WHO-EM/TFI/011/E/G
Distribution: General

The cigarette “transit” road to the Islamic Republic of Iran and Iraq

Illicit tobacco trade in the Middle East

World Health Organization
Regional Office for the Eastern Mediterranean
Cairo
2003

Document WHO-EM/TFI/011/E/L/07.03/1000

CONTENTS

EXECUTIVE SUMMARY I

1. INTRODUCTION 1

2. KEY ELEMENTS OF SMUGGLING 1

3. THE ROLE OF THE INDUSTRY 4

4. CIGARETTE SMUGGLING IN THE MIDDLE EAST 5

4.1 Tobacco trade journals 6
4.2 Lawsuits 8
4.3 Tobacco industry internal documents 12

5. A MARKETING STRATEGY DILEMMA: LEGAL OR ILLEGAL IMPORTS? 14

6. SOLUTIONS 17

Annexes
1. ARTICLE 15 OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL, ADOPTED WITH RESOLUTION WHA 56.1, 21 MAY 2003 19
2. REFERENCES 21

Important note

In January 2002, the Government of the Islamic Republic of Iran and WHO/EMRO jointly released *Coveting Iran*, the first inquiry on the activities of the tobacco industry in the Islamic Republic of Iran, after which the Iranian government took major steps to combat this serious problem. It is hoped that this report will contribute to the continuing efforts of the Government of the Islamic Republic of Iran towards this end.

Tobacco Free Initiative/EMRO acknowledges the efforts of Luk Joossens in writing and finalizing this report.

EXECUTIVE SUMMARY

- The issue of cigarette smuggling is now high on the agenda of governments and international organizations. It has been estimated that a third of internationally exported cigarettes are lost to smuggling. Total revenue lost by governments due to cigarette smuggling is estimated at US$ 25–30 000 million annually.

- Studies of the impact of smuggling show that when smuggled cigarettes account for a high percentage of the total sold, the average price for all cigarettes, taxed and untaxed, will fall, increasing sales of cigarettes overall.

- The cigarette companies often blame organized crime for the massive amount of cigarette smuggling worldwide, but much of the organized criminal smuggling that accounts for the vast majority of cigarette smuggling worldwide has occurred with the knowledge of the major cigarette companies themselves, and would not occur without the cigarette companies' compliance.

- In the Middle East, the two main target markets for international tobacco companies are the Islamic Republic of Iran and Iraq. Both the Islamic Republic of Iran and Iraq represent huge possibilities for international cigarette companies. Indeed, tobacco trade journals, internal tobacco industry documents and documents filed in legal actions make the importance placed on both countries by the entire tobacco industry very clear.

- According to trade journals, Cyprus is an important distribution point for American cigarettes going to the Islamic Republic of Iran through traders in Oman. At the same time, some of these cigarettes are sold to traders in Turkey who take them into Iraq. Beirut's imported cigarettes are distributed to traders and merchants in various countries in the Middle East and North Africa. It appears that the major customers for cigarettes distributed from Lebanon are the Islamic Republic of Iran and Iraq. From Beirut to Dubai or Oman and then on to the Islamic Republic of Iran is the path of some of the American cigarettes destined for Lebanon. Trucks now carry cargo through the Syrian Arab Republic to reach the open-air markets in Iraq.

- In their legal action against several international tobacco companies, the European Union (EU) filed in January 2002 documents on cigarette smuggling into Iraq showing that since the early 1990s, American tobacco companies have distributed their products from the United States into Iraq. For example, cigarettes produced in the United States have been shipped to and through ports in the EU to companies in Cyprus for years. Indeed, since 1996, approximately 50 billion cigarettes have been sent by RJ Reynolds Tobacco Company (RJR) (and its successor, Japan Tobacco) to Cyprus. Approximately half of these shipments were exported from Cyprus to Turkey in transit. Many of these shipments were destined for Iraq.

- On 30 October 2002, the EU and ten Member States launched another lawsuit against RJR. The new EU lawsuit goes far beyond any previous allegations, accusing RJR of direct complicity in facilitating not only money laundering schemes but also other criminal enterprises. Allegations on cigarette smuggling into Iraq were even more detailed.

- The EU allegations on smuggling in Iraq are in line with the well known methods of the cigarette smuggling scheme:

  – Exports of billion of cigarettes from major tobacco manufacturers.

  – Complex transport routes in order to complicate investigations.

  – Off-loading and re-loading of containers and removing marks and numbers from products to prevent their being traced.

  – Frequently switched bank accounts to cover up actions.

  – Operations led from Switzerland, a country protected by bank secrecy and business privacy laws.

  – Offshore companies located in Liechtenstein.

  – Use of tax-free harbours such as Mersin in Turkey.

- Internal tobacco industry documents describe in great detail the monitoring of smuggling operations and the illegal character of the transit (smuggling) trade in Lebanon and the Syrian Arab Republic. Several documents stipulate that it is unwise for the tobacco companies to have direct links with the transit trade.

- The objective of each company is to sell more products and make higher profits. Penetrating new markets and increasing the market share of its products is part of the strategy to achieve this objective. An obstacle for multinational tobacco companies are trade restrictions and/or embargoes. Some markets are closed to foreign companies or allow imported cigarettes only under certain strict conditions. Where there are high tariffs or a state monopoly, international cigarettes will be smuggled into the country, weakening the position of the state monopoly and delivering the market into the hands of the multinationals.

- While illegal imports may be an option in order to penetrate a market, the ultimate goal in the long term is to obtain official imports or production. The strategy of the international tobacco companies in the Islamic Republic of Iran became a success story in 2002, when the state tobacco authority signed an import and production deal with four cigarette companies in a bid to cut down cigarette smuggling. It is a clear example of how successful this strategy of international tobacco companies can be. The stages of the strategy are:

  1. Penetrate the market through illegal imports.

2. Weaken the state monopoly by reducing the market share of domestic brands and legal sales.

3. Convince the authorities to privatize or to open the market.

4. Authorize the legal import and/or production of foreign brands.

5. Stop fuelling the illegal market and take over the market in a legal way.

- If tobacco smuggling is to be tackled successfully it will require international collaboration. The likeliest mechanism for achieving this is the WHO Framework Convention on Tobacco Control (FCTC). In the text of the FCTC, article 15 deals with illicit trade of tobacco products, including markings, monitoring, data collection, cooperation, penalties, confiscation and licensing.

- Manufacturers should be required to have covert and overt markings on all packages of tobacco products that would identify manufacturer, date and location of manufacture, and another identifier that would show the chain of custody—wholesaler, exporter, distributor and end market. The onus should be placed on the manufacturer (through record keeping, and tracing and tracking systems) to prove that the cigarettes that leave the factory arrive in their intended end market.

- The way to combat smuggling is not to reduce taxes, but rather to control the supply of illegal cigarettes.

1. INTRODUCTION

The tobacco industry have argued that tobacco smuggling is caused by market forces, through the price differences between countries, which create an incentive to smuggle cigarettes from “cheaper” to “more expensive” countries. They have urged governments to solve the problem by reducing taxes, which will also, they say, restore revenue. The facts contradict these assertions. In fact, smuggling is more prevalent in “cheaper” countries, and where taxes have been reduced (in Canada and Sweden for example) consumption has risen and revenue has fallen.[1] However the new WHO Framework Convention may at last promote control of tobacco smuggling at the level at which it must be tackled—globally.

