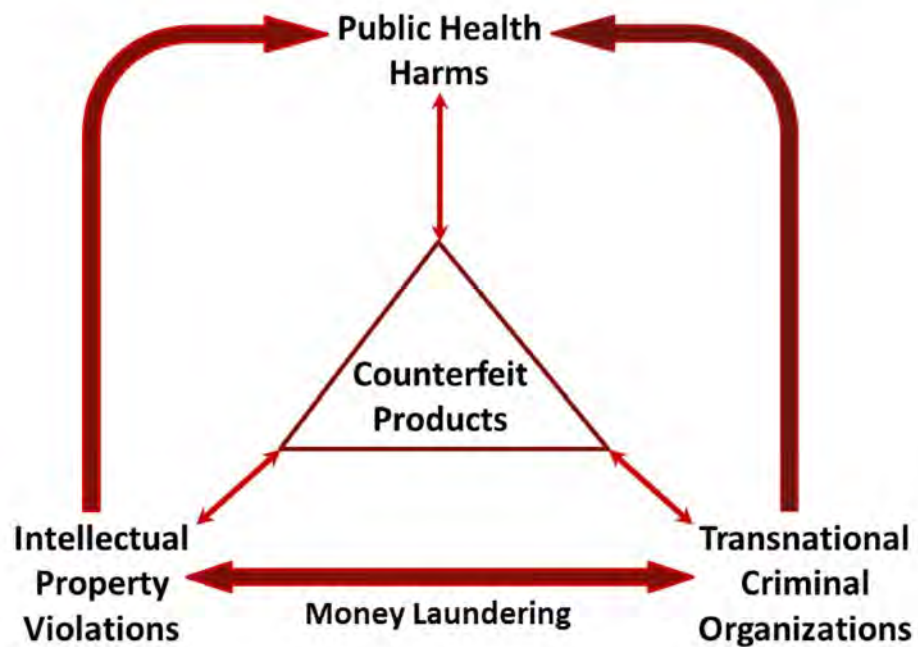


**COUNTERFEIT PRODUCTS, GENUINE HARM:
HOW INTELLECTUAL PROPERTY THEFT FUELS ORGANIZED CRIME
WHILE UNDERMINING AMERICAN COMMUNITIES**



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Executive Summary

On July 24, 2011, President Obama signed Executive Order 13581 blocking the control of property by transnational crime organizations. The Order was part of the National Security Council’s Strategy to Combat Transnational Organized Crime.¹ In the Order, the President made a formal determination

that 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.

Most of the organizations named in the Executive Order as examples of transnational crime organizations, and many similar criminal organizations, profit from trafficking in counterfeit items ranging from industrial parts to consumer products.

Trafficking in counterfeit products harms the public both directly, through the sale of dangerous parts and products, and indirectly by providing financing support to violent organizations and by undermining legitimate economic activity. Moreover, the social harms from the trafficking in counterfeit, pirated and otherwise contraband (untaxed) consumer goods falls disproportionately on predominately African American communities which are targeted by the traffickers as venues for their crimes.

Effectively countering the counterfeiters will require, as described in the President’s Strategy, building “international consensus, multilateral cooperation, and public-private partnerships to defeat transnational organized crime.”²

In terms of specific policies and actions, effectively countering the counterfeiters will require:

1. Consumer refusal to buy counterfeit/contraband/pirated products;
2. Enhanced law enforcement actions by all levels of government against counterfeiters; and
3. Federal regulatory policies that limit the opportunities for counterfeiting.

¹ See, National Security Council, “Strategy to Combat Transnational Organized Crime,” *available at* <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime>.

² See, National Security Council, “Executive Summary – Strategy to Combat Transnational Organized Crime,” *available at* <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/summary>.

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In the City of Los Angeles, investigations by law enforcement have substantiated the report that individuals involved in counterfeiting activities and the illegal sale of cigarettes are significant fund-raisers for known terrorist groups such as Hezbollah and Hamas.

– William F. Bratton, Chief of Police, Los Angeles, CA, May 2007.

Terrorists and insurgents increasingly will turn to crime to generate funding and will acquire logistical support from criminals, in part because of successes by U.S. agencies and partner nations in attacking other sources of their funding.

– James R. Clapper, Director of National Intelligence, January 31, 2012.

Fake cigarettes made from human excrement, asbestos, mould and dead flies are being smoked regularly in Britain, undercover detectives have found.

– The Daily Mail, 9 September 2012.

Counterfeiting – A Multidimensional Crime

Counterfeiting is a multi-dimensional crime. The production and sale of counterfeit goods triggers a series of legal violations with each criminal resonance contributing one or more social harms to the overall toll from the original crime. For example, a counterfeit product:

1. Is an intellectual property violation which causes revenue loss from the lawful property owner;
2. Is not made to a genuine product's quality standards, thus posing threats to public health and safety;
3. Is often sold without all legally required taxes resulting in reduced government revenues leading to reduced services and/or higher taxes on law abiding citizens;

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4. Produces profits from the illegal sales which are “laundered,” a process that the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) explains “has devastating social consequences;”³ and
5. The laundered profits frequently fuel transnational organized crime.⁴

With respect to the economic harm from counterfeit/pirated⁵ products, the US government estimates that “[c]ounterfeiting and piracy cost the U.S. economy between \$200 billion and \$250 billion per year, are responsible for the loss of 750,000 American jobs, and pose a threat to health and safety.”⁶ By 2015, the global trade in counterfeit and pirated products is grow to \$1.5 trillion.⁷

As illustrated in Figure 1 on the next page, counterfeit products harm public health both directly and through the activities of the organized crime groups which traffic in counterfeit products, often as part of a larger financing strategy which is underpinned by money laundering.

Counterfeit products endanger public health when they are placed into service in a safety-related capacity, such a aircraft fasteners or electronics parts in an emergency communications system, or when they are consumed as in the case of counterfeit medicines and certain other consumer products such as alcohol⁸ and tobacco.⁹

³ Treasury Department/FinCEN, http://www.fincen.gov/about_fincen/wwd/faqs.html#money.

⁴ National Security Council, “Strategy to Combat Transnational Organized Crime: Definition,” <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/definition>.

⁵ Pirated goods refers to products in electronic format (software, movies, music, etc.) which are illegally copied.

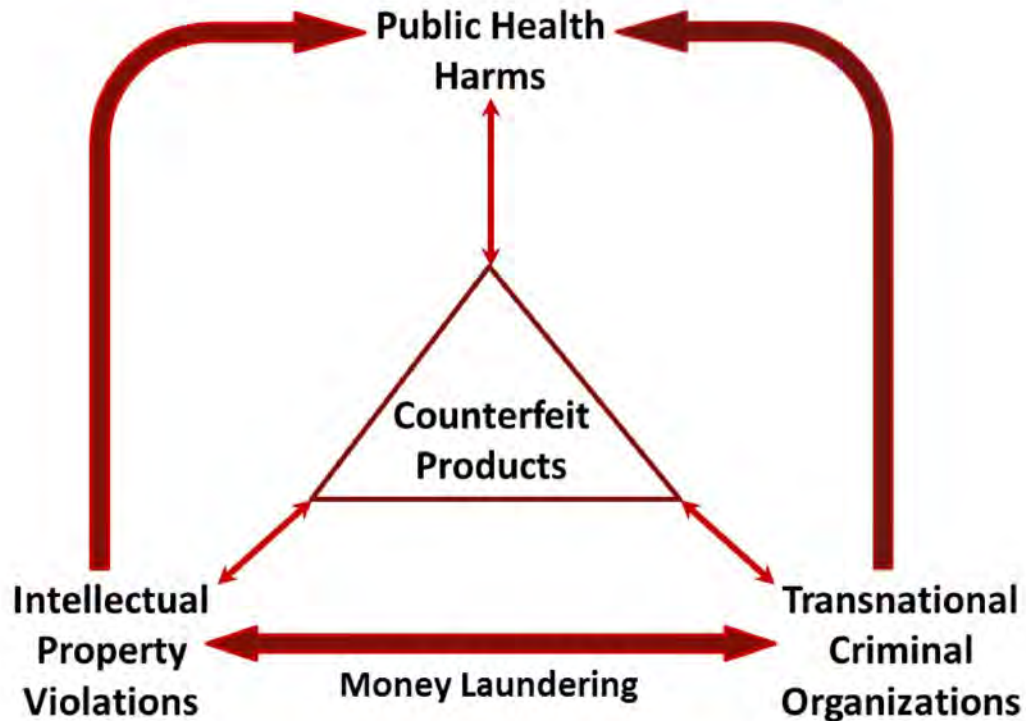
⁶ Department of Commerce/International Trade Administration, “Top 10 Ways to Protect Yourself From Counterfeiting and Piracy,” http://www.stopfakes.gov/sites/default/files/Consumer_Tips.pdf.

