



Illegal Pathways to Illegal Profits

The Big
Cigarette Companies
and
International
Smuggling

Campaign for Tobacco-Free Kids

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Executive Summary

Cigarette smuggling takes place on a colossal scale.

Each year approximately 400 billion cigarettes, or one-third of all legally exported cigarettes, end up illegally smuggled across international borders. Cigarettes are the world's most widely smuggled legal consumer product.

Cigarette smuggling hurts the world's nations by evading otherwise applicable duty fees and taxes. Even worse, it increases the number of smokers by providing a less-expensive supply of cigarettes, especially for the young and the poor. National efforts to restrict access to cigarettes by children can be undermined by the availability of cheap contraband cigarettes. In addition, cigarette smuggling that steals away public revenues leaves less funding available for public health efforts. At the same time, it reduces available revenues for health care and law enforcement.

The major international cigarette companies say that the solution for the world's governments is to reduce cigarette taxes and duty fees to reduce the incentives to smuggle. But an enormous, growing body of evidence shows that the major cigarette companies, themselves, have knowingly fostered and have consciously supported cigarette smuggling. In doing so, they have been able to penetrate otherwise closed markets, to increase the sales of their brands by making them available at lower prices, and to provide an argument against high or increased levels of cigarette taxes or import duties.

In addition, international studies have clearly established two key facts:

1. Raising national cigarette taxes is one of the most effective ways for a country to increase its revenues and reduce smoking, especially among youth—despite any related increases in smuggling.
2. The amount of cigarette smuggling in any given country has less to do with its cigarette tax rates than it has to do with its government's policies regarding cigarette smuggling, related enforcement efforts, and the general acceptance of smuggling and black market sales of any kind among its populace.

This report presents some key evidence and information about the major cigarette companies' involvement in international cigarette smuggling in order to help readers develop a better understanding of the problem and how it can best be addressed to improve the finances and public health of the world's countries.

As this report concludes, smuggling does not have to be accepted as an inevitable, undesirable by-product of national efforts to increase cigarette taxes, reduce access to cigarettes, or otherwise reduce smoking. Understanding the key role the major cigarette companies have played in cigarette smuggling over the years suggests a number of readily available measures that could help eliminate large-scale cigarette smuggling, regardless of how high cigarette tax levels go.

With numerous references to internal cigarette company documents

that have become publicly available through various anti-tobacco lawsuits, this report details the inner workings of the major cigarette companies' actions to encourage and support cigarette smuggling throughout the world.

While the cigarette companies' documents rarely talk about "smuggling," "black-market sales" or "contraband cigarettes," they contain several code words that mean exactly the same thing. The companies refer to cigarettes that are illegally imported into a country as "duty-not-paid" or "DNP" cigarettes. Cigarettes delivered through smuggling routes rather than legal channels are called "transit," "general trade" or "GT" cigarettes.

Based on company documents that use these terms, this report looks at the smuggling of cigarettes manufactured by British American Tobacco, Philip Morris, and R.J. Reynolds Tobacco in four representative countries—Bangladesh, Cameroon, Colombia and Spain—to illustrate, in considerable detail, the major cigarette companies' various roles in international smuggling operations.

As these examples show, the major companies have gone well beyond knowingly selling cigarettes that they know will end up in the hands of smugglers but have also carefully monitored and overseen the smuggling of their brands into various countries, often treating the illegal importation and contraband sales of their cigarettes as just one more regularly monitored distribution channel, along with ongoing legal cigarette

imports and sales. It is also clear that knowledge of the companies' efforts to promote and facilitate the smuggling of its brands often reaches to the highest-ranking company executives.

Among other things the examples in this report show that the major cigarette companies have also:

- Intentionally used small amounts of legal imports of certain brands to mask the display and sale of smuggled cigarettes in a country and to provide an excuse for their advertising and marketing efforts designed to promote the sales of the smuggled versions.
- Sent high-level executives to meetings with the middleman companies directly in charge of the smuggling efforts to discuss details of the smuggling operations, including destinations, brands, routes, quantities and prices.
- Knowingly supplied cigarette smuggling operations used by illegal drug traffickers for money laundering purposes.

Recommendations

It is clear that the major cigarette companies could eliminate much of the international cigarette smuggling by more carefully marking their cigarettes, monitoring their sales and restricting the ability of their customers to divert them away from specified legal destinations. Such action is, however, quite unlikely without more stringent laws and

enforcement, given the enormous profits the cigarette companies obtain from expanded sales caused by the large-scale smuggling of their brands. In addition, taking such anti-smuggling action unilaterally would put any single cigarette company at a serious competitive disadvantage.

Similarly, there is little any single country can do to sharply curtail cigarette smuggling worldwide. Moreover, while there are steps each nation can take to reduce the smuggling problem within its borders, complete success will require international cooperation.

Accordingly, cigarette smuggling is an ideal subject for international cooperation through the Framework Convention on Tobacco Control (FCTC), which is currently being negotiated by the world's nations. Building on the strong tradition of international agreements to reduce trafficking in contraband goods such as firearms, pharmaceutical products, alcohol and illegal drugs, the FCTC could apply the well-established policy tools for reducing smuggling in these other goods, for the very first time, to cigarettes, as well.

Initial drafts of the FCTC and a proposed anti-smuggling protocol have already offered many constructive provisions, including:

- Establish a comprehensive system of marking cigarettes to allow better tracking and identification of smuggled products, including prominent hard-to-counterfeit tax-paid, country-of-origin, and country-of-destination markings.

- Establish mandatory licensing of all parties involved in cigarette distribution.
- Require chain-of-custody record-keeping by all parties involved in the movement of cigarettes from the factory to the final country of sale.
- Eliminate duty-free sales, which often serve as a major source of smuggled cigarettes.

Other key anti-smuggling options include:

- Reform the system for transporting cigarette products in international commerce, including a requirement that the country of destination, and all countries through which a shipment passes, issue specific permits, licenses or authorization before a shipment is released into international commerce.
- Establish a system whereby applicable destination-country cigarette taxes, or an equivalent bond, would be collected at the original factory where the cigarettes are manufactured or

before shipments are released into international commerce—with destination-country tax stamps attached (ideally, under the cellophane) at the factory to indicate tax collection.

- Hold the major cigarette companies strictly liable for any of the brands they manufacture ending up as smuggled contraband, with related penalties and the destruction of all seized cigarettes. Such strict liability would follow the example of the Basel Convention on Transboundary Movement of Hazardous Waste.

An anti-smuggling protocol to the Framework Convention on Tobacco Control that included provisions such as those described here would not only substantially reduce international cigarette smuggling and its attendant harms but also directly promote public health. Without such a protocol, the enormous problems caused by large-scale international cigarette smuggling will continue.

Acronyms & Companies

The following acronyms appear frequently in this paper:

B&H	Benson & Hedges (cigarette brand)
B&W	Brown & Williamson Tobacco Company
BAT	British American Tobacco
BATCO	British American Tobacco Corporation
BATUKE	BAT (United Kingdom & Export)
BTC	Bangladesh Tobacco Company
CAR or RCA	Central African Republic
DNP	Duty Not Paid
EU	European Union
GT	General Trade
LSF	Lucky Strike Filters (cigarette brand)
PGL	John Players Gold Leaf (cigarette brand)
RJR	R.J. Reynolds Tobacco Company
SE555	State Express 555 (cigarette brand)
SUTL	Singapura United Tobacco Ltd.

The following companies are mentioned in this paper:

Bollere Tobacco	French cigarette company; appears in BAT documents discussing smuggling in Africa
British American Tobacco (BAT)	Transnational tobacco company; owns Benson & Hedges, Kent, and Lucky Strike brands
Brown & Williamson	U.S. subsidiary of BAT
Copaco	Panama-based company identified in EU case as having smuggled for RJR
Gallaher Tobacco Company	United Kingdom-based tobacco company
Imperial Tobacco Company	United Kingdom-based tobacco company
Japan Tobacco (JT)	Partially owned by Japan's Ministry of Finance, JT purchased RJR's non-USA operations in 1999
Mansur Free Zone Trading Company	A longtime distributor of Philip Morris brands in Latin America
Maraval	Swiss company alleged to have handled orders for Philip Morris cigarettes intended for smuggling
MITSA	Andorran company contracted by BAT to manufacture BAT brands apparently intended for smuggling
Philip Morris	U.S.-based transnational tobacco company; owns Marlboro brand
R.J. Reynolds Tobacco	U.S.-based tobacco company, formerly one of the largest transnational tobacco companies until it sold its international operations to Japan Tobacco in 1999
Romar	Aruba-based distributor of BAT brands
SODISA	Bangui, CAR-based company, thought to participate in BAT-brand smuggling in Central Africa
Sorexex Anstalt	Lichtenstein-based company thought to be BAT's smuggling middleman for West Africa
TEI	Rothmans subsidiary in Niger
Vinataba	Vietnamese state tobacco monopoly
Weitnauer	Swiss company alleged to have arranged delivery of contraband Philip Morris cigarettes

I. Global Problem— Global Culprits



**One in three of the
world's exported
cigarettes turns up as
illegal contraband.
That's about 400 billion
smuggled cigarettes
each year.¹**

The results are devastating. Smuggled cigarettes are cheaper than their legitimately imported counterparts, and lower cigarette prices increase the number of smokers and the amounts they consume, especially among the young and the poor. In many cases, government health policy efforts to reduce smoking and its attendant costs are undermined by the flood of cheap, smuggled cigarettes.² To make matters worse, government revenues—often in very poor countries—are reduced as cigarette taxes and import duties are avoided. Corruption of public officials and others is fueled by payoffs at countries' borders and throughout the smuggling routes. And government decision-making is compromised when the major cigarette companies argue that the only way to combat smuggling is to cut cigarette taxes.

Well-known international cigarette brands—Marlboro, State Express 555, Benson & Hedges, Camel, Winston—are the smugglers' brands of choice. This report adds to the growing volume of evidence that firmly establishes that the legal manufacturers of these cigarettes have knowingly fostered and have consciously supported the illegal smuggling of their own brands. As described herein, internal company documents have revealed that the cigarette companies have known that cigarettes they sell to certain distributors and importers would end up being illegally smuggled into various countries. Moreover, in many cases the companies have also carefully overseen and even directed the actions of intermediaries in the smuggling

routes taken by some of their cigarettes, from the factories where they were made right through to their final illegal entry into the target countries. While the major cigarette companies, themselves, may not have driven the trucks filled with contraband cigarettes over international borders, chartered the ships that drop smuggled cigarettes on foreign shores, or bribed the enforcement officials who look the other way, it is clear that not only have they known that all of these things are going on but they have also often encouraged and supported it, fostered it and included it in their business plans.

What Is Already Known about Cigarette Company Involvement in Smuggling

As this report documents, the following key basic facts have already been established from the currently available evidence, including extensive reports by the Center for Public Integrity's International Consortium of Investigative Journalists and by various major newspapers.³

1. Although the major international cigarette companies make the same amount of profit, per pack, on cigarettes they sell for legal importation and those they sell for illegal importation through smuggling, they have several economic incentives to smuggle:
 - a. Through smuggling, the cigarette companies can sell their cigarettes in countries other-



wise closed to them because of import bans or because tax rates and duty fees make legal imports much more expensive than domestic brands;

- b. Even where legal imports are already competitive with local brands, smuggling expands the companies' sales because their smuggled cigarettes, which avoid applicable taxes and duties, are much cheaper than those they legally import, giving the smuggled versions a competitive advantage against all legally imported cigarettes sold in the country;
 - c. By helping to keep overall cigarette prices down, smuggled cigarettes also help to increase overall sales; and
 - d. Smuggling can give a company's brands a price and access advantage over its major competitors' brands, unless the other companies are also smuggling in their own brands or quickly get their own smuggling operations under way.
2. Sharp differences between the cigarette tax levels of neighboring countries can encourage small-scale cross-border smuggling by independent, criminal entrepreneurs, but that kind of smuggling has been dwarfed by the large-scale smuggling supported by the major cigarette companies, which includes smuggling routes that often go from one continent to another and have little or nothing to do with price disparities between neighboring countries.
 3. Smuggling has been an integral part of the business activities of global cigarette companies. These actions expand their markets and help them gain a competitive advantage over other cigarette companies.

4. Smuggling has been used by the cigarette companies to gain political leverage. They artfully turn up the smuggling volume in order to support their efforts to persuade governments to reduce cigarette tax rates or duty fees or not increase them.*

The big cigarette companies often blame organized crime for the massive amount of cigarette smuggling worldwide,⁴ but much of the organized

Well-known international cigarette brands—Marlboro, State Express 555, Benson & Hedges, Camel, Winston—are the smugglers' brands of choice.

criminal smuggling that accounts for the vast majority of all cigarette smuggling worldwide has occurred with the knowledge and assistance of the major cigarette companies themselves, and would not occur without the cigarette companies' compliance.

The Cigarette Company Documents that Reveal the Truth

These facts have been established largely through previously secret, internal cigarette company documents, which have become available through various lawsuits against the companies. The documents describe extensive knowledge, oversight, and support of smuggling by the transnational

* The companies oppose increases to cigarette taxes and duty fees because they produce higher cigarette prices both in the legal and illegal markets (contraband prices are set in relation to legal prices), and higher overall cigarette prices reduce smoking levels and the total number of packs sold. [See, e.g., Chaloupka, F., et al., "The Taxation of Tobacco Products," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000.]

cigarette companies in numerous countries.⁵ At the same time, only a small portion of the smuggling-related documents uncovered to date have appeared in the press or elsewhere. Additional documents in the tobacco lawsuit document depositories that chronicle the companies' involvement in international cigarette smuggling may yet be discovered—and others may currently exist only in the cigarette companies' own files, if the companies

have not already destroyed them.[†] Owing to differences between how the different countries responded to the demand for document production in the various lawsuits against them, an overwhelming number of the most relevant smuggling documents have been obtained from those disclosed by British American Tobacco (BAT).⁶

Whereas Philip Morris and the other U.S.-based cigarette companies narrowly responded to the requests for document production during the lawsuits' discovery phases, BAT responded more broadly providing documents covering a much wider range of topics. As a result, numerous BAT documents pertaining to smuggling have been found in the Guildford depository of BAT documents, despite the fact that they have nothing to do with the underlying legal actions. Such documents are much rarer in the Minnesota depository of the U.S. companies' documents or on the U.S. cigarette companies' document websites.

[†] Specific examples of company destruction of smuggling-related documents are presented later in this report.

Because the vast majority of these company documents were produced pursuant to lawsuits starting in the early to mid-1990s, almost all of the documents are dated 1995 or earlier. But more recent data show that roughly a third of all exported cigarettes worldwide continue to be diverted into smuggling supply lines, with major

international brands continuing to predominate.⁷ There has also been no evidence since the time periods covered by the disclosed industry documents of any anti-smuggling initiatives or related reforms by any of the major cigarette companies.

Beyond the extensive documentary evidence already in hand, some

current and former company employees are cooperating with investigative efforts, providing additional information and a deeper understanding of the existing documents' terms and contents. In addition, lawsuits have been commenced by the Canadian federal government, the European Union (EU), the governors of the States of Colombia and others to recover damages from BAT, Philip Morris, R.J. Reynolds (RJR), Brown & Williamson and Japan Tobacco caused by their alleged smuggling activities.⁸ These lawsuits, currently under way in American courts, are based in part on U.S. racketeering law, alleging that the cigarette companies' smuggling activities constitute organized criminal activity. Other investigations into both civil and criminal wrongdoing related to cigarette smuggling by the cigarette companies, some public and some still confidential, are also under way.⁹

Tobacco Industry Executives' Cynicism Concerning Smuggling

While he was C.E.O. of Brown & Williamson Tobacco in the U.S., Nick Brookes attacked proposed U.S. cigarette tax increases by saying that they would directly cause cigarette smuggling into the United States over its borders with Canada and Mexico and through major U.S. ports. In an opinion piece titled "Black Market Bonanza" that Brookes wrote for *The Washington Post* (May 20, 1998), he stated that raising cigarette prices through tax increases would "create" an illegal and unregulated underground market," which he also described as "a massive black market, in which children will find it easier, not more difficult, to purchase cigarettes."

But when Brookes wrote those words he should have been aware that very little large-scale cigarette smuggling across international borders often occurs with the knowledge and support of one or more of the major cigarette companies. In fact, documents indicate that Brookes also knew that he had personally taken steps behind the scenes as a senior tobacco company executive to support and encourage the same kind of cigarette smuggling he was deploring in his public statements.

For example, only a few years earlier, while Director of New Business Development at BAT, Brown & Williamson's parent company, Brookes had noted that a potential joint venture between BAT and Vinataba, the Vietnamese state tobacco monopoly, would reduce BAT's sales of illegally smuggled cigarettes in Vietnam (referred to as "GT" or General Trade sales). As his report back to senior BAT management stated: "BATCo will achieve 1 billion GT sales of State Express 555 each year in perpetuity [without the joint venture]...any State Express 555 sales by the JV is a sale lost to GT."²¹

Other company documents show that while Director of New Business Development at BAT, Brookes also received reports of the smuggling of major cigarette brands into Colombia while using much smaller amounts of legal imports of the same brands to serve as an "umbrella" or cover.²² BAT appears to have adopted a similar strategy in Vietnam, after it did enter into the joint venture with Vintaba. As another document from Brookes' BAT files shows, BAT was very careful to adjust the pricing and other characteristics of the cigarettes made by Vintaba for legal sale in Vietnam to account for and influence those of the illegally sold versions. As one document states—after recognizing the "excellent quality of distribution, presence, and value of the G.T. [smuggled] product"—"Both versions will have a role to play in the further building of the brand, and the 'system' profitability."²³

The Cigarette Companies' Public Denials

Despite the overwhelming evidence against them, the major cigarette manufacturers and exporters have long categorically denied any involvement in smuggling, often with sweeping statements:

"[Philip Morris] will not condone, facilitate or support contraband... [and] we have been actively involved in supporting governments' anti-contraband programs in many countries around the world."¹⁰

"British American Tobacco companies do not smuggle. We do not condone smuggling, and we do not encourage or collude with others to smuggle on our behalf. Smuggling is caused by tax differentials, weak border controls, and import restrictions and bans. It is not caused by companies such as those in the British American Tobacco Group, which invest heavily in well-managed distribution networks and seek orderly, transparent markets for their goods."¹¹

R.J. Reynolds: "To suggest that Reynolds Tobacco has been involved in smuggling activity—in Europe or elsewhere—is unsupportable and untrue."¹²

Brown & Williamson: "We are aware that some of our products do enter markets other than through the legal channels, as do many other brands of cigarettes. We don't condone this. In fact, we work cooperatively with law enforcement to discourage smuggling...smuggling is bad for government and society because taxes are lost, criminal activity increases, disrespect for law grows, and law enforcement officials are presented with more crime to combat. High taxes and import restrictions or bans cause smuggling."¹³

The Cigarette Companies' Self-Serving Smuggling Myths

To divert attention from their own culpability, the cigarette companies have promoted a number of myths about cigarette smuggling.

Myth 1: "High cigarette taxes cause cigarette smuggling."

