

Confidential

Recommendations of the "Task Force"
Bad Bramstedt, 19/20th January 1978

To improve... or partially the...
the Brussels' bureaucracy in all matters concerning
tobacco advertising, tobacco distribution
smoking and health questions

The smoke filled room:
**How big tobacco influences
health policy in the UK**

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Recommendations of 'Task Force Consumerism',
Bad Bramstedt, 19/20th January, 1978

On proposal of Mr. von Specht the objectives of the task force were outlined as follows:

To inhibit totally or partially the activities of the Brussels' bureaucracy in all matters concerning tobacco advertising, tobacco distribution and smoking and health questions

... As for the possibility of 'throwing sand' in the gears of Brussels by making use of the differences of opinion and competences in the different services, it was recommended to discuss the matter with an experienced Brussels consultant.

The smoke filled room:
**How big tobacco influences
health policy in the UK**

www.ash.org.uk/SmokeFilledRoom

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**DEDICATED TO THE MEMORY OF
DAVID TAYLOR MP
1946-2009**
.....

Tireless campaigner and Chair of the All Party Parliamentary Group on Smoking and Health

ASH receives core funding from Cancer Research UK and the British Heart Foundation

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Smith, K.E., Gilmore, A., Fooks, G., Collin, J. & Weishaar, H. (2009) Tobacco industry attempts to undermine Article 5.3 & the 'good governance' trap. *Tobacco Control* 18(6): 509-511.

Smith, K. E., Fooks, G., Collin, J., Weishaar, H. & Gilmore, A. (In press). Is the increasing policy use of Impact Assessment in Europe likely to undermine efforts to achieve healthy public policy? *Journal of Epidemiology & Community Health*.

The authors listed above are not responsible for the content of this report.

FOREWORD

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The Framework Convention on Tobacco Control is the WHO's first ever international health treaty. Among its many strands, it provides a blueprint to stop tobacco advertising, reduce tobacco smuggling, introduce plain packaging for tobacco products and – perhaps most importantly, protect health policy from the tobacco industry and its lobbyists.

When the Secretary of State for Health launched the consultation on the future of tobacco control in May 2008, his proposals included ending displays at the point of sale, controlling vending machines and - at the top of the list - plain packaging for tobacco products. It was immediately headline news but the big tobacco companies were ready. They dusted off the file marked “*plain packs*” and pulled out their meticulously laid battle plan. It was a fight they had been preparing for over 15 years and they saw off the proposal to require plain packaging before the Health Bill reached parliament.

Of all the laws on tobacco control there are few the tobacco industry fears more than plain or standardised packaging. Even where tobacco advertising is banned, the pack is the tobacco's silent salesman, calling out from retailers' shelves and displayed by smokers 20 times a day. The ad men don't simply use the pack to tell us which brand is for women and which for men, or which brands are youthful and which are sophisticated. They can also use them to send out misleading, illegal signals giving the impression that one is less harmful or less addictive than another. In the early 1990s the Canadian Government tried to impose plain packaging. We now know from previously secret internal documents that - faced with such a threat - the world's private tobacco companies set aside their rivalry and formed a secret coalition, drafting a plan to stop the legislation not just in Canada but “*anywhere regardless of the size and importance of the market*”.¹

The industry plan was a classic of its type; despite the legal advice they had received² they would claim the law itself would be illegal, they would insist there was no evidence that the law would reduce youth smoking and they would make links with other more reputable businesses, creating front groups to screen their lobbying.

In line with its obligations under Article 5.3, the Department of Health had a policy of protecting health policy from tobacco industry interference but a series of submissions were received from organisations such as the British Brands Group, Trans Atlantic Business Dialogue, the Anti-Counterfeiting Group and the Global Intellectual Property Centre. During our research for this report we have found that these and other consultation respondents have powerful but frequently undisclosed tobacco industry connections so it is no surprise that their responses were all very similar. And when medical experts in the House of Lords tabled amendments to put plain packaging in the 2008 Health Bill, speeches against the measure displayed an uncanny similarity to the tobacco industry responses. Such was the use of front groups that many parliamentarians may be genuinely unaware that they are acting as mouthpieces for the tobacco industry. Just last month the Australian government declared that they would legislate for plain packs. We can count on the industry to try to obstruct the law with the same spurious arguments in the courts and through front groups. Their campaign last year in the UK parliament shows how little their tactics have changed.

“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

WHO Framework Convention on Tobacco Control Article 5.3

“As we discussed, the ultimate means for determining the success of this program will be:

1) A reduction in legislation introduced and passed restricting or banning our sales and marketing activities;

2) Passage of legislation favorable to the industry;”

Joshua Slavitt, Philip Morris, Tobacco Industry Youth Initiative 1991

“Doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public. It is also the means of establishing a controversy.”

