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ASH

Action on Smoking
and Health

3rd July 2000

Dear Mr. Clarke

Re: BAT and cigarette smuggling

I write to respond, belatedly, to [your letter of 14th March](#) complaining about your treatment by *The Guardian* and ASH. I am sorry, but I think you have only yourself to blame if you came out and prematurely sounded the 'all-clear' for BAT without pausing to view the evidence in full. In a [letter faxed to your office on 31st January](#), we notified you of [a large volume of evidence relating to BAT's involvement in smuggling](#), and invited you to view this on our web site. It would have been a simple matter for BAT to provide this evidence to you in whatever form you would have liked.

You are wrong, therefore, to say of the period immediately before you wrote [your article in *The Guardian* on 3rd February](#) in response to the Guardian's [coverage on 31st January](#): "*The only reference to the documents which were then before me were the references in the article, which did not in every case allow the original source of the short quotation to be identified.*" A more prudent man would have waited before offering himself as a 'human shield' for BAT's conduct and wayward executives. Especially as the allegations concern activities in [Asia](#) and [Latin America](#) in the early 1990s, which are matters that you could have only the most fleeting grasp of.

BAT itself has now adopted a more considered approach by engaging two law firms Cravath, Swaine & More, and Allen & Overy to look at a BAT's business practices and whether it did (and continues to) move beyond knowledge of smuggling and engage in controlling actions - as the documents clearly suggest. This is difficult for you, as these are problems you have already very publicly proclaimed do not exist.

Thankfully, it seems increasingly likely that we will not have to rely only on internal investigations by BAT-appointed lawyers and its Audit Committee. Mr. Rupert Pennant-Rea disclosed at the AGM that Cravath, Swaine & More had been engaged to defend BAT in potential RICO (racketeering) actions. This did not

suggest to me that the inquiry would be an open-minded pursuit of the truth, but that it would be purely defensive - a whitewash.

For this reason I was pleased to read the [Financial Times](#) and [The Times](#) on 15th June that the Secretary State for Trade and Industry has decided to instigate a DTI investigation into these allegations - as recommended by the Health Select Committee. I await the Government's official response to the Committee with anticipation. I do hope that Mr. Byers does see a role for the Government in investigating and exposing rogue corporate behaviour. As he said in his [speech to the WTO](#) in Seattle last November:

"If it were true that globalisation was about the unregulated power of cynical multinational corporations coercing Governments and playing off one country against another - then I would be the first to call a halt."

I think this very aptly describes BAT's attitude to globalisation, and I hope that Mr. Byers is true to his word and acts to put a stop to BAT's rogue conduct. I have written to the Secretary of State rehearsing the case for a DTI investigation, and I enclose [my letter to Mr. Byers](#) for your information.

Turning to the specific allegations, colleagues have advised me that we may have been overly optimistic in confronting you with *too much evidence* and that it would be better to press you to answer a small number of specific allegations. The rationale being that if you cannot adequately explain five documents; there is no need to ask you to explain 500. So may I invite you to offer alternative explanations to the following five statements drawn from our evidence as set out below?

1. Building market share in Argentina

One of the most revealing documents implicates some of the most senior BAT executives in development of marketing strategy based on smuggling. Here is an extract:

[Memo: 18/5/93^{\[1\]}](#)

Keith Dunt to Ulrich Herter, Barry Bramley [Chairman BAT Co], Pilbeam, Castro

"SUBJECT: DNP BRAZIL - ARGENTINA

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 Argentinean market via DNP."

Our interpretation of this memo is that Dunt was notifying Herter and others that the BAT Industries Chairman, Patrick Sheehy, was authorising the Brazilian BAT subsidiary to orchestrate smuggling of BAT brands into Argentina to increase market share. It indicates a deliberate intention to win market share by acting to ensure that BAT's brands were smuggled. I think this goes well beyond simply knowing of (and deploring) the smuggling activities of others.

I would be grateful if you could offer an alternative interpretation of this memo that is consistent with the position you offered to *The Guardian*. I asked about this at the AGM but Mr. Dunt was protected from answering the question by Mr. Broughton's intervention.

2. "Active and effective management" of smuggling business

BAT sees *active* management of the smuggling business as a priority. What does 'active' mean in this context?

[BATCo Global Five-year Plan 1994-1998](#)^[2]

In 1993, it is estimated that nearly 6% of the total world cigarette sales of 5.4 trillion were DNP sales. Eastern Europe and the Asia-Pacific region (c85bln each) accounted for the majority of this volume. Though Western Europe (c50bln) was also significant. In relation to total market sales, DNP volumes are largest in Eastern Europe (c13%) and Africa/ M. East (c12%), but are also significant in Latin America (c9%) and Western Europe (c7%). A key issue for BAT is to ensure that the Group's system-wide objectives and performance are given the necessary priority through the active and effective management of such business."

