Smuggling revised. cut 1/15/98

Memorandum DRAFT

To: Int'l tobacco working group

From: [redacted]

Date: January 14, 1998

Subject: Smuggling update

Section 1 - Definitions: Use existing definitions found in the Internal Revenue Code. Where Code is silent, look to Kennedy's draft.

Section 2 - Tobacco Product Labeling Requirements: Require both manufacturers and wholesalers to make their commercial records available for audit by Treasury officials so that, if necessary, the government may trace the chain of custody of a tobacco product shipment from the manufacturer to the retailer. Require a "date-shift" code on packages of tobacco product, similar to that required for explosives. When secure technology is available, to be determined by the Secretary, the record keeping requirement on manufacturers and wholesalers shall be replaced by a chain of custody stamp to be placed on each tobacco product package.

Exported packages of tobacco product shall be labeled with the country of final destination. The Secretary shall determine under what circumstances a waiver of this requirement may be granted.

Section 3 - Requirements for the Tracking of Tobacco Products: It shall be unlawful for any person to export any tobacco product unless a bond has been posted with the Secretary. The amount of this bond shall be 30 percent of the value of the shipment. This person must also certify to the Secretary that he has no knowledge that the recipient of this product in such country intends to violate any law or regulation of that country with respect to such products, and that the recipient has never been convicted of any offense with respect to tobacco.

eliminate certification

Section 4 - Pricing and Labeling of Products Sold on Military Installations or by Native Americans: In consultation with the Secretary of Defense, the Secretary shall promulgate regulations ensuring that the price charged for a tobacco product sold on a military installation is equal to the highest price for which such product is sold in the surrounding localities (inclusive of any tax) where the installation is located or the highest price for which such product is

sold in the US (inclusive of federal taxes), whichever is greater. Packages of tobacco product sold on military installations shall be so marked, as shall packages sold on Indian reservations.

Section 5 - Prohibition against Sale of Tobacco Products in Duty-Free Shops: The quantity of tobacco product an individual may purchase with a valid ticket for travel that day shall be determined by the Secretary. No person in the US may export tobacco products to duty-free shops outside of the US.

Sections 6 & 7 - Prohibitions and Tobacco Product Permits: Will continue to work with Treasury to establish a permit system for tobacco product sales. Will include "broker" in the definition of "wholesaler," and provide Treasury with inspection, and seizure and forfeiture authority.

revised. cut 9/15/98

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Establish NGO
to do media.
- Same health
Coalition
+ NGO
- Members
- HHS.

- Lugar/Harkin
- $150 million

AMENDMENT NO. ____ Calendar No. ____

Purpose: To establish the American Center on Global Health and Tobacco.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

(no.) ________

(title) ____

Referred to the Committee on ______________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by ______________

Viz:

At the appropriate place, insert the following:

SEC. ___. AMERICAN CENTER ON GLOBAL HEALTH AND TOBACCO.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Tobacco use is estimated to have caused nearly 3,000,000 deaths a year worldwide in the early 1990's, and is projected to cause in excess of 10,000,000 additional deaths a year globally by 2030, more than any single disease. More than 70 percent of those deaths are expected in developing countries.

(B) Many countries are unprepared to address increases in tobacco deaths, including the impact on health systems and health costs. While tobacco consumption in the United States and other established market economies has fallen over the last decade, consumption is rising in China, India, East Asia, and former socialist economies. Tobacco companies in the United States and elsewhere have increasingly targeted those markets.

(C) Tobacco use markedly reduces good health and threatens to erode the major health gains in life expectancy of the last century. Only HIV/AIDS infection and tobacco are large and growing causes of death and disease worldwide. The total projected deaths from tobacco over the next 10 years likely will exceed deaths from HIV/AIDS, maternal and childhood conditions, and tuberculosis combined.

(D) The United States consistently has provided leadership and funding to address the world's most pressing public health needs, including HIV/AIDS, hunger, maternal and child health, and immunization.

(E) Through exports and overseas operations, United States tobacco companies sell more cigarettes overseas than they do in the United States. Foreign sales now account for more than half of all sales for the 2 leading United States tobacco manufacturers.

(F) United States companies spend billions of dollars on aggressive tobacco marketing campaigns overseas that associate smoking with the United States, affluence, freedom, and liberation. In many markets, American companies reach youthful audiences through television and radio advertising, free samples, and other methods that are outlawed in the United States.

(G) In light of the role the United States tobacco companies have played in spreading tobacco use globally, and in light of the large financial benefits they continue to enjoy from tobacco exports, it is appropriate that this section be enacted in order to provide assistance and funding for international public education and mass media programs to inform the public about the hazards of tobacco use.

(H) Smoking in United States films is pervasive and influences persons in other countries who seek to emulate "American activities" depicted in motion pictures. According to one study, more than half of the top-grossing United States films released between 1991 and 1996 exhibited smoking. In these films, 80 percent of the male lead characters and 27 percent of the female characters smoked. The motion picture industry is painting a distorted picture that smoking is a truly American activity.

(2) PURPOSE.—The purpose of this section is to establish the American Center on Global Health and Tobacco (ACT). ACT shall assist organizations in other countries to reduce and prevent the use of tobacco. [Activities of] ACT shall [include] support—

(A) [conducting] public education programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke;

(B) [engaging in] mass media campaigns, including paid counter-tobacco advertisements, to reverse the image appeal of pro-tobacco messages, especially those that glamorize and "Westernize" tobacco use to young people; and

(C) [providing] education about the economic and societal costs of tobacco use, and effective tobacco use prevention and cessation strategies that are appropriate for the country involved.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established in the District of Columbia a private, nonprofit corporation to be known as the American Center on Global Health and Tobacco (in this section referred to as "ACT"). ACT shall—

(A) not be an agency or establishment of the United States; and

(B) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(2) RELATION TO UNITED STATES.—Nothing in this section shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its

employees, officers or employees of the United States.

(3) USE OF GOVERNMENTAL ASSISTANCE.—ACT shall have a limited staff, and, to the maximum extent practicable, utilize the available experience and talents of existing United States organizations to carry out its mandate, including United States nongovernmental organizations with specialized international experience in health, education, media, and tobacco.

(4) GOVERNING BOARD.—ACT shall be governed by a board of up to 25 members including—

(A) on a bipartisan basis, Members of the Senate and of the House of Representatives;

(B) the heads of American public health organizations;

(C) the heads of American media, marketing, and other nongovernment institutions and corporations; and

(D) individuals active in education, public health, and other relevant activities.

(5) INTERNATIONAL ADVISORY COUNCIL.—An International Advisory Council consisting of representatives from key global, regional, and national public health organizations, and leading individual

educators and health professionals shall provide advisory assistance to ACT.

(c) FUNDING.—

(1) DEFINITION OF TRUST FUND.—In this section, the term "Trust Fund" means the National Tobacco Settlement Trust Fund established in the Treasury of the United States and consisting of amounts that are appropriated or accredited to the Trust Fund from a tobacco settlement approved by Congress.

(2) ESTABLISHMENT OF GLOBAL PUBLIC HEALTH AND EDUCATION RESOURCE ACCOUNT.—There is established within the Trust Fund the Global Public Health and Education Resource Account that shall be accredited with $150,000,000 for each fiscal year.

(3) TERMINATION OF TRANSFER AUTHORITY.—The Secretary of the Treasury shall on October 1 of each fiscal year beginning after the date of enactment of this section, transfer $150,000,000 from the Global Public Health and Education Resource Account of the Trust Fund to the account of ACT to carry out the activities authorized under this section.

(4) TERMINATION OF TRANSFER AUTHORITY.—The authority of the Secretary of the Treasury to

transfer funds from the Trust Fund shall expire with the expiration of the Trust Fund.

(d) REQUIREMENTS FOR ELIGIBILITY FOR ANNUAL TRANSFERS FROM THE TRUST FUND.—

(1) OVERSIGHT.—ACT and its grantees shall be subject to the oversight and supervision of Congress, and shall annually submit a report of its activities to Congress in accordance with paragraph (5)(A)(iii).

(2) COMPLIANCE.—

(A) FUNDING CONTINGENT ON COMPLIANCE.—Annual payments from the Trust Fund may be made to ACT under this section only if ACT complies with the requirements specified in this section.

(B) USE OF FUNDS.—ACT may only fund programs for private sector groups, and may not carry out programs directly. ACT may provide funding only for programs which are consistent with the purposes of this section.

(3) SALARIES AND COMPENSATION.—

(A) NO OTHER SOURCE OF COMPENSATION.—Officers and employees of ACT may not receive any salary or other compensation from any source other than ACT for services performed for ACT.

(B) UNITED STATES OFFICERS AND EMPLOYEES.—An individual who is an officer or employee of the United States who also serves on the Board of Directors or as an officer or employee of ACT, may not receive any compensation or travel expenses in connection with services performed for ACT.

(4) STOCKS AND DIVIDENDS.—ACT shall not issue any shares of stock or declare or pay any dividends.

(5) AUDITS.—

(A) INDEPENDENT PUBLIC ACCOUNTANTS.—

(i) IN GENERAL.—The accounts of ACT shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of ACT are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by ACT and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(ii) CONTENT OF AUDIT.—The report of each audit conducted under clause (i) shall be included in the annual report required under this subsection. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly ACT's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of ACT during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

(iii) REPORT.—Not later than December 31 of each year, ACT shall submit an annual report for the preceding fiscal year to the President for transmittal to Congress. The report shall include a comprehensive and detailed report of ACT's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as ACT deems appropriate.

(B) COMPTROLLER GENERAL.—

(i) IN GENERAL.—The financial transactions of ACT for each fiscal year may be audited by the Comptroller General in accordance with such principles and procedures and under such rules and regulations as the Comptroller General may prescribe. Any such audit shall be conducted at the place or places where accounts of ACT are normally kept. The Comptroller General shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by ACT pertaining to its financial transactions and necessary to facilitate the audit. All books, accounts, records, reports, files, papers, and property of ACT shall remain in the possession and custody of ACT.

