

Regulatory Institutions Network

CHOP-CHOP: THE ILLEGAL  
CIGARETTE MARKET IN AUSTRALIA

Gilbert Geis

**Occasional Paper 2**

December 2004



**CHOP-CHOP:  
THE ILLEGAL CIGARETTE MARKET IN AUSTRALIA**

*Gilbert Geis*

Regulatory Institutions Network  
Research School of Social Sciences  
Australian National University  
Canberra ACT 0200

ISBN 0-9756819-1-5 (online)

**RegNet Occasional Paper No 2**  
*August 2004*

© Regulatory Institutions Network, Research School of Social Sciences,  
Australian National University 2004

*National Library of Australia*  
Cataloguing-in-Publication data:

Geis, Gilbert.  
Chop-chop: the illegal cigarette market in Australia

ISBN 0 9756819 1 5

1. Tobacco - Taxation - Australia. 2. Black market - Australia. 3. Taxation - Law and legislation - Australia. 4. Tax administration and procedure - Australia. I. Australian National University. Regulatory Institutions Network. II. Title. (Series: RegNet occasional paper ; 2).

336.27867970994

### **Disclaimer**

This article has been written as part of a series of publications issued from the Regulatory Institutions Network. The views contained in this article are representative of the author only and not of the Australian National University or any funding partner.

## REGNET OCCASIONAL PAPERS

This series of occasional papers is designed to bring the research of the Regulatory Institutions Network to as wide an audience as possible and to promote discussion among researchers, academics and practitioners both nationally and internationally on regulation.

The peer-reviewed occasional papers are selected with three criteria in mind:

- (1) to share knowledge, experience and preliminary findings from research projects;
- (2) to provide an outlet for policy focused research and discussion papers; and
- (3) to give ready access to previews of papers destined for publication in academic journals, edited collections, or research monographs.

Did you know . . .

**it's a crime to  
buy or sell  
illegal tobacco  
(chop chop)?**

Penalties of up to **\$55,000**  
and **2 years jail** apply.

If you have information regarding the buying or selling  
of illegal tobacco, please call **1800 060 062**.

Your confidentiality and privacy are assured.



## Foreword

Let me at once put the report that follows into perspective. I have been in Australia on this assignment only a couple of weeks more than two months. There will be people reading the report who have devoted all or most of their adult life to dealing with tax matters in Australia. And there are others who every working day over several years have grappled with issues concerning taxes and the illicit cigarette market, the so-called 'chop-chop' phenomenon. There is no way I could learn in the brief time I've looked at these matters most of what these people already know very well.

Hopefully, what I have to offer results from the fact that I am an outsider, scrutinising the subject with an outsider's perspective – undoubtedly at times what will prove to be a naïve perspective, but perhaps at other times a fresh one.

Besides, I've brought to this task some fifty years of work on matters of illegal behaviour, most particularly offences that are labelled white-collar crime. I appreciate that longevity need not be an asset: a person can make the same mistakes year after year. But I'd like to believe that along the way I've learned things that might render some of the views and ideas in this report worthwhile.

A penultimate preliminary note: I have been greatly impressed by what the excise tax personnel have accomplished during the rather brief time period since the world of domestic tobacco production became part of their domain. To provide a context for this observation I would note that I tend to be grumpily hypercritical of bureaucracies, including those of the academic world in which I have spent virtually all of my adult life. I had not anticipated being impressed by the decency, dedication, and intelligence of the excise people with whom I worked. But I was, and it is a pleasure to have an opportunity to say so.

It needs noting, finally, that the following material represents my own views and does not necessarily reflect the opinions held either by the Centre for Tax System Integrity at the Australian National University or those of the Australian Taxation Office, both of whom very kindly sponsored my work.

## **Chop-chop: The illegal cigarette market in Australia**

**Gilbert Geis<sup>1</sup>**

The cigarette industry in Australia is unique in several ways that bear significantly on public policy choices. For one thing, Australia appears to be the only nation in the world that licenses tobacco growers. Attending the International Conference on Illicit Tobacco Trade that convened at the United Nations during August 2002, Margot Rushton of the Australian Taxation Office (Tax Office) noted that ‘it was fascinating to find out that we are the only developed country with a licensing regime’ (Global Combat, 2000, p. 1). Australia also concentrates its excise enforcement, which is concerned with domestic production, very heavily on the farmers who raise tobacco. In terms of revenue, the tobacco excise tax currently brings in more than \$5 billion, compared to \$12 billion from petroleum and about \$2-\$3 billion from alcohol, the other two major excise tax revenue producers. Until November 1999, Australia calculated the excise levy in terms of the weight of the tobacco involved, which led the manufacturers to market lighter cigarettes (that is, cigarettes with less than common amounts of tobacco) that they could sell at relatively lower costs than today’s produce, which is taxed by the ‘stick’, that is, by the number of cigarettes. A lighter cigarette generally sold in packets of fifty, though the manufacturers were plagued by ‘loose end’ problems, plug that fell out of the tube.

The combined excise tax and the Goods and Services Tax (GST) account for approximately 70 percent of the cost of cigarettes in Australia, a figure in line with imposts in other first world countries. Excise taxes, it needs noting, are regarded as a particularly painless method to feed a government’s budget (Due, 1994), though Samuel Johnson in his 1755 *Dictionary of the English Language* was moved to define excise as ‘a hateful tax levied upon commodities.’ More pertinent is the musing of the American essayist, Ralph Waldo Emerson:

---

<sup>1</sup> Professor Emeritus, Department of Criminology, Law and Society, University of California, Irvine. He is a former president of the American Society of Criminology and recipient of its Edwin H. Sutherland award for outstanding research.

Was it Bonaparte who said that he found vices very good patriots? He got five million from the love of brandy and he would be glad to know which of the virtues would pay as much. Tobacco and opium have broad backs and will cheerfully carry the load of armies.

There is a great deal of dispute centred on the question of whether the excise tax on cigarettes is the major force that has led to the apparent striking increase in the diversion of tobacco leaf to an illicit domestic market. Take the following situation: A farmer produces 400 bales of tobacco, each bale weighing, on average, 105 kilograms. A bale is taxed \$26 000 (all prices used in this report will be in Australian dollars unless otherwise indicated) while the GST adds another ten percent to that amount. The farmer is generating \$116 million in revenue for the government. Put another way, a grower receives approximately \$7 per kilogram, while the tax is approximately \$287 for that kilogram. The excise tax also can be raised in February and August in line with changes in the Consumer Price Index, a trigger mechanism that can lead to speculation and hoarding prior to the usual upward price movement.<sup>2</sup> Regulations to control speculation mandate that manufacturers must adhere to the selling patterns established in the period more than three months before a new CPI announcement. In addition, the manufacturers have a tendency to add a bit more than the additional tax levy to the price of their product.

Manufacturers pay growers about \$600 for a bale of tobacco, a price that has stayed consistent for many years despite inflation and the decreasing exchange strength of the Australian dollar which has made overseas purchases of necessities such as fertiliser increasingly more expensive. If the grower sells just six bales to a chop-chop distributor who will pay in the vicinity of \$3000 to \$4000 each, the farmer stands to increase his income by \$18 000 to \$24 000 tax-free dollars, an amount equal to or more than what many growers are said to net on their entire year's crop. (Tobacco Industry Group, 2002b, p. 5).

---

<sup>2</sup> The International Monetary Fund recommendation that no additional (or reduced) excise tax be placed on tobacco unless the CPI has changed by five percent seems a reasonable idea (Sergeant, ndi, p. 27).

While governments understandably would like to maximise tax revenue, at least to the point where they can get away with it politically, public health authorities are intent on reducing the amount of smoking. Questions are numerous, satisfactory answers much more difficult to locate. We can note but a few matters that will recur in other segments of this report: If the excise tax is reduced will fewer people deal in the illicit tobacco market? Will illicit tobacco smokers move to sanctioned brands or will they stop smoking because the illicit product is less available? Will government revenue go up or down as a consequence of such market changes?

Australia's tobacco industry in worldwide terms is extremely small – some two tenths of one percent of the globe's tobacco production - in a market dominated by China, Brazil, India, and the United States. Australia today has about three hundred licensed tobacco growers, a number that has been shrinking steadily. Countries such as Brazil and Canada, which are not far different in size from Australia, in contrast, report in the vicinity of 30 000 tobacco growers each.

Australian growers supply around forty percent of domestic leaf demand. There are as well a rather small number of unlicensed tobacco growers whose crop ends up in the illicit market; they are believed to account for about ten percent of the illegal trade (Tax Office, 2002, p. 35). Tobacco growers are primarily located in relatively encapsulated enclaves in the Myrtleford Valley area in northeast Victoria, which includes Myrtleford, Markwood, Wangaratta, Whorouly, and Owens, the Mareeba-Dimbula-Muchilba region in north Queensland, and the Glasshouse Mountains-Beerbrum-Caboolture area of southern Queensland. At the end of 2002 there were only six tobacco growers in south Queensland, and it is believed that two of these will not grow tobacco after 2002. Oversight of the south Queensland area lies with the Sydney Tax Office, with enforcement being managed from Brisbane. Sixteen hundred kilometres distant from the south Queensland growers, the north Queensland tobacco growers are monitored from an office in Cairns.

Tobacco can be grown and harvested between August and April in Victoria, and throughout the year in Queensland. North Queensland produces two crops annually while the other two regions bring forth a single crop.

It is essential to examine closely the reasons for the shrinkage in the number of tobacco growers in Australia in order to comprehend adequately the nature of the illegal cigarette trade, in which the product is called, with typical Australian verbal hijinks, 'chop-chop.' The term apparently derives from the chopped roll-your-own tobacco leaf (or 'rollies' in Australianese) that is sold very widely throughout the country, in petrol stations, convenience stores, newsagent outlets, and over the Internet, among numerous other places. Derived from the Cantonese *kap*, the term, meaning fast, first came into Anglo-Australian usage to suggest that a person is or ought to be moving rapidly. It presumably migrated to the Australian tobacco scene from the routine sale of chopped tobacco in Asian market sites such as Timor, Singapore, and neighbouring countries. In Australia, chop-chop is usually sold in plastic bags and sometimes hawked from the boot of an automobile (Bimbauer & Sisti, 2002), though it can also appear on the market as the content of tailor-made cigarettes. It is generally sold in bulk size of half-kilogram or kilogram weight.

Australian tobacco growers are organised into co-operatives that distribute tobacco seed and are presumptively responsible for monitoring the amount of tobacco grown by their members. Decision-making power in the co-operatives is tied to the investment that each member has in the organisation. Each year the two largest manufacturers in the country – British American Tobacco Australia Limited (BAT) (for a history of BAT see Cox, 2000) and Philip Morris Limited (PML) – indicate to the co-operatives how much tobacco leaf they will purchase from them. Philip Morris commenced operations in Australia in 1954 in what was the first overseas venture of the company. PML was also the first American cigarette manufacturer to penetrate the Australian market. Imperial was formed after the merger of Rothman of Pall Mall Holdings Limited and WD and HO Holdings Limited into BAT because the Australian Competition and Consumer Commission would approve the merger only if the two corporations diverted some of their product to a third company.

BAT and Imperial work together and account for 60 percent of the Australian market; 45 percent for BAT and 15 percent for Imperial. Philip Morris is responsible for the remaining 40 percent of the legal tobacco market in Australia. The manufacturers now buy twice as much tobacco for the Australian market from outside the country than they purchase from domestic growers.

The stipulated domestic allocation is subdivided amongst the co-operative members. There is some leeway permitted in the total cultivation to cover unforeseen crop losses from storm damage, frost, plant disease, or barn rot. A large gap exists, however, between what the growers are able to produce and what they have produced in the past and what the manufacturers are willing to purchase from them. Today, only about 25 percent of the tobacco leaf that can be grown by licensed farmers in north Queensland will be sold to manufacturers. This situation was aggravated considerably by the recent announced withdrawal of BAT from the north Queensland market.

An indication of the relationship between that withdrawal and the illicit market in tobacco was brought home to me during a tour of the threshing plant in Myrtleford, the only such facility in Australia. It had been moved from Melbourne in pieces in 1995, in an operation that took nearly six months, and put into operation in 1996. It is here that the stem is separated from the lamina of the tobacco leaf and the lamina is dried to an even moisture content that seeks to provide optimum ageing conditions during the storage period. The acquisition of the threshing plant from Philip Morris was a striking coup for the Myrtleford area growers.

‘Those bales sitting there are from north Queensland,’ said my guide. ‘Do you notice anything in particular about them?’

They all looked about the same to me: burlap-wrapped bags of considerable size with bits of tobacco sticking out of them.

‘Look closely,’ he advised.

They still looked pretty much the same.

He then showed me how a large number of the bales had been compacted so that they appeared smaller, more readily manoeuvrable than the others.

‘This is the last year that many north Queensland growers will be able to sell their product legally. Some of them were hoping to make a quick buck in the brief time left. Compacted bags are more attractive to chop-chop buyers. We have them here only because they couldn’t be sold under the counter.’

He emphasised the point by taking me to another room where leaf from Victoria growers was being held awaiting shipment to warehouses. Some of it assuredly was compacted, but not nearly as much as the bales that I had been shown previously.