Brown & Williamson Tobacco Corporation Smoking and Health Proposal 1969

The Health Bill, now passed into law, did include measures to end tobacco displays at the point of sale. Here again we saw a text book industry campaign to stop the law. As far as possible the industry hid behind front groups, ideally providing layer upon layer of cover. MPs were outraged to discover that post cards they had thought were a product of a grass roots campaign to save local shops were mass produced by a tobacco industry front group. The “*Save Our Shop*” campaign carried the logo of the Responsible Retailers, but did not explain that this was a brand of the Tobacco Retailers Alliance, nor that the TRA was little more than a subsidiary of the Tobacco Manufacturers Association (TMA) based in TMA offices and that the TMA itself was a club for the UK’s big three tobacco companies, Imperial, BAT and Gallaher. Mirroring the campaign against smokefree public places, the front groups created a “*myth of lost profits*” to scare small businesses into opposing the law.³ They insisted that – whatever the scientists claim - there was no evidence that a display ban would reduce youth smoking. The measures survived the industry assault in parliament but have yet to come into force. The tobacco industry has vowed to fight on and one of their established tactics is delay, or as they put it, “*throwing sand in the gears*” of reform.⁴

That the tobacco companies should use front groups and employ “*experts*” to discredit the evidence against their products is not surprising; they adopted a similar approach to advocate for “*smokers’ rights*”, to obstruct smokefree legislation and to dispute that smoking causes cancer.^{5,6,7} However, analysis of previously secret industry documents has only recently revealed how BAT used front groups to shape the UK and EU regulatory framework known as “*Better Regulation*”.^{8,9} In 1996 BAT formed a coalition of companies and engaged the widely respected think tank, the EPC, successfully ensuring that corporations would be included in European policy discussions early in the policy making process. The European Commission published “*minimum standards*” for consultation in 2002 and BAT pulled off perhaps its most audacious coup in influencing Government: it had not only influenced the policy but shaped the very rules by which future policies would be made.¹⁰ When, in April 2009, an amendment to the Health Bill was tabled in the House of Lords to ensure the Government’s policies complied with their obligations under Article 5.3 Imperial Tobacco wrote to peers claiming “*This amendment is completely opposed to the general principles of Better Regulation that were documented in 2006.*”¹¹

Why the tobacco industry must be challenged

In “*A smokefree future*”, the tobacco control strategy published in February 2010 the Government committed itself to “*publishing the details of all policy-related meetings between the tobacco industry and any government official*”. Just one week later David Cameron MP declared “*I believe that secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics. It arouses people’s worst fears and suspicions about how our political system works.*”¹² It may, at last, be possible to consign to history the tobacco industry’s malign influence on health policy and this report illustrates just how vital that is. It only requires that commitments from all sides be honoured.

Deborah Arnott

Chief Executive, ASH

May 2010

INTRODUCTION

With millions of their customers either dying from tobacco-related illnesses or quitting each year, it is critical for the tobacco industry to keep recruiting new smokers. There are more than one billion smokers in the world and globally this number is increasing. Worldwide, 5.4 million people die prematurely each year from tobacco related diseases. If current trends continue, this will rise to ten million a year within the next twenty years. Tobacco kills up to half its users. Up to one hundred million deaths were caused by tobacco in the 20th century. This is set to rise to one billion deaths in the 21st century.¹⁴

Internal tobacco industry documents have been made available to the public due to a legal settlement that required tobacco companies to provide public access to its document archives. In the archives researchers have found documents that illustrate the tobacco industry's opinions on public health policies and the real thinking behind the tobacco companies' lobbying strategies.^{15,16}

Documents show that companies have been acting in concert and behind the scenes to undermine government health policies. In Europe and the UK tobacco companies have been lobbying:

- against Department of Health proposals to reduce smoking rates
- against regulations to reduce fires caused by cigarettes
- against international guidelines designed to protect public health policymakers from the vested interests of the tobacco industry
- to fundamentally alter the way in which all EU policy is made, ensuring that the industry should be consulted on issues regarding tobacco control
- to establish itself as a leader in corporate social responsibility in order to appear as a legitimate player in health policy.

The tobacco companies have used a variety of tactics to achieve these goals. Some of these include:

- Lobbying against the setting and implementation of public health policies with respect to tobacco control at national, European and international level
- Lobbying to make it obligatory for policymakers to consult tobacco companies when setting and implementing health policies with respect to tobacco
- Using front groups that appear to be independent organisations as mouthpieces to promote the tobacco companies' interests
- Using front men, moles or advocates who often fail to disclose ties to the industry and are often accepted with little scrutiny by the media as "*independent*" observers
- Misrepresenting the conclusions of scientific reports and legal advice
- Creating the impression of public support through a practice known as astroturfing, that is, funding campaigns that give the impression of being "*grass roots*", for example, through writing to newspapers, websites and policymakers

“Our objective remains to develop and mobilize the necessary resources – internal Philip Morris, external agencies and consultants, the industry National Marketing Associations and all potential allies – to fight the social and legislative initiatives against tobacco... We shall carefully target our opponents.”

Philip Morris¹³

1. INTRODUCTION

- Lobbying political decision makers for the authority to draft tobacco legislation and regulations
- Lobbying political decision makers for permission to self-regulate
- Offering voluntary initiatives, some purportedly designed to prevent youth smoking
- Lobbying for the right to participate in tobacco control policy development
- Claiming to be a legitimate stakeholder even though the tobacco sales business has a fundamental conflict of interest with developing public health policy
- Promoting so called “*corporate social responsibility*” through donations and other initiatives
- Initiating and leading a broad coalition of companies interested in aligning EU regulation to business concerns.

TOBACCO INDUSTRY BLOCKS "PLAIN PACKS"

The research for this report has uncovered many documents from the tobacco industry archives that show how they overcame the challenge of being held at arm's length from health policy to exert their influence both in the UK and abroad. It shows how their powerful vested interests time and again have stifled this policy throwing 'sand in the gears' and holding back legislation which could save thousands of lives.

