

This document 30 May 2000 was compiled by ASH and outlines British American Tobacco and smuggling – this section is on correspondence. Note links were correct at time of publication – 30/05/2000.

ASH/Smuggling/BAT and tobacco smuggling

British American Tobacco has been forced to release millions of pages of internal documents as a result of litigation in the United States. As well as revealing BAT's real stance on health, passive smoking, addiction and so on, these documents have shown that BAT has been engaged in a massive global smuggling operation - ensuring that its products are sold cheaply on the black market by evading tobacco taxes.

[Developments and correspondence]

On 30 October 2000, The Department of Trade and Industry (DTI) raided BAT's London offices and launched an investigation into BAT's role in smuggling. For explanation **see the ASH press release** (001030a) and analysis published in The Guardian: *Rogue Multinational* (1 November 2000) (Link: <http://www.guardian.co.uk/Archive/Article/0,4273,4084424,00.html>)

This type of activity is usually known as "racketeering" - the same as the organised crime bosses that never do the dirty work themselves but ensure that it happens and profit from it. BAT and other tobacco multi-nationals now face serious legal action over racketeering.

BAT and tobacco smuggling - developments are correspondence

- **ASH press release disclosing shocking documents (31 Jan 2000)**
- **Guardian comment article by ASH Director, Clive Bates (31 Jan 2000).**
- **Letter to Rt Hon Stephen Byers MP, UK Secretary of State for Trade and Industry calling for a DTI inquiry into BAT's conduct.**
- **Letter to the Rt Hon Kenneth Clarke QC MP, former Chancellor of the Exchequer and current Deputy Chairman of BAT, calling for Mr. Clarke to conduct an internal inquiry to report at the company AGM on 27 April 2000.**
- **Letter to Martin Broughton, Chairman of BAT, calling for a statement on exposure to smuggling-related legal action and a new standard of corporate governance.**
- **Defensive statement from BAT (31 Jan 2000).**
- **Dilemma of a cigarette exporter - Deputy Chairman of BAT responds in The Guardian(3 Feb 2000).**

Link: <http://www.guardian.co.uk/bat/article/0,,191288,00.html>

- **A Dirty Business - Guardian Editorial calling for investigation of BAT (4 Feb 2000).**

Link: <http://www.guardian.co.uk/bat/article/0,,191285,00.html>

- **Response from Rt Hon Kenneth Clarke MP denying any problem (10 Feb 2000).**
- **Second letter from ASH to Rt Hon Stephen Byers MP (15 Feb 2000).**
- **Transcript of oral evidence to the Commons Health Select Committee. Clive Bates (ASH), Duncan Campbell (journalist), Martin Broughton & Rt Hon**

Kenneth Clarke (BAT) grilled over smuggling (16 Feb 2000).

Link: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmhealth/27/0021601.htm>

- **ASH follow up letter to the Health Select Committee commenting on progress made in the oral hearing.**

Link: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmhealth/27/0021614.htm>

- **Second Reply from Rt Hon Stephen Byers at the Department of Trade and Industry (20 Feb 2000).**
- **4 page letter to Rupert Pennant-Rea, Chairman BAT Audit Committee about his review of BAT's involvement in smuggling (28 Feb 2000).**
- **Letter from P M Cook of British American Tobacco(1 Mar 2000).**
- **Clarke hits back - Kenneth Clarke's response to ASH promising an internal investigation into the affair and complaining about the approach of The Guardian and ASH (14 Mar 2000).**
- **Oral evidence to the Commons Health Select Committee. Clive Bates, Duncan Campbell, Martin Broughton, Rt Hon Kenneth Clarke grilled over BAT and smuggling (16 Feb 2000).**

Link: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmhealth/27/0021601.htm>

- **UK Health Select Committee section on BAT and smuggling (14 Jun 2000).**

Link: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmhealth/27/2717.htm#a21>

- **Letter to Stephen Byers, Secretary of State for Trade and Industry, outlining the case for a DTI investigation following the Health Select Committee recommendation (3 July 2000).**
- **Over 70 MPs sign a motion calling for the DTI to investigate BAT over the smuggling allegations (18 July 2000)**

Link: <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=17821&SESSION=703>

- **Letter to Kenneth Clarke rejecting his complaints and summarising the case against BAT with just five documents (3 Jul 2000).**
- **Reply from Clarke refusing to answer any specific allegations or explain quotes. (11th July 2000)**
- **BAT faces racketeering charges over Colombian cigarette smuggling (ASH release - 21 Sept 2000)**
- **BAT's petulant response to the Colombian racketeering case (21 Sept 2000).**
- **'Byers announces investigation of British American Tobacco PLC' (DTI press release, 30 October 2000)**
- **BAT's 'disappointed' response to the DTI investigation (30 October 2000)**

Press release

31st January 2000 00:01

ASH

Action on Smoking
and Health

BAT involvement in cigarette smuggling – ASH publishes startling new evidence on the web

ASH today challenges British American Tobacco (BAT) over its involvement in cigarette smuggling in developing countries by publishing 150 of BAT's internal and confidential documents on the ASH web site at www.ash.org.uk/smuggling/ [1]. The evidence clearly suggests that smuggling is integral to the operation of the international cigarette market and driven by the ferocious competition between the tobacco multinationals for new markets.

