



**IMPERIAL TOBACCO  
CANADA**

## **2020 Pre-Budget Submission**

**House of Commons Finance Committee**

**July 2019**

## Recommendations

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- Recognize the choice facing governments of a legal, regulated and taxed tobacco industry, or an illegal, unregulated and untaxed free-for-all, and make policy decisions accordingly.
- Launch a Committee study of illegal tobacco with a mandate to recommend decisive measures to address the problem.
- Implement new measures to address youth access to vapour products while not undermining the incentive for adult smokers to switch to these potentially reduced risk products.

## 1. ABOUT ITCAN

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Imperial Tobacco Canada Limited (ITCAN), established in 1908, is a wholly-owned subsidiary of British American Tobacco p.l.c, a leading tobacco company and the world's largest vapour products business by market share. ITCAN has expanded its portfolio of available products in Canada with the introduction of "Potentially Reduced Risk Products," which includes vapour and tobacco heating products.

ITCAN is dedicated to conducting its business responsibly, in a manner that meets society's expectations of a 21<sup>st</sup> century tobacco company. ITCAN recognizes the health risks associated with tobacco consumption and supports constitutional, reasonable and evidence-based regulation, especially measures aimed at keeping tobacco and vapour products out of youth hands.

ITCAN strictly follows all laws and regulations and pays all required taxes. Despite that, Governments have been pursuing an agenda that often seems designed to turn the market over to illegal operators who play by a completely different set of rules.

## 2. A LEGAL OR AN ILLEGAL TOBACCO INDUSTRY?

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The choice facing Governments is stark: you can have legal, regulated and taxed tobacco industry, or an illegal, unregulated and untaxed free-for-all. This section details three reasons why this choice is becoming a reality, while the next covers illegal tobacco trafficking in Canada.

First, the Federal Government has published final regulations to implement plain and standardized packaging of tobacco products, and standardization of individual cigarettes. This policy will be in market this Fall and will make it virtually impossible for consumers, retailers and law enforcement officers to tell a legal from an illegal tobacco pack or product.

No province we have spoken with seems to know how they can effectively ensure the integrity of their tobacco tax laws in this environment. Also, during a teleconference with the Canada Revenue Agency and provincial Finance departments on February 7, Revenue officials were asked what plan has been put in place to deal with this potential enhanced illegal tobacco threat. The response: "we don't really have a plan." Ergo, the Government has created conditions for a major illegal tobacco expansion, but has no plans to address it.

Second, Canada's three major legal tobacco companies are now under court-approved creditor protection, and there is over \$600 billion in government litigations against the legal industry – or one-third the GDP of Canada.

Undermining the financial viability of the legal tobacco industry is one of the goals of tobacco control lobbyists, as stated by the Non-Smokers Rights Association: "[I]f the tobacco companies

are found guilty and are forced by the courts to pay out significant damages, the potential exists to bankrupt the companies.”<sup>1</sup>

Third, Governments continue to impose additional regulatory costs on the legal tobacco industry which are not incurred by illegal operators. Plain and standardized packaging is just one example, but it has costs into the tens of millions of dollars as it requires the complete re-engineering of our manufacturing process.

Moreover, Health Canada continues to work hand-in-glove with special interest groups in the tobacco control lobby who have a never-ending list of demands. While we will continue to support effective, evidence-based regulation, the current path is unsustainable – especially with Federal inaction on the illegal tobacco market and the legal industry under creditor protection.

**Recommendation:** Recognize the choice facing governments of a legal, regulated and taxed tobacco industry, or an illegal, unregulated and untaxed free-for-all, and make policy decisions accordingly.

### 3. ILLEGAL TOBACCO: TIME FOR ACTION

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Since 2006 Canada has had an entrenched illegal tobacco industry that has consumed 20-33% of the market, depending on the year. Over that period, at least **\$28 billion** of tobacco tax revenue has been diverted to some of the most notorious organized crime groups in Canada,<sup>2</sup> with roughly 40% lost to the Federal Government.

