

Fighting Illicit Trade: Licensing



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INTERNATIONAL

September 2018

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Executive Summary

Philip Morris International (PMI) is fully committed to fighting the illicit tobacco trade and believes a more robust licensing regime is critical to combatting this global challenge.

Everyone must contribute to combatting trade in illicit tobacco products. It affects not only our industry, but also governments, and ordinary people. It funds organized crime and terrorism, deprives public authorities of tax revenues and misleads consumers.

Licensing is critical if we are to ensure effective control over relevant participants in the tobacco supply chain. Effective licensing systems will help secure the supply chain and reducing illicit trade.

At the same time, however, an effective licensing regime should be proportionate

and only essential tobacco manufacturing equipment should be subject to the requirements. We also believe licenses should be subject to periodic review and monitoring by competent national authorities. For example, a public consultation process in the United Kingdom, conducted by the HM Revenue & Customs (HMRC), showed wide acceptance of such a balance.

In this paper, we share the experiences and insights we have gained in implementing licensing regimes for our products, and essential manufacturing equipment.

The Issue

Effective licensing regimes for tobacco manufacturers, importers and exporters – and essential parts of tobacco manufacturing equipment – help secure the supply chain by ensuring that only legitimate manufacturers can produce, import and export tobacco products.

Industry has a big role to play in this effort. It can provide authorities with details of tobacco products and manufacturing equipment, and give information about product descriptions, names, registered trademarks, designs, brands, models or makes, and serial numbers of manufacturing equipment. Such data make all industry participants accountable, regardless of their size, and help make authorities better informed.

License holders, in turn, should be required to help prevent the diversion of tobacco products, key components and manufacturing machinery into illicit trade channels, thus further securing the supply chain.

By enacting appropriate licensing regimes, competent authorities can better monitor the industry and more easily identify those involved in illicit tobacco operations.

Licensing regimes also can help reduce the prevalence of ‘illicit white’ cigarettes, also known as ‘termite brands’ – which are cigarettes legally manufactured, but shipped, imported and sold illegally in other markets.

We support the implementation of licensing regimes or other equivalent control mechanisms which are proportionate and closely tailored in order to meet the intended purpose of reducing illicit trade, without creating unnecessary additional burden or cost.

What we think about Licensing

Proportionate

PMI fully supports the licensing of manufacturers of tobacco products and manufacturing equipment, and understands how implementing effective licensing schemes can help prevent the illicit trade in tobacco.

The emphasis should be on proportionate, effective and practical licensing schemes, guaranteeing that only legitimate actors are involved in the manufacture, import or export of tobacco products and manufacturing equipment.

Licensing schemes adopted in each country should take into account national and regional considerations, and be adapted to the specificities and requirements of the local market in order to ensure that the most effective measures are implemented.

Machinery should be licensed

Governments can achieve the aims of reducing illicit trade without creating unnecessary bureaucracy and costs by licensing manufacturers and only machinery parts that are fundamental to

the manufacturing process.

The scope of a licensing scheme for machinery should be carefully constructed and narrowly tailored. For example, cigarette-producing machines have up to 20,000 parts; it is not feasible to require a license for every individual part. By requiring licenses for key components, we can combat illicit trade without imposing additional unnecessary burden and cost.



Effective review mechanisms

We believe that all licensing regimes or equivalent approval systems should include periodic review and monitoring. Those failing to meet compliance standards should face the possibility of losing their licenses.

Build on experience

The results of the 2016 HMRC public consultation process show that the UK government reached similar conclusions on putting in place an effective and efficient tobacco licensing regime.

HMRC agreed that *“a licensing scheme for tobacco manufacturing machinery should cover only machinery used to directly manufacture tobacco products and that to include machines which make labels or packing would unnecessarily widen the scope of the scheme with increased burdens on business for little or no benefit.”*¹

