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Anti-Contraband Policy Measures: Evidence for Better Practice

Summary Report

Jeff Sweeting, MA
Teela Johnson, MSc
Robert Schwartz, PhD

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Executive Summary

Tobacco taxation has been used in many jurisdictions as a policy measure to discourage smoking. The effectiveness of taxation strategies can be undermined by widespread availability of tobacco products. This knowledge synthesis presents information on a wide-range of tobacco anti-contraband measures, in an effort to ascertain the relative effectiveness of various policy measures for addressing contraband in Canada and around the world. This report is based on a comprehensive literature search, a series of key informant interviews, and four Expert Focus Panels with participants from Canada, the United States and several European jurisdictions.

This paper identifies and defines the different forms of contraband tobacco, including casual bootlegging, organized international smuggling, illicit manufacturing, tax-avoidance from duty-free sources, and counterfeit cigarettes.

The effectiveness of ten anti-contraband policy measures are explored: licensing, tax-markings/stamping, tracking and tracing, record-keeping/control measures, enhanced enforcement, export taxation, tax harmonization, tax agreements/compacts, legally binding agreements with the tobacco industry and memoranda of understanding, and public awareness campaigns.

Analysis suggests that both type of contraband and means of distribution influence the effectiveness of different policies and the unintended consequences of action. For example, policy measures that were effective for legally manufactured, but cross-border smuggled cigarettes in the 1990s are less effective for illicitly manufactured and counterfeit cigarettes that dominate contraband activity today in many countries.

Case studies indicate that while contraband sources often emerge domestically, given the ease of transport and manufacture, sources can be easily displaced to neighboring or overseas jurisdictions.

Inter-agency cooperation (both domestic and international) emerges as a vital component of all successful anti-contraband strategies. The dynamic nature of contraband supply requires a comprehensive approach that focuses on both immediate and future threats.

Policies designed to ensure contraband tobacco products do not appear in the legitimate retail sector (such as tax-paid markings, licensing, record-keeping) and measures to ensure that counterfeit products are easily identified (such as enhanced taxation stamps) are vital resources. Adequate investment in enforcement is vital to the success of anti-contraband measures.

Given the global scope of the phenomenon, greater international cooperation and information sharing is paramount.

Obstacles and potential solutions to implementing various anti-contraband measures are examined from the unique perspective of Canadian First Nations.

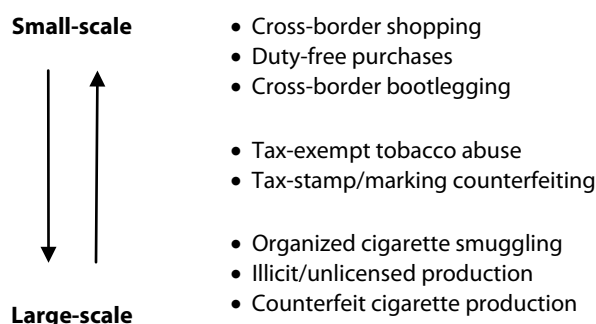
Very little data exists on contraband tobacco and there is almost no evaluative research on the effectiveness of anti-contraband policy measures, making study of the problem extremely challenging.

Background

Tobacco smuggling/tax-evasion is a global issue, with unique manifestations in different regions across the world. According to the Framework Convention Alliance, a conglomeration of international tobacco-control non-governmental organizations (NGOs) and advocates, approximately 10.7% of global sales are illicit, representing 600 billion cigarettes.¹ Revenue loss due to contraband is estimated to be \$40-50 billion US annually.² The illicit trade and consumption of tobacco products affects numerous priorities, including public health, revenue, and crime reduction. To eliminate contraband tobacco, the cooperation and attention of numerous governments, organizations, and agencies is required.

Rather than an informal collection of a small number of actors, large-scale organized smuggling represents highly-coordinated attempts to divert shipments of tobacco products to the illicit market. What constitutes contraband is, in general, “any tobacco product that does not comply with the provisions of all applicable ... statutes. This includes importation, stamping, marking, manufacturing, distributing, and payment of duties and taxes.”³ Thus, contraband can encompass cross-border bootlegging operations, large-scale container fraud, or illicit manufacturing operations (see Figure 1).

Figure 1: Types of Contraband Tobacco



Our study has been designed to primarily assess issues surrounding large-scale smuggling, given that most estimates suggest these activities result in the greatest losses of revenue. However, policies relevant to casual tobacco tax evasion, through purchases of tax-exempt tobacco from Aboriginal communities and other untaxed sources are also discussed.

1 Framework Convention Alliance. (2008). How Big Was the Global Illicit Tobacco Trade Problem in 2006? Framework Convention Alliance, February 2008. <http://www.fctc.org/docs/documents/fca-2008-inb-illicit-trade-inb1-factsheet-how-big-was-illicit-trade-2006-en.pdf>; Accessed 25 April 2008.

2 Ibid.

3 Royal Canadian Mounted Police (RCMP). (2008) Contraband Tobacco Enforcement Strategy. RCMP Customs and Excise Branch and the Government of Canada., p. 12. Note: the report from which this quote was taken refers to “federal and provincial statutes,” though this has been removed in order to allow the definition to apply in a global sense.

Policy Measures

Through review of the literature and consultation with co-investigators, ten anti-contraband policies were identified, which have been implemented in a number of jurisdictions. The policies identified are:

- Licensing
- Tax Markings/Stamps
- Tracking and Tracing
- Record-keeping/Control Measures
- Enhanced Enforcement
- Export Taxation
- Tax Harmonization
- Tax Agreements with First Nations and Native American Communities
- Legally Binding Agreements and Memoranda of Understanding (MOU) with Industry
- Public Awareness Campaigns

Policies and Case Study Comparisons

In comparing the selected case studies, a significant degree of policy overlap appears, allowing a comparison of the results from one jurisdiction to another. Table 1 outlines this comparison, focusing on the specific policies implemented to address issues of smuggling/tax-evasion.

Table 1: Policies and Case Study Comparisons

	Canada	California	Brazil	UK	EU	Australia
Licensing	X	X	X			X
Marking/Labeling	X	X	X	X		
Tracking and Tracing		X	X			
Record Keeping / Control Measures	X	X				X
Enforcement	X	X		X		X
Export Taxation	X		X			
Tax Harmonization	X				X	
Aboriginal Tax Agreements / Compacts	X					
MOUs / Legal Agreements	X			X	X	
Public Awareness				X		

Alongside these comprehensive case studies, specific examples from various jurisdictions will be used to supplement the lessons drawn for each policy.

Effects of Anti-Contraband Policy Measures

This section provides an overview of the knowledge gained about the effectiveness of each of the ten policy measures identified.

Licensing

Relevant Case Studies

- California
- Brazil
- Canada
- Australia

License means permission from a competent authority following the requisite submission of an application or other documentation to the competent authority.⁴ Governments can require manufacturers/retailers to only do business with other licensed bodies, thereby creating a greater chain of accountability. The costs associated with obtaining a license (sometimes in the millions of dollars) make it hard for small manufacturers to grow, unless they produce for the legal market. Manufacturers also producing for the illegal market run the risk of losing their license at great cost.

Policy Strengths

- Can prohibit licensed operators from dealing with unlicensed ones by making that a term of licensure
- Retail/manufacturing licenses can be revoked if operating illegally, creating economic disincentives

Policy Weaknesses

- does little to circumvent contraband production and smuggling if licensed/legitimate bodies are not involved in the first place
- licensing relies on enforcement of license terms
- multi-jurisdictional licensing can create confusion, slow-response

⁴ Source: http://www.who.int/gb/fctc/PDF/it2/FCTC_COP_INB_IT2_3-en.pdf

Marking/Stamping

Relevant Case Studies

- Canada
- Brazil
- California
- UK

Tax markings/stamps indicate the intended destination of product. For instance, some jurisdictions print mandatory labels indicating the country of intended export directly on the box. A marking indicating “For consumption in country X” helps officials and consumers ascertain whether a product has ended up in a jurisdiction it was not intended to be in.

Policy Strengths

- Overt labeling practices provides an easy and effective mechanism for enforcement, as markings allow officials to easily identify illicit products
- The existence of overt marking also prevents retailers from unknowingly selling contraband cigarettes

Policy Weaknesses

- Is ineffective if counterfeiting can replicate stamps
- Imposes costs on industry, especially if markings/stamps not one-size-fits-all
- Requires enforcement in order to have substantive impact

Tracking and tracing

Relevant Case Studies

- EU agreements
- Brazil
- California

Tracking means monitoring the route taken by products through their supply chains. **Tracing** means re-creating the route taken by products through their supply chains. The combination of mechanisms allows for both overt and covert indications of where the good is supposed to be. For instance, when tobacco is sold in the wrong jurisdiction (ascertained through the markings) tracing

mechanisms, such as barcodes, allow enforcement officers to determine the point at which the products were diverted from their intended course. In so doing, officers can isolate the cause of the smuggling, and take appropriate action.

Policy Strengths

- Governments can hold industry responsible for revenue lost due to cigarettes lost in transit, given the unique identifiers on cigarette packages. This serves as an incentive for industry to ensure their export practices are legal.
- The ability to trace the path of cigarettes lost in transit can help identify countries, areas, and ports where cigarettes are routinely lost, ‘naming and shaming’ countries that do not take action.

Policy Weaknesses

- Requires investments in technologies for tracking/tracing
- Requires enforcement

Record-Keeping and Control Measures

Relevant Case Studies

- Canada
- California
- EU
- Australia

Up-to-date records should be kept by all players in the tobacco supply chain, from raw material producers to manufacturers to retailers. All players should record when shipments made/ received and to/from whom facilitating government audits. For example, records kept by raw materials producers could verify that they are not producing excess materials or shipping to illegal entities, thereby controlling the source of tobacco raw materials. Record keeping among retailers might be required in order to document sales, especially to tax-exempt citizens. This policy is in place in Alberta, Saskatchewan, Manitoba, Quebec, and New Brunswick, where retailers pay tax up-front and must file a monthly report on tax-exempt sales to get a refund from the province.