Clive Bates, Director of ASH acknowledged that BAT does not actually do the smuggling itself, but said, "We are making these documents available so that public can decide for themselves whether they believe the tobacco companies' rhetoric on smuggling. The tobacco industry says that there is nothing they can do about it; we say the documents show that while BAT doesn't actually drive the trucks and sneak through customs themselves, they are one of the Mr. Bigs in the manipulation of international cigarette smuggling."

"The documents show that BAT sought to control markets through cigarette smuggling in the early 90s in ways that went well beyond any acceptable standard of corporate behaviour. It wasn't all happening outside the control of the tobacco industry. They were trying to manage smuggling routes, control price and availability in illegal markets and were treating smuggling almost like any other distribution channel." said Bates

ASH will be calling on [Stephen Byers](#) to launch a DTI investigation and demanding that the Deputy Chairman of BAT, former Chancellor [Kenneth Clarke](#), undertakes an internal inquiry into his company's involvement in smuggling. As the most senior non-executive director, Clarke is responsible for ensuring high standards of corporate conduct and governance.

"We have written to Mr. Clarke asking him take his responsibilities for BAT corporate governance seriously and present an interim report to the BAT AGM on April 27th. It is about time Clarke did the job that BAT shareholders, at least in theory, pay him for." said Bates[2]

Emma Must, International Campaign Manager at ASH said: "Cigarette smuggling is not a victimless crime: the latest projections suggest that one billion people will be killed by tobacco in the 21st Century, the vast majority in developing countries. As the tobacco multinationals turn their marketing firepower on developing countries, tobacco taxation is a vital counter-measure, but this is undermined by large scale smuggling."

[1] The documents have been found by researchers working in the BAT litigation depository in Guildford, England, which contains over 8 million pages of internal documents from the 1950s to 1994. This archive was made public as part of a major litigation settlement in the US State of Minnesota in 1998.

[2] As Deputy Chairman of BAT, Clarke was paid UKP(£)67,820 in 1998, according to BAT's 1998 Annual Report.

Note: Investigative journalists are expected to publish extensive exposes based on similar collections of documents in [The Guardian](#) and through the [US-based Center for Public Integrity](#) on 31st January 2000.

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Emma Must: +44(0)171 739 5902(w) +44(0)171 738 6506(h)

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ASH/ Tax & smuggling/ Commentary on BAT smuggling

Commentary on BAT smuggling by Clive Bates, Director of Action on Smoking and Health (ASH)

The Guardian, London, 31st January 2000

It would be reasonable to expect total world exports of any product to roughly equate to total world imports. For cigarettes, this is not at all the case. The trade figures show that one third of official exports never materialise as official imports. The bulk of the difference - around 350 billion cigarettes per year - is due to smuggling. The documents revealed in today's *Guardian* represent a major breakthrough in demonstrating what we have suspected for some years: that smuggled cigarettes are integral to the operation of the international cigarette market and driven by the ferocious competition for new markets between the tobacco multinationals.

No doubt the usual world-weary apologists for corporate greed will line up behind BAT's predictable defence, which can be translated as follows: "it's a bad old world out there, smuggling goes on, we sell to legal wholesalers, we don't know much about what happens after that, and we can't be expected to police every dubious border crossing or warehouse." This usually comes with a self-serving attack on tobacco taxes which are, apparently, the real cause of the problem - I suppose in much the same way that income tax evasion is the fault of the Inland Revenue.

What is so startling about BAT's internal documents is that they thoroughly destroy this defence. The documents show that the flow of smuggled cigarettes was treated within the company in much the same way as cigarettes from a legal distribution channel. BAT exported to wholesalers and distributors whose transit routes enabled smuggling to happen. BAT sought to control price and availability of its key brands in these channels; it marketed and withdrew products at will on the illegal market; and it used small legal operations, such as duty free shops to justify advertising campaigns aimed at boosting demand for products it knew would be actually supplied by smugglers - so-called 'umbrella operations'. When smuggling started to eat into its profits from legal sales the company even acted to close the illegal routes by withdrawing supplies from distributors - fearing that it was, in BAT's words, 'cannibalising' its own premium brands.

While BAT employees did not actually drive trucks over the borders or pay off crooked customs officials, they sought to manipulate the market conditions to ensure that these things happened and that their products competed on the markets supplied by the smugglers.

The fact that BAT's people were not doing the actual smuggling itself, does not absolve them of responsibility for it. BAT employees do not generally manage local distribution or run cigarette outlets, but that does not mean the company has no influence over what happens there. The Mr. Bigs rarely get their hands dirty. The documents suggest that BAT, a Mr. Big in the cigarette industry, exploited the markets for smuggled cigarettes by judicious marketing to increase their share, and top executives now on the main BAT board were in control of these operations. Because of the way these documents have entered the public domain the trail ends in 1994. We cannot tell from these documents whether such practices

continue today. BAT were not alone in this practice and the great disparity in world export and import figures certainly continues, and continues to grow.

