

EU Stakeholder Dialogues 2006

Final Draft Report

Research report prepared for
British American Tobacco plc



January 2007

Illicit Trade & Counterfeit Product

Summary

Overall, this is a less prominent issue for many stakeholders and it is only discussed briefly at the policy session, although several specialist stakeholders have wide-ranging expectations of BAT in this area.

Regarding illicit trade, specific expectations of BAT were discussed in relation to tracking and tracing legitimate product, co-operation with customs / border controls, raising consumer awareness of the dangers of counterfeit product and controls over machinery used in the manufacture of tobacco products. Opportunities for more collaboration were identified and more engagement in these issues at the CEO level was requested.

Stakeholders would like to see BAT take action on tracking and tracing of legitimate product, particularly widening the availability of readers of anti-counterfeit markers, exploring new technology to track product (including RFID), and demonstrating it has procedures to avoid over-supplying markets.

Stakeholders also identify areas where there are opportunities for BAT to co-operate more fully with customs and border controls, for example in sharing information on transports of legitimate product, and contributing to training sessions in how to identify counterfeit product. Stakeholders also suggest BAT contributes to the EU dialogues with countries such as Russia and the Ukraine on the issue of border controls.

Several opportunities are identified for BAT to engage on the issue of counterfeit product at the EU level since this is currently high on the agenda. Some stakeholders think there are opportunities for BAT to help prevent machinery used in the legitimate manufacture of tobacco products falling into the hands of counterfeiters. Stakeholders would also like to see BAT contributing to efforts to educate consumers on the dangers of counterfeit product, and helping to engage the media on such issues, ideally through cross-industry collaboration.

Across several areas, stakeholders raise opportunities for BAT to collaborate more with others, both within the tobacco industry and in other sectors. There is an openness to BAT contributing to these debates and stakeholders clearly want more engagement from the company on AIT and counterfeit products. There is even a certain pressure for BAT to match the example of Philip Morris, which is seen to be doing more in several areas due to its agreement with the EU on illicit trade.

Stakeholders would like to see more CEO-level engagement in the issue of illicit trade, to reinforce its importance and push it up the political agenda. Messages from the CEO are needed to support the engagement conducted at lower levels in Brussels.

Priority Issues

Overall, Anti-Illicit-Trade is a less prominent issue for many stakeholders (it is only discussed briefly at the policy session). Nevertheless, clearly it is an issue that needs to be tackled at the European level and several specialist stakeholders have wide-ranging expectations of BAT in this area.

The priority issues raised by stakeholders are:

- The tracking and tracing of legitimate product;
- Co-operation with customs / border controls;
- Anti-counterfeit measures (particularly raising consumer awareness of the dangers of counterfeit product and controls over machinery used in the manufacture of tobacco products); and
- Collaboration and industry engagement.

There is an openness to BAT contributing to these debates and stakeholders clearly want more engagement from the company on AIT and counterfeit products. One stakeholder in the policy session would like to see commitment to more specific actions:

The recommendations [from stakeholders in previous sessions] are vague. [I would like to see you] engaging more in the issues of counterfeit, and identifying priority actions in this area

The importance of counterfeiting issues across several industries is highlighted in the dialogue session and one of the high-level interviews. Several opportunities are identified for BAT to increase its collaboration, both within the tobacco industry and outside it. Finally, there are calls for more CEO-level engagement in these issues to reinforce their importance.

On a point of definitions, these expert stakeholders see a clear distinction between contraband and counterfeit products (with BAT having at least partial control over the former issue) and while some similarities are acknowledged, some participants would like BAT to clearly differentiate between its approach to these two issues.

Track & Trace

Stakeholders would like to see BAT take action on tracking and tracing of legitimate product. Philip Morris is seen as a leader in this area due to its EU agreement on illicit trade:

With the Philip Morris agreement, if you find something then you know who to blame ... It's about a willingness to open your production chain to be transparent.

