

Illicit tobacco trade between the United States and Mexico

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Colledge JW.
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Salud Publica Mex 2012;54:289-292.

Abstract

Objective. To provide a brief history of the illicit tobacco trade between Mexico and the United States. **Materials and methods.** Research included a previously published study: "Cigarette taxes and smuggling: A statistical analysis and historical review", published by the Mackinac Center for Public Policy; US Customs and Border Protection data; various US court documents; General Accountability Office reporting; media reports; other historical material, and a personal interview. **Results.** The research revealed that there is no credible evidence of organized criminal activity related to the illicit trade in tobacco products from Mexico into the United States. However, there is clear and convincing evidence of organized criminal activity in smuggling tobacco products from the United States into Mexico for at least 167 years. **Conclusion.** Historical records from 1845 into the 21st century clearly demonstrate that the United States was usually the source country for tobacco products moving illegally between the two countries.

Key words: control and sanitary supervision of tobacco-derived products; Mexico; United States of America

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Resumen

Objetivo. Describir brevemente la historia del comercio ilícito de tabaco entre Estados Unidos y México. **Material y métodos.** La investigación incluye publicaciones previas, como "Impuestos sobre los cigarrillos y el contrabando: Un análisis histórico y estadístico"; datos de la Agencia de Aduanas y Protección Fronteriza; varios documentos de la Corte; los informes de la Oficina General de Rendición de Cuentas de EU; notas de prensa; materiales históricos, y una entrevista personal. **Resultados.** La investigación reveló que no hay pruebas creíbles de actividad delictiva organizada relacionada con el comercio ilícito de productos de tabaco de México a EU. Sin embargo, hay pruebas claras y convincentes de que esta actividad se ha realizado de EU a México por lo menos durante 167 años. **Conclusión.** Los registros históricos desde el año 1845 claramente demuestran que EU solía ser el país de origen del tabaco ilegal entre los dos países.

Palabras clave: control y fiscalización de productos derivados del tabaco; México; Estados Unidos

There are many unsubstantiated reports of tobacco smuggling from Mexico into the United States circulating on various internet sites. Many of them appeared to originate from one common source - A Mackinac Center Report entitled: "Cigarette taxes and smuggling: a statistical analysis and historical review",

which described Mexico as a source country for tobacco products smuggled into the United States.¹

The Mackinac authors claimed that 8 to 10 percent of the contraband cigarettes in California, Texas, New Mexico and Arizona were smuggled from Mexico.¹ The authors did not provide sources for this data.

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Received on: March 6, 2012 • Accepted on: April 12, 2012

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The report did not provide any examples of organized or “casual” smuggling from Mexico into the United States.* It is not uncommon for day shoppers to cross the international border into Mexico, purchase tobacco products and other merchandise and return to the United States.

In fact, the usual 48 hour travel requirement for duty free imports is not applicable to US Resident day shoppers.

If you are a US resident returning from a foreign country with goods acquired for a personal duty-free exemption. If you are returning from Mexico, the 48-hour rule does not apply.²

The ability of US Residents to cross the international border, or in some cases simply visit the duty free stores at the border, make purchases and return with tobacco products on the same day, defeat state taxation efforts in the United States.

In 2010, the Mackinac Center for Public Policy released a second report entitled: “Cigarette taxes and smuggling 2010; an update of earlier research”.³ In this report, the authors stated:

...As in our previous analyses, Mexico played a considerable role in the estimated smuggling rates of four states: Arizona, New Mexico, California and Texas. Indeed, almost 24 percent of New Mexico’s in-state cigarette consumption is estimated to have originated in Mexico.³

Again, the authors failed to provide references for the data used to define the “considerable role” or the large volume cigarettes they claimed originated in Mexico.

It is important to recognize that these reports are often brought to the attention of state legislators and the media in states considering tax increases in the United States, but the reports have also appeared in at least one international forum. The themes in the report that increased taxes lead to smuggling or increased smuggling and unintended consequences such as other criminal behavior are stressed in the media reporting.

The “historical review” cited in the title of the first Mackinac report was deficient in a number of places. The authors omitted significant historical smuggling trends, methodologies, particularly as they related to the roles of the major tobacco manufacturers.

* “Casual” smuggling, a term used in the Mackinac Report, is commonly found in European tobacco control literature and United Kingdom government reports. The term is misleading and open to interpretation.

What do we know about illicit tobacco trade between the Mexico and the United States? It is not a new problem and the historical information demonstrated the United States was most often the source country.