An additional control tied to the refund system is a quota system dictates that only a specified quota of tax-exempt tobacco products may be supplied to reserves, based on population and consumption habits. This ensures that there is no excess product which might be smuggled and sold off-reserve.

Policy Strengths

- Encourages participation from legal retailers, manufacturers, or wholesalers in creating a paper trail
- Can be made a term of licensing which should encourage compliance
- Encourages manufacturer compliance licensing laws by creating a chain of “must haves” before business can be legally conducted

Policy Weaknesses

- Requires investments in audit officials to ensure that sales/shipments that are not recorded are accounted for
- Compliance must be enforced, and penalties significant
- Might be difficult to administer on Aboriginal reserves, if it is seen as encroachment
- Might be difficult to administer in multi-jurisdictional settings, if record keeping laws are different

Enhanced Enforcement

Relevant Case Studies

- California
- UK
- Brazil
- Canada
- Australia
- EU

All policies that address tobacco control require enforcement human resources to put the law into action. Adequate numbers of officials are necessary to monitor sales and shipments of tobacco. Furthermore, a variety of individuals, including customs officials, health officials, etc., should have the authority to penalize individuals for circumventing tobacco control policies. For instance, overt markings on cigarette packages are created to ensure that contraband cigarettes are easy to locate. Inspection officers should be able to directly penalize the retailer for selling contraband. For large-scale smuggling, officials must be equipped with appropriate technology to monitor and assess incoming goods for contraband.

Policy Strengths

- Technology that can quickly identify contraband cigarettes is critical, especially in cases of large-scale smuggling
- Enforcement is the cornerstone of all anti-contraband policies. Therefore, enhanced enforcement will have multiple benefits

Policy Weaknesses

- Investments solely in enforcement may only contain the problem, rather than eliminate the root cause

Export Taxation

Relevant Case Studies

- Brazil
- Canada

Increasing tobacco export tax is an effective means of decreasing smuggling, especially in cases where tobacco was previously exported tax-free to a nearby jurisdiction with lower sales tax, and then subsequently smuggled back into the jurisdiction of origin. The export tax could also be refunded if proof is provided that cigarettes were sent to a legitimate body.

Policy Strengths

- Is relatively easy to administer, especially in cases where the contraband problem seems to stem from legal cigarette exports.
- Has the effect of dramatically reducing the economic incentives for smuggling, thereby affecting not only supply, but also the demand

Policy Weaknesses

- Is easier to circumvent in cases of close proximity, where industries/manufacturers might simply re-locate to the cheaper jurisdiction
- When smuggling rings are still operative, it is likely that the actors will simply smuggle to tobacco from the new jurisdiction back into the old
- The threat of moving jurisdictions can also have significant political ramifications, not only for jobs, but also for tobacco growers
- Has no effect on tobacco originating from a different jurisdiction that is smuggled in from a different jurisdiction

Tax Harmonization

Relevant Case Studies

- EU
- Canada

Tax harmonization is when jurisdictions agree to cooperate on issues of taxation, levying tax at the same rate across jurisdictions. This reduces the economic incentives of cross-border shopping. This would not only be an issue of harmonizing taxes among provincial/state-level governments, but also between governments, through bodies such as NAFTA or the EU.

Policy Strengths

- Would substantially mitigate the economic incentives for cross-border shopping
- Could reduce exports to lower tax jurisdictions, therefore minimizing in-transit status of cigarettes

Policy Weaknesses

- Extremely difficult to do in practice
- Often a race to the bottom, where jurisdictions harmonize with the lowest common denominator because a tax increase is a hard sell
- Requires coordination not only domestically, but also at the regional level

Taxation Agreements/Compacts with First Nations Communities

Relevant Case Studies

- Canada
- US

Tax agreements with First Nations give them the ability to tax certain goods at the State rate and keep the proceeds. This would undermine the economic incentive to purchase tobacco on reserves. Tax could be collected from all tobacco customers or just non-Aboriginals.

Policy Strengths

- Generates revenues for reserves and might help build cooperation
- Leads to greater tax harmonization, thereby undermining smuggling originating on-reserve

Policy Weaknesses

- Might lead to a third level of contraband on reserves, where purchasers go to reserves to bypass jurisdictional taxes, and then go to illegal distributors on reserves in order to bypass reserve taxes
- Requires auditing, which can lead to conflict from reserves that violate the tax compact
- Is a sensitive issue for those on and off reserves because some First Nations ideologically oppose the notion of tax, regardless of who collects/distributes the revenue
- Can have adverse economic impacts on-reserve, undermining appetite for any such measures

Legally Binding Agreements and Memoranda of Understanding (MOUs) with the Tobacco Industry

Relevant Case Studies

- UK
- EU

Legal agreements with the tobacco industry outline the obligations and regulations on actors in the tobacco market. They have legislated enforcement mechanisms, and therefore provide incentives for the tobacco industry to ensure adequate control of their supply chains. A Memorandum of Understanding (MOU) is a non-binding agreement of cooperation between parties. In theory, MOUs should encourage voluntary industry cooperation to limit their brand presence in smuggling operations, instead of creating stricter government regulations. Nonetheless because MOUs are not legally binding, unenforceable, and hinge on the willingness of industry to comply with their terms, they are not particularly useful in practice.

Policy Strengths

- Legal agreements create a greater degree of liability
- Legal agreements might prompt voluntary reductions in exports, due to scrutiny, whereas MOUs would have limited impact
- Encourages industry to cooperate, rather than frustrate anti-contraband policies

Policy Weaknesses

- MOUs can easily be challenged by industry due to lack of enforceability
- Likely will not affect the areas where contraband is growing the quickest, as in Asia
- Does little to affect small-scale smuggling, especially where manufacturers are small in size

Public Awareness Campaigns

Relevant Case Studies

- UK
- Canada

Public awareness campaigns that emphasize the negative impacts of contraband, focusing on lost Government revenue, increased smoking rates, and increased youth smoking help show that contraband tobacco is not a “victimless crime,” as is often assumed. Awareness campaigns may also discourage the sale and distribution of contraband by highlighting the negative nature of smuggling rings. This policy might directly attack the “culture of tolerance” for smuggling, which allows contraband to thrive.

Policy Strengths

- Encourages citizen activism and discussion about the negative implications of smuggling
- Builds support for tobacco control mechanisms
- Joossens has argued that smuggling thrives in a culture of tolerance, and therefore this might help attack the public attitudes that allow contraband to exist

Policy Weaknesses

- Attitudes may not trump economic motivations
- Requires significant investment, with variable results

Assessment of the Effects of Policy Measures

There are many forms of contraband tobacco. Experience shows that contraband activities change over time, often in response to anti-contraband measures. For example, the UK has seen a decline in seizures of genuine-UK brands, with a parallel increase in seizures of counterfeit product, corroborating the conclusion that illicit tobacco operations adapt to the regulatory climate. Furthermore, in Australia, when domestic illegal tobacco was eliminated by buying-out the growers, seizures of imported tobacco leaf increased dramatically, suggesting that as long as sufficient demand and distribution networks exist, a new source of contraband tobacco will emerge.

Table 2 presents the various types of contraband tobacco, based on two fundamental distinctions: whether the entity producing the product is legal or illegal, and whether the smuggling occurs via the crossing of jurisdictional borders or is contained within one domestic jurisdiction. These two distinctions will be discussed further, but it should be emphasized that in all cases some form of smuggling/tax-evasion occurs, and therefore the activity is illegal. The typology table (Table 2) helps determine which entities are involved in illicit trade, and how the smuggling occurs. Defining distinctions between illegal/legal entities and domestic/cross-border tax-evasion assists in determining which policy measures might be most appropriate, as each player involved in contraband will respond differently based on their material interest and legal obligations.

Table 2: Contraband Context Table

		Distribution type	
Production Source		Domestic	Cross-Border
	Legal	<p>Growers</p> <ul style="list-style-type: none"> • Diversion of legal tobacco crops <ul style="list-style-type: none"> ▪ Australia <p>Manufacturers/ Distributors</p> <ul style="list-style-type: none"> • Tax-evasion by licensed manufacturers <ul style="list-style-type: none"> ▪ Brazil • Production over-runs by legal manufacturers <p>Retailers</p> <ul style="list-style-type: none"> • Sale of tax-exempt tobacco to ineligible consumers <ul style="list-style-type: none"> ▪ abuse of tax-exempt systems by non-Aboriginal consumers when purchasing on-reserve (Canada) ▪ abuse of duty-free or likewise tax-exempt retail outlets • Sales of counterfeit-stamped or unmarked cigarettes <ul style="list-style-type: none"> ▪ California <p>Consumers</p> <ul style="list-style-type: none"> • Purchases of tax-exempt or unmarked/counterfeit marked cigarettes 	<p>Growers</p> <ul style="list-style-type: none"> • Illegal exports of crops <ul style="list-style-type: none"> ▪ to unlicensed manufacturers <p>Manufacturers/ Distributors</p> <ul style="list-style-type: none"> • Organized smuggling • Uncontrolled exports in excess of consumption <ul style="list-style-type: none"> ▪ UK exports to Andorra • Smuggling of tobacco products into a jurisdiction <ul style="list-style-type: none"> ▪ HRT into UK • “Returning exports” <ul style="list-style-type: none"> ▪ Canada in early 1990s, Brazil in mid-1990s, UK in 2000 • Smuggling of products from a weakly regulated jurisdiction, termed “quasi-legal smuggling” <ul style="list-style-type: none"> ▪ smuggling of products from Paraguay into Brazil, non-UK brands into UK <p>Retailers</p> <ul style="list-style-type: none"> • Sales of unmarked or “out-of-state” marked cigarettes <ul style="list-style-type: none"> ▪ US, European markets <p>Consumers</p> <ul style="list-style-type: none"> • Purchases of legal cigarettes from internet vendors or out-of-state sources <ul style="list-style-type: none"> ▪ US
	Illegal	<p>Growers</p> <ul style="list-style-type: none"> • Illegal growing of tobacco <ul style="list-style-type: none"> ▪ growing in Australia without a license <p>Manufacturers/ Distributors</p> <ul style="list-style-type: none"> • Illicit/unlicensed manufacturing <ul style="list-style-type: none"> ▪ Brazil, Canada <p>Retailers</p> <ul style="list-style-type: none"> • Sales of illegal cigarettes <ul style="list-style-type: none"> ▪ baggies in Canada <p>Consumers</p> <ul style="list-style-type: none"> • Purchases of illegal tobacco products from internet vendors • Purchases of illegal tobacco products from informal or illegal sources <ul style="list-style-type: none"> ▪ baggies in Canada, from pubs or “boot sales” in UK 	<p>Growers</p> <ul style="list-style-type: none"> • Illegal growing of tobacco for export • Smuggling of tobacco leaf into jurisdiction <p>Manufacturers/ Distributors</p> <ul style="list-style-type: none"> • Smuggling of counterfeit cigarettes • Smuggling of illicit brands <ul style="list-style-type: none"> ▪ baggies in Canada <p>Retailers</p> <ul style="list-style-type: none"> • Sales of smuggled illicit cigarettes <p>Consumers</p> <ul style="list-style-type: none"> • Purchases of illegal cigarettes from Internet vendors or informal sources

