COMMODITY REPORT

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WHEN THE SMOKE CLEARS

The ban on tobacco products in South Africa during COVID-19

MICHAEL McLAGGAN

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ABOUT THE AUTHOR

Michael McLaggan is an analyst at the Global Initiative Against Transnational Organized Crime. His current focus is on crime and illicit markets in southern and eastern Africa.

Cover: A smoker at a protest in June 2020 against the tobacco ban in South Africa introduced as part of government's COVID-19 measures. © *Gallo Images*

Please direct inquiries to:
The Global Initiative Against Transnational Organized Crime
Avenue de France 23
Geneva, CH-1202
Switzerland

www.globalinitiative.net

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ACRONYMS AND ABBREVIATIONS

ANC	African National Congress
BAT	British American Tobacco
BATSA	British American Tobacco South Africa
COVID-19	Coronavirus Disease
EFF	Economic Freedom Fighters
FITA	Fair-trade Independent Tobacco Association
GI-TOC	Global Initiative Against Transnational Organized Crime
REEP	The Research Unit on the Economics of Excisable Products
SARS	South African Revenue Service
VAT	value-added tax
ZANU-PF	Zimbabwe African National Union – Patriotic Front

EXECUTIVE SUMMARY

The illegal trade in cigarettes reached new heights in South Africa following the government's decision to outlaw all domestic trade in tobacco products on 27 March 2020. This formed part of a lockdown that was imposed to enable the country to prepare for the COVID-19 pandemic that had recently reached its shores. Before the ban was put in place, as much as 35 per cent of the total cigarette market in the country was illicit. After it was implemented, 100 per cent of the market became illicit. An already large and lucrative market for illegal traders in tobacco products prior to the lockdown became even more profitable, attracting an array of new actors.

The stated purpose of the ban, which was eventually lifted on 17 August after a sustained public outcry, was to prevent smoking on the premise that smokers were at greater risk from the coronavirus. However, critics said this rationale lacked a scientific basis. In the end, the move failed to curtail either smoking or the sale of cigarettes and increased the risk of infection by encouraging the sharing of single cigarettes, something the government said it was trying to prevent.

The ban also increased the illicit trading of tobacco products and with it, smuggling. Instead of excise revenues from tobacco sales going into the government's coffers, they were lost to the black market. By some estimates, this amounted to R35 million in potential revenue lost per day,[1] resulting in a cumulative loss of about R4.8 billion in lost revenue from cigarettes alone by the ban's end in August.[2]

Traders in this underground market included those who had already been trading in illicit products as well as organized criminal groups such as gangs (who added cigarettes to their diverse repertoire of contraband products) and otherwise ordinary civilians seeking to make a living amid a worsening economic crisis exacerbated by the pandemic. Cigarette prices spiked in the first few months of the ban, with the cost of a packet increasing by an average of 230 per cent by mid-June. The hefty

◀ **Illicit transactions in South Africa during COVID-19: buying a cigarette amid a nationwide ban on tobacco products.** *Emmanuel Croset/AFP via Getty Images* price increases attracted interest in the market from further afield, evidenced by the growing number of foreign products in the country, many of which were unknown in South Africa prior to the ban. This suggests that not only did the ban fail in its purported public health aims, it made South Africa a tobacco smuggler's Mecca.

The market share of multinational corporations dropped from above 80 per cent before the ban to below 20 per cent. As the ban matured, the market seemed to be dominated by independent local and foreign companies known for manufacturing 'cheapies', which, in spite of their name, sold for heavily inflated prices for the period of the ban. Locally produced cigarettes were available but the increase in foreign brands was notable. The neighbouring countries of Zimbabwe and Mozambique were the most common source of these brands but labels from adjoining Namibia and Lesotho, as well as countries further afield, such as China, the Democratic Republic of Congo, Zambia, and even France, were on sale.

In addition to outlining the illicit tobacco trade, this paper identifies the shortcomings of the government's approach to the issue, both prior to and during the country's lockdown. Policy recommendations are outlined in the final section. These include

Men smoking in Soweto after a sustained public outcry resulted in the lifting of the tobacco ban in August 2020. *© Gallo Images/Papi Morake* implementing a track and trace system to account for all cigarettes produced in the country, increased sanctions for contravening laws and regulations pertaining to the trade of tobacco products and the imposition of export taxes, among others. The paper concludes that South Africa's decision to ban the local trade in tobacco products undermined the country's revenue generation abilities while also failing to deliver public health benefits related to COVID-19.

South Africa's ban on tobacco damaged its revenue generation and failed to deliver public-health benefits related to COVID-19.

The effects of the ban are likely to be felt long-term. As some companies struggle to recoup their losses, they may go out of business. The players who were able to navigate the ban may have broadened their consumer base, especially among price-sensitive smokers. With prices more or less returning to their pre-lockdown levels and the economic impact of South Africa's COVID-19 response being felt, many consumers now more than ever will seek cheap options. Lastly, new syndicates smuggling previously unknown foreign brands that emerged during the ban may continue to operate, having realized the potential for profit. With the established players consolidating their place and a new generation of smuggler emerging, South Africa's tobacco wars are set to escalate. The impact on both the fiscus and on public health are likely to last for years to come.

Methodology

Research for this paper was conducted using both primary and secondary sources of quantitative and qualitative information. Quantitative data was acquired from research reports by organizations such as the Research Unit on the Economics of Excisable Products at the University of Cape Town (REEP), from interviews and webinars with experts and from official data sources. Qualitative data was collected from GI-TOC researchers, from interviews with experts and ordinary civilians, and through secondary sources such as news reports, journal articles and books.

Academic sources consulted include research papers, journal articles and reports from as early as 2001 up to July 2020. News articles are mostly from 2020 but include older pieces containing details of the historical context of the illicit trade. Books by journalists and experts on the topic were also consulted. Interviews with academics, tax experts and sources with information about illicit trade were conducted to formulate recommendations on how to deal with the problem.

On-the-ground empirical research by GI-TOC researchers was conducted to shed light on the nature of the actors selling cigarettes and tobacco products during the ban, how and from where they procured the stock, and the profitability of the business. Interviews were also conducted with residents near South Africa's border with Zimbabwe, as well as police in Limpopo, to source information about and observations of movements of product across this porous border.

Smokers were interviewed to gauge their attitudes towards the ban and to gain a broad understanding of price and products available in different areas of the country. Although the latter was informative, the two recent reports conducted by REEP were the primary points of reference for understanding price and product availability. Interviews with members of the tobacco industry were also held to understand their outlook on the topic covered by this paper.

INTRODUCTION

The illegal trade in cigarettes and other tobacco products has been in the spotlight in South Africa for nearly a decade due to its prevalence and its connection to state capture,[3] which mushroomed under the rule of former president Jacob Zuma (2009–2018). In recent years, players in this market have been able to operate almost with impunity, and the low-risk, high-reward nature of the trade has made it appealing to opportunistic entrepreneurs and businesses willing to operate outside the law. This general impunity persisted throughout the ban and thereafter, and there is little indication that it will be disrupted in the near future.

The ban on the sale of cigarettes was imposed in South Africa in late March as one of many measures gazetted as part of South Africa's strict lockdown, put in place in response to the COVID-19 pandemic. The ban, along with other regulations, was promulgated by the country's newly-established National Coronavirus Command Council to support the lockdown.[4] The rationale was that smokers are more susceptible to infection by COVID-19 and more likely to suffer worse health effects once infected than non-smokers. The government further asserted that the sharing of single cigarettes, practised mostly in low-income communities, was a vector for the spread of the virus.

The ban has had adverse consequences, both in terms of criminality and public health. What was already a large and lucrative black and grey market increased overnight. The disruption of local production and networks created a much bigger market for illegal traders as formal retailers were forced to step back. This led to an increase in the smuggling of cigarettes through the country's borders. Many new brands on sale were of a low quality, which smokers said affected their health more than regular, legal, brands.

The increase in prices that followed the ban led to both increased profitability for the traders and the pursuit of alternatives by price-sensitive consumers. Rather than solving one problem, the ban created two new ones: it stimulated an already problematic black market and, ironically, undermined its own stated purpose by pushing

◄ South Africa's tobacco ban had adverse consequences both in terms of criminality, driving an already lucrative black market, and public health.. © *Misha Jordaan/Gallo Images*

Instead of supporting the COVID-19 crisis, the tobacco ban stimulated the black market and increased risky smoking practices.

smokers to seek out more dangerous alternatives and engage in risky practices, such as sharing cigarettes, which increased under the ban.[5]

The consequences of the ban may persist beyond the pandemic for consumers of tobacco products and the industry at large given how entrenched illicit trading became over the period in question. The fact that South Africa's COVID-19 response contributed to an increase in criminality and resulted in significant revenue losses to the government from excise taxes on legal cigarette sales highlights a failure of government policy in this regard.

