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Paper

**Role of Multinationals and other Private Actors:
Trade and Investment Practices**

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Abstract: In 1998, around 98% of the world cigarette market is accessible to some degree to foreign tobacco companies compared with just 50% over a decade ago. This change resulted from a number of factors, namely the dismantling of state monopolies, the introduction of free market economies, the establishment of trade pacts and the gradual removal of global trade barriers. While in the eighties domestic tobacco for the largest international tobacco company, Philip Morris, was far more profitable than international tobacco, international tobacco became more profitable in recent years. In 1998 for instance international tobacco generated US\$ 5 billion profit and accounted for almost three quarters of the total tobacco operating profit of Philip Morris. Faced with a difficult “business” environment in the USA and the falling demand of cigarettes in Western countries, there has been fierce competition among major multinational tobacco companies to expand sales in emerging and developing markets in Africa, Asia, Latin America and Eastern Europe. At the same time, mergers and acquisitions made a few tobacco companies to be even more dominant actors on the world cigarette market. The merger of British American Tobacco and Rothmans, the acquisition of RJR International by Japan Tobacco and the merger of the French Seita and the Spanish Tabacalera in 1999 have dramatically changed the face of the world wide industry. The list of the world’s top cigarette manufacturers now has four companies at the top which dominate more than 70% of the market.

Considering the treat posed by smoking to global health in low-income and middle-income countries and the emphasis of the marketing efforts of international tobacco companies on developing countries, an international regulatory strategy, such as the proposed WHO framework convention on tobacco control, is more than urgently needed.

1 Identification of various multinationals and private actors involved

A feature of the global cigarette market during the present decade has been falling demand in Western countries, coupled with fast growing demand in other parts of the world, in particular the emerging countries of Eastern Europe and Asia. As a consequence, there has been fierce competition amongst major multinational companies to establish a foothold in markets where cigarette sales are continuing to grow and this has been accompanied by a drive towards internationalise brands.¹ At the same time, mergers and acquisitions made a few tobacco companies to be even more dominant actors on the world cigarette market.

The merger of British American Tobacco and Rothmans, the acquisition of RJR International by Japan Tobacco and the merger of the French Seita and the Spanish Tabacalera this year have dramatically changed the face of the world wide industry. The list of the world's top cigarette manufacturers now has four companies at the top which dominate more than 70% of the market.

	billion units
1.CNTC (China)	1 700
2.Philip Morris (USA)	947
3.BAT/ Rothmans (UK)	899
4.Japan Tobacco (including RJR International) (Japan)	487
5.RJR (USA)	136
6.Reemtsma (Germany)	119
7.Altadis (Seita + Tabacelera: Spain and France)	99
8. KT&G (Korea)	94
9. Tekel (Turkey)	74
Total sales world wide	5600

1.1 China National Tobacco Corporation

Number one is China National Tobacco Corporation, which is a monopoly that produces around 1 700 billion cigarettes a year or 30% of the world's cigarette output, but supplies only the domestic market.

The other three manufacturers are privately owned companies, which improved their position on the international cigarette market strongly the last decade.

¹ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.1055

1.2 Philip Morris

Philip Morris Companies Inc is the largest international tobacco company, which sold 944 billion cigarettes in 1998 or one out of every six cigarettes smoked around the world.

One of Philip Morris key strengths is the Marlboro brand, which is by far the most sold cigarette brand in the world.

Marlboro (PM)	485
Mild seven (JT)	127
L&M (PM)	92
Winston (RJR and JT)	70
Camel (RJR and JT)	59
Derby (BAT)	54
Cleopatra	50
B&H (BAT)	48
Philip Morris (PM)	35
555 (BAT)	35

Source: Maxwell report

Philip Morris remains by far the most profitable tobacco company, generating US\$ 6.8 billion tobacco division operating profit in 1997. BAT's operating profit amounted to US\$2.5 billion, with RJR generating US\$1.7 billion and Rothmans US\$1.3 billion. Japan tobacco does not give separate profit figures for tobacco operations.²

While in the eighties domestic tobacco for Philip Morris was far more profitable than international tobacco, international tobacco became more profitable in recent years. In 1998 for instance international tobacco generated US\$ 5 billion profit and accounted for almost three quarters of the total tobacco operating profit of Philip Morris.

year	Domestic tobacco profits	International tobacco profits
1988	3.1	0.8
1990	4.2	1.4
1992	5.2	2.0
1994	3.3	2.9
1996	4.2	4.1
1998	1.5	5.0

Source: PM annual reports

According to the PM annual report 1998, its share of the international cigarette market, excluding the US, was 13,9% in 1998. While sales of cigarettes on the domestic market almost didn't increase during the last 10 years, the international volume more than doubled from 335 billion cigarettes in 1988 to 717 billion in 1998.

² World Tobacco file 1998, Market Tracking International Ltd, London, 1998 p.1061

year	Domestic sales (US)	International sales (excluding US)
1988	219	335
1990	221	368
1992	214	421
1994	221	536
1996	231	660
1998	228	717

Source: PM annual reports

In the 1998 annual report, the company admitted on the one hand problems on the domestic market. The cost of the US tobacco settlement and litigation claims was high and "a bitter pill to swallow" (p.4), as it reduced its domestic operating profits by more than two thirds.

On the other hand, the company was much more optimistic about the perspectives on the international market: "We account for only one out of every seven cigarettes sold outside the US, leaving considerable room for growth. We are planning for still more volume, share and income gains in this enormous market." (p.9)

Faced with a declining domestic market and a difficult "business" environment in the US, it seems evident that Philip Morris will continue its strategy of expansion overseas for the next decade, in particular into emerging and developing markets.

1.3 British American Tobacco

British American Tobacco is the second largest private tobacco company and sold 714 billion cigarettes around the world in 1998. Major brands include Benson & Hedges, Derby, Lucky Strike, Kent, Kool and State Express 555. According to the 1998 annual report the aim is to become "the world's leading international tobacco group (...). We will continue to grow our existing markets organically, enter new markets quickly and effectively and seek financially attractive acquisitions." (p.3)

On 11 January 1999, it was announced that an agreement has been reached on the terms of a proposed merger of British American Tobacco and Rothmans international. The merger in May 1999 brought together the second and fourth largest cigarette companies in the world, with a combined volume in 1997 of over 900 billion cigarettes and a world market share of over 16%. According to the 1998 BAT annual report, "the proposed merger with Rothmans is entirely consistent with our strategy, especially as it brings us leading positions in more markets, strengthens our share in the premium segment and provides further significant cost savings. The enlarged British American Tobacco will be the clear market leader in the emerging markets, where most of the future growth is expected." (p.3)

The strategy behind this merger- the most important in the history of the world cigarette industry- is in the first place to concentrate the marketing efforts in new markets to promote BAT international brands at the expense of the local companies. Another objective is to reduce costs, to focus on fewer, larger factories to make more profit.