The tobacco companies came together in 1993 to counter the threat of plain packaging in Canada and developed a common strategy. They decided to create a 'plain packs bible' that would be:

- *"a resource for... the industry and allied groups who need to put the industry's case in public"*
- *"accessible for civil servants and politicians"*
- *"sufficiently scholarly to be credible and citable and influence the academic debate"¹⁹*

They then used this body of information to consistently undermine the debate.

The strategy proved successful in every jurisdiction that has considered plain packaging, most recently in the UK where there is evidence that the industry has been shaping the debate on plain packaging since 1994 and successfully undermined attempts to introduce plain packaging into the Health Act 2009.

Part of the original strategy was to cultivate 'allies' who could take forward the industry line. Organisations and individuals were listed in secret tobacco industry meetings and action points made to make contact with them. Some of those contacted were receptive to these approaches and the resulting effect was a series of reputable organisations and individuals supporting tobacco industry arguments and adding an air of legitimacy to their version of the evidence.

Too often the links these organisations and individuals had with the tobacco industry were not disclosed and their contribution to the debate was never seen in the context of the benefits they reaped from their relationship to tobacco.

The evidence presented here can only give a flavour of the millions of tobacco industry documents now available but it does show a pattern of influence which has been carefully thought out and executed over a number of years and has worked to subvert the policy process and inhibit the proper development of health policy.

Packaging has been a crucial form of tobacco industry marketing for 100 years. Companies have always understood that the cigarette pack is more than just a receptacle of convenience but an object that is part of expressing who we are, as much as our clothes or music. While it has always been a key part of the marketing mix, the increasing restrictions on tobacco marketing have resulted in ever greater investment and emphasis on the advertising potential of the pack. The companies have invested significant resources into packaging design and point of sale display in order to communicate brand imagery and increase sales.

"It is a total opportunity for communications... a carefully planned brand or information communications campaign"¹⁷

Mawditt N. Putting pack opportunities into the frame.
World Tobacco Magazine. 2006

"... if you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see."

Speech notes of T.E. Sandefur, President of Brown and Williamson, 1985.¹⁸



Research shows this has already had an effect: Between 2002 and 2006 there was an increase in the proportion of young people aware of new pack design from 11 per cent in 2002 to 18 per cent in 2006.²⁰ In the words of a Tobacco International report *'Rethinking cigarette packs for a new age,'* "In this struggle to win over smokers, the pack and its messages have become increasingly important weapons."²¹

Proposals to address the tobacco industry's increasing use of the cigarette pack as a mobile advertisement would entail the introduction of plain packs that display only the product contents information, consumer information and health warnings required by law. Brand names would be in standardised typeface, colour and size and all other trademarks, logos, colours and graphics would be removed.²²

Analysts have predicted that the introduction of plain packaging could seriously affect sales. In 2008 Tobacco Journal International reported that according to analysts Morgan Stanley, if generic packaging becomes a legal requirement in the UK it "could result in considerably reduced profits."²³

"We believe the proposal would be extremely serious for the tobacco industry if implemented," Adam Spielman, Citi Investment bank, May 2008.²⁴

According to Philip Morris International, the world's major manufacturers have agreed to fight the introduction of plain packaging, stating that they "...don't want to see plain packaging introduced anywhere regardless of the size and importance of the market."²⁵

Plain Pack Group

The tobacco companies acted together.²⁶ In 1993 a "Plain Pack Group" was formed representing British American Tobacco, RJR Tobacco International, Gallaher, Reemtsma, Rothmans, Benson & Hedges, Imperial, Rothmans International Services and Philip Morris International.²⁷ The strategy they developed guides their actions to this day.

Together tobacco companies developed key messages including:

- *"Plain packaging will do nothing to achieve its [the Canadian Government's] anti smoking objectives at considerable potential cost in jobs, international trade problems and smuggling"*²⁸
- *"Plain packaging may be illegal"*²⁸
- Plain packaging is *"merely harassment of smokers"*²⁸
- There was no evidence that plain packaging would reduce smoking and *"could, in fact, have the opposite effect of that intended"*²⁸
- *"The assumption is that changes in the packaging will lead to changes in behaviour. There is no clear evidence that removing the trade mark, or dispensing with the pack design, will affect behaviour."*²⁹
- *"Prohibiting the use of trademarks is contrary to GATT"*²⁹
- *"Banning the use of any registered logo, design, pattern or trade mark amounts to censorship"*²⁹
- *"... a trademark to be registered and protected, must be used. If use is prohibited, the protection afforded by registration may not be available."*³⁰
- Compromising tobacco trademarks would interfere with an 'orderly tobacco market', result in increased counterfeiting and smuggling and have significant economic consequences³¹
- If adopted this would be an approach that might eventually be applied to alcohol and other products.³²

In 1993, at an inaugural meeting, the Plain Pack Group settled on three key actions:

- To develop a bank of industry-friendly experts through Shook, Hardy & Bacon. (see Appendix 3: Legal Firms)
- To seek the support of intellectual property associations like Interbrand, WIPO (World Intellectual Property Organisation), the Organisation for Economic Cooperation and Development (OECD), International Chamber of Commerce (ICC), UNICE (the Union of Industrial and Employers' Confederations of Europe, now Business Europe), AIM (Association des Industries du Marc), ITMLA (possibly a typo for ITMA, the International Trademark Lawyers Association), AIPPI (International Association for the Protection of Intellectual Property)
- To develop alliances with other multinational industries such as pharmaceuticals, alcohol, cosmetics, and specific companies such as Unilever, Colgate, Pepsi and Coke.³³