South Africa's tobacco industry

To understand South Africa's predicament regarding the illicit trade in cigarettes and tobacco products, some historical context is necessary. Prior to 1993, the Rembrandt Group held a majority on the country's tobacco trade through its ownership of Rothman's International.[6] In 1999, Rembrandt ceded Rothman's International to British American Tobacco.[7] The merger enabled British American Tobacco South Africa (BATSA) to command a market share on 93 per cent at the time.[8] Little is known about the illicit trade (or absence thereof) at this time due to the lack of literature and research on the matter. It was only after 2000 that it became noticeable, and only after 2010 that it became prominent.[9] This is due to most of the early independents being shut down by the South African Revenue Service (SARS) in the mid-2000s before a second generation of manufacturers emerged after 2010.[10]

It is important to note that, in the 1990s, there was strong pressure by anti-smoking groups and government to curb the prevalence of smoking. In 1993, the Tobacco Products Control Act was passed, with an amendment coming into effect in 1999.[11] This legislation and the policy that accompanied it introduced excise duties over a gradual period, along with a total ban on the advertising of tobacco products and restrictions on smoking in public spaces. The anti-smoking campaign was led by the then-minister of health, Dr Nkosazana Dlamini-Zuma. As a medical doctor and asthma sufferer, her disapproval of smoking is well known. She was an integral figure in the drafting and passing of South Africa's lockdown legislation during the COVID-19 pandemic, which included the ban.

The introduction of anti-smoking policies in the 1990s did significantly reduce the prevalence of smoking. By some estimates, total tobacco consumption decreased by 26 per cent from the early 90s to the early 2000s.[12] Despite reduced demand and the increase in excise duties, tobacco producers still increased their profits.[13] The industry countered the new costs of regulation by increasing the price of their products, effectively making the customer bear the burden of the new measures. The illicit trade at this stage was small, mainly comprising knock-offs of big-name brands.[14] It was only in the mid-2000s that the early independent companies started to emerge,[15] which signalled a turning point in the growth of illicit trade.

Currently, the tobacco industry in the country can be separated into two blocs: 'Big Tobacco', comprising long-established companies such as British American Tobacco (BAT), Phillip Morris International, Japan Tobacco International, and Imperial Tobacco; and the smaller independent companies, such as Gold Leaf, Carnilinx,

SIGNIFICANT LANDMARKS IN SOUTHERN AFRICA'S TOBACCO ECONOMY

1990

Mastermind Tobacco, first of the independents, is incorporated

1993

British American Tobacco acquires a near monopoly (93 per cent) of the SA tobacco market after a cession from the Rembrandt Group

Tobacco Products Control Act passed

1999

Tobacco Products Control (Amendment) Act passed

2000

Gold Leaf Tobacco (GLTC) formed and begins importing cigarettes

2001

GLTC begins manufacturing its own products

2002

Savannah Tobacco Company (later renamed Pacific Cigarette Company) incorporated in Zimbabwe

2003

Phillip Morris International establishes a South African branch

2007

Japan Tobacco International establishes a South African branch

Track and trace system proposed. Struggles to get off the ground

2009

Amalgamated Tobacco Manufacturers incorporated

2010

Increase in illicit trade noted

Project Honey Badger initiated by SA Revenue Service

2011

Edward Zuma made a director of ATM. Later resigned

Carnilinx (Pty) Ltd incorporated

2012

Folha Tobacco Company produces its first cigarette brand

Amalgamated Tobacco Manufacturers acquire a licence to manufacture cigarettes

Formation of the Fair-trade Independent Tobacco Association (FITA)

Home of Cut Rag primary processing plant constructed

2013

Reduction in illicit trade observed by REEP research study

2014

Best Tobacco Company incorporated

Tom Moyane becomes SARS commissioner

2015

Afroberg Tobacco Manufacturing incorporated

'Rogue unit' narrative forces several top executives out of SARS

Protobac (Pty) Ltd incorporated

2015–2017

Illicit trade spikes

2018

Tom Moyane dismissed as SARS commissioner

Draft Control of Tobacco Products and Electronic Delivery Systems Bill shared for public comment

2019

Track and trace system out to tender, later withdrawn

2020

COVID-19 pandemic hits South Africa. Sales of tobacco products banned as of 27 March. Illicit trade skyrockets.

FITA files court application against tobacco ban in May

BATSA files court application against tobacco ban in June

BATSA filed a court application against the tobacco ban in June 2020 as part of a wider resistance from the tobacco industry. © *Ziyaad Douglas/Gallo Images*

Amalgamated Tobacco, and Best Tobacco, to name a few. It is important to note that some independents based outside South Africa have made strong inroads into the country's tobacco market. Pacific Cigarette Company, located in Zimbabwe, is one such company.

Big Tobacco has the lion's share of the revenue market, with BAT alone accounting for 74 per cent as of 2016.[16] By early 2020, this number is believed to have gone down although it still retains a high share of revenues in the market.[17] The independents hold less than 10 per cent collectively, but some of their products are popular with consumers. RG, a brand manufactured by Gold Leaf, is among the most patronized brands of cigarettes in the country, according to some sources.[18]

The awareness of these two blocs is important because the narrative of what constitutes 'illicit cigarettes' has been built on the distinction between them. The independents are commonly targeted by Big Tobacco and the media as being the main proponents of the illegal trade. While at least some of these independents are undoubtedly complicit in illicit trading, one cannot assume that all are guilty of it. And elements of Big Tobacco have also reportedly been complicit in illegal trading in Africa in the past.[19]

Defining 'illegal trade'

The narrow definition

The commonly understood perception of illegal cigarettes is that these are products on which excise duty or other tax has not been paid. The advantage of this definition is that it provides a clear idea as to what constitutes illegal cigarettes, which makes policy interventions and enforcement easier and clearer. The disadvantage is that the definition focuses specifically on cigarettes and does not take into account the tax compliance of the whole value chain, including growing of the tobacco, cut rag, rolling papers etc. The focus is also too narrow in that it focuses more on avoidance of excise taxes and less on corporate or personal income tax evasion.

The broad definition

Broadly speaking, the illegal trade refers to products that, at some point in the value chain, have avoided payment of relevant taxes, or have otherwise been produced, disseminated or sold contrary to legislation. This would include all products used in the manufacture of cigarettes, as well as the compliance with regulations by tobacco companies themselves. Cigarettes would therefore be deemed illegal even if excise taxes and VAT had been paid on them if the companies that produced them had not declared profits made from these products and had not paid all relevant taxes.

Within these definitions, the understanding of what constitutes 'illegal' may vary depending on which part of the value chain one focuses on. This would go beyond looking at whether cigarettes have been legally manufactured by tax compliant companies, to consider the longer value chain such as the legality of the actual tobacco. It is necessary to examine the whole value chain to ensure full compliance with all relevant legislation and holistically combat illicit trading. However, for the purposes of this paper, 'illegal' or 'illicit' cigarettes are regarded as those on which excise and VAT have not been paid, in order to provide a clear and uniform understanding of the illicit trade.

The development of illicit markets

Black markets exist when a commodity is traded in a way that is contrary to the requirements of relevant laws, both within and between countries. The commodities in question could be outlawed completely (e.g. cocaine in most countries) or cover those that are ordinarily licit (e.g. cigarettes). In the latter case, products would usually be traded legally, but could also be traded illicitly. Black markets develop to circumvent a barrier to trade, or a regulation that undermines the profitability of trade and to address unmet demand for products that can arise from trade or legislative restrictions. These barriers can take many forms.

The most obvious is the law. Where the law prohibits the trade in a product for which there is demand, actors exist who will source the product to meet that demand for a profit.

Another example is taxation. Where a hefty tax is imposed on an otherwise lawfully traded commodity, actors involved may take measures to avoid or evade tax and protect their profits. Products that avoid this tax are sold contrary to law and are therefore illicit. Thus, a parallel illicit market exists alongside the licit one.

Other barriers prompting the creation of black markets could be regulations restricting the amount of a commodity that can be procured within a certain timeframe, or that can be imported or exported, making certain ventures less profitable.

