

**For discussion
on 8 April 2011**

Legislative Council Panel on Security

Enforcement Against the Smuggling and Sale of Illicit Cigarette

Purpose

This paper provides information on enforcement against the smuggling and sale of illicit cigarette by the Customs and Excise Department (C&ED) to Members for discussion at the special meeting on 8 April 2011.

Background

2. C&ED has made sustained efforts to combat illicit cigarette activities. Since the 50% increase in tobacco duty rates in 2009, C&ED has stepped up the monitoring of illicit cigarette activities and strengthened manpower through internal redeployment to take vigorous actions against such activities. In 2009, C&ED cracked a total of 8 419 illicit cigarette cases, representing an increase of approximately 67% over 5 030 cases in 2008 while illicit cigarette seizures dropped by approximately 19% from 75 million sticks in 2008 to 61 million sticks in 2009. The figures reflected the effectiveness of the intensified enforcement actions of C&ED, which made offenders reduce the quantity smuggled or traded at a time to minimize loss upon detection. On the whole, there is no sign that the situation in respect of the illicit cigarette market has deteriorated as a result of the increase in tobacco duty rates.

3. As the Government measure to abolish the duty-free concessions on tobacco products for incoming passengers came into effect in August 2010, C&ED has further strengthened the monitoring of illicit cigarette activities and tightened random checks on incoming persons at entry and exit control points. There has been no obvious increase in either the smuggling of duty-not-paid cigarettes by “couriers” or the illicit cigarette activities at street level.

4. In 2010, C&ED detected a total of 6 308 illicit cigarette cases at various control points and at street level, representing a drop of approximately 25 % compared to the figure in 2009. A total of 76 million sticks of smuggled cigarettes were seized, including some 29 million sticks of illicit cigarettes seized in cross-boundary transshipment cases. Therefore, the actual cigarette seizures in connection with local illicit cigarette activities stood at 47 million sticks, representing a drop of approximately 20 % compared to 2009. The enforcement figures reflected the effectiveness of C&ED's sustained vigorous efforts against illicit cigarette activities, in particular, street peddling of illicit cigarettes. With the intensified actions of C&ED, such unlawful activities have reduced in scale and magnitude. Relevant figures are given in Annexes 1 to 4 for reference.

5. Since the upward adjustment of tobacco duty rates was announced in the 2011-12 Budget, C&ED has been well prepared to step up its action to prevent the deterioration of illicit cigarette activities. We have strengthened manpower through internal redeployment to closely monitor illicit cigarette activities at various control points and at street level and to bolster enforcement against illicit cigarettes at different levels, including the importation, storage, distribution and peddling of illicit cigarettes.

Modus Operandi in Illicit Cigarette Activities

Cases of Importation, Storage and Distribution of Illicit Cigarettes

6. All along, the majority of the illicit cigarettes seized by C&ED were smuggled into Hong Kong from the Mainland, and approximately 40 % of them were counterfeits. The illicit cigarette syndicates mostly made use of cross-boundary vehicles to carry illicit cigarettes, which were mix-loaded with general cargoes or concealed at the rear or in the false compartment of the loading compartment or cargo container and then smuggled in under a false declaration. Besides, some smuggling syndicates also made use of cross-boundary private cars carrying passengers between Shenzhen and Hong Kong to smuggle in illicit cigarettes.

7. To reduce the risk of interception, the illicit cigarette syndicates

adopted the “swift distribution” mode in delivering orders. Cigarettes of different brands were sorted and packed in advance. Once the illicit cigarettes were smuggled into Hong Kong, they would be transported to the pre-appointed locations (say at the roadside or in the car park of an industrial building), where they would be unloaded and then immediately dispatched to peddlers or peddling black spots in various districts.

8. With regard to incoming passengers, there were also a small number of “couriers” who adopted the “ants moving home” tactics to smuggle in illicit cigarettes via the boundary control points for onward distribution to illicit cigarette “peddlers” at stations along the East Rail or for private resale at a small scale.

