

CONFRONTING ILLICIT TOBACCO TRADE:



A GLOBAL REVIEW OF COUNTRY EXPERIENCES

SENEGAL: ADDRESSING ILLICIT TOBACCO TRADE

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Addressing Illicit Tobacco Trade

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Chapter Summary

Senegal, like all member countries of the West African Economic and Monetary Union (WAEMU), is a signatory to the Protocol to Eliminate Illicit Trade in Tobacco Products (the Protocol). In recent years, Senegal has launched major legislative, regulatory, and tax reforms to curb tobacco consumption. Senegal is often considered to be at the forefront of the fight against tobacco and its illicit trade within WAEMU and the Economic Community of West African States (ECOWAS). It is important to assess, however, whether Senegal is seizing all opportunities at its disposal to combat illicit tobacco flows.

The analysis shows achievements but also insufficiencies in Senegal's implementation of the Protocol to date. A delay has occurred, notably, in implementing Law No. 2014-14, of March 28, 2014, on the manufacturing, packaging, labeling, sale, and use of tobacco.

On the one hand, for example, the indication "Sale in Senegal" must now appear on all cigarette packages sold in the country, and the mandatory inclusion of health alerts on packaging is already in force. On the other hand, the absence of a robust traceability system

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constrains the fight against illicit tobacco. Stamps or vignettes are not yet used to facilitate tracking and tracing. Nor is there a rigorous control system to monitor tobacco companies' product inventories and exports.

Senegal's Ministry of the Economy, Finance and Planning has set up a mixed enforcement brigade to tackle illicit tobacco trade, bringing together the Directorate General of Customs and the Directorate General of Taxes and Domains. However, substantial implementation challenges remain. For example, there are as yet no specific data collection provisions regarding seizures of illicit tobacco products. Accordingly, documentation of these operations is inconsistent.

Moreover, tobacco product seizures are perceived as unproductive by the customs and tax-administration agents charged to carry them out. The seizures do not give rise to incentive bonuses for enforcement personnel, leaving agents with little motivation to pursue perpetrators. There is also no formal mechanism for inter-ministerial coordination in the fight against illicit tobacco. Expertise and knowledge sharing for the implementation of the Protocol are limited. Rigorous monitoring of the illicit tobacco trade using appropriate indicators is lacking; strengthened monitoring is crucial to appreciate the problem's magnitude and track trends. At subregional and regional levels, joint initiatives to tackle illicit tobacco remain rare. To effectively combat the illicit trade, rigorous control mechanisms across the entire supply chain, international technical and judicial cooperation, and appropriate criminal and civil sanctions should be put in place.

The recommendations of this analysis primarily focus on: effective application of the anti-tobacco laws currently in place in Senegal; further reform of existing legislation; development of the tracking and tracing system for tobacco products; enhancement of governance as a means to combat illicit trade in tobacco; data collection and research; and regional/subregional coordination and cooperation on illicit trade. Specific recommendations include:

- » Accelerate full implementation of Law 2014-14 on the manufacture, packaging, labeling, sale, and use of tobacco products.
- » Improve existing mechanisms for coordinating interventions, national players, and technical and financial partners on the basis of recognized best practices, some of which are set forth in the Protocol.
- » Establish a robust tracking and tracing system to monitor all stages of the production, distribution, sale, and use of tobacco products.
- » Prepare detailed estimates of the scope of illicit tobacco trade in Senegal, and its economic and public-health impacts, to provide decision makers with reliable evidence for policy.
- » Advocate with WAEMU and ECOWAS Member States to promote regional cooperation in the fight against illicit tobacco.

Introduction

Illicit trade in tobacco products is a global problem. It threatens the health of populations, promotes criminality, reduces tax revenues, increases health expenditures, and causes other negative effects (WHO 2017). The fraudulent sale of tobacco products is estimated to be equivalent to 10-12 percent of global cigarette consumption and costs some US\$40 to 50 billion per year in lost revenues (WHO 2015). Illicit trade in tobacco products encompasses multiple challenges in the fields of public health, public finances, and national and regional security.

In recent years, Senegal has undertaken a number of initiatives to reform its tobacco taxation system. Specifically, Senegal, like all other West African Economic and Monetary Union (WAEMU) member countries, is a signatory to the Protocol to Eliminate Illicit Trade in Tobacco Products adopted at the fifth session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), on November 12, 2012.

1. Methodology

1.2 Estimation of Illicit Trade

Measuring the scope of illicit trade in tobacco products in Senegal is a complex exercise owing to the sensitivity of the data and data availability problems. For Ross (2015), two aspects are particularly important: the research methods on the quantification of illicit trade in tobacco and the criteria for assessing the reliability of articles on this subject.

This analysis uses a method of estimating illicit tobacco trade based on the Blecher approach (2010). The data from the 2015 GATS survey were used to estimate the total consumption of cigarettes in Senegal. The method calculates the total consumption of cigarettes and then adjusts this data for the known legal market to estimate the unknown illicit market.

1.3 Assessment of Readiness to Implement the Protocol

To assess Senegal's results (compliance, progress, innovations) in combating illicit trade in tobacco, this analysis applied the self-assessment checklist of the Protocol to Eliminate Illicit Trade in Tobacco Products to Senegal.

This checklist was supplemented by a questionnaire administered to the main entities involved in combating tobacco in general, and illicit trade in particular, in Senegal.

This analysis also conducted audits and data collection and verification operations (data triangulation and/or process analyses) with the following entities: the tobacco industry (Manufacture of West African Tobacco and Philip Morris), the Ministry of Economy, Finance and Planning (specifically the General Directorate of Customs and the General Directorate

of Taxes and Public Lands), the Ministry of Trade, the Ministry of Health, the Tobacco Control Unit, and civil society organizations. This made it possible to verify whether, in its practices, mechanisms, and existing laws, Senegal respects the measures recommended by the Protocol to Eliminate Illicit Trade.

