

REPORT

**STUDY ON THE
ILLICIT TRADE
OF TOBACCO IN
MALAYSIA**



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Executive Summary

The illicit trade of tobacco has undermined the efforts of tobacco control policies by facilitating the uptake of cigarettes amongst youths and adults from lower income households due to its affordability and accessibility. To exacerbate the problem, these products are not subjected to quality and safety controls in accordance with health regulations and legal restrictions such as graphic warnings and banning cigarette sales to minors. Furthermore, the existence of illicit trade results in massive losses to government revenue from excise taxes collected on legal tobacco sales, thus depriving the Ministry of Finance of valuable revenue that remain in the pockets of smugglers.

“Weak monitoring at our borders and the numerous entry points through which cigarettes can be smuggled into the country are key factors accounting for the widespread availability of contraband cigarettes.”

This study seeks to shed light on the illicit cigarette trade problem and to highlight the structural challenges specific to Malaysia. Weak monitoring at our borders and the numerous entry points through which cigarettes can be smuggled into the country are key factors accounting for the widespread availability of contraband cigarettes. In the meantime, the dearth of data to understand the cigarette consumption behaviour of Malaysian population has obscured the gravity of the issue as much as the current policy framework is uninformed and inadequate due to its lack of coherence and collaborative effort between different government agencies.

These factors combined aggravates the adverse effects to public health associated with smoking illicit cigarettes due to their unlicensed and unregulated ingredients, on top of the known side-effects of smoking cigarettes. Moreover, evading taxes on contraband cigarettes has incurred an estimated loss between RM3bil to RM4bil each year— which is approximately a quarter of the projected annual Sales and Service Tax (SST) collection. This revenue could have been utilised to reduce the burden of long-term public health costs associated with tobacco consumption currently borne by the government.

Accordingly, policy solutions must be able to offer cross-cutting structural reforms for the methods which the Malaysian government is currently using to address the illicit trade of tobacco. The government must establish a robust monitoring and evaluation system on the consumption behaviour of Malaysian smokers. Specific allocation of revenue collected from tobacco products should also be channelled towards prevention of illicit trade so that government programmes are sustainably funded to tackle the illegal cigarette trade. Regional collaboration is also vital to facilitate extensive information sharing on the movement of cigarettes across the region.

1. Introduction

The illicit trade of tobacco causes a multitude of problems and are generally highlighted by two profound impacts; reducing the effectiveness of tobacco tax on public health and increasing the overall demand for tobacco products. Intuitively, cigarettes are the obvious and preferred item of choice for smugglers, the product is easily sourced and smuggled while also returning a lucrative profit on investment. The low costs of production coupled with ardent demand for cigarettes have made it one of the most frequently smuggled goods across the world (Allen, 2011), with the black market comprising large amounts of cigarettes sold at below market retail price and without tax. In addition, and unlike the illegal trade of drugs, penalties are much less severe because tobacco products are not high on the priority list of enforcement agents, thus further incentivising smuggling activities.

Countries across the globe have taken up the responsibility to curb, and eventually eradicate, the illicit trade of tobacco. Although this primarily comes in the form of border enforcement and strict customs regulations, it can also be tackled through minimum price controls, graphic pictorial warnings and excise tax policies. These measures are universally understood to be effective tools in reducing the consumption and demand for tobacco, and by extension illicit cigarettes, and have brought about significant benefits by lightening the burden on the healthcare system. Smoking related health problems are classified as non-communicable diseases (NCD) because they are non-infectious and caused by modifiable risk factors such as tobacco usage, environment and lifestyle. The urgency of this issue is reflected in the fact that tobacco itself accounts for 7.2 million deaths annually, this includes exposure to second-hand smoke, and is forecasted to rise substantially in the upcoming years¹.

However, the illicit trade of tobacco undermines the efforts of tobacco control policies by facilitating the uptake of cigarettes amongst adults from lower income households, youths in particular, due to the affordability and accessibility of illicit cigarettes. To exacerbate the problem, these products are not subjected to quality and safety controls in accordance with health regulations and legal restrictions such as graphic warnings and banning cigarette sales to minors. The existence of illicit trade results in massive losses with regards to government revenue from excise taxes collected on legal tobacco sales, thus depriving the Ministry of Finance of valuable revenue that remain in the pockets of smugglers.

International collaboration to tackle this issue was institutionalised with the establishment of the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) on 21 May 2003. Recently, parties of the WHO FCTC negotiated an international treaty, The Protocol to Eliminate Illicit Trade in Tobacco Products, that was adopted on 12 November 2012. The Protocol outlines specific measures for eliminating all instances of illicit tobacco trade. The methods proposed include a global information sharing database in conjunction with a national and

¹ The Global Burden of Diseases, Injuries, and Risk Factors Study 2015.

regional tracking system as well as provisions to closely monitor the supply chain through tracking of sales, record-keeping, international transit of goods, licensing and Internet sales regulation².

1.1 Literature Review

It is well publicised that the most efficient approach to reducing cigarette sales and curb demand is through high taxes on tobacco products. Research studies across the region such as in Indonesia (Marks, 2003), Thailand (Isra, 2003), Vietnam (Eozenou, 2001), China (Hu & Mao, 2002) and South Africa (Van Walbeek, 2000) examined this phenomenon while also gauging the price elasticity of consumers with reference to their income levels. Their common findings infer that a reduction in instances of smoking occurs when the prices of cigarettes increase in line with customs taxation, hence establishing a correlational pattern. With prices being a key determinant of consumption, taxation is the best disincentive to levy on cigarettes with the added value of the policy also increasing government revenue (Ross & Al-Sadat, 2007). In line with that, it is commonly claimed that high excise taxes incentivise smuggling, a notion which is founded on the price differential between legal and illegal cigarette sales. Nevertheless, the majority of statistical evidence has contrasted these claims as the experience of many countries have suggested that no direct correlation exists between high tobacco taxes and smuggling occurrences. A simple example is the case of the Scandinavian countries who levy the highest tax rates on tobacco but experience very few instances of smuggling whereas Central and Eastern European countries who impose much lower taxes suffer rampant illicit tobacco trade (Joossens, 1998). Essentially, domestic cigarette prices are not directly correlated to smuggling but rather, smuggling routes. This pattern is consistent across regions as public health advocates have commonly pointed to economies with high tax burdens experiencing relatively low illicit penetration (Japan in Asia) in contrast to markets with low tobacco taxes but high levels of illicit trading (Colombia in South America)³. Therefore, although higher taxes cause a price disparity that may initially motivate smuggling, data has established other underlying factors that lead to the illicit trade of tobacco.

In the case of South-East Asia, although the governments have implemented stern laws in an effort to cap tobacco consumption, many countries face persistent issues with porous borders which are an ideal target for smugglers (Dr Khetrupal Singh, 2015). As of today, there is a growing knowledge gap surrounding the illicit trade of tobacco whereby robust data collection and statistics would prove extremely valuable in tackling the socio-economic consequences. Even though several research studies on illicit trade have been carried out, existing comprehensive studies were either funded or backed by the tobacco industry (Chen et al., 2015). Data estimates on the illicit consumption of tobacco is historically limited while existing research is typically funded by the tobacco industry in which figures tend to be exaggerated.

² The Protocol to Eliminate Illicit Trade in Tobacco Products.

³ Euromonitor International - Illicit Trade in Tobacco Products (2018).

For instance, a comparative study was conducted in Vietnam and published corresponding results, highlighting the inflated figures promoted by tobacco-funded research (Nguyen et al., 2014). Thus, this represents the urgent need for greater scrutiny on data sources, research independence and more extensive analysis on this matter for Malaysia. The onus lies with the public health sector to mobilise government resources and undertake a serious approach towards developing reliable indicators and a comprehensive database (Skafida et al., 2012). Nonetheless, though the brunt of the negative effects brought about by the illicit tobacco trade directly affects public health and the domestic economy, the role of the Ministry of Health in curbing this agenda remains limited. Integral action also lies with enforcement agents, custom officers, police forces, trade monitoring and anti-smuggling operatives.

The Protocol to Eliminate Illicit Trade in Tobacco Products calls for an efficient and transparent track and trace solution for tobacco goods in circulation. In line with that, the protocol explicitly rejects the involvement of tobacco companies in the operations of the track and trace solution due to the risk of conflict of interest. Historically, Phillip Morris International (PMI) developed its own product surveillance system named Codentify, later sold to a third-party and rebranded as Inexto, which is an encrypted 12-character code stamped onto each tobacco package and carton for identification and verification purposes⁴. However, the process only serves to authenticate the legitimacy of the code rather than the actual product, thereby exposing the system to software theft (Ross et al., 2018). Since the codes are readable and easily reproduced because it does not entail any physical security features, products with duplicate codes would seamlessly pass the Codentify verification⁵. A study by Ross et al. (2018) calculated the probability for enforcement officials detecting a fraudulent package with the Codentify system using statistical analysis and subsequently established that the authorities would need to inspect 27,000 cigarette packs to attain a 90% chance that they do not miss a duplicate. This demonstrates the immense resources required for the inefficient Codentify programme which only serves to give an illusion of control with minimal chance of success.

In tackling the problem of illegal tobacco smuggling, policies should also be aimed towards reducing smoking prevalence as a whole. Studies have investigated the inverse relationship between human development indicators and cigarette consumption, providing evidence that aside from the effective method of levying high taxation on cigarettes, a greater emphasis on growth factors which increase living standards in Malaysia leads to a decrease in tobacco usage (Fallahi, Mohamed Nor & Bui, 2015). Generally, individuals with the privilege of working in a higher occupational class, live in safer communities and possess tangible assets experience a considerably lower rate of cigarette consumption (Jarvis & Wardle, 2005). Other factors such as higher educational standards have shown that people exhibit a lower propensity towards becoming a smoker (Tan & Yen, 2017).

The purpose of taxation on tobacco products is to restrain demand and consumption, which has proven effective in limiting the take up by minors and the low-income population. Nevertheless, different tax policies across multiple countries results in a

⁴ Anti-smuggling proposal 'may let tobacco industry in by back door' (2017).