Already in the 1998 annual report BAT is proud “ to have made considerable progress in moving towards having fewer larger factories. We closed factories in Germany, Panama, Mexico, Hong Kong, Uzbekistan and Malawi; and made announcements concerning the closure of factories in Spain and Singapore and part of the factory in Belgium. This move to larger factories will lead to economics of sale and costs savings in the future.” (p. 12)

Operating profit in 1998 was £1 011 million, compared with £ 1303 M, in 1997. The decline in pre-tax profit in 1998 was mainly due to initial costs of US tobacco settlements, which were much higher in 1998 (£613 million costs in 1998 and £258 million in 1997).

According to the trade report World Tobacco 1998, “BAT is the world’s most international cigarette manufacturer and the breadth of its brand portfolio could be said to give the company an important marketing advantage over its competitors, although in some respects the plethora of brands could be thought to be a disadvantage. BAT has more cigarette brands, more factories and lower profit margins than Philip Morris and RJ Reynolds and as a result is fundamentally less profitable than its main two rivals”. (p.1083)

World Tobacco concludes: ”Although the rise in anti-smoking sentiment in major western markets has posed problems for almost all major tobacco companies, BAT has benefited from its early initiative to enter emerging markets in Africa, Asia and Latin America.” (p.1084)

1.4 Japan Tobacco

A state monopoly until 1985, Japan Tobacco is now, after the acquisition of RJR International in 1999, the world’s third largest international manufacturer, with combined volumes of 487 billion cigarettes in 1997 (JT: 288 billion and RJR International: 199 billion)

The privatisation in 1985, with the government as sole shareholder, paved the way for more aggressive marketing of the company’s products as well as for diversification into non tobacco business. Until 1994, the government remained the sole shareholder but since then one third of the shares have been sold, with the residual two third being retained.

In 1997, nine of the top ten cigarette brands in Japan were produced by Japan Tobacco. The flagship brand is Mild Seven, the world’s second most sold cigarette, with a domestic market share of 36%. Domestic volume sales rose by 2.6% in 1996-97 to 270.6 billion units. International sales fell during the year by 17.5% to 17.7 billion units.

While Japan Tobacco has limited international experience, RJR has adopted a strategy of international expansion, in particular into Eastern Europe. International volume of RJR has grown by 14% from 175 billion units in 1993 to almost 200 billion units in 1997. RJR core brands –Camel, Winston and Salem- are among the best selling international cigarettes world wide.³

³ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.1161-5

2. Trade and investment practices

In 1998, around 98% of the world cigarette market is accessible to some degree to foreign tobacco companies compared with just 50% over a decade ago. This change resulted from a number of factors, namely the dismantling of state monopolies, the introduction of free market economies, the establishment of trade pacts and the gradual removal of global trade barriers.⁴

2.1 Acquisitions and joint ventures

During the 1990s, there has been an increase in the number of acquisitions and joint ventures world-wide, in particular, in a number of regions and countries formerly closed to multinational companies. This has been particularly marked in Eastern Europe and in Asia. This occurred at a time when consumption has been stagnant or declining in developed countries and as a consequence, multinational companies have been quick to establish themselves in the newly opened markets.

Since 1990 the list of acquisitions by the three major companies is rather impressive: Philip Morris made acquisitions or expanded its activities in Hungary, Russia, Czech Republic, Lithuania, Ukraine, Kazakhstan, China, Poland, Portugal and Mexico; BAT in Hungary, USA, Uzbekistan, Russia, Poland, Cambodia, Mexico and Turkey; RJR in Russia, Ukraine, Kazakhstan, Azerbaijan, Turkey, Poland, Hungary, Tanzania, Finland and Romania.⁵

Local companies tend to lose market share, when multinationals enter the market. In the 1998 BAT annual report, the company stated with some pride: “British American Tobacco and its main international competitors are being increasingly successful at the expense of the local companies.”(p. 5)

2.2 Trade liberalisation and trade pacts

The new face of the tobacco industry includes the disappearance of monopolies in a more liberalised world. With market liberalisation, agreements like GATT and the appearance of the World Trade Organisation, monopolies have started to break down. Since the fall of the Berlin Wall in 1989 for instance, most factories in Central and Eastern Europe have been taken over by trans-national tobacco companies. No government in these countries complained about this evolution, as they were eager to have access to western technology and know-how. There was a need for modernisation of tobacco manufacturing and no funds available. The preferred solution for new funds was joint ventures.

Health experts were sceptical and were convinced that the privatisation would lead to more aggressive marketing practices and to a widespread increase in the number of smokers. Already the opening of the cigarette markets in Japan, Taiwan, South Korea and Thailand to American cigarette companies in the mid-and late 1980s resulted in an increase of 10% in tobacco consumption in these countries over and above any expected increase.⁶

Even the 1999 World Bank report “Curbing the epidemic” admitted that “the removal of trade barriers tends to introduce greater competition that results in lower prices, greater advertising and promotion, and other activities that simulate demand.”(p.14)

⁴ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.15

⁵ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.1058-9

⁶ Chaloupka F J, Laixuthai A, US Trade Policy and Cigarette Smoking in Asia, NBER Working Paper No.5543, Cambridge, Mass.: National Bureau of Economic Research, 1996.

The first aim of trans-national companies in taking over old fashioned factories is not to provide help, but rather to penetrate a new market and to sell more of their products. In Belgium, for instance, the company Welltab was taken over by Philip Morris in 1974 and the Belgian company Gosset was taken over by RJ Reynolds in 1982. Despite the fact that the market share of Philip Morris increased from 9% in 1982 to 30% in 1993, the factory was closed in 1994 in order to transfer its production to a new plant in the Netherlands, where Philip Morris produces 80 billion cigarettes with less than 2000 workers. (Joossens, 1995)

The Gosset factory was closed in 1990 and its production transferred to a RJR factory in Germany, which produces more than 30 billion cigarettes a year. Philip Morris, Reynolds, BAT or Rothmans have all the same production strategy which is to close down the small factories and to maintain only a limited number of plants at strategic places where they can produce huge amounts of cigarettes. The labour force is reduced in these plants as the new machines are extremely powerful and produce 10,000 to 12,000 cigarettes per minute.⁷

One can wonder why RJR took over a company in Belgium, modernised the infrastructure and closed it down 8 years later. For TTC's the take over is a way to penetrate a market and to promote its brands. In the Belgian example, RJR decreased gradually the advertising expenditure for the local Gosset brand "Saint Michel" and promoted more and more its "Camel" cigarettes. Saint Michel was an important cigarette brand in the seventies in Belgium, but no longer in nineties.

In the case of manufacturers who have gone into growth markets, their immediate strategy is to improve the local brand because that's got the market, but their real objective is to find a prominent place for the own international brands. In fact promotion expenditure for international brands will almost always exceed promotion of local brands and the market share of international brands will steadily increase at the expense of the domestic brands. More international brands will be produced at the local factory and eventually exported to the surrounding countries. For example, Reemstma went into Kyrgyzstan and Kazakhstan in 1998 with the following strategy: first to improve the local brand, then to produce their own brand West and then to export those brands into the other central Asian markets.⁸

When the international brands are well established in the region, the TTC headquarters may decide to rationalise production, reduce costs and close down the smaller factories. Only cost and marketing considerations will be taken into account to maintain or to close a factory.

