



## Fact Sheet



Public Affairs Division - Washington DC

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### **Tobacco Enforcement**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the federal law enforcement agency with primary jurisdiction over the Contraband Cigarette Trafficking Act (CCTA) to stop tobacco diversion. Congress enacted the CCTA in 1978 and amended it in 2006 with the re-authorization of the Patriot Act. The CCTA specifically addresses the interstate transportation, possession and sale of non-state tax paid cigarettes and smokeless tobacco. The CCTA combats structured and organized criminal groups that derive significant financial gain through illicit and contraband tobacco diversion.

ATF's primary goal in tobacco enforcement is to enforce the federal laws relating to tobacco diversion with a nexus to violent crime, and protect the revenue of the federal and state governments. Because of the diversity of crimes involved in the tobacco black market, ATF often charges defendants with violations other than, or in addition to, CCTA violations. There are two types of tobacco traffickers who move black market tobacco products:

- The first is the "casual" smuggler. These include smokers who cross a state line to purchase cheaper cigarettes because of the varying state excise taxes.
- The second type is the "commercial" smuggler, which includes structured or organized groups.

The potential financial gain of tobacco smuggling is immediately apparent. Legal entities pay significant taxes on their product, including \$1.01 per pack in federal excise tax, from \$0.17 to \$4.35 per pack in state and local excise taxes, and typically \$0.60 per pack to a settlement fund for health care costs incurred by the States because of tobacco use by their citizens. Manufacturers and distributors of contraband tobacco products reap substantial profits by avoiding federal and state excise taxes.

For example, purchasing legally taxed products in Virginia (a low excise tax state) for approximately \$4.50 a pack and reselling them in New York City, N.Y., (a high excise tax city in a high excise tax state) for approximately \$13, creates an estimated \$8.50 per pack profit margin. In this example, a single carton (10 packs) yields \$85 in profits; a single case (60 cartons) yields \$5,100 in profits and a single truckload (typically 800 cases) yields \$4.08 million.

Organized criminal groups, including those with ties to terrorist organizations, have increasingly engaged in the illegal trafficking of tobacco products, particularly counterfeit cigarettes.

Through tobacco diversion investigations, ATF disrupts and dismantles criminal organizations by identifying and arresting offenders who traffic illegal tobacco products. In addition, ATF conducts financial investigations with ongoing criminal investigations in order to seize and deny further access to assets and funds used by criminals and terrorist organizations.

ATF faces several challenges enforcing federal laws to counter tobacco smuggling. Some tobacco businesses that sell over the Internet or through mail order do not comply with the PACT Act, which requires them to report their sales of tobacco to appropriate state revenue agencies so state taxes can be assessed.

The trade of counterfeit tobacco products is also a rapidly growing global problem. Smokers tricked into buying fake cigarettes do not get the product they are expecting. While all cigarettes are dangerous and cause disease, counterfeit cigarettes can contain higher levels of tar, nicotine and carbon monoxide than genuine cigarettes. Furthermore, many contain contaminants, such as sand and other packaging materials, including bits of plastic. Since these are illegally manufactured and imported cigarettes, consumers do not know what ingredients manufacturers use in these cigarettes. Counterfeit cigarettes pose a greater health risk to consumers for these reasons.

Counterfeit cigarettes have a direct impact on the U.S. economy since no one pays the federal or state taxes or Master Settlement Agreement payments. This differs from contraband cigarettes, where the federal taxes may be paid by the manufacturer but the state taxes are generally not paid.

Many organized crime organizations use counterfeit cigarettes because of the substantial profits generated through tobacco diversion. These organizations use these profits to fund other criminal activities, including international money laundering and possibly terrorism. Legitimate tax stamps assist in the identification of state tax-paid cigarettes. Many tobacco traffickers use counterfeit tax stamps to save the cost of paying the state excise tax on the genuine manufactured cigarettes. It is cheaper for the black market trafficker to buy counterfeit stamps than to pay the state excise tax.

ATF has used these statutes and charges in tobacco enforcement investigations:

- Title 18, United States Code, Section 2342 – The CCTA makes it illegal to possess more than 10,000 unstamped cigarettes in a state that requires a tax stamp
- Title 18, United States Code, Section 2343 – Requires that any person who distributes more than 10,000 cigarettes to keep accurate records pertaining to the shipment, receipt, sale, and distribution of cigarettes
- Title 18, United States Code, Section 2320 – Trafficking in counterfeit cigarettes.

- Title 15, United States Code, Section 375 – The Prevent All Cigarette Trafficking Act (PACT Act) (the amended Jenkins Act) makes it illegal to ship cigarettes to a non-licensee in a state without notifying the state taxation authority
- Internal Revenue Code – Imposes a \$1.08 per pack federal tax and requires a permit for manufacturers and importers. ATF coordinates with the U.S. Department of Treasury’s Alcohol and Tobacco Tax and Trade Bureau to enforce this law
- Title 26, United States Code, Section 5762 – Failure to pay the federal excise tax on tobacco products
- Title 18, United States Code, Sections 1341 and 1343 – Mail and wire fraud
- Currency Reporting Act – Failure to report currency transactions over \$10,000.
- Title 18, United States Code, Section 1956 – Money laundering
- Racketeering Influenced and Corrupt Organizations
- Aiding and Abetting
- Conspiracy

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