Using Front Men, Moles and Advocates against plain packs

The use of third parties to carry their message was central to the tobacco industry strategy against plain packs from the very start. **John Luik** (see Appendix 1: Front Men) was commissioned by the Plain Pack Group to produce a book putting forward views against plain packaging that was published in 1998. The book is often referred to in industry documents as *"the plain packs bible"*³⁴. The majority of the content of the book, *Plain Packaging and the Marketing of Cigarettes* was written and either signed off by the Plain Pack Group, or under the review of the industry law firm, **Shook, Hardy and Bacon**.³⁵ The book was written

on behalf of British American Tobacco, Philip Morris International, Imperial Tobacco Ltd, Rothmans, Reemtsma and R.J. Reynolds. It argued that public health assumptions about the beneficial effects of plain packaging were defective and that plain packaging would cause problems with smuggling, and even threaten the values of a democratic society.³⁶ The total cost of the book project to the participating tobacco companies was US \$240,000.^{37,38} Although funding from the six tobacco manufacturers was declared, it was claimed that *"the views in this book are solely those of the contributing authors"* who were all selected by the Plain Pack Group with all chapters vetted by Shook, Hardy and Bacon.³⁹

Recently **John Luik** has been actively campaigning against proposed UK tobacco control measures. In 2009 Luik published articles in the UK without disclosing his long standing links with the tobacco industry.⁴⁰

Other *"front men"* recruited by the Plain Pack Group included **John Murphy** and **Iain Mills**. Murphy is the founding director of the **Interbrand** group (see Appendix 2: Front Groups). The Plain Pack Group consulted him for advice and considered commissioning him to write a paper on brands and branding for them in 1994. The same year Interbrand offered to contribute a chapter to John Luik's book on *"Plain Packaging and the Marketing of Cigarettes"* arguing that the substitution of branded packs for plain packs deprives brand owners of economic assets. Interbrand also suggested it might contribute to the Canadian hearings on behalf of the tobacco companies.⁴¹ Mills was a Conservative Party politician in the United Kingdom, a non-executive director of the **Interbrand** group and chairman of the **European Trademark Committee**. He was considered a valuable potential ally by the **Plain Pack Group** and was also willing to write a chapter in the *"Plain Packaging and the Marketing of Cigarettes"* book. In 1994 Mills advised Rothmans on how to influence parliamentarians against packaging reform.⁴² This was during a period when a Private Members Bill had been tabled by Kevin Barron MP to ban tobacco advertising.⁴³

Duplicitous claims about legal objections

Since 1993 the tobacco industry has hoped that plain packaging regulations would violate minimum obligations for the protection of intellectual property rights and have investigated this avenue under the following international trade agreements:⁴⁴

- The Agreement on Trade-Related Aspects of International Property Rights 1994 (TRIPS)
- The North American Free Trade Agreement 1994 (NAFTA)
- The Paris Convention for the Protection of Industrial Property 1883 which is administered by The World Intellectual Property Organisation (WIPO)

The tobacco companies are aware that all these trade agreements contain important exceptions for health related issues which have been defended successfully.⁴⁵ By 1994 the World Intellectual Property Organisation (WIPO) had written more than once to say there were no restraints under the Paris Convention to the plain packaging of tobacco products and the companies realised that *"current conventions and treaties afford little protection"* and that there is *"little joy"* in GATT/TRIPS.⁴⁶ Nevertheless industry lawyers have continued to insist that plain packaging would curtail or even annul tobacco trademarks.⁴⁷

Faced with unsupportive legal opinions, unsupportive intellectual property agencies and unsupportive corporate allies, the Plain Pack Group set about to improve their chances of success. The companies could not change the GATT or NAFTA but they could endeavour to persuade governments and policymakers around the world to change their understanding of what these agreements meant.

Misleading the UK government

"Even when arguments are sometimes not conclusive in themselves, they should be used uniquely to lobby local governments in our favour." BAT case study on advertising and GATT and TRIPS⁴⁸

When Alan Johnson, former Secretary of State for Health, launched the consultation on the future of tobacco control in Britain in May 2008, the tobacco companies, Philip Morris, British American Tobacco, Imperial Tobacco and Japan Tobacco International responded to the consultation paper to argue the case against the introduction of plain packaging.

Despite knowing that trade agreements contain important exceptions for health related issues which have been defended successfully, the tobacco companies' objections to plain packaging in the UK continued to be on legal grounds:⁴⁹

- Interference with trade mark rights
- Breach of certain rules of EU law
- Breach of various articles of the European Court of Human Rights

Imperial Tobacco wrote to the Department of Health and members of the House of Lords giving notice that it would seek judicial review of any legislation barring branded packs. The letter stated, *"Imperial Tobacco is also concerned about the continued erosion and potential expropriation of our valuable intellectual property rights... Regulation that requires plain packaging will expropriate valuable corporate assets in which the company and its shareholders have invested for more than a century and risks placing the UK government in breach of a range of legal and treaty obligations that relate to intellectual property rights, international trade and EU law."*⁵⁰

Japan Tobacco International (JTI) responded saying that plain packaging would be *"in breach"* of TRIPS and the Paris Convention.⁵¹

BAT responded saying that *"Intellectual property rights are 'a cornerstone of economic activity', hence both their significant value to their owners and the wider economy and the need for them to be protected effectively at both the domestic and international levels.*

