

**Cigar Association of America, Inc.
Presentation to the
OMB Office of Information and
Regulatory Affairs**

March 19, 2013

Overview

- Current Cigar Industry
- Tobacco Buyout
- FDA User Fees

Current Cigar Industry

- Size of Industry
- Comparison to Cigarette Industry
 - Manufacturers/Brands
 - Definitions
 - Size and Shape

Size of Cigar Industry

Sales by:

- 2012 Total Industry by Units: 13.782 billion
 - Large Cigars: 13.02 billion
 - ◆ Premium Cigars: 305 million
 - Little Cigars: 762 million
- 2011 Total Industry by Dollars: \$6.6 billion
 - Large Cigars: \$6 billion
 - ◆ Premium Cigars: \$500 million
 - Little Cigars: \$100 million

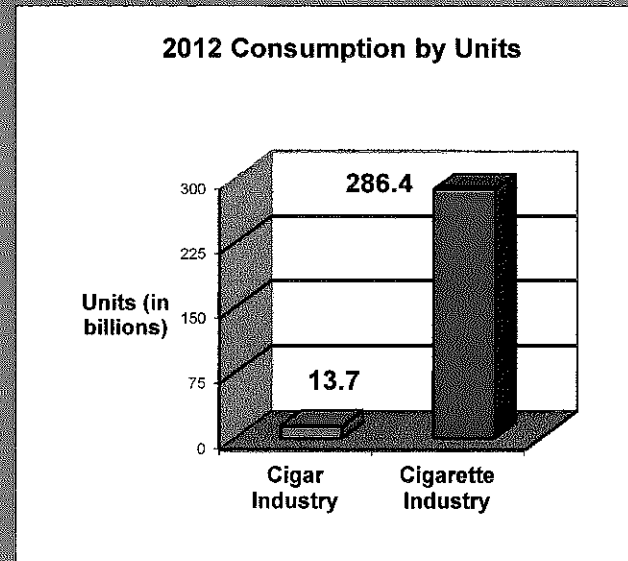
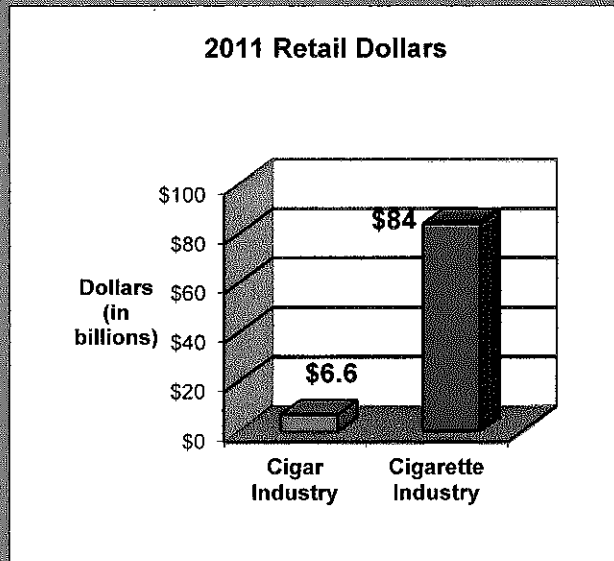
Size of Cigar Industry

Excise Taxes Paid:

- 2012 Federal Excise Taxes (est.): \$803 million
 - Large Cigars: \$765 million
 - Little Cigars: \$38 million
- 2011 State Excise Taxes (year ending June 30, 2011): \$525 million

