

Land of opportunities

The illicit trade in cigarettes in the United States

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Introduction

The illegal cigarette trade is a global phenomenon. The smuggling and sale of contraband cigarettes is pervasive in many parts of the world and trafficking routes span the globe. Much of the recent criminological research, however, has focused on the situation in just a few regions, namely Australia, China, Europe and Canada.² Comparatively little attention has been paid to the cigarette black market in the United States even though the US has been associated with a major problem of cigarette smuggling. According to recent estimates the US has the third largest illegal cigarette market in the world in terms of the absolute number of illegal cigarettes traded, only surpassed by China and Russia. In relative terms, the same estimates suggest that between 13% and 25% of US smokers purchased illegal cigarettes in 2007 (Joossens, Merriman, Ross & Raw, 2009: 10, 12).

The purpose of this study and review is to examine and to interpret the illegal cigarette trade as it pertains to the United States against the backdrop of developments in Europe. A close-up look will be taken at New York City, arguably the largest local cigarette black market in the country. It seems that the state of affairs over the past few years is somewhat reminiscent of the situation of the illegal cigarette

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² On the situation in Australia, see Geis, Cartwright & Houston (2004). On the situation in Canada, see Beare (2002; 2003). On the situation in China, see Shen, Antonopoulos & von Lampe (2010) and von Lampe, Kurti, Shen & Antonopoulos (2012). For a collection of criminological writings on the illegal cigarette trade in Europe, see Van Duyne & Antonopoulos (2009). See also Antonopoulos (2006; 2008), Coker (2003), Griffiths (2004), Hozic (2004), von Lampe (2006; 2010).

trade in Europe in the 1990s, marked by the exploitation of cross-jurisdictional tax differentials by bootleggers and some degree of connivance on the part of the tobacco industry. At the same time there are features that are specific to the United States. This includes the role of Native American reservations and the concentration of cigarette black markets in deprived inner city areas.

Basic parameters of the illegal cigarette trade

The illegal cigarette trade, at its core, is a form of tax evasion. The taxes imposed on cigarettes create incentives for criminal suppliers and consumers to seek ways to circumvent taxation. Four main schemes can be distinguished by which cheap cigarettes are currently made available for illegal distribution: bootlegging, large-scale smuggling, counterfeiting, and so-called *cheap whites*.

Bootlegging involves the purchase of cigarettes in low-tax jurisdictions. The cigarettes are obtained with taxes paid and are then transported to a high-tax jurisdiction for illegal distribution.

Large-scale smuggling takes advantage of the fact that cigarettes destined for export are not subject to taxation until they are introduced to the final consumer market. These untaxed 'in-transit' cigarettes are diverted from international trade channels to the black market. The term 'large scale' is used because typically 'in-transit' cigarettes are obtained and smuggled in large consignments of millions of sticks at a time.

Counterfeiting involves the illegal production of brand cigarettes without permission by the trademark owner and without paying taxes. The counterfeiting of cigarettes needs to be distinguished from the counterfeiting of cigarette tax stamps. Counterfeit tax stamps have been affixed to different kinds of illegal cigarettes (i.e., bootlegged, smuggled and counterfeit), apparently in an effort to increase their marketability by appearing as a legitimate product on which taxes have been paid. For example, cigarettes bootlegged from Virginia, may bear a counterfeit combined New York City and New York State tax stamp to hide the source of origin and to fool law enforcement into believing that local city and state taxes have been paid.

Cheap whites are cigarettes that are legally produced in other states under unique brand names or no brand name at all. They appear to be destined primarily for illicit distribution and are largely absent in legal distribution channels. The constellation is similar to large-scale smuggling in several respects. In both cases, *legally* produced untaxed cigarettes are made available for illegal distribution in large consignments at low costs. Likewise, in both cases there is some degree of connivance on the part of

manufacturers. However, in the case of cheap whites the manufacturers are for all intents and purposes an integral part of the illegal cigarette trade.

Developments in Western Europe since the 1990s

In Western Europe since the 1990s, namely in Germany and the UK, the cigarette black market seems so have evolved through four partially overlapping phases, marked, respectively, by one specific procurement scheme (Joossens and Raw, 1998; 2008; von Lampe, 2006).

The emergence of extensive cigarette black markets in Germany and the UK appears to have been fuelled initially by bootlegging between Poland and Germany, respectively across the British Channel. Along the way, bootlegged cigarettes were partly replaced by diverted ‘in-transit’ cigarettes that the major tobacco companies had sold into dubious channels. In the early 2000s, as a result of political and legal pressure exerted on the tobacco industry, the supply of ‘in-transit’ cigarettes to smugglers was largely cut off. The resulting vacuum was filled in part by counterfeit cigarettes originating from China and other South-East Asian countries (von Lampe, 2006: 247).

Counterfeits were commonly inferior in quality and threatened to undermine the reputation of the affected premium brands like “Marlboro” and “Benson & Hedges”. This brought the tobacco manufacturers into a natural alliance with authorities in Europe and Asia. Considerable state and industry resources have gone into curbing the influx of counterfeit cigarettes. At the same time it seems that because of the low quality of the counterfeit cigarettes their marketability in Europe has been limited, perhaps with the exception of the UK and Ireland (von Lampe, 2006: 237; von Lampe, Kurti, Shen and Antonopoulos, 2012: 57-58).