As some of these denial quotes show, the cigarette companies like to blame high cigarette taxes and import duties for cigarette smuggling, but that claim tells only a part of the story. While cigarette smuggling evades cigarette taxes and import duties (or penetrates the markets of countries that ban or severely restrict legal cigarette imports), those countries with the highest cigarette tax rates or duties do not necessarily have the highest levels of cigarette smuggling. Other key factors include the pervasiveness of preexisting smuggling routes and black markets for other products in the country, government policies toward cigarette smuggling, the levels of corruption among enforcement personnel, and the major cigarette companies' chosen

marketing strategies for the country, including their reliance on smuggling for economic or political purposes.¹⁴

Why do cigarette companies link smuggling with tax rates? Cigarette tax increases help to reduce smoking levels by increasing prices and also bring in new government revenue.¹⁵ Accordingly, a World Bank report concluded in 1999 that:

"Smuggling is a serious problem, but...even where it occurs at high rates, tax increases bring greater revenues and reduce consumption. Therefore rather than foregoing tax increases the appropriate response to smuggling is to crack down on criminal activity."¹⁶

More broadly, large-scale cigarette smuggling occurs regardless of the level of different countries' cigarette

“...transit...is essentially the illegal import of brands... upon which no duty has been paid.”

—BAT doc. 302000021, 1989

tax rates or duty fees worldwide. One reason is that the major cigarette companies transport their products knowingly or at least recklessly to smuggling middlemen or transiteers or do not take reasonable precautions and other readily available steps to make sure their cigarettes are only legally delivered to proper destinations.¹⁷

Myth 2: "We just sell our cigarettes to distributors and have no knowledge or control over what they do with them."

Beyond blaming high taxes, the cigarette companies claim that they simply sell their brands to distributors, wholesalers and exporters, and have no control over what happens with their cigarettes after that. For example, on British television in 1998, an executive from the Gallaher cigarette company, based in the United Kingdom, made the following claim:

"We sell cigarettes legally to our distributors in various countries. If people, if those distributors subsequently sell those products on to other people who are going to illegally bring them back into this country, that is something outside of our control..."¹⁸

But a careful read of the industry's own documents and statements shows the cigarette companies' claims of non-involvement are false, as described in this report and in numerous publicly available reports on industry involvement in cigarette smuggling.¹⁹ For example, when faced with the first major report on cigarette company involvement in global cigarette smuggling by the Center for Public Integrity, the Deputy Chairman of BAT, Kenneth Clark—a former Chancellor of the Exchequer and Health Minister in

Conservative Party governments in the United Kingdom and a current Member of Parliament—published an opinion piece in *The Guardian* newspaper in which he stated that "we act, completely within the law, on the basis that our brands will be available alongside those of our competitors in the smuggled as well as the legitimate market."²⁰

In response to Clarke's admissions, *The Guardian* commented that "BAT had previously claimed that it merely

* Months later, Mr. Clarke contradicted himself and returned to the more traditional cigarette company denials, stating that "There is no evidence I have ever seen that BAT is a participant in this smuggling. We seek to minimize and avoid it." He even stated that BAT is "a company of integrity and a good corporate citizen" that not only follows the requirements of the laws in the countries in which it operates but also follows "good ethical standards." ["DTI to Investigate BAT Smuggling Claims," *The Guardian*, 30 October 2000.]

turned a blind eye to smuggling but the papers show it is central to the company's operation."²⁴ One example is a 1994 BAT internal report that includes a "Distribution Channels" table which identifies the distributors

gling verdicts against their executives or employees—they claim that any smuggling activities by their personnel are simply the result of dishonest employees operating entirely on their own in direct violation of the compa-

to Ulrich Herter (Managing Director, Tobacco, for BAT Industries), Tony de Castro (President and CEO of Souza Cruz, BAT's Brazilian subsidiary), Barry Bramley (Chairman, British American Tobacco) and others, all very senior executives and officers of BAT. The memo states:

"...the BAT Industries Chairman has endorsed the approach that the Brazilian Operating Group increase its share of the Argentinean market via DNP."

—BAT doc. 500028732, 1993

*"I am advised by Souza Cruz [BAT's Brazilian subsidiary] that the BAT Industries Chairman has endorsed the approach that the Brazilian Operating Group increase its share of the Argentinean market via DNP [duty not paid or smuggling]."*²⁷

for BAT, its U.S. subsidiary Brown & Williamson, and its Brazilian subsidiary Souza Cruz in each of ten South American countries, with separate listings for those that handle the legal (duty-paid) and illegal (duty-not-paid) imports. Text accompanying the table states that "Due to the sensitivity, management, and coordination of the DNP [duty-not paid] business, all brands should be concentrated on one operator per channel."²⁵

A corollary to the companies' assertion that they sell to distributors without knowing what goes on afterwards is the contention that they are unable to track their cigarettes after they sell them and ship them to distributors or importers. The evidence demonstrates that the companies have regularly tracked many of their shipments destined for illegal import, through all the steps and intermediaries in their route to the final countries where the cigarettes are sold.

Myth 3: "Any company involvement in smuggling is done by rogue employees operating entirely on their own."

In many cases, when the major cigarette companies are confronted with the smuggling evidence from their own documents—or with guilty smug-

nies' anti-smuggling policies. For example, after the smuggling conviction of Les Thompson—the RJR executive who headed its Canadian Northern Brands subsidiary during its efforts to support smuggling of Canadian brands back from the United States—Steven Goldstone, the Chief Executive Officer of RJR Nabisco, tried to deflect all the blame for the smuggling activities onto Thompson, himself:

*"Employees are prohibited from engaging in smuggling or other violations of the law [but there will always be] the risk that dishonest employees will find ways to circumvent controls for their own personal benefit."*²⁶

Given Goldstone's explanation, there are a surprisingly large number of memos implicating a large number of employees as being aware of the company's involvement in smuggling activities. Indeed, industry documents show that cigarette smuggling operations have proceeded not only with the knowledge, but also with the direct support of some of the companies' most senior officers. For example, the then-Chairman of BAT Industries, Sir Patrick Sheehy, is directly implicated in planned smuggling operations in South America in a 1993 memo sent from Keith Dunt (Territorial Director for Latin America & the Caribbean)

The Structure of This Report

The evidence that major cigarette companies are knowingly involved in smuggling is overwhelming. This report uses concrete country-specific examples of the smuggling of British American Tobacco, Philip Morris, and the R.J. Reynolds Tobacco Company brands in Africa, Latin America, Asia and Europe. Building on the prior publications that have presented some of the massive documentary evidence, this report will show how the cigarette companies have been intimately involved in all the stages of the ongoing global cigarette smuggling problem, including strategic planning; manufacture and packing specifically for smuggling; setting quantities and prices for the contraband; overseeing shipping and route choices; assessing candidates for onward sale of the smuggled goods; and efforts to disguise the illegal activities.

This report focuses on the four country-specific smuggling examples to provide readers with a better understanding of how cigarette smuggling really works—and to show how the major cigarette companies track, oversee, and sometimes supervise the progress of their brands from the original factories where they are made

through their illegal diversion into established smuggling routes to their final illegal destinations. Evidence of these companies being involved in the smuggling of their brands in many other countries also exists, and other companies—such as Brown & Williamson, Japan Tobacco, Rothmans and Bollore—are also implicated.* Some of this information will be presented.

Cigarette Company Code Words for Smuggling

Cigarette company documents do not use the word "smuggling," but instead use euphemisms or code words for the activities whose meaning is clear. The companies are discreet with their use of language, and there are even examples where the companies sought to avoid creating a paper record at all, either through the use of technology or a practice of not committing certain material to paper:

*"[I]n future, please do not distribute such sensitive matters beyond myself and do not name interested parties. Ideally, all such communication should be oral and only personal hand-written notes maintained. I recognize the practical problems, but the down-side risk is very considerable."*²⁸

Where the paper record of cigarette company knowledge and participation in cigarette smuggling has been uncovered, cigarette company euphemisms or code words for smuggling are the norm. The most common are: duty not paid (DNP), transit, general trade (GT), combined exports, parallel imports and recycled product. Usually, one can ascertain what they

really mean from context, sometimes from a direct statement, or from how the terms are defined or used in other related company documents. Here are a few examples:

Transit. *"With regard to the definition of transit it is essentially the illegal import of brands from Hong Kong, Singapore, Japan, etc., upon which no duty has been paid."*²⁹

Duty Not Paid (DNP). *"[The DNP market] is the volume of cigarettes produced in Venezuela, exported (mainly to Aruba) and re-entering Venezuela as transit plus transit cigarettes produced elsewhere (mainly Ecuador and Brazil)."*³⁰

General Trade (GT). *"The imported segment [in Taiwan] has increased each year and penetration reached 32.6% in 1993. This figure includes legal imports which accounted for 6.7 bns in 1993...plus GT imports estimated at 7.6 bns (17.4% SOM [share of market])."*³¹

In their documents, the cigarette companies also use terms like "wholesaler," "distributor," "buyer," or "transit agent" to describe various parties in the smuggling chain. Put simply, however, the cigarette companies use two basic categories of smuggling intermediaries:

Middlemen. The first is a regional operative with a long-standing relationship with the company, often covering many countries. Along with the cigarette company, they facilitate the smuggling and deal with the day-to-day issues. In this paper these facilitators are called "middlemen."

Transiteers. The second intermediary is further along the distribution channel, being the party who physically carries the cigarettes across borders. This paper calls these company intermediaries "transiteers."

* After the time period covered by the available industry documents, Japan Tobacco purchased the non-U.S. operations of RJR and, consequently, has greatly increased its presence in some of the markets where smuggling is most flourishing and now internationally produces and sells former RJR brands that have historically been smuggled.

¹ Joossens, L. & M. Raw, "Cigarette Smuggling in Europe: Who Really Benefits?" *Tobacco Control*, July 1998, <http://tc.bmjournals.com/cgi/content/full/7/1/66>. U.S. Foreign Agriculture Service, Tobacco Group webpages, www.fas.usda.gov/cots/tobacco.html. See, also, Merriman, D., et al., "How Big is the Worldwide Cigarette-Smuggling Problem," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000.

² See, e.g., Non-Smokers' Rights Association of Canada, *Cigarette Smuggling: A Global Weapon against Public Health Measures*, 5 April 2001, www.nsr-aadnf.ca/english/smuggling.html.

³ See, e.g., Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000, www.public-i.org/story_01_020200.htm; Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301.htm; Dickey, C. & R. Nordland, "Big Tobacco's Next Legal War: Cigarette Makers Are Coming Under Fire As Governments Attack Global Smuggling," *Newsweek*, 31 July 2000; Bonner R. & Drew, C., "Cigarette Makers are Seen as Aiding Rise in Smuggling," *The New York Times*, 25 August 1997; Bonner, R., "Two Cases Shed Light on Cigarette Smuggling in Italy," *The New York Times*, 2 September 1997; Bonner, R., "Europe Inquiry on Smuggled Cigarettes Seeks U.S. Aid," *The New York Times*, 8 May 1998; Marsden, W., "Tobacco Insider Talks: Major Firms Were Deeply Involved in Cross-Border Smuggling, Former Executive Says," *Montreal Gazette*, 18 December 1999, www.nsr-aadnf.ca/english/gazinsider1.html; CBS, *60 Minutes II* television show, "Tobacco's Other Secret," 18 January 2000; ASH-UK website on BAT and smuggling, www.ash.org.uk/html/smuggling/html/smuggling.html; Maguire, K. & D. Campbell, "Tobacco Giant Implicated in Global Smuggling Schemes," *The Guardian*, 31, January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956951,00.html; Rowell, A. & C. Bates, *Tobacco Smuggling in the UK*, October 2000, www.ash.org.uk/html/smuggling/html/uksmuggling.html. See, also, Appendix One.

⁴ See, e.g., British American Tobacco website, "Smuggling: Our View," [www.bat.com/bat/bathome.nsf/0/53027513fc27f99e802569540030c0a1/\\$FILE/Smuggling_Our_View.pdf](http://www.bat.com/bat/bathome.nsf/0/53027513fc27f99e802569540030c0a1/$FILE/Smuggling_Our_View.pdf); Brown & Williamson, *Organized Crime and the smuggling of Cigarettes in the United States - The 1999 Update*, www.brownandwilliamson.com/displaypage.cfm?ID=118&Sect=4&txtSearch=smuggling.

- ⁵ For the lawsuit settlement agreements creating public access to these documents, see, e.g., *State of Minnesota et al. vs. Philip Morris et al., Settlement Agreement and Stipulation for Entry of Consent Judgment*, Civil Case No. C1-94-8565, State of Minnesota District Court, Second Judicial District, 08 May 1998 [hereafter "Minnesota Settlement"]; *Master Settlement Agreement*, between the U.S. states and territories and the major U.S. cigarette companies, 23 November 1998, <http://www.naag.org/tobaccopublic/library.cfm> [hereafter "Multistate Settlement Agreement"]. For the reports on cigarette company involvement in smuggling based on these documents, among other evidence, see footnote 3 and Appendix One.
- ⁶ The state of Minnesota in the United States of America settled a cost recovery lawsuit against the tobacco industry in 1998. The settlement stipulated that the defendants had to create and operate for ten years a depository giving public access to the millions of documents obtained during what is known as the "discovery" phase of legal proceedings. BAT, unique among the defendants, was permitted to run its own depository in Guildford, England, just outside of London. Similar provisions were in the November 1998 Multistate Settlement Agreement in the United States, which resulted in each of the U.S. cigarette companies establishing websites that provided public access to the documents they disclosed in the lawsuits (see, e.g., the Philip Morris document website at www.pmdocs.com). In sharp contrast, the BAT documents at Guildford can only be viewed in person, by appointment. To get an appointment, one must write to BAT, requesting dates. The present contact information is: Ms. Melanie Thomas, British American Tobacco, Globe House, 4 Temple Place, London, WC2R 2PG, United Kingdom, fax: 44-20-7845-2783. Information on all of the major cigarette company document websites and hard-copy locations are provided in Appendix One.
- ⁷ Joossens, L. & M. Raw, "Cigarette Smuggling in Europe: Who Really Benefits?" *Tobacco Control*, July 1998, <http://tc.bmjournals.com/cgi/content/full/7/1/66>. U.S. Foreign Agriculture Service, Tobacco Group web pages, www.fas.usda.gov/cots/tobacco.html.
- ⁸ *European Union v. RJR Nabisco Inc. et al.*, United States District Court, Eastern District of New York, Civil Case No. 1-00-06617-NGG, www.tobacco.org/Documents/001103euvpm,rjr.html; *Attorney General of Canada vs. RJR Tobacco et al.*, U.S. District Court for the Northern District of New York, Civil Case No. 99CV2194 [complaint available at www.public-i.org/download/canadacomplaint.pdf]; *Colombian Governors v. Philip Morris Companies, Inc. et al.*, U.S. District Court, Eastern District of New York, Docket No. 00 Civ. 2881 (NGG), filed 08 November 2000, www.public-i.org/download/AmdendedColombiaSuit.pdf; Richards, M., "Ecuador Files Suit Against Tobacco Industry," *Associated Press Newswires*, 05 June 2000. A New York District Court dismissed the Canadian lawsuit on jurisdictional grounds, but the Canadian Government's lawyers have appealed that decision. *Dow Jones Busi-*
- ness News*, "Canada to Appeal Dismissal of U.S. Smuggling Lawsuit," 28 July 2000.
- ⁹ See, e.g., Levin, M., "Cigarette Makers Targeted On Smuggling," *Boston Globe*, 10 August 2000; Dickey, C. & R. Nordland, "Big Tobacco's Next Legal War: Cigarette Makers Are Coming Under Fire As Governments Attack Global Smuggling," *Newsweek*, 31 July 2000; *Associated Press*, "Grand Jury Probes RJR's Export Sales," 21 August 2000.
- ¹⁰ Letter from Elizabeth Cho, Philip Morris International, to Center for Public Integrity, January 2000.
- ¹¹ British American Tobacco website, "Smuggling: Our View," [www.bat.com/bat/bathome.nsf/0/53027513fc27f99e802569540030c0a1/\\$FILE/Smuggling_Our_View.pdf](http://www.bat.com/bat/bathome.nsf/0/53027513fc27f99e802569540030c0a1/$FILE/Smuggling_Our_View.pdf).
- ¹² Michaels, A. & D. Bilefsky, "Brussels Sues US Tobacco Groups in Crackdown," *Financial Times*, 07 November 2000.
- ¹³ Brown & Williamson website, "Smuggling: Our View," www.brownandwilliamson.com/index_sub2.cfm?ID=22.
- ¹⁴ Joossens, L. & M. Raw, "Cigarette Smuggling in Europe: Who Really Benefits?" *Tobacco Control*, July 1998, <http://tc.bmjournals.com/cgi/content/full/7/1/66>; Joossens, L., *Smuggling and Cross-Border Shopping of Tobacco Products in the European Union*, UK National Health Service Health Development Authority & International Union Against Cancer, 2000; Merriman, D., et al., "How Big is the Worldwide Cigarette-Smuggling Problem," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000; Joossens, et al., "Issues in the Smuggling of Tobacco Products," in Jha & Chaloupka, 2000.
- ¹⁵ Townsend, J., "The Role of Taxation Policy in Tobacco Control," in Abedian, I., et al., *The Economics of Tobacco Control*, Applied Fiscal Research Centre, University of Capetown, 1998; Chaloupka, F., et al., "The Taxation of Tobacco Products," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000; Merriman, D., et al., "How Big is the Worldwide Cigarette-Smuggling Problem," in Jha, & Chaloupka, 2000.
- ¹⁶ World Bank Report, *Curbing the Epidemic: Economics of Tobacco Control*, June 1999.
- ¹⁷ For more on how to stop cigarette smuggling, see the final section of this report and Joossens, L. & M. Raw, "How Can Cigarette Smuggling Be Reduced?," *British Medical Journal* 321:947-950, 14 October 2000, <http://bmj.com/cgi/content/full/321/7266/947>.
- ¹⁸ BAT Bates No. 203474922, Brookes to M. Broughton, D. Allvey and U. Herter, BAT internal memo, 03 June 1993.
- ¹⁹ Beelman, et al., 31 January 2000.
- ²⁰ BAT Bates No. 203472751/55, McPhail, P. letter to P.C. O'Keefe, 21 October 1993, available at www.public-i.org/McPhail_to_Millbank.pdf; Beelman, M., et al., 2 February 2000.
- ²¹ BBC Money Programme, 08 November 1998.
- ²² *Supra*, notes 3, 6, 8. See, also, Appendix One.
- ²³ Clarke, K., "Dilemma of a Cigarette Exporter," *The Guardian*, 3 February 2000. For the report by the Center for Public Integrity's International Consortium of Investigative Journalists, see Beelman, M., et al., *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.html.
- ²⁴ Maquire, K., "Clarke Admits BAT Link to Smuggling," *The Guardian*, 3 February 2000.
- ²⁵ BAT Bates No. 301742119, undated but faxed on 29 November 1993.
- ²⁶ Marsden, W., "Tobacco Insider Talks: Major Firms Were Deeply Involved in Cross-Border Smuggling, Former Executive Says," *Montreal Gazette*, 18 December 1999.
- ²⁷ BAT Bates No. 500028732, BAT memo, 18 May 1993. See, also, BAT Bates No. 500017305, BAT internal memo marked "Restricted," P. Adams to B. Bramley, Chairman of BAT board, "Visit of Sir Patrick Sheehy," 11 February 1994.
- ²⁸ BAT internal memo, Chris Reynolds to Neil Lovett, 08 March 1990. BAT Bates No. 301659640.
- ²⁹ BAT letter dated 25 August 1989. BAT Bates No. 302000021.
- ³⁰ BAT internal document, file owner Keith Dunt, "Venezuelan Market Definitions and Assumptions," undated, BAT Bates No. 500025647.
- ³¹ BAT internal document entitled "Review of Asia-Pacific Market," January 1995, BAT Bates No. 502628801.

II. Cigarette Smuggling in Africa:

BAT and Cameroon

The strong marketing presence of British American Tobacco (BAT) throughout Africa mirrors the company's involvement in African smuggling of BAT brands of cigarettes.



