

HOUSE OF COMMONS TB51

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HEALTH COMMITTEE : SESSION 1999-2000

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INQUIRY INTO THE TOBACCO INDUSTRY

AND THE HEALTH RISKS OF SMOKING

NOTE OF EVIDENCE BY DUNCAN CAMPBELL

IN RESPECT OF

**PLANNING, ORGANISATION AND MANAGEMENT OF
CIGARETTE SMUGGLING BY BRITISH AMERICAN
TOBACCO PLC, AND RELATED ISSUES**

1. This note of evidence concerns the activities of British American Tobacco PLC ("BAT") and its predecessor, subsidiary and group companies during the period from 1970 to date. It is based on enquiries made by the author and others as part of an international investigation conducted during 1999 by the International Consortium of Investigative Journalists, a project of the Center for Public Integrity ("CPI"). CPI is a Washington based public interest research group.* The larger part of our investigation has concerned company documents which BAT agreed to make public as part of the terms on which, in 1998, they agreed to settle the health action brought by the State of Minnesota. These documents were inspected by us at the Guildford Depository, with which Members of the Committee are familiar.
2. The major issues which can be drawn from our enquiries are :

How corporate sleaze developed within BAT

A Smuggling, often organised in a furtive and clandestine manner, has been BAT company policy since the late 1960s. Under the stewardship of former chairman Sir Patrick Sheehy, the deliberate smuggling of BAT products evolved from an *ad hoc* activity into an organised and centrally managed system of lawbreaking. This was overseen at the highest levels within the United Kingdom headquarters organisation. The company directors and managers who were involved were, on evidence that is plentifully available, fully aware that what they organised was unlawful in those countries where they placed smuggled products.

Support for criminal activity is endemic among BAT senior managers

B. All current executive directors of BAT PLC and a majority of the current Management Board have been routinely involved in planning, organising or managing criminal activity, and/or have knowingly consented to the deliberate smuggling of contraband BAT tobacco products around the world. A very substantial part of the company's revenues derives from this misconduct.

BAT has provided support to narcotics traffickers and other organised crime

C. During the period, and with increasing importance in the 1990s, BAT's activities have supported the smuggling of narcotics (cocaine, crack and heroin) by providing tobacco products with which value may be returned to producer countries. This is particularly so where international controls have been developed to restrict money-laundering of the proceeds of narcotics sales. Colombia is the most obvious example. A further and direct consequence of the company's actions is and has been to remove billions of pounds annually from the income of governments and public authorities around the world, and to deliver it instead into the hands of [other] organised crime groups.

BAT has obstructed investigations into its involvement in tax evasion and smuggling

D. In an attempt to prevent or at least limit the disclosure of its unethical and/or illegal activities, the company has systematically obstructed access by researchers to the Guildford Depository. Members of the Health Committee have been misled as to the electronic availability of documents, and as to the actual reasons why so many of the company's documents have yet to be inspected.

BAT fixes prices and discusses smuggling activities with competitor companies

E. Executives of British American Tobacco collaborate with competitors (in particular Philip Morris) to fix prices and market shares within individual countries. These collaborative discussions cover smuggled as well as legal products. The argument advanced by BAT representatives that they are driven to lawbreaking by the conduct of their competitors is misleading. The evidence shows that, when they choose to (and, critically, only when it is in their financial interests), the major tobacco companies can and do collaborate to stop smuggling.

A criminal investigation should start in the United Kingdom

F. Prior to 1999, executives of BAT who planned and organised smuggling activities may have comforted themselves that, as they did not themselves transport contraband, their role in organising smuggling in overseas territories was not in apparent breach of United Kingdom law. This position was reversed in September 1999. Since then, any conduct of BAT executives amounting to a conspiracy to smuggle overseas has been a criminal offence in the United Kingdom. Since such activities have been admitted on behalf of the company by Mr Clarke in his Guardian article, it follows that a police investigation would be appropriate.

