

**NLWJC - Kagan**

**DPC - Box 045 - Folder 011**

**Tobacco-Settlement: International  
Issues**

Tobacco - International



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

cc: Bruce/Elena  
Spierling  
~~Woods~~  
Bartholomew  
Podgorski

**INFORMATIONAL MEMORANDUM FOR THE WHITE HOUSE CHIEF OF STAFF**

**FROM:** August Schumacher, Jr.  
Under Secretary for Farm and  
Foreign Agricultural Services

A handwritten signature in dark ink, appearing to read "August Schumacher, Jr.", written over the typed name.

OCT - 5 1998

**SUBJECT:** Update on U.S. Tobacco Exports to China

**ISSUE:**

The U.S. is seeking approval from China to export U.S. tobacco. Under the 1992 U.S.-PRC Market Access Memorandum of Understanding (MOU), China agreed to improve access for a number of U.S. agricultural products, including tobacco.

**BACKGROUND:**

China will not permit the importation of U.S. tobacco until it has been demonstrated that tobacco blue mold (TBM) will not be introduced into China on this product. Scientists from both countries have spent considerable time on TBM. U.S. researchers have demonstrated that its tobacco (from 1991 to 1997) has no evidence of blue mold. There is no scientific evidence that TBM even causes infection naturally, a conclusion reached by world renown researchers. During the week of September 20, 1998, at the most recent USDA and CIQ bilateral meeting, the U.S. once again requested approval from China for the importation of U.S. dried tobacco. China still maintains that there is a risk in stored tobacco and insists there is a need to do more research.

July 8, 1998

MEMORANDUM FOR THE VICE PRESIDENT

FROM:

SUBJECT: Meeting with Representative Doggett -- International Tobacco Control

You are meeting with Representative Doggett on Friday to discuss his bill, the International Tobacco Responsibility Act of 1998. The Doggett bill was included, with some minor modification, in the Hansen-Meehan bill, which the President said he would sign if provisions are included to protect farmers. The Hansen-Meehan bill has 107 cosponsors, including Doggett and 11 Republicans.

We believe that public health spending under comprehensive tobacco legislation should include significant funding (\$200 million a year) for international tobacco control efforts. These funds should be spent on both governmental and non-governmental efforts to promote public health and smoking prevention efforts.

The Doggett bill has several additional international provisions that we would like to change so that they do not interfere with diplomatic and trade priorities. For example, although we support the bill's effort to prohibit U.S. government support for promotion of tobacco overseas, we need to ensure that the language does not interfere with USTR's ability to negotiate tariff reductions or interfere with treatment of other products. In addition, the Doggett bill contains a provision that the State Department and HHS consider problematic and unenforceable, which would require US companies to abide by the new labeling and advertising requirements when doing business in other countries. The industry strongly objects to these provisions for a different reason, because it views them as a real threat to its international operations.

The McCain bill, as reported out of the Commerce Committee, contained provisions very similar to those in the Doggett bill. Consequently, DPC staff worked with Senator Wyden and other Commerce Committee members to arrive at mutually agreeable international provisions in the Manager's Amendment offered by Senator McCain. The language we negotiated, while not perfect, successfully addressed the problems raised above.

In addition to discussing international tobacco control, Representative Doggett is likely to ask about general strategy for advancing comprehensive tobacco legislation in the House. First, we will encourage Representatives Hansen and Meehan to file a discharge petition for their bill. Second, we will explore the possibility of including key provisions designed to reduce youth smoking -- such as a significant per pack price increase -- in any potential reconciliation bill.

## **Background: Q&A on International Tobacco Issues**

### **Q. Does the Administration support the international provisions in the Doggett bill?**

A. Tobacco use is a global health problem. Comprehensive tobacco legislation should address this problem by providing significant funding for multilateral and bilateral efforts designed to discourage youth smoking abroad. Such funding will enable us to provide technical assistance to other countries, and will support diplomatic, media, and grass roots efforts designed to reduce youth smoking.

We do have concerns, however, about certain provisions in the Doggett legislation. Some of these provisions raise important legal and foreign policy concerns. As we move forward in this area, we want to ensure that international tobacco control legislation does not interfere with our diplomatic and trade priorities or result in policies that are unenforceable abroad. Rather than extend US laws unilaterally to other nations, we want to work bilaterally and multilaterally through the World Health Organization and other entities to share our experiences with other nations, and encourage them to adopt laws to reduce tobacco advertising that targets children. We prefer language like that included in the bill Senator McCain brought to the floor of the Senate.

**Congressman Lloyd Doggett's The International Tobacco Responsibility Act of  
1998**  
*Protecting the World's Children from Nicotine Addiction*

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

2. **Ends U.S. Government Support for Tobacco Abroad.** The bill prohibits the federal government from promoting the sale or export of tobacco or tobacco products abroad. It also prohibits the government 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 public health.

2. **Adequately Funds Global Tobacco Control Efforts.** The bill dedicates two percent of any revenues from assessments on the tobacco industry to fund global tobacco control. It dedicates half of that amount to the Department of Health and Human Services and the other half to the American Center on Global Health and Tobacco, a private, nonprofit organization the bill establishes 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.

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

5. **Support International Tobacco Framework Convention.** The bill expresses the sense of Congress that the United States should support the adoption of the International Framework Convention, which would set worldwide standards for curbing tobacco use.

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. The International Tobacco Responsibility Act of 1998 establishes a responsible U.S. policy for the promotion of global public health.

## **Detailed Summary of the International Tobacco Responsibility Act of 1998 Sponsored by Congressman Lloyd Doggett**

### **Title I. Code of Conduct & Advertising.**

#### **1. Amends the Federal Food Drug and Cosmetic Act (FDCA) to:**

- Make it unlawful for any domestic concern (defined as an individual who is a citizen or resident of the U.S. or a corporation, partnership, etc. which has its principal place of business in the U.S. or is organized under U.S. law) to cause or contribute to the sale or distribution of tobacco products in a foreign country to children.
- Make it unlawful for a domestic concern to advertise or promote tobacco products in a foreign country in a manner that does not comply with U.S. requirements for advertising and promotion.
- Make it unlawful for any domestic concern to sell in a foreign country tobacco products which do not contain warning labels that comply with U.S. requirements and are in the primary language(s) of the country; allows the Secretary of HHS to issue a waiver when he/she determines that the requirements of a foreign country are (1) substantially similar to U.S. requirements and are (2) adequately enforced.
- Create a finder's fee (consistent with other sections of the FDCA) that would be awarded to anyone providing information that leads to a conviction for a violation of the law.

### **Title II. Prohibition of Government Support of Tobacco Overseas.**

- Prohibits any U.S. official or agency from promoting the export, sale, distribution, etc. of tobacco or tobacco products in a foreign country.
- Prohibits any U.S. official or agency from seeking the reduction or removal of any foreign tobacco restriction unless:
  1. the restriction is applied in a manner which is an arbitrary or unjustifiable discrimination;
  2. the Secretary of Commerce certifies in writing to Congress that the restriction is being applied in a manner which is an arbitrary or unjustifiable discrimination; and
  3. the Secretary of HHS certifies in writing to Congress that the restriction is not a reasonable means of protecting the public health.

### **Title III. The American Center on Global Health and Tobacco.**

- Requires that two percent of any tobacco settlement revenues be dedicated to international tobacco control efforts, with half of that amount dedicated to the American Center on Global Health and Tobacco (ACT) and half dedicated to the Department of Health and

**Human Services.**

- Establishes the American Center on Global Health and Tobacco (ACT). Charges ACT with support that includes:
  1. public education programs to inform the public about the hazards of tobacco use and environmental tobacco smoke.
  2. mass media campaigns, including counter-tobacco advertising to reverse the image appeal of pro-tobacco messages.
  3. education about the economic and societal costs of tobacco and effective tobacco use prevention and cessation strategies.
- Provides that ACT shall be a nonprofit corporation based in the District of Columbia and that in no way shall it be construed an agency of the U.S.
- Provides that ACT shall be governed by a board of up to 25 members including Members of the Senate and 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.
- Creates an International Advisory Council consisting of representatives of international public health organizations to provide advisory assistance to ACT.
- Provides for funding at \$150 million per year.
- Requires ACT to submit an annual report to Congress and provides for annual audits by the Comptroller General and periodic audits by independent accounting firms.

**Title IV. Smuggling.**

**1. Labeling**

- Requires the Secretary of Treasury to develop regulations that require tobacco manufacturers to print a unique serial number on all packages of tobacco products that will allow the Secretary to identify the manufacturer of the product and the location and date of manufacture.
- Requires that the package of tobacco products which are exported be labeled with the name of the country of final destination.
- Makes it illegal for any person to alter or remove any mark or label from a tobacco product.

**2. Requirements for Tracking.**

- Requires any person exporting tobacco products to post a bond with the Secretary of Treasury that discloses the country to which the product will be exported and receive written assurances from the recipient that the recipient (1) will not violate any law or

regulation relating to tobacco products and (2) has never been convicted of an offense related to tobacco products.

- Requires the Secretary to develop regulations that determine the amount of the bond, but states that the bond must be at least equal to the Federal tax that would be imposed on the products if they were to be consumed in the United States.
- Directs the Secretary to return the bond when he/she determines (based on documentation provided by the person who posted the bond) that the tobacco products have been received in the country stated in the bond or have been stolen or destroyed.

### 3. Tobacco Product Permits.

- Requires the Secretary of Treasury to develop a program under which tobacco product permits are issued to persons wishing to export tobacco products and allows the Secretary to require record keeping for tobacco products that are subject to the permit requirements; allows the Secretary to audit such records.
- Makes it unlawful for anyone not holding a permit to import, export, manufacture, warehouse, etc. any tobacco product.

### 4. Military Installations and Indian Reservations.

- Directs the Secretary of Defense, in consultation with the Secretary of Treasury, to develop regulations that limit the sale of tobacco products on a military installation to one carton per individual per day. Directs the Secretary to determine the amount of noncigarette tobacco products to be sold per individual per day.
- Requires that tobacco products sold on military installations be labeled as such.
- Requires that tobacco products sold on Indian reservations be labeled as such.

### 5. Duty Free Shops.

- Directs the Secretary of Treasury to promulgate regulations to enforce a reasonable per day limit on the sale of tobacco products.

### 6. Changes to Contraband Cigarette Trafficking Act (relates to smuggling between states only, not international).

- Lowers the threshold for unlawfully distributing, selling, etc. cigarettes which bear no evidence of state tax payment from 60,000 to 30,000 and expands coverage to all tobacco products.
- Makes it unlawful to transport tobacco products under a false bill of lading.
- Makes it a violation of CCTA to fail to keep distribution record or to interfere with inspection of those records.
- Provides for forfeiture of proceeds resulting from the unlawful distribution of tobacco products.

**Title VI. Sense of Congress.**

States; It is the sense of Congress that the United States government should support the development, adoption, and implementation of the International Framework Convention on Tobacco Control through all available resources, including direct financial support, technical assistance, and any other appropriate measure.

Kay Casstevens @ OVP

07/07/98 02:32:06 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Bruce N. Reed/OPD/EOP  
Subject: VP meeting with Rep. Doggett on tobacco

Rep. Doggett has asked to meet with the VP about his bill, the International Tobacco Responsibility Act of 1998. I think his bill has been included as a title in the House D's tobacco bill.

I think that Doggett just wants to tell the VP about it and ask for White House support.

The meeting is set for Friday afternoon at 4:20 pm. I have a summary of the bill which I will fax to you. Will you please take a look at it and let us know what position the VP should take. I'll put together a briefing memo on Thursday and would really appreciate your input. If it is necessary, we can do a 5 minute briefing with him prior to the meeting on Friday.

Thanks for your help. -- Kay

**International Tobacco Issues**  
(DRAFT -- March 26, 1998)

	<b>Lautenberg Proposal</b>	<b>Comments</b>	<b>Alternative Proposal</b>
<p><b>US Government Support for Tobacco Abroad</b></p>	<p>Prohibits the use of federal funds to (1) promote the sale, manufacture, advertising, or export of tobacco or tobacco products abroad; or (2) attempt to weaken a foreign tobacco regulation (including tariffs) unless the Secretary of Commerce [should be USTR] certifies that the regulation discriminates against US products in an arbitrary and unjustifiable manner and the Secretary of Health certifies that it is not a reasonable means of protecting public health.</p>	<p>This section permanently codifies and expands Doggett amendment to FY98 Commerce-Justice-State Appropriations bill. Provision would apply to other agencies.</p> <p>Language could prevent the US from negotiating to reduce or eliminate all tariffs (which would include tobacco tariffs) as part of a larger negotiation, or enforcing US trade agreement rights.</p> <p>HHS Secretary certification process is too onerous. Should instead be consulted and have input.</p> <p>The "arbitrary and unjustifiable" standard would exclude MFN violations where a country treats the products of one country less favorably than another. Also, standard is derived from GATT so an unfavorable court interpretation could adversely impact other trade areas.</p>	<p>Option 1: Permanently codify Doggett without expansions. Report language could assure Congress that easing tariffs on tobacco products would not be primary objective of any tariff negotiation, and that HHS would be consulted on any actions regarding tobacco.</p> <p>Option 2: Amend expanded Doggett language to delete reference to tariffs and certification requirement. Provide same report language as in option 1.</p>

	<b>Lautenberg Proposal</b>	<b>Comments</b>	<b>Alternative Proposal</b>
<b>Code of Conduct for Labeling and Advertising</b>	Companies are prohibited from selling, advertising or marketing tobacco products to children in other countries, with US standards applying to their conduct overseas. Federal law governing the content of health warning labels on tobacco products would apply to products sold overseas (unless the label complies with substantially similar labeling requirements set by the foreign country, and those requirements are being enforced). Labels must appear in the primary language(s) of the foreign country.	<p>International code of conduct for US companies would be unilateral, not enforceable in other countries, and voluntary in nature. Moreover, foreign countries would find this intrusive.</p> <p>Instead, an international framework convention is more likely to lead to global policy that is binding for participating countries.</p>	<p>Provide agencies with principles to adhere to in negotiations for an international tobacco control "framework convention", and authorize an annual appropriation to fund an office responsible for coordinating this effort.</p> <p>This could take the form of sense of the Congress language which conveys that the President should work, through the Secretaries of State and Health, with other countries to develop international code of conduct to encourage the emulation of our domestic tobacco policies elsewhere.</p>

	<b>Lautenberg Proposal</b>	<b>Comments</b>	<b>Alternative Proposal</b>
<b>Prevention of Tobacco Smuggling</b>	<p>Gives ATF authority to deter tobacco smuggling through a system of export permits, packaging requirements, and increased record keeping.</p> <p><u>Permits:</u> It would be illegal for anyone to ship tobacco products in interstate commerce or foreign commerce without a permit issued by the Secretary of Treasury. Permit holders must keep records concerning the chain of custody of tobacco products.</p> <p><u>Packaging:</u> all tobacco products must have serial number identifying the manufacturer, and must be labeled with the country of destination. Exporters must post bond with Dept. of Treasury and receive written confirmation that recipient will not violate laws of that country.</p> <p><u>Military Installations:</u> prices charged at overseas military installations must be the greater of : (1) the average price charged in neighboring metropolitan area; or (2) the highest price charged for the product on military installations in the US.</p> <p><u>Duty-free Shops:</u> prohibits the sale of tobacco products in duty-free shops.</p>	<p>Doesn't address what happens once US products go overseas -- ie. How do we ensure that they arrive at their proper destination?</p>	<p>Make it illegal for anyone to ship tobacco products in interstate commerce or foreign commerce without a permit issued by the Secretary of Treasury. Anyone conducting business without a license or registration would be subject to criminal and civil penalties.</p> <p>Authorize funds for ATF for investigative operations and prosecutions and for ATF and customs to prevent trafficking and contraband tobacco products. Funds should be available for US customs to provide training and technical assistance to foreign governments.</p> <p>Allow the Secretary of Treasury to impose licensing and registration fees to recover the costs of administering the system.</p> <p>[Note: Treasury Department (John Simpson) still owes us paper on bar codes, tracking, etc. to ensure that products arrive at their proper destination).</p>

	<b>Lautenberg Proposal</b>	<b>Comments</b>	<b>Alternative Proposal</b>
<p><b>Funding for International Tobacco Control Efforts</b></p>	<p>Requires US tobacco companies to pay a two-cent licensing fee to the Secretary of HHS for each package of cigarettes it sells overseas.</p> <p>These fees would be deposited in an International Tobacco Control Trust Fund, and \$150 million would go annually toward the establishment and operation of a private, nonprofit organization located in Washington, DC (the American Center on Global Health and Tobacco "ACT"), designed to assist public health organizations in other countries to reduce tobacco use through public education programs and mass media campaigns.</p> <p>Trust fund revenues could be used to fund grants and other forms of assistance to foreign governments and NGOs to reduce tobacco use in foreign countries.</p>	<p>Funds should not be channeled exclusively through one organization. Guiding principles should be that funds should be available to public and private entities (governments and NGOs), along multilateral and bilateral lines, and for health and education purposes.</p> <p>There should not be a separate 2 cent per pack fee -- international piece is part of a comprehensive solution to tobacco issue so there should be one comprehensive fee.</p> <p>ACT is too media/education oriented. Should focus equally on promoting public health and be accountable to public health community.</p>	<p>Funds should go to the following combination of entities:</p> <p>a) assist efforts by foreign governments and NGOs to reduce tobacco use in foreign countries. HHS would provide leadership and coordination for the global effort.</p> <p>b) deposit funds within a trust fund at the World Bank, to be used for international tobacco-related public health and education effort. The Fund would be used in developing countries for education and training programs, implementing bans on advertising and promotion of tobacco products, implementing national price increases, research, and establishing tobacco control units.</p> <p>c) ACT or ACT-type organization which places equal emphasis on education and public health components.</p>

**Purpose:** To agree on Administration principles regarding international tobacco to feed into the legislative process currently underway. A number of legislative proposals have been floated for consideration. Many were introduced at a Capitol Hill press conference on February \_\_. A brief synopsis of these bills is attached at Tab 1. The Administration will be asked on Tuesday during the mark-up of Senator McCain's bill its position on these various proposals. An inter-agency working group under the NEC has been working many of these issues the past few months and have arrived at consensus on key points. We are seeking for NEC Principals to ratify inter-agency consensus positions.