The illicit cigarette trade

As mentioned above, cigarettes are a commodity traded legally throughout the world (with the exception of Bhutan[20] and, for nearly five months, South Africa) and one where illicit markets operate parallel to licit ones globally.[21] Illicit cigarettes can be locally produced or smuggled across borders from neighbouring states and even further afield. Notable examples from around the world where the trade is prominent include Brazil and the Balkans.[22] The latter is a pertinent example of a conglomerate of countries with lax enforcement regimes and where some have bigger markets for illicit products than others by virtue of larger populations. Some states with small populations, such as Kosovo and Montenegro, are used as manufacturing and/or transit hubs, while others with larger populations, such as Bosnia-Herzegovina, serve as consumer destinations.[23] This echoes the situation in southern Africa where smaller states such as Zimbabwe and Lesotho serve as production sites and/or transit hubs for cigarettes destined for the larger consumer market in South Africa. This will be explored later

The illegal cigarette trade is a global scourge that requires regional responses.

in this paper. Suffice to say, the illegal cigarette trade is a global scourge and one that requires regional responses.

Ins and outs of the black market

Common practices to avoid compliance with export and import requirements are found at the secondary and tertiary level of the cigarette value chain. These are:

- Round-tripping/ghost exports
- Undeclared production
- Stock 'lost in transit'
- Smuggling

Round-tripping/ghost exports

Round-tripping describes the process whereby legally manufactured cigarettes are marked for export, which removes the requirement to pay local taxes, but never make it to the declared destination. Instead, these cigarettes find their way back into the local market, where they are sold tax free.[24] Round-tripped cigarettes are thus legally produced goods that are sold illegally in their home market. There is a subtle difference in method between roundtripping and ghost exports. In the latter case, the stock intended for export never leaves the country of origin. In the former, the stock arrives at its destination but is then filtered back into the country of origin. In both cases the result is the same: products are illicitly present and sold in their country of origin.

Undeclared production

Undeclared production involves the illegal manufacture of cigarettes which are not declared to the authorities and no tax is paid on them. These cigarettes can then either be sold on the local market or smuggled across borders to be sold in foreign markets.[25] The products are therefore illegally manufactured and are sold either locally or in other countries, also illegally.

Stock 'lost in transit'

This refers to products manufactured in one country that are marked for export to another but never reach their purported destination. They find their way into the market of a third country, in which they were never supposed to have arrived, to be sold there on the black market.[26]

Smuggling

Smuggled products are those that are illegally trafficked across borders to be sold in the country to which they are trafficked. These are products that could have been undeclared when manufactured, lost in transit, or simply bought in one jurisdiction but moved over the border illegally to avoid paying the required duties in a practice known as 'bootlegging'.[27]

SOUTH AFRICA'S CIGARETTE MARKET

The value chain can be separated into primary, secondary and tertiary sectors. The primary sector is the agricultural part of the process, which includes planting, growing and cultivating tobacco, and acquiring the raw materials necessary for manufacture. The secondary sector involves the manufacture of cigarettes. Finally, the tertiary sector covers the wholesale, distribution and retail elements of the product.

In current literature and policy, interventions to address the illicit trade focused on the tertiary, and to a lesser extent, the secondary, sectors. Policy interventions have mostly focused on increasing excise taxes, securing borders, and attempting (so far, unsuccessfully) to introduce track and trace systems. These important interventions have achieved a degree of success around the world. However, they focus only on a part of the value chain, opening gaps for the avoidance of tax and regulations.

This has suited Big Tobacco, as it has led to the perception that products manufactured by smaller independents (its competitors) are often illegal, while it projects the image that its own products are always lawfully manufactured and tax compliant.[28] This is made easy due to, in no small part, the pricing of these products. Big Tobacco's products, which are expensive and priced well above the minimum tax threshold per pack (R19.10 at the time of writing), cannot be identified as illegal from their price alone. The cost of these products usually varies between R25 and R60, whereas those manufactured by independents are generally priced between R10 and R20.[29]

Higher prices do not necessarily equate with tax compliance. It is possible that these products could have avoided excise taxes but still be priced as if they were compliant. Big Tobacco companies and their brands are well established and thus tend to be trusted by consumers. Smaller independents do not enjoy the same awareness in the market and need to compete on price alone. Evading excise taxes enables traders

◀ **Policy interventions should focus not only on wholesale, distribution and retail services but also on the cultivation and manufacture of tobacco products.** © *Peter Kovalev/TASS via Getty Images*

During lockdown, a series of peaceful protests demanded lifting the tobacco ban. Above, protestors in Cape Town, 25 July 2020. © *Brenton Geach/Gallo Images via Getty Images*

to make a profit on low margins. The result is that the independent products are often priced below the minimum tax threshold and are therefore easier to identify as illegal. This is one of the reasons that brands manufactured by independents are often disproportionately identified as illegal.

The politics

The independents are noteworthy for, among other things, the characters behind them and their links to political figures, both in South Africa and Zimbabwe. Family and friends of the former presidents of these two countries have cropped up in investigations into the trade. Edward Zuma, the son of former president Zuma, was a director of Amalgamated Tobacco alongside Yusuf Kajee, an open supporter of the ruling African National Congress (ANC).[30] Zuma is also known for his business relationship with Paul de Robillard, an alleged smuggler with ties to both South Africa and Zimbabwe. Adam Molai of Pacific Cigarette Company, formerly trading as Savannah Tobacco, is married to the niece of the late former Zimbabwean president, Robert Mugabe.[31] Yakub Mohamed and Simon Rudland, founders of Gold Leaf, which has factories in both countries, also have links with Zimbabwe's ruling ZANU-PF. Rudland himself reportedly attends party rallies and contributes financially to the party.[32] Rudland survived an attempt on his life in 2019 in Johannesburg, which was believed to be linked to ongoing disputes within the tobacco industry and indicative of the shady nature of the business.[33]

One high-profile player in the trade is Johannesburg-based Adriano Mazzotti. He describes himself as 'politically active'[34] and he is a personal friend of Julius Malema, the leader of the opposition Economic Freedom Fighters in South Africa, to which he has made donations in the past.[35] He is also alleged to have contributed to Dlamini-Zuma's bid for the presidency in 2017, which was reported in local media.[36] This link was revisited by the media and others in the wake of the cigarette sales ban. As photos of the minister with Mazzotti circulated on social media, South Africans speculated that she had conspired with Mazzotti to formulate the ban to enable his company Carnilinx to reap handsome profits from the illegal trade in cigarettes, with her taking a cut. Both parties have rejected the claims. Mazzotti and Dlamini-Zuma have denied a relationship of any kind, although Mazzotti did admit to being friends with Malema.[37] The links between tobacco barons and politicians is important in understanding the environment in which illicit trade flourishes.

The emergence of the illicit trade

In the early 2000s, Big Tobacco had a monopoly on the cigarette trade, occupying an estimated 93 per cent of the market.[38] It was at this time that the first independent tobacco companies in South Africa emerged.[39] These companies broke into the market by selling budget products in an effort to claim a portion of the cigarette market, which had shrunk following the passing of legislation aimed at curbing the prevalence of smoking.[40] They were able to keep product prices down through a combination of smuggling and tax evasion, including undeclared production, round-tripping and the smuggling of raw tobacco and manufactured cigarettes across borders.[41] Although most of these early independent companies were shut down by the revenue service, they paved the way for the emergence of a wave of new companies, which were attracted to the potential profitability of the trade.[42]

They became more prominent in the market after 2010, when an increase in non-compliance with tax regulations was observed by the then Economics of Tobacco Control Project (now the REEP).[43] The initial spike occurred between 2010 and 2012 but declined for a period thereafter, most likely because of effective enforcement measures taken by SARS.[44] During this period, the illicit trade reportedly dropped from 26 per cent to about 17 per cent of the market.[45] Most of these companies continued to operate and tax compliance reportedly improved. [46] However, in 2015, another surge in illegal trading was observed.[47]

This coincided with a period of state capture under the leadership of Zuma and the hounding of various officials at SARS by Tom Moyane, who was installed as head of the revenue service during Zuma's term of office, allegedly to forestall any action against the president for unpaid taxes. Moyane was accused of undermining the effectiveness and efficiency of SARS, and one of the casualties was the ongoing investigation into the illicit trade in cigarettes.[48] Between 2015 and 2017, non-compliance with tax regulations was rampant and those involved in the illegal trade operated with impunity.[49] Investigations into the trade ceased and the size of the illicit market increased to between 30 and 35 per cent of the total market by 2017.[50]

After Zuma's resignation in 2018 and the subsequent change in leadership at SARS, efforts to combat the illicit trade resumed.[51] However, the 2020 cigarette ban not only undermined these efforts, it breathed new life into the black market. The fact that the ban was in place for nearly five months allowed illicit trading to become entrenched, which will make it harder for SARS and law-enforcement bodies to tackle it. The illicit trade in tobacco products was a small black market at the beginning of the millennium, but 20 years down the line it became one of the biggest challenges facing South African authorities. This is in no small part due to inadequate enforcement policies, state capture, corporate malfeasance and the decision to ban tobacco sales for nearly five months. Acknowledgement of failures and shortcomings of past policy and practice is thus necessary in order to pave the way forward.