The earliest reference I found was in the *Personal Memoirs of U.S. Grant*, Lieutenant General, US Army, and former President of the United States. In September 1845, then Lieutenant Grant found himself in Corpus Christi (Texas). Here are some observations he made:

...There was, in addition, a small American trading post, at which goods were sold to Mexican smugglers. All goods were put up in compact packages of about one hundred pounds each, suitable for loading on pack mules. Two of these packages made a load for an ordinary Mexican mule, and three for the larger ones. The bulk of the trade was in leaf tobacco, and domestic cotton-cloths and calicoes...The trade in tobacco was enormous, considering the population to be supplied. Almost every Mexican above the age of ten years, and many much younger, smoked the cigarette. Nearly every Mexican carried a pouch of leaf tobacco, powdered by rolling in the hands, and a roll of corn husks to make wrappers. The cigarettes were made by the smokers as they used them.

Up to the time of which I write, and for years afterwards –I think until the administration of President Juarez– the cultivation, manufacture and sale of tobacco constituted a government monopoly, and paid the bulk of the revenue collected from internal sources. The price was enormously high, and made successful smuggling very profitable. The difficulty of obtaining tobacco is probably the reason why everybody, male and female, used it at that time.⁴

In 1994, some 149 years after Lieutenant Grant’s observations in Texas, another major tobacco smuggling operation came to the attention of the US government in New Orleans, Louisiana. This time the Brown and Williamson Tobacco Corporation, headquartered in Louisville, Kentucky was one of the suspects.⁵ The international border in Texas was again the scene of the smuggling and related activity.

The investigation into Brown and Williamson Tobacco began as an investigation of their role in providing large volumes Canadian brand cigarettes to ship chandlers that were eventually smuggled into Canada in violation of the laws of Canada and the United States. Investigators learned that Brown and Williamson Tobacco were also engaged in smuggling cigarettes into Mexico and bribing Mexican officials to facilitate the smuggling.

A copy of an Affidavit for a Search and Seizure Warrant related to that investigation was found on the

Webpage for the Center for Public Integrity.* According to the Affidavit, the Brown and Williamson Tobacco Corporation maintained an office in San Antonio, Texas known as the Specialty Markets Division that coordinated illegal sales into Mexico.⁵

The Affidavit stated that Brown and Williams sold large volumes of cigarettes to "Duty Free Warehouses" along the international border between Texas and the adjacent Mexican states where the cigarettes were sold as export merchandise, thus avoiding US and Texas excise taxes.⁵ The Affiants stated that Brown and Williamson personnel paid "sales incentives," bribes, to various Mexican officials to facilitate smuggling of Brown and Williamson Tobacco products from the United States into Mexico.⁵

Five years later another, more significant tobacco smuggling operation, including smuggling from the United States into Mexico, diversion from the US Customs "in-bond or duty free" system and counterfeit cigarettes smuggled from China into the commerce of the United States was uncovered by U.S. Customs Service investigators in El Paso, Texas.

The Center for Public Integrity published a series of tobacco smuggling stories in 2008 as part of the "Tobacco Underground; The Booming Global Trade in Smuggled Cigarettes." One of those stories was entitled: "The guy in a wheelchair; how an El Paso smuggler moved a half-billion cigarettes across America."⁶

The violators in this case were smuggling cigarettes and liquor into Mexico, through the Ciudad Juarez Port of Entry. The organization utilized trucks with false compartments, bribery of at least one Mexican official, and the systemic weaknesses of the US Customs in-bond or duty free system.[‡]

* I was unable to confirm the authenticity of the Affidavit found on the Center for Public Integrity (CPI) Webpage. I was familiar with some aspects of this investigation as a former US Customs Service criminal investigator and the National Program Manager. The Affidavit was in the form of a PDF file, it was labeled "ATTACHMENT D AFFIDAVIT," contained the signature page with signatures of the two Affiants and the US Magistrate Judge, and was dated: 9 January 1995. There was no case or file number on any page of the Affidavit. Furthermore, I knew one of the reporters associated with the tobacco smuggling investigations and reports written by the CPI. I was able to confirm through Clerk of the US District Court for the Western District of Kentucky that a Federal Search Warrant was issued for the Brown and Williamson Tower in US Magistrate number 395MJ4 on 9 January 1995 by US Magistrate Judge Gambill. US Magistrate files are destroyed after five years. Presently, I have no reason to question the authenticity of the document.

‡ I was the National Program Manager for International Tobacco Smuggling when this investigation began. I received regular briefings on this investigation, met with investigators and prosecutors and briefed Customs Headquarters staff on this investigation until my departure from Customs Headquarters in October 2002.