Note: To increase clarity, items on the table have been simplified, such as by including distributors under the ‘manufacturer’ definition and leaving importers out entirely, mainly due to the importance of law enforcement in scanning and inspecting incoming cargo in this sector.

Table 3: Raw Context Table

Production Source	Distribution type	
	Domestic	Cross-Border
	Legal	Illegal
Legal	1	2
Illegal	4	3

Each quadrant will be analyzed separately, describing policy alternatives that address each aspect of the contraband problem. Policy alternatives are labeled as “high potential” and “some potential,” depending on the impact that particular alternative has been seen to elicit in practice, based upon the policy lessons and case studies above. After each analysis of the policy problems and alternatives, there is a brief discussion of the consequences of action and the expected displacement of risk.

Quadrant 1: Legal Products Distributed Domestically

Quadrant 1 of the raw context table (Table 3) pertains to legal tobacco products that are illegally distributed within one jurisdiction, tax-exempt. Examples of this quadrant’s policy problems include diversion of tobacco leaf by growers, the sale of tax-exempt tobacco to ineligible customers, and similar themes of tax-evasion. Most jurisdictions have licensing or registration processes which allow government officials to differentiate between legal and illegal products, and therefore Quadrant 1 policy alternatives focus on enforcement activities, regulation, and tax collection. Table 4 below outlines the various scenarios captured under this quadrant, as well as the policy responses deemed to have high potential or moderate potential in addressing these issues.

Table 4: Policy Alternatives: Legal Products Distributed Domestically

Policy Problem	Policy Measure	
	High potential	Moderate potential
Growers <ul style="list-style-type: none"> • Diversion of legal tobacco crops 	Enhanced enforcement	Licensing Record-keeping/controls
Manufacturers/ Distributors <ul style="list-style-type: none"> • Tax-evasion by licensed manufacturers • Production over-runs by legal manufacturers 	Tax-markings/stamps Tracking and tracing	Enhanced enforcement Legally binding agreements Licensing Record-keeping/controls
Retailers <ul style="list-style-type: none"> • Sale of tax-exempt tobacco to ineligible consumers <ul style="list-style-type: none"> ▪ abuse of tax-exempt systems by non-Aboriginal consumers when purchasing on-reserve ▪ abuse of duty-free of likewise tax-exempt retail outlets 	Tracking and tracing	Licensing Tax Agreements/Compacts Tax-markings/stamps Record-keeping/control measures
Retailers <ul style="list-style-type: none"> • Sales of counterfeit-stamped or unmarked cigarettes 	Enhanced enforcement Licensing Tax-markings/stamps	Enhanced enforcement Public Awareness Campaigns
Consumers <ul style="list-style-type: none"> • Purchasing tax-exempt tobacco products or unmarked/counterfeit stamped tobacco products 		Enhanced enforcement Public Awareness Campaigns Record-keeping/controls

Growers

Although in most cases, tobacco growers in a jurisdiction are regulated or licensed by the government, and accordingly follow mandated protocols for the sale and distribution of tobacco leaf, the case study of Australia demonstrated that despite a rigorous licensing regime, some growers will still divert their product to the illicit market, by selling product directly to illegal distributors. Therefore, though the growers are legal entities in the supply chain, their participation in the illicit market merits effective policy responses.

Enhanced enforcement is designated as the policy response with the highest potential for addressing contraband concerns among growers. Because growers must be licensed and are subject to random government inspection, enhanced enforcement strategies, such as monitoring grower crop sizes, and engaging in “controlled sales,” can be an effective deterrent. Growers divert their product in an effort to increase profits, therefore the fines and other penalties extracted by inspection officers undermine the motive. Other policy solutions, such as improved licensing, have some potential, but may be ineffective for two reasons: first, licensing is hampered when numerous entities exist, and second, the efficacy of licensing regimes is dictated by the number and quality of enforcement officers, without which the licensing is moot. The case study of Australia demonstrated that enforcement alone is not sufficient and can be difficult.

Potential Unintended Consequences of Policy Change

Though considered to have high potential to eliminate diversion of legal tobacco crops to the contraband market, one consequence of enhanced inspection and enforcement on tobacco growers may be a breakdown in the relationships between the growers and enforcement officials. This was a significant concern among policymakers in Australia.

Manufacturers/ Distributors

In this context, it is uncommon for tobacco manufacturers to sell directly to the illicit market, except manufacturers located on First Nations reserves in Canada. The most likely scenario off-reserve is deliberate manufacturer production overruns, although this can be minimized with adequate marking/stamping and licensing requirements. Given this, enhanced tax stamps, particularly tracking and tracing stamps, are important to maintain an accurate and objective measure of cigarettes produced by each manufacturer. This was demonstrated most clearly by the Brazilian case study. If an effective tracking mechanism is built into all production machines, taxation authorities would receive automatic updates of how much product is being produced, and the requisite tax amount. Tracking and tracing and marking/stamping both are considered high potential solutions to control manufacturer tax evasion.

In contrast to the potential efficacy of the previous measure, enhanced enforcement is considered to only have moderate potential, as was seen in California. If the regulatory framework is sufficiently described and enforced, contraband should not gain share in the market. Implicit in this is the assumption that licensing and marking/stamping systems are implemented with adequate enforcement.

Legal agreements are considered by many informants to have only moderate potential for the same reasons as enhanced enforcement. It is assumed that an adequately enforced licensing regime pre-empts the need for legal agreements. However, legal agreements can help to clarify manufacturers' roles in the distribution of tax-exempt tobacco products, which can ensure that their products are sold within the requisite quota or refund systems on First Nation reserves.

Licensing and record-keeping/controls are also deemed to have moderate potential. This is because these policies are less pro-active, merely ensuring a paper-trail. However, requiring that licensed manufacturers only purchase raw tobacco from licensed growers and sell to licensed retailers is a policy that has met with some success, as seen by the "know your customer" protocols in the EU agreements.

Potential Unintended Consequences of Policy Change

It is unlikely that increased inspection and enforcement will generate unintended effects on manufacturers or distributors because they are already government regulated.

Retailers

In the formal and informal retail sector, both legal and illegal products might be sold at discounted prices. A good example of this is the way tax-exempt cigarettes are sold on Canadian First Nation reserves. Often the cigarettes are legally manufactured but illegally sold tax-exempt to ineligible consumers. Hence, tracking and tracing is considered the policy measure with the highest potential because it allows enforcement officers to see where shipments end up, in this case, whether they end up off reserve. Furthermore, tracking and tracing markings allow tax-exempt and tax-paid products to be differentiated when on the shelf, and help ensure that markets regulated by quotas are not being oversupplied.

Though tracking and tracing mechanisms can help reduce diversion of tax-exempt cigarettes to off-reserve retailers, they do little to address the informal sales that occur outside of the formal retail sector, highlighting the need for tax-agreements/compacts with First Nations reserves. Such agreements undermine the profit incentive for tax avoidance/smuggling from reserves. Examples include the tax compacts implemented in Washington State and the policy in New Brunswick where tribes are reimbursed the taxes collected from non-First Nation customers. This policy measure was classified as having moderate potential due to the practical difficulties with implementing this in all First Nation communities.,

Most of the policies, including licensing, tax-paid markings/stamps, and record-keeping are considered to have moderate potential given the presumed legitimate nature of the tobacco manufacturers in this quadrant. Such measures increase the effectiveness of any anti-contraband regime but do not solve the underlying motivations for retailers in the illicit market. Policies such as requiring retailers to have a license, restricting retailers from purchasing goods from anybody other than a licensed distributor/manufacturer, and requiring retailers to maintain two distinct stocks of product, one tax-exempt, one tax-included, are recommended.

Canadian provinces regulate tax-exempt sales with one of three mechanisms, through a quota system, a refund system, or a mixture of the two; however, each mechanism is prone to abuse. While refund programs put some onus on the consumer to prove their eligibility, most provinces with refund programs note that many retailers will sell tax-exempt product to individuals without adequate proof of eligibility. As well, sometimes eligible consumers buy product for non-eligible users, also undermining the program. Quota systems attempt to cap the number of tax-exempt cigarettes sold to reserves, however, most allocations are very high and still allow surplus product to exist in the community. Moreover, as with refund systems, quota-bound retailers also sell to ineligible customers, and eligible customers who do not smoke will buy product for ineligible smokers. Finally, though many provinces attempt to impose a daily or weekly purchase limit, without a real-time electronic system to monitor these purchases, consumers can purchase more than their quota by visiting multiple retailers with no way to stop them. Thus, the quota and refund

systems are designated as having only moderate potential, as the systems' loopholes undermine their effectiveness. Practices such as Alberta's use of electronic eligibility cards are certainly better practice, but is nevertheless an incomplete solution to addressing on-reserve sales.