2. Results

2.1 Tobacco Use and Public Health in Senegal

Tobacco use is one of the main causes of avoidable death in the world. It is a major risk factor for cancers; cardiovascular diseases such as hypertension, coronary heart disease, myocardial infarction, and strokes; and many other diseases (WHO 2017).

Studies on the prevalence of tobacco in Senegal focus primarily on ad hoc surveys and often a specific segment of the population.

The Global Adult Tobacco Survey (ANSD 2015), carried out among the adult population (15 years of age and over) using a random sample of 4,514 representative households, has provided the most reliable figures to date on the prevalence of tobacco use in Senegal. It shows that 6.0 percent of the adult population consumes tobacco products, 11.0 percent of men and 1.2 percent of women. 0.7 percent of the adult population uses smokeless tobacco, with women constituting the largest proportion of this market at 1 percent, as against 0.3 percent for men. Tobacco use is more prevalent among the most active and productive segment of the population (25-64 age group), usually the parents of the youngest group (0-15 years).

Questions on tobacco use were included in the STEPwise survey (ANSD 2016) that was conducted among the population aged 18 to 69 years across the entire country in order to identify and monitor risk factors for non-communicable diseases. The survey was carried out on the basis of a nationally representative three-tiered stratified random sample of 6,306 individuals and took account of respondents' residential milieu (urban and rural). The results generally confirm those obtained by the GATS (2015) on the prevalence of tobacco use in Senegal. Overall tobacco consumption was found to be 5.9 percent, with 15.6 percent of men and 0.4 percent of women reporting tobacco use.

The Global Youth Tobacco Surveys (GYTS 2002, 2007), carried out in schools across the country, focused specifically on adolescents between the ages of 13 and 15. Although relatively dated, these surveys provide information on broad trends in the prevalence of tobacco use in this segment of the population, changing consumption patterns, and the issues and challenges of combating tobacco consumption now and in the years ahead. The survey shows that the proportion of children who smoked their first cigarette before the age of 10 increased from 19.3 percent in 2002 to 25.9 percent in 2007 (GYTS, 2002, 2007). In 2002, 13.2 percent of schoolchildren (boys: 20.2 percent, girls: 4.4 percent) smoked cigarettes and 5.4 percent (boys: 7.3 percent, girls: 2.9 percent) consumed other tobacco products. In

2007, 7.5 percent of schoolchildren (boys: 12.1 percent, girls: 2.7 percent) smoked cigarettes, a decrease of about 6 percentage points compared to 2002. However, consumption of other tobacco products, such as shisha, rose from 5.4 percent to 9.3 percent (boys: 11.7 percent, girls: 7 percent). Since 2007, this trend seems to be confirmed among teenagers in Dakar. Outings to smoke shisha are in fashion, and during social gatherings among young people in the capital, shisha is widely consumed. The trend is so persistent and worrying that the authorities have taken steps to restrict consumption in some places frequented by young people.

Of particular concern, comparing the results of the two surveys shows an upward trend in the proportion of young people who wanted to begin smoking, rising from 15.6 percent in 2002 to 31 percent in 2007. This increase was significant both for girls (13.9 percent to 27.7 percent) and for boys (17.7 percent to 37.2 percent)

All surveys also indicate that exposure to tobacco smoke remains high in Senegal: 30.4 percent of adults are exposed in their workplace, 20.6 percent at home, and 20.8 percent in restaurants (GATS 2015). The GYTS data (2002, 2007) show that at least one child in five has at least one parent who smokes. In 2002, 45.8 percent of schoolchildren lived in houses where other persons smoked in their presence, and more than six out of ten (62.6 percent) were exposed to tobacco smoke outside their place of residence. In 2007, 47.6 percent of GYTS respondents lived in a house where other persons smoked in their presence, an increase of approximately two percentage points from the 2002 level.

Senegal, like most developing countries, has an epidemiological transition model characterized by the coexistence of infectious diseases and non-communicable diseases (NCDs). Some authors expect that 46 percent of deaths in sub-Saharan Africa will be linked to NCDs by 2030 (Gaylin et al. 1997; WHO 2004). The results of the STEP survey do not establish a direct causal relationship between the current prevalence of smoking and that of NCDs in Senegal. Nevertheless, it is amply demonstrated in the scientific literature that tobacco is a risk factor that exacerbates major chronic NCDs. The results of the survey show that hypertension, which can be related to or aggravated by smoking, affects 24 percent of Senegal's population, with women who smoke heavily being more affected. According to the cancer country profile prepared by the WHO for Senegal (2004), smoking, physical inactivity, obesity, and household solid fuel use constitute the main risk factors for cancer among adults in Senegal.

Beyond these chronic illnesses, the analysis of the effects of tobacco on public health in countries such as Senegal must take into account other diseases such as tuberculosis, AIDS, and maternal and infant health problems. These are public-health problems that have a disproportionate impact on the countries of the subregion. The link between their progress and tobacco consumption is well established today, but there are no specific studies on these issues in Senegal. In terms of the relationship between tobacco and maternal and infant health, it is established that smoking is the main factor in modifiable morbidity and mortality risks associated with pregnancy (CalEPA 2005; Cnattingius 2004). The challenge for Senegal is to reduce the passive smoking of women of childbearing age. Smoking prevalence among

Senegalese women is very low. However, women are commonly exposed to second-hand smoke in their families. This makes them vulnerable to the negative health effects of tobacco during pregnancy and after childbirth. Infertility and ectopic pregnancies are more frequent among women who smoke (Cnatingius 2004). A review of the work of Guérin et al. (2006) indicates some effects of passive smoking on women and babies, including: low birth weight, sudden infant death syndrome, and premature delivery. A meta-analysis by Pattenden et al. (2006) indicates that prenatal exposure to tobacco smoke also results in respiratory problems for the baby, regardless of postnatal exposure.

To date there have been no studies assessing the impact of illicit trade in tobacco on the prevalence of smoking and the health of the population of Senegal.

