



False zombie arguments about illicit tobacco shouldn't be given any more oxygen

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Summary

'Zombie arguments' that Aotearoa New Zealand's smoke-free measures will boost illicit tobacco trade are false. The evidence points in the opposite direction: illicit tobacco use has *not* increased as a proportion of the tobacco market, despite substantial tobacco tax increases, which tobacco companies predicted would boost illicit trade. It has also substantially declined in absolute terms in tandem with declines in smoking prevalence and consumption. Arguments about growth in illicit trade come from tobacco companies but are given new life whenever government and media commentators echo them. Instead, plans to repeal our smoke-free legislation should be reversed to enable a rapid and equitable fall in smoking and, with it, the demand for illicit tobacco

'Zombie arguments' are lines of argument that refuse to die, despite lacking a logical or empirical foundation.¹ Repeated often enough, many people may come to [believe these claims](#), as in Aotearoa New Zealand recently. Specifically, [politicians in the new coalition Government](#), echoed by [some media commentators](#), have repeated tobacco industry arguments that measures in Aotearoa New Zealand's [Smoke-free Environments and Regulated Products \(Smoked Tobacco\) Amendment Act \(SERPA\)](#), (particularly retailer reduction and denicotinisation) would boost illicit tobacco trade.

Selling any product without paying legally required duties and taxes is, by definition, an "illicit" trade. In the case of tobacco, this includes counterfeit products, smuggled manufactured cigarettes and loose tobacco, and traded home-grown tobacco ('chop chop'). Despite Aotearoa New Zealand's isolation and border controls, tobacco enters the country illegally for sale at lower prices than legal tobacco. Seizures of smuggled tobacco are well-documented ([New Zealand Customs Service, 2022](#);²[New Zealand Customs Service, 2023](#)).³

'Zombie arguments' about illicit tobacco trade attempt to justify repealing the SERPA but lack evidence. Typically, they appeal to "common sense"; for example, [Prime Minister Luxon](#) [claimed](#) it is a "natural reality" that decreasing retailer numbers would increase illicit tobacco trade.⁴

In this article, we lay out empirical evidence about illicit trade in Aotearoa New Zealand and conclude that, under the SERPA tobacco control regimen, it would not increase but decline.

How is the size of the illicit tobacco market measured?

Measuring the size of any illicit market is difficult given its covert nature. Predicting future trends is also inherently speculative. However, by using varied measures, such as discarded pack surveys and consumption gap analyses, repeated over time, it is possible to test the validity of claims that the SERPA will increase illicit trade.

Discarded pack surveys. Discarded pack surveys collect, count, and inspect tobacco packets found in gutters and footpaths to measure the proportion that do not comply with packaging regulations, and are therefore likely to have been smuggled.

Repeated pack surveys in Aotearoa New Zealand show that illicit trade changed little between 2010 and 2021, despite large and sustained increases in tobacco excise taxes to be among the highest in the world, and the introduction of plain packaging. A survey

conducted between May 2021 and April 2022 estimated the prevalence of foreign and potentially smuggled packs at 5.4%,⁴ very similar to earlier studies of [3.2% in 2008/2009](#)⁶ and [5.8% in 2012/2013](#).⁶ A [2023 University of Auckland study](#) commissioned by the Ministry of Health applied similar methods to fewer packs, of which 7.2% were non-compliant.⁷

Consumption gap analysis. Consumption gap analysis estimates the difference between the aggregate amount of tobacco people say they smoked and the amount released into the legal market to assess how much tobacco might be illicit.⁸ In the University of Auckland analysis,⁷ the volume of tobacco released by tobacco companies into the market as reported in the [annual tobacco returns to the Ministry of Health](#)⁹ was subtracted from the total amount of tobacco consumed using estimates from [annual NZ Health Survey](#)¹⁰ questions.

