STOPPING TOBACCO ORGANIZATIONS & PRODUCTS

Case Study

South Africa

Tobacco tracking and tracing: South Africa's revenue service is at a crossroads

September 2020

South Africa has been working to tackle illicit tobacco trade for many years, having ratified the Framework Convention on Tobacco Control (FCTC) in 2005. Article 15 of the Framework focuses on countering illicit trade in tobacco products. In 2013, South Africa signed[1] the Protocol to eliminate illicit trade in tobacco products ("the Protocol"). This builds on FCTC Article 15 by requiring countries which have ratified the Protocol to implement strong controls on tobacco products at various stages in the supply chain. These controls include ensuring that each cigarette pack has a unique identifier code (similar to a serial number), has anti-counterfeit security features and has had all duties and taxes paid on it. This enables the tracking (product movements) and tracing (product origin) process that dramatically increases governments' ability to catch smugglers.

South Africa suffered a setback in this process when, in May 2020, the South African Revenue Service (SARS), after several extensions, canceled its tender for a track and trace system. This came amidst a fragile political climate and tobacco industry opposition. SARS' current commissioner, Edward Kieswetter, has since stated that SARS' illicit trade strategy "may or may not require track and trace." This calls South Africa's ability to address illicit trade into question and demonstrates how successful the tobacco industry is in undermining tracking and tracing there.

[1] South Africa has signed but not yet ratified the Protocol, meaning it is not yet officially valid in the country. However, South Africa is a party to the FCTC and so is obligated to meet the requirements of FCTC Article 15, on which the Protocol is based.

SARS' track and trace tender, issued in April 2019, was intended to upgrade the country's outdated "Diamond Stamp" tax markings and replace them with modern, secure tax markings and a track and trace regime. This new system would have incorporated key supply chain provisions of the Protocol and dramatically improved the South African government's efforts to address an extensive illicit tobacco trade in the country, as acknowledged by both SARS and independent research.

However, South Africa is one of the top 10 countries most at risk from interference by the tobacco industry, according to the Global Tobacco Industry Interference Index. And it appears that the country's progress in trying to tackle illicit trade has fallen victim to such interference. SARS has engaged extensively with the tobacco industry in recent years via regular meetings between the Service and the now defunct Tobacco Institute of Southern Africa (TISA). Its members included British American Tobacco South Africa (BATSA), Philip Morris South Africa, Japan Tobacco International and Imperial Tobacco.

Further, there is evidence that the tobacco industry influenced state decision making in South Africa for its own benefit. A former BATSA security service provider stated in 2018 that the provider "would use SARS and the police to raid BAT's opposition factories, warehouses and places that sold their cigarettes." All of this is particularly concerning given that Article 5.3 of the FCTC is there to protect public health policies from the commercial and other vested interests of the tobacco industry. Indeed, the Article's implementing guidelines state that Parties to the treaty should interact with the tobacco industry only when and to the extent strictly necessary. The symbiotic relationship between BAT and SARS stands counter to the spirit of Article 5.3.

In addition to regularly engaging and collaborating with SARS when the tender was being developed, transnational tobacco companies also exerted their influence when the tender process was announced. The opposition to the announcement was led by TISA, which described the tender as a "rushed process" that would "impose excessive and impractical regulatory burdens on small retailers" and "only encourage retailers to sell illegal products." The Fair Trade Independent Tobacco Association, which claims to represent 80% of licensed cigarette makers in South Africa, has argued that the tender was canceled due to transnational tobacco companies' influence over the South African government.

TISA's efforts to undermine the tender after its announcement were unsurprising, given the historical complicity of transnational tobacco companies in tobacco smuggling across Africa. BAT used illegal channels to supply African markets throughout the 1980s and 1990s, with smuggling a crucial component of the company's business strategy. This helped it gain market presence and leverage in government negotiations, compete with other transnational tobacco companies and circumvent local import restrictions.