Tobacco smuggling has become a critical public health issue. It affects public health by bringing tobacco onto markets cheaply, making cigarettes more affordable and thus stimulating consumption, thereby increasing the burden of ill health caused by its use. It is not a small phenomenon. It is estimated that globally, one-third of legal cigarette exports disappear into the contraband market. This is an extraordinary proportion, resulting in the second key effect of smuggling: the loss of thousands of millions of dollars of revenue to government treasuries. Total lost revenue by governments due to cigarette smuggling is estimated at US$ 25–30 000 million annually.[2]

Cigarette smuggling occurs in all parts of the world, even in regions where taxes are low. One internal document of the British American Tobacco (BAT) company[3] estimated that 324 billion, or nearly 6% of world cigarette sales of 5400 billion, were duty not paid (DNP) cigarettes, an industry term for contraband (see below). Eastern Europe and the Asia-Pacific region account for the majority of this at about 85 billion each, though Western Europe was also significant at about 50 billion. In relation to total market sales, DNP volumes are largest in Eastern Europe (around 13%), and Africa and the Middle East (around 12%), but are also significant in Latin America (around 9%) and Western Europe (around 7%). Western Europe has the highest prices in the world, four to five times higher in 1996 than in Africa, the Middle East or Eastern Europe. However, despite these high prices, smuggling is on average lower than in other regions of the world. In other words, cigarette smuggling is not principally caused by “market forces”. It is supply driven, caused mainly by fraud through the illegal evasion of taxes.

Yet the tobacco industry has lobbied governments to reduce tobacco tax, arguing that to do so will solve the smuggling problem and increase government revenues. This is not true. When the Canadian government reduced cigarette tax in response to industry pressure the results were disastrous. The real significance of tobacco smuggling is that it not only makes tobacco available cheaply, it also sabotages national tobacco taxation and tobacco control strategies.

2. KEY ELEMENTS OF SMUGGLING

There are two main types of smuggling: bootlegging and large-scale organized smuggling. Their main differences can be summarized in the following way.

The term "bootlegging" was used in the nineteenth century to refer to the smugglers' practice of hiding bottles in their boots.[4] We use the term to describe the smuggling activities of individuals who illegally import small quantities of products. It involves, for instance, the purchase of cigarettes and other tobacco products in low tax jurisdictions in amounts that exceed the limits set by customs regulations for resale in high tax jurisdictions. In general, bootlegging involves transporting cigarettes over relatively short distances (for example, between neighbouring countries and other nearby jurisdictions). As with legal activities, significant price differentials between jurisdictions create incentives for bootlegging.

Bootlegging is a problem in some regions of the world, but huge price differences between neighbouring countries are uncommon and the market share of bootlegged tobacco products is much smaller than the market share of large-scale smuggled tobacco.

Large-scale organized smuggling (or container smuggling), in contrast, involves the illegal transportation, distribution, and sale of large consignments of cigarettes and other tobacco products, generally avoiding all taxes. This type of smuggling usually involves millions of cigarettes, smuggled over long distances.

Large-scale smuggling is encouraged by the presence of criminal organizations and is a relatively sophisticated system for distributing smuggled cigarettes at local level. It is hugely aided by the lack of control of the international movement of tax-free cigarettes. This large-scale organized smuggling is the major problem and is not caused by differences in the price of tobacco products. Significant sums of money are involved. Large-scale smugglers transport containers of 10 million cigarettes. A container of 10 million cigarettes can be bought without taxes "in transit" for US$ 200 000, but has a current fiscal value (import taxes, excise duties and VAT) that is three to ten times higher. Large-scale smugglers operate in all parts of the world, as the container transport costs are small compared to the market value of their goods.

The most common way to buy tax-free cigarettes is to buy cigarettes under the "in transit" regime. Transit is a concession system aimed at facilitating trade. Its essence is to allow the temporary suspension of customs duties, excise and VAT payable on goods originating from and/or destined for a third country while under transport across a defined customs area. However, many containers disappear during their international transport and never arrive at their final destination.

The key points about container fraud are that it is highly organized and that the cigarettes are supplied to the illegal market by the tobacco manufacturers through (legal) exports to countries where they have no market. They are transported from these countries (often by circuitous and complex routes) into the target contraband market to be sold illegally, at half to one-third of the legal price. They can be sold on the illegal market without taxes. These fraudulent transactions typically involve several separate buyers between the initial first buyer and their disappearance from legitimate circulation.

Smuggling, therefore, mainly involves cigarettes that are duty suspended under the transit regime and that disappear during their international transport. Most of these cigarettes are classified in world trade statistics as missing. It has been estimated that a third of internationally exported cigarettes are lost to smuggling (see Table 1).

The different steps of the smuggling scheme are:

- Manufacturing at one of the (often international) tobacco companies
- Legal export of one or more consignments to a trader who is not located in the final country of destination and who buys the cigarettes without taxes under the "duty suspended" transit regime.
- Playing hide-and-seek with the customs authorities: exporting and importing the containers in different locations around the world during a short period of time. The object of these operations is to make the final owner untraceable, and to make the links between successive owners as obscure as possible.[5] Payments often have to be made in cash or from well-known tax havens and countries favouring bank secrecy.
- Transfer from the legal transit regime to the illegal circuit in a location known for its lack of surveillance. Containers with cigarettes are off-loaded and re-loaded onto other containers with a cover load. Typically the cigarette cartons are buried underneath other products (for example, paper towels, shoes, furniture, clothes, pizzas), and the containers are officially as being full of "pizzas".
- Illegal transport of the cover loaded cigarettes to the intended contraband market.
- Illegal selling through a sophisticated distribution network in the intended contraband market.

Table 1. World cigarette imports and exports (billion pieces)

Year	Imports	Exports
1990	418	543
1992	568	804
1994	886	1156
1996	607	1047
1997	603	1069
1998	610	1031
1999	583	886
2000	618	907
2001	622	898
2002 (estimate)	624	929

Source: United States Department of Agriculture, September 2002

3. THE ROLE OF THE INDUSTRY

According to the World Bank report, *Curbing the epidemic: governments and the economics of tobacco control,*[6] economy theory suggests that the industry itself will benefit from the existence of smuggling. Studies of the impact of smuggling show that when smuggled cigarettes account for a high percentage of the total sold, the average price for all cigarettes, taxed and untaxed, will fall, increasing sales of cigarettes overall.

Despite its professed opposition to criminal activity, the tobacco industry benefits from smuggling in several ways:

- Smuggling stimulates consumption both directly (through the street sale of cheap cigarettes) and indirectly (through pressure to lower or keep down taxes);

- The threat of smuggling has been used to avoid trade barriers or force open new markets.

