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—
Chair

Mr. Garry Breitkreuz

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• (1530)

[English]

The Vice-Chair (Hon. Roy Cullen (Etobicoke North, Lib.)): Ladies and gentlemen, *mesdames et messieurs*, I'd like to bring the meeting to order.

Welcome to meeting 28 of the Standing Committee on Public Safety and National Security. We're doing a study of contraband tobacco. We're looking at contraband tobacco, not in the sense of smoking and the ills of smoking—I don't think many of us here need to be reconvinced of that—but in the context of contraband. I'm sure that's been explained to the witnesses.

I welcome all of you, and the members.

If I could indulge the witnesses for one moment so I can do a bit of planning here, we understand that the minister will not be available to come to our committee next week within the context of our review of tasers. So I have a suggestion to make. The panel meeting that we had originally planned for the other stakeholders on the contraband tobacco question had to be cancelled because of the water problems on the Hill on Monday. So with your agreement, we'll reschedule that panel, if there's sufficient time, for this coming Monday.

Is that okay?

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): I don't disagree with that at all, but that panel is way too big to have here on one day. This room was full, and there wouldn't have been room for the panel to be here in the room. I really think it should be divided in half, and that the meeting should have been for two days. I don't think it would be fair to the panellists, otherwise.

An hon. member: Agreed.

The Vice-Chair (Hon. Roy Cullen): Is that agreed?

Okay, that might make it easier to schedule as well. If anyone has some scheduling problems, we'll split it up. Does it matter which pairs or—

Mr. Dave MacKenzie: I think we should have the tobacco industry people here separately from the other group. It's not that there's anything untoward about the second body, but it was just way too big.

The Vice-Chair (Hon. Roy Cullen): You don't have to call them with the order?

Mr. Dave MacKenzie: No, absolutely not.

The Vice-Chair (Hon. Roy Cullen): It's a matter of the practicalities of who we can get—

Hon. Sue Barnes (London West, Lib.): Why don't you just let the concordance group do our scheduling?

The Vice-Chair (Hon. Roy Cullen): Yes.

Okay, thank you. We'll proceed on that basis.

I believe we will now have statements from the RCMP, the Canada Revenue Agency, and the Canada Border Services Agency, as I understand it. We will start with the usual five- to ten-minute presentations, and then we'll open it up to questions.

Could we start with Mr. Cabana, chief superintendent from the RCMP.

Chief Superintendent Mike Cabana (Chief Superintendent, Director General, Border Integrity, Federal and International Operations Directorate, Royal Canadian Mounted Police): Thank you very much.

As director general of the RCMP border integrity program, I'd like to thank the committee for this opportunity to meet and discuss the illicit tobacco trade.

Briefly, and by way of background, a large portion of the RCMP's border integrity mandate is to enforce laws within Canada and along the uncontrolled border, and to govern thereby the international movement of dutiable, taxable, controlled, or prohibited goods; and the manufacture, distribution, and possession of contraband products, including tobacco and spirits.

Historically, like other criminal trends, the illicit tobacco trade ebbs and flows. Over the years, we've seen periods of sharp spikes and sharp declines. Today, it is not only flowing, but also hemorrhaging, and it has flourished into a key business enterprise for many criminal groups. Since 2001, our contraband tobacco seizures have rapidly and steadily climbed. Last year, our seizures reached an all-time high. We seized more than 618,000 cartons of illegal cigarettes, a 21-fold increase over 2001, which totalled 29,000 cartons at that time. Equally concerning are the large bags of illegal raw leaf and loose tobacco seized. Again, last year our seizures reached 37 metric tonnes.

Clearly it's big business for criminals. In fact, intelligence assessments, along with seizure rates, indicate three things: the trade is growing, it is no longer centralized in only Ontario and Quebec, and more than 150 organized crime groups are involved. But they are not only involved in trafficking contraband tobacco.

•(1535)

[Translation]

These are criminals who also deal in drugs, firearms smuggling and money laundering. It's not uncommon to have our investigators seize other illegal commodities along with tobacco, today.

[English]

Last summer, through a marine security initiative called Shiprider, the RCMP and the U.S. Coast Guard worked in partnership on the same vessels along our shared marine border. The project resulted in the seizure of more than 1.4 million contraband cigarettes, 200 pounds of marijuana, and \$38,000 in illicit cash, and contributed to dozens of arrests. All this occurred in a two-month span in a relatively small marine corridor in the St. Lawrence Seaway.

Given its growth, proliferation, and connection to organized crime, contraband tobacco is a major priority of the RCMP customs and excise program. To further focus our efforts on effectively attacking the market, the Minister of Public Safety and our deputy commissioner of federal policing officially released the RCMP's contraband tobacco enforcement strategy this morning. While a big part of the strategy is the disruption of criminal organizations, success will require more than enforcement alone.

In this regard, in developing our strategy we met with over 70 partners and stakeholders that have an interest in the contraband tobacco trade. Through this consultation and dialogue, we believe our strategy responds to the various challenges before us.

Decades of experience dealing with this illegal market, however, indicate that enforcement efforts alone will not resolve the issue. Making an impact will require a multi-layered approach encompassing a number of initiatives, including raising public awareness. The public needs to understand that purchasing contraband tobacco directly supports organized crime. We believe that knowing the consequences will help reduce the demand.

We'll strive for more open dialogue with aboriginal governments on issues associated with contraband tobacco trade. We will monitor and evaluate programs to keep pace with the evolution of the illicit trade and adjust our approach as required.

We are committed to expanding partnerships and improving international cooperation and training. For example, last week close to 150 representatives from several countries met in Toronto for the sixth annual tobacco diversion workshop. This is perfect example of international cooperation. This is more than a Canadian problem; it's a global problem requiring a global solution.

In closing, based on the growth of the illicit market, it's evident that the current deterrents have to be enhanced and expanded. I can assure you that the RCMP will continue to pursue criminal organizations involved in illicit tobacco manufacturing operations and large-scale distribution networks.

[Translation]

The Strategy is our continued commitment to targeting this crime and it will build on the actions we are already taking to ensure the safety and security of our communities.

[English]

I would like to thank you for inviting me to appear before this committee. I am prepared to take any questions you may have.

[Translation]

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. Cabana.

Our next witness is Pierre Bertrand, Director General, Excise and GST/HST Ruling Directorate, Canada Revenue Agency.

Mr. Bertrand.

[English]

Mr. Pierre Bertrand (Director General, Excise and GST/HST Ruling Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency): Good afternoon, and thank you, Mr. Chairman and members of the committee, for the opportunity to appear today and explain Canada Revenue Agency's role in this file under discussion.

With me today is Phil McLester, who is the director of the excise duties and taxes division.

The CRA is responsible for the administration of the Excise Act of 2001, which establishes the framework for licensing tobacco manufacturers, regulating tobacco products in Canada, and applying excise duties to tobacco products manufactured in Canada or imported. Our focus is maintaining compliance in the legal tobacco market. To this end, we interpret the act and its regulations, and we create policies and other administrative procedures.

On the tobacco file, one of our important roles is the issuance and renewal of tobacco manufacturing licences. Without a tobacco licence, the company does not have the right to manufacture tobacco products, will not have legal access to raw leaf tobacco, and cannot import tobacco without the imposition of excise duty. The licensing function can be described as an important first step in gaining compliance with the legislation.

The act and the regulations respecting excise licences and registrations contain strict requirements for obtaining and maintaining a licence, and these are applied diligently to all applicants. Prior to issuing a licence, the CRA undertakes criminal background checks, ensures a history of compliance with federal tax legislation, contacts provincial authorities to verify compliance with their legislation, and verifies the financial and economic viability of the enterprise.

An important criterion for obtaining and maintaining a licence is that an applicant or licensee must comply with any act of Parliament or of the legislature of a province respecting taxation of tobacco or controlled items. The CRA consults with the province in which an applicant is located. The information provided is evaluated, along with all the information available when assessing the issuance of a licence, or when considering possible suspension or revocation of a licence. In addition, the CRA advises licensees of the need to comply with provincial permit requirements by way of outreach packages, licensing notifications, and visits to manufacturing premises.