⁷ Frontier Economics, Ltd., “Estimating the global economic and social impacts of counterfeiting and piracy,” February 2011, p. 5, available at <http://thecre.com/pdf/Global%20Impacts%20-%20Final.pdf>.

⁸ A. Young, The Drinks Business, “Counterfeit alcohol costs UK £1.2bn a year,” <http://www.thedrinksbusiness.com/2012/11/counterfeit-alcohol-costs-uk-1-2bn-a-year/>.

⁹ J. R. Blackwell, Richmond-Times Dispatch, Chinese delegation here to discuss counterfeit cigarette problem,” http://www.timesdispatch.com/business/chinese-delegation-here-to-discuss-counterfeit-cigarette-problem/article_c299c97b-422a-5164-8305-acb751f94be7.html.

Figure 1



Rather than focusing on the economic harms from counterfeiting, which have been extensively studied,¹⁰ this paper will focus on the less studied issue of how counterfeit products directly and indirectly threaten public health and safety. Moreover, although this paper will discuss various types of counterfeit products, it will focus the greatest attention on counterfeit products which receive the least attention but play an important role in financing international criminal organizations.

Counterfeit Products Trafficked by Organized Crime

Counterfeit Parts

A 2012 report by the Senate Armed Services Committee discussed the “flood” of counterfeit electronic parts (electronic parts being only one type of parts/supplies which are counterfeited) and determined that the problem is of substantial magnitude.

¹⁰ See, for example, the GAO report “Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods” available at <http://www.gao.gov/assets/310/303057.pdf> and the OECD study, “The Economic Impact of Counterfeiting and Piracy” available at http://www.oepm.es/cs/OEPMSite/contenidos/ponen/InformeOCDE26feb09/2009_03_03_OECD_Study_on_Counterfeiting_and_Piracy.pdf.

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The Committee's investigation found the problem of counterfeit parts to be widespread in the defense supply chain. Looking at just part of the supply chain over a two year period from 2009 to 2010, the investigation uncovered approximately 1,800 cases of suspect counterfeit electronic parts. The total number of individual suspect parts involved in those cases exceeded one million.

As to the source of those parts, the Committee tracked well over 100 of the approximately 1,800 cases of suspect counterfeit parts back through the supply chain. The vast majority of those trails led to China, with more than 70 percent of the suspect parts being traced to that country. U.S. government reports consistently point to China as the epicenter of the global trade in counterfeits. The Committee's findings provide overwhelming and undeniable evidence in support of that assessment.¹¹

In addition to discussing some of the economic consequences of counterfeits, the report also discussed some of the direct dangers to US citizens from counterfeit parts in the military supply chain.

The President of the Semiconductor Industry Association likened using counterfeit parts to "playing Russian roulette," explaining, "[w]ith luck, the chip will not function at all and will be discovered in testing. But in some cases the chip may work for a while, but because of the environmental abuse it could fail at a critical time when the product containing the chip is stressed - as in combat."¹²

A Task Force on Counterfeit Parts established by the American Bar Association's Section of Public Contract Law recently noted that "No type of company or organization has been untouched by counterfeit electronic parts. Even the most reliable of parts sources have discovered counterfeit parts within their inventories."¹³

Although the ABA report's focus was on use of counterfeit parts in national defense applications, the paper reveals how very many industries are affected by counterfeit parts. The public dangers posed by

¹¹ "Inquiry into Counterfeit Electronic Parts in the Defense Supply Chain," A Report of the Committee on Armed Services, United States Senate, May 21, 2012, ("Senate Report") pp. i-ii, available at http://www.levin.senate.gov/newsroom/press/release/senate-armed-services-committee-releases-report_on-counterfeit-electronic-parts/

¹² Senate Report, p. 8.

¹³ Task Force on Counterfeit Parts of the Committee on Acquisition Reform and Emerging Issues of the American Bar Association Section of Public Contract Law, "A White Paper Regarding Department of Defense Implementation of Section 818 of the National Defense Authorization Act for Fiscal Year 2012" October 5, 2012, ("ABA Task Force") p. 1, available at http://www.americanbar.org/content/dam/aba/administrative/public_contract_law/aba_pcl_taskforce_on_counterfeit_part_white_paper.authcheckdam.pdf

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counterfeit parts in the energy industry, described below by the ABA, is disturbing but not surprising and is notable for helping illustrate the extraordinarily wide-ranging scope of parts which may be counterfeit.

DOE first formally addressed “suspect/counterfeit items” in July 1988, after receiving a U.S. Nuclear Regulatory Commission Notice regarding discoveries of suspect electrical equipment at commercial nuclear facilities. DOE has reported discovering counterfeits of the following items at DOE or National Nuclear Safety Administration (“NNSA”) sites: threaded fasteners, including assemblies containing fasteners such as ratchet tie down straps; various electrical components (semiconductors, circuit breakers, current and potential transformers, fuses, resistors, switchgear, overload and protective relays, motor control centers, heaters, motor generator sets, DC power supplies, AC inverters, transmitters, ground fault circuit interrupters (“GFCIs”)); piping components (fittings, flanges, valves and valve replacement products, couplings, plugs, spacers, nozzles, pipe supports); preformed metal structures; elastomers (O-rings, seals); spare or replacement kits from other than the OEMs, weld filler material; and diesel generator speed governors and pumps.¹⁴

As the ABA Task Force pointed out, even the construction industry needs to be concerned with counterfeit parts and equipment.

Although it is difficult to imagine a “counterfeit” building, the construction industry is just as prone to counterfeit parts – particularly with regard to construction materials and electronic building systems – as any other industry.¹⁵

It is important to note that virtually everyone is at risk from counterfeit parts as illustrated by the following statement from the United States Attorney’s Office – Eastern District of Michigan.

Two Metro Detroit residents face criminal charges following their arrests Monday during an enforcement action targeting an alleged counterfeit air bag trafficking scheme, announced United States Attorney Barbara L. McQuade and Special Agent in Charge Brian Moskowitz, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI)

The arrests come after a joint announcement Oct. 10 by ICE and the National Highway Transportation Safety Administration (NHTSA) warning consumers of the grave dangers associated with the use of counterfeit air bags.

¹⁴ ABA Task Force, p. 40.

¹⁵ Ibid.

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“Counterfeit auto parts like air bags not only violate intellectual property laws, they also create a serious safety risk to consumers”, McQuade said.¹⁶

Counterfeit military parts, counterfeit construction supplies and counterfeit air bags are linked by a common thread – they are all smuggled and sold by organized crime groups. As the Director of U.S. Immigration and Customs Enforcement (ICE) explained with regard to the automotive equipment,

“Organized criminals are selling dangerous counterfeit and substandard airbags to consumers and suppliers with little to no regard to hazardous health and safety consequences.”¹⁷

Similarly, a 2012 University of Florida research article on how “[c]ounterfeit construction materials are flooding the U.S. market,” noted that

New York City officials report that organized crime rings now consider counterfeiting to be a more attractive line of business than prostitution or drugs.¹⁸

These organized crime rings are a serious threat to US and international security. It is in response to the national security threats posed by organized crime that President Obama established a White House strategy to combat transnational criminal organizations.¹⁹

Counterfeit Pharmaceuticals

As is the case with parts, pharmaceutical products are also extensively counterfeited. The problem of counterfeit pharmaceuticals can be summarized by three statements. Counterfeit medicines are:

1. Very big business. According to the Department of Justice, “fake drugs raked in an estimated \$75 billion last year.”²⁰

¹⁶ United States Attorney’s Office – Eastern District of Michigan, Press Release, October 15, 2012, http://www.justice.gov/usao/mie/news/2012/2012_10_15_sayoub_hjomaa.html

¹⁷ NHTSA, “Safety Advisory: NHTSA Alerting Consumers to Dangers of Counterfeit Air Bags,” October 10, 2012, <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/Safety+Advisory:+NHTSA+Alerting+Consumers+to+Dangers+of+Counterfeit+Air+Bags>

¹⁸ G. L. Lawrimore, University of Florida, Office of Research, Explore Magazine, “Buyer Beware,” http://www.research.ufl.edu/publications/explore/current/story_4/.

¹⁹ White House, “FACT SHEET: Strategy to Combat Transnational Organized Crime,” <http://www.whitehouse.gov/the-press-office/2011/07/25/fact-sheet-strategy-combat-transnational-organized-crime>

²⁰ Stuart F. Delery, Acting Assistant Attorney General, Civil Division, Department of Justice, blog post “The Real Cost of Cheap Online Meds,” April 26, 2012, <http://blogs.justice.gov/main/archives/2161>.

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2. Deadly. For example, the US Food and Drug Administration (FDA) has sent out warnings about fake chemotherapy drugs.²¹ Sen. Grassley, in a statement discussing a bipartisan bill to increase penalties for trafficking in counterfeit drugs, stated that “Counterfeit drugs reportedly result in 100,000 deaths globally each year....”²²
3. Part of the global trade in counterfeit products which fund terrorist organizations and other transnational crime groups. A 2011 report by the Stimson Center on Counterfeit Drugs and National Security stated that

*not only have groups such as the Russian mafia, Colombian drug cartels, Chinese triads, and Mexican drug gangs all become heavily involved in producing and trafficking counterfeit drugs over the past decade, but mounting evidence also points to the direct involvement of Hezbollah and al Qaeda.*²³

The report concluded that “counterfeit pharmaceuticals pose a direct threat to national and international security.”