⁵ Framework Convention Alliance (2008).

price differential that allows for arbitrage and incentivises smuggling. Regrettably, the lack of regional tobacco tax structures has led to rampant smuggling across neighbouring countries with large price variations; for instance, the discrepancy amongst European tax policies inadvertently encouraged high levels of consumption and cross-border smuggling (Non-Smokers' Rights Association, 1994). Thus, it presents a significant barrier to sustaining constant tax hikes (Warner, Slade & Sweanor, 1997). With that said, an optimal governmental response is to harmonise cigarette prices across the region to minimise price differentials and by strengthening customs enforcement.

A study has shown that the occurrence of smuggling is more prominent not in regions which have the highest price differentials but in countries where cheap imports and smuggling are the least costly, typically in the form of lax border control and customs regulation (Joossens & Raw, 1995). Essentially, the worldwide smuggling problem can be forecasted based on the variance between global cigarette imports and exports, since production and consumption typically display comparable figures. Cigarettes as a product is quickly perishable and have a short shelf life, hence there would not be large stockpiles of cigarettes in storage. This factor would provide for a relatively accurate estimate of the illicit trade of tobacco consumption based on official government statistics. In recent years, exports have far exceeded imports even after accounting with generous estimations for duty-free sales (Joossens, 1998).

Based on the reviewed literature, this study seeks to shed light on the illicit cigarette trade problem and to highlight the structural challenges specific to Malaysia. The overall flow of the report will first outline the determinants and consequences of illicit trade to the economy followed by the methodology of assessing existing evidence. To set the premise, Section 2 will elaborate on the determinants of illicit trade which includes porous borders for smuggling that is exacerbated by numerous entry points, the ease of purchase of illicit cigarettes and the shortcomings due to lack of a coherent policy framework. The consequences arising from these factors will be emphasised in Section 3 which notes the additional health risks associated with consuming illicit cigarettes as well as the excise revenue loss for the government to the illicit market. Following that, Section 4 contains the methodology of this study which will evaluate the issue based on a thematic presentation of in-depth interviews with various stakeholders, analysing estimates on the size of the illicit trade market and an international case study on tackling smuggling operations. To conclude, Section 5 will present the policy solutions and recommendations, ranging from low-hanging fruits to core structural reforms, to effectively tackle the issues highlighted by the study.

2. Determinants of Illicit Trade

2.1 Porous Borders & Numerous Entry Points

Table 1: Summary of Modus Operandi of Kretek and White Cigarette Smuggling

Characteristics	Kretek	Whites
Country of Origin	Indonesia	China, Europe, England, Hong Kong, Taiwan
Method of Smuggling	Boat	Legal imports or transshipment procedures using falsified declarations on import documents.
Main Ports of Entry	Sandakan, Tawau	Port Klang, Penang Port, Johor Port in West Malaysia

Source: SEATCA's *The Modus Operandi of Cigarette Smuggling in Malaysia* (2006)

The Role of Transshipment and White Cigarette Smuggling

Primarily from China, Europe, England, Hong Kong, Taiwan, the contraband whites are either (i) first exported to Singapore as a transshipment port or (ii) shipped directly to one of the ports in Malaysia but declared as transshipment goods that are intended for a third country. The role of Singapore is as a transshipment port where goods are in transit through Singapore but are bound for a third country. The Port of Singapore Authority does not examine these goods in transit and no tax needs to be paid since they are not entering the country as the final destination. These cigarettes might be kept in a warehouse at the port for a short time to avoid incurrence of storage charges; they are subsequently unloaded onto feeder vessels bound for Malaysia. However, often times the cigarettes can be loaded onto the feeder vessels directly from the main ship without needing to be stored at the Singapore Port. Upon arrival in Malaysia, these goods are declared as non-taxable goods, which are oftentimes passed on without customs examination since they were intended for export to a third country.

Another method is to declare part of the consignment; for example, declaring two containers out of ten as cigarettes with duties paid accordingly while the remainder of eight containers were declared as non-taxable goods. These remaining containers are cleverly stacked with declared taxable goods at the front-end while the smuggled cigarettes are hidden behind these goods, thus making it difficult for customs to effectively examine them unless they were prepared to spend a lot of time doing so. There were also cases when containers with cigarettes were not declared at all but reported to contain items that were non-taxable such as iron bars. Customs does examine these non-taxable containers but given that so many containers are declared as non-taxable, it would take weeks for this task to be completed. This would

unnecessarily delay genuine manufacturers from receiving their non-taxable imported raw materials and has resulted in many complaints from manufacturers.

Regarding cases where cigarettes were brought in directly through Malaysian ports, they were likewise declared as goods in transit, bound for a third country. Similar to Singapore, they are temporarily stored in warehouses located within the free trade zones and since these goods are not taxable, they will not be required to be examined by Customs. Since these goods were in transit, they are usually then loaded onto a vessel and “exported”. However, somewhere out at sea, the cigarettes are quickly unloaded onto smaller vessels and subsequently transported back into Malaysia without duties being paid. They are sometimes brought to private jetties and subsequently loaded onto smaller boats or trucks to be transported to hideouts or warehouses for temporary storage until they are safe for distribution.

Kretek Cigarette Smuggling

Indonesia is the only source of kretek, the famous clove cigarette. Indonesian migrants in Malaysia remain its main consumers with only Malays acquiring the taste for it, while most Chinese and Indians do not smoke it. Kretek smuggling is a very dangerous process as most syndicates are typically well-armed to face any possible consequences and raids tend to be conducted with the police. Smuggled kretek come directly from a town named Kediri in Java which is where they are manufactured. The goods are then brought to an island called Pulau Rupert in Sumatra for storage. Pulau Rupert is located close to Malaysia, only three hours by boat to Malacca Port.

Kretek are commonly smuggled by boats landing directly on the nearest shores in Malaysia. Due to the extremely short distance, it is easier to smuggle the goods directly instead of utilising transshipment methods through ports such as Singapore. The boats used for direct smuggling are fast, powered by 55 hp engines. They typically land at twilight hours and are unloaded immediately onto trucks. Loading time is also extremely fast, within 30 minutes or less, implying that the loaders are well-organised. Some of these loaders are local villagers who work as fishermen or labourers and are earning extra money when not at sea.

Once loaded onto trucks, the smuggled cigarettes are quickly distributed to retailers in towns. The distribution process is rapid, normally completed within four hours after loading is completed. Cigarettes typically do not go straight to licensed importers or wholesalers but are first stored in empty houses or illegal stores in palm oil estates or remote villages to avoid detection by Customs. From these storage facilities, they are carried in vans owned by wholesalers to pass off as duty-paid cigarettes.

2.2 Ease of Public Purchase of Illicit Cigarettes

Convenience of purchase: Location, accessibility, visibility, variety of brands at different prices

A market visit was conducted to assess the accessibility and affordability of illicit cigarettes in various sundry stores across Kuala Lumpur. As a whole, it was discovered that the informational gap between legal and illegal cigarettes is essentially negligible in the consumer market. For instance, graphic images and health warnings are nearly identical for all cigarette packs while two brands by the name of Zon King and June did not even print pictorial health warnings. Moreover, because several illicit brands were inconspicuously on the same shelves as legal products, consumers lack any indicators for distinguishing between legal and illegal brands. 17 different brands were observed and identified during the market visit, many of which were not commonly known. All products were being obtained below the minimum price of RM10 per pack.

For certain products which were produced and manufactured locally and are apparently legal due to the manufacturer's official registration, shopkeepers and retailers were cautious but willing to sell them at an illegal price. However, they would initially quote a legal price such as RM 12.50 for a pack of cigarettes before reducing the price upon further prompting. When it came to completely contraband products such as the unregistered brands of John, Canyon, and Luffman, retailers hid them in opaque boxes, shelves or underneath tables. From this observation, it is assumed that shopkeepers and retailers know the difference between illegal and legal products along with their respective prices.

In a more blatant, or possibly ignorant action, several packs were conspicuously tagged with illegal prices. For example, one brand, A380 had a RM 5.50 price sticker while another brand, Mayor was tagged at RM 4.00. Both brands are produced by Global Tobacco Manufacturers, a locally licensed tobacco manufacturing company, and should have been compliant with the minimum price laws. Moreover, contraband cigarettes sold in bulk were also far cheaper. In one of the stores, three cigarette packs of different brands were sold for RM 10. The same store also sold a ten-pack carton of Zon King for RM 30.

In another instance, a legitimate receipt was issued for the illicit cigarette pack sold below market price, which printed the company's name and tax invoice. The shopkeeper did not appear to comprehend the legal implications of distributing a receipt displaying an illegal price point. Upon further investigation, it was found that retailers do not face heavy consequences if they are caught red-handed. According to the Customs Act 1967, the penalty for a first offence incurs a minimum fine not less than ten times the amount of customs duty evaded or RM 50,000 and of not more than twenty times the amount of customs duty evaded or RM 100,000. Evidently, it has proven to be an insufficient monetary deterrent whether it be paid by the retailer or the syndicate distributing illicit cigarettes.

Overall, basic observations include:

- Licit and illicit cigarettes are placed on the same shelves
- Illicit cigarette packs are tagged with a price like any other product
- Receipts were issued for illicit cigarettes
- Retailers are not aware regarding the legality of the products
- Graphic images and health warnings are identical to legal cigarette packs
- Duty paid stamps are essentially indistinguishable between fake and original ones.

Critiquing the supply chain of locally-produced cigarettes and government tax stamps

From the 17 distinguishable brands, all tax stamps belonging to Global Tobacco Manufacturers and Zeno DSFC Sdn. Bhd were validated as legal based on scans using the JKDM2U mobile application. There was only one fake tax stamp as detected by the app, attributed to Willson, a brand distributed by VTI Marketing Sdn. Bhd. VTI Marketing imports several brands of cigarettes with duty-paid stamps but they were available for purchase below the minimum price.

The distribution supply chains of Global Tobacco Manufacturers and Zeno DSFC are unclear. While both companies have registered brands with the government according to the JKDM2U application, none of the 9 brands attributed to these two manufacturers were sold at the legal price. In such a scenario, if these two companies paid their excise duties as the tax stamp suggests, then products should be sold at a price of at least RM 8 to marginally break even with the cost of the tax stamps. If the manufacturers were to irrationally argue that retailers are selling at a loss, such a ludicrous claim ignores the retailer's need to achieve profit margins for survival. Past evidence indicates that in 2012, Global Tobacco Manufacturers were charged in a magistrate's court with three counts of evading more than RM 950,000 worth of taxes pertaining to the "MY" code on tax stamps.