It seems like an extraordinary example of corporate misconduct, but what should be done? Our legal advice is that the documents do not in themselves constitute adequate evidence of a crime - for example a criminal conspiracy to cause others to commit crimes in South America. A single strand of evidence could never be sufficient - the documents provide a snapshot of one company's operations in developing countries in the early 1990s. In any event, the English law governing conspiracy to commit crimes in non-EU jurisdictions came into force only in 1998 and all the documentary we have evidence pre-dates this. Whatever the legal arguments, the documents do clearly show there is a case to answer, if not in criminal law then in ethical conduct.

I believe three things should happen straight away. The Deputy Chairman of BAT, former Chancellor Kenneth Clarke, should immediately launch an internal inquiry and report back to the BAT Annual General Meeting on April 27. It is the proper role of non-executive directors such as Clarke to supervise and strengthen the corporate governance of major companies and as Clarke is not implicated in this and commands more respect and trust than most tobacco industry people, he is clearly the man for the job. Secondly, the Department of Trade and Industry should begin an in-depth inquiry into BAT's business practices and conduct. The DTI has extensive investigative powers and is the sponsoring department within the Government for BAT and the tobacco industry. It is up to the Government to ensure British multi-nationals do not treat developing countries like some lawless wild frontier and there must be some sort of public inquiry. Thirdly, these revelations must inject urgency into the inter-governmental negotiation of the World Health Organisation's Framework Convention on Tobacco Control. The Convention is the first serious attempt to develop a world-wide regulatory regime for the tobacco multi-nationals and within it there is a proposal for a protocol on tobacco smuggling. The Convention is a global response to a global epidemic of smoking-related disease. Around 100 million people died from tobacco-related illness in the 20th Century. One billion premature deaths are predicted for the 21st Century on current trends - the vast majority in developing countries.

As the tobacco industry turns its marketing firepower on developing countries, tobacco taxes are one of the most important public health counter-measures and are endorsed as sound policy by the World Bank. Smuggling undermines tax regimes and keeps the cheap cigarettes flowing.

Tobacco companies act as though they regard tobacco taxes as an ill-conceived government impertinence that stands in the way of greater sales. I hope people all over the world will read The Guardian's report and view the selection of BAT's original documents on our own web site and that of the Guardian; and join those of us that think this over-mighty industry needs to be held to account for its actions.



ASH

Action on Smoking
and Health

Rt. Hon Stephen Byers MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET

31 January 2000

Dear Mr. Byers

I write following the release of British American Tobacco internal documents showing the extent of the company's involvement in smuggling in Latin America and Asia. I hope you will have seen the extensive coverage in *The Guardian* and will have an opportunity to view the documents and other relevant material on the ASH web site at www.ash.org.uk/smuggling/.

I believe these documents reveal a controlling involvement in cigarette smuggling that goes far beyond normal or acceptable business conduct, even in markets where corruption is rife. As the sponsoring department for BAT and the tobacco industry, we call on the DTI to launch an investigation into BAT's conduct, business practices, and corporate governance. It is simply not acceptable for British multinationals to act to undermine legitimate tax policies in developing countries. As you will see, the documents refer to many different countries – this is not an isolated 'bad apple', but a systematic approach to marketing, sponsored from the very highest levels in BAT.

I hope you will agree to launch an investigation and make an announcement within the next few days. We will of course provide any assistance we can, but I believe this is a matter for an official investigation with proper powers to question the individuals involved, demand further documents and, if appropriate, to assess whether the law may have been broken either here or in any other jurisdiction.

If you do not believe a DTI investigation to be appropriate, I would be grateful if you could let me know what you do think should be done, if anything.

Yours sincerely,



Clive Bates
Director

ASH

Action on Smoking
and Health

Rt. Hon Kenneth Clarke QC MP
Deputy Chairman
British American Tobacco plc
Globe House
4 Temple Place
London
WC2R 2PG

31 January 2000

Dear Mr. Clarke

I write following the release of British American Tobacco internal documents showing the extent of your company's involvement in smuggling in developing countries. I hope you have seen the extensive coverage in *The Guardian* and that you will have an opportunity to view some of the documents and other relevant material on the ASH web site at www.ash.org.uk/smuggling/.

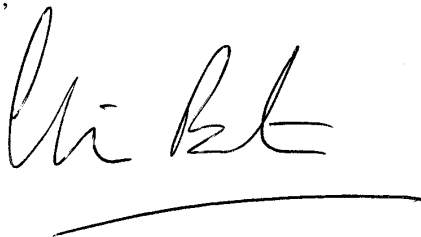
I think you will recognise that these documents raise serious questions about BAT's corporate conduct and governance – at least in the early 1990s. I believe the documents reveal a controlling involvement in cigarette smuggling that went far beyond normal or acceptable business conduct, even in markets where corruption is rife.

As the Deputy Chairman of BAT and its most prominent non-executive director, we are calling on you to launch an internal investigation into BAT's actions regarding 'DNP', 'Transit' and 'General Trade' sales where these terms refer to smuggled cigarettes. As a non-executive director, we believe the responsibility falls on you to ensure BAT's executive management is running a strictly legal business with high standards of corporate conduct and governance.