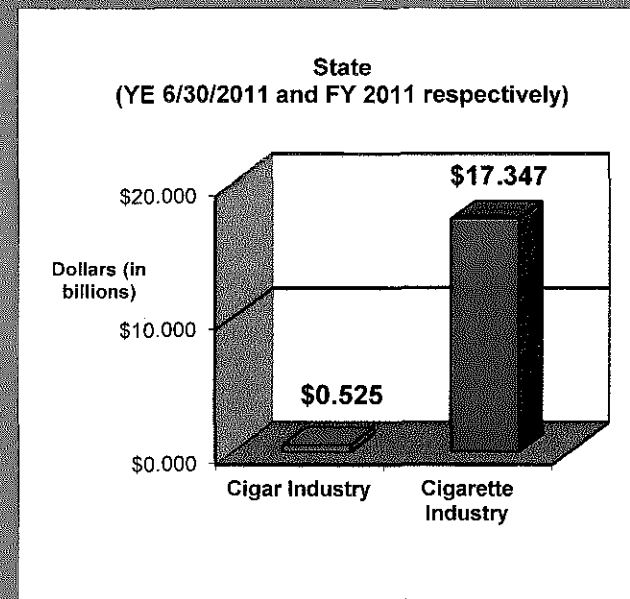
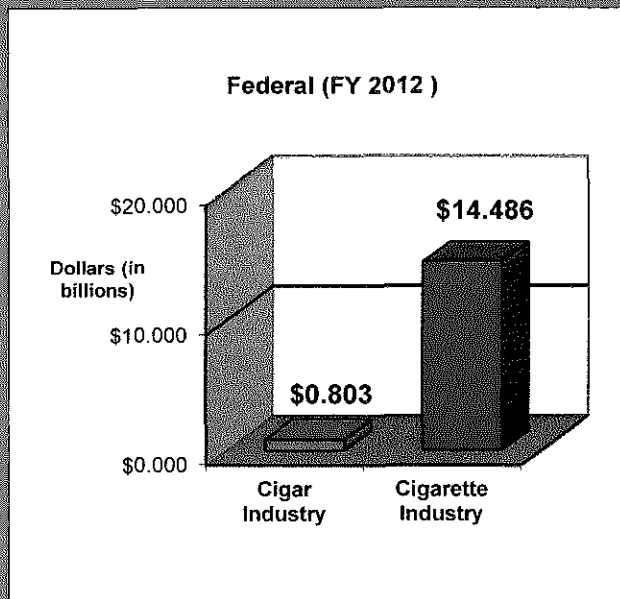
Size of Cigar Industry

The cigar industry is between 4% and 7% of the cigarette industry. More cigarettes are sold in about 2 weeks than cigars are sold in a full year.



Size of Cigar Industry

Respective Industry Size - Excise Taxes Paid



Manufacturers/Brands

- Cigarette Industry
 - 3 Major Manufacturers
 - Approximately 45 brands
- Cigar Industry
 - 20 Major Manufacturers
 - Approximately 2400 brands

Definitions

□ Cigarette “(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, it is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.”

Definitions

Cigar “any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco”

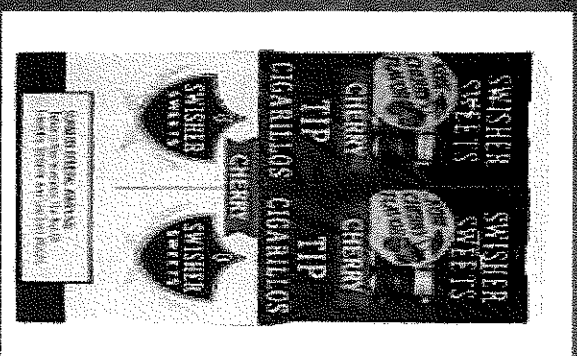
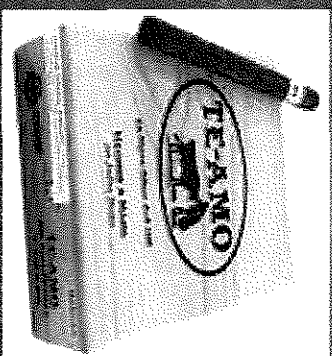
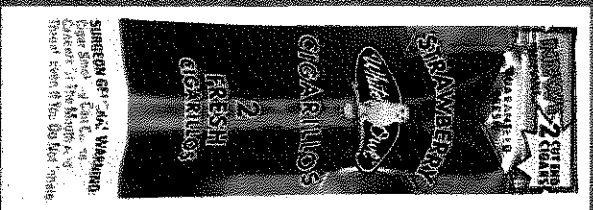
- Little Cigar: cigars weighing no more than three pounds per thousand
- Large Cigar: cigars weighing more than three pounds per thousand

