# Eye on the tobacco industry

*An update on current Canadian tobacco industry activities*

April-June 2010

## Are tobacco companies behind Canadian Convenience Stores Association's anti-contraband tour?

Efforts by the Canadian Convenience Stores Association (CCSA) to convince governments to reduce tobacco taxes as an anti-contraband measure were recently met with resistance from health groups and politicians.

The CCSA appeared before a Parliamentary Committee in April and toured through Ontario, Quebec and the Maritimes from May to June.[1,2] On numerous occasions, in interviews with the media or in press releases, they suggested that tobacco taxes should be reduced or kept at the present level, arguing that tax increases will only drive more smokers to buy contraband.

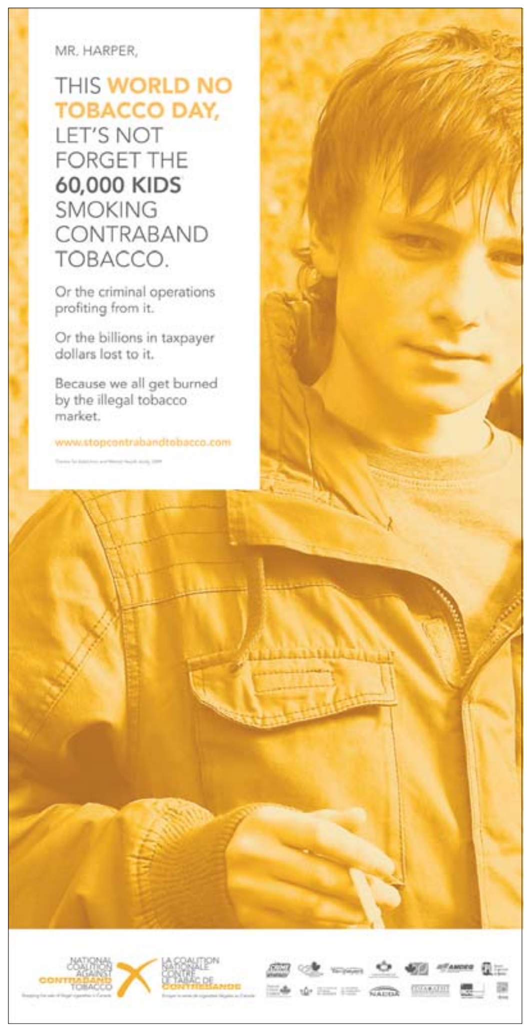
The Ontario Korean Businessmen's Association, a long-time ally of the tobacco industry, has also called for a tobacco tax reduction:

> "A tax reduction—to where taxes were before the smuggling took off—would ensure that cigarette crime didn't pay."[3]

At the same time as retailer organizations have been calling for tax reductions, health groups have been raising important questions about who funds the work of the CCSA and the National Coalition Against Contraband Tobacco (NCACT), and just whose interests they serve.[4] Two different CCSA spokespeople acknowledged that tobacco companies are helping to fund the organization:

> "[CCSA spokesman Chris] Wilcox acknowledged that some of the association's funding comes from tobacco companies but would not specify how much they contribute, only saying that it is not in the millions of dollars." [5]

Meanwhile, the NCACT, which receives tobacco industry funding, ran a full-page ad in *The National Post* urging Prime Minister Stephen Harper to take action against contraband.




*National Post, May 25, 2010.*

Unfortunately, the NCACT has recruited support for its campaign from legitimate community groups and other organizations, in much the same way as convenience store owners did for their ineffective youth smoking prevention program, Operation I.D. It is important to note that both the CCSA and NCACT are funded by Big Tobacco, and most convenience store owners share the same overriding interest of the tobacco companies in selling more tobacco.

### *Store owners often in violation of laws*

Efforts by the convenience store association to get governments to enforce the law are arguably hypocritical considering recent events in which numerous convenience store owners themselves are alleged to have broken the law.

On June 16th, police in Quebec announced they had raided 22 convenience stores in the Montreal area and arrested 16 people who are expected to face charges of fraud, conspiracy and concealment. It is alleged the store owners were selling contraband little cigars which had been supplied by distributors from the Tyendinaga Mohawk Reserve near Belleville, Ontario.[6] The arrested owners, if convicted, will face sanctions under tobacco tax laws.

These charges follow on the footsteps of a CBC News investigation which found that individual cigarillos were still being sold in several Montreal convenience stores, one month after federal legislation banning single sales of those products went into effect.[7]

## JTI-Macdonald smuggling settlement denounced as 'sweetheart deal'

The $550 million smuggling settlement between JTI-Macdonald and the federal and provincial governments—which saw all criminal charges against tobacco company executives dropped and the recovery of only 6% of the taxes the companies fraudulently avoided—was widely condemned/criticized in April.