I will be attending the BAT AGM on 27th April and hope you will have completed at least an interim report in time for me to ask you about it at the meeting.

I would be grateful if you could let me know what you intend to do.

Yours sincerely,



Clive Bates
Director

ASH

Action on Smoking
and Health

Mr. Martin Broughton
Chairman
British American Tobacco plc
Globe House
4 Temple Place
London
WC2R 2PG

31 January 2000

Dear Mr. Broughton

I write following the release of BAT internal documents showing the extent of your company's involvement in cigarette smuggling in developing countries. I hope you will have seen the coverage in *The Guardian* and that you will have an opportunity to view some of the documents and other relevant material on the ASH web site at www.ash.org.uk/smuggling/.

I have written to the Deputy Chairman, the Rt. Hon. Kenneth Clarke QC MP, asking that he establishes an internal inquiry into BAT's corporate conduct and governance. I have also written to the Secretary of State for Trade and Industry asking for a full DTI investigation. The documents we have will also be made available to the Grand Jury investigation currently underway in the Eastern District of North Carolina in the United States. While the proceedings of this investigation are secret, the investigation is known to be examining cigarette smuggling and could lead to charges against tobacco companies. These could include RICO actions such as the Canadian government has brought against other tobacco companies in the Northern District of New York.

Such charges, if proven, carry extremely serious financial and other penalties. As a small shareholder in BAT, I do think that it is important that you make a statement to all shareholders regarding the company's exposure to smuggling-related legal action or other possible consequences of the Grand Jury investigation – even if it is to reassure shareholders that there is, in your view, no exposure. Please let me know what you intend to do, and your views on BAT's exposure to RICO or other smuggling-related legal action.

More generally, I would be grateful if you could let me know what action, if any, you intend to take to ensure that BAT is conducting its business with the highest standards of corporate conduct and governance.

Yours sincerely,



Clive Bates
Director

**BRITISH AMERICAN
TOBACCO**

Allegations of smuggling / Center for Public Integrity report

Smuggling is a global and serious problem faced by many industries – illustrated by the serious erosion of the legitimate tobacco market in the UK, due to far higher taxes than in mainland Europe. Smuggling arises from tax differentials in different countries, and national trade barriers. A policy of raising tobacco taxes to excessive levels, often driven by anti tobacco activists, can only exacerbate this situation.

British American Tobacco group companies work with governments and customs and excise authorities around the world proposing solutions to the issue, and supporting initiatives to help eradicate the problem.

Along with many other companies in the tobacco industry, and in other industry sectors, we are aware that some of our products are handled other than through official channels. Smuggling is a matter of considerable concern to us, not least because it undermines our substantial investment over decades in building proper and well managed distribution networks. We are acting, with others, to seek to eradicate a significant global problem, but we cannot control the distribution chain all the way to the final customer.

The Center for Public Integrity is a United States based special interest group to whom the Guildford document depository in the UK has been made openly available and who claim to be preparing a report based on documents which they have selected from the Guildford facility. We have not seen this report. They appear to have 'cherry picked' a selected number of documents from the 8 million pages in the depository, and could be at high risk of drawing and publishing conclusions which are at variance with the facts.

Allegations such as these are not new. We have frequently encountered inaccurate claims, based on highly selective and out of context extracts from old documents, on this and other topics.

We do not intend to answer questions or address allegations apparently based on highly selective and out-of-context documents, about matters which are more properly addressed - and in many instances are being addressed with our full co-operation - by governments and customs authorities around the world.

Note: In February 1999, as a result of US litigation, a document depository for the public was established at Guildford in the UK, where visitors can view over 8 million pages from company files going back some 50 years. There is open access on request and copies of documents have been given to overseas plaintiffs' lawyers, and to several anti-smoking campaigners and pressure groups. Documents claimed to be 'secret' or 'unveiled', and in many cases placed on the Internet, have frequently come from this open access. Many visitors have searched the depository looking for evidence, for example, that important internal research was concealed which proved that smoking caused disease. None has been identified, and there is none.

**British American Tobacco
28 January 2000**



**BRITISH AMERICAN
TOBACCO**

10th February, 2000

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London WC2R 2PG
United Kingdom

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Dear Mr. Bates,

Thank you very much for your recent letter which was obviously based on the rather far-fetched interpretation that the Guardian newspaper placed on isolated sentences they had trawled from eight million pages of BAT records which were available to the public at Guildford. British American Tobacco suffers from smuggling of a large number of our products, in the same way as producers of other products such as alcohol, where Governments create wide discrepancies in the tax rate with neighbouring countries. We wish to see our products sold through our own distribution network and we work closely with Governments to try to eliminate smuggling whenever a Government wishes to tackle the problem. Even in countries where smuggling is rife, we only sell to legitimate outlets and pay our tax and excise wherever they are due.

I enclose a copy of an article I placed in the Guardian, which explains our position. The Guardian's so-called investigative journalists still tried to spin this to support the original allegations, but I think that was fairly obviously contrived.