British Columbia's practice of regulating the tax-exempt retail market through discretionary licensing, and refusing to license retailers who attempt to operate in a market that already densely populated with tax-exempt retailers does seem to be effective and warrants further study. A more sophisticated system that includes a refund and quota system, discretionary licensing, and electronic eligibility cards would likely have high potential in the Canadian context.

The California case study illustrates another scenario where legally manufactured cigarettes are diverted and either marked with counterfeit stamps or sold unstamped by retailers. Although the product being sold is legal, the lack of authentic fiscal markings creates an illicit market. California responded by implementing a rigorous licensing and enforcement regime that resulted in near complete elimination of contraband sold from licensed retailers, underscoring the effectiveness of this approach. Enhanced tax stamps, with both overt and covert security features, augmented enforcement officials' ability to inspect products and lay charges where necessary. Thus, this trio of policy measures appears to have high potential in addressing concerns of counterfeit sales within the retail sector.

In both the tax-exempt and counterfeit scenarios, jurisdictions disseminated public awareness information, usually to the retailers themselves, outlining retailers' obligations under the law and how to identify illicit product. While this was seen as a useful public relations effort, and demonstrated the government's commitment to address the problem, most key informants noted that the campaign had minimal impact because the retailers were knowingly selling illegal products.

Potential Unintended Consequences of Policy Change

Enhanced inspection and enforcement runs the risk of leading to increased informal cigarette sales. When sales move to the informal level, policy solutions become constrained, as enforcement officials can only rely on identifying illegal distributors and seizing and penalizing individuals caught selling illegal tobacco products.

Consumers

There are few policy solutions to address consumers' tax-avoidance in this quadrant. Enhanced enforcement is considered to only have moderate potential because attempting to crack down on tobacco tax avoidance would require significant resources, and might not get the necessary political and judicial support. An enhanced enforcement campaign similar to that implemented in the UK would deter a portion of tax-avoiders, but the sheer volume of retail outlets (both formal and informal) and the required resources and political support make this a lukewarm policy solution.

Public campaigns are not likely to be effective, given that the products being purchased are from legitimate manufacturers, and therefore cannot focus upon the unknown nature of counterfeit or illicit cigarettes, as is done in the UK. Public awareness campaigns can merely help to clarify the legality of purchasing tax-exempt cigarettes, although the impacts of this would likely be minimal, given that consumer demand is driven by the cost-savings.

Potential Unintended Consequences of Policy Change

Enhanced inspection and enforcement efforts would need to be publicized through public awareness campaigns to effectively notify consumers that purchasing tax-exempt or unmarked tobacco products is an illegal activity. Coupling public awareness leaflets with enforcement activities related to seizing illegal product, and penalizing consumers for purchasing tax-exempt or unmarked tobacco products might have a significant impact on consumer demand. However, this also would likely encourage informal sales, generally impervious to policy measures. Another unintended consequence of public awareness campaigns would be the legitimizing effect the campaign may have on legal tobacco. The campaigns may be received in the same way tobacco advertisements would be, undermining anti-tobacco policies in general.

Quadrant 2: Legal Products Distributed Cross-border

Quadrant 2 of the raw table (Table 3) addresses legal tobacco products that are illegally distributed across more than one jurisdiction. Cross-border smuggling of legal brands is common, and is perhaps the easiest way to smuggle. Because the brands themselves are legal, the key is to intercept those who are illegally diverting and distributing the product, evading the requisite taxes. A qualification to the analysis of this quadrant (and to Quadrant 3 below) is in cases where the source of the illegal product is in another jurisdiction. One example is the current situation in Canada where illicit cigarettes are manufactured on the US side of the Akwesasne reserve and smuggled north into Canada. Since Canadian officials have no jurisdiction over US manufacturers, policy solutions focus upon either intercepting the products before they cross the border, or identifying the products when they are sold at retail, either through formal or informal retailers. Beyond that, political pressure to force the neighbouring jurisdiction to take action is the only available option. Therefore, Table 4 suggests policy measures relevant to manufacturers and growers within one jurisdiction, rather than assuming that regulatory controls could be applied to these actors in another country.

In cases where products are smuggled in from a neighbouring jurisdiction, the most common policy measure implemented is enhanced border enforcement through x-ray scanners, spot-checks, and strict penalties. This policy solution has high potential to disrupt illicit trade, though attempts to control all entries to the country can require huge investments in resources, given the high volume of imports to most countries, therefore limiting the potential of this approach. Key informants

illustrated this point using the UK experience, where border authorities successfully identified and seized large quantities of tobacco products, but likely only intercepted a small proportion of the illegal products crossing the border. Informants posited that if there is enough demand, smugglers will consider border seizures as simply “the cost of doing business,” given that most shipments successfully enter the intended jurisdiction.

As exemplified by the Spanish case study, one vital approach in this quadrant is inter-jurisdictional cooperation and intelligence sharing, as pressure from multiple countries can promote policy-mobilization to shut down the source of the smuggled product, even if it is cross-border. However, in cases where countries are significantly dependent upon the tobacco production sector, as is the case in Brazil, this tactic may not be effective, as some jurisdictions might be unwilling to suffer the potentially adverse economic consequences.

Table 5: Policy Alternatives: Legal Products Distributed Cross-border

Policy Problem	Policy Measure	
	High potential	Moderate potential
Growers <ul style="list-style-type: none"> Illegal exports of crops <ul style="list-style-type: none"> to unlicensed manufacturers in other jurisdictions (i.e. Brazil) 	Export tax	Enhanced enforcement Licensing Record-keeping/controls
Manufacturers/ Distributors <ul style="list-style-type: none"> Organized smuggling “returning exports” 	Tracking and tracing Legally binding agreements Export Tax	Tax-markings/stamps Enhanced enforcement Licensing
Retailers <ul style="list-style-type: none"> Sales of unmarked or “out-of-state” marked cigarettes <ul style="list-style-type: none"> US, European markets 	Tax-markings/stamps Licensing Enhanced enforcement	
Consumers <ul style="list-style-type: none"> Purchases of legal cigarettes from internet vendors or out-of-state sources Cross-border smuggling of cigarettes 	Enhanced enforcement	Record-keeping/controls

A common theme across these studies has been a phenomenon termed “returning exports,” where tobacco products are grown or manufactured within one jurisdiction, exported to a neighbouring jurisdiction (in order to avoid domestic tobacco taxes), and subsequently smuggled back into the original jurisdiction and sold at a lower price. The case studies of Canada in the early 1990s, Brazil, and the UK are all demonstrative of this. Thus, policy measures can target both the production source and the point of re-entry.

Growers

The Brazil case study illustrates how tobacco growers can be complicit in the illicit market by exporting tobacco leaf to a neighbouring jurisdiction, where it is manufactured into cigarettes, to be subsequently smuggled back into the grower’s jurisdiction. In Brazil, levying an export tax on

tobacco leaf was effective at disrupting this type of illicit trade. While export taxes are a blunt measure that can cause displacement of the site of production to neighbouring jurisdictions, or encourage smuggling across the border, it is still considered a policy measure with high potential.

Measures such as enhanced enforcement, stricter licensing, and record-keeping have only moderate potential because it can be difficult to implicate growers as complicit actors in the contraband market, given the number of entities (in the case of Brazil, thousands) and the numerous points of distribution. Thus, while officials might attempt to monitor and disrupt exports to illicit production sites, revoking licenses where appropriate, the difficulty inherent in directly placing a certain grower's tobacco leaf at the base of a smuggling ring makes this measure less effective.

Record-keeping processes requiring growers to disclose all their shipping partners, and whether they are legal manufacturers are not particularly effective, given the cross-border nature of this approach. It will not always be possible to ascertain which manufacturers on the list are in the contraband market, or whether the intention of the grower was to supply the contraband market.

Potential Unintended Consequences of Policy Change

Enhanced border controls and increased export taxes will likely deter growers from diverting their product to outside jurisdictions. Therefore, this policy, along with enhanced inspection and enforcement should be effective at discouraging domestic growers from engaging in contraband operations. However, this policy may not be sufficient to stop non-domestic growers.

Manufacturers/ Distributors

The phenomenon of “returning exports” is well known to have occurred in Canada in the early 1990s, in Brazil in the mid-1990s, and continues presently in other countries. In their own defense, manufacturers argued that they have no control over what happens to their products after they are shipped; however, several case studies in this report belie this argument, illuminating how manufacturers intentionally exported cigarettes to be smuggled back, tax-free, and sold at a reduced price.

There are two policy measures, tracking and tracing and legally binding agreements, which have proven effective in such cases. Tracking and tracing mechanisms can reliably reveal the export practices of a manufacturer such as to whom the product is being shipped. Both the Brazil and EU case studies show this. The ability to trace a product to a particular site or retailer allows enforcement officials to gather information on common distribution routes and practices and the roles that manufacturers play in the smuggling network. Legally binding agreements augment this policy by requiring that manufacturers provide a list of all recipients of their products, thereby enabling authorities to pinpoint when and where the products are diverted in the distribution chain.

Legal agreement allows authorities to force manufacturers to cease distribution to illegal recipients, or risk stiff penalties and investigation.

Memoranda of understanding (MOUs) are not considered useful because they do not have the weight of legally binding agreements. As seen in the Canadian case study, even though manufacturers signed a “gentleman’s agreement” with the Canadian government to stop exporting their products to be smuggled back into Canada, the inability of the government to enforce these voluntary agreements meant that nothing changed. Therefore, strong legal agreements that require manufacturers to provide a list of distribution points and demonstrate how they monitor and control their supply chain are recommended as high potential solutions.

Similarly, as seen in the case study of Brazil (and to a lesser extent, Canada), levying an export tax undermines the financial incentive to participate in the illicit market, forcing manufacturers to seek new distribution routes or shift production. While this is an unintended consequence of export taxation, the immediate impacts on the smuggling network are such that export taxes are nonetheless considered a high potential policy solution.