(ii) REPORT.—A report of each audit shall be made by the Comptroller General to Congress. A copy of each report shall be furnished to the President and to ACT at the time the report is submitted to Congress.

(6) RECORDKEEPING.—

(A) IN GENERAL.—ACT shall ensure that each recipient of assistance from ACT under this section keeps such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) ACCESS.—ACT shall ensure that it, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of each recipient of assistance from ACT that are pertinent to assistance provided through ACT under this section.

[redacted]

Int'l licensing & labeling applies abroad.

[DISCUSSION DRAFT]

JANUARY 13, 1998

105TH CONGRESS
2D SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. [redacted] introduced the following bill; which was referred to the Committee on ____________

[redacted] An Amendment

To impose requirements regarding labeling and advertising of tobacco products abroad by any domestic concern.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LABELING OF TOBACCO PRODUCTS ABROAD.

(a) REQUIREMENTS.—It shall be unlawful for any domestic concern, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to export from the United States, or to sell or distribute in, or export from, any other country, any tobacco products the package of which does not contain a warning label that—

(1) complies with Federal labeling requirements for tobacco products manufactured, imported, or packaged for sale or distribution within the United States; and

(2) is in the primary language of the country in which the tobacco products are intended for consumption.

(b) WAIVER AUTHORITY.—The Secretary of Health and Human Services may waive subsection (a) with respect to a country in which exported tobacco products are intended for consumption if the Secretary determines that the country has in effect requirements for labeling of tobacco product packages substantially similar to or more stringent than the requirements for labeling of tobacco products set forth in subsection (a).

SEC. 2. ADVERTISING OF TOBACCO PRODUCTS ABROAD.

It shall be unlawful for any domestic concern, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to advertise or cause to be advertised in any foreign country any tobacco product in a manner that does not comply with Federal requirements for the advertisement of tobacco products in the United States.

SEC. 3. REGULATIONS.

The Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out this Act, including regulations setting forth the specific requirements for compliance with this Act.

SEC. 4. PENALTIES.

(a) CRIMINAL PENALTIES.—Whoever violates the provisions of section 1 or section 2 shall—

(1) if not an individual, be fined not more than $100,000 per day for each such violation; and

(2) if an individual, be fined not more than $100,000 per day, or imprisoned not more than 5 years, or both, for each such violation.

(b) INJUNCTIONS.—If the Secretary of Health and Human Services finds that a violation of section 1 or 2 is occurring or is imminent, the Secretary shall apply to an appropriate district court for an injunction to prevent or restrain such violation. The district courts of the United States shall have jurisdiction, for cause shown, to grant such injunction.

SEC. 5. DEFINITION.

In this Act, the term "domestic concern" means—

(1) any individual who is a citizen, national, or resident of the United States; and

(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To establish the American Center on Global Health and Tobacco.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

(no.) ________

(title) ________________________________

Referred to the Committee on ________________ and ordered to be printed

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AMENDMENT intended to be proposed by ________________

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(B) Many countries are unprepared to address increases in tobacco deaths, including the impact on health systems and health costs. While tobacco consumption in the United States and other established market economies has fallen over the last decade, consumption is rising in China, India, East Asia, and former socialist economies. Tobacco companies in the United States and elsewhere have increasingly targeted those markets.

(C) Tobacco use markedly reduces good health and threatens to erode the major health gains in life expectancy of the last century. Only HIV/AIDS infection and tobacco are large and growing causes of death and disease worldwide. The total projected deaths from tobacco over the next 10 years likely will exceed deaths from HIV/AIDS, maternal and childhood conditions, and tuberculosis combined.

(D) The United States consistently has provided leadership and funding to address the world's most pressing public health needs, including HIV/AIDS, hunger, maternal and child health, and immunization.

(E) Through exports and overseas operations, United States tobacco companies sell more cigarettes overseas than they do in the United States. Foreign sales now account for more than half of all sales for the 2 leading United States tobacco manufacturers.

(F) United States companies spend billions of dollars on aggressive tobacco marketing campaigns overseas that associate smoking with the United States, affluence, freedom, and liberation. In many markets, American companies reach youthful audiences through television and radio advertising, free samples, and other methods that are outlawed in the United States.

(G) In light of the role the United States tobacco companies have played in spreading tobacco use globally, and in light of the large financial benefits they continue to enjoy from tobacco exports, it is appropriate that this section be enacted in order to provide assistance and funding for international public education and mass media programs to inform the public about the hazards of tobacco use.

(H) Smoking in United States films is pervasive and influences persons in other countries who seek to emulate "American activities" depicted in motion pictures. According to one study, more than half of the top-grossing United States films released between 1991 and 1996 exhibited smoking. In these films, 80 percent of the male lead characters and 27 percent of the female characters smoked. The motion picture industry is painting a distorted picture that smoking is a truly American activity.

(2) PURPOSE.—The purpose of this section is to establish the American Center on Global Health and Tobacco (ACT). ACT shall assist organizations in other countries to reduce and prevent the use of tobacco. Activities of ACT shall include support—

(A) conducting public education programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke;

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(B) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(2) RELATION TO UNITED STATES.—Nothing in this section shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its

employees, officers or employees of the United States.

(3) USE OF GOVERNMENTAL ASSISTANCE.—ACT shall have a limited staff, and, to the maximum extent practicable, utilize the available experience and talents of existing United States organizations to carry out its mandate, including United States nongovernmental organizations with specialized international experience in health, education, media, and tobacco.

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(5) INTERNATIONAL ADVISORY COUNCIL.—An International Advisory Council consisting of representatives from key global, regional, and national public health organizations, and leading individual

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(c) FUNDING.—

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(3) TERMINATION OF TRANSFER AUTHORITY.—The Secretary of the Treasury shall on October 1 of each fiscal year beginning after the date of enactment of this section, transfer $150,000,000 from the Global Public Health and Education Resource Account of the Trust Fund to the account of ACT to carry out the activities authorized under this section.

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(ii) CONTENT OF AUDIT.—The report of each audit conducted under clause (i) shall be included in the annual report required under this subsection. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly ACT's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of ACT during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

(iii) REPORT.—Not later than December 31 of each year, ACT shall submit an annual report for the preceding fiscal year to the President for transmittal to Congress. The report shall include a comprehensive and detailed report of ACT's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as ACT deems appropriate.

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(A) IN GENERAL.—ACT shall ensure that each recipient of assistance from ACT under this section keeps such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

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Doggett II.
Makes Doggett permanent
- not just appropriation
- working group.
Lugar/Durbin
Lautenberg

AMENDMENT NO. ____ Calendar No. ____

Purpose: To prohibit the use of funds to facilitate the exportation or promotion of tobacco.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. ____

(title) ____________________

Referred to the Committee on ____________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by ____________________

Viz:

At the appropriate place, insert the following new section:

SEC. ___. PROHIBITION ON USE OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—Notwithstanding any other provision of law, no funds made available by appropriations or otherwise made available may be used by any officer, employee, department, or agency of the United States—

(1) to promote or encourage the export, sale, manufacture, advertising, promotion, distribution, or use of tobacco or tobacco products to or in a foreign country; or

(2) to seek, through negotiation or otherwise, the removal or reduction by any foreign country of any restriction or proposed restriction in that country on the importation, sale, manufacture, advertising, promotion, distribution, packaging, labeling, use, content, imposition of tariffs, or taxation, of tobacco or tobacco products.

(b) EXCEPTION.—Subsection (a)(2) shall not apply to any restriction or proposed restriction by a foreign country if—

(1) the restriction is applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination between countries;

(2) the Secretary of Commerce certifies in writing to Congress that the restriction is being applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries; and

(3) the Secretary of Health and Human Services certifies to Congress in writing that the restriction does not protect human health.

(c) DEFINITION.—In this section, the term "arbitrary or unjustifiable discrimination" means a restriction or proposed restriction by a foreign country that—

(1) is arbitrary or unjustifiable; and

(2) does not adhere to the principle of national treatment and applies less favorable treatment to goods that are imported into that country than the country applies to like goods that are the product, growth, or manufacture of that country.

AMENDMENT NO. ____ Calendar No. ____

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IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

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(b) EXCEPTION.—Subsection (a)(2) shall not apply to any restriction or proposed restriction by a foreign country if—

(1) the restriction is applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination between countries;

(2) the Secretary of Commerce certifies in writing to Congress that the restriction is being applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries; and

(3) the Secretary of Health and Human Services certifies to Congress in writing that the restriction does not protect human health.

(c) DEFINITION.—In this section, the term "arbitrary or unjustifiable discrimination" means a restriction or proposed restriction by a foreign country that—

(1) is arbitrary or unjustifiable; and

(2) does not adhere to the principle of national treatment and applies less favorable treatment to goods that are imported into that country than the country applies to like goods that are the product, growth, or manufacture of that country.

recover attorney's fees and other litigation costs if the court finds that the position of the United States was vexatious, frivolous or in bad faith. The conferees understand that a grand jury finding of probable cause to support an indictment does not preclude a judge from finding that the government's position was vexatious, frivolous or in bad faith. The provision provides that the procedures and limitations of the Equal Access to Justice Act apply, except with regard to burden of proof, and that certain evidence may be received ex parte and in camera and kept under seal for the court to make this determination. Fees and expenses awarded under this provision shall be paid by the agency over which the party prevails, from any funds made available by appropriation to the Department of Justice.

Sec. 618. — The conference agreement includes a provision, Section 618, as contained in the House bill, prohibiting funds provided in this Act from being used to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal of foreign restrictions on the marketing of tobacco products, provided such restrictions are applied equally to all tobacco or tobacco products of the same type.

