

Center for Regulatory Effectiveness

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August 26, 2013

The Right Honourable Keith Vaz, MP
Chair
Home Affairs Committee
House of Commons
7 Millbank
London SW1P 3JA
homeaffcom@parliament.uk

Re: Tobacco Smuggling Inquiry; Written Submission

Dear Sir:

1. On 23 July 2013, you said, “Tobacco smuggling is a significant threat to UK tax revenues and to public health.”
2. On 16 August 2013, the Associated Press reported¹ on the federal sentencing in the State of Virginia of the last of ten defendants in a \$20 million cigarette trafficking ring.
3. I note the above recent news items because they demonstrate that the illegal trafficking in tobacco products is a blight that harms public health in both of our countries.
4. The AP news story is particularly illustrative of this common threat because the article goes on to explain that the convicted ringleader “also transferred money to a money launderer in London and traveled to China to buy counterfeit cigarettes as part of the conspiracy....”
5. I am writing in response to the Committee’s tobacco smuggling inquiry in order to provide results from several years of research my organization has performed on the public health threat from contraband tobacco.
6. By way of introduction, I served as a senior regulatory official in five consecutive Presidential Administrations, http://thecre.com/ombpapers/OMB_Officials.htm. An interview conducted by the National Archives in which I discuss the development of centralized regulatory review across several Administrations is available here, http://thecre.com/video/National_Archive.html while a broader overview of my regulatory experience is available here, http://www.thecre.com/emerging/Jim_Tozzi_Bio.html.

¹ Associated Press, “Last cigarette trafficking conspirator sentenced to seven years,” August 16, 2013, available at http://www.tricitimes.com/news/local/article_a74e1600-0686-11e3-b46f-0019bb30f31a.html.

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7. The Center for Regulatory Effectiveness (CRE) is a non-partisan regulatory watchdog which focuses on ensuring that regulators comply with the “good government” laws² that regulate the American regulatory process. Our activities specific to contraband tobacco include operating the Counterfeit Cigarette Enforcement Forum, an interactive website that provides news and findings regarding the global trade in illicit tobacco, <http://www.thecre.com/cc/>.
8. CRE’s work also includes performing our own studies of the various public health harms from tobacco trafficking. Our research shows that there are three distinct types of public health dangers from the illegal trafficking in tobacco products:
 - 8.1. ***Extreme Toxicity of Counterfeit Cigarettes.*** Measured levels of lead, cadmium, and other heavy metals in counterfeit tobacco products are magnitudes higher than found in their legal counterparts.
 - 8.2. ***Underage Sales of Contraband Tobacco.*** Tobacco traffickers do not adhere to minimum sales age restrictions and thus increase underage smoking and addiction.
 - 8.3. ***Tobacco Traffickers Fund Terrorist Organizations.*** Some of the greatest public health threats from contraband cigarette sales are from the traffickers themselves and the violent criminal organizations they fund.
9. CRE’s findings on these issues are summarized in two studies we prepared and provided to the US Food and Drug Administration (FDA) and which are publicly available on the FDA’s website:
 - 9.1. *An Inquiry into the Nature, Causes and Impacts of Contraband Cigarettes;*³ and
 - 9.2. *The Countervailing Effects of Contraband Cigarettes.*⁴
10. In accordance with the Committee’s requirement that a hard copy be included of previously published materials which are referenced, complete copies of both studies are attached to the original of this letter which is being delivered to the Committee via Federal Express.
11. I am also attaching a complete copy of the working draft of a study that is currently available for public comment on our website, *Counterfeit Products, Genuine Harm: How Intellectual Property Theft Fuels Organized Crime While Undermining American Communities* which provides a broader societal perspective on the threats to public health from counterfeit consumer products.

² See, <http://www.thecre.com/insurance/?p=357>. CRE’s Declaration of Interest is at the end of this letter.

³ Available at, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM243625.pdf>.