It is unknown how a company such as Global Tobacco Manufacturers is able to obtain paid tax stamps and distribute them to retailers who sell the products below the minimum market price. Tellingly, the distribution chain of locally-produced cigarettes and tax stamps from factory to store is unknown. An investigation could unveil several facts about the illicit trade of tobacco, with possible conclusions such as but are not limited to:

- Local manufacturers manage to obtain tax stamps (solely distributed by RMCD) that have not been officially paid for to pass through to retailers.
- Local manufacturers or retailers are illegally absorbing the price of the tax stamps which may be obtained at a cheaper price than the official rate, subsequently maintaining their profit margins by selling products at low prices.
- The tax stamps and the cigarette packs obtained were high quality fakes or are extremely sophisticated counterfeit products.

2.3 Lack of Coherent Policy Framework

Tobacco Control Regulations in Malaysia

Malaysia signed the WHO Framework Convention on Tobacco Control (FCTC) in 23 September 2003 and eventually ratified FCTC on 16 September 2005. Malaysia, along with 180 other countries, is officially committed to a legally-binding treaty negotiated by the World Health Organization (WHO). This treaty holds governments accountable for developing, legislating, and implementing its own national tobacco control laws based on the FCTC provisions. Prior to the FCTC, the Malaysian government enacted The Control of Tobacco Products Regulation 1993, which was revised in 2004. In 2008, WHO introduced the affordable and achievable six practical measures of tobacco control policies MPOWER. The MPOWER package includes: (M)onitor tobacco use and prevention policies; (P)rotect people from tobacco smoke; (O)ffer help to quit smoking; (W)arn about the dangers of smoking; (E)nforce bans on tobacco advertising, promotion and sponsorship; and (R)aise taxes on tobacco. WHO has also set up a national target of 30% global reduction by 2025 with the prevalence of current tobacco use among the population aged 15 years and older. The Malaysian government is also committed to the target of reducing the prevalence of smoking in Malaysia to 15% in 2025 and less than 5% in 2045.

Malaysia has already implemented a number of tobacco control measures outlined in the FCTC such as (1) price and tax measures on tobacco products and (2) non-price measures as part of the Control for Tobacco Products Regulations 2004 (CTPR). The excise tax rates have been steadily increasing over the years and looks to be facing further increases as announced by the Ministry of Health in 2017 (Carvalho, 2017). Non-price measures that have been implemented under CTPR include (i) the ban of tobacco product advertisements through tobacco-promoting posters, pamphlets, and television commercials; (ii) at least 55% of the cigarette packaging must be covered with health warnings; (iii) the introduction of more smoke-free spaces that has been extended to cities, public parks, and playgrounds. The Ministry of Health had announced in 2017 that they are looking to raise the minimum age to purchase cigarettes as well as introducing the contentious cigarette plain packaging (Carvalho, 2017).

Despite these measures, Malaysia's current tobacco tax level is around 52% of the retail price, which still falls short of the WHO's recommended 70% (Tobacco Control Laws, 2017). The latest FCTC Implementation Report on Tobacco reveals that Malaysia is lacking a practical tracking and tracing regime that secures the distribution system and a cohesive reporting mechanism to monitor the levels of illicit trade in Malaysia (FCTC Implementation Report, 2014).

History of Cigarette Excise Tax, albeit at an ad-hoc rate

Cigarette tax is collected from cigarette manufacturers or cigarette importers. Until 2004, as shown in Table 2, taxes on tobacco were levied according to their weight. This changed in 2005 with the adoption of a specific excise tax per stick. Specific tax rates are more favourable as they are easier to administer since it only requires counting the sticks without weighing them and makes it more difficult to avoid taxes by making cigarettes lighter.

Overall, there has been an upwards trend in excise tax rates for cigarettes, reflected in excise tax rates and prices of cigarettes. Table 2 shows the cigarette taxes imposed by the Malaysian government from 1990 until 2010 whereby both the excise tax and import tax imposed on cigarettes increases over time. Figure 1 shows the prices per box of premium and sub-premium cigarettes increasing steadily from 2006 to 2016. As a result, increases in tobacco taxation over the years has generated a significant amount of tax revenue for the government.

Table 2: Tobacco taxation in Malaysia

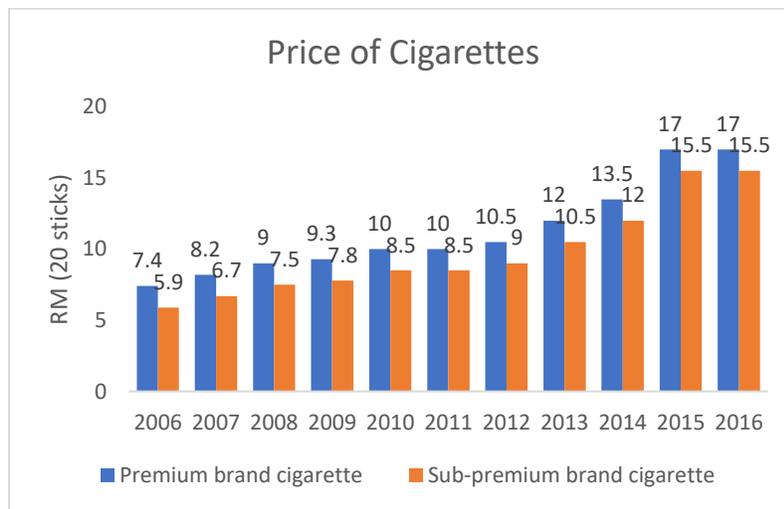
Year	Specific excise tax	Sales Tax	Ad Valorem tax
	RM/kg or RM/stick	%	%
1990	13/kg	15	-
1991	14	15	-
1992-1998	28.6	15	-
1999-2000	40	15	-
2001	40	25	-
2002	48	25	-
2003	58	25	-
2004*	0.081/stick	25	-
2005	0.11	5	20
2006	0.12	5	20
2007	0.15	5	20

2008	0.17	5	20
2009	0.18	5	20
2010	0.21	5	20
2011	0.21	5	20
2012	0.21	5	20
2013	0.26	5	20
2014	0.28	5	20
2015	0.40	6	0

*Specific tax per stick was introduced (1 kg = 1100 sticks)

Source: (Nor, Abdullah, Rampal, & Noor, 2013) & Ministry of Health Malaysia, 2016

Figure 1: Prices of cigarettes from 2006 to 2016



Source: (Surendran, 2017)

Malaysia's Incapacity to Ratify the Global Regulatory Framework

The WHO set up the Protocol to Eliminate Illicit Trade in Tobacco as a complimentary international treaty to the FCTC in 2012. Given that illicit tobacco comprises a significant portion of global tobacco consumption, an effective multilateral response to the illicit tobacco trade would make a consequential contribution to worldwide tobacco control. The Protocol is designed to strengthen domestic and international cooperation in combatting the global illicit tobacco trade. However, for it to become

an international law, 40 countries must ratify or accede to the Protocol. The provisions of the Protocol allow governments to secure the supply chain of tobacco products from the point of production to the first point of sale through licensing, record keeping and the establishment of a global tracking and tracing regime. The Protocol is also a platform for intensive international cooperation via information sharing, technical and law enforcement, cooperation, mutual legal and administrative assistance, and extradition.

The Protocol's conditions for entry into force had only been met in June 2018, after it was acceded by 41 countries. It should be highlighted that it took the Protocol five years to achieve the minimum conditions of entry to come into force. In comparison, the FCTC—one of the most quickly ratified international treaties in United Nations history—was signed by 168 countries in the span of only two years. The Protocol requires significant commitment from its Parties to take a variety of measures towards tobacco control that are beyond the scope of their health agencies. While illicit tobacco consumption is a public health problem, the capacity needed to combat illicit tobacco trade are not conventionally found in health agencies. Hence, it will require the development of cooperative ties between domestic and international non-health related agencies. Additionally, the Protocol also addresses the cooperation between governments in many parts of the world with the tobacco industry to combat illicit trade. This relationship poses risks for tobacco control, especially if the norms of cooperation become muddled with other areas of FCTC implementation on tobacco control.

Despite being classified by WHO as one of the main transit countries in the global trade of illicit tobacco, Malaysia has not yet acceded to the Protocol. Once ratified, the Protocol will not only demand significant technical and financial investments in border enforcement, cargo monitoring and track and tracing technology; it will also require Malaysia to begin implementing policies that are cross-cutting between ministries and government agencies. The implementation of the Protocol will involve many agencies such as the Royal Malaysian Customs Department (RMCD), Bank Negara Malaysia (BNM), Ministry of Domestic Trade and Consumer Affairs (KPDNHEP), Malaysian Maritime Enforcement Agency (APMM) and Ministry of Health (MOH). Although there has been no indication that Malaysia will ratify the Protocol soon, a representative from MOH is positive that various government agencies is moving in the direction of ratifying the Protocol. This is exemplified through the recent joint effort by RMCD with several other government agencies to strengthen security of Malaysia's land borders against illicit activities in establishing the Malaysia Border Control Agency (AKSEM).

3. Consequences of Illicit Trade

3.1 Health Risks and Additional Dangers of Smoking Illicit Cigarettes

Contraband cigarettes are either (i) licensed local cigarette brands sold below the mandated legal price or (ii) unlicensed and unregulated brands produced by unknown manufacturers. Regardless, unregulated illicit cigarettes endanger public health for several reasons.

Illicit cigarettes often contain ingredients which are not tested for hygiene standards, tar and nicotine content, and permitted or restricted additives as required by strict regulations. The quality of the filter may not even meet basic quality standards. Additionally, the name, address and license number of the manufacturer is typically not stated on the box. Several illicit cigarette brands from our market survey such as Zon King and June do not even print pictorial graphics or text-based warnings as required by the Ministry of Health guidelines. Most saliently though, cigarettes are sold at attractive prices, thus drawing more products into the market. This attracts price-elastic consumers towards initiating, continuing and even increasing smoking consumption.