Cases of Street-level Peddling of Illicit Cigarettes

9. The modus operandi commonly adopted by illicit cigarette “peddlers” include street peddling and telephone order. Areas with heavy pedestrian flows, such as Mongkok, Yaumatei, Sham Shui Po, Chai Wan and Wan Chai, are black spots for illicit cigarette peddling. The “peddlers” who sell illicit cigarettes through telephone orders operate by two types of methods: (1) to sell to fixed groups of customers and those with whom they are familiar whereas new customers have to be referred by regular ones and the name of the referring party or a password has to be provided for identification at the time of order; and (2) to distribute leaflets to solicit business with public housing residents as the major target group; such activities are particularly rife in Tuen Mun and Tin Shui Wai areas. The offenders will resort to various means to evade Customs detection, which makes law enforcement more difficult.

Offence and Penalty

10. Under Section 17(1) and 17(6) of the Dutiable Commodities Ordinance, Cap.109, Laws of Hong Kong, anyone who deals with, possesses, sells or buys illicit cigarettes commits an offence. Under Section 46 of the Ordinance, the maximum penalty on conviction is a fine of \$1 million and imprisonment for two years.

11. Furthermore, under Section 34A of the Ordinance, a person who enters the territory at an entry point and fails to declare or makes a false or incomplete declaration to a Customs officer on the quantity of cigarettes in his/her possession which are in excess of the duty free concession commits an offence. Under Section 47A of the Ordinance, C&ED may “compound the offence” by imposing a fine on instead of taking proceedings against the offender. The penalty for offence under Section 34A is a fine of \$2,000 whereas that for Section 17(1) or 17(6) is 5 times the duty payable on the dutiable cigarettes involved.

Enforcement Strategy

12. C&ED will continue to work closely with the Mainland and strengthen intelligence collection to combat cross-boundary cigarette smuggling activities by interdicting the inflow of illicit cigarettes at source. At street level, actions will also be strengthened, including conducting raids targeting at black spots for illicit cigarette storage, smuggling, distribution and peddling as well as mounting “undercover” operations against illicit cigarette peddling through telephone order. Random checks on incoming persons at control points will also be stepped up to prevent “couriers” from smuggling in illicit cigarettes by means of the “ants moving home” tactics.

13. Besides, C&ED has enhanced its publicity programmes to impress on the public that it is an offence to buy or sell illicit cigarettes. Apart from putting up anti-illicit cigarette publicity posters in public housing estates, Government premises, tertiary institutions and major cigarette retail outlets in the territory, anti-illicit cigarette APIs are broadcast on major radio and TV channels as well as district town halls to strengthen public education.

Resources Allocation

14. In 2003, C&ED set up an Anti-Illicit-Cigarette Investigation Division with an establishment of 35 officers, including 1 Assistant Superintendent, 2 Senior Inspectors, 4 Inspectors, 4 Senior Customs Officers and 24 Customs Officers, dedicated to combating illicit cigarette activities. In addition, manpower will be flexibly deployed to reinforce anti-illicit cigarette efforts

as the need arises. One example is the formation of a 13-person task force in March 2009 to take focused action against telephone ordering of illicit cigarettes. The task force is still in operation. Besides, additional manpower will also be deployed to reinforce large scale raiding operations.

15. Since the new tobacco duty rates as announced in the Budget came into effect, C&ED has strengthened manpower through internal redeployment to closely monitor illicit cigarette activities at various control points and at street level and to intensify its actions against illicit cigarette activities at different levels, including importation, storage, distribution and street peddling. If necessary, additional resources will be employed to support anti-illicit cigarette enforcement. C&ED is confident that it is capable of containing cigarette smuggling situation.