⁴ Available at, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM263564.pdf>.

12. The *Counterfeit Products, Genuine Harm* paper was presented at a conference on illicit tobacco trafficking which enjoyed participation by government, industry and academia.⁵
13. As with all CRE work products, the work is transparently sourced based on US and UK government documents, peer reviewed scientific studies, and reports published by the major media.

Extreme Toxicity of Counterfeit Cigarettes

14. Researchers at the US Centers for Disease Control and Prevention (CDC) measured the levels of lead, cadmium, and thallium in counterfeit and legal cigarettes and concluded that “[m]ainstream smoke levels of all three metals were far greater for counterfeit than the authentic brands, in some cases by an order of magnitude.”⁶
15. Based on the data in the Pappas study, CRE prepared charts illustrating the difference in lead levels between counterfeit and legally-made cigarettes. In keeping with the Committee’s instructions to use as little color in written submissions as possible, I refer the Committee to Charts 1 – 3 on pp. 6-7 on the attached *Inquiry* paper.
16. When evaluating the public health relevance of the charts, the following statement from the Pappas study should be kept in mind,
 - 16.1. *“it is probable that exposure of children or adults to tobacco smoke with higher particulate levels of cadmium and lead such as those found in these counterfeit cigarettes could translate to higher heavy metal blood levels.”*⁷
17. CRE also evaluated a study by W. E. Stephens of the University of St. Andrews and his colleagues which measured the differences between counterfeit and legally-made cigarettes with respect to ten metals.⁸ Stephens found that arsenic levels in counterfeit cigarettes were sharply higher than in legal product. The team also measured cadmium levels in counterfeit cigarettes and found the levels to be almost 500% higher than in authentic products, the lead levels in counterfeit cigarettes that measured to close to 600% higher. A graphic analysis of the Stephens data is available on p. 8 of CRE’s *Inquiry* paper.

⁵ Conference Agenda available at http://www.tma.org/tmalive/Upload/LeftFrameFiles/2013_illicit-trade/illicit-trade-agenda.pdf.

⁶ R.S. Pappas, G.M. Polzin, C.H. Watson, D.L. Ashley, *Food and Chemical Toxicology* 45 (2007) 202–209, pp. 202-209, Abstract, available at <http://www.thecre.com/scur/wp-content/uploads/2011/02/Pappas-Cadmium-lead-and-thallium-in-smoke-particulate-from-counterfeit-cigarettes-compared-to-authentic-US-brands.pdf>.

⁷ Pappas, p. 207.

⁸ Stephens, W.E., Calder, A., Newton, J., 2005. “Source and health implications of high toxic metal levels in illicit tobacco products,” *Environ. Sci. Technol.* 39, 479–488.

18. In addition to measuring metal levels in cigarettes, Stephens places the data in a context meaningful to policy leaders grappling with the public health implications of the illicit trade in tobacco:

18.1. “The main purchasers of counterfeit cigarettes are dominantly those on low incomes, either young people who then become addicted to smoking or the socially disadvantaged for whom so many other factors impact negatively on their state of health that the addition of another factor is potentially very serious. The extent of the U.K. market share now claimed by counterfeits means that an issue once considered marginal is rapidly becoming a major problem. The health risks described above as well as social implications means that early awareness of these issues is important if remedial action is to have significant impact.”⁹ [Emphasis added.]

19. The Stephens paper is discussed on p. 1 and on p. 5 of CRE’s *Countervailing Effects* paper.

Underage Sales of Contraband Tobacco

20. Researchers at the University of Toronto’s Dalla Lana School of Public Health found that,

20.1. *“cheap, illicit cigarettes...constituted a substantial proportion (~43%) of all cigarettes smoked by Ontario high school daily smokers, and this situation may undermine key tobacco control policies such as accessibility restrictions and taxation strategies designed to reduce youth smoking.”*¹⁰

21. After reviewing the literature on contraband tobacco and underage smoking, including studies by Callahan, CRE concluded in the *Inquiry* that:

21.1. The contraband market is a key tobacco supply source for underage smokers.

21.2. An expansion of the contraband market would increase adolescent participation in the illegal trafficking in contraband tobacco.