Another aspect of the dismantling of monopolies is the increase of imported tobacco. World wide the main cigarette blend types are American-blend, Virginia-blend, Oriental/Turkish blend, Menthol and Dark/Black blends. Trans-national tobacco companies have mainly been promoting "American blend" type of cigarettes, such as Marlboro and Camel. Consumption of American-blend cigarettes has increased from 25% of world volume sales in 1990 to some 40% in 1997 due to rising sales in the Asia Pacific, Eastern Europe and Latin American regions.⁹ The continued shift to American-blend cigarette remains an important global trend. American blend cigarettes – which use a lot of flue-cured tobacco - have proved to be extremely popular in markets with a traditional strong uptake of oriental blend or dark cigarettes such Turkey, Bulgaria or Poland. The uptake of American-blend cigarettes led to a

⁷ Joossens L, Finding and using information about activities undertaken by tobacco interests to defend themselves, in : Strengthening Tobacco Control In Central & Eastern Europe: proceedings of a training seminar, Warsaw, Poland, 20-25 October 1995, World Health Organisation, p.79-84.

⁸ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.1269

⁹ World Tobacco file 1998, Market Tracking International Ltd, London,1998 p.988

strong demand for flue cured tobacco and caused severe problems for the tobacco growers in these countries. The share of tobacco produced by Polish growers fell for instance from 92% in 1990 to 50% in 1992, due mainly to a Polish factory which produces Marlboro under licence and imports its leaf tobacco.¹⁰

¹⁰ Joossens L, Finding and using information about activities undertaken by tobacco interests to defend themselves, in : Strengthening Tobacco Control In Central & Eastern Europe: proceedings of a training seminar, Warsaw, Poland, 20-25 October 1995, World Health Organisation, p.79-84.

Box 1: The privatisation process in Thailand and the Asean Free Trade Area (AFTA)

Privatisation

As part of the conditions attached to the IMF-led \$17.2 billion economic bailout package for Thailand, some of Thailand's 70 state owned enterprises must be privatised. One of the agencies being considered for privatisation is the Thai Tobacco Monopoly. In fact, in its fifth letter of intent to the International Monetary Fund, the government has set the TTM privatisation as one of its goals for the first quarter of 1999.

Thailand Finance Minister Tarrin Nimmanahaeminda said the aim of selling shares in state companies is to make them more competitive. But local and international tobacco control activists have severely criticised the move on the grounds that a more efficient TTM is not beneficial to Thailand. But the IMF may not be the only agency pushing for the privatisation of the TTM. It is known that the monopoly began considering joint-venture possibilities before the government accepted the IMF-backed bailout. In fact the state enterprise has been in talks about various ventures for more than a year with several international tobacco companies, including Philip Morris Co., RJR Nabisco Inc.'s R. J. Reynolds Tobacco International Inc. (now owned by Japan Tobacco) and British American Tobacco.

TTM executives say that regardless of the outcome of privatisation, changes in their business model are required now to survive increased competition from overseas. Greater incentives to retailers will be offered to encourage stronger promotion of local products. If the monopoly's 275-strong distribution network fails to expand sales in line with targets, a separate company could be set up to handle marketing directly.

As far back as 1993 Philip Morris had been trying to relocate its operations. In an article published in July 1993 it is stated that Philip Morris had approached the TTM to have them produce Marlboro locally. The TTM rejected the offer but Philip Morris then went on to look into the possibility of setting up a manufacturing plant in Singapore for regional sales. The article reported that the Philip Morris offer included an offer to set up suitable machinery and equipment. "Marlboro would pay for the operations adding further revenue to the Thai State enterprise." The article stated that "The aim of Philip Morris is to produce cigarettes competitively with RJ Reynolds, which has stopped exporting Winston from the US and instead is producing them out of Hong Kong." The TTM knocked back the offer saying that the cost of producing Marlboro in Thailand would be much lower and subsequently lead to higher sales at the expense of TTM brands. The TTM also noted that they were afraid of being criticised by Thai anti-smoking campaigners and the Ministry of Public Health. The article quoted a source from the TTM as saying "... we have been scolded enough times by the Public Health Ministry." At the time this was occurring the TTM held 97% of the total Thai cigarette market.¹¹

ASEAN forum and Asean Free Trade Area (AFTA)

Since the tobacco industry in Thailand is a monopoly, other foreign companies cannot manufacture tobacco products in Thailand. Also, Thailand's domestic cigarette market is protected through high tariffs and central distribution channels. Although the Thai cigarette market opened in 1991 to foreign brands, cigarettes imported into Thailand are charged a

¹¹ 'US cigarette war spreads to SE Asia', *The Nation*, Jul 21st 1993, pg. B1.

22.5- percent tariff from ASEAN countries and a 60- percent tariff from non-ASEAN countries.

In 1998, at ASEAN summit in Vietnam, the member nations of the ASEAN (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand) agreed that AFTA would be implemented by 2002. And they also agreed to apply tariffs of 0 to 5 percent by the year 2000 on 90 percent of their total dutiable items. This would account for about 90 percent of intra-ASEAN trade. When it comes into force on January 1, 2003, AFTA will impose its tariff reduction scheme on tobacco products as well. They will then be given a 7-year adjustment period but import duties are required to be reduced gradually to 5% by 2001. Sources report that the ASEAN pact makes it far more advantageous for multinational cigarette companies to produce in one of the member countries. Therefore, Malaysia is replacing Hong Kong as the Asian hub for cigarette manufacturing due to its cheaper labor and to more favorable trading arrangements.¹²

British American Tobacco relocated its Hong Kong manufacturing plant to Malaysia in July 1998. Malaysian Tobacco Company Bhd (MTC) chief executive Russell Cameron said the move to Malaysia was part of a strategic plan by BAT to consolidate its manufacturing base in the region. “

Currently, manufacturing for export make up nearly half of the MTC’s total volume and with the transfer of the Hongkong operations this will increase significantly.”¹³

¹² <http://www.fas.usda.gov/tobacco/circular/1999/9907/thailand.html>

¹³ *BAT relocating HK plant to M’sia, Singapore Business Times, 25 April 1998, p 7*

3 Smuggling

Between 1997 and 2001, the world market for cigarettes is forecast to remain stable, falling by 0,2% to reach around 5,163 billion pieces. This total does not include the smuggled sector, which is estimated to account for over 350 billion pieces in 1997.¹⁴

The trade in contraband sales world wide grew by more than 110 % between 1990 and 1997. Markets with a high level of smuggling include China, Taiwan, Hong Kong, Brazil, the Russian federation and Pakistan. Smuggling remains a world problem, which deprives governments of revenue but at the same time, has helped to promote some of world's leading brands in markets which had previously remained closed to foreign imports. Demand for western cigarette brands remains high.¹⁵

The tobacco industry benefits from smuggling in several ways:

smuggling stimulates consumption both directly (through the street sale of cheap cigarettes) and indirectly (through pressure to lower or keep down taxes)

the threat of smuggling has also been used to avoid trade barriers or to force open new markets

There is no doubt that the industry benefits from smuggling. The UK tobacco companies even admitted it in their annual reports. At page 13 of the 1996 Corporate Report of the Imperial Tobacco Group, the report says: " In the hand rolling sector, Imperial Tobacco 's Golden Virginia brand is exported to many European countries. In particular, sales to Belgium have risen substantially, reflecting the growing legal and illegal cross-border trade in re-imports into the UK." The annual report 1997 of Gallaher says on page 16 : "Increased tourist demand from the Canary Islands and higher shipments to Andorra contributed to an increase in sales to Iberia of around 37%.