Market conditions are a good deal more favourable in Victoria than in north Queensland. Often, smaller Queensland growers will transfer to larger growers for a pittance of sixty cents a kilo the allocation that they have been assigned. Many growers, however, are unable to use their fallow land to grow other products, sometimes because a long history of using the land to produce tobacco has ruined the soil for the cultivation of many other marketable products or for cattle grazing. Besides, some of these growers have a long family tradition of tobacco cultivation that they find difficult to put aside. For a time, grape growing seemed to be an alternative way of making a decent living, but the vicissitudes of the wine industry have undercut that possibility. In Myrtleford, one former tobacco farmer has put together a thriving business in cut flowers, but he is very much the exception to the rule.

Except for a very small export business largely confined to the Pacific Islands region, the possibility of selling ‘excess’ tobacco leaf overseas is not available because Australian growers find prices on the world market unacceptable. In 2002, for instance, the international marketplace would pay about \$US2.50 for a kilo of Australian leaf, less than half the amount that the same kilo would bring on the Australian market. The low price for Australian tobacco on the international market is in part a reflection of the belief that except for what is grown in southern Queensland the leaf, while ‘generally acceptable...is not of a high standard’ (Baxter & Wilson, 2001, p. 27). The situation results from the fact that

tobacco grown in Australia sometimes has a taste not favoured by smokers outside the country, though one that Australians have come to prefer, or at least to accept.

The bleak situation of the Australian growers is compounded today by overhanging threats from both BAT and PML that if financial conditions do not improve for them they will abandon the country. While both manufacturers' profits remain sizeable, they point out that they could realise even more money if they were to buy cheaper tobacco leaf and incur lower labour costs in other parts of the nearby world, such as Indonesia. Paul Baxter, who has examined aspects of the tobacco industry for a private research firm, maintains that '... there is no future for Australian growers. They are disappearing more and more rapidly.' Baxter presumes that, while the manufacturers may remain in Australia, they will concentrate on marketing imported cigarettes both there and in a potentially very lucrative surrounding Asian market (Baxter, 2002).

The Australian cigarette market also is characterised by a number of other considerations that point in strikingly different directions when it comes to formulating satisfactory policy guidelines for the growing, distribution, taxing, and sale of tobacco products. Unlike in other jurisdictions around the world, the black market in tobacco in Australia involves not interstate cross-border or international smuggling, but rather the diversion of internally grown tobacco from legal channels into illicit distribution paths. If tough enforcement policies are adopted to eliminate the leakage into the black market from the growers' production, the growers may decide to give up their farms that by and large are relatively small holdings. This would impact the 22 000 persons involved in growing tobacco and the 3200 employed in the manufacturing process.

The problem is exacerbated by the official concern in Australia about an apparent discontent with rural existence. A report pinpoints the issue in these terms:

Economic and social change in Australia, particularly in the last thirty years, have had a dramatic impact on farming in rural areas. In some cases, whole communities

have suffered economic hardship and many are struggling to survive. Indeed, it is widely accepted that small communities with populations of less than 10 000 are no longer economically viable, as we witness farm repossession, business and industry closures, the removal of medical and educational services, and the exodus of people to larger commercial centres.

Such drastic changes have taken their toll on the people in farming communities, whose already high sense of alienation and frustration is exacerbated by financial insecurity and family breakdown (Hoagland & Pieterse, 2000, p. 19).

There has been a striking drop in the number of persons living in rural communities in Australia, from 16.9 percent of the country's population in 1966 to 14.4 percent in 1984, and down to 10 percent in 2000 (Morgan & Murphy, 2001, p. 2). There is also a disconcertingly high suicide rate among youth in rural areas that provides an objective measure of frustration with life there – a sense of hopelessness. In 1997, Australia recorded the highest suicide rate for any industrialised country in the world, and that rate escalated even further in communities with populations of fewer than 4000 persons.

If excise taxes rise to a point where the Australian manufacturers no longer believe that it is financially worthwhile to deal in locally grown tobacco, it is reasonable to presume that what will remain a continuing consumer demand for cigarettes will be fed not only by imports, but also by smuggling from outside Australia, perhaps under the control of organised crime groups. At the moment, there is a great deal of anecdotal material about an incipient movement of mafia-type organisations into the Australian chop-chop market (see, for example, Tax Office, 2002, pp. 15, 74; Baxter & Wilson, 2001, pp. 46, 49, 52; and see the further discussion of this issue below). There have been reports also of the counterfeiting of legitimate cigarette brands, but no firm evidence of the extent of such a practice. One researcher in Britain used the ingenious approach of counting all the cigarette packets left on the ground after a soccer match and learned that more than half were counterfeit (Hood, 2002). Ironically, in some Asian countries it is essential to place the health warnings on counterfeit packs of cigarettes in order to persuade buyers that they are

getting the real thing. In Myrtleford, the story was told of one grower who sold his product to a chop-chop impresario only to learn subsequently that he had been paid in counterfeit money.

The scenario that would ensue were the local production and marketing of cigarettes in Australia to collapse altogether would presumably involve the transfer of responsibility for the collection of taxes and the enforcement of tobacco laws from the excise division of the Tax Office to Customs. It is an intriguing speculative exercise to itemise and evaluate the significance of such a shift. While the current idiosyncratic Australian situation can be evaluated as a self-contained system, it is quite another thing to determine the implications of the phasing out of the present program and the appearance of a quite different arrangement. We best might leave that endeavour to governmental authorities: our most useful input, it would seem, is to put on record the fact that the evolution of such an altered situation is far from unlikely, though it is difficult to predict with any assurance either if or when such a change might occur or whether it will be for the better or the worse, all things considered – and there are very many things to consider. Certainly it would be in order to pre-plan for how such an alteration would be handled, drawing in particular on the extensive literature and lore about tobacco smuggling worldwide.

### **The finale of the franchise tax**

It must be appreciated that the campaign of the excise tax authorities to gain the upper hand over the chop-chop trade is in its infancy. Tobacco was grown in Australia virtually simultaneously with the establishment of the penal colony. The fascinating early history of the Australian tobacco industry, however, at best bears only peripherally on the subject of this report: those interested in that story can begin fruitfully exploring it by reading Robin Walker's (1984) description of the development of the Australian tobacco trade. In addition, a comprehensive but now somewhat outdated review of the relationship between health issues and the tobacco trade in Australia is offered by Margaret Winstanley (1995) and two colleagues. Similarly, the arcane art of tobacco cultivation and the considerable

vicissitudes of the process of turning leaf into a marketable product as they have developed over the centuries will not detain us overlong (but see, for example, *Tobacco Growing in Victoria*, n.d.). Let it only be noted that: ‘tobacco has always been acknowledged to be the greatest farming gamble’ (Robertson, 1972, p. 107).

The focus in this section is on developments during the 1980s and 1990s and at the beginning of the new century that directly bear upon the appearance of a significant chop-chop market.

Between 1975 and 1997 regulation of the tobacco industry was left to the industry itself, though in 1936 the Local Leaf Content Scheme had been introduced by the Commonwealth government to support growers. The scheme required manufacturers to use 7.5 percent of domestically grown tobacco. This figure was escalated to 28.5 percent in 1960 and to 57 percent in 1977, but ceased after the 1997 *Ha* decision discussed below.

A significant proportion of the tax on tobacco was assessed by the states and the territories by means of business franchise fees. In August 1997, however, the High Court ruled that these fees actually were an excise duty and therefore that states could not constitutionally collect them. The court divided 4-3 in that decision with the slim majority having to traverse a number of mine fields of precedent to sustain its position.

The barebones facts were these: the state of New South Wales imposed a monthly fee of \$10 on those who sold tobacco goods. It also collected a quarterly levy on the pre-market value of the tobacco. In 1987, that impost had been set at 30 percent. It rose to 35 percent in 1989, to 50 percent and 75 percent subsequently, and finally to 100 percent. Ngo Ngo Ha and Sakhieung Lim, who owned duty-free shops in suburban Sydney, had not paid the franchise fee and were also said by the state to owe it, respectively, \$1 422 174.90 and \$927 548. Walter Hammond & Associates, a Sydney wholesaler, in the same court case was declared to be in default of a sum of \$20 432 928.29.

The court's majority opinion decreed that the plaintiffs were correct in their allegation that the so-called franchise tax was in fact an excise levy and that under section 50 of the constitution the Commonwealth was granted the exclusive right to collect excise taxes. Particularly persuasive was a declaration in a 1989 opinion by Justice Brennan: 'If there be any rock in a sea of uncertain principle, it is that a tax on a step in the production and distribution of goods to the point of receipt by the customer is a duty of excise' (Philip Morris, 1989, p. 445).

The court declared that '[h]aving regard to its nature and size, it [the franchise fee] is not a fee for engaging in business'; besides, 'the size of the fee clearly exceeded the cost of implementation' (Ha and Another, 1997, p. 471). There was a great deal of debate about the proper meaning of an excise, with the acknowledgment that it all depended on what authority you preferred to rely upon. Judicial skirmishing also centred on whether an excise could be collected only on production and manufacturing, but not on sales. It was agreed, however, that however illegal previous 'franchise' payments had been, the new interpretation would not be applied retroactively (Ha and Another, 1997).

In the years before the *Ha* decision, state governments had provided funds to restructure the tobacco industry. In 1994, for instance, Victoria gave \$3 million to growers who voluntarily agreed to leave the industry, and in the same year, the entire New South Wales tobacco growing industry was dismantled by a similar subsidy program. At about the same time, the tariff on imported leaf was abolished (Excise Business Group, 2002, p. 7).

After *Ha* the Commonwealth agreed to adjust the tobacco excise rates by an amount previously collected by the states. This tripled the duties on tobacco, transferred the matter of tax evasion from the states to the federal government, and set the stage for the emergence of a chop-chop market. Such a market was always in existence, but in rather insignificant magnitude, though it was particularly pronounced during the second World War when the supply of cigarettes in Australia was limited (Thompson, 2002).

Before *Ha*, cigarette smuggling operations in Australia primarily resembled those that have been and are found throughout the world (see, for example, Joossens, 2002). There were cross-border forays of shoppers who legally stocked up on cigarettes that cost less in the places they were visiting than at home, and there were smugglers who did the same thing, dealing in considerably larger amounts. A recent report documents Australian activities of that time that are commonplace today in the realm of tobacco smuggling:

Some organisers avoided state taxes in Australia by purchasing tobacco from wholesalers and duty-free shops on the mainland for export to Norfolk [Island, 1500 miles off the Australian mainland]. Then they flew to the island, where the shipment was repacked and mailed to clients in Australia and New Zealand, who thereby avoided taxes and duties (Fossen, 2002, p. 223).

Authorities became so perturbed by these activities that in October 1996 one hundred and twenty-seven police and revenue agents mounted ‘Operation Norfolk’ and raided twenty-seven premises in Sydney, seizing cigarettes, guns, and \$1.25 million in cash. But the High Court decision ending the franchise tax led the police to drop the Norfolk Island case.

### **The elusive chop-chop figure**

The amount of tax revenue loss that the government suffers because of the existence of the chop-chop market has been rather promiscuously estimated to be anywhere from \$40 million to \$600 million annually. The Audit report puts the figure at between \$99 million and \$450 million (Tax Office, 2002, p. 11), while industry estimates are in the \$600 million range. The Attorney General’s Audit report gently but rather often chides the Tax Office for what it deems to be a failure to pin down more precisely the extent of the revenue loss from chop-chop sales. The report urges the Tax Office to seek the cooperation of other agencies to generate reliable loss figures. It points out that the personnel who conduct surveys for agencies such as the Department of Health and Ageing (DHA) might be persuaded to generate information in subsequent inquiries about the extent of the chop-chop market. It is noted that a recent, yet unpublished household survey by DHA included a pair of questions about chop-chop usage. Unfortunately, respondents were confined to

persons aged twenty years and over. It placed the number of Australian smokers at twenty percent of the population. Of the 1497 persons interviewed who reported smoking at least once a week, 1.5 percent said they used chop-chop daily - let us say, roughly, 20-odd of every 1500 adult smokers. Only 0.4 percent reported using chop-chop some days, while 8 percent said that chop-chop crossed their lips 'only occasionally' (Scollo & Freeman, in press). This survey was a good start, but there is need for further refinement and expansion.

A more comprehensive survey by the DHA, which focused on a variety of forms of drug-usage and also gathered information about the extent of chop-chop smoking would be valuable as a baseline guide to alterations in usage patterns over time and in regard to intervention tactics, particularly if such tactics were introduced selectively in this or that site and monitored scrupulously.

Such a general inquiry into usage patterns could ask a person how much on average he or she smoked chop-chop, perhaps with questions specifying the past week as the time period of concern. A bold venture could tactfully (with a stress on the voluntary nature of the response) seek to determine where the leaf was obtained, the price paid, and on the basis of a predetermined roster of reasons, the person's belief about why he or she had recourse to chop-chop. A sub-sample of respondents might be asked to provide information on considerations that they believe would persuade them to abandon use of chop-chop, though such answers cannot be taken literally.

A chop-chop survey might best be carried out with a sample of students in the fourteen to eighteen year-age range. For one thing, this is the age group that is of greatest public health concern in regard to initiation into smoking. The general rule is that if a youth smokes before the age of eighteen, he or she is likely to continue the habit for at least ten additional years. If smoking is not begun before eighteen it is likely that it will not occur.

The school setting also provides a captive audience, though those not present on any given day are more likely to be smokers than those in attendance. Attempts can later be made to

get answers from those absent on the day the questionnaire was administered, though this can prove costly in terms of time and personnel. If students are guaranteed anonymity and steps are taken to provide some persuasive assurance that such anonymity will be respected (such as having the teacher leave the room and the responses collected by one of the class) there is reliable evidence that the students will pretty much respond honestly.

