

**Remarks of Jim Tozzi of the Center for Regulatory Effectiveness
before
The National Foundation of Women Legislators Forum on Illicit Tobacco Trade
November 21, 2014 Philadelphia, Pennsylvania**

Illicit Tobacco Trade

I am Jim Tozzi¹ with the Center for Regulatory Effectiveness, a regulatory watchdog located in Washington, DC.

I appreciate the opportunity to make a presentation before the National Foundation of Women Legislators on the matter of the trade of illicit tobacco. This event is timely because it provides an opportunity to acquaint the NFWL and its legislative members of two ongoing studies, one by the FDA and one by the National Academy of Sciences, both of which will have a substantial impact on your constituents.

More specifically I would like to discuss the impact that illicit tobacco has on public health.

For a number of years CRE has been calling to the attention of public health leaders the substantial risk inherent in illicit tobacco products.

The levels of toxic metals in illicit cigarettes relative to branded cigarettes is alarming. A study sponsored by the University of St. Andrews (UK) and replicated in part by the HHS Centers for Disease Control and Prevention concluded:

Cadmium levels in illicit products are nearly five times that of branded products.

Arsenic in illicit products are nearly three times that of branded products.

Cadmium and arsenic are not only are carcinogens but are associated with cardiovascular and renal toxicities.

Lead levels in illicit products are more than five times that of branded products.

Lead affects the nervous system and the neurodevelopment in youth.

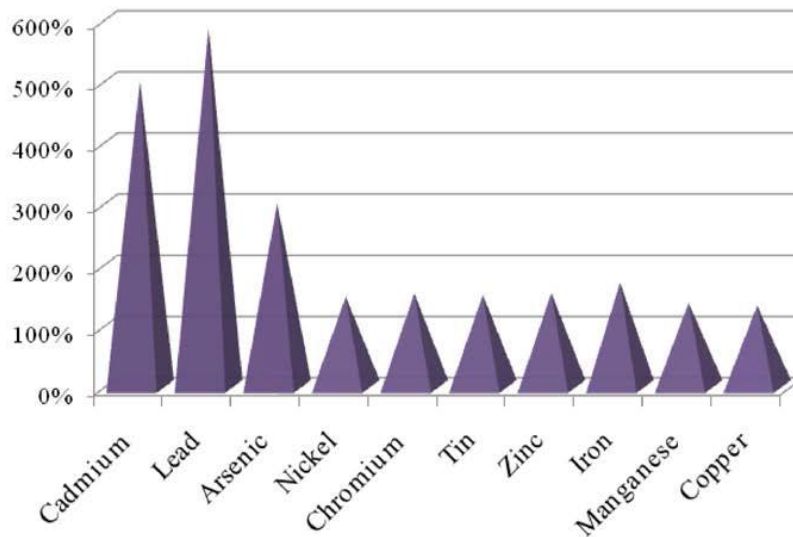
¹Jim Tozzi worked for five consecutive Presidential Administrations, including service as the Assistant Director of the White House Office of Management and Budget, where he was instrumental in establishing its centralized review of regulations. He has a B. S. in Chemical Engineering, a M. R. in Retailing-Market Research and a Ph. D. in Economics and Business Administration. See [Jim Tozzi](#)

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The following table is extracted from a CRE study titled: “An Inquiry into the Nature, Causes and Impacts of Contraband Cigarettes”.

Higher Metal Concentrations in Counterfeit Cigarettes (UK)

Metal Concentrations in Counterfeit Cigarettes as a Percentage of their Concentration in Authentic Product (mg/kg)



Source: Stephens, et al (2005), Figure 1

A range of similar effects occur at lesser levels for a wide range of other metals. Adverse health effects are not limited to toxic metals, a UK newspaper reports:

“ Human excrement, asbestos and dead flies: The ingredients found in fake cigarettes that cost the taxpayer billions.”

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A particular concern is that underage purchasers of contraband are not subject to an age restriction. The problem I am emphasizing is that the consumption of contraband by both underage and of age smokers is very significant.

Several months ago a group in Canada conducted an in-depth analysis of the smoking of illicit tobacco in Ontario Canada-- they concluded that over 40% of the cigarettes smoked in Ontario were contraband.

Notwithstanding these alarming statistics CRE has been singularly unsuccessful in getting the FDA to examine the health effects of contraband notwithstanding the fact that CRE has:

- testified a number of times before the FDA Advisory Committee on tobacco
- has written public comments to FDA on the adverse health effects of contraband
- has posted the above information on numerous websites of interest to the FDA.

FDA has never stated a reason for not acting on the adverse health effects of contraband. Hopefully they will do so in their ongoing statutorily mandated review of contraband.

Finally, not only does contraband have adverse health impacts but it also provides a major source of funds for terrorist groups.

CRE has a website dedicated to contraband; put *Counterfeit Cigarette Enforcement Forum* into Google and you will visit a web site read by stakeholders throughout the world. The objective of this forum is to have a wide range of stakeholders, including law enforcement groups, participate in the federal regulatory process.

Consequently what plan do we have underway to increase the visibility of the negative impacts of contraband to regulators?

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1. CRE has an extensive outreach program directed to a wide range of stakeholders in which we encourage them to work with their respective regulators-both at the federal, state and local level. FDA is the primary regulator but ATF has an explicit statutory role to combat contraband and has an excellent track record but is in need of additional resources dedicated to activity.
2. CRE provides the above stakeholders with up to date information on contraband through an ever increasingly popular interactive public docket-- *Counterfeit Cigarettes Enforcement Forum*-- and routinely publishes comments made by stakeholders.
3. CRE prepares White Papers which analyze state of the art publications on the health effects of contraband as well as the world-wide linkage between terrorism and contraband tobacco and makes these analyses available for public review and comment through the aforementioned interactive public docket.
4. CRE routinely intervenes in regulatory proceedings when such an action will highlight the need for greater attention being given to the health effects of contraband and its contribution to terrorism.
5. CRE routinely attends and makes presentations before federal advisory committees dealing with contraband tobacco. We look forward to making a presentation to the National Academy of Sciences which is studying contraband to emphasize the need for them to address the link between contraband tobacco and the funding of terrorists.

We compliment the NFWL for holding this important forum and we recommend that they:

- (1) establish a panel to examine the problems associated with illicit tobacco and,
- (2) Recommend to the relevant federal authorities that a Federal Task Force on the Trade of Contraband Tobacco be established to review the

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issues described herein including the impact that a ban on menthol in cigarettes would have on contraband tobacco.

It is timely to take the aforementioned actions because FDA has requested the views of the public on these matters when they asked:

“ If menthol cigarettes could no longer be legally sold is there evidence that illicit trade in menthol would become a significant problem?”

*“If so what would be the impact of any such illicit trade on **public health**?”*

We applaud the FDA for asking these most important of questions.

The impact of a menthol ban would be overwhelming; contraband sales of menthol cigarettes would increase dramatically as demonstrated by a wide range of studies, there would be no age checks for minors and all smokers of menthol products would ingest a significantly higher level of toxic chemicals.