Gallaher believes that the gains in Andorra, coupled with a sharp increase of some 13% in handrolling sales to Belgium and Luxembourg, relate to increased bootlegging trade into the UK".

There is debate, however, about whether there is evidence of direct tobacco industry involvement in smuggling. The line of the multinationals is that they sell their cigarettes legally to dealers and that their responsibility ends there. In a BBC programme on smuggling in Andorra, a spokesperson of Gallaher defended the policy of his company in the following way:" We will sell cigarettes legally to our distributors in various countries. If people, if those distributors subsequently sell those products on to other people who are going to illegally bring them back into this country, that is something outside of our control..."¹⁶

Exports from the UK to Andorra increased from 13 million cigarettes in 1993 to 1520 million in 1997. Taking into account that almost none of these cigarettes were legally re-exported, that Andorra only has a population of 63,000 habitants and that smokers in Andorra don't prefer British brands, it is hard to believe that the British companies didn't know that they were supplying to smugglers.

¹⁴ World Tobacco file 1998, Market Tracking International Ltd, London, 1998 p.1322

¹⁵ World Tobacco file 1998, Market Tracking International Ltd, London, 1998 p.1246-7

¹⁶ BBC Money Programme, 8 November 1998.

According to the chief EU fraud investigator, Per Knudsen, « British tobacco manufacturers must have been aware that the sudden increase of the brands to Andorra could not be explained by the normal market. Neither in Andorra, nor in any of the neighbouring countries. Simply because these brands are not widely sold outside the UK and Ireland. »¹⁷

Since 1997, there have been several court cases and official investigations in different parts of the world which accused the industry of supplying the smuggled cigarettes and/or at least of being aware of the illegal destination of their products.

B&W and Canada: a former Brown & Williamson executive pleaded guilty to trafficking in contraband cigarettes between the US and Canada. The cigarettes were sent from a warehouse in Alabama to a private warehouse in Louisiana, were marked for offshore vessels and thus tax free, and were then sold to a Vietnamese organisation that smuggled them into Canada.¹⁸

BAT and China: a former BAT executive was found guilty by the Hong Kong's High Court of taking US\$2.24 million in bribes in return for ensuring that distributors Giant Island received huge quantities of duty-free cigarettes earmarked for the mainland.¹⁹ The Judge, Mr Justice Yeung, said the companies had failed to explain evidence that suggested they knew vast quantities of their cigarettes were being sold to smugglers. "A leading international tobacco company sold large quantities of duty-not-paid cigarettes, worth billions and billions of HK dollars, with the knowledge those cigarettes would be smuggled into China and other parts of the world." According to the judge, "it is also an open secret known to everyone in Hong Kong that some of these cigarettes would find their way back on the local black market."²⁰

RJ Reynolds and Canada: In 1998, for the first time, a major tobacco company was convicted for actively breaking the law to assist in a smuggling operation. An affiliate of RJ Reynolds International pleaded guilty to charges of helping smugglers illegally reroute export cigarettes into Canada. The affiliate, Northern Brands, Inc., has agreed to pay \$15 million in criminal fines and forfeitures for its involvement in these illegal activities.²¹

RJ Reynolds and Europe: Spanish authorities seized a ship in October 1997, carrying more than 120 million Winston cigarettes bound for the contraband market. The mastermind of this operation, was Michael Hänggl, who says he has been a Reynolds customer for 15 years and has frequently been a supplier to smugglers who bring Reynolds cigarettes into Spain. According to The New York Times of May 8 1998, the Reynolds spokesman denied that the company knowingly sold to smugglers, but also said that Reynolds decided to keep Mr Hänggl as a customer even after Mr Hänggl told The New York Times in 1997 that he sold to clients he knew to be smugglers. European authorities say that they believe that the manufacturers routinely sell American cigarettes to traders who immediately resell them into black markets set up to evade taxes and offering leading brands at a discount.²²

17 BBC Money programme, 8 November 1998

18 Former B&W executive convicted of cigarette smuggling, Associated Press, October 16 1997.

19 Buddle C, Tobacco chief guilty in \$33m bribes case, South China Morning Post, June 12 1998

20 Buddle C, Judge blasts tobacco firms as Jerry Lui sentenced, South China Morning Post, June 26 1998.

21 Dow Jones Newswires, RJR affiliate To Pay \$15M For Acting As Smuggling Front, December 22, 1998.

22 Bonner R, Europe turning to US to fight illicit cigarettes, The New York Times, May 8 1998. Bonner R, Drew C. Cigarette makers are seen as aiding rise in smuggling, The New York Times, August 25 1997

RJR and Tanzania: Tanzania's main tobacco company (TTC) evaded tax amounting to Tsh6 billion (\$12 million) between 1995 and 1997 by offloading billions of shillings worth of export cigarettes into the local market, investigations have revealed. The massive racket was carried out by a crime ring involving senior Tanzania Cigarette Company (TCC) officials, police and Tanzania Revenue Authority (TRA) officials.

The racket was first detected by senior company staff who suspected that some of their colleagues were offloading cigarettes in Mwanza and Moshi ostensibly intended for export to Sudan.

Formerly state-owned, the TCC was privatised in 1994 and taken over by Geneva-based RJ Reynolds. The take over was acclaimed as Tanzania's showcase of privatisation because it earned the country billions of shillings in revenue.

Although it has been taken over by Japan Tobacco Incorporated, the firm has retained RJ Reynolds as the management company. Senior staff implicated in the multi-billion tax evasion scam are still on board.²³

Philip Morris, BAT and Columbia: in 1999 Colombia's provincial governors sued tobacco companies Philip Morris and BAT for \$1billion, alleging they avoided import duty on cigarette imports.²⁴ According to a study by the Colombian Ministry of Foreign Trade, 64 percent of the 30 billion cigarettes sold each year in Colombia are contraband, while 26 percent are made domestically and 10 percent are imported legally. The report said that of the 5.5 billion Marlboro cigarettes that entered Colombia in the first nine months of 1997, 4.4 billion came from the free trade zones in Aruba and Panama, meaning that they entered tax free as contraband. Philip Morris denies any wrongdoing. In a statement the company said that it would "discontinue our business relationship" with any customer found to be involved in smuggling, but said Philip Morris had "limits to our ability, alone, to affect the cigarette contraband problem."²⁵ Confidential documents of BAT of 1994 showed that the company was well aware that the duty non paid cigarette market in 1993 was already more important than the duty paid market and that the company had a different marketing strategy to launch and support their cigarette brands on the legal and illegal market.²⁶

23 Mwakisyala, The East African , Fake Exports Ring Hits Tanzania for \$12m, July 14, 1999

24 Francis D, Colombian smuggling helps drug lords do their laundry, National Post, May 13,1999.

25 Farah D, In Colombia, Marlboro is Smugglers' Haven, The Washington Post, August 30 1998.

26 BAT documents nr 503891624-30, 503891718-19, 503891649-50.

Box 2 Smuggling in Vietnam, Hong Kong and Thailand

Vietnam

In low-income countries, such as Vietnam, where locally-produced cigarettes are cheap, international brands have swept in with an aggressive marketing campaign based on a simple logic: even if the people can't afford the higher-priced cigarettes right away, they can start wanting them now.