A licence has a maximum duration of two years. To be renewed, it must pass through the same stringent requirements noted above. Once a licence has been issued, if the licensee fails to meet the conditions of the licence—e.g., maintaining satisfactory security or complying with the act—a licence may be suspended or revoked. We have suspended and revoked licences when licensing conditions are not met. There are currently 46 tobacco licences in Canada. While we do not specifically track or report on the locations or premises associated with these licences, I can say that there are currently 14 tobacco licensees on first nations reserves.

The CRA undertakes numerous activities to ensure that licensees are in compliance with the legislation, including audits to confirm revenue and regulatory activities to ensure compliance with the control of tobacco products. There are many examples of this activity, such as reviewing internal controls, touring premises, inventory verifications, stamping and marking verification, etc.

In respect of the recent history of federal excise revenues collected on tobacco products, it is public information that over the four years from 2003-04 to 2006-07, federal excise revenues have declined from \$3.35 billion to slightly under \$2.5 billion. This relates specifically to legitimate tobacco manufacturing production.

Budget 2005 announced funding for a number of tobacco compliance activities, and the CRA has used this funding to advance its tobacco compliance strategy. This encompasses enhanced audits of tobacco manufacturers, tobacco grower outreach and compliance monitoring, and the establishment of an enhanced stamping regime.

• (1540)

We have implemented the first two elements of our strategy. As well, we have completed contracting for a new tobacco stamp that will contain state-of-the-art overt and covert markings to combat counterfeiting and discourage the illicit manufacture or under-reporting of tobacco production. The new stamp will be another tool in the arsenal of federal and provincial enforcement agencies to address a portion of the contraband tobacco challenge.

Government has long recognized that the subject of legislative compliance and contraband tobacco is far-reaching and complex, involving the cooperation of several partner government organizations. To ensure that Canada's tobacco tax laws are effectively applied, CRA works with the RCMP, CBSA, Finance Canada, and the provinces and territories. In terms of our overall administrative role, we also work with Health Canada and Agriculture and Agri-Food Canada. In fact, the CRA participates in numerous fora with provincial, national, and international representation, including the tobacco diversion workshop mentioned by my RCMP colleague. There are a number of other ones.

In terms of our future activities, the CRA will continue to advance our new enhanced stamping regime; support our partners in combating contraband tobacco products; advance collaboration with band councils and manufacturers in the tobacco industry; participate in the World Health Organization Framework Convention on Tobacco Control's intergovernmental negotiating body toward the drafting of an international protocol on illicit trade in tobacco products; and defend, in collaboration with Justice Canada, Canada's interests before the courts to ensure that revenue is protected and compliance objectives are met and maintained.

Mr. Chairman, thank you for this opportunity to speak to you today. We would be pleased to answer any questions you may have.

• (1545)

The Vice-Chair (Hon. Roy Cullen): *Merci beaucoup, monsieur Bertrand.* I'm sure we'll want to know more about this decline in the tobacco federal excise revenues. I was surprised by your comment.

Nonetheless, we'll move on to the Canada Border Services Agency. Mr. Quartermain, please.

Mr. David Quartermain (Director, Borders Intelligence Division, Intelligence Directorate, Enforcement Branch, Canada Border Services Agency): Thank you, Mr. Chairman and members of the committee.

On behalf of the CBSA, I am pleased to appear before the committee to explain to you how the CBSA addresses the contraband tobacco situation in the context of our border mandate and to respond to any questions you may have.

The mandate of the CBSA is to provide integrated border services that support national security and public safety priorities. The CBSA is responsible for managing, controlling, and securing Canada's borders by ensuring that all people coming into Canada are admissible and comply with Canadian laws and regulations, and for processing all commercial shipments that cross our ports of entry to ensure that Canada's laws are adhered to.

Under the Customs Act, we are also responsible for investigation and prosecution of border security offences, such as the smuggling or unlawful import or export of controlled, regulated, or prohibited goods, including contraband tobacco. The CBSA investigates commercial fraud, smuggling, and other import- and export-related offences and ensures that the business community complies with Canada's trade and border legislation.

The agency administers more than 90 acts and regulations on behalf of other federal departments and agencies, the provinces, and territories. Where there is a contravention under these authorities, such as the unlawful importation of tobacco products, the CBSA will prosecute offenders, or we will call on our law enforcement partners to lay criminal charges under the Criminal Code of Canada.

The agency works in close partnership at the federal level with our partners represented here at this table: the RCMP, the Department of Public Safety, the Department of Justice, and the Canada Revenue Agency, as well as a variety of partners beyond our borders, including U.S. Customs and Border Protection, the U.S. Immigration and Customs Enforcement, and of course, the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives.

Regarding tobacco, the CBSA administers its responsibility in accordance with the provisions set out in the Customs Act; the Customs Tariff; Excise Act, 2001; and the Criminal Code of Canada.

With respect to the current situation, it is notable that the price of Canadian cigarettes has increased by approximately 45% over pre-1994 levels. While this may have motivated some smokers to quit, others seek out lower-cost sources of tobacco. In 2007, CBSA officers made over 3,800 seizures of illicit tobacco, totalling 268,754 cartons of cigarettes, 225 kilograms of cigars, close to 17,000 kilograms of fine-cut tobacco, and just under 3,000 kilograms of pipe and other tobacco products.

Compared to 2006, the number of tobacco seizures in 2007 increased by 43%. This is primarily due to a greater number of seizures made in the postal and courier modes. The total seizures in 2007 represented the highest number of annual tobacco seizures made by CBSA officers since the implementation of the federal tobacco control strategy. This increase can be attributed to better targeting due to intelligence development through monitoring and assessing the contraband tobacco market as required by the strategy.

Counterfeit Canadian and American brand cigarettes, primarily from China, as well as Chinese brand cigarettes are being seized from marine containers and comprise the majority of contraband cigarettes intercepted by the CBSA. Extensive smuggling by organized crime groups continues to occur in the Cornwall-Valleyfield area, both at and between the ports of entry, and this remains a challenge for law enforcement personnel.

Between 2003 and 2007, the CBSA seized approximately 18,000 cartons of cigarettes, as well as carton equivalents in zip-lock bags, at the port of Cornwall, consisting mainly of native brand cigarettes produced on the U.S. side of the Mohawk community of Akwesasne. However, the majority of tobacco smuggling in these areas continues to occur between the ports. Here, the CBSA supports its law enforcement partners by providing resources to assist in intelligence-gathering initiatives.

The CBSA is also noticing that smugglers are making increasing use of the courier and postal systems to move illicit tobacco products into Canada. This mode of smuggling has seen a dramatic increase over the years, but most notably this past year. In 2006 there were 641 seizures as compared to 1,610 seizures in 2007. This is an increase of 151% in one year.

To detect tobacco smuggling at the border, the CBSA uses state-of-the-art technology and intelligence information to assess and target shipments coming into Canada.

• (1550)

The CBSA continues to successfully intercept illicit tobacco at the Canadian border. A notable success occurred in July 2007, when the agency seized 49,000 cartons of Chinese brand cigarettes from a marine container originating in China. The cigarettes were discovered during a mobile VACIS scan and a physical examination of the container. The seizure occurred following a cooperative joint enforcement effort involving the CBSA and the RCMP in the Greater Toronto Area, and it resulted in the arrest of seven individuals.

Also, in October 2007, more than 15 metric tonnes of fine-cut tobacco, valued at over \$1.5 million, originating in North Carolina and South America, were seized in two separate shipments at two ports of entry in Quebec. The seizures were the result of a joint force operation involving the CBSA, the Integrated Border Enforcement Team, and U.S. Customs and Border Protection agents.

Our largest seizure occurred in December 2007, when four persons in Markham, Ontario, were arrested following a joint CBSA-RCMP enforcement operation. A marine container originating in China arrived containing 51,600 cartons of counterfeit Marlboro brand cigarettes valued at over \$3.6 million. Also in December, at the port of Vancouver, CBSA intercepted another container, again originating in China, with 48,950 cartons of Chinese brand and Canadian and American counterfeit brand cigarettes valued at \$3.4 million. Duties and taxes evaded were approximately \$1.2 million.