2.2 Senegal Targeted by Tobacco Companies

Sub-Saharan Africa is increasingly targeted by tobacco producers and distributors in their strategy to expand and penetrate developing-country markets. Conditions favorable to the implantation of tobacco firms are present in these countries, including: rapid economic growth, demographic expansion, young populations, weak anti-tobacco legislation, porous borders, the existence of free-trade zones, and low tobacco risk aversion among government authorities compared to those in industrialized countries.

Senegal's geographic and strategic position make it a special target for tobacco industry efforts to better penetrate the African market. An analysis of tobacco import and export tables shows that Senegal plays a key role in the industry's strategy for supplying the subregional market and the continent as a whole with tobacco products (Annexes 1 and 4). The culmination of the tobacco industry's strategy for penetration into Senegal was the implantation of the multinational firm Philip Morris in the country in 2007, with the support of the Senegal Investment Promotion Agency (APIX). Since the arrival of Philip Morris, national production of cigarettes has grown steadily. Its value rose from US\$ 126 million in 2012 to US\$ 172.4 million in 2015, a 36.8 percent increase. A similar trend has been seen in the export of tobacco products from Senegal to other African countries following processing of the imported raw tobacco (Annex 1).

Analysis of the changes in the prevalence of tobacco use and the strategies of the tobacco companies in Senegal show disturbing trends. If not reversed, these patterns risk making the country fertile ground for the expansion of domestic tobacco consumption and for rising exports of tobacco products to the rest of continent.

2.3 Tobacco Control in Senegal

Tobacco control in Senegal is governed by national laws and subregional community provisions (involving those of WAEMU and the Economic Community of West African States, ECOWAS), as well as international treaties, including the Protocol to Eliminate Illicit Trade in Tobacco Products.

National measures. At the national level, Senegal has taken a number of recent anti-tobacco measures (Annex 2). Law No. 12/2014 of March 14, 2014, on the manufacture, packaging, labeling, sale, and use of tobacco has entered into effect. Likewise, the new General Tax Code (2013) has made improvements to the country's tobacco tax legislation with the establishment of a higher ad valorem tax ceiling (45 percent), the elimination of the distinction between premium and economy brands, and the introduction of a minimum price for the tobacco tax base. While these steps are important, Senegal's policy of a 45 percent ad valorem ceiling on tobacco taxes conflicts with more recent directives by other bodies which draw on the FCTC. In practice, taxes on cigarettes and other tobacco products in Senegal remain relatively low, at 38 percent of average retail price (WHO 2017:138). To date, tax reforms and other tobacco control measures have not achieved the desired effects on tobacco consumption in the country. This gives added importance to initiatives now being undertaken by the subregional economic communities in which Senegal participates.

Subregional efforts. Overall, Senegalese law, except with respect to exemptions, is compliant with WAEMU provisions on tobacco taxes, particularly Directive No. 03/98/CM/WAEMU of December 22, 1998, harmonizing the excise tax laws of the Member States, as amended by Directive No. 03/2009. However, it should be noted that, as of this writing, the tobacco tax rates and structures operative in WAEMU and ECOWAS have remained suboptimal compared to those applied in countries that have recorded the most significant results in their anti-tobacco efforts, such as the United Kingdom, France, and Canada. Efforts are underway to strengthen tobacco control within these subregional organizations.

In October 2017, regional experts validated the draft harmonization of laws establishing a system for tracking, tracing, and tax audit of tobacco products manufactured or imported in ECOWAS Member States. The draft directive aims to harmonize relevant laws and regulations in the Member States to facilitate the smooth functioning of the internal tobacco-product market. The model calls for ECOWAS Member States to establish and maintain a unified track-and-trace system for all tobacco products imported or produced in the territory using a unique identifier. Once adopted, the directive will also oblige ECOWAS Member States to ensure that all economic operators involved in the trade of tobacco products (from the manufacturer to the last economic operator before the first point of sale) record the entry of all unit packets in their possession, as well as all the intermediate movements and the final output of unit packets from their possession. However, the project has not yet been adopted by most of the organization's Member States.

The Government of Senegal is among the parties to the draft ECOWAS directive that recommends the elimination of all tax exemptions on tobacco products and the mandatory application of a combination of ad valorem taxes (50 percent minimum), price applied by the manufacturers (price exit factory), and specific taxes (US\$ 0.20 per package of 20 cigarettes).

Harmonizing ECOWAS and WAEMU approaches. An important challenge will be the adoption and transposition of this draft ECOWAS directive into the national laws of the WAEMU

countries. The WAEMU countries (also members of ECOWAS) are generally more inclined to transpose WAEMU directives into their national tax legislation than ECOWAS directives. A second challenge is for Senegal, as a member of these two regional organizations, to assert its right to apply the maximum ECOWAS rate, which is 100 percent of the price applied by the manufacturers (price exit factory), and to induce other countries to align with it for the upward harmonization of tobacco taxes toward the ECOWAS and WHO target rates. A third ongoing challenge is the production of scientific evidence taking account of national and regional socioeconomic and health realities to assess the real and potential impact of the application of tobacco control policies in general, as well as policies to reduce the expansion of illicit trade in tobacco. A fourth concern is the involvement of key stakeholders in the production of this information and the establishment of sustainable cooperation mechanisms, so that the evidence generated can continue to inform the choices of decision makers and promote change.

Global initiatives. At the international level, Senegal is a signatory to the Protocol to Eliminate Illicit Trade in Tobacco Products. This treaty was adopted in November 2012 in Seoul and then opened for signature on January 10, 2013, at WHO headquarters. The Protocol implements Article 15 of the WHO FCTC, which sets out the main measures to be implemented to effectively control illicit trade in tobacco products. The commitment to adopt a more restrictive instrument in this area was raised at the first Conference of Parties to the FCTC. It arose out of evidence of the scope of illicit traffic in tobacco products (more than one cigarette in ten around the world) and the resulting particularly significant challenges in terms of tax revenues, the effectiveness of public health policies, and the effectiveness of policies to combat organized crime.