Over the past decade, Vietnam has tried to build a line of defence against the rising incidence of smoking. Since 1990, the government has tightened its ban on imports of U.S. and foreign cigarettes, prohibited tobacco advertising, and banned smoking in many public places -- including hospitals, meeting halls, theatres, and aboard buses and planes.

Many local bodies have placed additional restrictions on cigarette promotion, and numerous workplaces, ministries, and local people's committees have forbidden or regulated smoking. Statistics on cigarette consumption are elusive in Vietnam. But smoking rates are clearly climbing. In 1996, Vietnam produced 30 billion cigarettes, up from 24.6 billion in 1992 -- and this, of course, does not include the millions of cigarettes smuggled into the country.

Not only do smuggled cigarettes indirectly funnel sales and profits into the companies' worldwide operations, but smuggling has an additional benefit: It puts tremendous pressure on countries such as Vietnam to relax or eliminate their bans on cigarette imports. An estimated 10 percent of Vietnam's demand for cigarettes is met by smuggled varieties, and they can be found everywhere. Vietnam's Ministry of Trade said the country is mobilizing border guards, police, and a special unit of the Trade Ministry to co-ordinate anti-smuggling efforts, fight corruption, and patrol highly porous land and sea borders. The smugglers are often Vietnamese hill country and border peasants who carry illegal smokes across from Cambodia and Laos, just as, a generation ago, Vietcong soldiers and porters hauled rice, arms, and ammunition down the Ho Chi Minh Trail. The government is hoping to remove the incentive for the cigarette traffic by providing capital and employment opportunities to farmers in the border regions.

Hong Kong

Cigarette smuggling has become a lucrative trade because of the substantial price differential between Hong Kong and neighbouring areas. The prevalence of cheap contraband cigarettes in Hong Kong not only erodes duty revenue, but also causes health hazards to the community. The quantity of duty-paid cigarettes dropped by 43.4% from 6,990 million in 1990 to 3,955 million in 1997. While the decrease may be attributable to the success of the anti-smoking campaign, the increasing level of cigarette smuggling may be a contributing factor. To contain the problem, the Customs and Excise Department (C&ED) has stepped up its enforcement efforts. Between January and September 1998, the Department arrested 1,359 persons involved in cigarette smuggling and seized 78.2 million cigarettes with a duty potential of \$59.5 million.

The Anti-Cigarette Smuggling Task Force (ACSTF), set up in May 1994, continues its vigorous enforcement action against syndicated smuggling activities. Between January and September 1998, the ACSTF seized 55.1 million cigarettes with a duty potential of \$41.9 million, representing 70% of the total cigarettes seized during the period.

Apart from stepping up enforcement, the Government has taken steps to enhance co-operation with the tobacco industry and liaison with the Customs Authorities in neighbouring areas to share information and intelligence on both regular and ad hoc basis. Co-operation with the

counterparts in the Mainland has led to significant seizures both in Hong Kong and the Mainland. Moreover, the public has been encouraged to participate through an incentive scheme which rewards informers.

Thailand.

In the past, the Thai market was closed to foreign cigarettes. The domestic market was monopolised by the Thai Tobacco Monopoly. The arrival of US servicemen in large number in Thailand during the Vietnam War in the late 1960s initially served to stimulate demand for foreign cigarettes. Before that foreign cigarettes were only available in provinces bordering other countries where foreign brands have been available. Only well-to-do people and those who had been abroad smoked foreign cigarettes.

Once the growth in demand accelerated, smuggling cartels began providing the supply. After the opening of the Thai market to foreign cigarettes in 1990, the smuggling activities continued to thrive because there is still huge profit to be made thanks to high tax policy of government. There was a huge price gap between legal duty-paid foreign cigarettes and smuggled foreign cigarettes. Since the crisis struck in mid-1997 the price gap has narrowed, despite perceived or actual difference in quality of legal duty-paid cigarettes and smuggled foreign cigarettes. Many smokers continue to buy smuggled foreign cigarettes even as the price gap has narrowed now. They insist on buying “better quality” smuggled cigarettes with blue stamp, which indicates that they are made for the US and European markets.

The problem in Thailand is typical among countries where governments put in place restrictive law and tax policy to try to control tobacco consumption. The country is surrounded by countries with more tolerance and lower tax on cigarettes, including foreign brands that can be easily re-exported. Long and porous borders with neighbours make it difficult to fight smuggling.

Contraband trade seems to have the tacit approval of a large section of society because it makes it possible for people to buy foreign products at significantly lower prices than they would from legitimate outlets. That is to say smuggling is widely accepted by the society. Law enforcement can only hope to keep contraband trade at a manageable level.

Law enforcement officials say the main reason why smuggled cigarettes continue to be popular among smokers is that contraband cigarettes are found to be of higher quality than legitimate duty-paid cigarettes. That is the case when comparing cigarettes of the same international brands. Possible reasons are that duty-paid foreign cigarettes are produced from different cheaper blends (mainly produced in Malaysia) than smuggled cigarettes (mainly from US and Europe re-exported from Singapore). Price difference is not so much a factor that explains the continued popularity of smuggled cigarettes as the perceived higher quality of the contraband products.

4. Recent and changing trends in the promotion activities of multinationals

4.1 Internet

Multinational companies such as BAT-owned Brown and Williamson and R.J. Reynolds have launched web sites to advertise their products including pictures and details of special promotions. The Internet remains an attractive medium for tobacco brands mainly because it is an ideal place to reach the youth market- their biggest audience.²⁷

4.2 Indirect advertising

In Asia- Pacific, some of the world's largest tobacco companies are planning to circumvent the European Union-wide ban on cigarette advertising and sponsorship by legally promoting their cigarette brand names in a new range of coffee products. The idea of linking coffee and tobacco is being tested in Malaysia by World Investment Company, a private company set up by BAT explicitly to develop non-tobacco products to be badged with names of its cigarettes. These include Benson & Hedges Quality Blend coffees, Lucky Strike clothing, John Player Special whisky and Kent Travel, a travel agency. Total sales in 1997, amounted to US\$100 Million.²⁸ The amount of indirect marketing, particularly brand stretching, has been increasing markedly over the past 3 years in Thailand. The most prominent example is Camel Trophy clothing (although there is also Marlboro Classic clothing this is not being pushed as strongly at this point.) Camel Trophy clothes are sold in up-market department stores and in separate Camel Trophy shops. The clothes are periodically sold at significant discount and "copies" are also widely available in markets around the city. Camel Trophy wear has become extremely popular over the past year (1998/9) and is commonly seen. Most people, however, do not know that the clothes are connected to the industry. Philip Morris registered 'Marlboro Classic' in Thailand as a trademark in 1990.