Internal BAT documents reviewed to date suggest that BAT has had involvement in smuggling in about 30 countries in sub-Saharan Africa alone.³²

From the late 1970s through at least the early 1990s, BAT organized both its legal and illegal African cigarette-sales operations into regional groupings based on geography and contraband flows. Cameroon, along with Equatorial Guinea and several inland smuggling destination countries, formed BAT's "Unit II."³³ These countries worked as a coordinated unit, particularly for contraband originally entering Africa from Europe and Latin America.

Countries involved in cigarette company smuggling efforts usually serve one of several purposes: either origin countries, destination countries or through transit countries for contraband cigarettes. Cameroon is particularly interesting because it served multiple roles for smuggled BAT brands.

Smuggling Routes into West Africa and Cameroon

A large percentage of the contraband flows of BAT brands originated from the company's Southampton factory in England. In many regions of the world, cigarettes marked "Made in England" enjoy a certain cachet or extra appeal. Indeed, the BAT subsidiary BATUKE (BAT United Kingdom & Export), which is in charge of all UK-made BAT brand exports, is a major supplier of smuggled cigarettes worldwide. A BATUKE plan for 1993

to 1997, marked "SECRET," states that just "two key General Trade markets will account for 4.7 billion units or 22% of BATUKE's total shipments," and £3.8 million (or approximately \$6 million in US dollars) "will be invested to grow our business in the GT markets."³⁴

From Southampton or other BAT factories, BAT's cigarettes bound for illegal import into Cameroon—Benson & Hedges, Kent, Lucky Strike and others—frequently arrived in West Africa through Malabo, a town located on the north end of an island belonging to Equatorial Guinea. The island is conveniently located just offshore of Cameroon, only a quick boat trip away. A 1991 BAT document shows that BAT relied heavily on this smuggling route to get their brands into Cameroon:

"[T]here are no legal imports [into Cameroon]...Unit II comprises sales to Malabo for which the end market is Cameroon."³⁵

The importance of smuggling for BAT's business plans in Africa, and the key role Malabo played in facilitating smuggling into Cameroon and much of both West and Central Africa, cannot be overstated as shown below. BAT's contraband moved from Malabo through various ports of entry in Cameroon and other African countries utilizing false shipping documentation. Senior BAT executive John Ticehurst reports on a 1989 trip to Malabo:

"[I] visited Juan Cabrera, who has been established in Malabo over 20 years...207 c/s [cases] had been 'exported,' i.e., to Cameroon, although

falsified documents indicated Nigerian importers. (Sodisa followed the same documentation procedure as exports to Cameroon are not allowed by customs.)³⁶

Although BAT may have begun its smuggling into Cameroon in order to penetrate a market that was otherwise closed to its brands, it is clear that the company was ready to continue smuggling into Cameroon even after it lifted its ban on foreign cigarette imports. Typical is an internal 1991 memo from Joe Green, a senior BAT marketing executive, who says that in a scenario where legal imports are permitted into Cameroon, BAT's plan is to continue supplying that country primarily via smuggling. In that situation, Green says:

"GT shipments will remain the mainstay of our activity...The Malabo distribution channel will have to be

*maintained...Maintain a minimum cover level of BHSF [Benson & Hedges Filter brand] via legal imports."*³⁷

Once imports were permitted, knowledge and decision making about using smaller amounts of legal sales to cloak larger smuggling or GT operations went all the way to the apex of the company, BAT Industries Chairman Sir Patrick Sheehy:

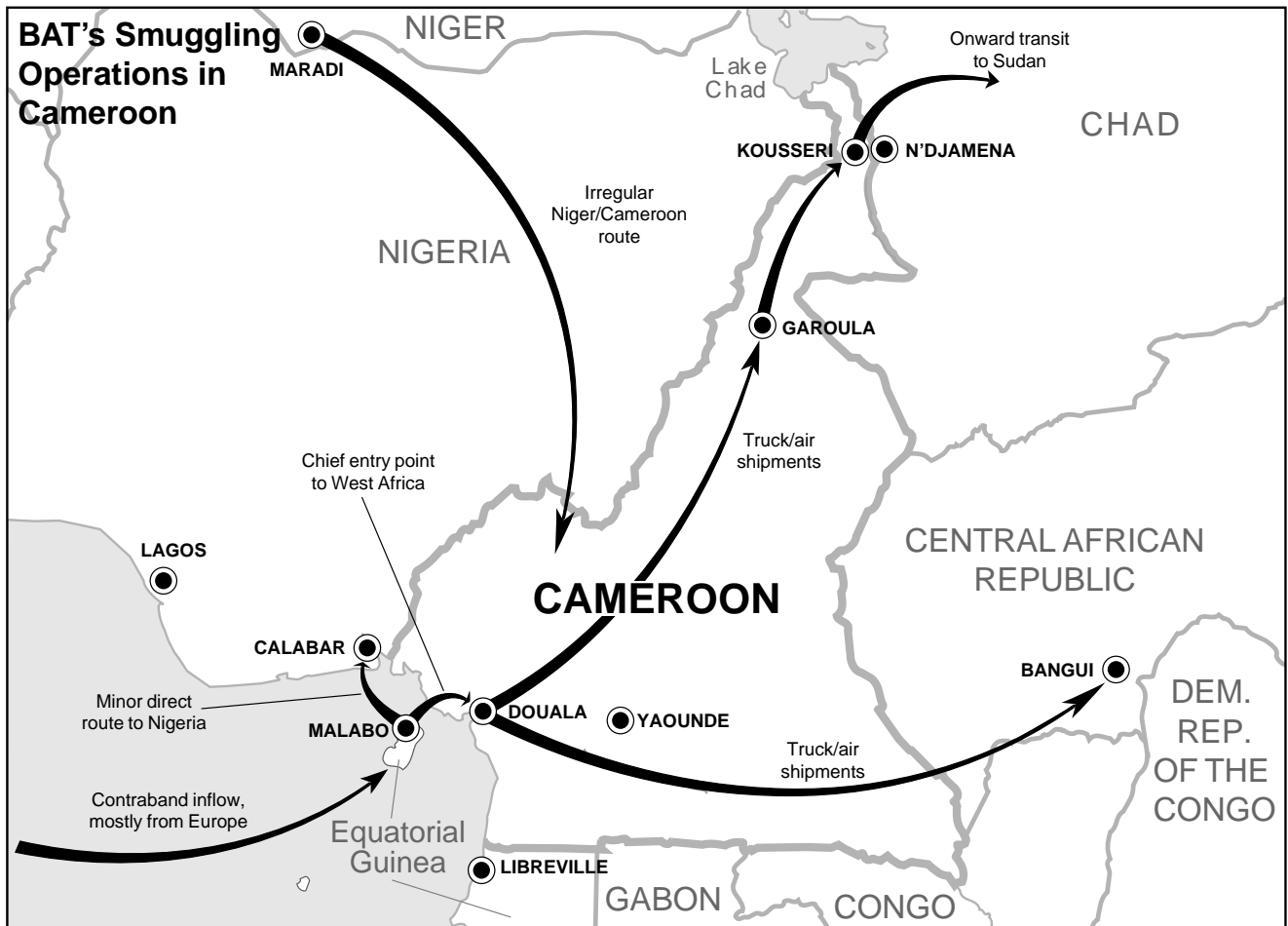
"When the issue of Unit II was discussed where BATUKE wished to appoint a domestic importer enabling us to provide cover for advertising and GT business, Sir Patrick felt that it was perfectly acceptable for BAT Cameroon to recommend a domestic importer for [Benson & Hedges]."^{38,*}

* The cigarette companies' use of relatively small amounts of legal imports to camouflage or cover much larger amounts of illegally smuggled imports is discussed more fully later in this report.

These internal documents, showing BAT actively making decisions to organize and fuel the contraband market, are in stark contrast to the public statements of BAT's present chairman, Martin Broughton, that "High duties create the conditions for smuggling, not tobacco companies."³⁹

BAT's Smuggling Middleman for Africa

As detailed below, BAT's middleman for smuggling into West Africa in the 1980s through the early 1990s was a company called Sorepex Anstalt. Sorepex was based in Liechtenstein but apparently run to a large degree from France. The BAT/Sorepex relationship closely resembles that between BAT and other well-known regional smuggling middlemen, such as Romar in Latin America and SUTL in Asia.⁴⁰



Sorexex provided organization and logistical support for smuggling and a front for BAT, should people begin to scrutinize smuggling activity in West Africa. As one BAT document puts it:

*"One of the main functions of SOREPEX was to allow BAT to keep at arm's length from transit customers—particularly in Cameroon."*⁴¹

That front, however, was only superficial. BAT remained the party in firm control of the smuggling operations:

*"Our objective now is to preserve the 'façade' that Sorexex represents us and the sensitive markets of Togo, Benin, Niger (Unit I) and Equatorial Africa (Unit II) but, at the same time, enable the BAT field force to take over the management of this important business."*⁴²

An example of how BAT exercised control is seen in a 1989 Sorexex letter to senior BAT executive John Ticehurst dealing with contraband sales departing from Malabo to northern Cameroon and Chad. Three transiteers brought the contraband BAT brands across these borders: Sodisa, Mouchili and Bogno. Mouchili and Bogno were provided with extra financial inducements to participate.

<< En fait, c'est la ristourne par la BAT qui a été l'élément décisif pour Mouchili et Bogno, qui recevront chacun:

*Mouchili: 3.000 FCFA par carton
Bogno: 2.000 >>*

"It's the rebate from BAT that was the decisive element for Mouchili and Bogno, who will both receive:

*Mouchili: 3.000 FCFA per carton
Bogno: 2.000 FCFA per carton"*⁴³

BAT did an enormous amount of business with Sorexex. Indeed, in about 1989 BAT provided Sorexex with a rolling credit limit of £5 million (about \$8.2 million U.S. dollars).⁴⁴ In internal discussion BAT described its relationship with Sorexex in West Africa as a "gravey

train."⁴⁵ It was a relationship both companies sought to maintain, leading BAT to alter prices to accommodate Sorexex in its transit operations.⁴⁶

"GT shipments will remain the mainstay of our activity...The Malabo distribution channel will have to be maintained...Maintain a minimum cover level of BHSF [Benson & Hedges Filter brand] via legal imports."

—BAT doc 301773703, 1991

The closeness of the BAT/Sorexex relationship, and the measures BAT employed to keep part of that secret, is seen in this quote from a 1979 memo to file from "JLWC," probably BAT executive John Challiss:

Sorexex/BAT(UK&E) Relationship

*"It is the policy of B.A.T (UK & Export) Limited to support fully Sorexex in the markets of Togo, Benin, Niger and R.C.A. [Central African Republic] Transit. To achieve this support it is necessary to create strategies and a modus operandi fully understood by both parties. The highly political nature of these markets requires any strategies to be flexible, which in turn must result in a constant ongoing dialogue between the two parties. The domicile of M.H.J. Binst and Bongard [both senior Sorexex operatives for Africa] should facilitate such dialogue."*⁴⁷

The sending of sensitive documents to the homes of Binst and Bongard is consistent with a strategy as previously described in this paper of keeping such documents out of the office.

Despite the mutually beneficial relationship between cigarette manufacturers and their regional smuggling agents, problems sometimes arose.

This is to be expected given the frequent opportunities and financial incentives to divert contraband. In one instance, Sorexex sold BAT brands to a transiteer other than BAT's preferred

transiteer, resulting in parallel deliveries to two illegal sellers smuggling at the same border town. The competition between the two caused problems with what had previously been accommodating border officials. In response to the conflict between competing BAT-brand smugglers, the officials closed the border to smuggled BAT cigarettes.^{48,*}

Cameroon and the Smuggling Pipeline to Central Africa

The cigarettes smuggled into Cameroon were not just for sale there. Cameroon also served as a major conduit for smuggling BAT cigarettes into central Africa, most notably into Chad and the Central African Republic. Some of the contraband even crossed several countries, finally ending up in Sudan. The operations were carefully monitored by BAT and for the most part organized by Sorexex.

* Other company documents show that BAT's American subsidiary, Brown & Williamson, also had a direct relationship with Sorexex that it terminated in 1986, apparently to run its own West African operations. [BAT Bates Nos. 301627202-204 and No. 301612514.]

Two separate smuggling routes operated between Cameroon and Sudan. In August 1990 a senior BAT executive, John Ticehurst, described the primary dry-season smuggling route as trucking BAT's contraband cigarettes through northern Cameroon and then smuggling them into Chad by crossing the border at N'Djamena. Much of the contraband BAT brands were then taken onwards to Sudan, exiting Chad at the frontier town of Adre.⁴⁹ The level of BAT's oversight of these routes is suggested by the fact that Ticehurst monitored the prices of the smuggled cigarettes not only by the case, as they would be sold to transiteers, but also by the pack, as they would be sold to vendors or smokers.⁵⁰

A second, more southerly route from Cameroon to Sudan ran from Douala in Cameroon to Bangui in the Central African Republic, then onward to Sudan exiting the Central African Republic near Birao. SODISA, a company based in Bangui and a frequent participant in BAT-brand smuggling in the region, moved many of the BAT cigarettes through the Central African Republic.⁵¹ As with the northern route, the contraband was moved by trucks during the dry season. During the wet season, BAT's documents indicate that smuggled cigarettes were shipped by military aircraft, which would suggest some government complicity with the smuggling.⁵²

Some of the logistical challenges faced by Sorexex are presented in a 1988 report Sorexex sent to BAT. It states:

<<...j'ai demandé à Daher de créer un deuxième circuit de vente, parallèle à son circuit habituel, et de négocier directement avec les soudanais...cela doit lui permettre de briser le monopole des commerçants de Birao, tout en les conservant dans son camp (en leur payant une commission et en leur vendant de petites quantités de cigarettes) car ces

gens son indispensables pour négocier le passage de la frontière...>>

"I asked [my transiteer] Daher to create a second sales circuit, parallel to his customary route, and to negotiate directly with the Sudanese...This will enable him to crack the monopoly of the Birao dealers, whilst keeping [the Birao dealers] on his side (by paying them commission and selling them small quantities of cigarettes) because these people are indispensable in negotiating border crossings."⁵³

The level of detail in Sorexex's reports to BAT are indicated by a February 1987 communication from Michel Chevaly of Sorexex to BAT about smuggling into Cameroon:

<<Dans un premier temps, Bogno achètera par lot de 300 cartons: c'est la capacité de son camion, compte tenu des autres marchandises qui "cacheront" les cigarettes. >>

"First, Bogno will buy loads of 300 cartons: that's the capacity of his truck given the fact that there is other merchandise which 'will hide' the cigarettes."⁵⁴

Cameroon: Cigarette Smuggling in a Nutshell

The smuggling of BAT brands in Cameroon is typical of much of the smuggling of major cigarette company brands that has occurred throughout the world. Elements from the smuggling of BAT brands into Cameroon that parallel the documented characteristics of cigarette smuggling in various other countries include:

- Knowledge and assistance of the smuggling activities at the highest levels within the cigarette company;
- Importation of a small amount of legal product to mask the display of smuggled cigarettes and provide an excuse for advertising the otherwise illegal products;

- Centralized entry points for contraband flows;
- Falsification of shipping documents;
- Occasional changes to routing, including the development of new routes as required;
- Competition on the smuggling routes by a (usually limited) number of traders operating outside of the control of the cigarette company;
- Coordination of the upstream smuggling activity with a small number of middlemen—often with longstanding and close ties to the cigarette company—sometimes with meetings to discuss details of the operations including brands, quantities, prices, routing, etc.;
- Use of a larger number of transiteers, especially in so-called GT operations, to physically move the cigarettes across borders; and
- Careful oversight by the cigarette company of the middleman and the transiteers.⁵⁵

It should be noted, of course, that these elements do not necessarily occur together or in all cases.

⁵² See, e.g., the collection of some of the documents re BAT and smuggling in Africa compiled by ASH-UK on its website, <http://www.ash.org.uk/html/smuggling/html/africa.html>, for numerous country references.

⁵³ BAT internal document, unsigned, from file entitled "Africa Unit 2, 1991," BAT Bates No. 301773722-723.

⁵⁴ Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000, www.public-i.org/story_01_020200.htm.

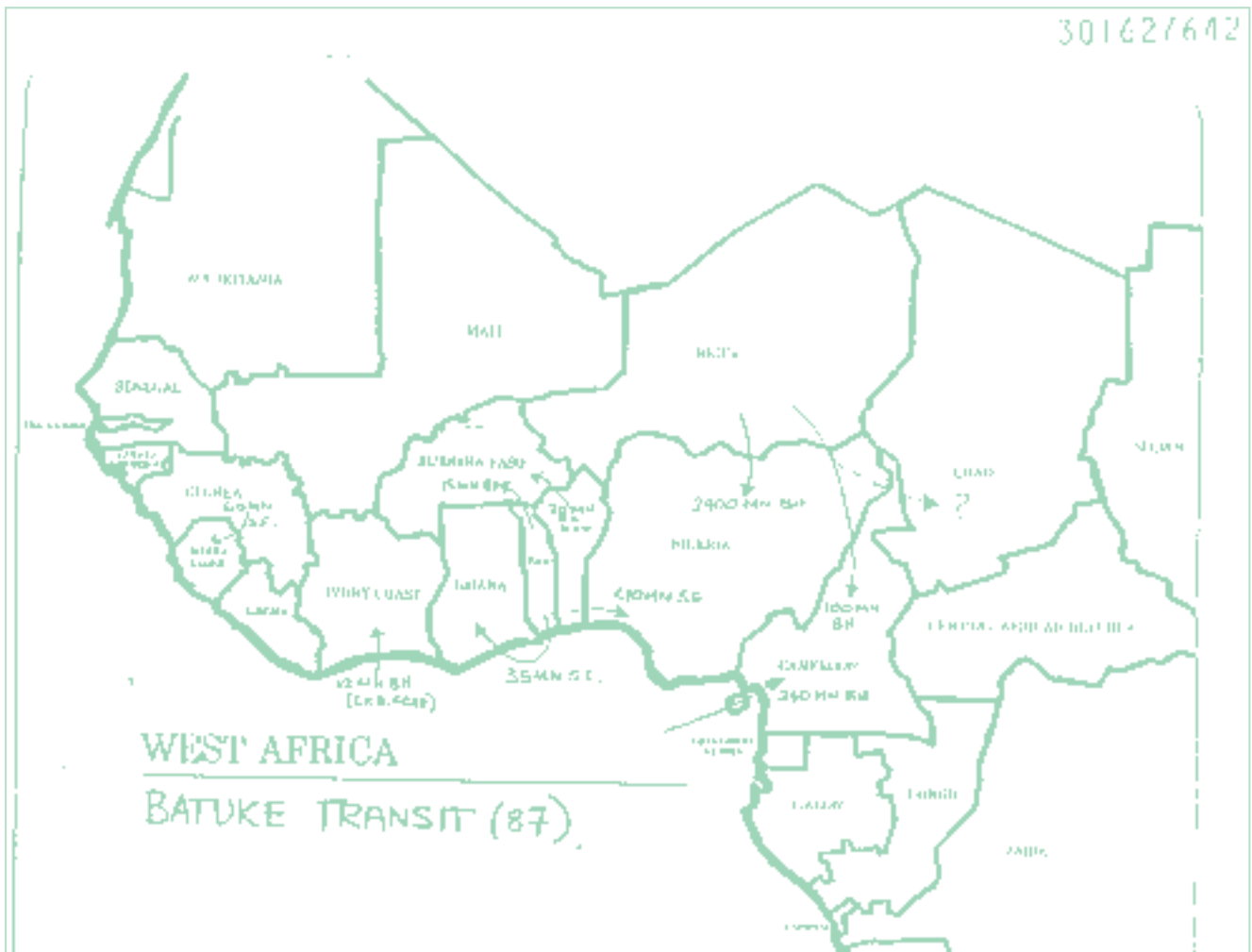
⁵⁵ BAT internal document, unsigned, from file entitled "Africa Unit 2, 1991," BAT Bates No. 301773722-723.