Tax-markings/stamps are identified to have moderate potential, given that they do not always disclose the place of manufacture or distribution points and practices, unless they are enhanced tax stamps. Without this information, it is more difficult to implicate the manufacturers in a smuggling scheme. Therefore, while markings/stamps are useful tools to identify tax-status or intended export market, they provide little other information, and can easily be ignored by manufacturers and consumers. For example, the Canadian cigarettes that were exported and then smuggled back into Canada in the 1990s bore an “export only” marking, but that was still insufficient to successfully implicate the manufacturers exporting the cigarettes to be smuggled.

For similar reasons, stricter licensing practices, including some know-your-customer protocols, might fail to change manufacturers’ practices if they cannot be explicitly connected to the illicit market. Linking licensing systems with tracking and tracing stamps makes licensing a more effective policy that enables monitoring of smugglers’ distribution practices. Thus, this policy has potential only if it is deployed with a tracking and tracing regime.

Enhanced enforcement is deemed to only have moderate potential because seizures of smuggled product and tobacco manufacturer investigations only seem to scratch the surface of contraband activities. Legal agreements and comprehensive tracking and tracing components can be far more effective than individual enforcement activities because they definitively prove manufacturer participation in the illicit market.

Potential Unintended Consequences of Policy Change

Given the cross-border nature of this context, manufacture and distribution sources are often larger and more organized. Therefore, an unintended consequence of further regulating legal manufacturers/distributors may be a shift of the source of contraband to Quadrant 3, characterized by illegally produced tobacco products, such as counterfeit brands, or “quasi-legal” brands produced in weakly-regulated states. For example, when the smuggling of exported UK produced cigarettes had declined, the UK contraband market was re-populated with non-UK produced and counterfeit cigarettes.

Retailers

Tax stamps/markings are especially effective at the retail level and can ensure that products smuggled in from lower-taxed jurisdictions are not sold in the formal retail market in higher-taxed jurisdictions. This also applies to tax-exempt product that is smuggled off-reserve. However, tax-markings are limited to protecting only the formal retail sector, and do not address informal sales of cigarettes.

Furthermore, as seen in the California case study, licensing and adequate inspection of the retail sector can reduce the quantity of contraband cigarettes sold in formal retail outlets. The threat of losing a retail license for possessing contraband cigarettes was perceived as very serious by California retailers, making licensing a policy measure with high potential. Jurisdictions that require both retailer licensing and cigarette tax-markings are better insulated against contraband being sold at the formal retail level.

Enhanced enforcement, requisite for the success of markings and licensing, is also a measure with high potential, considering that it is enforcement officers who check for markings and revoke licenses. Key informants from California attested that prior to the state licensing requirements, retailers did not take inspectors seriously. However, now that inspectors are empowered to revoke licenses, retailers have incentive to keep their stock clear of contraband.

Potential Unintended Consequences of Policy Change

Increased enforcement of measures affecting the formal retail sector risks pushing sales to the informal market. The likelihood and extent to which this may occur varies by jurisdiction.

Consumers

At the consumer level, the case study of the UK is instructive, where small groups of civilian consumers took advantage of lower-taxed jurisdictions around the UK by smuggling tobacco products in over the border. Improved enforcement/inspections efforts, coupled with strong penalties for smugglers helped reduce the smuggling networks. Therefore, a concerted enforcement

campaign, with substantial penalties for engaging in cross-border smuggling can be an effective measure.

Beyond enforcement campaigns, few other policies affect the consumer level. As seen with the US problem of Internet tobacco sales, attempts to recover tobacco taxes from Internet purchasers have not been successful, with many consumers either going unidentified by the Internet vendors or ignoring government tax notices, and too few resources available to proactively recoup lost taxes.

Potential Unintended Consequences of Policy Change

At the level of consumers, cross-border smuggling, or casual bootlegging is a serious issue for a number of jurisdictions. A combination of border enforcement and tax markings are promising solutions. “Duty-paid” or “export only” markings ensure that smuggled product is easily identifiable at the border to facilitate seizures. Imposing severe penalties is also a good deterrent. The UK practice of impounding vehicles used in bootlegging operations has reduced casual smuggling activities, shifting the sources of smuggling to larger containers and postal methods.

Quadrant 3: Illegal Products Distributed Cross-border

Quadrant 3 of the raw context table (Table 3) pertains to illegal tobacco products (counterfeit or unlicensed manufacturer) that are distributed throughout more than one jurisdiction. Smuggling through large-scale shipments of counterfeit products is a burgeoning global threat, demonstrated through various case studies, such as the UK. The distribution of counterfeit cigarettes from producers in China and Eastern Europe has already become a major source of contraband in many countries, and requires different policy solutions than those aimed at legitimate producers.

Given that policymakers have no regulatory jurisdiction over cross-border manufacturers, the most common policy measure implemented is enhanced border security and imports inspection, in order to intercept illicit products. However, because domestic policymakers do have jurisdiction over the retail sector and cigarette consumer, these actors will be the focus of the analysis (see Table 6).

Table 6: Policy Alternatives: Illegal Products Distributed Cross-border

Policy Problem	Policy Measure	
	High potential	Moderate potential
Retailers <ul style="list-style-type: none"> Sales of illicit or counterfeit cigarettes 	Licensing Tax markings/stamps Enhanced enforcement	Public Awareness Campaigns
Consumers <ul style="list-style-type: none"> Purchases of illegal cigarettes from internet vendors or informal sources such as pubs, friends, etc 		Enhanced enforcement Public Awareness Campaigns

Retailers

Protecting the retail level from illegal brands requires a comprehensive licensing regime with adequate inspection and enhanced tax markings/stamps to ensure that illicit products do not enter the legitimate supply-chain. This was demonstrated by the California case study. The emphasis on enhanced tax-stamps is important because numerous case studies have confirmed the relative ease with which smuggling operations are able to counterfeit generic tax markings. As such, enhanced tax markings have high potential for ensuring that illicit products do not permeate the retail sector. Licensing and enhanced inspections also demonstrate high-potential in this area, due to the threat of retail license revocation.

Public awareness campaigns can also affect the retail sale of illicit cigarettes, by explicitly explaining retailer requirements in the sale of cigarettes, how to distinguish authentic from counterfeit tax markings, and how to identify counterfeit goods. Although key informants held that most retailers knowingly sell contraband product, the distribution of awareness information can preclude “but I didn’t know” arguments.

Potential Unintended Consequences of Policy Change

Important in this quadrant is the ability to prevent counterfeit and unmarked tobacco products from being sold at the formal retail level. Scanning tax-stamps and inspecting tobacco outlets to screen for counterfeit products can effectively keep legitimate retail suppliers out of the contraband business. Unfortunately, many case studies showed that smuggled products are often sold through informal networks, such as friends, which are outside the purview of formal retail inspection officers. Regardless, key informants suggested that maintaining a contraband-free formal retail supply-chain is still important because it minimizes the overall size of the contraband market and deters those consumers who are wary of purchasing cigarettes informally.

Consumers

At the consumer level, enhanced enforcement is not very effective because cigarettes are often sold through informal channels. Enforcement officers can only attempt to identify major informal distribution points and penalize individuals caught purchasing illicit cigarettes. However, as one key informant stated, this is merely “cleaning up the mess” after the cigarettes have already reached the general population.

The effect of the UK “Counterfeit Kills” campaign, urging smokers to avoid smoking counterfeit cigarettes is an area for future research. Based on the case study, this report finds public awareness campaigns to have moderate potential to address contraband cigarettes by underscoring their uncertain ingredients and other risks associated with using such cigarettes. For some consumers clearly outlining that these cigarettes are illegal, and a form of tax-evasion, is enough of a deterrent.

However, numerous key informants suggested that few consumers of cheap illicit brands are that naïve and simply want a cheap cigarette, legal or not. Thus, this policy will likely only have a small impact on consumers, and runs the risk of re-legitimizing commercial cigarette brands.

Potential Unintended Consequences of Policy Change

Policies that undermine consumer demand by offsetting its low price with penalties, such as car impoundment, could be effective at reducing Quadrant 3 types of smuggling. Furthermore, if policies are aimed at individuals selling illicit cigarettes informally, the incentive to participate in the trade might be weakened. Public awareness campaigns highlighting the illegal and hazardous nature of illicit cigarettes from other countries may also reduce the contraband market, though key informants were mixed on the impact that these campaigns would have.

Several key informants fear that this quadrant symbolizes the future of contraband tobacco. The combination of global trade as well as continual declines in brand recognition might move consumer demand towards cheap tobacco, regardless of the form or country of origin. Given the cross-border nature of contraband trade, key informants suggested that some weakly regulated states might become hubs of illicit tobacco production. Policymakers in affected jurisdictions will have few options other than to better control points of entry, and pressure those states to crack down on illegal production.

Quadrant 4: Illegal Products Distributed Domestically

Quadrant 4 of the raw context table (Table 3) addresses illegal tobacco products (without a license or registration) that are distributed within one jurisdiction. Likely some form of licensing or registration already exists, delineating a distinction between legal and illegal manufacturing operations. Analysis of this quadrant assumes that the manufacturer is purposely avoiding a legal responsibility to acquire a license, and is capable of doing so due to either lax enforcement, or legal complications. An example of this would be illicit manufacturers operating in Canada without a license on First Nations reserves.

Tobacco can also be grown illegally by unregistered or unlicensed growers, who may sell tobacco leaf to manufacturers or directly to consumers. In this case, growing tobacco is similar to the growing of marijuana, where authorities inspect suspected growers, and enforce penalties for engaging in such activities. Officials in Australia speculate that this likely occurs among some of the previously licensed growers. This quadrant highlights the importance of enforcing compliance with existing laws (see Table 7). This, along with identifying illegal growing or production operations, is crucial to addressing the problem.