*The UK Government is not entitled to interfere with trade mark and related intellectual property rights in respect of lawful products by reference to the nature of those products, because such an interference would be contrary to the harmonised EU and international system of trade mark protection with which it is obliged to comply."*⁵²

Philip Morris responded saying that *"plain packaging will squarely conflict with"* TRIPS and the Paris Convention.⁵³

“All together now”: Front groups join in the chorus

The European Communities Trade Mark Association (ECTA) responded to the consultation to say that implementing plain packaging “*would involve various violations of treaty obligations... [and] is contrary to the harmonised EU and international systems of trade mark protection...*”⁵⁴ Intellectual property solicitor, David Latham, is the group’s legal advisor.⁵⁵ Latham has worked extensively as a legal advisor for BAT and has been a prominent and integral member of the **Plain Pack Group**.⁵⁶

The International Trademark Association (INTA) also made a submission. David Latham has attended meetings with this group on behalf of the Plain Pack Group and BAT and it is clear that the Plain Pack group wanted to influence the Association which in turn invited members of the Plain Pack Group to speak at conferences.^{57,58,59} In 2010, the group’s treasurer is listed as BAT employee, Toe Su Aung.⁶⁰

It seems that trade mark associations have a history of responding to packaging consultations on behalf of tobacco companies. In 1994 the **International Trademark Association (INTA)** had been asked by Rothmans to participate in Canadian hearings on plain packaging.⁶¹

The **British Brands Group** responded to the Department of Health’s consultation saying “*We see the DH’s suggestion for plain packaging of tobacco products to be a move in the opposite direction to other Government policies, leading to less informed, empowered consumers, less competition and markets that work less well...*”⁶² In the group’s February 2009 briefing, the BBG also asserted that intellectual property rights are “*a cornerstone of economic activity*” and are protected at domestic and international level. Removing brand imagery from packaging would in effect remove registered trade marks. However the Government may not interfere with IP rights in respect of lawful products as this would be contrary to the harmonised EU and international system of trade mark protection with which it is obliged to comply.”⁶³ In its response to the Government consultation, the group did not mention any tobacco industry involvement in the main body of the text, instead saying: “*The British Brands Group is a trade body that provides the collective voice for brand manufacturers operating in the UK. Members range in size and supply a variety of branded products including food, drink, household, toiletry, pharmaceutical, DIY, clothing and sports goods.*”⁶²

It does not appear that the British Brands Group revealed its members in its submission to the Department of Health. However, the Group is not always so coy. When submitting a consultation response to an Office of Fair Trading consultation the British Brands Group did list its members which included BAT and Interbrand. However by the time the same consultation response appeared on its website the list of members had been removed.^{64,65}

Although there is no list of members of the British Brands Group on the Group’s website, members are mentioned by BAT Belgium. The company highlights how its membership of the British Brands Group is important to its defence of trademarks. The company states: “*BAT is actively involved in the look-alikes committee of the International Trademark Association, and in the UK, with the British Brands Group. These organisations are effective in persuading*

governments to address the problems, not least because the companies involved can represent considerable economic and investment power".⁶⁶

Although the British Brands Group is now constituted as a company limited by guarantee and none of the four founding companies have tobacco industry connections, previously there had been tobacco industry involvement. The British Brands group was originally formed in 1994 by, among others, British American Tobacco, Rothmans, Kraft Jacobs Suchard (then owned by Philip Morris), Coca Cola, Unilever, Bass, Guinness, Allied Lyons and Interbrand (see Appendix 2: Front Groups).⁶⁷ This was just a year after the tobacco industry including Philip Morris, Rothmans and BAT founded the Plain Pack Group with a specific strategy to engage with other industries and companies notably the pharmaceutical and alcohol industries; and companies including Unilever and Coca Cola. Interbrand is also noted as being particularly important by the Plain Pack Group. Its Chairman, John Murphy, and one of its directors, Iain Mills MP, were invited to write a chapter for the plain packs book.⁶⁸

John Murphy was also the industry's key contact at The Brand Owners Association and was the person the tobacco companies sought support from when they were campaigning against legislative threats to advertising.

The Anti Counterfeiting Group submitted its response jointly with the British Brands Group and similarly failed to mention tobacco industry involvement, although it did mention household goods, clothing, car parts and pharmaceutical industries even though all the major tobacco manufacturers in the UK are members of the Anti Counterfeiting Group.⁶⁹

Business Action to Stop Counterfeiting and Piracy (BASCAP) also responded to the Department of Health consultation. British American Tobacco, JTI and Philip Morris International were listed among a select group of just 25 members in 2009, while BAT is a founder member.^{70,71} The group is part of the International Chamber of Commerce (ICC) which was identified as a potential ally by the Plain Pack Group in 1993 and was subsequently contacted by BAT requesting the group write to Canada's trade minister opposing plain packaging in Canada on trademark grounds.^{72,73}

The **Trans Atlantic Business Dialogue (TABD)** is an interest group promoting free trade. This group made a submission to the consultation opposing the introduction of plain packs. The group argued that introducing plain packs would constitute a "*weakening of intellectual property rights*" and have a "*detrimental effect*" on "*jobs, growth and prosperity*".⁷⁴ BAT is listed as one of five UK members of the TABD group. Nowhere in the TABD consultation response were the links between the group and BAT disclosed although BAT's membership is mentioned on the TABD group website. Significantly, it was **Jeffries Briginshaw**, the TABD's EU Director who signed the group's response. Briginshaw joined the TABD from BAT where he had been Head of Political and Regulatory Affairs between 2004 and 2007.⁷⁵ During this time he served on the TABD policy committee. Briginshaw has also worked at the legal firm **Lovells** in the practice area of Intellectual Property alongside Intellectual Property Solicitor and BAT legal advisor, **David Latham**.