The current Canadian contraband tobacco market results primarily from illegal manufacturing, with 50 illegal cigarette factories and approximately 300 smoke shacks located on some First Nations territories. The illegal tobacco is trafficked across Canada and sold outside existing legal, regulatory and tax frameworks by 175 groups which have ties to organized crime,<sup>3</sup> and numerous reports from law enforcement agencies, think tanks and the media have drawn clear links between illegal tobacco and other criminal activities, including drug and weapons trafficking, human smuggling, money laundering and terrorist financing.<sup>4</sup>

Illegal tobacco has its origins in supply and demand economics: a desire by consumers to save money by willingly purchasing much less expensive illicit products, and the potential for criminals to make high profits.<sup>5</sup> Through taxation and regulation, Governments are driving up the cost of legal products, creating demand. By taking no significant enforcement action, the

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<sup>1</sup> [https://www.nsra-adnf.ca/cms/file/files/Eye\\_on\\_the\\_Industry\\_2016-FINAL2.pdf](https://www.nsra-adnf.ca/cms/file/files/Eye_on_the_Industry_2016-FINAL2.pdf)

<sup>2</sup> Based on tax losses estimated at \$2 billion a year since 2006.

<sup>3</sup> RCMP testimony, House Public Safety Committee, April 27, 2010.

<sup>4</sup> <https://www.opp.ca/index.php?id=115&lng=en&entryid=590a25088f94ac74657b23c6>, and <https://2009-2017.state.gov/documents/organization/250513.pdf>.

<sup>5</sup> The Illicit Trade in Tobacco Products and How to Tackle It, International Tax and Investment Center, 2012.

Federal Government makes it easy for criminal groups to profit from this activity and offer supply.

Incredibly, U.S. lawmakers seem to be paying more attention to Canada's illegal tobacco problem than Canada's Government, with legislation introduced that would require the Secretary of State to report annually on which countries are determined to be a major source of illicit tobacco products.<sup>6</sup> That could mean bad news as it is well-documented that illegal product from our country is entering the U.S. (as well as Mexico and Latin America).

Action is needed, starting with an in-depth Committee review of illegal tobacco, its root causes and measures to reduce its size and scope. This is one of the biggest sources of profit for organized crime groups in Canada today – eight times more profitable than cocaine according to the Sûreté du Québec<sup>7</sup> – a situation that requires Parliamentary attention.

**Recommendation:** Launch a Committee study of illegal tobacco with a mandate to recommend decisive measures to address the problem.

## 4. REDUCED HARM PRODUCTS: STRIKING THE RIGHT BALANCE

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Despite the known health risks, many adults continue to smoke, so working to develop potentially less risky alternatives has been a priority for our company for years. To that end, we have introduced Potentially Reduced Risk Products (PRRPs) into Canada, including vapour products, which have no tobacco or combustion and produce a vapour that is inhaled.

Traditional combustible cigarettes and vapour products are at opposite ends of a risk spectrum, as recognized by Health Canada in legislation wherein vaping products are regulated “as a separate class of products.”<sup>8</sup> Health Canada has stated “that while vaping products are harmful, they are less harmful than smoking cigarettes.”<sup>9</sup> This was echoed by the Health Minister in May, who stated: “Vaping products deliver nicotine in a much less harmful way than smoking cigarettes,” and “smokers who switch completely from cigarettes to vaping products significantly reduce their exposure to dozens of powerful toxins and carcinogens found in cigarette smoke.”<sup>10</sup>

However, an appropriate legislative, regulatory and tax framework is critical if these products are to fulfill their public health potential, which has been brought to the public's attention largely by recognized health advocates.

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<sup>6</sup> <https://www.csce.gov/international-impact/press-and-media/press-releases/jackson-lee-and-hudson-introduce-legislation>

<sup>7</sup> <https://www.eurobsit.eu/article/smuggled-tobacco-in-canada-a-transatlantic-network>

<sup>8</sup> Ibid.