Table 7: Policy Alternatives: Illegal Products Distributed Domestically

Policy Problem	Policy Measure	
	High potential	Moderate potential
Growers <ul style="list-style-type: none"> Illegal growing of tobacco <ul style="list-style-type: none"> i.e. growing in Australia without a license Could also be grown for supplying unlicensed manufacturers 	Enhanced enforcement	
Manufacturers/ Distributors <ul style="list-style-type: none"> Illicit/unlicensed manufacturing <ul style="list-style-type: none"> i.e. Brazil, Canada, etc. 	Enhanced enforcement	Licensing
Retailers <ul style="list-style-type: none"> Sales of illegal cigarettes <ul style="list-style-type: none"> i.e. baggies in Canada 	Licensing Tax Markings / Stamps Enhanced enforcement	Public Awareness Campaigns
Consumers <ul style="list-style-type: none"> Purchases of illegal tobacco products from internet vendors Purchases of illegal tobacco products from informal or illegal sources <ul style="list-style-type: none"> baggies in Canada, from pubs or “boot sales” in UK 		Enhanced enforcement Public Awareness Campaigns

Growers

Within the case studies, there were few examples of illicit tobacco growing, largely due to few jurisdictions having formal licensing regimes for growers. However, key informants from Australia did indicate that they continue to monitor for illicit tobacco growing, even after a country-wide buy-out of all growers which has made the growing of tobacco similar to the growing of other illegal crops such as marijuana. In this instance, enhanced enforcement/inspections appear to be the most prudent of policy measures, in order to adequately monitor previous tobacco growers and ensure that no crops are still being grown. This policy would also require coordination with other partners, to help identify illicit operations.

Potential Unintended Consequences of Policy Change

It is unlikely that increased inspection and enforcement will generate unintended effects on growers because they are already government regulated.

Manufacturers/ Distributors

Enhanced enforcement is the measure with the highest potential because it promotes the closure of a manufacturer in violation of regulatory laws.. Key informants in Brazil have reported success in this area. However, some political/legal barriers may exist, preventing a straightforward resolution. For example, Canadian First Nation manufacturers on reserves routinely invoke treaty rights in an attempt to exempt themselves from licensing regulations. Fostering cooperation between

manufacturers and enforcement officials in order to adequately address the situation requires culturally sensitive negotiation.

An enhanced licensing regime can bring some illegal manufacturers into the regulatory system. As seen in the case study of Brazil, despite attempts by some manufacturers to produce illegal cigarettes, the Government has successfully defended their case for licensing in the courts, which has forced most tobacco product manufacturers to either comply with the license, or cease operations. Thus, there is some potential in acquiring legislative changes to the licensing regime when necessary, and subsequently penalizing those who fail to adhere to the requirements.

Potential Unintended Consequences of Policy Change

Illegal manufacturers thrive when the licensing/regulatory framework of their jurisdiction is inadequately enforced, and politics play a role in enforcement. A good example of this is contraband manufacturing on First Nation reserves in Canada. Some on-reserve manufacturers argue that they are not subject to Canadian laws, and therefore what they are doing is not illegal.⁵ Solving this issue might prove to be more political than policy-oriented, requiring either political will to enforce compliance, or negotiations to bring contraband manufacturers into the legal realm.

Retailers

Policy alternatives in Quadrant 4 are very similar to Quadrant 3, with licensing, enhanced tax-paid markings/stamping, and enhanced enforcement all having high potential for addressing contraband activities. The ability to successfully identify contraband product through enhanced tax-stamps, coupled with the financial risks of losing a retail license can have a profound effect upon retailers' willingness to engage in the illicit trade.

Furthermore, for the same reasons as described in Quadrant 3, a public awareness campaign among retailers can have some impact by clearly outlining what products are legal, and how to spot illegal ones. Furthermore, given legal uncertainty in some cases such as Canada, outreach campaigns can outline the illegal nature of tax-exempt tobacco products sold off-reserve, and undermine retailer arguments of innocent ignorance.

Potential Unintended Consequences of Policy Change

Similar to other quadrants, policies aimed at identifying contraband at retail, along with inspection and enforcement can help ensure the retail market is not flooded with illicit products. However, similar to Quadrant 3, many parallel informal networks of distribution usually exist also. Thus, greater penalties and intelligence on distribution networks is recommended.

5 Canadian Broadcasting Corporation. (2006) "Shawn Brant Interview." CBC News. <http://www.cbc.ca/sunday/brant.html>; accessed 07 August 2008.

Consumers

As indicated in Quadrant 3, both enhanced enforcement and public awareness campaigns will likely have only minimal impact on consumer willingness to purchase illicit cigarettes. However, in cases such as Canada where legal uncertainty exists around products manufactured by First Nations producers, public awareness campaigns can have some impact by clearly outlining what products are illegal. Many key informants held that consumer motivation to buy cheap cigarettes might supersede other concerns.

Potential Unintended Consequences of Policy Change

With consumers, enhancing penalties for possession of illicit tobacco products can have an effect, though many key informants noted a perception within the legal system that it is “just” tobacco, and therefore not as serious as the possession of other illicit products, such as drugs or weapons. Many consumers simply want a cigarette, and are not concerned about where it comes from, or how it tastes. Thus, policies might be better tailored towards addressing the manufacturers of the products, rather than the consumers.

Solving Quadrant 4 problems would likely shift the source of contraband from a domestic to an international producer. For example, if Brazil is able to eliminate all domestic illicit manufacturers, smuggled products from Paraguay will replace the lost domestic ones. Because of the continued demand, and the dynamism of the source, focusing only on domestic producers will likely not solve the problem in any given jurisdiction.

Role Specific Policy Alternatives

Each quadrant requires a different set of policies, while some interventions, such as enforcement, run throughout each context. The following tables highlight policy measures that are common to several (or all) quadrants, presenting an overall ‘better practice’ in anti-contraband measures for each entity, regardless of the context. As in the tables above, the policy measures are divided into the four quadrants, with an upper-case “X” symbolizing “high potential” policies and a lower-case “x” symbolizing policies with “moderate potential.” “High potential” policies received two points, while “moderate potential” policies received one point. It should be understood that this is not a scientific comparison, but useful for illustrative purposes.

Tobacco Growers

Table 8: Ranked Policy Alternatives for Tobacco Growers

Policy Alternative	Q 1	Q 2	Q 3	Q 4	TOTAL
Licensing	x	x			2
Tax marking/stamp					0
“Enhanced” tax stamp					0
Tracking and tracing					0
Record-keeping / control measures	x	x			2
Enhanced enforcement – investigations/seizures	X	x		X	5
Enhanced enforcement – border controls		X	X		4
Enhanced enforcement – inspection penalties					0
Export Taxation		X			2
Tax Harmonization					0
Tax agreements / compacts					0
Legal agreements					0
Memoranda of Understanding (MOUs)					0
Public awareness campaigns					0

Enforcement/inspection capacity is critical to ensuring that tobacco crops are not diverted to the illicit market. Improved inspection and monitoring are the most effective mechanisms to do this. Noted by Australian key informants, and mirrored by Canadian experience, it can often be difficult to prove that a tobacco grower is complicit in the diversion of tobacco and therefore monitoring may be the best way to do this. Control measures restricting the sale of tobacco to licensed/registered manufacturers are also useful tools in ensuring that growers themselves are held accountable for the use of their crop.

Manufacturers/Distributors

Table 9: Ranked Policy Alternatives for Manufacturers/Distributors

Policy Alternative	Q 1	Q 2	Q 3	Q 4	TOTAL
Licensing	x	x		x	3
Tax marking/stamp	X	x			3
“Enhanced” tax stamp					0
Tracking and tracing	X	X			4
Record-keeping / control measures	x				1
Enhanced enforcement – investigations/seizures	x	x		X	4
Enhanced enforcement – border controls		X	X		4
Enhanced enforcement – inspection penalties					0
Export Taxation		X			2
Tax Harmonization					0
Tax agreements / compacts					0
Legal agreements	x	X			3
Memoranda of Understanding (MOUs)					0
Public awareness campaigns					0

Several different policy measures can be implemented at the manufacturer/distributor level, depending on the context. For example, Quadrant 1 and 2 have more possible policy alternatives compared to 3 and 4, reflecting the legal versus illegal distinction in production sources. In Quadrant 1 and 2, each policy alternative, though different in nature, serves a similar end, which is greater accountability and transparency of tobacco distribution. In a cross-border setting, tracking and tracing helps provide information and investigation capacity to control supply-chains, whereas the same policy in a domestic setting serves a production monitoring and tax-collection purpose. Similarly, legal agreements can have a strong effect in Quadrant 2 (and a minor impact in Quadrant 1), where the obligations and penalties of licensed manufacturer can be explicitly outlined and agreed upon, as in the EU agreements. Here, the incentive to participate in the illicit market (or engage in weak supply-chain controls more generally) is undermined, minimizing the role that tobacco manufacturers might play in smuggling.

Enforcement activities are important in all quadrants, but the nature of investigations will be different depending on the context. Enforcement in Quadrant 1 would focus on production overruns and lax supply-chain controls within one jurisdiction; enforcement in Quadrant 2 would focus on tobacco manufacturer distribution practices and their role in supplying tobacco smugglers worldwide; enforcement in Quadrant 3 would focus on increasing border controls to prevent product from entering the country; and enforcement in Quadrant 4 would focus on locating domestic illicit manufacturing sites, and shutting them down, with less focus on the activities of the manufacturers themselves. Thus, the term ‘enforcement’ takes on different practical meaning depending on the context, and the specific needs of policymakers.

Retailers

Table 10: Ranked Policy Alternatives for Retailers

Policy Alternative	Q 1	Q 2	Q 3	Q 4	TOTAL
Licensing	X	X	X	X	8
Tax marking/stamp	x	X	X	X	7
“Enhanced” tax stamp	X		X	X	6
Tracking and tracing	X				2
Record-keeping / control measures	x				1
Enhanced enforcement – investigations/seizures					0
Enhanced enforcement – border controls					0
Enhanced enforcement – inspection penalties	X	X	X	X	8
Export Taxation					0
Tax Harmonization					0
Tax agreements / compacts	X				2
Memoranda of Understanding (MOUs)					0
Legal agreements					0
Public awareness campaigns	x		x	x	3

Licensing and enhanced inspection are considered the most effective anti-contraband measures directed at retailers. However, the feasibility of licensing retailers is low in some jurisdictions. In cases where retailers are too plentiful or mobile for licensing, officers should still have sufficient inspection/seizure capacity to penalize the retailer in a meaningful way, potentially restricting the ability to sell any products.