Other Groups making submissions to the consultation arguing against plain packaging include:

The **Global Intellectual Property Centre**: BAT and Philip Morris are members of the Centre's Counterfeit Coalition Programme but the group's consultation response does not disclose any tobacco industry links.⁷⁶

Tobacco Control Accountability Initiative does not appear to disclose tobacco industry funding or involvement and maintains it is independent. However, its founder is **Luc Martial** former lobbyist for the Non-Smokers Rights Association and Canadian Council on Smoking and Health. He switched sides in June 2001.⁷⁷

Markenverband is a German brands group. Manfred A Häussler, now retired, was previously an Executive Director at Markenverband and Imperial Tobacco's Sales and Marketing Director.⁷⁸ Markenverband has disclosed that it has tobacco industry members but asserted that it was "*not writing to you on their specific behalf*".

Nude Brand Creation This group was appointed for a major design deal on JTI packaging in 2005.⁷⁹

Front men line up against the 2009 Health Bill

Canadian pro-tobacco industry spokesmen, **John Luik** and **Patrick Basham** have been actively campaigning against proposed UK tobacco control measures. In 2009 Basham and Luik published articles in the UK press, gave presentations at UK health conferences and advertised their recent publications putting forward the tobacco companies' messages.^{80,81} When making these appearances in the UK, the two did not disclose their long standing links with the tobacco industry. Luik and Basham have both played a part in a long term campaign to reframe smoking as an insignificant risk and portray the laws designed to control the tobacco epidemic as part of an idealistic aim to achieve a "*risk free society*".

Soon after taking a PhD at Cambridge University, Patrick Basham became Director of the tobacco industry funded, Fraser Institute Social Affairs Centre. Basham's success in securing funding of a "*shopping list*" of research programs resulted in the Centre's "*enormous success and growth*". Funders described as "*on side*" with the Centre's research programme included Imperial Tobacco, JTI MacDonald Corp, Rothmans, Benson & Hedges and Brown & Williamson Tobacco.^{82,83}

Today Basham and Luik both declare that they work for the Democracy Institute, Basham as founding director and Luik as a Senior Fellow. Basham also promotes himself as an adjunct scholar with the Cato Institute's Centre for Representative Government. In October 2009 Luik and Basham published an article campaigning against the tobacco display ban on the UK's leading politics news website, politics.co.uk, entitled "*Can the UK avert a smoking Irish failure*". Basham and Luik have also published articles on tobacco control and other health issues on the British Medical Journal website, bmj.com and Telegraph newspaper website, telegraph.co.uk, as well as for libertarian groups such as The Cato Institute and Spiked online.^{84,85,86,87}

During this House of Lords debate **Lord Naseby**⁸⁸ and **Lord Borrie** both opposed the introduction of plain packaging using arguments which addressed several of the original key messages of the Plain Pack Group.^{89,90}

The Canadian experience

In Canada there was a strong possibility that plain packaging standards might be introduced in 1994.⁹¹ Despite the knowledge that GATT, TRIPS and NAFTA Trade Agreements would not impede the introduction of plain packs and despite WIPO's advice that there were no impediments under the Paris Convention to the introduction of plain packaging, the individual tobacco companies undertook their own lobbying and also engineered lobbying efforts by representatives of the wider business community to persuade otherwise.

For example, the International Chamber of Commerce (ICC) was recruited by BAT to write to Canada's trade minister opposing plain packaging in Canada on trademark grounds. Despite WIPO's advice to the contrary only a month before, the ICC maintained this would be a serious breach of Canada's obligations under the Paris Convention.⁹²

The companies co-ordinated their efforts through the Canadian Tobacco Manufacturer's Council (CTMC) which, according to Imperial Tobacco, was authorised to "*plan, coordinate and execute*" the campaign "*much along the lines of a political campaign*". Their activities included:

- Daily conference calls among all companies that allowed them to develop their tactics to respond to changing events.
- Working through a consultant with the House of Commons Committee Clerk to draw up a list of witnesses friendly to the industry.
- Giving friendly witnesses "*strategic and tactical advice*."
- Keeping more than 200 allies "*aware of developments and key issues through a daily plain packaging bulletin*".
- Influencing media coverage by "Feed[ing] selected journalists material attacking motives of Health Minister and undermining credibility of anti-smoking lobby".⁹³

Additionally Philip Morris and RJ Reynolds hired former US trade representatives, Carla Hills, and Julius Katz to tell the Canadian Commons Committee that plain packaging would be an "*unlawful expropriation*" of their trademark rights and that the "*compensation claims of affected foreign trademark holders would be staggering, amounting to hundreds of millions of dollars*."⁹⁴

By 1995 the tobacco companies' duplicitous claims appeared to have convinced the Canadian Government that introducing standardised packaging would be contrary to international trade agreements, as Health Canada released a framework for renewed legislation that made scant mention of plain packaging.⁹⁵

The tobacco companies have continued to use the tactic of bringing up spurious objections about intellectual property rights into the twenty-first century. When Canada was exploring proposals to implement 50 per cent graphic warning messages on cigarette packages.⁹⁶ BAT reacted by writing to the European Commission to complain.⁹⁷ The European Commission

Director General replied with the conclusion *"Our initial assessment is that the measures are probably compatible with WTO rules"*. In 2002 Philip Morris then submitted comments on a proposed ban on the descriptors 'light' and 'mild' saying that *"banning such terms on tobacco packaging would violate Canada's obligations under the NAFTA, the World Trade Organisation's Agreement on Technical Barriers to Trade ("TBT") and the TRIPS"*.