The mounting efforts to suppress the marketing of counterfeit cigarettes paved the way for the emergence of cheap whites. These cigarettes do not challenge the integrity of the major cigarette brands. Likewise, because of their status as legal manufacturers the producers of cheap whites, located in various Eastern European non-EU countries, were largely immune from law enforcement intervention. In essence, authorities could act only once cheap whites illegally crossed the border into the EU. Ironically, the success of cheap whites has made them a lucrative target of counterfeiters (World Customs Organization, 2013: 20), providing yet another example for the dynamic nature of the illegal cigarette trade.

Without arguing that the development in the Western European cigarette black market is the only possible course of events, it can serve as a point of reference for

assessing the evolution of the illegal cigarette trade elsewhere, namely in the United States.

The data reviewed in this chapter suggest that the development in the United States has so far largely remained in the bootlegging phase with the primary modus operandi being the transport of genuine brand cigarettes between states within the US. The question is to what extent large-scale smuggling, counterfeiting and cheap whites are likely to become more prevalent.

The tobacco-tax regime in the US

Similar to the situation in Europe and elsewhere, cigarettes in the US are a highly taxed good with taxes making up the major component of the retail price (GAO, 2011: 10). Also similar to the situation in Europe (see Hornsby & Hobbs, 2007: 554), the United States is characterized by a patchwork of different tobacco-tax levels. Just as tobacco taxes vary from country to country in Europe, tobacco taxes in the US vary from state to state and sometimes even on the local level. However, the state-to-state tax differentials are greater than cross-country differences in the EU, and overall the average tax burden on cigarettes in the US is significantly lower than in the EU. In 2010, on average, taxes made up around 78% of the retail price of a cigarette in EU Member States (European Commission, 2010: 7). In comparison, in the US this share was only around 53% (GAO, 2011: 10). While the federal government collects a uniform excise tax on cigarettes (\$1,01 in 2010), state excise taxes on cigarettes vary greatly. In 2010, Missouri was the state with the lowest rate of \$0,17 per pack compared to \$4,35 per pack in the state of New York (GAO, 2011: 10–11).

In addition to federal and state excise taxes, some local governments impose taxes on cigarettes. In New York City, a further \$1,50 is added to the price of a pack of cigarettes, accounting for the highest tax burden and accordingly the highest retail prices for cigarettes nationwide at around \$12–13 per pack (Kurti, von Lampe and Thompkins, 2013).

The illegal cigarette trade and the US: an overview

From all that is known, the illegal cigarette trade in the United States has been fuelled primarily by domestic bootlegging which exploits retail-price differentials between low-tax and high-tax jurisdictions. To what extent other schemes besides bootlegging have played any substantial role, is difficult to discern. Given the

fragmentation of law enforcement in the United States, no comprehensive data on the nature and extent of the cigarette black market and on the prevalence of large-scale smuggling, counterfeit cigarettes and cheap whites are available. Research, mainly driven by a public health agenda has likewise remained fragmented; and the tobacco industry, which may have more complete data, is not willing to share these publicly.

Inter-state bootlegging

The United States has a long history of inter-state bootlegging. As early as 1949, federal legislation in the form of the Jenkins Act aimed at curbing illicit cigarette sales across state lines (Alderman, 2012: 8).

It was not until the mid-1960s, however, that cigarette bootlegging emerged as a significant problem, especially in the Northeast. By that time price differences had increased substantially between the tobacco-producing states Kentucky, North Carolina and Virginia, on one hand, which kept their cigarette taxes low, and states like New York, on the other, which raised their taxes rapidly in part to increase revenue and in part to discourage smoking. The policy to reduce smoking by increasing the costs of cigarettes had been inspired by a now legendary 1964 report issued by the Surgeon General on the health hazards of smoking (Advisory Committee, 1977).

Large-scale smuggling

Since the 1960s, bootlegging within the United States has remained the main modus operandi for procuring cigarettes for illicit distribution. Large-scale smuggling of genuine brand cigarettes never seems to have played a dominant role for the domestic cigarette black market.

The diversion of untaxed 'in-transit' cigarettes has often been identified as a potential problem and some cases have been detected over the years. But there does not appear to be any evidence that large-scale smuggling has ever been the main source of contraband cigarettes as it has been for the EU in the 1990s and early 2000s (Joossens & Raw, 2008; GAO, 2011: 18; Lafàive, Flecnor, & Nesbit, 2008: 8). This is remarkable especially because large numbers of US-manufactured 'in-transit' cigarettes have found their way into illegal distribution channels in other parts of the world, namely China, Europe and South America (Holzman, 1997; Joossens & Raw, 1998).

The smuggling of genuine brand cigarettes from other countries into the US appears to be confined largely to the US-Mexican border, significantly impacting only the four southern border states of California, Arizona, New Mexico and Texas (Lafaive & Nesbit, 2010: 12). At the US-Canadian border, the problem is reversed. Here, the US has long been a source and trans-shipment country for contraband cigarettes going into Canada (Beare, 2002; Lafaive & Nesbit, 2010: 12).