3. These issues, and each of them, bear directly on the health risks of smoking since:-

(a) The use of smuggling enables and is intended to enable the company to target more, poorer and younger consumers than would be reached by products on which excise and customs duties have been lawfully paid, thereby adding to the health burden and mortality of smoking;

(b) BAT, in common with other tobacco companies, have used smuggling as a deliberate tactic to frustrate and overcome government policies intended to reduce smoking and thus limit damage to public health. The long term goal of the companies' smuggling tactics is to force governments to reduce taxation to levels acceptable to the tobacco companies, thus nullifying public health improvements. The immediate effect of smuggling is the same or similar, in that the increased availability of cigarettes at lower cost enables smokers to avoid abandoning their habit in the face of high excise duties, to the detriment of their personal health. Currently, as the Committee is already aware, the United Kingdom is the major target of deliberate smuggling;

(c) By arranging to supply the major commodity used for money laundering by elements of the international narcotics trade, BAT have assisted in the recent growth of hard drug addiction to endemic proportions, to the substantial detriment of individuals and the public health in the United Kingdom and other nations;

(d) By obstructing access to documents held at Guildford, BAT has attempted to limit the discovery and disclosure of material of relevance to public health. This is the case both where the material is of direct medical relevance, and where it relates to marketing and thus to the scale and severity of tobacco-related morbidity and mortality.

4. The points made in this note of evidence are mainly derived from BAT corporate documents. As the Committee is aware, these amount to about 8 million pages. The files used by the CPI team include more than 30 lever arch files. It would not be practicable in this, or indeed in a much lengthier hearing, to produce or examine all the relevant documents and files, and I have not sought to do so. However, all the pages of disclosed documents which we have seen have been individually paginated, using a system called "Bates numbers". Should any particular observation be challenged by the company's representatives at the hearing, we will be able to supply

the Bates numbers of documents that relate to the issue. BAT will then be able to provide the Committee with the originals of these documents or files for inspection.

5. Although Mr Broughton of BAT did not make it clear in his previous evidence to the Committee, all of the documents which BAT releases to researchers are electronically scanned by the company's solicitors, Messrs Lovell White Durrant. BAT should therefore be able to provide the Committee with copies of any pages that are requested, without delay. Indeed, they could put the already scanned pages on the Internet (as Members of the Committee have requested) without significant delay or difficulty.
6. In the remainder of this note, I wish to indicate briefly some of the factual basis for the points made above.
7. To avoid confusion, it may be useful first to set out part of BAT's corporate history, as this has been the subject of recent major changes. British American Tobacco Ltd was first in existence as a company from 1902 to 1976. In 1976, the name of the holding company was changed to BAT Industries Ltd ("BATI"). In due course, BATI became a Public Limited Company and remained so until 1998.
8. During this period, the parent company controlled four tobacco operating companies, and a separate financial services group. The four tobacco companies were British American Tobacco Company Limited (known as "BATCo"); Brown and Williamson Tobacco Corporation in the United States; Souza Cruz S.A. of Brazil; and BAT Cigarettenfabriken GmbH of Germany ("BATCF"). A fifth tobacco company in the BAT group was Imperial Tobacco Ltd of Canada, which was partially owned through an intermediary.
9. In 1998, BATI reverted its name to British American Tobacco Plc. The former financial interests were sold off. The former tobacco operating companies were integrated. The company now operates with a two-tier management structure. The top level is the board of directors of the company, numbering 8. Below this is the management board, comprising the three executive directors of the company and ten other executives who are not members of the holding company board.