21.3. Counterfeit cigarettes are often higher in nicotine than legal products. Since underage smokers disproportionately purchase more addictive counterfeit cigarettes, an increase in counterfeit cigarette supplies could lead to more adolescents who experiment with tobacco becoming regular smokers.

Tobacco Traffickers Fund Terrorist Organizations

22. The contraband cigarettes that financed the murders of Sappers Mark Quinsey and Patrick Azimkar were smuggled through Florida. The international financing of violent criminal

⁹ Stephens, W.E., Calder, A., Newton, J., 2005. “Source and health implications of high toxic metal levels in illicit tobacco products,” *Environ. Sci. Technol.* 39, 479–488, p. 486.

¹⁰ Russell C. Callaghan, Scott Veldhuizen, et al., “Contraband cigarette consumption among adolescent daily smokers in Ontario, Canada,” *Tobacco Control*, published October 21, 2010 in advance of print.

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organizations through tobacco trafficking is a public health threat to the citizens of both our countries and beyond.

23. The public health threats from tobacco smuggling go well beyond contraband-financed violence. Cigarettes smugglers and sellers broadly threaten public health by using their illicit proceeds to support narcotics trafficking and other health menaces. In our *Counterfeit Products, Genuine Harm* paper, CRE quoted the Former Assistant Chief Constable, Head of Organised Crime in Northern Ireland stating that

- 23.1. *“organised crime gangs and terrorist groups turned smuggling tobacco into a multi-million pound black market business, funding prostitution and drug trafficking.”*

24. In recognition of the extraordinary threats these criminal groups pose to American security, President Obama signed Executive Order 13581 blocking the control of property by transnational crime organizations. In the Order, the President made a formal determination that,

- 24.1. *“significant transnational criminal organizations constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.”*

25. CRE explained in *Counterfeit Products, Genuine Harm* that the President’s Order included an Annex which listed examples of transnational criminal organizations including Los Zetas, the violent, Mexican-based criminal syndicate which is heavily involved in the narcotics trafficking, Camorra, and Yakuza. A government report prepared by the inter-agency National Intellectual Property Rights Coordination Center¹¹ stated that these criminal groups were involved in cigarette counterfeiting.

26. The connection between cigarette smuggling and violent transnational organized is recognized by Congress as well as by the White House. To illustrate Congressional leadership in combatting tobacco smuggling, CRE’s paper quoted the Chairman of the House of Representatives Subcommittee on Counterterrorism and Intelligence, Rep. Peter T. King (NY), stating,

- 26.1. *“Yet every day, the failure to strongly combat the growing crime of contraband cigarette smuggling deprives governments of billions of dollars in tax revenues — siphoned off by terrorist and criminal organizations. ...*

- 26.2. *Disturbingly, the financial loss and budget effect are only part of the problem. Often the state’s loss is terrorist organizations’ gain. In 2008, under my leadership, a House Homeland Security Committee investigation found a terrifying nexus between cigarette smuggling and terrorism.”*

¹¹ For more information see, <http://www.iprcenter.gov/about-us>.

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27. The conclusion from our research on tobacco smuggling is:

27.1. In addition to stealing government revenues, tobacco traffickers steal public health and safety.

28. **CRE recommends** that the Home Affairs Committee:

28.1. Specifically evaluate the public health threat posed by contraband tobacco; and

28.2. Inform the United States Food and Drug Administration of its findings.

Respectfully,

/s/

Jim J Tozzi, Ph.D.

Member, Board of Advisors

Attachments

Declaration of Interests

29. The Center for Regulatory Effectiveness is a regulatory watchdog. CRE receives funding from virtually every industrial sector including the tobacco industry.