Yours sincerely,

RT. HON. KENNETH CLARKE QC MP
DEPUTY CHAIRMAN

Mr. Clive Bates,
Director,
ASH,
102 Clifton Street,
LONDON EC2A 4HW



The Rt Hon Stephen Byers MP
Secretary of State for Trade and Industry

Mr Clive Bates
Action on Smoking and Health
102 Clifton Street
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EC2A 4HW

3 February 2000

Secretary of State
**Department of
Trade and Industry**

1 Victoria Street
London SW1H 0ET

Direct line
0171 215 6272

DTI Enquiries
0171 215 5000

e-mail
TLO.Byers@tlo.dti.gov.uk

Dear Mr. Bates,

British American Tobacco

Thank you for your letter of 31 January.

I fully understand your concerns. I regret that my powers in this area are limited. Companies Act investigations are fact finding, not designed to gather evidence for prosecution. To the extent that the facts are already well established this would seem a case more appropriate for one of the prosecuting authorities. HM Customs & Excise, who are responsible for issues relating to smuggling and VAT evasion, are best placed to undertake this sort of investigation. Officials there inform me that they have already received documents from you and are considering them.

I hope you agree that this is the most effective course of action.

Yours sincerely,

Stephen Byers
STEPHEN BYERS

ASH

Action on Smoking
and Health

Rt. Hon Stephen Byers MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
London
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8th February 2000

Dear Mr. Byers

Re: British American Tobacco

Thank you for your letter of 3rd February.

I am glad that you understand our concerns about BAT and smuggling in Asia and Latin America – the idea that a British multinational is ‘at large’ in developing countries with scant regard for local law or taxation policies should be of great concern to all of us.

I may not have been completely clear about why I believe it is a matter for the DTI. It is precisely because the need is for ‘fact finding’ and not to gather evidence for a prosecution that we wrote to you requesting an investigation using your powers under the Companies Act.

Our legal advice is that a prosecution under English law is unlikely because the relevant conspiracy law did not come into force until 1999 and all the material pre-dates this. While the material is of interest to HM Customs & Excise in that it shows a particular *modus operandi*, it is unlikely that they will be able to proceed to a prosecution. It is possible that legal action will follow in other jurisdictions and would welcome and support that as appropriate.

The most important issues raised here in Britain are:

- the conduct of members of BAT’s main board, notably the Finance Director, Keith Dunt, and Managing Director, Ulrich Herter, and whether these individuals are fit people to be at the helm of a major British company.
- whether BAT’s business practices were and are acceptable – a question of corporate conduct.
- whether there is adequate supervision of the executive management – a question of corporate governance.

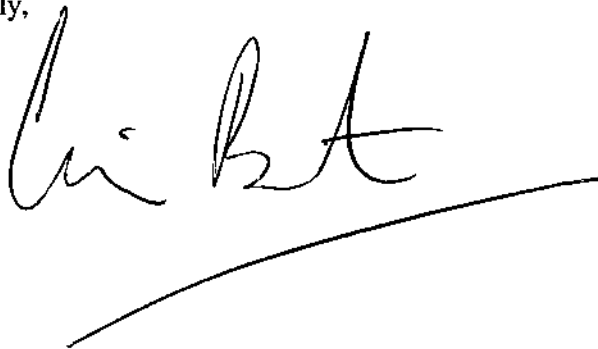
I am aware of no approach other than a DTI fact-finding investigation that could establish clarity on these important points. I believe this falls well within your remit, and given the strength of the evidence presented by ASH and others, I hope you will consider a proper investigation. As *The Guardian* leader of 4 Feb put it:

"Trade and industry officials, who laboured so long over whether Mohamed Al-Fayed was a fit person to run Harrods, should be given a new and bigger task: the review of the BAT documents to determine if its senior officials are fit people to preside over a company which runs its company so dangerously."

To ignore this would send a very poor signal to all those in the private sector that are striving to run modern ethical businesses and to Britain's trading partners overseas who are on the receiving end of all this lawlessness. I hope therefore, that you will be able to confirm your intention to launch a fact-finding investigation. I look forward to your reply.

I believe it may be helpful to discuss the evidence with you in person. To this end I would like to request a meeting with you at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Clive Bates". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Clive Bates
Director

The Rt Hon Stephen Byers MP
Secretary of State for Trade and Industry



Secretary of State
**Department of
Trade and Industry**

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Clive Bates Esq
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20 February 2000

Dear Mr Bates,

BRITISH AMERICAN TOBACCO

Thank you for your further letter of 8 February.

As you will be aware this matter is now under consideration by the Health Select Committee. I feel that it's appropriate that I should wait for their report and recommendations before deciding what action my department should take.

Yours sincerely,

Stephen Byers

STEPHEN BYERS

ASH/ Tax & smuggling/ ASH letter to Mr. Rupert Pennant-Rea

102 Clifton Street, London EC2A 4HW Tel: (0207) 739 5902 Fax: (0207) 613 0531

Mr. Rupert Pennant-Rea
Chairman, Audit Committee
British American Tobacco plc
Globe House
4 Temple Place
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ASH
Action on Smoking
and Health

28th February 2000

Dear Mr. Pennant-Rea

Re: Cigarette smuggling – BAT Audit Committee review

ASH welcomes the decision of the Chairman of BAT to refer the allegations regarding the company's involvement in smuggling for review by the board's Audit Committee. During his oral evidence before the Commons Health Select Committee, Mr. Broughton noted that BAT intends to comply with the **Turnbull guidance on internal control** developed under the auspices of the Institute for Chartered Accountants of England and Wales and endorsed by the Stock Exchange. As the matter of BAT's involvement in smuggling raises important questions of internal governance, exposure to market, legal and reputational risks and of business probity, a review of internal control as part of compliance with the Turnbull guidance is an appropriate basis for reassuring or informing shareholders of the real meaning of these documents.