The ubiquitous Camel Trophy sticker adorns almost every 4x4 sold in Thailand. The company's close connection with off-road activities extends to the promotion of Camel Trophy clothes through off-road magazines and ensuring a high profile at 4x4 events. So 'high' in fact that it is hard to believe that the relationship cannot be characterised as sponsorship. In this the TTC's are not only taking advantage of lax enforcement but also in legislative loopholes that do not forbid the use of minimally altered tobacco brand names and images.

All manner of items are produced and either sold or freely distributed including car accessories (such as seat covers and sun visors) and bumper stickers (particularly Camel Adventure stickers). Whilst not all the products are produced by the tobacco companies (local manufacturers at times use the logo's without consent) the result is the same. Tobacco company images have appeared on kites, children's shoes, socks, bags, clothes, clocks, cigarette lighters, stickers, hats, sunvisors, ash trays, money boxes, walkmans, earrings and chewing gum.

²⁷ World Tobacco file 1998, Market Tracking International Ltd, London, 1998 p.77

²⁸ World Tobacco file 1998, Market Tracking International Ltd, London, 1998 p.77

Box 3: Judgements against Camel boots advertising

FRANCE: October 1998 - Camel Boots
RJ Reynolds sued for indirect advertising.

In a landmark case, French representatives of the US tobacco company, RJ Reynolds, have been found guilty of indirect advertising. In the first case of its kind in France, the Paris County court ruled that RJ Reynolds had breached the French law which bans tobacco advertising. The case was brought by the French tobacco control organisation, CNCT. Until this case, CNCT had successfully sued the media and advertising agencies for indirect tobacco advertising but had not been able to prove that the tobacco industry was behind the advertisements. This situation changed following a complaint about a Winston Spirit ad. The headquarters of RJ Reynolds were raided and police found a document by the RJR subsidiary, Worldwide Brands, which set out plans for the circumvention of advertising bans in European countries by using indirect ads such as Camel Boots, etc. It is expected that RJ Reynolds will appeal against the ruling but for the moment this is an important victory for CNCT and tobacco control.

FINLAND: March 1998 - Camel Boots

The Marketing Court in Finland has ruled on 30 March 1998 that the use of the word "Camel" and the camel picture in conjunction with the marketing of Camel Boots is contrary to the Act on Tobacco Control. This ruling maintained the earlier decision by the National Product Control Agency for Welfare and Health (STTV).

The decision prohibits the use of the Camel emblem in a curved form with a similar font as it is used in the emblem of Camel cigarettes. The decision prohibits also the use of a camel picture similar to that of the emblem for Camel cigarettes.

The Marketing Court considered that the marketing of Camel Boots has been advertising for footwear. Trade marks of a tobacco product that have been used for a long time as the Camel marks and that are well-known by the population have been used in the advertising of the Camel Boots. Therefore the advertising for boots has also conveyed an image of the Camel tobacco product. The inclusion of an emblem for a tobacco product as a part of the advertising for another product is marketing that is prohibited in the Finnish Tobacco Control Act as this also promotes the sales of the tobacco product. Therefore advertising with the use of the Camel emblem has been directly against the Act.

This is the first case of prohibition of indirect tobacco advertising in Finland that has been upheld. It is also the first application of the amended (1995) article prohibiting indirect tobacco advertising.²⁹

²⁹ For the details of the Finnish legislation go to the Finnish tobacco prevention site www.tupakka.org (partly in English).

4.3 Social Development Support programs

The tobacco corporations in Malaysia usually conduct their lobbying activities through the Confederation of Malaysian Tobacco Manufacturers (CMTM). While the settlement issue was being hotly debated in the US in 1997, the CMTM in Malaysia pooled together US\$ 280,000 and launched an anti-smoking campaign in collaboration with the Ministry of Education in some 15,600 secondary schools throughout the country between May and August. The campaign theme (as in the US) is “Right Decisions Right Now.”

The timing of the campaign was significant in that it took place about the same time the US settlement issue was released, so that the US tobacco corporations would not have to answer to charges in Malaysia. It also coincided precisely with the controversial Peter Stuyvesant KRU concert tour whose advertisements were more aggressive and attractive and contrasted sharply with the preachy, unattractive anti-smoking ones placed sparingly by CMTM's campaign.

Although the launch of the campaign received much publicity in the local press, in the following months a check with secondary schools in Penang revealed that there was no real campaign activity on the ground. The public health community criticized this campaign by the CMTM and the Education Ministry's endorsement.

The government has been criticized for compromising with the tobacco lobby. The lack of seriousness in addressing the promotion of tobacco, particularly indirect advertisements and sports sponsorship has been highlighted many times. The tobacco lobby seems to have found a support in Malaysia's minister of information, who has indicated that the government's television-radio station cannot do without tobacco money. Hence the contradictions and compromises continue.

The Information Ministry's support of the tobacco industry seems to have a direct bearing on the electronic media's policy on tobacco. While tobacco-related illnesses are increasing, and the minister of health has declared that the nation is facing a smoking epidemic, there are no regular anti-smoking messages aired over radio or television in Malaysia.

4.4 Point of sales advertising

A lack of knowledge about restrictions on point of sale advertising by shop owners, in conjunction with a lack of enforcement by public health officers, has meant that the amount of advertising in shops is increasing in Thailand. Giving out display cabinets and shelves with Camel and Marlboro logos and colors is very common in Thailand. Most sellers have them. The cabinet featured also features the advertising (on the top of the cabinet) for the new Marlboro cigarette brand which costs only 29 Baht, undercutting the price of leading brand Krongthip. The cabinets are free and ensure a neat, eye-catching display for the cigarettes. Recently 'Lucky Strike' and 'Mild Sven' have become increasingly active. The cabinets have also become larger including those which contain shelves below for chips etc.

