

**Statement of
The Center for Regulatory Effectiveness
before
The Tobacco Products Scientific Advisory Committee
November 18, 2010**

- ▶ I'm Bruce Levinson with the Center for Regulatory Effectiveness. We are a regulatory watchdog that works to ensure federal agency compliance with the "good government" laws that regulate the regulatory process.
 - We receive funding from virtually every business sector including the tobacco industry.

CRE Data Quality Petition

- ▶ In an exemplary demonstration of the seriousness with which the FDA takes their Data Quality responsibilities, the agency provided a substantive interim response to CRE's Request for Correction of certain information that was presented to the TPSAC regarding menthol cigarettes.
 - In their response, the FDA stated that CRE's petition is under review, that additional time is required to complete their response and that January 18, 2011 is the agency's target date to complete their work.
 - CRE appreciates the time and attention the FDA is giving to our petition.
- ▶ CRE requests that the TPSAC defer any decisions regarding the menthol issue until the FDA has completed their work on our Data Quality petition.

Contraband Cigarettes

- ▶ The TPSAC is required to consider the impact a contemplated menthol ban would have on the contraband cigarette market.
 - Section 907(b)(2) of the Family Smoking Prevention and Tobacco Control Act requires HHS to "consider...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."

- Section 907(e)(1), which is specific to menthol cigarettes, states that “the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).”
- ▶ To help inform the committee’s deliberations, the Center for Regulatory Effectiveness is preparing a major study discussing how a menthol ban would likely affect the contraband cigarette trade, the impact of the trade on underage smoking, and the health of adult smokers and non-smokers.
- ▶ Another important source of information the committee should consider is the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), part of the Department of Justice. ATF is the federal agency with primary statutory responsibility for combating the illegal cigarette trade under the Contraband Cigarette Trafficking Act (CCTA).
- ▶ ATF has substantial information and expertise regarding contraband cigarettes. CRE recently provided comments supporting an ATF Notice of Proposed Rulemaking (NPRM) on contraband cigarettes. [75 FR 44173, July 28, 2010] Our comments are available on our TPSAC Interactive Public Docket (IPD). The following three ATF statements from their NPRM are directly on point with respect to issues that this committee is statutorily directed to consider:
 - “contraband cigarettes are more likely to be sold to underage persons than legitimate product.”
 - “The trafficking in counterfeit and contraband tobacco products also poses a serious health risk to our society. There are no standards of production in counterfeit product. This allows for such things as biological or chemical contamination of the product.”
 - “The legislative history of the CCTA and ATF’s investigative efforts over the years have established that organized crime has been involved in the diversion of legal tobacco products into the illegal market. Moreover, several investigations by ATF and its law enforcement partners have established links to international terrorist groups, including Hezbollah and al Qaeda.”
- ▶ Increased youth access to tobacco, cigarettes that pose increased health hazards, and financing of international criminal gangs, those are all issues that the TPSAC needs to weigh when considering a ban on menthol cigarettes.
- ▶ In addition to considering our forthcoming contraband paper, I encourage you to invite ATF to brief this committee on the potential impacts a menthol cigarette ban would have on the contraband market and the public.