Such surveys will not, of course, provide any overall sense of the full extent of the chop-chop market. Their value lies in the fact that they offer a continuing answer to the question of how much change has occurred in chop-chop usage within the tested population over a period of time and in what direction that change is moving. It also will provide useful data on questions such as whether chop-chop use is lessening but cigarette smoking increasing, whether both are declining, or whether their use is moving in different directions.

To determine with acceptable accuracy the amount of revenue lost by chop-chop is, I believe, a feckless enterprise and one that ought not to take up undue resources or intellectual energy on the part of the Tax Office. For one thing, there always will be a so-called 'dark figure,' that is, a degree of the behaviour that no tactic can sensibly determine. Even in regard to murder, where the rate is calculated in terms of a count of bodies discovered to have been done to death by illegal means, there is an unknown dark figure. There are cases of homicide by poisoning that are never discovered, and there are 'accidental' episodes in which a car is backed out of a garage into a spouse who has been deemed to have outlived his or her usefulness. These and similar lethal events will thwart any attempt to achieve a totally precise count of murders. When it comes to matters such as assaults, burglaries, and similar so-called street crimes, the best we usually can do is to rely on two sources: reports to the police, which are woefully unrepresentative except in the sense that we hope that they tend to portray trends over time. We can complement statistics derived from reports to the police with victimisation surveys, which ask a random sample of the population whether they have been the victim of this or that offence within a stipulated time period. These surveys are somewhat more useful than police reports to determine the total amount of crime and crime trends, but they fall far short when it comes

to pinpointing exactly what the crime scene is like. To take but one example: In the United States lower-class African-American men report having suffered fewer assaults than middle-class whites. Obviously, it is not the number of assaults that is being accurately accounted for but the victims' perception of what is an illegal act of violence against them.

Additional obstacles in the way of an attempt to determine the amount of revenue lost because of the market in chop-chop are notoriously formidable. While chop-chop usage may or may not fit snugly into the definition of a 'victimless crime,' since the state coffers suffer harm, it clearly is a behaviour in which both parties to the transaction are voluntary, even eager, participants, quite unlikely to inform the authorities about what is taking place. Therefore, policing almost exclusively has to be proactive rather than reactive to reports of violations, and enforcement decisions rather than the behaviour itself will strongly influence what is discovered and what therefore can be tabulated. The relationship between what becomes known and what else exists inevitably will remain highly uncertain.

There are other measurement tactics that allow the gathering of information in regard to the numerical proportions of the chop-chop market. One of the most ingenious is the approach now being taken by the Tax Office that focuses on the import of paper and other supplies that appear to have no purpose except for wrapping tobacco leaf used in the smoking of chop-chop. (Tax Office, 2002, p. 51). If the importation of such supplies increases dramatically – as it has in Australia in recent years, going up 280 percent from 1977 to 2000 (Tax Office, 2002, p. 51) - we sensibly can presume that a rise in chop-chop usage is taking place. We can even attempt crudely to calculate from the amount of paper used the number of smokes created from chop-chop. The figure arrived at will have a certain degree of accuracy, but decidedly not total accuracy, since at least some of the paper will be lost or discarded and some used for other purposes. Many Australians recall the antics of comedian Norman Gunston who as part of his routine used cigarette paper to soak up the blood from facial nicks suffered while shaving.

A particularly interesting, but far from perfect, monitoring tactic employed by excise officers is the Global Positioning System under which the acreage that a grower will use to cultivate tobacco is measured. It becomes relatively easy then to estimate generally how many bales the grower ought to produce and to try to make certain that this production is placed into legal channels. During my field excursions, however, several growers complained that the acreage surveys had considerably overestimated how much land they had to cultivate, and they offered a particularly glaring example of one stunning overestimate. There was general agreement that these matters will be ironed out in time and it was recommended that all estimates be discussed with and endorsed by the growers. One grower pointed out that an inherent difficulty in this approach lies in the fact that a grower can plant seeds closer together in order to enhance his yield and confound the government's estimates. The rejoinder was that tax officials are not out to detect minor variations; it is the big-time crooks that they are after.

Some general sense of movement in the chop-chop market can also be ascertained from the price at which the product is sold. In 2001, chop-chop was said to retail for \$45 to \$60 per kilogram, while more recent reports show that the price has risen to \$80 to \$100 for each kilogram. This compares to a price of \$320 per kilogram for legal roll-your-own tobacco. These figures might indicate a lesser availability of chop-chop, though they could reflect a perceived greater risk of selling it without the duty having been paid.

### **Enforcement tactics**

The excise tax unit at present devotes about 75 percent of its investigative resources to law violations involving chop-chop. It focuses this enforcement attention on growers, with only cursory monitoring of retailers. Monitoring retailers is designed primarily to keep them aware that in the lottery of apprehension for wrongdoing there is at least some chance that their number will show up. This low-key strategy with retailers seems altogether reasonable: the locus of diversion of leaf to the chop-chop market is at the grower level, and there are a reasonably limited number of growers for the one hundred or so investigators to keep an eye on.

It is worth pointing out, however, that studies, such as one conducted in Adelaide, indicate that different kinds of retail outlets sell cigarettes illegally to minors at different rates. It is not unlikely that those most lax in this regard are also most hospitable to trading in chop-chop. The Adelaide research had ten youngsters between the ages of twelve and fourteen try to buy cigarettes at some ninety-eight sites. Their purchase ‘success’ varied from sixty-seven percent at newsagencies to forty percent at delicatessens. They had no luck whatsoever obtaining cigarettes at tobacconists or at shops selling wine and spirits, though it needs noting that the sample contained only a few of these outlets – only eight in all (Wakefield, et al., 1992). The study results, and a general consideration of the selling of legal cigarettes as well as chop-chop, suggest that some attention might well be devoted to restricting the kinds of sites that are allowed to sell cigarettes with the aim being to limit such sales to the more reputable, reliable, and responsible retailers.

There is strong reluctance within the Tax Office to any enforcement approach that would involve the licensing of retailers, a position that is said to be based both on practical and constitutional grounds (Tax Office, 2002, p. 48). I do not know whether the Office’s opposition would extend to restricting outlets since this might be regarded as a form of licensing. I personally believe that such restrictions are a good idea, just as other restrictions on who is allowed to sell poisons is a good idea. And, more certainly, there ought to be a serious attempt to ban totally cigarette vending machines. These machines permit minors to purchase cigarettes easily and, in terms of the chop-chop situation, initiation into smoking by the vending machine route could in time be transferred to indulgence in chop-chop. At the same time, it would certainly be useful – at least it seems so to me – to try to do away with tobacco sales at duty-free shops at sites located away from airports that do not cater exclusively, and sometimes only rarely, to legitimate international travellers. To cease to allow tobacco products to be sold at all duty-free shops is a position that seems to me meritorious.

The excise tax enforcers are expected to act in terms of an ethos that insists that they show respect and courtesy to all with whom they deal. Tax collectors are in a business that is very likely to engender antagonism from those whose money they gather up and the voluntary nature of much tax collection relies at least in part on the goodwill of those taxed. A recent episode involving the monitoring of tobacco growers indicates possible pitfalls on occasion of a soft and considerate enforcement approach. Investigators had been told that they ought not alienate the growers, that they should avoid appearing to be heavy-handed snoopers and creating a hostile atmosphere between the enforcer and the 'suspect.' It was decided therefore to notify growers beforehand of the time investigators would arrive on the scene.

Not surprisingly, this genial approach proved somewhat less than satisfactory. Wherever they went investigators found everything in perfect order: they became convinced that growers who had detoured some of their production into the lucrative chop-chop market merely borrowed bales of tobacco leaf from other growers who were not scheduled to be seen that day. The bales were returned when it came time for the crops of the growers who had lent them to be inspected.

The Excise Act provides penalties for the illicit transport, storage, manufacture, and sale of tobacco. Growers apprehended for illicit traffic in chop-chop risk the loss of their license and in theory they can be penalised by a fine of up to \$55 000 and two years imprisonment. The Act also provides for what are called Penalty Infringement Notices (PINs) for possession or sale of tobacco on which the excise tax has not been paid. PIN fines can be imposed on the spot and can be up to a ceiling of \$2200. The government also may recover the amount of revenue lost because of the illegal transactions. But the reality is that offenders most likely will receive a much more lenient sentence than the maximum prescribed. There is, however, no conclusive evidence that legislating tougher penalties and enforcing them to the hilt would produce either greater individual deterrence of that particular offender or general deterrence of other growers who might be diverting chop-chop or contemplating doing so. Principles of restorative justice, by means of which the law-breaking is condemned but the law-breaker is nudged into redefining himself or herself

as a decent person (Braithwaite, 1989; 2002), might well be worth exploring, particularly since they appear likely to be most successful with persons who have a reasonable general foothold in conforming behaviour. At the other end of the response spectrum, widespread publicity highlighting the fate of a chop-chop transgressor could serve to frighten other tobacco growers into acceptable growing and selling habits (Fisse & Braithwaite, 1983).

The diversion of chop-chop needs to be blockaded at its source. This strategy is reflected in the Tobacco Industry Group's report, *Aggressive Tobacco Project 2000-2001*, which involves an eighteen-month trial program that provides for a heightened policing presence in the main tobacco growing areas (Rowe, 2001). Preliminary results are expected to be available by the end of 2002, but there appears to be a considerable sense of agreement that the program is having some success. Impetus for the report is the belief that the overhanging threat of manufacturer withdrawal from the Australia market has given birth to an attitude among growers to 'make the most from tobacco while the sun shines,' that is, to exploit to the fullest possibilities of gaining income, albeit illegally, during the brief time these possibilities are likely to exist (Rowe, 2001, p. 3).

The policing approach now launched duplicates in many respects the fashionable (which is not to say that it is not also effective) neighbourhood policing concept that is being introduced in many urban areas worldwide to try to deal more effectively with street crime. It is expected that the new approach in Australia to tobacco growers will produce a larger number of prosecutions, license forfeitures, and a rise in the street price of chop-chop. The last of this triumvirate of outcomes is, of course, the only one that might tell us something about the program's effectiveness: the first two are almost inevitable outcomes, much as the installation of road checks most certainly will identify more persons driving under the influence of alcohol. It is anticipated that the tougher enforcement posture will result in increased tax revenue that would exceed \$50 million.

The more focused and intensive monitoring tactic involves an aspect of tax enforcement policy that rarely is discussed thoroughly in public, though it has a strong influence on

policy decisions within the enforcement world. It concerns the cost-benefit ratio between additional personnel and, more importantly, the public relations fallout from stepped-up enforcement efforts. If the excise enforcement program for tobacco desired to increase its effectiveness dramatically it could hire two inspectors to spend their entire time on site with a grower. At an estimated cost of \$150 000 for each agent (salary and other expenses) the six hundred agents would cost the government \$90 million, a figure on the low side of estimates of the excise tax lost to the 'chop-chop' market. If the government didn't mind an agent being a bit lonesome without a mate to share the monitoring duties, the cost would drop to \$45 million. Having one agent cover two growers would cut that figure in half, and even that amount could be reduced considerably because growing and harvesting seasons in the two major tobacco raising areas are not synchronous. Presumably, the recovered excise tax would increase well beyond the amount of enforcement money expended, though such a speculative exercise, it must be granted, depends on a number of uncertain elements: growers' ingenuity might invent tactics to circumvent this blanketing scrutiny. Besides, practical politicians almost invariably focus more on the cost side of any cost-benefit analysis.

Local resistance to such an approach, it seems obvious, would be very strong. Tobacco growers undoubtedly would claim that they were being picked on unreasonably – scapegoated – and they would point out that other tax laws, such as those against cheating on income tax, were going largely unattended.

Of course, there is no guarantee in this real world that all laws are going to be – or even should be – enforced evenly, and many are never enforced at all. But such a philosophical position will hardly assuage a group of tobacco growers who, with reason, believe that they are under siege, even if the action is directed at controlling violations of the law by some in their midst.

### **Criminalising chop-chop use?**

It seems best to approach the following topic by posing a hypothetical. The question is this: Suppose that we had the scientific information that we now possess in regard to the consequences of involvement of an individual with various kinds of drugs, such as the opiates, alcohol, marijuana, and cigarettes; suppose too that we had no laws on the books concerning the sale or possession of these items; and suppose, finally, that you were in a position to write new laws onto this blank juridical slate: What would be the nature of the laws that you would favour?

No attention as yet has been focused in Australia or, to the best of my knowledge, anywhere in the world on this question, at least in its basic sense. All matters considered, should a criminal penalty – obviously a relatively benign one, presuming any criminal penalty can be benign – be mandated for the possession of any of these drugs, including cigarettes and/or chop-chop. Historically there have been times and places where any smoking of tobacco leaf was outlawed – and draconian penalties have been decreed for the violation of such statutes. In 1652, the English parliament passed an act that prohibited the growing of tobacco. It empowered anyone to ‘grub, cut up, destroy, and utterly consume all and every such tobaccos.’ In some eastern countries at this time, torture and death dogged smokers (Corina, 1975, pp. 38-39). There also have been times and places where the smoking of tobacco was not only strongly encouraged but virtually made mandatory. Tobacco was used by the Mayans for religious rituals from at least the first century. Jean Nicot, immortalised in the term ‘nicotine’, brought tobacco to France from his post as ambassador to Portugal in 1556; physicians used it for medicinal purposes (Braithwaite & Drahos, 2000, pp. 394-395). In 1665, young students at Eton were required to smoke daily to protect them against the great plague, ‘under penalty of a housemaster’s whip for non-compliance’ (Corina, 1975, p. 40).