Nevertheless in 2009, Health Canada, a Canadian government department, conducted a tobacco smoke analysis on illegal cigarettes and found the same chemical substances present in the smoke by-product of both contraband and legal cigarettes, with no notable difference in chemical content. While the Canadian findings cannot be directly applied to the Malaysian context, the findings represent the prevalence of illicit products in the market (Health Canada, 2009).

On a similar note, the normalisation of smoking illegal cigarettes has destigmatised its consumption in public places. As found in our market visit, retail shops are treating illegal cigarettes as a similar product to legal cigarettes and have become increasingly blatant in their operations. It is dangerous to allow the continued normalisation of this behaviour if illegal cigarettes are accepted as substitutable for legal products.

3.2 Excise Revenue Loss to the Illicit Tobacco Trade

The Malaysian government most recently hiked the excise duty on cigarettes in November 2015 to 40 sen per stick, up from 28 sen, a 42.8% increase (Lee, 2015). In 2016, the Royal Malaysian Customs Department (RMCD) reported RM 3.5 billion in revenue collection from excise duties on tobacco. However, increasing illicit tobacco consumption resulted in RM 4.3 billion loss of excise duty revenue. Malaysia's revenue loss is far more significant as compared to developed countries such as the United Kingdom, where the losses were around GBP 2.1 billion out of approximately GBP 9.5 billion in collected tobacco duties as reported in 2014 (HM Revenue and Customs 2015). There were fewer observed losses in neighbouring

Indonesia where in 2016, there was a loss of USD 637 million out of USD 10.73 billion in excise duties collected (Oxford Economics, 2016).

While these statistics illustrate the prevalence of the illicit cigarette trade, they also represent a lost opportunity for the Malaysian government. Per World Health Organization (WHO) recommendations, allocating excise duties on cigarettes provides significant, sustainable revenue needed to strengthen the national health system and reduce inequities in accessing health care. Additionally, excise duties on cigarettes can create and support health care programs to treat tobacco-related illnesses and tobacco-control programs that foster healthy behaviours and promote resistance to tobacco use (Campaign for Tobacco-Free Kids, 2017).

4. Methodology

4.1 Evaluating Key Stakeholders Understanding of Illicit Trade

We conducted semi-structured interviews with relevant key players on the issue such as tobacco control NGOs, international public health NGOs, the Ministry of Health, and public health academics, to evaluate their understanding and perceptions on the problem of illicit tobacco products in Malaysia.

Lack of data sources and limited access to existing data sources

Lack of data sources and limited access to existing data sources on illicit tobacco products was cited in our interviews as a major issue for the key players and general public to get a comprehensive understanding of the issue. There seems to be a heavy reliance on data from tobacco-industry funded studies where various media reports on illicit trade cite Nielsen's 2017 Illicit Cigarettes Study's estimation of the size of the market at 55.6% (The Edge, 2018; FMT, 2018; The Star, 2018). A representative from the Ministry of Health noted that some civil servants in other ministries also relied on the data from tobacco-industry funded studies. Besides industry-funded data, the only other existing data sources on illicit tobacco products in Malaysia that are collected and monitored by international public health NGOs and international market research companies are not easily accessible to the general public.

On the other hand, there are no government agencies that collect comprehensive information on the level of illicit tobacco products in the local market and the operations of the movement of illicit tobacco. According to MyWatch, Customs only reports the number of illicit tobacco products they confiscated from raids which is not an effective gauge. It also seems that any existing data on illicit tobacco products collected by Customs is not directly shared with the relevant government agencies, according to a representative from the Ministry of Health. Our interview with the Ministry of Health also revealed that the ministry itself did not make their data available nor publicise their research and resources on illicit trade. Overall, there seems to be a misalignment between the various government agencies on who should collect data on illicit tobacco products, as well as the accessibility of this data for other government agencies and the general public.

Size of Illicit Trade Market

As mentioned earlier, there seems to be an inclination to quote data from tobacco-industry funded studies whereby various media reports on illicit trade have cited Nielsen's Illicit Cigarettes Study's estimation on the size of the illicit trade market at 36.9% in 2015, 52.3% in 2016 and 55.6% in 2017. The estimated level from a joint study by the Ministry of Health and Universiti Putra Malaysia in 2015 finds the illicit trade of tobacco to be around 30%, but this study was not carried out annually. Our interviews with relevant policy makers, academic researchers, and civil society organisations, expressed their concern on the persistent over-estimation of the size of the illicit trade market by industry-funded research. They all cite the methodology that Nielsen's study uses, the empty pack survey, as heavily location and habitually biased, which makes the data collected easily manipulated. However, due to the lack of independent data points and research done on illicit tobacco products, it is very difficult to counter the estimated number provided by Nielsen.

Relationship between Level of Excise Tax and Illicit Trade

Policy makers, academic researchers, and civil society organisations, highlighted that the prices of legal cigarettes are not the only factor in determining the level of illicit tobacco products and that there are many other important factors involved such as the enforcement at our porous borders, the issue of corruption within government agencies, and lack of an effective track and trace system. It is important to highlight that they do not deny the effect of prices of legal cigarettes on illicit consumption but they emphasise that it is not the main factor to consider to understand why the illicit market has been growing. According to a representative from UNU-IIGH, they believe that more empirical studies need to be done to examine the relationship between the two factors.

Tobacco industry representatives and IDEAS, an economic think tank, suggest that the economic theory of demand is not applicable to the Malaysian tobacco market due to the large presence of the illegal market (The Edge, 2018; IDEAS, 2017). They believe that in the case of Malaysia where illegal cigarette trade is relatively high without effective enforcement, there should be no further tax increases where it will only spur illegal cigarette trade and increase consumption due to the large price differential that causes consumers to shift from legal products to illegal products. According to the tobacco industry players interviewed, there is a correlation between tax and illegal cigarette. In addition, they also state that there is no optimal tax rate and it should be determined by each sovereign country based on the circumstances set in Section 3.2 of Guidelines to Article 6 of the FCTC.

Main Challenges of Illicit Trade

Interviewees mentioned three main barriers to combating the illicit trade of tobacco, all surrounding policy and enforcement issues: the tobacco industry, government bureaucracy, and political corruption. The Ministry of Health state that they do not have much jurisdiction or power because it is outside their purview. With a mandate on health, they can only impact legal cigarette trade and consumption, commercial advertising, graphic images, and packaging. On the other hand, Customs and other border enforcement agencies have the power to enforce laws and conduct raids on illicit cigarettes. This reinforces the need for more shared data and collaboration

between the Ministry of Health and Customs to effectively tackle the issue of illicit cigarettes. All interviewees and representatives alluded to widespread bribery and corruption within the Customs department. These practices have hindered efforts to enforce laws on illicit cigarettes due to unprofessional and corrupt behaviour in these agencies. They also suggested that Customs and the government as a whole do not prioritise combatting this severe problem.

Policy Suggestions by Stakeholders

Interviewees agreed that a multi-pronged approach is most conducive towards solving illicit trade. Firstly, MyWatch and UNU-IIGH agreed that excise taxes on cigarettes should be increased continuously and progressively to combat the unscheduled tax increases currently in place. A study on tobacco control by UPM indicate that the optimal tax rate to reduce cigarette consumption in line with WHO's targets, is 61% or RM 21.00 per pack. Secondly, representatives from MyWatch and the Ministry of Health emphasised that Malaysia must earmark tobacco taxes as well as present and future taxes on other determinants of adverse health effects such as alcohol and sugar towards health promotion and health insurance programs. Instead of being absorbed by the Ministry of Health, programs such as MySihat could be funded by the previously mentioned excise duties. They cited the Philippines as an exemplary case study to model policies from, as they allocate revenue from excise duties to health insurance and health system improvements. Thirdly, representatives from MyWatch and the UNU-IIGH added that Malaysia should ratify the Protocol to Combat the Illicit Trade of Tobacco, but implementation remains too resource-intensive. As part of the ratification of this protocol, there is a strong call by MyWatch and the other interviewed parties to introduce a proper track and trace system that can track all locally produced cigarettes and imported cigarettes. Lastly, representatives from MyWatch also suggested that the government must implement and enforce policies that tackle transshipment and distribution points of all cigarettes.

According to tobacco industry players who were interviewed, they stand by the Illicit Cigarette Study that was conducted by Nielsen to be a robust analysis of the ongoing illegal cigarette trade situation. The industry maintains that the data is independently collected by Nielsen with a robust methodology deployed through the collection of empty pack on the ground and this study has also been reviewed by the Royal Malaysian Customs. The industry players also suggested that they are open to receiving feedback on Nielsen's methodology from the relevant authorities such as Royal Malaysian Customs, Ministry of Finance and Ministry of Health or to discuss with the authorities to undertake a study with a similarly robust methodology to ensure accurate measurement and tracking of the incidence of illegal cigarettes.

4.2 Evaluating the Estimates for the Market Size of Illicit Cigarettes

In determining the extent of illicit tobacco trade in Malaysia, it is important for the study to have an estimated consumption of contraband cigarettes. We are relying on estimates of illicit consumption in Malaysia conducted by six different organisations; the study on excise tax, consumption and revenue by Universiti Putra Malaysia (UPM); the Asia Illicit Tobacco Indicator by Oxford Economics and funded by Phillip

Morris International (PMI); under-invoicing of cigarette imports by Malaysia by Universiti Kebangsaan Malaysia (UKM); the Illicit Cigarette Study by Nielsen Malaysia; Euromonitor International; and the International Tobacco Control (ITC) survey commissioned by the FCTC.

Since it is difficult to measure the size of illicit cigarette trade due to its illegal nature, identifying discrepancies among data from different datasets can be used to measure the size of illicit tobacco trade in Malaysia. A study by an economist at UPM, Assoc. Professor Dr. Norashidah Mohamed Nor, uses an empirical model that is based on comparative studies on cigarette tax avoidance and illicit trade in Thailand (Pavanunt, 2011) and in Vietnam (Nguyen *et. al*, 2014). The method looks at the gap between local production, and the export and import of cigarettes in Malaysia with estimated total consumption of cigarettes. If the sum of production and net import of cigarettes is less than the total consumption, it is assumed that there is illicit import of cigarettes into the country. Additionally, the discrepancy approach generates estimates that is reproducible and comparable to similar data in other countries.