Size and Shape

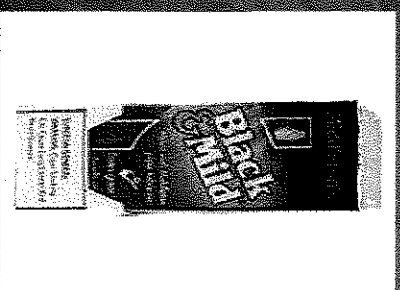
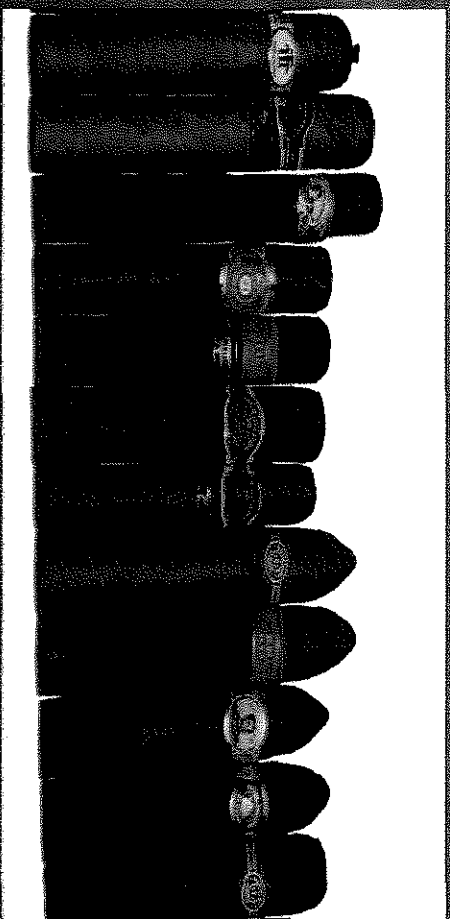
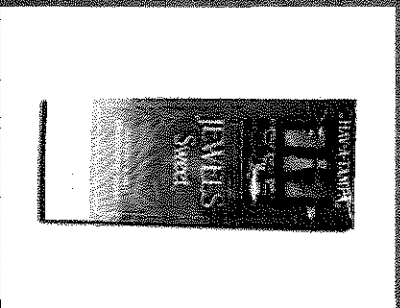
Cigarettes are uniformly manufactured and packaged



Size and Shape



Cigars are not uniformly manufactured or packaged



Fair and Equitable Tobacco Reform Act ("FETRA"): The "Tobacco Buyout"

History of FETRA

- Passed in 2005, concludes in 2014
- Total cost: \$10.1 billion over ten years
- Paid by tobacco manufacturers and importers
- Cigar companies did not use quota tobacco or benefit from the system
- Cigar industry share has gone from \$27 million in 2005 to \$100 million in 2013 (declining cigarette volumes)

FETRA

- FETRA Assessment Methodology
 - Step A: Inter Category Allocation (i.e. cigarettes, cigars, snuff)
 - Step B: Intra Category Allocation (i.e. Altadis, Swisher, John Middleton)
- Assessments based on information provided by tobacco manufacturers and importers

FETRA

- For FY 2005, Congress determined to calculate shares of the buyout by “multiplying net tobacco products removed (both domestic and imported) by the maximum excise tax rate for each class of tobacco.”
- This methodology erroneously assumed all large cigars paid excise taxes at the cap rate of \$48.75/1,000, significantly overstating the cigar industry share.
- Based on IRS figures, if actual excise tax payments had been used for FY 2006, the cigar industry share would have been 2.6% rather than the 3.044% calculated under FETRA. In the years since, this disparity has grown.

FETRA

- Relation to SCHIP tax increase
 - In 2009, the SCHIP tax increase raised the large cigar excise tax rate from 20.719% of manufacturer's sale price with a cap of 4.875 cents to 52.75% MSP with a cap of 40.26 cents
 - CAA asked Commodity Credit Corporation ("CCC") of USDA to use actual excise taxes paid
 - CCC declined, electing to continue using the existing methodology (2005 rate and cap)

Challenges to FETRA Methodology

■ There have been two challenges to the FETRA methodology, one to “Step A” and one to “Step B.”

- Step A: Philip Morris sued USDA seeking to use the new tax rates and cap should be used to calculate the inter category share

Decrease cigarette industry share - increase cigar industry share

Challenges to FETRA Methodology

	CAA Method	USDA Method	Philip Morris	
Cigar Portion of Buyout Assessment	7.5%	9.8%	22.5%	Total Buyout Assessment
FY 2013	\$75,000,000	\$98,000,000	\$225,000,000	\$1,000,000,000

Challenges to FETRA Methodology

- Step B:
 - Prime Time International challenged the intra category allocation
 - ◆ Proposed CCC use weight versus units
 - CCC published Proposed Rule
 - A group of cigar companies urge that CCC maintain current methodology

FDA - User Fees

- Amount of user fees
 - The Center for Tobacco Products' budget is set by statute and funded by the tobacco industry
 - CTP receives a fixed amount of funding – no additional funding for regulation of additional categories of products
- Key issues are:
 - how user fees are divided by segment and by company
 - how user fees for new tobacco products will be calculated

FDA - User Fees

After 2014 termination date of the buyout, FDA can use a different methodology to calculate user fees.

