

CAMPAIGN For TOBACCO-FREE Kids[®]

THE BIG CIGARETTE COMPANIES AND CIGARETTE SMUGGLING

For years, the major cigarette companies have regularly tried to block efforts to raise cigarette taxes or import fees by claiming that they will spark massive increases in cigarette smuggling and black markets. But increasing amounts of evidence show that the cigarette companies, themselves, have been supporting – and profiting from -- the same kind of cigarette smuggling schemes they claim are caused by higher tobacco taxes or duties.

In early 2000, the Center for Public Integrity released a major two-part report, based on internal tobacco industry documents, that details the knowing and intentional involvement of British American Tobacco (BAT), and other cigarette companies, in cigarette smuggling efforts throughout the world.¹ Following the ongoing disclosures of the involvement of the R. J. Reynolds cigarette company (RJR) in cigarette smuggling over the Canadian border, the Center for Public Integrity report opened yet another window on how extensively all the major cigarette companies are involved in illegal cigarette sales worldwide.

The smuggling along the U.S.-Canadian border, knowingly supplied and encouraged by U.S. and Canadian companies, mirrors situations in Europe, China, South Africa, Latin America, and elsewhere. In every case, the big cigarette companies have claimed that they have no knowledge or control over illegal smuggling of their products. But solid evidence of their knowledge and complicity exists, and additional evidence continues to appear.²

Cigarette Company Involvement in Smuggling Cigarettes Over the U.S. Canadian Border

During the period of high smuggling from the U.S. into Canada in the early 1990s, over 90 percent of the contraband market was comprised of cigarettes manufactured in Canada, exported to the U.S. to avoid the higher Canadian taxes, and then smuggled back into Canada. This smuggling could not occur without enormous, unprecedented new exports of Canadian brands into cross-border areas of the U.S. – and the Canadian cigarette companies readily and knowingly supplied this black market.³

- Canadian cigarette companies – including subsidiaries and affiliates of the major U.S. companies – at first promised the Canadian government they would not supply smugglers, then cancelled their agreement and began shipping billions of cigarettes a year into the black market. Going further, the Canadian cigarette companies even changed how they shipped their cigarettes to the U.S. to make them harder for enforcement officials to trace and changed how they packaged the cigarettes to make it harder to distinguish smuggled packs from legal ones.⁴
- RJR's Canadian affiliate Northern Brands and its former President, Les Thompson, have each pleaded guilty to charges of being involved in illegal smuggling. In an interview with 60 Minutes II, Thompson (who was imprisoned for his role in the smuggling) stated that RJR set up its Canadian affiliate, Northern Brands, expressly for the purpose of smuggling cigarettes back into Canada and was fully aware of the affiliates efforts to encourage and support the smuggling.⁵
- According to Thompson, Northern Brands shipped five billion cigarettes per year to the U.S. side of a small, 2,800-person Indian reservation that straddled the border of the United States and Canada, knowing that the cigarettes would quickly find their way back into Canada for illegal resale. Thompson said that, during that time, 60 percent of RJR's Canadian business was from smuggled cigarettes. Northern Brands was bringing in an average of \$1.3 million in profit each week -- making it the most profitable business unit in the RJR family.⁶
- These facts prompted the Canadian government to file a racketeering lawsuit in December 1999 against RJR and its related companies, seeking compensation for lost tax revenues caused by the companies' smuggling efforts.⁷ This lawsuit was dismissed on jurisdictional grounds without any court consideration of the merits of Canada's claims.

But RJR was not the only cigarette company involved in Canadian cigarette smuggling. In 1997, two Brown & Williamson (B&W) sales managers pleaded guilty to the charge of aiding smugglers who were

illegally bringing cigarettes into Canada by supplying the smugglers with untaxed cigarettes from a bonded B&W warehouse in Alabama.⁸ An investigation by the Montreal Gazette also found evidence that the Canadian cigarette companies Rothmans Benson & Hedges (a subsidiary of Philip Morris) and Imperial Tobacco (a subsidiary of BAT) were also involved with the Canadian smuggling.⁹

Cigarette Company Involvement in Other International Cigarette Smuggling

Almost a third of all global cigarette exports are diverted into the illegal contraband market, which amounts to more than 350 billion "missing" cigarettes each year – with the U.S. cigarette companies serving as a major source of these smuggled cigarettes.¹⁰ The companies lack of concern about their "missing" exports is not surprising. Smuggled cigarettes help the companies to penetrate markets they cannot legally enter, and help to increase the companies' overall sales by providing smokers with cheaper cigarettes sold free from import duties and taxes (without reducing the cigarette companies' own revenues or profits per pack).