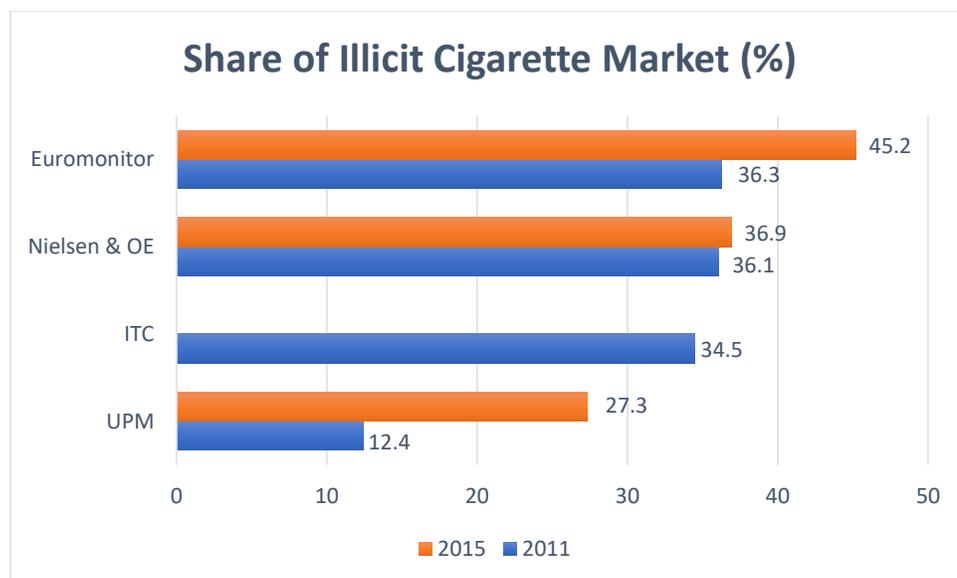
The UPM study uses official government datasets for their estimates. The consumption figures are obtained from Global Adult Tobacco Survey (GATS) 2011 and National Health and Morbidity Survey (NHMS) 2015—both administered by Ministry of Health. GATS and NHMS are both nationally representative household surveys, sampling 5,112 and 21,352 households respectively. Whilst production and export datasets are obtained from the Ministry of Primary Industries and the Ministry of Finance. The study found that illicit consumption constitutes 12.4% of total consumption in 2011 and 27.3% in 2015. Although the study utilises NHMS as the official dataset for cigarette consumption which are representative of the Malaysian population, the self-reporting nature of the survey exposes the study to a certain bias. As many academic literatures have suggested, there is a tendency for respondents to under-report their tobacco consumption due to social perception of smoking behaviour (Guindon *et. al*, 2013, Hatzlandreu *et. al.*, 1989). For example, a study that examines trends in under-reporting of smoking in Italy over the last two decades found that their figures correspond to an under-reporting of approximately 1% in 1990, 25% in 2001 and up to 35% in 2008 (Gallus *et. al.*, 2011). Sensitivity analysis with a justified degree of assumption for under-reporting should be included to assure precision of estimates.

Meanwhile, the Illicit Cigarette Study (ICS) by Nielsen and Asia Illicit Tobacco Indicator by Oxford Economics analysed empty packs of cigarettes discarded on the streets of Malaysia. It identifies incidence and trends of illegal cigarettes in Malaysia. The finding seems robust due to its large sample size and consideration for different cigarette consumption pattern and geographical landscapes. For example, the ICS study surveyed 51,000 empty cigarette packs, yielding a sampling error of only 0.4%. Surveying back-end consumption is also less discriminatory because it eliminates the possibility of under-reporting. However, the empty pack studies are exposed to biases if their locations are not fully randomised—certain areas, especially in lower-income neighbourhoods are bound to have more illicit cigarette packs discarded (Reuter and Majmundar, 2013). Furthermore, litter habits of pedestrians and the differing efficiency of public services such as cleaning and sweeping of walkways are not accounted for, especially when the gap caused by these factors are considerably

large across upscale neighbourhoods and low-cost flats. With low-income customers constituting a larger portion of the customer base for illegal cigarettes, the collection of litter may be greatly skewed towards their rate of consumption.

The UKM study examines the extent of under-invoicing in total cigarette imports in Malaysia between 2002 and 2009 and evaluates the effectiveness of this measure as an indicator of the level of cigarette smuggling. Under-invoicing is defined as the discrepancy between the US dollar value of cigarettes exported to Malaysia (as recorded by the exporting economies) and the US dollar value of cigarettes imported into Malaysia (as reported by Malaysia), using UN Comtrade data. This method relies on the assumption that the difference in cigarettes between the reported export and import of cigarettes become smuggled cigarettes, which is one of its biggest limitations. This study finds that Singapore and Indonesia have consistently been the economies where the discrepancy between the value of cigarette imports reported by Malaysia and value of cigarettes exported as reported by these economies are the largest. Our own analysis using this method of under-invoicing using Malaysia's largest trade partners of cigarettes and the UN Comtrade data between 2010 and 2017, support these results where Singapore and Indonesia are the two economies where the discrepancy is the greatest (See Appendix A). The study concludes that due to the aforementioned limitations, it is difficult to pinpoint whether these cigarettes are truly smuggled or entering duty-free zones and free trade areas. However, we still find this method useful in indicating which country may be contributing towards cigarette smuggling through transshipments.

Two other estimates on illicit cigarettes that are often less cited are estimates from Euromonitor International and International Tobacco Control (ITC) survey. Euromonitor is a proprietary data source whose data regarding the global tobacco control community are available for purchase. However, they do not disclose the methodology of their estimates. Meanwhile, ITC relies on pack inspection survey methods whereby study respondents submit their cigarette packs for inspection. ITC is exposed to biases because consumers are typically reluctant to submit their illicit cigarette packs to avoid negative sentiments or repercussions.



Source: Estimates of illicit consumption in Malaysia conducted by six different organizations: the study on excise tax, consumption and revenue by Universiti Putra Malaysia (UPM); the Asia Illicit Tobacco Indicator by Oxford Economics; under-invoicing of cigarette imports by Malaysia by Universiti Kebangsaan Malaysia (UKM); the Illicit Cigarette Study by Nielsen Malaysia; Euromonitor International; and the International Tobacco Control (ITC) survey commissioned by the FCTC.

The chart shows different estimates for the share of illicit cigarette market in Malaysia in 2011 and 2015. The year 2011 and 2015 corresponds to the publication of NHMS reports that were used by the UPM study to estimate cigarette consumption. The estimates from UPM is not as significant as the estimates from the industry-funded studies. It is evident that estimates of the size of the illicit tobacco market in Malaysia vary based on the type of method used to derive estimates, at least in part due to the different approaches. Methods based on self-reports or purchase behaviour typically yield lower estimates than pack inspection survey methods, while littered pack studies typically produce the highest estimates (Reuter and Majmundar, 2013). These methods differ in sample size, time periods covered and scientific rigour; resultantly, they yield different estimates and have different sources of error. Considering these factors, it is important to compare estimates across multiple methods to obtain the most comprehensive picture of the scale of the illicit tobacco market in this country.

4.3 Evaluating Recent Initiatives by the Government

Enforcement and anti-smuggling efforts constantly make the headlines as primary factors of unlawful activity. The structural organisation and effectiveness of surveillance authorities are potential determinants and deterrents of criminal operations. In 2017, the Malaysian Parliament passed the Malaysia Border Control Agency (AKSEM) bill which is purposed to strengthen security at Malaysia’s land borders against smuggling and illicit activities. Additionally, AKSEM establishes two special committees; the Coordinating Committee and the High-Level Committee

which includes various members across ministries, government agencies and departments. Based on their functions, the Coordinating Committee is tasked with the monitoring of illicit activity, designing and formulating smuggling prevention programmes, and proposing recommendations to the High-Level Committee who in turn will review and approve these recommendations and report on matters pertaining to national border security. This collaborative effort sets up a platform for various parties to share their expertise, experiences and advice to improve preventive and enforcement measures. With the AKSEM organisational structure and legislation being flexible, there is room for consolidation during periodical reviews from the aspect of personnel strength and control factors. The Ministry of Home Affairs cited the purpose of strengthening coordination and operations for land border control and allowing AKSEM to perform independently as the main initiative towards effective border surveillance.

To elaborate on the details, the new law establishes that border patrol would involve the collective operations of five agencies; Royal Malaysia Police (PDRM), Immigration Department, Royal Malaysia Customs Department (RMCD), National Anti-Drug Agency (NADA) and National Kenaf and Tobacco Board (LKTN). Additionally, the legislation sought to enhance the role of the Smuggling Prevention Unit (UPP) by facilitating enforcement efforts between various government departments and pooling their resources for increased personnel. Within this restructuring, 933 staff under the UPP were merged with the General Operations Force (GOF) personnel to form AKSEM, resulting in a 10,800-strong workforce. AKSEM would be empowered to carry out operations along Malaysia's land borders with Thailand and Indonesia. Previously, PDRM and the Malaysian Armed Forces (MAF) were unable to take legal action against criminal offences if the suspects had not passed through Customs or Immigration checkpoints. However, with the implementation of this act, AKSEM is allowed to conduct random inspections along the borders and subsequently enforce legal action against arrested criminals. Furthermore, aside from the agency's tasks of monitoring the land borders, AKSEM personnel can also raid and seize smuggled goods if there are reports of such activity further in-land

4.4 Case Study: Successful measures to tackle illicit tobacco trade in United Kingdom

Background

During the 1990's, illicit trade of tobacco was at an extreme high whereby HM Revenue and Customs (HMRC) estimated that in 2000, 21% of cigarettes in the UK and 63% of hand-rolled cigarettes were illicit⁶. However, co-ordinated action across

⁶ HMRC Customs & Excise Annual Report, 2000-2001.

the UK and EU has reduced the amount of illicit trade with levels of illicit trade, in 2015, at 13% for cigarettes and 32% for hand-rolled tobacco⁷. Illicit trade of tobacco reduces the public health impact of increases in tobacco tax rates and increases demand for tobacco products. Therefore, it is of public interest to tackle the illicit trade of tobacco to reduce the tobacco tax gap, driven by illicit trade of cigarettes and hand-rolling tobacco, estimated to be around £2.5 billion for 2016/17⁸.