In 2001, the Government of Canada introduced the federal tobacco control strategy to improve the health of Canadians by discouraging tobacco consumption. Health Canada is the lead agency in this initiative, and the CBSA is a partner along with the RCMP and other partners seated at this table.

In support of furthering cooperation between domestic and international enforcement partners, I am pleased to say that the CBSA recently co-hosted, along with the partners at this table, the sixth annual Canada/U.S. Joint Tobacco Diversion Workshop. Participants met over three days to discuss tobacco diversion issues. This year's attendees included representatives from various U.S. and Canadian federal agencies and provincial ministries, as well as international guests from the World Customs Organization, the Australian Customs Service, French customs, Her Majesty's Revenue and Customs, the U.K. Border Agency, the New Zealand Customs Service, and the OLAF.

Through the collaborative partnership of the Canadian host agencies—CBSA, the RCMP, CRA—and our American counterparts at the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Alcohol and Tobacco Tax and Trade Bureau, this workshop has become an important forum for exchanging intelligence between enforcement partners, for the building of international relationships, and for the development of both strategic and technical intelligence related to the domestic and international contraband tobacco market.

While the above successes are noteworthy, we at the CBSA recognize our contraband tobacco market continues to be of great concern, and I can assure you, Mr. Chairman, that the CBSA continues to address the contraband tobacco market as an agency, in cooperation with our partners.

• (1555)

The Vice-Chair (Hon. Roy Cullen): Thank you very much, Mr. Quartermain.

Now we'll start with a round of questions. The first round, seven minutes per questioner, will start with Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

I see this document that we just received. Not to be critical of the presenters from the RCMP, but this suddenly appears on the day of this hearing. Call me an unbeliever, but I just find that not very persuasive, and I don't know how much went into printing this.

Here are my questions. We know there is contraband smuggled into the country and manufactured in this country. I'd like to know what percentage of the total tobacco trade is contraband, what part of that is smuggled into the country, what part of that is manufactured in the country, where it is manufactured, and why you have not done anything about it—about the manufactured part.

The Vice-Chair (Hon. Roy Cullen): Who would like to start with that? Monsieur Cabana.

Hon. Ujjal Dosanjh: It's the RCMP.

C/Supt Mike Cabana: Certainly, sir. I'm afraid that in terms of being able to provide you with percentages of contraband tobacco in Canada that originates from manufacturers here in the country compared to what originates in the U.S., I'm not in a position to provide you with those statistics. Those statistics would be based on seizure levels and would be—this is my personal opinion—somewhat speculative.

Hon. Ujjal Dosanjh: I am assuming that there are manufacturers within this country that may be engaging in illicit trade as well. I am assuming that. You can correct me if I am wrong.

C/Supt Mike Cabana: No. You're absolutely right.

Hon. Ujjal Dosanjh: I am also assuming that there are unlicensed manufacturers. I'd like to know both what you are doing with respect to the licensed manufacturers that are engaging in this and where the unlicensed manufacturers are located, and what have you done about them?

C/Supt Mike Cabana: As for unlicensed manufacturers that we have identified to date in the Akwesasne territory, we believe that between 11 and 13 factories exist. In the Kahnawake territory, there would be 11. In the Six Nations, there would be seven.

Hon. Ujjal Dosanjh: And these are unlicensed?

C/Supt Mike Cabana: These are unlicensed premises.

Hon. Ujjal Dosanjh: Are there any other unlicensed premises off reserves in this area?

C/Supt Mike Cabana: There may very well be, sir. This is based on—

Hon. Ujjal Dosanjh: But you're not aware of them.

C/Supt Mike Cabana: This is based on the intelligence that we have.

Hon. Ujjal Dosanjh: And tell me, what steps have you taken within the last six months to deal with the unlicensed manufacturers that you know of, which is 24 plus seven; that's 31.

C/Supt Mike Cabana: Yes, sir. Actually, a number of steps have been taken, one of which.... And I realize you might find today's release of the tobacco strategy questionable. The timing of the release of this strategy was not really—

Hon. Ujjal Dosanjh: It wasn't you. I understand that.

C/Supt Mike Cabana: It was released today.

The strategy, though, is something we've been working at for quite some time. This strategy has been in development for well over a year. There has been extensive consultation. So this is more on the preventative side; this is sort of the way forward.

What we've been doing, aside from developing a strategy and doing the consultation, is basically analyzing the intelligence that we have and trying to identify the criminal organizations that are actually operating these facilities that are located within the different native communities. The vast majority—and I guess this will partly answer your original question—of contraband tobacco that is seized across Canada originates from central Canada and is manufactured on the U.S. side of the border in licensed and unlicensed manufacturing facilities.

We're enhancing the cooperation that already exists between the Canadian agencies, which are represented here at the table, to make sure the intelligence is fully shared and that the targeting is done at the appropriate level.

• (1600)

Hon. Ujjal Dosanjh: I understand. That's what's coming across the border, and you're integrating your efforts, coordinating them.

What are you doing with respect to the 31 locations that are within Canada, within your own jurisdiction? Why have you not enforced the law?

C/Supt Mike Cabana: Well, I would beg to differ on that point, sir. A number of projects have actually come to fruition over the past year, targeting some of those facilities.

Hon. Ujjal Dosanjh: How many have you put out of business in the last two years?

C/Supt Mike Cabana: Actual facilities?

Hon. Ujjal Dosanjh: Yes.

C/Supt Mike Cabana: I'm afraid I can't provide you with that answer.

Hon. Ujjal Dosanjh: Is it none, or one?

C/Supt Mike Cabana: The facilities themselves? I don't know, sir. I don't know.

But what I can tell you is that there have been quite a few individuals charged. There have been a total of 918 people charged in the course of the past two years. The individuals who have been charged—and you have to understand, we focus on targeting the highest level of the organizations—

Hon. Ujjal Dosanjh: Absolutely.

C/Supt Mike Cabana: So whether the manufacturers are still operating.... I know some of them are operating and I would suggest to you, sir, that probably the majority of them are operating.

Hon. Ujjal Dosanjh: You have known this information about organized crime being part of all of this, either in terms of the smuggling of manufactured stuff elsewhere and otherwise. And no reflection on you individually, but I just want to tell you that as a former attorney general for British Columbia, I've been very proud of the RCMP. They serve much of British Columbia. But I am actually flabbergasted with the lack of action on this file that all of the law enforcement agencies—none excluded—have exhibited. I don't know what else to say.

C/Supt Mike Cabana: In response to your comment, sir, I would suggest to this honourable committee that we have to recognize that the agencies that are sitting at the table here, over the past many years, have been focused on trying to eradicate the problem. If you look at the seizure levels over the past several years, seizures are increasing exponentially. It's clear the problem is not getting resolved.

This is why the document you have in front of you, which was distributed.... That's why we now recognize that enforcement alone is not the solution to the contraband tobacco problem.

Hon. Ujjal Dosanjh: And what is?

C/Supt Mike Cabana: It's a combination, sir, of different initiatives. It's education within the communities and it's also enforcement and regulation of the industry.

The Vice-Chair (Hon. Roy Cullen): Thank you very much, Mr. Dosanjh.

Madam Thäi Thi Lac, *s'il vous plait*.

[Translation]

Mrs. Ève-Mary Thäi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good afternoon. I would like to thank the witnesses for being here today to talk about the smuggling that is happening in Quebec and across Canada.

Most of my questions are for Mr. Cabana. You said that over 900 people have been prosecuted. When prosecuting people for tobacco smuggling, the Crown prosecutor can choose to proceed by summary conviction or indictment. Do you have any statistics on the number of people who were charged on summary conviction, and those who were indicted?

You said that you target the upper levels of organizations. We know that no business can operate without clients or buyers. I agree that you do need to dismantle the upper levels of these organizations. But are any consumers ever brought before the courts? Are there any penalties that dissuade consumers from buying illegal tobacco products?

C/Supt Mike Cabana: Thank you for that very good question.

Unfortunately, I don't have the figures on how many people have been brought before the courts on summary conviction or indictment. However, we can find those figures and convey them to you.

Ms. Ève-Mary Thäi Thi Lac: Thank you.