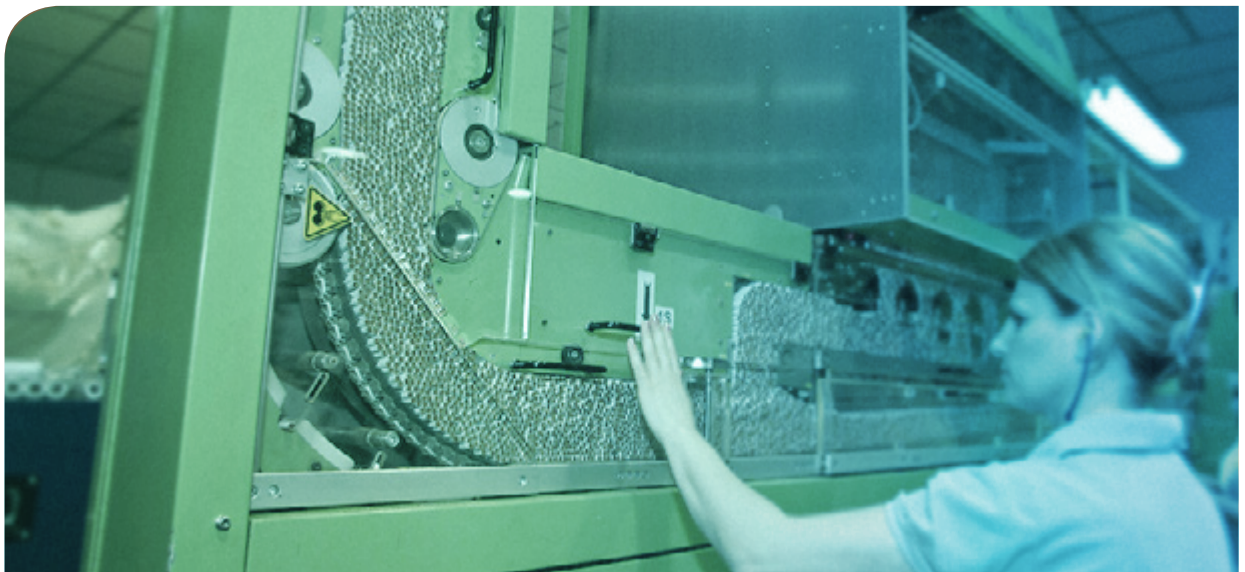
It also recognized the need to *“avoid over regulation and duplication of controls, highlighting that the design of the licensing*

scheme for tobacco manufacturing machinery will be fully integrated with the registration of tobacco factories.”

The government proposed to implement *“a simple licensing scheme for all tobacco manufacturing machinery in the UK including machinery being used and machinery being imported, exported or destroyed.”*

Concerning licensing conditions, the HRMC stated that *“(…) a fit and proper person test should be applied for all applicants for a license. License holders will be subject to inspection and checks that they are complying with the terms of their license. In the UK registered manufacturers of tobacco products are already required to comply with legislation designed to tackle the illicit market and this will continue.”*

¹ HMRC Consultation to Tobacco Illicit Trade Protocol Summary of Responses - licensing (or equivalent) of the supply chain https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/657105/Tobacco_Illicit_Trade_Protocol_-_licensing_or_equivalent_of_the_supply_chain_-_summary_of_responses.pdf



The government proposed “a light touch licensing system for tobacco manufacturing machinery which will aim to minimize administrative burdens. Applicants who already have a registered factory will have new requirements closely linked to existing registrations to avoid any duplication.”

Finally, “(...) the government decided that it will not charge a fee for a license for a tobacco

manufacturing machine, which will keep the costs to legitimate businesses to a minimum.”

We fully support the conclusions of the HMRC consultation process, and believe an appropriate licensing system should be proportionate, without unduly increasing cost and burden. This will allow for the proper monitoring and inspection of all distributed licenses.