The Turnbull guidance provides a broad framework for the assessment and management of risk and should of course be taken as a whole, but I believe the following elements of the guidance are particularly relevant to your review:

*In determining its policies with regard to internal control [...] the board's deliberations should include consideration of the following factors: the nature and extent of the risks facing the company; the extent and categories of risk which it regards as acceptable for the company to bear; [...] (para 17). The risks are generated by BAT having an involvement in cigarette smuggling, usually through intermediaries, that goes beyond knowledge of illegal markets, and represents a *controlling* involvement. This is outlined in our evidence – its is *not* sufficient simply to argue that BAT only trades with legal entities, if these are in effect acting as BAT's agents in illegal markets. If you are in any doubt that the control goes beyond passive knowledge, may I refer you first to reference 31 in our memorandum. This shows that BAT and Philip Morris can vary the price in legal and illegal markets*

independently – which shows that BAT has control over which consignments are reaching the illegal markets and which wholesalers are supplying them. There is plenty of other evidence to this effect. The challenge for your review is to define what is and what is not acceptable in these markets and to ensure that the relevant internal controls are in place.

"Does the company have clear objectives and have they been communicated so as to provide effective direction to employees on risk assessments and control issues?" (Appendix, section 1: page 13) and *"Does the company communicate to its employees what is expected of them and their scope of freedom to act?"* (Appendix, section 2: page 13). Given that there is a clear distinction between knowledge and control and development of illegal channels. Do BAT employees know what is and what is not acceptable? Where is this documented? Are BAT's sales performance remuneration packages in conflict with efforts to avoid inappropriate engagement in illegal markets.

"Are the significant internal and external operational, financial, compliance and other risks identified and assessed on an ongoing basis? (Significant risks may, for example, include those related to market, credit, liquidity, technological, legal, health, safety and environmental, reputation, and business probity issues)" (Appendix, section 1: page 13). Basing a substantial part of BAT's business on illegal activity carries many serious risks. I have asked Mr. Broughton to clarify the Company's exposure to US RICO (racketeering) or other smuggling related legal actions for the benefit of all shareholders. There is also clear evidence of collusion with Philip Morris in Latin American markets (see reference 31 in our memorandum), and obvious reputation and business probity concerns. Are the non-executive directors aware of these risks, have they been disclosed to shareholders and what internal controls are in place to manage these risks to acceptable levels?

"Do management and the board receive timely, relevant and reliable reports on progress against business objectives and the related risks that provide them with the information, from inside and outside the company, needed for decision making and management review purposes?" (Appendix, section 3: page 14). We have seen a great deal of management information in which covert language is used to describe smuggling; DNP, transit, GT, Combined Exports (in the case of China), border trade etc. Is the information presented to the board absolutely crystal clear in describing sales of BAT products through illegal channels? Does the board know the extent to which BAT's financial performance relies on illegal sales of its product?

"Do the company's culture, code of conduct, human resource policies and performance reward systems support the business objectives and risk management and internal control system?" (Appendix, section 2: page 13). The evidence we present suggests that where business objectives conflict with risk management, then the risky, unethical or illegal route was chosen – see references 10-15, though there are plenty more. It is the drive for market share and competition that has driven BAT into a risky wholesale engagement in illegal markets, apparently constrained only by the maxim "don't get caught."

"Does senior management demonstrate, through its actions as well as its policies, the

necessary commitment to competence, integrity and fostering a climate of trust within the company?" (Appendix, section 2: page 13). The people that feature most prominently in the memos and who have had the most obvious involvement in smuggling have been promoted and well-rewarded, and many are now your executive director colleagues on the main board of BAT. These include Mr. Herter and Mr. Dunt. Sir Patrick Sheehy, while at the apex of BAT, appeared to authorise an increase in market share in Argentina via smuggling from Brazil (see reference 10 in our memorandum). This suggests an internal culture devoid of integrity and rooted in a culture of disrespect for the laws of the countries in which BAT operates.

"Should the board become aware at any time of a significant failing or weakness in internal control, it should determine how the failing or weakness arose and re-assess the effectiveness of management's ongoing processes for designing, operating and monitoring the system of internal control." (para 34) and *"The board should ensure that its disclosures provide meaningful, high level information and do not give a misleading impression."* (para 40). The decision of Mr. Broughton to refer the allegations to the Audit Committee is the right one. However, we were disturbed that the Deputy Chairman attempted to exonerate the company in an opinion piece in *The Guardian* only three days after the evidence had been published, and, apparently without ever reading it. While such conduct may be regarded as acceptable by Mr. Clarke in his political life, the standards required of directors of listed companies are more exacting. We believe that you should review the advice given to Mr. Clarke and its source and establish what process led to the senior non-executive director making such ill-advised and dismissive claims, about evidence which is now to be the subject of an Audit Committee review, chaired by you.