Recycling dubious claims worldwide

United States: In 1995 when Washington State Senator Mike Heavey proposed legislation to require plain packaging, Philip Morris International provided materials used in Canada to combat the proposal.⁹⁸

Australia: In 1995 British American Tobacco's Australian subsidiary told the Australian Senate that plain packaging would violate international law and the Australian constitution.⁹⁹ The Australian health minister Carmen Lawrence appeared to be convinced as she rejected the idea of plain packaging on international trade and legal grounds. A spokeswoman for Dr. Lawrence said this would breach constitutional requirements for free trade. *"Unfortunately, it is just not feasible,"* the spokeswoman said. *"We would have to buy the tobacco companies' trademarks and that would cost us hundreds of millions of dollars"*.¹⁰⁰

Hong Kong: in 1995 the Tobacco Institute of Hong Kong told the Hong Kong government that its proposed Smoking (Public Health) (Amendment) Bill would diminish commercial value of trademarks and may violate the Paris Convention, GATT and TRIPS.¹⁰¹ This false assertion appears to have deterred the Hong Kong government from implementing the proposals and in June 2000 Hong Kong attorneys provided legal opinion that a Private Member's bill to amend Hong Kong's smoking act would be a violation of intellectual property agreements.¹⁰²

Thailand: In 1995 BAT wrote to the Thai government suggesting that a Thai ingredient disclosure regulation was a breach of intellectual property rights.¹⁰³ BAT then went on to write to the EU Commission DG Johannes Beseler to complain about the disclosure.¹⁰⁴ In 1997 Beseler replied to BAT to say that he did not see a problem with compliance.¹⁰⁵

European Union: In 2000 The Confederation of European Community Cigarette Manufacturers Ltd briefed the EU in response to the proposed ban on light and mild descriptors and claimed it was a violation of TRIPS and the Paris Convention in the case of names like *"Mild Seven"*.¹⁰⁶

The Framework Convention on Tobacco Control: In 2000 JTI submitted that the Framework Convention on Tobacco Control would violate intellectual property laws if it banned descriptors. In the same year BAT's submission to the WHO's Framework Convention on Tobacco Control warned that the WHO's proposals to ban tobacco advertising and descriptors such as 'Lights', could infringe commercial and intellectual property rights guaranteed in international law and could clash with provisions embodied in national constitutions protecting freedom of speech.

TOBACCO'S INFLUENCE IN WESTMINSTER

The reputation of the tobacco companies has been on the decline for decades since the truth about the harm caused by smoking became public and their part in covering up the evidence. This decline has had an impact on how they work to influence parliament. It has meant that they have put greater emphasis on developing their own funded front groups. They have worked to cultivate relationships with other reputable organisations who might be convinced to take a line supportive of the industry and they have continually twisted evidence in order to portray restrictions on their activity as harmful to the economy, limiting individual choice and contrary to the law.

Health Act 2009

In 2009 the Government announced further tobacco control legislation as part of the Health Bill. This legislation proposed restricting the sale of tobacco from vending machines and ending the display of tobacco in shops.¹⁰⁸ Since the ban on tobacco advertising in 2003, tobacco companies have focused on the display of tobacco products behind shop counters and at other points of sale to attract attention to their products. Tobacco companies have exploited this loophole and since 2003 there has been considerable growth in the number and size of tobacco displays in many premises.¹⁰⁹ The tobacco industry has fought the removal of public tobacco displays through its own direct lobbying and – more publicly - by using others to run the campaign on its behalf.

Health Act 2009: Tobacco retailers lobby group

In 2008 the Tobacco Retailers Alliance used British American Tobacco, JTI and Imperial Tobacco funds to orchestrate the “*Save Our Shop*” campaign whereby MPs were inundated with postcards urging them not to back the Department of Health proposals to remove public displays of cigarettes. The Tobacco Retailers Alliance claims to represent the interests of 25,000 independent retailers but is in fact funded by the Tobacco Manufacturers' Association, an industry body representing its members, BAT, JTI (through its Gallaher subsidiary) and Imperial Tobacco Ltd.

According to its website

“The TMA’s prime function is to represent the views of its members when communicating with the UK Government, the authorities and others on issues of shared interest and concern, including taxation, smuggling and youth access prevention”.^{110,111}

The Tobacco Retailers Alliance did not publicise its links with the manufacturers' body and the Save our Shop postcards bore no reference to the connection between the Save Our Shop campaign and British American Tobacco, Gallaher and Imperial Tobacco. Over 100 MPs signed an early day motion that opposed the Department of Health's proposal, many oblivious to the fact that the campaign had been orchestrated by the tobacco industry. MPs were outraged when they found out that they had been hoodwinked.¹¹²

“In our opinion [after taxation] the other two regulatory environment changes that concern the industry the most are homogenous packaging and below-the-counter sales. Both would significantly restrict the industry’s ability to promote their products.”