The global nature of the trade in counterfeit medicines was made clear in an August 2012 news release from ICE noted that a “man faces up to 10 years in prison after being found guilty by a jury this week on federal charges stemming from his role as a key operative for a drug ring that distributed large quantities of Chinese-made counterfeit pharmaceuticals throughout the United States and worldwide.”²⁴

The Center for Regulatory Effectiveness (CRE)²⁵ has long been active in the fight against counterfeit drugs. For example, in 2003, CRE released its white paper, “Dirty Deals: The Drug Diversion Trade – How It Victimizes the Vulnerable and How to Stop It” which highlighted that “Drug diversion, and the intertwined crimes of adulteration and counterfeiting, is a widely recognized threat to public health.”²⁶

²¹ FDA, “Another counterfeit cancer medicine found in U.S. - Illegal practice puts patients at risk,” <http://www.fda.gov/Drugs/DrugSafety/DrugIntegrityandSupplyChainSecurity/ucm298047.htm>

²² Sen. Grassley, “Leahy-Grassley Bill To Increase Penalties For Counterfeit Drugs Adopted In FDA Bill,” http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=40786

²³ Brian D. Finlay, The Stimson Center, “Counterfeit Drugs and National Security,” February 2011, http://www.stimson.org/images/uploads/research-pdfs/Full_-_Counterfeit_Drugs_and_National_Security.pdf

²⁴ U.S. Immigration and Customs Enforcement, News Release, August 9, 2012, <http://www.ice.gov/news/releases/1208/120809losangeles.htm>

²⁵ See, http://www.thecre.com/oira/?page_id=8.

²⁶ CRE, “Dirty Deals: The Drug Diversion Trade – How It Victimizes the Vulnerable and How to Stop It,” Working Draft, July 2003, <http://thecre.com/forums/attachment.php?attachmentid=22&d=1058453962>

CRE also served as an information source for the book, “Dangerous Doses: How Counterfeiters Are Contaminating America’s Drug Supply.”²⁷

Counterfeit Cigarettes and Counterfeit Tax Stamps

A counterfeit product that has received relatively little attention is cigarettes, perhaps because even the authentic products are so highly hazardous. Counterfeit cigarettes are, however, orders of magnitude more dangerous than legal products. Moreover, counterfeit cigarettes along with other forms of contraband (untaxed) tobacco, is the leading edge of a crime wave that is helping fuel organized crime around the globe.

The sale of counterfeit cigarettes is often abetted by the production and use of counterfeit tax stamps. An example of the extent to which tax stamps are counterfeited is illustrated by the experience of New York State:

*The New York State Department of Taxation and Finance announced the arrest of two Brooklyn men for possession of over 100,000 counterfeit tax stamps with an estimated black market value of over half a million dollars. The seizure also included over 2,000 cartons of untaxed cigarettes.*²⁸

It’s estimated that 40% of the cigarettes sold in New York City have counterfeit tax stamps²⁹ which may be affixed to either counterfeit or illegally transported cigarettes.

As was noted earlier, counterfeiting is particularly serious crime because it triggers a series of other crimes. For example, the production and sale of counterfeit cigarettes creates demand for counterfeit tax stamps which, in turn, results in at least four types of harm:

- ▶ Abetting the illegal sale of hazardous products;
- ▶ The loss of state and local tax revenue;
- ▶ Providing counterfeiters with highly profitable experience in forging government documents which can then be applied to forging other government documents, such as drivers licenses; and
- ▶ Counterfeit drivers licenses, as *The Washington Post* reported, are used to commit an array of crimes ranging from underage drinking to credit card fraud.³⁰

²⁷ Katherine Eban, “Dangerous Doses: How Counterfeiters Are Contaminating America’s Drug Supply.” <http://www.amazon.com/Dangerous-Doses-Counterfeiters-Contaminating-Americas/dp/0151010501>

²⁸ <http://www.thecre.com/cc/?p=880>

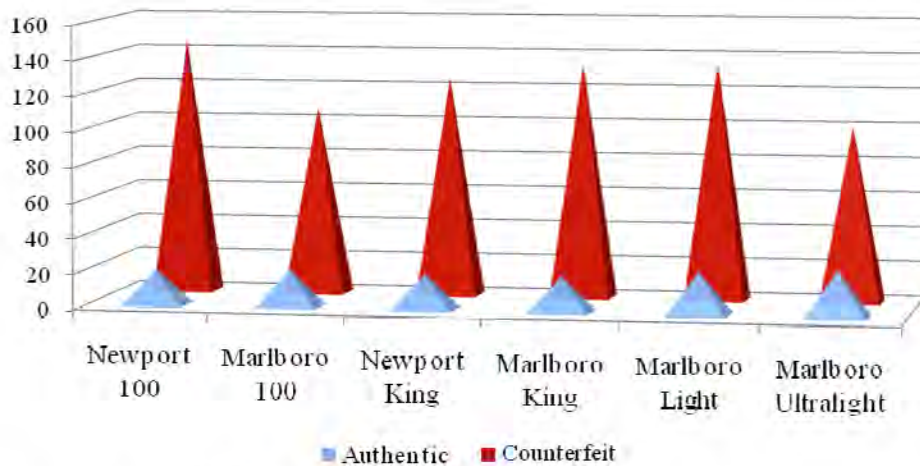
²⁹ <http://www.thecre.com/cc/?p=1119>

³⁰ See, <http://www.thecre.com/cc/?p=366>

Health Hazards of Counterfeit Cigarettes

The particular health hazards associated with counterfeit cigarettes, as described in the peer reviewed literature, have been discussed in detail in CRE’s Monograph, *An Inquiry into the Nature, Causes and Impacts of Contraband Cigarettes*.³¹ Although the Monograph should be consulted for in-depth analysis of counterfeit cigarette-specific health hazards, the Figure 2 below (Monograph, p. 7) derived from data in a peer reviewed study by US Centers for Disease Control and Prevention (CDC) researchers provides an indication of the hazards by comparing the lead levels of lead in counterfeit and authentic cigarettes. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reported that, in addition to having higher levels of lead, cadmium and other toxic metals, counterfeit cigarettes are higher in nicotine than legal products³² which would make them more addictive, a particular concern since counterfeit cigarettes are often purchased by underage buyers since criminals don’t check their customers’ age.

Lead Levels Authentic and Counterfeit Cigarettes (ng/ mg of nicotine: mainstream smoke)



Source: Pappas (2007), Figure 4

³¹ See, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM243625.pdf>.

³² See, <http://www.atf.gov/publications/factsheets/factsheet-tobacco-diversion.html>

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Despite the work by researchers at CDC and other government and university laboratories discussed in the Monograph, there is much that is not known about the health effects of counterfeit cigarettes. For this reason, CRE has called for additional federal research on the health hazards of counterfeit cigarettes.³³

Recent media reports on the contaminants found in counterfeit cigarettes have further highlighted the need for additional research on counterfeit cigarettes. The following are a half-dozen examples from a half-dozen countries of reports on the contaminants and particular hazards from counterfeit cigarettes.

From: The Australian (Australia)

As well as millions of dollars lost in Government revenue, the health risks are considerable because counterfeit cigarettes contain “dangerous contaminants and much higher levels of carcinogens than legitimate cigarettes”. Most are imported from China and Indonesia.³⁴

From: BuaNews (South Africa)

This equates to more than 15 million cigarettes being sold illegally every day, or more than 6 billion per year. This defrauds the fiscus of more than R2.6 billion in unpaid excise duties.