Counterfeit Cigarettes

Similar to large-scale smuggling, there is no clear evidence that counterfeit cigarettes play a major role in the cigarette black market in the United States. Some attention has been paid to counterfeit cigarettes being seized at US ports and surfacing on local cigarette black markets. However, there does not appear to be a trend towards an increasing market share of counterfeit cigarettes. A 2004 report by the Government Accountability Office (GAO), for example, noted that the problem of cross-border cigarette smuggling is particularly one of counterfeit cigarettes, following a sharp increase in the number of counterfeit cigarettes seized by US authorities in the years 1999 and 2000 (GAO, 2004: 21). In contrast, another GAO report on illegal cigarettes presented in 2011 mentioned counterfeit cigarettes more or less only in passing as one of many schemes to evade tobacco taxes (GAO, 2011: 17).

This corresponds to published tobacco industry estimates that suggest that counterfeit cigarettes might play a much lesser role in the US and the Western Hemisphere than in other parts of the world. A report issued by British-American Tobacco (BAT) on the prevalence of illegal cigarettes in various world regions claimed that in the Americas in 2008, 2% of illegal cigarettes were counterfeit, compared to 4% in the Asia-Pacific region, 7% in Africa and the Middle East, 12% in Western Europe, 49% in Eastern Europe, and 80% in China (British American Tobacco, 2010: 18). Unfortunately, these estimates have not been broken down to the level of individual countries, not to mention individual parts of countries.

Native American Reservations

The landscape of the illegal cigarette trade within the United States has been complicated by the role of Native American reservations that are scattered across the country. These tribal lands have some level of legal autonomy that can only be limited by the US Congress. The state where a reservation is located has no authority to regulate business activities or to collect taxes from tribal members (Alderman, 2012: 5). As a result, cigarettes can be sold to tribal members on a reservation exempt

from state taxation. However, tribal businesses have not only sold cheap cigarettes to Native American customers but also to non-tribal members through retail stores on reservations and online.

Purchases of cheap cigarettes from Native American Reservations have originally been primarily a problem for states in the Western parts of the country, in particular for Washington state (Advisory Commission, 1977: 12; Svogun, 1980: 252). Over the course of the 1980s and 1990s, the centre of gravity of the tribal cigarette business shifted to reservations located in New York State. The mail order and internet sale of cigarettes in particular is said to be dominated by businesses based in upstate New York reservations (DeCicca, Kenkel & Liu, 2010: 8).

Some reservations have become main importers of brand cigarettes disproportionate to their population size (DeCicca et al., 2010; GAO, 2011; Walker Guevara & Willson, 2008). This situation is similar to the role countries like Andorra or Cyprus have played for the illegal cigarette trade in Europe during the 1990s. Andorra with a population of 63,000, for example, became a trans-shipment centre for billions of brand cigarettes that were legally imported and then illegally exported through various smuggling routes to Spain and the UK (Joossens & Raw, 2000: 948-949).

The cigarette black market in New York City

The nature of the illegal cigarette trade in the United States can perhaps best be observed in a close-up look at New York City. It is here where the most salient features of the cigarette black market converge and fall, it seems, on particularly fertile grounds.

Factors conducive to illegal cigarettes in New York City

New York City, as indicated, has the highest tobacco taxes and the highest retail prices for cigarettes in the US. This creates a demand for cheap illegal cigarettes, particularly in socioeconomically deprived neighbourhoods (Chernick & Merriman, 2013).

At the same time, New York City is in close proximity to a number of potential sources for contraband cigarettes. Several Native American reservations that sell cigarettes are nearby. Low-tax states such as Virginia are also within driving distance. A round-trip by car, including purchasing cigarettes at one of many cigarette retailers takes about 10 hours. In addition, the New York City area is home to one of the

largest container ports in the world, the Port of New York and New Jersey, through which counterfeit and 'in-transit' cigarettes could be smuggled, for example from China or from Paraguay. Paraguay, importantly, is a major producer of illicit cigarettes for black markets in Latin America (Ramos, 2009: 23; World Customs Organization, 2013: 28–29).

A potentially countervailing factor is the decreasing smoking prevalence in New York City. Under mayor Bloomberg (2002–2014) the city has seen a relentless campaign against smoking which is credited with bringing down adult smoking rates from 35% in 2002 to 14% in 2010 (New York City Department of Health and Mental Hygiene, 2011). During the same time period legal sales of cigarettes in New York City fell by about two-thirds (Chernick & Merriman, 2013: 657). It is not clear, however, what impact this trend has had on the volume of the cigarette black market in either relative or absolute terms.

The history of the cigarette black market in New York City

The city of New York has a long history of cigarette trafficking dating back to the year 1938 when a temporary tax of 1 cent was added to the price of about 15 cents for a pack of cigarettes. The response of many smokers was, reportedly, to either buy their cigarettes outside of the city or to draw on bootleggers for a supply of cheap cigarettes. The state of New York followed with a cigarette tax of its own in 1939. This led to smokers and bootleggers going to the neighbouring state of New Jersey, which did not tax cigarettes until 1948 (Fleener, 2003: 2).