Customs and Excise Department
March 2011

**Statistics on Illicit Cigarette Cases
between 2008 and March 2011**

	2008	2009 (as compared with 2008)	2010 (as compared with 2009)	2010 (Jan - Mar)	2011 (Jan - Mar) (up to Mar 20 only)
No. of Cases	5 030	8 419 (+67%)	6 308 (-25%)	2 179	1 561
Smuggling, Storage and Distribution	813	1 419 (+75%)	1 095 (-23%)	383	245
Peddling	764	1 497 (+96%)	1 067 (-29%)	269	295
No. of incoming persons bringing in excessive duty-free cigarettes and dealt with by compounding	3 453	5 503 (+59%)	4 146 (-25%)	1 527	1 021
No. of Arrested Persons	4 637	7 790 (+68%)	6 001 (-23%)	2 109	1 457
Total Quantity of Illicit Cigarettes Seized (in million sticks)	75	61 (-19%)	76 (+25%)	9.9	25.6
Illicit Cigarettes seized at street level (minus seizures in transshipment cases) (in million sticks)	69	58 (-16%)	47 (-19%)	9.1	20
Market Value of Illicit Cigarettes Seized (\$)	110 million	110 million (---)	140 million (+27%)	19 million	56.8 million
Duty Potential Involved (\$)	60 million	70 million (+17%)	92 million (+31%)	12 million	38.6 million

**Cases of Illicit Cigarette Smuggling, Storage and
Distribution Between 2008 and March 2011**

	2008	2009 (as compared with 2008)	2010 (as compared with 2009)	2010 (Jan-Mar)	2011 (Jan-Mar) (up to Mar 20 only)
No. of Cases	813	1 419 (+75%)	1 095 (-23%)	383	245
No. of Arrested Persons	719	1 381 (+92%)	1 014 (-27%)	371	253
Quantity of Cigarettes Seized (in million sticks)	67.3	53 (-21%)	68.8 (+30%)	8.6	21.8
Illicit Cigarettes seized at street level (minus seizures in transshipment cases) (in million sticks)	61.3	50 (-18%)	39.8 (-20%)	7.8	16.2
Market Value of Cigarettes Seized (\$)	100 million	97 million (-3%)	130 million (+34%)	16.3 million	49.1 million
Duty Potential Involved (\$)	54 million	60 million (+11%)	83 million (+38%)	10.3 million	33.3 million

**Cases of Illicit Cigarette Peddling
Between 2008 and March 2011**

	2008	2009 (as compared with 2008)	2010 (as compared with 2009)	2010 (Jan-Mar)	2011 (Jan-Mar) (up to Mar 20 only)
No. of Cases	764	1 497 (+96%)	1 067 (-29%)	269	295
No. of Persons Arrested	464	903 (+95%)	840 (-7%)	210	183
Quantity of Cigarettes Seized (in million sticks)	6.2	6 (-3%)	5.7 (-5%)	0.8	3.3
Market Value of Cigarettes Seized (\$)	9.4 million	11 million (+17%)	11 million (---)	1.6 million	6.6 million
Duty Potential Involved (\$)	4.9 million	7 million (+43%)	7 million (---)	1 million	4.6 million

**Incoming Persons Bringing In Excessive Duty-free
Cigarettes and Dealt With by Compounding
Between 2008 and March 2011**

	2008	2009 (as compared with 2008)	2010 (as compared with 2009)	2010 (Jan-Mar)	2011 (Jan-Mar) (up to Mar 20 only)
No. of Cases	3 453	5 503 (+59%)	4 146 (-25%)	1 527	1 021
No. of Persons Involved	3 454	5 506 (+59%)	4 147 (-25%)	1 528	1 021
Quantity of Excessive Duty-free Cigarettes (in million sticks)	1.5	2 (+33%)	1.5 (-25%)	0.5	0.5
Market Value of Cigarettes Seized (\$)	2.3 million	3.9 million (+70%)	3 million (-23%)	1.1 million	1.1 million
Duty Potential Involved (\$)	1.1 million	2.5 million (+127%)	1.8 million (-28%)	0.7 million	0.7 million