



Illegal Cigarette Trafficking

November 10, 2014

Key Findings



- Organized crime is continuing to use Virginia as a main source state for obtaining cigarettes, which they can then traffic to northern states for enormous profits.
- Law enforcement has noted that ethnic gangs continue to engage in cigarette trafficking, frequently with links to drug and weapons trafficking.
 - Some gangs also use the profits from cigarette trafficking to fund human trafficking/prostitution operations.

Key Findings



- Links with terrorism continue to be observed.
- In May of 2013, a multi-agency police investigation of a cigarette smuggling ring arrested 16 conspirators in New York and Virginia.
 - The main organizers, who are Palestinian, are believed to be associated with both Hamas and Hezbollah operatives.
 - Up to 20,000 cartons of cigarettes a week were trafficked, resulting in \$55 million in sales, and over \$10 million in profits.

Source: “NY cigarette-smuggling ring may have terror link,” Brady, B., CNN.com, May 17, 2013.
 - Several million dollars are believed to have been transferred overseas.

Key Findings



- This past September, Mohamed Seid Ahmed Mohamed of Chesterfield, Virginia, pled guilty in federal court to conspiring to traffic contraband cigarettes.
 - Mohamed used his role as owner of the City Cigarettes store in Richmond to purchase 440,000 cartons of cigarettes between 2011 and 2014, and then sold them to traffickers.
 - The U. S. Attorney estimated that \$1,009,046 of sales tax was lost to Virginia.

Source: “Chesterfield man faces prison time for crimes involving \$19.8 million worth of cigarettes,” WTVR.com, September 3, 2014.

Key Findings



- On Wednesday, November 5, 2014, Michael Zekry was arrested in Staten Island, with more than 2,000 cartons of Virginia cigarettes inside his van.
 - An additional 551 cartons were recovered from his home, along with \$40,000 in cash and an electronic money counter.

Source: “Big-time cigarette smuggler busted on Staten Island with half-million illegal smokes, DA says,” Koeske, Z., SILive.com, November 7, 2014.

Key Findings



- The Mackinac Center for Public Policy earlier this year published their most recent estimates for what percentage of cigarettes are either smuggled in, or trafficked out of, each state.
 - Based upon 2012 data, it was estimated that 21.1% of cigarettes from Virginia are ending up out-of-state.
- The most recent “litter pack” study conducted on behalf of Altria, in February of 2014, found that 23% of all the packs collected in NYC had a Va. tax stamp.
 - 41% of all the packs had an out-of-state tax stamp; the data suggests Virginia remains the number one source for trafficked cigarettes in NYC.

Key Findings



- Law enforcement officers are still having a difficult time investigating and bringing cases against larger scale, fraudulent retail operation schemes.
 - Both extensive surveillance and forensic accounting are usually needed for a successful prosecution.

Recommendations



- Recommendation #1: Lower the felony threshold level in Va. Code § 58.1-1017.1 from 500 cartons to 200 cartons.
 - This will crack down on fraudulent retail purchases from wholesalers. Phony retailers will purchase just under \$10,000 dollars of cigarettes, in an attempt to avoid federal reporting requirements.
 - \$9,900 worth of premium cigarettes generally equates to between 230 and 250 cartons.

Recommendations



- Recommendation #2: The definition of “authorized holder” in Va. Code § 58.1-1000 should be expanded to exclude anyone who has been convicted of a similar offense in any locality, state, or the United States.
 - Should also exclude anyone convicted of an offense involving tax fraud in connection with cigarette sales.
- This past year, the definition of an “authorized holder” was amended, to preclude anyone who has ever been convicted of cigarette trafficking in Virginia from acting in such a capacity.
- However, many traffickers have convictions from other states, but not in Virginia.

Recommendations



- Recommendation #3: A list should be developed and maintained of “non-authorized holders.”
 - This would inform wholesalers of “retail” customers who are ineligible to purchase large quantities of cigarettes.
 - The list should be easily accessible to wholesalers.
 - This information could be maintained by the Va. Office of the Attorney General or the Va. Department of Alcoholic Beverage Control.

Recommendations



- Recommendation #4: Require that wholesalers and retailers who sell 50 or more cartons of cigarettes in a single transaction must record certain information on a form to be developed by the Office of the Attorney General.
 - Already they are required to keep all “invoices, papers, and other documents” related to such sales—the forms would collect important information in one easily read, standardized format.
 - These forms would be kept for at least 3 years, and be made available for inspection to law enforcement and tax authorities.

Recommendations



- Recommendation #5: Create a new Code section to make it a criminal offense to purchase cigarettes from a wholesaler using a forged business license, or a forged or invalid sales and use tax exemption certificate.
 - 25 cartons or less would be a misdemeanor for a 1st offense, and a Class 6 felony for a 2nd or subsequent offense.
 - More than 25 cartons would be a Class 6 felony for a 1st offense, and a Class 5 felony for a 2nd or subsequent offense.

Recommendations



- Recommendation #6: Require anyone who wants to sell tobacco products to the general public in Virginia to obtain a tobacco retail license.
 - 36 other states require a license or permit to sell cigarettes.
 - Without some sort of retail permit system, state officials and law enforcement do not have the ability to identify all of the tobacco retailers in the state.
 - If retail sales of tobacco are dependent upon a state issued license that can be revoked for criminal violations, retailers will have more of an incentive to properly obey all statutes and regulations.
 - Similar to those who hold permits to sell alcohol or lottery tickets.

Recommendations



Recommendation #6: (continued)

- Designate Virginia Department of Alcoholic Beverage Control (Va. ABC) to manage the tobacco retailing permit system.
 - They have extensive experience handling the administration of wholesale and retail sales permits for a similar product—alcohol.
 - They are used to thoroughly vetting applicants, and address locations, before granting an alcohol license.
 - There is an overlap of approximately 40% of businesses that sell both alcohol and tobacco.
- Va. ABC also has extensive experience in law enforcement operations, including investigating white collar crimes and fraudulent retail practices.

Recommendations



Recommendation #6: (continued)

- Having a well known, centralized state unit dedicated to tobacco enforcement could provide many benefits to Virginia's local and state law enforcement:
 - Deconfliction assistance when multiple jurisdictions are investigating the same trafficking ring;
 - Forensic accounting investigations that are often difficult for local law enforcement;
 - Coordinating investigations that involve other localities, states and/or the federal government;
 - Providing a well-known point of contact for federal, state and local law enforcement, prosecutors, industry, and the general public; and,
 - Administrative civil hearings as another avenue to stop the operations of crooked wholesalers and retailers.

Recommendations



Recommendation #6: (continued)

- To assist Va. ABC in covering the operating costs of having a tobacco unit, the current civil penalties that exist for violating various cigarette statutes, such as Va. Code § 58.1-1017.1, could be sent to them, instead of the Virginia Department of Taxation.
- Wholesaler permits could also easily be adopted by Va. ABC, which would also offset the costs.
- Application fees and tobacco permit fees could also help offset the costs of the tobacco unit.
 - Currently, there is a \$65 fee to apply for an alcohol license; a license itself costs anywhere from \$120 to \$665, depending on the nature of the license (e.g., beer, liquor, on/off, etc.)
- There would also be some savings if the Tax Dept. transferred some of their tobacco duties over to Va. ABC.



Discussion