Cigarette taxes remained at a relatively low level throughout much of the 1940s and 1950s. Then, combined city and state taxes on cigarettes rose quickly from 4 cents per pack to 14 cents between 1959 and 1965 (Fleener, 2003: 3). This is when cigarette smuggling is said to have shifted from small-time operations of independent smugglers to 'organised' bootlegging with the involvement of members and associates of the New York Mafia, also known as Cosa Nostra. A contemporary report by the Advisory Commission on Intergovernmental Relations provides the following illustrative example of one mafioso turned bootlegger (Advisory Commission, 1977: 23–24):

As early as 1966, Anthony Granata was known to be involved on a large scale in transporting and selling untaxed cigarettes in the City and State of New York. Originally his operation was located in the Bath Beach section of Brooklyn, N.Y. Granata is listed by law enforcement officials as a member of the organised crime family headed by Joseph Colombo. His criminal record reflects 12 arrests, four of

which were connected with cigarette bootlegging. He has been convicted of criminally receiving stolen property as well as use of a forged driver's license.

Initially, Granata's operation consisted of small-scale bootlegging. As the years went on, it developed into a full-sized operation. In the period from September 1966 to April 1967, Granata, based upon his own records seized by law enforcement authorities, was responsible for smuggling 1,109,920 cartons of cigarettes into New York State. Tax assessments against him totalling \$2,422,510 were levied by New York State and City authorities for this period, as provided by law. These assessments remain uncollected.

Granata operated his business on a professional level with over 30 employees. He was known to have dispatched drivers on a 6-days-a-week schedule to North Carolina. Orders were placed and all necessary arrangements were handled by clerical employees in New York City. He also employed an expeditor or traffic manager, stationed in North Carolina, to manage that end of his operation. Typically, drivers were paid \$100 per trip and an additional \$95 expense money if they were long-haul drivers (all the way to North Carolina). Short-haul drivers (to Pennsylvania) received \$60 per trip, plus expenses. A short-haul driver would be used when arrangements had been made with the North Carolina supplier to transport the cigarette loads to selected points in Pennsylvania. The short-haul driver would meet the shipment, transfer it to his vehicle, and bring it into New York.

All legal costs arising from the arrests of drivers, such as lawyers fees, bail, and fines, were also handled, wherever the jurisdiction, from Granata's headquarters. Fraudulent driver's licenses and other false identification were supplied. Among other devices used to avoid detection, Granata constructed a truck disguised as a lumber transporter. Dummy corporations also were formed to further conceal his cigarette bootlegging business.

Reportedly, Cosa Nostra members and associates like Anthony Granata pushed small-time bootleggers out of the market through violence and intimidation (Flecnor, 2003: 6; Svogun, 1980: 245). The mafia dominance over the cigarette black market in New York, however, did not last long. Later analyses of the situation make little or no mention of mafia involvement and point to a wide range of individuals and groups engaged in the smuggling and selling of illegal cigarettes (Flecnor, 2003: 14; Walker Guevara & Willson, 2008).

One reason for the fragmentation of the cigarette black market might have been the passage of the Contraband Cigarette Trafficking Act (CCTA) in 1978 that increased the risk for large inter-state bootlegging operations. The act made the transport and distribution of contraband cigarettes a crime punishable by up to five

years in prison. It also authorized the seizing of vehicles used in smuggling activities (Fleenor, 2003: 11; Svogun, 1980: 259-260).

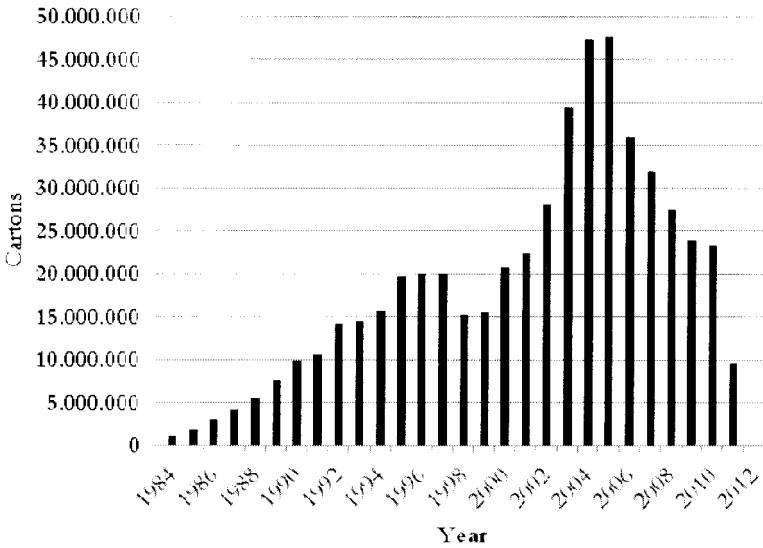
A significant uptick in cigarette black market activity occurred in the aftermath of tax hikes in the year 2002 (Walker, Guevara and Willson, 2008). In March 2000, New York State taxes were increased from \$0,56 to \$1,11 and in April 2002 to \$1,50 per pack of cigarettes. Shortly thereafter, New York City raised its tax in a single step from \$0,08 to \$1,50 per pack. This led to a drop in legal sales of cigarettes by more than 50% in the first few months following the tax hike (Fleenor, 2003: 3, 13). A further growth of the cigarette black market is alleged to have been triggered by tax hikes in 2008 when New York State raised taxes from \$1,50 to \$2,75 per pack (Chernick & Merriman, 2013), and also by a tax hike in 2010 that led to an increase of New York State taxes by \$1,60 to the current level of \$4,35 per pack (Montero, Fasick, & Bennett, 2010).