### **Issue 1: Guidelines on U.S. Government support for promotion of tobacco overseas.**

There is Congressional interest in making permanent the Doggett Amendment to the FY98 State/Commerce/Justice Appropriations bill and codifying the Administration's Guidelines issued in February. There is inter-agency agreement to incorporate the Doggett language into a comprehensive tobacco bill, while providing some additional report language assuring the Congress that tobacco products would not be a primary objective in tariff negotiations, and that the USTR would include in its Annual Report information on any actions regarding tobacco restrictions that were addressed because they were discriminatory and fit within the exceptions provided in the amendment. Lastly, the report could assure Congress that HHS would be consulted on any actions regarding tobacco products.

### **Issue 2: International Code of Conduct**

Senator Lautenberg and Representative Waxman support an "international code of conduct" that would set labeling and advertising requirements for tobacco products abroad by domestic concerns. U.S. tobacco companies would be required to print health warning labels on tobacco products that are at least as stringent as those in the United States. Companies would face the same standards applied to their overseas conduct as they face at home -- they would be prohibited from selling, advertising, or marketing tobacco products to children abroad, for example.

This proposal raises extraterritoriality issues that would cause problems with many foreign governments with whom we seek to work to positively address tobacco control issues. Export controls for a legal product has little if any support and would rally pro-tobacco forces. Also, State Department cites enforcement concerns about its ability to enforce these rules overseas. A voluntary code would undoubtedly be not successful given the tobacco industry's track record. The inter-agency consensus is that it would be preferable to negotiate a code of conduct with governments.

HHS has proposed pursuing a "Framework Convention on International Tobacco Control" as proposed in 1996 by the World Health Assembly (see Tab \_\_). Such an accord would create an international framework through which nations could address the supranational dimensions of tobacco control in separate protocols. It would also aim to strengthen control efforts through information sharing. The inter-agency group, including the Department of State, is in general

agreement with this approach, though it is agreed that considerable work must be done in conceptualizing what such a convention would look like, how local laws and regulations would be enacted and enforced and what sort of international assessment provisions would ensure its effectiveness.

### **Issue 3: Smuggling**

There is significant concern that smuggling may undermine legislated price increases in the U.S. market. The Administration will be proposing licensing and registration for domestic manufacturers, wholesalers/distributors, retailers and exporters/importers. The Administration's proposal should include funds for Customs and BATF to enforce at borders and internally, respectively. Although outside of the International Working Group's mandate, it has been suggested that our proposal should also promote customs cooperation (being able to match U.S. exporter documentation with corresponding importer data, for example) to better ensure integrity of custody chain. It would also be beneficial to also provide funds for technical assistance to other nations' customs services (see international funding issues, below).

### **Issue 4: International Funding**

There are two basic issues: amounts and modalities. Specific proposals have been introduced to create a new NGO ("ACT") modeled on National Endowment on Democracy. There are a variety of options as to whether and how such an entity would share funding with official -- bilateral and multilateral -- programs. As for funding, a 2¢ per pack "export fee" has been proposed, but there has been no serious consideration of the separate fee to fund international programs. The percentage or absolute amount of industry payments to be devoted to international activities has not been fixed; desired range has been cited at \$50-150 million per year. Nor is there at this point agreement on a specific mechanism. However, there is no disagreement on the general principles. Funding should be made available in the legislation for:

- official and non-official (NGOs and non-profits) endeavors
- bilateral and multilateral programs
- public health and education/media efforts
- have provisions for policy coordination plus financial accountability

HHS would like to beef up CDC's tobacco control efforts; Treasury would like some funding to be set aside for the World Bank and regional development bank programs. (See HHS and Treasury proposals at Tab \_\_). There is also agreement on providing a key role for NGOs -- though less enthusiasm for funding them directly (such as through ACT proposal) or indirectly (through HHS, State/USAID and Treasury/MDBs). Ultimately, however, the international programs should include monies to train USG overseas diplomatic and commercial personnel (per Doggett and Guidelines) and fund official international tobacco control efforts (e.g., WHO framework) and technical assistance to customs and enforcement personnel overseas.

## **INTERNATIONAL TOBACCO ISSUES**

The President has stated that the strengthening of international efforts to control tobacco, including international prevention and cessation programs, should be included as part of comprehensive tobacco legislation. Pursuant to this goal the Administration seeks legislation that will:

### **Prohibit U.S. Government support for promotion of tobacco overseas.**

- Make permanent the Doggett Amendment to the FY98 State/Commerce/Justice Appropriations bill, codifying the Administration's Guidelines issued in February.
- Provide report language that clarifies "normal business facilitation" and the treatment of tobacco in tariff discussions; assures that HHS will be consulted and sign-off on any trade actions that are taken relating to tobacco or tobacco products; and provides for USTR to report on any tobacco-related trade activity in its Annual Report to Congress.

### **Promote Development of a Code of Conduct for International Tobacco.**

- Will work to address the issue of warning labels, advertising bans and prohibitions on sales to children with other governments, bilaterally and multilaterally, including through the framework provided by the World Health Assembly.
- Do not support difficult to enforce legislation that unilaterally sets tobacco product labeling, advertising and sales requirements for U.S. companies operating abroad.

### **Increase International Cooperation to Combat Smuggling.**

- Propose licensing and registration for domestic manufacturers, wholesalers/distributors, retailers and exporters/importers to address concerns that smuggling may undermine positive effects of mandated price increases in the U.S. market.
- Include provisions to enable more effective enforcement at borders and internally; should also promote customs cooperation to better ensure integrity of export custody chain and provide for technical assistance for other nations' customs services.

### **Ensure Adequate Funding of International Public Health and Education Initiatives.**

- Provision for funding of international public health and education initiatives should be identified within overall payment from industry, not from a separate "export fee."
- Delivery mechanisms must ensure for policy coordination and fiscal accountability and be flexible enough to provide substantial funding for science-based public health and education/ media programs, delivered through both official and non-governmental channels, bilaterally as well as multilaterally.
- Specific mechanisms to be developed in further consultation with interested Members of Congress and international public health community once macro funding parameters established.

**International Tobacco -- Wyden/Hollings Negotiations**  
(May 1, 1998)

	<b>S.1415</b>	<b>Our Position</b>	<b>Wyden's Proposed Compromise</b>	<b>Hollings Proposed Language</b>	<b>Our Proposed Strategy</b>
<b>Doggett</b>	Expanded Doggett.  (Comment: This would interfere with our ability to negotiate tariffs on other products and contains onerous HHS certification requirements if tobacco trade negotiations would potentially impact public health.)	Simple Doggett <sup>1</sup> with report language saying that lowering tariffs on tobacco should not be primary goal of any trade negotiation, and Secretary of HHS should be consulted on tobacco trade issues affecting public health.	Simple Doggett, but wants to strengthen report language on reporting and accountability to Congress.  (We would probably not have a problem with this change.)	Codifies Doggett	We should encourage Hollings to adopt Wyden's report language.

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<sup>1</sup> The Doggett language included in the FY98 Commerce-Justice-State Appropriations bill prevents the federal government from promoting the sale or manufacture of US tobacco products overseas.

	S.1415	Our Position	Wyden's Proposed Compromise	Hollings Proposed Language	Our Proposed Strategy
<b>Code of Conduct</b>	<p>Unilaterally imposes US marketing and advertising laws on US companies, its affiliates or subsidiaries selling tobacco products overseas. Requires FDA enforcement of these provisions abroad.</p> <p>(Comment: creates extraterritorial issues which will be viewed with hostility by other nations. Many provisions would be unenforceable.)</p>	<p>Work through international framework convention on multilateral and bilateral basis to encourage other nations to adopt laws, regulations and public health programs similar to ours.<sup>2</sup></p>	<p>Adopt international framework approach, and amend the Export Administration Act to require license for tobacco exports. Require that US companies comply with our advertising, marketing and labeling restrictions overseas in order to obtain an export license. Also wants to cover re-exports.<sup>3</sup></p>	<p>Creates an Office of International Tobacco Control Policy at HHS which would act as the lead negotiator for the US in area of international tobacco control, coordinate among US foreign policy and trade negotiators, and report to Congress on the progress of negotiations in this area. Authorizes such sums as necessary.</p>	<p>We should not pursue the EAA option, but instead encourage Hollings to beef-up his Office of International Tobacco Control Policy language to: (1) coordinate with and fund activities of other agencies and international organizations; (2) coordinate with NGOs, including ACT; and (3) participate in international framework convention.</p>

<sup>2</sup> Alternatively, the State Department has prepared line edits to Wyden's code of conduct language which would apply restrictions only to US companies, but not to foreign citizens operating in foreign countries. While this would address some of our extraterritorial concerns, enforcement problems would still remain regarding US persons acting overseas. It would also just prompt US companies to set up overseas subsidiaries. The international policy agencies do not want to go down this road.

<sup>3</sup> Wyden has acknowledged that his code of conduct language raises large extraterritorial problems, and is willing to pursue a framework convention approach as long as some other mechanism takes effect in the interim. He has proposed making US advertising, marketing and labeling restrictions a condition of tobacco export licensing under the Export Administration Act (EAA). The EAA currently governs the licensing of US exports to protect national security or advance foreign policy -- products such as super-computers or weaponry that could be used against us by hostile nations. The EAA lapsed in 1994, and is only operational under a semi-annual declaration of emergency by the President pursuant to the International Economic Emergency Powers Act. Currently, the EAA stipulates that it could be used to further the policy goal of protecting foreign health and safety, but it has never been used in this way. Wyden wants to amend the EAA to stipulate that protecting international public health is an important foreign policy interest that justifies the licensing of tobacco exports. He views this as a compromise because it would only apply to US exporters. It would, however, just prompt US companies to set up foreign subsidiaries. Enforcement problems would also remain under this proposal, particularly regarding re-exports. The international policy agencies do not want to go down this road, and it is extremely unlikely that Senator Ford would accept this compromise.

	<b>S.1415</b>	<b>Our Position</b>	<b>Wyden's Proposed Compromise</b>	<b>Hollings Proposed Language</b>	<b>Our Proposed Strategy</b>
<b>Funding Structure for International Tobacco Control Efforts</b>	\$150 million annually for ACT (new NGO), with balance raised from export fee (see below) for unspecified official programs.	\$200 million annually for government agencies (CDC, State Dept), international programs (through World Bank, WHO and UN), and NGOs.	Agreed to our position.	Authorizes such sums as necessary for ACT. <sup>4</sup>	Encourage Hollings to coordinate ACT with activities of proposed Office of International Tobacco Control (above); specify ACT's mission and responsibilities.
<b>Funding Mechanism</b>	2 cent per pack export fee.  (Comment: this is an unconstitutional export tax.)	Funding should come from overall tobacco trust fund and should go through the annual appropriations process.	Wants guaranteed funding stream/mandatory money.	Authorizes such sums as necessary.	We should assure Wyden that we will make appropriation for international tobacco control a priority, and encourage Hollings to support \$200 million in funding.

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<sup>4</sup> This is language is a pared down version of Wyden. It does not specify ACT's mission or responsibilities, or contain Wyden's language creating international trust funds/accounts, use of funds, salaries, audits, reporting, recordkeeping, etc.

	<b>S.1415</b>	<b>Our Position</b>	<b>Wyden's Proposed Compromise</b>	<b>Hollings Proposed Language</b>	<b>Our Proposed Strategy</b>
<b>Labeling</b>	Requires warning labels on US exports that comply with US requirements or with labeling requirements of foreign nation which are deemed by the Secretary as substantially similar to US requirements and are adequately enforced.	We would accept labeling language in McCain bill.	Make labeling a licensing requirement under Export Administration Act.	Requires warning labels on US exports that comply with US requirements or with labeling requirements of foreign nation.  Requires Office of International Tobacco Control Policy to identify those countries whose labeling requirements are not substantially similar to ours. <sup>5</sup>	Require warning labels on US exports that comply with US requirements.
<b>Smuggling</b>	McCain provision.	Treasury's edits of McCain language.	N/A	Requires serial numbers on tobacco products. Amends Contraband Cigarette Trafficking Act by reducing quantity of tobacco products from 60,000 to 30,000. Requires Secretary to establish a permitting program for sellers and shippers of tobacco.	We need to ensure that his effort does not operate at cross purposes with our effort to strengthen the McCain language.

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<sup>5</sup> Does not contain Wyden's requirement that labels should be in primary language of importing country. Unlike Wyden, it appears that Hollings would allow labels to comply with foreign labeling requirements even if they are not substantially similar to ours.

	<b>S.1415</b>	<b>Our Position</b>	<b>Wyden's Proposed Compromise</b>	<b>Hollings Proposed Language</b>	<b>Our Proposed Strategy</b>
Imports	None	None	None	Non-US tobacco leaf cannot be imported into the US unless it is imported through the Port of Seattle and is held in customs custody for at least 7 years. Not eligible for automated entry.	This is a non-tariff barrier in violation of GATT.

## Effective and Enforceable International Provisions are Key to a Comprehensive Tobacco Bill

Smoking is a major global public health problem. It is expected to kill about 500 million people alive in the world today, including more than 200 million of today's children and teenagers. The total will exceed deaths from HIV, malaria, tuberculosis and maternal conditions combined. By 2030, based on current smoking rates, tobacco will kill about 10 million people annually, with more than 70 percent of those deaths occurring in developing nations.

The US should be a leader in reducing youth smoking and promoting smoking cessation worldwide, and strong and effective international tobacco control provisions should be a part of any comprehensive tobacco bill.

### **What should be the goal of US international tobacco control policy?**

Comprehensive tobacco legislation should work to discourage youth smoking abroad through multilateral efforts designed to promote education and public health. These efforts should include providing technical assistance to other countries, and supporting diplomatic, media, public health, and grass roots efforts designed to reduce youth smoking

### **How can we ensure that the federal government does not promote US tobacco interests overseas?**

Language proposed by Representative Doggett and attached to the FY98 Commerce-Justice Appropriations bill currently prevents the federal government from promoting the sale or manufacture of US tobacco products overseas. This language should be permanently codified as part of comprehensive tobacco legislation. The Doggett rider says:

“None of the funds provided by this Act shall be made available to any officer, employee, department, or agency of the United States 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, unless such restrictions are not applied equally to all tobacco and tobacco products.”

The Doggett rider should not be expanded in a way that would prevent the federal government from negotiating tariff reductions on all other goods or enforcing US trade agreement rights. It should be clear, however, that easing tariffs on tobacco products should never be the primary objective of any tariff negotiation.

### **How can we work to ensure that our marketing and advertising restrictions and public health policies become models for similar programs in other countries?**

Legislation should direct US officials work through the World Health Assembly on an international framework convention designed to reduce youth smoking worldwide and promote

smoking cessation. The purpose of these multilateral collaborations should be to encourage other nations to emulate US laws on youth marketing and advertising, labeling requirements for tobacco products, and other tobacco-related initiatives aimed at improving the public health.

The goal of US tobacco policy should not be to unilaterally impose US marketing and advertising restrictions on foreign nations. To do so would raise enormous enforcement problems for the FDA or other agency charged with enforcing US policy overseas. And requiring other nations to comply with US domestic law raises extraterritorial concerns which would be viewed with hostility by foreign nations. Instead, we should work cooperatively through an international framework convention to promote US policies and appropriate public health strategies abroad.