CIGARETTE LOCKDOWN

The bootleg economy

As stated above, the illegal market before the lockdown was already thriving. Products circulating in the black market were those manufactured in South Africa, which were either undeclared or round-tripped back into the country. By some accounts, this locally manufactured stock accounted for most of the cigarettes available in the market.[52] Different brands from outside the country also emerged. This was not new. Cross-border smuggling of cigarettes has been prevalent for a decade and more.[53] Smuggling goods across South Africa's porous borders is a well-established trend. Untaxed Zimbabwean products, and brands from elsewhere, have been found in South Africa in notable quantities in recent years.[54]

The Command Council

The ban on the sale of tobacco products was one of the most controversial measures taken by South Africa's National Coronavirus Command Council, the body tasked with managing the pandemic in the country. Dlamini-Zuma, as Minister for Cooperative Governance and Traditional Affairs, oversees the Disaster Management Act, the umbrella legislation that permits the lockdown. In this role, she is also co-chair of the command council alongside the president, and part of the high-level team tasked with drawing up lockdown regulations. The combination of her high-profile role in deciding on lockdown regulations and her well-known anti-smoking stance as a former health minister has led to a widespread view that she was the main driver of this specific ban.

The government's explanation for the move was that it had 'evidence' that smokers were more susceptible to being infected by the virus and suffering more serious effects because of the existing damage to their lungs from smoking.[55] Dlamini-Zuma emphasized the dangers prevalent in low-income communities of the practice of sharing single cigarettes, which carry significant risk of spreading infection. Her mention in a public broadcast of a 'zol' to describe a hand-rolled cigarette was subsequently parodied in a local music video that went viral on social media.[56]

Almost overnight, the entire market for cigarettes and other tobacco products went underground as formal retailers removed their stock and the supply chain suffered

◀ **Borderline trade. The cross-border smuggling of goods through South Africa's porous borders, such as Beit Bridge, is a well-established practice.** © *The Gift 777/iStock*

Minister Dlamini-Zuma, well-known for her anti-smoking stance, is seen as the main proponent of the tobacco ban. *© GCIS*

severe disruption.[57] This paved the way for the increase in smuggling.[58] Of South Africa's neighbours, only Botswana introduced a similar ban,[59] which meant that production and sale of the products continued largely unabated in countries around South Africa. These countries were potentially important transit points for products from further afield, such as China and the Middle East.[60] In summary, by disrupting and paralyzing the formal market locally, the ban stimulated cross-border smuggling.

A growing bootleg economy opened up new avenues for profit, not only for criminals but also for otherwise law-abiding citizens in need of income. Diminished supply did not reduce demand but it did drive up prices in the first two months of the ban.[61] A study by the Excisable Products Research Unit at the University of Cape Town observed a blanket price increase of 53 per cent between 29 April and 11 May.[62] The overall price increase from the start of lockdown on 27 March until 11 May is estimated to be 90 per cent.[63] A second survey, conducted by REEP between 4 and 19 June, showed that prices continued to increase until the beginning of the second survey, and that, by 19 June, the overall increase in price for cigarettes in general was about 230 per cent.[64]

The findings of the two studies highlighted different trends. The first showed a daily increase in cigarette prices during the period surveyed (29 April to 11 May), whereas the second recorded no such daily increase over the period surveyed (4 to 19 June).[65] This reflects that supply started to match demand, demonstrating the entrenched nature of illicit supply channels and illicit trading.

In the first two months of the ban, diminished supply of tobacco not only failed to reduce demand but drove up prices of illicit products. *© Lefty Shivambu/ Gallo Images*

Depending on the brand, a packet of 20 cigarettes was selling for up to R300, up from pre-lockdown prices of between R30 and R50.[66] By mid-June, the average price for a packet of 20 cigarettes was R114.[67] Importantly, although the prices of all cigarettes spiked, a clear price distinction still exists between Big Tobacco products and those of independents. Independent brands are reported to be selling for between R60 and R180 per pack, whereas Big Tobacco brands are priced at between R200 and R250, and sometimes as much as R300.[68] However, price is influenced by a multitude of factors in addition to the brand, including distance from the source of supply, nature of the seller, point on the retail chain and whether delivery costs are built in.[69]

This surge in prices increased the incentive for criminals to participate in the market. Moreover, it also drew law-abiding people into the illicit trade to generate an income during this period of economic hardship. It was against this backdrop that allegations surfaced that Dlamini-Zuma may have benefited from the profits of illicit tobacco, with her alleged links to Carnilinx's Mazzotti cited as evidence.[70] However, when considering the sourcing and distribution challenges experienced by the local independents due to the ban and the lockdown, it is unlikely that the Minister had profit in mind when contemplating the ban's effects. Rather, it is more likely to be her dislike of smoking and longstanding vendetta against the industry that was behind the ban. Her hard-headed response to the groundswell of public outrage on the issue led to widespread criticisms that the government had little regard for the potential consequences of its actions.

The cross-border angle

South Africa has multiple points of entry for illegal cigarettes, with few obstacles faced by operators.

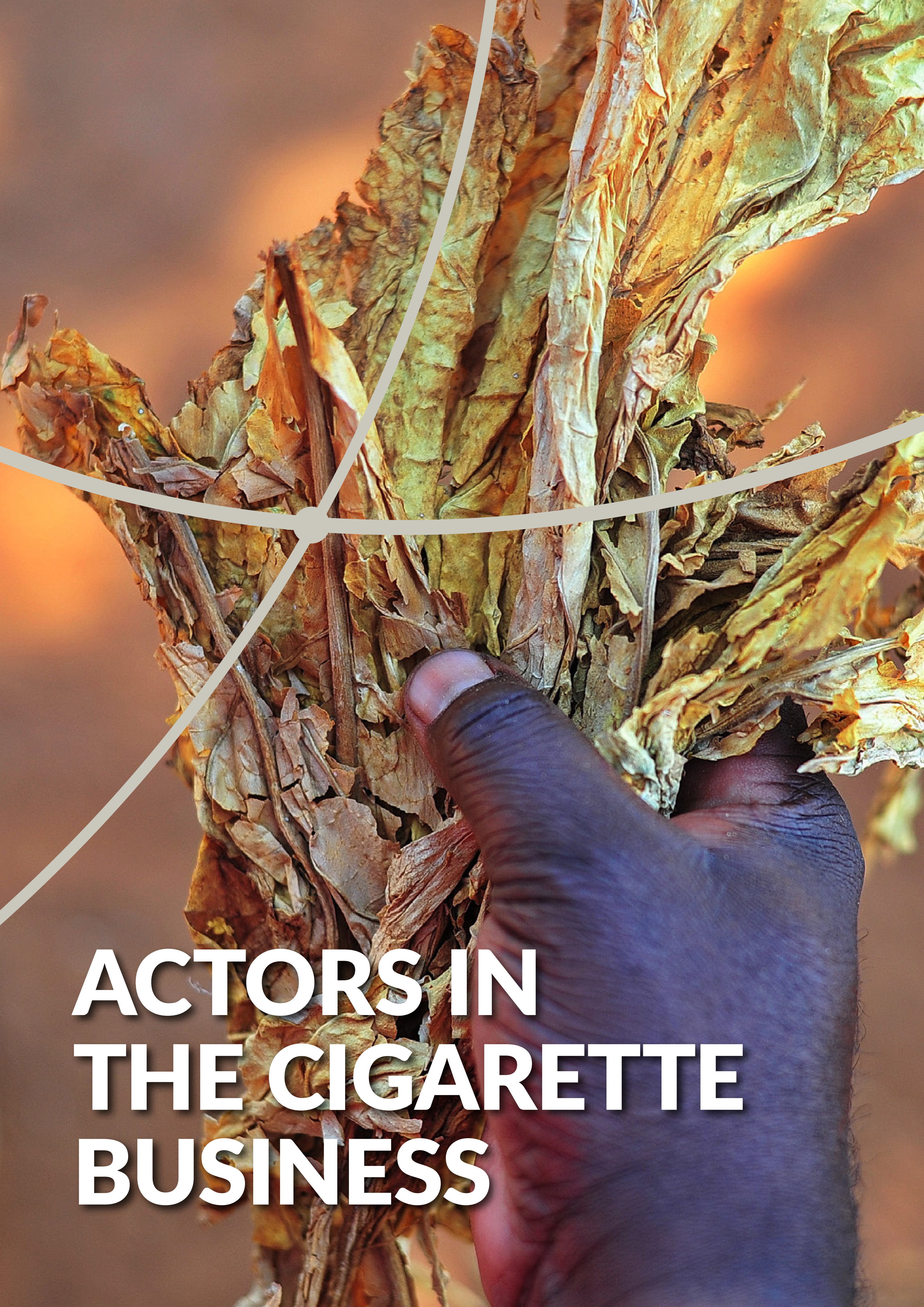
The consignments entering South Africa from abroad were mostly products manufactured by Zimbabwean companies, which took advantage of pre-existing smuggling channels.[71] One cartel allegedly operated a route from Harare to Durban,[72] and a number of consignments were seized in Limpopo,[73] with at least one large haul seized in Cape Town.[74] These channels were unlikely to be affected materially by the lockdown. Cross-border transport of essential goods continued after the clampdown,[75] and stashing illegal stock in secret compartments in vehicles continued as well.[76]

