scrutiny. This method of smuggling has become more popular due to the installation of truck scanners. This led to an increase in the unwillingness of some *malaityas* (cross-border transporters) to risk discovery. However, for some the risk is outweighed by the potential profit – therefore smaller vehicles, like cars, that are only subjected to sporadic searches, are rather used.[62]

Tactics employed by cigarette smugglers habitually include hiding contraband in secret compartments of their vehicle. For example, truckers defray their costs by smuggling cigarettes, instead of completing their trip with an empty container. In addition, organised smuggling networks employ corruption and political connections – to ensure that the illicit consignment reaches its destination – such as spaza shops (small general dealers).

A cartel, operating between Durban and Harare, employed political connections to ensure that, even when entering through a formal border-crossing, the contraband trucks are not searched. This highlighted the claims made by some multinational manufacturers, who control 80 percent of the world tobacco market, that up to a third of their cigarettes 'go missing' somewhere along the supply line.[63] Examples include Savanna Tobacco[64] and Amalgamated Tobacco[65].

Similar to the powerful tobacco manufacturers, the ITT is said to occupy a prominent place in politics, due to the broader market's great fiscal contributions (through paying taxes). These tax-contributors (multinationals) are granted a seat at the table, which often coincides with power over policy and enforcement decisions. Therefore, conflict, explicit and covert, violent and non-violent, over who profits most and who has control over the ITT, is a main feature of South Africa's political economy.[66]

South Africa has a history of accommodating these powerful, private multinationals, and of high corruption levels throughout the tobacco control process.[67] It may therefore be argued that entrepreneurs go underground not necessarily to evade tax, but rather to avoid bureaucracy and corruption.[68] Profitability, as per usual, also serves as a driving force, especially for local manufacturers.

South Africa is estimated to produce 60 percent of its illicit cigarettes locally.[69] The local production makes the cheap cigarettes on offer even cheaper – and more attractive as a substitute – which may lead to higher profits for the producers.[70] The choice by producers, to converge with the illicit, is justified according to Mr Yusuf Kajee, the chief executive at Amalgamated Tobacco. He explained that otherwise South Africa does not profit, because of the low average selling price of R40,00. Following royalty payments and excise tax, he states that what remains is R3,60, which still needs to cover VAT and production costs.[71] Sunday Times[72] revealed that the same tobacco tycoon, "paid tens of thousands of rands every month for several years" to "facilitate business deals" [73] – starkly contrasting to the image purported as a struggling business owner.

Socioeconomic context

The average South African smoker faces socioeconomic difficulties, as South Africa is plagued by high rates of poverty, social inequality, unemployment, and public service access disparities.[74] The extent of the country's unemployment and consequent poverty (key drivers of illicit economic activity) is illustrated by the expanded unemployment rate of 42.6 percent in late 2020.[75] In certain countries, particularly developing nations such as South Africa, these socio-economic factors (such as poverty and inequality) may act as catalysts for crime.[76] Therefore, improvements in household income may significantly reduce smoking, especially among young adults.[77] Nevertheless, poor South African consumers may shift their behaviour towards seeking cheaper goods and alternative employment – needs that the illicit market, especially in a globalised economy, strives to satisfy.[78] Therefore, generally at the core of the shift lies either a need for income or a persistent smoking habit.

Social and cultural norms

Individual characteristics are important in explaining the probability and intensity of smoking habits.[79] Various studies have researched the general social and cultural norms applicable to smoking habits. These trends include –

- Drinkers are more likely to smoke than non-drinkers.[80]
- Women are between 14 and 17 percent less likely to smoke than men.[81]
- There is a strong and consistent trend in smoker age, with older smokers more likely to purchase cheap cigarettes.[82]
- The average price paid by men is often higher–possibly the norm is that men provide cigarettes to women, similarly to contexts where the man is expected to pay for bills.[83]
- Nonetheless, a larger proportion of South African women buy cheaper cigarettes than men, at all price thresholds.[84]
- Sharing cigarettes with peers may increase smoking intensity, as sharing is often done within a specific social context. Smoking becomes a social event, which creates the expectation that the smoker will join in and be offered a cigarette if they cannot buy it themselves.[85]
- Religious conscious individuals are less likely to smoke.[86]
- It is less probable for married smokers, than for unwed smokers, to purchase cheap cigarettes.[87]
- More educated smokers are less likely to purchase cheap cigarettes and to smoke – which may be a result of increased exposure to information on the related health hazards; this is also the case in townships.[88] Thus, generally individuals with secondary and tertiary education are less likely to participate in smoking than those with no formal education.[89]

Policies aimed at tobacco control do not necessarily result in initiatives to decrease the prevalence of smoking. Nevertheless, the regulatory framework can have influence over manner and size of participation in the ICT, as its weaknesses or shortcomings could be what creates room for the ICT.