The role of Native American Reservations in New York State

The most significant development that accompanied the New York City and New York State tax increases of the 2000s was the emergence of Native American Reservations as the main source of contraband cigarettes reaching the New York City black market.

This development is reflected in sales data of untaxed cigarettes in the state of New York that were provided by the New York State Department of Taxation and Finance. These data show a steady increase in the number of untaxed cigarettes going to Native American reservations through the 1980s and 1990s and peaking in the year 2005. In 1984, about 200 million untaxed cigarettes were delivered to Native American reservations in New York State. In 2005 that number had risen to 9,5 billion untaxed cigarettes (Figure 1 next page).

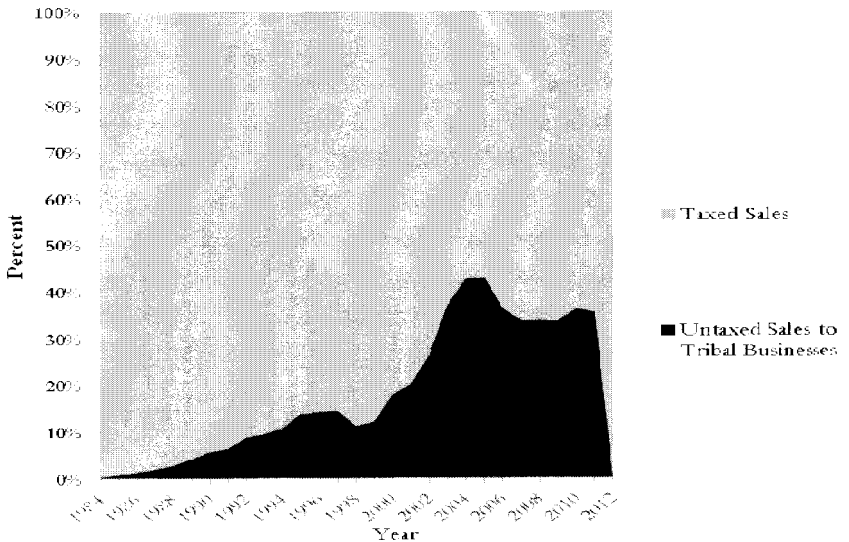
Figure 1
Native American untaxed cigarette purchases
(cartons per 200 sticks) 1-01-1984 till 31-08-2012



Source: New York State Department of Taxation and Finance

It is obvious that by far most of these cigarettes were sold on to non-tribal members. Otherwise each of the some 30.000 tribal members on the New York reservations would have had to smoke more than 40 packs of cigarettes a day. Particularly telling is the example of a reservation on Long Island close to New York City. This reservation with a territory of one square mile (2,5 km²) and a population of 283, according to the New York State Department of Taxation and Finance, imported a total of more than 59 million cartons of untaxed cigarettes (11,8 billion sticks) between January 2001 and June 2011. This means that on average some 3,6 million cigarettes per tribal member were delivered to this tiny reservation annually, equalling a per-capita consumption of close to 500 packs per day. A large portion of these shipments passed through one business, that of a native of Costa Rica who had married into the reservation. Other shipments went to addresses on the reservation that were literally no more than a sign post by the street, and some delivery addresses were entirely fictitious. In other words, the reservation essentially served as a trans-shipment centre (Saul, 2008). Non-tribal consumers either came to the reservation directly or bootleggers, typically using minivans and cars for transportation, would pick up cigarettes and bring them to retail sellers in New York City (Walker, Guevara and Willson, 2008).

Figure 2
Native American untaxed cigarette purchases:
Share of New York State sales volume: 1-01-1984 till 31-8-2012



Source: New York State Department of Taxation and Finance

The Role of the Tobacco Industry

The cigarettes passing through the Native American reservations eventually made up a substantial part of the business of the tobacco industry in New York State. Figure 2 shows the trends in the delivery of cigarettes from non-tribal tobacco manufacturers to Native American Reservations from January 1984 until August 2012, the last month for which data were made available at the time of writing this chapter. Significant is the overall steady increase from 0,5% of tribal purchases in New York State in 1984 to close to 15% in the 1990s and 20% in 2001. This was followed by a sudden increase between 2002 and 2005 when the share of wholesale cigarettes in New York State going to tribal stores reached 43,2%. After 2005 the share first decreased slightly to a level of about 35% between 2006 and 2011, then abruptly dropping to 0,01% in 2012 when untaxed cigarettes purchases by Native American reservations were regulated by the New York State Department of Taxation and Finance under amended New York Tax Law § 471 and § 471-c.

The tobacco manufacturers, prominently among them R.J. Reynolds, Lorillard and Philip Morris, would sell their products, such as Camel, Newport and Marlboro cigarettes, to a small number of wholesalers who in turn would deliver the cigarettes

to the reservations. At the same time, the tobacco manufacturers are said to have also been in regular direct contact with tribal businesses 'to check supply and product placement, update signs, and discuss discounts' (Walker, Guevara & Willson, 2008).