Although historically the largest identified country of origin for smuggled cigarettes,[77] Zimbabwe is not the only source. Mozambique appears to be another transit country for contraband products destined for South Africa.[78] This was the case prior to lockdown, and increased after its implementation.[79] This is evidenced by cigarette packets, of various brands, found in South Africa with warning labels written in Portuguese.[80] This does not rule out other transit countries, but given that Mozambique is the closest country with a Portuguese-speaking population, it is the most likely source.

A gang member in Cape Town who sold cigarettes during this time claims that his stock was sourced from Namibia.[81] Some gangs also allegedly procured stock from ships docked in Cape Town's harbour.[82] Lesotho has also been identified as a source or transit country, with consignments seized along its border with Eastern Cape province.[83] These examples illustrate that there are multiple points of entry for illegal cigarettes, seemingly with few obstacles faced by operators. The chances of getting caught appear to be slim, with bribes said to have deterred law enforcement officials from trying to intercept smugglers.[84]

The 'missing' exports

As of 2020, 66 per cent of all cigarettes marked for export from South Africa reportedly did not reach their final destinations.[85] Destination countries included neighbouring Namibia and Lesotho, as well as Mali in West Africa and Syria.[86] In the case of the former two countries, not only were fewer cigarettes recorded as imports than were listed as exports from South Africa, but the number of cigarettes marked for these countries far exceeded their per capita consumption of the product.[87] This missing stock is likely lost to the black market, and given the close proximity of Lesotho and Namibia to South Africa, it probably finds its way back home. In the case of exports to Mali and Syria, missing stock probably either never leaves South Africa, or it gets lost in transit and enters black markets abroad. If this is the case, it means that tobacco companies in South Africa are aiding and abetting an illicit global trade in these products that is not merely confined to southern Africa.



ACTORS IN THE CIGARETTE BUSINESS

The manufacturers

Cigarettes manufactured by all tobacco companies registered in South Africa were bought and sold during the ban.[88] This could have been without the active participation of the companies concerned but it does demonstrate that they were not able to secure their supply chains. With drastic price increases and consistent demand, the ban was a prime opportunity for profit. However, the independents, which mostly produce locally, would have faced challenges manufacturing during the lockdown, which severely disrupted manufacturing and legitimate economic activity. As a result, most of their products sold at this time would have been pre-existing stock. Thus, the size of the opportunity would be linked to the length and severity of the lockdown.

The second report released by REEP showed that some independents experienced an increase in market share, with others experiencing a decrease.[89] Among the former were Carnilinx, Amalgamated Tobacco, and the Zimbabwean-based Pacific Cigarette Company and lesser known Olomide. The latter two companies experienced an increase of more than 100 per cent in market share and more than 1 000 per cent, respectively (Pacific from 3.6 to 7.9 per cent and Olomide from 0.2 to 2.2 per cent) since the first REEP survey.[90] This is unsurprising given the surge in smuggling over the border from Zimbabwe and the prevalence of Remington Gold (Pacific) and Chelsea (Olomide) brands in South Africa. Gold Leaf's products experienced a small decrease in market share, but it still retains a substantially higher share than it had prior to lockdown – almost 27 per cent of the market.[91] Other independents such as Folha and Protobac have seen their share reduced to almost zero,[92] possibly due to difficulties with production and distribution.

At the same time, there has been a decrease in purchases of Big Tobacco products. This has helped to fuel the narrative that smaller independents are unjustly benefiting from the ban at the expense of Big Tobacco. However, although market share in terms of products sold has diminished, a marked price differential exists between Big Tobacco products and those manufactured by the independents.[93] The market share therefore only refers to units purchased, not turnover. Big Tobacco brands continue to be sold at a higher price than independent brands and make more of a profit from fewer units.

◀ South Africa's tobacco farmers faced an uncertain future during the ban on cigarettes and other tobacco products. © *Lucas Ledwaba/iStock*

During the ban, interception of vehicles trafficking illicit cigarettes to South Africa was widely reported. Here, Remington Gold cigarettes manufactured in Zimbabwe are seized in Limpopo in May 2020. *© SAPS, via WhatsApp*

It is important to note that cigarettes produced by both Big Tobacco and by the independents were purchased by consumers, as well as seized by officials, during the lockdown period.[94] A BATSA official said these were products purchased by wholesalers or retailers prior to the lockdown.[95] However, Big Tobacco brands were among those seized along borders during the ban,[96] meaning that it was not just pre-existing stock being sold off. But even with their products being smuggled into South Africa, the market share of Big Tobacco under the ban rapidly diminished, with the share of all the multinationals together estimated to have declined to just 18 per cent.[97]

The smugglers

There is no single profile of a cigarette smuggler. A smuggler, strictly speaking, is anyone brazen enough to bring in products over the border without declaring them or paying the requisite duties. Cigarettes have been smuggled in hidden compartments of shipping containers, oil tankers, and trucks in the past, as well as in cars and bakkies (pick-up trucks), often hidden among other goods.[98] The interception of vehicles trafficking illicit cigarettes was widely reported during the ban in South Africa.[99] A method that become popular during the lockdown was the use of runners – people who, as the name suggests, carry goods on their person across borders.[100] The introduction of scanners at border posts made smuggling goods in vehicles increasingly risky and increased demand for runners,[101] who delivered goods to vehicles

During lockdown, Cape Town gangs reportedly obtained illicit cigarettes from cruise ships in the harbour. Above, a quarantined ship with suspected COVID-19 cases on board. *© Rodger Bosch/AFP via Getty Images*

waiting near border fences.[102] This practice is most common along the border with Zimbabwe,[103] where observers noted a marked increase in smugglers crossing over. Said one farmer in the area, 'From the odd group of five to eight carriers (per week) a year ago, we now have 60-plus every few days crossing in front of our camp on the Limpopo with impunity.'[104] As the cargo is light in weight, large quantities can be carried by one person.[105] Depending on the brand, a single carton of 10 packets was being sold for anywhere between R300 and R3 000 on the street while the ban was in place.[106]

The introduction of previously unknown brands brought to market by opportunists attracted to easy profits is noteworthy. The number of respondents who selected 'other' in REEP's surveys of brands purchased grew from 1.1 per cent to 3.8 per cent in the first survey, and 7.3 per cent in the second.[107] This demonstrates the growing number and popularity of previously unknown brands in the market, many of them likely to have been smuggled in. These foreign products may also be cheaper than locally produced better-established brands as they seek market share. With no indication of how long the ban would last, these actors would have had to act swiftly to exploit the profit opportunity.