There are few persuasive arguments regarding free traffic in opiates or cocaine. The arguments for and against legal alcohol are more complicated and I will only note them as something that you might want to consider. But should there be a fundamental review of policies regarding marijuana and cigarettes and chop-chop? Perhaps it is necessary that I note that I do not favour outlawing cigarette smoking, but that what I am pressing for is a serious and impartial examination of an extremely important topic, no holds barred.

There are a considerable number of reasons that favour criminalising cigarette smoking. Undoubtedly the most important of these is that it is a personally harmful behaviour – often lethally so. Whether a political entity ought to interdict self-destructive behaviour is not a question with an unquestionable answer. For some, such behaviour is, to use the phrase highlighted in the 1962 British Wolfenden report on homosexuality and prostitution, Not the Law's Business. For others, it is apparent that no society would allow the marketing of foods that make people seriously ill or of products that, for instance, are too easily flammable. Therefore, by analogy it becomes not only proper but mandatory for those of this persuasion that legal consumption of cigarettes be severely reduced by whatever means possible and that illegal purchases carry a regulatory or criminal penalty.

Issues such as this cannot sensibly be examined without concomitant scrutiny of the laws against the use of marijuana. Few doubt that the effects of regular cigarette smoking are significantly more harmful than regular marijuana usage, yet the possession of the latter is forbidden throughout Australia, with the exception of the Australian Capital Territory (ACT), where possession of a very small amount of the drug is permissible. The discrepancy in these situations can only be characterised as irrational, although it needs to be granted that powerful historical and political considerations underlie current arrangements.

Public health authorities have for some time now produced evidence beyond contradiction that smoking causes serious harms both to those who engage in it as well as those who inhale the fumes created by it. A recent Australian report indicated that 1.7 million infants

face increased risk of asthma, ear infections, respiratory infections, and Sudden Infant Death Syndrome from the inhalation of cigarette smoke put into the air by others, most often their parents. More than sixteen thousand children under the age of eighteen months were said to develop lower respiratory tract infections each year as a result of exposure to smokers. Putting aside the unlikely precision of such numbers, the generalisation that smoking can seriously harm bystanders remains solid (Passive Smoking, 2002, p. 1). Indeed, both BAT in Sydney and PML in Melbourne have forbidden employees to smoke in their offices.

The difficulty is that the governing principle that might justify the control of smoking is not readily generalisable. If the aim is to reduce behaviour that is obviously and importantly related to poor health outcomes then dealing with many other matters, such as overeating, offers a significant challenge. Do we concentrate on behaviours which have the most catastrophic effect on the greatest number of people or those which seem logistically easiest to contend with? Some decades ago, tongue in cheek, I proposed a program in which persons who weighed more than they ought to in terms of the consequences for their health should be rounded up and, with the threat of severe penalties, placed on a dietary regimen and required to weigh in on a government scale at stipulated periods in order to see if they were proceeding satisfactorily to shed excessive poundage (Geis, 1978).

That this idea is not wholly absurd nor only a figment of my own too undisciplined imagination was demonstrated recently in New York City during a public hearing on a proposed tax increase from eight cents to one dollar and fifty cents on a pack of cigarettes. The leader of an organisation called CLASH (Citizens Lobbying Against Smoker Harassment) told the Mayor: 'I know you love to eat chunky peanut butter with bacon and bananas. How about [only a native New Yorker would use such a phrase] I start a campaign to tax that bacon that's going to cause heart disease, and tax that super-chunky peanut butter that's going to kill you?'

This sideshow notwithstanding, the tax increase was approved, making New York City the most expensive place in the United States to buy a pack of cigarettes. A particularly interesting outcome of the tax increase was a flyer the CLASH group circulated that recommended that New Yorkers henceforth buy their cigarettes at upstate Indian reservations, where they are tax-free. Implicit in this recommendation, of course, is an endorsement of black market purchases of cigarettes smuggled in from other jurisdictions or from overseas (Allen, 2002, p. 20).

### **Myrtleford, Victoria**

Myrtleford, lying about 275 kilometres (178 miles) northeast of Melbourne amidst a series of valleys and a multitude of streams, has a population of about 3500 persons. It is adjacent to what has become a popular ski resort and it is at the centre of Australia's largest tobacco growing area. Perhaps the most eye-catching sight in Myrtleford is a large multi-coloured chimney atop the co-operative headquarters that is designed and painted to resemble a cigarette. It was installed in 1996 to expel dust that collected from threshing operations and is painted bright yellow on its top so that airplanes can see it clearly. Myrtleford's near-future in regard to the production of tobacco seems relatively secure, although there is considerable uncertainty about prospects for the longer term. BAT has agreed to purchase what the growers traditionally produce through 2007 with an option to continue doing so thereafter. Philip Morris has entered a three-year contract with the Victorian growers. The contract runs from 2001 with an option to renew for two more years after 2004.

The historian of the municipality of Myrtleford (so designated on 32 May 1980) declares that she can recount 'no momentous events' (Robertson, 1972, p. 173; see also Talbot, 2000). But she nonetheless relates an absorbing saga of the descent in the 1850s of hordes of miners panhandling for gold, working deep in the earth searching for alluvial deposits. The Chinese were heavily represented among these pioneers, outnumbering the Europeans in the area by a three to one ratio (Robertson, 1972, p. 52), and, sadly, in July 1857 many of them were massacred and driven from the region. Perhaps the term chop-chop entered the

language of tobacco with these Chinese immigrants more than a century ago. The careless rape by mining of the rich soil of the area was largely the product of human greed and natural plagues. Robertson (1972, p. 204) summarises what happened in this early period:

Not too long ago, the face of Myrtleford was wrinkled with old mine shafts, old water traces, tunnel openings, old dredge refuse, all of which could be found within the town area. It was disfigured by a straggly yellow beard of St. John's Wort. Rabbits had left it bare and pockmarked with warrens, and it had the pallor of the 'Depression'.

A similar, rather poetic portrait of the area is offered by Peter Carey (2001, p. 122) in a Booker prize-winning novel: 'The earth here were like a mighty firebreak all ripped apart like a creature slaughtered its skin pulled back its guts torn out by dogs it were like a battlefield no quarter given.' This description of the area is presented when the novel's protagonist comes across a group of Chinese sifting through leftover mullock, foraging for gold.

Tobacco, called 'negro twist' (Robertson, 1972, p. 13), was grown from the beginning of the Myrtleford gold rush in the mid-1800s. By the end of the nineteenth century farmers were producing potatoes, pumpkins, and maize. Hops, grown with the aid of irrigation, represented the main cash crop. Dairying was also widespread.

In the early days in Myrtleford, tobacco often was the common currency medium, and smoking, Robertson notes, was ubiquitous. Near the end of the century tobacco began to be used for sheep washing to get rid of scab disease, until a few decades later when it was replaced by a more efficacious sulphur and lime mixture. The first excise duty on tobacco, six pence a pound, was imposed in 1881. Meanwhile, the stronger of the local tobacco products were given the name KSD, taken by the locals to stand for 'Kill Stone Dead.' Cigarettes, first manufactured in 1887, soon began to replace pipes and cigars, and as the twentieth century progressed the local tobacco industry prospered mightily, with an all time high of 1317 growers at work before the Great Depression of the 1930s.

The handful of growers I talked with in Myrtleford during the spring of 2002 were uniformly but guardedly optimistic about their future in the tobacco industry. Their prediction was that as third world countries progressed they would no longer be as able to undersell Australian tobacco as they now can, thereby creating a more level playing field. They gauged that the irreducible number of smokers in Australia would go down to about fifteen percent of the population, but that the growth in the population would expand the consumer base.

One grower, Colin Masterton, who works his farm with his brother Graham, implicitly indicated his faith and possible reservations about tobacco growing in the Myrtleford area when answering one of my questions.

‘If you had a son would you want him to be a tobacco grower?’ I asked.

‘I do have a son,’ he replied. ‘He just finished his studies at university in agronomy. I told him to work in his field for five years, and then we’d sit down and talk about this farm.’

It was notable that the growers invariably mentioned the possibility of tobacco being declared illegal. They expressed no qualms to me about their product, taking the view that in a free society people should retain the right to do as they please. We did not get into the issue of what harm the exercise of such a right might cause others.

One grower declined to let me identify him, so that I had to put aside specific and colourful details of his life and work. His request for anonymity was not based on anything that he had said – he was circumspect and tactful – but what others might think he had told me about their activities, perhaps regarding the sale of chop-chop, if it became known that we had talked together.

A brief interchange at Heiner’s Bakery on Standish Street in Myrtleford sheds an interesting light on the chop-chop trade. A couple picked up on my American accent when I

ordered lunch, and invited me to sit with them. They asked what was I doing in Myrtleford. I responded in general terms and passingly mentioned my interest in chop-chop. That got merely a nod, and we went on to discuss their recent trip to the United States. Then they stopped that flow of conversation to point out a tall, bulky man who had just come into the café. 'He's into chop-chop,' the husband said. How do you know? 'Just go outside and look at the row of cars parked here. His is the big black one. It must have cost him a fortune. And we know other things he owns and all the travelling he does during the winter.' Later, I would hear from growers, expressing what could be taken as sentiments of jealousy, about others that they believed to be dealing in chop-chop: 'I look at all the jewellery he has, the very expensive car he bought for his daughter, the house he moved into and the furniture he bought, and all I can afford is a vacation once in a while to the Gold Coast or New Zealand,' one said. There is no question that the law-abiding growers would appreciate tougher law enforcement, but neither is there much of a question that their disapproval does not extend to the point where they would take an active part in naming or apprehending the violators.

What the café story indicates – along with similar episodes – is that the growers who deal in chop-chop are pretty much known in the community. Knowing them, of course, is very different from being able to build a case on the basis of which to prosecute them. There has been some talk of scrutinising their income tax returns to detect amounts that indicate law-breaking – a practice, I might add, allegedly not allowed in the United States, but one that most citizens suspect federal law enforcement employs when it believes it necessary or finds it convenient. Intense surveillance is virtually impossible in a community in which strangers are immediately recognised as such and their reason for hanging around becomes a topic of local interest.

Despite the fact that violations are rather well known, the Tax Office has developed an extremely detailed risk-rating protocol that allegedly is used to pinpoint probable violators. This is equivalent to the profiling procedures used in the United States (US) to try to predetermine where and, particularly, on whom law enforcement resources ought to

concentrate. The approach aroused a great deal of controversy in the US, in large part because it tends to include racial minorities overmuch in its embrace. That controversy abated somewhat in the wake of the September 11 decimation of the World Trade Center and the generic and unwarranted suspicion of all Moslems. In the world of tobacco enforcement, such elaborate profiling seems to involve a great deal of overkill and, perhaps, is more of a demonstration of good intentions than a valuable detection tool. There is not empirical support for the extremely long list of supposed correlates of chop-chop involvement and no indication of what weight or priority ought to be assigned to the different items.

There was not a grower to whom we talked who did not have a story to tell about being approached by men, always in pairs, who wanted to know if they had some tobacco they cared to sell to them. 'I told them to piss off,' one grower reported. He had written down the license plate of their car. The police determined that it was a rented vehicle and that, apparently, was the end of the matter.

These reported visitations provide interesting analytical fare. For one thing, they signify that the hopeful chop-chop buyers, at least at that moment, had been unable to acquire sufficient leaf from their usual contacts. This would indicate that there is (or, at least, was) a limited number of growers willing to divert some of their crop to the chop-chop market. And those who do so may have a very real fear of apprehension if they go overboard in regard to how much leaf they divert. The events also may mean that the chop-chop market is sufficiently extensive that there is a continuing need to recruit additional growers to supply it.

The visitations provide at least some inkling of the nature of the chop-chop enterprise. The men seeking to buy leaf illegally do not appear to represent the kind of monstrously threatening mobsters that we typically associate with organised crime syndicates. They came calling in their rental cars and departed without incident in the face of at least one hostile putdown rejection. There were no threats to burn down the farm or injure the

grower's family. Besides, the face-to-face approach may be seen as less than professional organised planning. It allowed the visitors to be described and those descriptions checked against rosters of known offenders.

On the other hand, there is evidence that the chop-chop trade can have an especially nasty face. In 2000, a Myrtleford grower who was presumed to be dealing in chop-chop was shot to death, and his assailants have not as yet been apprehended. Some interpret the incident as evidence of organised crime involvement in the chop-chop trade. A more common explanation is that the grower was also involved in drug trafficking and an argument over money due and not paid led to the killing.

### **Mareeba, Queensland**

If Myrtleford tobacco growers proved to be uneasily optimistic about their future, the growers in north Queensland are distressed and distraught about theirs. On May 26, 2002, British American Tobacco announced formally that it no longer would buy tobacco in Queensland. This was disturbing, but the same thing had happened the previous year and by August BAT had changed its mind and gone in for 12 000 bales. But when I came to Mareeba, a city of about 7000 persons, in about mid-October to watch the second of the three annual sales of tobacco, no change of BAT policy had been made and representatives of the company, who tend to be tight with information, were saying outright that they saw no likelihood whatsoever that the BAT position would change. 'The decision was made in Sydney, it was approved by the regional office in Kuala Lumpur, Malaysia, and endorsed at Grace House headquarters in London. It is not going to be altered by any local appeals or pressure.' It might be noted in passing that the Malaysia office is being moved to Hong Kong, in order to be in greater proximity to the 300 million Chinese who constitute one-third of the smokers in the world. In 2001, BAT had signed an agreement with the Chinese government to open a factory in Sichuan Province.