Measures to tackle illicit trade

In 2000, the UK government introduced a package of measures to curb illicit trade which included: deployment of 1,000 additional Customs officers; additional specialist investigators and intelligence staff; additional x-ray scanners; tougher sanctions and penalties; and a public awareness campaign. This was part of a joint action plan “Tackling Illicit Tobacco Smuggling” between HMRC and Border Force⁹. This strategy was reinforced in 2006 with supply chain legislation, introducing fines for manufacturers who facilitate smuggling.

In 2008, there was a joint effort between the UK Border Agency (UKBA) and HMRC to work together to tackle smuggling. With HMRC retaining responsibility for the collection and enforcement of tobacco duties and the detection of illicit tobacco inland, the UKBA’s responsibility was for detecting and seizing smuggled tobacco at the UK border and arresting those suspected of smuggling. This coordinated effort is more effective as UKBA acts as an additional support to help HMRC in tackling illicit trade. They built on this strategy in 2011 by introducing: increasing criminal intelligence and investigation resources deployed on tobacco fraud by 20% to prosecute more of those involved in smuggling; new technology, intelligence and detection capability; pursuing proceeds of crime and applying new powers of assessment and penalties; and reducing the minimum indicative levels for personal imports to 800 cigarettes and 1kg hand-rolling tobacco.

5. Policy Recommendations

5.1 Application of material-based track and trace solutions to enhance enforcement and industry compliance

Setting up and maintaining a comprehensive surveillance system on the movement and sales of tobacco products will formalise logistical processes and severely limit the manoeuvrability of illicit products.

Malaysia has set the agenda to support the FCTC’s Protocol to Eliminate Illicit Trade in Tobacco Products. In the short-term, the government should aim to create a regional track and trace (T&T) system free of interference or collusion with the

⁷ HMRC Annual Report and Accounts, 2015-2016.

⁸ HMRC Measuring tax gaps 2017 edition. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654490/HMRC-tobacco-tax-gap-estimates-2017.pdf

⁹ HMRC Tackling Smuggling Together, 2008.

tobacco industry. In the long-term, they should support the institution of a global T&T system. The Protocol aims to eliminate all forms of illicit tobacco by focusing on securing a transparent supply chain of legally manufactured tobacco products (Gilmore, Gallagher, and Rowell 2018).

A global T&T system must determine the past, present, and future locations of tobacco packaging through supply chains, up until duties and other obligations are paid or addressed (FCTC Secretariat, 2010). Additionally, they must fulfil the following requirements:

- Human-readability: People from a diverse range of linguistic backgrounds must understand identifiers or markings.
- Uniqueness: Individual tobacco products must have a globally unique identification.
- Security: External parties cannot decrypt markings without permission from national, regional, or global T&T systems.
- Integration: Tobacco products require a unique, serialised identity which can be exchanged electronically throughout the supply chain.
- Compliance: T&T systems must respect national or regional regulatory requirements.
- Size: T&T identifiers should respect the size limitations of manufactured tobacco products.
- Ease of production: To satisfy fast-paced supply chains, T&T systems should efficiently produce quality identifiers.
- Cost-effectiveness: Costs should not hinder implementation efforts of T&T systems.

(FCTC Secretariat, 2010)

While a global T&T system has yet to be created or implemented, the aims and objectives of the FCTC should guide endeavours by the Malaysian government to institute a national T&T system. These strict guidelines present two options for the Malaysian government.

First, Malaysia could follow in the footsteps of countries such as Hungary and produce their T&T system. In 2012, Hungary introduced a T&T system operated by Hungarian company Allami Nyomda (Ross, 2015). This move came after a considerable decrease in the share of illicit cigarettes from 20% in 2005 to 3.8% in 2011 due to a campaign of proactive national policy-making and enhanced law enforcement practices. With special security features and unique serial numbers tied to a central database, Hungary's T&T system ties in with its collection of excise taxes on tobacco. Second, the Malaysian government could partner with international private companies such as Société Industrielle et Commerciale de Produits Alimentaires or SICPA, a Swiss security printing company to create a national T&T system. Previously the Malaysian government outsourced technology from SICPA for cigarette tax stamps after an "opaque bidding process" to Lembah Sari Sdn Bhd (Ross, 2015), which is owned by Datuk Haris Onn Hussein, the brother of Dato' Seri Hishammuddin Hussein. Furthermore, Albania, Brazil, Canada, Kenya, Morocco, and Turkey, all have national T&T systems created in partnership with SICPA (Ross, 2015). However, SICPA systems are often costly and expensive. Ross (2015) further

implies that because SICPA is a private firm, governments can customise their T&T systems to varying degrees of specificity and inevitably, outcomes.

In any case, the Malaysian government should not utilise Codentify, Inexto, or any other tobacco-industry endorsed the T&T system. This unimpeachable standard exists because the tobacco industry repeatedly undermines endeavours to implement FCTC Protocol-compliant T&T systems (Ross, Eads & Yates, 2018). The industry promotes Codentify, a pseudo “T&T” system developed by Phillip Morris International (Gilmore, Gallagher & Rowell, 2018). Licensed freely to PMI’s three competitors JTI, BAT and ITG in 2010, and later rebranded and licensed as Inexto in 2016, Codentify is both ineffective and ethically compromised (Ross, Eads & Yates 2018). Because it is “human readable and does not incorporate any security features,” Codentify’s proprietary digital marking system external parties can compromise the system’s efficacy (Ross, Eads & Yates, 2018). Media outlets have also described the tobacco industry’s promotion of Codentify as akin to the “fox guarding the hen house (St George, 2017).” Under Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products, T&T systems must be under the control of governments and never the tobacco industry, whom the T&T system is designed to govern and control (FCTC Secretariat, 2010). Codentify’s mechanism of action remains relatively unknown, two academic surveys depending on brochures and websites procured by Inexto (Ross, Eads & Yates, 2017) and PMI (Joosens & Gilmore, 2013).

The Malaysian government should institute a T&T system to combat illicit trade. However, the new system must be entirely tobacco industry-independent to deflect the risk of foul play with the tobacco companies. In line with the spirit, goals, and plans of the Protocol, governments must work together through international means to develop a framework that is applicable across borders and function effectively in the detection of illicit products.

Nevertheless, it should be noted that according to tobacco industry players who were interviewed, they do not see how an establishment of a track and trace system in Malaysia will help to address the illegal cigarette trade situation in Malaysia. Smuggled products do not comply with any of the packaging, labelling or pricing regulations so should a track and trace system be instituted, it will only create a system that legitimate players comply with while the illegal cigarette trade operators continue to be non-compliant resulting in a redundant effort. The industry players believe that the key focus should be on effective enforcement efforts instead of additional policy that does not serve to stop illegal cigarette trade.

5.2 Establish robust government monitoring and evaluation (M&E)

National governments need to establish systems to effectively monitor tobacco consumption, price data, illicit tobacco trade, corruption and changes within the tobacco industry.

As aforementioned, there is a clear need for improving the availability of robust data and analysis for estimating the size of illicit tobacco trade in Malaysia. The lack of a

definitive estimation on illicit cigarette consumption as shown by the range of differences between available estimates in our previous section, mostly stemmed from the lack of availability of robust official data. Our interviews with various stakeholders have highlighted the pressing need for detailed and robust data management on cigarette consumption at the national level—illicit or otherwise—to properly monitor the extent of illicit cigarette trade in the country.

Presently, the main official data that can be used for this purpose is the National Health and Morbidity Survey (NHMS) which tracks average cigarette consumption among Malaysian population. However, there has been a lack of consistency with the NHMS methodology in tracking tobacco consumption behaviour of the population. The present format of the NHMS survey on tobacco is adapted from the Global Atlas Tobacco Survey (GATS)—a tobacco survey method established by the WHO — and has only been replicated twice, in 2011 and 2015. Furthermore, the duration gap between each survey is too long. The last NHMS survey was conducted in 2015 and the next survey will only be published in 2019. 2015 was the year that the government raised cigarette excise tax from RM0.28 per stick to RM0.40 per stick. Researchers must wait for four full years before they can use official data to analyse the impact of the tax rise on tobacco consumption patterns. In contrast, Thailand has not only completed the GATS survey biannually but has also conducted six rounds of a longitudinal study modelled on the International Tobacco Control Policy Evaluation Project (ITC) (GATS Atlas, 2015). Therefore, efforts to the illicit trade of tobacco would require a monitoring system that is effective and timely to ascertain the responsiveness and effectiveness of existing policies.

Moreover, the NHMS survey is not inclusive of all subsets of the population that is affected with tobacco consumption, namely the millions of foreign workers in the country. According to the Ministry of Human Resources, the number of foreign workers with work permits in Malaysia for 2017 was 1.8 million. NHMS has found that smoking prevalence is the highest amongst men of low-income background. Considering that many of the immigrants in this country are labourers, it is highly reasonable for the government to track their tobacco consumption, not only for the purpose of monitoring public health but also for the loss of tax revenue through illicit consumption. The inability of our existing data to capture the consumption patterns of such a large subset of the population renders our view on illicit cigarette trade incomplete.

Additionally, we find that academic findings on illicit tobacco in Malaysia are not presented and circulated widely enough especially to the media, who are positioned to influence the perception of the public and policy makers. Many media articles that we consulted in the process of writing this study have quoted the size of the illicit trade market provided by industry-funded research. This stands in contrast with the scepticism of these estimations shown by our interviewees, who consist of relevant policy makers, academic researchers, and civil society organisations. According to them, there is an irreconcilable conflict of interests in industry-funded research on illicit tobacco. If the methodology of data and estimates provided by the industry is flawed or not adequately robust, researchers should make a concerted effort to critically analyse their methodology and openly publish these findings. Academic and non-academic researchers alike must publish their findings to the public to provide

more nuance to the public perception on illicit tobacco trade. However, we also recognise the limitation in resources and availability of robust data on both licit and illicit tobacco consumption in Malaysia. Additionally, the government proprietary for the NHMS data, Institute for Public Health (IKU), does not readily release raw data to non-academic researchers. The official process to obtain this raw data is not only cumbersome but also requires different levels of approval. To ensure an engaging and balanced debate on the issue of illicit tobacco, the government must make a concerted effort to disseminate the available data in their depository.