The cigarette companies often blame organized crime for the massive amount of cigarette smuggling worldwide, but much of the organized criminal smuggling that accounts for the vast majority of cigarette smuggling worldwide has occurred with the knowledge of the major cigarette companies themselves, and would not occur without their compliance. These facts have been established largely through previously secret, internal cigarette company documents, which have become available through various lawsuits against the companies. The documents describe extensive knowledge, oversight, and support of smuggling by the transnational cigarette companies in numerous countries. However, only a small portion of the smuggling-related documents uncovered to date have appeared in the press or elsewhere.[7]

Additional documents in the tobacco lawsuit document depositories that chronicle the companies' involvement in international cigarette smuggling may yet be discovered—and others may currently exist only in the files of the cigarette companies, if the companies have not already destroyed them. Cigarette company documents do not use the term "smuggling", but instead use euphemisms or code words for the activities whose meaning is clear. Where the paper record of cigarette company knowledge and participation in cigarette smuggling has been uncovered, cigarette company euphemisms or code words for smuggling are the norm. [8]

Two common euphemisms are: *duty not paid* (DNP) and *transit*. Here are a few examples:

- 'With regard to the definition of transit it is essentially the illegal import of brands from Hong Kong, Singapore, Japan, etc., upon which no duty has been paid. To my understanding this is most prevalent in the south of Taiwan. . .' [9]

- 'Contraband is 9% of the Argentine cigarette market and 46% of the Market in the NEA [North-East Argentina] DNP [duty not paid] cigarettes are a fact of life and almost institutionalized.'[10]

- '[The DNP market] is the volume of cigarettes produced in Venezuela, exported (mainly to Aruba) and re-entering Venezuela as transit plus transit cigarettes produced elsewhere (mainly Ecuador and Brazil).' [11]

In a 1993 document, a British American Tobacco (BAT) employee provides a list of questions and answers on overseas trade:

- Question 10: What is transit trade?
  Transit trade is the movement of goods from one country to another without the payment of taxes and tariffs. It is more commonly known as smuggling.
- Question 11: Are you aware of cigarette smuggling?
  Yes, smuggling of popular goods which attract high taxes has been ongoing for centuries. Cigarettes, like alcohol are smuggled into many parts of the world.
- Question 12: Is BATco a willing party in smuggling activity?
  No. We do not condone smuggling. Because of excessive taxation and trade restrictions/embargoes smuggling is inevitable.
- Question 14: Where is smuggling most prevalent?
  Far East, Latin America, Central and Eastern Europe and Africa.[12]

The link between the transit trade and smuggling is clear in this document: transit is another word for smuggling. According to this document, smuggling is "caused" by high taxes, but surprisingly seems to be more prominent in low tax regions.

4. CIGARETTE SMUGGLING IN THE MIDDLE EAST

In the Middle East, the two main target markets for international tobacco companies are the Islamic Republic of Iran and Iraq:

> The Middle East Cluster consists of 12 countries with a total population of 145 million at rates in excess of 3% per annum. Five countries viz Iran, Iraq, KSA (Kingdom of Saudi Arabia), Syria and Yemen account for 90% of the population. . . . The total cigarette market is estimated at 108 billion cigarettes. This could be under estimated by 15–20 billion, mainly in Iran and Iraq where information (as in Yemen) is poor. 49% of the volume is in Iran (26%), Iraq (15%) and Yemen (8%) which have been neglected by us in the past, and where we are our share is either insignificant (Iran and Iraq) or zero (Yemen).[13]

Both the Islamic Republic of Iran and Iraq represent huge possibilities for international cigarette companies. Indeed, many of the tobacco industry's once secret internal documents—documents obtained from court proceedings in the United States—make the importance placed on the Islamic Republic of Iran by the entire tobacco industry very clear.[14]

Several reasons for the interest in the Islamic Republic of Iran apply to all the major tobacco companies: (1) a large population; (2) rising living standards; (3) moderate cigarette consumption levels leaving room for growth; and (4) a worldwide trend towards a diminished role for state tobacco monopolies. Moreover, the Islamic Republic of Iran is conveniently located, wedged between the tobacco industry's established smuggling centres in the Middle East and the burgeoning tobacco markets in the subcontinent and the former Soviet Union. The documents suggest that the multinational tobacco companies saw the Islamic Republic of

Iran not only as a market, but also as a conduit for the supply of contraband cigarettes to other countries.[15]

Overall, the tobacco industry's documents suggest that the Islamic Republic of Iran was viewed by the global cigarette companies as a battlefield where the national tobacco monopoly could be duped, government officials could be misled, and the physical health of Iranians could be sacrificed for the financial health of the companies' shareholders.[16]

The attractiveness of the Islamic Republic of Iran is underlined by a recent article in a tobacco trade journal: 'Iran is the largest consumer in the Middle East and this includes significant cigarette consumption. An estimated 45 billion units are sold each year and consumption is growing at an annual rate of 1 percent.'[17]

Iraq is another attractive market for tobacco companies. In a 1990 BAT document, the Iraqi market was described in the following way:

> Subsequent to the lifting of trade sanctions, every effort will be made to tap this large and predominantly Virginia market (30+ bns total market which is undersupplied by at least 5 bns per year) with our international brands — firstly Benson & Hedges, subject to maximum assurance that stock will not be redirected.[18]

British brands were already present in Iraq twenty years ago:

> Iraqi smokers developed a fondness for British cigarettes some decades ago. During the early 1980's the United Kingdom was an important supplier of Iraqi cigarette imports. British cigarette exports to Iraq average \$48 mn during 1979–81, and \$37 mn annually during 1982–84.[19]

Cigarettes from the USA, Germany and Greece found their way to the illegal markets in the Islamic Republic of Iran and Iraq. Internal tobacco documents, tobacco trade journals and current lawsuits describe the transit routes used.

4.1 Tobacco trade journals

Both Cyprus and Lebanon have been important importers of American cigarettes (Table 2).

Table 2. American exports of cigarettes to Cyprus and Lebanon (million cigarettes)

Year	Lebanon	Cyprus
1995	10 098	7473
1996	11 713	9488
1997	10 938	9949
1998	10 938	5321
1999	5736	6164
2000	4227	6920
2001	5717	4453

Source: United States Department of Agriculture

In tobacco trade journals, it was acknowledged that the final destinations of these cigarettes are not Cyprus or Lebanon, but rather the Islamic Republic of Iran and Iraq: 'Cyprus is an important distribution point for US cigarettes going to Iran through traders in Oman. At the same time, some of these cigarettes are sold to traders in Turkey who take them into Iraq.'[20] And:

> Beirut's imported cigarettes are distributed to traders and merchants in various countries in the Middle East and North Africa. . . . It appears that the major customers for cigarettes distributed from Lebanon are Iran and Iraq. . . . From Beirut to Dubai or Oman and then to Iran is the path of some of the US cigarettes destined for Lebanon. Trucks now carry cargo through Syria to reach the open air markets in Iraq, like the elaborate facility in Mosul.[21]

Not only American companies are exporting to Cyprus: the British tobacco industry has considerably increased its exports to Cyprus from 89 million cigarettes in 1996 to 5404 million in 2000.[22]

Finally, the Greek cigarette industry has also been exporting more and more to the Middle East during recent years, as outlined in Table 3 and the following quotes. Multinationals such Philip Morris (PM), BAT and JT International (JTI) account for around half of Greek cigarette output.