Another method, which TTC's used to increase their market, was to increase the profit that went to retailers. TTM brands normally earned retailers 50 satang (or 0.5 baht) per pack. To encourage retailers to sell foreign brands the TTC's increased the retailers cut to between 1.5 and 1.9 baht per pack. The TTCs also applied for excise department licenses for the retailers to encourage them to sell foreign cigarettes.³⁰

In the interim period between the opening of the Thai market to foreign cigarettes and the passing of the 1992 Tobacco Products Act foreign cigarette companies tried to rapidly build

³⁰ *'Foreign cigarettes grow faster and stronger than expected', Siam Rat Weekly, September 1991, pg. 22*

up their distribution networks. At that time few retailers stocked foreign cigarettes. In an effort to improve this situation a carton of BAT's 'State Express 555' was offered free every month to retailers in addition to promotional stickers. During the same period Philip Morris planned to offer gold to retailers to promote Marlboro but the plan had to be dropped once the 1992 act was passed.³¹

4.5 Corporate affairs Sponsorship

In 1994 a spokesman from Philip Morris Asia said in an interview that their new marketing policy in Asia (and particularly South East Asia) would be focused on 'corporate affairs.' That is, they would promote the company name as opposed to brands. He pointed to arts sponsorship as one of the avenues, which they would take. He blamed advertising bans on the need to alter their promotion direction and stated that Philip Morris would be extending this plan to other countries in South East Asia. Examples of this policy in action include the Philip Morris ASEAN Arts Awards.³² The Philip Morris ASEAN Arts Awards have been run from the 28th October to the 2nd November every year since 1994. The region-wide Arts competition was launched in 1994 to storms of protest. In Thailand the competition was jointly organised with Silpakorn University (Thailand's most prestigious arts university) and the 'Arts and Culture' Magazine. The magazine helped to discredit tobacco activists objections to the events staging. Art institutes throughout ASEAN supported the competition including the Art Society of Brunei, the Indonesian Fine Arts Foundation, the National Art Gallery of Malaysia, Ayala Museum of the Philippines and the National Arts Council of Singapore. Despite being allowed to continue, the award is not given much coverage by the media in Thailand. In 1994 an exhibition of the finalists was held in Singapore. The Singaporean government gave Philip Morris special exemption in order to stage the event. In 1995 the Thai Art Awards (Thai judging round for the ASEAN awards) offered cash prizes of 625,000 baht. Privy Councillor and Statesman presided over the opening of the 1996 competition which was held at the National Gallery of Thailand. With him was the secretary-general of ASEAN Dato Ajit Singh and Peter Barnes, president of Philip Morris Asia. The Medical Council of Thailand opposed the involvement of Silpakorn University in the PM ASEAN Arts awards. Their secretary-general said that if Silpakorn University allowed Philip Morris to sponsor the event, "it [would] taint the image of pure arts." He went on to say that allowing PM to sponsor the event would do more for the firm – "which wants to create a good image" – than for the arts.³³

4.6 Music and pop concerts

R. J. Reynolds Berhad operates a record shop called the Salem Power Station in Malaysia. The Salem brand has been prominent in sponsoring live pop concerts in the cities, and music concerts over television under the "Salem Cool Planet" banner. These events are heavily advertised over television, radio, and newspapers. The advertisements claim the event is "where the music comes alive." RJR sponsors live concerts and bring in international stars

³¹ 'Thai cigarettes hurt: TTM tries to survive', Thansethakij, 17th-23rd February 1992, p 57, 69.

³² 'Philip Morris new strategy is to use art sponsorship instead of advertising', Tharnsethakij, July 20th – 21st 1994.

³³ 'Art contest's sponsorship up in smoke?' The Nation, 26th July 1994, p44.

popular with young people, such as Alanis Morissette, Hooties & the Blowfish, and Paula Abdul.

R.J.Reynolds chooses entertainers that appeal to young people because they have controversial images, defy the conventional, and rebel against acceptable norms. The Salem concerts, which are usually held in Kuala Lumpur, are well attended by young people. Aggressive advertising for these concerts, especially on television, starts well before the event itself and appears many times a day, especially during prime time.

When a concert is organized in Malaysia, R.J.Reynolds also sponsors a radio program where listeners can call in and answer trivial questions about the pop stars and win free tickets to their concert. RJR would also sponsor contests through newspaper ads young people are eager to win a free ticket to see their favorite entertainer. In the past, the winner had to go to a "Salem booth" to collect the ticket. Free cigarettes used to be handed out to the audience attending the Salem-sponsored events. The distribution of free samples has since been outlawed.

R.J.Reynolds also sponsors the "Cool Planet Chart" show on television, which gives the latest update on international pop music. But not all Malaysian teenagers enjoy Western pop music. To cater to Chinese youth, Salem also sponsors live concerts or music programs on television featuring such Chinese entertainers as Daniel Chan and Fay Wong.

Other promotional tactics under "Salem Cool Planet" include the "Blockbuster Spotlight," where free tickets to blockbuster movies, such as Face Off, Air Force One, My Best Friend's Wedding, Nothing to Lose, The Assignment and Excess Baggage are distributed. All one needs to do is take the newspaper advertisement for the promotion to the participating cinemas at certain advertised times and redeem it for two free tickets. R.J.Reynolds also organizes year-end disco parties under the "Salem Cool Planet" banner, previously called "Salem Celebrations." Free tickets to the parties can be won by sticking Salem car stickers (distributed free at gas stations) in a creative manner on your car. Salem Cool Planet paraphernalia such as coasters are also found in discos.

4.7 Sports

Like other tobacco corporations operating in Malaysia, R.J. Reynolds is also into sports, and Salem has found its niche in sponsoring tennis. RJR sponsors tennis tournaments or the telecasts of major tennis tournaments. This way it gets to associate the Salem brand name with tennis champions, with intensive television advertising. While tennis may not be the most popular sport among Malaysians (soccer is the favorite national game and is controlled by Dunhill sponsorship), nevertheless the advertising mileage on television is phenomenal.

Winston World of Action sponsors television programs on wrestling and boxing. As a sport, wrestling is not well developed in Malaysia; however, the sport has a large television audience, including children. In 1997, RJR brought wrestlers from the World Wrestling Federation to perform in several large towns in Malaysia.

Philip Morris has a long history of Marlboro sponsorship of motor racing in Malaysia. The nation's quest to host Formula One racing has certainly given Marlboro a special place in the development of this event. Meanwhile, Marlboro hosts and sponsors other motor racing events and its telecasts on television, Every Sunday afternoon Marlboro used to sponsor the Marlboro Total Malaysian Club Prix. Marlboro's sponsorship of motor racing has been endorsed by no less than Malaysia's King, Prime Minister, and the deputy Prime Minister. The Prime Minister flagged off the Marlboro Malaysian Grand Prix in April 1997.

4.8 Youth access campaigns

Youth prevention campaigns are now a well known activity of Philip Morris. In the annual report of 1998 the company explain : “ We expanded our youth smoking prevention efforts to include 73 programs in 51 countries, and we have plans to increase these efforts in the near future.” (p.9)

Already in 1993 Philip Morris approached the Ministry of Public Health with materials for a program to discourage Thai youth from smoking. This offer was rejected, but Philip Morris has been slowly introducing the programme alone ever since. Initially ASH noticed the distribution of stickers stating that selling cigarettes to people under 18 is not permitted. In 1999 the project was extended, when Philip Morris began distributing pamphlets to shop owners on how to refuse sales to those under the age of 18 years.

This campaign has been run in many other countries under various different guises. Importantly none have ever shown any reduction in smoking amongst young people nor in the level of compliance of shop owners to the acts provision. In fact studies have shown that this type of campaign has actually led to increases in smoking amongst young people.

Health advocates believe that the initiative is a public relations strategy by Philip Morris and that it may well do more harm than good as it reinforces the association of smoking as a indicator of maturity.