We had these discussions a couple of years ago with Philip Morris about marking products. Cigarettes are marked as dedicated for the Ukraine. It's as easy as ABC. It gives a clear indication for you when something is going wrong in your supply chain.

In particular, some would like to see BAT widening the availability of readers of anti-counterfeit markers:

Who has received these trackers? Where are they available? Which customs officers have received them? ... If you don't supply us with readers, what can customs officers do faced with crates of illicit product?

Others would like BAT to explore new technology to track product, such as radio frequency identification (RFID), where the major benefit is seen as the ability to track product flow down to the individual item level, i.e. each packet of cigarettes:

The limiting factor on you using this is presumably the cost ... At what point, given the economies of your losses, is that technology going to be a viable option for you to track and trace?

While BAT is clearly examining the options in this area, and is keen to take time to ensure it adopts the best solution, it would perhaps be ideal to provide some demonstration of progress in this area, or at least to give an indication of the timescales when an enhanced track and trace system will be operational.

Stakeholders would like to see demonstrations that BAT knows its customers, and some suggest the focus should be here (rather than on technological solutions):

If you know your first customer, do you know your second customer? What's stopping you from stopping the inflow into that market? ... Track and trace is not about technology, it is about knowing your customer and not over-supplying the market.

Philip Morris is again quoted as an example of best practice in this area:

Philip Morris has careful and proper checking of its supply chain. Wholesalers should be strictly examined on a daily basis.

Customs & Border Controls

Stakeholders also identify areas where there are opportunities for BAT to cooperate more fully with customs and border controls. Examples given include informing customs of the number of transports of legitimate product, and contributing to training sessions in how to identify counterfeit product:

They need some training in Customs. It's confidential – you are protecting your product, but we are protecting the market. This sort of training is learning for us that something could go wrong at the border. You can inform us of the number of legal transports from the UK, then [we can tell that] all the rest are illegal.

Stakeholders also raise the problems customs forces face in storing illicit product before cases come to court, and in destroying illicit product once the court decision has been made. There are suggestions that more support from companies like BAT in these storage and destruction activities could avoid seized products re-entering the market and help plug another source of illicit trade:

Storage and destruction is a huge problem – it's physically a problem ... Simplified destruction has to be taken forward.

The flow is so high, every day we are picking up millions. Our rooms are bigger than this building and on a daily basis [it's full] ... First we have to wait for the court decision and then destroy these [illicit] products. Sometimes we are re-selling them, so this is one of the sources of the problems.

The limited resources of customs forces are seen as an issue, and there is speculation about opportunities for BAT to contribute financial support for customs forces where appropriate:

There should be specialist IP Officers in every port. There's three in Antwerp – they do an incredible job in difficult circumstances, but there's only three of them and the port's bigger than Brussels. Let's be realistic ... there needs to be more trained IP Officers on the ground.

What are these industries doing to contribute to the cost of destruction? ... Why should governments foot the bill?

There are some enforcement problems due to limited resources. It's not personnel, it might be a lack of computing equipment, etc. A solution could be looked at in

areas of tension where they lack equipment or where better equipment would improve the situation, and where the authorities can accept [financial support from companies].

Stakeholders suggest BAT contributes to collective efforts such as the Commission's dialogues with countries such as Russia and the Ukraine, since industry input is welcomed at this sort of forum on specific issues such as weak border controls and corruption:

The Commission has dialogues with the Ukraine and Russia – are you involved in these platforms? Have you been invited to contribute on these issues? How do you interact with these bodies? ... The Commission is very interested in what different industry sectors have to say ... it's a platform of opportunity. They are looking for pragmatic proposals to address specific concrete problems.

One stakeholder in the policy session suggests more co-ordinated international policing of borders is needed, to combat illicit trade and also organised crime:

There are weak border controls – people are on low salaries, it's understandable there is bribery ... Because police can't cross borders, co-operation is feeble. I have said we need an FBI for Europe, but that's not on the distant horizon.

Nevertheless, some stakeholders think that tightening controls in one place will simply move illicit trade to other locations:

If you go too hard in one place, they will find somewhere else because the profit and the market will still be there. You can find a solution to one place and one problem, [but] it will be there somewhere else another day.