The conferees do not intend for this provision to prevent the United States Government from taking necessary actions in accordance with the requirements and remedies available under applicable U.S. trade laws and international trade agreements to ensure non-discriminatory treatment of U.S. products. Further, the conferees do not intend to prohibit the use of funds for routine international trade services available to all U.S. citizens such as the provision of publicly available information on foreign country conditions and policies, information or assistance that may help U.S. firms or individuals comply with foreign government laws or regulations, the processing of export trade certificate of review applications, and assistance in assuring fair treatment of U.S. companies by foreign governments in transactions such as customs clearance and intellectual property rights enforcement.

Sec. 619. — The conference agreement includes a provision prohibiting the use of funds to pay for the expenses of an election officer appointed by the court to oversee the election of any officer or trustee of the International Brotherhood of Teamsters, as proposed in the House bill. The Senate bill did not contain a provision on this matter.

Sec. 620.—The conference agreement includes section 620, numbered as section 612 in the Senate bill, which repeals a portion of a 1900 appropriations Act which prohibited telegraph or cable lines owned by foreign citizens or foreign corporations or governments from being established or permitted to enter Alaska. The House bill contained no similar provision.

Sec. 621.—The conference agreement includes section 621, similar to section 61_ of the Senate bill, which prohibits funds from being used to issue a visa to any alien involved in extrajudicial and political killings in Haiti. Specifically, the provision prohibits issuance of a visa to any person who (1) has been credibly alleged to have ordered, carried out, or assisted in extrajudicial and political killings of 16 named individuals; (2) was included in the list presented to former President Aristide by former National Security Advisor Anthony Lake; (3) was sought by the FBI in relation to political or extrajudicial killings; (4) was involved in the September 1991 coup or murders occurring between 1991 and 1994; or (5) has been credibly alleged to have been a member of the paramilitary organization known as FRAPH. The provision gives the Secretary of State authority to make exceptions on a case-by-case basis. The provision

Tobacco Industry, Conciliatory in U.S., Goes on the Attack in the Third World

By BARRY MEIER

Last August, dozens of journalists from Latin America arrived in Miami as guests of the British-American Tobacco Company, whose Brown & Williamson unit makes popular cigarettes like Kool, Carlton and Lucky Strike.

The company paid for the visitors' air fare, hotel rooms and even dinners at expensive restaurants. At meetings like this, the reporters, from countries including Brazil, Argentina, Chile and Peru, heard company officials and paid speakers attack restrictions on smoking and cigarette advertising as scientifically unsound or artifacts of lawsuit-driven societies like the United States'.

The public relations full-court press was a startling contrast to the face of sweet reason that the tobacco industry has been putting on for the American public these days. In June, five major tobacco companies, including multinational giants like British-American Tobacco, based in London, and the Philip Morris Companies, reached a $368.5 billion agreement to settle existing lawsuits by states and smokers, a development hailed by the industry as a historic opportunity to reduce youth smoking. That deal is now under consideration by Congress.

But while the companies agreed to sweeping restrictions in this country on cigarette marketing and secondhand smoke and to bolder cancer-warning labels, they are fighting as hard as ever in the third world to convince the media, the public and policy makers that similar changes are not needed.

The tobacco companies have long lobbied policy makers here and abroad to prevent passage of antitobacco measures. But in the last three years they have sharpened their campaigns overseas to influence how tobacco-related issues are portrayed in the news or presented to the public, and there are signs that some of those efforts are paying off.

For example, British-American Tobacco, which is owned by B.A.T. Industries, has had seminars at luxury resorts worldwide at which it has offered foreign journalists data that play down the health risks of smoking. To head off indoor smoking restrictions, large cigarette producers have also begun public relations campaigns abroad that recycle the same theme. And advertising agencies like Leo Burnett Inc. of Chicago, the creator of the legendary Marlboro Man campaign, have used their talents on behalf of tobacco producers to thwart antismoking programs outside the United States.

In the Philippines, for example, Leo Burnett officials proposed a public relations strategy to Philip Morris in late 1994 aimed at removing "cancer awareness and prevention" as a "key concern" of health department officials in that country, an internal agency document shows. Though a Leo Burnett spokesman said that Philip Morris did not buy the proposal, agency executives took credit in the document for helping that year to "neutralize" the effects of a Philippine Government plan intended to reduce smoking by children. The document also stated that the agency had "propagated studies that point to other possible causes of lung cancer."

Some tobacco executives see the proposed settlement in the United States not as a blueprint for a new worldwide approach to cigarettes but solely a concession to legal realities in America.

Under the plan, in exchange for protection from lawsuits, the tobacco companies agreed to finance antismoking campaigns, restrict marketing and pay penalties if youth smoking does not decline, among other things. But the document is virtually silent about the cigarette makers' overseas operations, an area that antismoking advocates want to see addressed in the coming Congressional debate on the proposal.

John Bloom, manager of international issues for the Coalition for Tobacco-Free Kids in Washington, said the proposed settlement did not address issues like whether tobacco producers should be required to acknowledge the harmful nature of their products wherever they do business.

The Congressional debate over the proposed settlement comes as the tobacco industry finds itself under attack in some parts of the world. Recently, 15 European nations, including Britain, France, Germany and Italy, agreed to ban virtually all tobacco advertising within five years. Turkey has recently passed laws that restrict cigarette advertising.

With cigarette sales stagnant in this country, multinational producers like B.A.T., Philip Morris and R. J. Reynolds, which is owned by the RJR Nabisco Holdings Corporation, have scrambled in recent years to buy stakes in production operations in areas of rapid sales growth in Eastern Europe, Asia and elsewhere.

In recent years, for example, British-American Tobacco has put on many conferences for journalists, inviting reporters from third-world countries.

"Their strategy all the time is to raise questions about anti-tobacco research," said Kathryn Strachan, a reporter with Business Day, a newspaper in Johannesburg, who attended a company-sponsored conference last year at a resort on Mauritius, an island nation in the Indian Ocean.

Some of the speakers at the B.A.T. conferences were American scientists with strong ties to the tobacco industry. But company officials have also offered newer faces. One of them, Tana Wells, who is described by the tobacco company as an "independent communications consultant," made her presentation to a meeting of African journalists last year from a wheelchair.

Ms. Wells, who is not disabled, used the wheelchair to dramatize her belief that many countries are becoming paralyzed by the fear of such "infinitesimal, if not hypothetical, risks" as the "whiff" of someone else's cigarette, according to a copy of her remarks.

Ms. Wells did not appear at the Miami conference. But similar themes were sounded by Steven Milloy, executive director of the Advancement of Sound Science Coalition, a group in Washington. The group was formed to expose what it describes as "junk science" or "bad science used by personal-injury lawyers to shake down deep-pocket businesses," and by "Chicken Littles to fuel wacky social agendas," according to the group's Internet site.

Sales campaigns question anti-tobacco research.

Officials of British-American Tobacco said they had never tried to hide the company's sponsorship of seminars for foreign reporters. Dr. Chris Proctor, the company's chief scientist, said meetings like the Miami gathering provided the cigarette producer with a chance to present its side of the smoking debate.

The effects of the meetings sponsored by British-American Tobacco are difficult to gauge. But in countries where tobacco producers still spend a lot of money advertising in newspapers and are still permitted to run commercials on television, journalists' coverage of health issues can sometimes show a surprising slant in favor of the tobacco industry's point of view.

In late 1996, for example, several newspapers in the Philippines reported on a Cornell University study that suggested office workers who had headaches and other symptoms associated with indoor air pollution might be reacting to psychological factors rather than environmental irritants.

After reporting the study's findings, all the articles then asserted that the "informational campaign against smoking" was causing similar psychological effects in nonsmokers. The articles then criticized Philippine officials for trying to convince the public that secondhand smoke was harmful.

Alan Hedge, the Cornell University professor who conducted the study, said he was stunned to learn how it was covered in the Philippines, because it had nothing to do with secondhand smoke.

In recent years, tobacco manufacturers have revived public relations campaigns once tried in the United States to fight moves in third-world countries to limit or bar smoking in restaurants or workplaces. In Brazil, for instance, tobacco companies are running newspaper advertisements arguing that smokers and nonsmokers have rights and appealing to both groups to learn to live with each other, said Vera Luiza da Costa e Silva, an official with the National Cancer Institute of Brazil.

In other cases, the efforts are apparently more covert. In the proposal presented by Leo Burnett officials in Manila to Philip Morris in late 1994, executives of the agency cited several accomplishments, including their work to "neutralize" a Philippine health department antismoking campaign.

That campaign was based on a cartoon character named "Yosi Kadiri," whose name means "cigarettes are disgusting" in slang. Dr. Daniel Tan, a physician in Manila who helped develop the program, said that the character, who has bloodshot eyes and yellow teeth, was intended to convey the message to children that smoking was a terrible habit.

But soon after the television and print campaign started, Philippine health authorities and newspapers received letters criticizing it as a waste of money, and after a few months money for it was virtually eliminated. Dr. Tan said that when he and associates tried to identify those who had written the letters, they found that some of the names used on the correspondence did not exist.

Dr. Ruth Surmieda Gamaro, national coordinator for tobacco programs at the Philippine Department of Health, said she was told by an advertising agency that Philippine television stations had refused to carry public-service promotions for the initiative after tobacco industry officials threatened to withdraw their advertising.

[DISCUSSION DRAFT]

JANUARY 13, 1998

105TH CONGRESS
2D SESSION

H. R. ______

IN THE HOUSE OF REPRESENTATIVES

Mr. [redacted] introduced the following bill; which was referred to the Committee on ______________________

[redacted] An Amendment

To impose requirements regarding labeling and advertising of tobacco products abroad by any domestic concern.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LABELING OF TOBACCO PRODUCTS ABROAD.

(a) REQUIREMENTS.—It shall be unlawful for any domestic concern, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to export from the United States, or to sell or distribute in, or export from, any other country, any tobacco products the package of which does not contain a warning label that—

(1) complies with Federal labeling requirements for tobacco products manufactured, imported, or packaged for sale or distribution within the United States; and

(2) is in the primary language of the country in which the tobacco products are intended for consumption.