### **What is the best use of funds for international tobacco control efforts?**

Comprehensive tobacco legislation should dedicate approximately \$200 million per year in order to sufficiently fund efforts to reduce youth smoking overseas. Funding should go promote multilateral efforts designed to promote education and public health, and should support technical assistance to other countries, as well as diplomatic, public health, media and grass roots efforts designed to reduce youth smoking.

Because any effort to reduce youth smoking overseas will require a varied approached to the problem, funding should be divided among non-governmental organizations (NGO's) and federal agencies with expertise in international public health efforts, such as the Centers for Disease Control, the Treasury Department (through the World Bank), and the State Department. The McCain bill and others have proposed creating a new NGO, the American Center on Global Health and Tobacco (ACT), which would coordinate and fund NGO efforts worldwide. The creation of ACT, or an ACT-like coordinating entity, should be considered as part of any funding proposal for international tobacco efforts.



Tob - ser - international

Director, Resources, Plans & Policy  
Office of the Secretary of State

May 8, 1998

Erskine  
Bruce  
Egan

**Memorandum to John Podesta, Assistant to the President and Deputy Chief of Staff**

FROM: State - Craig Johnstone *CJ*

SUBJECT: International Tobacco Control Trust Fund

The Office of the Secretary has a strong interest in recommending specific changes to Subtitle C of the McCain tobacco settlement legislation, which proposes an International Tobacco Control Trust Fund. We have concerns about two key aspects of this Subtitle.

First, we do not believe it appropriate that an as yet unformed NGO with no track record of accountability should be written into statute as the recipient of all or any of portion of the trust fund.

Also, we appreciate that HHS has an important role in tobacco use reduction domestically. However, the authority for this international fund most appropriately belongs to the Secretary of State, who has explicitly delegated authority for coordination of international affairs programs and the allocation of related resources. Absent the Secretary of State's management of this fund, potential conflicts of interest between USG agencies carrying out disparate programs could seriously damage U.S. credibility overseas, threatening successful pursuit of other major foreign policy objectives. The tobacco reduction program also has important multilateral implications, requiring the Secretary of State's direction and overall coordination.

Second, we believe that the International Tobacco Control Trust Fund must be established as a separate self-financed trust fund, and as a distinct Function 150 account with income and outgo streams independent of other function budget accounts. Arrangements for financing the trust should mirror other independent federal trust funds, ensuring that the purposes of the fund are actually met. A separate account would be insulated from the vagaries of selective appropriations, and trust fund proceeds could therefore not be siphoned off for use elsewhere, in ways contrary to policy.

We request the opportunity to work with you on the Statement of Administration Policy and any revisions the Administration may propose to the McCain legislation. We recognize the importance of this legislation and want to ensure that Subtitle C proposes a workable result with the role of the Secretary of State taken into consideration.

int'l - extranet  
unenforceable - not so effective  
impacts people  
inherence of jurisdiction  
trade priorities  
(w/ for 4  
tariffs)  
some countries  
(290 per pack fee)

[Draft 4/21]

Q&A  
International Tobacco

wh w/ countries on multilateral  
basis - recent concerns  
Plus funding - NGOs  
CDC  
int'l orgs - WHO/  
World Bank

**Q. There appears to be a growing controversy over the international provisions of the McCain bill. What is the Administration's position on this?**

**A.** Tobacco use is a global health problem. Comprehensive tobacco legislation should address this problem by including funding to discourage youth smoking abroad through multilateral and bilateral efforts designed to promote education and public health. This will enable us to provide technical assistance to other countries, and will support diplomatic, media and grass roots efforts designed to reduce youth smoking.

**Q. Does the Administration support the provisions in the McCain bill?**

**A.** We certainly share the goals of these provisions. Our concerns are instead with the prescribed means. Some of these provisions raise important constitutional and foreign policy concerns. As we move forward in this area, we want to ensure that international tobacco control legislation does not interfere with our diplomatic and trade priorities or result in policies which are unenforceable abroad.

**Q. But don't we have a successful example of exporting US laws overseas -- such as, the Foreign Corrupt Practices Act (designed to prevent bribery of foreign officials)?**

**A.** Actually, the fight against corrupt practices in overseas business has become more successful once an international consensus was reached. Similarly, on tobacco, we need to work with other countries and encourage them to adopt laws similar to ours in order to reduce youth smoking on a global scale. Specifically, we need to work bilaterally and multilaterally through the World Health Organization and other entities to share our experiences and success with other nations, encouraging them to adopt laws similar to ours designed to reduce advertising and marketing to children.

**Q. Do you support the expanded Doggett language in the McCain bill?**

**A.** We support the Doggett rider contained in the FY98 Appropriations bill, which would prevent the federal government from promoting the sale or manufacture of US tobacco products overseas. This is current US policy, and we firmly stand behind it. In fact, we would like to see this language permanently codified. We are concerned that the language contained in the McCain bill, however, could prevent us from negotiating tariff reductions on all other goods or enforcing US trade agreement rights. We believe that easing tariffs on tobacco products should never be the primary objective of any tariff negotiation, and that health considerations must be factored into any trade policy decisions regarding tobacco.

**Q. Do support the funding provisions in the McCain bill for international tobacco control efforts?**

A. Comprehensive tobacco legislation needs significant funding to discourage youth smoking abroad through bilateral and multilateral efforts designed to promote public health and education. This funding will enable us to provide technical assistance to other countries, and should support diplomatic, media and grass roots efforts designed to reduce youth smoking. The funding should be channeled through NGOs, federal agencies such as the CDC, and international organizations which have expertise in international public health efforts, such as the World Health Organization and the World Bank.

**Q. What level of annual funding for international tobacco control efforts do you support?**

A. \$200 million.

**Q. The McCain bill creates a new NGO called ACT (the American Center on Global Health and Tobacco). Do you support this?**

A. Funding for international tobacco control efforts should go both to NGOs, such as ACT, and governmental agencies which have expertise in international public health initiatives, such as the CDC, and international organizations such as the World Health Organization and the World Bank. Funding should also be available to the Departments of State, Commerce and HHS to train personnel regarding tobacco policies and to work with other countries in promoting tobacco control policies.

**Q. Do you support a 2 cent per pack fee in order to fund international tobacco control efforts?**

A. The 2-cent per pack fee for funding international tobacco control efforts in the McCain bill appears to be an unconstitutional tax on exports. Funding for international tobacco control efforts should instead come from the overall tobacco trust fund.

**Q. Then how could you guarantee funding for international tobacco control efforts?**

A. We would make international tobacco control funding an explicit policy priority within the annual appropriations process.

**Q. Do you support the code of conduct language in the McCain bill which would require other nations to abide by our advertising and marketing restrictions?**

A. We support working through the World Health Assembly on an international framework agreement which would allow us to work, on a multilateral basis, to encourage other nations to adopt laws similar to our own. In this manner, we can work to reduce

marketing and advertising to children overseas. We are concerned that the McCain bill's approach of working on a unilateral basis to impose US laws on other nations will result in policies that are ineffective and unenforceable overseas. In addition, they raise extraterritorial issues that will be viewed with hostility by foreign nations, diverting attention and efforts away from solutions to these public health problems.

**Q. Is smoking really a global problem?**

A. Tobacco is expected to kill about 500 million people alive in the world today, including more than 200 million of today's children and teenagers. This will exceed deaths from HIV, malaria, tuberculosis and maternal conditions combined. By 2030, based on current smoking rates, tobacco will kill about 10 million people annually, with more than 70 percent of those deaths occurring in developing nations.

**Q. What role do US tobacco companies play in terms of worldwide sales of tobacco?**

A. US companies and their subsidiaries and affiliates supply approximately one-fifth of the world's supply of cigarettes. In 1996, more than 70 percent of cigarettes sold by Philip Morris, and 57 percent of those sold by RJR Nabisco, were sold overseas.



Cynthia A. Rice

04/07/98 01:52:38 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Cynthia Dailard/OPD/EOP  
Subject: International Tobacco Update

### Ford-Hollings-Wyden Update

We are meeting today with Ford and Hollings staff to make sure we're on the same page on the Wyden international provisions (we are).

Ford and Hollings staff want to get us together with Wyden tomorrow. For tomorrow, we'd like to focus on the least controversial issues (should anything leak out for Thursday):

**Doggett:** The so-called "Doggett" language which forbids the use of federal funds to promote the sale, manufacture, advertising or export of tobacco. We support making permanent the simple Doggett provision, but USTR has serious concerns about Wyden's more expansive "Super Doggett" language which could prevent the US from negotiating to reduce or eliminate all tariffs (including tobacco tariffs) as part of a larger negotiation and establishes an "arbitrary and unjustifiable" standards on which to judge whether a country treats the products of one country less favorably than another.

**Funding:** We strongly support funding both governmental and non-governmental efforts (Wyden funds only non-governmental efforts). We oppose what is essentially a 2 cent per pack excise tax on all exported cigarettes, and Treasury tax policy says it probably violates the U.S. Shoe ruling the Supreme Court handed down last week.

**Labeling/Marketing/Advertising:** We are also ready to discuss -- but thought we should wait until after Thursday -- the labeling, marketing, and advertising provisions which would require U.S. firms to apply the new U.S. law when overseas. (The State Department objects to exporting our laws abroad -- "extraterritoriality" as they call it -- and say they are as a practical matter unenforceable. HHS and State agree that we would do more to protect the world's children if we work on a multilateral basis through the World Health Organization to encourage other countries to adopt similar laws.)

**Other Issues:** There are several other issues we will have internal meetings on tomorrow to make sure we have a handle on them. They are provisions involving military bases, duty free shops, and international anti-smuggling efforts. Thus, we are not planning to discuss with Ford, Hollings, or anyone else until we discuss internally first. I'll let you know how those meetings go.

### Waxman Update

Waxman's staff has called DOJ for a technical briefing on the Foreign Corrupt Practices Act (which prohibits U.S. companies from bribing officials overseas and is conceptually analogous to forbidding U.S. companies from engaging in certain marketing and advertising practices overseas). Waxman's staff also called Treasury to find out what we're thinking generally on international. I'm afraid we

# CAMPAIGN For TOBACCO-FREE Kids

April 13, 1998

The Honorable William J. Clinton  
President  
The White House  
Washington, DC 20500

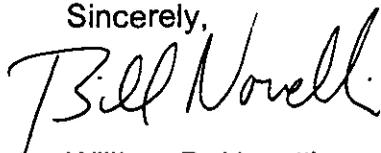
Dear Mr. President:

You have shown remarkable leadership in protecting American children from tobacco addiction, and we have been proud to stand with you in this fight. We also know that you believe, as we do, that America has a special responsibility to show international leadership on this issue. We believe the opportunity to demonstrate that leadership is now before us.

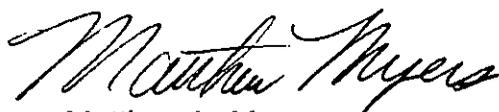
We strongly support provisions of tobacco control legislation recently approved by the Senate Commerce Committee that would address the international dimensions of this issue. We are doing all that we can to ensure that these provisions are enacted into law in the strongest form possible.

We believe these measures will have a significant positive effect worldwide and will leave an important legacy for your Administration and Congress. With your help, we believe they are attainable. We urge you to voice your support for these measures at the earliest opportunity.

Sincerely,



William D. Novelli  
President



Matthew L. Myers  
Executive Vice President and  
General Counsel

cc: Vice President Al Gore  
Secretary Donna Shalala  
Senator John McCain  
Senator Ron Wyden  
Bruce Reed  
Elena Kagan  
Cynthia Rice  
Sherman Boone

# The Washington Post

AN INDEPENDENT NEWSPAPER

## *Selling Death Overseas*

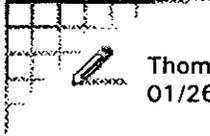
**A**S COMMUNISM FELL in Eastern Europe, Marlboro Man rode into town. U.S. cigarette makers were in the vanguard, exporting their lethal products as symbols of Western glamour and free-market prosperity. In the former Soviet Union, the three big multinational tobacco firms became, along with energy companies, the biggest investors. When Western advertising began to provoke a nationalist backlash, a new brand appeared. "Peter the Great" cigarettes were designed—according to an inscription on each pack—for those who "believe in the revival of the traditions and grandeur of the Russian lands." They're made by, yes, R. J. Reynolds Tobacco Co.

The tobacco industry may be on the defensive here, but it's unashamedly on the march overseas, trying any trick to lure old smokers to new brands in ex-Communist countries and hook new smokers there as well as in the developing world. The big three—Reynolds, Philip Morris Inc. and British-American Tobacco Co.—wanted a settlement in the first place in large part so that legal challenges in their stagnant home market wouldn't distract them from growth opportunities in the Third World. But an agreement here that protects some American children from tobacco addiction at the expense of many more children in foreign countries wouldn't be much of a victory.

That's why it's important that any tobacco bill includes some measures to limit tobacco's

predatory behavior overseas. Sen. John McCain's proposal—with support from senators Ron Wyden, Dick Durbin and others—would prohibit the U.S. government from promoting the U.S. tobacco industry abroad. It also would step up U.S. efforts against cigarette smuggling and assist other nations in their anti-smoking efforts, with funding coming from a two-cents-a-pack "fee" on overseas sales of U.S. cigarettes. Perhaps most important, it would seek to impose the same restrictions against selling or marketing to children overseas as would apply here.

Some of these provisions are modeled on the Foreign Corrupt Practices Act, a precedent for U.S. regulation of companies' overseas behavior. But it's not clear whether they could apply to foreign subsidiaries, and even in their present form they're under attack from some senators and the tobacco industry. The Clinton administration should work with Congress in passing the strongest legally defensible provisions possible. President Clinton also should provide more leadership of an international coalition against smoking. Tobacco accounted for 2.6 percent of the worldwide burden of disease in 1990, according to a recent study by the World Health Organization and World Bank. By 2020, that figure will grow to 9 percent—more than malnutrition, HIV or any single disease. U.S. firms bear considerable responsibility for that sad statistic.



Thomas L. Freedman  
01/26/98 09:54:40 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP, Sherman G. Boone/OPD/EOP  
Subject: International Tobacco Updates

Results from our meeting:

1. State/Commerce/USTR have agreed on draft language to send to US embassies to implement the Doggett Amendment: formalizing our "no promotion of tobacco" policy. It might make a decent leak. On the plus side it makes explicit our current rule (for instance an Ambassador could not go to a tobacco event in a foreign country under the new policy) on the other hand: (1) embassies have generally understood they shouldn't be promoting under our old policy; (2) some might say we were prompted by Doggett to do this; (3) tobacco companies can still get "routine facilitation services" such as "publicly available information." USTR is nervous about press as they say it will only raise the bar for what we should do. I still think its worth giving out, we say it formalizes our current policy, Doggett provides for continued giving out of services, and we are looking for a more comprehensive strategy to come out of the comprehensive legislation. I'd go ahead and check with groups to make sure we get validated if we were thinking of doing this.

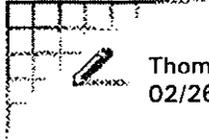
I've dropped a copy of the document off for you.

2. The Hill (a group including Lautenberg, Durbin, Doggett, Waxman, Lugar, Harkin) have a variety of draft bills in the works:

- \* An expanded Doggett that makes Doggett, which was attached to an Appropriations bill, permanent and includes all U.S. government agencies not just State/Commerce/USTR.
- \* Smuggling labeling and tracking to ensure custody chain. (I've sent over a copy of their memo).
- \* Fund creating \$150 million a year endowment to do media/education against smoking efforts internationally.
- \* International labeling and advertising bill to make companies comply with federal domestic requirements.

These Hill groups are looking to move this stuff in the next two weeks with a media event on Feb. 11.

3. Framework Convention idea. HHS still wants to move the idea of a convention along. State is hesitant but not negative. State argues we don't have a policy yet to codify in a treaty.



Thomas L. Freedman  
02/26/98 08:01:39 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: FYI. International Tobacco Press Conference

### Senators Propose Intl Restrictions [02/26-5]

A group of senators, including New Jersey Sen. Frank Lautenberg and Sen. Dick Durbin of Illinois, have released plans to control tobacco use worldwide.

Here is an official summary:

#### A Responsible U.S. Policy To Address International Tobacco Use and Promote Global Public Health

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 public health.
2. Adequately Fund Global Non-governmental 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 Tobacco Control 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.

Message Sent To:

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Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Cynthia A. Rice/OPD/EOP  
Jerold R. Mande/OSTP/EOP  
Mary L. Smith/OPD/EOP

Tobacco - settlement -  
international

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

DK-124  
① Draft guidance  
to embassies from  
USTR/State. I emailed  
you about.