⁵⁶ BAT memo to file, "Visit to Malabo—February 14-15, 1989, JM Ticehurst and M Chevaly," John Ticehurst, 20 February 1989, BAT Bates No. 301773735.

- ³⁷ BAT memo with apparent appendix, Joe Green to Tony Pereria, 01 November 1991, BAT Bates Nos. 301773703-705.
- ³⁸ BAT memo, Joe Green to Tony Pereria, 01 November 1991, BAT Bates No. 301773703.
- ³⁹ Dickey, C. & R. Nordland, "Big Tobacco's Next Legal War," *Newsweek*, 31 July 2000.
- ⁴⁰ Campbell, D., et al., "Paper Trail to Markets of the East," *The Guardian*, 2 February 2000, www.guardian.co.uk/Archive/Article/0,4273,3957775,00.html; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show, 31 January 2000, www.public-i.org/story_01_013100.htm; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers, 2 February 2000, www.public-i.org/story_01_020200.htm.
- ⁴¹ BAT memo to file, "Note on Sorex Meeting, Paris-28th June 1988," John Ticehurst, 05 July 1988, BAT Bates No. 301626935.
- ⁴² BATUKE letter, R Howe to M Binst, 28 April 1988, BAT Bates No. 301626956.
- ⁴³ Sorex letter, M Chevaly to J Ticehurst, undated, BAT Bates No. 301773741.

- ⁴⁴ BATUKE fax, J Green/B Johnston to P Sassoon, 20 November 1989, BAT Bates No. 301626853.
- ⁴⁵ BAT "Secret" memo, R Howe to WJRV Rose, 23 June 1987, BAT Bates No. 301627054.
- ⁴⁶ BAT memo to file, "Minutes of Sorex Meeting, 3/6/87, Cannes," DB Yellowless, 16 June 1987, BAT Bates No. 301627109.
- ⁴⁷ BAT Memo, Sorex/BAT (UK & E) Relationship, 19-07-1979, BAT Bates No. 301627024.
- ⁴⁸ BAT handwritten memo, R Browne to R Cameroon, "BHSF Transit ex CAR and Equatorial Guinea," 03 April 1988, BAT Bates No. 301639050-053.
- ⁴⁹ BAT memo to file, "Meeting with Sorex-Working, 1/7/87," DB Yellowless, BAT Bates No. 301627038.
- ⁵⁰ BAT memo to file, "Notes on Visit to Chad, 16th-18th July 1990," John Ticehurst, 03 August 1990, BAT Bates No. 301612414.
- ⁵¹ BAT handwritten memo, R Browne to R Cameroon, "BHSF Transit ex CAR and Equatorial Guinea," 03 April 1988, BAT Bates No. 301639050.
- ⁵² BAT handwritten memo, R Browne to R Cameroon, "BHSF Transit ex CAR and Equatorial Guinea," 03 April 1988, BAT Bates No. 301639050.

- ⁵³ Sorex letter, M Chevaly to R Bongard with a copy to R Howe of BAT, 25 March 1998, BAT Bates No. 301773794.
- ⁵⁴ Sorex letter from M Chevaly to J Ticehurst of BAT, 01 February 1989, BAT Bates No. 301773741.
- ⁵⁵ These elements are reflected in the other sections of this report and in, e.g., Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000, www.public-i.org/story_01_020200.htm; Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301.htm.



III. Cigarette Smuggling in Latin America:

Philip Morris and Colombia



Parts of the cigarette
smuggling story in
Colombia have already
been made public
through the media,
particularly BAT's
activities.⁵⁶

However, the alleged role of narcotics money and drug traffickers in the smuggling of Philip Morris brands in Colombia has not yet been adequately discussed, despite the presence of allegations to that effect in the lawsuit filed by some of the Governors of Colombia.⁵⁷

As presented below, the smuggling of Philip Morris brands in Colombia bears many smuggling hallmarks seen elsewhere. Competent middlemen were key. There was convoluted ordering and indirect delivery. And much of the contraband flow was funneled through a small number of entry points.

My Belmont or Your Belmont?

In the smuggling lawsuit brought against Philip Morris by the governors of 25 of Colombia's 32 states plus the capital district of Bogotá, the pleadings filed with the court describe two main smuggling routes, one regional and one transatlantic.⁵⁸ The regional route arose due to the pressure of competition and a curiosity of trademark ownership in the region. In the early to mid-1990s, Philip Morris and BAT had a major dispute over who had the rights to sell the Belmont brand in Colombia. A February 2, 1995 BAT memo outlined the company's options should it lose. These included getting its Belmont packs into Colombia via smuggling.⁵⁹

Philip Morris won the trademark battle giving it the exclusive right to sell the Belmont brand in Colombia.

BAT retained its exclusive right to sell Belmont in Venezuela. This conflict in ownership between the two countries created an incentive for one company to smuggle its Belmont into the neighboring country, where it could undersell the legal versions and cannibalize the market share of its competitor. BAT-made Belmonts were soon smuggled into Colombia from Venezuela.⁶⁰ In response, the Colombian governors' court filings stated that Philip Morris began to smuggle its own Belmont cigarettes into Colombia from Ecuador, both directly and via Panama,⁶¹ essentially fighting contraband with contraband.

Cigarettes and Cocaine

The transatlantic smuggling route for other Philip Morris brands includes alleged associations between cigarette smuggling and money laundering for the narcotics cartels, especially in relation to Colombia. The pleadings in the Colombian governors' case state it simply:

"Since at least 1991, the PHILIP MORRIS DEFENDANTS were selling cigarettes to individuals whom they knew were reputed drug smugglers."⁶²

More specifically, the Center for Public Integrity has reported that:

"For more than 50 years, Philip Morris' main distributor in Latin America was the Mansur Free Zone Trading Company, N.V....In August 1994, the United States indicted cousins Eric and Alex Mansur along with 52 others allegedly involved in

a massive drug money-laundering enterprise. The investigation, dubbed *Operation Golden Trash*, targeted an alleged conspiracy that used narco dollars to purchase cigarettes, alcohol and household electronics, which were sold to individuals and businesses in Colombia. The proceeds would then flow to cocaine barons. *Operation Golden Trash* was part of a much larger money-laundering investigation called *Operation Polar Cap*. In the early 1990s, U.S. law enforcement authorities froze numerous bank accounts of tobacco distributors, charging they were part of a drug money-laundering conspiracy."⁶³

Rather than terminate its relationships with these distributors, the Colombian governors contend that Philip Morris simply switched to more secretive sales routes so that the smuggling and money laundering could continue but with a reduced likelihood of detection by law enforcement officials.⁶⁴ Specifically in regard to the Mansurs, Philip Morris told the Center for Public Integrity that it had cut all business ties with them in 1998. The Center reports, however, that the Mansurs still control Superior Tobacco Co. N.V., an Aruba company that manufactures Marlboro Red and

Marlboro 100 cigarettes as a Philip Morris licensee.⁶⁵

Describing these money laundering schemes, a lawyer for the Colombian Governors stated in court on November 27, 2000 that "It's a matter of taking the money from the money launderer who initially wrote the checks, through the Philip Morris distributor, through the bank of that distributor, and up to Philip Morris."⁶⁶

As described in the Colombian lawsuit and elsewhere, the alleged smuggling activity of Philip Morris in Colombia illustrates how a major multinational cigarette company



worked with narcotics dealers. Cigarette smuggling offers a money laundering opportunity for drug dealers. Cocaine profits could be used to purchase cigarettes, which in turn could be quickly sold at a handsome profit and generate the appearance of legitimacy.⁶⁷ Narcotics dealers could be excellent smuggling middlemen: they have a ready supply of cash; they have the institutional capacity to maintain illegal distribution channels; and they have no qualms about smuggling an otherwise legal product.

“In fact, PHILIP MORRIS has moved the records concerning many of its illegal activities worldwide to Switzerland so as to escape the surveillance of the governments which are victimized by PHILIP MORRIS’ illegal activities.”

—Colombian Governors’ Lawsuit against Philip Morris et al., 2000

The Long Route to Bogotá

The smuggling process began with verbal orders for cigarettes being placed with Philip Morris agents in remote offices. According to Court papers, the orders were then passed on to a Swiss company, Maraval. Switzerland was convenient for its company secrets laws:

“The PHILIP MORRIS DEFENDANTS made arrangements by which smugglers and those who distributed to smugglers could pay for their cigarettes in Switzerland so as to avoid detection of these payments. In fact, PHILIP MORRIS has moved the records concerning many of its illegal activities worldwide to Switzerland so as to escape the surveillance of the governments which are victimized by PHILIP MORRIS’ illegal activities.”⁶⁸

The governors go on to say that a second Swiss company, Weitnauer, arranged delivery of the contraband Philip Morris cigarettes. Providing further detail, the Center for Public Integrity has reported that:

“Philip Morris documents from January 1993 identify Weitnauer as a Philip Morris customer dealing in ‘various DF’ markets, an apparent reference to duty-free markets. Thompson, the RJR sales manager convicted of smuggling, said Weitnauer was one of ‘the most widely used customers

servicing the southern borders black market. They are financially encouraged to penetrate the border through the guise of normal duty free operation.” Weitnauer was also listed in BAT documents as a “general trade” and “transit” client, though in the 1980s BAT refused to do any further business with Weitnauer apparently because the company was diverting cigarettes beyond BAT control.”⁶⁹

According to the Colombian Governors’ complaint, Marlboro cigarettes, made in the United States and ultimately destined for Colombia would be first shipped from Miami, Florida, across the Atlantic Ocean to The Netherlands. In later times, the point of entry in Europe was changed to Belgium to take advantage of what may have been lax port control. Maraval would then be paid for the

cigarettes. After payment, the cigarettes would be shipped back across the Atlantic, likely to either Aruba or Panama, where false paperwork would permit redirection of the cigarettes into Colombia.⁷⁰ For example, a 1998 invoice shows that the Swiss Maraval company billed the Mansur-owned Marlex SA company for the sale of almost \$500,000 worth of U.S.-made Philip Morris cigarettes.⁷¹ The governors’ lawsuit states that this circuitous route was designed to distance Philip Morris from the ultimate smuggling of the cigarettes into Colombia and make it harder for enforcement officials to distinguish between legal and illegal shipments.⁷²

According to the documents, one of Philip Morris’s main distributors within Colombia was Santander Lopesierra, a former Liberal Party Senator. Lopesierra is also named in a U.S. federal court affidavit filed in support of the previously mentioned money-laundering indictments as being part of a scheme to launder narcotics dollars through shipments of various goods bound for Colombia.⁷³

Company Perks for the Smugglers

The pleadings in the Colombian case allege that these smuggling operations were so beneficial to Philip Morris that smugglers were granted particularly favourable financing terms. These terms permitted later payment on the delivered contraband than would be offered to legitimate cigarette traders. With these incentives, the volume of smuggled cigarettes moving into Colombia was kept very high.⁷⁴

It is also alleged that BAT also funneled much of its Colombia-bound contraband through the Caribbean (especially Aruba) and Panama, with its Aruba-based distributor, Romar, playing a key role.⁷⁵ Both Philip Morris and BAT are alleged to have entertained the smuggling middlemen:

*"[T]he BAT DEFENDANTS treated the executives of Romar like regular, valued customers. Executives from Romar were invited to travel to London to meet with BAT executives, attend dinners with them, and even attend the tennis matches at Wimbledon with BAT executives."*⁷⁶

These events are also reflected in a 1992 BAT letter to one of the Romar executives who accepted the invitation to Wimbledon.⁷⁷ Moreover, the Colombian governors' case states that in 1990, high level Philip Morris executives—including Mark Goldberg, a senior vice president, and Hal Quick, the head of duty free sales for Philip Morris—attended a function arranged for the company's alleged Colombian smuggling clients.⁷⁸

Hiding the Evidence

The Colombian pleadings capture one of the inherent challenges in proving cigarette smuggling cases: the lack of a fully comprehensive documentary record. As noted earlier, companies have become more careful about what they put on paper, and Philip Morris and the other U.S. cigarette companies appear to have initially taken much more care than BAT to avoid unnecessarily disclosing any incriminating documents not specifically required by the various tobacco lawsuits. The pleadings further allege that:

*"PHILIP MORRIS' own records show that in the 1990s, the PHILIP MORRIS DEFENDANTS destroyed records, including correspondence and order files, related to "Zeinal," "Mansur Trading" and others—all entities that PHILIP MORRIS has openly described as its "tax-free" customers."*⁷⁹

BAT also attempted to avoid detection of its Colombian smuggling operations through the removal of documents, in one documented case spiriting them out of the country by the third quarter of the year:

*"The Bogota office will be clean by Q3/94 in reference to DNP information. Management of DNP will be in Caracas."*⁸⁰

Nevertheless, various documents still remain that implicate both Philip Morris and BAT in cigarette smuggling, including documents that serve as the foundation for the Colombian governors' lawsuit and many that have been revealed in earlier reports.⁸¹

Adding to the Competition: Smuggled Brown & Williamson and RJR Brands

BAT's documents show that brands from its United States subsidiary, the Brown & Williamson Tobacco Company, were also smuggled through Aruba. Starting as early as 1985, these cigarettes were probably destined for Colombia.⁸² The minutes of a February 1994 coordination meeting of the BAT Group, pertaining to an item 36 dealing with "Colombia/Paraguay" records, state that:

*"B&W will hand over these two markets to BATCO by March 1...B&W and BATCO will closely coordinate business in Panama with [alleged smuggling middleman] Pangelli [sic]. Otherwise, the B&W border business in South America transfers to BATCO."*⁸³

BAT intelligence reports also indicate that R.J. Reynolds was involved in Colombian cigarette smuggling, as well. A 1994 assessment of the Colombian market, undertaken by BAT's Venezuelan subsidiary, says:

*"[R.J. Reynolds] launched Winston, Camel F.F. [full flavour] and Lights, Yves Saint Laurent, Salem in D.P. [duty paid market] in 1993...Reynolds works in the D.N.P. [duty not paid] channels with Doral F.F., Lights and Menthols in low price segments."*⁸⁴

Lessons Learned

The Colombia lawsuit illustrates what can occur if smuggling is permitted to grow unchecked. Smuggling of one cigarette company's brands can lead to smuggling by another, and then another. Cigarette smuggling becomes commonplace, enforcement can become lax and often corrupt, so that smugglers can act without fear of government interference. In the process, smuggling takes desperately needed cigarette-tax revenues away from the government. Colombia, for example, reportedly lost \$305 million per year.⁸⁵ This reduction in tax revenues, especially in developing countries, can lead to a reduction in available resources for public education, law enforcement and the public health care system. Indeed, cigarette-tax revenues lost to smuggling often result in direct cuts to national efforts to reduce smoking and its attendant harms and costs.⁸⁶

Today, Colombian tax and customs authorities report that they are still seizing large quantities of smuggled cigarettes, despite signed agreements with Philip Morris and BAT pledging to do everything in their power to halt the illegal trade.⁸⁷

⁵⁶ See, e.g., Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinationals Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm; Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301.htm; Marsden, W., "The Mob and Big Tobacco," *Montreal Gazette*, 4 March 2001, www.montrealgazette.com/news/pages/010303/5033773.html; Colombian Governors Lawsuit vs. Philip Morris et al.; Maguire, K. & D. Campbell, "Tobacco Giant Implicated in Global Smuggling Schemes," *The Guardian*, 31 January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956951,00.html.

- ⁵⁷ *Colombian Governors v. Philip Morris Companies, Inc. et al.*, U.S. District Court, Eastern Distr. Of New York, Docket No. 00 Civ. 2881 (NGG), filed 08 November 2000, www.public-i.org/download/AmdendedColombiaSuit.pdf. See, also, Farah, Douglas, "Money Cleaned, Colombia Style: Contraband Used to Convert Drug Dollars," *The Washington Post*, 30 August 1998.
- ⁵⁸ *Colombian Governors v. Philip Morris Companies, Inc. et al.*, U.S. District Court, Eastern Distr. Of New York, Docket No. 00 Civ. 2881 (NGG), filed 08 November 2000 [hereafter "Colombian Governors Lawsuit Against Philip Morris et al."].
- ⁵⁹ Beelman, M., et al., *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, [BAT document excerpt available at www.public-i.org/story_01_013100_ref.htm].
- ⁶⁰ Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm; Maguire, K. & D. Campbell, "Tobacco Giant Implicated in Global Smuggling Schemes," *The Guardian*, 31 January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956951,00.html.
- ⁶¹ *Colombian Governors Lawsuit vs. Philip Morris et al.*, paragraph 37(s).
- ⁶² *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(i).
- ⁶³ Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_05_030301.htm. See, also Marsden, W., "The Mob and Big Tobacco," *Montreal Gazette*, 4 March 2001, www.montrealgazette.com/news/pages/010303/5033773.html.
- ⁶⁴ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(j).
- ⁶⁵ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001.
- ⁶⁶ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001.
- ⁶⁷ See, e.g., Farah, D., "Money Cleaned, Colombia Style: Contraband Used to Convert Drug Dollars," *Washington Post*, 30 August 1998.
- ⁶⁸ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(v).
- ⁶⁹ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001.
- ⁷⁰ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(m), (n) and (t). See, also, Farah, D., "Money Cleaned, Colombia Style: Contraband Used to Convert Drug Dollars," *The Washington Post*, 30 August 1998.
- ⁷¹ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001 [invoice available at www.public-i.org/download/tob_maraval.pdf].
- ⁷² *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(m), (n) and (t).
- ⁷³ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001.
- ⁷⁴ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(l).
- ⁷⁵ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm; *Colombian Governors Lawsuit vs. Philip Morris et al.*, paras. 37(m) & (r).
- ⁷⁶ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 38(hh).
- ⁷⁷ BAT letter from BAT executive Watson to Romar's Harris, 15 June 1992, BAT Bates No. 301675006. Available from the Center for Public Integrity website at <http://www.public-i.org/download/HarmstoWimbledon.pdf>.
- ⁷⁸ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(k).
- ⁷⁹ *Colombian Governors Lawsuit vs. Philip Morris et al.*, 37(ii).
- ⁸⁰ BAT memo to file, "Visit Notes, Colombia Meeting-23 February 1994," this copy belonging to Keith Dunt (who was in attendance), Claudio Figueiredo, 16 March 1994, BAT Bates No. 503891629.
- ⁸¹ *Colombian Governors Lawsuit vs. Philip Morris et al.* See, e.g., Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301.htm; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm.
- ⁸² B&W internal memo, GE Kirschner to J Anders et al., copied to Tome Whitehair, 25 February 1985, B&W Bates No. 464022683.
- ⁸³ BAT internal document, "Minutes of Group Coordination Meeting, February 8 & 9- London," unsigned, 1994, B&W Bates No. 670943747.
- ⁸⁴ BAT internal document, "Country Competitive Report: Colombia 1994," unsigned, undated but faxed on 06 May 1994, BAT Bates No. 500151875.
- ⁸⁵ Souder, E., "Philip Morris to Help Colombia Halt Cigarette Smuggling," *Dow Jones News Service*, 20 March 2000.
- ⁸⁶ See, e.g., Non-Smokers' Rights Association of Canada, *Cigarette Smuggling: A Global Weapon against Public Health Measures*, 5 April 2001, www.nsr-aadnf.ca/english/smuggling.html.
- ⁸⁷ Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001.

IV. Cigarette Smuggling in Asia:

BAT and Bangladesh



The smuggling operations to bring British American Tobacco's brands into Bangladesh have been quite sophisticated and follow many of the patterns seen in dozens of other countries.