(b) WAIVER AUTHORITY.—The Secretary of Health and Human Services may waive subsection (a) with respect to a country in which exported tobacco products are intended for consumption if the Secretary determines that the country has in effect requirements for labeling of tobacco product packages substantially similar to or more stringent than the requirements for labeling of tobacco products set forth in subsection (a).

SEC. 2. ADVERTISING OF TOBACCO PRODUCTS ABROAD.

It shall be unlawful for any domestic concern, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to advertise or cause to be advertised in any foreign country any tobacco product in a manner that does not comply with Federal requirements for the advertisement of tobacco products in the United States.

SEC. 3. REGULATIONS.

The Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out this Act, including regulations setting forth the specific requirements for compliance with this Act.

SEC. 4. PENALTIES.

(a) CRIMINAL PENALTIES.—Whoever violates the provisions of section 1 or section 2 shall—

(1) if not an individual, be fined not more than $100,000 per day for each such violation; and

(2) if an individual, be fined not more than $100,000 per day, or imprisoned not more than 5 years, or both, for each such violation.

(b) INJUNCTIONS.—If the Secretary of Health and Human Services finds that a violation of section 1 or 2 is occurring or is imminent, the Secretary shall apply to an appropriate district court for an injunction to prevent or restrain such violation. The district courts of the United States shall have jurisdiction, for cause shown, to grant such injunction.

SEC. 5. DEFINITION.

In this Act, the term "domestic concern" means—

(1) any individual who is a citizen, national, or resident of the United States; and

(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

State new policy.

Tobacco: Guidance for U.S. Diplomatic Posts on Health, Trade and Commercial Issues

General Policy

The opening of international markets to U.S. products, non-discriminatory treatment for U.S. exporters, and removal of barriers to international trade are high priorities of the U.S. Government and the Clinton Administration. At the same time, given the importance of health measures internationally, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to improve the health of their citizens.

Tobacco sits squarely at the intersection between trade and health policies. In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco products. This policy also conforms to the provisions of Section 618 of the Act Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for FY 1998, which stipulates that, "none of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type." The U.S. respects the rights of foreign governments to establish and maintain sound public health practices, encourages them to do so, and, where appropriate, may support such efforts with multilateral and bilateral assistance. On the other hand, the U.S. Government will continue to seek elimination of discriminatory trade practices and will strive to ensure that U.S. firms are accorded the same treatment in foreign countries as that country's own firms and firms from other countries. The overall objective is to shrink the global market for tobacco without disadvantaging U.S. firms.

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4. Posts should continue to provide routine business facilitation services to all U.S. citizens or firms such as the provision of publicly available information on foreign country conditions and policies, information or assistance that may help U.S. firms or individuals comply with foreign government laws or regulations, and assistance in resolving business problems--such as customs or port clearance, trademark violations, or phytosanitary restrictions--that are potentially discriminatory.

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UNCLASSIFIED FAX FROM
THE NATIONAL ECONOMIC COUNCIL
AND
THE NATIONAL SECURITY COUNCIL OF
THE WHITE HOUSE

SENDER: **Sherman G. Boone** SGB
PH: 202-456-9288
FAX: 202-456-9280
PAGES: 3 **DATE:** January 21, 1998

SUBJECT: **Tobacco: International Issues Meeting**

Agency	Name	Phone #	Fax #
CEA	Chad Stone	395-5086	395-6958
DPC	Tom Freedman	456-5587	456-7431
	Mary L. Smith	456-5571	456-7431
OSTP	Jerry Mande	456-6018	456-6027
OVP	John Norris	456-9518	456-9500
OMB	Joe Minarik	395-5873	395-1198
USTR	Jennifer Haverkamp	395-7320	395-4579
	Jan McAlpine	395-9582	395-4579
HHS	Andy Hyman	690-6318	690-7998
HHS/CDC	Michael Eriksen	770-488-5701	770-488-5767
	Michelle Larkin	205-9231	205-8313
HHS/FDA	Judith Wilkenfeld	301-827-0933	301-443-5169
	Linda Horton	301-827-3344	301-443-6906
HHS/OPHS	Ripley Forbes	260-2255	260-1570
State/OES	Nancy Carter-Foster	647-2435	736-7336
State/EB	Terry Miller	647-3090	647-2302
	Paul Aceto	647-1490	647-1894
USDA	Charlie Rawls	720-6158	720-5437
USDA/FAS	Frank Coolidge	720-9519	690-1171
USDOC	Troy Cribb	482-3737	482-2331
	Les Simon	482-0341	482-3981
Treasury	Jon Gruber	622-0563	622-2633
Treasury/OASIA	Whit Warthin	622-1733	622-1731
	Gene Clapp	622-1261	622-2505

There will be an inter-agency working group meeting to discuss international tobacco issues on **Friday, January 23 at 10:30 am in Room 231 of the OEOB.** To obtain clearance into the White House complex, please confirm your attendance (with name, birth date and social security number) via fax # 202-456-9280. Thank you.

International Tobacco Issues
Inter-Agency Working Group Meeting
January 23, 1998

Agenda/Issues for Discussion:

1. State/Commerce Department guidelines (draft attached)

2. Possible Congressional initiatives/proposals regarding:

    -- prohibition on USG official activities ("Doggett-plus")
    -- global public education
    -- prevention of smuggling
    -- international code of conduct

3. Framework Convention

4. Other issues (e.g., National Cancer Policy Board report, international public health initiatives)

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Tobacco: Guidance for U.S. Diplomatic Posts on Health, Trade and Commercial Issues

General Policy

The opening of international markets to U.S. products, non-discriminatory treatment for U.S. exporters, and removal of barriers to international trade are high priorities of the U.S. Government and the Clinton Administration. At the same time, given the importance of health measures internationally, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to improve the health of their citizens.

Tobacco sits squarely at the intersection between trade and health policies. In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco products. This policy also conforms to the provisions of Section 618 of the Act Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for FY 1998, which stipulates that, "none of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type." The U.S. respects the rights of foreign governments to establish and maintain sound public health practices, encourages them to do so, and, where appropriate, may support such efforts with multilateral and bilateral assistance. On the other hand, the U.S. Government will continue to seek elimination of discriminatory trade practices and will strive to ensure that U.S. firms are accorded the same treatment in foreign countries as that country's own firms and firms from other countries. The overall objective is to shrink the global market for tobacco without disadvantaging U.S. firms.

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Int'l tobacco

ahyman @ os.dhhs.gov
02/24/98 05:36:00 PM

Record Type: Record

To: Sherman G. Boone

cc:
Subject: fwd: Press conference on int'l tobacco -- has been scheduled !

Just wanted to make sure you were aware of this.

Original Text
From: Kevin Burke@ASL@OS.DC, on 2/24/1998 1:05 PM:
To: Andrew D. Hyman@OGC.IO@OS.DC, INTERNET[JOHara@OSOPHS.DHHS.GOV], INTERNET[MLarkin@HRSA.DHHS.GOV]

FYI

From: Dan_O'Grady@durbin.senate.gov (Dan O'Grady), on 2/24/98 9:31 AM:
To: <AAPI@aol.com>, <andy_mcdonald@wellstone.senate.gov>, <Cathy_Carpino@lautenberg.senate.gov>, <ctchikes@erols.com>, <dan_katz@lautenberg.senate.gov>, <dan_o'grady@durbin.senate.gov>, <dana_jones@wyden.senate.gov>, <EEPO@cdc.gov>, <faith.weiss@mail.house.gov>, <ilisa.halpern@apha.org>, <jackie_williams@durbin.senate.gov>, <jbloom@tobaccofreekids.org>, <jcooper@lungusa.org>, <jonathan_halpern@labor.senate.gov>, <Karen.Lightfoot@mail.house.gov>, <kburkel@os.dhhs.gov>, <klewis@advocacy.org>, <lcat@erols.com>, <mary_dietrich@agriculture.senate.gov>, <matthew.miller@mail.house.gov>, <mhpalmer@erols.com>, <michael_knipe@agriculture.senate.gov>, <michele_chang@harkin.senate.gov>, <mml4@cdc.gov>, <ray.squitieri@TREAS.SPRINT.COM>, <rhamburg@amhrt.org>, <rob@essential.org>, <sballin@tobaccofreekids.org>, <spalmer.ceche.dc@worldnet.att.net>, <spolan@cancer.org>, <Stephanie_Kennan@wyden.senate.gov>, <susan_goodman@graham.senate.gov>, <tom_faletti@durbin.senate.gov>, <Tom_Mahr@conrad.senate.gov>, and others...

We have a confirmed date/time/location for the press conference to announce our international tobacco initiatives:

--> Thursday, February 26, 1:00 p.m., in room 608 of the Dirksen Senate Office Building.

Every organization that supports the initiatives is encouraged to attend and join the sponsoring Members of Congress behind the podium when the Members speak. (The statement of the initiatives, drafted by Matt Miller, is attached.) Each organization should also feel free to bring its own press statement, even though most organizations will not be able to speak during the press conference because of the size of our group.

Hope to see you Thursday.

Statement on International Tobacco Initiatives

Tobacco use is a growing threat to global public health. Today, tobacco products account for three million deaths worldwide each year; by 2025, that number is expected to rise to ten million per year, with over 70 percent of tobacco-related deaths occurring in developing nations.

As the world's leading exporter of tobacco products, the United States has a moral responsibility to address the adverse impact of its products on global public health. As a part of any effort to address tobacco use, Congress should establish a responsible international health policy by enacting these five proposals:

1. **End U.S. Government Support for Tobacco Abroad.** The federal government should be prohibited from promoting the sale or export of tobacco or tobacco products abroad. It should also be prohibited from attempting to weaken a foreign tobacco regulation unless the regulation discriminates against U.S. products in an arbitrary and unjustifiable manner and is not a reasonable means of protecting the public health.