Furthermore, illegal cigarettes pose an even greater threat to people’s health, as these products do not comply with the strict government regulations to which legal manufacturers and traders adhere.³⁵

From: Curaçao Chronicle (Curaçao)

WILLEMSTAD – During an inspection in a mini market, customs recently discovered and seized 15,000 fake cigarettes. These fake cigarettes were open and exposed in a large box which rats and other vermin could walk across it. “It is a serious situation which is very harmful to health”, Varressa Elisabeth, the interim director for customs, stated yesterday during a press conference.³⁶

From: Shandong Provincial Tobacco Monopoly Bureau (China)

Many counterfeit cigarettes manufacturers use mostly tobacco waste, poor, substandard tobacco even moldy leaf tobacco. Counterfeit cigarettes in the filter

³³ <http://www.ojp.usdoj.gov/docs/sabappendixmsabcomments062012.pdf>

³⁴ See, <http://www.thecre.com/cc/?p=1704>

³⁵ See, <http://allafrica.com/stories/201102041010.html>

³⁶ See, <http://www.thecre.com/cc/?p=1886>

paper use inferior quality products even waste or contaminated waste products. Studies show that a counterfeit cigarette combustion will produce a large quantity of 3,4-benzopyrene and other carcinogenic substances. The tar content significantly exceeds the national standard. Counterfeit cigarettes contain “bemisias tabaci” eggs that, once inhaled, will be like “pork tapeworm” as chronic parasitic in humans, the large population of which will cause very great harm to the nervous system and, in severe cases, can lead to necrosis of the brain. Second, industrial dyes and industrial flavors used counterfeit cigarettes, and their combustion products, will produce severe damage to the reproductive system and visual system, resulting in “my eyesight is getting worse and even blindness” and other symptoms of toxic amblyopia and including sexual dysfunction. More seriously, is that residual sulfur ingredients used in curing smoked harm the respiratory system and even pose a direct threat to life.³⁷

From: The Daily Mail (United Kingdom)

Fake cigarettes made from human excrement, asbestos, mould and dead flies are being smoked regularly in Britain, undercover detectives have found.³⁸

From: Virginia State Crime Commission (United States)

- *“Most counterfeit cigarettes...tend to differ in every respect from their legal counterparts, including tobacco, paper, filter tips, and packaging ”(Shen et al., 2010).*
- *This does more than result in a cigarette that is less pleasant in taste; serious health risks are implicated by counterfeit cigarettes.*
- *Contaminants and excessive levels of cadmium, thallium and lead have been found in counterfeit cigarettes.³⁹*

Counterfeit and Contraband Cigarettes – Differences and Similarities

Counterfeit cigarettes are a subset of the larger issue of contraband tobacco. Contraband tobacco refers to tobacco (primarily cigarettes and loose tobacco for roll-your-own cigarettes) on which all required taxes have not been paid. Thus, contraband tobacco includes all counterfeit cigarettes as well as unbranded and

³⁷ See, <http://www.thecre.com/cc/?p=69>

³⁸ See, <http://www.thecre.com/cc/?p=1622>

³⁹ See p. 52, <http://www.thecre.com/cc/wp-content/uploads/2012/09/frmvsc.pdf>

off-brand cigarettes sold through illicit means,⁴⁰ and major label cigarettes which have been illegally transported across state or national borders.⁴¹

Although not all contraband cigarettes share the extreme health hazards of counterfeit cigarettes, they do share some health-related commonalities. For example, a study in the journal *Nicotine & Tobacco Research* found that Australian smokers of the unbranded contraband cigarettes known locally as “chop-chop” had significantly worse health than other smokers. Specifically, the study found that

*relative to smokers of licit tobacco, current users of illicit tobacco had significantly greater odds of beginning smoking at younger than legal age, 60% greater odds of reporting below-average social functioning on the SF-8 [a standardized health survey], and nearly twice the odds of reporting a measurable disability.*⁴²

The study explained that is chop-chop is “sourced from unlicensed domestic growers or suburban homegrown production.” Moreover, the study’s authors point out that chop-chop “is similar to contraband tobacco in Canada sourced from domestic production by illegal manufacturers.”⁴³ Thus, the elevated health hazards from unbranded contraband cigarettes above and beyond the health hazards of legal cigarettes is not limited to Australia.

An additional substantial health hazard from contraband cigarettes irrespective of their country of origin is from their being sold to underage smokers. As was noted, illegal sellers of cigarettes, don’t adhere to age restrictions.

*A Research Letter in the Canadian Medical Association Journal (CMAJ) estimated that “[c]ontraband cigarettes accounted for about 17.5% of all cigarettes smoked by adolescent daily smokers in Canada overall, and for more than 25% in the provinces of Ontario and Quebec.” In a more recent study in Tobacco Control, Callaghan (2010) increased the estimate of the share of the youth market accounted for by contraband cigarettes to 43%.*⁴⁴

An additional hazard to underage smokers from illicitly sold cigarettes reported in the English newspaper the *Spalding Guardian* is that “[t]eenagers face an added risk of being asked for sexual favours if they smoke toxic fake cigarettes....”⁴⁵

⁴⁰ <http://www.thecre.com/cc/?p=142>

⁴¹ <http://www.thecre.com/cc/?p=295>

⁴² See CRE Monograph p. 59 or <http://www.ncbi.nlm.nih.gov/pubmed/19541950>

⁴³ See, CRE Monograph p. 17.

⁴⁴ CRE Monograph, p. 19. [Notes omitted]

⁴⁵ See, <http://www.thecre.com/cc/?p=1760>

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From a law enforcement perspective, the most significant commonality between counterfeit and other contraband cigarettes is that, irrespective of whether the illicit transport and sales are domestic or international, both types of cigarettes are trafficked by transnational criminal organizations.

It is because counterfeit and other contraband cigarettes are at the nexus of so many different crimes and threats to national security, from terrorism to drug trafficking, that contraband tobacco requires particular attention from:

1. Federal, state and law enforcement;
2. Government policy officials; and
3. The public who purchases illicit tobacco, often without realizing the chain of crimes involved and the consequences.

There are three key issues with respect to the criminal organizations trafficking in cigarettes:

1. The traffickers include groups designated by the US State Department as Foreign Terrorist Organizations (FTOs);⁴⁶
2. There is a convergence between FTOs and traditional organized crime groups with cigarette trafficking being common to crime organizations irrespective of any ideological motivations; and
3. Tobacco smuggling is closely intertwined with and funds drug smuggling, arms trafficking and human trafficking.

Each of these three issues will be discussed below.

⁴⁶ <http://www.state.gov/j/ct/rls/other/des/123085.htm>

The Terror– Tobacco Trafficking Connection

On July 24, 2011, President Obama signed Executive Order 13581 – Blocking Property of Transnational Criminal Organizations.⁴⁷ In the Order, the President stated

I therefore determine that 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.

The Order included an Annex which listed examples of significant transnational criminal organizations including Los Zetas, the violent, Mexican-based criminal syndicate which is heavily involved in the narcotics trafficking, Camorra, and Yakuza. These three groups were also named in federal report, along with Chinese Triads, La Cosa Nostra, and the Russian Mafia as being involved in cigarette counterfeiting.⁴⁸

Although the President’s Order is relatively recent, it was based on extensive federal information gathering and experience with the criminal organizations. The role of counterfeit and other contraband cigarettes in financing terrorists and other dangerous criminals has been long established. In a 2004 article published in *The Police Chief*, a publication of the International Association of Chiefs of Police (IACP), an ATF senior intelligence analyst explained that

*The trafficking of cigarettes by terrorists and their sympathizers has been going on worldwide since the mid-1990s, and the last four years have seen a sudden increase in trafficking. The trafficking schemes provide the terrorist groups with millions of dollars annually, which fund the purchasing of firearms and explosives to use against the United States, its allies, and other targets.*⁴⁹

The ATF federal official also explained that

Known and suspected Hezbollah and Hamas members have established front companies and legitimate businesses in the cigarette trade in Central and South America. Indications from law enforcement sources are that these companies

⁴⁷ <http://www.whitehouse.gov/the-press-office/2011/07/25/executive-order-blocking-property-transnational-criminal-organizations>

⁴⁸ National Intellectual Property Rights Coordination Center “Intellectual Property Rights Violations: A Report on Threats to United States Interests at Home and Abroad nation Center,,” November 2011, Figure 10, p. 36.

⁴⁹ William Billingslea, “Illicit Cigarette Trafficking and the Funding of Terrorism,” *The Police Chief*, February 2004.

*traffic in contraband and counterfeit cigarettes and tax stamps for profit and then use the proceeds to purchase arms and ammunition.*⁵⁰

The trafficking in counterfeit cigarettes and tax stamps is not unique to any type of FTO or geographic region. For example the intelligence official points out that the “The IRA was one of the first groups to begin using cigarettes to fund their activities.” Similarly,

*The Kurdish Workers Party (PKK) is involved in the trafficking of contraband cigarettes and tax stamps. In one particular instance in 2000, the Turkish military and Turkish federal police conducted a raid at a PKK safe house, which was suspected of actually being one of the PKK headquarters for eastern Turkey. Initially, the Turkish authorities were expecting to find caches of arms, ammunition, and explosives. But the authorities actually found a gravure printing press for producing counterfeit tax stamps and other forged documentation.*⁵¹

More recently, an article published by Scientific American, quoting a retired FBI agent the role of counterfeit cigarette trafficking in financially supporting terrorism, stated

*“Obviously there is a concern of what is coming into the United States and how it’s being examined,” said Bob Hamer, a retired FBI agent. Hamer’s last assignment was Operation Smoking Dragon, lasting from 2002 to 2005. Through sales of counterfeit Marlboro cigarettes and tax stamps, the FBI learned about many of the funding sources helping to finance terrorism through the transport of items via Southern California ports. “A lot of the profits from these counterfeit cigarettes were, particularly, going to support Hezbollah and Hamas,” said Hamer. “The whole thing began with counterfeit cigarettes. It eventually evolved into something much greater than that.”*⁵²

Similarly, a Congressional Research Service report noted that,

*Cigarette smuggling schemes as a means for financing terrorists have been discovered in a range of countries and regions, including the United States, Europe, Turkey, the Middle East and North Africa, and Iraq.*⁵³

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Reut Rory Cohen, “Security and Commerce: Finding a Balance in a Post-9/11 World with Risk-Analysis Science,” Scientific American Blogs, May 3, 2012.