The sellers

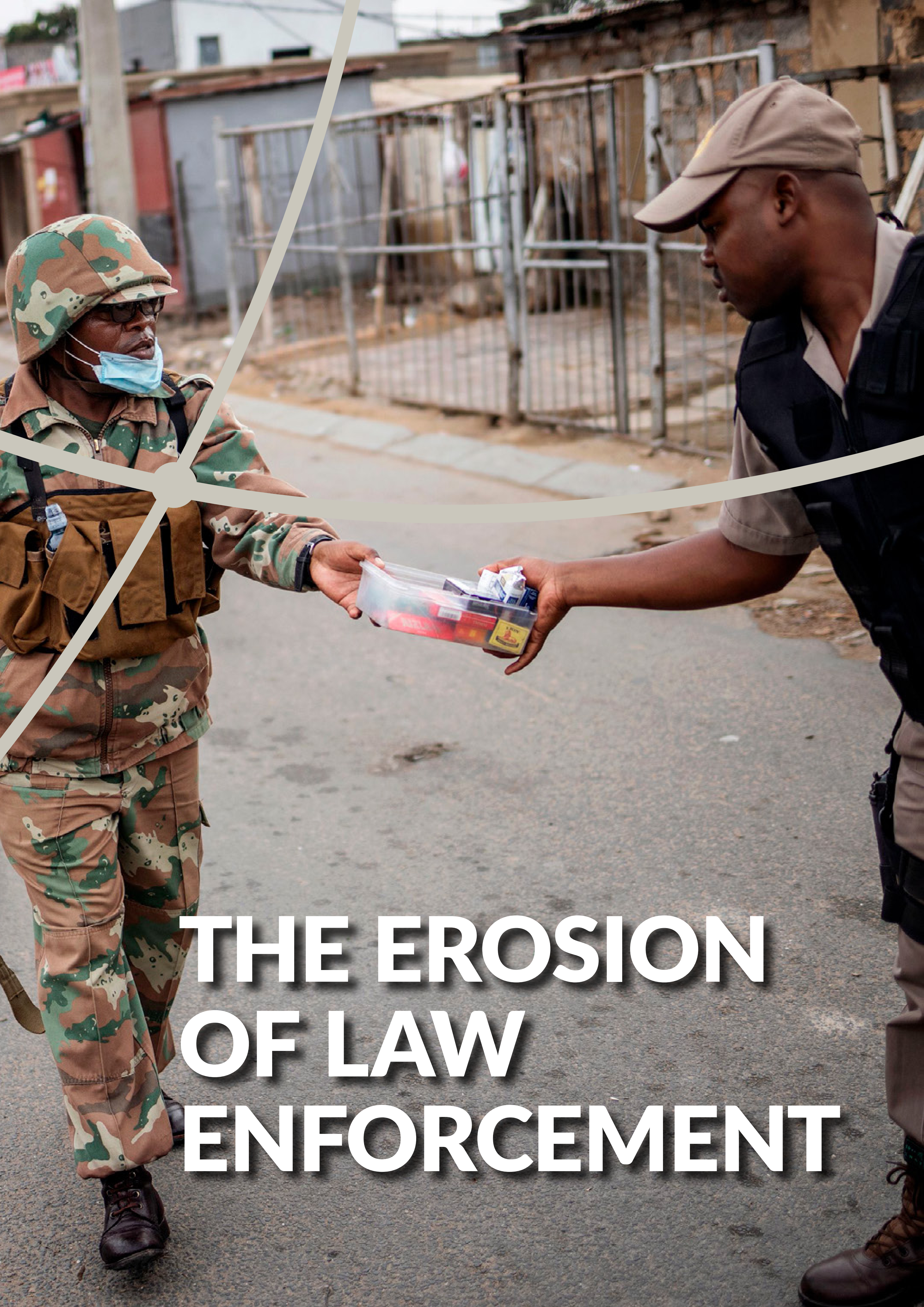
Big Tobacco brands are typically sold by big supermarket chains.[108] The ban closed this route to market, which partially explains why fewer Big Tobacco products were purchased during the ban, over and above the cost factor. The main lockdown outlets were corner cafes, spaza shops and street vendors,[109] already a common source of illicit products before the lockdown.[110]

Criminal groups and civilians alike were involved in selling lockdown contraband.

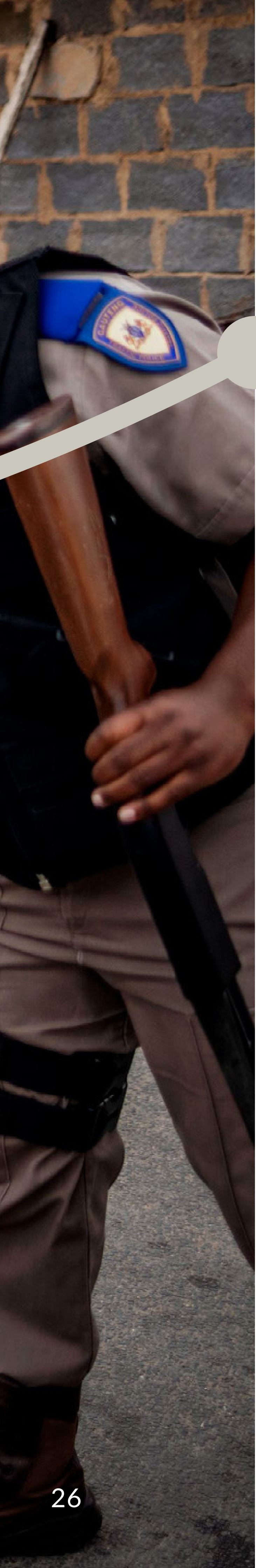
During lockdown, the number of outlets selling cigarettes decreased in the initial phase as the market found its feet. This opened up a gap for new players to exploit. Among them were gangs, who added cigarettes to their inventory of drugs and illicit liquor.[111] By some accounts, the ban made trading in cigarettes more profitable than other drugs such as methamphetamines,[112] which made it an appealing market for these groups, and one that was easy to monopolize in areas under their control. Cigarettes became part of the gang trade, utilizing regular outlets, including drug dens and street corners, as well as sales in minibus taxis and by prostitutes.[113]

In Cape Town, these gangs reportedly procured much of their stock from cruise ships in the harbour.[114] Because of the source, these cigarettes would have been Big Tobacco products.[115] They were initially sold for R10 per single cigarette, rising to as much as R20 amid increasing demand.[116] Interviews with gang members and associated persons describe how at least two of Cape Town's most notorious criminal gangs have made as much as R12 million (US$710 000) each during the period from the start of lockdown in late March until mid-July from the cigarette trade alone.[117] These numbers are difficult to corroborate given the informal and illegal nature of the activity, but this demonstrates that a significant part of the retail tobacco trade fell into the hands of these organized criminal groups with extensive and well-established distribution networks. Moreover, by monopolizing the trade at local levels, they can inflate prices and reap greater profits without the threat of competition.

Ordinary civilians also took to selling cigarettes, with various motivations. One woman in Cape Town bought cigarettes pre-lockdown to barter for wine after the alcohol ban was introduced.[118] A man in Pretoria procured cartons of cigarettes to distribute among his friends on a non-profit basis.[119] A local actor was arrested on charges of selling cigarettes during the ban at a taxi rank in Polokwane.[120] Others have used the opportunity to make a living after losing their jobs and incomes. One couple in Centurion sold cigarettes after losing their jobs.[121] Finding this enterprise to be more lucrative than their previous work, they said they intended to go continue with it after the lockdown.[122] Children have taken to buying packs from other sellers and peddling loose cigarettes at a marked-up price to support their jobless families.[123] These examples illustrate the diverse array of actors involved in selling lockdown contraband and the ease with which they were able to access the market. It also explains the rapid market growth.



THE EROSION OF LAW ENFORCEMENT



State capture

During Zuma's presidency, state capacity was significantly eroded, particularly in the area of law enforcement. Loyalty to the president and his followers was favoured over competency and integrity in political appointments.[124] Crime Intelligence, in particular, was undermined at this time, particularly after the appointment of Richard Mdluli as Head of Crime Intelligence in 2009.[125] Mdluli reportedly used his position to both prevent investigations into the controversial president, as well as to openly loot the unit's coffers for his own benefit.[126] Although suspended in 2011, he continued to receive his salary until 2018,[127] when he was dismissed and criminal charges were laid against him for crimes committed in 1999.[128] He was later charged and convicted for assault, kidnapping, and assault with intent to do grievous bodily harm.[129] The National Prosecuting Authority, led by Nomgcobo Jiba and Lawrence Mrwebi as Deputy Director of Public Prosecutions and head of the Specialised Commercial Crimes Unit, respectively, appeared to be more interested in protecting their political masters than prosecuting crimes.[130] Both were dismissed after a judicial commission of inquiry found them to be unfit for office.[131]

The 'spy wars'

During this period, certain agencies in the state apparatus were used to further the interests of specific groups. For example, the State Security Agency was used to spy on both SARS and on various independent tobacco companies.[132] The precise details of the episode are well documented, but the example serves to illustrate how factions in the state security and the tobacco industry became embroiled in the state capture project and provides the back story to how corruption led to the weak state of law-enforcement bodies in South Africa.