As the company's own internal documents show, large volumes of BAT cigarettes have been smuggled into Bangladesh for many years. Although BAT has knowingly fostered cigarette smuggling throughout much of Asia, Bangladesh was a particularly key destination, probably because of its large population, the local preference for British-style cigarettes, and its location adjacent to the burgeoning market for major-brand cigarettes in India.⁸⁸

Smuggling from Bangladesh into India is alluded to in a 1991 correspondence between senior BAT executive Bruce Davidson and the Working Office:

*"In answer to your questions on India: (1) There is clearly potential of 555 and B&H and also existing demand. Whilst there is some GT from neighbouring countries it is very small relative to the size of the market; this is due to a vigilant policy enforced by Indian authorities—whilst we continue to explore routes I do not foresee much development of this business..."*⁸⁹

The State Express 555 and Benson & Hedges brands identified as moving into India from its neighbours are precisely the BAT brands being smuggled into Bangladesh. A 1991 document listing some of the BAT-brand contraband flows in the subcontinent indicates that 25 times the volume of these two BAT brands were smuggled directly into Bangladesh than were smuggled into Afghanistan, supporting

the theory that Bangladesh functioned as a supplier. This is further supported by the fact that the volumes of smuggled BAT brands in Bangladesh were often orders of magnitude larger than their legal duty-free volumes going elsewhere in the subcontinent.⁹⁰

Smuggling as Part of BAT's Everyday Operations

So integrated was smuggling into the marketing of BAT brands in Bangladesh that the company conducted monthly product quality ratings of smuggled cigarettes, quantifying the quality of both the cigarette and the appearance of the package. Heading the list in mid-1991 were the Benson & Hedges and State Express 555 brands, both identified by BAT as smuggled brands.⁹¹

The fact that BAT oversight of Bangladesh cigarette smuggling was a regular part of its business operations is revealed further by the casualness of a 1994 memo by Patrick O'Keefe, then a senior BAT executive in England. In the memo, he discusses a company reorganization that included the transfer of responsibility over Bangladesh and Afghanistan smuggling from one regional group to another.⁹²

BAT's activities in Bangladesh are illustrated by its careful monitoring and monthly reporting of the smuggled volumes of its own brands as well as those of other cigarette companies, including Philip Morris. A January 1994 monthly report on BAT's Bangladesh activities is typical:

"GT volume was estimated at only 16 million against 35 million last month...Brandwise breakdown is as follows:

B&H	15.30 Million
SE 555	0.14 Million
Marlboro	0.14 Million
Others	0.60 Million" ⁹³

BAT also endeavoured to control the price on its smuggled cigarettes in the subcontinent. The company apparently did this through the International Brand Group (IBG) at BAT's central headquarters in England rather than from anywhere within Bangladesh or Asia. A 1993 memo regarding BAT's John Players Gold Leaf brand says: "Pricing of transit brands are to be advised by IBG."⁹⁴ On the ground wholesale and retail selling prices of BAT's smuggled cigarettes, with a brand-by-brand breakdown, were reported to the head office, both for the point of entry, Chittagong, and in Dhaka. In January 1991, BAT's local manufacturing company reported to BAT head office on the price of smuggled cigarettes with prices listed in Bangladeshi taka (Tk):

"The market price structure in December '90 for transit products was as follows:⁹⁵

Wholesale		
	Chittagong	Dhaka
B&H	Tk 300/200s	370/200
SEFK	280/200s	340/200s
PGL	200/200s	N.A.
CAPSTAN	170/200s	N.A.

Retail		
	Chittagong	Dhaka
B&H	Tk 35/20s	45/20s
SEFK	33/20s	40/20s
PGL	30/20s	N.A.
CAPSTAN	24/20s	N.A.

Along with price, BAT apparently was also able to shut off the supply of its contraband brands for Bangladesh at will. In January 1991 R. Duncan from BTC (Bangladesh Tobacco Company) writes:

"Had spoken to Mike Scott of BATUKE re PGL [Players Gold Leaf] transit in November. Possibly as a result, no further quantities of PGL seem to have entered the market."⁹⁶

BAT's Asian Smuggling Alliance

Throughout the period described by the documents, SUTL, a Singapore-based trading company, served as the primary middleman for the smuggling of BAT brands into Bangladesh:⁹⁷

"The nature of this [transit] business brings apparently paradoxical requirements of an arm's length approach and close supervision. [BAT] must be able to disassociate itself from direct involvement in parallel imports. Nevertheless, indiscriminate sourcing can and does lead to potentially embarrassing problems. This conflict can be resolved by maintaining close control over the export agent."⁹⁸

The BAT/SUTL relationship was decades long and included some employees working at the two companies at different times. In addition, there were regular meetings and reporting.⁹⁹ The cigarette quantities were enormous, with SUTL delivering BAT cigarettes from Afghanistan to China. Reports suggest that 22% of the entire production of BAT's export arm, BATUKE, went into just two smuggling channels, including the one run by SUTL out of Singapore.¹⁰⁰

According to BAT documents, SUTL ran both legal and contraband distribution for BAT in numerous Asian countries. A 1988 internal BAT document on a redefinition of market responsibilities in Asia describes this

in simple terms: "SUTL, as accredited agents, have de facto responsibility for most end markets, legal or transit."¹⁰¹

BAT's internal documents attest that these smuggling operations proceeded with the knowledge and often the direct involvement of very senior executives within both BAT and SUTL, including BAT's regional director for Asia-Pacific, the head of BAT's marketing department, senior marketing managers, and BAT area managers in the Far East. BAT executives were even expressly put in charge of various GT (i.e., smuggling) operations. For example, BAT's senior management for Asia attended a meeting with SUTL representatives in February 1994 where SUTL was encouraged to expand their overland smuggling routes into China, with BAT China covering duty-paid imports.¹⁰² Another BAT memo to Barry Bramley, chairman of BAT, discussed the planned follow-up to a "Far East trip" by Sir Patrick Sheehy, chairman of BAT Industries (BAT's parent company):

"I detail below a suggested list of issues for discussion with Sir Patrick and Ulrich Herter [BAT's Managing Director] in April...

- Follow-up on SPS [Sir Patrick Sheehy's] Far East trip
- clarification of management responsibility
 - Indo-China
 - Duty Free
 - Transit."¹⁰³

Umbrella Operations: Legal Cover for Illegal Smuggling

In Bangladesh, the smuggling of BAT brands was enhanced by what BAT sometimes called "umbrella operations," whereby small amounts of some BAT brands were legally imported into a country in order to cover for much larger amounts that were smuggled in at the same time. Umbrella operations were a typical

smuggling mechanism in numerous countries in Asia, and were exploited by BAT and other major cigarette companies throughout the world. In such operations, the legal imports serve as legal cover for legal advertising campaigns that actually support the sale of the smuggled version of the brands. Moreover, the simultaneous appearance of legal and contraband supplies makes it possible for vendors to openly display and sell the contraband versions of various brands while appearing to be completely legal sellers.

In many cases, such as in Bangladesh with BAT, there is little benefit to the companies from their legal imports except as a cover for their illegal sales. As one internal BAT document puts it:

“Legal imports [of BAT brands] would attract high enough duty to

make them difficult to sell, but there is indication that ‘legal’ imports could hide large scale transit activity.”¹⁰⁴

BAT’s situation in Bangladesh is a bit more complex than in many other countries owing to the existence of

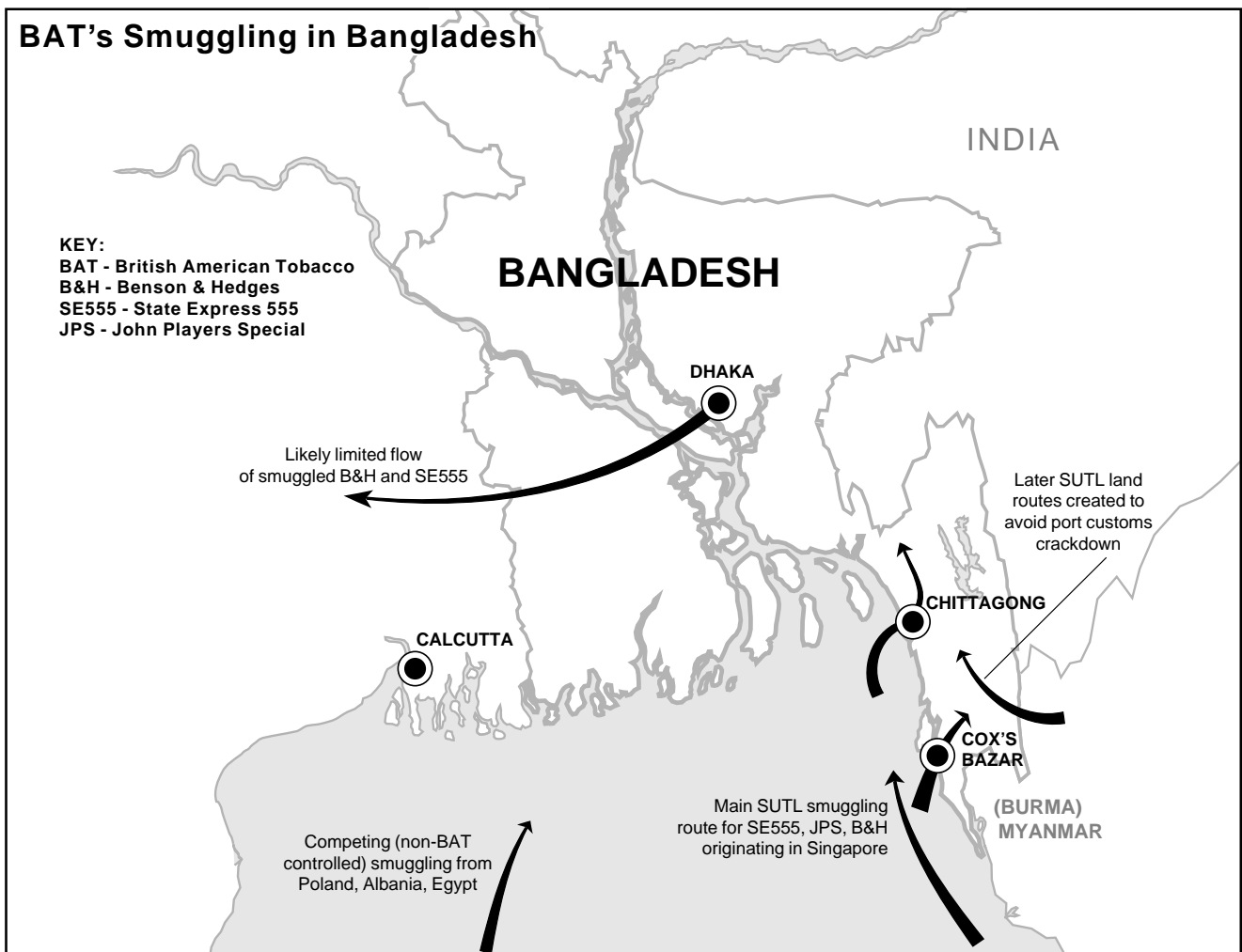
a local BAT cigarette manufacturing subsidiary, Bangladesh Tobacco Co. (or BTC), as well as both legal imports and illegally smuggled cigarettes. Accordingly, there is an intimate interplay of legal and smuggled cigarettes in BAT’s overall marketing and distribution plans in Bangladesh. In 1992, BTC reports that it has increased its

legal production of BAT-brand cigarettes in anticipation of expected declines in the smuggled supply of the same brands due to an anticipated closure of the main entry point for smuggled BAT cigarettes:

“...‘legal’ imports could hide large scale transit activity.”

–BAT doc. 400657565, 1993

“Packing efficiencies were below target and the average for the year due, in large part, to the deliberate delay in maintenance on the HLPs [cigarette production equipment] to build up and maintain stocks in preparation for the closure of Chittagong and the clampdown on transit.”¹⁰⁵



BAT apparently undertook a rather complex economic analysis to make the decision whether to smuggle or not and to develop the optimal mix of smuggled and legal cigarettes. At least with respect to Benson & Hedges in 1993, BAT concluded that from an economic perspective smuggling the brand into Bangladesh was the best way to go. However, it also concluded that political factors outweighed the economic advantage of smuggling that brand. The desire for a consistent supply uninterrupted by seizures at entry points, as well as various other factors, tipped the balance in favour of local, legal manufacture in Bangladesh.¹⁰⁶

Altering actual production volumes of legal cigarettes, as described above, is an effective, if blunt, method of changing the mix of contraband and legal sales. However, BAT also employed more artful strategies. For example, senior BAT executive Simon Smith describes using a price increase to fine-tune the mix between legal Benson & Hedges and contraband versions being brought in to Bangladesh by SUTL:

*"As far as I am concerned we can go ahead as we always have the option to increase the price [of legal B&H] if SUTL volume drops off too far. Suggest we review formally every 3 months."*¹⁰⁷

Increasing the cost of the legal Benson & Hedges would make the smuggled Benson & Hedges being supplied on BAT's behalf by SUTL even cheaper, comparatively, which would likely increase their appeal to potential customers.

Smuggling as a Political Strategy

One of the ways cigarette companies strategically use cigarette smuggling is to try to persuade governments to reduce cigarette taxes or import duties

or at least not raise them.* At the very same time that BAT was involved in the smuggling of its brands into Bangladesh, the company made representations to the government that cigarette taxes needed to be reduced in order to protect legal sales from encroachment by smuggled contraband, and to prevent an erosion of government revenues from its taxes on legal sales. For example, in a 1994 letter to the Chairman of the Bangladesh National Board of Revenue, BAT wrote:

*"There is a real risk that the sales volume of [legally sold] STATE EXPRESS 555 will continue declining. This decline is directly related to the price increase that was necessary after the June excise increase...The declining volumes of [legally sold] STATE EXPRESS 555 will continue to reduce Government revenue and if the current trend continues, loss of Revenue from this one brand is likely to exceed Tk. 500 mn in financial year 1994/95... Furthermore our experience of cigarette markets around the world shows that once smuggled cigarettes become established it is virtually impossible to reverse the trend."*¹⁰⁸

Of course, the letter did not disclose BAT's influence over whether legal State Express 555 sales would continue to decline, nor did it explain how BAT's own actions and decisions played a key role in the smuggling reality BAT had experienced and was reporting.[†]

* As noted earlier, cigarette taxes increase both legal and illegal cigarette prices, which reduces smoking levels and the number of packs sold, which reduces the cigarette companies' sales revenues and profits.

† It is also important to note that countries that have reduced their cigarette tax rates in order to reduce smuggling (and at the urging of the cigarette companies)—such as Sweden and Canada—have actually experienced a net decrease in net tax revenues because the tax cut reduces revenues more than any increase in legal sales increases them. [See, e.g., Joossens, et al., "Issues in the Smuggling of Tobacco Products," in Jha & Chaloupka, *Tobacco Control in Developing countries*, 2000.]

Without such full disclosure, the companies' anti-tax arguments sometimes succeed, as indicated by an earlier report on BAT's lobbying of the Bangladesh government, which stated: "We have now heard that the Government have agreed to amend the excise rates in line with our proposal."¹⁰⁹

BAT's related ability to control the volume of its legal sales through its smuggling efforts is reflected in a February 1992 internal note from Trevor Bates, BAT statistician, to Norman Davis, BAT territorial director, regarding State Express 555 in Bangladesh. Shipments carried by SUTL, described in the documents as transit, were carefully tracked by BAT on a month-by-month basis. Not surprisingly, they move inversely with the legal sales: legal sales go up when contraband sales go down and vice versa.¹¹⁰

Smuggling Routes into Bangladesh

BAT maintains worldwide production facilities, and the company's internal documents are replete with analysis regarding where at any given time the supply of a particular brand for a specific country might be sourced. In regards to BAT's smuggled cigarettes, the source country of a particular brand often switched from one country to another. Overall, however, it seems that a large percentage of BAT's contraband brands that ended up in Bangladesh were originally made in BAT's Southampton factory, purportedly for legal export by BAT's export group, BATUKE.

During the late 1980s and early 1990s, these cigarettes—along with others made in various regional BAT facilities—were shipped by BATUKE to Singapore. From what is known, the likely route SUTL arranged for the Bangladesh-bound contraband BAT cigarettes was to go from Singapore by ship along the Strait of Malacca and up the east side of the Adaman

Sea before entering Bangladesh at either Cox's Bazaar or Chittagong. SUTL also arranged land routes from Singapore, apparently via Burma, with direct BAT concurrence. For instance, BAT's company plan for 1994 to 1998 for the Asia-Pacific region states:

"It is anticipated that supply will continue to be a major problem in Bangladesh during 1994 as experienced in both 1992 and 1993. The basic reasons continue to be as follows:

(a) Increased customs surveillance in Chittagong/Cox's Bazaar.

(b) Border confrontation between Bangladesh and Myanmar over the Rohingya Muslim refugee crisis...

"During late 1993 and early 1994, SUTL will strive to improve this situation by developing land routes via Myanmar and optimizing duty-free leakage."¹¹¹

The smuggling of BAT brands into Bangladesh was very successful. However, there could be problems between competing smugglers. In 1991, BAT's local Bangladesh subsidiary, BTC, faced this problem and voiced a complaint to other companies in the BAT group:

"During discussions, senior BTC management expressed their view that other companies in the Group should not be allowed to transit PGL [Player's Gold Leaf] in Bangladesh as this would create serious problems for them."¹¹²

What is not known is what the head office in London did. What is clear from this example, and many others, is that high-level executives in BAT were made aware of the many players involved in the smuggling of their brands in Bangladesh and throughout the region. As the above quote indicates, BAT had the ability to decide who would be allowed to smuggle BAT brands into specific countries and who would not.

⁸⁸ Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000, www.public-i.org/story_01_020200.htm.

⁸⁹ BATUKE memo to file, B Davidson to Working office, "India," 15 May 1991, BAT Bates No. 301555070.

⁹⁰ BAT internal memo with appendix, "SE555," Andrew Suszynski to Normal Davis, BAT Bates No. 500030591.

⁹¹ BTC memo, Bangladesh Tobacco Co. to BAT, "Comparison of July '91 and August '91, PQ Rating for Selected Brands," author: "MJK," undated, BAT Bates No. 400093288.

⁹² BTC "Restricted" memo, RMH Duncan to BAT (stamped received by Trevor Bates), "Monthly Review for December 1991," 12 January 1992, BAT Bates No. 503932405.

⁹³ BTC memo, R Accorda to BAT (likely received by Trevor Bates), "Monthly Review for January 1994," 20 February 1994, BAT Bates No. 500081068.

⁹⁴ BAT memo, MR Barnes to J Lim et al., "JPLG Multi-Country Research," 06 September 1993, BAT Bates No. 500284545.

⁹⁵ BTC fax, H Sattar to TM Wilson of BAT, 08 January 1991, BAT Bates No. 503914293.

⁹⁶ BTC fax, RMH Duncan to Tim Wilson of BAT, either 06 or 04 January 1991, BAT Bates No. 503914292.

⁹⁷ Beelman, M., et al., *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000. Campbell, D., et al., "Paper Trail to Markets of the East," *The Guardian*, 2 February 2000, www.guardian.co.uk/Archive/Article/0,4273,3957775,00.html.

⁹⁸ BAT internal document, "Proposed Redefinition of Market Responsibilities" labeled "Secret," undated but attached to a 16 December 1988 letter from Ian Ross to Ronnie Crichton, BAT Bates Nos. 500014652-653.

⁹⁹ See, e.g., BAT Internal Report, 17 September 1992 ["BATUKE commenced supplied to SUTL in 1977 for markets not supplied via STC [BAT subsidiary, Singapore Tobacco Co.]: Bangladesh, Laos, Cambodia and Vietnam."] BAT Bates No. 500045604.