The Indictment in this case provided details of how this organization utilized the weaknesses in the US in-bond or duty free system to avoid paying US taxes on cigarettes that were removed from customs custody with false documents and then smuggled into Mexico.⁷ The false documents included Mexican import and export documents known as "Pedimentos."⁷ In a background and definition section of the indictment, the following background statement was offered:

The Republic of Mexico has stringent requirements for the importation of cigarettes. According to Mexican customs, an importer of cigarettes into Mexico must make an application and have the application approved by the Mexican Government. The importer needs to belong to the Importers Census List. There is a list of authorized Mexican customs ports of entry for cigarettes. The list includes the following ports: Cancun, Ciudad Hidalgo, Colombia, Manzanillo, Nuevo Laredo, Subteniente Lopez, Tijuana, Veracruz and Aeropuerto Internacional de la Ciudad de Mexico/International Airport in Mexico City.

Ciudad Juarez is not an authorized port of entry for cigarettes. All cigarettes imported into Mexico are subject to a tax of approximately two hundred and fifty percent (250%).⁷

Even though this case was one of the most significant tobacco smuggling cases ever, as noted in the CPI story, it was tainted when the key source of information was linked to drug smuggling murders in Ciudad Juarez. This resulted in a series of plea bargains, wherein the violators received much lighter sentences.⁶

In May 2004, the General Accountability Office of the US Congress released a report entitled: "Cigarette smuggling; federal law enforcement efforts and seizures increasing." The report listed Mexico as a source country for cigarettes smuggled into the United States based upon information received from the Bureau of Alcohol, Tobacco and Firearms and US Immigration and Customs Enforcement.⁸ There were no references for the inclusion of Mexico in the list of source countries.

While attending the Tax Stamp Forum 3 in Washington, DC from 13-14 September 2011, I had the opportunity to discuss illicit tobacco trade with many people, including Anthony Forschino, Assistant Director, Arizona Department of Revenue. Mr. Forschino was not aware of any significant smuggling of tobacco products from Mexico into the United States.*

* Colledge III JW. Interview of Anthony Forschino, Assistant Director, Arizona Department of Revenue, Washington, D.C., 13-14 September 2011.

In conclusion, the misinformation campaign waged by the tobacco industry and their surrogates defined and controlled the discussions regarding illicit tobacco trade, including the illicit trade between Mexico and the United States. The Mackinac Reports are examples of documents commonly utilized to define and distort the factual basis of illicit trade between Mexico and the United States.

Tobacco smuggling between Mexico and the United States is not a new issue. The majority of the information in the public domain clearly suggests that the United States has been the source country for this illicit trade more often than Mexico.

The smuggling witnessed by former President Grant as a young army officer was at a time of little or no border controls between the two countries.

The border controls are better today, but they are not perfect. Public corruption, poor import, export and duty free control systems provided and continue to provide opportunities to smuggle contraband, including tobacco products, between the two countries. These shortcomings are found on both sides of the border, despite political rhetoric in the United States to the contrary.

Former President Grant also noted that high taxes in Mexico provided a financial incentive to smuggle in 1845. Again, in 2000, the 250% duty on tobacco products in Mexico provided large profits to smugglers. In the past five years, increased State and Federal excise taxes on tobacco products provided significant profits for tobacco smuggling into the United States and diversion from low tax states to high tax states. The recent tobacco increase in Mexico will also provide further incentives to smuggle tobacco products into Mexico.

Unfortunately, advocates of tax increases often failed to include adequate enforcement laws, staffing, financial resources and ideally a marking system that would provide tracking and tracing capabilities for tobacco products. Enforcement mechanisms must accompany tax increase to protect the revenue flow. Inadequate or no enforcement provides opportunities for organized criminal activity. These deficiencies provided additional opportunities to the tobacco industry and their surrogates to define and control the illicit trade discussions.

Another factor in those discussions has been "counterfeit cigarettes," that is cigarettes bearing counterfeit trademarks. The counterfeit products seen in El Paso in 2000 were primitive in comparison to those today. Although this access is legal and incorporated into

international law, it allowed them to define the illicit tobacco trade on their terms.

Many illegal manufacturers, including counterfeiters, purchase cigarette paper, filter tow, leaf tobacco and manufacturing equipment from the same sources as the major manufacturers and other trademark holders. The counterfeit volume of the early 2000s provided the tobacco industry a means to gain access to a wide range of enforcement agencies seeking protection of their trademarks, which has often caused enforcement efforts and limited resources to be focused on anti-counterfeit enforcement rather than tax enforcement.

Anti-illicit trade is complicated. Tobacco is a legal commodity, but has been smuggled for hundreds of years to avoid government monopolies and high taxes. The stakes are high for the governments of Mexico and the United States. They have the sovereign right to impose taxes, but with that come the responsibility of protecting the revenue flow.

Declaration of conflict of interests: The author declares not to have conflict of interests.

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