As you will be aware, Stock Exchange listing rules require a statement of compliance with the Combined Code, and hence the Turnbull guidance, in the annual report and accounts. *"A company that has not complied with the Code provisions [...] must specify the Code provisions with which it has not complied [...] and give reasons for any non compliance."* (cited at Turnbull para 5). I believe therefore that this is also a matter for the Stock Exchange and for BAT's auditors, PricewaterhouseCoopers, and I have copied this letter and the evidence to the PwC BAT audit team and to Mr. Roger Davis, Deputy Chairman of the Turnbull working party and Head of Professional Affairs at PwC.

I hope that you personally will take the time to become acquainted with these remarkable documents and the picture they paint of BAT's activities in Asia and Latin America in the early 1990s. Despite initial attempts to dismiss the evidence, there are important questions of corporate conduct and governance raised in the evidence and which should be properly addressed. In declaring his intention to hold a review; Mr. Broughton told the Commons Health Select Committee in response to a question from Dr. Peter Brand MP: *"... we have a fully developed professional internal control system, it is a well-managed business, it is entirely competent to carry out that review. Under the Turnbull committee report any major finding out of that review which was unsatisfactory in any way would be reported to the shareholders in due course..."*. I hope this means that an interim report will be available at the Annual General Meeting on 27th April, if not before.

I believe the discipline of conducting an Audit Committee review as part of BAT's compliance with the Combined Code will go some way to avoiding a whitewash – a fear clearly voiced by MPs on the health Committee. However, I do believe the matters raised are so important and serious that they ought to also be the subject of an external investigation by the Department of Trade and Industry under section 432 of the Companies Act 1985. The Secretary of State, Mr. Byers, is examining the case for a DTI investigation and has told us he will decide when he has seen the report and recommendations of the Health Select Committee. I believe that a DTI investigation, which has sweeping powers and can take evidence under oath, may pose further risks to the company, and that you should consider these in your review.

During their oral evidence to the Health Select Committee on 16th February, Mr. Clarke and Mr. Broughton appeared to be largely unaware of the strength of the evidence, though almost all of it had been on the ASH web site from 31st January. To facilitate your work, I am pleased to provide a CD-ROM with the documents referred to in the ASH memorandum and a larger collection of relevant documents arranged thematically. To open the CD-ROM simply insert it in the CD drive of a PC and it should launch automatically.

I would be grateful if you could let me know the timing and terms of reference of the Audit Committee review. If I can be of further assistance, or if you encounter problems accessing any of the documents on the CD, please let me know.

Yours sincerely



Clive Bates

Director

CC:

Mr. Martin Broughton, Chairman BAT

Rt Hon Kenneth Clarke QC MP, Deputy Chairman BAT

Mr. Nigel Land, BAT Audit Team, PricewaterhouseCoopers


Mr. Roger Davis, Head of Professional Affairs, PricewaterhouseCoopers

Mr. Paul Geradine, Head of Listing, London Stock Exchange

Dr. John Benger, Clerk, Health Select Committee

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 House of Commons

14th March, 2000

Dear Mr. Bates,

Thank you very much for sending me a copy of your letter to Rupert Pennant Rea as Chairman of the British American Tobacco Audit Committee and for sending me a copy of the CD-ROM. I can assure you that the Audit Committee of the BAT Board, of which I am a member, does take its responsibilities seriously and will continue to do so. We certainly intend to comply with the Turnbull guidance on internal control as soon as possible, and in full.

I do resent the latest line which you and the Guardian are taking that my denial in the Guardian was not an adequate reply to the allegations and documents that I had then been alerted to. The Guardian wanted me to reply straightaway and it was despite their pressure that I took two days to do so. 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. I made enquiries of those involved on the basis of the allegations in the original Guardian reports. It seemed to me that the Guardian and the investigative journalist concerned had failed to provide sufficient substantive evidence for there to be a case to answer.

Your letter and the Guardian are now trying to allege that my Guardian article was in response to many other documents which I had not had time to see before I reached the Select Committee. In my opinion, having participated in the oral evidence session, I was at least as well prepared as you and Mr. Duncan Campbell.

Yours sincerely,

 K.Clark

Mr. Clive Bates,
Director,
Action on Smoking amp; Health,
102 Clifon Street,
LONDON EC2A 4HW



ASH

Action on Smoking
and Health

Rt. Hon Stephen Byers MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET

8th February 2000

Dear Mr. Byers

Re: *British American Tobacco*

Thank you for your letter of 3rd February.

I am glad that you understand our concerns about BAT and smuggling in Asia and Latin America – the idea that a British multinational is ‘at large’ in developing countries with scant regard for local law or taxation policies should be of great concern to all of us.

I may not have been completely clear about why I believe it is a matter for the DTI. It is precisely because the need is for ‘fact finding’ and not to gather evidence for a prosecution that we wrote to you requesting an investigation using your powers under the Companies Act.