As indicated in Figure 2, in the mid-2000s up to more than 40% of cigarettes sold in New York State were untaxed purchases by businesses on tribal lands. Native American reservations seem to have been particularly important for Lorillard and its Newport brand which is popular among smokers in socio-economically deprived areas of New York City such as the South Bronx (Walker Guevara & Willson 2008). In a survey of a purposive sample of 254 South Bronx smokers conducted in May 2011³ by Marin Kurti, a co-author of this chapter, almost all respondents (91,6%) reported that Newport was their preferred brand (Kurti, 2011). Likewise, a survey of discarded cigarette packs conducted in March 2011 in 30 randomly selected census tracts in the South Bronx found that Newports held a market share of 86%. The study also showed that 76,2% of cigarettes smoked in the South Bronx were not legally purchased with payment of New York City and New York State taxes. In light of 42% of discarded packs not having any tax stamp and 15,9% bearing counterfeit tax stamps the study concluded that most illegal cigarettes had most likely come from Native American reservations (Kurti et al., 2013).

How much Lorillard depended on reservation sales in absolute terms and relative to other tobacco manufacturers is shown by data for 2007. In that year Lorillard sold 2,88 billion *taxed* cigarettes in New York State compared to 2,02 billion *untaxed* cigarettes going to Native American reservations. This means that 41,2% of Lorillard's business in New York State went to tribal stores in a year when industry wide the share of untaxed sales to tribal stores had already dropped to 33,9%. In comparison, the shares of untaxed sales to tribal businesses of the two other major tobacco manufacturers, R.J. Reynolds and Philip Morris, in the year 2007 were only 29,7% and 17,6%, respectively (Walker Guevara & Willson, 2008). In the end, 5% of the entire national volume of Lorillard's Newports reportedly flowed through just one tiny reservation closest to New York City, long after Philip Morris had ceased supplying cigarettes to the tribal stores there in an effort to distance itself from the bootlegging business (Buiso, 2011).

³ In May 2011, 254 surveys were distributed in three commercial zones in the South Bronx. Respondents were purposively selected according to their residency status (12 or more months), smoking status (one or more cigarette per week) and age (18 years and older).

Efforts to curb bootlegging from Native American Reservations to New York City

The developments between 2005 and 2011, when the overall share of sales to tribal stores began to decline and eventually dropped to 0 can be ascribed to various measures undertaken by the State of New York. The first two measures were taken in 2005 and aimed against the sale of cheap cigarettes from Native American reservations over the internet. The New York attorney general joined forces with other states' attorneys general and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to reach an agreement with the major credit card companies and PayPal to stop processing internet purchases of cigarettes. Shortly thereafter, the New York attorney general successfully pressured private carriers, including FedEx and UPS, into stopping the delivery of cigarettes (Ribisl, Williams, Gizlice & Herring, 2011: 2). Congress followed up on this agreement with a law going into effect in 2010, the Prevent All Cigarette Trafficking Act (PACT), which prohibited the US Postal Service from delivering cigarettes (Lafaive & Nesbit, 2010: 9).

The decisive measure that effectively cut off supply from Native American reservations to New York City, however, was legislation passed by the state of New York in the same year, 2010 (Chapter 134 of the Law of 2010). This law mandated that all cigarette packs delivered to tribal stores had to bear a New York State tax stamp. Tax-exempt purchases by tribal members in New York State continued to be possible, but only through a coupon or prior approval system that effectively limited the volume of tax-exempt sales to tribal members.

After a legal battle the new law was upheld by the New York State Supreme Court in June 2011, which put an immediate stop to untaxed cigarettes being supplied to tribal stores. In fact, it practically ended the supply of non-tribal brand cigarettes to tribal stores altogether. Between June 21, 2011 and August 31, 2012, according to data provided by the New York State Department of Taxation and Finance, a total of only 1.140 cartons of cigarettes (228.000 sticks) were delivered to Native American reservations under the new prior approval system.

This left only Native American brand cigarettes as a potential supply from reservations to the black market in New York City. However, the new law did not affect cigarettes produced on tribal lands. Only cigarettes delivered to reservations have to bear a New York State tax stamp, not cigarettes that originate from reservations. However, as of this writing there is no indication that Native American brands have gained any significant share of the cigarette black market in New York City.

Supply channels for illegal cigarettes since 2011

Theoretically, the void left by brand cigarettes funneled through Native American reservations could have been filled by a number of sources of illegal cigarettes. With a view to developments in Europe one could have expected large-scale smuggling, cheap whites or counterfeit cigarettes conquering the cigarette black market in New York City. None of this has happened, however, as of this writing.

a. Bootlegging to New York City since 2011

All available information points to genuine brand cigarettes bootlegged from low-tax states such as Virginia dominating the black market in New York City once again, similar to the situation in the 1960s and 1970s (Caruso, 2013; Davis, Grimshaw, Merriman, Farrelly, Chernick, Coady, Campbell, & Kansagra, 2013).

One recent high profile case illustrates the current scale of inter-state bootlegging. In May of 2013, authorities broke up a smuggling ring made up of 16 Palestinian immigrants with alleged terrorist ties. The suspects are charged with selling more than 274 million cigarettes in New York City and in New York State over a period of about two years. The cigarettes were purchased in bulk from a legitimate wholesaler in Virginia under the ruse of supplying stores in Virginia. The cigarettes were then transported to a public storage facility in Delaware. A group member shuttled back and forth between the storage facility and New York, bringing about 20,000 cartons (4,000,000 sticks) per week to nine distributors who in turn took the cigarettes to various storage facilities in New York City from where the cigarettes were sold to markets and grocery stores (Hays, 2013; Mekeel, 2013; Powell, 2013).