⁵³ John Rollins and Liana Sun Wyler, “Terrorism and Transnational Crime: Foreign Policy Issues for Congress,” Congressional Research Service, October 19, 2012 available at <http://www.thecre.com/cc/wp-content/uploads/2012/11/R41004.pdf>.

It is important to recognize that cigarette trafficking means more than just a flow of funds to violent organizations, it is about murder. In 2009, a Florida newspaper detailed the how the trafficking of cigarettes through Florida was used to finance the murder of two British soldiers.

The bullets rang out thousands of miles away, but investigators now believe the assault had its origin in an anonymous cargo ship docked at a bustling South Florida port.

A gray-haired 57-year-old Cutler Bay man with no criminal history named Roman Vidal sold millions of cigarettes that had been smuggled to Dublin criminals who funded the terrorist group that killed Quinsey and Azimkar, investigators say. The charges are just the latest link between black-market U.S. smokes and violent terrorist groups around the world.⁵⁴

The Terror– Tobacco Smuggling – Organized Crime Connection

The peer reviewed paper “Methods and Motives: Exploring Links between Transnational Organized Crime & International Terrorism,” researched and written by academicians utilizing a National Institute of Justice grant, “identifies and analyzes the points of convergence between organized criminals and terrorists to draw useful conclusions for investigators.”⁵⁵

The researchers from American University and other institutions explain that,

The interaction between terrorism and organized crime is growing deeper and more complex all the time. First, transnational criminal groups are expanding, both through the addition of new groups and the growth of existing ones. Such growth led to more connections between these groups as well as with other shadowy actors like insurgents, arms proliferators and indeed terror cells. For example, as gangs have evolved into the newest transnational crime groups in North America, stories have recently surfaced that an Al Qaeda operative made contact with members of one gang, Mara Salvatrucha or MS-13, in Honduras in 2004. Terrorists in European prisons recruit criminals to their cause, allowing incarcerated individuals move between their identities as terrorists and criminals.

⁵⁴ Tim Elfrink, “South Florida Cigarette Smuggling Funds Terrorism,” Broward Palm Beach New Times, July 2009, available at <http://www.browardpalmbeach.com/2009-07-02/news/south-florida-cigarette-smuggling-funds-terrorism/>

⁵⁵ Dr. Louise I. Shelley, John T. Picarelli, et al, “Methods and Motives: Exploring Links between Transnational Organized Crime & International Terrorism,” September 2005, p. 5, available at <http://www.thecre.com/ccsf/wp-content/uploads/2011/06/Methods-and-Motives.pdf>

Second, the dealings between terrorist and organized crime groups have long since ceased to be a matter of business alone; the two phenomena now intersect on many different levels. Many international terrorists sustain themselves only with the support of organized crime. That dependency, combined with the fact that terrorists commit a range of relatively minor crimes too, can be important keys to detecting and apprehending them.

With so many individuals active in both terrorism and organized crime, there now exists a merging and blurring of functions.⁵⁶

Cigarette smuggling is part of organized crime and terrorist financial dealings. For example, the authors note that “[c]igarette and alcohol smuggling has fueled the Kurdish-Turkish conflict as well as the terrorist violence in both the Abkhaz and Ossetian conflicts.”⁵⁷

Los Angeles Police Chief William F. Bratton discussed the convergence of organized crime and terrorist groups in an article in *The Police Chief* in which he wrote,

*The connection between organized crime and the illicit trade market has undergone a mutation of sorts, to the extent that organized-crime entities have morphed from the traditional fixed hierarchies with controlling leaders or families to more decentralized, loosely linked, multiple networks that come together and cooperate only on an opportunistic basis and then separate. In his book *Illicit: How Smugglers, Traffickers, and Copycats Are Hijacking the Global Economy*, Moisés Naim takes the view that this mutation is similar to that of international terrorist organizations such as al Qaeda and Islamic Jihad. As Naim puts it, the world’s first unmistakable glimpse of this transformation came on September 11, 2001. Although many—politicians included—took the position that the “world changed,” it may be more accurate to say that something about the world was revealed to us.⁵⁸*

Chief Bratton also emphasized that cigarette trafficking plays a significant part of the organized crime-terrorist convergence:

In the City of Los Angeles, investigations by law enforcement have substantiated the report that individuals involved in counterfeiting activities and the illegal sale

⁵⁶ Ibid., p.11. [Notes omitted].

⁵⁷ Ibid., p. 66.

⁵⁸ William F. Bratton, Chief of Police, Los Angeles, California, “The Mutation of the Illicit Trade Market,” *The Police Chief*, May 2007 available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1177&issue_id=52007.

*of cigarettes are significant fund-raisers for known terrorist groups such as Hezbollah and Hamas.*⁵⁹

More recently, the links between organized crime, terrorist organizations and the trafficking in cigarettes and other counterfeit consumer products has been widely noted around the world by reporters, commentators and government officials. Examples include:

From: Malaya Business Insight:

*Cigarette smuggling has now become a major security concern for many countries because terrorist networks such as Al Qaeda are turning to this illicit trade to finance their criminal activities, according to a study done by a global non-profit tax research foundation. ... The ITIC study disclosed that terrorist organizations and other organized crime groups are exploiting the illicit trade in tobacco products because the highly lucrative activity is relatively low-risk compared to other heavily penalized crimes like drug trafficking and human smuggling.*⁶⁰

From DOJ/ATF:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Atlanta Field Division, together with officials from the Georgia Attorney General's Office, Georgia Department of Revenue, the Gwinnett County District Attorney's Office, the Lawrenceville Police Department, and the Gwinnett County Sheriff's Department, announced today a large-scale enforcement operation involving the execution of multiple arrest, search, and seizure warrants in connection with the illegal trafficking of cigarettes in Georgia.

*Organized criminal groups, including those with ties to terrorist organizations, have increasingly engaged in the illegal trafficking of tobacco products, particularly counterfeit and lawfully manufactured cigarettes. Prior to 2003, ATF averaged about 40 new diversion investigations annually. Since 2003, ATF has initiated more than 1,050 tobacco diversion investigations, with an average of 131 investigations per year.*⁶¹

From: The Peterborough Telegraph (UK):

The Tax and Investment Centre report said: "Counterfeits of UK brands originate mostly from the Far East.

⁵⁹ Ibid.

⁶⁰ <http://www.thecre.com/cc/?p=907>.

⁶¹ <http://www.thecre.com/cc/?p=555>

“The counterfeiters show ever-increasing sophistication in the face of international enforcement efforts.

“Cigarette smuggling is a highly profitable option for organised crime gangs and terrorist networks.

“People involved in the illicit trade of tobacco products are also involved in other forms of illicit trade, such as drugs, human trafficking and guns.”⁶²

From Business World Online (Philippines):

With the proposed sharp rise in tax rates on, and hence the price of, cigarettes, the Philippine government might have to deal with the return of cigarette smuggling into the country. ... The return of smuggling could provide new life to criminal syndicates and enemies of the State. Experiences in other countries show that smuggling provides financial muscle to organized crime and terrorist activities. Is the Philippine military establishment ready for this?⁶³

From News Letter (UK):

Former Assets Recovery Agency chief Mr McQuillan said the seizure of cigarettes in Dublin would cause “serious damage” to dissidents.

“It seems quite clear that dissident republicans are inextricably linked to organised crime and they are probably using this money to fund paramilitary operations,” he said.

“But really what you have here is organised crime gangs. It has to be priority for the community to get behind the police in order to stop these economic and terrorist crimes.

“I am delighted to see this seizure in Dublin but what we really need is for people to stop buying illegal cigarettes.

“They need to know that their money is going to kill their neighbours through dissident republican terrorism.”⁶⁴

⁶² <http://www.thecre.com/cc/?p=1677>

⁶³ <http://www.thecre.com/cc/?p=1667>

⁶⁴ <http://www.thecre.com/cc/?p=479>

From The Philippine Star:

The World Economic Forum noted in 2011 that illicit trade is a major source of revenue for terrorist groups and transnational criminal networks. According to Framework Convention Alliance (2008), recent studies estimate that over 600 billion cigarettes a year is illicit resulting in annual government revenue losses of over \$40 billion.⁶⁵

From Rep. Peter King:

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. ...

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.

We uncovered far too many examples. Consider, counterfeit cigarette tax stamps were found in an apartment used by members of the Egyptian Islamic Jihad cell that carried out the 1993 bombing of the World Trade Center. The notorious "Lackawanna Six" Islamic-terrorist cell received \$14,000 from a former gas station operator, who was subsequently convicted for cigarette trafficking and money laundering.⁶⁶

From WJLA ABC-7:

ATF agent Ashan Benedict has handled several major cigarette smuggling cases in our region.