Table 3. Cigarette exports from Greece to Turkey, Cyprus and Jordan in 1999 and 2000 (tonnes)[23]

Country	1999	2000
Turkey	1720	4144
Cyprus	1338	2608
Jordan	2198	2041

> Many Greek cigarettes purchased by Turkish transit traders are delivered to customers in the Middle East countries. Trucks moving trough the Silopi Pass into Iraq probably transport over a third of the Greek cigarettes shipped to Turkey. . . . Iran is another large market for Greek cigarettes. Traders in Turkey, Cyprus, and some other countries deliver cigarettes to many small traders from Iran.[25]

> Turkey has been a leading source of cigarettes and other goods imported into Iraq. . . . Cigarettes from Greek factories (including some major American brand names) have taken up the slack left by a lack of US made cigarettes entering Iraq in the last two years. . . . Many of the cigarettes delivered by trucks passing through Silopi Pass from Turkey into Iraq are exchanged for diesel purchased in Iraq. Iraq obtains cigarettes from distributors in Cyprus, United Arab Emirates, Oman, Russian Federation and Europe, but Turkey appears to be the major transit route.[26]

In 2001, local cigarette production in Iraq was estimated at 5700 million cigarettes and imports at 10 700 million cigarettes (Table 4). The source of the imported cigarettes was Greece (3200 million), Turkey (2900 million), Jordan (1100 million), Cyprus (700 million) and other transit (2800 million).[27]

Table 4. Iraq: estimated source of imported cigarettes by quantity during 1990–2001 (million pieces)[28]

Year	Turkey	Greece	Cyprus	Jordan transit	Other transit	Total transit
1990	400	170	200	2300	980	4050
1991	600	300	220	1100	950	3170
1992	500	430	290	900	700	2820
1993	900	370	340	660	500	2770
1994	1100	350	400	500	675	3025
1995	1250	300	660	600	500	3310
1996	1300	450	780	800	400	3730
1997	1600	500	800	700	700	4300
1998	2000	800	970	900	1800	6470
1999	2500	1200	1100	1300	2600	8700
2000	2800	2095	1200	1200	3600	10 895
2001	2900	3200	700	1100	2800	10 700

4.2 Lawsuits

In their legal action against several international tobacco companies the EU filed in the United States District Court, Eastern District of New York, in January 2002 documents on cigarette smuggling into Iraq:

> Since the early 1990s, United States tobacco companies have distributed their products from the United States through the European Community and into Iraq. For example, cigarettes produced in the United States have been shipped to and through ports in the European Community, including Valencia, Spain, to companies in Cyprus, including Audeh Trading for years. Indeed, since 1996, approximately 5 000 000 master cases (50 billion cigarettes) have been sent by RJR (and its successor, Japan Tobacco) to Cyprus (Audeh Trading/ICBS). Approximately one-half of such shipments were exported from Cyprus to Mersin, Turkey in transit. For many years, RJ Reynolds Tobacco International SA (Geneva) provided consignments to Cypriot companies, often for massive amounts of Winston brand cigarettes. Part of the scheme was to falsely declare that the shipments were destined for export (i.e., to “Russia”) when, in fact, the products were destined for countries outside of Cyprus and Russia (i.e., Iraq). It is hard to exaggerate the scope of the scheme inasmuch as since August 1999 — during a time when both RJR and Japan Tobacco had responsibility for management or oversight of the operations — approximately 570 000 master cases (or 5.7 billion cigarettes) were distributed through Cyprus. Substantial percentage of those cigarettes was delivered to and through ports in the European Community, including Valencia, Spain. As shown below, many of these shipments were destined for Iraq.
>
> RJR and Japan Tobacco International S.A. distributed hundreds of container loads of cigarettes from Puerto Rico, to Valencia, Spain, to Limassol, Cyprus, to Beirut, Lebanon, to Mersin, Turkey, which products were then offloaded onto trucks and shipped overland to the Habur border crossing, and sold into Iraq. This scheme has been in place since at least August 1999, at a time when RJR managed operations for Japan Tobacco under contract. As one example of this scheme, the accompanying proffer shows how RJR/Japan Tobacco manufactures products in the United States and ships them to Spain, and then to Cyprus, for ultimate delivery into Iraq.

The steps of this scheme may be summarized as follows:

1. Japan Tobacco, located in Puerto Rico and acting under license of RJR, shipped containers of Winston brand cigarettes from the United States to Valencia, Spain by cargo ship.
2. In Spain, the containers were off-loaded and later re-loaded onto a second vessel using the Spanish port facilities. From Spain, the containers were shipped to Cyprus.
3. In Cyprus, the containers were unpacked and the Winston brand cigarettes were reloaded into new containers, bearing different markings
4. Subsequently, the containers containing the Winston brand cigarettes were exported from Cyprus, with "Russia" as the declared country of final destination.
5. The five forty-foot containers with the Winston brand cigarettes (packed with 5,340 master cases) were shipped to Lebanon and then to Turkey.
6. Those five containers were then shipped overland through Turkey to the Habur border crossing and into Iraq."[29]

The EU allegations on smuggling into Iraq attracted wide media coverage as they concerned billions of cigarettes, exported by an American company to a country under embargo and considered by the United States government to be their enemy number one. The lawsuit led to the following editorial in *The Washington Post*:

Organizations that violate US sanctions on Iraq cannot usually expect sympathy from the Bush administration. Nor can groups that collude with Russian mobsters or Colombian drug gangs. If the allegations recently filed by 10 European governments in a New York district court have merit, R.J. Reynolds Tobacco Holdings Inc. (RJR) has run a smuggling conspiracy involving all three offences. Even so, the Bush administration persists in siding with RJR and the other cigarette giants in international tobacco-control negotiations convened by the World Health Organization. [30]

In a front-page article of the leading United States financial newspaper, *The Wall Street Journal*, the EU complaint was described as follows:

RJR-brand cigarette sales into Iraq dramatically increased from 1997 to 2001, with many of the cigarettes manufactured in Puerto Rico, according to people familiar with the EU's investigation. The paperwork accompanying some of those shipments states: "United States law prohibits distribution of these commodities to North Korea, Vietnam, Iraq or Cuba unless otherwise authorized by the United States." In recent months, Japan Tobacco for the first time sought and received U.N. permission to sell cigarettes in Iraq. These sales aren't subject to United States law, because the company closed its only plant on United States soil, which was located in Puerto Rico; Japan Tobacco's cigarettes bound for Iraq are now made in Europe. These cigarettes still flow to Kurdish-controlled Northern Iraq. However, at this point their final destination is murky. It now appears that many of them are smuggled to the Islamic Republic of Iran, which some traders consider a more lucrative market than Baghdad. Every day, young Kurds bearing large canvas backpacks stuffed with cartons of cigarettes make daily climbs along the mountainous routes into the Islamic Republic of Iran. "It is constant, non stop," says one Kurdish businessman who witnessed waves of backpackers smuggling Winstons last month, adding that they're paid about $10 per trip. According to UN records, Japan Tobacco got approval to sell 401 000 master cases of Winston, Magna and Winchester — more than five billion cigarettes — to Kani, the Kurdish tobacco monopoly, via Mr. Audeh and a Turkish distributor. The KDP spokesman called the amount requested by Japan Tobacco "huge" and far more than the 3.7 million Kurds possibly could smoke. "You'd have to find babies in their cradles smoking," he says. Asked for his view of where the cigarettes might be ending up, Guy Cote, Japan Tobacco's spokesman in Geneva, says: "I don't have a clue."[31]

On 30 October 2002 the EU and ten Member States launched another lawsuit against RJR. The new EU lawsuit goes far beyond any previous allegations, accusing RJR of direct complicity in facilitating not only money laundering schemes but also other criminal enterprises. Allegations on cigarette smuggling into Iraq were even more detailed, as illustrated in these extracts:

> Throughout the 1990s, the RJR DEFENDANTS committed an array of crimes, including money laundering, by selling United States-made cigarettes into Iraq in violation of United States law. The means by which this money-laundering operation was conducted include the following: The RJR DEFENDANTS maintained a long-term relationship with an individual known as Issa Audeh. Issa Audeh had previously been an employee of R.J.REYNOLDS TOBACCO INTERNATIONAL, INC. In the 1980s, Audeh served as Regional Director, Middle East/Near East Region for RJR. Around the late 1980s or early 1990s, Issa Audeh set up a group of companies located in Cyprus, including Audeh Trading and Consultancy Service and IBCS Trading and Distribution Company Limited ("IBCS"). . . .
>
> In late 1989 or early 1990, the RJR DEFENDANTS and Issa Audeh entered into an agreement with an individual known as Abdel Hamid Damirji for the purpose of distributing RJR products in Iraq. Through his Liechtenstein corporation, Tradinter Middle East Development Establishment, Abdel Damirji worked with the RJR DEFENDANTS and Issa Audeh to establish RJR products and the RJR product name in Iraq. In the fall of 1990 after the Iraqi invasion of Kuwait, Abdel Damirji transferred his cigarette sales operations to Jordan with the approval of the RJR DEFENDANTS for the purpose of supplying the Iraqi market with RJR cigarettes from Amman. The RJR DEFENDANTS, through their officer or employee, Edward Touma, as part of RJR's "Special Markets-Middle East-Near East" division, in written and/or telephonic communications with Abdel Damirji, arranged a procedure by which Abdel Damirji would purchase RJR cigarettes from RJR through Issa Audeh in Cyprus. At times when Abdel Damirji needed more RJR cigarettes than could be supplied through Issa Audeh's companies, Abdel Damirji obtained his RJR cigarettes directly from RJR. For example, in June 1991, the RJR DEFENDANTS sold and delivered directly to Abdel Damirji seven full air-cargo shipments consisting of approximately 17 000 master cases of RJR cigarettes. (There are 10 000 cigarettes in a master case.) Between March 1991 and September 1992, Abdel Damirji purchased at least six hundred thousand master cases of cigarettes, either directly from RJR or from Issa Audeh. . . .
>
> Between 1993 and 1995, the aforesaid agreement remained in place and Abdel Damirji acted as the exclusive distributor of RJR products in Iraq. During this period, hundreds of millions of dollars of RJR cigarettes were purchased by Abdel Damirji from the RJR DEFENDANTS and were sold and distributed in Iraq.[32]

The EU allegations on smuggling in Iraq are in line with the well-known methods of the cigarette smuggling scheme:

- Exports of billion of cigarettes from major tobacco manufacturers.
- Complex transport routes in order to complicate investigations.
- Off-loading and re-loading of containers and removing marks and numbers from products to prevent their being traced.
- Frequently switched bank accounts to cover up actions.

- Operations led from Switzerland, a country protected by bank secrecy and business privacy laws.

- Offshore companies located in Liechtenstein.

- Use of tax-free harbours such as Mersin in Turkey.

In the EU lawsuit against RJR, the main motive behind smuggling—"the race for market share"—is explained in the beginning of the filed documents:

> Throughout the 1990s and continuing to the present day, the RJR DEFENDANTS have undertaken extensive efforts to increase their market share and to expand the sales of their products throughout the world.
>
> To accomplish this end, the RJR DEFENDANTS have actively engaged in the sale of their products to criminals and/or criminal organizations, which can purchase goods with their criminal proceeds only if the payments for those goods are made covertly so as to avoid detection by law enforcement. . . . The RJR DEFENDANTS have controlled, directed, encouraged, supported, and facilitated the activities of the criminals who purchase their products. The RJR DEFENDANTS have collaborated with criminals, directly and indirectly, and have sold cigarettes to persons and entities that they know or had reason to know were laundering criminal proceeds through the purchase of cigarettes.
>
> By engaging in this illegal conduct the RJR DEFENDANTS have achieved multiple benefits for themselves, including but not limited to the following:
>
> (a) The RJR DEFENDANTS have increased their cigarette sales because they have new and additional customers, namely, the money-launderers and the criminal organizations they service.
> (b) The RJR DEFENDANTS have increased their profit margins because they require the criminals to pay a premium for their cigarettes and/or subject the criminals to sales and credit terms that are more favourable to the RJR DEFENDANTS than those granted to legitimate customers.
> (c) The RJR DEFENDANTS have increased their market share by adding to their customer base to the detriment of their competitors.
> (d) The RJR DEFENDANTS have enhanced the market value of their tobacco operations, while decreasing the market value of their competitors' operations.[33]

The tobacco industry has always claimed that high taxes are the main cause of smuggling. However, as the trade journal *Tobacco International* observes in its article on Iraq: 'No taxes are levied on cigarettes in Iraq. Government income from petroleum revenues tends to limit efforts to collect taxes from the ways some countries do.'[34] Smuggling in Iraq is not caused by high taxes, but by the competition of tobacco companies to increase the market share of their international cigarette brands.

RJR and JTI are not the only companies that have been accused of smuggling into Iraq. Almost a thousand police and customs agents raided the Hamburg offices of the German tobacco company, Reemtsma Tobacco, on 14 January 2003 on suspicions that the German cigarette manufacturer, which is owned by Imperial Tobacco Group, channelled cigarettes onto the black market and breached the UN trade embargo on Iraq.

Investigations have been opened into at least one board member and several other senior executives. The primary suspicion, outlined in a statement from the prosecutor's office in Essen, is that Reemtsma Tobacco transferred millions of untaxed cigarettes from German ports to third countries and then allowed them to be smuggled back into Germany. One of the destinations was Iraq. The company is being investigated not only for money laundering and tax evasion but also for sanctions busting.[35]

4.3 Tobacco industry internal documents

Tobacco industry internal documents also describe Cyprus as the traditional transit point for cigarettes into the Middle East. Documents obtained by the Center for Public Integrity show that as early as 1976, BAT's American subsidiary Brown & Williamson employed the services of Kental Traders Ltd. of Cyprus to handle DNP or "transit" cigarettes into Ethiopia, Jordan, Somalia, Sudan, Syrian Arab Republic, Turkey and Yemen with hope of opening routes into the Islamic Republic of Iran and Iraq.[36]

BAT and Brown & Williamson's long-term involvement in what their own documents indicate was an illegal business became evident when two separate quarrels arose in 1983 involving Kental Traders Ltd. and rival tobacco agents fighting over the smuggling trade in Lebanon.[37]

The first quarrel was over 2970 cases of BAT cigarettes smuggled into Lebanon by Kental Traders Ltd. BAT had contracted with Kental Traders Ltd. to pay a Lebanese trader named Souren Khanamirian US$ 2 for every case of cigarettes smuggled into Lebanon. At the time, Khanamirian was a board member of The Regie, Lebanon's government-controlled tobacco monopoly. Documents obtained by the Center for Public Integrity show that Khanamirian complained in 1983 to BAT that he had not received his commission on the shipment. BAT settled the matter in March 1983 by paying the commission from its own accounts directly to Khanamirian. BAT then billed Kental Traders Ltd. for reimbursement. The BAT document notes that Khanamirian was paid a commission for 'transit deliveries that go to Lebanon.'[38]

The second quarrel broke out in 1984 in the midst of the Lebanese civil war when Brown & Williamson's official agent in Lebanon, Albert Abela, was found to be selling DNP cigarettes in Lebanon and Syria.[39]

Concerned that Abela was selling DNP cigarettes in his own territory, Kental Traders Ltd. wrote to Brown & Williamson that:

> . . . your Lebanese agent should not be involved directly or indirectly because by participating in the transit business, which is unlawful and a criminal offence in Lebanon, when the time of normalization will come, both Abela and Brown and Williamson might have catastrophic repercussions and of course being black-listed.
>
> This is the reason why Philip Morris, RJ Reynolds and other companies never involved their Lebanese agents directly or indirectly in the transit business.[40]

This letter is interesting as it implies that the traders know that the transit business is illegal and that it is not wise to have direct links between the transit trade and the tobacco companies. In internal correspondence of Brown & Williamson between WL Telling and RJ Pritchard concerning the Abela case, Telling would defend the same ideas:

> The region is also concerned that Brown & Williamson is at considerable risk by selling to an official agent in Lebanon, who is directly involved in DNP ex-Cyprus. Brown & Williamson is the only major cigarettes manufacture who is in this position and could be prohibited from doing business in Lebanon if Syria or the fundamentalist Moslems gain control of the Government and effective work with the Regie to reduce transit.[41]

Brown & Williamson was monitoring the transit operations in Lebanon very closely: 'cigarettes supplied to Kental and Pelligrini [the organization of Abela] are separately coded and consequently identifiable when found in markets other than intended by Brown & Williamson.' And decided: 'The Lebanese transit market is insufficient to support the activities of two transit agents.'[42]

Monitoring of the transit trade by tracing identifiable codes on the packs in specific markets was not unusual, even if it was recognized in a BAT letter that 'wholesalers are very wary when it comes to illegal stocks and therefore I cannot confirm or otherwise whether this code is actually available with the wholesalers.'[43]

In other correspondence, the delicate characteristic of the "transit" and DNP trade in Lebanon is also stressed. In internal correspondence of Brown & Williamson between WL Telling and JR Anders, the following comment is made:

> We received warnings from the Regie at least twice a year regarding DNP stock. With the thousands of cases of L&M, Chesterfield and other brands being sold through DNP into Lebanon, I would be surprised if two containers of KDL (Kent de Luxe) provoked the latest Regie warning sent to manufacturers.[44]

Smuggling into the Syrian Arab Republic seems to occur through Lebanon, mostly from Cyprus, as explained in a note of Kental Traders Ltd: 'So in 1976 we brought to Cyprus from Lebanon and Syria the professionals in the transit business and we organized a very well studied plan to cover the whole territory of Lebanon and also the penetration into Syria.' Total sales out of Cyprus to Lebanon/Syrian Arab Republic from all tobacco companies in the period 1976 to June 1984 was estimated at 38.6 billion cigarettes (of which 27 billion were from Philip Morris, 4.4 billion were from RJR and 5.2 billion were from Brown & Williamson).[45]

In a document from Emil Schildt (the BAT transit coordinator located in Hamburg) on the company World Wide Corporation/ Charles Hadkinson, it is noted that:

> CH (Charles Hadkinson) stated the destination for the 1st 17 MIO. BHSF (Benson & Hedges Special Filter) to be Syria. As it is known Syria has a Tobacco Regie and no financial possibilities to import cigarettes officially. Although CH confirmed to be able to bring the cigarettes illegally into the Syrian market, i.e. via Lattakia/Syria, this is definitively impossible. The only way in this case would have been possible via Lebanon.[46]

Both the possible and impossible illegal routes to the Syrian Arab Republic were described in the internal BAT documents.

5. A MARKETING STRATEGY DILEMMA: LEGAL OR ILLEGAL IMPORTS?

The objective of each company is to sell more products and to make higher profits. Penetrating new markets and increasing the market share of its products is part of the strategy to achieve this objective. An obstacle for multinational tobacco companies is trade restrictions and/or embargoes. Some markets are closed to foreign companies or allow imported cigarettes only under certain strict conditions. Legal imports may, for instance, only be authorized after the payment of high import tariffs or through expensive licensing schemes, which could result in legally imported products that are non-competitive. The avoidance of import restrictions may result in high smuggling rates. Tobacco companies consider that these smuggling rates are beyond their control as they are “not responsible for policing borders”. In cases of high tariffs or a state monopoly, international cigarettes will be smuggled into the country, weakening the position of the state monopoly and delivering the market into the hands of the multinationals. The choice between using legal or illegal imports to penetrate a specific market is often discussed in the internal tobacco industry documents.

In a document of the Sorepex Company (a company with whom BAT has a close relationship in Africa) to BAT, two possibilities for the transit trade in Chad are discussed: either transit trade with a legal licence, which would make the price of the cigarettes non-competitive, or transit trade without licence, which would mean an illegal transfer of money.[47]

In a BAT report on the status in Viet Nam, the advantages of legal and illegal imports are described in the following way:

> Cigarette imports were banned 6 years ago. Smuggled sales into Vietnam are currently estimated at approximately 7 billion p.a. . . .
>
> SE [State Express] 555 is the major smuggled brand and there is no doubt it has a tremendous image and sales potential in the country. BAT has resisted to manufacture 555 in Vietnam due both to concerns about the ability to sell the brand as a locally manufactured product and to the possible impact of a licence outside Vietnam. However Vinataba [the Vietnamese state tobacco company] sees a licence of 555 as an attractive opportunity for the JV [joint venture] and believe that BAT’s opposition to a licence is simply “to protect the smuggling” trade.[48]

In a BAT document which estimated the total cigarette market in the Middle East at 108 billion cigarettes, it was also recognized that:

> Iran, Iraq, Syria and Lebanon have a Government monopoly on cigarette manufacturing and in Syria and Lebanon on imports as well . . . Lebanon permits free imports. Syria allows limited quantities whilst there is a complete ban in Iran. Despite this, or because of this, 62% of Iran’s market is Transit.[49]

Restrictions or bans on imports represent obstacles to the conquer of specific markets. In the minutes of a BAT “transit meeting” held on the 16 March 1987, the different options for the trade in the Middle East were discussed: either legally (and pay the import licenses) or illegally (through "transit"). For Sudan the request for legitimate import could be turned down:

> . . .because it was very unlikely that Kental's [which is the company with whom BAT collaborates in Cyprus] customers would obtain import licenses. . . . If there are opportunities for transit to Iraq these should be taken up. If there are opportunities for transit to Iran these should be taken up. Jordan — opportunities for legal imports to be fully investigated before we seek transit opportunities.[50]

A central person at this transit meeting was Emil Schildt. Emil Schildt was appointed by BAT in 1972 as their transit-coordinator and has offices in Hamburg. The company was well aware that transit trade was "delicate" business:

> The German BAT insisted that ES [Emil Schildt] should not establish his office in the BAT-Hamburg-Building . . . One of the main reasons for establishing this office independent from a BAT company was, that due to the delicate business the customers could visit Hamburg-office without involving a BAT company directly.[51]

The main problem for international tobacco companies was how to do deal with trade restrictions: illegal imports were one option, but more collaboration with the state monopolies was another. While you may start illegally in the short term, the ultimate aim to do legal business in the long term.