In fact, the cigarette companies often know exactly where these "missing" cigarettes are. In internal communications and other documents, the major cigarette companies carefully avoid the term "smuggled cigarettes" but refer to these cigarettes as "DNP" or "duty not paid," "DF" or "duty free," "GT" or "general trade," or "transit sales."¹¹ In some countries they have carefully kept track of their regular versus DNP or transit sales.¹² While the companies say that their knowledge of the illegal DNP or transit sales is innocent, an internal BAT document states that a Bogota, Colombia office should be purged of any references to smuggled cigarettes: "documents dealing with DNP have been separated and should now be forwarded to Caracas. A good quality safe and shredder are required."¹³

When asked about the companies' claims of ignorance about smuggling, a major dealer in international cigarettes in Switzerland, one of the hubs of international cigarette trading, said, "It's a lie. Of course they know."¹⁴ Similarly, a prosecutor in an Italian racketeering case speaking about Philip Morris and the smuggling of its brands, said, "I am personally sure they know the final destination of their cigarettes."¹⁵ RJR even continued selling cigarettes to an international trader even after the *New York Times* had published his admission that he supplied smuggling operations.¹⁶

There are many other examples of cigarette company complicity in cigarette smuggling, such as:

- The cigarette companies have consistently resisted enforcement officials' efforts to obtain information about their international customers, even when those customers are under formal investigation for international smuggling.¹⁷
- A 1983 BAT memo describes a 1971 company study that showed that BAT "was years behind the competition in transit" or smuggling sales in Europe and states that BAT's subsequent creation of a separate Hamburg, Germany office was meant to address this problem.¹⁸
- In the early 1990's, Brown & Williamson and other BAT subsidiaries shipped cigarettes to the free-trade zone in Aruba, a Caribbean island off the coast of Colombia, to facilitate smuggling into Colombia and Venezuela. BAT records show that in 1993 only two percent of its imports into Colombia were not smuggled in.¹⁹
- A 1993 BAT memo reports that the BAT Industries Chairman "endorsed the approach that the Brazilian Operating Group Increase its share of the Argentinean market via DNP."²⁰
- A BAT UK and Export (BATUKE) plan for 1993 to 1997, marked "SECRET," states that just "two key General Trade markets will account for 4.7 billion units or 22% of BATUKE's total shipments," and that £3.8 million (or more than \$6 billion) "will be invested to grow our business in the GT markets."²¹
- Company documents show that in 1993 a single senior executive at BAT served as "Co-ordinator of GT worldwide," with duties that included the "maintenance of profiles of all main dealers, and monitoring of supply routes; negotiation of trans-regional accounts."²²
- BAT's Latin American "Marketing Guidelines for Company Plan 1995-1999" instructed managers in Colombia that their plans should cover the launch of "variants on the DP and DNP markets."²³ To

make matters worse, the cigarette smuggling in Colombia and elsewhere in Latin American has been linked with money-laundering efforts by illegal drug smugglers in the region – with Marlboros playing a key role.²⁴

- In 1997, South African tobacco conglomerate Rembrandt Group, Ltd. sued Philip Morris, charging that Philip Morris was supporting the illegal smuggling of Marlboro cigarettes into South Africa, thereby violating a licensing agreement between Phillip Morris and Rembrandt.²⁵
- In Hong Kong in 1998, an executive of British American Tobacco (BAT) was convicted of accepting bribes from a smuggling syndicate. The judge in that case lambasted the cigarette company for its involvement in tobacco smuggling into China.²⁶
- Cigarette company documents show that Philip Morris and BAT each began to smuggle cigarettes into Venezuela as part of a price war that began when a prior price-fixing agreement broke down.²⁷