The Protocol aims to eliminate all forms of illicit trade in tobacco products by means of a series of measures to be taken by countries individually or in cooperation with other countries. The prevention of illicit trade focuses on:

- » Securing the supply chain of tobacco products through a series of measures that form the “heart” of the Protocol, such as the tracking and tracing regime for tobacco products;
- » Establishing a global tracking and tracing regime within five years of the Protocol’s entry into force, comprising national and regional tracking and tracing systems and a global information-sharing hub located within the Secretariat of the Convention;
- » Introducing other provisions to ensure control of the supply chain, including licensing and record-keeping requirements, as well as the regulation of internet sales, duty-free sales, and international transit.

Other significant parts of the Protocol deal with due diligence, international cooperation, and enforcement. The Protocol sets out the general obligations of the Parties (Article 4), measures on supply chain control (Articles 6 to 13), offenses (Articles 14 to 19), and international cooperation (Articles 20 to 31).

2.4 Public Health, Tax, and Security Challenges in the Illicit Tobacco Trade in Senegal

Illicit trade in tobacco products entails a number of challenges, particularly relating to public health, public finances, and national and regional security.

PUBLIC HEALTH CHALLENGES

In the area of public health, it must be stressed from the outset that the consumption of tobacco products is dangerous for the population, whether these products are sold legally or illegally, or whether they are genuine or counterfeit. Smoking kills more than half of its confirmed users prematurely, by an average of over 10 years (Peto and Jha 2014). All tobacco products are harmful to health.

However, smuggling, counterfeiting, and the illegal manufacture of tobacco products are aggravating factors for public health and constitute additional obstacles to the achievement of tobacco control policy objectives. Illicit products, which are sold on formal and informal markets, are offered at lower prices, making them more accessible to the population. The development of illicit trade thus counteracts the impact of smoking disincentives and anti-smoking campaigns, particularly those targeting the youngest and most vulnerable populations. In addition, contraband tobacco products sold in Senegal do not typically display the dissuasive health warnings introduced in the country following the enactment of the new anti-tobacco law. This is the case, for example, with several cigarette brands sold in Senegal's border areas, which do not respect the prevailing laws on packaging. Distributors of illicit tobacco products generally have a greater propensity to violate the restrictions on the sale of tobacco to minors in comparison with licensed distributors, precisely because of the informal nature of their marketing channels. The size of the informal sector tends to exacerbate this situation in the WAEMU countries. Finally, illicit trade in tobacco products is responsible for a shortfall in government revenues that could be used to finance public policies, including health policies.

No study has yet evaluated the impact of eliminating illicit tobacco trade on public health in Senegal. However, estimates indicate that the elimination of the global illicit trade in cigarettes would save more than 160,000 lives each year worldwide, starting from 2030 (Joossens and Raw 2009).

TAX ISSUES

Although tobacco products are dangerous, their production and marketing bring in tax revenues to the Government of Senegal. For example, in 2013, the Government collected approximately US\$ 26 million in excise taxes and US\$ 15.2 million in VAT, for a total of about US\$ 40.3 million. In 2016, excise taxes totaled some US\$ 28.4 million and VAT some US\$ 16 million, for a total of US\$ 44.4 million (see Annex). The development of the illicit trade in

tobacco products reduces the Government's ability to expand the tax base and collect taxes on tobacco products. It blunts the expected boosting impact of higher taxes on tax revenues.

Another significant tax challenge related to illicit trade is the concern that smuggling has been used by the tobacco industry to gain leverage with governments for access to their markets under tax concessions (Legresley et al. 2008) or to limit proactive tax measures in countries' anti-tobacco efforts. The tobacco industry often uses the Senegalese press to "warn" national authorities and the population of the supposed risks of rising illicit trade in tobacco following tax increases. This strategy likely aims to delay decisions on major tax reforms that could reduce tobacco consumption in the country. One solution is to enhance controls and implement sufficiently dissuasive sanctions to discourage any inducement to illicit trade.

SECURITY CHALLENGES

The Sahel zone, in which Senegal and the other WAEMU countries are located, faces significant security challenges.² These include inadequate surveillance of the cigarette supply and distribution chains, but also a range of other worrying conditions: rampant terrorism, regional vulnerability to war, widespread financial and political crime, porous borders, ineffective law enforcement, insurrectionist movements in some areas, all complicated by endemic poverty and corrosive corruption.

Illicit trade can flourish in this fertile ground through the operation of criminal networks and potentially terrorist organizations that are harmful to public and international security. The proceeds from the smuggling of cigarettes are laundered and used to finance the activities of such networks. Meanwhile, key tobacco control measures, notably including higher excise taxes on legally traded tobacco products, create potential profit margins for tobacco smugglers, alongside these measures' powerful health and social benefits.

2.5 Estimate of the Scope of Illicit Trade in Tobacco in Senegal

The calculations of this analysis, based on Senegalese data from the most recent GATS survey, show that the illicit market totaled some 9 percent in 2015. This rate is quite close to that for Africa as a whole (10.6 percent) and is generally in line with the estimated global proportion of 9.9 percent (WHO 2017).

² The Sahel refers to a band of Africa marking the ecological and climatic transition between the Saharan area in the north and the savannahs to the south, where the rains are substantial. In the west-to-east direction, the Sahel stretches from the Atlantic to the Red Sea. Different authors variably delimit the precise area covered. Thus, for some, the Sahel includes all territories bordering the Sahara; there is therefore a northern Sahel and a southern Sahel. In this report, it refers to the latter, when the term Sahel is used without a further qualifier. The Sahel zone covers, in whole or in part, the following countries: Algeria (extreme south), Burkina Faso (north), Cape Verde, Chad (center), Mauritania (south), Mali, Niger, Nigeria (far north), Senegal, Sudan (center, including Darfur and Kordofan). The countries of the Horn of Africa are sometimes added: Djibouti, Ethiopia, Eritrea, and Somalia.