If you move [illicit trade] from the Ukraine, it will move somewhere else.

It is also pointed out that illicit trade via rail and shipping needs to be addressed as well as that using road transport. There are also seen to be opportunities for different customs forces to share best practice:

Keep in mind rail and shipping also, they are base sources for huge smuggling of cigarettes ... You do not [always] need sophisticated equipment. There are some lessons we can share with others.

Counterfeit Product

Several opportunities are identified for BAT to engage on the issue of counterfeit product at the EU level. Stakeholders emphasise that the issues of counterfeiting and intellectual property rights are currently high on the EU agenda (particularly for DG TAXUD and DG Enterprise), and are on the priority list for the German presidency of the EU and the next round of the G8. The potential for engagement with the WCO Framework standards and other bodies such as OLAF is also mentioned, since *‘there is huge support for enforcement’*:

Counterfeiting and piracy (IP enforcement) is ... there as a priority.

One stakeholder in the policy session suggests that because tobacco products are inhaled or ingested, the increased risk to consumer health from counterfeits could make the issue an even higher priority:

Some types of counterfeit are worse than others. Sometimes the victim is [just] the companies ... but sometimes the victim is the health of consumers. For example, [counterfeit] pharmaceuticals – we don't know what's in it and it is sold innocently by pharmacists. Is that [issue of potential health risks] the same with tobacco? If so, that could push the issue up the agenda.

In terms of direct BAT action, some stakeholders are pressing for BAT to help prevent machinery used in the legitimate manufacture of tobacco products falling into the hands of counterfeiters, and even see it as an area in which BAT could play a leading role in the tobacco industry:

So you can assure me that all machines that are used by BAT are never sold, they are scrapped? Those machines can be bought on the black market and used for counterfeits ... Because acting against counterfeit is in the interests of the whole industry. Your comrades in arms [i.e. competitors] might follow that.

It only takes a second to buy the machinery, it's very easy to buy. [Restricting the availability of machinery] cannot solve the whole problem, but it's a part of it.

Some stakeholders would like to see BAT pressing for the destruction of production equipment when counterfeiters are apprehended, perhaps lobbying for such measures to be included in the upcoming Criminal Sanctions Proposal:

Something we've been asking for when we catch the counterfeiter, one of the sanctions we want to see in place, is the destruction of equipment. Either recalibration so it

produces another product in no way fake, otherwise total destruction. Legally it's not easy.

However, the difficulty of achieving effective regulation on the issue at the EU level is recognised and some feel national regulation would be a more realistic proposal here:

It's a good idea, but then [let's] come back to reality. [The Criminal Sanctions Proposal] is causing sovereignty problems throughout the Union. There's more chance at a national level.

Stakeholders would also like to see BAT contributing to efforts to educate consumers on the dangers of counterfeit product:

What are you doing on awareness raising among consumers and the dangers of [counterfeit] products? ... Some general messages are never communicated properly. We talk about them at these forums, but other people never hear them. What is the impact or cost [of counterfeit] – on industry, on Government, on the consumer?

If I put a fake packet [of cigarettes] in front of you today, if you can't tell [it's fake] as a member of BAT, how can the consumer know [whether] this is genuine?

Some stakeholders see this as problematic given the restrictions on advertising and promotion of tobacco:

A specific [consumer education] campaign on tobacco counterfeiting – how do you reconcile that indirect publicity for the product?

The best route is seen to be collaboration with other industries who are already working on publicising counterfeiting issues, not least to address the concerns about incidental promotion of tobacco products. The FMCG, pharmaceutical, technology and clothing sectors are mentioned as similarly facing problems with counterfeit. BAT is urged to see the problem of counterfeit tobacco products as part of a wider consumer issue:

Aircraft parts can also be counterfeits, so shouldn't we be raising awareness of the issue as a whole? ... Consumers don't know, I don't know – if I go into Carrefour, something will be fake. The local market is Christmas time for counterfeit.