### 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.

② Draft memo on  
smuggling  
bill from  
Hill I  
also sent  
note on.  
TON

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.

Hill press conference

Tobacco - retirement - international

### 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: 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, 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. Given that tobacco use will be the leading global cause of premature death and preventable illness early in the 21st century, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to reduce the consumption of tobacco and tobacco products and improve the health of their citizens.

In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco or tobacco products or seek the reduction or removal by any foreign country of nondiscriminatory restrictions on the marketing of tobacco or tobacco products. At the same time, 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 of this policy is to ensure equal access to a shrinking global market for tobacco. 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.

### **Guidelines**

The following guidelines are consistent with 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.
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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.

**DRAFT Q/A'S**  
**TOBACCO GUIDELINES FOR FOREIGN POSTS**  
**2/12/98**

- Q. What do the guidelines accomplish?**
- A.** The guidelines provide explicit guidance to all U.S. Government representatives to do nothing that will promote, or could be construed as promoting, the overseas sale or export of tobacco or tobacco products. They also significantly restrict U.S. diplomatic and commercial officials' latitude to challenge local country laws or regulations that are based on sound public health principles and applied equally to both foreign and domestic products.
- Q. Who are the guidelines sent to?**
- A.** The guidelines are being sent to all U.S. diplomatic posts, including embassies and commercial offices. They will also be circulated among Washington agencies involved in international health, trade and commerce.
- Q. What is new in the guidelines?**
- A.** While reflecting long-standing Clinton Administration practice, the guidelines explicitly enunciate a single policy among agencies that deal with international health, trade and commercial issues. These guidelines provide uniform instruction to overseas representatives of the Departments of State, Commerce and Agriculture with regard to trade and investment promotion. Heretofore, tobacco and tobacco products were considered no different than any other legally traded goods; this guidance makes clear that, because of the health implications, tobacco is indeed different, and actively encourages U.S. posts to assist and promote tobacco-control efforts. The guidelines are consistent with recent legislation, known as the Doggett Amendment, which sought to limit promotion by the government of tobacco overseas.
- Q. What other steps that should be taken?**
- A.** When the President announced his plan for comprehensive tobacco legislation, he called for a strengthening of international efforts to control tobacco. These policy guidelines should be incorporated into comprehensive tobacco legislation. In addition, comprehensive legislation should provide for

resources so that the United States Government -- working bilaterally, multilaterally, and through NGOs -- can actively support international tobacco-control initiatives.

**Q. Are there examples of what this would prohibit?**

- A.** Under the guidelines, a number of activities by U.S. officials are prohibited. U.S. Ambassadors cannot tout the opening of new cigarette factories overseas and U.S. government representatives cannot attend public or privately-sponsored events that serve to promote the sale or distribution of tobacco or tobacco products. In addition, U.S. officials are prohibited from seeking to delay enactment or counter the effects of local laws or regulations that inhibit the sale of tobacco or tobacco products -- so long as they are applied equally to all such products, foreign and domestic.

*Tobacco - enrollment - international*

62878

**Fact Sheet**  
**International Tobacco Issues**

**The Problem**

- There are approximately one billion smokers in the world representing about one-third of the global population aged 15 years and over. 800 million of these smokers are in the developing countries.
- By 2025, tobacco is projected to be the leading global cause of premature death and preventable illness.
- Currently, about 3 million persons die each year from tobacco-related diseases worldwide.
- Tobacco-related deaths by the year 2025 are expected to reach 10 million persons per year, with seventy per cent (7 million) of these deaths occurring in the developing countries.
- If current smoking patterns continue, about 500 million people alive today half of which are children will be killed by tobacco. This represents about 9% of the world's population. Unless smoking behavior changes, by the year 2025, premature deaths caused by tobacco in the developing world will exceed the expected deaths from AIDS, tuberculosis, and complications of childbirth combined.
- Tobacco consumption is decreasing in most developed countries, but increasing in developing countries, due to aging population, rising income, low level of information on health hazards of tobacco, and from tobacco industry's practices (advertising and promotion, smuggling, and use of additives that increases tobacco addiction). Multinational tobacco companies are actively targeting developing countries markets.
- The increase in cigarette consumption levels in emerging markets such as central and eastern Europe, China, Asia, and Africa is expected to compensate for declines in volume sales in mature cigarette markets such as the United States and Western Europe.

**Exports**

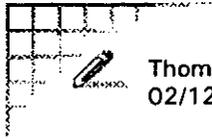
- China, Malawi, Brazil, Zimbabwe, United States, Turkey, and Italy, account for over half of all global exports of unmanufactured tobacco.
- United States is a major cigarette production center and the world's leading exporter of manufactured cigarettes.
- China is the world's dominant producer of unmanufactured tobacco, leads the world in tobacco manufacturing, and also the world's largest cigarette market, accounting for 32.3% of world sales.
- Two countries, Malawi and Zimbabwe are particularly dependent on tobacco as major source of all export earnings, with tobacco accounting for 64% of all export earnings in Malawi and 23% in Zimbabwe.

- Many countries that are devoting more than one per cent of their total import expenses purchasing tobacco are either developing countries or countries of central and eastern Europe. In these countries, expenditures on tobacco imports are relatively large, and are a significant cost to economic development.

#### **Economic Issues**

- 1,000 added tons of tobacco consumption produces a global net loss of US \$27.2 million.
- It has been estimated that a 10% per cent increase in per capita income can be expected to increase tobacco consumption by 7 per cent in middle income countries, and by more than 13% in low-income countries.
- The Bellagio statement on tobacco and sustainable development stated that tobacco consumption is a major threat to sustainable and equitable development. Furthermore, in the developing world, tobacco poses a major challenge, not just to health, but also to social and economic development and to environmental sustainability.
- Developing countries are already struggling with health care problems, the additional burden of tobacco-related illness will markedly hinder economic development.
- Tobacco use cessation and prevention programs are among the least expensive methods worldwide for preventing tobacco-related disease and death.
- A global strategy is needed to treat tobacco products commensurate with the enormous harm they cause.

Sources: World Health Organization Tobacco Alert 1997, World Bank Report, Institute of Medicine (IOM) Report 1997, UNICEF Press Release 1997, Bellagio Conference on sustainable and equitable development, World Tobacco File 1996.



Thomas L. Freedman  
02/12/98 02:28:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Sherman G. Boone/OPD/EOP, Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP  
Subject: Re: Tobacco Guidelines

Here are the guidelines for foreign posts as currently vetted. Sherman has informed the inter-agency group (HHS, Commerce, State, USTR, USDA, Treasury) that this could be released as soon as this weekend. The trade people (USTR) were very strong on non-discrimination language to go with the no-promotion of tobacco and tobacco products guidelines. We will be getting some Q/A's together as well.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 02/12/98 02:15 PM -----



Sherman G. Boone  
02/12/98 12:24:45 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP  
cc:  
Subject: Re: Guidelines 



GUIDE\_21.W attached version reflects the text as being cleared by State Department among the inter-agency group (some minor edits from the version on your screen)

## **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, 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. Given that tobacco use will be the leading global cause of premature death and preventable illness early in the 21st century, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to reduce the consumption of tobacco and tobacco products and improve the health of their citizens.

In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco or tobacco products or seek the reduction or removal by any foreign country of non-discriminatory restrictions on the marketing of tobacco or tobacco products. At the same time, 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 of this policy is to ensure equal access to a shrinking global market for tobacco. 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.

### **Guidelines**

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THE WHITE HOUSE  
WASHINGTON

FEBRUARY 13, 1998

MEMORANDUM FOR GENE SPERLING  
DAN TARULLO

FROM:

SHERMAN BOONE *SB*

RE:

International Tobacco Up-date

The following is an up-date on international tobacco issues. (A fact sheet on international tobacco, prepared by CDC's Office on Smoking and Health, is attached at Tab 1 for your reference).

Guidelines

The State Department is preparing to notify overseas diplomatic and consular posts of Administration policies on tobacco and provide guidance. A copy of the guidelines is attached at Tab 2. An earlier draft, discussed with HHS Secretary Shalala last October, was superseded by Representative Doggett's amendment to State/Commerce/Justice Appropriations bill. **These guidelines are to be leaked by the DPC this afternoon and transmitted to posts on Tuesday.**

Legislation

A Congressional (primarily Democratic) staff group has developed several pieces of international legislation on tobacco over the past few months. These are summarized in their press backgrounder attached at Tab 3. A press conference had been scheduled for this past Wednesday, but was postponed in light of the Conrad bill roll-out.

The Conrad bill includes several of the elements put forward by the Hill group. It contains a provision that extends and expands upon the Doggett Amendment to the FY98 State/Commerce/Justice Appropriations bill prohibiting the use of funds to facilitate the sale, export or promotion of tobacco or tobacco products. However "normal business facilitation" is not explicitly excepted. The Conrad bill goes beyond Doggett to require certification by Commerce and HHS to Congress, if seeking to address a trade barrier, that the restriction is "arbitrary and unjustifiable" treatment by the host country and is not a

"reasonable means to protect public health." Doggett (and the guidelines) allows some government intervention, without certification, if relevant agencies conclude the trade barrier is discriminatory and not health related.

The Conrad bill also provides monies (3% out of the 15.5% allocated to public health, estimated at \$300 million over 5 years) for international programs. The Hill group was to propose a two cents per pack "licensing" fee on each package of cigarettes sold by U.S. tobacco companies overseas with the money channeled to an International Tobacco Trust Fund for bilateral and multilateral international tobacco control efforts, including the ACT (see below) and grants administered by HHS.

One-third of the monies provided in the Conrad bill would go to a newly established non-governmental organization, the **American Center on Global Health and Tobacco**, or **ACT**. This NGO, which has the support of Senators Lugar, Hatch, and Harkin, would fund public information campaigns. ACT would also provide funds for public education, as well as technical and general assistance on tobacco control, but would not be involved in any science-based public health activities.

Two-thirds of the international monies provided in the Conrad bill would be designated for official programs. Bilateral and multilateral assistance for "reducing and preventing the use of tobacco in foreign countries" is to be approved by the Secretary of Health and Human Services (in consultation with the Secretary of State). The designated multilateral vehicle is the World Health Organization (WHO); missing is any provision for multilateral development bank programs.

A couple of other internationally-oriented legislative proposals are not included in the Conrad bill. Senator Lautenberg and Representative Waxman support a bill to prevent smuggling. It contains measures that would, in effect, treat tobacco like distilled spirits to ensure the integrity of the custody chain, control of sales, etc. Treasury's Bureau of Alcohol, Tobacco and Firearms would be given authority and budget to deter tobacco smuggling through, among other things, a system of export permits and increased record keeping. Though there is much interest in preventing smuggling, the steps needed to effectively do so are not likely to find much support. ]

Lautenberg and Waxman also support an "international code of conduct" that would set labeling and advertising requirements for tobacco products abroad by domestic concerns. U.S. tobacco companies would be required to print health warning labels on

tobacco products that are at least as stringent as those in the United States. Companies would face the same standards applied to their overseas conduct as they face at home -- they would be prohibited from selling, advertising, or marketing tobacco products to children abroad, for example.

#### Framework Convention

HHS is interested in pursuing a "Framework Convention on International Tobacco Control" as proposed in 1996 by the World Health Assembly. Such an accord would create an international framework through which nations could address the supranational dimensions of tobacco control in separate protocols. It would also aim to strengthen control efforts through information sharing.

There is inter-agency working group consensus that the tobacco control goals proposed for the convention are sound, but that the specific policies to be pursued need further development in order to clearly define what the parties will actually try to accomplish. Further work will be done by the group to flesh out a proposal. In the meantime, HHS is searching for resources within its budget to fund additional consultative work under the auspices of the WHO.

cc: Bruce Reed  
Elena Kagan  
Tom Freedman  
Mary Smith

**Fact Sheet**  
**International Tobacco Issues**

**The Problem**

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February 11, 1998

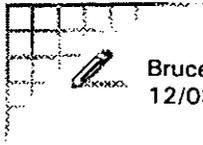
Tobacco use is a growing threat to global public health. Today, tobacco products account for three million deaths worldwide each year; by 2025, that number is expected to rise to ten million per year, with over 70 percent of tobacco-related deaths occurring in developing nations.

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 protection of 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

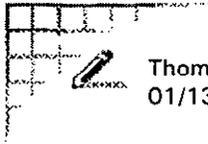


Bruce N. Reed  
12/03/97 01:05:43 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP  
Subject: Re: International Tobacco 

smuggling yes, feeling bad about selling cigarettes to other nations no



Thomas L. Freedman  
01/13/98 10:22:08 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP  
Subject: HHS & International Framework Convention

Sherman says HHS is moving ahead with the framework convention.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 01/13/98 10:21 AM -----



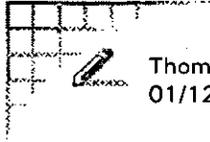
Sherman G. Boone  
01/13/98 09:32:24 AM

Record Type: Record

To: Daniel K. Tarullo/OPD/EOP, Thomas L. Freedman/OPD/EOP  
cc: Jerold R. Mande/OSTP/EOP  
Subject: HHS & International Framework Convention

We soon should be hearing "officially" that HHS (Kevin Thurm) has decided to proceed with drafting request for Circular 175 negotiating authority for the International Framework Convention on Tobacco Control. HHS will be searching internally for \$100,000 as the U.S. contribution towards a planning meeting to be convened by WHO (10-15 nations to participate).

Tobacco - ~~regulation~~ -  
international



Thomas L. Freedman  
01/12/98 08:30:18 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP

cc:

Subject: International Tobacco -- Draft Legislation

FYI. Some international tobacco bills in Congress.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 01/12/98 08:29 PM -----



Sherman G. Boone  
01/12/98 07:54:23 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc: Jerold R. Mande/OSTP/EOP

Subject: International Tobacco -- Draft Legislation

I have received from the "bipartisan international tobacco issues working group" on the Hill copies of discussion drafts for several pieces of possible legislation:

- Prohibitions on official USG promotion of exports of "tobacco and tobacco products" (Doggett & Durbin) -- an "expanded" version of the Doggett Amendment to the FY98 State/Commerce/Justice Appropriations bill: normal business facilitation would be allowed (it is anticipated that the legislative history would incorporate State/Commerce Department Guidelines to Embassies), but any exceptions on the trade front (e.g., to cease discriminatory practices or remove barriers) would require certifications to Congress that there are no negative public health ramifications.
- Smuggling (Lautenberg & Waxman) -- would generally treat tobacco like distilled spirits to ensure the integrity of the custody chain, control of sales, etc.; the prospective changes in the way that tobacco would have to be sold at the retail level are huge. ]
- Creation of an American Center for Global Health and Tobacco (Lugar & Harkin) -- an NGO to fund (\$150 million per annum) major public information campaigns; does **not** provide monies for bilateral and multilateral science-based public health activities to control tobacco.

I hope to receive additional drafts this week, including legislation relating to an international code of conduct (Doggett & Waxman) that, like the framework convention, would seek to promote cigarette labelling and advertising requirements at least as rigorous as those in effect in the U.S. The report from the National Cancer Policy Board does indeed have quite a substantial section on international issues.

I hope to collar an intern to put together a quick summary of these various materials.

## AMERICAN CENTER FOR A TOBACCO-FREE WORLD

## Sec. I FINDINGS

1) Tobacco use is estimated to have caused nearly 3 million deaths a year worldwide in the early 1990's, and is projected to cause in excess of 10 million additional deaths a year globally by 2025, making it the leading killer worldwide. More than 70% of those deaths are expected in developing countries.

2) Most developing governments are unprepared to address increases in tobacco deaths, including the impact on health systems and health costs. Very few have implemented the fiscal and regulatory policies that can limit increases in tobacco attributable deaths. While tobacco consumption in the U.S. 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 US and elsewhere have increasingly targeted these markets. ~~Along with China, Germany, and Japan, the US accounts for one-half of the global cigarette production.~~

*4/26/94  
New March 11.5.7*

3) Tobacco use markedly reduces good health and threatens to erode the major health gains in life expectancy of the last century. Only HIV infection and tobacco are large and growing causes of death worldwide. The total projected deaths from tobacco over the next ten years likely will exceed deaths from HIV, maternal and childhood conditions and tuberculosis combined. ~~While the US has shown significant leadership in mobilizing international HIV control, it has done far less to prevent the spread of tobacco use.~~

4) ~~Since 1992, the World Bank has adopted a formal policy of not lending for tobacco production, processing, or marketing. The World Bank's conservative estimate is that tobacco investment globally resulted in an annual \$200 billion net economic loss around 1990. Any economic evaluation that places reasonable value on human life suggests a net loss from tobacco.~~

5) ~~The adoption of comprehensive national legislation governing tobacco will constitute necessary world leadership. No civilized society can do less to stem the toll of disease and death from tobacco use. Since marketing abuses that the US seeks to control at home are practiced without restraint abroad by US-based companies, there is both a public health and moral obligation to do the extent possible to see that the protections afforded US citizens are extended to all.~~

5) The United States consistently has provided leadership and funding to address the world's most pressing public health needs, including AIDS, hunger, maternal and child health, and immunization. (Annual U.S. funding for these public health issues exceeds \$XXX)

6) The United States exports more than 240 billion cigarettes per year worth more than \$6 billion. The leading American tobacco company made in excess of \$6.3 billion in overseas profits in 1996, ranking third in performance among transnational US-based companies. Foreign sales now account for more than half of all sales for the two leading

U.S. tobacco manufacturers.

