

MEMORANDUM OF UNDERSTANDING BETWEEN HM REVENUE & CUSTOMS AND GALLAHER LTD

1. Objective

- 1.1 The purpose of this Memorandum of Understanding ("MoU") is to set out a framework of co-operation between HM Revenue & Customs and Gallaher Ltd in order to seek to limit the smuggling of both contraband and counterfeit Gallaher Ltd product into the UK, while minimising obstacles to legitimate trade.
- 1.2 Within this framework of co-operation, both HM Revenue & Customs and Gallaher Ltd will respect the 'commercial-in-confidence' status of information provided by either party to this MoU, subject always to any overriding legal obligations affecting either party.
- 1.3 Gallaher Ltd is committed to take commercially reasonable steps as a manufacturer of tobacco products (cigarettes, hand rolling and pipe tobacco and cigars) to promote the objective that its tobacco products be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements; sold at retail in accordance with all applicable tax and duty laws in the intended retail market; and at volumes consistent with Gallaher Ltd's understanding of the domestic consumption in that market and the permissible requirements of the travelling consumer.
- 1.4 HM Revenue & Customs is committed to take steps to work together with other EU and Non-EU Customs Authorities, within the spirit of this MoU.
- 1.5 Gallaher Ltd recognises the need to assist HM Revenue & Customs in its efforts to combat smuggling and this document sets out its continuing commitment to support UK Government initiatives. Accordingly, Gallaher Ltd and HM Revenue & Customs have now agreed the actions set out in this document.

2. Gallaher Ltd International Sales and Distribution of Tobacco Products:

International Sales

- 2.1 Gallaher Ltd will ensure that its products carry the health warning and other required markings of the destination market and are sold to approved customers in accordance with Gallaher Ltd's Corporate Responsibility policies (attached as Annex A) in such a mix of brands and in such quantities as are consistent with Gallaher Ltd's understanding of the domestic consumption in that market and the permissible requirements of the travelling consumer.
- 2.2 Gallaher Ltd will provide HM Revenue & Customs with source-market specific sales data on request for UK-Sensitive brands (defined as those brand variants which have a significant presence in the UK illicit market) and information about codings and other pack markings relating to such supplies, and will share with HM Revenue & Customs at least on an annual basis its understanding of domestic and legitimate cross-border consumption for each such tobacco product and brand in the intended destination market of its international sales.
- 2.3 Gallaher Ltd will keep under review its existing supply policy and procedures to ensure that controls, embedded in the Company's systems, remain appropriate and reflect best practice in this area.

International Markets

- 2.4 Gallaher Ltd will consult with HM Revenue & Customs to identify and analyse smuggling risks before entering UK-Sensitive brands into new markets or, in respect of UK-Sensitive brands in existing markets, significantly increasing volumes sold or selling to new market distributors.
- 2.5 Gallaher Ltd will facilitate visits by HM Revenue & Customs, if required, to its international markets where UK-Sensitive brands are sold, in order to assist HM Revenue & Customs develop a better knowledge and understanding of these overseas markets.

International Distribution

- 2.6 Where HM Revenue & Customs have concerns about Gallaher Ltd brands entering the UK from a specific market, Gallaher Ltd will provide, on request, source-market specific data relating to current approved market distributors, proposed new market distributors and any discontinued market distributors for those brands.
- 2.7 Gallaher Ltd will make all reasonable efforts to ensure that all its customers are similarly committed, through adoption of Gallaher Ltd's Corporate Responsibility policies, to taking action to prevent product being diverted by smugglers.
- 2.8 Gallaher Ltd will, where there is a reasonable prospect of success, take action against suspected trademark infringements under Article 5 of Council Directive 89/104/EEC. Where HM Revenue and Customs receives a request for assistance with such action from Gallaher Ltd, HM Revenue and Customs will provide all reasonable assistance.
- 2.9 Gallaher Ltd will support all reasonable ways in which the industry, and Gallaher Ltd in particular, can join with HM Revenue & Customs to maximise supply chain controls, disincentives and sanctions against those retailing EU duty paid tobacco products in quantities that are not consistent with Gallaher Ltd's understanding of the domestic consumption in that market or the permissible requirements of the travelling consumer.