A study, for instance, looking into retailer adherence to the law banning sales of cigarettes to minors found in 1995 that 91% of the 773 retailers violated the law banning sales to minors.³⁴

The study set up a ‘sting’ operation wherein students aged 9 to 17 were sent out to try and purchase cigarettes in five of Thailand’s major cities. Although the retailers were not asked whether they knew about the law, there was evidence showing that 10% of these retailers acknowledged the law by displaying ‘No sales to under 18s’ sticker. These stickers, similar to the ones being distributed by Philip Morris presently, had no effect on the retailers’ adherence to the law. In fact of the 7 retailers which did refuse sales to minors, none displayed the sticker.

³⁴ Suriyawongpaisal, P., Tantiked, B., ‘Retailers’ compliance to the law banning cigarette sales to minors, 1995, Tobacco Consumption Control Institute, Bangkok, Thailand.

Box 4: Case study on how multinational companies try to influence the tobacco policy of Asian countries

A. US Trade Representative

In the 1980s, the US Trade Representative helped to force open markets of Japan, South Korea, Taiwan, and Thailand for the US tobacco corporations, and challenged those countries' health measures on tobacco as unfair trade barriers using section 301 of the trade Act of 1974. US-based transnationals then introduced very sophisticated and extremely effective advertising and promotion techniques along with their products.³⁵ In recent years, the US Government has shown more sensitivity to health concerns. The Doggett Amendment now prohibits the U.S. departments of Commerce, State and Justice from using government funds to promote tobacco products, and prohibits employees from opposing tobacco control measures in other countries.³⁶

B. US Congressmen

In July 1991 US Congressman Mitch McConnell from Kentucky visited Thailand and met with then Prime Minister Anand Panyarachun and senior Thai officials. He pushed for what he called a "real opening" of the Thai cigarette market through adjusting import duties and excise taxes levied on foreign cigarettes which he said, prevented US cigarettes from capturing a substantial share of the Thai market. Thai officials resisted the pressure pointing to the fact that the import and excise duties imposed on foreign cigarettes were consistent with the GATT ruling.³⁷

C. Local Politician

In March 1992 a closed-door meeting was held to scrutinise the two proposed tobacco control acts. With the help of a National Assembly Member, one of Philip Morris (Thailand's) managers was given access. Though discovered and quickly asked to leave the two parliamentarians maintained their objections to the acts and to article 4 (banning sale to minors) and article 11 (ingredient disclosure) in particular.³⁸

D. Their Embassies

It took Thailand more than six years for the ingredients disclosure regulation to finally get cabinet approval in 1997 coming into effect on February 10 1998. In April 1995, when the issue of ingredients disclosure was first brought up, Representatives from Rothmans, Japan Tobacco, British-American Tobacco and Philip Morris petitioned cabinet ministers through their respective embassies and through a joint letter on the subject to the Ministry of Foreign Affairs. They also wrote a letter to the Ministry of Public Health voicing the concerns of the tobacco companies about the implications of the law for the companies.

³⁵ "Trade and Health issues: Dichotomy between U.S. Tobacco Export Policy and Antismoking Initiatives," US General Accounting Office (GAO), May 1990, p.11

³⁶ Bloom J L, International Interests in U.S. Legislation, Health Science Analysis Project, Policy Analysis No 3, April 14, 1998.

³⁷ 'Anti-smoking lobby deplores US pressure', *The Nation*, 20th July 1991, p4

³⁸ 'Marlboro man slips into smoking review', *The Nation*, 12th March 1992, pB10

A US Embassy official stated, in a letter to the Director General of the Business Economics Department of the Royal Thai Ministry of Commerce, dated January 22, 1998, that “Washington has instructed me to offer you the attached information regarding proprietary information and the disclosure of cigarette ingredients.” Also a source from the Ministry of Public Health said that the ingredients disclosure issue might be raised during discussions between Prime Minister Chuan Leekpai and President Bill Clinton in Washington from March 10-17 1998.³⁹

The tobacco industries: Rothmans, Japan Tobacco, British-American Tobacco and RJ Reynolds, themselves formed an association of tobacco importers and sent a letter to the Ministry of Health. The letter requested that the ingredient disclosure regulation be delayed pending an inquiry into Thailand’s intellectual property obligations. It went on to say that they had donated 1.5 million baht to the Thai King’s ‘Flood Relief fund’ and that they would become more active in supporting Thai tobacco farmers through the setting up of a ‘Thailand Tobacco Leaf Foundation’ in their attempt to sway the civil servants.

Many government agencies, including the Prime Minister's Office, received letters complaining that revealing the ingredients of their products was in violation of the Agreement on Trade Related Aspects of Intellectual Property Rights, as it would mean revealing the production secrets of each brand of cigarettes. The tobacco firms attempted to avoid the regulation by not revealing their ingredients to the ministry. This resulted in a shortage of imported tobacco products apparently aimed at getting consumers to complain about the shortage of their products.

In a bid to ease the concerns of TTCs, the International Economic Committee asked the Public Health Ministry to ensure trade secrets were kept confidential. However, a Commerce Ministry source claimed the new regulation was too rigid and should be eased by allowing foreign manufacturers and importers to reveal only important ingredients which endanger health, such as tar and nicotine. He said he was worried that American tobacco producers might force the United States to retaliate against Thailand by increasing tax on Thai products.⁴⁰

³⁹ *Woranuj Maneerungsee, ‘Concern over trade secrets’, Bangkok Post, March 7, 1998*

⁴⁰ *‘Two firms reminded of deadline: Formulas must be lodged by April 10’, Bangkok Post March 27, 1998*

Recommendations

Faced with a difficult “business” environment in the USA and the falling demand of cigarettes in Western countries, there has been fierce competition among major multinational tobacco companies to expand sales in emerging and developing markets in Africa, Asia, Latin America and Eastern Europe. At the same time, mergers and acquisitions made in 1999 a few tobacco companies to be even more dominant actors on the world cigarette market. In future, a few powerful groups may work with a few powerful countries to derail tobacco control regulations and conventions.

Considering the treat posed by smoking to global health in low-income and middle-income countries and the emphasis of the marketing efforts of international tobacco companies on developing countries, an international regulatory strategy, such as the proposed WHO framework convention on tobacco control, is more than urgently needed.

- Direct and indirect advertising, promotion and sponsorship by the tobacco industry across all media and in all forms of entertainment should be banned world wide. This should include a ban on the use of any brand names, logos, images or trademarks associated with the tobacco industry on non-tobacco products and services.
- Regional and international trade organisations should follow the example of the World Bank and ensure that their activities do not promote or support the tobacco industry and do not diminish the effects of tobacco control efforts. A section on investments and trade practises that increase tobacco supply and consumption should be included in the proposed WHO Framework Convention on Tobacco Control.
- National governments should recognise the negative impact that tobacco use has on their economies and take all positive measures to restrict activities of the tobacco industry.
- Cigarette smuggling can be reduced, but action need to be at national, regional and world level. At international level, the proposed WHO framework convention on tobacco control should contain a specific protocol on smuggling. This protocol should, for instance, require record-keeping and tracking systems, which place the onus on the manufacturers to prove that cigarettes arrive legally in their end-user markets