Your problems are almost the same as every other industry. CDs, perfume, jeans – from the East, UK, Russia, on the internet. These industries don't want to admit it because they don't want to alert consumers ... It would be more effective if you worked with other industries. If you got together and told national leaders the whole picture – it's terrifying the amount of revenue that is lost – you would perhaps get more action ... It would make your case much stronger if you worked with other industries which have exactly the same problems as you.

The importance of engaging the media is also highlighted:

We need to get the media on side, too. People hear most of their messages from the media nowadays. We need to get [the message about counterfeit] out there.

The point that the issue of counterfeiting is often associated exclusively with luxury goods is seen as a barrier to wider consumer understanding, but there are seen to be some opportunities to convey appropriate messages about counterfeit products:

It's OK when the consumer knows they're buying a fake bag, that's OK. But what can they do [if they don't know whether they are buying a genuine tobacco product]?

The message can sell – where is the money going? If you know you're buying a fake t-shirt, there's no excuse if you're told where the money is going and how it's produced. 'Give six or eight euros direct to the drug pusher – cut out the middle man'.

However, messages on the increased health risk of counterfeit cigarettes are seen by some as problematic, in view of the health risks of the genuine product:

There's health risks of counterfeit, but we don't know the risks of your [genuine] products.

This stakeholder links the issue of the increased health risks of counterfeit products to the health risks of tobacco in general and the need for BAT to disclose ingredients. Although this line was not pursued by other stakeholders, this perhaps underlines the need for BAT to show a comprehensive overall strategy for responsible business when talking on any specific issue such as AIT, and to make links to other areas such as health and harm reduction clearly accessible, in order for its stance on specific issues to be credible.

Collaboration & Industry Engagement

Across several areas, stakeholders raise opportunities for BAT to collaborate more with others, both within the tobacco industry and in other sectors to avoid 'reinventing the wheel'. These include work groups and round tables organised by organisations such as UNICE and AmCham:

Why aren't you working with others?

We get all the supply chain round a table, a multi-industry voice. It's a global world, we're sitting together and finding global solutions, coalition building ... What are you doing on sitting round a table with your competitors and others to find solutions?

One stakeholder in the policy session calls on BAT (along with other industries) to make specific examples available to UNICE on the issue of border controls, so the organisation can take it up in dialogues with the relevant authorities:

The Commission is asking for facts and figures. Some companies are reluctant to give them because of fear of retaliation from the countries ... We want every industry to feed into UNICE with specific cases.

However, one stakeholder in particular would prefer more action to more discussion forums:

For the last ten years we have been listening to the same speech. You can't fight counterfeit with words ... If I wanted to be provocative I'd say there were more coalitions than customs officers!

There is even a certain pressure for BAT to match the example of Philip Morris, which is seen to be doing more in several areas (and the point that PMI made its agreement on illicit trade as part of having a legal case against them dropped, is not mentioned and does not seem to detract from the credit it is receiving in European circles for its stance on AIT). Examples cited of Philip Morris good practice include its agreement on track and trace, its collaboration with customs and its links to other agencies such as OLAF:

If one company does it well, others are understandably reluctant to doing it straight after ... the Philip Morris agreement – could it be signed by your company? To start with just that part [on track and trace].

BAT [should] be in contact with companies like Philip Morris who have got good relations with Agencies, etc. OLAF is part of the Commission, it should be represented here. They deal specifically with smuggling issues.

Some stakeholders would also like to see more CEO-level engagement in these issues, to reinforce their importance and push them up the political agenda. Messages from the CEO are needed to support the engagement conducted at lower levels in Brussels, and stakeholders highlight the risk of conflicting CEO messages undermining the company's lobbying:

What are you doing at the highest levels? Unless the Commission hears the message from the highest levels, otherwise they think it can't be important. That's what needs to happen to get the political will ... So much hard work is done by business in Brussels, but CEOs are not backing it up, they're giving different messages. You can do as much as you want at this level, but if it's not supported [by the CEO], it might not be working.