"Cigarette smuggling is as lucrative or more lucrative than smuggling drugs or smuggling guns," Benedict says.

The Department of Justice puts the scope of the problem into the billions of dollars, with big organized crime, and even groups with links to terrorists cashing in.

⁶⁵ <http://www.thecre.com/cc/?p=1259>

⁶⁶ <http://www.thecre.com/cc/?p=645>

“You are looking at millions of dollars and the more organized they get we are seeing links to human smuggling, links to narcotics, weapons and violence,” Benedict says.⁶⁷

The Narcotics – Gun Running – Human Trafficking – Tobacco Smuggling - Crime Connection

As reported above by a Washington, DC television station, cigarette smuggling is linked to a host of other crimes. The Voice of America has also reported on the close links between cigarette trafficking, counterfeiting and other crimes:

Fake designer brand purses, clothing and even prescription medications are made and sold around the world. Investigators say it is bigger business than the illegal drug trade. And police say that when consumers buy counterfeit items, they could be contributing to the funding other crimes. ... At the Port of Los Angeles, police seize counterfeit purses, clothing, prescription medications, appliances and cigarettes.⁶⁸

It’s important to recognize that tobacco smuggling is more than simply one element in a portfolio of illegal activities by crime organizations, tobacco smuggling is the fuel for an array of crimes. As the the Former Assistant Chief Constable, Head of Organised Crime in Northern Ireland made clear, trafficking in contraband cigarettes should be understood as a gateway crime that in turn funds other crimes:

I have dedicated 30 years of my life to policing crime on the streets of Northern Ireland, where organised crime gangs and terrorist groups turned smuggling tobacco into a multi-million pound black market business, funding prostitution and drug trafficking.⁶⁹

Similarly, the Royal Canadian Mounted Police (RCMP) has reported that,

“The illicit tobacco trade is a global phenomenon that contributes to the growth of transnational organized crime and undermines public health objectives.”⁷⁰

A senior Google official, during a discussion of the role of illicit networks in supporting crime, explained that seemingly different crimes in different places are closely connected and need to be understood and countered in a unified manner:

⁶⁷ <http://www.thecre.com/cc/?p=1897>

⁶⁸ <http://www.thecre.com/cc/?p=1204>.

⁶⁹ <http://www.thecre.com/cc/?p=2009>

⁷⁰ <http://www.thecre.com/cc/?p=1641>.

Some illicit networks, such as Hezbollah, are involved in activities as diverse as cigarette smuggling in the United States, money laundering in West Africa, drug smuggling in Europe, and illicit arms sales all over the world. To combat such illicit activities, the first step is to view them holistically rather than through traditional silos, and the second step is to identify critical nodes, such as financial intermediaries, that could play a disruptive role if armed with the appropriate information and tools.⁷¹

The Myth that Counterfeiting and Piracy are Victimless Crimes

The question arises as to why, given the close links between tobacco smuggling and violent organizations does cigarette trafficking receive relatively little attention? Part of the answer, as previously noted, is that cigarettes are an inherently hazardous product. Another part of the answer, however, is found in the myth that the sale of counterfeit and other contraband cigarettes is a victimless crime.

A consultant the IHS Jane's Information Group and writer for several trade publications explained the victimless crime myth by stating:

The contraband of tobacco products internationally has attracted little interest on a media level, although it constitutes an important and increasing form of revenue for a variety of illicit actors, be they organized crime figures, terrorists or extremist sects. In contrast to narcotics trade or human trafficking, tobacco smuggling constitutes no obvious social threat; nevertheless, these activities are conducted by the same people who run the bulk of other dangerous illicit trades, while fueling governmental corruption in developing nations.⁷²

The Department of Justice is long on record making the same point,

"Tobacco diversion is not a victimless crime," said ATF Special Agent in Charge Rich Marianos. "Depriving the government of tax revenue impacts the funding of necessary services for our citizens. Many times these investigations also lead to the funding of violent criminal organizations."⁷³

A municipal official in England similarly explained,

⁷¹ Neal Ungerleider, "How Google Fights Terrorists And Human Traffickers," Fast Company, July 17, 2012.

⁷² Ioannis Michaletos, International Tobacco Contraband, May 11, 2012 available at <http://www.worldpress.org/Europe/3911.cfm>.

⁷³ <http://www.thecre.com/cc/?p=1787>.

“There is a commonly held view that dealing in imported cigarettes is a victimless crime which doesn’t do any harm.

“The perception of a ‘Robin Hood’ type figure, not paying tax to the government so they can sell them cheaply to the poor is totally false as it affects the livelihood of other local shops who sell cigarettes.”⁷⁴

The mistaken view that the purchase of contraband tobacco is a victimless crime is a subset of the larger problem which is that a significant share of the public views the purchase of counterfeit/pirated products as victimless crimes,

Bob Barchiesi has a saying: “If you can make it, they can fake it.”

That was apparent yesterday as more than 400 people from 50 countries gathered for an international intellectual property crime conference in Halifax.

On display were everything from fake handbags to fake circuit breakers – and many of them were indistinguishable from the real thing.

“If you knew where your money was going, you’d probably think twice about (buying counterfeit goods),” said Barchiesi, president of the International Anti-Counterfeiting Coalition.

“The people that are engaged in the sale of counterfeit goods are often engaged in other nefarious criminal conduct. It’s been linked to organized crime, it’s been linked to funding terrorist organizations. It’s not victimless.”⁷⁵

As CNBC reported,

Counterfeit goods may have a reputation for poor design, unsafe parts and toxic elements, but consumers don’t seem to mind.

No country has been associated with dangerous knockoffs more often than China. According to US Customs & Border Protection data, more than 75 percent of counterfeit goods seized between 2004 and 2009 were manufactured there. Apparently, people love a bargain, and they don’t mind taking a risk to get one. Despite the risks, it’s easy to see why counterfeit goods are appealing. The customer gets what looks like a Louis Vuitton handbag for \$50 instead of \$2500, and if anything shady happened on its way from the factory to the hawker’s table,

⁷⁴ <http://www.thecre.com/ccnf/?p=66>.

⁷⁵ Paul McLeod, “Counterfeiting not a victimless crime, expert says,” Metro News, June 26, 2008 available at <http://metronews.ca/news/halifax/75395/counterfeiting-not-a-victimless-crime-expert-says/>.

the buyer usually doesn't know about it. This allows most people to assume that counterfeiting is a victimless crime. The truth, however, is a different story.

Illegal Products and Illegal Labor

*A counterfeit product is often created in a sweatshop, in violation of child labor laws, anti-sweatshop laws and basic human rights. Dana Thomas, described the conditions she witnessed in sweatshops in her 2007 book *Deluxe: How Luxury Lost Its Luster*.*

"I remember walking into an assembly plant in Thailand a couple of years ago and seeing six or seven little children, all under 10 years old, sitting on the floor assembling counterfeit leather handbags. The owners had broken the children's legs and tied the lower leg to the thigh so the bones wouldn't mend. [They] did it because the children said they wanted to go outside and play."⁷⁶

The Victims of Contraband Cigarettes: Disproportionally Young and African American

The victims of contraband cigarettes are numerous and diverse. Everyone who smokes extraordinarily toxic counterfeit cigarettes is a victim as is every underage person who illegally purchases cigarettes from a contraband vendor. Cities and states are victims of the massive lost tax revenues. Mark Quinsey and Patrick Azimkar of British 38th Regiment Royal Engineers whose murders were funded by cigarette trafficking are also victims of the trade.

While the victims of trafficking in counterfeit and other contraband cigarettes are numerous, taken as a whole, they have clear demographic characteristics. As the previously discussed article in the Canadian Medical Association Journal explained, citing an article in Tobacco Control, the young are particularly victimized by the availability of contraband cigarettes stating that a new study "increased the estimate of the share the share of the youth market accounted for by contraband cigarettes to 43%."