C/Supt Mike Cabana: We are focusing on the upper levels of criminal organizations. If most of our people were to focus on the lower levels, the impact on the organizations would be minimal. However, we do recognize that a balanced approach is needed.

In answer to your question, I can say that some customers who support the industry are targeted strategically, so that we can develop intelligence and be in a position to identify the upper levels of the organization.

•(1605)

Mrs. Ève-Mary Thäi Thi Lac: In the early 1990s, there was a surge in tobacco smuggling. I studied criminology, and I remember that a major awareness campaign was launched to help people

understand that if they were caught smuggling or carrying smuggled products in their vehicles, the products would be seized. The purpose of that measure was to dissuade people from carrying three or four cartons or even whole boxes full of cigarettes for resale. The point was to hurt the organization. There were severe penalties in place, to make it perhaps more difficult to recruit people.

If smugglers or others engaged in smuggling are brought before the courts on summary conviction, doesn't that send a message that it's no more serious than a fine for going through a red light or speeding? Since that is not necessarily a criminal act, don't we trivialize the fact that tobacco smuggling is wrong?

C/Supt Mike Cabana: Indeed. However, one must understand that the decisions to proceed by summary conviction or indictment must be based on evidence available to the Crown attorney at that time. I do not think that I'm able to speak for justice. However, you are absolutely right with respect to the deterrent effect of certain police action against these clients. Last year, in 2007, we seized 257 vehicles, some of which belonged to these clients.

Another feature that must be acknowledged is that during the 1990s, crime associated with contraband tobacco was not at the level we are experiencing today. During the 1990s, as you said, much emphasis was placed on clients. Through an analysis of the causes, we realized that the majority of people arrested for possession of contraband goods, were not paying their fines. This placed an additional burden on the judicial system and had a very minimum impact on an organization's operation.

Mrs. Ève-Mary Thäi Thi Lac: All right.

Earlier, in response to Mr. Dosanjh's question, you said that you did not have any statistics on the closing down of contraband activities, but that you were working very hard to target the upper levels of these organizations by shutting down illegal factories and warehouses.

Do you find that your police workforce is sufficient to carry out this work? Do you have enough police officers to undertake these investigations?

•(1610)

C/Supt Mike Cabana: That is another excellent question.

I truly doubt that there would one single agency appearing before you today which would claim having sufficient resources to deal with the problem. However, it must be recognized that currently... I will give you an example. In Ontario and in Quebec, there are 299 RCMP investigators assigned to the customs and excise units. Of this figure, not each and every single investigator is assigned to contraband tobacco. Nonetheless, the methodology used to target organization confirms that investigators working in the Customs and Excise Program are not alone in monitoring illicit tobacco trade. Our investigators are integrated in border teams who also investigate the same criminal organizations that are involved in other activities beside contraband tobacco. There are police forces. For example, in Quebec, through the ACCES program, the Sûreté du Québec and the Montréal police force lead many regions of the country in terms of efforts in cracking down on contraband tobacco.

So do we have enough investigators? The RCMP will always take the additional resources that are available; of course it can help. However, the approach has changed over the years. It is now a collaborative approach between all agencies and police forces .

[English]

The Vice-Chair (Hon. Roy Cullen): *Merci beaucoup, madame Thi Lac.*

Thank you, Mr. Cabana.

Joining the table is Staff Sergeant Timothy Ranger from the RCMP Customs and Excise Branch.

Mr. Ranger, did you have anything to add to Mr. Cabana's remarks at this point?

Staff Sergeant Timothy Ranger (RCMP, As an Individual): No, that's fine. Thank you very much.

The Vice-Chair (Hon. Roy Cullen): Thank you.

I'll now go to Ms. Priddy.

Ms. Penny Priddy (Surrey North, NDP): Thank you, Mr. Chair.

Perhaps you could provide me with a little guidance around the questions that we are asking today, given that the minister did a press conference today talking about strategies that will now begin around tobacco enforcement. Are we to consider those to be in our report and we don't ask about those? I'm puzzled. I'm not trying to be flippant here, but thank you for the chuckling, Sue.

We have a number of recommendations here...not recommendations—I'm sorry, ministers don't make recommendations—but things the minister has said will happen. And fair enough, I'm sure those are all quite acceptable things. But do we then exclude those things from our questions, or do we consider that part a done deal and move on to parts that we see are necessary and that aren't necessarily covered here?

The Vice-Chair (Hon. Roy Cullen): Ask any questions you want. You have various materials in front of you to consider or not, so....

Ms. Penny Priddy: No, I understand that I do.

The Vice-Chair (Hon. Roy Cullen): There's nothing cast in stone. Our committee will develop a set of recommendations, presumably.

Ms. Penny Priddy: So the minister's recommendations, or rather his directions, are there for whatever. Okay.

My first question has to do with aboriginal youth. I read somewhere in the background documents that aboriginal youth are more inclined to seek out contraband tobacco than others might be. I'm wondering if the government's cessation of the aboriginal tobacco cessation strategy a year and a half ago has made any difference in that respect—you know, whether you've seen more or less, or whether a cessation program has been started up again that would be of assistance to those youth.

That's to whoever can answer the question; it may best be the RCMP, I'm not sure.

I'm interested in—fascinated by, truly—the amount of tobacco imported into the country from China. This may not be a question

you can answer—if you can't, fair enough—but if we took all of the illegal or contraband tobacco that you know is out there, what percentage would be coming in from China? You were talking about containers full, really. Do you have any sense of how much is coming in? I guess there was a bit from South America, but it primarily seems to be China that you're speaking of. What percentage is coming in from China versus some of the sources that you've named in Canada?

I'd also like to know, when you talk about targeting the head of an organization—I understand the rationale behind that, and fair enough—does that mean the head of the criminal organization or the head of the person who is in charge of the tobacco part?

My last question—I know you probably won't have time to get to all of those, so short answers will be good ones, thank you—is with regard to the criminal organizations that you are talking about. Are any of those criminal organizations that have links outside of Canada? When I say outside of Canada, I think I really mean overseas, or outside of the Americas.

That's for anybody; just pick one up.

• (1615)

C/Supt Mike Cabana: If I may, you have a number of questions built into one.

Ms. Penny Priddy: Yes—and I'm allowed.

C/Supt Mike Cabana: I realize that.

I'll try to go down and address as many of your questions as possible.

Ms. Penny Priddy: Okay, great; aboriginal youth.

C/Supt Mike Cabana: Health should probably handle the question on aboriginal youth. From the RCMP's perspective, to my knowledge, we haven't seen much in terms of changes.

Ms. Penny Priddy: Thank you.

C/Supt Mike Cabana: In terms of contraband from China versus contraband from the U.S. versus contraband from Canada, as with a previous question, unfortunately I cannot provide you with numbers. Honestly, I personally have a problem with statistics. I find them extremely subjective.

The reality, though, is that the majority of the contraband tobacco we have in Canada originates from the U.S. Exactly what the percentage breakdown is—

Ms. Penny Priddy: No, no, I didn't think you could give me the specifics. It's just that in the CBSA report, it sure seemed like a lot was coming in from China.

C/Supt Mike Cabana: It's a trend....

Do you want to take that?

Mr. David Quartermain: Yes, I can answer that.

In 2007 we did seize 268,754 cartons, of which 257,531 were from China.

Ms. Penny Priddy: And that was just last year?

Mr. David Quartermain: That was just in the last year.

Ms. Penny Priddy: Right.

Continue.

C/Supt Mike Cabana: In terms of heads of organizations, I would respond that it's both. Ultimately our aim is to arrest and bring to justice the head of the organization, not necessarily the person who is managing whatever manufacturer is operating in Canada or in the U.S. As I explained earlier, it's a balanced approach. We are targeting the different levels of the organization, but ultimately we realize that if we don't interdict the person who is actually responsible for the operation, the operation will continue.

Ms. Penny Priddy: Did people who were charged last year go to jail? I know about fines, that we fine and do whatever, and I've heard people say that people will pay their fines anyway. Did anybody go to jail as a result of a charge?

C/Supt Mike Cabana: Yes, people went to jail as a result of charges. I don't have—

Ms. Penny Priddy: I'm not asking if it was six or whether it was seven, but maybe if it was 10 or 300.