One BAT document explained that the key issue for BAT was 'to improve penetration of the key opportunity such as Iran and Iraq by building up the duty free business initially and subsequently through joint ventures, licensing etc.'[52]

In its *Iran Business Plan 1992–94*, BAT noted:

> On the 18th February 1991, the Supreme Economic Committee of Iran announced the liberalisation of the Iranian Market for direct imports of cigarettes and tobacco, thus breaking the monopoly of ITC (Iran Tobacco Company). However, little progress has been made to date.
>
> All imported product enters the market via Dubai to the southern ports of Iran or through Turkey ex Cyprus. From there it is transported by bus or truck to large secure warehouses on the outskirts of major cities. As this activity is considered smuggling little is known of distribution thereafter, however, all brands, notably Winston and Marlboro, are clearly visible at point of sale.[53]

An additional problem for BAT was the strong presence of RJR in the illegal market in the Islamic Republic of Iran. This presence of (illegal) Winston in the Islamic Republic of Iran was well-known. A 1991 Reuters report noted:

> An official of the state tobacco company said last year Iranian's smoked 30 billion cigarettes a year — divided about equally between domestic production, government imports and illegal imports mostly smuggled in across the Gulf. Despite occasional crackdowns, smuggled Winston are sold on every corner.[54]

In 1994, RJR would estimate the illegal or tax-free market share in the Islamic Republic of Iran at 68% and the RJR market share (mainly with Winston and Magna) at 50%.[55]

In its 1994 business plan, RJR discussed the respective merits of both the tax-free smuggling option and legal direct import as tactics to conquer the Iranian market:

Tax free:
- volatile due to loss in purchase power, currency devaluation and strong ITC (Iranian Tobacco Company)/ government clamp down
- Channels Gulf (South) Mersin (North New).

Direct Winston Importation:
- now only possible through ITC,
- order confirmed 1 BN for 1994,
- involves lower margins and higher finance risk[56]

Both options were also discussed for the Syrian Arab Republic in the RJR business plan:

Syria:
- Significant under supply by local production (35%). Large Tax Free business and direct imports recommenced in August 1993.
- RJR/JTI elected to go direct rather than Tax Free and currently represent 52% of direct segment.
- Viewed as being good guys and well positioned to benefit from changes in Government attitude to boosting local production through outside partners[57]

In the Syrian Arab Republic, RJR took the "legal" option as the best way to please the government. In the Islamic Republic of Iran, RJR was also promoting in its objectives and strategies "local cooperation" with ITC:

RJR needs to invest and become exclusive foreign/joint venture partner for ITC in Rash and possibly in Tehran /Hashtgrad facilities:
- To influence ITC's market control plans from within.
- To avoid PMI and Marlboro displacing RJR and Winston.[58]

Illegal imports may be an option in order to penetrate a market, but the ultimate goal in the long term should be official imports or production.

The strategy of the international tobacco companies in the Islamic Republic of Iran became a success story in 2002, when the state tobacco authority signed an import and production deal with four cigarette companies in a bid to cut down cigarette smuggling.[59] The deal was strongly welcomed by the trade journal *Tobacco Reporter*: 'Under the contracts, each company is allowed to legally import its products into Iran's strictly controlled tobacco market. BAT and JTI have also granted permission to produce their products in Iran. *Local production is the golden key for multinationals* [emphasis added].'[60]

It is a clear example of how successful the strategy of international tobacco companies can be. The stages of the strategy are:

1. Penetrate the market through illegal imports.

2. Weaken the state monopoly by reducing the market share of domestic brands and legal sales.

3. Convince the authorities to privatize or open the market.

4. Authorize the legal import and/or production of foreign brands.

5. Stop fuelling the illegal market and take over the market in a legal way.

The consequences of privatization may be far reaching. Reviews of privatized industries find that privatization leads to improved productivity and efficiency, which usually also implies an increase of production. But if increased production by cigarette producers is accompanied by higher consumption, this will have a negative impact on public health. To counter the potential negative effects of privatization, De Beyer and Yurekli of the World Bank made a plea for the introduction of a regulatory framework to correct the worst market failures by including measures to adequately inform citizens of the health risks of tobacco use, protect non-smokers from exposure to second-hand smoke in public places and introduce a comprehensive ban on all tobacco product marketing and promotion.[61]

6. SOLUTIONS

There is no legal obligation for tobacco companies to inform authorities of the final destination of their products. The line of the multinationals is that they sell their products legally to transit traders and that their responsibility ends there. The concern for the authorities is that annually 300 to 400 billion cigarettes disappear during their international transport and that measures should be taken to ensure that cigarettes arrive at their intended destination. The tobacco industry has been accused of exporting to entities or destinations where they know that legitimate demand for their cigarettes cannot possibly account for the orders made and the massive quantities delivered.[62] In the Middle East, billions of cigarettes have been exported to Cyprus and Lebanon that were in fact destined for the illegal market in Iraq and the Islamic Republic of Iran. As part of a strategy to prevent disappearance during international transport, tobacco companies should be obliged to determine the final destination of their products at the time of manufacture and to supply their products only where there is legitimate demand for the product in the intended final market.

Given this interpretation of the problem, we believe the essence of the government’s response should be to create a liability regime in which the manufacturer is made responsible for the safe transport of the cigarettes that leave the factory gate. This could be achieved, in principle, by making them show where all the cigarettes end up. This could happen if the measures proposed below were adopted. It is important to place the responsibility on the tobacco manufacturers. The evidence for their role in smuggling is so compelling that the onus should be placed firmly on them to demonstrate correct behaviour. It should be their responsibility to *prove* that their cigarettes have reached the intended legitimate end markets.[63]

This reversal of the burden of proof is important. Among other things, it means that traditional relationships, especially that between customs departments and industries, have to be questioned when the product concerned is tobacco. Tobacco is a special case and must be treated as a special case. It is hard to imagine any other consumer product being allowed to evade tax on such a scale—one third of global exports finding their way to the contraband market.

Manufacturers should be required to have covert and overt markings on all packages of tobacco products, which would identify the manufacturer, and date and location of manufacture, and another identifier, which would show the chain of custody—wholesaler, exporter, distributor and end market. The onus should be placed on the manufacturer (through record keeping, and tracing and tracking systems) to prove that the cigarettes that leave the factory arrive in their intended end market. Manufacturers should know in advance to which country they export their cigarettes. Most countries have country specific health warnings and/or tax stamps or markings. These can only be printed or attached at the place of manufacturing. Manufacturers exporting their products should provide information on the country for which the cigarettes are finally destined, provide evidence that there is a market for these products in that specific country, have prominent markings on the products which show the destination country, provide the list of all intermediate traders and have covert markings which should contain this intermediate trader information.

If tobacco smuggling is to be tackled successfully it will require international collaboration and the likeliest mechanism for achieving this is the WHO Framework Convention on Tobacco Control (FCTC). In the text of the FCTC, article 15 deals with illicit trade of tobacco products, such as markings, monitoring, data collection, cooperation, penalties, confiscation and licensing. According to the Framework Convention Alliance (FCA) which compromises 180 nongovernmental organizations from more than 70 countries, the text of article 15 contains potentially strong commitments, but of a very general nature. The development of a protocol would make these commitments specific, meaningful and compatible between countries. A protocol could specify the minimum controls applied, the documentation to be used and address the question of mutual assistance and cooperation between Parties in action against the illicit tobacco trade. Negotiations for a protocol should start without delay.[64]

Annex 1

ARTICLE 15 OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL, ADOPTED WITH RESOLUTION WHA 56.1, 21 MAY 2003

Part IV: Measures relating to the reduction of the supply of tobacco

Article 15

Illicit trade in tobacco products

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.

2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:

(a) require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: *"Sales only allowed in (insert name of the country, subnational, regional or federal unit)"* or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and

(b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.

