Illicit Trade in Tobacco products in Kenya

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Kenya- Illicit trade Context

Conflicts in some countries in the Region (South Sudan, Somalia)

Major Manufacturing Hub – Tobacco is supplied to 17 countries from Nairobi

Shares porous borders with 4 countries

Complex tax laws aid tax evasion

Major transit corridor for 4 hinterland countries
Illicit Trade in Tobacco in Kenya

- Undeclared imports
- Undeclared local Production
- Counterfeit brands – foreign production
- Under declared values – CIF and RSP

How Illicit Trade is conducted in Kenya
Kenya’s Response to Illicit Trade

Administrative Controls
- Registration and control of importers
- Creation of Market Surveillance Office
- Licensing and monitoring of taxpayers compliance

Technological Interventions
- Deployment of Excisable Goods Management System
- Use of Electronic Cargo Tracking Systems
- Use of a modern tax management system – itax

Legislative
- Simplified tax structure (1200 per mille or 35% of RSP
- New Excise Bill 2014

Collaboration
- Industry engagement
- Intergovernmental agency enforcement (KEBs, ACA…)
- Single Customs Territory (payment of taxes upfront)
Tax Stamps Programme 1993-2014

1993
Excise stamps introduced on cigarettes

2009
Audits reveal tax stamps grossly abused

2013
Excisable goods Management System

Led to 50% increase in tax collection
Counterfeiting and under declaration of values
Simplification of the tax structure

- Till 1993 excise tax on tobacco was 130% of the excise value. This posed serious challenges of value with transfer pricing being the main avenue for tax evasion.
- In 1993 a new tax regime based on banded retail selling price was introduced. Manipulation of the retail selling price to place products in the lower bands became a challenge.
- In 2008, there was an attempt to replace the retail selling price with banding based on product characteristics
- In 2011, Kenya introduced a high breed system of minimum specific tax and ad valorem based on RSP, which ever is higher.
- In 2013, Kenya aligned its legislation with the WHO draft Protocol for elimination of illicit trade in tobacco products
In 2013 KRA introduced new generation excise stamps complete with production accounting and track and trace systems known as **excisable goods management system** which enables the tax authority to:

- monitoring of production remotely
- Ensure manufacturers do not interfere with the system
- Enables various stakeholders including retailers and other law enforcement agencies to verify authenticity of stamps.
- Support effective enforcement through Market Surveillance
- Generation of Business Intelligence on the behaviour of individual taxpayer or sectors.
Electronic Cargo Tracking System

In 2008, KRA introduced **Electronic Cargo Tracking System** for control and monitoring of transit and export goods.

The system which uses GPS, GPRs and RFID technologies is capable of:

- Ensuring goods are moved on designated routes to the exit points or intended destination allowing only up to 50 metre deviation on either side of the road.
- Has an electronic seal to secure the entrance to the cargo container
- Reports any events and alerts related to the cargo
Market Surveillance Office

In 2013, KRA set up the Market Surveillance Office under the Investigations and Enforcement Department with a mandate to:

- Inspect excisable goods in the market for compliance with excise regulations
- Inspect excise premises for compliance with the licensing requirements and conditions
- Enforce the use of Electronic Tax Registers

Current staffing stands at 56 personnel. 50 officers to be added this financial year. Total planned strength 300 officers
Regional Integration (Single Customs Territory)

- In 2003, three EAC countries introduced Single Customs Territory to facilitate collection of taxes before transit goods leave the first port of entry into the territory or before exports are released. Tobacco was among the first products to be put under the arrangement.
- This initiate was aimed at;
  - Faster movement of cargo
  - Reduction in illicit trade (diversion of transit or export cargo)
  - Advance information is shared on the departure of tobacco destined to their countries
  - Restriction of exports to less risky exit points
  - Kenya has joined various international arrangements for the information sharing
Results of Interventions

- These initiatives have led to the following;
  - Easy detection and seizure of illegal cigarettes. In 2014, a total of 5 million cigarettes were seized,
  - Steady increase in the consumption of legitimate cigarettes
  - Closure of 3 factories that couldn’t compete after effective tax regime
  - Slower growth of importers
Seizures at Kilindini Port
Seizures at the Coast
Seizure of cigarettes, JKIA Airport
Cigarettes Seizures in the last one year by Customs

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>ITEM</th>
<th>QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELDORET</td>
<td>SUPER MATCH EXPORT CIGARETTES</td>
<td>ONE MILLION TWO HUNDRED STICKS OF SUPERMATCH</td>
</tr>
<tr>
<td>ELDORET</td>
<td>COUNTER FEIT EXCISE STAMPS</td>
<td>64 CARTON</td>
</tr>
<tr>
<td>MOMBASA</td>
<td>RICHMAN CIGARETTES</td>
<td>EIGHT HUNDRED THOUSAND STICKS</td>
</tr>
<tr>
<td>MOMBASA</td>
<td>COUNTERFEIT SPORTSMAN CIGARETTES</td>
<td>FIVE HUNDRED AND SIXTY THOUSAND STICKS</td>
</tr>
<tr>
<td>SHIMONI</td>
<td>MASTERMIND CIGARETTES</td>
<td>TWO MILLION STICKS</td>
</tr>
<tr>
<td>MOMBASA</td>
<td>SUPERMATCH</td>
<td>FOUR HUNDRED THOUSAND STICKS</td>
</tr>
<tr>
<td>MOMBASA</td>
<td>1*40 FT CONTAINERS CONTAINING COUNTER FEIT BAT CIGARETTES DECLARED AS COTTON BUDS</td>
<td>ONE MILLION STICKS</td>
</tr>
<tr>
<td>JKIA</td>
<td>CONSIGNMENT DECLARED AS FRESH VEGETABLES BUT FOUND TO BE CIGARETTES.</td>
<td>ONE MILLION STICKS OF RICH MAN CIGARETTES</td>
</tr>
</tbody>
</table>
## Recent cases in Mombasa area

<table>
<thead>
<tr>
<th>CONTAINER NUMBER</th>
<th>DATE OF SEISURE</th>
<th>DESCRIPTION</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSKU4005840</td>
<td>29/4/2014</td>
<td>Counterfeit cigarettes “Bringi trademark”</td>
<td>Investigations ongoing by ACA</td>
</tr>
<tr>
<td>MRKU3581622</td>
<td>26/7/2013</td>
<td>Counterfeit cigarettes “Bringi trademark”</td>
<td>Awaiting destruction (Court order issued)</td>
</tr>
<tr>
<td>GATU8683047</td>
<td>15/6/2010</td>
<td>Counterfeit cigarettes “Sportsman trademark”</td>
<td>Destruction done on 19/9/12 at Bamburi Cement. Awaiting destruction certificate from KRA</td>
</tr>
</tbody>
</table>
Outcomes

These initiatives have led to the following:

- Easy detection and seizure of illegal cigarettes. In 2014, a total of over 20 million cigarettes were seized,
- Steady increase in the consumption of legitimate cigarettes
- Closure of 3 factories that couldn’t compete after effective tax regime
- Slower growth of importers