Related to cigarette smuggling in the 1990s, Canada's third-largest tobacco company, JTI-Macdonald (JTI-MC), formerly RJR-Macdonald, pled guilty in an Ontario court to "aiding persons to be in the possession of tobacco not packaged in accordance with the *Excise Act*." The company was fined $150 million.[8] Under the civil settlement, R.J. Reynolds Tobacco Co., the former parent company of RJR-Macdonald, paid governments $325 million, "while Northern Brands International Inc., a company related to RJR, pled guilty to a *Criminal Code* conspiracy and was fined $75 million."[9]

The $550 million total was split among the federal government, the provinces and territories.

JTI-MC called the settlement "an important milestone for the company and its employees, securing a stable commercial and regulatory environment in which to do business for the future."[10] Meanwhile, health groups denounced the settlement:

> "Garfield Mahood, executive director of the Non-Smokers' Rights Association, said the cheaper cigarette prices that resulted from the smuggling — and the subsequent tax cuts — increased rates of smoking in the 1990s, especially among young people."[11]

Mahood explained to *The Globe and Mail* that a Health Canada study leaked to the NSRA predicted 40,000 future tobacco-related deaths just from the increase in adolescent smoking that would take place from 1994 to 1999 if tobacco taxes were rolled back due to smuggling. He said the failure to hurt the companies financially or hold them criminally responsible meant that once again the industry would not be brought to justice.

Documents filed in court in 2005 contained claims by the federal and provincial governments for nearly $10 billion against JTI-MC and related companies. The $550-million payout (worth only 6% of $10 billion) was condemned as “chump change” compared to the true cost of the smuggling:

> “Criminal responsibility, deterrence and justice were bargained away. And there was no attempt made to negotiate health benefits to repair the health damage caused by the criminal behaviour, like those obtained in similar-kind negotiations in the United States.”[12]

As a result of the settlement which ended smuggling-related litigation against the company in Canada, JTI-MC has been removed from bankruptcy protection.

## Smokeless tobacco developments in Canada and the U.S.

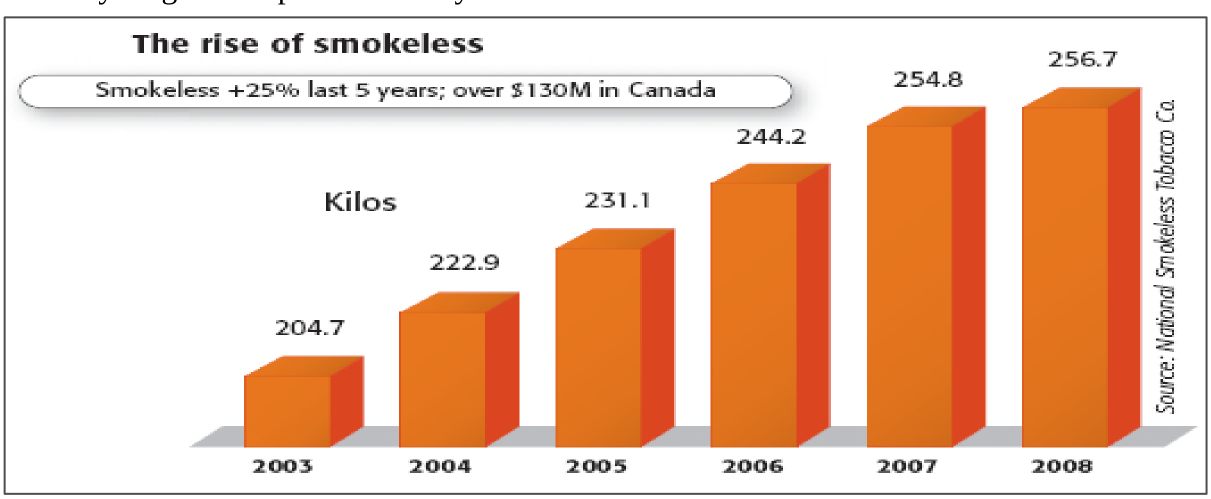
Dollar volume sales of chewing tobacco and snuff grew significantly in Canada between October 2008 and October 2009, a convenience store industry magazine reported recently.