Local regulation

Within South Africa, the main legislation aimed at addressing the ITT, is the Tobacco Products Control Act 83 of 1993 (hereafter TPC Act), as amended; it dictates, among other things, tobacco advertising, smoking restrictions, packaging and labelling.[90] Regulations were also issued under the TPC Act with regards to signage (which is required to display price and health warnings).[91] This act was last amended by the Tobacco Products Control Amendment Act 63 of 2008 to align South Africa with the World Health Organisation's tobacco control framework (discussed below).

South Africa's legislation was thought to be one of the most comprehensive at its time of implementation. However, even with the relatively recent amendments, the tobacco-control measures are currently falling behind when compared to other nations.[92] The legislation aimed at combating the ITT is not as robust as it should be, as it often imposes outdated measures (for example, the archaic diamond excise stamp that has been in use since the 1970s).[93]

However, it should be acknowledged that South African regulation does not operate within a vacuum. There are several region-specific challenges that are also faced by those attempting to effectively implement the admittedly limited controls.

Other considerations

The Southern African region also faces region-specific threats, such as single cigarettes stick sales (which drastically decreases chances of traceability); an exorbitant manufacturing wastage allowance (from 5 to 20 percent, while international standard practice allows none); and significant sales in prisons (a destination market that remains unchecked and unmeasured, thus unregulated).[94]

Following these price and non-price factors, and before attempting to compile reform recommendations, the current best practice measures also need to be considered.

INFORMED REFORM

South Africa signed the World Health Organisation's Framework Convention on Tobacco Control (hereafter WHO FCTC) in 2003 and ratified it in April 2005.[95] This global convention, read along with the first protocol thereto, the Protocol to Eliminate Illicit Trade in Tobacco Products (hereafter ITT Protocol), prescribes several best practise measures. The ITT Protocol, undersigned on 10 January 2013, is yet to be ratified, therefore South Africa remains non-compliant.[96] Ratification grants "the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty."[97] Consequently, at the core of many tobacco control issues lies poor political will to properly legislate the issue and provide resources to combat ICT.

South Africa's response to the ICT is measured against some of the best practice measures, each prescribed in an article of the ITT Protocol. In *Table 1*, South Africa's performance in the areas of licensing, due diligence, track-and-trace technology, recordkeeping and the destruction of contraband is evaluated.

Table 1: Evaluation of specific South Africa's tobacco control practices

ITT Protocol reference	***South Africa's performance***
Art. 6: *Licensing*	Licensing across the supply chain (as recommended) is not required–it only applies to manufacturers and importers.[98] Physical compliance review processes have been unsuccessful, due to the contact between the inspectors and the business owners. Thus, fraud and corruption opportunities arise.[99] A licence to manufacture is awarded after undergoing a vetting process. This process may be susceptible to corruption and can be used for extortion (threats to revoke license or not award it).[100]
Art. 7: *Due diligence*	No obligations to conduct know-your-customer checks during license vetting are performed, as proposed. This would include identifying the bank accounts intended for use and performing criminal background checks. Assessment of whether orders correspond with the demand in the intended destination, is also not mandated.[101]
Art. 8: *Tracking and tracing*	South Africa's diamond-shaped excise stamp is a simple ink impression placed upon packs (rather than the suggested affixed paper tax stamp or banderol-based stamps). The number of stamps is not kept record of and the mark itself is easily forged. Additionally, it provides no assurance that the pack is genuine, the applicable tax has been paid, and its origin can seldom be confirmed.[102] Efforts have been made to draft legislation, but no noticeable progress has been made.[103] Furthermore, about a third of South African smokers buy single sticks–which poses another hurdle altogether.[104]
Art. 9: *Record-keeping*	Proper record-keeping would require all licensees to provide general information, on request, of market volumes, trends, quantities of tobacco products and manufacturing equipment. Also required is information regarding the movement and inspection of such products.[105] South Africa's ineffective tracking and tracing system creates opportunities to obfuscate figures, or simply lose track of the tobacco products.
Art. 18:	In South Africa, often a representative body of the tobacco industry is tasked with the destruction of seized tobacco products. This directly contradicts the WHO FCTC