The use of tax-paid markings and enhanced anti-counterfeit markings may have the greatest effect at the retail level, where such markings can ensure that contraband products are not sold openly at retail outlets, but are forced to informal areas. While enforcement and seizures are more difficult to execute in the informal retail sector, these policies at least ensure that formal retail outlets are not saturated with illicit products, making these products easy for the average consumer to access.

Consumers

Table 11: Ranked Policy Alternatives for Consumers

Policy Alternative	Q 1	Q 2	Q 3	Q 4	TOTAL
Licensing					0
Tax marking/stamp					0
"Enhanced" tax stamp					0
Tracking and tracing					0
Record-keeping / control measures	x	x			2
Enhanced enforcement – investigations/seizures	x	X	x	x	5
Enhanced enforcement – border controls		X	x		3
Enhanced enforcement – inspection penalties					0
Export Taxation					0
Tax Harmonization					0
Tax agreements / compacts					0
Memoranda of Understanding (MOUs)					0
Legal agreements					0
Public awareness campaigns	x		x	x	3

The findings of this study suggest that demand-side policy interventions can influence consumer purchasing patterns. For example, the UK case study showed that hefty penalties for cross-border shopping/bootlegging were an effective deterrent for casual bootleggers. Furthermore, due to a lack of penalties and dishonesty on the part of some retailers, many Canadian consumers assume that it is legal to purchase tax-exempt products, or even baggies of cigarettes. Therefore, publicizing strict penalties (such as vehicle seizures, large fines, etc.) can deter some individuals from participating.

Public awareness campaigns aimed at undermining contraband tobacco may also influence purchasing patterns, though they remain a matter of debate given the potential unintended consequences of this approach, described above.

Concerns Unique to the Canadian Context

Parts of Canada and the United States face unique issues related to the production and sale of contraband tobacco by First Nations or Native Americans. This section describes anti-contraband policy measures in the context of Canadian First Nations.

Expert Focus Panel with First Nations

As mentioned earlier, the authors were not successful at making contacts with First Nations key informants, and therefore were not able to include a case study of Canadian First Nations in this report. Fortunately, near the end of the project, several First Nations key informants agreed to participate in an expert focus panel, specifically tailored to First Nations perspectives on anti-contraband tobacco policy measures. The expert focus panel revealed new and unique concerns about the feasibility and likely effects of various anti-contraband policy measures in this context.

Economics

Perhaps the most salient theme during the Expert Focus Panel was the economic impact that the tobacco trade has on-reserve, and the significant negative economic impact that a crackdown on contraband would have. Because First Nations communities are often small and remote, tobacco retailers have to rely on providing lower prices as a way to entice customers. The tobacco trade, both legal and illegal, was identified as a funding source for community initiatives such as day cares and libraries by panel members, and was described as an essential source of income for some reserves. Apparently, even if controlling contraband was a priority for First Nations communities, panel members indicated that it would not be financially feasible currently, as many reserves are poor and have no other significant sources of income.

Panel members argued that due to government practice of cutting First Nations' funding whenever extra cash flows in, there is little incentive for equalizing tax rates in order to inject the tax revenue back into the community. Collectively, participants felt that implementing tax harmonization on reserves would prevent First Nation prosperity and keep communities trapped in the cycle of poverty.

First Nations' Autonomy

First Nations' right to self-govern was strongly emphasized during the focus panel. Participants expressed a perception that the Canadian government does not genuinely respect First Nations' sovereignty, paying lip-service to the notion while behaving otherwise in practice. They noted that the First Nations community is suspicious of government attempts to partner with them on anti-

contraband tobacco measures, as past experience shows that the partnership only works as long as First Nations comply with what they are told by government.

Panelists suggested that First Nations communities have a stake in reducing on-reserve criminal activities. According to panelists, some communities have already implemented their own tobacco law with community-based licensing and oversight, though the extent of these community-based regulations was not widely known. All panel members vehemently stated that First Nation community autonomy must be maintained, therefore any new compacts would have to be endorsed, executed, and enforced by the community.

Sensitivities about taxation and use of the term ‘taxation’ emerged as an important concern. Participants noted that First Nations are often ideologically opposed to collecting taxes from citizens, and do not want to take on roles as tax collectors. In order to achieve First Nations buy-in, the language used in discussions has to reflect this. For example, a policy term like tax-harmonization can be re-phrased as a band rule requiring that a set percentage of every tobacco sale is to be given back to the community. Panel members noted that some communities impose levies or fees, which although serving the same purpose of a tax, does not carry the same linguistic baggage. Non-First Nation key informants in Manitoba echoed these concerns, noting that “band assessments,” which are applied to tobacco products, are not described as a tobacco tax. The language of policy solutions is important, and can be a step towards reconciling different perspectives.

Perceptions of False Accusations

Participants also expressed frustration with government allegations of First Nations involvement in organized crime. Some tobacco trade routes have existed for centuries and the tobacco trade was described as an integral part of reserve culture. It is considered a First Nations right. According to a panelist, one family may own a smoke shop and employ extended family members, involving up to 40% of the community in tobacco sale; therefore, selling tax-exempt cigarettes (to all customers, First Nations and non) is not perceived as criminal activity, but rather as a form of economic development.

Panel members felt that the emphasis on contraband tobacco as a revenue-generator for organized crime is considered a police-instigated, fear-mongering ploy to criminalize First Nations, and support police presence on-reserve. Therefore, categorizing First Nations tobacco traders as organized criminals closes the lines of communication.

Panelists noted that First Nations people are blamed for sale of tax-exempt tobacco products to non-First Nations people. Specifically, it is often non-First Nations people who deliberately make trips to reserves to purchase large quantities of tax-exempt tobacco products, and non-First Nations people often abuse on-reserve tax-exempt tobacco by selling it off-reserve. First Nations participants

expressed opinions that their community is being unfairly criminalized by law enforcement and government. Given this perception, policies of collaboration and cooperation are therefore unlikely to get off the ground.

Confusing Government Roles

Collaboration between First Nations and government to find a solution to contraband is perceived as being encumbered by confusion about the roles of different levels of government and of various government agencies, according to panelists. Lack of communication between federal and provincial governments was cited, along with seemingly haphazard allocation of jurisdiction over First Nations' affairs. Panel members noted that Revenue Canada oversees tobacco taxation; Indian and Northern Affairs Canada oversees housing and economy, and provincial agencies also attempt to play a role. The numerous non-First Nation entities attempting to have a presence on-reserve was identified as a source of frustration for many panel members, especially given the perception of government infringement on First Nation sovereignty.

Another problem cited was law enforcement. Reserves fall under First Nations, provincial, and federal laws, which are sometimes at odds. Unless the other governments acknowledge First Nations supremacy of law and allow First Nation law enforcement, panel members suggested that law enforcement will remain ineffective. Allowing First Nations law enforcement also means investing in it, as one panelist posited that there are only approximately 2.5 First Nations police officers per community. Panel members argued that greater investments in First Nations police forces could lead to considerable improvement in addressing smuggling, as the enforcement presence would not be from the "outside," but by members of the community itself.

Unequal Treatment of First Nations

Participants identified unequal treatment by government as another barrier to collaboration. A specific example discussed is the quota system implemented in some communities, where on-reserve retailers may only purchase a specified quantity of tobacco for a given time period. Because non-First Nation retailers are not bound by any purchasing restrictions, participants viewed this as discriminatory. Participants also posited that quotas have the unintended consequence of creating a market for contraband because many retailers assume that a large supply of cigarettes must be purchased up-front. When retailers do not have the money to buy a month's supply of cigarettes (as they are often delivered on just one day per month) they purchase illicit cigarettes to maintain stock.

Another problem panelists associated with buying legal tobacco is that retailers sometimes experience difficulty collecting their tax rebate. Panel members argued that Revenue officials may question the authenticity of signatures, or demand additional paperwork.

Finally, participants shared their distaste for the treaty cards they are required to show before buying cigarettes (among other items). They considered it another way that the government can monitor their purchasing patterns.

Education Needed

Participants called for more education on both sides of the table. Government needs to be educated on First Nations' cultural tradition of 'community first,' while First Nations need to be educated on the health consequences of smoking and other resources they can use to bolster their economy. There needs to be an on-going, open-minded dialogue that seeks solutions tailored to the unique needs of different communities. Models that worked in New Brunswick, British Columbia, or the US may not be effective in Ontario, for example, and therefore creative, collaborative thinking is required. Policymakers have to approach this with sensitivity, being careful not to judge First Nations.

To summarize, the panelists indicated that the process undertaken has to be respectful of First Nations' nationhood and ability to set priorities. It was made clear that First Nations will resist any laws that are forcefully implemented, and therefore the Canadian government needs to be flexible, and negotiate with First Nations nation-to-nation.

First Nations' Tobacco Distributed Off-Reserve

If First Nations reserves are considered sovereign nations, smuggling from reserves can be considered cross-border. Therefore, solutions proposed in Quadrant 2 are theoretically applicable. By law, First Nations are exempt from tobacco taxes. Through the quota or refund systems described in detail elsewhere,⁶ First Nation retailers can legally purchase tax-exempt tobacco to sell on reserve. The problem arises when this legal tobacco is smuggled off-reserve, "cross-border," to be consumed by non-First Nations tobacco users.