In June, the *Independent Convenience News*, citing Nielsen MarketTrack data, reported that “chewing tobacco grew 25%, and snuff increased 23%” in the one year period.[13]

As the graph below indicates, sales of smokeless tobacco (measured in kilograms) in Canada grew by 25% between 2003 and 2008.[14]

Despite the growth in sales, however, prevalence rates reported by the Canadian Tobacco Use Monitoring Survey (CTUMS) have not changed. CTUMS found that in the first half of 2009 only 8% of Canadians 15 years and older reported ever having tried smokeless products, unchanged from the first half of 2008.[15] Full year data for 2009 is not yet available, but full year data from 2008 showed minimal use of smokeless:

> “Less than 1% of Canadians aged 15 years and older reported using any of these products in the past 30 days. Only 1% of youth aged 15-19 (about 30 000 teens) and 1% of young adults aged 20-24 (about 27 000 young adults) reported using smokeless tobacco in the past 30 days. The rates for Canadians aged 15+, 15-19 years and 20-24 years are unchanged compared to 1999, the first year CTUMS asked respondents about their use of smokeless tobacco products.”[16]



There are several possible explanations for the fact that sales have increased while reported rates of smokeless tobacco use have not. The increase in sales could be attributed to regular smokeless users simply purchasing more product than in the past. Another possible explanation is that the groups with the highest rates of use are youth and young adults and many researchers believe that the true habits of these age groups may not be captured by traditional telephone surveys as only people with land lines are included and many young people only have cell phones. A third reason is that there may have been significant increases in use among certain demographic cohorts, for example, young men in selected northern and western communities, which would not be discernible given the sampling methodology of nation-wide surveys.

The increases in sales of smokeless tobacco have occurred despite changes in 2008 to the way the federal government taxes smokeless tobacco that have significantly increased the price of these products. Fifteen gram packs of smokeless now retail for $10, which is about the same price as a package of 25 premium priced cigarettes in Ontario and provides roughly the same amount of nicotine doses.

### Altria takes Marlboro snus nationwide; believes overall smokeless category grew 7% in 2009

Philip Morris USA (PM USA), owned by parent Altria Group Inc., expanded its Marlboro Snus tobacco product nationwide in the U.S. at the end of March, after testing the product in a few markets starting in 2007.[17] [18]


While cigarettes are by far the most popular—and most harmful—tobacco products used by those addicted to nicotine, this situation may slowly be reversing:

> "Altria said in recent years that cigarette volumes have declined by about 4 percent per year, while the smokeless tobacco segment has grown by about 7 percent per year."[19]

In April, Altria said both of its companies that sell smokeless products (PM USA and the United States Smokeless Tobacco Company) saw their combined domestic smokeless products shipment volume for the first quarter of 2010 grow by about 5%.[20]

### Reynolds American plans expansion of its smokeless tobacco operations

Recognizing the decline in cigarette sales, Reynolds American Inc. announced in May that it was consolidating its cigarette manufacturing operations and increasing its smokeless tobacco operations.[21]

These actions could be because the company recognizes the potential for giving nicotine consumers the drug (nicotine) they seek in less harmful products. What is more likely is that it is building brand extensions into its product line, knowing it won't seriously damage its cigarette business.

Critics contend that Reynolds is merely developing products that will increase the likelihood that its customers will stay in the market rather than having smoking bans persuade them to become non-smokers. R.J. Reynolds Tobacco Company, which is owned by Reynolds American, already sells a variety of smokeless products in the U.S., including Orbs, Snus, Strips and Sticks (see below).

Tobacco control professionals in Canada should pay attention to U.S. smokeless tobacco developments. Industry strategies used there are likely to be replicated here. As thinking related to harm reduction continues to evolve,[22] we need to ensure that the market moves in a direction that benefits public health. Some recommend that banning the most harmful forms of smokeless tobacco could be a first step in that direction.

## Opposition to flavoured tobacco ban increases at World Trade Organization

There are now three countries—Malawi, Kenya and Uganda—complaining at the World Trade Organization (WTO) about Canada's *Cracking Down on Tobacco Marketing Aimed at Youth Act*, which amended the *Tobacco Act* to ban flavoured tobacco. All three countries have raised the issue at the WTO's Committee on Technical Barriers to Trade.[23] [24] [25]

Malawi, Kenya and Uganda all produce significant amounts of tobacco, and Malawi is the world's largest producer of burley. In raising the issue at the WTO, each country asked Canada a series of questions, raising arguments in opposition to the law similar to those advanced by Philip Morris International. The company appears to be acting behind the scenes to try to quash the legislation, and it has garnered the support of at least four countries, as Tanzania has also indicated its opposition to the legislation.[26] Burley tobacco on its own tastes bitter and is harsh to smoke, which is why tobacco companies typically flavour or sweeten it. The recent amendment to the *Tobacco Act* banned these flavours from being added to cigarettes sold in Canada.