Destruction of contraband	which recommends that an independent regulatory authority, rather than the tobacco industry itself, should be given this task.[106] However, the South African Revenue Service (SARS) are also actively shown to be destroying contraband – which could satisfy the recommendation.[107]

Limitations

A literature study was conducted therefore this article has the inherent limitation of being based upon secondary sources. The reliability of findings was verified (were possible) through cross-referencing and verification with other sources from credible sources (such as peer-reviewed articles). Verification through interviews was not attempted, specifically due to the covert and criminal nature of the ITT. However, a comprehensive, holistic approach was followed by gathering multidisciplinary sources from various recognised international institutions.

CONCLUSION AND RECOMMENDATIONS

Controls may only be deemed effective if they are matched with successful enforcement and the prosecution of offenders.[108] In South Africa, the core of the ICT challenge lies in the state's inability to effectively regulate this grey industry, where the illicit and legal habitually overlap.[109] We have examined the existing regulatory framework to identify gaps and possible remedies in the form of recommendations. These recommendations consider best practice measures alongside relevant contributing factors, thereby providing a holistic reform proposal with, we believe, a reasonable chance of success.

In an interdisciplinary evaluation of the ICT, the underlying drivers (both price and non-price factors) were explored. The price factors were distilled into a single consideration, namely taxation. Taxation on cigarettes is regarded by some as the most effective control policy to limit cigarette consumption, yet many smokers (excluding the poor) do not concern themselves with the amount of tax paid for their habit.[110] Additionally, the practice of self-declaration for duty payments and duty-free allowances still leave room for exploitation, as illustrated recently in the media the reported the abuse of these provisions by diplomats.[111]

Non-price factors – geopolitics, socioeconomics, social and cultural norms and local regulation – are considered in some studies as being more relevant than price.[112] As an illustration, South African geopolitics indicate a precarious relationship between Zimbabwean producers and South African

consumers. The Beitbridge border crossing's reputation of being a contraband gateway is reaffirmed by investigating reports of smuggling operations (of OCGs and on a smaller scale).[113] However, the literature is clear that 60 per cent of South Africa's illicit cigarettes are produced domestically.[114] Improvement of supply management, especially through more effective regulation of the producers, should therefore be a priority. It could place pressure on the artery that supplies illicit cigarettes, thereby also cutting off blood to the hand that serves illicit customers.

South Africa faces multiple socio-economic difficulties, such as high rates of poverty and unemployment. These circumstances drive poor South Africans towards seeking cheaper goods and alternative employment, both of which the illicit market can satisfy.[115] Furthermore, a lack of education of consumers compounds the attractiveness of smoking, which in turn drives the ICT.[116] Health initiatives aimed at reducing smoking prevalence through emphasizing the health hazards of the habit may therefore have potential.

The existing South African legislative framework, primarily the TPC Act (last amended in 2008), is not keeping up with the ever-changing ITT. Its various stipulations are progressively outdated and so of limited effect; for example, the identification of points-of-origin or destinations of illegal goods may not be effective. Consequently, reform is no longer a nice-to-have but a necessity if South Africa is to regulate the tobacco trade.

Participants in the ICT are not afraid of the potential consequences – such as penalties or social retribution – of their participation in the business. Thus, a lack of fear due to the perception of this illicit market further entices those looking to generate low-risk profits, which includes OCGs.[117] Efforts to increase the perceived risk associated with participation in the ITT may thus also prove effective.