The contraband cigarette also disproportionately impacts lower income and non-white citizens. An article published in the American Journal of Public Health analyzing the contraband cigarette trade in New York City summarized its results by stating:

A large tax increase led to what focus group participants described as a pervasive illegal cigarette market in a low-income minority community.⁷⁷

⁷⁶ Daniel Bukszpan, "Counterfeiting: Many Risks and Many Victims," CNBC, 13 Jul 2010 available at http://www.cnbc.com/id/38229835/Counterfeiting_Many_Risks_and_Many_Victims

⁷⁷ Donna Shelley, MD, MPH, M. Jennifer Cantrell, MPA, et al., (2007) "The \$5 Man: The Underground Economic Response to a Large Cigarette Tax Increase in New York City," American Journal of Public

Furthermore, the researchers found that African Americans noted that Blacks compared with all other ethnic groups and were clustered in low-income neighborhoods (NYC Department of Health and Mental Hygiene, unpublished data, 2003).⁷⁸

While smokers that were included in the study's focus groups cited the lower price of illicit cigarettes as an attraction, they also highlighted the fact their economic status was the reason the contraband dealers were in their neighborhood. As one woman explained,

"We're thankful for the \$5 man. Everyone is happy that the fare is gonna go back down. We're happy that we found the man on 125th Street that says Newport \$5. We don't care that the cops are standing right there and he's doin' something illegal. It's not very important down on 86th Street, Central Park West. That's because they got a lot of money." (Female smoker, 18–24 years)⁷⁹

The study's subjects were also keenly aware of the racial aspects of the illegal sale of cigarettes and the role that race, economic status and discrimination play in causing African Americans to smoke and in the availability of contraband tobacco:

"I sometimes wonder if someone is pushing cigarettes in Harlem because you can go outside of Harlem and you don't see, you don't hear. But in these streets of Harlem, someone is walking around saying, 'cigarettes \$5.'" (Female smoker, 50 years)⁸⁰

"I need this to calm down and that plays a big role in the life of a Black man of course, there's a lot of things that's put to us that stresses us out and we run to these packs." (Male smoker, 25–49 years)

"It's stressful living in Harlem especially with the economy now. You can find a pack of cigarettes before you can find a job." (Female smoker, 18–24 years)

"Ya know, we're poor and this [smoking] is the way we get over a lot of things." (Female smoker, 18–24 years)⁸¹

Health, Vol 97, No. 8, pp. 1483-1488.

⁷⁸ Ibid., p. 1483 [note omitted].

⁷⁹ Ibid., p. 1485.

⁸⁰ Ibid, p. 1486.

⁸¹ Ibid.

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The study also provides a street level view of the same point that the an ATF official made, that cigarette “smuggling is as lucrative or more lucrative than smuggling drugs....”

“The profit is unbearable. You know, I watch guys today in Harlem. Bought cars [with the money they made] selling cigarettes. Buy vans and jeeps [with the money they made] selling cigarettes.” (Male smoker, 25–49 years)⁸²

One of the ways in which street level contraband dealers increase the availability of cigarettes is by breaking up packs of smuggled cigarettes and selling them individually. The term for such cigarettes is “loosies” for loose cigarettes. The availability of illegal loose cigarettes allows people to buy one or two cigarettes at a time rather than spending the much larger sum that would be needed to buy an entire pack.

“It’s been about 4 months since I stopped buying packs. I buy loose cigarettes.” (Female nonsmoker, 25–49 years)⁸³

The New York Times ran a profile on an African American contraband cigarette vendor, Lonnie Warner. In 2011. Mr. Warner, who is better known as “Lonnie Loosie” because he specializes in the sale of loose cigarettes, buys smuggled menthol cigarettes for a little over \$50/carton and “then resells them for 75 cents each, two for \$1 or \$8 for a pack (\$7 for friends).”⁸⁴

According to Mr. Warner, “he and each of his two partners took home \$120 to \$150 a day, profit made from selling about 2,000 cigarettes, mostly two at a time. Each transaction is a misdemeanor offense.” Thus, the illicit cigarette vendors discussed in the story are engaging in nearly 1,000 illegal cigarette transactions a day.

With crime comes punishment. Mr. Warner is frequently arrested. He “recalls being arrested 15 times, generally on the charge of selling untaxed tobacco.” Punishment “usually means a few days in jail on Rikers Island, or a week of community service, some of it spent sweeping cigarette butts.”

There are three key lessons to be learned from the story of Lonnie Loosie:

1. ***Availability of Loose Cigarettes Undermines Smoking Cessation Efforts.*** The article quotes Mr. Warner explaining how people who have the stated intention of quitting smoking have their intent undermined by the availability of single cigarettes.

In his time, Mr. Warner has learned a lot about smokers’ habits. He sometimes hears from customers who explain to him they are quitting as they buy two final loosies.

⁸² Ibid.

⁸³ Ibid., p. 1485.

⁸⁴ Joseph Goldstein, “A Cigarette for 75 Cents, 2 for \$1: The Brisk, Shady Sale of ‘Loosies,’” New York Times, April 4, 2011.

*“A lot of them believe they are quitting,” he said, “but they come back every day.”*⁸⁵

2. ***Cigarette Restrictions Increase the Black Market.*** Tax policies which effectively restrict lawful cigarette purchases to relatively upper income smokers have spurred the growth in the contraband cigarette market. As Mr. Warner explains,

*“The tax went up, and we started selling 10 times as much,” Mr. Warner said. “Bloomberg thinks he’s stopping people from smoking. He’s just turning them onto loosies.”*⁸⁶

Thus, efforts to weaponize poverty, *i.e.*, policies that use a low income population segment’s economic status as the fulcrum in an attempt to alter behavior, can and do backfire.

3. ***Limited Economic Opportunities for Disadvantaged Citizens Also Spur the Black Market.*** As Mr. Williams explains, one of the reasons why he sells contraband cigarettes, despite his frequent arrests, is that he has few other opportunities.

After his release from a 13-year sentence in 2006, Mr. Warner tried to find steady work in New York, but was invariably rebuffed — because of his felony status, he suspects. When he considers his options for making a living, he sees few besides selling loosies.

“I’m sorry that it’s come to this, but this is what it’s come to,” he said.

The specific issue of limited economic opportunities for disadvantaged citizens and the larger issues of racism and the daily burdens associated with living in a disadvantaged community are crucial to understanding both the contraband cigarette market and the prevalence of smoking among African Americans. Moreover, any fair assessment of the victims of the illegal trafficking in any contraband item, whether cigarettes or narcotics, needs to recognize the fact that it is disproportionately African Americans who go to prison. As one of the participants in the Shelley (2007) study explained,

“It creates more of a way for the lot of us in jail too because for them raising the price and forcing us now to go across state line. They know what’s going on and they’ll catch you knowing we have a big demand for this, and they lock you up or they catch guys on the street and they grab them and put them in jail, and the most people they’re grabbing and putting in jail are people of color.”
*(Male smoker, 25–49 years)*⁸⁷

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Shelley (2007), p. 1486.

The statement by the study participant that “the most people they’re grabbing and putting in jail are people of color” is based on fact. The Fair Sentencing Act was passed by Congress and signed into law in 2010 because of the extreme racial disparities in punishment for African Americans who sold cocaine in the form most common in lower income communities compared with the punishment for whites holding the same quantity of the drug in the form most common in upper income environments.

While a person found with five grams of crack cocaine faced a five-year mandatory minimum prison sentence, a person holding powder cocaine could receive the same sentence only if he or she held five hundred grams. Similarly, those carrying ten grams of crack cocaine faced a ten-year mandatory sentence, while possession of one thousand grams of powder cocaine was required for the same sentence to be imposed.⁸⁸

The racial disparity in sentencing occurred even though a 1997 study “examined the addictive nature of both crack and powder cocaine and concluded that one was no more addictive than the other.”⁸⁹

Moreover, the racial disparity in sentencing for the sale of contraband items is not unique to cocaine. As National Public Radio noted in a discussion of the Fair Sentencing Act,

In New York and California, state data analyses suggest blacks are much more likely to be arrested for marijuana violations than whites, and census data show a stark reality: African-Americans make up about 12 percent of the U.S. population - and about 44 percent of America’s prison inmates.⁹⁰

An article in Time Magazine, discussing a study published in the Archives in General Psychiatry based on the federal 2005 to 2008 National Survey on Drug Use and Health datasets, explained that

Black youth are arrested for drug crimes at a rate ten times higher than that of whites. But new research shows that young African Americans are actually less likely to use drugs and less likely to develop substance use disorders, compared to whites, Native Americans, Hispanics and people of mixed race.⁹¹

The racial imbalance in persons serving time for substance offenses is also illustrated by the most recent statistics from the Department of Justice’s Bureau of Justice Statistics regarding “sentenced prisoners under state jurisdiction....” Among prisoners sentenced for “drugs” a category that includes “trafficking,

⁸⁸ http://en.wikipedia.org/wiki/Fair_Sentencing_Act.

⁸⁹ Ibid.

⁹⁰ National Public Radio, “Black Men’s Jail Time Hits Entire Communities,” August 23, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=129379700>.

⁹¹ Maia Szalavitz, “Study: Whites More Likely to Abuse Drugs Than Blacks,” November 7, 2011.

possession, and other drug offenses” 46% were Black and only 28% were White.⁹² Thus, there is a sharp racial divergence between the people who commit substance-related crimes and those who go to prison for the offenses – a fact which needs to inform federal development of substance-related legal policies.

Will Menthol Smokers be the New Contraband Victims?