However, the policy options discussed thus far in this report would not likely prove effective, given the current tense political situation between First Nations communities and the Canadian government. Due to this political climate and in an effort to keep the tension from escalating, the Canadian government does not consistently enforce manufacturer or retailer regulations on-reserve. Were this not the case, recommendations such as enhanced enforcement, licensing, public awareness campaigns, and record-keeping would be recommended and likely prove effective; however given the situation, other measures would need to be implemented first to address the primary arguments

⁶ Sweeting J, Johnson T, Schwartz R. *Anti-Contraband Policies: Evidence for Better Practice*. Toronto, ON: The Ontario Tobacco Research Unit, Special Report Series. May 2009, Section Three.

revealed in the panel. Based on the issues raised by the panel, potential policy measures to address these issues are described below.

Economic Development Plan

As was stressed by First Nations key informants, the poor economic conditions on-reserve must be addressed. First Nations cannot be expected to surrender a prominent source of their revenue without being helped to transfer their economy onto something else. Specifically what this ‘something’ should be is outside the scope of the paper, although one possibility is to develop, in concert with First Nations stakeholders, an economic development plan to help identify new sources of income and employment in exchange for co-operation about contraband. Panelists alluded that without a new revenue-generator, First Nations will continue to oppose government efforts to regulate tobacco on-reserve.

Statement of First Nations Autonomy

To address the concern raised by the panel that First Nations autonomy is not respected by government, a formal statement from government to the contrary may be required. At the start of the negotiation session, government representatives could attest to their commitment to uphold First Nations sovereignty in deciding their own affairs, define what they mean when they use the term “First Nations sovereignty,” and briefly outline how they will ensure that it remains top of mind throughout the negotiations. The language and wording used in this process should also be carefully chosen.

Another way to address this concern would be to encourage and assist more First Nations communities to implement their own tobacco laws, licensing, and oversight of on-reserve criminal activities. Part of this could involve educational campaigns on-reserve about the negative effects of the contraband trade.

Finally, it has been suggested that ratification of the FCTC treaty and implementation of tax harmonization by First Nations are both ways to augment First Nations autonomy. Voluntarily signing on to an international treaty in an effort to increase the health and wellness of on-reserve citizens and generate tax revenue that can be spent to further improve conditions on-reserve would make a bold statement of exercising autonomy as a nation.⁷

⁷ Physicians for a Smoke-free Canada. 2007. Towards effective tobacco control in First Nations and Inuit communities.

Evidence-based Allegations

A possible way to mitigate the perception of false accusations of First Nations involvement in organized crime would be for enforcement officers to become more transparent with their information and data collection methodology. Increased transparency and closer communication and collaboration between enforcement and band leaders would show that every effort has been made to confirm that all First Nations individuals accused of being part of organized crime actually are, and help prevent false accusations. In addition, the role that non-First Nation individuals play in smuggling tobacco off-reserve should also be flagged in published materials. In partnership with First Nations police, enforcement officers should publish all document evidence that contraband trade is present and thriving on reserves, highlighting the ways in which such trade fosters criminality on reserves.

Clarify Government Roles

One possible way to simplify First Nations dealings with both federal and provincial government Ministries is to have a single point of contact where all items for clarification are given to the same government official (or group of officials). Those officials would then locate the right Ministry and individual to contact about the issue, receive a response, and transmit the response back to First Nations in a timely manner. In addition, an index could be created and provided to all band councils that illustrates and describes the structural organization of all the government Ministries involved in Aboriginal affairs, displaying both their relationships to one another and First Nations.

Quota System Unfair

The concern about unequal treatment raised by panelists is of a dual nature. Panelists expressed displeasure that First Nations are subject to quota laws when purchasing cigarettes at both the wholesale and retail levels, and non-First Nations citizens are not. However, the fact that First Nations are allowed to purchase tobacco products tax free can also be seen as unequal treatment by other Canadians. One solution is to repeal section 87 of the *Indian Act*, and with it First Nations ability to purchase tax-exempt tobacco. All quotas could then be lifted and all Canadians would be treated equally. Although fair, this solution is not likely to garner political support.

Health Promotion Education

According to the panelists, First Nations need to be given the same access to information and opportunity to make informed health decisions as the rest of Canadians. The tobacco control triumphs logged by non-First Nation communities did not happen overnight. Rather, they have been the result of long and slow processes of incremental changes in social attitudes towards tobacco, facilitated by public health campaigns and anti-smoking policies. Now, many Canadians have chosen to quit smoking or simply not start. First Nations citizens should be educated about the dire

health effects of smoking using similar methods. Education about the traditional, sacred use of tobacco is also recommended. However, given that First Nations' tobacco is often sold off-reserve to non-First Nations consumers, the health promotion impetus to prevent tobacco from being distributed off-reserve may not prevail over the profit motive inherent in such operations.

The possible solutions presented require political impetus, patience, and firm commitment from both sides to negotiate and listen to one another. It will not be a short or easy process, but with perseverance will yield excellent long-term health and financial outcomes. Increased awareness of Canada's contraband problem among policymakers and the public can help to create momentum towards implementing these policies and getting the issue of contraband on the federal agenda.

Conclusions and Future Considerations

Dynamic Nature of Contraband

There is no single silver bullet to eliminate contraband tobacco, nor should one expect that successful policy implementation in one jurisdiction represents a best practice that will be equally successful in another jurisdiction. Policymakers should be particularly attentive to the methods of smuggling and production, to what entities are involved in the trade, and how successfully regulatory policies can curb these activities. This issue is laden with political overtones, and therefore attention must be paid to the political feasibility of different policies, in order to foster a long-term sustainable resolution.

A central theme within this document has been the multi-faceted nature of successful anti-contraband tobacco policies which require combinations of regulation, fiscal/taxation policy, enforcement, and public awareness campaigns. Policies designed to address contraband tobacco must take into account the potential for unintended consequences on broader tobacco control measures, as the two are not always complementary in nature. For example, in Canada in the early 1990s sales tax cuts, higher export taxes, and regulatory measures significantly reduced the level of contraband tobacco but promoted higher smoking rates, especially among youth, representing a step backwards for tobacco control. Price cuts due to lowered taxes allowed tobacco companies to focus their efforts on expanding the legitimate tobacco market in Canada. Contraband tobacco policies should support general tobacco control measures, because, as some informants suggested, addressing one at the expense of the other is an unsustainable approach.

Brand Recognition

Several key informants noted the growth of a market for baggies of loose cigarettes in Canada. Tobacco control measures such as advertising bans, public awareness campaigns, and point-of-sale display bans have had the cumulative effects of denormalizing traditional cigarette brands, stripping them of the social significance they once had. As big tobacco company brands have been denormalized, there has been growth in demand for “no-name” cigarettes and discount brands. This burgeoning demand has been filled by the contraband market through baggies and Native brands of cigarettes. The significance of this shift is twofold. First, it explains why baggies have not emerged significantly in other countries, especially the United States. Some suggest that brand recognition is stronger in the US than in Canada, and therefore smokers in the US would prefer to smoke brand name cigarettes (namely Marlboros), rather than no-name singles. Thus, there has been a rise in counterfeit Marlboros in the US, as well as cross-border smuggling (either by truck, or through internet sales), rather than baggie sales, despite suggestions that the US side of the Akwesasne is a major source of baggies in Canada. Second is the fact that policymakers may see baggies emerge in other countries also, as tobacco control policies have a continual impact, and smoking rates decline.

Ease of Transport

Contraband tobacco is successful in carving out a market share because it is both easy to manufacture and easy to smuggle. Some policy solutions propose controls on cigarette machinery or production-related products (such as tipping paper), but given the simplicity of transport and the huge demand for cigarettes, policymakers should be aware of the ability smuggling operations to remain dynamic. An interesting example of this is in the UK, where smugglers use the Royal Mail to ship individual components of counterfeit cigarette products, such as packaging, tobacco, or paper, to be collected and assembled at a single site.⁸ These operations are a testament to the “cottage industry” possibility of contraband tobacco, which should be considered by policymakers.

Data Sources

Transparent, public data on contraband tobacco is extremely limited, and in some jurisdictions, non-existent. One major recommendation of this paper is to make statistics and information regarding the tobacco trade and contraband tobacco much more available to the public, in order to assist with research and debate of this subject. For example, many jurisdictions (including Canada) do not provide official estimates of the size of the illicit market or comprehensive data on contraband tobacco seizures made by federal and provincial agencies, making it extremely difficult to evaluate and assess approaches in this area.

In contrast, the UK government should be applauded for its relatively open and accessible statistics on seizure activity and illicit market estimates. These data provide a clearer picture of the effects of different policies and the evolving nature of the trade. However, some key informants suggested that the data presented might be incomplete and therefore misleading. For example, strict reliance on seizure data might be inadequate, as seizure data is often directly tied to resources and intelligence, which is variable. Also, the apparent increases in counterfeit seizures might, as some key informants suggest, be a result of cooperation with the tobacco industry, which can provide biased data given the industry interest in protecting their market shares. Data that suggest a dramatic increase in counterfeit seizures does not always mean an increase in counterfeit activities as a whole, but instead a greater competency in identifying and seizing these goods. Seizure data should be complemented with overall illicit market estimates, in order to better understand the shape of the illicit market, rather than attempting to infer such data from seizures.

Another potential outcome of providing public data on contraband is increased public awareness, and by extension, political will. Since such data is often unavailable, it is difficult to make a compelling case or report based on anecdotal evidence, and “guess-timates.” Government estimates and data on contraband improve policymakers’ and researchers’ capacities to study the trade, and

⁸ Interviews with HMRC officials.

therefore can build better cases for political action, when the public has a sense of the scope of the problem and the size of financial losses.

Conclusion

The recommendations we have made based on our findings match closely with the pending World Health Organization Framework Convention on Tobacco Control Intergovernmental Negotiating Body protocol on illicit trade. The issue of contraband requires the attention and insight of governmental and non-governmental actors. Increased funding is also needed for studies of the size, scope, and distribution of illicit tobacco in order to effectively address this problem. In providing a concrete analysis of common anti-contraband policies and documenting the contexts in which contraband is found, policymakers and researchers will have a better sense of how to approach contraband tobacco. Tobacco control policies have had a dramatic impact on smoking rates in the last decade. Yet contraband tobacco can and will undermine these public health gains if policymakers, academics, and advocates do not take action soon.

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