

Report on Smuggling Control in Spain

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Introduction

Tobacco smuggling has become a critical public health issue because it brings tobacco on to markets cheaply, making cigarettes more affordable and thus stimulates consumption. The result is an increase in the burden of ill health caused by its use. According to the tobacco trade report *World Tobacco 2002* a major feature of the world cigarette market is the continued growth in smuggling and counterfeit trade, which accounts for a minimum of 8% of the world cigarette consumption at around 400 thousand million pieces.⁽¹⁾

Smuggled tobacco products represent both a threat to public health and to government treasuries, which are losing thousands of millions of dollars or euro in revenue.

Smuggled cigarettes became a major concern for governments and international organizations such as the World Health Organization, the World Customs Organization, the World Bank, the International Monetary Fund and the International Criminal Police Organization (Interpol). At a conservatively estimated average tax of US\$ 1.0025 to US\$ 1.50 per cigarette pack (this is much higher in most developing countries) cigarette smuggling (20 thousand million packs) accounts for US\$ 25 to US\$ 30 thousand million being lost by governments every year.

The tobacco industry has argued that tobacco smuggling is caused by market forces—by the price differences between countries, which create an incentive to smuggle cigarettes from “cheaper” countries to “more expensive” ones. The industry has urged governments to solve the problem by reducing taxes, which will also, it says, restore revenue. The facts contradict all these assertions. Smuggling is more prevalent in “cheaper” countries and, where taxes have been reduced, such as in Canada, consumption has risen and revenue fallen. There are, however, countries that have solved the problem by better control, Spain being the most impressive example to date. There are two main reasons why the example of Spain in terms of combating smuggling is impressive:

- The country had a huge smuggling problem, despite low prices.
- It effectively reduced smuggling without reducing prices

A huge smuggling problem, despite low prices

Joossens and Raw (1998, 2000, 2002) showed that tobacco smuggling defies apparent economic logic. Common sense might suggest that cigarettes would be smuggled from countries where they are cheap (southern Europe, for example) to expensive countries (such as northern Europe) and that this is due simply to price differences between these countries, as the tobacco industry claims. Although this does happen, it is not the largest type of smuggling, and in Europe there is far more smuggling from north to south rather than the reverse.⁽²⁾

Using 1995–1997 data on nine countries from the European Confederation of Cigarette Retailers and other sources, Joossens and Raw classified the 15 European Union (EU) countries and Norway as follows: *high-smuggling countries*, with a contraband market share of 10% or more (Spain 15%, Austria 15%, Italy 11.5%, Germany 10%), *medium-smuggling countries*, with a contraband market share between 5% and 10% (Netherlands 5-10%, Belgium 7%, Greece 8%, and probably Luxembourg and Portugal, but no studies are available), and *low-smuggling countries*, with a contraband market share of less than 5% (France 2%, the United Kingdom 1.5%, Ireland 4%, Sweden 2%, Norway 2%, and probably Denmark and Finland, but no studies are available).⁽²⁾ The results can be seen in Table 1. (Note that the situation has changed in a number of the countries since the study was done.)



Table 1

Prices of cigarettes (in US\$, June 1997) and level of smuggling (1995) into countries of the European Union

Country	Price	Level of smuggling
Spain	1.20	high
Portugal	1.75	medium*
Greece	2.06	medium
Italy	2.07	high
Luxembourg	2.12	medium*
Netherlands	2.43	medium
Austria	2.69	high
Belgium	2.95	medium
Germany	3.02	high
France	3.38	low
Finland	4.26	low*
Ireland	4.27	low
United Kingdom	4.35	low
Denmark	4.55	low*
Sweden	4.97	low
Norway	6.27	low

Notes: The table shows the price (in US\$ at 1 June 1997) of 20 cigarettes from the most popular price category. Sources for prices are the Commission of the European Communities and the Norwegian Council on Tobacco and Health.

* Probably details of how this index was constructed are given in the text

The correlation between high prices and high levels of smuggling claimed by the tobacco industry simply does not exist. In fact, countries with very expensive cigarettes do not have a large smuggling problem. Table 1 shows high levels of cigarette smuggling in the south of Europe rather than the north. Other factors than price levels that make cigarette smuggling more likely include corruption, public tolerance, informal distribution networks, widespread street-selling, and the presence of organized crime.

Effective reduction of smuggling without reducing prices

Spain is one of the few countries in the world to have tackled smuggling successfully. It did not do so by reducing tobacco tax. Despite Spanish cigarettes being among

the cheapest in the European Union, smuggled cigarettes had an estimated market share of 15% in 1995.(3)

According to the EU lawsuit against Philip Morris, RJ Reynolds and Japan Tobacco, filed on 3 November 2000 in New York under the United States Racketeering Influenced and Corrupt Organization Act (RICO), Spain has been a primary destination for smuggled *Winston* cigarettes for so long that the smugglers are sometimes known as “Winstoneiros”. According to the EU lawsuit, because of the way RJR mark and label their cigarettes, the company could identify which smuggled RJR cigarettes in the marketplace had been originally supplied by RJR USA, and which were smuggled into the country by persons without authorization of RJR.

As the demand for *Winston* in Spain rose through the 1990s increased numbers of “lower quality” *Winston* from other sources were being smuggled into Spain, interfering with the smuggling authorized by RJR. According to the EU complaint, RJR took steps to prevent the unauthorized smuggling. They developed a particular presentation of *Winston* cigarettes known to the Spanish consumer as *patanegra*. The *patanegra* presentation could be distinguished from the other “lower-quality” *Winstons* by distinctive markings and because they did not have the blue sticker found on most *Winston* cigarettes.