C/Supt Mike Cabana: Ma'am, in terms of sentencing, there's a wide range of sentences, depending on the jurisdictions, depending on the circumstances of the case. It can range anywhere from a fine of \$500 to \$1 million and, I believe, up to five years in jail.

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. Cabana and Ms. Priddy.

I'll go now to Mr. MacKenzie.

Mr. Dave MacKenzie: Thank you, Mr. Chair, and thank you to the panel.

I think it's important that we focus on going forward. I think we can always look back and see some shortcomings. Certainly that's been true of most of us, including some organizations. I think the problem has now obviously developed to the point where more and more people are well aware of it. So as we go forward, how do we put an end to it?

Mr. Bertrand, I know in your opening statement you indicated that part of your role is to investigate prior to issuing the licences and so on. How often do your inspectors make site visits to those sites that you indicated are the aboriginal sites? Are they able to make a thorough inspection of the facilities and the books of those operations?

• (1620)

Mr. Pierre Bertrand: Thank you for your question, sir.

As I mentioned in my introductory remarks, we do have an audit program that deals with the licensees. We monitor and audit the legal part of the business.

Basically, we have two parts to our audit program. In one part we go in and do full audits. Through our funding that we received through the tobacco compliance strategy in budget 2005, every licensee, on reserve and off reserve, receives a full audit once a year.

We also have what we call regulatory visits. We can visit in order to check on the inventory. We can be called and we will examine a container that is being loaded, and seal it prior to it being shipped. On average, every licensee will receive four visits per year.

To answer a previous question about what we do when we find the records on imports or purchases of tobacco do not match production, we raise assessments for the tax not paid.

Mr. Dave MacKenzie: So you raise assessments, but there's no penalty other than the assessment they would then pay. They end up paying that amount—what they should have paid—as opposed to a penalty or being shutting down.

Mr. Pierre Bertrand: There are penalties and interest attached to the amount of tax that is owed, according to the penalty and interest regime in the legislation. We do make sure that when the licence comes up.... Depending on the seriousness, we do have the possibility of revoking or suspending licences.

Mr. Dave MacKenzie: That's good.

When you do your audits, does that also include audits on the tubes they have purchased and the material for the filters to correlate to the tobacco they...?

Mr. Phil McLester (Director, Excise Duties and Taxes Division, Excise and GST/HST Rulings Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency): If I might, we certainly look into the amount of raw leaf purchased relative to how much was manufactured, how many tobacco products. As well, we look at imports of raw leaf to verify if it's considered appropriate for the amount of production on which excise duty was paid. If we deem that to be considerably different from what should have been paid, we will raise deemed assessments.

Mr. Dave MacKenzie: Do you match the raw tobacco to the amount of tubes purchased?

Mr. Phil McLester: No, we don't actually match it to the tubes purchased, but we do monitor the amount of products that go into manufacturing tobacco. We monitor equipment, the raw leaf, the paper, the filter, that sort of thing. We have not yet started correlating filter material and paper with tobacco production.

Mr. Dave MacKenzie: As we go forward, might that be one of the solutions? Obviously it doesn't apply to production somewhere other than in Canada, but in Canada alone might that be part of a solution to the problem?

Mr. Phil McLester: One aspect I would mention is the recent proposed budget item for tobacco manufacturing equipment. That will allow us to now require that records be given to us. Of course, that affects the possession and import of that equipment, which means the less equipment that is available to illicit manufacturing, the less contraband we'll see.

Mr. Dave MacKenzie: Chief Superintendent, as we start to look at the bigger picture, sometimes we see a focus on the aboriginal community. It certainly seems that there is some connection, but it would seem to me that in many cases they may only be the enablers. The beneficiary of all of this is actually organized crime. In the U.S., they've indicated that it goes beyond organized crime to other offshore entities.

We've heard from some folks that if you have tobacco being smuggled, the same pipelines are being used for drugs, guns, and human smuggling. In most common-sense minds, all of those things tend to go back to organized crime. Could you comment on this philosophy from a law enforcement perspective? Is it a likely connection?

•(1625)

C/Supt Mike Cabana: Absolutely, sir. What you've just explained is exactly what we've been observing over the past several years.

It's important to understand that a lot of the organizations, the heads of the organizations who are actually driving these ventures, are not located on native territory; they're operating from major centres in Canada and abroad. Some of the funds that are being generated from these activities are also being funnelled abroad or to the organization itself in the major centres. Those organizations are in business for one thing—to make money. This is one of their ventures. You're absolutely right, if they've created a pipeline that enables them to bring the contraband into Canada, they're using the same pipeline for other ventures.

The best example of that would be the Shiprider program that was implemented between August and September of last year. During these two months, there were 40,000 cartons of cigarettes seized, together with fine-cut tobacco and marijuana. Clearly it is not a one-commodity type of organization.

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. MacKenzie.

Ms. Barnes.

Hon. Sue Barnes: Thank you for attending today.

Was the Shiprider program a pilot? Or was it something that's going to be continued?

C/Supt Mike Cabana: It was a pilot. A number of pilots were implemented, culminating in August 2007 with a two-month pilot project that was held in the Cornwall area and on the west coast.

Hon. Sue Barnes: This was a joint project—U.S. Coast Guard and RCMP. I take it that since they were in the same vessels they would be on both sides of the border, going in and out of the sovereignty of the United States and Canada. Is that correct?

C/Supt Mike Cabana: That's correct. They received cross-designation to be able to operate on both sides of the border.

Hon. Sue Barnes: Is the U.S. Coast Guard an armed force?

C/Supt Mike Cabana: Yes.

Hon. Sue Barnes: So both the RCMP and the U.S. Coast Guard would be armed, and the vessels would be armed as well.

What authority is there for the U.S. Coast Guard bearing arms inside Canada's sovereign territory? What was done to allow that?

C/Supt Mike Cabana: The pilot project was implemented following a diplomatic note between the two countries, and with administrative forbearance on some of the acts in place on both sides of the border. As to the carriage of firearms, the U.S. Coast Guard personnel were cross-designated under the RCMP Act as supernumerary constables. When they were operating on Canadian soil, they were operating under the direction and supervision of Canadian officers.

Hon. Sue Barnes: So an exception was made to the rule covering another sovereign country's ability to carry firearms in Canada.

C/Supt Mike Cabana: It was made as a proof of concept, to be able to see whether—

Hon. Sue Barnes: But it wasn't brought through Parliament. Under what authority was it done?

C/Supt Mike Cabana: The appointment was done under the RCMP Act.

Hon. Sue Barnes: Okay. Is that because it was an exception? If this type of operation were continued in future, would it be a continuing exception?

C/Supt Mike Cabana: No.

Hon. Sue Barnes: Or would you do something legislatively, so that the rest of Canadians would understand this?

C/Supt Mike Cabana: Exactly, and that was the purpose: to see if there would be a benefit in going down that road. The proof of concept actually proved to be quite beneficial in affecting the criminality in the area. As a result of that, diplomatic notes were exchanged earlier this year between the two countries. The official negotiation of treaty agreements between the two countries commenced in February-March of this year for that specific purpose, to develop a legal framework so that if we have any further initiatives such as Shiprider, they are done under the context of appropriate laws.

•(1630)

Hon. Sue Barnes: I would hope that is done openly the next time and not like this, as an exception to our laws in Canada. I'll put that on the record.

For the second question, I'll just do a follow-up with respect to the precursors for the materials to produce illicit tobacco products. What controls will be on the paper and the filters for the production? And how will you manage that control system?

Mr. Phil McLester: I'm sorry, but someone's coughing and I missed part of your question. Would you re-ask it?

Hon. Sue Barnes: Okay. I'm talking about the raw material to create illicit tobacco products. You talked about the machinery. I'd like to know what control you would have on paper and filters, because there don't seem to be control relationships right now in what's in the works, what's planned. I don't think the budget 2008 does cover that, so tell me what you're planning to do.