2. **Adequately Fund Global Nongovernmental Tobacco Control Efforts.** A private, nonprofit organization should be established to assist public health organizations in other countries through public education programs, technical assistance to health professionals, mass media campaigns, grants and other general assistance.

3. **Establish a Code of Conduct for Labeling and Advertising Overseas.** U.S. tobacco companies should be required to print health warning labels on tobacco products sold overseas that are as stringent as those required in the United States. U.S. tobacco companies should also be prohibited from selling, advertising or marketing tobacco products to children in other countries, with the same standards applied to their overseas conduct as at home.

4. **Stop International Tobacco Smuggling.** The Bureau of Alcohol, Tobacco and Firearms, which currently regulates alcohol smuggling, should be given authority to deter tobacco smuggling through, among other things, a system of export permits and increased record keeping.

5. **Fund International Tobacco Control Through a Licensing Fee.** Every U.S. tobacco company should pay a two-cent fee for each package of cigarettes it sells overseas. The money raised through such a fee should be used for tobacco control efforts by governmental and non-governmental entities.

The United States has the opportunity to act as a world leader in promoting public health. If Congress passes any measure to confront domestic tobacco use, it must also tackle the health problems caused by the use of American tobacco products abroad. We strongly endorse these proposals to establish a responsible U.S. policy for the promotion of global public health.

Tobacco - International
SW

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Int'l tobacco! Ew

FRANK R. LAUTENBERG
UNITED STATES SENATOR
NEW JERSEY

506 HART SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510-3002
(202) 224-4744
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United States Senate
WASHINGTON, D.C. 20510

Telecopier Sheet

TO: Tom Friedman
FROM: Cathy Carpino 224-4517
DATE: 2/25
TIME: 3:45
PAGES: + 1 cover = 17
Comments:
int'l tobacco proposals
let me know if you'd like the legislative language.

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Memorandum

To: Int'l tobacco working group

From: Cathy Carpino

Date: February 25, 1998

Subject: summary of the smuggling proposal

To curb the $16 billion/year global problem of smuggling, which also facilitates teen smoking, our proposal requires exported packages of tobacco products to be marked with the name of the country of final destination. Exporters would have to post bonds that would be returned to them when ATF receives documentation that the product reached its final overseas destination, or was destroyed or stolen.

Every package of tobacco product manufactured in the US must be marked with a unique serial number. This number will enable ATF to determine the place and date of manufacture, as well as the product's chain of custody. The Treasury Department shall extend its permit and record keeping system for alcohol manufacturers, importers, wholesalers, and retailers to tobacco products. Sales on military bases and in duty-free shops will be limited, and packages of tobacco products sold on bases and on Indian reservations will be so marked. Foreign trade zones will no longer be able to manufacture or accept tobacco products and improvements are made to the Contraband Cigarette Trafficking Act.

Talking Points and summary of the Anti-Smuggling Proposal

One-third of global tobacco product exports end up on the black market

Why should we care? Cigarette smuggling threatens public health. Black market cigarettes are typically one-third less expensive, and therefore more accessible, especially to teenagers. Tobacco smuggling also denies governments billions of dollars in lost revenues.

Scope of the problem

Globally:

- According to published reports, between one-quarter to one-third of tobacco exports are diverted from the intended final destination and end up on the black market.
- Not only do governments lose approximately $16 billion a year in tax revenues, when tobacco products are sold on the black market they are less expensive and therefore more accessible to youth.
- Unless current tobacco consumption trends are altered, within the next few decades the WHO estimates 10 million people a year will die of tobacco-related illnesses.
- Smuggling is a means of establishing brand recognition (and therefore product loyalty) for foreign manufacturers in countries that have high taxes, state-run monopolies that produce lower-priced local brands, or otherwise have effectively closed their market to American brands.

Real world examples:

- Winston is the most popular foreign brand in Spain. At least 60 percent of its sales were contraband so that a pack of black market Winstons is approximately equal to a local brand and one-third less than the price of legal Winstons.
- In Italy, cigarette production is controlled by a state monopoly and tobacco advertising has been banned since the early 1960s. This should make it difficult for foreign brands to compete. However, Marlboro is the market leader with a 50% share and is, by far, the most smuggled brand in Italy. Contraband Marlboros are sold cheaper than the leading national brand. Similar examples can be found in countries like China, Bulgaria, and Argentina.

In the United States:

- Certain states (e.g., Washington, Michigan, New York, and California) lose hundreds of millions a year from smuggling. Indian reservations, military bases, duty-free shops, and foreign trade zones pose a significant problem. This problem will only increase when a higher federal tax is imposed.

Real world example:

- A federal grand jury in New York indicted 21 individuals last year allegedly involved with a smuggling ring on the St. Regis Mohawk Indian Reservation (which covers land in both the US and Canada). It has been estimated that almost $700 million in contraband tobacco and liquor was ferried through this reservation from 1992 to 1996.

Lowering tobacco taxes is not the solution: We need only look to Europe to refute the tobacco companies' argument that lowering tobacco taxes will reduce or eliminate the problem of smuggling. High tax countries like Sweden and Norway have a relatively low contraband market share; however, countries like Italy and Spain that tax tobacco products at low levels have a significant diversion problem.

Tobacco manufacturers benefit from smuggling and encourage it: Smuggling enables American tobacco companies to increase their market share by the lowering the cost of their product. Contrary to whatever public statements tobacco companies may make about smuggling, the evidence demonstrates they support it.

- In a recent New Orleans case involving Brown and Williamson employees, middle level managers from that company stated in an affidavit that their performance evaluation was based upon how well they smuggled cigarettes from the US into Canada.

- In Europe, companies like Philip Morris sell to persons who boast about selling to smugglers.

- After Canada increased its cigarette tax, American companies like Reynolds began manufacturing Canadian brands in the US and would ship them to states that border Canada. These cigarettes would, of course, be smuggled into Canada. A tobacco industry spokesperson said that the industry "absolutely" knew most of these products were being smuggled into Canada. In addition, Canadian cigarette exports to the US more than tripled from 4.5 billion cigarette in 1991 to 15.6 billion in 1993. There is virtually no US market for Canadian brand cigarettes.

The tobacco companies expected these brands to be brought illegally back into Canada, and they were.

Greater accountability needs to be placed upon tobacco product manufacturers: Manufacturers frequently respond to criticism about smuggling with the refrain that they cannot be responsible for the product's final destination once it is sold to another person.

- What other industry allows one-third of its product to end up on the black market? Manufacturers must have a financial incentive to assure that their products reach their intended final destination.

- Our history with the tobacco companies demonstrates that we cannot merely take them at their word.

What this proposal does and why it's necessary: The proposal would require:

- tobacco product manufacturers, wholesalers, and distributers to obtain a operational permit (like that required for alcohol). Should a permittee violate the terms and conditions of the permit, the Treasury Secretary may revoke or suspend that permit. This provision gives ATF the ability to put bad actors out of business, it would also give ATF the authority to audit the permit holder's business records to ensure they are complying with the terms of their permit.

- exported packages of tobacco products to be marked with the name of the country of final destination. This will enable government officials to easily ascertain whether tobacco products are contraband.

- a unique serial number to be marked on every package of tobacco product. This provision will allow officials to track down smugglers by being able to go back to the manufacturer to determine the chain of custody.

- record keeping on the part of manufacturers, importers, wholesalers, and retailers and give the Secretary access to these records. Access to records will promote accountability.

- tobacco products sold on military bases and Indian reservations to be so marked. This section will ease law enforcement's efforts to stop contraband tobacco products.

- limits on the amount of tobacco products sold on military bases and in duty-free shops per person/per day. Limiting the quantities available will

<u>deter smuggling off of these premises.</u>

- modifications to the Contraband Cigarette Trafficking Act to expand the Act's coverage and make it more stringent. See the other memo for details on changes to the CCTA.

- foreign trade zones to stop accepting tobacco products.

- additional resources be given to Treasury to enforce the provisions of this proposal.

Summary of the Anti-Smuggling Proposal

I. Modifications to existing laws

a. Amendments to the Contraband Cigarette Trafficking Act (CCTA)

1. What the CCTA currently does: makes it unlawful for any person to ship, transport, receive, possess, sell, distribute, or purchase in excess of 60,000 cigarettes (300 cartons) which bear no evidence of state tax payment in state where cigarettes are found if such state requires a tax stamp. Record keeping requirements are required for any person who ships, sells, or distributes any quantity in excess of 60,000 cigarettes and Treasury is permitted to inspect these records. Penalties for violations of CCTA's provisions (18 USC 2341 et seq.) include up to 5 years imprisonment or fines. Contraband cigarettes are subject to seizure and forfeiture.

2. What our proposal does: (A) lowers the threshold to 30,000 cigarettes and expands CCTA's coverage to include tobacco products; (B) makes it unlawful to transport tobacco products under a false bill of lading or no bill of lading (similar to provisions covering liquor - 18 USC 1263); (C) makes it a violation of CCTA to fail to keep distribution records, make false statements in those records, alter or obliterate required markings, or interfere with the inspection of the records; (D) extends the forfeiture provisions to include the proceeds from the unlawful distribution of tobacco products; and (E) extends the reach of CCTA to those states that do not require tax stamps by requiring persons in those states to produce some evidence indicating these products are moving in legal commerce.

b. Extension of provisions contained in the Federal Alcohol Administration Act to tobacco products

1. What the FAAA does: among other things, it establishes a permit system for the manufacture, distribution, and sale of alcohol. Should a permittee violate any terms or conditions of the permit, the Secretary may revoke or suspend the permit. Labeling requirements are also imposed by this section. Violations of this Act are misdemeanors and the penalty per offense is $1000.