2.6 Assessment of the Framework for Combating Illicit Trade in Tobacco Products

Senegal signed the FCTC on June 19, 2003 and ratified it on January 27, 2005. The convention entered into effect on April 27, 2005. Senegal has made significant progress in combating tobacco, the culmination of which was the signing of Decree No. 2016-1008 on July 26, 2016, implementing Law No. 2014-12 of March 28, 2014, on the manufacture, packaging, labeling, sale, and use of tobacco. Senegal thus has a law that is basically in line with the framework convention as regards the implementation of health warnings, for example. The establishment of designated smoking areas is effective in some public and private institutions. Overall, however, the level of application of the law remains problematic.

Senegal acceded to the Protocol to Eliminate Illicit Trade in Tobacco Products on August 31, 2016. The fight against illicit trade requires a specific mechanism with well-defined procedures, responsibilities, and resources. The involvement of a number of public agencies is necessary to meet the obligations and achieve the objectives. The framework established by the Government of Senegal to combat illicit trade in tobacco thus brings together a number of ministries, agencies, and other entities.

STAKEHOLDERS IN THE FIGHT AGAINST ILLICIT TOBACCO TRADE

The Ministry of Economy, Finance and Planning's (MEFP) joint team to combat illicit trade in tobacco products includes the General Directorate of Customs (DGD) and the General Directorate of Taxation and Public Lands (DGID). The joint team's mission is to combat the smuggling and counterfeiting of tobacco products and to conduct verifications throughout the supply chain (e.g., routine unannounced inspections).³ The MEFP is responsible for the team's governance. The team and its member agencies have achieved some notable successes. DGD actions at Dakar airport (Annex 3) and throughout the national territory have resulted in large seizures of illicit tobacco products.

However, the seizures (Annex 3), which are generally destroyed at the end of the operations, are considered unproductive by customs and tax administration agents. Because the products are not subsequently sold, they bring in little in terms of customs and tax revenues. Moreover, the agents conducting the seizures are not awarded bonuses, reducing their motivation to hunt down perpetrators. The establishment of an incentive fund for combating illicit trade in tobacco could increase the motivation of those involved in frontline enforcement operations. It should be noted that the verification mechanism established by the joint team is not fully in line with the requirements of the Protocol for effectively combating illicit trade, since the mechanism currently in place does not allow for the tracing of tobacco products.

³ Important quantities of tobacco products have been seized by the DGD on Senegalese territory and in some border regions, including recent seizures of cigarettes valued at 13 million FCFA in Saint-Louis (DGD 2017).

Broadly speaking, Senegal needs to improve its legal framework to support and facilitate the implementation of the Protocol. The analysis of the application of Protocol provisions does show that Senegal has a legal framework in conformity with Protocol Article 6 (License, equivalent system of homologation or control), according to which parties shall establish a mandatory licensing system for anyone manufacturing, importing, or exporting tobacco products or manufacturing equipment. Parties have the discretion to authorize other activities, such as retailing tobacco products or growing tobacco. In Senegal's case, Decree 2016-1008 of July 26, 2016, takes into account these requirements.

The Ministry of Trade, via the Domestic Trade Directorate, conducts control operations throughout the national production and distribution chain. These controls and verifications of the marketing chain often result in seizures of smuggled or counterfeit tobacco products. In border regions such as Saint-Louis, Kaolack, Ziguinchor, and Kolda, domestic trade units cooperate with other entities including the police, the gendarmerie, and the customs service to exchange information and carry out operations for the control and seizure of illicit cigarettes. The Ministry of the Interior is also involved in combating illicit trade in tobacco products. It cooperates with the MEFP in operations for the seizure of such products.

The Ministry of Health and Social Action focuses more on the establishment and implementation of anti-tobacco laws. It has created a National Anti-Tobacco Program (PNLT) that reports to its Prevention Directorate. The Ministry also acts through regional and departmental committees, which are fora for dialogue and discussion of anti-tobacco measures aimed at reducing the prevalence of smoking and protecting the population. These committees, which are headed by governors (in the case of regions) and prefects (in the case of departments), bring together the main local stakeholders in anti-tobacco efforts in their areas. They facilitate the mobilization of partner resources, support local players, and assist the Anti-Tobacco Program in harmonizing its strategies and interventions. The committees also conduct anti-smoking actions, monitor illicit trade in tobacco, and participate in activities to promote the implementation of laws and regulations at the regional and departmental levels. They may also provide input on the national anti-smoking policy, particularly on its instruments, such as national plans.

Civil society partners include associations and entities that are active in anti-smoking efforts in general and efforts to combat illicit trade in particular. These include the Senegalese Anti-Tobacco League (LISTAB), created in 2011, which did a great deal of work toward the approval of the anti-tobacco law. LISTAB's mission is to help reduce the prevalence of smoking and protect the population against exposure to tobacco smoke. The civil society players working to combat illicit trade in tobacco include religious leaders, members of the Association of Health, Population and Development Journalists (AJSPD), legal experts, economists, and consumers' associations. These stakeholders intervene to increase awareness of the harmful consequences of smoking and advocate with the population for the application of laws combatting tobacco and illicit trade in tobacco.

Clearly, many stakeholders are active in efforts to combat tobacco in Senegal. However, the multi-player mechanism for combating illicit trade in tobacco does have limitations. There is no formal framework for coordination among the entities involved, nor a clear and consistent governance system to determine the roles and responsibilities of the various public agencies. In addition, the DGD's system for collecting data on illicit trade has not established specific provisions concerning tobacco products to allow for monitoring of trends.

TOBACCO PRODUCT TRACKING AND TRACING SYSTEM

The status quo: important advances, but a system that remains incomplete. The current arrangement for tracking trade in tobacco products between Senegal and other countries is under the responsibility of the DGD. This system is not in compliance with Article 8 of the Protocol, which discusses tracking systems. In particular, Senegal's current approach does not make it possible to trace the entire supply network. In addition to the DGD, other entities representing the Ministries of Trade and Health and Social Action also monitor the supply chain to prevent illicit trade in tobacco products. They conduct unannounced inspections and verifications of distributors, merchants, and transporters operating on road corridors.