These predictable efforts to influence the tender following its announcement are outclassed only by BAT's extensive interference at SARS' expense prior to the tender even being announced. The tender process followed a difficult period for SARS and led to a major change in the organization's staffing and, ultimately, to the appointment of the current commissioner, Edward Kieswetter. According to a former senior official at SARS, Johann Van Loggerenberg, tobacco industry operatives sought to use senior political connections to halt previous SARS investigations into the tobacco industry.

In 2013, SARS established a project specifically to investigate South Africa's illicit tobacco trade. This led to BATSA becoming the subject of an in-depth SARS audit and, in 2014, an employee of BAT (as well as TISA and the South African government's State Security Agency), who had been in a personal relationship with Van Loggerenberg, accused Van Loggerenberg's unit at SARS of going "rogue" and spying on high-profile politicians.

The accusations led to Van Loggerenberg and several of his colleagues at SARS facing corruptions charges, all of which were later dropped. The media publication which first covered the claims subsequently apologized for over-relying on its sources and for getting "some things wrong." According to Van Loggerenberg, the entire narrative was a now-discredited tobacco industry attempt to undermine SARS.

However, the allegations were extremely damaging. They led to SARS' entire executive committee, including its acting commissioner, being suspended and the investigation into illicit trade being scrapped. The last remaining SARS official involved in the project was suspended in 2017. The changes at SARS, including the loss of key human resources and the Special Investigative Unit being disbanded, which effectively wiped out SARS' capacity to combat illicit trade, were directly linked to the industry. Following this, SARS had only eight full-time staff members to address illicit tobacco trade. This changed in May 2018 when SARS announced that it was in the process of re-establishing dedicated investigative teams to address the problem.

Crucially, SARS' track and trace tender was developed soon after this tenuous period and before Kieswetter became commissioner. Speculatively, this may explain why Kieswetter canceled the tender. It does not, however, diminish South Africa's need for an effective tracking and tracing system. This is why Kieswetter's statement that SARS' illicit trade strategy "may or may not require track and trace" is concerning.

Without track and trace, SARS is left to rely instead on placing customs officers in production facilities and on a recently introduced regulation that requires counting devices to monitor cigarette production. Both measures are insufficient at addressing illicit trade and lead to favorable outcomes for the industry. Having customs officers in manufacturing facilities is not encouraged by the World Customs Organisation (WCO). Automated approaches provide a clearer audit trail and more accountability, and lead to fewer face-to-face interactions where corruption could occur. Further, production counters were recommended by TISA in the months leading up to the announcement but are not recommended by any international instruments (e.g., the Protocol). Both TISA and FITA have supported this measure since it was announced.

If SARS does not implement recognized effective best practice with respect to production controls, tracking and tracing and the other supply chain controls envisaged by FCTC Article 15 and the Protocol, then the industry will have succeeded in undermining SARS as an institution as well as its policy efforts to address illicit tobacco trade. This has implications not just for South Africa's commitment to FCTC Articles 5.3 and 15 but also for government revenue. Evidence from Kenya, for example, demonstrates that tracking and tracing increases tax compliance and is cost-effective.

SARS must now decide how to effectively address illicit tobacco trade. Will it revisit its prior efforts to implement FCTC Article 15 and the Protocol or risk allowing the country's' significant illicit tobacco problem to continue?

Canceling the tender allows SARS to begin a new, open and transparent tender process that both integrates the provisions of FCTC Article 15 and the requirements of the Protocol and addresses the unique illicit trade situation in South Africa. If SARS does not grasp this opportunity, then the tobacco industry will have succeeded in undermining the implementation of effective and independent supply chain controls in South Africa.

Due to its vested interest, the tobacco industry has worked extensively to try and gain control of the implementation of tracking and tracing in countries across the globe. This is why it is crucial that SARS not only begins a new tender process for tobacco tracking and tracing, but that it protects this process and the resulting tracking and tracing system from interference by the tobacco industry.

To find out more about the tobacco industry's efforts to influence tracking and tracing and ways governments can fight against this, read the STOP briefing on tracking and tracing, or the short summary here.