7) In light of the role the U.S. has played in spreading tobacco use globally, and in light of the large financial benefits the U.S. continues to enjoy from tobacco exports, it is appropriate that this nation provide significant assistance and funding for international public education and mass media programs that inform the public about the hazards of tobacco use.

8) Smoking in U.S. films is pervasive and influences persons in other countries who seek to emulate "American activities" depicted in motion pictures. A recent study recently reported that more than half of the top-grossing U.S. 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.

~~6) Renumeration for the death and disease caused by these profits is appropriate. At the very least, American policies governing advertising, production, labeling, packaging and sales at home must be consistent abroad.~~

SEC. 2 PURPOSES. The American Center for a Tobacco-free World (ACT) shall assist organizations in other countries to address the several health problems associated with tobacco use through-  
*directly through grants,*

- 1) public education programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke,
- 2) 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,
- 3) educating organizations about the economic and societal costs of tobacco use, and effective tobacco use prevention strategies that are appropriate for the country;
- 4) facilitating access to nicotine addiction therapies,
- 5) evaluating <sup>and disseminating</sup> tobacco use <sup>of prevention</sup> cessation strategies; and
- 6) providing technical assistance to develop standardized epidemiologic methodologies to monitor tobacco use
- 7) *and other efforts to reduce tobacco use*

SEC 3 DEFINITIONS.

(a) Trust fund \_The term "Trust Fund" means the National Tobacco Settlement Trust Fund established in the Treasury of the United States consisting of amounts that are appropriated or accredited to the trust fund from the tobacco settlement approved by Congress

#### SEC. 4. AMERICAN CENTER FOR A TOBACCO-FREE WORLD

Congress finds that there is established in the District of Columbia a private, nonprofit corporation known as American Center for a Tobacco-free World (ACT) which is neither an agency nor establishment of the United States Government

*501 c(3)  
# of years since  
initial meeting*

#### SEC. 5 FUNDING

(a) ESTABLISHMENT OF GLOBAL PUBLIC HEALTH AND EDUCATION RESOURCE ACCOUNT . There is established with the Trust fund the Global Public Health and Education Resource Account that shall be accredited with \$\_\_\_ for each fiscal year.

(b) IN GENERAL \_The Secretary of the Treasury shall, on October 1 of each fiscal year subsequent to the effective date of this Act, transfer \$\_\_\_ million from the Global Public Health and Education Resource Account of the Trust Fund to the account of the ACT to carry out the activities authorized under this Act

(c) TERMINATION OF TRANSFER AUTHORITY \_The authority of the Secretary to transfer funds from the Trust Fund shall expire on \_\_\_\_

#### SEC. 6 ELIGIBILITY FOR ANNUAL TRANSFERS FROM THE TRUST FUND

(a) Nothing in this Act shall be construed to make the ACT an agency or establishment of the United States Government, or to make the members of the Board of the ACT, or its employees, officers or employees of the United States

(b) OVERSIGHT The ACT and its grantees shall be subject to the oversight and supervision of Congress, and shall annually submit a report of it's activities to \_\_\_\_.

(c) CONDITIONS ON ELIGIBILITY FOR FUNDING (basically track language in sec 504 of PL 98-164- National Endowment for Democracy)

**SECTION 4. AMERICAN CENTER ON GLOBAL HEALTH AND TOBACCO**

Congress finds that there is established in the District of Columbia a private, non-profit corporation known as the American Center (ACT) On Global Health and Tobacco which is neither an agency nor establishment of the United States Government.

ACT is governed by a Board of up to 25 members including:

1. On a bipartisan basis members of the Senate of the United States and of the House of Representatives.
2. The Presidents of American public health organizations.
3. The Presidents of American media, marketing and other non-government institutions and corporations.
4. Individuals active in education, public health, and other relevant activities.

ACT is to have an International Advisory Council. This Council consists of representatives from key global, regional and national public health organizations and leading individual educators and health professionals.

It is directed that ACT is to have a limited staff and to the maximum extent utilize the available experience and talents of existing American organizations to carry out its mandate. These include American non-governmental organizations with specialized international experience in health, education, media and tobacco.

**SECTION 5. FUNDING**

- (a) **ESTABLISHMENT OF GLOBAL PUBLIC HEALTH AND EDUCATION RESOURCE ACCOUNT.** There is established with the Trust Fund the Global Public Health and Education Resource Account that shall be accredited with \$150 million for each fiscal year.
- (b) **IN GENERAL.** The Secretary of the Treasury shall on October 1 of each fiscal year subsequent to the effective date of this Act, transfer \$150 million 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 Act.
- (c) **TERMINATION OF TRANSFER AUTHORITY.** The authority of the Secretary to transfer funds from the Trust Fund shall expire with the expiration of the Trust Fund.

**SECTION 6. ELIGIBILITY FOR ANNUAL TRANSFERS FROM THE TRUST FUND.**

- (a) Nothing in this Act shall be construed to make ACT an agency or establishment of the United States Government, or to make the members of the Board of ACT, or its employees, officers or employees of the United States.
- (b) **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 the Congress.

(c) CONDITIONS FOR ELIGIBILITY FOR FUNDING.

a. Annual Payments from the Trust Fund may be made to ACT under this title only if ACT agrees to comply with the requirements specified in this section and elsewhere in this title.

b.1. ACT may only provide funding for programs of private sector groups and may not carry out programs directly.

2. ACT may provide funding only for programs which are consistent with the purposes set forth in Section 2.

Salary or compensation

c.1. Officers of ACT may not receive any salary or other compensation from any source, other than ACT, for services rendered during the period of their employment by ACT.

Travel expenses.

2. If an individual who is an officer or employee of the United States Government serves as a member of the Board of Directors or as an officer or employee of ACT, that individual may not receive any compensation or travel expenses in connection with services performed for ACT.

Stock or dividends.

d.1. ACT shall not issue any shares of stock or declare or pay any dividends.

2. No part of the assets of ACT shall inure to the benefit of any member of the Board, any officer or employee of ACT, or any other individual, except as salary or reasonable compensation for services.

Audits.

e.1. 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.

Report.

2. The report of each such independent audit shall be included in the annual report required by subsection (h). 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 ACT's income and expenses during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

GAO audit.

f.1. The financial transactions of ACT for each fiscal year may be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be

prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of ACT are normally kept. The representatives of the General Accounting Office 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; and they shall be afforded full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of ACT shall remain in the possession and custody of ACT.

Report to  
Congress

2. A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the financial operations and condition of ACT, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried on or made contrary to the requirements of this title. A copy of each report shall be furnished to the President and to ACT at the time submitted to the Congress.

Report to  
President

Recordkeeping

g.1. ACT shall ensure that each recipient of assistance provided through ACT under this title 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.

Information  
accessibility

2. 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 the recipient that are pertinent to assistance provided through ACT under this title. The Comptroller General of the United States or any of his duly authorized representatives shall also have access thereto for such purpose.

Report to  
President and  
Congress.

h. 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 the Congress. The report shall include a comprehensive and detailed report of ACT's operations, activities, financial condition, and accomplishments under this title and may include such recommendations as ACT deems appropriate. The Board members and officers of ACT shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (f), or any other matter which any such committee may determine.

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97 STAT. 1089

ant to this section shall be set forth in a grant agreement between the Secretary of State and The Asia Foundation.

(b) If funds made available to The Asia Foundation pursuant to this title or pursuant to any other provision of law are, with the permission of the head of the Federal agency making the funds available, invested by the Foundation or any of its subgrantees pending disbursement, the resulting interest is not required to be deposited in the United States Treasury if that interest is used for the purposes for which the funds were made available.

Interest

FUNDING

Sec. 404. There are authorized to be appropriated to the Secretary of State \$6,000,000 for the fiscal year 1983, \$10,000,000 for the fiscal year 1984, and \$10,000,000 for the fiscal year 1985 for grants to The Asia Foundation pursuant to this title.

22 USC 4403

TITLE V—NATIONAL ENDOWMENT FOR DEMOCRACY

National Endowment for Democracy Act

SHORT TITLE

Sec. 501. This title may be cited as the "National Endowment for Democracy Act".

22 USC 4411 note

NATIONAL ENDOWMENT FOR DEMOCRACY

Sec. 502. (a) The Congress finds that there has been established in the District of Columbia a private, nonprofit corporation known as the National Endowment for Democracy (hereafter in this title referred to as the "Endowment") which is not an agency or establishment of the United States Government.

22 USC 4411

(b) The purposes of the Endowment, as set forth in its articles of incorporation, are—

(1) to encourage free and democratic institutions throughout the world through private sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;

(2) to facilitate exchanges between United States private sector groups (especially the two major American political parties, labor, and business) and democratic groups abroad;

(3) to promote United States nongovernmental participation (especially through the two major American political parties, labor, business, and other private sector groups) in democratic training programs and democratic institution-building abroad;

(4) to strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;

(5) to support the participation of the two major American political parties, labor, business, and other United States private sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and

(6) to encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific

97 STAT. 1040

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requirements of the democratic groups in other countries which are aided by programs funded by the Endowment.

GRANTS TO THE ENDOWMENT

22 USC 4412

Sec. 503. (a) The Director of the United States Information Agency shall make an annual grant to the Endowment to enable the Endowment to carry out its purposes as specified in section 502(b). Such grants shall be made with funds specifically appropriated for grants to the Endowment or with funds appropriated to the Agency for the "Salaries and Expenses" account. Such grants shall be made pursuant to a grant agreement between the Director and the Endowment which requires that grant funds will only be used for activities which the Board of Directors of the Endowment determines are consistent with the purposes described in section 502(b), that the Endowment will allocate funds in accordance with subsection (a) of this section, and that the Endowment will otherwise comply with the requirements of this title. The grant agreement may not require the Endowment to comply with requirements other than those specified in this title.

(b) Funds so granted may be used by the Endowment to carry out the purposes described in section 502(b), and otherwise applicable limitations on the purposes for which funds appropriated to the United States Information Agency may be used shall not apply to funds granted to the Endowment.

Restriction.

(c) Nothing in this title shall be construed to make the Endowment an agency or establishment of the United States Government or to make the members of the Board of Directors of the Endowment, or the officers or employees of the Endowment, officers or employees of the United States.

(d) The Endowment and its grantees shall be subject to the appropriate oversight procedures of the Congress.

(e) Of the amounts made available to the Endowment for each of the fiscal years 1984 and 1985 to carry out programs in furtherance of the purposes of this Act—

(1) not less than \$13,800,000 shall be for the Free Trade Union Institute; and

(2) not less than \$2,500,000 shall be to support private enterprise development programs of the National Chamber Foundation.

ELIGIBILITY OF THE ENDOWMENT FOR GRANTS

22 USC 4413

Sec. 504. (a) Grants may be made to the Endowment under this title only if the Endowment agrees to comply with the requirements specified in this section and elsewhere in this title.

(b)(1) The Endowment may only provide funding for programs of private sector groups and may not carry out programs directly.

(2) The Endowment may provide funding only for programs which are consistent with the purposes set forth in section 502(b).

Salary or compensation.

(c)(1) Officers of the Endowment may not receive any salary or other compensation from any source, other than the Endowment, for services rendered during the period of their employment by the Endowment.

Travel expenses.

(2) If an individual who is an officer or employee of the United States Government serves as a member of the Board of Directors or as an officer or employee of the Endowment, that individual may

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97 STAT. 1041

not receive any compensation or travel expenses in connection with services performed for the Endowment.

(d)(1) The Endowment shall not issue any shares of stock or declare or pay any dividends.

Stock or dividends.

(2) No part of the assets of the Endowment shall inure to the benefit of any member of the Board, any officer or employee of the Endowment, or any other individual, except as salary or reasonable compensation for services.

(e)(1) The accounts of the Endowment 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 the Endowment are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Endowment and necessary to facilitate the audits shall be made available to the person or persons conducting the audit; and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

Audits.

(2) The report of each such independent audit shall be included in the annual report required by subsection (h). The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Endowment'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 Endowment's income and expenses during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

Report.

(d)(2) The financial transactions of the Endowment for each fiscal year may be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Endowment are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Endowment pertaining to its financial transactions and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Endowment shall remain in the possession and custody of the Endowment.

GAO audit.

(2) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the financial operations and condition of the Endowment, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made contrary to the requirements of this title. A copy of each report shall be furnished to the President and to the Endowment at the time submitted to the Congress.

Report to Congress.

Report to President.

97 STAT. 1042

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Recordkeeping.

(g)(1) The Endowment shall ensure that each recipient of assistance provided through the Endowment under this title 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.

Information accessibility.

(2) The Endowment 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 the recipient that are pertinent to assistance provided through the Endowment under this title. The Comptroller General of the United States or any of his duly authorized representatives shall also have access thereto for such purpose.

Report to President and Congress.

(h) Not later than December 31 of each year, the Endowment shall submit an annual report for the preceding fiscal year to the President for transmittal to the Congress. The report shall include a comprehensive and detailed report of the Endowment's operations, activities, financial condition, and accomplishments under this title and may include such recommendations as the Endowment deems appropriate. The Board members and officers of the Endowment shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (f), or any other matter which any such committee may determine.

Foreign Missions Amendments Act of 1983.

TITLE VI—FOREIGN MISSIONS

SHORT TITLE

22 USC 4301 note.

Sec. 601. This title may be cited as the "Foreign Missions Amendments Act of 1983".

REQUIREMENT FOR LIABILITY INSURANCE

Sec. 602. Section 6 of the Diplomatic Relations Act (22 U.S.C. 254e) is amended—

(1) in subsection (a) by striking out "President" and inserting in lieu thereof "Director of the Office of Foreign Missions in the Department of State";

(2) in subsection (b) by striking out "The President shall, by regulation, establish liability insurance requirements" and inserting in lieu thereof "The Director of the Office of Foreign Missions shall, by regulation, establish liability insurance requirements which can reasonably be expected to afford adequate compensation to victims and which are"; and

(3) in subsection (c) by striking out "President" and inserting in lieu thereof "Director of the Office of Foreign Missions".

ENFORCEMENT OF COMPLIANCE WITH LIABILITY INSURANCE REQUIREMENTS

Sec. 603. Title II of the State Department Basic Authorities Act of 1956 is amended by inserting after section 204 (22 U.S.C. 4304) the following new section:

# Memorandum

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To: Int'l tobacco working group  
From: Cathy Carpino  
Date: December 18, 1997  
Subject: Outline of anti-smuggling proposal

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**I. Establish a permit system for cigarettes:** Mirroring the system in place for alcohol (27 USC 203, et seq), this proposal would require any person engaged in the business of manufacturing, distributing, selling, or importing tobacco to obtain a permit from the Treasury Secretary within a certain period of time (e.g., 180 days) of enactment of Act. Any person shall be entitled to a permit unless they have been convicted of a felony, convicted of a misdemeanor involving tobacco within the past three years, or if such person is unlikely to conform their operations with federal law.

The Secretary may suspend, revoke, or annul a permit if any of the permit's conditions are violated. These permits cannot be transferred voluntarily. If transferred by operation of law, the new permittee shall have 30 days within which to reapply. The old permit shall continue in effect until the Secretary acts on the permittee's application.

To prevent the sale or distribution of cigarette packages that do not comply with federal labeling requirements, no person shall produce, distribute, or sell cigarettes unless that person obtains a certificate from the Secretary. Officers of internal revenue are authorized and directed to withhold the release of packages of cigarettes from the manufacturer unless such a certificate has been obtained. Customs officers are authorized and directed to withhold the release of packages of cigarettes from customs custody unless certificates have been obtained. [need to look at the Kennedy bill and Conrad's proposal to ensure consistency]

**II. New labeling requirements for cigarette packages:** (1) The President is directed to require cigarette manufacturers to identify the manufacturing facility, distribution facility, export warehouse, and any other information determined by the President to be relevant to the chain of custody on each package of cigarettes within one year of enactment of this Act. The stamp containing this information shall use secure technology that is not susceptible to

alteration, but that can be accessed by officials, both in the United States and in foreign countries, and (2) Cigarette manufacturers shall label every package with the country of final destination. The President shall promulgate regulations regarding the size and location of this stamp on the package. If manufacturers do not comply with federal labeling requirements, the Secretary of Treasury shall revoke their permit, in addition to applying all existing penalties.