All cigarettes sold within the national territory are subject to labeling requirements. The words "Vente au Sénégal" must appear on all packages. Since August 28, 2017, new cigarette packages with color photos covering 70 percent of the front, back, and sides have been in circulation. Posters at cigarette outlets warn consumers of the risk of imprisonment for buyers and sellers of illicit cigarettes.

Different labels for exemptions and exports and multi-layered security mechanisms for tracking and tracing (digital labeling, barcodes, holograms, chips, etc.) have not yet been developed. Senegal does not yet have a system of stamps or stickers for use in tracking and tracing tobacco products, as recommended by the Protocol and already practiced in countries such as Kenya.

Under the current system, Senegalese authorities experience difficulties controlling the potential illegal sale of producers' tobacco product stocks and monitoring informal channels through which products officially destined for export may be diverted. The tax administration's tracking of changes in tobacco company inventories is weak.

Inconsistencies in reported production for export. Senegal's tobacco exports increased 40.5 percent between 2012 and 2013. However, there are differences in the amounts declared for export by the tobacco industry and the quantities identified in data collected by the National Agency of Statistics and Demography (ANSD). The amounts declared by the tobacco industry are significantly lower than those identified by the ANSD. This discrepancy surged from a value of around CFAF 8 billion in 2012 to approximately CFAF 27 billion in 2015, immediately following the implementation of the 2014 tax reform.

This gap between the export data provided by the ANSD and the declarations of the tobacco industry to the DGID raises a number of questions. Which data are more reliable? If the

Table 1. Value of Tobacco Product Exports, 2012-2015, Tobacco Firms' Reports versus National Agency of Statistics and Demography Calculations (CFAF)

	2012	2013	2014	2015
Exports declared by tobacco industry	28,687,425,056	40,322,443,540	27,233,426,409	27,816,965,966
Exports (ANSD statistics)	36,816,357,672	48,542,975,129	48,308,265,172	55,316,823,159
Difference	8,128,932,616	8,220,531,589	21,074,838,763	27,499,857,193

Source: ANSD and the tobacco industry (2017)

Figure 2. Cigarette Exports from Senegal, 2012-2015, Tobacco Industry Reports versus National Agency of Statistics and Demography Calculations



Sources: ANSD, tobacco companies (2017)

ANSD data are more reliable, the tobacco companies are presumably under-declaring. This gap is connected with a major concern regarding the players behind the illicit trade in tobacco products. According to some authors, in some countries, most cigarettes traded illicitly are manufactured by the legal tobacco industry (Lalam 2012). Additional research (beyond the scope of this study) would be necessary to confirm or refute this thesis in the case of Senegal.

The tracking of tobacco products intended for export (and thus exempt from taxes) to their declared destinations in foreign countries is deficient, under Senegal's current system. The specific characteristics of WAEMU and ECOWAS make the situation more worrisome, in terms of the potential proliferation of illicit trade. Products nominally intended for export may subsequently be brought back into Senegal via informal channels, if there is a significant difference in prices between countries, and if customs controls at the border are inadequate. This promotes illicit trade in tobacco, increases the tax revenue shortfall owing to

the non-payment of the VAT, and facilitates tax evasion. To tackle this deficiency, authorities must systematically triangulate the data on exports declared by the tobacco industry and those issued by the customs administrations and statistics institutes of the WAEMU countries to verify whether the declared exports really leave the country, arrive at their destination, and do not return to Senegal via informal channels. Clearly the tracking system now in place in Senegal does not yet meet the necessary standards.

Moving toward a robust model of “track-and-trace.” As a signatory to the FCTC and the Protocol, Senegal is required to comply with the global tracking and tracing regime within five years following the Protocol’s entry into effect. When operational, the planned global network should include national or regional tracking and tracing systems that are linked to the “global information-sharing focal point” at the Convention Secretariat through national or regional nodal points. “Unique identification markings” must be affixed to packages, cartons and any outside packaging of cigarettes and, within ten years, to other tobacco products.

To finance improvements in Senegal’s tracking and tracing system, it has been decided to proceed as stipulated in the Protocol, i.e., that the cost be covered by the tobacco industry. However, the procedures for implementation of this option have not yet been clearly defined. The tracing system implemented by Kenya, for example, may be used as a benchmark.

3. Public Policy Recommendations

The concluding recommendations focus primarily on: effective application of the anti-tobacco laws currently in effect; reform of existing legislation; development of the tracking and tracing system for tobacco products; enhancement of governance as a means to combat illicit trade in tobacco; data collection and research; and regional/subregional coordination and cooperation on illicit trade.

3.1 Effective Application and Reform of the Laws Now in Effect

- » Accelerate the application of Decree No. 2016-1008 of July 26, 2016, implementing Law No. 2014-14 of March 28, 2014, on the manufacture, packaging, labeling, sale, and use of tobacco products, so as to achieve effective implementation and enforcement of the law throughout the national territory.
- » In the short term, establish a more suitable legal framework to facilitate application of the Protocol to Eliminate Illicit Trade in Tobacco Products in Senegal. Senegal has made progress in its anti-smoking efforts, but a key issue remains the extent to which current legislation corresponds to the Protocol. The General Tax Code and Customs Code offer opportunities for improvements that can lead to successful application of the Protocol’s provisions.
- » Significantly increase the fines and penalties applicable to offenders in order to discourage the illicit trade in tobacco products.

3.2 Governance Mechanisms to Combat Illicit Trade in Tobacco

- » Improve the existing mechanism for coordinating interventions, national players, and technical and financial partners on the basis of best international practices, some of which are mentioned in the Protocol. Successful practices involve, for example, mechanisms to strengthen information sharing between the parties; assistance and cooperation (training, technical assistance, and cooperation in scientific, technical, and technological fields); investigation and prosecution of offenders; and other measures.
- » Create a multisectoral mechanism to fight illicit trade with a clear, consistent system of governance. This will make it possible to better define the roles and responsibilities of the various public agencies. The assignment of this task to the national coordinating mechanism created under Article 5(2)(a) of the FCTC could constitute an alternative solution to the creation of a new structure and should be enacted by ministerial memorandum. According to the report submitted to the Conference of Parties, a large number of countries have indicated that control of the supply chain is the responsibility of the finance, customs, and/or trade sectors.