[The 2023 University of Auckland report](#) estimated the 2022 consumption gap at 8.4%, equivalent to 143 million cigarettes and considerably lower than the estimates of 11-14% (344-430 million illicit cigarettes) in the years between 2012 and 2015.⁷ Between 2012 and 2021 the annual estimates fluctuated, but the overall trend declined.⁷

Estimates from the two different methods - pack surveys and gap analysis - are remarkably similar. Neither indicates the increase in [illicit trade predicted by tobacco companies](#) and instead points to a low and declining level of illicit trade as legal tobacco retail prices have increased. Importantly, the absolute size of the illicit market declined as smoking prevalence and consumption decreased.⁷

A [tobacco-industry-funded report](#) by KPMG on illicit trade in Aotearoa New Zealand, reported similar findings.¹¹ While the estimated size of the illicit market as a proportion of all tobacco, increased slightly, from 11.5% to 12.1% from 2019 to 2022 (a period when tobacco taxes increased markedly and ‘zombie arguments’ would predict a large rise in illicit trade) there was a substantial (27%) *decline* in the estimated volume of illicit tobacco consumed, from 230 to 167 million kg.¹¹ (See [Appendix](#) for caveats about the KPMG report).

How can the illicit tobacco trade be minimised?

It is possible to minimise illicit tobacco entering the border and at points of sale by prohibiting the importation of tobacco products by air cargo or mail, strengthening border controls, and enhancing enforcement, monitoring, and evaluation. The previous government invested in each of these steps. New Zealand Customs received a further \$10.3 million in [Budget 2022](#) to target tobacco smuggling operations, including establishing a dedicated tobacco team, and an additional \$16.3 million over the next four years supporting local enforcement.^{12,13} In 2022 the Ministry of Health contracted the University of Auckland to undertake monitoring and evaluation research on illicit tobacco trade for four years.

Conclusions

Good governments do not abandon popular and empirically supported smoke-free measures in response to threats that the illicit tobacco market might grow. Nor do they keep repeating tobacco industry arguments, given that serves industry’s self-interest. An evidence-based response would stop echoing discredited “zombie arguments” of the tobacco industry, proceed with putting the existing smoke-free legislation into operation, and continue to invest in measures to minimise the illicit tobacco trade.

What is new in this *Briefing*?

- Multiple lines of evidence suggest that the proportion of tobacco products that are illicit in Aotearoa has not increased since the adoption of the Smoke-free Aotearoa goal in 2011.
- The absolute size of the illicit tobacco market has declined over this period, particularly recently from 2019-2022.
- There is no evidence to suggest that the current smoke-free legislation measures will result in an increase in the size of the illicit market. Rather, they are likely to accelerate the decline in smoking prevalence.

Implications for public health policy and practice

- The best way to ensure that the illicit tobacco market continues to shrink is to fully implement the current smoke-free legislation (eg, requiring denicotinisation of tobacco and retail reductions).
- Investment in strengthening interventions to enforce border controls and local enforcement should also continue, to minimise the illicit tobacco trade.

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Appendix - caveats to KPMG estimates of the illicit tobacco trade in New Zealand

In May 2023, KPMG [published research on the illicit tobacco trade](#) (KPMG, 2023) funded by Imperial Tobacco NZ, a large tobacco company operating in New Zealand. The report contained an 'Important notice', where KPMG disclosed that the "scope of our work, information sources used, and any scope and source limitations were fixed by agreement with the beneficiary [Imperial Tobacco New Zealand]" (KPMG LLP, 2023, p. 2). KPMG further stated that the "Report is not written for the benefit of any party other than the beneficiary. In preparing this Report, we have only considered the interests, needs, or circumstances of the beneficiary" and advised that it is "not suitable to be relied on" by anyone other than Imperial Tobacco New Zealand, and anyone who does, "does so at their own risk". This disclaimer strongly suggests the public and policymakers should not rely on KPMG's illicit tobacco estimate of 12.1% of total consumption in 2022 which is substantially greater than independent estimates.

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