Our legal advice is that a prosecution under English law is unlikely because the relevant conspiracy law did not come into force until 1999 and all the material pre-dates this. While the material is of interest to HM Customs & Excise in that it shows a particular *modus operandi*, it is unlikely that they will be able to proceed to a prosecution. It is possible that legal action will follow in other jurisdictions and would welcome and support that as appropriate.

The most important issues raised here in Britain are:

- the conduct of members of BAT’s main board, notably the Finance Director, Keith Dunt, and Managing Director, Ulrich Herter, and whether these individuals are fit people to be at the helm of a major British company.
- whether BAT’s business practices were and are acceptable – a question of corporate conduct.
- whether there is adequate supervision of the executive management – a question of corporate governance.

I am aware of no approach other than a DTI fact-finding investigation that could establish clarity on these important points. I believe this falls well within your remit, and given the strength of the evidence presented by ASH and others, I hope you will consider a proper investigation. As *The Guardian* leader of 4 Feb put it:

102 Clifton Street, London EC2A 4HW Tel: (020) 7739 5902 Fax: (020) 7613 0531

Rt. Hon. Kenneth Clarke QC MP
Deputy Chairman
[British American Tobacco](#)

Globe House
4 Temple Place
London
WC2R 2PG

By fax: 020 7240 0555

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

Back
to

From: The Rt. Hon. Kenneth Clarke, QC, MP



HOUSE OF COMMONS

LONDON SW1A 0AA

11th July, 2000

Dear Mr. Bates,

Thank you very much for your letter of 3rd July. As I have previously explained, I regard my article in the Guardian on 3rd February as a full response to the Guardian's coverage of the allegations against British American Tobacco on 31st January. You repeat that you sent a fax to my office on 31st January, notifying me of a large volume of evidence which you invited me to view on your web site. I am afraid that I am inclined to regard that, sent on the day when the Guardian article appeared, as an attempt to delay any prompt reply to the Guardian article. I believe that my article in the Guardian answered the Guardian's case and I stand by it.

Rupert Pennant-Rae explained at the Annual General Meeting of British American Tobacco, when you were present, the steps which the company has now decided to take to have an investigation by independent and respected lawyers of the subject. He explained the basis upon which that investigation is to proceed and we have made it clear that we take the subject seriously, and the company will take any action necessary to make sure, if any problems are revealed, that we comply with our own high standards of corporate behaviour and the laws of every country where we trade.

I have nothing to add to Rupert Pennant-Rae's statement. I do not think that correspondence between us about extracts from individual documents would be a very helpful process alongside the rather more sensible way of proceeding that we have proposed.

Yours sincerely,

LC4

Mr. Clive Bates,
ASH,
102 Clifton Street,
LONDON EC2A 4HW

Press release 21st September 2000 immediate

BAT faces punitive racketeering charges over Colombian cigarette smuggling

British American Tobacco (BAT) is today facing serious racketeering charges over its involvement in cigarette smuggling in Colombia. BAT faces action by the Departments (States) of Colombia which allege that it committed violations of racketeering laws:

“...arising from its involvement in organized crime in pursuit of a massive, ongoing smuggling scheme.”

The full text of the filing is available on the ASH web site [1] and alleges involvement in **money laundering**, and that BAT:

“...committed, and continue to commit, acts that constitute negligence, fraud, unjust enrichment, public nuisance, negligent misrepresentation, and conspiracy to commit such torts.”

The filing was made by New York lawyers Speiser, Krause, Nolan & Granito [2], which represent the Colombian Departments and adds BAT to the case that was already up and running against its rival Philip Morris. A number of the BAT personnel named in the filing are currently at board level.

Related developments. ASH has released hundreds of BAT confidential documents showing BAT's involvement in smuggling in Asia, Latin America and Africa and related developments [3]. In June, the House of Commons Health Select Committee made a formal recommendation that the Department of Trade and Industry should undertake an investigation of BAT's involvement in smuggling. The response from Secretary of State, Stephen Byers is expected in the next couple of weeks. The European Union has announced that it will launch a smuggling RICO action shortly, though it is not yet known whether this will include BAT

ASH said the Colombian move was significant and further strengthened the case for a DTI Companies Act investigation of the allegations of fraud and misconduct at BAT. Clive Bates, Director of ASH said:

“All the evidence we have seen, and there's lots of it, suggests that BAT treated smuggling as just another distribution channel and arranged their business operations to exploit it to the full.

“While we're very heartened that the authorities are finally catching up with BAT and its role in smuggling, it is a British company and the it is British government that needs to take hold of the situation. A DTI investigation into the allegations of fraud and misconduct is clearly now essential and would demonstrate the Government was prepared to tackle rogue corporations, however big and self-important.”

[1] See the full filing at <http://www.ash.org.uk/html/smuggling/html/colombiarico.html>

[2] +1 212-661-0011 (telephone)

[3] Full background on BAT and smuggling: <http://www.ash.org.uk/?smuggling> including the defence of BAT by Rt. Hon Kenneth Clarke QC MP and ASH's challenging response to Clarke.

Press Contact: Clive Bates 020 7739 5902 (w) 0468 791 237 (m) ISDN is available