3.3 Tracking and Tracing

- » Establish a full-fledged tracking and tracing system to monitor production and supply chains. The system should include tracking inventory changes at tobacco companies to avoid the development of parallel production and distribution channels and, consequently, tax revenue losses.
- » This system should be totally independent of the tobacco industry but financed by it, as recommended by the Protocol.
- » Study the feasibility of establishing an x-ray control system under the authority of Customs with the involvement of other partners in fighting illicit trade.
- » Better monitor exports and ensure that tobacco company declarations match the quantities of tobacco that leave the national territory.

3.4 Data Collection and Research on Illicit Trade in Tobacco

- » Study and prepare detailed estimates of the scope of illicit trade in tobacco products in Senegal, its impact on the economy and public health, and related issues to provide decision makers with robust research that can inform anti-smoking policies.
- » Establish a sustainable centralized mechanism for collecting data on illicit trade in tobacco products by establishing formal cooperation between the DGID, the DGD, the Domestic Trade Directorate, ANSD, and the grassroots regional and departmental committees. This

mechanism should promote data collection on illicit trade and allow for an analysis of the characteristics of the tobacco products seized, including the type of product, the brand name, the location of the seizure, the modus operandi, the planned destination, whether counterfeits are involved, the quantity, and the weight. The starting point for the implementation of this recommendation is the preparation of memorandums asking the units concerned to systematically collect data on any seizures they conduct.

- » Conduct investigations in selected border areas (Kaolack, Kaffrine, Ziguinchor and Saint-Louis) to identify illicit tobacco products marketed in these areas.
- » Establish benchmarks based on countries that have successfully combated illicit trade in tobacco products. Steps may include systematic reviews of best practices and field visits to countries that have achieved notable success in combating illicit trade.
- » Build the capacities of the members of the national technical committee and regional and departmental anti-smoking committees.
- » Establish a fund for combating illicit trade in tobacco products, a portion of which will be used to motivate the participants involved.

3.5 Regional/Subregional Coordination on Illicit Trade

Successful implementation of the Protocol and achievement of results in the efforts to combat illicit trade in the ECOWAS and WAEMU areas require:

- » Revision of the agreements between some countries and tobacco manufacturers in light of the provisions of the Protocol;
- » Advocacy with WAEMU and ECOWAS Member States to promote international cooperation in information-sharing;
- » Advocacy with WAEMU and ECOWAS Member States to raise the WAEMU maximum tax rate to the WHO-recommended level of 75 percent of retail price, or at least to the European Union minimum level of 60 percent.

4. Conclusion

Senegal has made progress in combating tobacco and implementing the Protocol to Eliminate Illicit Trade in Tobacco Products. However, these efforts remain insufficient. They must be enhanced to achieve additional tangible results, considering the issues and challenges involved in combating illicit trade at the national and regional level. Monitoring and evaluating progress will require in-depth, independent research aimed to: more accurately measure the volume of illicit trade; assess its characteristics; document the organization of illicit markets and the players involved; measure illicit tobacco's impact on public health and the national and subregional economy; and evaluate the coordination and efficacy of control interventions.

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An analysis of links between illicit tobacco and broader covert financial flows will help clarify relationships between illicit tobacco trade and the financing of terrorism or other criminal activities. This is a concern because illicit trade in tobacco products is considered to be one of the main sources of financing for terrorist activities in sub-Saharan Africa today, alongside drug trafficking. This provides Senegal and other countries of the region with additional incentives to track and combat illicit tobacco flows.

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Annexes

Annex 1: Summary of Tobacco-Product Exports from Senegal

YEAR	ZONE	CIF VALUE (CFAF)	NET WEIGHT (KG)
2013	WAEMU	7,002,438,551	480,259
	ECOWAS	13,991,793,657	1,198,096
	OTHER	11,219,390,263	931,285
	Subtotal 1	32,213,622,471	2,609,640
2014	WAEMU	6,055,623,680	391,739
	ECOWAS	13,335,592,289	1,320,438
	OTHER	9,289,868,318	668,868
	Subtotal 2	28,681,084,287	2,381,045
2015	WAEMU	9,498,860,579	632,450
	ECOWAS	19,007,190,764	1,679,390
	OTHER	9,957,818,015	767,939
	Subtotal 3	38,463,869,358	3,079,779
2016	WAEMU	18,079,399,275	1,151,056
	ECOWAS	27,866,652,749	2,156,069
	OTHER	8,051,656,110	553,585
	Subtotal 4	53,997,708,134	3,860,710
TOTAL		153,356,284,250	11,931,174