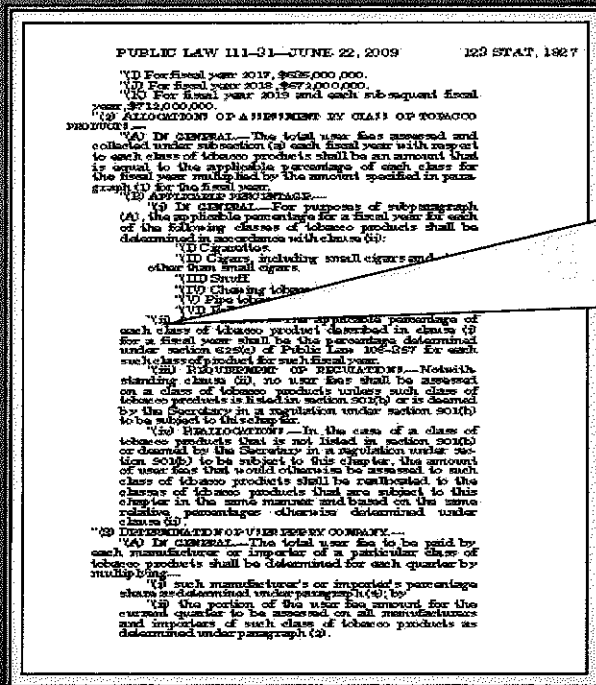
- CAA: Use actual excise taxes paid
- USDA: Current methodology
- PM: Use prevailing excise rates and caps and continue incorrect assumption that all large cigars are at the cap

FDA - User Fees

	CAA Method	USDA Method	Philip Morris	
Cigar Portion of User Fees	7.5%	9.8%	22.5%	Total FDA User Fees
FY 2013	\$37,875,000	\$49,490,000	\$113,625,000	\$505,000,000
FY 2015	\$42,450,000	\$55,468,000	\$127,350,000	\$566,000,000
FY 2019	\$53,400,000	\$69,776,000	\$160,200,000	\$712,000,000

FDA - User Fees

The FSPTCA provides that user fees for each class shall be the same as the class assessment percentage under the Fair and Equitable Tobacco Reform Act ("FETRA"). FETRA expires in FY 2014.



"The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108-357 for each such class of product for such fiscal year." (§ 919(b)(2)(B)(ii)).

FDA - User Fees

On January 8, 2013, FDA announced that it anticipates publishing a proposed rule regarding data collection for computation of user fees.

"... USDA currently collects such data, but its program sunsets at the end of September 2014 ... FDA is taking this action so that it may continue to calculate market share percentages needed to compute user fees."

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FDA - User Fees

The inherent fairness of using actual excise taxes paid was recognized with the FSPTCA itself.

	128 STAT. 1829	PUBLIC LAW 111-31—JUNE 22, 2009
		"(9) No FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.
		"(4) ALLOCATION OF A FISCAL YEAR.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (a) through (h) of section 605 of Public Law 109-357.
		"(5) ASSESSMENT FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.
Violations		"(6) TIMING OF ASSESSMENT.—The assessment imposed on each manufacturer or importer under this section of the amount of the user fee shall be based on the excise taxes paid by such manufacturer or importer for each quarter of each fiscal year. The assessment shall cover not later than 90 days prior to the beginning of each quarter for which such assessment is made, and payment of all assessments shall be made by the first day of the quarter involved.
Deadline		"(7) MEMORANDUM OF UNDERSTANDING.—
		"(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.
Disclosure		"(B) AS PROVIDED.—Beginning not later than fiscal year 2010, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage share described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.
Effective date		"(8) CHARGING AND A VOUCHER OF FEES.—
		"(A) IN GENERAL.—For each quarter under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided for advances in appropriations Acts, subject to paragraph (7)(D). Such fees are not to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation accounts for salaries and expenses with such fiscal year limitation.
		"(B) VOUCHERS.—

“Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.” (§ 919(b)(5)).

FDA - User Fees

- ❑ User fees should be proportional to the relative size of product segment
- ❑ The simplest, fairest and most transparent method of calculation would be to use actual excise taxes paid using prevailing rates and cap
- ❑ Government has sufficient information from companies included in FETRA, but:
 - not all tobacco products pay federal excise taxes
 - government sales data is not available for all tobacco products