**III. Tracking requirements:** (1) Cigarette manufacturers are required to post a bond for exported packages of cigarettes to be returned when the Secretary of Treasury receives documentation that such cigarettes reached their final destination. The Secretary of Treasury shall promulgate regulations determining the amount of the bond and what documentation is needed to verify delivery of the packages; (2) in order to obtain the return of a bond, the Secretary shall determine that a country has a legitimate market for cigarettes exported from the United States and that such cigarettes are to be consumed in that country as part of the legitimate market. The Secretary shall publish the list of these countries; and (3) Cigarette manufacturers cannot sell to any person, either in the United States or in a foreign country, if they have reason to believe such person will violate any law or regulation of that country, or if such person was convicted of a crime involving cigarettes.

**IV. Military bases:** The Secretary of Defense is directed to require that packages of cigarettes sold overseas on military bases shall be priced at the highest level found in the country in which the base is located or in the United States, whichever is greater. Packages of cigarettes sold on military bases shall be so marked.

**V. Indian reservations:** Packages of cigarettes on Indian reservations shall be so marked.

**VI. Duty-free stores:** Duty-free stores located in the United States shall not sell packages of cigarettes and no person in the United States may sell to duty-free stores in foreign countries.

**VII. Increased resources:** It is the sense of the Senate that the Treasury Department shall allocate additional resources to curb the problem of cigarette smuggling, especially on Indian reservations.

Draft language regarding tobacco product labeling and advertising abroad

**SEC. 1. EXPORTS OF TOBACCO PRODUCTS ABROAD**

(1) **REQUIREMENTS.** --It shall be unlawful for any 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--

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

(B) is in the primary language of the country in which the cigarettes are intended for consumption.

(2) **WAIVERS.** --The President may waive the prohibition contained in paragraph (1) if the President determines that the country in which the exported tobacco products are intended for consumption 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 paragraph (1).

**SEC. 2. ADVERTISING OF TOBACCO PRODUCTS ABROAD**

(1) **REQUIREMENTS.** --It shall be unlawful for any domestic concern to advertise or cause to be advertised abroad 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. PENALTIES.**

(1) **FINE.** --Any person who violates the provisions of section 1 or section 2 shall be fined not more than \$100,000 per day for each such violation. Any person who knowingly reexports from or transships tobacco products through a foreign country for which the President has issued a waiver as described in section 1(2) to avoid the requirements of section 1 shall be fined not more than \$150,000 per day for each such occurrence.

(2) **INJUNCTION PROCEEDINGS.** --The district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 1 or section 2 upon the application of the Attorney General of the United States.

**SEC. 4. DEFINITIONS.**

(1) **DOMESTIC CONCERN** --In this act, the term "domestic concern" means--

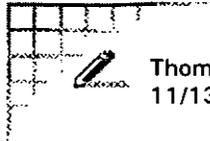
*See also  
conclusion*

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

*ECTA*

(B) 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.

Tobacco-international



Thomas L. Freedman  
11/13/97 11:53:45 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Jerold R. Mande/OSTP/EOP

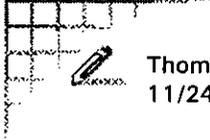
cc:

Subject: Doggett Amendment

It looks Doggett's amendment to prohibit the US government's promotion of tobacco abroad will be in State/Commerce. The amendment actually basically reflects current US policy, but it is a formalization of our position. When the President signs it, i think we can say that it will balance the Etheridge position that we won't discriminate against US farmers with the comittment that we also won't promote tobacco overseas.

Tom -  
Did this pass?  
Elena

Tobacco - settle - international

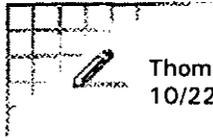


Thomas L. Freedman  
11/24/97 06:58:24 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Doggett Amendment

You dropped me a note about whether the Doggett amendment passed. It did in State/Commerce, but has not been signed yet. (It formalized the US position on tobacco exports-- prohibiting promotion of tobacco overseas but allowing the government to fight discrimination specifically against US tobacco).



Thomas L. Freedman  
10/22/97 07:45:20 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

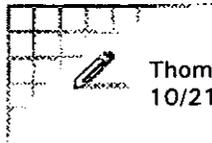
cc: Mary L. Smith/OPD/EOP

Subject: Academics and tobacco

Re: academics. You both are very pithy.

Re: tobacco. We were looking for exec actions on the international front and maybe this is one: There are draft commercial guidelines from State that codify what we discussed in our last meeting -- what steps the government will take to push tobacco products via our embassies etc. It codifies our existing policy, essentially promising not to promote tobacco products. (This is not the same as limiting USTR in trade agreements in which our policy is to not fight valid health regulations, only those barriers that discriminated on the basis of national treatment.) Tarullo met with Shalala and discussed this, concluding the commercial guidelines might make a good Gore-Shalala event (see previous e-mail). What do you think?

BR - Yes



Thomas L. Freedman  
10/21/97 02:54:23 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP  
Subject: FW: Smuggling

----- Forwarded by Thomas L. Freedman/OPD/EOP on 10/21/97 02:52 PM -----



Sherman G. Boone  
10/21/97 02:04:08 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP  
cc:  
Subject: FW: Smuggling

FYI, Dan Tarullo met with Shalala yesterday morning and agreed on the following points:

1. The trade issues should be handled low-key, but we should also push harder internally to get tobacco off the table in trade negotiations. We can point to the absence of trade actions (as compared to the 1980s) as this Administration's policy statement. It's too easy to antagonize Congress on this one.
2. Should push to conclude commercial guidelines, along the lines of the most recent State Department draft (which I have not circulated inter-agency as of yet). These could be rolled-out at a Gore-Shalala event, but should try to include someone from Commerce (new head of Foreign Commercial Service if confirmed) or State.
3. HHS will cooperate with Treasury on creation of a new fund using non-appropriated resources. HHS staff will begin doing homework on absorption capacity of intended recipients (primarily multilateral institutions, but also some bilateral programs and, presumably, NGOs). Will then have to get together later this fall with Treasury, legal types, to structure how such a fund will work.

----- Forwarded by Sherman G. Boone/OPD/EOP on 10/21/97 01:49 PM -----



mpe0 @ cdc.gov  
10/21/97 01:40:00 PM

Record Type: Record

To: Sherman G. Boone

cc:

Subject: FW: Smuggling

Sherman - If i remember correctly, you're interested in smuggling as well as other aspects of international tobacco control.

-----  
From: Eriksen, Michael

To: Langguth, Shelley M.; Yurekli, Ayda Aysun; Giovino, Gary A.; Woollery, Trevor; Pechacek, Terry F.

Cc: Eriksen, Michael

Subject: Smuggling

Date: Tuesday, October 21, 1997 1:24PM

This might be relevant both for the questions from GAO, as well as for the Seattle Customs seizure.....

Sunday, October 19, 1997

Cigarette tax hike a smuggler's  
boon?  
U.S., Canadian law officials say yes

BY MARK JOHNSON  
Media General News Service

It's a losing proposition but one you can't refuse.  
It's the politics of contraband. It's the smuggler's blues.  
-- "Smuggler's Blues" by Glenn Frey

CORNWALL, Ontario

The radio squawked, piercing both the night's stillness and the parking lot conversation. A Royal Canadian Mounted Police constable out on surveillance reported that a boat on the St. Lawrence River was approaching shore at a suspected smuggler's house three doors from the Blue Anchor bar.

"Yee-ha!" shouted Georges Levere, a Cornwall police officer on special assignment, as he and two other members of the RCMP's regional anti-smuggling task force scrambled into their vehicles.

The "mounties" -- in casual street clothes and unmarked vehicles, not red tunics and horses -- fanned out to different positions. The constable

On both sides of Canada's border with the United States, front-line law enforcement officials predict that if the United States imposes a \$1.50 per pack price increase as proposed by President Clinton, cigarette smuggling will boom.

"A nightmare," said Jeff Groh, an agent with the Bureau of Alcohol, Tobacco and Firearms who, until moving to headquarters in April, led cigarette and liquor smuggling investigations in the western states.

Groh and some of the ATF's most expert investigators on tobacco and alcohol smuggling said smugglers view their trade as low risk because of the modest criminal penalties compared with violent crime. After all, a suspect has to possess 60,000 illegal cigarettes before the ATF will consider making a criminal case.

"If you've got 300 cartons and one hanging out of your mouth, you better eat that one," said Joseph P. Dougherty, an ATF agent in the Washington headquarters who worked for eight years in New York.

A \$15 jump in the store price of a carton of cigarettes only will enhance the allure of tax-free illegal smokes.

"(Smuggling) will increase exponentially," Dougherty said. "You're going to see it in areas where you don't see it now."

The one twist that could avert at least some smuggling is if the \$1.50 per pack increase comes in some form other than a tax, the agents said.

Congress soon will consider the price increase as part of legislation that would settle lawsuits by more than two dozen states against the nation's largest tobacco companies. The White House proposed that the \$1.50 "penalty" be added in order to, among other purposes, discourage smoking and pay for smoking prevention programs for children.

// ✓ why?

If Congress slaps the penalty directly on the cigarette makers, it will boost the price at the factory instead of later as a tax. In that scenario, smugglers may not be able to avoid it, ATF agents said.

} why?

Smuggling works in different ways, but the most common, and what Canada saw in droves a few years ago, starts with a cigarette wholesaler buying from the factory and then selling to an exporter. In the United States, for example, neither the wholesaler nor the exporter has to pay federal tax -- currently \$2.40 a carton -- on export cigarettes, since they are intended for foreign sale. Exports also avoid state cigarette taxes, which run from 2.5 cents per pack in Virginia to \$1 per pack in Alaska.

Ah, I see.

The exporter usually will ship the cigarettes to a specially licensed warehouse just outside the country. Canadian smugglers often ship Canadian cigarettes to the United States, especially Indian reservations where, by federal law, cigarettes and other commodities are sold tax-free. Smugglers then slip the cigarettes back into Canada and sell them at below-market prices that still reap enormous profit. They also smuggle untaxed American brand cigarettes into Canada, such as the vanload of Marlboros, but the market for them is limited.

By the early 1990s, Canada's cigarette taxes had ratcheted up the price of a carton from around \$20 to about \$47. The higher price included about \$37 in tax, a large chunk of which helps pay for the nation's health-care system.

The dramatically higher price was "engendering a smuggling situation," said Dave McDonald, chief of intelligence operations for the Cornwall office of Canada's Customs Bureau.

Smuggling grew rampant, and Cornwall turned into a sort of nicotine gateway. This small industrial town sits along the border at

the St.

Lawrence River and abuts the Akwesasne Mohawk reservation. The reservation straddles Ontario, Quebec and New York state, making it easy to ship contraband from one nation to the other. In 1994, when taxes hit their peak, the mounties in Cornwall seized 103,000 cartons of illegal cigarettes, roughly twice the amount they currently confiscate. In the more populous eastern provinces of Ontario and Quebec, illegal cigarette sales were starting to rival legal distribution.

The federal government, followed by the eastern provincial governments, lowered the taxes to where a carton costs about \$21. The smuggling trade collapsed but only temporarily. The western provincial governments refused to lower their taxes, and the smugglers eventually started selling there.

"It took a while for them to be able to mobilize their lines of communication into these other provinces to take advantage of the other markets that were there," McDonald said. In addition, the taxes have crept back up in Ontario and Quebec, pushing the price of cigarettes to about \$27 a carton.

Anti-smoking activists dismiss smuggling forecasts as a preventable problem that's been exaggerated. They argue that tobacco companies could help stop most illegal sales but won't, because black market cigarettes simply mean more consumption and more profit. The cigarette makers, however, usually cite smuggling as a reason not to raise cigarette taxes.

A federal grand jury in Syracuse, N.Y., is investigating R.J. Reynolds Tobacco Co.'s possible ties to an alleged smuggling ring that shipped \$687 million worth of illegal cigarettes and liquor through the Akwesasne Mohawk reservation from 1992 to 1996. Federal court documents unsealed in August disclosed that a Reynolds marketing agent

spent a fishing vacation with three of the accused smugglers and listened to conversations about the smuggling operation.

While ATF officials agree that, as one agent said, "there is no moral turpitude clause" for the tobacco industry, they say their concerns about higher taxes encouraging smuggling already are borne out within this country. Cigarettes sold in low-tax states such as North Carolina, South Carolina and Virginia are trucked to high-tax states such as Michigan.

"You'll get a lot of states saying they don't have a problem. The anti-smoking people will say there's no problem," said Jane Gazzaniga, an ATF analyst who focuses on smuggling.

ATF officials say it is difficult to persuade supervisors and federal prosecutors to devote investigators and money to combat illegal cigarettes. The public, however, may not realize that, as Canada found out, contraband cigarettes can quickly take over a large share of the market with nobody paying taxes on them. The state and the federal governments then lose revenue.

"(What's) going to make up that loss?" asked Jerry Bowerman, chief of ATF's anti-smuggling division. "Income tax and other taxes."

More immediately threatening are the crimes connected to smuggling.

"There's a certain amount of violence associated with these groups," said Bob Leary, an ATF agent based in Buffalo, N.Y.

The nature of the crime and the criminal have changed. It's no longer three guys from New York in a van driving to the Carolinas to get smokes for the cigarette machines in their bar. The smuggling rings are organized, sophisticated and willing to protect their assets, law enforcement officials said.

In Cornwall during the week when the mounties caught the van of Marlboros, their boat was shot at two nights in a row by smugglers on the Akwesasne reservation.

"It's scare tactics," said Levere. "And it's working."

Dougherty, who has tackled everything from firearms trafficking to conspiracy cases, offered a prediction. Among the crimes that concern the public and receive law enforcement's attention, cigarette smuggling ranks low on the priority list. Unless it gets more violent, he said, it will stay there.



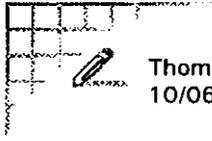
**Revised Sec. 618 report language --**

**Sec. 618.**—The conference agreement includes a provision, 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 in a non-discriminatory manner.

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.

The conferees understand that this provision reflects current United States Government policy, which does not support the use of Federal funds provided to agencies covered under this Act to promote the marketing of tobacco or tobacco products, or to advocate for the reduction or removal of non-discriminatory marketing restrictions, including those which serve a legitimate public health purpose.

Tobacco - amendment -  
international



Thomas L. Freedman  
10/06/97 04:52:32 PM

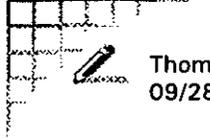
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP  
Subject: Doggett and tobacco

The Doggett Amendment basically seeks to ban export promotion for tobacco and stop State from fighting prejudicial tobacco bans. His amendment was attached to state/commerce approps. in the House version and is not in Senate version, Some reports have the issue being taken up in Conference as early as this week. NSC says that is unlikely.

Substance: This Administration effectively banned export promotion, so this is not far from where we apparently already are. Problems: 1. while we don't promote cigs anymore, USDA seems to help tobacco (and therefore farmers). Doggett is not attached to the ag. approps. but his amendment does mention both tobacco and tobacco products. We're talking to USDA about this late today. 2. Doggett has called evidently asking for support. Should the Administration position be not to endorse specific tobacco bills yet?

tobacco - settlement - international



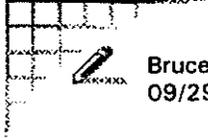
Thomas L. Freedman  
09/28/97 03:26:18 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP  
Subject: Tobacco smuggling

You (Bruce) asked about the status of tobacco smuggling. We haven't done anything other than the immediate steps of asking where the agencies were taken right after the NYT article saying how widespread the problem was. Should we ask the international folks to put together a proposal?

Tobacco - movement -  
international



Bruce N. Reed  
09/29/97 01:29:51 PM

Record Type: Record

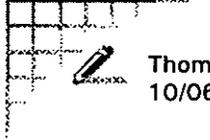
To: Thomas L. Freedman/OPD/EOP

cc: Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP, Jerold R. Mande/OSTP/EOP

Subject: Re: Tobacco smuggling

It's not particularly urgent, but I do think that the smuggling and contraband issues are going to come back to haunt us down the road. Cigs are \$1 a pack in Mexico, and on their way toward \$2.50-3.00 here with legislation. We need a better answer when the industry raises this concern -- not about FDA and the black market, but simply about higher prices and a black market.