Consequently, we propose refashioning the ICT's image to better align public perception of the trade with its definite criminal nature. Success in the tobacco trade can encourage the commissioning of crimes or the formation of alliances with illicit market participants.[118] Crimes such as corruption, money laundering, racketeering and fraud are often the results of efforts by enterprises (including the multinational tobacco producers) to increase profits.[119]

Therefore, tax evasion should not be the main penalty associated with the ICT. This would serve two purposes –

- The perceived risk of participating in the trade would increase if participants were seen to be more severely punished. Conviction of tax evasion results in a fine or a maximum of five years imprisonment. Instead, alternative charges, including racketeering and money laundering (30 years imprisonment or

a fine of R100 million fine), should be imposed. The ITT is less attractive with higher penalties and stricter legislation, as demonstrated by Italy and Spain.[120]

- The prevailing public consensus is that the biggest problem caused by the ICT is the loss of tax income.[121] If the ICT's image can shift more towards that of the face of organised crime, the public's perception could also shift. The public may perceive financial crime (tax evasion in this case) as victimless, whereas organised crime inherently conjures up cinematic images of dangerous mafias.

However, reform efforts should not only focus on consumers, but also attempt to address those factors that enable or strengthen the tainted manufacturer's positions in the tobacco trade. Efforts to address worrisome political connections between tobacco role-players and those tasks with regulation, should receive attention.

We recommend that the tobacco industry should be scrutinised to identify high-risk enterprises, participants and their relationships. For example, a red flag should be raised if politically exposed persons are involved with the management of the enterprise. The anti-money laundering field and related institutions, such as the Financial Intelligence Centre, can provide valuable guidance here.[122]

Similarly, in line with the geopolitics in South Africa, the risks due to the country's geological position warrant attention. Special attention should be given to the Zimbabwean border. One option is to impose mandatory rotations of border officials, to manage the risk of having a co-conspirator in the role of a gatekeeper. The example of Kenya can also be followed, by deploying additional scanners (aimed at enhancing the non-intrusive inspection of cargo at borders).

The segregation of duties is also advised by the World Bank Group: 'the personnel managing the scanning function are not involved in the analysis and interpretation of the scanner images, to eliminate a motivation for undue influence.'[123] First prize would be to automate both the scanning and interpretation functions, thereby removing the human element and its possible undue influence.

Additionally, the following specific actions are proposed to address the inadequacies of specific South African initiatives (including those discussed in Table 1). These actions are informed by international best practice as prescribed in the ITT Protocol –

- License requirement**:** Licensing across the entire supply chain should be pursued; the Canadian province of Quebec's comprehensive approach can be referenced.[124] Adequate non-compliance penalties should be imposed on vendors and manufacturers. Additionally, the licensing process should be secured and include due diligence to limit the risk of undue human interference (for example, granting a license due to bribery).

- Due diligence: Suppliers and manufacturers must be required to perform at least basic know-your-customer (KYC) checks. Financial institutions are required by law to conduct KYC checks; such principles, tailored as required, should also be followed.[125]
- Track and trace technology: The tender process[126] to procure much-needed track-and-trace technology needs to be reinvigorated. The ability to accurately determine destinations and points-of-origin is a necessity when trying to uncover smuggling networks or to identify perpetrators. This process can also be pursued as part of a broader, excisable goods management system (EGMS) for tobacco and alcohol. Kenya's EGMS[127] can serve as an example; it provides for 'production counting, tracking and tracing products, stock control, tax revenue forecasting, tax stamp forecasting and processing, accounts management, and the collection of other business intelligence'.
- Duty payments: To prevent reliance on self-declaration by suppliers, the practice of allowing deferred duty payments should be reviewed.
- Excise stamp: The archaic diamond tax stamp needs to be replaced with high-security markings, thereby improving resistance to attempts at forgery. Banknote features, such as covert markings, should inspire the new stamp features. Alternatively, automated monitoring systems[128] (digital stamps automatically placed by special manufacturing equipment) can be used. An automated system enhances recordkeeping of production, as each stamp – which thereby identifies each pack of cigarettes – is recorded in a database, which can reduce tax evasion as illustrated by the case of Brazil.[129]

Following these recommendations, the emphasis of regulatory initiatives should be on supply-chain management, while educational initiatives should focus on eliciting public support and redressing the ICT in the eyes of South Africans. Relying too heavily on taxation-based policies to regulate the tobacco industry is short-sighted as it does not acknowledge the grey nature of the tobacco trade, and, as recent history shows, ultimately fails to prevent the ICT from expanding.

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