The state capture era had a profound effect on the state's capabilities, and willingness, to investigate and prosecute crimes. Zuma had professionals in crime-fighting

◀ **Corruption in South Africa has weakened its law-enforcement bodies, blunting the response to the illicit tobacco trade.** © *Michele Spatari/AFP via Getty Images* organizations replaced by people aligned to his interests. The capture of SARS compounded this, especially as it was, until then, a key player in the fight against illicit trade in tobacco products. Project Honey Badger, the SARS operation established to focus on the illicit tobacco trade, was one of the casualties.

It had experienced a certain degree of success in curbing illicit trading and ensuring tax compliance in the industry. The illicit cigarette trade reportedly dropped from 26 per cent of the total market to 17 per cent, in large parts owing to its efforts.[133] However, its success was eroded during the state capture period. When Moyane became commissioner of SARS in 2014, the unit was disbanded, investigations into the trade all but ceased, and cases arising from its work and lodged with the crime-fighting unit targeting organized crime, The Hawks, never progressed.[134] The illicit trade reportedly grew to 35 per cent of the market by 2015.[135] In addition, numerous senior officials were accused of running a so-called rogue unit within the revenue service, allegedly with the intention of spying on state officials, notably Zuma.[136] This rogue unit narrative was used as the basis to suspend SARS officials and prevent further investigations into powerful politicians and big corporations, including tobacco companies – both the multinationals and independents.[137]

The tobacco industry's role in the dismantling of SARS is well-documented in the media and books written by investigative journalists and former employees.[138] The rogue unit narrative has since been widely discredited by journalists and courts of law, finally being dismissed as a fabrication in 2020.[139] However, the damage was done, and SARS's investigative capacity and administrative capabilities were severely eroded. However, under the new SARS boss, Edward Kieswetter, some investigations have resumed.[140]

Current law-enforcement agencies were woefully ill-equipped to enforce the ban on tobacco products, a problem compounded by the lack of will on the part of those tasked with doing so. Army patrols along the border with Zimbabwe were said to be accepting bribes to turn a blind eye to smuggling while some police officers were found to be complicit in the sale of cigarettes.[141] Other measures, such as the construction of a new R37 million fence along the Zimbabwe border, had little to no effect. Reports from Limpopo suggest that the fence is easily navigated by circumventing it, cutting through it, or digging ditches underneath it.[142]

Lockdown by fiat

Policy experts and researchers in the field were not consulted prior to the ban's implementation. Rather, the decision was a political one with a fig leaf of respectability given to the decision by the co-option of scientists on the COVID-19 Command Council. The science on which it was based is either absent or inconclusive. Given South Africa's diminished law-enforcement capacity, there was little hope of effectively enforcing the ban and preventing the mushrooming of illicit trade in the banned products. The lack of deliberation and thought that went into the ban is evident in the government's court papers prepared to defend its decision in a court action brought against it by the FITA.

In one of its responses, the government claimed that the thriving illicit market had helped to alleviate the economic harm resulting from lost revenue.[143] This is problematic in several respects. Firstly, and most probably unwittingly, it implicitly acknowledges that the ban has failed by admitting that smoking and the sale of cigarettes has continued. Secondly, it begs the question as to why, if the government was concerned about the economic harm resulting from the ban, it did not just lift it to allow revenue generation through legitimate channels. Thirdly, it tacitly condones criminal activity. This shows that the decision to institute the clampdown was flawed both in practice and in principle.

THE POST-LOCKDOWN FUTURE

New trends

Firstly, it is indisputable that the trading of cigarettes continued largely unabated under lockdown. The profitability of the market increased, attracting a new group of cigarette traders. Among these were opportunistic entrepreneurs and people who were desperate for a source of income. The involvement of gangs is especially disconcerting, as these already powerful groups profited immensely from the venture. These gangs have reportedly stockpiled large quantities of cigarettes in anticipation, should the ban be reinstated.[144] Although selling cigarettes will not be as profitable outside of lockdown, the profitability of the venture may encourage these new entrants to continue participation in the market post-lockdown, creating different avenues for the sale and purchase of illicit products.

Secondly, a greater awareness of smaller independent brands is likely to be an outcome of the ban and they may find continued patronage among price-sensitive consumers as prices return to normal. Big Tobacco may feel compelled to lower their own prices to be more competitive in a market where greater awareness of their competitors exists, resulting in a price war.[145] However, opinions differ on this. Some smokers felt exploited by the 'cheap' yet ironically overpriced brands and said they intended returning to Big Tobacco brands.[146] If this is a common position among smokers, Big Tobacco may be less likely to lower prices. BATSA says that because its brands are well-established, they will be purchased by consumers despite the higher prices.[147] Pricing within the first week since the lifting of the ban suggests that Big Tobacco has taken a dual approach to the matter. Big Tobacco budget brands, such as Rothman's, Benson & Hedges, and Winston, have experienced a small drop in price when compared to their pre-ban pricing, while more expensive brands like Peter Stuyvesant, Camel and Marlboro have recorded substantial increases compared with pre-ban prices.[148] By keeping their budget brands at lower prices, they appeal to more price-sensitive consumers, while smokers of the more expensive brands, likely to be from wealthy backgrounds, have the disposable income to pay for the increase. In doing so, it mitigates loss of patronage but also makes more of a profit. What the

◀ **Protests in favour of lifting the tobacco ban were buoyed by the fact that cigarette trading continued in South Africa despite the prohibition.** © *Brenton Geach/Gallo Images* ban laid bare is how much money smokers are willing to pay, which is what may have emboldened some tobacco companies to increase their prices.

Thirdly, the challenges of manufacturing during the lockdown period may have a lasting impact on the competitiveness of several of these companies. Even those that continued to produce cigarettes clandestinely over this time would have had to manage the challenges of employees being grounded, restrictions on transport (which would have affected both the movement of raw materials for manufacturing and the transport of finished goods), and other limitations.[149] Even as the lockdown was relaxed, manufacturing conditions were not optimal. Companies with factories outside South Africa were able to continue production, notably in Zimbabwe, which had a less onerous lockdown than South Africa.

The independents' fortunes are mixed. Data from the second REEP study indicates that, while some independents lost out, others were able to capitalize on the situation and increase their market share.[150] The more prominent independents emerging from the ban may now have a wider consumer base, especially with other independents struggling. However, the introduction of even cheaper foreign brands, as well

Independent cigarette brands muscling in. Liberty is a brand produced in Zambia previously not found in South Africa. The lower price suggests new syndicates smuggling in foreign stock are competing on price.

as better-quality products offered by Big Tobacco, may force the independents into an awkward middle ground. The likely response will be a concerted effort to keep their products as cheap as possible in an increasingly competitive environment. There is little doubt that to keep products cheap, extra effort may go into tax evasion and smuggling. An eye should be kept on how much these companies declare for export as they produce relatively little for this market.[151] Most exports are likely to be ghost exports or roundtripped products.

Post-lockdown, the illicit tobacco market will not be significantly disrupted: new players may emerge and the survivors will be stronger than before.

Finally, there will be winners and losers within the industry. The winners are likely to be those companies with factories outside South Africa who were able to continue production. The losers are likely to be those who only manufacture within South Africa, whose production facilities and supply chains would have been severely curtailed by lockdown. Many may not survive the post-ban era, losing market share to the surviving independents or to Big Tobacco. Either way, the illicit market will not be significantly disrupted. New players may emerge, even on a small scale at first, and the survivors will be stronger than before. Backyard businesses may also grow, with cigarette-manufacturing machines available online at reasonable prices. This option is made more attractive by the fact that SARS currently does not keep track of cigarette-manufacturing machines in the country.[152]

New avenues for violence

Violence often occurs in industries where regulatory regimes are weak and no legal recourse exists to decide upon disputes, or where it is limited or unfeasible. Numerous incidents of violence within the tobacco industry have been reported in recent years, as documented by tax specialist Johann van Loggerenberg in his industry exposé, *Tobacco Wars*.[153] These include hijackings, shoot outs, intimidation, and most notably an attempted hit on tobacco baron Simon Rudland.[154] With an increase in the number of actors in the trade during the ban, especially those already involved in other criminal activities, such as gangs, intimidatory tactics could become more commonplace moving forward.