Tobacco- amendment - intentional



Thomas L. Freedman  
10/06/97 04:52:32 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP  
Subject: Doggett and tobacco

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# Selling Cigarettes in Asia

In Hong Kong, hip clothing stores pass out American cigarettes free to their customers. Salem sponsors a "virtual reality" dome, where teenagers attack each other with laser guns. Empty packs of American cigarettes can be redeemed for tickets to movies, discos and concerts.

Hong Kong is one of the battlefronts of the modern-day Opium War. While Britain went to war last century to keep its Indian-grown opium streaming into Chinese ports, today American tobacco companies win profits and build addiction throughout Asia, where tobacco consumption is growing at the fastest rate in the world. Indeed, American cigarette companies have agreed to the proposed domestic tobacco settlement in part because it does not touch them overseas, where profits are soaring and they can boldly target teen-agers without fear of lawsuits or powerful critics.

American cigarette exports have tripled since the 1970's, when domestic smoking rates began to fall. Since 1990, sales of Philip Morris cigarettes have risen by 4.7 percent in the United States, but 80 percent overseas. Cigarette manufacturers find the Asian market particularly inviting because of its size and the Asian love for tobacco. In Vietnam, for example, 73 percent of men smoke.

In much of Asia, governments hold monopolies or near-monopolies on cigarette production. The largest manufacturer in the world, in fact, is the Chinese Government. But American companies are moving into Asian markets, and have had substantial help from Washington. The White House's Trade Representative and American embassies abroad have pressured countries to open their markets to American cigarettes, often threatening trade restrictions if they do not. Such practices have diminished under the Clinton Administration.

Tobacco companies say they are not promoting smoking, just gaining access to an existing market. But the entry of American companies often transforms the cigarette industry in ways that increase consumption. Unlike government tobacco monopolies, American companies lobby hard against anti-

smoking laws. They also advertise, whereas government monopolies advertised little. Before the American cigarette invasion of Korea in the mid-1980's, Korea had banned virtually all tobacco ads. But the Trade Representative's office demanded and won the right for American companies to advertise in Korean publications. The same thing happened in Taiwan.

Since the vast majority of smokers start before age 20, advertising is largely directed at young people, who are more affluent and rebellious than ever before. Smoking by teen-agers and children is soaring all over Asia, especially among girls.

In Hong Kong, where American tobacco blends make up 94 percent of the market, Salem sponsors tennis tournaments featuring the American player Michael Chang, an idol of Hong Kong girls. A Madonna concert from Spain was rebroadcast into Hong Kong as a Salem Madonna concert. Stores sell Camel and Marlboro caps, watches and binoculars.

While the manufacturers deny they are targeting young people, the merchandise and events they offer appeal mainly to teen-agers. Cigarette advertising is banned from television and radio, but billboards and print ads showing young people having sophisticated fun are practically identical to those in the United States. These ads piggyback on the lure of American pop culture, which represents freedom and excitement for many Asian youths.

It is probably unrealistic to expect that overseas considerations will be added to the proposed domestic tobacco settlement. But Washington can surely remove tobacco from the category of products that get aggressive support for opening foreign markets. It can also finance anti-smoking programs in health organizations overseas and put the Agency for International Development to work discouraging smoking. American companies and the American Government unleashed sophisticated marketing campaigns that increased smoking in many countries where people do not fully understand its danger. That gives Washington a responsibility to undo the damage.

*Tobacco - settlement - international*

Tobacco - settlement -  
international

Total Pages: 22

LRM ID: AER173

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Wednesday, August 20, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below  
*Consult 2/15/97 AS DA*  
FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference  
OMB CONTACT: Robert J. Pellicci  
PHONE: (202)395-4871 FAX: (202)395-6148  
SUBJECT: OMB Request for Views on S1060 Worldwide Tobacco Disclosure Act of 1997, HR 2135 International Tobacco Responsibility Act of 1997, and a draft Durbin amendment Prohibiting the use of funds to facilitate the export or promotion of tobacco products

DEADLINE: Wednesday, September 3, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please include in your comments any policy and technical concerns relating to these bills/amendment.

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Nancy E. Schwartz  
Robert E. Barker

**LRM ID: AER173      SUBJECT: OMB Request for Views on S1060 Worldwide Tobacco Disclosure Act of 1997, HR 2135 International Tobacco Responsibility Act of 1997, and a draft Durbin amendment Prohibiting the use of funds to facilitate the export or promotion of tobacco products**

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**RESPONSE TO  
LEGISLATIVE REFERRAL  
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

**TO:                    Robert J. Pellicci Phone: 395-4871 Fax: 395-6148  
                         Office of Management and Budget  
                         Branch-Wide Line (to reach legislative assistant): 395-7362**

**FROM:**            \_\_\_\_\_ (Date)  
                         \_\_\_\_\_ (Name)  
                         \_\_\_\_\_ (Agency)  
                         \_\_\_\_\_ (Telephone)

The following is the reponse of our agency to your request for vIews on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this reponse sheet

105TH CONGRESS  
1ST SESSION

# S. 1060

To restrict the activities of the United States with respect to foreign laws that regulate the marketing of tobacco products and to subject cigarettes that are exported to the same restrictions on labeling as apply to the sale or distribution of cigarettes in the United States.

---

## IN THE SENATE OF THE UNITED STATES

JULY 23, 1997

Mr. LAUTENBERG (for himself, Mr. WYDEN, Mr. DURBIN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## A BILL

To restrict the activities of the United States with respect to foreign laws that regulate the marketing of tobacco products and to subject cigarettes that are exported to the same restrictions on labeling as apply to the sale or distribution of cigarettes in the United States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Worldwide Tobacco  
5 Disclosure Act of 1997".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

2

1 (1) CIGARETTE.—The term “cigarette”  
2 means—

3 (A) any roll of tobacco wrapped in paper  
4 or in any substance not containing tobacco  
5 which is to be burned,

6 (B) any roll of tobacco wrapped in any  
7 substance containing tobacco which, because of  
8 its appearance, the type of tobacco used in the  
9 filler, or its packaging and labeling is likely to  
10 be offered to, or purchased by consumers as a  
11 cigarette described in subparagraph (A),

12 (C) little cigars which are any roll of to-  
13 bacco wrapped in leaf tobacco or any substance  
14 containing tobacco (other than any roll of to-  
15 bacco which is a cigarette within the meaning  
16 of subparagraph (A)) and as to which 1000  
17 units weigh not more than 3 pounds, and

18 (D) loose rolling tobacco and papers or  
19 tubes used to contain such tobacco.

20 (2) DOMESTIC CONCERN.—The term “domestic  
21 concern” means—

22 (A) any individual who is a citizen, na-  
23 tional, or resident of the United States; and

24 (B) any corporation, partnership, associa-  
25 tion, joint-stock company, business trust, unin-

1           corporated organization, or sole proprietorship  
2           which has its principal place of business in the  
3           United States, or which is organized under the  
4           laws of a State of the United States or a terri-  
5           tory, possession, or commonwealth of the Unit-  
6           ed States.

7           (3) NONDISCRIMINATORY LAW OR REGULA-  
8           TION.—The term “nondiscriminatory law or regula-  
9           tion” means a law or regulation of a foreign country  
10          that adheres to the principle of national treatment  
11          and applies no less favorable treatment to goods that  
12          are imported into that country than it applies to like  
13          goods that are the product, growth, or manufacture  
14          of that country.

15          (4) PACKAGE.—The term “package” means a  
16          pack, box, carton, or other container of any kind in  
17          which cigarettes or other tobacco products are of-  
18          fered for sale, sold, or otherwise distributed to cus-  
19          tomers.

20          (5) SALE OR DISTRIBUTION.—The term “sale  
21          or distribution” includes sampling or any other dis-  
22          tribution not for sale.,

23          (6) STATE.—The term “State” includes, in ad-  
24          dition to the 50 States, the District of Columbia,  
25          Guam, the Commonwealth of Puerto Rico, the Com-

1 monwealth of the Northern Mariana Islands, the  
2 Virgin Islands, American Samoa, the Republic of the  
3 Marshall Islands, the Federated States of Microne-  
4 sia, and the Republic of Palau.

5 (7). TOBACCO PRODUCT.—The term “tobacco  
6 product” means—

7 (A) cigarettes;

8 (B) little cigars;

9 (C) cigars as defined in section 5702 of  
10 the Internal Revenue Code of 1986;

11 (D) pipe tobacco;

12 (E) loose rolling tobacco and papers used  
13 to contain such tobacco;

14 (F) products referred to as spit tobacco;  
15 and

16 (G) any other form of tobacco intended for  
17 human use or consumption.

18 (8) UNITED STATES.—The term “United  
19 States” includes the States and installations of the  
20 Armed Forces of the United States located outside  
21 a State.

5

1 **SEC. 3. RESTRICTIONS ON NEGOTIATIONS REGARDING**  
2 **FOREIGN LAWS REGULATING TOBACCO**  
3 **PRODUCTS.**

4 No funds appropriated by law may be used by any  
5 officer, employee, department, or agency of the United  
6 States—

7 (1) to seek, through negotiation or otherwise,  
8 the removal or reduction by any foreign country of  
9 any nondiscriminatory law or regulation, or any pro-  
10 posed nondiscriminatory law or regulation, in that  
11 country that restricts the advertising, manufacture,  
12 packaging, taxation, sale, importation, labeling, or  
13 distribution of tobacco products; or

14 (2) to encourage or promote the export, adver-  
15 tising, manufacture, sale, or distribution of tobacco  
16 products.

17 **SEC. 4. CIGARETTE EXPORT LABELING.**

18 (a) **LABELING REQUIREMENTS FOR EXPORT OF**  
19 **CIGARETTES.—**

20 (1) **IN GENERAL.—**It shall be unlawful for any  
21 domestic concern to export from the United States,  
22 or to sell or distribute in, or export from, any other  
23 country, any cigarettes whose package does not con-  
24 tain a warning label that—

25 (A) complies with Federal labeling require-  
26 ments for cigarettes manufactured, imported, or

6

1 packaged for sale or distribution within the  
2 United States; and

3 (B) is in the primary language of the coun-  
4 try in which the cigarettes are intended for con-  
5 sumption.

6 (2) LABELING FORMAT.—Federal labeling for-  
7 mat requirements shall apply to a warning label de-  
8 scribed in paragraph (1) in the same manner, and  
9 to the same extent, as such requirements apply to  
10 cigarettes manufactured, imported, or packaged for  
11 sale or distribution within the United States.

12 (3) ROTATION OF LABELING.—Federal rotation  
13 requirements for warning labels shall apply to a  
14 warning label described in paragraph (1) in the  
15 same manner, and to the same extent, as such re-  
16 quirements apply to cigarettes manufactured, im-  
17 ported, or packaged for sale or distributed within  
18 the United States.

19 (4) WAIVERS.—

20 (A) IN GENERAL.—The President may  
21 waive the labeling requirements required by this  
22 Act for cigarettes, if the cigarettes are exported  
23 to a foreign country included in the list de-  
24 scribed in subparagraph (B) and if that country  
25 is the country in which the cigarettes are in-

7

1 tended for consumption. A waiver under this  
2 subparagraph shall be in effect prior to the ex-  
3 portation of any cigarettes not in compliance  
4 with the requirements of this section by a per-  
5 son to a foreign country included in the list.

6 (B) LIST OF ELIGIBLE COUNTRIES FOR  
7 WAIVER.—

8 (i) IN GENERAL.—Not later than 90  
9 days after the date of enactment of this  
10 Act, the President shall develop and pub-  
11 lish in the Federal Register a list of for-  
12 eign countries that have in effect require-  
13 ments for the labeling of cigarette pack-  
14 ages substantially similar to or more strin-  
15 gent than the requirements for labeling of  
16 cigarette packages set forth in paragraphs  
17 (1) through (3). The President shall use  
18 the list to grant a waiver under subpara-  
19 graph (A).

20 (ii) UPDATE OF LIST.—The President  
21 shall—

22 (I) update the list described in  
23 clause (i) to include a foreign country  
24 on the list if the country meets the  
25 criteria described in clause (i), or to

8

1 remove a foreign country from the list  
2 if the country fails to meet the cri-  
3 teria; and

4 (II) publish the updated list in  
5 the Federal Register.

6 (b) PENALTIES.—

7 (1) FINE.—Any person who violates the provi-  
8 sions of subsection (a) shall be fined not more than  
9 \$100,000 per day for each such violation. Any per-  
10 son who knowingly reexports from or transships  
11 cigarettes through a foreign country included in the  
12 list described in subsection (a)(4)(B) to avoid the re-  
13 quirements of this Act shall be fined not more than  
14 \$150,000 per day for each such occurrence.

15 (2) INJUNCTION PROCEEDINGS.—The district  
16 courts of the United States shall have jurisdiction,  
17 for cause shown, to prevent and restrain violations  
18 of subsection (a) upon the application of the Attor-  
19 ney General of the United States.

20 (c) REPEAL.—Section 12 of the Federal Cigarette  
21 Labeling and Advertising Act (15 U.S.C. 1340) is re-  
22 pealed.

23 (d) REGULATORY AUTHORITY.—Not later than 90  
24 days after the date of enactment of this Act, the President

1 shall promulgate such regulations and orders as may be  
 2 necessary to carry out this section.  
 3 (e) EFFECTIVE DATE.—The provisions of subsections  
 4 (a) through (c) shall take effect upon the effective date  
 5 of the regulations promulgated under subsection (d).

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105TH CONGRESS  
1ST SESSION

# H. R. 2135

To make exports of tobacco products and the advertising of tobacco products abroad subject to the restrictions on labeling and advertising applicable to tobacco products in the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1997

Mr. DOGGETT (for himself, Mr. WANMAN, Mr. HANSEN, Mr. MEEHAN, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CAPPS, Ms. DEGETTE, Mr. DELLUMS, Mr. HINCHEY, Mr. KIND, Mr. LEWIS of Georgia, Mr. LUTHER, Mr. MILLER of California, Mr. OLVER, Ms. PELOSI, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on Commerce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To make exports of tobacco products and the advertising of tobacco products abroad subject to the restrictions on labeling and advertising applicable to tobacco products in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "International Tobacco  
5 Responsibility Act of 1997".

1 **SEC. 2. EXPORTS OF TOBACCO PRODUCTS AND ADVERTIS-**  
2 **ING OF TOBACCO PRODUCTS ABROAD.**

3 (a) LABELING REQUIREMENTS FOR EXPORTS.—

4 (1) REQUIREMENTS FOR CIGARETTES.—It shall  
5 be unlawful for any person subject to the jurisdiction  
6 of the United States, either directly or through a  
7 foreign subsidiary or agent of that person, to export  
8 from the United States or any other country any  
9 cigarettes the package of which does not contain the  
10 label statements, in the primary language of the  
11 country in which the cigarettes are intended for con-  
12 sumption, required by section 4 of the Federal Ciga-  
13 rette Labeling and Advertising Act (15 U.S.C. 1333)  
14 for cigarettes manufactured, imported, or packaged  
15 for sale or distribution within the United States.

16 (2) SMOKELESS TOBACCO WARNING.—It shall  
17 be unlawful for any person subject to the jurisdiction  
18 of the United States, either directly or through a  
19 foreign subsidiary or agent of that person, to export  
20 from the United States or any other country any  
21 smokeless tobacco product the package of which does  
22 not contain the label statements, in the primary lan-  
23 guage of the country in which the smokeless tobacco  
24 product is intended for consumption, required by  
25 section 3 of the Comprehensive Smokeless Tobacco  
26 Health Education Act of 1986.

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1           (3) WAIVERS.—The President may waive the  
2 prohibition contained in paragraph (1) or (2) if the  
3 President determines that the country in which the  
4 exported cigarettes or smokeless tobacco product are  
5 intended for consumption has in effect requirements  
6 for labeling of cigarette packages or smokeless to-  
7 bacco product packages substantially similar to or  
8 more stringent than those set forth in section 4 of  
9 the Federal Cigarette Labeling and Advertising Act  
10 or section 3 of the Comprehensive Smokeless To-  
11 bacco Health Education Act of 1986. The President  
12 shall publish in the Federal Register all waivers  
13 granted under this paragraph.

14           (b) LABEL STATEMENTS REQUIRED FOR ADVERTIS-  
15 ING ABROAD.—

16           (1) REQUIREMENTS FOR CIGARETTES.—It shall  
17 be unlawful for any person subject to the jurisdiction  
18 of the United States, either directly or through a  
19 foreign subsidiary or agent of that person, to adver-  
20 tise or cause to be advertised abroad any cigarette  
21 unless the advertising contains the label statements,  
22 in the same language as the advertising message, re-  
23 quired for advertising under section 4 of the Federal  
24 Cigarette Labeling and Advertising Act.