For its part, Philip Morris plans to remain the sole tobacco purchaser in north Queensland. But the company has only officially signed on for one year, a situation hardly satisfactory. For one thing, even for those growers who may do reasonably well in 2003, there remains the uncertainty regarding what will happen thereafter. In addition, growers sensibly will not invest in new equipment nor spend money that is necessary to upgrade deteriorating equipment. Nor will banks permit them loans, given their uncertain future. Philip Morris, for its own business reasons, may feel unable to commit itself beyond a one-year period, but this has created a situation that does not bode well either for the manufacturer or the grower and particularly for trust and cooperation between them.

Ethnic Italians dominate the ranks of north Queensland growers, followed in numbers by Slavs, a great many of whom have Albanian backgrounds. There are, surprisingly, no Chinese growers. The Chinese came to the area in large numbers after the discovery of gold in the Palmer River in 1872. For a time the 17 000 Chinese seeking gold outnumbered the entire remaining population of Queensland. Race rioting drove the Chinese out well before 1930, when tobacco growing got started in the region (Thompson & Townsend, 1981; see also Dembula History Committee, 1989).

No grower with whom I talked showed the slightest optimism about the future. 'To encourage your children to take over the farm and grow tobacco,' said one wryly, 'would be a form of child abuse.' They were both puzzled and angry about what they regarded as the government's brusque indifference to their economic plight, though they tended to be more understanding of the manufacturers. 'They're in it for the money, the bottom line – and they will see to their own financial interest unless they are forced to do otherwise.' They believed that the manufacturers hold most of the trump cards. 'They can always leave Australia, go offshore, go somewhere else.'

'They put a few carrots in front of us like donkeys,' one grower told me.

His mate objected. 'Don't call me a donkey,' he said good-naturedly.

'We're all donkeys here,' was the reply.

The other man then nodded in agreement.

Danny Latit, from an ethnic Albanian background, is a young, under forty, and articulate farmer who raises tobacco and chickens with his brother, Shaban. The chicken business, undertaken in large part because of the location of a chicken processing plant nearby, could not alone support the pair: sale of the tobacco crop is essential. Danny sees the future as 'scary.' 'They ought to shut the industry down,' he says, 'and that would get rid of the chop-chop. Anybody growing tobacco would be doing it illegally.' Danny has no argument with the proposals to revive – perhaps resurrect is a better word – the industry, but he believes that they probably are utopian dreams. 'They're slowly choking the growers,' he says. By 'they' he means the manufacturers and the government.

'We've lived an honest, decent life,' Danny adds, 'and the chop-chop buyers roll up and offer us \$4000 for a bale that we can sell legally for only \$660. He says that chop-chop solicitations have increased noticeably during 2002. Sometimes the chop-chop merchants now call from public pay phones. He tells them all the same thing: 'For you, the risk is small. You probably won't get caught and if you do, the penalty will be light. For me it means the revocation of my license to grow tobacco and the end of the main source of my livelihood.' Danny is a trained mechanic and he could work at that trade, but the farm is where he wants to be, though he appreciates that he probably is in a no-win situation. Growers, even as members of co-operatives, are so few in number that they possess no significant political clout, and no sensible politicians is going to publicly support so tainted a product as tobacco and those who produce it. 'Marijuana growers are better off than we are under the law,' Danny says, and he observes wistfully that a farmer who grows corn can sell it on a regular market and can offer it to the public unmolested and untaxed from a stand by the side of the road. He also repeats a theme that is virtually a creed today among north Queensland growers. 'Chop-chop used to be sold out of greed; now it has become a matter of need.' Young tobacco-producing families are said to be saddled with large mortgages and growing families that they cannot support by legal cultivation of tobacco. Danny's lament captured some of the essence of the whole problem of tobacco growing today: 'I'm not doing anything illegal yet I am made to feel that I am doing something

dirty.’ Another grower put the point more forcefully: ‘They make me feel like a murderer,’ he said.

Rather to my surprise, many north Queensland growers called for a total ban on growing tobacco in Australia, a move to be preceded by a government buyout of those presently in the business. Then, they said, the tax authorities would be able to act against anybody growing tobacco anywhere in the country, a task they thought more readily accomplished than enforcement against today’s chop-chop trade.

Many of the growers had tried alternative crops with an almost total lack of success. Mangoes and avocados and lychees ran up against an oversupplied market; table grapes did only mildly well; and the tea tree oil trade which prospered briefly has left north Queensland producers with full storage tanks of a product whose price dropped dramatically because of over-supply, particularly after aggressive tax planning scheme promoters organised spurious R & D and other tax advantages for tea tree investment.

In the shed in Mareeba, where the tobacco sale was being conducted, a Philip Morris official in a friendly but intense manner challenged his corresponding number in BAT: ‘You guys really didn’t need to pull out,’ he said. I was too far away to catch more than snatches of the subsequent interchange. But, from various sources, the essence of the situation seems to take the following lines:

Must fundamentally, BAT thought that the north Queensland growing situation had failed to accommodate to changing conditions rapidly enough. Some years ago the growers had been told that they had to produce a crop that favoured flavouring in order to better satisfy the smoking public. They did so and prospered but, it was claimed, they had fallen into the unacceptable habit of going for a large output rather than an outstanding crop. Then they were told that it no longer was flavouring that was desirable but rather a high quality yield. There was no disagreement that today the growers in north Queensland were producing a notably outstanding crop of tobacco, but, in the often-repeated two words of one person

who discussed the situation, it had come ‘too late.’ ‘Our decision was commercial. We could do better importing what we now get from north Queensland, while maintaining our buying in Myrtleford.’ The necessity today to transport Queensland tobacco to be threshed to Myrtleford had also added unacceptable costs – ‘the tyranny of distance’ one grower called it. There was also the view expressed that if BAT had not chosen to focus on Myrtleford, then both growing areas would have gone under.

For Philip Morris commercial considerations certainly figured in the decision to continue to do business in north Queensland, but they also were swayed by other things, most notably the stability of Australia in a world that increasingly is being sundered by violence and disorder. Just days before my visit to Mareeba, Bali had been thrown into turmoil by a terrorist bombing. Indonesia may have cheap labour and produce good tobacco, Philip Morris reasoned, but what do we do if access is restricted or conditions are in a state of upheaval. The Australian market, Philip Morris apparently decided, is dependable, and any price differential associated with the relative remoteness of north Queensland from threshing and from the major markets of Sydney and Melbourne could be absorbed. This position is reinforced by the fact that Philip Morris’ plan to build a tobacco processing factory in Manila in 2005 has to be reviewed in terms of the unrest in the Philippines.

In north Queensland a word I heard exceedingly often was ‘viable.’ ‘Do I think there is a viable tobacco future here?’ a man with a long-time connection with the tobacco industry there said, rephrasing my question. ‘I wouldn’t bet me house on it,’ he replied. Handwritten figures compiled internally by office workers at the storage shed in Mareeba tell the woeful story of the decline of the industry in the area:

**Table 1: Bales of tobacco purchased by Australian manufacturers in North Queensland**

<b>Year</b>	<b>Number of Bales</b>	<b>Year</b>	<b>Number of Bales</b>
1983	68 639	1994	59 136
1984	65 006	1995	not available
1985	65 002	1996	85 212
1986	66 328	1997	50 542
1987	68 585	1998	45 421
1988	69 929	1999	32 950
1989	69 537	2000	27 736
1990	70 045	2001	31 128
1991	72 201	2002	c. 22 000
1992	72 931	2003	est. 10 000
1993	69 031		

Source: Lyn Stadhams & Midge Gibbs.

Table 1 indicates what was and what could be produced in the area. In the period between 1960 and 1980, north Queensland tobacco growers prospered magnificently. A 'Hindsight' national radio program of the period called the area 'the Virginia of the North', and 'one of the wealthiest places in Australia.' The state premier would put in an appearance at the tobacco sales; the growers had great lobbying power. Today, as one grower put it: 'No politician dare do anything for us.' The Hindsight reporter made the same point: Tobacco, she said, had become 'unfashionable' and an 'infamous crop.'

There seems to be no question but that the current chaos in the tobacco growers' world in north Queensland will lead to the creation of a much greater trade in chop-chop than currently exists. It would seem essential that the investigative tax taskforce in the region be increased significantly. I would also strongly suggest that enforcement agents set up their

office in the cities adjacent to the growing fields. It is a pleasant enough three-quarters of an hour drive from Cairns, where the tax office is located, to Mareeba, and a scenic hour and a half trek to Dimbula. Double those times for the roundtrip and we have a significant loss of enforcement time spent on the road. Besides, there is no better way to try to get information about chop-chop than to live amongst those who deal with the problem.

Remzi Mulla, the 66-year-old grower (he is not altogether certain of his age, since the records in the Albanian town where he was born were destroyed by fire) who heads the local co-operative board of directors, has calculated that 1500 to 2000 bales of tobacco are diverted into the chop-chop market in north Queensland, but he grants readily that this is at best no more than a guesstimate.

There have been three chop-chop arrests during the first ten months of 2002, an achievement applauded by both growers and manufacturers. On the basis of information supplied, a semi-trailer carrying twelve bales was intercepted, and another ninety-eight bales being carried in six different vans were discovered. In addition, the state police, having stopped a stolen vehicle, found that an accompanying van carried thirty-one bales of tobacco bound for the chop-chop market.

### Remzi Mulla

Remzi Mulla, white-haired, gregarious, articulate, and deeply devoted to the cause of the tobacco growers in north Queensland, merits attention because he speaks for a beleaguered constituency and what he says reflects the feelings of the growers he represents.

Remzi's father (most everybody in Australia is refreshingly first-name informal) came to Australia from Albania in 1927, on his own at the age of nineteen, landing in Fremantle. He had left Europe for political and economic reasons. He cut timber in Western Australia for two years, then moved to Rockhampton to pick cotton. He went into tobacco farming when the government offered subsidies to encourage production of the crop. In March 1939,

twelve years after he had arrived in Australia, he sent for his wife and son in Albania. Remzi was ten-years old when he first went to school in Australia, and he later studied pharmacy. He began raising tobacco in 1960 on the farm where he now works; his brother does the same on nearby land. One of Remzi's sons designs computer chips; the other is a diesel technician.

Both Remzi and his brother have prospered, particularly, they believe, because of the government rule that demanded that fifty percent (the manufacturers raised this to fifty-seven percent) of all tobacco products be made up of domestic leaf, a requirement that was dropped in 1995 when Australia opted for free trade policies and eliminated the tariff on imported tobacco. Remzi thinks that there still is hope for tobacco growing in north Queensland. His formula to control chop-chop would involve the following actions to aid growers to make a decent legal living:

- 1) Let the manufacturers defer their tax payments, now weekly, to a monthly basis which would allow them to pay better prices to growers.
- 2) Eliminate the automatic Consumer Price Index increase of the excise tax for tobacco.
- 3) Beef up the Tax Office enforcement effort to make chop-chop dealing truly dangerous for those who engage in it.
- 4) Buyers need to purchase 40 000 bales of tobacco from north Queensland growers.

Remzi veers off to a threat that if the growers do not get a better deal they will unite and not pay their rates. I suggest that such a revolt seems unlikely to lead to constructive results. He shrugs. 'We just can't lie down,' he says. He maintains that if actions he recommended were taken, the cooperative board would enact bylaws that would expel anybody dealing in chop-chop because such behaviour 'would jeopardise everybody's livelihood.' Today, the co-operatives rarely achieve the seventy percent vote required to expel a member. He says that he recently had been approached by a chop-chop dealer who came to the farm with his

wife and began asking questions about the availability of tobacco. The man said that he was just curious; that he was in the region on holiday. Remzi told him that if he didn't leave 'I'll do you in.' The man told the next farmer he solicited: 'There's a crazy bastard on Burns Road,' the site of Remzi's farm.

The most realistic option that Remzi is pushing is a buy-out by the government of the local tobacco growers or at least the percentage of them who no longer can sell sufficient quantity to sustain themselves. In 2000, the north Queensland growers, in collaboration with those in Victoria, thought that they had the outlines of a successful buy-out package. But the Victoria growers withdrew from the coalition when their growing future became more assured. What is needed today for north Queensland, Ramzi says, is an 'agri-politician,' someone who will fight for north Queensland's tobacco growers.

### **Exploring enforcement options**

I have so far mostly indicated the considerable difficulties and dilemmas involved in seeking to combat the chop-chop industry. It seems in order to offer some ideas that might be worth exploring as part of the excise office's campaign to control chop-chop.

#### (1) Rewards:

A particularly inexpensive strategy would be to offer monetary rewards for information that leads to the arrest of growers or dealers engaged in the chop-chop trade. There are several values in such an effort. For one, it represents a symbolic gesture that can be widely publicised in the relevant communities: in this sense it indicates somewhat dramatically that the excise office is concerned about the chop-chop trade and willing to expend money to undermine it. It warns malefactors that they are very liable to be the done in by doobers; and it most assuredly makes them much more anxious about their activities, and less likely to engage in chop-chop transactions.

For another, it offers the possibility of success. There is enough resentment among legitimate growers about chop-chop profiteers to perhaps impel them to report others to the authorities. A reward program could operate with a telephone number that would receive reports. The reporter need not at first indicate his or her identity, but merely record the date and time and nature of the call in order to subsequently qualify for a bounty. Rewards typically are higher than they need to be to work successfully (Geis, Huston, & Wells, 1992). In this regard, \$50 000 would seem a reasonable sum, but the information supplied must be more helpful than just a name: it would be required to be instrumental in an arrest. The downside of a reward approach, of course, is that snitching has unappetising moral overtones and, more practically, that it typically produces a good deal of information that not only can prove useless, but can also be wasteful of investigative resources.