Mr. Phil McLester: There is nothing in the Excise Act of 2001 that gives the Canada Revenue Agency the right to deal with those products in any way. In all honesty too, some of these products are multipurpose, and determining what filter tool may be used and whether it's air filters, car filters, or cigarette filters would be difficult. We don't have responsibility for that at this time.

Hon. Sue Barnes: Thank you. I think that is a control mechanism that could be pursued, that might be effective, just as if you have the raw product of raw leaf and you're tallying that. These are obviously tools of the trade.

Thank you. I'm sure my five minutes are up.

The Vice-Chair (Hon. Roy Cullen): Just about. Thank you, Ms. Barnes.

Now, Monsieur Bouchard, *s'il vous plaît*.

[Translation]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair.

Thanks to you too for appearing before us this afternoon. My question is for both Mr. Cabana and the Canada Revenue Agency representative.

It is my understanding that it is nearly impossible to quantify the proportion of illegally sold tobacco products that come from China, the United States, South America and Canada. Right now, the illegal tobacco product trade is at a significant high.

Do the existing legislation and regulations and your procedures give you the necessary tools to put an end, or at least reduce that contraband trade?

C/Supt Mike Cabana: Thank you very much, Mr. Bouchard.

Currently, to deal with the problem, several tools make up the arsenal that is at the disposal of agencies responsible for law enforcement. That being said, I would not go as far as to say that we have all of the tools necessary to crack down on criminal organizations' ability to adjust to the initiatives put in place by governments and police agencies.

Various laws and tools at our disposal enable us to deal with criminal organizations at the root of the problem. However, the agencies represented here today have the duty to continue reviewing the problem. We've discussed and suggested precursors; this is another possibility. We cannot close the door saying that we have everything we need.

Mr. Robert Bouchard: As I was listening to the list of seizures and where they were made, I wondered how you would qualify the current situation. Do we have control of the situation, or have we lost it? Are we, or are we not completely overwhelmed by events? My question is for Mr. Cabana and the representatives from Revenue Canada.

C/Supt Mike Cabana: Let's just say that I'm not appearing before this committee today to state that we have control over the situation and that there is no problem. Yet, I would not say that we have lost control of this particular situation. There is some distance between the two extremes. The problem is on the rise, which been confirmed by the number of tobacco seizures made in recent years. The

document announced by the minister today is an attempt at redeploying efforts specifically with a view of controlling the problem of contraband tobacco.

• (1635)

Mr. Robert Bouchard: My last question is for the Canada Revenue Agency.

In your document, you say that in 2003-2004, accise revenue totalled \$3.35 billion, but that there were \$2.492 billion in 2006-2007. I've calculated the difference, the result indicates that the agency has lost \$868 million.

Based on the difference between these two periods, have you made more detailed calculation of the losses incurred by the agency?

Mr. Pierre Bertrand: With respect to the losses and the gap in revenue for these two years, there was no study conducted to determine whether this was a result of Health Canada's policy on tobacco use or the fact that contraband tobacco had become the prevailing problem. We have no statistics on this matter.

The Vice-Chair (Hon. Roy Cullen): Thank you very much, Mr. Bouchard.

[English]

Mr. Brown, please.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you very much, Chair.

I want to thank our witnesses for being here today. You all represent quite a number of agencies and departments that are committed to dealing with this problem.

I represent the border riding of Leeds—Grenville. It has two border crossings, at the Thousand Islands and at Johnstown, and I know there are some issues. We regularly hear of arrests made at the border and in the riding due to contraband tobacco, so I'm familiar with this problem.

The areas I want to explore a little are those of integration, cooperation, and trying to solve the problem between the agencies. Maybe we can hear about how there's coordination between the RCMP, Canada Revenue Agency, and CBSA.

C/Supt Mike Cabana: Is this open to anybody?

Mr. Gord Brown: Yes. Tell us more about how our government agencies are working together to solve the problem.

C/Supt Mike Cabana: Being from a border area, you realize that the relationship between CBSA and the RCMP has been long-standing; it actually precedes the creation of CBSA by a long time. That relationship is probably better now than it's ever been. As my colleague here mentioned, we are both involved in coordination of the tobacco diversion workshops that are taking place. This is the type of integration we're doing from a training and an operational perspective, keeping in mind the distinct and complementary mandates that both agencies have.

CBSA is part of the integrated border enforcement team, which I'm sure you're very familiar with. There are a number of integrated initiatives within the RCMP. You will find that CBSA and the RCMP are working hand in hand. In terms of tobacco, pilot projects that involve both agencies have been implemented in the high-risk area of Cornwall. CBSA participated in the development of the strategy, as part of the body that was consulted. There's also cross-training on the U.S. side.

So I think the relationship, both domestic and international, has been enhanced quite a bit. If you look at the strategy that was tabled again today, you will find that we are recommending this partnership be enhanced even more.

• (1640)

Mr. David Quartermain: I will just add that as an agency we have a number of officers embedded with various joint force operations, including the IBETs. That includes our U.S. partners: U. S. Coast Guard, ICE, and CBP. We have a very tight relationship, and we share information on a daily basis to interdict at ports of entry and in between the ports. We have an excellent working relationship.

As Chief Superintendent Cabana also mentioned, internationally we deal with international partners and international customs organizations and police organizations. We have an excellent working relationship.

C/Supt Mike Cabana: If I may build on what my colleague just said, the partnerships are also not strictly with CBSA. They are also with the policing jurisdictions and the police forces that operate within the aboriginal communities.

Mr. Phil McLester: I will mention that, similar to my colleagues, we participate at the same meetings with them. However, CRA's focus is the legal tobacco market. We try to support their enforcement activities as best we can with information and initiatives. In terms of getting together with our colleagues, we have a great deal in common with the provinces, and we attend quite a few meetings with their organizations, steering committees, and senior revenue officials. We work directly with the provinces to try to align our initiatives on gaining tobacco tax compliance and on monitoring the control of tobacco products in Canada.

Mr. Gord Brown: All right, we've heard quite a bit about how you're working together. Are there any additional ways we could have our agencies working together to help solve the problem?

C/Supt Mike Cabana: That is a very good question, but it's also a very difficult question to answer.

If you look at the agencies represented here at the table, each has, I would say, with the exception of CBSA and the RCMP, a different mandate and different responsibilities. I hate doing this, but if you look at the strategy, there is a recognition that it's not strictly enforcement agencies that have to be coordinated. There are also regulatory agencies, at all levels of government, that have to align their goals. If you are asking me where we could make things better and where we could operate better, it would be through greater integration of this range of agencies, both regulatory and law enforcement.

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. Brown. Thank you very much.

We're now into the third round.

Ms. Brown, do you have any questions?

Ms. Bonnie Brown (Oakville, Lib.): Thank you, Mr. Chairman.

I'm having trouble getting hopeful about stopping this criminal activity, because I keep thinking about things like this. You think about the aboriginal people, and you think that the growing of tobacco and the smoking of tobacco is pretty traditionally tied to their culture, as is the trapping of animals and the making of furs for purchase.

The book says that you can buy 200 cigarettes for \$6. In the regular market, that is about \$80 worth. So I think to myself, suppose I look for a fur coat, and the fur coat is priced at \$8,000, and I hear that out at the Indian reserve they have a shop where I can buy the same coat for \$600. I find it hard to see how they're making much profit. But it's pretty tempting for people, particularly people who want to smoke and can't afford \$80 for their carton and people who would like a fur coat but can't afford \$8,000. The market suggests to me that people are going to go to the places where they can get the best bargains.

So how are you going to stop that? As long as there is a market for these goods, people are going to provide to that market. It seems to me that we're beating our heads against the wall here.

Of course everyone is concerned about the tie-in to other things, like illegal guns and drugs and that sort of thing. But maybe these products are the loss leaders in those shipments, because they are such a bargain. If in fact on an Indian reserve they can manufacture 200 cigarettes, sell them for \$6, and still make a profit, you wonder, as I said jokingly to my partners here, which one is the bandit. Is it the one selling it for \$80 or the one selling it for \$6? If \$6 represents a certain profit, what does \$80 represent?

That's just a different way of looking at it.

• (1645)

The Vice-Chair (Hon. Roy Cullen): Who would like to have a go at that one?