Smuggling Within the United States

U.S. cigarette smuggling studies clearly establish that cross-border tax-avoidance purchases, tax-avoidance internet cigarette sales, and black market sales directly to smokers are small problems compared to organized cigarette smuggling -- whereby otherwise legal retailers of cigarettes purchase cigarettes smuggled from low-tax states to avoid paying their state's higher cigarette taxes, and then sell them at normal prices to unknowing customers – with the law-breaking retailers pocketing the extra profits.²⁸ In some cases, otherwise legal cigarette wholesalers also participate in the process, selling cigarettes to retailers without applying the proper state tax charges or tax stamps.²⁹

Past U.S. smuggling studies also indicate that organized cigarette smuggling (with wholesaler or retailer participation) accounts for roughly three to five percent of all cigarettes purchased in the United States – with informal cross-border purchases by consumers and small-time smugglers who travel into lower-tax states to buy their cigarettes accounting for only about one percent. More recently, one published scientific research study found that cigarette smuggling and cross-border cigarette purchases accounted for no more than about five percent of all cigarette sales; and another new study found that all state smuggling and tax avoidance revenue losses – through organized as well as informal smuggling, cross-border purchases and internet purchases combined -- totaled less than eight percent of total state cigarette tax revenues (with those losses concentrated in the highest-tax states).³⁰

Some reports (typically from groups opposed to cigarette tax increases or funded by the cigarette companies) have found higher levels of organized smuggling and cross-border purchases.³¹ But it is important to note that roughly two-thirds of all cigarettes sold in the United States are sold by the single pack.³² These single-pack purchases show that smokers are much more interested in convenience than in crossing state borders or seeking out unreliable black market vendors to buy their cigarettes by the carton in order to save a few cents per pack. For example, a survey in California found that soon after the state's 50-cent cigarette tax increase went into effect in 1999 no more than five percent of all smokers were purchasing cigarettes in nearby states, from Indian reservations or military bases, or via the internet, or otherwise avoiding the state's cigarette tax.³³ Moreover, initial tax-avoidance efforts that occur right after a tax increase soon fade away as continuing smokers go back to their regular ways of buying cigarettes. In New York state, for example, fully taxed cigarette sales went down sharply the first year after the state's 55-cent tax increase to \$1.11 per pack in 1999, but then increased a bit in the following year despite additional price increases caused by cigarette-company price hikes (which should have prompted additional declines in smoking and cigarette sales).³⁴ This data suggests that some state residents who initially took steps to avoid the cigarette tax increase (e.g., by purchasing cigarettes in neighboring states, via the internet, or from the black market) soon returned to their original in-state purchasing patterns and began fully paying the new state cigarette tax.

The fact that every state that has increased its cigarette taxes has increased its cigarette-tax revenues -- despite the smoking declines and reduced cigarette sales prompted by the price increases and despite any revenue losses to cigarette smuggling or other tax avoidance -- also indicates that cigarette smuggling and tax avoidance within the United States is a relatively minor problem – especially when compared to international cigarette smuggling.³⁵

The Cigarette Companies' Smuggling & Black Market Bogeyman

While no solid evidence of direct cigarette company involvement in interstate cigarette smuggling in the United States has appeared to date, the U.S. cigarette companies greatly benefit from it. Cigarette smuggling helps to keep prices lower, which promotes smoking and increases total cigarette company sales. In addition, the U.S. cigarette companies use the threat of smuggling, black markets, and cross-border sales as their most powerful weapon against federal or state cigarette tax increases.