There are compelling arguments for a policy under which the government would buy out redundant growers – or, for that matter, all of the country’s tobacco growers. Such an approach would likely win constituency approval for the politicians who advocated it. My colleague, John Braithwaite observes that such buy-outs could fruitfully be consumed with a reward system. Information which led to the arrest of a chop-chopper could be recognised by placing the source for the information on the top of a buyout priority tax. A grant of half a million or even a million dollars would not be out of line if the government were to gain this amount or more by its attack on the chop-chop trader.

(2) Random Roadblocks:

Drivers who consume too much alcohol, particularly on holidays, often find themselves trapped by police roadblocks set up at particularly opportune times. This tactic might have some success in intercepting the movement of chop-chop from the growing areas to the points of manufacture. The Excise Amendment (Compliance Improvement Bill) enacted in September 2000 provides that conveyances may be stopped and searched for excisable goods and tobacco leaf at any place. Road blocks would need to be unexpected so that word does not circulate too rapidly about where they are. Dogs may also be useful. Dogs are trained to react to drugs; presumably they can also be trained to smell out tobacco leaf.

(3) Sting Operations:

Sting operations would have law enforcement officers pretend to be legitimate chop-chop purchasers and see who agrees to the deal they offer. There are unappetising elements of entrapment in such a scenario, but they might be lessened somewhat by the agents outlining a proposed deal and letting the grower mull it over. He would be told to call a certain telephone number if he agreed to sell, so that at least some of the initiative for the transaction would originate with him. A particularly valuable side-effect of a successful sting operation is that growers no longer can be certain that those who solicit them are not law enforcement personnel.

(4) Set Ups:

More dangerous but worth pursuing is the idea of an operation in which word is circulated that so-and-so is interested in unloading some of his tobacco crop into the chop-chop market. The alleged culprit could have a button that he might press that alerts law enforcement at once and a camera that he might activate if the ploy succeeds in generating a visit from chop-chop dealers.

Similarly, though the danger may prohibit this tactic, a grower might be persuaded to agree to engage in a chop-chop transaction and then alert the enforcement agency about when and where the exchange will occur. The grower could be protected, somewhat, by having any arrest take place further down the line, after the product has been transported to a manufacturing site.

(5) Retailers:

It is a fairly simple matter to identify places that sell chop-chop. While it is costly in terms of time and police power, it could prove useful to put a few such places under surveillance to determine who is delivering the chop-chop to them. It would be simpler if the retailer, for

whatever reason, would agree to the installation of a surreptitious camera that would photograph all persons who enter the store.

### **License forfeiture: A case study**

Privacy laws in Australia inhibit promulgating some of the aspects of illicit tobacco operations that result in the revocation of licenses: 'Section 159 Excise Act precludes ATO officers from advising others when a license has been cancelled' (Tobacco Industry Group, 2002, p. 21). Because of this rule, manufacturers will not be told that they may be dealing with an unlicensed dealer. An amendment ought to be made so that it no longer requires the withholding of such information, which, I believe, should properly be placed into the public domain. Obviously, however, I am obliged to abide by the existing prohibitions. Some of the details in the following case have had to be omitted and others put into more general terms. Thus, for instance, 'Middle East' is substituted for the name of the country involved in the case. At the same time, despite the law, many of the ingredients of the case have become public knowledge, ironically in part from an Tax Office press release.

The case particularly illustrates enforcement difficulties when an operative principle is that the Tax Office not unduly antagonise growers. Australian regulatory investigators, like those in England (see for example, Hawkins, 1984), operate on the principle that the parties with whom they deal are essentially honest and well-meaning and that it is necessary to maintain good relations with them so that, for instance, manufacturers and cooperative officials will help rather than harass them. American enforcers, for their part, are much more likely to adopt a confrontational posture, viewing all those with whom they deal as untrustworthy unless and until they prove otherwise. It may be that these approaches are suitable for the clientele in the different countries.

In June 2001, the Supreme Court of Victoria found Tony Martino guilty of having violated section 117(1) of the Excise Act on the ground that he had traded in the chop-chop market. Martino was fined \$127 718.22 for this offence, and a cutting machine, a cutting blade, a

press, and a set of scales, found in a West Sunshine location in Victoria, were seized by the authorities. Martino's older brother, Frank, was released under a \$100 recognisance that would be forfeited if he did not manifest good behaviour during the following year.

Tony Martino claimed that he had bought some whole tobacco leaf in the town of Leverton, cut and packaged it, and set out for Albury to meet with a 'Leon' with whom he had established contact by phone. Tony stopped in at his brother's farm, claiming he was tired. Tony transferred the leaf to a Toyota utility vehicle, which apparently belonged to his brother, and which was later forfeited to the state. Failure to agree with 'Leon' on a price for the leaf led the brother back home. They were intercepted by the local police from Moyle and Whitfield. Frank claimed that he did not know what was in the bags; that he was surprised that uncut tobacco had ended up in the back of his vehicle.

A spectator at the trial found the judge notably unimpressed by the nature of the violation. The judge noted gratuitously: 'You [growers] work seven months to make thirty-five to fifty cents a kilo. It seems a lot for nothing.' The judge's sternest observation was that his sentence would be nothing compared to the treatment that the defendant might expect from the tobacco manufacturers.

At the time the court verdict was rendered, the grower already had planted his next crop. The manufacturers, acting on the fixed policy that they will not buy from growers who have dealt in the chop-chop market, refused to have anything to do with the crop. The excise office then revoked Frank Martino's license on the ground that he had no legitimate marketplace for the tobacco that he grew. This rather roundabout procedure is a function of the difficulty the tax officials have of proving chop-chop behaviour, and the ease of simply reacting to the manufacturers' dictate. An added difficulty, it appears to me, is that, however expeditious, it is not altogether fair. The Tax Office at least should be obligated to hold a *de novo* hearing, appealable to a tribunal, before it deprives a citizen of his or her means of livelihood. If the procedures to revoke a license by tax officials is overly

burdensome and unduly prolonged then it is these conditions that ought to be amended so that recourse to a less defensible approach is not necessary.

The grower has appealed to an administrative court claiming that indeed he does have a legitimate market for his product, therefore his license should be restored. The excise office has calculated rather scrupulously the cost of the seed that led to his tobacco crop (about \$40 000) and determined to its own satisfaction that the grower at best would have been able to recoup only that amount from the Middle East transaction. The court case is set for a November hearing.

### **Stolen tobacco: A dilemma**

A provision of the Excise Act of 1901 allows tax to be collected on bales of tobacco that are alleged to be stolen from their rightful owner. In one recent case, for instance, the authorities are entitled to bill some \$6 million for more than a hundred bales that were reportedly stolen from the warehouse, though it is arguable who would be obligated to pay the levy, the warehouse (or its insurer) or the grower.

For the excise authorities, the 'stolen' provision is a can of worms. They often desire to impose the levy because they are reasonably certain that the 'stolen' goods were removed with the cooperation of the grower. In other cases, however, they are reasonably certain that there was a bona fide theft. One of the growers to whom I talked said that he is very uncomfortable if he has to go out at two in the morning to inspect his kiln. Another told of his security system going off and his wife, deeply concerned for his safety, cautioning him to ignore the alarm, which was likely a false alert anyway.

For the manufacturers the 'stolen' doctrine is something of a nightmare. They envision the consequences of the hijacking of a truck that could result in a tax bill from the excise office of many millions of dollars. BAT says that it now transports all tobacco only during

daylight hours and that it has installed a satellite surveillance system that costs it more than \$1.5 million.

The Myrtleford co-operative has subsidised all growers so that they can install security systems. The co-operative would like to have a central response to the alarms by professional lawmen and women, but the growing areas are too distant one from another to make that practical. The co-operative also has been negotiating with the Tax Office about having harvested tobacco stored on its premises, but it would require exemption from section 105 of the Excise Act that would make it liable for any tobacco that might be stolen (Tobacco Industry Group, 2002b, p. 5). Such an improvement in storage would seem eminently desirable. The Tax Office should take cognisance of the fact that it has the discretion not to impose the tax if tobacco is reported stolen<sup>3</sup> and could establish security arrangements with the cooperative and the manufacturers that would exempt them from liability in the unlikely event that a theft occurred.

The excise authorities are loathe to make the judgment about whether tobacco bales have truly been stolen because they believe it will give rise to a sense of discrimination among the growers – why me and not him? Yet, they are uncomfortable with a law that doubly victimises the victimised. There also is the obvious problem that no sensible grower will report the theft of a few bales of tobacco to the authorities if he knows that this will result in a sizeable tax bill, and he presumes, with some reason, that the theft will not be discovered. Because of this, the authorities are shut off from information that could be important for enforcement purposes.

### The Southern Shipping Case

The leading legal precedent that guides (or misdirects, depending on how you look at it) excise policy regarding stolen goods is the *Southern Steamship Company* case (Collector,

---

<sup>3</sup> The Tax Office points out that two Attorney General opinions say that it does not possess this power. I find that view unsupportable if the *Southern Shipping Case* (see below) is regarded as ruling precedent.

1962) decided by the High Court of Australia. The British Australian Tobacco Company had delivered to a storage site at Circular Quay 4 in Sydney two hundred and ninety-five cartons of tobacco for shipment to Hobart aboard the steamship company's vessel, the *S.S. Karuah* which was berthed at the Quay. The storage site (called, oddly, a 'dead house') was broken into by forcing the door and forty cartons were stolen at some time between eleven o'clock the night before and five in the morning on Easter Sunday.

The Collector of Customs claimed that the steamship company was responsible for the goods and therefore subject to the 2274 pound excise levy due for the forty missing cartons. The court observed that section 60 of the Excise Act 1901-1952 imposed such liability on a person or company that had been entrusted with excisable goods and had, to the satisfaction of the collector, failed to keep them safely. The steamship company argued that the key to the storehouse had been lodged in the customs office and was not available to it; therefore, the goods were under control of customs. Neither had it had recourse to another key that was sealed but could be used for emergencies. That seal had not been broken.

The High Court, in a unanimous decision, toyed uncomfortably with the doctrine of absolute liability. The justices' reasoning, with all respect, was circular. There was not absolute liability, they declared, because there had to be negligence on the part of the possessor of the goods. But then they ruled that the fact that the goods had been stolen demonstrated negligence in the care for them Justice McTiernan said as much: 'The task of keeping goods safely cannot be said to have been fulfilled if the goods are stolen even though reasonable precautions are taken' (Collector, 1962, p. 290). One wonders what the judges might have concluded had two warehouse guards been shot during the theft of the tobacco. They apparently believed that only a divine act, such as a fire caused by lightning, could exempt the steamship company from liability.

The problematic aspect of this decision and the current policies that use it as a foundation can be located in the opinion of Justice Taylor: 'The provision is not designed to inflict a penalty upon a bailee for some breach of duty imposed by the bailment; it is a provision

which is designed to ensure that some excise revenue should not suffer if excisable goods, by some irregular means, find their way into home consumption' (Collector, 1962, p. 295). The Justice is wrong: The outcome clearly *is* a penalty, and it can be a very severe one. Yet there has to be no true demonstration of negligence, no showing of a guilty mind. However important, the revenue should take second place to the demands of justice – or, more directly put, money should not trump principles. If the claim is that tobacco was stolen, the tax should be collectible only if it can be proven by a preponderance of evidence that the goods were illegally taken. Such a doctrine would press toward more intensive investigation, albeit that it might cause the inconsequential loss of a few million or so in a \$5.1 billion tax receipt.

### **PriceWaterhouseCoopers and chop-chop**

The ugliest and arguably the most disgraceful series of corporate scandals in the history of business enterprise in the United States has involved accounting firms that provided 'creative' solutions to corporate profit and loss statements so that companies on the verge of bankruptcy could report dazzling earnings. As part of these recent events, executives were awarded or stole staggering sums of money from corporations such as Enron that in short order went belly up. The bankruptcies swindled shareholders and deprived employees of lifelong retirement savings. Arthur Andersen, one of America's five leading auditing organisations, was convicted of criminal charges and many of its top executives are now or will soon face similar charges. The swindles that were perpetrated are dazzling in terms of their utter disregard of fiscal decency and responsibility. These plots would inexorably lead any sensible person to conclude that a significant portion of the American business world is riddled with corrupt and self-serving practices. For the auditing companies, there was a fear of losing lucrative auditing contracts; besides, many of them were deriving very large sums of money by offering consulting services to the same companies whose financial statements they were supposed to be examining with scrupulous attention to accuracy.

It is with this background in mind, and admittedly with what perhaps was an unfair prejudice, that I read the June 2001 report on Australia's tobacco industry that had been prepared by PriceWaterhouseCoopers' (PWC) Economic Studies and Strategies Unit. PWC, it needs noting, is the company that audits the books for British American Tobacco Australia, and it is the largest auditing firm in Australia; indeed, in the world. The research unit undertakes commissioned inquiries into public policy matters.

My initial wariness was increased when for the first seventeen pages of the 71-page report there is no mention whatsoever of the funding source for the report. Virtually all of the major findings are presented before we learn from the second page of the Appendices that the report was commissioned by Australia's three major tobacco manufacturers/distributors. It is said, however, that the approach and the findings 'are not necessarily those of the companies' nor of any individual company (Baxter & Wilson, 2001, p. 18). It is difficult to believe that the sponsors would find anything in the report that they would be hesitant to endorse.