2. FAAA provisions extended to tobacco products: In order to operate, manufacturers, importers, and wholesalers must obtain a permit. We have decided to not extend the permit system to retailers because of the additional resources it would require of ATF to police them. Record keeping requirements would be imposed upon permit holders and upon retailers to better monitor the distribution of tobacco products and Treasury would be given the authority to audit these records. The Secretary will also be given authority to revoke, suspend, or annul the permit. To update the fine, the proposal simply would apply penalties in accordance with title 18 (specifically those provided in 18 USC 3571).

II. New Provisions

a. Serial number mark: Each tobacco product package must be marked with a unique serial number (we've been told by ATF that manufacturers currently have the ability to do this). The serial number would enable ATF to determine the place and date of manufacture along with the product's chain of custody.

b. Country of final destination mark: Each package of tobacco product intended for export shall be labeled, at a size and location to be determined by the Secretary, with the name of the country of final destination.

c. Bond requirements: In order to export tobacco products, a person must post a bond with the Secretary. This bond will be returned upon receipt of documentation provided by the person who posted the bond that the shipment reached its final destination, or was stolen or destroyed. The bond shall comprise the tax value of the value of shipment if it were sold in the US, and the Secretary shall determine the frequency with which the bond shall be collected. In order to receive the return of the bond, the person who posted it must receive a written statement from the intended recipient that he/she will not knowingly and willfully violate any law or regulation of his/her country with respect to such products and that he/she has never been convicted of any offense involving tobacco products.

d. Labeling for sales on military bases and Indian reservations: Packages of tobacco products sold on military bases (both in the US and abroad) and Indian reservations shall be so marked. Again, the Secretary shall determine the size and location of this label.

e. Sales limitations on bases and at duty-free shops: No individual may purchase more than one carton/day of cigarettes on a military base and more than 2 cartons/day at duty-free shops.

f. Prohibition against moving tobacco products in foreign trade zones: No person may forward through or manufacture tobacco products in any foreign trade zone in the United States.

g. Resources: Treasury shall be provided with such sums as are necessary to carry out the requirements of this proposal.

What the Tobacco Control Fee Proposal Does

U.S. tobacco manufacturers will be required to pay an annual tobacco control fee. The fee will be based on the worldwide number of tobacco products produced by that manufacturer, including products manufactured by foreign subsidiaries, affiliates, joint venturers, or licensees. It will amount to 2 cents per pack of cigarettes for each pack consumed outside of the U.S. An equivalent amount will be assessed for other tobacco products.

This license fee will be used to enforce the international code of conduct for U.S. manufacturers and their subsidiaries, affiliates, joint ventures, and licensees; fund an independent nonprofit organization that will counter tobacco advertising with education and mass media programs; and support HHS international tobacco control activities including bilateral and multilateral government initiatives.

EXPLANATION OF THE AMENDMENT TO PROHIBIT THE USE OF FEDERAL FUNDS TO PROMOTE THE EXPORT OF TOBACCO OVERSEAS

WHAT THIS AMENDMENT DOES

This amendment prohibits the use of U.S. Government funds to:

(1) promote the export or use of tobacco and tobacco products overseas, or

(2) weaken any restriction or proposed restriction on tobacco products by a foreign government, unless — (a) the restriction discriminates against U.S. products in an arbitrary or unjustifiable manner; (b) the Secretary of Commerce certifies in writing to Congress that the restriction discriminates against U.S. products in an arbitrary or unjustifiable manner; and (c) the Secretary of Health and Human Services certifies in writing to Congress that the restriction is not a reasonable ~~protection of~~ public health.
means of protecting

This amendment applies to tobacco products and leaf tobacco.

WHY THIS AMENDMENT IS NECESSARY:

Current U.S. policy and law allow the U.S. Government to promote the export and use of tobacco products overseas, and to intervene on behalf of U.S. tobacco companies to weaken foreign restrictions on tobacco products, if the act of a foreign government can be construed to discriminate in any way against U.S. tobacco products.

In 1995, for example, the U.S. Embassy in Thailand intervened on behalf of U.S. tobacco companies when the Government of Thailand proposed regulations to require the disclosure of ingredients of all brand-name cigarettes sold in Thailand. In 1994, the U.S. Ambassador to Romania attended the opening of an R.J. Reynolds facility in Bucharest and said: "I'm sure that Camel and the other splendid products of the R.J. Reynolds Company will prosper in Romania."

Cigarettes are not splendid products; they are addictive and they are spreading disease and death around the globe. The U.S. Government should not promote that spread. This amendment is necessary to make it clear that U.S. officials may not promote or encourage tobacco in foreign countries, and to make it clear that the U.S. Government may only oppose tobacco restrictions if those restrictions discriminate against U.S. products in an arbitrary or unjustifiable manner and the restrictions are not a reasonable protection of public health.

WHAT THIS AMENDMENT DOES NOT DO:

This amendment does not prohibit normal forms of U.S. Government assistance to U.S. tobacco producers overseas as long as such assistance does not encourage or promote tobacco or tobacco products in foreign countries. For example, this amendment does not prohibit assistance with visas.

This amendment does not prohibit the U.S. Government from opposing tobacco restrictions in foreign countries if those restrictions discriminate against U.S. products in an arbitrary or unjustifiable manner and the restrictions are not a reasonable protection of public health.

A Worldwide Code of Conduct for American Tobacco Companies

The Code of Conduct and Labeling amendment sets a worldwide minimum standard for the conduct of American tobacco companies by amending the Federal Food, Drug, and Cosmetic Act, which grants authority to the Department of Health and Human Services to regulate food, drugs, medical devices, and other substances. The amendment:

- Requires that tobacco products sold in a foreign country by any American citizen or company contain the same warning label required by federal law for tobacco products sold in America.
- Allows the Secretary of Health and Human Services to waive the label requirement if he or she determines that the label requirement of the foreign country in which the tobacco products are sold is substantially similar to U.S. federal requirements and that the foreign label requirement is adequately enforced.
- Makes it unlawful for any American citizen or company to sell tobacco products to children in a foreign country or to advertise or promote tobacco products in a foreign country in a manner that appeals to children. The amendment provides legal guidance to companies by extending a "safe harbor" so tobacco products sold or promoted overseas in a manner legal in the United States are in compliance with the requirements of this amendment.
- Provides for enforcement of these provisions under existing civil and criminal penalties in the Food, Drug, and Cosmetic Act (FDCA). The FDCA gives the FDA authority to seize products that are in violation of the Act, to cite companies for violating the Act, and to prosecute them if warranted.
- Provides an incentive for private citizens to bring violations to the attention of the FDA by awarding one-half of the criminal fine imposed (up to $125,000) on the violating party to the private citizen providing information if the information leads to conviction.

Every country has the responsibility to set its own policies on the sale and marketing of products inside its borders. But as the world's leading exporter of tobacco products, the United States also has the obligation to guarantee that its companies will behave responsibly no matter where they do business. Just as we acted through the Foreign Corrupt Practices Act to set a higher ethical standard for American companies, now we can act to set a higher moral standard as well.

The labeling requirements of this amendment simply ensure that American tobacco companies advise consumers of the harmful health effects of their products. By prohibiting the marketing of tobacco products to children, the sale and advertising provisions set a standard of conduct that tobacco companies claim they already follow. We require that tobacco companies meet these basic moral codes here in America. We can exhibit our leadership to the world by extending them abroad.

The American Center (ACT) on Global Health and Tobacco
"Save the World's Children from Spreading and Deadly Nicotine Addiction"

The United States has a unique opportunity to benefit from our extraordinary domestic revolution to lead a world-wide revolution against smoking. The United States also has a unique responsibility – American tobacco companies and American marketing genius are major causes of the sharply increasing smoking among children and women throughout the world. As restrictions increase in the United States, American tobacco companies see their major growth markets overseas and they are increasingly targeting children and women in other countries. The World Health Organization predicts that about 200 million children alive in the world today will be killed by tobacco. To counter this rapidly spreading and deadly addiction, the time has come to establish an American Center (ACT) on Global Health and Tobacco to provide education, information and shared experience worldwide.

The facts are clear. Tobacco use is estimated to have caused nearly 3,000,000 deaths a year world-wide in the early 1990's, and is projected to cause in excess of 10,000,000 additional deaths a year globally by 2030. While tobacco consumption in the United States and other established market economies has fallen over the last decade, consumption is rising in China, India, such former socialist countries as Russia and Ukraine, and most other emerging countries. Tobacco use markedly reduces good health and productivity, and threatens to erode the major gains in life expectancy of the last century. Only HIV/AIDS infection and tobacco are large and growing causes of death and disease worldwide. The total projected deaths from tobacco over the next 10 years likely will exceed deaths from HIV/AIDS, maternal and childhood conditions, and tuberculosis combined.

Through exports and overseas operations, United States tobacco companies sell more cigarettes overseas than they do in the United States – including more than 10 billion packs of cigarettes exported from the United States each year. Foreign sales now account for more than half of all sales for the two leading U.S. tobacco manufacturers. U.S. companies spend billions of dollars on aggressive tobacco marketing campaigns overseas that associate smoking with the United States, affluence, freedom, and liberation. In many markets, American companies reach youthful audiences through television and radio advertising, free samples, and other methods that are outlawed in the United States. In addition, smoking in U.S. films is pervasive and influences persons in other countries who seek to emulate "American activities" depicted in motion pictures, and particularly adolescents. According to one study, more than half of the top-grossing United States films released between 1991 and 1996 exhibited smoking. In these films, 80 percent of the male lead characters and 27 percent of the female characters smoked. The motion picture industry, as well as the marketing of U.S. tobacco companies themselves, is painting a distorted picture that smoking is a truly American activity. The message is "If you like Americans, and want to be like Americans, smoke American cigarettes."

The American Center (ACT) on Global Health and Tobacco is being established to counter this pro-smoking targeting of adolescents and women with vigorous public education and mass media campaigns and sharing American experience on the most effective tobacco use prevention and cessation strategies. ACT will assist organizations and individuals in other countries to conduct programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke.