How corporate sleaze developed within BAT

10. In 1970, BAT operated an International Exports Division (IED) from premises in Westminster. This organisation was responsible for placing UK made cigarettes in both legal (duty free) and smuggled markets. So far as we can determine from company documents, the issue of smuggling as corporate policy was raised within the group board as early as 1971. After receiving a study on smuggling in Europe, the board directed that a new office be established to co-ordinate BAT's use of smuggling in Europe. Following this, an "IED Sales Office" was established in 1972 in Hamburg, Germany. Because of the illegality of the work it undertook, this office was required to be located in separate premises from the legitimate offices of BAT Germany. The director of the new IED office was Emil Schildt. BAT documents show that, between 1972 and 1983, Mr Schildt's operation was responsible for smuggling an average of over a billion cigarettes a year. This was only a small part of the international smuggling trade organised by IED. Smuggling from Britain to Nigeria and other African states was at least five times larger, and continues to the present time.
11. Also during the 1970s, BAT established strong and enduring links with major smuggling organisations around the world, notably the Harms Brothers company (later, Romar) in Aruba, Dutch Antilles; and Singapura United Trading Limited (SUTL) of Singapore. These companies ran and developed a large range of smuggling routes into Latin America, Asia and the Middle East. Other smuggling routes were developed in West Africa (especially Nigeria) and North Africa (especially Sudan). As IED's business expanded, it was converted into a new company, BAT (UK and Exports) Ltd ("BATUKE").
12. A quantum leap in the scale of smuggling as a proportion of BAT's corporate business followed the appointment of Sir Patrick Sheehy as group Chairman in 1982. He identified Asia as the major area in which smuggling would afford substantial additional business. A "China team" was set up in Britain to plan the development of smuggling routes into the lucrative Chinese market. The key centre for smuggling into China was BAT's Hong Kong subsidiary. Many different smuggling routes and channels were used. BAT (Hong Kong) Ltd initially supplied cigarettes to 12 local smuggling operators.
13. The largest of BAT's smuggling distributors was Giant Island Ltd. Officers from Hong Kong Independent Commission Against Corruption raided Giant Island's offices in 1994. They found accounts showing that Giant Island had by then purchased \$HK5.36 billion (£490 million) worth of cigarettes from BAT (Hong Kong) Ltd. This could correspond to 50-60 billion cigarettes. In the year 1994 alone, Giant Island smuggled 16 billion BAT cigarettes into China. These were made either in Britain or by Brown and Williamson in the United States.

14. Two examples of the range and diversity of the smuggling routes and agents used by BAT are illustrated below. Figure 1 details the Asians markets (other than into the People's Republic of China) operated by BAT's Singapore Office in 1993. This shows that BAT's cigarettes were legally imported into the domestic market in only 5 of 23 countries listed in the region, but were smuggled into 11.

36. iii

SUTL MARKETS

| MARKET | DUTY FREE | DUTY PAID | GT |
|-------------|-----------------|--------------|--------------|
| INDIA | X | - | X <i>not</i> |
| PAKISTAN | X | - | X |
| BANGLADESH | X | - | X |
| SRI LANKA | X | - | - |
| MALDIVES | X | X | - |
| NEPAL | X | - | - |
| MYANMAR | X | X | X |
| THAILAND | X | - | X |
| LAOS | X | (X) | X |
| CAMBODIA | X | X | - |
| VIETNAM | X | - | X |
| MALAYSIA | X | - | - |
| SINGAPORE | X <i>(duty)</i> | - | - |
| INDONESIA | X ? | - | X |
| PHILIPPINES | X ? | - | X ? |
| HONG KONG | X | - | - |
| JAPAN | X | - | - |
| NORTH KOREA | - | - | X <i>not</i> |
| AFGHANISTAN | - | - | X <i>not</i> |
| TAIWAN | X | - | - |
| AUSTRALIA | X | X | - |
| NEW ZEALAND | X | - | - |
| TOTAL (23) | 20 | 5 | 11 |

500046020

BATCO CONFIDENTIAL - CATEGORY I: MINNESOTA TOBACCO LITIGATION.

BATCo document for Center for Public Integrity 10 September 1999

15. Table 1, also from 1993, shows the smuggling centres and agents BAT employed in South America.



| Market / channel | | Brown & Williamson | Souza Cruz |
|------------------|-----|--------------------|---------------|
| Colombia | DNP | Romar Giovannex | Romar J Vegaz |
| Panama | | Giovannex | Giovannex |
| Suriname | DNP | | Icomtrade |
| Guyana | DNP | | Icomtrade |
| Ecuador | DNP | | |

| | | | |
|--------------|-----|------------------|------------------|
| Peru | DNP | General Supply | Marinho |
| Bolivia | DNP | General Supply | Marinho |
| Paraguay | DNP | | Santimar |
| Uruguay | DNP | Diltox | Extralán |
| Iqueque | | General Supply | Extralán |
| Punta Arenas | | Jacqueline Int'l | Jacqueline Int'l |

16. From 1993 onwards, control and management of BAT's smuggling operations was centralised at the Staines headquarters of BATCo, under the control of a single senior executive. The post of "Senior Regional Export Manager" was held initially by Tony Pereira, and subsequently by Pdraigh O'Keefe. The job description was "Co-ordinator of GT [i.e., smuggling] worldwide", and included a requirement to conduct "proactive" searches for new smuggling routes for BAT to use.