3. Anti-Smuggling Measures

General Assistance

- 3.1 In order to address the smuggling of both contraband and counterfeit product, Gallaher Ltd will provide reasonable assistance to HM Revenue & Customs in its efforts to identify all smuggled product, and track down the smugglers with the overall objective of reducing further or eliminating this unlawful trade.
- 3.2 Gallaher Ltd will advise HM Revenue & Customs of all suspected sources of counterfeit product (including manufacturing sites and supply chains) wherever it may occur, that may be destined for or seized in the UK, based on specific intelligence and trend analysis.
- 3.3 Where Gallaher Ltd gathers data in the course of investigations into specific smuggling operations, this shall be shared with HM Revenue & Customs at the earliest opportunity, to ensure that HM Revenue & Customs have the greatest chance of successfully progressing the investigation and securing successful prosecutions.

Technology

- 3.4 Gallaher Ltd will actively contribute to the Technology Joint Working Group (comprising representatives of HM Revenue & Customs; those manufacturers party to MOUs; and the Tobacco Manufacturers Association) to identify and assess technologies that would enable HM Revenue & Customs to detect material quantities of genuine tobacco products either smuggled into or being transported within the UK, and advise on how and when any new technology should be implemented.

4. Seizures

- 4.1 For material seizures of tobacco products bearing Gallaher Ltd Trademarks by HM Revenue & Customs or other Customs Authorities, in circumstances where it is identified as destined to be smuggled into the UK without payment of UK duty, Gallaher Ltd and HM Revenue & Customs will apply the procedures set out in this Clause. Seizures will be considered material if they are of at least 100,000 cigarettes or 50 kg of hand-rolling tobacco.
- 4.2 HM Revenue & Customs will:
- 4.2.1 notify Gallaher Ltd within 15 UK working days of any material seizures it may make of tobacco products bearing Gallaher Ltd trademarks (including the date, location, size and brand composition thereof) that have or may have been smuggled into the UK market for re-sale.
- 4.2.2 allow Gallaher Ltd access to inspect the seized product within 15 UK working days of notification of seizure, and to select random samples of the seized product for examination. HM Revenue & Customs may also select samples which Gallaher Ltd must examine for tracking and tracing. Where the seizure has been made by another Customs Authority, HM Revenue & Customs will use best endeavours to secure the same facilities.
- 4.2.3 after inspection and sampling (for tracking and tracing and evidential purposes) has taken place destroy all seized tobacco products. Where the seizure has been made by another Customs Authority, HM Revenue & Customs will use best endeavours to ensure that seized products are similarly destroyed and not placed onto the market.
- 4.3 Gallaher Ltd will provide HM Revenue & Customs with accurate and comprehensive responses to tracking and tracing requests and provide within 20 working days following the receipt of samples of these packs a written response stating whether the seized tobacco products are genuine or counterfeit. In the case of genuine Gallaher Ltd tobacco products the following information will be provided:
- i. the place of manufacture of the seized product;
 - ii. the date of manufacture of the seized product;
 - iii. country of intended destination for the seized product;
 - iv. any intervening warehousing and shipping used by Gallaher Ltd when exporting the seized tobacco product from their country of manufacture to their intended destination country;
 - v. the identity of the First Purchaser outside of the company, of the seized product, and related payment records. Where regular seizures are made where it is not possible to identify the First Purchaser outside of the company, Gallaher Ltd and HM Revenue & Customs will jointly identify alternative measures in order to identify the point of supply chain weakness;
 - vi. the identity of any known Subsequent Purchaser of the seized product; and
 - vii. information about codings and other pack markings.
- 4.4 HM Revenue & Customs will make Gallaher Ltd aware of any concerns about specific traders, or destination markets from which significant volumes of manufactured tobacco products are seized being smuggled into the UK. 'Significant' in this sense may refer, amongst other things, either to the volume of seizures or the proportion of seized product in relation to the total volume supplied to a particular market.
- 4.5 Gallaher Ltd will consider with HM Revenue & Customs the appropriate actions to be taken if significant volumes of Gallaher Ltd tobacco products for any market, are smuggled into the UK.
- 4.6 If the evidence indicates that product has been smuggled, or (if seized prior to entry into the UK) was intended to be smuggled, into the UK in commercial quantities for re-sale and Gallaher Ltd concludes that the first customer cannot demonstrate sufficient effective control of its products to prevent repetition, then Gallaher Ltd will take steps to restrict supply including if necessary delisting and refusing further supplies to that

customer.