Public-health concerns

Form a public-health aspect, the costs of the lockdown weigh heavily on the gains. A small number of smokers have reportedly given up the habit during the ban, but a number of them intend to resume smoking now that it has been lifted. Of the 80–90 per cent of those who continued to smoke, sharing of cigarettes became more common.[155] The irony of this is that it was the fear of people sharing cigarettes that was used to justify the ban, which turned out to be a self-defeating rationale.

The quality of illicit products may also have health risks. While all smoking is unhealthy, the smoking of cheaper, unregistered products can exacerbate health problems. For example, these products may have a higher tar content than what is permissible. This is especially the case with products smuggled from states with weaker regulatory regimes.[156] The exploration of alternatives to factory cigarettes also presents health concerns. Raw tobacco rolled into banana leaf is one alternative that some have professed to trying in lieu of cigarettes.[157]

Moving forward: Policy and industry options

With the lifting of the ban in mid-August, policy interventions for the way forward need to be formulated. A multi-level, multi-agency approach is required to effectively counter illegality in the tobacco industry, focused on all sections of the value chain. This will entail efficient monitoring and regulation of the entire tobacco chain, from tobacco production to the consumer. However, it will require consistent and effective communication between various regulatory and law-enforcement bodies not only within, but between countries, which presents a serious challenge to the success of such an initiative. Any intervention needs to take into account South Africa's short-comings and capabilities as well as the will of stakeholders to move forward. To address the illicit trade in cigarettes specifically, a series of short- to mid-term interventions need to be made at the secondary and tertiary levels of the value chain.

Introduction of export taxes

Under the current Customs and Excise Act, tobacco companies are exempt from paying tax on products for export if they can prove that the shipment reached its intended destination.[158] This is where round-tripping is commonly employed as an evasive technique. Up to 66 per cent of cigarette exports from South Africa did not reach their intended destination in 2020, prior to the ban's implementation.[159] Imposing an export tax on products marked for export, payable before they leave the country, will make round-tripping less profitable. This is logically sound and has worked in countries such as Brazil.[160] However, this may also shift the problem rather than solving it. In the Brazilian example, the gap left by the absence of locally-produced budget products was quickly filled by contraband smuggled from neighbouring Paraguay.[161] This reflects the situation in South Africa in the wake of the ban, with contraband from across the borders filling the market gaps.[162] Players in the industry, although obviously eager to discourage an export tax, believe this would make local products regionally uncompetitive.[163] This suggests that a regional approach to tackling the problem is necessary.

Harsher sanctions for non-compliance

Currently, as indicated by a representative from BATSA, those found guilty of illicit trading are typically charged under the Customs and Excise Act, which prescribes lower penalties than other legislation such as the Prevention of Organized Crime Act and the Financial Intelligence Centre Act.[164] A short-term solution that could have positive ramifications for the future is to ensure that those found to be complicit in illicit trading are charged under all applicable legislation and given harsh sentences so as to eliminate the low-risk, high-reward appeal of the trade. With the threat of harsh sanctions, less hardened white-collar criminals may be discouraged from entering the market. This could prove particularly effective given that it is these actors who often orchestrate smuggling and who have more resources available to move large quantities of product.

Technology interventions

Introducing technology into production facilities to count the exact number of cigarettes produced to avoid human error and intentional undercounting may help to reduce illegal practices. Putting tax stamps on all cigarette packets is another useful intervention.[165] Ghana recently introduced this measure, which was paid for by the government.[166] The cost of implementing the system was offset by the resultant surge in revenue collection, which indicates a decrease in undeclared production.[167] Regular inspections by customs officials, and regularly alternating officials who inspect production, can also contribute to better control of the market.

Where a factory consistently declares production that is lower than its capacity allows, it should be forced to downscale that capacity. One shortcoming of this approach is that it will only affect companies with factories in South Africa – the independents. The only factory registered to a Big Tobacco corporation is the BATSA facility in Heidelberg, Gauteng.[168]

Another shortcoming is that even the technology to counter undeclared products can be circumvented. Deliberate wetting of the scanners can yield incorrect readings, allowing excess products to avoid detection. If the data is stored on a local server before it is declared to the Revenue Service, it can be 'doctored' to present an incorrect amount. Measures thus should be taken to ensure the data capture is tamper proof. Some factories are said to deliberately slow their production lines prior to visits by SARS officials in order to understate capacity.[169] These methods of circumventing the system need to be tackled. However, although not watertight, using technology to monitor production does make under-declaring of production more difficult, placing a significant obstacle in the way of illicit production.

Target smuggling routes

Securing South Africa's borders is the most obvious way to tackle smuggling. However, the country has not had much success in doing so in the past, partly because of a lack of political will to stop the movement of goods and people illegally and poor enforcement of regulations. Another factor is the lack of capacity to monitor its long foreign borders and coastline. To be effective, stricter border controls will require better training of officials and introducing incentives for tackling cross-border trafficking and apprehending suspects.

A more effective approach would be to make smuggling less profitable. Reducing undeclared production is one way to do this. If smugglers are forced to pay the full duties for the stock they have earmarked for export, the profitability of the venture can be reduced. Harsher sanctions for smuggling could be effective, but would require those orchestrating the venture (the 'big bosses'), to be the primary targets. The runners doing the actual smuggling are mostly poor youths with no job prospects. They would be unlikely to be able to identify the kingpins.

The introduction of a track and trace system requires proper consideration. It must be mechanized to keep human input to a minimum. Experts insist that such a system is cost-effective and viable to implement, despite the industry's claims that it would be overly complex and expensive.[170] They also maintain that it would be ineffective due to the informal nature of a large portion of sales outlets.[171] The fact that efforts to put in place such a system date back to 2007 does not bode well for current attempts in this regard. There are ways to address the challenges raised by the industry, such as greater oversight of supply chains and keeping detailed delivery schedules to sales outlets.

However, the tobacco producers keep their supply chains opaque precisely to avoid this. By not tracking where its products end up, companies are able to avoid complicity in smuggling and off-the-grid transactions. This allows informal retailers to access their stock off the books. Thus, the challenge for the industry is partly one of its own creation. The need for a track and trace system would be reduced if companies were prepared to be more diligent about securing their supply chains.

The industry also argues that when a tender was put out to provide a track and trace system in 2019, it was rushed through, with players saying Ghana had taken four years to implement such a system.[172] This seems to be a disingenuous argument, given that attempts have been made for more than a decade to

get the system off the ground. The delays have been caused by industry lobbying to stall the process, again demonstrating that the problems the industry cites for a lack of progress are of its own doing. It consistently highlights the potential shortcomings of a track and trace system without acknowledging the benefits.

The value chain

Until a multi-level approach is taken, the common understanding of illegal cigarettes will remain focused on a small segment of the value chain. To effectively police the illicit trade and prevent undue profiteering, compliance along the entire value chain is required, beginning with the farming of tobacco leaf and ending with the consumer. However, this is complicated by the fact that most cigarettes in South Africa contain tobacco sourced from outside of the country. This means that, to effectively monitor compliance in this detail, regional and transnational cooperation between revenue authorities is essential – but unlikely.

The illicit tobacco trade can be countered only by policing the entire value chain, beginning with cultivation of the tobacco leaf. *© Rainer Schimpf/Gallo Images*

Illegal trade in cigarettes long predates the COVID-19 ban, even though the latter has exacerbated the problem. The lifting of the ban will not mean a reversion to the pre-lockdown situation, particularly given the length of the clampdown. There are now more players in the illicit industry, both from within and outside of the country, who have seen the potential for profit from this trade. There is also increased awareness of different, and cheaper, brands that emerged during the ban.

It is apparent that South Africa lacks both the enforcement capacity and the political will to effectively police the trade. With weak state capacity following years of state capture and the boom in the illicit market during the COVID-19 pandemic, the black market trade in tobacco is likely to become an even more intractable problem in the future unless decisive steps are taken by stakeholders in government and the private sector to work towards effective solutions.

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