<sup>9</sup> <https://www.canada.ca/en/health-canada/news/2018/05/background-vaping-products.html>

<sup>10</sup> <https://www.canada.ca/en/health-canada/news/2019/05/message-from-the-minister-of-health-on-world-no-tobacco-day.html>

For example, a 2016 report from the U.K. Royal College of Physicians ("RCP") recommends "in the interests of public health it is important to promote the use of e-cigarettes ... and other non-tobacco nicotine products as widely as possible as a substitute for smoking." The RCP stated e-cigarettes are not a gateway to smoking; use is confined almost exclusively to those who are using or have used tobacco; vaping does not "normalize" smoking; there is no evidence that non-smokers and youth are drawn to e-cigarettes and will end up smoking as a result; and for many people e-cigarettes are an effective smoking-cessation tool.<sup>11</sup>

This RCP report echoed the findings of Public Health England ("PHE") whose evidence, published in 2015, concluded that "best estimates show e-cigarettes are 95% less harmful to your health than normal cigarettes;" there is no evidence that e-cigarettes are acting as a route into smoking for youth or non-smokers; and e-cigarettes may be contributing to decreasing smoking rates among adults and young people.<sup>12</sup>

An update on the PHE report was released in February 2018 and concluded:<sup>13</sup>

- Vaping poses only a small fraction of the risks of smoking and switching completely conveys substantial health benefits;
- E-cigarettes could be contributing to at least 20,000 successful new quits per year and possibly many more;
- E-cigarette use is associated with improved quit success rates and an accelerated drop in smoking rates;
- Many thousands of smokers incorrectly believe that vaping is as harmful as smoking, and around 40% of smokers have not even tried an e-cigarette;
- Evidence does not support the concern that e-cigarettes are a route into smoking among young people as youth smoking rates continue to decline and regular use is rare and is almost entirely confined to those who have smoked.

For consumers to take advantage of reduced harm products, they need to be accessible and affordable. However, we share the concern about youth use of these products and believe the Government should concentrate on the issues of access and enforcement.

It is important to remember that it is already illegal for youth to purchase a vapour product. Therefore, if that is happening, the system has broken down somewhere and we need to determine how youth are accessing these products illegally.

While we are confident the vast majority of youth do not obtain these products directly through convenience retail locations,<sup>14</sup> we have nevertheless launched a new retail campaign to further educate retailers and remind consumers that vapour products are not to be sold to youth.

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<sup>11</sup> <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

<sup>12</sup> <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

<sup>13</sup> <https://www.gov.uk/government/news/phe-publishes-independent-expert-e-cigarettes-evidence-review>

<sup>14</sup> For example, a recent mystery shopper exercise by Ontario authorities found convenience stores had a 96.2% success rate on age-restricted product sales.

We also welcome the efforts of Health Canada to curb youth vaping and have made recommendations for new regulations that could be imposed, while also calling for strict enforcement of existing provisions banning sales to youth. Our company is already compliant with #4, #5 and #6.

1. Stronger enforcement measures to ensure retailers and third parties obey the law and do not furnish vaping products to underage youth.
2. Stiffer penalties for anyone caught furnishing vaping products to underage youth.
3. Mandatory training programs for all vaping product retailers.
4. A requirement that ID must be provided at the time of delivery of a vaping product ordered online.
5. A requirement that mandates online vendors to implement a robust third-party age verification process before accepting any online orders for vaping products.
6. Verification and audit requirements for delivery and online age verification processes.
7. Prohibiting online vendors from accepting large multiple orders of vaping products that exceed an amount reasonably required for personal use or the use of adult family members.

While we understand there may be concern about flavours, nicotine content and the design of products, it is critical that governments understand the features that encourage adult smokers to switch to these potentially less harmful products, and there is evidence – both empirical<sup>15</sup> and anecdotal – that adult smokers help switch through the use of flavours and varying nicotine levels, and to restrict those threatens to limit adult smoker migration towards vaping.

Therefore, it is critical to strike the right regulatory balance in which adult smokers have the features they seek in potentially reduced risk products while ensuring measures are put in place to prevent youth access and to punish those who furnish these products to youth.

**Recommendation:** Implement new measures to address youth access to vapour products while not undermining the incentive for adult smokers to switch to these potentially reduced risk products.

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<sup>15</sup> <https://www.rights4vapers.com/wp-content/uploads/2019/05/pressrelease.pdf>