Source: DGD

Annex 2: Main Tobacco Control Laws in Senegal, 1980-2016

LAW	KEY PROVISIONS
Law No. 81-58 of November 9, 1981	<ul style="list-style-type: none"> › Prohibition on tobacco advertising and its use in some public places
Law No. 85-23 of February 25, 1985	<ul style="list-style-type: none"> › Amendment of Law No. 81-58: criminal sanctions set out in Article 13 and review of list of places where smoking is permitted
Law No. 92-40 of July 9, 1992 establishing the General Tax Code	<ul style="list-style-type: none"> › Uniform rate of 30% applicable to all products. No distinction between the different types of products.
Law No. 2002-07 of February 22, 2002	<ul style="list-style-type: none"> › Differentiation of tax rates for economy cigarettes (50%) and luxury cigarettes (30%).
Law No. 2004-30 of August 12, 2004	<ul style="list-style-type: none"> › Higher tax level: 16% excise tax for economy cigarettes and 40% for premium cigarettes. › Introduction of a new category of cigarettes called "standard cigarettes" with a tax rate of 31%.
Law No. 2004-36 of December 14, 2004	<ul style="list-style-type: none"> › Ratification of the WHO Framework Convention on Tobacco Control
Law No. 2009-19 of March 9, 2009	<ul style="list-style-type: none"> › Excise tax rate increased to 20% for economy cigarettes and 45% for premium cigarettes › Elimination of the standard category introduced into the nomenclature in 2004
Order No. 14202 of December 12, 2011	<ul style="list-style-type: none"> › Maintenance of some cigarettes in the premium category (reaction to the declassification strategies adopted by tobacco companies to pay lower taxes on so-called premium category cigarettes)
Law No. 2012-31 of December 31, 2012 (entry into force in January 2013)	<ul style="list-style-type: none"> › Increase of tax rates: 40% for economy cigarettes and 45% for premium cigarettes. › Amendment of Article 434 of the General Tax Code (CGI)
Law No. 2014-29 of October 27, 2014 (entry into force in November 2014)	<ul style="list-style-type: none"> › Introduction of a single rate of 45% › Distinction between economy and premium cigarettes is eliminated. Thus, an increase in the tax rate on economy cigarettes of 5%.
Decree No. 2016-1008 implementing Law No. 2014-14 of March 28, 2014	<ul style="list-style-type: none"> › Application of Law No. 2014-14 of 28 March 2014 on the manufacture, packaging, labeling and use of tobacco.

Annex 3: Cigarette Seizures at the Dakar Airport Customs Post, 2015-2017

CIGARETTE SEIZURES AT THE AIRPORT			
	2015	2016	2017*
Number of cartons	6,781	7,381	7,130
Value	40,686,000	43,986,000	43,780,000

Source: DGD,2017

*DGD estimations as of May 27, 2017

Annex 4: Summary of Tobacco-Product Imports to Senegal, by Origin

YEAR	ZONE	CIF VALUE	NET WEIGHT	TAXES (ASSESSED)
		(CFAF)	(KG)	(CFAF)
2013	WAEMU	246,064	1	327,095
	ECOWAS	1,733,795	257	3,677,887
	OTHER	89,564,111	9,472	155,981,248
	Subtotal 1	91,543,970	9,730	159,986,230
2014	WAEMU	0	0	0
	ECOWAS	0	0	0
	OTHER	106,288,674	15,114	226,147,253
	Subtotal 2	106,288,674	15,114	226,147,253
2015	WAEMU	0	0	0
	ECOWAS	0	0	0
	OTHER	75,327,110	5,839	133,144,655
	Subtotal 3	75,327,110	5,839	133,144,655
2016	WAEMU	171,060,403	18,453	122,308,189
	ECOWAS	171,060,403	18,453	122,308,189
	OTHER	195,525,291	20,863	383,240,994
	Subtotal 4	537,646,097	57,769	627,857,372
TOTAL	810,805,851	88,452	1,147,135,510	

Source: DGD (2017)

COVER QUOTE SOURCES

ⁱ WHO Framework Convention on Tobacco Control Press Release, June 28, 2018.
<https://www.who.int/fctc/mediacentre/press-release/protocol-entering-into-force/en/>

ⁱⁱ World Health Organization Press Release, July 19, 2017.
<https://www.who.int/en/news-room/detail/19-07-2017-who-report-finds-dramatic-increase-in-life-saving-tobacco-control-policies-in-last-decade>

ⁱⁱⁱ Combatting illicit trade in tobacco products: Commissioner Andriukaitis' Statement on the EU's adoption of an EU-wide track and trace system. European Commission Press Release, December 15, 2017.
http://europa.eu/rapid/press-release_STATEMENT-17-5269_en.htm

^{iv} How to design and enforce tobacco excises? International Monetary Fund, October 2016
<https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2016/12/31/How-to-Design-and-Enforce-Tobacco-Excises-44352>

^v World Bank Group: "Global Tobacco Control: A Development Priority for the World Bank Group", Preface of WHO Global Tobacco Report 2015.
http://www.who.int/tobacco/global_report/2015/timevansandworldbankforeword.pdf?ua=1

“To tackle illicit trade is to tackle accessibility and affordability of tobacco products, to be more effective on the control of the packaging and to reduce funding of transnational criminal activities whilst protecting the governmental revenues from tobacco taxation.”ⁱ

– **Dr. Vera Luiza da Costa e Silva**
Head of the Secretariat of the WHO Framework Convention on Tobacco Control

“Governments around the world must waste no time in incorporating all the provisions of the WHO Framework Convention on Tobacco Control into their national tobacco control programmes and policies. They must also clamp down on the illicit tobacco trade, which is exacerbating the global tobacco epidemic and its related health and socio-economic consequences.”ⁱⁱ

– **Dr. Tedros Adhanom Ghebreyesus, Director-General**
World Health Organization

“Tobacco still remains the biggest avoidable cause of premature death in the EU, and the illicit trade in tobacco facilitates access to cigarettes and other tobacco products, including for children and young adults. In addition, millions of euros in tax revenues are lost every year as a result of the illicit trade.”ⁱⁱⁱ

– **Commissioner Vytenis Andriukaitis**
Health and Food Safety / European Commission

“Given their light weight, small size, and high value, tobacco products are susceptible to fraud through illegal trade, production, and cultivation. . . . Illegal trade is a context-specific activity that has various modus operandi and therefore requires multi-dimensional context-specific solutions.”^{vi}

– **Patrick Petit (Senior Economist) & Janos Nagy (Senior Economist)**
Fiscal Affairs Department / International Monetary Fund

“Effective tobacco tax regimens that make tobacco products unaffordable represent a 21st century intervention to tackle the growing burden of noncommunicable diseases. We are convinced that, working together with WHO and other partners in support of countries, we will be able to prevent the human tragedy of tobacco-related illness and death, and save countless lives each year.”^v

–**Dr. Tim Evans (Senior Director) & Patricio V Márquez (Lead Public Health Specialist)**
Health, Nutrition and Population Global Practice / World Bank Group