The opposition at the WTO comes on the heels of a campaign by Philip Morris International, working with tobacco farming organizations in the United States and American politicians in the tobacco belt, to convince the U.S. government to consider the legislation worthy of a trade dispute. The Obama Administration has refused to see it as such, possibly due to an Executive Order, still in force, signed by President Bill Clinton in 2001, which is the explanation offered by *Embassy*, a Canadian foreign policy newspaper:

> "US law prohibits American administrations, including agencies such as [United States Trade Representative], from lobbying for tobacco exports or seeking removal of foreign restrictions on tobacco products."[27]

## Casa Cubana exploits loophole in the law; plans to continue to sell flavoured little cigars

Casa Cubana, which imports and sells the majority of flavoured little cigars on the Canadian market, has indicated on its website that it plans to continue to sell flavoured little cigars, despite a national ban on flavoured cigarillos which comes entirely into force on July 5.

Casa Cubana says it has modified its products to be compliant with the new law, passed with all-party support in 2009. By increasing the size of its Prime Time and Bullseye little cigars to weigh more than 1.4 grams and by not utilizing a "cigarette-style" filter, Casa Cubana says the products satisfy all the requirements of the legislation.[28] In reality, the changes made are against the spirit of the law, if not the letter, and will ensure that fruit- and candy-flavoured little cigars remain available to youth in Canada.

Public health groups, including the Canadian Medical Association and the Canadian Lung Association, are calling on lawmakers to close the loophole.[29]

Canada's Minister of Health, Leona Aglukkaq, has said the government will deal with tobacco companies that try to circumvent the new law:

> "Not only does this action go against the intent of the legislation; it endangers the health of Canada's children. We will deal with this issue and will continue working to ensure that Canada's children are protected from the dangers of tobacco."[30]

Exactly how the Minister intends to "deal with this issue" is not clear, but immediate action is required as Casa Cubana has said it will continue to sell little cigars—under the brand names Prime Time Plus and Bullseye Extra—in Cherry, Grape, Vanilla, Peach, Rum and Strawberry flavours. Its website also indicates it will sell the reformulated little cigars in packages of 10, and in Western Canada it will sell singles, although the legislation requires packages of 20.


*A photo of the flavoured cigars Casa Cubana will sell after July 5. The company has replaced the cigars' "cigarette-style filter" with a filter made of tobacco (which the company claims is a "natural filtration system"). This change is one of the loopholes being exploited under the current legislation, which allows a cigarillo to be defined as a cigar and therefore continue to include flavourings.*

## Federal government, Imperial Tobacco Canada dispute over third party costs headed to Supreme Court

Imperial Tobacco Canada's effort to enjoin the federal government as a third party in two different lawsuits in B.C. is headed to the Supreme Court of Canada.

There are presently two lawsuits against the tobacco industry in B.C. — one is the B.C. government's medicare cost recovery litigation, and the other is a class action lawsuit related to "light" cigarettes. In both cases, the tobacco industry named the federal government as a third party in an effort to share both the blame and the costs if the tobacco companies are found guilty.

In May, the Supreme Court of Canada granted the federal government leave to appeal, following a narrow 3 to 2 majority decision by the B.C. Court of Appeal in June 2009 in favour of the tobacco companies.

As was reported by *Bloomberg*, the tobacco companies (including JTI-Macdonald and Rothmans Inc.) "claim the federal government knew of the risks of smoking, while regulating the industry, and in the 1960s pressed the tobacco manufacturers to promote lower-tar cigarettes."[31]

A tentative hearing date has been scheduled for February 2011.[32] The federal government is seeking to have the third party notice quashed.

## Imperial Tobacco Canada Foundation nominates dance companies for Arts Achievement Award

The charitable arm of Imperial Tobacco Canada nominated four dance companies for its $75,000 Arts Achievement Award in April.[33]

The National Ballet of Canada, The Royal Winnipeg Ballet, La compagnie Marie Chouinard and La compagnie La La La Human Steps are each vying for the prize, with the winner slated to be announced by the end of June. As of the end of June, no announcement was forthcoming.

Donations to the arts and cultural sector give the tobacco industry considerable visibility and legitimacy — many people attending an event will peruse the programme and see the names of the sponsors. The donations have also provided tobacco companies with access to a network of influential supporters in communities across Canada. Announcing the winners also gives the company the opportunity to gain favourable publicity.

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