It was alleged that RJR produced the *patanegra* presentation specifically for their best smuggling customers, to insure that they could maintain their competitive advantage over other smugglers and so that RJR could increase their market share (because if you can guarantee good quality you will sell more and increase market share). The *patanegra* presentation was developed specifically for the Spanish market and sold only in Spain. According to the EU lawsuit, it was one of the examples that showed how RJR maintained and exercised control of the smuggling operations in Spain.(4)

Another source of smuggled cigarettes in Spain and the EU was Andorra. In a 1992 BAT internal tobacco industry document, the illegal cigarette trade in Andorra was described in the following way:

“Smuggling is a traditional and highly lucrative trade in Andorra. The growth has increased rapidly in recent years as Andorran supply has replaced that which used to enter Spain by sea and has been subjected to increased controls because of the links with the drugs trade.” (5)

Between 1997–1998 there was concerted action at national and European levels to reduce the supply of contraband cigarettes. Close collaboration among the authorities in Andorra, Britain, France, Ireland, Spain and the European Anti-Fraud Office (OLAF) reduced the supply of smuggled cigarettes from Andorra. Actions included sealing the Andorran border, and having civil guard brigades patrol valleys and hills to make smuggling more difficult. The European Anti Fraud Unit led a first mission to Andorra in March 1998, accompanied by representatives from the neighbouring countries (France and Spain) and from cigarette exporting countries (Ireland and the United Kingdom). The enquiries revealed a lack of appropriate legislative instruments in Andorra to prevent and combat fraud. In November 1998 a EU Commission mission visited the Andorran Government and found that attitudes had changed fundamentally. The laws on customs fraud and the control of sensitive goods and the law amending the criminal code and making smuggling a crime were published respectively in the Andorran Official Journal on 4 March 1999 and 7 July 1999.⁽⁶⁾

As a result, contraband cigarettes which had accounted for an estimated 12% of the Spanish market in early 1997, held only 5% by mid-1999¹ and only an estimated 2% in 2001. Sales of legal cigarettes increased from 78 thousand million in 1997 to 87 thousand million in 1998 (see Table 3), and tax revenue increased by 25% in the same year (see Table 2). According to the Spanish customs authorities, their success was not due to controlling distribution at street level, which is almost impossible, but to reducing the supply into the country at “container level” through intelligence, customs activity and cooperation, and technology².

1996	443
1997	516
1998	646
1999	667
2000	742

Source: Spanish Customs and Excise

1996	72
1997	78
1998	87
1999	86
2000	88
2001	90

Source: Comisionado del Mercado de Tabaco

Andorra is important because it illustrates the role of the tobacco industry. Andorra was not only supplying illegal cigarettes to the Spanish market but also to the United Kingdom. Exports from the United Kingdom to Andorra (which has a population of only 63 000) increased from 13 million cigarettes in 1993 to 1 520 million in 1997. Since few of these cigarettes were legally re-exported and Andorran smokers do not generally smoke British brands, then either each Andorran (including children and non-smokers) was smoking 60 British cigarettes a day in 1997 or these cigarettes were being smuggled out of Andorra. It seems obvious that the companies would know what was happening to their cigarettes. In a television interview on the BBC’s *Money Programme* of 8 November 1998, a spokesperson for the tobacco company (Gallaher) said: “We will sell cigarettes legally to our distributors in various countries. If people, if those distributors subsequently sell those products on to other people who are going to illegally bring them back into this country, that is something outside of our control.” ⁽⁷⁾

Discussion

The tobacco industry has often claimed that smuggling is more prominent in high-tax countries and that the best way to tackle cigarette smuggling is by reducing the demand and by lowering taxes. In fact, cigarette smuggling

¹ (Ignacio Garcia, Customs and Excise, Madrid, personal communication)

² (Ignacio Garcia, Customs and Excise, Madrid, personal communication)



occurs in all parts of the world, even in countries where prices are low. Spain had the lowest cigarette prices in the EU and still had a huge smuggling problem. Cigarette smuggling in Spain was not caused by the demand of smokers in search of cheaper cigarettes, but by the illegal supply of international cigarette brands on the Spanish market.

Fortunately, the Spanish experience shows also that coordinated action to stop the illegal cigarette supply can solve the smuggling problem. The proportion of smuggled cigarettes in the Spanish market was reduced dramatically and revenue was increased, without lowering taxes, whereas tax reductions produced disastrous results – lower revenues and a sharp increase in consumption, especially among young people – in Canada. (3) Governments need to acknowledge that smuggling is, to large extent, a supply-driven process and that manufacturers exercise a large degree of control over their end markets, both legal and illegal, as testified to by many documents from the Guildford archives. (8) What follows logically from this, is the need to cut off the supply of cigarettes to the smugglers.

Economic analysis of the effect of cigarette prices in Spain and the analysis of smoking histories from the national health survey 1993-1995-1997 has shown that the price increase of black cigarettes had a significant effect on prevalence, but the price increase of blond cigarettes did not. (9) Smuggling may be an explanation for this difference between the effect of price increases of blond and dark cigarettes as smuggling of cigarettes in Spain occurred mainly with blond (Winston) cigarettes, which were promoted on the illegal market as “high-quality cigarettes” (the so called *Patanegra* Winstons). The ready availability of lower-price smuggled blond cigarettes undermined the effect that price increases of legitimately sold cigarettes should have had.

While the success of the fight against smuggling in Spain was evident, the impact of the reduction of smuggling on smoking prevalence is unclear. Smoking prevalence among women remained stable at 27% in 1995 and 2000-2001, but decreased among men from 47% in 1995 to 42% in 2000-2001. (10) It is unclear whether the decline of smoking among men is linked to the reduction of cigarette smuggling, but it might be, since the action against smuggling greatly reduced the ready supply of cheap Winstons available to consumers.

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