Beyond anecdotal evidence, systematic research based on the analysis of littered cigarette packs points to a resurgence of inter-state bootlegging as the main procurement scheme for the New York City cigarette black market since June 2011. A survey of discarded cigarette packs undertaken in New York City in 2008 found only 14% of packs with tax stamps from other states (Chernick & Merriman, 2013: 644). In comparison, a study using a similar methodology in New York City in 2011 found a share of 49,1% of discarded packs with known non-local tax stamps or no tax stamps. Among cigarette packs with non-local tax stamps or no tax stamps approximately 62,6% of discarded cigarette packs were from other states (Davis et al., 2013: 3).

The shift to bootlegging from low-tax states is even more evident in research carried out in the South Bronx. Pack surveys were conducted in March 2011, shortly before the New York State Supreme Court upheld the new legislation preventing untaxed cigarettes from being funnelled through reservations, and again in March

2012. The 2011 survey found a low share of 15,8% of discarded packs in the South Bronx with tax stamps from other states (Kurti et al. 2013). One year later, about nine months after the supply of cheap cigarettes coming through Native American reservations had been cut off, the share of packs with tax stamps from low-tax states had increased to 57,6%. The share of cigarettes from Virginia alone increased between March 2011 and March 2012 from 9,1% to 48,6%. At the same time, the share of cigarettes with no tax stamps or counterfeit New York City tax stamps decreased from 56,1% in 2011 to 16,8% in 2012 (Johnson, von Lampe & Kurti, 2012).

b. Counterfeit Cigarettes on the New York City Market

The 16,8% of packs with either no tax stamp at all or a counterfeit New York City tax stamp that were found in the 2012 survey are significant because they arguably mark the greatest possible extent to which counterfeit cigarettes have penetrated the cigarette market in the South Bronx as of March 2012. This assumption is based on the notion that most cigarette packs that were found in 2011 with no tax stamps or counterfeit tax stamps came from Native American reservations and that it would make no sense to market counterfeit cigarettes in New York City with any counterfeit tax stamps other than those imitating New York City tax stamps. It is doubtful, however, that the share of counterfeit cigarettes in the South Bronx was indeed as high as 16,8% in 2012. These cigarettes could also have been bootlegged from states that do not use tax stamps, namely North Carolina, South Carolina and North Dakota (Chernick & Merriman 2013: 640). Other possibilities for the absence of tax stamps, respectively the presence of counterfeit tax stamps include the cigarettes coming from duty free stores or stamps from other states having been removed and replaced by counterfeit New York City tax stamps.

As far as can be seen, no estimates have been published about the prevalence of counterfeit cigarettes in New York City except for a press report from 2010 which mentioned in passing that tobacco manufacturers believe up to 2% of the New York cigarette market might be counterfeit (Crudele, 2010). Interestingly, this corresponds to the BAT estimates for the entire Western Hemisphere cited above. No litter pack survey has examined if the cigarette packs themselves are counterfeit. Knowledge of counterfeit cigarettes are reserved for tobacco companies who have their own ways of verifying 'unauthorized products' (UP), as they call them, including forensic examination of tear tape and foil (Unauthorized Product Strategy, 2000).

A systematic review of media reports in the three daily New York City papers *The New York Times*, *Daily News* and *New York Post* covering the time period January 1995 to September 2012⁴ suggests that various attempts have been made by suppliers of counterfeit cigarettes to penetrate the New York City black market without sustained success. The first reported incidents of counterfeit cigarettes in New York City date back to 2002, which is relatively late considering the sharp increase in the seizure of counterfeit cigarettes in the US nationwide as early as 1999 and 2000.

The first reported New York cases were linked to Chinese businesses and the Chinese community in New York City. One case, for example, involved an alleged \$5 million operation supplying fake Marlboros and other brand names originating in China to stores in Canal Street in Chinatown (Graham, 2002; Shifrel, 2002).

Counterfeit cigarettes being sold by Chinese businesses have been a recurrent theme in media coverage (see, e.g., Medaglia, 2007). Another recurrent theme has been the introduction of counterfeit cigarettes into the same illicit distribution channels through which also bootlegged cigarettes from Native American reservations and from low-tax states have been funnelled to the black market in New York City. In one case, for example, 28 mostly Middle-Eastern men were arrested for selling cigarettes bootlegged from Native American reservations as well as counterfeit cigarettes obtained from Chinese suppliers. The cigarettes went to store owners in New York City and the neighbouring town of Yonkers (Wilson, 2005; see also Crowley, 2006).

Some of the counterfeit cigarettes appearing in New York City have reportedly been delivered to legitimate stores, complete with counterfeit tax stamps, and have then been sold to unwitting consumers at regular prices (Weir, 2007). However, it seems that more typically counterfeit cigarettes have been sold under circumstances, including price and venue, that made the illegal nature of the cigarettes more or less obvious to customers, if not by the often low quality of the fake brand products (Graham, 2002; Medaglia, 2007; Weir, 2007; Seifman, 2012). This means that the retail sale of counterfeit and other contraband cigarettes tends to be an illegal transaction in which sellers and buyers collude. Accordingly, seller-buyer relationships at the retail level are an integral part of the illegal cigarette trade.