C/Supt Mike Cabana: Madam, it's an excellent observation. The market is price driven, there's no doubt. This is what's attracting people to acquire this kind of tobacco. There's absolutely no doubt there. This is why we believe that enforcement alone is not the answer. There has to be a very significant education piece so that people understand that there's a collateral cost to funding this type of enterprise in terms of the organized criminality that is actually behind it. This is why, also, the same aboriginal communities that, to some extent, derive a certain benefit from these ventures are also victimized. These aboriginal communities recognize that. They recognize the impact and the other collateral activities that these organizations are bringing to their communities.

Ms. Bonnie Brown: When we brought in prohibition, for example, in the thirties, we criminalized something that prior to that had been not criminalized. The minute we criminalized it we drove the prices up and we had shipments of guns coming across the Great Lakes with the boatloads of gin. It makes me wonder whether we should make all this criminal or just let it happen.

C/Supt Mike Cabana: This is a question that is much broader than I would be able to answer, because there are health and societal aspects to it, but you're absolutely right.

Ms. Bonnie Brown: Yes, but we let people smoke even though there is a negative health effect. We let them pay the \$80, which represents a very good profit for the legitimate companies and a big, big, big profit for government. There are many layers here. It isn't just simply that this is criminal, we have to catch them, they're all bad. There are all kinds of facets to this, as to what society decides to do.

I realize you have to enforce the law, but for us, we have to think about these other things as well.

Thank you.

The Vice-Chair (Hon. Roy Cullen): Thank you, Ms. Brown.

I'll go now to Mr. Norlock.

Are you going to share with Mr. MacKenzie?

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Yes. Mr. MacKenzie will go first.

Mr. Dave MacKenzie: I think my friend has very much oversimplified the whole issue. The very first part is that legitimate manufacturers have costs that organized crime and other groups do not have when it comes to the price of cigarettes. One of them, of course, is in taxes and in other areas.

There are not a lot of \$6 packs. There's a lot of \$12 baggies out there, and that's probably where the profit is, far more than the \$6 one. If for one minute we say to society, it's okay because you want to smoke and you want to smoke cheaply, then what's the difference between that and saying I want to have a Lamborghini so a stolen one, cheaper, is okay? And it's not okay. That's the bad message here. It's okay if you want to smoke and you smoke cheaply, but there are a whole lot of factors that end up in that \$80 carton of cigarettes. We should be concerned about that kind of philosophy.

Mr. Rick Norlock: I'd like to carry on with that philosophical outlook. There would be nothing illegal because everybody would be free to choose. I know that's not what Ms. Brown intended to say.

My question comes down to this. I suppose there could be some health components, but I think we need to understand. I think I do, but I just need you to help me here. I need to know what, in your opinion, is the difference between contraband cigarettes or tobacco and counterfeit tobacco. I don't know what agency is vested with that. I suspect CRA, because if you're going to tax it you have to know what you're taxing.

So we'll start with them, and then perhaps I can go to the RCMP.

When you're giving the difference, maybe you could talk about things that in the trade are called...how do you cut the tobacco? What do you cut it with when it's not the good stuff? Is it cut with sawdust, or whatever?

I think, Mr. McLester, that's your area.

• (1650)

Mr. Phil McLester: Actually I don't know that I'd want to take credit for knowing a great deal about contraband tobacco products

since we generally treat the legal tobacco market. I can say that the counterfeit cigarettes are just a portion of the contraband, as we've heard from the members of the enforcement agencies today. It is a production. There are the baggies, which are the 100% complete contraband, and of course there's under-reporting of legal tobacco products. So they all take up a portion of the contraband that you mention.

I would defer to my colleagues to give you that definition.

Mr. David Quartermain: For our purposes tobacco is a legal commodity. It's only considered contraband when it's diverted from the legal market to illegal distribution. If individuals are declaring it as they enter the country, it's legal, but when it's diverted from that declaration, then it becomes contraband. Counterfeit is when it's manufactured outside the regular process, and you get consistently different byproducts.

C/Supt Mike Cabana: I absolutely agree with my colleague.

Mr. Rick Norlock: When you seize these things, there's no analysis done?

Mr. David Quartermain: The CBSA has a counterfeit detection—

Mr. Rick Norlock: If you're going to do the analysis, maybe you can share what some of those analyses have shown.

Mr. David Quartermain: For the agency's purposes, we've developed a counterfeit detection kit. When we discover tobacco, we can test it and determine if it is counterfeit or not. We do share that kit with both our domestic and international partners.

Mr. Rick Norlock: If you came across cigarettes that could be killing people, what would you do?

Mr. David Quartermain: We can't go to that level; it would obviously have to be sent to a lab. But for the purposes of doing a quick determination, we have a kit available to do that sort of analysis.

Mr. Rick Norlock: I think there needs to be a message from somebody. I guess we had better find out from this committee, and we need to be able to determine it. It's more than a tax issue. I know we're dealing with issues and we're purposely not dealing with the health issue. I think the elephant is in the room. If you're smoking something that can kill you because it's been sprayed with some terrible chemical or because somebody is cutting it with some terrible material that could cause you more harm than just the tobacco itself—that is part of the reason I asked the question. Consumers who buy the cheap cigarettes may enjoy a cheap cigarette, but they could be getting those extra nails in the coffin a little more quickly. That's why I asked about the analysis and what the difference was.

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. Norlock.

In a moment we're going to go to a fourth round, but with committee members' indulgence, I have a question or two myself.

Mr. Trueman has been sitting there like the Maytag repairman. I know that Finance Canada plays an integral role in the policy architecture around these sorts of issues.

Mr. Trueman, you heard the presentation from the Canada Revenue Agency. They talk about this \$850 million decline and then they say this relates specifically to legitimate tobacco manufacturing production. I'm assuming that's because there might be unlicensed, illegitimate ones that existed before that period and still exist. They're not really commenting on contraband, but just through the moccasin telegraph I've heard numbers. I know Finance has some practices, but I've heard there might be forgone revenues of \$1 billion to \$3 billion a year as a result of contraband.

Do you have any estimates, sir?

Mr. Geoff Trueman (Chief, Air Travelers Security Charge, Sales Tax Division, Tax Policy Branch, Department of Finance): We do not have an estimate at this time of federal revenue losses as a result of contraband activity. Certainly what you can see in the public accounts is a decline. It hit a peak of \$3.5 billion in 2003-04, and then over the next four years we've seen it decline to roughly \$2.5 billion. The question there is, is that decline attributable, certainly some part of it, to contraband activity and is some of it attributable to long-term declines in smoking, consistent with what we see in consumption surveys?

Trying to evaluate both those items is a difficult process. By its very nature, contraband activity is underground, black market activity. While we have reports on seizures, we can't necessarily extrapolate and come up with a level of contraband activity that would be reliable or verifiable. Similarly on the consumption side, we can look at long-term trends, but again, survey data will not always be 100% accurate, by its very nature.

I think what we've tried to do is monitor the contraband situation, look at the type of contraband that is occurring, and make changes to the excise tax structure that reflect that and that give the compliance and enforcement agencies the tools they need.

• (1655)

The Vice-Chair (Hon. Roy Cullen): With respect, sir, to the reporting period in this CRA brief, from 2003-04 to 2006-07, if you have unlicensed, illegal manufacturing outside those periods then they'd clearly be part of that contraband equation. I know certainly from my experience that the Minister of Finance would sometimes ask the officials how much revenue is forgone. You're saying that Finance Canada has not done that recently?

Mr. Geoff Trueman: We have not done that in my time on the file, no.

The Vice-Chair (Hon. Roy Cullen): I have a quick question.

Mr. McLester, we talked about tracking the tobacco equipment, which you have the mandate and the authority to do now. There was a question from a couple of members about filters and papers. You don't have the mandate now. I gather that could be changed legislatively, if I understood you correctly. You made a comment that papers and filters could be used for a variety of purposes. That puzzled me, because if I was looking at the market for cigarette papers and filters, I can think of small tobacconists—because some people still roll their own—I can think of legitimate cigarette manufacturers, and I can think of unlicensed and illegal. Beyond that, what would these papers and filters be used for?

