

Illicit trade protocol: the weakest link: invited commentary

The article 'From cigarette smuggling to illicit tobacco trade'¹ exposes the modus operandi in illicit trade that highlights the need for global cooperation in eliminating the illicit trade of tobacco products (*see page 230*). It must be emphasised as well that the protocol can only be as strong as the weakest link in the chain of states that will participate in it. Ideally, all countries currently identified in the smuggling route or territories that could potentially serve as a transit point should participate and agree to be bound by the protocol. It bears stressing that many of these countries are developing countries.

Hence, any recommendation for a robust protocol on the illicit trade of tobacco products should reflect the capacity and needs of developing nations. A 'strong' protocol could mean a binding instrument that has comprehensive regulatory measures, strict obligations with commensurate sanctions for non-compliance, and measures to make non-complying states accountable. Comprehensive measures to curb any form of smuggling require, to say the least, some level of infrastructure (more so for porous borders) to control the borders. This includes technology to enable efficient monitoring (eg, computers, including electricity to run them, vehicles for officials, machinery for destruction of seized items), and increase in skilled personnel or investment in building their capacity.

A commitment to undertake obligations under a 'strong' protocol would mean nothing if the state is not willing to invest

resources to control its borders. For some developing nations that indiscriminately accept private sector support, there is a very high risk that the tobacco industry would offer to undertake such investments as a form of 'corporate social responsibility' or 'public relations activity', thereby creating 'partnerships' or a perception of partnerships with governments that could, in turn, create opportunities to influence governments in their tobacco control policy.

Unless the 'strong' protocol provides clear mechanisms of assistance, including financial mechanisms for developing countries, and/or includes strong conflict of interest rules, it can potentially make the state vulnerable to violating Article 5.3 of the WHO Framework Convention on Tobacco Control, the obligation to protect public health policies from the commercial and vested interests of the tobacco industry.

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REFERENCE

1. Joossens L, Raw H. From cigarette smuggling to illicit tobacco trade. *Tob Control* 2012;**21**:230–4.

Invited commentary

Until recently, no one thought cigarette smuggling was too serious, so law enforcement has not spent resources to go after it (*see page 230*).

However, huge tobacco black markets have arisen from several countries of Africa as smugglers move cheap and counterfeit cigarettes to sell in lucrative regions of the world where regulations are inadequate and enforcement lax. The illicit trade is fuelling addiction by making inexpensive cigarettes widely available, while robbing governments of sorely needed tax revenue. Those engaged in illicit tobacco trade in Africa have perfected the act, using such strategies as signing deceptive manufacturing memoranda of understanding with governments and seeking importations ahead of manufacturing start dates whereas the sole aim is to engage in smuggling. They avoid seaports by using illegal routes through mostly land-locked countries for tax evasion.

The African region is caught up in illicit commercial flows in tobacco trade facilitated by locally based individuals who own or have stakes in numerous businesses close to the corridors of power, on one hand, and the transnational corporations on the other. In each case, at least one component of the supply chain lies outside Africa. The problems are transnational challenges,

and this means there are at least two broad ways of coming up with solutions in the form of policy options.

The first is to address those aspects of the problem that lie outside the region. In many cases, this is the easier path, since law enforcement capacity in Africa is among the poorest in the world. The WHO Framework Convention on Tobacco Control's strong illicit trade protocol, when ready, could help achieve this.

The second is curbing the demand for tobacco use by removing the profitability of intraregional cigarette smuggling, which can be achieved by harmonised tax policy and licensing regimes, and curtailing the processing of illicit goods in free trade zones.

In both approaches—transnational and local—the involvement of the international community is essential for sustainable success. Unilateral remedial action by any African state on its own will surely be undermined by less progressive practices by its neighbours, particularly given the weakness of borders in the region, especially in West Africa.

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