Nonetheless, while I personally take issue with many of the report's positions, they are worth careful consideration for at least two reasons: First, I may be incorrect in my assessments; and second, they are views held by people who are important in the world of Australian tobacco and they merit serious attention. But let it be noted that there are serious ethical issues involved in a firm that audits a corporation also promulgating what might reasonably be considered propaganda that involves that corporation.

The document rarely presses the views of the tobacco manufacturers directly, though it cannot resist defining the purchasing practices of its sponsors as 'relatively generous arrangements,' a relatively ambiguous designation. The report's most common approach is to bewail the plight of lower income persons who find that the price of cigarettes, because of the excise tax, consumes a considerable portion of their household income; and that in this regard, the excise tax is a regressive measure that rides heavily on the backs of the poorer portion of the country's population. This matter is well worth some considerable

policy consideration. Cnossen (1977, p. 47) points out after a survey of excise taxes throughout the world that ‘it appears that the tobacco excise is regressive almost everywhere’ (for facts and figures for England, see Godfrey & Maynard, 1988). But the same author notes that this would not be true if differentiated excise rates were applied based on the nature of the product and its selling price. An example is offered of Indonesia where a lower rate is (or at that time was) imposed on indigenous black tobacco and clove that is primarily consumed by lower-income smokers. In India, *biri* cigarettes are taxed at a much lower rate than American imports, and in the Philippines the excise rate for a pack of cheaper cigarettes was twelve percent against thirty percent for the expensive imports (Cnossen, 1977, p. 50). Such discrepant levies could have a very significant effect on the chop-chop market which largely appears to be a market frequented by the less wealthy. If because of much lower taxes certain brands of cigarettes can be bought for a price not much out of line with the cost of chop-chop it is conceivable that the chop-chop industry would be priced out of existence. On the other hand, if the goal is to price low-income smokers out of the habit this policy would be counterproductive or, at best, have a neutral impact.

Mention of the excise tax in the PriceWaterhouseCoopers report often is accompanied, not very subtly, with the adjective ‘huge’ and the noun ‘burden,’ the first word preceding ‘tax’ and the second following it (for example, Baxter & Wilson, 2001, p. 27). Rather more subtly, the report finds the regulatory system for cigarettes in Australia woefully jerry-built. Commonwealth and state packaging and marketing regulations are said to be promulgated endlessly and to impose dire costs and to promote great confusion in the ranks of retailers, who regard them almost as a challenge to cease selling cigarettes.

The Executive Summary also laments the fact that the regulations appear to be issued without prior consultation with those who will have to obey them (Baxter & Wilson, 2001, p. 1). Given that a sizeable literature has found that the tobacco industry has, in the past ten years, been unconscionable in terms of the deceptiveness – and downright lies – that it has used to avoid confronting the dangers associated with smoking, it is at least arguable that it or its outlets represent a constituency that ought to be intimately involved in determining

rules designed to control its behaviour. At the same time, there obviously is some good sense in the plaint that requirements for the advertising and marketing of tobacco ought to be more homogeneous across Australia. There is, however, less virtue in the observation that the rules have not been adequately demonstrated to be effective in achieving public health aims, most importantly in reducing the risk of sales to minors. If the tobacco manufacturers so believe, it would appear incumbent upon them to carry out the scientific inquiries that would prove or disprove their thesis; nor does it seem unfair to point out that historically the record of scientific integrity demonstrated in research undertaken under the auspices of tobacco manufacturers, to put it kindly, leaves a good deal to be desired, so that answers to such questions must be sought by nonpartisan and well-respected social scientists. All told, the future vitality of the tobacco industry in Australia depends heavily upon the goodwill and cooperation of the domestic manufacturers and it would be encouraging to be able to forge a strong link that satisfied their needs and the needs of the government and consumers.

The argument is made in the PriceWaterhouseCoopers report, in the face of worldwide empirical evidence that categorically contradicts it, that the seventy percent excise tax on cigarettes in Australia 'has created a significant and growing illegal tobacco market' (Baxter & Wilson, 2001, p. 1). Seventy percent is pretty much the average excise tax around the world: European Union legislation requires that the tax on cigarettes be at least 70 percent (Merriman, ndi, p. 34). The theme that the tax inevitably leads to an illegal market subsequently is reiterated in other words in the report: '[T]he attractiveness of excise tax avoidance will remain so long as the high taxation approach is maintained' (Baxter & Wilson, 2001, p. 9). Note, contrariwise, the empirical conclusions of Luk Joossens and Martin Raw (2002), after scrupulous research, that it is not excise taxes but lax enforcement that most significantly contributes to tobacco tax avoidance. They note that market forces may have 'some' effect on the smuggling of cigarettes, but that such smuggling is more prevalent in countries with low excise taxes. They point out that although cigarettes in Spain are among the cheapest in the European Union, smuggled cigarettes accounted for fifteen percent of the market there in 1993. Legal pressure on

smugglers reduced this rate to five percent by 1999 (Joossens & Raw, 2002, p. 8). Notable too, 'where taxes have been reduced consumption has risen and revenue has fallen, with disastrous consequences for public health' (Joossens & Raw, 2002, p. 1). A study by David Merriman adds that his research discovered that 'the level of corruption [in a country] is found to be an even more important determinant of tobacco smuggling than price differential' (Merriman, ndi, p. 9).

Rather overblown, though perhaps with a slight element of truth, is PriceWaterhouseCoopers' observation that the 'artificially high value' (what is 'artificial' about it?) of cigarettes in Australia endangers retail staff because the product they sell becomes more tempting to robbers. Lest this point be overlooked by readers, the report adds that there is also peril in manner in which cigarettes have to be displayed; staff may face increased danger because they 'have to leave their posts to collect tobacco products' (Baxter & Wilson, 2001, p. 9). It is maintained that the presumed decline in cigarette smoking in Australia, lauded by health authorities, is untrue, merely a function of persons changing to chop-chop. No support is offered for this conclusion, but it is an opinion well worth empirical examination.

The rhetoric escalates as the report progresses: We are told that '[t]he creation of a thriving illegal tobacco market is a direct result of government policy,' particularly in regard to the excise tax which has 'artificially inflated the value of tobacco products' (Again one wonders what is 'artificial' and what is 'real?'). This has led, it is claimed, to 'the involvement of criminal elements' so that aspects of the tobacco industry pose considerable personal danger for transporters and retail staff (Baxter & Wilson, 2001, p. 15).

One observation on chop-chop in the consultant report seems to be something of a nonsequitur. The tobacco companies, it is said, had addressed the matter of chop-chop, 'pointing out its scale of the problem, its cause, and operation.' They called for additional resources to be devoted to the matter. But 'the Government's policy response was to increase penalties for the sale of illicit product and to increase enforcement activity.' On the

face of it these would seem to be responsive moves, the impact of which would have to be determined. But the report concludes this section with an odd observation: ‘However, anecdotal evidence suggests that the distribution of Chop-Chop has now spread to include outlets such as hairdressing salons and butchers as well as the more traditional outlets of hotel bars, street markets, and small retail outlets’ (Baxter & Wilson, p. 47).

The report, finally, offers interesting ‘anecdotal evidence’ that suggests why the purchase of chop-chop is not regarded as untoward by those who buy it:

- 1) Tobacco is a legal product and therefore chop-chop has no illicit association;
- 2) ‘Tobacco consumers are used to being used as revenue tools by governments’; therefore tax avoidance by smoking chop-chop is seen as ‘fair game.’
- 3) The only victims appear to be the tobacco company, whose products are avoided.
- 4) Chop-chop enjoys an apparent ‘positive’ health image, in that it is seen as uncompromised because it does not appear to contain ingredients added by the manufacturers (Baxter & Wilson, 2001, p. 49).

The second point seems rather dubious and the third incorrect, since it is much more likely that the chop-chop customer believes that he or she is cheating the tax authorities not the tobacco manufacturers. The fourth point is well worth consideration by government authorities who may want to try to undermine any positive health image associated with chop-chop. Tobacco manufacturers point out that the only ingredients that they add to cigarettes, when they do so at all, are harmless taste-enhancers. They note that they control scrupulously the contents of their product, and point out that chop-chop may contain all kinds of harmful impurities. There are, of course, no health warnings on chop-chop containers. The Tax Office also notes that ‘the manufacturing facilities where illegal tobacco is cut are unlikely to be maintained to the required ‘food grade’ standards,’ and

they suggest that there may well be pesticide additives, bleaches for removing moulds, and other 'foreign' materials in chop-chop (Tobacco Industry Group, 2002a).

It might well be worthwhile to assay samples of chop-chop and determine what, if any, materials are found in it that could have ill effects on a smoker, and then to publicise the conclusions widely.

### **Organised crime and chop-chop**

'Organised crime' is a highly evocative term. The image that it arouses involves psychopathic killers and ruthless dark-visaged men swearing fealty to each other in blood oaths. Today, the ranks of organised crime are said to have extended well beyond the Italian Mafia into Asian and Latino ethnic groups, among others. From a sociological viewpoint, organised crime is regarded as the route chosen by ethnic minorities who see their way to lawful financial success blocked because of barriers based on discrimination which keep them from obtaining the credentials, particularly those of an educational nature, that would allow them access to legitimate enterprises. It is often said of the leaders of organised crime that if they were to turn their intelligence and skills to legal endeavours they inevitably would flourish.

Just how intertwined cigarette and narcotic smuggling are and might become as an organised crime enterprise is an open question. At the moment, in many parts of the world the tobacco industry appears to be used by organised crime to launder monies that are 'earned' by the sale of narcotics.

Be that as it may, the fear of the intrusion of organised crime into the black market in cigarettes in Australia is not inconsiderable. The Audit report often hinted rather broadly that such an intrusion already was underway, but no concrete information was offered (for example, 'Commonwealth law enforcement authorities have evidence to link organised crime groups to the trade in chop-chop' (Tax Office, 2002, p. 14)). Enforcement officials to

whom I talked tended to note only that they were anxious about such a development, but at the moment the only evidence they had of possible organised crime in the tobacco trade in Australia was merely anecdotal.

My own effort to pin down the level of organised crime involvement, if any, in the chop-chop business indicated that chop-chop involves very loosely-knit low-level crime groups, but it should be kept in mind that it is particularly difficult to prove a negative conclusively – that something does not exist. David Gray, the director of intelligence at the National Crime Authority (NCA), emphasised that his smallish agency targets the most ominous upper echelons of organised crime. The NCA's scrutiny of the chop-chop market led it to the conclusion that it was not a sophisticated operation, that whatever organisation might at first be 'didn't seem to meet the threshold level to justify NCA involvement.' This did not necessarily mean, Gray added, that there might not be some kind of organised crime involvement in chop-chop transactions.

There is an ominous possibility that if the tobacco manufacturers abandon Australia in terms of domestic purchases, they might be less constrained to engage in the kind of nefarious smuggling activities, involving trans-shipments, which have been documented as a result of discovery proceedings in court cases. Simply put, the companies, with the complicity of executives high up on the corporate ladder, have knowingly fed their product into underground smuggling channels. Cigarettes are good bets for smuggling. They are compact and lightweight, and a large semi-trailer can hold more than 120 000 packs of cigarettes (Flexnor, 1996, pp. 1, 6).

A typical procedure has been to ship untaxed cigarettes to, say, Andorra, with fictitious paperwork indicating their destination as, perhaps, Spain. Andorra, it might be noted, has not been selected for this illustration haphazardly. Though matters there are now under reasonable control, exports from the United Kingdom to Andorra rose from thirteen million cigarettes in 1993 to 1520 million in 1997 – vastly more than the Andorran population of 63 000 conceivably could consume. The smuggled cigarettes might then be transhipped to

their place of origin, packed in cartons marked as a product other than cigarettes or, perhaps, their entry could be facilitated by bribes to dockyard personnel. Quite commonly, the illegal smuggling is accompanied by the legal introduction into the end destination of a small amount of the smuggling company's cigarettes in what is known as 'umbrella operations.' This latter shipment is used to justify advertising to gain acceptance of the brand on the local market and to stimulate demand on the illegal markets (Action on Smoking and Health, 2000, p. 12; *Illegal Pathways*, ndi, p.vi; for a case study of such an operation in Colombia see Shapiro, 2002). A 'smoking gun' internal tobacco company memorandum verifies its involvement in such activities. 'It is recommended,' one company official wrote to another, 'that [we] operate under 'umbrella' operations. A small volume of Duty Paid exports would permit advertising and merchandising support in order to establish the brands for the medium/long term with the market being supplied initially primarily through the DNP [Duty Not Paid] channel' (Action on Smoking and Health, 2000, p. 10). Today, about one third of all internationally traded cigarettes are smuggled. One defence against the advertising tactic has been to forbid the expenditure of more money on advertising than the company reports for tax purposes as its gain in the legal market.

There inheres in what little that I have learned and written about chop-chop a puzzling question to which I have been unable to locate an answer. It has often been noted that Australia's tobacco business is unique, in part because the growers are licensed and the black market is made up of diverted leaf that is domestically grown.

But why don't other countries have a similar problem to the chop-chop situation in Australia? Nowhere in the considerable literature on the sale of Duty Not Paid (DNP) tobacco have I seen a syllable about an arrangement similar to chop-chop in Australia. Is this because such diversion is so insignificant compared to smuggling and counterfeiting cigarettes that it is not worth a mention? Or is it because the smuggled product can undersell or at least meet the price of any potential overseas market in chop-chop's equivalent?