The US Food and Drug Administration (FDA) is considering banning menthol-flavor cigarettes. The FDA was directed to undertake the review of menthol cigarettes by the Family Smoking Prevention and Tobacco Control Act. The Act, however, also required the Secretary of the Department of Health and Human Services to

consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or nontobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand. (Public Law 111-31, §907(b)(2))

Advising the FDA on the menthol issue was a Tobacco Products Scientific Advisory Committee (TPSAC) authorized by the Tobacco Control Act. After reviewing evidence presented to the committee at a series of public meetings, the TPSAC said in their final report that,

*TPSAC acknowledges that the potential for contraband menthol cigarettes exists, should FDA choose to implement a ban or take some other policy action that restricts availability of menthol cigarettes.*⁹³

The TPSAC did not, however, reach any conclusions regarding the size and scope of a contraband market for menthol cigarettes. Instead, the committee stated that they were “not constituted to carry out analyses of the potential for and impact of a black market for menthol cigarettes” and “concluded that FDA would need to assess the potential for contraband menthol cigarettes as required by the Act.”⁹⁴

CRE’s Monograph developed an estimate of the increase in the contraband market resulting from a ban on menthol cigarettes based on federal and state government data and the peer reviewed literature. Because menthol cigarettes are often preferred by African Americans and younger smokers – the same communities already disproportionately targeted by contraband tobacco sales organizations, CRE

⁹² E. Ann Carson, Ph.D., and William J. Sabol, Ph.D., U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics, “Prisoners in 2011,” December 2012, NCJ 239808, Table 9.

⁹³ TPSAC, “Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations,” p. 227.

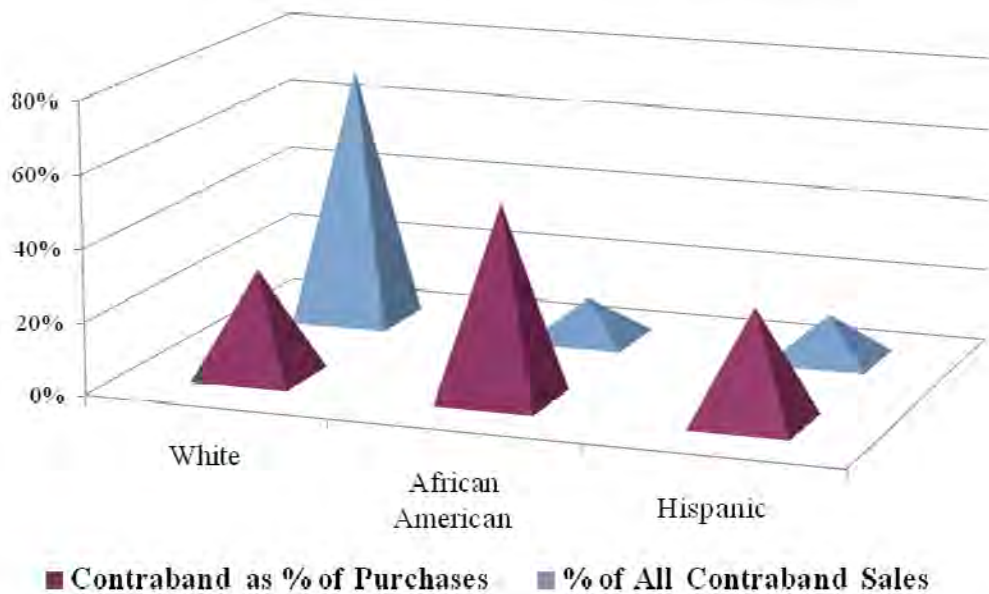
⁹⁴ Ibid., p. 225.

estimated that African American neighborhoods would be the focal point of contraband sales organizations in event of a menthol ban.

CRE found that, even though whites, Asians, Hispanics and African Americans currently purchase contraband tobacco at about the same rate, it is African Americans who are most likely to purchase contraband menthol cigarettes as illustrated in Figure 3 (appearing as Figure 13 in the Monograph).

Figure 3

A Menthol Ban Would Disproportionately Impact African American Smokers



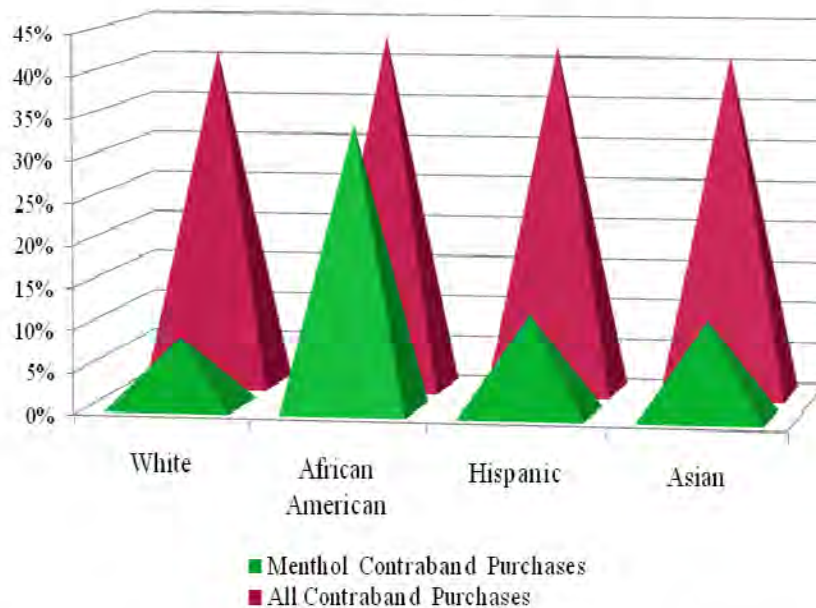
Source: CRE

CRE projected that, if there were a menthol ban, it would be African Americans who would disproportionately purchase contraband tobacco even though whites would be, by far, the primary purchaser of illicit cigarettes as illustrated in Figure 4 (appearing as Figure 17 in the Monograph).

Figure 4

Share of Adult Male Smokers Who Have Purchased Contraband Cigarettes

Comparison of all Contraband Purchases to Menthol Contraband Purchases



Source: CRE based on Taylor (2005), NSDUH, Census Bureau Current Population Survey

Counterfeit and other contraband tobacco needs to be subjected to increased law enforcement attention at all levels of government. As President Obama stated in the Executive Order about transnational criminal organizations that traffic in illegal cigarettes, drugs, weapons and humans, they “constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States...” An increase in the contraband cigarette trade resulting from a menthol cigarette ban, however, would mean that the social burden of those enhanced law enforcement efforts would be experienced predominantly in lower income, largely minority communities.

According to data from HHS/CDC presented to the TPSAC, adult white menthol smokers outnumber adult African American menthol smokers by 1.8:1. Among underage menthol smokers, whites outnumber African Americans by 4.7:1.⁹⁵ Experience with illegal substances strongly suggests, however, that those

⁹⁵ <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProducts/ScientificAdvisoryCommittee/UCM207153.pdf>

who are subjected to law enforcement actions for contraband tobacco in event of a menthol ban would not be predominately white. This is particularly true given the relative lack of access in disadvantaged communities to tobacco cessation programs and other social support services.

The concerns regarding the impact of a potential menthol ban go far beyond law enforcement issues. As was explained above, in event of a ban on legal menthol cigarettes, contraband tobacco dealers will be even more prevalent in African American communities and will enjoy even larger financial rewards.

The likely impacts of a menthol ban would include:

- ▶ More criminals selling cigarettes to children – contraband dealers don't adhere to age restrictions.
- ▶ More cigarettes with extreme levels of lead, cadmium and other toxics as well as potentially higher levels of nicotine.
- ▶ More street level hawking aka advertising, of cigarettes. As a participant in the Shelley (2007) study explained,

“How could we all forget the biggest advertisement going now when you pass the corner on the street (mimics people selling cigarettes). That's the new advertisement, the people who sell them. (Female nonsmoker, >50 years)⁹⁶

- ▶ More cigarettes sold as singles, aka loosies, increasing their affordability.
- ▶ More money going to organized criminal groups to finance other criminal activities.
- ▶ More money laundering activities.

In short, the bad guys ranging from Los Zetas to Hezbollah would be the beneficiaries of a ban on menthol cigarettes. Everyone else would lose.

⁹⁶ Shelley (2007), p. 1486.

Conclusions

1. Transnational crime organizations are a threat to national security, as determined by President Obama in Executive Order 13581.
2. The illegal transport and sale of counterfeit and other contraband products is a major revenue source for terrorist and related crime organizations.
3. Counterfeit products pose severe health threats to consumer health and safety.
4. Counterfeiting/piracy of consumer goods is NOT a victimless crime.
5. The trafficking in counterfeit and other contraband cigarettes has a disproportionately harmful impact on African American communities.
6. Any successful strategy to reduce smoking in African American communities will need to focus on making positive improvements in peoples lives rather than on punitive actions.

Recommendations

1. Consumers refuse to buy or use counterfeit/contraband/pirated products.
2. Law enforcement agencies at all levels of government assign a higher priority to fighting counterfeiters.
3. Federal regulators not expand the opportunities for transnational crime organizations by banning menthol cigarettes.