⁴ Using the Lexis-Nexis database of news publications, media reports from 1 January 1995 to 20 September 2012 printed by *The New York Times*, *Daily News* (New York) and *The New York Post* were retrieved using various combinations of keywords (cigarettes; cigarette; tobacco; counterfeit, fake, illegal, illicit, bootleg, pirated, smuggled). The initial search netted 4,204 articles that included any of the keywords in the content; upon further review, 190 articles were identified as having relevant content.

c. Retail selling of illegal cigarettes

In New York City the organisation of retail selling of illegal cigarettes seems to have gone through different phases. Early reports speak of retail sellers opportunistically searching for customers at public places where smokers likely converge in large numbers, for example at factory gates or at train stations (see, e.g., Pileggi, 1987: 57). This seems to have been the prevalent pattern throughout the 1960s, 1970s, 1980s and 1990s. In the 2000s, following the tax increases of 2002, stationary vendors operating at particular public and semi-public places appear to have been the most common manifestation of the retail sale of illegal cigarettes. Dubbed ‘\$5 Man’, these vendors became a common sight ‘on street corners, in busy shopping areas, outside subway entrances, and in apartment buildings’ particularly in low-income neighbourhoods (Shelley, Cantrell, Moon-Howard, Ramjohn and VanDevanter, 2005: 1484).

For reasons that are not entirely clear, since the late 2000s, the retail sale has shifted from street vending to sales out of grocery stores, commonly called ‘bodegas’. The New York City Sheriff’s Office Tobacco Task Force, which has conducted over 1.700 cigarette retail inspections between August 2011 and 2012, found that approximately 42% of bodegas sold illegal cigarettes (Virginia Crime Commission, 2012). Law enforcement data also suggest that bodegas that sell contraband cigarettes tend to be geographically located in socio-economically deprived neighbourhoods with largely African-American and Hispanic minority populations⁵ (New York City Sheriff’s Office, 2013; see also Walker, Guevara and Willson, 2008). Bodegas in these areas are typically owned and operated by recent immigrants from the Middle East which may explain in part why many of the bootlegging and wholesale operations that have been detected in recent years are also made up primarily or exclusively of individuals with Middle Eastern roots (Crudele, 2011).

One can speculate that a reason for the apparent shift from street vendors to bodegas might have been that street vendors became associated with low quality (counterfeit) cigarettes. In contrast, smokers might have been more confident to obtain high quality genuine cigarettes from bodegas. At the same time, in light of rising legal prices for cigarettes it appears plausible that bodega owners have increasingly felt a need to sell cheap (illegal) cigarettes in order to maintain customers (Guart, 2002). Especially for smokers in socio-economically deprived areas it has become more and more difficult to afford a pack of cigarettes at prices of well over \$10. Once one bodega in an area starts selling illegal cigarettes, as anecdotal evidence

⁵ Hot spot analysis of seizures from cigarette retailers from August 2011 to March 2013 indicates that they are saturated in low-income census tracts of New York City.

suggests, this creates substantial pressure on nearby bodegas to also sell illegal cigarettes (Montero, Fasick & Bennett, 2010).

It appears evident that the sale of illegal cigarettes enjoys some level of social acceptance in poor neighbourhoods (Shelley et al., 2005). At the same time law enforcement pressure has been described as relatively low and the penalties for black market participants are seen to be lenient, especially in comparison to drug dealing (Alderman, 2012: 4; Caruso, 2013).

Conclusion

The illegal cigarette trade in the United States has for the past decades been marked primarily by the exploitation of cigarette price differentials between high-tax and low-tax jurisdictions. In the case of New York City, arguably the most important local cigarette black market in the country, inter-state bootlegging, and for a historical period of some twenty years ending in 2011, the bootlegging from Native American reservations have been the main modes of procurement of cheap cigarettes. Against the background of developments in Europe since the early 1990s, two aspects are remarkable.

First, it is important to note that according to the available evidence neither large-scale smuggling, nor counterfeit cigarettes, nor so-called cheap whites have taken over the black market and that the illegal cigarette trade continues to be defined by the least sophisticated procurement scheme.

Second, it is peculiar to find major tobacco manufacturers implicated in the illegal cigarette trade at a time when in Europe the tobacco industry seems to have completely desisted from supplying cigarettes into dubious distribution channels. Apologetic statements by Lorillard at the height of their involvement in untaxed sales, claiming that “cigarette manufacturers should not be expected to police the trade in untaxed cigarettes” (Saul, 2008), remind one of the stance taken by manufacturers in Europe before they succumbed to political and legal pressure exerted by the European Commission and others in the late 1990s and early 2000s. Perhaps this is something that should be kept in mind should the tobacco industry be implicated in shady schemes in the future.

From a scholarly perspective, the United States is not just another case of criminals taking advantage of the taxation of cigarettes. The variations in the patterns of illicit activity across space and time involving a commodity which remains constant in shape, size and weight invite future research into the organization of crime for profit from a comparative angle.

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Corruption, greed and crime-money. Sleaze and shady economy in Europe and beyond

Petrus C. van Duyne, Jackie Harvey, Georgios A. Antonopoulos, Klaus von Lampe, Almir Maljević, Anna Markovska (eds.)

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