Mr. Phil McLester: I don't want to put myself forward as an expert with respect to these types of materials, Mr. Chair, but we

have investigated this a little bit and we are aware that acetate tow, which is used for filters in tobacco products, don't come as filters, they come in huge packages that could be used and cut to any length, any size, and used for other filter media. Beyond that, of course, as you mentioned, we do not have these goods as our responsibility under the Excise Act, 2001, as we do with raw leaf and now with equipment, if this passed.

I can't say it would lead us nowhere or that it would be impossible, but from what we have gleaned from our discussions, the goods are multi-use.

The Vice-Chair (Hon. Roy Cullen): Thank you.

Ms. Priddy.

Ms. Penny Priddy: Thank you, Mr. Chair.

I had to check a number because I wasn't sure how many there were in B.C. Maybe somebody could have a quick conversation with me about tax treaties. I suppose that's probably Revenue Canada. I think there are 11 bands in British Columbia that have a tax treaty with the federal government, where they charge the additional first nations tax. They keep it for development. It's equal to the GST, which isn't charged on it anyway. It seems to be having success in British Columbia, and I wonder if people could comment on the potential of that for use in other places.

Mr. Geoff Trueman: Actually, my colleague Ken Medd is here. He deals exclusively in that FNGST, working with first nations governments, so I'll pass to him for that issue.

Ms. Penny Priddy: I'm sorry, I didn't mean to make you feel like the Maytag man.

Mr. Geoff Trueman: Not at all.

The Vice-Chair (Hon. Roy Cullen): Sir, could you identify yourself, your position title and department?

• (1700)

Mr. Ken Medd (Senior Tax Policy Officer, Aboriginal Tax Policy Section, Department of Finance): I'd be happy to.

My name is Ken Medd. I work for the aboriginal tax policy section of the Department of Finance.

Our unit is quite a small unit. We're responsible for negotiating tax-related provisions of treaties and land claims and self-government agreements. My work for the past few years has been focused on first nations goods and services tax agreements.

The Vice-Chair (Hon. Roy Cullen): Thank you.

Continue.

Ms. Penny Priddy: My question was, do the tax treaties I've seen, which I think amount to only about 11 but nevertheless seem to be successful—which is the charging of a first nations tax instead of GST, keeping it for development—do they have some potential for extension?

Mr. Ken Medd: Yes, I believe so.

The origins of this set of arrangements we have with first nations goes back to about 1997, where individual first nations came forward and said they would like to start charging their own sales tax on sales on reserve of, generally, tobacco or fuel products or alcohol. Beginning in 2003, we put in place federal legislation to support a first nations goods and services tax, whereby first nations could enact laws imposing a tax exactly like the GST on their lands in connection with all sales of taxable products under the GST that take place on reserve.

Currently we have 19 of those arrangements in place, and we're expecting to put another one in place with another British Columbia first nation very shortly. We have a number of them in place with self-governing first nations in the Yukon, Northwest Territories, and Newfoundland and Labrador.

I do see potential here. There is a revenue potential for the first nations that choose to enact those laws and enter into an agreement with Canada for implementing a first nations goods and services tax. From a tax policy perspective, we also achieve somewhat more of a uniform tax landscape across the country where there aren't these pockets of different tax treatment.

Ms. Penny Priddy: Is there any interest outside of the west and the Yukon?

Mr. Ken Medd: Yes, there has been interest outside of Yukon and the west. Just let me check here. We have negotiations that are under way now with some first nations other than B.C. These arrangements are available both for self-governing first nations and for Indian bands that continue to operate primarily under the Indian Act. All of those arrangements with Indian Act bands are in British Columbia at the moment, but we do have negotiations at various stages with first nations in other parts of Canada.

Ms. Penny Priddy: So it's not only a B.C. phenomenon.

Thank you very much.

The Vice-Chair (Hon. Roy Cullen): Thank you, Ms. Priddy.

We've come to the end of the four rounds. We have the witnesses until, I believe, 5:30 p.m. and there are bells at 5:15 p.m.

I have a question for Chief Superintendent Cabana. You talked about how some of the contraband tobacco is coming from offshore, but that some of it is being manufactured in Canada, the bulk of it on reserve. We understand the sensitivity about enforcing laws on reserve. There are, I gather, first nations police forces and there's a lot of coordination between those police forces, provincial police forces—as and when they apply—and the RCMP.

How realistic is it to say—and have you done it to date—that if you become aware that someone is operating illegally on reserve, you'd actually take enforcement action on reserve, working with other law enforcement agencies or whatever you have to do?

C/Supt Mike Cabana: It's actually quite realistic. Again, going back to my earlier comment about the impact this phenomenon is having on the native communities, there's a willingness by these communities to collaborate and participate in some of our enforcement efforts.

I can't speak specifically to the day-to-day type of activities that we have with aboriginal police services, but I can confirm that we're actually very proud of the cooperation that we have and the relationship that we have established with many of the aboriginal law enforcement services. An example would be a partnership that we have with the Akwesasne Mohawk Police Service, which participates full-time in our joint investigative teams, which are comprised of Canadian and American enforcement partners, targeting serious crimes within their territory.

Now, understanding the sensitivities that the tobacco trade has in some of those communities—again, I go back to my earlier comment—we do not target the communities themselves; we target the criminal organizations that have, for a lack of a better term, infiltrated those communities, and in that scope the aboriginal police services are more than happy to collaborate.

• (1705)

The Vice-Chair (Hon. Roy Cullen): Sir, you mentioned that there'd be impacts in the communities—and communities reacting somewhat negatively—but would it also be true that there'd be a large number of vested interests? There is economic activity, there are jobs, there are profits, there is cash, so wouldn't there be competing interests within these aboriginal communities?

C/Supt Mike Cabana: Very much so. Absolutely, there are competing interests, but as I said, there's a realization that the collateral activities are probably more costly than whatever economic activity is generated within the community.

The Vice-Chair (Hon. Roy Cullen): I have one final question and then we'll all go.

The Canadians who are smoking these contraband cigarettes... My understanding is that Canadians like a Virginia-type tobacco product, so that you don't see many Canadians rushing down to the United States to buy Philip Morris or Kools or anything. Maybe some of the snowbirds do, but even the snowbirds—we made provisions in the legislation some time ago to allow, I think, 1.5% of production to accommodate the snowbirds—generally like Virginia tobacco.

So the cigarettes that are being manufactured on reserve—or the tobacco products that are coming in from offshore—are they dealing with a tobacco that Canadians enjoy? Or are they just making anything and putting it into the market, and the market is there; people are buying it?

C/Supt Mike Cabana: As I mentioned earlier, it's price driven. The market is there. Some of the organizations might put a focus on trying to please the customers, but the reality is that the discrepancy in prices is driving the market.

The Vice-Chair (Hon. Roy Cullen): Okay.

Ms. Brown.

Ms. Bonnie Brown: I have one question.

There's a period in your chart showing the apprehensions going way, way down, and then they started to go up again. Is that tied to the lowering of the tax that we did in the nineties?

C/Supt Mike Cabana: If you look at the chart contained in the book, yes, it clearly.... If you look at the taxation levels over the years, you can actually follow the curve. Taxation is clearly one issue, but I would suggest it's not the only issue.

Ms. Bonnie Brown: Well, it looks to me, from this chart, that it is a very serious issue, because the apprehension numbers were up here, and then suddenly they went down here. And now they have started to go up again at the very moment the taxes have gone up again.

So I think the only policy question for us, this being a price-driven commodity, is whether we want to reduce the illegal activity

around it and reduce the appeal to the marketplace of these cheap prices by lowering the federal tax again.

It worked the last time, Mr. Chair.

The Vice-Chair (Hon. Roy Cullen): Well, I can tell you on good authority that when the government increased those taxes during our mandate, there was a very real recognition that it would create more opportunities and more risk for contraband.

Ms. Bonnie Brown: Exactly.

The Vice-Chair (Hon. Roy Cullen): The idea or objective, I guess, was to try to deal with the hazards of smoking and other matters. But I'm sure all of this will be discussed by the committee.

I'd like to thank all the witnesses for coming today. Thank you for your very informed presentations.

The meeting is adjourned.

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