¹⁰⁰ Beelman, M., et al., *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000.

¹⁰¹ BAT internal document, "Proposed Redefinition of Market Responsibilities" labeled "Secret," undated but attached to a 16 December 1988 letter from Ian Ross to Ronnie Crichton, BAT Bates No. 500014650.

¹⁰² BAT memo to file, R Duncan, "Notes of Meeting with SUTL at SUTL Offices in Singapore, 24th February 1993," 25 March 1993, BAT Bates No. 500045568.

¹⁰³ BAT internal memo marked "Restricted", P Adams to B Bramley, Chairman of BAT board, "Visit of Sir Patrick Sheehy," 11 February 1994, BAT Bates No. 500017305.

¹⁰⁴ Greig letter to Fry of BTC with copy to N Davis of BAT, 26 May 1993, BAT Bates No. 400657565.

¹⁰⁵ BTC "Restricted" memo, RMH Duncan to BAT (stamped received by Trevor Bates), "Monthly Review for December 1991," 12 January 1992, BAT Bates No. 500081403.

¹⁰⁶ BAT memo to file, "Bangladesh, Imports of BHSF by BTC," Bruce Johnston, 17 December 1993, BAT Bates No. 301702099.

¹⁰⁷ Marginalia note on additional copy of document from Steve Smith to David Aitken, 16 December 1993, BAT Bates No. 301702136.

¹⁰⁸ BTC letter, R Accorda to Dr. Akbar Ali Khan, Bangladesh National Board of Revenue, 21 November 1994, BAT Bates No. 600515551.

¹⁰⁹ BTC memo, DS Jones to Ronnie Crichton of BAT, 16 March 1990, BAT Bates No. 503914177, BAT Bates No. 503914177.

¹¹⁰ BAT internal memo with attachment, "State Express: Bangladesh," TR Bates to Norman Davis, 25 February 1992, BAT Bates No. 500030586.

¹¹¹ BAT internal document, "COMPANY PLAN 1994-8: Asia Pacific South/ SUT: Domestic," unsigned and undated, BAT Bates No. 500282756.

¹¹² BTC memo, Imran Hussain apparently to BAT, likely 08 December 1991, BAT Bates No. 503914283.

V. Cigarette Smuggling in Europe:

RJR and Spain

As stated earlier, cigarette companies habitually point to taxation as the cause of cigarette smuggling. R.J. Reynolds Tobacco (RJR) is no exception.



In an April 1998 address, Steven Goldstone, then chairman and C.E.O. of RJR Nabisco, said, speaking of a potential national cigarette tax increase in the United States:

*"I will predict flatly...that if the price hike legislation currently being discussed in Congress is actually implemented, a black market... will occur."*¹¹³

But these attempts to blame tax increases for cigarette smuggling ignore the fact that in some parts of the world cigarette smuggling is more extensive in lower tax countries and more contained in higher tax countries. Spain and the other countries in Europe provide prime examples. While Spain has a more serious smuggling problem than most northern European countries, its cigarette tax rates have been among the lowest in the European Union, as have its cigarette prices.¹¹⁴ The extent of Spain's cigarette smuggling is caused more by the "culture" of smuggling in Spain—which provides both smuggling routes and consumer willingness to purchase smuggled goods—and by the cigarette companies' apparent willingness to take advantage. Absent the organization and supplying of transiteers by RJR and other cigarette companies, Spain's smuggling problem might have been much smaller.¹¹⁵

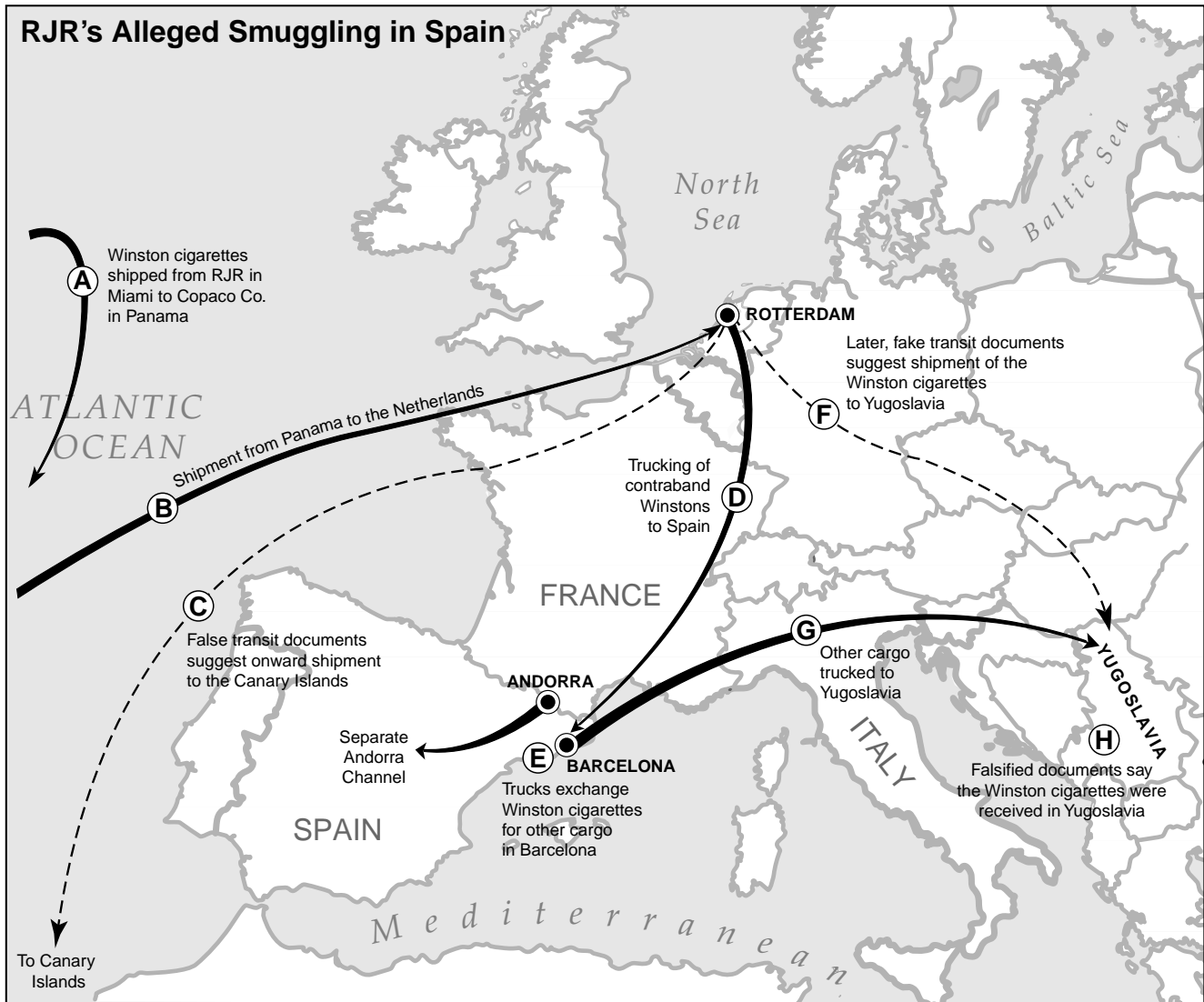
RJR's involvement in smuggling in Spain has been the subject of several extensive newspaper articles, most notably in *The New York Times*. In addition, the European Union recently filed a lawsuit against the cigarette

manufacturers for smuggling cigarettes into and through the EU. The complaint in that case states that RJR was particularly active in the smuggling of cigarettes into Spain.¹¹⁶ While the lawsuit is based on numerous company documents that have already been made public, its discovery phase, which has yet to begin, is expected to yield many more.¹¹⁷

Winston Travels Good Like a Smuggled Cigarette Should

The EU case alleges that RJR carried out a complex plan to smuggle their Winston brand cigarettes into Spain. The pleadings describe an RJR employee, Richard Larocca, as being specifically hired to run RJR's operations in Spain. Further, the complaint describes a Panama-based company, Copaco, as the main middleman organizing the smuggling for RJR. RJR's alleged scheme was to ship cigarettes from the U.S. to Copaco in Panama, which would then ship them onward to Rotterdam in the Netherlands. The cigarettes would then be illegally trucked from the Netherlands to Barcelona, with false documentation stating that the cigarettes were actually being legally sent to the Canary Islands or Eastern Europe.¹¹⁸

The EU pleadings state that transiteers paid RJR executives to ensure that they received a continuing supply of American-made Winston brand cigarettes because these were preferred by Spanish smokers over Winstons made elsewhere.¹¹⁹ According to the



documents filed with the court, RJR went so far as to specially mark certain Winston cigarette cases and packs destined for the Spanish transiteers, and redesigned the cardboard shipping cases of the cigarettes destined to be smuggled so that they could better tolerate the rougher handling inherent in the smuggling routes they would take to Spain.¹²⁰

The EU court documents and *The New York Times* describe Peter Haenggi, operating out of Switzerland, as a longstanding middleman for RJR. Mr. Haenggi has publicly admitted selling many hundreds of millions of cigarettes to transiteers operating out of Panama and Chile who smuggled RJR cigarettes into Spain.¹²¹ Yet RJR

continued to supply Haenggi with cigarettes long after his smuggling activities were made public.¹²²

Global Smuggling Parallels

The EU's description of RJR's smuggling-related efforts in Spain parallels other documented cigarette company involvement in smuggling. RJR's use of a primary middleman placed between the company and the transiteers, for example, is identical to what BAT and Philip Morris did in various other countries and regions. RJR's reported alteration of conditions of sale to assist the smuggling, its alleged direct oversight over smuggling routes and pricing, and knowledge of the company involvement in smuggling among

top-level executives is all similar to the activities of BAT and Philip Morris in Asia, Africa and Latin America. The described use of legal sales of RJR brands to cover for illegal sales is much like the umbrella sales of BAT brands in Bangladesh. The alleged use of false documentation to facilitate smuggling RJR brands into Spain resembles the false documentation in the smuggling of BAT brands in Cameroon. Finally, the link the EU draws between RJR cigarette smuggling in Spain and money laundering from the narcotics trade in Latin America parallels the similar claims pertaining to the smuggling of Philip Morris brands in Colombia.¹²³

Andorra: A Heavily Used Back Door to Spain (and Europe)

Andorra is a very small European principality with limited resources. Though Andorra lacks a significant industrial base or an abundance of agricultural terrain, it does occupy a very strategic location wedged between Spain and France high in the Pyrenees Mountains. For decades, perhaps centuries, Andorra has been a well-known centre for smuggling of all kinds of goods. Lately, Andorra has been associated with significant cigarette smuggling throughout Europe including its neighbor, Spain.¹²⁴

With smuggled brands from each of the major cigarette companies often directly competing for smuggled sales, it is not surprising that the disclosed industry documents show that the companies monitored not only their own but the others' smuggled sales. For example, BAT-brands were comparatively late entering the Andorran smuggling route into Spain, and an internal 1992 BAT document discussed the need to exploit this channel based on the activities of their competition:

"Smuggling is a traditional and highly lucrative trade in Andorra. The growth in transit of cigarettes has increased rapidly in recent years as Andorran supply has replaced that which used to enter Spain by sea... In order to exploit the significant volume opportunities presented by the above trade, all major competitive brands (Marlboro, Winston, Camel, Rothmans etc.) are manufactured under license in Andorra."¹²⁵

As this BAT quote indicates, BAT believed that brands from RJR, Philip Morris and Rothmans were also being smuggled through Andorra.

Other BAT documents describe a BAT-proposed operation that would have involved a sophisticated smuggling

operation from Andorra into Spain, with BAT contracting with MITSA, an Andorra-based company, to manufacture the BAT group brands needed for the smuggling.* MITSA was owned by the prominent Mas family from Andorra in partnership with the local Andorran distributor for Seita, the French national cigarette company. The document describes the BAT cigarette brands to be made by MITSA expressly for smuggling included Lucky Strike, owned by BAT's American subsidiary, Brown & Williamson. The document indicates BAT was pleased with the involvement of Seita technical staff for they felt that would ensure high product quality.¹²⁶ According to the document, BAT planned to ship all the necessary raw materials to MITSA, free of charge, from a BAT factory in the Canary Islands.¹²⁷

According to BAT's plans, after being manufactured in Andorra by MITSA their cigarette brands would be smuggled from Andorra into Spain by a local transiteer company known as Caves Andorranas.¹²⁸ The document indicates BAT also planned to run the now familiar joint legal/illegal import operation. In addition, the document states the MITSA manufacturing facility was to produce about 200 million cigarettes each year operating with just one shift. The BAT document, speaking for its Spanish subsidiary BAT España, describes the intended subsequent distribution in remarkably frank terms:

"It is essential that BAT Espana brands, and in particular LSF [Lucky Strike Filter], are competitively marketed in Andorra to local Spanish tourist visitors...This legitimate business is estimated at approximately 50 mns p.a....There is also significant volume (approximately 30 mns p.a.) of small scale transit (via taxis, daily workers from the Peninsula etc.)..."

* There is no indication in the documents discovered to date whether this operation actually occurred.

"It is desirable that the option to bulk transit LSF ex-Andorra is kept open for the following reasons:..."

- b) *With the forecasted increase in Peninsular tobacco duty it may become more profitable to transit ex-Andorra.*
- c) *One option that BAT Espana has to control the entry of contraband ex-USA (and other sources) is to compete directly by permitting contraband ex-Andorra. In this way the sales and profit are at least kept within the company."¹²⁹*

It is possible that the remaining production, some 120 million BAT cigarettes annually, or 60% of the planned production, would have been destined for what BAT terms "bulk transit" to Spain.

As with the situation in Cameroon discussed previously, senior BAT employees appeared to have been aware of this Andorran smuggling plan. The plan as viewed was found in a BAT company document composed of a 1992 fax sent from Winter J.R.V. Rose, a BAT marketing executive, to Jimmi Rembiszewski, the head of BAT's marketing department. The plan was copied to Philippa Casingena, a BAT lawyer.¹³⁰

¹¹³ Prepared Remarks of Steven F. Goldstone Chairman and CEO, RJR Nabisco to Financial Analysts, 24 April 1998, www.rjrnabisco.com/news/042498g.htm.

¹¹⁴ Joossens, L. & M. Raw, "Cigarette Smuggling in Europe: Who Really Benefits?" *Tobacco Control*, July 1998, <http://tc.bmjournals.com/cgi/content/full/7/1/66>.

¹¹⁵ Joossens & Raw, July 1998; Merriman, D., et al., "How Big is the Worldwide Cigarette-Smuggling Problem," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000; Joossens, et al., "Issues in the Smuggling of Tobacco Products," in Jha, & Chaloupka, 2000; Joossens, L., *Smuggling and Cross-Border Shopping of Tobacco Products in the European Union*, UK National Health Service Health Development Authority & International Union Against Cancer, 2000.

¹¹⁶ *European Union v. RJR Nabisco Inc. et al.*, United States District Court, Eastern District of New York, Docket No. 1-00-06617-NGG, www.tobacco.org/Documents/001103euvpm,rjr.html [hereafter EU Complaint].

¹¹⁷ Bonner, R. & C. Drew, "Cigarette Makers Are Seen as Aiding Rise in Smuggling," *The New York Times*, 25 August 1997; Bonner R., "Europe Inquiry on Smuggled Cigarettes Seeks U.S. Aid," *The New York Times*, 08 May 1998.

¹¹⁸ EU complaint, 32(d).

¹¹⁹ EU complaint, 32(c).

¹²⁰ EU complaint, 32 (g).

¹²¹ Bonner, R. & C. Drew, "Cigarette Makers are Seen as Aiding rise in Smuggling," *The New York Times*, 25 August 1997; EU complaint, 32(t).

¹²² Bonner R., "Europe Turning to U.S. to Fight Illicit Cigarettes," *The New York Times*, 08 May 1998; EU complaint, 32(t).

¹²³ EU complaint; Bonner articles; supra note 3; *Colombian Governors Lawsuit vs. Philip Morris et al.*

¹²⁴ See, e.g., Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301_txt.htm.

¹²⁵ BAT internal document, Winter Rose to Jimmi Rembiszewski, "Secret Andorra Contract Manufacture Proposal," 22 May 1992, BAT Bates No. 503095358-365, see www.ash.org.uk/html/smuggling/html/andorra.html.

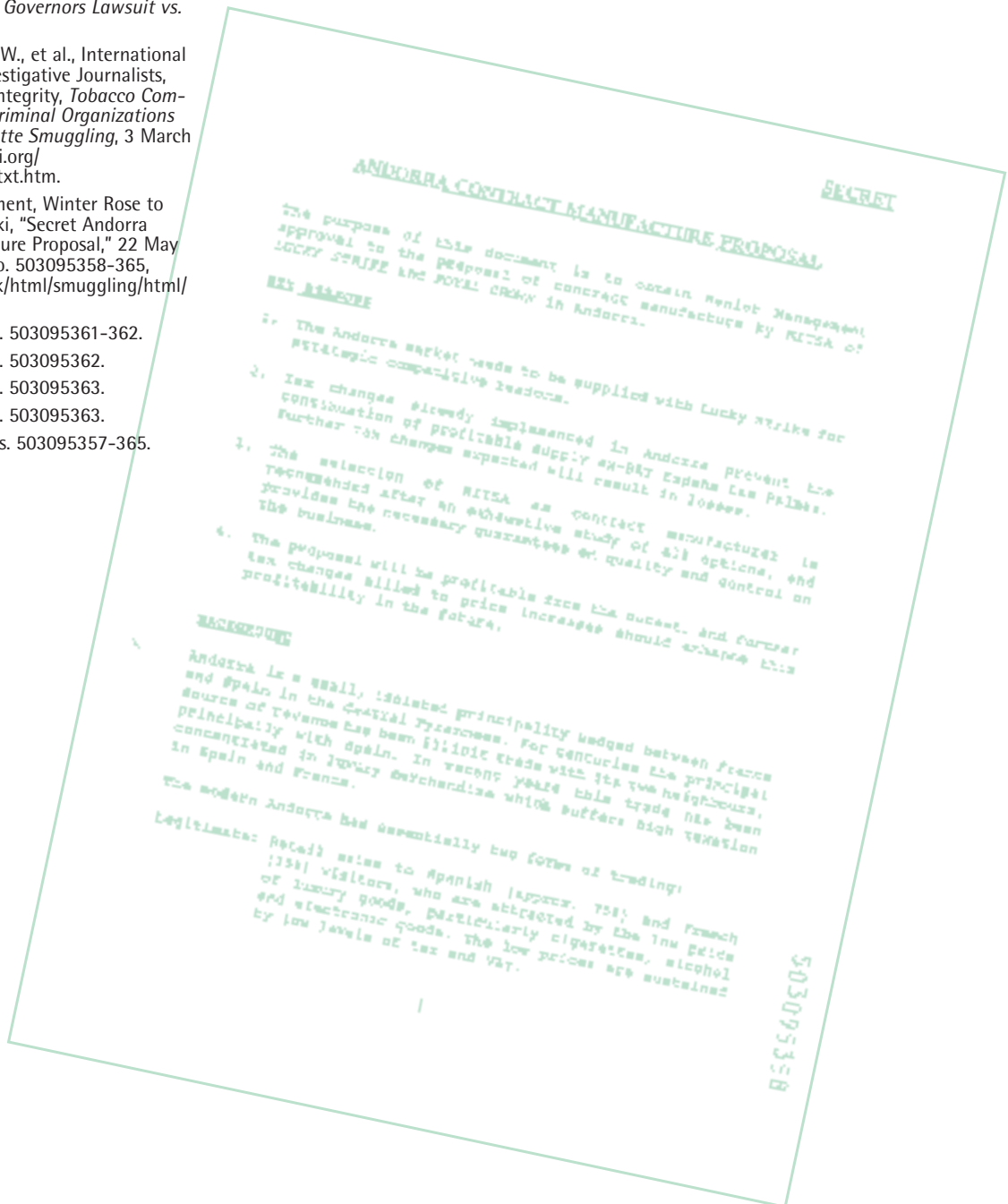
¹²⁶ *Ibid.*, BAT Bates No. 503095361-362.

