



Tobacco Illicit Trade Protocol –





Please note we have only listed and responded to applicable questions in this response.

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government. The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders. We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info).

Trading standards services have been at the forefront of tackling the illicit trade at local and regional level working alongside colleagues from HMRC and Border Force. The CTSI has supported this work by providing operational guidance and coordinated funding (from the Department of Health) for the provision of tobacco detection dogs to assist in this challenging environment. Operation Henry 2 is live at the time of preparing this response; this follows the successful Operation Henry (1) in 2014¹, where 67 of 81 participating councils across England detected and seized illicit tobacco products.

The Institute is aware of many challenges faced by local trading standards services in seeking to tackle the illicit tobacco trade. In committing to the protection of honest businesses, we believe that despite some concerns about the potential administrative impact of a licensing scheme, particularly on small businesses, the benefits of such a proposal to legitimate traders should far outweigh any burden.

CTSI has no direct or indirect links with the tobacco industry and receives no industry funding.

It is essential that tobacco manufacturing equipment is licensed to:

¹ Operation Henry (2014) ; Published by Trading Standard Institute available at : [file:///C:/Users/tobaccocontrol/Downloads/OH_FINAL_FOR_PUBLICATION%20\(1\).pdf](file:///C:/Users/tobaccocontrol/Downloads/OH_FINAL_FOR_PUBLICATION%20(1).pdf) accessed online 13th April 2016



Meet the United Kingdom's obligations under the Article 6 of the WHO Illicit Trade Protocol (ITP)

Ensure the maximum impact on illicit trade of the tracking and tracing system for tobacco products required under Article 15 of the EU Tobacco Products Directive (TPD)² and Article 8 of the ITP, and the security feature requirements of Article 16 of the TPD.

Ensure that relevant machinery does not enter the illicit production market, particularly in the form of second hand or reconditioned equipment; this is a point that the Institute has received reports on as being of concern to trading standards services.

For this purpose, we define tobacco manufacturing equipment as meaning any machine or other equipment designed or modified specifically for the manufacture of a tobacco product, and further define 'tobacco product' as a product that can be consumed and consists, even partly, of tobacco;³

We consider that the licensing requirement should go wider than 'manufacturers' and should include 'producers' of machines, using the EU definition used in other legislation 'producer' means:

(i) the manufacturer of the product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;

(ii) the manufacturer's representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product;

(iii) other professionals in the supply chain⁴

Point (iii) adds to this definition of suppliers of machinery i.e.

Suppliers of new machines or components (they have not manufactured)

Suppliers of second hand or reconditioned machines

Second hand machines can and do enter the illicit tobacco production market and have



Yes. CTSI believes that an effective licensing system should control the import and export of tobacco manufacturing equipment. The system should place a responsibility on all producers to obtain a licence for the supply of tobacco machinery and a responsibility



We suggest that, at retail level, this should include the widest range of non-compliance for example, illegal sales to under 18s, breaches of the tobacco display regulations as well as the supply of illicit tobacco products. We strongly suggest that licences should be regarded as a privilege and not an automatic right.

We are guided in making a response to this question by Article 23.3 of the TPD.

This requires that:

“Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures that are necessary to ensure that these penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive. Any financial administrative penalty that may be imposed as a result of an intentional infringement may be such as to offset the economic advantage sought through the infringement”.

Sanctions must be proportionate to the nature of the non-compliance. Given the wide variety of businesses engaged in the supply chain this is an important consideration.

For example, non-compliance might include:

1. Technical infringements by legitimate businesses due to oversight or errors. A recently expired licence for example ,through to
2. The deliberate avoidance of holding a licence by those involved in smuggling and criminal supply chains (OCGs)

At the very least, we believe that consideration should be given to the following sanctions:

Fixed penalty notices available to deal with minor infringements where some form of penalty is justified, and the business accepts that they have acted unlawfully
Fines proportionate to the size of the commercial entity that is in breach of licence conditions
Temporary or permanent deprivation of licence

For the OCGs that operate outside the licensing system, the criminal offence of supplying tobacco, or to possess or supply products, without a licence should be a criminal offence, punishable at Level 5 on the standard scale, (an unlimited fine or up to six months in prison) . Consideration should also be given to the seizure of assets under the Proceeds of Crime Act 2002.

CTSI has for some time held the view that the sanctions currently available to TSS to tackle the supply of illicit tobacco are inadequate. We also therefore welcome the announcement in the Budget 2016 that “HMRC will consult on strengthening sanctions to tackle tobacco fraud”, and we will be responding to this consultation in due course.



tobacco-



Straightforward removal of ANY tobacco whether legitimate or not if found on unlicensed premises;

Support for legitimate businesses compliant with tobacco control legislation

Removal of the source of "affordable" tobacco. The availability of cheap tobacco undermines efforts of those that want to quit and allows young people easier access



This raises an important issue. A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 40% in their budgets since 2010 and staff numbers have fallen by 50% in the same period.

Operation Henry demonstrated that trade in illicit product is widespread, and that organised crime groups have moved into this sector. The investigation of offences and subsequent enforcement action has b