

CORE ARGUMENTS AGAINST A PRICE POINT DEFINITION



- 1. Preventing Youth Access to Tobacco Products:** PCA and CRA strongly support efforts to prevent youth access to tobacco products. Premium cigar retailers and manufacturers have a strong record of compliance with laws regarding age verification and do not market their products to youth. The objective of a price point in the definition is to serve as a differentiating mechanism to prevent youth access. Unequivocally, premium cigars are not part of the youth access issue. Data recorded by the National Institutes of Health and the Food and Drug Administration in their Population Assessment of Tobacco and Health (PATH) study asserts that the average age of people enjoying their first premium cigar is 30.
- 2. Retail prices vary by state:** The price that a consumer pays for a premium cigar varies widely throughout the United States due to differences in state tax rates and costs of operating retail stores. According to the Federation of Tax Administrators, cigar tax rates vary from 10% in Virginia to 95% in Washington State. Florida and Pennsylvania have no cigar excise tax. Within states, some cities and municipalities have their own taxes. Moreover, stores in cities or tourist destinations with high rents (i.e. stores in Las Vegas casinos) have much higher retail prices than rural stores that cater to locals. Consequently, a cigar that could meet a price threshold in one state may not meet it in another state, or two different stores in the same city may sell cigars at different prices.
- 3. States calculate cigar taxes differently:** Not only do cigar tax rates vary greatly by state, but so do the ways that Congress calculates tax rates. For example, New Jersey's cigar tax is calculated as a percentage of the "wholesale price" while Colorado levies its tax as a percentage of the "manufacturer's price." Other states like Arizona have a fixed tax of 22 cents per cigar. Accordingly, there is no standard way for calculating cigar retail prices.
- 4. Manufacturers do not control retail prices:** Each retail store sets its own price based on its taxes, rent, customer base, and related operating factors. If there is a price element in the definition, manufacturers would be responsible for complying with regulation while a retailer's prices would determine whether a product is subject to regulation. This would cause a web of confusion between manufacturers, retailers, and tax collecting agencies. Manufacturers are not legally able to control the final price for which a retailer sells their product. Furthermore, premium cigars, like many products, cost less when bought in larger quantities - the same premium cigar sold as an individual unit may in many cases be above the \$12 price threshold, but when the same cigar is bought as a box of 20, would be below \$12.
- 5. Can Congress/FDA set a retail price floor?** The interstate commerce clause of the Constitution gives Congress the authority to set minimum prices for premium cigars sold through interstate commerce (i.e. online or mail order sales). It would be difficult for Congress or FDA (using the authority delegated to it by Congress) to set a minimum price that a brick and mortar retailer sells a customer who walks in off the street since that transaction does not involve interstate commerce.
- 6. Average Premium Cigar Prices:** In an article funded and written by FDA staff and published in Oxford's Nicotine and Tobacco Research peer-reviewed journal in 2017, the authors analyzed FDA/NIH PATH study data. The study shows that the median price of "premium cigars" sold is \$7.49. The table notes that of the range of retail prices for premium cigars studied, the 25th percentile is \$4.53 and the 75th percentile is \$9.93 – meaning that less than 25% of premium cigars have a retail price over \$10. Therefore, if a \$10 minimum price were to be adopted, less than a quarter of all premium cigars would be included.

Thank you for your careful consideration of this information and the viewpoint of our respective organizations in this debate.