- During the debate over the McCain tobacco control bill, the tobacco industry and its allies argued that the proposed increases to U.S. cigarette prices would create a “thriving black market in cigarettes” supported by cigarette smuggling that “may increase beyond our control” while “exploding the ranks and profits of organized crime.” They claimed that illegal cigarettes would be like alcohol during Prohibition or like the current trafficking in cocaine and marijuana, creating “the most massive black market this country has seen since the Prohibition days of the 1920’s.” Children would have “unregulated access” to black market cigarettes. No longer buying their cigarettes from convenience stores or “stealing them from their mother and daddy,” kids will be getting their cigarettes by “going out on the street dealing with drug dealers.” All this was supposed to happen from raising U.S. cigarette prices by 65 cents in 1999 and by another 45 cents over the following four years.³⁶
- In an opinion piece published in the Washington Post during the debate over the McCain bill, Nick Brookes, the head of B&W, wrote that the price increases prompted by the McCain bill would “create a massive black market, in which children will find it easier, not more difficult, to purchase cigarettes.”³⁷ Going on, he stated that Canada’s earlier smuggling problems, and similar smuggling problems in England and Sweden, were all caused by higher cigarette taxes – and claimed that high cigarette taxes create a “black-market bonanza” that lures organized crime into action. But nowhere did he mention the direct involvement of B&W personnel in Canadian cigarette smuggling nor the complicity of all of the major cigarette companies in smuggling throughout the world. In fact, the January 2000 smuggling report by the Center for Public Integrity shows that Brookes has been well aware since at least 1993 of BAT’s use of legal sales to provide an “umbrella” or cover for its smuggled sales.³⁸

While the cigarette companies relentlessly oppose cigarette tax increases with their exaggerated threats of increased smuggling and black market sales, they do not hesitate to raise cigarette prices themselves (which, unlike higher cigarette taxes, brings the companies more revenues and profits). Since 1998, the cigarette companies have raised their prices by more than one dollar per pack. These price hikes are much larger than any of the tax increases the cigarette companies have said would prompt massive increases in cigarette smuggling. But the companies made these price increases -- which will bring them tens of billions of dollars in new revenue -- without expressing any concerns about increased smuggling or black markets. More importantly, it does not appear that these price increases have prompted any significant increase in cigarette smuggling or black market sales in the United States. In fact, international experience shows little correlation between country cigarette prices and smuggling levels.³⁹

Recent state cigarette tax increases have not substantially increased cigarette smuggling or black market sales within the United States, either – but they do provide substantial new revenues for the states, instead of for the cigarette companies. Accordingly, the companies relentlessly trot out their smuggling and black market scare tactics to try to block state tobacco tax increases. The experiences of the many states that have raised their cigarette taxes in recent years suggest that smokers do stock up before scheduled large tax increases, and that after a large tobacco tax increase there is often an initial surge of cross-border cigarette purchases to avoid the new higher cigarette prices. Over time, however, these effects fade and consumers return to their earlier in-state purchasing patterns. More importantly, in every state that has significantly increased its cigarette taxes smoking levels have gone down while state cigarette tax revenues have increased, and both informal and organized cigarette smuggling has remained a relatively minor problem.⁴⁰

Some Ways to Reduce Both International and Domestic Cigarette Smuggling

On its own, the U.S. could dramatically reduce international cigarette smuggling by adopting such measures as requiring cigarette pack and packaging labels on U.S. cigarette exports to clearly identify the country where the cigarettes are meant to be sold, requiring better tracking and reporting of cigarette exports, licensing exporters, and boosting enforcement efforts. The U.S. and other countries could further reduce the problem internationally by leading efforts to reform the various international agreements that govern the treatment of cigarettes and other tobacco products in international commerce.

Although U.S. interstate cigarette smuggling is already only a relatively minor problem, it could be reduced considerably by requiring each state to have prominent, under-the-cellophane, and otherwise hard-to-counterfeit tax stamps that specifically identify all cigarettes that can be legally sold within their borders. While most states already do require special tax stamps on cigarettes sold in state, North Carolina has none – which is why that state serves as a major supplier for cigarettes smuggled into higher-tax states for illegal resale. Michigan had no cigarette tax stamp in 1994 when it increased its cigarette tax from 25 to 75 cents per pack, and it did experience an increase in smuggling and cross-border purchases. But after the state introduced a cigarette tax stamp in 1998, these problems faded away and Michigan's cigarette tax revenues increased by about twenty percent.⁴¹