Support for criminal activity is endemic among BAT senior managers

17. Our examination of BAT's files revealed an abundance of euphemisms which were routinely (although not exclusively) used in place of exact terms, such as "contraband", "smuggling" or "illegal". The more common terms we noted were "DNP" [Duty Not Paid], "GT", [General Trade], "Transit", "parallel", "second channel", and "recycled".
18. Examination of the papers also showed that involvement in smuggling was so prevalent in BAT that a majority of the present management board of the company can be shown to have been complicit in the commission of criminal offences overseas. Table 2 lists the executive directors and management board members in respect of whom such information is available. The third column gives brief examples of activities with which these directors and executives have been involved.

Table 2 (A). BAT Board of Directors

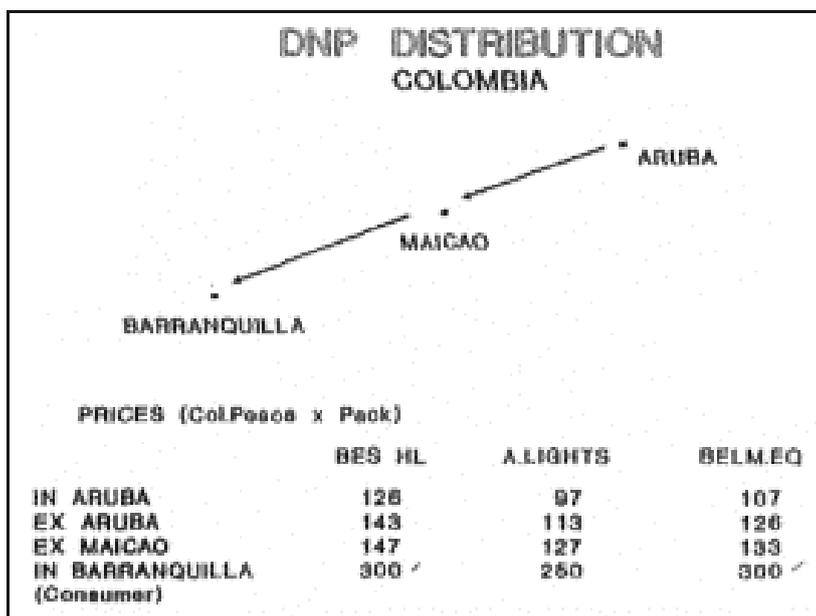
| | | Current and past position |
|-------------------------|---|--|
| Martin Broughton | Chairman since 1998; previously Deputy Chairman and Group CEO (1993-1998); group director since 1988 | As Chief Executive of BATI from 1998 onwards, Mr Broughton chairs the Executive's Committee and exercises strategic direction and oversight of all tobacco divisions |
| Ulrich Herter | Managing Director / CEO; previously Managing Director since 1998 | As managing director of BATI since 1998, Mr Herter has endorsed and approved plans to import massive quantities of Imperial brand cigarettes into Canada in the early 1990s with the intention (directly or indirectly) of defeating the Canadian fiscal and health policies on smoking |
| Keith Dunt | Finance Director / CFO; previously Regional Director, Latin America and the Caribbean (from 1992) | As Regional Director for Latin America and the Caribbean in the early 1990s, Mr Dunt supervised an extensive smuggling operation |

Table 2 (B). BAT Management Board

| | | Current and past position |
|-----------------------------------|--|--|
| Paul Adams | | Regional Director, Europe since 1998; previously Regional Director, Asia-Pacific (1991 to 1998) |
| Nick Brookes | | Regional Director Asia-Pacific; Chairman and CEO of Brown and Williamson since 1995; previously BATCo manager of New Business Development |
| Antonio Monteiro de Castro | | Regional Director, Latin America since 1996; |

| | |
|--------------------|---|
| | previously president and CEO of Suza Cruz, Brazil (1991-1996) |
| Dick Green | Regional Director, Amesca (Africa and Middle East); previously Vice President, Brown and Williamson (1993-1999) |
| Jimmi Rembiszewski | Marketing Director from 1991 to date |

19. By way of further example, figure 3 is an illustration of one BAT smuggling route into Colombia, via the island of Aruba and the northeastern town of Maicao. This map was held in a file belonging to Keith Dunt.