A. **Informing Children Through Television**

It is widely recognized that the most powerful way to affect individual behavior is through public awareness campaigns and the mass media. A U.S. domestic counter-advertising campaign is a feature of most draft legislation. We propose to massively leverage the funds which will be made available to ACT for mass media by engaging both global media companies and national media organizations throughout the world in an alliance to keep children from starting to smoke and to help others kick the habit. We propose having on the Board of ACT the largest global television and marketing companies and creating a group which would work with these companies to create and place anti-smoking programs.

These could include an initial hour-long, television special with globally known entertainment figures and hard-hitting investigative reporting on the industry and the effects of smoking. The mix of star quality, great popular music and hard-hitting information ought to appeal to a younger as well as an older audience and be usable both on satellite and national terrestrial networks throughout the world. More generally we will work with the multinational media companies and national media companies to train their people in anti-smoking programming and to produce both short-form, PSA-type pieces and longer anti-smoking programs. We would seek to engage the major print organizations as well in this global campaign.

One American NGO has experience working with the major U.S. television networks in training groups of foreign producers, writers, directors, and on-air personalities and journalists in the health field. It also has experience producing and airing on national television networks throughout post-communist Europe long- and short-form television programs on smoking and other public health issues. Funding should be made available to cover every country in the world by the training and co-production programs with every national television station and every national magazine or newspaper included: We would train, motivate, and empower national media as well as catalyzing local media action. One of the best features of this mass-media program is that we would get free air time and space in print media – whereas the tobacco industry has to pay for most of their space. At the same time if $500 million annually is needed to conduct such a media, counter-advertising campaign in the United States (and if the tobacco industry itself spends much more on marketing), then clearly at least one-fifth that amount as America's contribution to this global campaign is required.

Overall ACT should receive at least one percent of the total revenues now under consideration from tobacco.

B. Sharing Experience

U.S. organizations have experience in designing and conducting comprehensive public health intervention/demonstration projects in post-communist Europe. These projects combine the use of mass media, intensive community-level actions in schools, work with health and media professionals and so forth. ACT will launch demonstration projects focused on applying state-of-the art tobacco control intervention through all channels, including:

- On the school and kids front, programs in the United States have prevented thousands of American youths from falling prey to the deadly habit. ACT will transfer these skills through a variety of locally adaptable products, including draft model curricula for schools starting with the pre-school level, how to conduct youth campaigns and so forth. At the same time, this is an area where Americans can learn from the experience in some other countries as youth smoking actually is increasing in the United States.

- ACT will target health professionals, whose American counterparts have set the pace in the United States as role models and teachers. Today fewer than 1% of all young American doctors smoke, whereas the first thing the visitor entering hospitals in many countries notices is the number of doctors and nurses smoking in the halls and even while examining patients. U.S. NGOs have worked with health professionals in many countries and will design special materials for them.

- ACT will set up partnerships with employers and business groups to create tobacco-free work environments. This has been the single most successful anti-smoking program in the United States as employers have been educated that tobacco-free environments (for example, airplanes and offices) are actually cheaper and more efficient.

C. Shared Data Base

There is now no organization in the U.S. that effectively tracks international trends in the tobacco industry and in tobacco control, analyzes and disseminates the information, and provides technical assistance on international issues to tobacco control advocates in the U.S. and abroad. These activities are important for the U.S. tobacco control movement to benefit from what is happening internationally, and are equally important for international advocates to benefit from new information and strategies in the U.S. Advocates in developing nations, in particular, have limited access to the latest data, policy research, and strategic thinking in tobacco control.

An information program run by ACT – in cooperation with existing U.S. and international information sources – could make a tremendous difference. It will include:

- Collecting, analyzing and organizing information on important international trends.
- Providing regular updates on important developments in the U.S. for tobacco control groups abroad.
- Providing regular analysis of international developments for U.S.-based tobacco control advocates.
- Responding quickly and effectively to requests for technical support from groups abroad.
- Developing appropriate materials, including fact sheets, charts, graphs and reports, on tobacco control issues tailored to international audiences.
- Developing a rapid response support capability to provide intensive support to strategically important campaigns. Support may include funding leading experts to draft reports, provide testimony and lead workshops, or providing small grants for locally-based advocates to secure expert assistance.

<u>Setting Up ACT</u>

Fortunately there is growing recognition of the need for American international leadership in tobacco control. The United States consistently has provided leadership and funding to address the world's most pressing public health needs, including HIV/AIDS, hunger, maternal and child health, and immunization. In light of the role American tobacco companies have played in spreading tobacco use globally, and in light of the large financial benefits they continue to enjoy from tobacco exports, it is appropriate that ACT be established to provide assistance and funding for international public education and mass media programs to inform the public about the hazards of tobacco use.

It is important to distinguish between actions the U.S. Government should undertake and those more effectively and appropriately spearheaded by private American efforts. HHS, USTR and other agencies have a full and important new agenda for action, including U.S. and multilateral trade policies and agreements, working with multinational institutions such as WHO and so forth.

We believe that nongovernmental individuals and groups – here and abroad – can play an equally powerful, indeed indispensable role and that they must be free of government (and tobacco industry) influence if they are to play that role. It is clear that our own present revolution would not have happened without "activist" individuals and groups. This is even more true in the majority of the world's countries whose governments rely heavily on income from tobacco and are far less democratic and responsive to their people's needs than in the United States. But the paradox we face is that without substantial money either from a settlement with the U.S. tobacco industry or some other tobacco-related and legislated source, there is no way for the world's educators and anti-smoking advocates to begin to defeat the tobacco industry's money, political power and mass media marketing campaigns in their own countries. At the same time it is clear that tobacco control action exclusively through the U.S. Government channels will mean primarily work with other governments and international institutions such as WHO, and that agencies such as HHS and WHO will understandably be concerned with avoiding confrontation and with other priorities having nothing to do with the struggle against tobacco. There is also an inevitable danger that what is a priority this year will give way to something else in the relatively near term – while the war against tobacco will take a generation to win. Finally, for certain programs like media campaigns it is more appropriate and far more cost effective for the American private sector to work directly with their private sector counterparts in other countries.

The Congressional and other founders of the National Endowment for Democracy well understood very similar domestic and international dynamics/realities when they conceived the framework and wrote the legislation establishing the Endowment in 1983. In its opening provisions the legislation notes that the endowment is "not an agency for establishment of the United States Government," that its purpose is "to encourage free and democratic institutions throughout the world through private sector initiatives" and "to promote United States nongovernmental participation" in this process. It instructs and requires the Director of the United States Information Agency to make an annual grant to the Endowment of an amount specified by the Congress and limits USIA's role by specifying that the Endowment's grant funds "will only be used for activities which the Board of Directors of the Endowment determine are consistent with the legislation."

ACT will be a nonprofit corporation established in the District of Columbia. ACT will have a limited staff to save on overhead and to the maximum extent utilize the available experience and talents of existing American organizations to carry out its mandate. These will include the leading American professional and voluntary health organizations, and those NGOs specialized in international health education. ACT will fund programs for private sector groups, and may not carry out programs on its own. ACT may provide funding only for smoking education and information programs.

ACT will be governed by a board of up to 25 members, including on a bipartisan basis, Members of the Senate and of the House of Representatives; the heads of American public health organizations; the heads of American media, marketing, and other nongovernment institutions and corporations; and individuals active in education, public health, and other relevant activities. It will have an International Advisory Council consisting of representatives from key global, regional and national public health organizations and leading individual educators and health professionals.

ACT and its grantees shall be subject to the oversight and supervision of Congress, and shall annually submit a report of its activities to Congress.

revised. ccat 9/15/98

Memorandum

DRAFT

To:	Int'l tobacco working group
From:	[redacted]
Date:	January 14, 1998
Subject:	Smuggling update

Section 1 - Definitions: Use existing definitions found in the Internal Revenue Code. Where Code is silent, look to Kennedy's draft.

Section 2 - Tobacco Product Labeling Requirements: Require both manufacturers and wholesalers to make their commercial records available for audit by Treasury officials so that, if necessary, the government may trace the chain of custody of a tobacco product shipment from the manufacturer to the retailer. Require a "date-shift" code on packages of tobacco product, similar to that required for explosives. When secure technology is available, to be determined by the Secretary, the record keeping requirement on manufacturers and wholesalers shall be replaced by a chain of custody stamp to be placed on each tobacco product package.

Exported packages of tobacco product shall be labeled with the country of final destination. The Secretary shall determine under what circumstances a waiver of this requirement may be granted.

Section 3 - Requirements for the Tracking of Tobacco Products: It shall be unlawful for any person to export any tobacco product unless a bond has been posted with the Secretary. The amount of this bond shall be 30 percent of the value of the shipment. This person must also certify to the Secretary that he has no knowledge that the recipient of this product in such country intends to violate any law or regulation of that country with respect to such products, and that the recipient has never been convicted of any offense with respect to tobacco.

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Section 4 - Pricing and Labeling of Products Sold on Military Installations or by Native Americans: In consultation with the Secretary of Defense, the Secretary shall promulgate regulations ensuring that the price charged for a tobacco product sold on a military installation is equal to the highest price for which such product is sold in the surrounding localities (inclusive of any tax) where the installation is located or the highest price for which such product is

Tobacco: Guidance for U.S. Diplomatic Posts on Health, Trade and Commercial Issues

General Policy

The opening of international markets to U.S. products, non-discriminatory treatment for U.S. exporters, and removal of barriers to international trade are high priorities of the U.S. Government and the Clinton Administration. At the same time, given the importance of health measures internationally, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to improve the health of their citizens.