The federal government could further dampen interstate smuggling by reducing the minimum amount of smuggled cigarettes that violates federal law and forbidding retail sales of large numbers of cartons of cigarettes to any single customer. It could also increase its anti-smuggling enforcement efforts – including more rigorous oversight of wholesaler cigarette sales to retailers to ensure compliance with labeling, tax-collection, and pricing requirements. Other possible anti-smuggling steps include eliminating below-market-price sales of tobacco products at military commissaries or other sales outlets on military bases (a source of low-cost cigarettes for cross-border buys and black market sales) and eliminating the sale of tobacco products at U.S. duty-free shops (another source, especially at the Mexican border).⁴²

The U.S. Bureau of Alcohol, Tobacco and Firearms invites anyone with information about any specific acts of illegal cigarette tax avoidance, such as smuggling or black market sales of cigarettes in the USA or over U.S. international borders, to contact BATF by email, alctob@atfhq.atf.treas.gov, or phone, 1-888-ATF-TIPS.

The Campaign for Tobacco-Free Kids, May 18, 2003

For more on the cigarette companies and smuggling, see: <http://tobaccofreekids.org/reports/smuggling>.

¹ Beelman, M., M. Ronderos & E. Schelzig, International Consortium of Investigative Journalists, Center for Public Integrity, http://www.public-integrity.org/story_01_013100.htm, "Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show (January 31, 2000) & "Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers" (February 2, 2000).

² See, e.g., Campaign for Tobacco-Free Kids, *Illegal Pathways to Illegal Profits: The Big Cigarette Companies & International Smuggling*, 2001, <http://tobaccofreekids.org/campaign/global/framework/docs/Smuggling.pdf>.

³ See, e.g., Non-Smokers' Rights Association and The Smoking and Health Action Foundation (Canada), *The Smuggling of Tobacco Products: Lessons from Canada* (August 1994); Wyckham, "Regulating the Marketing of Tobacco Products and Controlling Smoking in Canada," *Canadian Journal of Administrative Sciences* (June 1997); Marsden, W., "Tobacco Insider Talks: Major Firms Were Deeply Involved in Cross-Border Smuggling, Former Executive Says," *Montreal Gazette* (December 18, 1999).

⁴ See, e.g., Non-Smokers' Rights Association (August 1994); Wyckham (June 1997); Marsden (December 18, 1999); Beelman, Ronderos & Schelzig (January 31, 2000).

⁵ CBS, 60 Minutes II, "Tobacco's Other Secret" (January 18, 2000). Marsden (December 18, 1999).

⁶ 60 Minutes II (January 18, 2000). See also, Marsden (December 18, 1999).

⁷ See, e.g., "Provinces May Join Tobacco Suit," *Toronto Star* (January 8, 2000).

⁸ Dow Jones News Service, "Ex-Brown and Williamson Manager Gets Probation for Smuggling" (October 15, 1997).

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¹² Beelman, Ronderos & Schelzig (January 31, 2000).

¹³ Beelman, Ronderos & Schelzig (January 31, 2000).

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- ¹⁶ Bonner, R., "Europe Inquiry on Smuggled Cigarettes Seeks U.S. Aid," *New York Times* (May 8, 1998).
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- ²⁰ Beelman, Ronderos & Schelzig (January 31, 2000).
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- ⁴⁰ See, e.g., Campaign Factsheet, *Raising State Tobacco Taxes Always Increases State Revenues and Always Reduces Tobacco Use*, <http://tobaccofreekids.org/reports/prices/#factsheets> or www.tobaccofreekids.org.
- ⁴¹ See, e.g., Gregg, BG & C Cain, "Cigarette Tax Revenue Soars: Jump Linked to Stamp on Packs to Fight Smuggling," *The Detroit News* (February 11, 1999); Hyde, J., "It's Just A Speck of Color," *Associated Press* (May 5, 1998).
- ⁴² Many of these anti-smuggling provisions were in the original McCain bill (S.1415) – the comprehensive tobacco control legislation that the Senate just failed to pass in 1998 – when it was reported out of committee. Neither the full Senate nor the full House of Representatives has taken up the cigarette smuggling issue since that time.