The Malaysian government needs to establish systems to effectively monitor tobacco consumption, price data, illicit tobacco trade, corruption and changes within the tobacco industry. Article 20 of the FCTC, for which Malaysia is a signatory of, promulgate each Party to administer robust research, surveillance and information exchange programmes to increase evidence-based policy-making for effective implementation of the convention (WHO, 2017). We find that the guideline and recommendations from the FCTC Secretariat for an effective government monitoring and evaluation (M&E) system addresses the shortcomings discussed in this section.

According to the FCTC, some of the characteristics that make an effective government M&E are:

- Representative: Surveys should be designed to be as representative of the general population as possible.
- Standardised: Standardised monitoring and surveillance tools help keep data comparable even when collected at different times, by different authorities, using different systems. This is important for bringing disparate sources together to reveal bigger pictures and trends.
- Timely: Turnaround between data collection and analysis and the availability of results should be as quick as possible so that information is available while it is still accurate.
- Usable: Plans for data dissemination, publication and promotion should be in place to ensure that results and analysis of the data can be shared and used as quickly as possible. This includes public dissemination and research. It also means regularly checking with stakeholders that the data indicators being collected are still useful to them – i.e. that they are topics of academic, advocacy or public interest (WHO, 2017).

Finally, the M&E system established by the government should also be comparable at the regional and global level to assist in the fight against illicit trade. As we have established in the previous sections, curbing illicit trade cannot be effectively done at the national level. It requires an integrated regional effort, that should be facilitated by comprehensive information sharing between governments in a region. Although Malaysia has not acceded to the FCTC's Protocol to Eliminate Illicit Trade in Tobacco Products that would have accorded its parties appropriate resources and expertise to facilitate this flow of information, Malaysia has to begin consolidating country-level data and building an information-sharing network with neighbouring countries that play a critical role in our illicit tobacco trade such as Indonesia, Singapore and Thailand. The Malaysian government must promote and facilitate the exchange of publicly available information, including on the practices of the tobacco industry in Malaysia, tobacco cultivation, and other scientific, technical, socioeconomic,

commercial and legal information that is relevant to combatting illicit tobacco trade (WHO, 2017).

5.3 Structured and scheduled excise tax increments for cigarettes through announcements to the public

To establish consistency and market preparedness for increases in excise tax for cigarettes and in line with creating a comprehensive tobacco tax strategy.

As discussed in Chapter 2, the way the government has been scheduling excise tax increments have been inconsistent over time and the method of taxation has changed several times. In 2004, they changed the tax levy on tobacco in two ways: from excise tax according to weight to excise tax per stick; moved from a sales tax of 25% to a mixture of 5% sales tax and an ad valorem tax of 20%. Although there has been an upwards trend in excise tax rates for cigarettes, the increments have not been consistent where there were no increases between 2010 and 2012, while there was a large increment between 2014 and 2015. This inconsistency in tax increments along with the complexity of tax structures makes it not only more difficult to administer, but also creates more opportunities for tax evasion. This in turn makes tobacco taxation less effective in generating revenue and achieving the public health goals.

First, we recommend that should there be any cigarette tax increases, it should be structured and scheduled. These tax increments should be shared through announcements to the public in advance so that the market knows when to expect the increases in tax and can adjust accordingly. Through the announcements of tax increases and sharing the goal the government is working towards to reduce cigarette consumption, this creates a more open and transparent for the government to operate in. This is also in line with creating a more coherent policy framework on reducing cigarette consumption.

5.4 Specific allocation of tax revenue collected from tobacco products to be channelled towards prevention of illicit trade

Highlights the urgency of recovering potential losses in tobacco tax collection from illicit trade to provide the government with a continued and sustainable source of extra revenue.

During the past two decades, a number of countries have started to allocate part of their tax revenues towards public health policy and enforcement on illicit cigarettes. This is also known as 'earmarking' tobacco tax revenue to channel it towards such preventive programmes. The main advantage to this policy is that it can serve as a continuous source of funding and not be subject to annual budgetary reviews. This in turn contributes to reducing the burden of long-term health costs borne by the government. A recent study by WHO found that earmarking tobacco taxes for health programmes, particularly tobacco control, is supported by the experience of eight

countries (Botswana, Egypt, Iceland, Panama, Philippines, Poland, Romania, Thailand, Vietnam) who secured a reliable source of funds for effective long-term interventions. (WHO, 2016)

On a similar note, across the ASEAN region, only Thailand and Vietnam have implemented effective tobacco control initiatives from earmarked excise duties (SEATCA, 2017). In Thailand, a 2% surcharge tax on tobacco and alcohol producers and importers fund the Thai Health Promotion Foundation or ThaiHealth, which is tasked with a USD 125 million annual budget dedicated to tobacco control and health promotion activities (SEATCA, 2017). Vietnam's Tobacco Control Law established the Fund for Prevention and Control of Tobacco Harms who is funded by a 1.5% surcharge per pack of cigarette on tobacco manufacturers and importers (Campaign for Tobacco-Free Kids 2017). Meanwhile, the Philippines allocates 80% of incremental revenue from excise duties to universal health care products while 20% is earmarked for medical assistance and health facility enhancement (WHO, 2013). Lao PDR created the Lao Tobacco Control Fund and planned to collect a 2% tobacco companies profit tax and a LAK 200 per pack excise duty (SEATCA, 2017). However, the government of Lao PDR is currently unable to collect these duties up until 2026 due to a 2001 Investment License Agreement signed between the Ministry of Planning and Investment and tobacco companies limiting taxes on tobacco products produced and sold in the nation (FCTC Secretariat, 2015). Other ASEAN countries such as Brunei, Cambodia, Indonesia, and Myanmar do not dedicate tobacco excise duties to tobacco control programs (SEATCA, 2017).

Malaysia does not earmark tobacco tax revenues to border enforcement nor tobacco control programs. However, like Singapore, tobacco control programs are financed by the state treasury (SEATCA, 2017). In Malaysia, the Ministry of Health and the Ministry of Finance work together to set excise duty rates (SEATCA, 2017) while the RMCD collects the excise duties. Following that, the Ministry of Finance and the Ministry of Economic Affairs, then allocates tax revenue spent in the annual budget to specific departments, programs, and policies, which would include all expenditure on health initiatives. Thus, the Ministries of Finance and Economic Affairs have the sole power to earmark and allocate the excise duties collected from tobacco sales. This process sub-optimally devolves financial allocations from those with knowledge on healthcare and health systems. Additionally, the urgency to combat the illicit trade of cigarettes lessens when lost revenue impacts the whole government rather than the Ministry of Health's tobacco control programmes and RMCD's enforcement efforts.

5.5 Consider the enforcement of a transshipment ban on cigarettes and restrict the import of cigarettes to a single-entry point for Malaysia

Implementing limitations on the ports of entry and narrowing potential smuggling routes will severely impair illicit operations and break up established processes.

Transshipment operations at Malaysian trading ports are exposed to a high degree of tobacco smuggling. Accordingly, Malaysia must take sustained and vigorous enforcement actions against illicit transshipment. The country has a total of seven major Federal ports namely Port Klang, Johor Port, Port of Tanjung Pelepas, Kuantan Port, Penang Port, Bintulu Port and Kemaman Port. Considering that three of the Malaysian ports are among the largest transshipment hubs in the world—Tanjung Pelepas, Klang and Penang—, extensive monitoring of transshipment for the purpose of curbing illicit trade of cigarettes in Malaysia will undoubtedly incur a large cost for the Royal Malaysian Customs Department (RMCD). Hence, the RMCD requires practical solutions that allows for a more effective and comprehensive monitoring and enforcement without incurring unsustainably high cost to deploy human resources and equipment to all our major ports.

Firstly, the transshipment of tobacco products across all ports in the country must be banned. As aforementioned, illegal transshipment has allowed for the entry of contraband cigarettes into the local market via two methods. Smugglers take advantage of weak sea border enforcement to move tobacco products illegally from container ships to smaller feeder vessels, thereby evading customs and excise duties. They manipulate documentation for “onward” shipment and cigarettes may be unloaded into new untraceable containers that are falsely remanifested as containing other products. Furthermore, smugglers also disguise the origin and nature of their products by mis-declaring goods, declaring goods in transit that are placed in warehouses to obscure their onward movement and manipulating accompanying documents. Inspecting all transshipment goods thoroughly will undoubtedly cost the RMCD a lot considering the volume of transactions at our ports. Not to mention that the economic costs caused by delayed deliverance of goods may significantly deter businesses from operating through these ports. Hence banning transshipment of cigarettes at our ports will set up a concrete legal barrier against the entry of cigarettes that are not for the consumption of the legal local market. It also translates to easier and clearer enforcement by RMCD. The RMCD, through the Ministry of Finance, may consult a precedent for banning the transshipment of a good in Malaysia by the directive of Ministry of Agriculture and Ministry of Transport which issued a ban on the transshipment of rice into the country that has been enforced to curb the smuggling of rice.

RMCD’s effort to mitigate the illicit tobacco trade can be further simplified by concentrating the import of cigarettes to only one main port in Peninsular Malaysia. This will free up resources for monitoring and enforcement which will be consolidated and centralised. Because cigarettes in transshipment cargo are smuggled into Malaysia when they are supposedly en-route to a third country, interceptions can be made more effectively by restricting the entry points of cigarette imports. Additionally, the intermingling of tobacco products with non-tobacco products in containers or transport and storage units within the sea port zones should be prohibited so as to simplify the enforcement process by RMCD. The department is already using scanners at all major ports to prevent the entry of illegal substances into the country and have successfully foiled smuggling and tax evasion of cargo at Malaysian ports. However, the Association of Malaysian Hauliers (AMH) has reportedly mentioned that the compulsory scanning has affected the businesses of their members through delivery delays (The Malaysian Reserve, 2017). Hence, to prevent bottleneck of both

services and resources deployed by RMCD, scanning effort should be coupled with the prohibition for other goods to intermingle with tobacco. The RMCD can then strengthen enforcement through selective scanning of containers instead of making it compulsory for each container to be inspected as part of customs clearance.