There is a puzzling omission in the extensive and often sophisticated analyses of the tobacco trade that are issued by the excise office. In none of them have I seen any mention of the smuggling of cigarettes from overseas into Australia. There seems to be agreement that such smuggling occurs, that it is not insignificant in scope, and that it usually involves ship containers that are placed aboard seagoing vessels. The containers may have cigarettes hidden under other and legal cargo that is itemised in the manifest. China is most often mentioned as the point where the illegal tobacco is loaded, though other entrepôts sometimes are named. I have not come across any mention of the landing of contraband cigarettes at isolated points along the very long and often isolated Australian coastline.

The reaction to such efforts at smuggling that I've heard tend to be low-keyed. It goes on, it is granted, but we have excellent detection devices that can determine rather well what truly is in a container and can permit us to seize a goodly percentage of the cigarettes that are in the process of being smuggled into Australia.

For me the seemingly unattended relationship between the chop-chop market and the smuggled cigarette market is of considerable importance. How much of domestic smoking involves contraband cigarettes that have gotten through the customs detection system? In what manner, if any, do smuggled cigarettes compete with chop-chop for the smoking trade? Presumably, smuggled cigarettes can be sold a good deal cheaper than taxed cigarettes. Are they? Or is that same price asked in order to cover the costs and, particularly, the risks involved in the smuggling enterprise? And, most basically, is there adequate coordination between customs, which is responsible for the control of smuggling, and the excise office, which seeks to control the chop-chop trade?

## **Conclusions**

It is essential to keep in mind the solidly-grounded conclusion of the World Bank, after a comprehensive review of cigarette smuggling in today's global community: 'Smuggling is a serious problem,' the World Bank report observes, 'but even where it occurs at high rates,

tax increases bring greater revenues and reduce [cigarette] consumption. Therefore, rather than foregoing tax increases, the appropriate response to smuggling is to crack down on criminal activity' (Action on Smoking and Health, 2000, p. 18). This is a vitally important empirically-supported conclusion, though it leaves unanswered questions about the consequences for smuggling and the chop-chop trade sharply and rapidly increased tax levies might have, or what results might ensue if the tax reached what the public believes is an unacceptable level. It should be noted too that cigarette excise taxes fall short of covering the health costs incurred from smoking (Hanson & Logue, 2000, p. 1254).

At the same time, I disagree with the logic of those who downplay the contribution of the excise tax to an illegal tobacco market. They may follow this observation with the 'proof' that countries such as Spain, which had a very low excise tax on cigarettes, nonetheless suffered from high levels of tobacco smuggling. The argument then is made that the core problem is lax enforcement work; that the excise rate is largely irrelevant (Joossens & Raw, 2002).

Current excise taxes are a major contributing force to the chop-chop market. 'If I sold two bales of tobacco for chop-chop,' said one grower wistfully, 'I could take a very nice vacation.' Excise taxes have existed for centuries. Today, the fact that they serve to reduce smoking probably is sufficient reason for the excise, beyond the contribution it makes to the national budget. I have offered a suggestion to make the tax less regressive, but its general level and existence is a fact of contemporary life, and like smuggling (see Flexnor, 1996) and chop-chop, its sequelae are something that have to be dealt with on their own terms.

Bruce Thompson, now at work in New Zealand, during his time as a top administrator in the Tax Office was regarded as a particularly astute student of chop-chop developments. He offers the following laundry list of explanations for the emergence and continuation of chop-chop trade:

- (1) There is no other market for the growers' leaf.
- (2) They cannot grow any other crop. Previous industry rationalisation did not work for these people or for their land.
- (3) Leaf is not of sufficient quality for the legal market.
- (4) The yield exceeds the allocation quota. There is no legal buyer, though manufacturers often will buy excess just to remove temptation to sell the overage illegally.
- (5) The growers want cash/income.
- (6) Pressure from buyers to sell.

Thompson then includes a wise addendum: 'Etc.'

I have made an attempt to address a number of the foregoing items and to see what implications they might have for the work of the Tax Office. As a working agenda each point merits analysis and ideas for possible remedial action. This report, most certainly, has merely touched the surface of a problem that is complicated, intellectually challenging, and of considerable policy importance, especially in view of the public health risks attached to the cigarette trade.

## Acknowledgments

I want to express my deep appreciation to persons who have made the preparation of this report possible. In particular, Valerie Braithwaite has been superbly supportive and endlessly helpful, as has John Braithwaite, with whom my association goes back a great many years. Linda Gosnell at ANU is a superb arranger and a lovely person. Thanks also are due to two fine Ph.D. students – Sophie Cartwright and Jodie Houston – who were helpful and jolly research companions. Greg Rawlings, whose office was down the hall, bailed me out of numerous word processing crises. Prue Torrance, Ph.D. student, was an unbelievably competent editing aide. Tina Murphy was also a pleasant help mate, as were Eliza Ahmed and Monika Reinhart. Henry Pontell, my American colleague who has been working in Australia on the topic of identity theft, was both great company and notably helpful.

Long-time friends Bronwyn McNaughton and Peter Grabosky, Julie and David Biles, and Rhonda and Duncan Chappell were gracious hosts and made our time in Canberra particularly pleasant. My wife, Dolores Tuttle, was, as always, a great companion and help-mate.

Bob Harkins and Steve Hood of the Tax Office were helpful well above the call of duty. The fact that people in the tobacco industry like and trust them made those persons much more receptive to me than they might otherwise have been. Other Tax Office people – Paul Duffus, Margot Rushton, Andrew Stout, Ted Bunt, Michael Beattie, Bevan Murphy, and Paul Crowe – cooperated in every way with my work, and offered excellent advice.

At BAT I was very courteously assisted by David Singleton, Michael Dijanosic, Rob Edgerly, Phil Hando, and Gary Kreele. At Philip Morris, Joe Miot and Brad Smith shared their views with me. John Moore, the office manager at the Tobacco Co-Operative of Victoria, took a good deal of time from his other tasks to provide me with an understanding of the work of his organisation, as did Colin Masterton and a fellow grower in Myrtleford who preferred to remain anonymous. Angie Rigoni was also an enormous source of valuable information. In north Queensland, growers and officials who offered assistance were, in alphabetical order, John Bonaccori, Glenn Cagnola, Joe Cadillo, Dita and Angelo Carusi, Tony Casoniti, Oscar Gallina, Danny Latit, Sid Rantucci, Peter Soda, Craig Starham and Eddie Tofanello.

Others who helped me were Paul Baxter, David Gray, Michelle Smith, Grant Wardlaw, Michelle Scollo, Toni Makkai, Bruce Thompson, Daryl Cram, and Tricia Dogao.

## REFERENCES

- ABC National Rural News. (2000). (June 23).
- Action on Smoking and Health. (2000). *Tobacco industry smuggling*. London: Submission to the House of Commons Select Committee (February 16).
- Allen, H. (2002). Smoke-filled rooms in Brooklyn tobacco party. *New Yorker*. (July 20).
- Australian Taxation Office (Tax Office). (2002). *Administration of tobacco excise*. Canberra: Australian National Audit Office.
- Baxter, P. (2002). Telephone Interview. (September 26).
- Baxter, P., Wilson, L, et al. (2001). *The current economic and public environment for the Australian Tobacco Industry*. Canberra: PriceWaterhouseCoopers.
- Bimbauer, B., & Sisti, L. (2002). Australian Parliament warned of tobacco smuggling-crime link. *The Public I*. (June 22).
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Melbourne: Cambridge University Press.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.
- Braithwaite, J., & Drahos, P. (2000). *Global business regulation*. Cambridge: Cambridge University Press.
- Carey, P. (2001). *The history of the Kelly Gang*. St. Lucia: University of Queensland Press.

Cnossen, S. (1977). *Excise systems: A global study of selective taxation of goods and services*. Baltimore: Johns Hopkins University Press.

Corina, M. (1975). *Trust in tobacco: The Anglo-American struggle for power*. London: Michael Joseph.

Cox, H. (2000). *The global cigarette: Origins and evolution of British American tobacco, 1880-1945*. Oxford: Oxford University Press.

Dimbula History Committee. (1989). *Golden leaf to golden reef: A history of Dimbula*. Dimbula: Dimbula State School.

Due, J. F. (1994). *Excise taxes*. Washington, DC: World Bank.

Excise Business Group. (2002). *Australian Tobacco Industry profile: 2002*. Canberra: Tobacco Industry Group, Australian Taxation Office.

Fisse, B. & Braithwaite, J. (1983). *The impact of publicity on corporate offenders*. Albany: State University of New York Press.

Flexnor, P. (1996). *The effects of excise tax differentials on the interstate smuggling and cross-border sales of cigarettes in the United States*. Washington, DC: Tax Foundation.

Fossen, A. van. (2002). Norfolk Island and its tax haven. *Australian Journal of Politics and History*, 48, 210-225.

Geis, G. (1978). The fable of a fatty. In Peter W. Lewis, & Kenneth D. People (Eds.), *The Supreme Court and the criminal process: Cases and comments* (pp. 150-152). Philadelphia: Saunders.

Geis, G., Huston, T., & Wells, J. (1992). Scrutiny on the bounty: Business rewards for crime tips. *Business Horizons*, 35 (November-December), 80-81.

Global Combat of Illicit Tobacco Trade. (2002). *In the news*. (Australian Taxation Office) 28, (August 19).

Godfrey, C., & Maynard, A. (1988). Economic aspects of tobacco policy and taxation policy. *British Medical Journal*, 297, 339-343.

Hanson, J. D., & Logue, K. D. (2000). The cost of cigarettes: An economic case for ex post incentive based regulation. *Yale Law Journal*, 107, 1166-1361.

Hawkins, K. (1984). *Environment and enforcement: Regulation and the social definition of enforcement*. Oxford: Clarendon Press.

Hoagland, S., & Pieterse, R. (2000). *Suicide in Australia: A dying shame*. Sydney: Wesley Mission.

Hood, S. (2002). Personal Interview. (October 14).

*Illegal pathways to illegal profits: The big cigarette companies and international smuggling* (ndi). Campaign for Tobacco-Free Kids.

Joossens, L. (2002). *Tobacco smuggling*. Tobacco Control Fact Sheets (March 19).

Joossens, L., & Raw, M. (2002). *Turning off the tap: An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling*. London: Cancer Research UK (June).

Merriman, D. (ndi). *Understand, measure, and combat tobacco smuggling*. Economics Toolkit. Tool 7: Smuggling. Washington, DC: World Bank.

Merriman, D., Yrelili, A., & Chaloupka, F. J. (2000). How big is the worldwide cigarette smuggling problem? In P. Jha, & F. J. Chaloupka (Eds.), *Tobacco Control in Developing Countries* (pp. 365-392). Oxford: Oxford University Press.

Morgan, S., & Murphy, K., (2001). *The 'other nation?' Understanding rural taxpayers' attitudes towards the Australian tax system*. Centre for Tax System Integrity Working Paper No. 26. Canberra: Australian National University.

Passive smoking threat to 1.7m children. (2002). *Canberra Times* (September 20) p. 1.

Robertson, K. (1973). *Myrtleford: Gateway to the Alps*. Melbourne: Rigby.

Rowe, C. (2001). *Aggressive Tobacco Strategy 2001-2002*. Canberra: Australian Taxation Office.

Sergeant, I, C., (ndi). *How to Tax Cigarettes in Transition Economies*. London: International Tax Investment Centre.

Scollo, M., & Freeman, J. M. W. (in press). Early evidence of impact of recent reforms to tobacco taxes on tobacco prices and tobacco use in Australia. *National Tobacco Campaign Evaluation Vol III*. Canberra, Department of Health and Ageing.

Talbot, D. (2000). *Tobacco in the Owens Valley*. Bright, Victoria: Specialty Press.

Thompson, B. (2002). *E-mail correspondence* (September 25).

*Tobacco Growing in Australia*. (ndi). Myrtleford: Tobacco Co-Operative of Victoria Ltd.

Tobacco Industry Group. (2002a). *Illegal Tobacco*. Canberra: Australian Taxation Office (April).

Tobacco Industry Group. (2002b). *Tobacco Producers: An Approach to Licensing & Compliance Response*. Canberra: Australian Taxation Office.

Thompson, M., & Townsend, L. (1981). *A Pictorial History of Mareeba*. Mareeba: George H. O'Donnell.

Wakefield, M., Carangis, J., Wilson, D., & Reynolds, C. (1992). Illegal cigarette sales to children in South Australia. *Tobacco Control*, 1, 114-117.

Walker, R. (1984). *Under Fire: A History of Tobacco Smoking in Australia*. Carlton, Victoria: Melbourne University Press.

Winstanley, M., Woodward, S., & Walker, N. (1995). *Tobacco in Australia: Facts and Issues*. 2nd. Carlton South, Victoria: Ash Australia.

## **CASES**

*CEO of Customs v. Martino*, Victoria Supreme Court 217 (2001).

*Collector of Customs (N.S.W.) v. Southern Shipping Company, Ltd.*, 10 Commonwealth Law Reports 279 (1962).

*Ngo Ngo Ha and Another v. State of New South Wales and Others; Walter Hammond & Associates Pty Ltd v. State of New South Wales and Others*. 189 Commonwealth Law Reports 465 (1997).

*Philip Morris Ltd. V. Commissioner of Business Franchises (Vict.)* 167 Commonwealth Law Reports 399 (1989).

SAVINGS and LOAN



*New Yorker*  
August 5, 2002