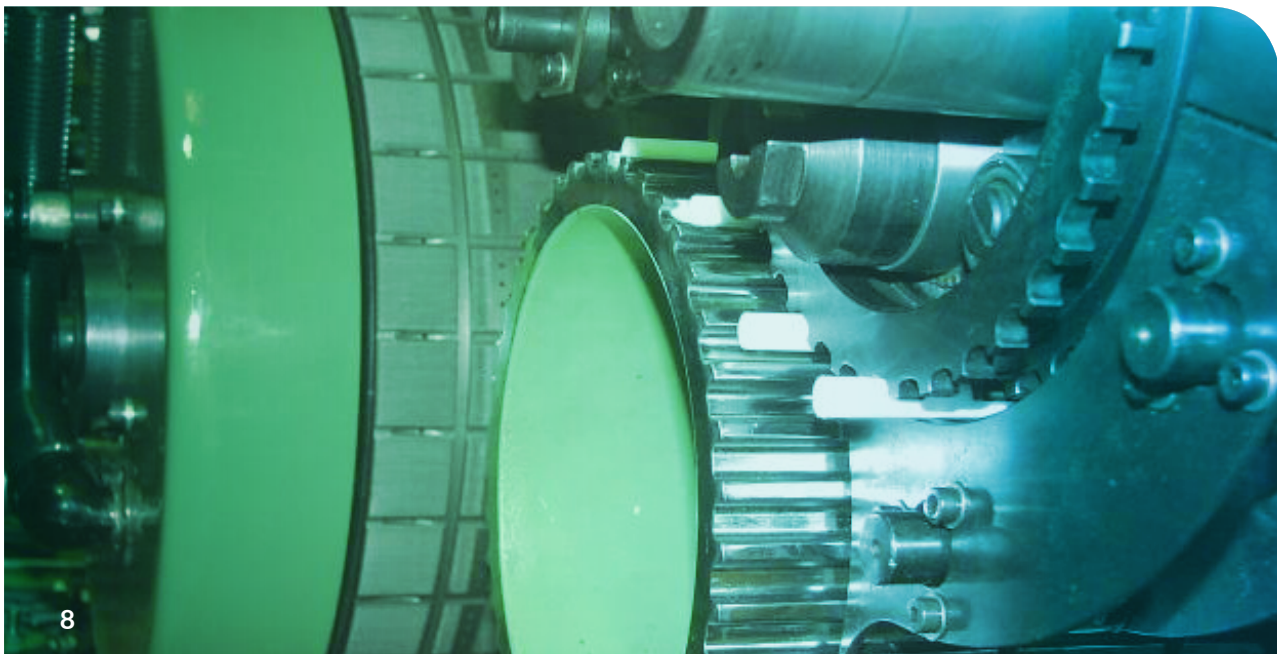
Conclusion

We can fight the illicit trade in tobacco products and reduce the growing problem of “illicit whites” by licensing tobacco manufacturers and the essential elements of the machinery used to produce tobacco products.

For licensing regimes to be effective, they must be proportionate. Beyond licensing manufacturers, regimes should apply for machinery essential to manufacturing tobacco products. These licensing regimes should include monitoring systems, with provisions for revoking licenses of those failing to comply with specified requirements.

In support of these principles, we concur with the reasoning of the HMRC in its public consultation process. We support a system that integrates machinery licensing with registration of factories, allowing for easier audit and inspection.

By building on these lessons, we believe implementation of licensing regimes or equivalent approval processes can secure the supply chain and reduce illicit trade.



APPENDIX

Existing Legal Instruments

The FCTC Protocol to Eliminate Illicit Trade in Tobacco Products (The Protocol) was drafted as an international treaty aligned with the 2003 WHO Framework Convention on Tobacco Control (FCTC).

Parties to the FCTC created the Protocol with the objective of eliminating all forms of illicit trade in tobacco products, expanding on the existing Article 15 of the FCTC. WHO refers to the Protocol as a 'global solution to a global problem'.²

The Protocol will enter into force on September 25th, 2018, i.e., 90 days after the 40th ratification which took place on June 27th, 2018. A link to the current list of countries that are Parties to the Protocol can be found [here](#).

The FCTC will then convene the first Meeting of the Parties—the Protocol's governing body—in Geneva from October 8th to 10th, 2018. The meeting will bring together Parties to the Protocol to discuss the practical applications of the treaty. The expected outcome of this meeting is that the Parties to the Protocol become well-equipped for the Protocol's practical transposition into their local laws.

Consisting of 47 Articles overall, the Protocol is divided into three substantive sections relating to (i) Supply Chain Controls; (ii) Offences; and (iii) International Cooperation.

The first (Supply Chain Controls) requires the implementation of measures to preserve the integrity of the tobacco supply chain. These measures seek to prevent the diversion of tobacco products, key components of tobacco products, and manufacturing equipment used to produce tobacco products, into illicit trade channels. The measures addressed in this section include among others the implementation of licensing systems, due diligence processes, record-keeping obligations, provisions for a global tracking and tracing regime, and controls within free trade zones.

² See: http://www.who.int/fctc/Protocol_summary_3Jul18-en.pdf

Section two of the Protocol, covering Offences (Articles 14-19) must be properly implemented at the national levels to enable the Protocol to meet its objectives. These Articles of the Protocol provide guidelines for Parties on how to address unlawful conduct. There are also provisions regarding search and seizure and confiscation of assets. Standards are set for what actions should ideally be considered as unlawful conduct under the Protocol. Importantly, the destruction of illicit products is also highlighted, addressing this very relevant and recurring topic, and related threat of the seized illicit products reappearing on the market.

The final substantive section of the Protocol outlines ways in which parties can cooperate among themselves and with competent international organizations to, among others, share best practices, provide trainings and technical assistance.

This section encourages Parties to share general information regarding seizures of tobacco products and information on whether taxes have been evaded, the quantity or value of the production of tobacco products, and methods used in illicit trade.

Illicit trade damages society, resulting in lost tax revenues, increased criminality, and enhanced access to cigarettes by youth. PMI is very encouraged by the prospect of joining forces with relevant stakeholders and other legitimate tobacco manufacturers to fight the illicit tobacco trade. Successful public-private partnership is the most effective way to fight the issue.

This is why we support and welcome the entry into force of the Protocol.

With international scope and a broad remit to address the multiple drivers of illicit trade, we believe that the Protocol has a key role to play in helping to defeat the black market in tobacco.



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