Tobacco sits squarely at the intersection between trade and health policies. In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco products. This policy also conforms to the provisions of Section 618 of the Act Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for FY 1998, which stipulates that, "none of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type." The U.S. respects the rights of foreign governments to establish and maintain sound public health practices, encourages them to do so, and, where appropriate, may support such efforts with multilateral and bilateral assistance. On the other hand, the U.S. Government will continue to seek elimination of discriminatory trade practices and will strive to ensure that U.S. firms are accorded the same treatment in foreign countries as that country's own firms and firms from other countries. The overall objective is to shrink the global market for tobacco without disadvantaging U.S. firms.

Guidelines

Posts should be aware of U.S. trade policy on tobacco as jointly enunciated by USTR and HHS. The following guidelines ensure consistency with that policy and Section 618 of the Act cited above, as well as the Administration's overall approach to reducing the negative health impact of tobacco while protecting the rights of Americans overseas:

1. Posts are encouraged to assist and promote tobacco-control efforts in host countries.

2. Posts should not challenge host country regulations based on sound public health principles, applied in a nondiscriminatory manner to both imported and domestic tobacco products, and for which sufficient notice has been given. If a post has reason to believe that such health regulations may, in fact, discriminate against U.S. firms or individuals, the issue should be referred to Washington for consideration by trade, health and other appropriate agencies.

3. Posts should not promote the sale or export of tobacco products, and should not assist the efforts of U.S. firms or individuals to do so. Ambassadors or embassy staff should not attend or otherwise support receptions, trade promotions, or any events sponsored by individuals or entities involved in the export, manufacture, promotion, distribution or sale of tobacco or tobacco products where their attendance could be construed as United States Government support for the sale or export of tobacco products.

4. Posts should continue to provide routine business facilitation services to all U.S. citizens or firms such as the provision of publicly available information on foreign country conditions and policies, information or assistance that may help U.S. firms or individuals comply with foreign government laws or regulations, and assistance in resolving business problems--such as customs or port clearance, trademark violations, or phytosanitary restrictions--that are potentially discriminatory.

sold in the US (inclusive of federal taxes), whichever is greater. Packages of tobacco product sold on military installations shall be so marked, as shall packages sold on Indian reservations.

Section 5 - Prohibition against Sale of Tobacco Products in Duty-Free Shops: The quantity of tobacco product an individual may purchase with a valid ticket for travel that day shall be determined by the Secretary. No person in the US may export tobacco products to duty-free shops outside of the US.

Sections 6 & 7 - Prohibitions and Tobacco Product Permits: Will continue to work with Treasury to establish a permit system for tobacco product sales. Will include "broker" in the definition of "wholesaler," and provide Treasury with inspection, and seizure and forfeiture authority.

Tobacco Industry, Conciliatory in U.S., Goes on the Attack in the Third World

By BARRY MEIER

Last August, dozens of journalists from Latin America arrived in Miami as guests of the British-American Tobacco Company, whose Brown & Williamson unit makes popular cigarettes like Kool, Carlton and Lucky Strike.

The company paid for the visitors' air fare, hotel rooms and even dinners at expensive restaurants. At meetings like this, the reporters, from countries including Brazil, Argentina, Chile and Peru, heard company officials and paid speakers attack restrictions on smoking and cigarette advertising as scientifically unsound or artifacts of lawsuit-driven societies like the United States'.

The public relations full-court press was a startling contrast to the face of sweet reason that the tobacco industry has been putting on for the American public these days. In June, five major tobacco companies, including multinational giants like British-American Tobacco, based in London, and the Philip Morris Companies, reached a $368.5 billion agreement to settle existing lawsuits by states and smokers, a development hailed by the industry as a historic opportunity to reduce youth smoking. That deal is now under consideration by Congress.

But while the companies agreed to sweeping restrictions in this country on cigarette marketing and secondhand smoke and to bolder cancer-warning labels, they are fighting as hard as ever in the third world to convince the media, the public and policy makers that similar changes are not needed.

The tobacco companies have long lobbied policy makers here and abroad to prevent passage of antitobacco measures. But in the last three years they have sharpened their campaigns overseas to influence how tobacco-related issues are portrayed in the news or presented to the public, and there are signs that some of those efforts are paying off.

For example, British-American Tobacco, which is owned by B.A.T. Industries, has had seminars at luxury resorts worldwide at which it has offered foreign journalists data that play down the health risks of smoking. To head off indoor smoking restrictions, large cigarette producers have also begun public relations campaigns abroad that recycle the same theme. And advertising agencies like Leo Burnett Inc. of Chicago, the creator of the legendary Marlboro Man campaign, have used their talents on behalf of tobacco producers to thwart antismoking programs outside the United States.

In the Philippines, for example, Leo Burnett officials proposed a public relations strategy to Philip Morris in late 1994 aimed at removing "cancer awareness and prevention" as a "key concern" of health department officials in that country, an internal agency document shows. Though a Leo Burnett spokesman said that Philip Morris did not buy the proposal, agency executives took credit in the document for helping that year to "neutralize" the effects of a Philippine Government plan intended to reduce smoking by children. The document also stated that the agency had "propagated studies that point to other possible causes of lung cancer."

Some tobacco executives see the proposed settlement in the United States not as a blueprint for a new worldwide approach to cigarettes but solely a concession to legal realities in America.

Under the plan, in exchange for protection from lawsuits, the tobacco companies agreed to finance antismoking campaigns, restrict marketing and pay penalties if youth smoking does not decline, among other things. But the document is virtually silent about the cigarette makers' overseas operations, an area that antismoking advocates want to see addressed in the coming Congressional debate on the proposal.

John Bloom, manager of international issues for the Coalition for Tobacco-Free Kids in Washington, said the proposed settlement did not address issues like whether tobacco producers should be required to acknowledge the harmful nature of their products wherever they do business.

The Congressional debate over the proposed settlement comes as the tobacco industry finds itself under attack in some parts of the world. Recently, 15 European nations, including Britain, France, Germany and Italy, agreed to ban virtually all tobacco advertising within five years. Turkey has recently passed laws that restrict cigarette advertising.

With cigarette sales stagnant in this country, multinational producers like B.A.T., Philip Morris and R. J. Reynolds, which is owned by the RJR Nabisco Holdings Corporation, have scrambled in recent years to buy stakes in production operations in areas of rapid sales growth in Eastern Europe, Asia and elsewhere.

In recent years, for example, British-American Tobacco has put on many conferences for journalists, inviting reporters from third-world countries.

"Their strategy all the time is to raise questions about anti-tobacco research," said Kathryn Strachan, a reporter with Business Day, a newspaper in Johannesburg, who attended a company-sponsored conference last year at a resort on Mauritius, an island nation in the Indian Ocean.

Some of the speakers at the B.A.T. conferences were American scientists with strong ties to the tobacco industry. But company officials have also offered newer faces. One of them, Tana Wells, who is described by the tobacco company as an "independent communications consultant," made her presentation to a meeting of African journalists last year from a wheelchair.

Ms. Wells, who is not disabled, used the wheelchair to dramatize her belief that many countries are becoming paralyzed by the fear of such "infinitesimal, if not hypothetical, risks" as the "whiff" of someone else's cigarette, according to a copy of her remarks.

Ms. Wells did not appear at the Miami conference. But similar themes were sounded by Steven Milloy, executive director of the Advancement of Sound Science Coalition, a group in Washington. The group was formed to expose what it describes as "junk science" or "bad science used by personal-injury lawyers to shake down deep-pocket businesses," and by "Chicken Littles to fuel wacky social agendas," according to the group's Internet site.

Sales campaigns question anti-tobacco research.

Officials of British-American Tobacco said they had never tried to hide the company's sponsorship of seminars for foreign reporters. Dr. Chris Proctor, the company's chief scientist, said meetings like the Miami gathering provided the cigarette producer with a chance to present its side of the smoking debate.

The effects of the meetings sponsored by British-American Tobacco are difficult to gauge. But in countries where tobacco producers still spend a lot of money advertising in newspapers and are still permitted to run commercials on television, journalists' coverage of health issues can sometimes show a surprising slant in favor of the tobacco industry's point of view.

In late 1996, for example, several newspapers in the Philippines reported on a Cornell University study that suggested office workers who had headaches and other symptoms associated with indoor air pollution might be reacting to psychological factors rather than environmental irritants.

After reporting the study's findings, all the articles then asserted that the "informational campaign against smoking" was causing similar psychological effects in nonsmokers. The articles then criticized Philippine officials for trying to convince the public that secondhand smoke was harmful.

Alan Hedge, the Cornell University professor who conducted the study, said he was stunned to learn how it was covered in the Philippines, because it had nothing to do with secondhand smoke.

In recent years, tobacco manufacturers have revived public relations campaigns once tried in the United States to fight moves in third-world countries to limit or bar smoking in restaurants or workplaces. In Brazil, for instance, tobacco companies are running newspaper advertisements arguing that smokers and nonsmokers have rights and appealing to both groups to learn to live with each other, said Vera Luiza da Costa e Silva, an official with the National Cancer Institute of Brazil.

In other cases, the efforts are apparently more covert. In the proposal presented by Leo Burnett officials in Manila to Philip Morris in late 1994, executives of the agency cited several accomplishments, including their work to "neutralize" a Philippine health department antismoking campaign.

That campaign was based on a cartoon character named "Yosi Kadiri," whose name means "cigarettes are disgusting" in slang. Dr. Daniel Tan, a physician in Manila who helped develop the program, said that the character, who has bloodshot eyes and yellow teeth, was intended to convey the message to children that smoking was a terrible habit.

But soon after the television and print campaign started, Philippine health authorities and newspapers received letters criticizing it as a waste of money, and after a few months money for it was virtually eliminated. Dr. Tan said that when he and associates tried to identify those who had written the letters, they found that some of the names used on the correspondence did not exist.

Dr. Ruth Surmieda Gamaro, national coordinator for tobacco programs at the Philippine Department of Health, said she was told by an advertising agency that Philippine television stations had refused to carry public-service promotions for the initiative after tobacco industry officials threatened to withdraw their advertising.