1 (2) SMOKELESS TOBACCO REQUIREMENTS.—It  
 2 shall be unlawful for any person subject to the juris-  
 3 diction of the United States, either directly or  
 4 through a foreign subsidiary or agent of that person,  
 5 to advertise or cause to be advertised abroad any  
 6 smokeless tobacco product unless the labeling con-  
 7 tains the label statements, in the same language as  
 8 the advertising message, required for advertising by  
 9 section 3 of the Comprehensive Smokeless Tobacco  
 10 Health Education Act of 1986.

11 (3) WAIVER.—The President may waive the  
 12 prohibition contained in paragraph (1) or (2) with  
 13 respect to a country in which the advertising is car-  
 14 ried out if the President determines that the country  
 15 has in effect requirements for advertising of ciga-  
 16 rettes or smokeless tobacco products substantially  
 17 similar to or more stringent than those set forth in  
 18 section 4 of the Federal Cigarette Labeling and Ad-  
 19 vertising Act or section 3 of the Comprehensive  
 20 Smokeless Tobacco Health Education Act of 1986.  
 21 The President shall publish in the Federal Register  
 22 all waivers granted under this paragraph.

23 **SEC. 3. PENALTIES.**

24 (a) FINE.—Any person who violates the provisions of  
 25 section 2 shall be fined not more than \$100,000.

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1 (b) INJUNCTION PROCEEDINGS.—The district courts  
2 of the United States shall have jurisdiction, for cause  
3 shown, to prevent and restrain violations of section 2 upon  
4 the application of the Attorney General of the United  
5 States.

6 **SEC. 4. REPEAL.**

7 Section 12 of the Federal Cigarette Labeling and Ad-  
8 vertising Act (15 U.S.C. 1340) is repealed.

9 **SEC. 5. RESTRICTIONS ON ACTIVITIES ABROAD REGARD-**  
10 **ING THE MARKETING OF TOBACCO PROD-**  
11 **UCTS.**

12 (a) PROHIBITION.—No funds appropriated by law  
13 may be used by any officer, employee, department, or  
14 agency of the United States or of any State or local gov-  
15 ernment—

16 (1) to seek, through negotiation or otherwise,  
17 the removal or reduction by any foreign country of  
18 any restrictions which that country imposes or may  
19 impose on the advertising, manufacture, packaging,  
20 taxation, or sale or distribution of cigarettes, little  
21 cigars, snuff, chewing tobacco, or smokeless tobacco,  
22 that is produced in that foreign country; or

23 (2) to promote the export of cigarettes, little ci-  
24 gars, snuff, chewing tobacco, or smokeless tobacco  
25 to, or the sale or distribution of cigarettes, little ci-

1 gars, snuff, chewing tobacco, or smokeless tobacco  
2 in, any foreign country.

3 (b) EXPORT PROMOTION ACTIVITIES.—For purposes  
4 of this section, the term “promote the export of cigarettes,  
5 little cigars, snuff, chewing tobacco, or smokeless tobacco”  
6 includes any activity designed to stimulate or assist United  
7 States businesses in marketing those products abroad  
8 competitively with businesses from other countries, includ-  
9 ing, but not limited to—

10 (1) trade development and dissemination of for- 10  
11 eign marketing opportunities and other marketing 1  
12 information to United States producers of those 11  
13 products, including the expansion of foreign markets 1  
14 for those products; 1

15 (2) the development of regional and multilateral 1  
16 economic policies that enhance United States trade 1  
17 and investment interests in such products, and the 1  
18 provision of marketing services with respect to for- 1  
19 eign countries and regions; and 1

20 (3) the exhibition of such products in other 2  
21 countries. 2

22 **SEC. 8. COMPOSITION OF SECTION 301 COMMITTEE.** 2

23 Any interagency committee established to assist the 2  
24 United States Trade Representative in performing the 2  
25 functions vested in the Trade Representative under section 2

1 301 of the Trade Act of 1974, shall include, with respect  
2 to any case under such section 301 that involves ciga-  
3 rettes, little cigars, snuff, chewing tobacco, or smokeless  
4 tobacco, representatives of the Department of Health and  
5 Human Services.

6 **SEC. 7. INTERNATIONAL CONFERENCE ON TOBACCO USE.**

7 It is the sense of the Congress that the President  
8 should urge the United Nations, acting through the  
9 United States Permanent Representative to the United  
10 Nations, to create a United Nations Conference to address  
11 the use of tobacco worldwide and to implement regulations  
12 to decrease the use of tobacco.

13 **SEC. 8. REGULATORY AUTHORITY.**

14 The President may issue such regulations and orders  
15 as may be necessary to carry out this Act.

16 **SEC. 9. DEFINITIONS.**

17 For purposes of this Act:

18 (1) **CIGARETTE.**—The term “cigarette”, “Unit-  
19 ed States”, “package”, and “sale or distribution”,  
20 have the meanings given those terms in section 3 of  
21 the Federal Cigarette Labeling and Advertising Act  
22 (15 U.S.C. 1332).

23 (2) **FOREIGN SUBSIDIARY.**—A person is a “for-  
24 eign subsidiary” of another person if that person is  
25 located outside the United States or is organized

1 under the laws of a foreign country, and that person  
2 is directly or indirectly owned or controlled by that  
3 other person to the extent of 10 percent or more of  
4 its voting stock (in the case of an incorporated en-  
5 terprise) or an equivalent interest (in the case of an  
6 unincorporated enterprise), and such term includes a  
7 branch of that other person.

8 (3) SMOKELESS TOBACCO.—The term “smoke-  
9 less tobacco” means any finely cut, ground, pow-  
10 dered, or leaf tobacco that is intended to be placed  
11 in the oral cavity.

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To 1

Mr.

To

# DURBIN DRAFT

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

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

IN THE SENATE OF THE UNITED STATES—105th Cong., 1st 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 Mr. DURBIN

Viz:

1 At the appropriate place, insert the following new sec-  
2 tion:

3 SEC. \_\_\_\_, PROHIBITION ON USE OF FUNDS TO FACILITATE  
4 THE EXPORT OR PROMOTION OF TOBACCO  
5 PRODUCTS.

6 No funds appropriated by this Act may be used by  
7 any officer, employee, department, or agency of the United  
8 States—

1           (1) to assist or encourage the export, sale, man-  
 2           ufacture, advertising, promotion, or distribution of  
 3           cigarettes, cigars, little cigars, snuff, chewing to-  
 4           bacco products, pipe tobacco, or other similar to-  
 5           bacco products; or

6           (2) to seek, through negotiation or otherwise,  
 7           the removal or reduction by any foreign country of  
 8           any restrictions or proposed restrictions in that  
 9           country on the importation, sale, manufacture, ad-  
 10          vertising, promotion, distribution, packaging, label-  
 11          ing, or taxation, of cigarettes, cigars, little cigars,  
 12          snuff, chewing tobacco products, pipe tobacco, or  
 13          other similar tobacco products.

Tobacco - settlement - international

Total Pages: 12

LRM ID: RJP117

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Tuesday, August 5, 1997

LEGISLATIVE REFERRAL MEMORANDUM

**SPECIAL**

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference  
 OMB CONTACT: Robert J. Pellicci  
 PHONE: (202)395-4871 FAX: (202)395-6148

SUBJECT: COMMERCE Report on S1060 Worldwide Tobacco Disclosure Act of 1997

DEADLINE: NOON Wednesday, August 6, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Commerce Secretary Daley has promised Sen. Lautenberg a response by August 7th.  
DISTRIBUTION LIST

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 Louisa Koch  
 Janet R. Forsgren

Eliz / Barry / 1st page to Bruce -  
 Say Daley's response  
 is absolutely right, but  
 FYI I kind of like this.  
 Elena



**The Honorable Frank Lautenberg  
506 Hart Senate Office Building  
Washington, DC 20510-3002**

**The Honorable Ron Wyden  
717 Hart Senate Office Building  
Washington, DC 20510-3703**

**Dear Senators Lautenberg and Wyden:**

Thank you for your letter requesting the Administration's views regarding your bill, the "Worldwide Tobacco Disclosure Act of 1997" (S. 1060). President Clinton has called for an interagency review of the proposed tobacco settlement, including an examination of a wide range of domestic and international policies and recommendations in this area. Since the review is ongoing, the Administration is not in a position to comment on specific, related proposals prior to the completion of the review. However, as this interagency review progresses, the Administration will give serious consideration to your proposals, and will follow developments concerning your bill.

Sincerely,

**William M. Daley  
Secretary of Commerce**

106TH CONGRESS  
1ST SESSION

**S.** 1060

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IN THE SENATE OF THE UNITED STATES

Mr. LAUTENBERG (for himself, Mr. WYDEN, Mr. DURBIN, and Mr. HAWKINS) *and Reed*  
introduced the following bill; which was read twice and referred to the  
Committee on

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**A BILL**

To restrict the activities of the United States with respect to foreign laws that regulate the marketing of tobacco products and to subject cigarettes that are exported to the same restrictions on labeling as apply to the sale or distribution of cigarettes in the United States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Worldwide Tobacco  
5 Disclosure Act of 1997".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) CIGARETTE.—The term “cigarette”  
2 means—

3 (A) any roll of tobacco wrapped in paper  
4 or in any substance not containing tobacco  
5 which is to be burned,

6 (B) any roll of tobacco wrapped in any  
7 substance containing tobacco which, because of  
8 its appearance, the type of tobacco used in the  
9 filler, or its packaging and labeling is likely to  
10 be offered to, or purchased by consumers as a  
11 cigarette described in subparagraph (A),

12 (C) little cigars which are any roll of to-  
13 bacco wrapped in leaf tobacco or any substance  
14 containing tobacco (other than any roll of to-  
15 bacco which is a cigarette within the meaning  
16 of subparagraph (A)) and as to which 1000  
17 units weigh not more than 3 pounds, and

18 (D) loose rolling tobacco and papers or  
19 tubes used to contain such tobacco.

20 (2) DOMESTIC CONCERN.—The term “domestic  
21 concern” means—

22 (A) any individual who is a citizen, na-  
23 tional, or resident of the United States; and

24 (B) any corporation, partnership, associa-  
25 tion, joint-stock company, business trust, unin-

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1           corporated organization, or sole proprietorship  
2           which has its principal place of business in the  
3           United States, or which is organized under the  
4           laws of a State of the United States or a terri-  
5           tory, possession, or commonwealth of the Unit-  
6           ed States.

7           (3) NONDISCRIMINATORY LAW OR REGULA-  
8           TION.—The term “nondiscriminatory law or regula-  
9           tion” means a law or regulation of a foreign country  
10          that adheres to the principle of national treatment  
11          and applies no less favorable treatment to goods that  
12          are imported into that country than it applies to like  
13          goods that are the product, growth, or manufacture  
14          of that country.

15          (4) PACKAGE.—The term “package” means a  
16          pack, box, carton, or other container of any kind in  
17          which cigarettes or other tobacco products are of-  
18          fered for sale, sold, or otherwise distributed to cus-  
19          tomers.

20          (5) SALE OR DISTRIBUTION. The term “sale  
21          or distribution” includes sampling or any other dis-  
22          tribution not for sale.

23          (6) STATE.—The term “State” includes, in ad-  
24          dition to the 50 States, the District of Columbia,  
25          Guam, the Commonwealth of Puerto Rico, the Com-

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1        commonwealth of the Northern Mariana Islands, the  
2        Virgin Islands, American Samoa, the Republic of the  
3        Marshall Islands, the Federated States of Microne-  
4        sia, and the Republic of Palau.

5            (7) TOBACCO PRODUCT.—The term "tobacco  
6        product" means—

7            (A) cigarettes;

8            (B) little cigars;

9            (C) cigars as defined in section 5702 of  
10        the Internal Revenue Code of 1986;

11          (D) pipe tobacco;

12          (E) loose rolling tobacco and papers used  
13        to contain such tobacco;

14          (F) products referred to as spit tobacco;  
15        and

16          (G) any other form of tobacco intended for  
17        human use or consumption.

18            (8) UNITED STATES.—The term "United  
19        States" includes the States and installations of the  
20        Armed Forces of the United States located outside  
21        a State.

5

1 SEC. 8. RESTRICTIONS ON NEGOTIATIONS REGARDING  
2 FOREIGN LAWS REGULATING TOBACCO  
3 PRODUCTS.

4 No funds appropriated by law may be used by any  
5 officer, employee, department, or agency of the United  
6 States—

7 (1) to seek, through negotiation or otherwise,  
8 the removal or reduction by any foreign country of  
9 any nondiscriminatory law or regulation, or any pro-  
10 posed nondiscriminatory law or regulation, in that  
11 country that restricts the advertising, manufacture,  
12 packaging, taxation, sale, importation, labeling, or  
13 distribution of tobacco products; or

14 (2) to encourage or promote the export, adver-  
15 tising, manufacture, sale, or distribution of tobacco  
16 products.

17 SEC. 4. CIGARETTE EXPORT LABELING.

18 (a) LABELING REQUIREMENTS FOR EXPORT OF  
19 CIGARETTES.—

20 (1) IN GENERAL.—It shall be unlawful for any  
21 domestic concern to export from the United States,  
22 or to sell or distribute in, or export from, any other  
23 country, any cigarettes whose package does not con-  
24 tain a warning label that—

25 (A) complies with Federal labeling require-  
26 ments for cigarettes manufactured, imported, or

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1 packaged for sale or distribution within the  
2 United States; and

3 (B) is in the primary language of the coun-  
4 try in which the cigarettes are intended for con-  
5 sumption.

6 (2) LABELING FORMAT.—Federal labeling for-  
7 mat requirements shall apply to a warning label de-  
8 scribed in paragraph (1) in the same manner, and  
9 to the same extent, as such requirements apply to  
10 cigarettes manufactured, imported, or packaged for  
11 sale or distribution within the United States.

12 (3) ROTATION OF LABELING.—Federal rotation  
13 requirements for warning labels shall apply to a  
14 warning label described in paragraph (1) in the  
15 same manner, and to the same extent, as such re-  
16 quirements apply to cigarettes manufactured, im-  
17 ported, or packaged for sale or distributed within  
18 the United States.

19 (4) WAIVERS.—

20 (A) IN GENERAL.—The President may  
21 waive the labeling requirements required by this  
22 Act for cigarettes, if the cigarettes are exported  
23 to a foreign country included in the list de-  
24 scribed in subparagraph (B) and if that country  
25 is the country in which the cigarettes are in-

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1 tended for consumption. A waiver under this  
2 subparagraph shall be in effect prior to the ex-  
3 portation of any cigarettes not in compliance  
4 with the requirements of this section by a per-  
5 son to a foreign country included in the list.

6 (B) LIST OF ELIGIBLE COUNTRIES FOR  
7 WAIVER.—

8 (i) IN GENERAL.—Not later than 90  
9 days after the date of enactment of this  
10 Act, the President shall develop and pub-  
11 lish in the Federal Register a list of for-  
12 eign countries that have in effect require-  
13 ments for the labeling of cigarette pack-  
14 ages substantially similar to or more strin-  
15 gent than the requirements for labeling of  
16 cigarette packages set forth in paragraphs  
17 (1) through (3). The President shall use  
18 the list to grant a waiver under subpara-  
19 graph (A).

20 (ii) UPDATE OF LIST.—The President  
21 shall—

22 (I) update the list described in  
23 clause (i) to include a foreign country  
24 on the list if the country meets the  
25 criteria described in clause (i), or to

8

1 remove a foreign country from the list  
2 if the country fails to meet the cri-  
3 teria; and

4 (II) publish the updated list in  
5 the Federal Register.

6 (b) PENALTIES.—

7 (1) FINE.—Any person who violates the provi-  
8 sions of subsection (a) shall be fined not more than  
9 \$100,000 per day for each such violation. Any per-  
10 son who knowingly reexports from or transships  
11 cigarettes through a foreign country included in the  
12 list described in subsection (a)(4)(B) to avoid the re-  
13 quirements of this Act shall be fined not more than  
14 \$150,000 per day for each such occurrence.

15 (2) INJUNCTION PROCEEDINGS.—The district  
16 courts of the United States shall have jurisdiction,  
17 for cause shown, to prevent and restrain violations  
18 of subsection (a) upon the application of the Attor-  
19 ney General of the United States.

20 (c) REPEAL.—Section 12 of the Federal Cigarette  
21 Labeling and Advertising Act (15 U.S.C. 1340) is re-  
22 pealed.

23 (d) REGULATORY AUTHORITY.—Not later than 90  
24 days after the date of enactment of this Act, the President

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- 1 shall promulgate such regulations and orders as may be
- 2 necessary to carry out this section.
- 3 (e) EFFECTIVE DATE.—The provisions of subsections
- 4 (a) through (c) shall take effect upon the effective date
- 5 of the regulations promulgated under subsection (d).