Our interpretation of this marketing plan is that BAT regarded the markets for smuggled products (DNP) as part of its overall business objectives around the entire globe. The plan also makes the 'active and effective management' of the smuggled markets a priority and key issue. Again this is far from simply having knowledge; it represents a much more serious ambition and engagement in illegal activity. How else can you describe 'active and effective management'? We think that this means understanding, manipulating and ultimately controlling the smuggled markets - through trusted intermediaries whose business is well understood and supported by BAT.

I would be grateful if you could provide some alternative explanation of these statements in the BAT Global marketing plan.

3. Collusion with Philip Morris - manipulating the smuggled market

One of the most damning documents is a note of a meeting between senior BAT and Philip Morris executives with responsibility for Latin America. I recommend you read this in its entirety - it is most revealing. The document shows extensive cartel behaviour in seeking market share agreements, price fixing and attempts to limit market support expenditures. Most relevant to our disagreement, it shows that BAT (with Philip Morris) can determine the price in the smuggled and legal market independently. The only way that this is possible is if they know which wholesalers are selling to smugglers and can vary the price specifically for them.

[FILE NOTE: marked "Secret" 05/08/92](#)^[3]

"MEETING WITH PHILIP MORRIS REPRESENTATIVES

At Pennyhill Park, Bagshot

...

BATCo suggested an aggressive price increase to be negotiated at a local level for DNP to be implemented if possible by the end of August.

...

Following action on DNP PMI suggested we should pursue a DP price increase. PMI wanted linkage between the DNP increase. This was not supported by us.

Do you deny that BAT and Philip Morris have colluded in price fixing, share agreements and other cartel behaviour in Latin America? Do you think that the ability to control prices in the legal and illegal markets independently (albeit in collusion with Philip Morris) indicates a level of control over the illegal market that is acceptable?

4. Launching products on the smuggled market

The following document again show a high degree of control over the smuggled market so that BAT's marketing planners treat it as just another channel.

[Columbia Trip notes^{\[4\]}](#)

File Note, 9 March 1994, Mark Waterfield: "Colombia Trip Notes, 23/24 1994."

"Kent Super Lights ... DNP product should be launched two weeks after the DP product has been launched."

"Lucky Strike ... withdraw from the DNP market the 20's and 10's versions."

My reading of this is that BAT can decide exactly when and where to have its products smuggled by supplying the wholesalers and feeding products into the transit routes that the company knows supply the smugglers. This quote (and many others) shows that BAT treats smuggling as a regular marketing channel in which it can control price and availability of its products.

Do you agree that the ability to determine precisely the launch date on legal and illegal markets suggests that BAT knows exactly who is doing the smuggling and that BAT is using these wholesalers as its agents in illegal markets?

5. Umbrella operations

It is quite clear from the documents that BAT has used a small legal operation as cover for advertising aimed at stimulating sales in the illegal market - so-called 'umbrella operations'. The document below shows BAT's furtive discussion of the real nature of its business.

[Internal document from Andrew O'Regan to ADG Pereira dated 7.12.93^{\[5\]}](#)

Trip Notes - India 29 Nov to 2 Dec 93

...

The "Available in Duty Free" cover for extensive media coverage needs to be very carefully used, as it can easily become antagonistic and will draw attention to the source of market supply, which we would rather did not come under scrutiny. Legitimate imports through various hotel groups is defensible and provides another source of "cover" for our brand building plans, and a promotional platform.

Do you believe that BAT does not operate under 'umbrella operations', and that we have somehow misunderstood documents? Or do you think umbrella operations are a normal and acceptable business practice?

I look forward to a genuine attempt to explain away these documents - and there are many more in a similar vein - without recourse to your usual argument that these are selective and just a few documents from millions. The fact is that they are real documents and they describe the words and deeds of very senior BAT executives. It hardly matters that there are several million documents in Guildford dealing with other subjects, if there are several hundred that reveal BAT's *modus operandi* in illegal markets.

I look forward to receiving your reply and any explanation you can offer that differs from my interpretation of the five points raised above in bold. Images of the original documents (and comprehensive evidence) are of course available on the ASH web site at www.ash.org.uk/smuggling/ but please do contact us if you would like us to send the documents in hard copy.

I am sure others will be interested in your response, so I will circulate this letter and any reply from you setting out your position in response.

Yours sincerely

Clive Bates

Clive Bates
Director

Enc: [Letter to Rt Hon Stephen Byers MP 3rd July 2000](#)

Internet links for the five documents referred to above are as follows:

[1] www.ash.org.uk/smuggling/500028732.pdf

[2] www.ash.org.uk/smuggling/048.pdf

[3] www.ash.org.uk/smuggling/220.pdf

[4] www.ash.org.uk/smuggling/503891624.pdf

[5] www.ash.org.uk/smuggling/050-052-053-054-055-056.pdf

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