5. Counterfeit Product

Manufacture and Supply of Counterfeit Tobacco Products

5.1 Gallaher Ltd will:

5.1.1 Establish effective internal controls needed to ensure that none of its materials and equipment, used in the manufacturing of tobacco products, are sold or diverted to manufacturers of illicit tobacco product

5.1.2 Report any significant losses of machinery and materials to HM Revenue & Customs. Machinery and materials include as a minimum:

- i. Cigarette production machinery
- ii. Cigarette and HRT packing machinery
- iii. Cigarette paper
- iv. Tipping paper
- v. Filter tips
- vi. Packaging
- vii. Raw and processed tobacco product

5.2 Where HM Revenue & Customs identifies a UK counterfeit production facility manufacturing counterfeit Gallaher Ltd product it will allow, within 10 UK working days of its closure by HM Revenue & Customs, Gallaher Ltd access to inspect the facility (including all machinery and materials therein), operational requirements permitting. Where a counterfeit production facility manufacturing counterfeit Gallaher Ltd product is identified overseas, HM Revenue & Customs will wherever possible secure access for Gallaher Ltd.

5.3 Following inspection of a counterfeit production facility, Gallaher Ltd will provide HM Revenue & Customs within 20 working days a written report providing its assessment of the source of any machinery and materials identified and the potential production capacity of the facility.

Smuggling of Counterfeit Tobacco Products

5.4 Gallaher Ltd will advise HM Revenue & Customs based on specific intelligence and trend analysis of how, and from where, counterfeit products are being supplied into the European Union and other markets, on the assumption that those products may be diverted from those markets to the UK.

5.5 If Gallaher Ltd suspects that goods within Europe may infringe its intellectual property rights (IPR), it shall apply to the relevant customs authorities for action to be taken pursuant to Article 5 of Council Regulation 1383/2003.

5.6 HM Revenue & Customs will work and share information with Gallaher Ltd (subject to the provisions of the Revenue and Customs Act 2005, Section 18) to identify, trace, deter and prevent trade in counterfeit product and where appropriate, provide information, advice and support to assist Gallaher Ltd's investigations into the up-stream activity of the counterfeit trade.

5.7 Further to the procedures agreed under Sections 4.2 and 4.3, in the case of seizures of counterfeit versions of their tobacco products Gallaher Ltd will provide the following information wherever possible:

- i. the type of machinery used to manufacture the seized product (with details of any distinguishing characteristics such as markings)
- ii. information about codings and other pack markings;
- iii. information about the paper, tips, packaging and tobacco used in the manufacture of the seized product;
- iv. the place of manufacture of the seized product;
- v. a description of the variant of the counterfeit Gallaher Ltd seized tobacco product and links to any previous seizures

- 5.8 Gallaher Ltd will provide all reasonable assistance to HM Revenue & Customs concerning Gallaher Ltd brands, to identify any suspected counterfeit tobacco products of which the identity of the manufacturer is not easily recognisable.

Sale of Counterfeit Tobacco Products

- 5.9 Gallaher Ltd will advise HM Revenue & Customs of all complaints received concerning counterfeit tobacco products purchased at UK retail outlets, as well as any additional relevant information that may assist with enquiries.
- 5.10 In respect of the UK retail trade Gallaher Ltd will continue to support HM Revenue & Customs in raising the awareness of the growth in smuggled counterfeit cigarettes and provide publicity material to this effect to the UK retail trade.
- 5.11 In order to assist HM Revenue & Customs to differentiate between counterfeit and genuine Gallaher Ltd tobacco products and to prevent sale of counterfeit tobacco products in the UK retail sector, Gallaher Ltd will actively contribute to the Anti-Counterfeit Joint Working Group (comprising representatives of HM Revenue & Customs; those manufacturers party to MOUs; and the Tobacco Manufacturers Association), to identify and advise on technologically and commercially viable options for the secure covert marking of tobacco products intended for sale in the UK.

6. General Provisions

Witness Statements

- 6.1 In order to assist HM Revenue & Customs in the prosecution of tobacco smugglers, Gallaher Ltd will continue to provide witness statements, as required, for use in UK Courts.

Provision of Information

- 6.2 Both parties agree to keep confidential any information provided by the other in the course of this co-operation unless both parties agree otherwise.
- 6.3 Neither party shall be required to provide information to the other in the course of this co-operation where to do so would place that party in breach of any law or legal obligation.

Review of Co-operation

- 6.4 Both parties are committed to meet frequently to review progress and to share views on the presence of Gallaher Ltd brands (genuine and counterfeit) in HM Revenue & Customs seizures and the sources of those seizures. At these meetings, both parties will consider the effectiveness of the co-operation arrangements set out in this MoU, together with any further actions that may be necessary to ensure Gallaher Ltd brands continue to be driven out of the illicit market.

Term

- 6.5 This MoU shall continue in force until either party gives the other written notice of its wish to discontinue or amend such co-operation.

Legal Obligations

- 6.6 The signing of this MoU is not intended to create binding legal obligation on either party.

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