Finally, as an alternative to the transshipment ban, RMCD could adopt control and verification measures for international transit or transshipment of tobacco products to combat the diversion risk. All transshipment must be properly recorded, tracked and vetted even after they have arrived in the third-country. This can be done by ensuring verification at the final destination through bank guarantees. Enforcement agencies must also exchange information with the industry which will include exporters, freight forwarders, carriers, consolidators, express couriers and other role-players. To facilitate this, RMCD must develop user-friendly quick systems to exchange data with authorised officials in neighbouring countries and key trading partners and compare export declarations from our sea ports with import declarations in other countries to facilitate the reduction of illegal trade in tobacco products regionally and worldwide.

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Appendix

Appendix A: Implementation of Framework Convention on Tobacco Control (FCTC) in Malaysia

Table 3: Measures relating to the reduction of the supply of tobacco with reference to Articles 15, based on Malaysia's Fourth FCTC Implementation Report (2014).

Article	Have you adopted and implemented, where appropriate, legislative, executive, administrative or other measures or have you implanted, where appropriate, programmes of any of the following:	Reported Answer
15.2	- Requiring marking of all unit packets and packages of tobacco products and any outside packaging of such products to assist in determining the origin of the product?	Yes
15.2 (a)	- Requiring marking of all unit packets and packages of tobacco products and any outside packaging of such products to assist in determining whether the product is legally sold on the domestic market?	Yes
15.2 (a)	- Requiring that unit packets and packages of tobacco products for retail and wholesale use that are sold on the domestic market carry the statement: "Sales only allowed in ..." or carry any other effective marking indicating the final destination of the product?	Yes
15.2 (b)	- - developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade?	No
15.3	- - requiring that marking is presented in legible form or	Yes

	appears in the principal language and/or languages of the country?	
15.4 (a)	- - Requiring the monitoring and collection of data on cross-border trade in tobacco products, including illicit trade?	Yes
15.4 (a)	- - facilitating the exchange of this information among customs, tax and other authorities, as appropriate and in accordance with national law and applicable bilateral and multilateral agreements?	Yes
15.4 (b)	- Enacting or strengthening legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes?	Yes
15.4 (c)	- Requiring that confiscated manufacturing equipment, counterfeit, and contraband cigarettes and other tobacco products derived from illicit trade are destroyed, using environmentally friendly where possible, or disposed of, in accordance with national law?	Yes
15.4 (d)	- Adopting and implementing measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties?	Yes
15.4 (e)	- Enabling the confiscation of proceeds derived from illicit trade in tobacco products?	Yes
15.5	- Do you have any information on the percentage of illicit tobacco products on the national tobacco market?	No
15.6	- Promoting cooperation between national agencies and relevant regional and international intergovernmental organisations in investigations, prosecutions and proceedings,	Yes

	with a view to eliminate illicit trade in tobacco products, with special emphasis on cooperation at regional and subregional levels?	
15.7	- Licensing or other actions to control or regulate production and distribution in order to prevent illicit trade?	Yes

Appendix B: Images of Illicit Cigarettes in Malaysia

Image 1: Zon King and June without pictorial health warnings



Image 2: 9th Century shown incorrectly as Promax when scanned with JKDM2U application.

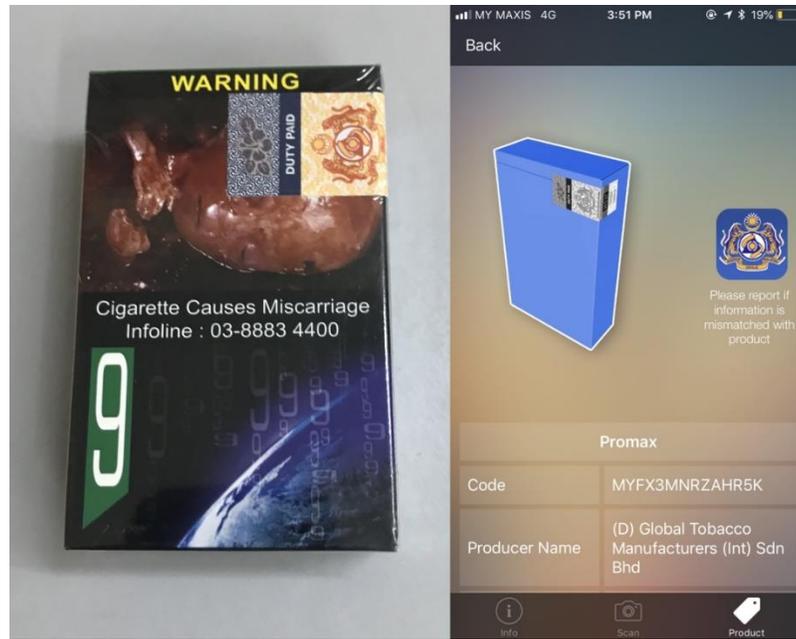


Image 3: A380 (upper left corner) is tagged at a price below minimum



Image 4: All tax stamps attributed to Global Tobacco Manufacturing are legal when scanned with JKDM2U application, although products are sold below minimum price.

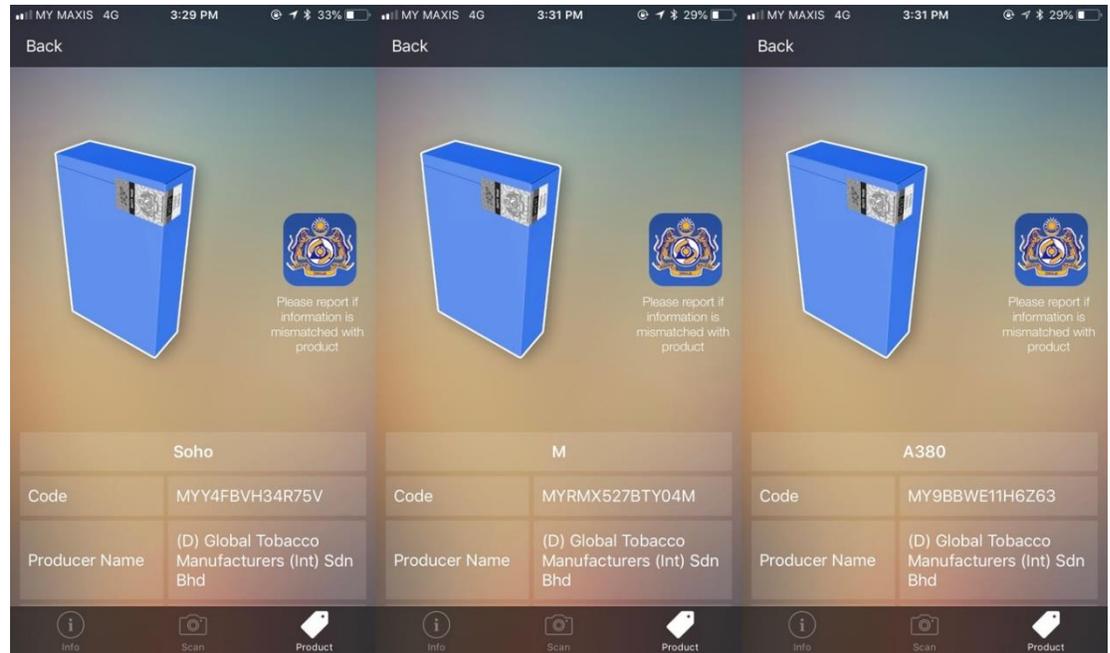


Image 5: Willson, a brand attributed to VTI Marketing Sdn. Bhd, with a fake tax stamp.



Appendix C: Under-invoicing of Cigarette Trade

Table 4: Under-invoicing with Malaysia's largest cigarette trade partners (Singapore and Indonesia) from 2010 to 2017, using UN COMTRADE data

Year	Indonesia			Singapore		
	Import (\$)	Export (\$)	Difference (%)	Import (\$)	Export (\$)	Difference (%)
2010	121.4M	175.0M	-44.2	7.9M	124.0M	-1466.5
2011	134.1M	190.1M	-41.8	13.6M	165.0M	-1116.1
2012	170.5M	208.5M	-22.3	16.2M	209.3M	-1189.3
2013	195.4M	237.5M	-21.6	41.4M	224.8M	-443.1
2014	223.3M	259.1M	-16	49.7M	165.7M	-233.6
2015	197.2M	255.1M	-29.4	46.3M	138.5M	-199.1
2016	158.0M	228.4M	-44.5	20.0M	108.6M	-442.8
2017	158.0M	227.2M	-43.8	20.0M	82.1M	-310
Year	Philippines			Thailand		
	Import (\$)	Export (\$)	Difference (%)	Import (\$)	Export (\$)	Difference (%)
2010	27.7M	13.3M	52	27.2M	13.6M	50
2011	32.1M	20.4M	36.4	27.6M	5.2M	81.3
2012	38.3M	11.7M	69.6	19.0M	9.8M	48.4
2013	35.8M	11.3M	68.5	.7M	3.6M	-454
2014	28.8M	15.7M	45.4	2.7M	5.2M	-90.4
2015	13.3M	10.3M	22.9	2.1M	15.6M	-635.1

2016	18.8M	13.1M	30.4	6.9M	29.2M	-323
2017	18.8M	34.9M	-85.9	6.9M	-	-
Year	China			Viet Nam		
	Import (\$)	Export (\$)	Difference (%)	Import (\$)	Export (\$)	Difference (%)
2010	30.4M	17.9M	41.0	4.4M	5.8M	-32.8
2011	41.7M	19.8M	52.5	4.1M	5.9M	-41.9
2012	54.1M	25.9M	52.1	2.5M	8.9M	-259.2
2013	40.1M	23.5M	41.5	4.3M	8.7M	-104.9
2014	27.5M	18.0M	34.5	5.8M	16.1M	-175.8
2015	58.7M	54.1M	7.8	5.2M	22.2M	-323.6
2016	59.6M	58.5M	1.8	7.0M	19.2M	-172.7
2017	22.8M	-	-	5.4M	-	-