¹²⁷ *Ibid.*, BAT Bates No. 503095362.

¹²⁸ *Ibid.*, BAT Bates No. 503095363.

¹²⁹ *Ibid.*, BAT Bates No. 503095363.

¹³⁰ *Ibid.*, BAT Bates Nos. 503095357-365.



VI. Additional Smuggling Highlights

Because most of the available evidence of cigarette company involvement comes from documents obtained through lawsuits against the cigarette companies in the United States...

the previous sections of this report have focused on those multinational cigarette companies sued in those U.S. lawsuits, namely Philip Morris, RJR, and BAT, with some references to BAT's U.S. subsidiary, Brown & Williamson, which was also in a lawsuit. It would be impossible to present all the other documented evidence of the smuggling activities of these companies. Instead, this section of the report offers a list of illustrative examples, some of which have not previously been published. Following that are some examples of document references regarding smuggling-related activities by other cigarette companies.

Philip Morris & BAT in Venezuela

As widely reported, cigarette company documents show that Philip Morris and BAT each took steps to increase the smuggling of their brands into Venezuela as part of a price war that began when their prior price-fixing agreement broke down.¹³¹

BAT in India

The Indian government seeks to gain revenue by reselling some of the smuggled cigarettes it seizes through its enforcement efforts in special "custom notified shops." However, a 1994 BAT document reveals that the cigarette company views these shops as a new marketing opportunity for getting its otherwise-restricted brands sold in India. In fact, rather than

simply wait for smuggled cigarettes to be seized by enforcement officials and sent to the custom notified shops for resale, cigarettes were being smuggled directly to the shops, where they could be illegally sold under the cover of the shops' legal sales of smuggled cigarettes that had actually been seized.¹³²

RJR (and Others) in Canada

In the early 1990s, when Canadian cigarette prices were much higher than cigarette prices right over the border in the United States, a large contraband cigarette market developed based on Canadian brands manufactured in Canada, exported to the U.S., and then smuggled back into Canada.¹³³ Initially, the Canadian cigarette companies—including affiliates, subsidiaries and licensees of RJR, Philip Morris and BAT—said they would not supply smugglers, but they soon began shipping billions of Canadian brands to cross-border locations in the U.S. to supply the black market. A June 1993 letter from BAT's Canadian affiliate Imperial Tobacco to Ulrich Herter, BAT's managing director, states:

"As you are aware, smuggled cigarettes...represent nearly 30% percent of total sales in Canada, and the level is growing. Although we agreed to support the Federal government's effort to reduce smuggling by limiting our exports to the U.S.A., our competitors did not. Subsequently, we have decided to remove the limits on our exports to regain our share

of Canadian smokers....Until the smuggling issue is resolved, an increasing volume of our domestic sales in Canada will be exported, then smuggled back for sale here."¹³⁴

Some Canadian companies even changed how they shipped their cigarettes to the U.S. to make them harder for enforcement officials to trace, and changed how they packaged the cigarettes to make it harder to distinguish smuggled packs from legal ones.¹³⁵

In fact, an RJR company, Northern Brands International, and its former president, Les Thompson, have each pleaded guilty to charges of being directly involved in the illegal smuggling. In an interview with the U.S. television news show *60 Minutes II*, Thompson (who has been imprisoned) stated that RJR set up Northern Brands expressly for the purpose of smuggling Canadian brands back into Canada and was fully aware of its efforts to encourage and support the smuggling.¹³⁶ Beyond RJR, in 1997 two former Brown & Williamson sales managers pleaded guilty to the charge of providing smugglers who were illegally bringing cigarettes into Canada with untaxed cigarettes from a bonded B&W warehouse in Alabama.¹³⁷ Investigations by the *Montreal Gazette* and others have also presented evidence that the Canadian cigarette companies Rothmans Benson & Hedges (owned by Rothmans and Philip Morris) and Imperial Tobacco (an affiliate of BAT) were also involved with the Canadian smuggling.¹³⁸

Brown & Williamson in Nigeria

In 1990, Brown & Williamson sent its executives to Nigeria to evaluate the mechanics of launching one of its leading brands, Kool, in that market. Pricing and "volume-related offshore payments" were considered to encourage what B&W called "push" in the contraband trade market.¹³⁹

BAT in Israel

One major avenue for cigarette smuggling is the illegal diversion of cigarettes purportedly destined for duty-free sales outlets. A 1994 BAT document shows that BAT cigarettes, ostensibly for duty-free sale in Israel, ended up in Nepal. This diversion did not trouble BAT, which was more concerned about keeping its bookkeeping straight. As the document states:

*"We record SE 555 as a shipment into Israel Duty Free and then also as a Domestic Sale in Nepal by yourselves. We believe it is the same brand and therefore we are counting in twice, once [sic] in Israel and once in Nepal."*¹⁴⁰

Philip Morris in South Africa

In 1997, South African tobacco conglomerate Rembrandt Group, Ltd. sued Philip Morris, charging that Philip Morris was supporting the illegal smuggling of Marlboro cigarettes into South Africa, thereby violating a licensing agreement between Phillip Morris and Rembrandt.¹⁴¹

BAT in Hong Kong and China

In Hong Kong in 1998, an executive of British American Tobacco (BAT) was convicted of accepting bribes from a smuggling syndicate. The judge in that case lambasted the cigarette company for its involvement in cigarette smuggling into China.¹⁴² Various BAT documents refer to China smuggling. For example, a 1993 memo to Paul Adams, who ran BAT's Asian Operations, from Ernie Peeples, a vice president at BAT's Brown & Williamson subsidiary notes that no more than 30 percent of all imports into China are legal and states:

"The best prospects for growth in the Chinese market continues [sic]

*to be the unofficial channels for the foreseeable future."*¹⁴³

Other Cigarette Companies Implicated in Cigarette Smuggling

Because smuggling can be prompted by competition between the companies, company documents often contain internal reports on the smuggling activities of their competition. Most often this is BAT commenting on the activities of Philip Morris, or vice versa, but occasionally cigarette smuggling by other cigarette companies not yet mentioned in this report is also discussed. Here are some examples:

Japan Tobacco International

A January 1995 BAT document on cigarette markets in the Asia-Pacific region reviewed the situation in Taiwan, stating:

*"The gap between legal and GT imports narrowed in 1993 as JTI (which has used the GT route to circumvent an embargo on imports ex-Japan) began importing legally from UK and Switzerland."*¹⁴⁴

As noted earlier, in 1999 Japan Tobacco purchased the non-U.S. operations of RJR, including the exclusive rights to sell formerly RJR brands outside of the United States. Consequently, Japan Tobacco has greatly increased its presence in some of the markets where smuggling has flourished and now produces for international sale former-RJR brands that have historically been smuggled.

Bollore Tobacco

BAT documents frequently discuss smuggling in Africa by the French cigarette company Bollore Tobacco (BT). Sometimes the discussion seems to suggest cooperative, or potentially cooperative, smuggling operations between BT and BAT. In this 1990 document referring to Niger, senior

BAT executive John Ticehurst opposes a joint manufacturing operation with BT on the grounds that it will hurt BAT's transit business:

*"Salem and Hadjis are our main customers for the transit trade. By allying ourselves with BT [Bollere] we would effectively be allying ourselves with the major threat to our customer's business. Thus rather than attempt to safeguard our transit business, we would be undermining any goodwill we still enjoy..."*¹⁴⁵

Rothmans Tobacco

BAT's African documents also include what BAT describes as smuggling via Niger by TEI, Rothmans' local subsidiary.¹⁴⁶ Just after the period captured by the documents, BAT purchased Rothmans, including TEI.

Gallaher & Imperial Tobacco Companies

In the fall of 2000, the Action on Smoking and Health organization based in London (ASH-UK) and two UK publications each issued major reports charging that since roughly 1993 the UK-based Gallaher and Imperial tobacco companies have been actively exporting British-brand cigarettes (e.g., Regals and Superkings) to countries where the brands are rarely smoked (e.g., Andorra, originally, and now Cyprus) to facilitate the illegal, large-scale importation of the brands back into the UK for black-market sale.¹⁴⁷ This process directly parallels the smuggling activities in Canada in the early 1990s, as described above. While the companies claim they have no control over their cigarettes once they export them, there is evidence of Gallaher and other cigarette companies giving bonuses and other benefits to known smugglers.¹⁴⁸ Gallaher's longstanding willingness to support smuggling is also evidenced by earlier Inter-Office

Correspondence regarding "Transit to U.A.E." and "Transit Stock in Saudi Arabia."¹⁴⁹

¹³¹ See, e.g., Levin, "Tobacco Memos Show Overseas Price Fixing," *Los Angeles Times*, 17 September 1998.

¹³² BAT internal report, "India Domestic Markets," 31 March 1994. See, also, BAT Bates No. 503964700, BAT Bates No. 503964664.

¹³³ See, e.g., Non-Smokers' Rights Association and The Smoking and Health Action Foundation (Canada), *The Smuggling of Tobacco Products: Lessons from Canada*, August 1994; Wyckham, "Regulating the Marketing of Tobacco Products and Controlling Smoking in Canada," *Canadian Journal of Administrative Sciences*, June 1997; Marsden, W., "Tobacco Insider Talks: Major Firms Were Deeply Involved in Cross-Border Smuggling, Former Executive Says," *Montreal Gazette*, 18 December 1999; Marsden, W., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301_txt.htm.

¹³⁴ BAT Bates No. 5000281453 June 1993, available at www.public-i.org/ITL_to_Herter.pdf.

¹³⁵ See, e.g., Non-Smokers' Rights Association, August 1994; Wyckham, June 1997; Marsden, 18 December 1999; Marsden, 3 March 2001; Beelman, M., et al., International Consortium of Investigative Journalists, Center for Public Integrity, *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm.

¹³⁶ CBS, *60 Minutes II*, "Tobacco's Other Secret," 18 January 2000. Marsden (December 18, 1999).

¹³⁷ See, e.g., Dow Jones News Service, "Ex-Brown and Williamson Manager Gets Probation for Smuggling" (October 15, 1997); Marsden, W., et al., 3 March 2001.

¹³⁸ Marsden, 18 December 1999; Marsden, 3 March 2001; Thompson, F., "Imperial Tobacco, Imasco, and the Smuggling of Cigarettes into Canada," Non-Smokers' Rights Association (Canada) (January 28, 2000), <http://www.nsr-aadnf.ca/english/imptob/Imperial%20Tobacco%20smuggling.html>.

¹³⁹ B&W internal document, P. Richardson, "Nigeria Trip Report, October 2-7, 1990," undated, BAT Bates No. 301777465.

¹⁴⁰ BAT letter, 15 June 1994, BAT Bates No. 500200164.

¹⁴¹ Bonner, R., "Rival Asserts Philip Morris Smuggles in South Africa," *The New York Times* (November 22, 1997); Turner, "Smuggling Benefits Tobacco Firms," *Business Day* (Johannesburg), 5 May 1998.

¹⁴² *Dow Jones News Service*, "Hong Kong Tobacco Exec Gets 3-Year Jail Term for Bribery," 25 June 1998; *Reuters*, "HK Top Court Restores Ex-Tobacco Exec's Conviction," 14 December 1999.

¹⁴³ B&W internal document, Peeples to Adams, 19 November 1993. BAT Bates No. 500014760.

¹⁴⁴ BAT internal document, BAT Marketing Intelligence Department, "Review of Asia-Pacific Market," January 1995, BAT Bates No. 502628801.

¹⁴⁵ BAT memo Ticehurst to Joe Green, BAT Bates No. 301612457, 14 June 1990.

¹⁴⁶ B&W internal document, P. Richardson, "Nigeria Trip Report, October 2-7, 1990," undated, BAT Bates No. 301777465.

¹⁴⁷ Rowell, A. & C. Bates, *Tobacco Smuggling in the UK*, ASH-UK, October 2000, www.ash.org.uk/html/smuggling/html/uksmuggling.html; Rowell, A. & R. Cookson, "No Smoke Without Fire, *The Big Issue South West*, 2 October 2000, www.ash.org.uk/html/top.html; Abrams, F. & A. Rowell, "It Just Fell Off the Back of a White Van: Its all Very Odd: British Tobacco Companies Export Billions of Cigarettes Where They Know They Have No Market: Why?," *The Independent*, 24 September 2000, www.ash.org.uk/html/smuggling/html/indypiece.html.

¹⁴⁸ See, e.g., Abrams & Rowell, 24 September 2000; Rowell & Bates, October 2000.

¹⁴⁹ Borek, A. to A.J. Williams, 1 June 1983, www.ash.org.uk/html/smuggling/html/uksmuggling_files/image004.jpg; Borek, A. to A.J. Williams, 4th June 1983, www.ash.org.uk/html/smuggling/html/uksmuggling_files/image002.jpg.

VII. Ways to Stop Cigarette Company Smuggling

This report adds to the enormous amount of still-growing evidence about the cigarette companies' role in large-scale cigarette smuggling over international borders. The companies publicly deny their involvement.

Yet, as the industry's own documents show, the companies often know what happens to their cigarettes after they sell them to wholesalers, distributors and importer-exporters. They can and often do exercise control over their cigarettes after they are sold. And as some documents show, they do support, participate in and profit from cigarette smuggling. Repeatedly, their public statements are contradicted by established facts.

The world's nations should not accept the cigarette companies' disrespect for national laws and borders. Nor should they accept the enormous harms caused by international cigarette smuggling. Aside from its fundamental illegality and the corruption it spawns, cigarette smuggling also promotes smoking by lowering cigarette prices, creates unfair competition for legal cigarette sellers and local manufacturers, and reduces national tax revenues and import duty collections.¹⁵⁰

The fact that international cigarette smuggling often occurs with the knowledge of the major cigarette companies and their support and complicity also suggests effective ways to sharply curtail it.

The Role of the Framework Convention on Tobacco Control

Because it is a problem that cannot be adequately addressed by any single country, cigarette smuggling is an ideal subject for international cooperation through the Framework Convention on

Tobacco Control (FCTC), which is currently being negotiated by the world's nations. Building on the strong tradition of international agreements to reduce trafficking in contraband goods such as firearms, pharmaceutical products, alcohol and illegal drugs, the FCTC could apply the well-established policy tools for reducing smuggling in these other goods, for the very first time, to cigarettes, as well.¹⁵¹

Initial drafts of the FCTC and a proposed anti-smuggling protocol have already offered many constructive provisions, including:

- Establishing a comprehensive system of marking cigarettes to allow better tracking and identification of smuggled products, including prominent hard-to-counterfeit tax-paid and country-of-origin markings.
- Establishing mandatory licensing of all parties involved in cigarette distribution.
- Requiring chain-of-custody record-keeping by all parties involved in the movement of cigarettes from the factory to the final country of sale.
- Significantly increasing the relative priority and sophistication of anti-cigarette-smuggling efforts, including use of better tracking systems, new scanning technology, state-of-the-art risk management techniques, improved cooperation between relevant government agencies, and increased training

and staffing for tobacco tax enforcement units.

- Creating an international technical body, funded by countries in proportion to their funding of the World Health Organization, that would assist signatories to the Convention in sharing information, training, technical assistance, research and resources, with special attention to the funding needs of developing nations.
- Eliminating duty-free sales, which often serves as a major source of smuggled cigarettes.¹⁵²

Additional Effective Measures for Reducing Cigarette Smuggling

Additional measures that should be considered for any final anti-smuggling protocol include the following:

- Reforming the system for transporting cigarette products in international commerce, including a requirement that the country of destination, and all countries through which a shipment passes, issue specific permits, licenses or authorization before a shipment is released into international commerce.

- Establishing a system whereby applicable destination-country cigarette taxes, or an equivalent bond, would be collected at the original factory where the cigarettes are manufactured or before shipments are released into international commerce—with destination-country tax stamps attached (ideally, under the cellophane) at the factory to indicate tax collection.
- Holding the major cigarette companies strictly liable for any of the brands they manufacture ending up as smuggled contraband, with related penalties and the destruction of all seized cigarettes. Such strict liability would follow the example of the Basel Convention on Transboundary Movement of Hazardous Waste.¹⁵³
- Agreement by all parties to the treaty to exercise the maximum jurisdiction allowed under international law over their nationals (corporations and individuals) involved in cigarette smuggling outside of their territory.
- Agreement by all parties to the treaty to implement a system of rewards for information leading to convictions of those involved

in international cigarette smuggling.¹⁵⁴

An anti-smuggling protocol to the Framework Convention on Tobacco Control that included provisions such as those described here would not only substantially reduce international cigarette smuggling and its attendant harms but also directly promote public health. Without such a protocol, it's likely to be business as usual for the big cigarette companies, and the enormous problems caused by large-scale international cigarette smuggling will continue.

¹⁵⁰ On the public health impact of cigarette smuggling, see, e.g., Non-Smokers' Rights Association of Canada, *Cigarette Smuggling: A Global Weapon against Public Health Measures*, 5 April 2001, www.nsr-aadnf.ca/english/smuggling.html.

¹⁵¹ Joossens, L., *Technical Elements of a Protocol on the Elimination of Tobacco Smuggling: Questions and Answers*, Framework Convention on Tobacco Control, April 2000.

¹⁵² See, also, Joossens, L., *Technical Elements of a Protocol on the Elimination of Tobacco Smuggling: Questions and Answers*, Framework Convention on Tobacco Control, April 2000.

¹⁵³ United Nations Environment Programme (UNEP) News Release, *Compensation and Liability Protocol Adopted by Basel Convention on Hazardous Wastes*, 15 December 1999.

¹⁵⁴ For more on how to stop cigarette smuggling, see Joossens, L. & M. Raw, "How Can Cigarette Smuggling Be Reduced?," *British Medical Journal* 321:947-950, 14 October 2000, <http://bmj.com/cgi/content/full/321/7266/947>.



Appendix One:

Sources of Additional Information

Major Publications and Websites re Cigarette Companies & Smuggling

International Consortium of Investigative Journalists, Center for Public Integrity, series on cigarette companies and smuggling:

Beelman, M., et al., *Major Tobacco Multinational Implicated in Cigarette Smuggling, Tax Evasion, Documents Show*, 31 January 2000, www.public-i.org/story_01_013100.htm.

Beelman, M., et al., *Global Reach of Tobacco Company's Involvement in Cigarette Smuggling Exposed in Company Papers*, 2 February 2000, www.public-i.org/story_01_020200.htm.

Marsden, W., et al., *Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling*, 3 March 2001, www.public-i.org/story_01_030301.htm.

Bonner series in *The New York Times*:

Bonner R. & C. Drew, "Cigarette Makers are Seen as Aiding Rise in Smuggling," 25 August 1997.

Bonner, R., "Two Cases Shed Light on Cigarette Smuggling in Italy," 2 September 1997.

Bonner, R., "Europe Inquiry on Smuggled Cigarettes Seeks U.S. Aid," 8 May 1998.

The Guardian articles on cigarette smuggling, including:

Maguire, K. & D. Campbell, "Tobacco Giant Implicated in Global Smuggling Schemes," 31 January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956951,00.html.

Beelman, M., et al., "How Smuggling Helps Lure Generations of New Smokers," 31 January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956952,00.html.