BAT has provided support to narcotics traffickers and other organised crime

20. During the 1980s, the use of cocaine and related products in the United States and Western Europe expanded massively, particularly as the result of extensive development in the key producer country, Colombia. Western governments responded from the late 1980s onwards by introducing financial controls which were intended to impede the proceeds of narcotics trafficking from being returned to the Colombian cartels. After US intervention in Panama in particular, the cartels sought new means with which to receive and repatriate their proceeds from drugs sales.
21. From 1990 onwards, the major means by which the cartels sought to bring funds back to Colombia was by means of smuggling. The principal centre for this activity was Aruba, and the principal product involved was cigarettes. At this time, the three most prominent smuggling agents in Aruba were the Harms family, the Mansur family, and Randolph Habibe. The Harms worked for BAT, while the Mansurs worked for Philip Morris, the manufacturers of Marlboro cigarettes.
22. The basic mechanism of money laundering was that US dollars raised from cocaine sales were transferred to Aruba, and used to purchase cigarettes from agents such as the Harms or the Mansurs. The cigarettes were then smuggled into Colombia along traditional routes, and sold in urban black market centres known as Sanandresitos. The proceeds of the black market sales were then transferred to the cocaine producers, as "clean" Colombian pesos. This mechanism, known as peso broking, is the basic means of money laundering associated with cocaine trafficking.
23. From 1990 onwards, contraband cigarettes increasingly took over from legal cigarette sales in Colombia, at times constituting 70 to 90 per cent of the market. BAT (and Philip Morris) responded to the situation by massively increasing contraband shipments into Colombia, primarily by way of Aruba. BAT files show that successive illegal operations were planned from the United Kingdom to increase smuggling sales into Colombia. Most of the BAT cigarettes concerned came from Venezuela. Smuggling into Colombia was so important to BAT that when Venezuela threatened to introduce export taxes, BATCo responded with an emergency plan to relocate its factories and equipment to Chile instead.
24. By 1992, both the Mansurs and the Harms were under active investigation by American and British law enforcement agencies for involvement in cocaine related money-laundering. Yet in the same year, BAT director Keith Dunt visited Aruba to be briefed by Roy Harms about smuggling, and then invited him to enjoy corporate hospitality at Wimbledon alongside ambassadors and a Foreign Office minister.

25. Similar features are present in other major BAT smuggling markets. In Hong Kong, the close involvement of the smuggling trade with Triad gangs has resulted in the murder of a BAT manager and an agent, the prosecution for corruption of the company's former export manager, and other ex-employees fleeing justice.
26. In Asia as in Latin America, smuggling routes used by BAT into Myanmar, Thailand, Afghanistan among others overlap directly with traditional narcotics export routes, in this case from the "Golden Triangle" and "Golden Crescent" regions.
27. During the 1990s, the volume of UK-made product made by BAT for smuggling purposes can be estimated to have placed at least £500 million annually in the hands of such criminals. Worldwide, the total is many billions of pounds every year.

BAT has obstructed enquiries into its involvement in tax evasion and smuggling

28. In his evidence to the Committee on 27 January, Mr Broughton made a number of remarks which were incorrect or seriously misleading. In particular, he suggested that the small proportion of pages which he said had been inspected, 350,000 out of 8 million was evidence that no-one was interested in the files. In a similar vein, he claimed that the depository was empty on many days was because of a lack of interest by researchers.
29. Mr Broughton's statements to the Committee may usefully be contrasted with a letter sent by his legal department on 21 October 1999 to Ms Judith Watt, explaining why access to the Depository had to be restricted. She was told:

"The volume of copies requested by our visitors has far exceeded our expectations; since mid June we have received requests for over 170,000 pages of documents. This has placed a considerable strain on our resources ..."