4. With a view to eliminating illicit trade in tobacco products, each Party shall:

(a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;

(b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;

(c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;

(d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and

(e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.

5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21.

6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.

7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

Annex 2

REFERENCES

[1] Joossens L and Raw M. Turning off the tap…, An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling, London, 2002.

[2] Joossens L. How to combat tobacco smuggling through the WHO Framework Convention on Tobacco Control. Presentation at the Second World Conference on Modern Criminal Investigation, Organized Crime and Human Rights, Durban, 7 December 2001.

[3] BATco Global Five Year Plan 1994–1998. Bates number 50018206-10.

[4] *The Concise Oxford Dictionary*, tenth edition, 2001.

[5] European Parliament. *Committee of inquiry into the Community Transit System. Final report and recommendations. Volume I*. Brussels, February 1997.

[6] *Curbing the epidemic: governments and the economics of tobacco control*. Washington DC, World Bank, 1999.

[7] Campaign for Tobacco-Free Kids. *Illegal pathways to illegal profits. The cigarette companies and international smuggling.* Washington DC, May 2001.

[8] Ibid.

[9] BAT letter dated 25 August 1989. BAT Bates No. 302000021.

[10] BAT internal document. North-East Argentina BAT 1992 marketing plan. Bates No. 503918336/503918347.

[11] BAT internal document, file owner Keith Dunt. Venezuelan market definitions and assumptions. Undated, Bates No. 500025647.

[12] BAT internal document, Brendan Brady. BATco Q&A overseas trade. 25 May 1993, Bates No. 502553111-4.

[13] BAT internal document. AMESCA organisation proposals. Middle East Executive. Summary. Undated, Bates No. 503861786-9.

[14] World Health Organization. *Coveting Iran: The infiltration and exploitation of Iran by global cigarette companies*. Cairo, September 2001.

[15] Ibid.

[16] Ibid.

[17] Puckett A. Up for grabs. The tobacco industry's newest competitive player: Iran. *Tobacco Reporter*, January 2003, 24–7.

[18] BAT (UK and Export) limited. Company plan 1991–1995. Part 1. December 1990, Bates No. 303610452-524.

[19] Parker J. Iraq depending more on imported cigarettes. *Tobacco International*, October 2002, 26–30.

[20] Parker J. US cigarette exports set to decline further. *World Tobacco*, July 2001, 41–4.

[21] Parker J. Lebanon, an expanding US cigarette exports. *Tobacco International*, October 2001, 35.

[22] Joossens L and Raw M. Turning off the tap…, An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling. London, 2002.

[23] Parker J. Greek cigarette exports. Flourish to Middle East Markets. *Tobacco International*, October 2002, 33–7.

[24] Ibid.

[25] Ibid..

[26] Parker J. Iraq depending more on imported cigarettes. *Tobacco International*, October 2002, 26–30.

[27] Ibid.

[28] Ibid.

[29] Declaration of John J Halloran, JR in support of the motion of the European Community and Member States to submit a proffer of evidence concerning the link between cigarette smuggling in this case and terrorism, United States District Court Eastern District of New York, January 2002.

[30]. Mr Bush and tobacco. *The Washington Post*. Editorial. 25 November 2002, 14.

[31] Stecklow S. Seeking a smoking gun behind US cigarettes being sold in Baghdad. *The Wall Street Journal,* 31 October 2002, 1–2.

[32] European Community et al. Versus. RJR Nabisco, Inc. et al. United States District Court, Eastern District of New York, October 2002. http://www.tobaccofreekids.org/pressoffice/rjrlawsuit.pdf

[33] Ibid.

[34] Parker J. Iraq depending more on imported cigarettes. *Tobacco International*, October 2002, 26–30.

[35]Mansell I and Boyes R. Hamburg police raid Reemtsma offices. *The Times*, 15 January 2003.

[36] International Consortium of Investigative Journalists. Tobacco Companies Linked to Criminal Organizations in Cigarette Smuggling: Cyprus and the Middle East. 3 March 2001, www.public-i.org/story_07_030301.htm.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Kental Traders Ltd. Note. Brief history of Kental Traders Ltd. Nicosia/Cyprus, 10 October 1984,. Bates No. 204400918-24.

[41] Brown & Williamson (Europe). WL Telling to RJ Pritchard, Brown & Williamson (USA), subject Abela. 25 March 1986. Bates No. 204400914-7.

[42] Letter from T Cardwell to R Pritchard, 29 April 1997 with Interim Report Transit Operations Middle East. Bates No. 204400822-7.

[43] Letter from SP Morris (BAT UK and Export) limited to T Rubai (Easa Saleh Al Gurg Company in Dubai) concerning Transit Trade in the Abu Dhabi market. 8 July 1987. Bates No. 301713877-8.

[44] Brown & Williamson (Europe). WLTelling to JR Anders, Your Fax dated May 28. May 29 1987. Bates No. 204400876-7.

[45] Kental Traders Ltd. Note. Brief history of Kental Traders Ltd. Nicosia, Cyprus, 10 October 1984 Bates No. 204400918-24.

[46] Emil Schildt. Note Re: World Wide Corporation/ Charles Hadkinson. Summary of information on hand re Syria 1988. 30 January 1988. Bates No. 301713525-6.

[47] N.Chevaly (Sorepex) to R.Bongaard (Sorepex), R.Howe (BAT) and N.Binst (Sorepex). Transit vers le Soudan. Decembre 1987. Bates No. 301773797. ‘Au Tchad, deux possibilité également:- transit avec une licence autorisant le transfert de devises, mais coût de cette licence: 15 000 FCFA par carton qui doivent être payés lors de la délivrance de la licence; dans ces conditions le prix des cigarettes n’est plus compétitif. -transit sans licence, imposant donc un transfert illégal de devises.’

[48] BAT internal document, BJ Kemball to BD Bramsley. Vietnam Status Report. 15 May 1995. Bates No. 500045875-91.

[49] BAT internal document. AMESCA Organisation proposals. Middle East Executive. Summary, undated. Bates No. 503861786-9.

[50]BAT internal document. Minutes of transit meeting held on 16 March 1987. Bates No. 301713899-901.

[51] BAT internal document, E.Schildt, Hamburg-office. 21 March 1983. Bates No. 301713719-25.

[52] Ibid.

[53] *Iran Business Plan, 1992–1996*. BAT Bates No. 300051641-666.

[54] Reuters library report. BC cycle: Iranian Parliament passes anti-smoking bill. 8 May 1991.

[55] SBU Middle East/Near East/Africa business review and projects update. 29 July 1994. RJR Bates No. 513214977-5199.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Iran inks cigarette deal with four majors. *IranMania News*. 20 November 2002.

[60] Puckett A. Up for grabs. The tobacco industry's newest competitive player: Iran. *Tobacco Reporter*, January 2003, 24–7.

[61] De Beyer J and Yurekli A. Privatisation of state-owned tobacco enterprises in Turkey and Ukraine. In: *Economic, social and health issues in tobacco control*. Report of a WHO international meeting. Centre for Health Development, World Health Organization, Japan, Kobe, 3–4 December 2003, 169–18

[62] Campaign for Tobacco-Free Kids, Illegal pathways to illegal profits. The cigarette companies and international smuggling. Washington DC, May 2001.

[63] Joossens L, Raw M, Turning off the tap…, An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling. London, 2002.

[64] Framework Convention Alliance (FCA). Briefing on the Chair's text for INB 6. January 2003.