Bates, C., "Revealed: The Ugliest Secret of Britain's Cigarette Giant," 31 January 2000, www.guardian.co.uk/Archive/Article/0,4273,3956913,00.html.

Campbell, D., et al., "Paper Trail to Markets of the East," 2 February 2000, www.guardian.co.uk/Archive/Article/0,4273,3957775,00.html.

Bates, C., "Rogue Multinational," 1 November 2000, www.guardian.co.uk/Archive/Article/0,4273,4084424,00.html.

ASH-UK website on BAT and smuggling, www.ash.org.uk/html/smuggling/html/smuggling.html.

CBS, "Tobacco's Other Secret," *60 Minutes II*, U.S. television show, 18 January 2000.

Dickey, C. & R. Nordland, "Big Tobacco's Next Legal War: Cigarette Makers Are Coming Under Fire As Governments Attack Global Smuggling," *Newsweek*, 31 July 2000.

Marsden, W., "The Mob and Big Tobacco," *Montreal Gazette*, 4 March 2001, www.montrealgazette.com/news/pages/010303/5033773.html.

Marsden, W., "Tobacco Insider Talks: Major Firms Were Deeply Involved in Cross-Border Smuggling, Former Executive Says," *Montreal Gazette*, 18 December 1999, www.nsra-adnf.ca/english/gazinsider1.html.

Rowell, A. & C. Bates, *Tobacco Smuggling in the UK*, October 2000, <http://www.ash.org.uk/html/smuggling/html/uksmuggling.html>.

Thompson, F., Non-Smokers' Rights Association of Canada, *Imperial Tobacco, Imasco, and the Smuggling of Cigarettes into Canada*, 5 March 2001, www.nsra-adnf.ca/english/imptob/Imperial%20Tobacco%20smuggling.html.

Other Publications and Websites on Cigarette Smuggling Issues

Chaloupka, F., et al., "The Taxation of Tobacco Products," in Jha, P. & F., Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000, <http://tigger.uic.edu/~fjc/>

Joossens, et al., "Issues in the Smuggling of Tobacco Products," in Jha, & Chaloupka, 2000, <http://tigger.uic.edu/~fjc/>

Joossens, L. & M. Raw, "How can cigarette smuggling be reduced?," *British Medical Journal* 321:947-950, 14 October 2000, <http://bmj.com/cgi/content/full/321/7266/947>.

Joossens, L. & M. Raw, "Cigarette Smuggling in Europe: Who Really Benefits?" *Tobacco Control*, July 1998, <http://tc.bmjournals.com/cgi/content/full/7/1/66>

Joossens, L., *Smuggling and Cross-Border Shopping of Tobacco Products in the European Union*, UK National Health Service Health Development Authority & International Union Against Cancer, 2000.

Joossens, L., *Technical Elements of a Protocol on the Elimination of Tobacco Smuggling: Questions and Answers*, Framework Convention on Tobacco Control, April 2000.

Merriman, D., et al., "How Big is the Worldwide Cigarette-Smuggling Problem," in Jha, P. & F. Chaloupka, *Tobacco Control in Developing Countries*, Oxford University Press, 2000, <http://tiger.uic.edu/~fjc/>

Non-Smokers' Rights Association of Canada, *Cigarette Smuggling: A Global Weapon against Public Health Measures*, 5 April 2001, www.nsr-aadnf.ca/english/smuggling.html.

Townsend, J., "The Role of Taxation Policy in Tobacco Control," in Abedian, I., et al., *The Economics of Tobacco Control*, Applied Fiscal Research Centre, University of Capetown, 1998.

World Bank Report, *Curbing the Epidemic: Economics of Tobacco Control*, June 1999.

Tobacco Company Document Websites

Philip Morris, www.pmdocs.com

British American Tobacco does not have a company document website. But some BAT documents are available at the following websites:

- University of California at San Francisco Tobacco Document Collection, www.library.ucsf.edu/tobacco
- Canadian Council for Tobacco Control, www.cctc.ca
- Centers for Disease Control and Prevention Guildford Document search, <http://outside.cdc.gov:8080/BASIS/ncctId/web/guildford/sf>
- British Columbia (Canada) Guildford Documents, www.hlth.gov.bc.ca/guildford

R.J. Reynolds Tobacco Company, www.rjrtdocs.com

Brown & Williamson (U.S. subsidiary of British American Tobacco), www.bw.aalatg.com

Lorillard Tobacco Company, www.lorillarddocs.com

Council for Tobacco Research, www.ctr-usa.org/ctr

Tobacco Institute, www.tobaccoinstitute.com

Other Document Websites

U.S. Centers for Disease Control (CDC), www.cdc.gov/tobacco/industrydocs/docsites.htm

Tobacco Documents Online, www.tobaccodocuments.org

University of California at San Francisco Document Collection, <http://galen.library.ucsf.edu/tobacco>

Tobacco Detectives, www.tobaccodeTECTIVES.com

Minnesota Blue Cross/Blue Shield Tobacco Litigation documents, www.mnbluecrosstobacco.com/toblit/trialnews/docs/search.asp

Document Depositories

Guildford Document Depository
For appointments: Ms. Melanie Thomas
British American Tobacco, Globe House
4 Temple Place, London, WC2R 2PG
United Kingdom

Fax: 44-20-7845-2783

Minnesota Tobacco Depository
1021-10th Avenue, S.E.

Hennepin Business Center
Minneapolis, MN 55414 USA

1-612-378-5707 1-800-526-8886

E-mail address: mndepo@aol.com

www.tobaccoarchives.com/docbasic.html

Appendix Two:

Copies of Some of the Key Company-Smuggling Documents

Global Problem, Global Culprits

500028732 36
BAT internal memo, 18 May 1993, from Keith Dunt (at the time, BAT territorial director for Latin America) to Ulrich Herter (BAT managing director), Tony de Castro (Souza Cruz chairman), Barry Bramley (BATCO chairman), and Richard Pilbeam (BAT finance director). BAT Industries Plc. was then the parent company of British American Tobacco (BAT). The BAT Industries chairman at this date was Sir Patrick Sheehy. Souza Cruz is BAT's Brazilian subsidiary. The document indicates not only Patrick Sheehy's granting of approval with respect to a specific smuggling operation but also the knowledge of this by a significant cross-section of the highest rung in BAT's organization.

Cigarette Smuggling in Africa

301773703 37
BAT internal memo, 01 November 1991, from Joe Green (senior BAT marketing executive) to Anthony Pereira (senior BAT executive) with copies to Nick Brookes (at the time, director of BAT's New Business Development group) and Susan Osborne (BAT marketing executive). BATUKE is a BAT subsidiary involved in the export business.

301627642..... 38
BAT document consisting of handwritten flows of contraband BAT cigarettes throughout West Africa in 1987 of the brands Benson & Hedges (BH) and State Express 555 (SE). Undated and unsigned, though apparently from the files of Dick Howe, BATUKE executive.

Cigarette Smuggling in Latin America

500151875..... 39
BAT internal document, "Country Competitive Report, Colombia, 1994," unsigned and undated, but faxed on 06 May 1994 from BAT's Venezuela subsidiary, Cigarrera Bigott.

Cigarette Smuggling in Asia

500045603 40
Reproduction of extract from a BAT internal report, "BAT Singapore, SUTL, Other Established Business, Far East Others, Singapore Group," 17 September 1992, Fred Combe (BATUKE area manager, Far East South).

500030587..... 41
BAT internal document, sales chart for State Express 555 in Bangladesh showing both legal and contraband market. From Trevor Bates (BAT, marketing intelligence manager) to Norman Davis (BAT territorial director), 25 February 1992. Note that BAT knows the exact totals of both legal and illegal sales of their brand into Bangladesh on a month-by-month basis.

Cigarette Smuggling in Europe

503095358 42
BAT Espana document, "Andorra Contract Manufacture Proposal," 22 May 1992, from Winter Rose (BAT Espana) to Jimmi Rembiszewski (BAT marketing director) with copies to Philippa Casingena (BAT company solicitor) and O Grasbeck (BAT finance).



BRITISH-AMERICAN TOBACCO COMPANY LIMITED

TO: U HERTER
 A M DE CASTRO
 B D BRAMLEY
 P H PELBEAM

FROM: KEITH S DUNT

DATE: 18 May 1993

SUBJECT: DNP BRAZIL - ARGENTINA

B.D.S.
 RECD - 18 MAY 1993

This note is to ask you to clarify the position of BAT Industries in the above business.

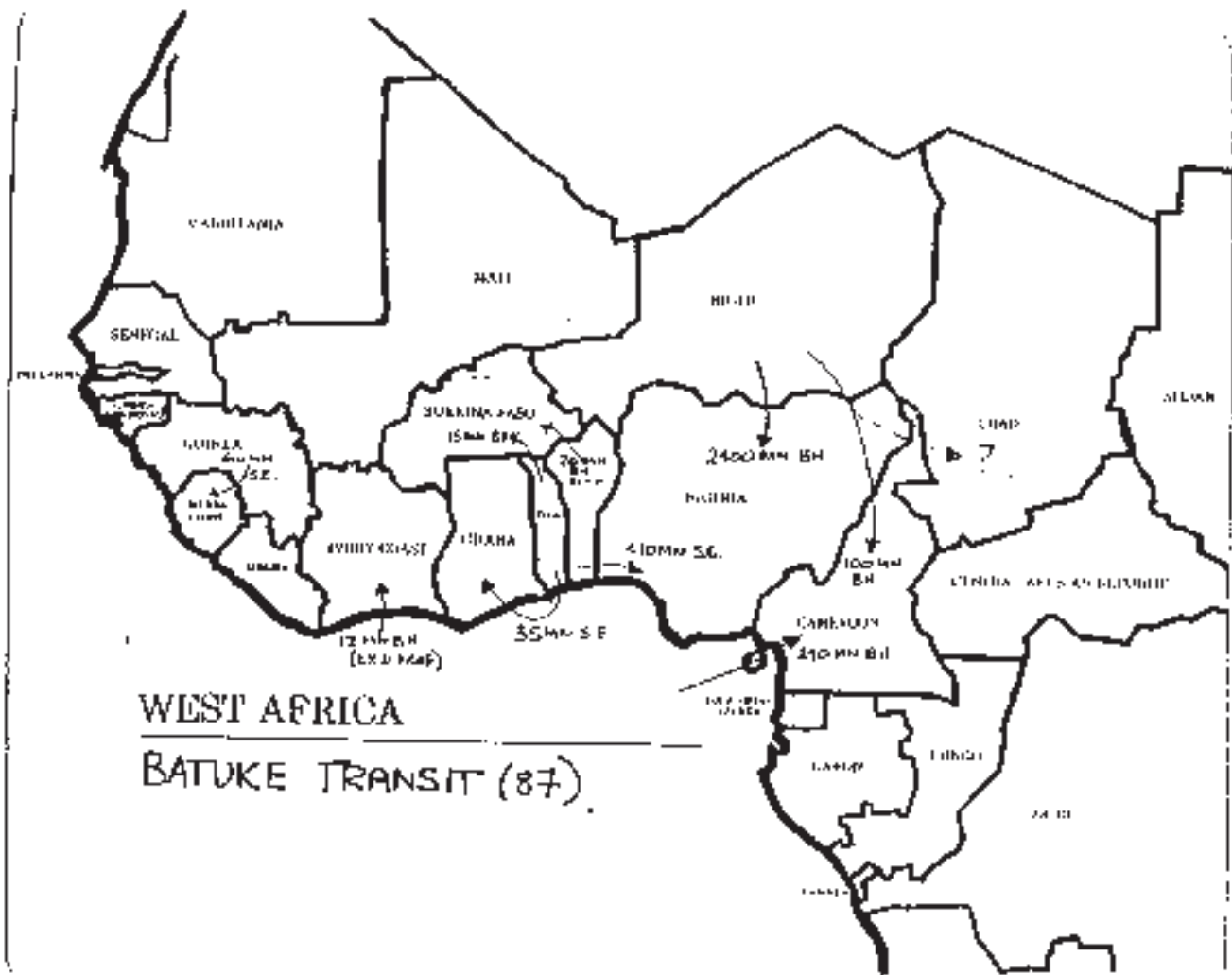
I am advised by Souza Cruz that the BAT Industries Chairman has endorsed the approach that the Brazilian Operating Group increase its share of the Argentinian market via DNP. As the Director entrusted with responsibility for the management of Nobleza-Piccardo I need to advise you of the likely volume effect on N-P of this decision and of course the financial impact.

First quarter volumes shipped by S.C. to Paraguay (all brands) increased by 77% in 1993, up from 424mt to 748mt, with well over 50% being Rizq Slims and Rizq KS/S.C. Of these tax free exports to Paraguay it is agreed by both S.C. and N-P that, as best estimate, approximately 80% enter the Argentinian Market and that a further 30% of this cannibalises N-P rather than competition - this latter number can be regarded as conservative given N-P's now 91% share of the National Full Flavour segment. Rizq price is between 10c and 15c on the border versus Derby \$1.17 (effectively \$1.20) guaranteeing take up. All up YTD end-April S.O.M for Argentina is 47.1% for BAT Industries - 41.3% via N-P.

Hence, part of the share loss and profit decline now forecast by Nobleza-Piccardo is not only a result of natural up-treading to Marlboro (given a full two years with no price increases), but also the increasing volume being "pumped" through the northern border.

A separate update paper on Nobleza's marketing and other initiatives is programmed for the BEC in mid-June.

500028732



SUMMARY OF MARKET TRENDS

- The market is full - flavor although mild perceived mild products such as Belmont Suaves and Mustang Suave continues to grow King Size and Box Menthol segment has experienced a moderate growth mainly based on Kool's performance.
- Appendix 1 and 2 shows the main segment and price categories.
- Appendix 1 shows the Colombian price structure in D.P. channel.
- Consumers awareness of smoking and health is relatively low, the high socio-economic segment of the population is the more concerned in this subject.
- Consumers life style and behavior trends in high and medium socio-economic levels, particularly in the YACS are being influenced by the American values and way of life which has impact in the brand communication strategies.

COMPETITORS

P. MORRIS INT'L.

Represented by P. Morris Latinoamericana S.A. Philip Morris is leads in high price category based on the performance of Marlboro Red. They have heavily investment behind Marlboro in T.V., Radio, magazines and outdoors.

Last year Marlboro Lights started to grow in share without support. Other brand that P.M. support is Parliament, the performance is stable but the both above brand are threats against Kent. P.M.I. launched L&M in pilot market in Medellin. All the brands are imported from U.S.A. with exception of L & M from Brazil directly by P. Morris Latinoamericana S.A. and they sell to local distributors.

R.J. REYNOLDS

Represented by Torreón (Subsidiary of Grupo Fierro). They launched Winston, Camel F.F. and Lights, Yves Saint Laurent, Salem in D.P. in 1991, they haven't success in the market, the distribution is deficient and has limited resources to support its brand portfolio. In 1994 Torreón didn't import into Colombia. All the above brands are imported from U.S.A. Reynolds works in D.N.P. channels with Doral F.F., Lights and Menthol in low price segments.

500151875

AGENTS

SUTL

DUTY FREE

- I.S.C.
- Singapore Ship Stores
- Thailand
- Indo China
- Indonesia

DUTY PAID

- Myanmar
- Cambodia

G. T.

- Bangladesh
- Pakistan
- Thailand
- Vietnam
- Laos
- Afghanistan
- India

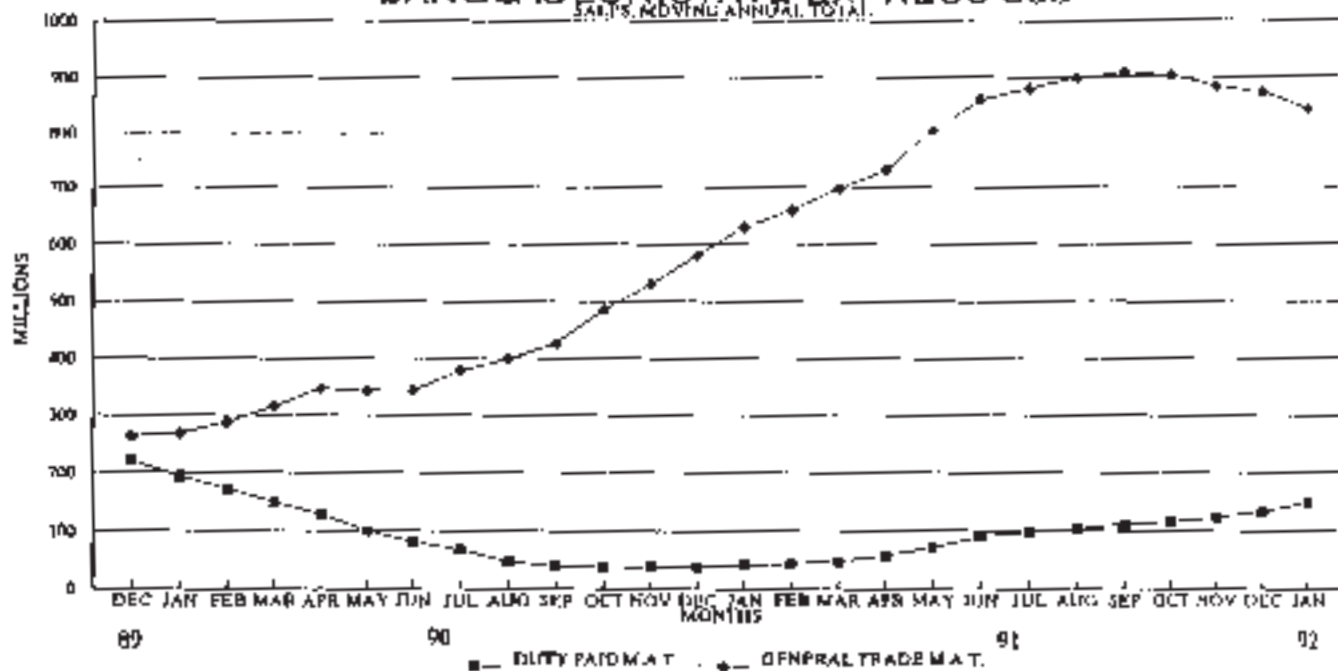
JOINT VENTURE

- Myanmar
- Cambodia
- H.C.M. City

500045603

BANGLADESH STATE EXPRESS 555

SALES MOVING ANNUAL TOTAL



500030587

SECRET

ANDORRA CONTRACT MANUFACTURE PROPOSAL

The purpose of this document is to obtain Senior Management approval to the proposal of contract manufacture by NITSA of LUCKY STRIKE and ROYAL CROWN in Andorra.

KEY REASONS

1. The Andorra market needs to be supplied with Lucky Strike for strategic competitive reasons.
2. Tax changes already implemented in Andorra prevent the continuation of profitable supply ex-BAT España Las Palmas. Further tax changes expected will result in losses.
3. The selection of NITSA as contract manufacturer is recommended after an exhaustive study of all options, and provides the necessary guarantees on quality and control on the business.
4. The proposal will be profitable from the outset, and further tax changes allied to price increases should enhance this profitability in the future.

BACKGROUND

Andorra is a small, isolated principality wedged between France and Spain in the Central Pyrenees. For centuries the principal source of revenue has been illicit trade with its two neighbours, principally with Spain. In recent years this trade has been concentrated in luxury merchandise which suffers high taxation in Spain and France.

The modern Andorra has essentially two forms of trading:

Legitimate: Retail sales to Spanish (approx. 75%) and French (25%) visitors, who are attracted by the low price of luxury goods, particularly cigarettes, alcohol and electronic goods. The low prices are sustained by low levels of tax and VAT.

CAMPAIGN *for* TOBACCO-FREE Kids

NATIONAL CENTER FOR TOBACCO-FREE KIDS