It will be apparent from this that BAT in fact faced considerable demand for copies of their files, and set out to curb this demand.

30. Some of Mr Broughton's other statements to the Committee were also disingenuous, at best. The primary reason that so few pages have been inspected, and that some days may not be utilised is that BAT has set out to obstruct access. The company refused to open the Depository at all until early in 1999, and then only did so after receiving a

legal warning from the attorneys for the State of Minnesota. Instead of allowing access on five days notice in compliance with their undertaking to the US Court, BAT's legal department operates a complex booking system, the mechanics of which are varied at whim and concealed from requesters. The hours of access are greatly restricted, and copied of documents now take more than two months to be produced. Some of the tactics used by BAT's legal department have simply been childish; for example, the visitors book which BAT previously required be completed by searchers was removed last week to prevent anyone checking whether statements BAT has made about the availability and use of the Depository were true or not.

31. In the autumn of 1999, the legal department created a new rule that only members of one single organisation could be present at one time. Initially, this was explained as being in the interests of "privacy". When organisations such as ourselves challenged this and said that we were content for others to be present, the "one organisation at a time" rule was then justified on the basis above, namely that BAT's copying department was being overwhelmed by demand and could not cope. On 20 September, I was present personally at the depository when Ms Judith Watt, representing the Protocol Management Group of Australia, attended and sought admission. She had given the requisite notice, but was told that no places were available. She was forced to wait in the building lobby for the entire day. BAT's claim that no places were available was, to my knowledge, false. On that day, there were six places available, but only two people searching. These were myself and Maud Beelman, also from ICIJ.

32. Mr Broughton's other remarks such as "nobody has shown any interest in it despite all the people who have been there" (Q 942) or that "most of the material that is of any relevance can be found on the Internet already" (Q 966) may perhaps best be answered with the observation that four days later the immense public interest and relevance of such documents were set out on the front page of the Guardian, leading directly to the Committee's further enquiries.

33. Mr Broughton also told the committee that apart from material sent to Minnesota, "other documents are not scanned" (Q 928-929). My understanding is that this is not true. I understand that the Committee were not invited to see the separate BAT building behind the Depository, where scanning of company files has been underway for many months. Separately from this, BAT's lawyers scan every document that is requested before supplying it. That is how, for example, the sample document I have illustrated on page 5 contains the identifying line at the bottom; it was added during scanning.

34. It follows that, contrary to what Mr Broughton said previously, many hundreds of thousands of pages (at least) are already available and have been scanned, and could rapidly be made available on the Internet.

A criminal investigation should start in the United Kingdom

35. The BAT documents which we examined leave no room for doubt that BAT directors and senior executives agreed with their agents and others that smuggling should take place overseas. In the years for which BAT documents are currently available to us, this was not of itself a criminal offence in Britain.
36. Parliament passed the Criminal Justice (Terrorism and Conspiracy) Act in September 1998. This law came into effect on 5 September 1999. Section 5 of the Act creates the new offence of "conspiracy to commit offences outside the United Kingdom". The key elements of this offence are that parties within the UK agree to conduct outside the United Kingdom which will involve the commission of an offence or offences under the law in force in that country or territory. It seems plain that any agreement within BAT "to act ... on the basis that [company] brands will be available in the smuggled market" overseas is an admission of offences contrary to the 1998 Act.
37. As the Committee will detect, the words quoted in the previous paragraph come from Mr Kenneth Clarke, the Deputy Chairman of BAT Plc, writing in the Guardian two weeks ago. They confirm that BAT has not desisted from the corporate policy of cigarette smuggling which was exposed by our investigation. Although Mr Clarke qualified his remark by claiming that the conduct he acknowledged was within the law, it is not – either overseas or, since 1999, in the UK.
38. If this is the correct and current position, then serious offences contrary to United Kingdom law are being committed even as the Committee investigates and deliberates. If that is so, then there must be a duty on the public authorities in Britain to begin a criminal investigation.

**DUNCAN CAMPBELL 14 February
2000**