Morgan Stanley Research 2007

“The early-day motion very carefully avoids any kind of hint of their support... It is a pretty dirty, surreptitious quest they're on. I felt a bit pissed off about it. ..They can't help themselves, they're so keen to preserve the profit margins they've enjoyed for decades that they resent any kind of attempt to curtail their activities” said Frank Cook, Labour MP for Stockton North in December 2008.¹¹³

“This sort of manipulation doesn't necessarily entail outright lies of commission, but it typically entails lies of omission that disguise the identity of the message's sponsor... The logic of the third party technique implies that when PR firms set out to manufacture news, they often want to keep their clients (and themselves) out of the story.” SourceWatch

Health Act 2009: Scare tactics

The tobacco industry did not depend on its bought and paid for front groups to do the job alone, however, and set about manufacturing fear of this legislation among retailers. To motivate this fear the industry particularly focused on the cost of compliance, claiming costs which escalated far beyond those estimated by the Department of Health in its impact assessment. Independent retail groups seemed to be quoting ever higher figures for cost of compliance as the campaign went on, as if they had entered a bidding war. For example in 2008 when the Association of Convenience Stores submitted its response to the Department of Health consultation on point of sale display bans it stated that it believed it would cost retailers a minimum of £1,850 and a maximum of £5,000.¹¹⁴ These estimates were still way in excess of the Government's estimates. However, by the time the ACS submitted its joint response with the Scottish Grocers Federation to the Scottish Parliament on the same issue, it had inflated this cost to over £10,000.¹¹⁵ There was little evidence on which to base these inflated costs. The experience of Ireland's legislation which was implemented on July 1, 2009 did not support these claims. Compliance cost most Irish retailers little or nothing. According to the Irish Office of Tobacco Control, 68% of retailers had a new type of automated dispenser, usually owned by the tobacco companies, which were made compliant cheaply and easily with the costs borne by the manufacturers. The Association of Convenience Stores commissioned research on the costs to Irish retailers and found most convenience stores had at least some of the costs met by the tobacco companies and, for 4 in 10 of these shops, the industry paid over 90%. Even though the survey excluded shops where the tobacco industry met the cost of automated dispensers, the average cost was only £300 per shop.¹¹⁶

The vague stories of economic catastrophe are well encapsulated by this advert (opposite page) placed by JTI in the retail press just prior to MPs voting on the Health Bill. It offers no rationale and provides no data or references. Instead it plays on retailer's emotions by showing an illustration of an abandoned shop and claiming that the legislation could do this to their business.

ACT NOW!

HOW COULD A DISPLAY BAN AFFECT YOU?

- In December 2008, the Department of Health announced proposals to remove cigarette displays in larger shops from 2011 and smaller businesses from 2013
- Northern Ireland has indicated that it intends to ban tobacco displays earlier, as soon as July 2010
- The display ban is included in the UK Health Bill (which applies to England, Wales and Northern Ireland) and is **currently being debated by MPs in the House of Commons**
- In Scotland a Bill has been introduced to the Scottish Parliament also seeking to ban tobacco display which is expected to be debated by MSPs later in the year

LOSS OF BUSINESS

- You could lose customer footfall
- 78% of retailers think this would increase the sales of illicit tobacco trade¹
- 15% of retailers would close their store²

ADDITIONAL COSTS

- You could incur costs of up to £5,000³

LOSS OF SALES

- 79% of retailers believe they would lose tobacco sales in addition to secondary sales of drinks, newspapers, confectionery etc¹
- 55% of retailers believe they will lose sales to larger retailers¹



WHAT CAN YOU DO?

- If you oppose a display ban, you can still write to your local MP (England and Wales), MLA (Northern Ireland) or MSP (Scotland) to make your views known – it will make a difference!
- If you don't know who your local MP, MLA or MSP is please visit: writetothem.com or contact the Tobacco Retailers Alliance (TRA) on **tel 0800 00 82 82**

Source: 1. Independent Retail News, survey July 2008 2. Convenience Store Magazine survey, June 2008 3. ACS April 2008



Health Act 2009: Covering their tracks

Labour MP David Clelland was a prominent opponent of the tobacco control measures in the Health Bill. He spoke in parliament against the measures but failed to disclose his close relationship with the tobacco industry's campaign.

Clelland was exposed by regional newspaper the Sunday Sun when it came to light that his step daughter Katherine Graham ran the industry front group The Tobacco Retailers Alliance which had orchestrated the Save our Shop campaign. There was no requirement under parliamentary procedure for Clelland to disclose his relationship and he told newspapers that he had said nothing because: *"I didn't want to give the impression I was raising it because I'm related to Katherine Graham"* ¹¹⁷

Indeed, David Clelland's support for the tobacco industry predates his step daughter's appointment. Tobacco industry documents record him as a supporter in 1991 when he attended an event with the Tobacco Advisory Council, the precursor of the TMA, which Sourcewatch describe as an organisation that: *"primarily operated to delay and obstruct tobacco control legislation and preserve the social acceptability of smoking. Member companies included Gallaher, British American Tobacco, Imperial Tobacco, and Rothmans Tobacco. TAC engaged in various programs and activities aimed at confusing the public about the scientific consensus that secondhand smoke harms the health of non-smokers."* ¹¹⁸

Health Act 2009: Other front group activity

The British Brands Group was among those that wrote to parliamentarians during the passage of the Bill without disclosing its full membership. The British Brands Group also had a display in the lobby of the House of Commons while the Bill was before the house which promoted the importance of branding to the British economy, again, without disclosing its tobacco industry links.



On February 20th 2008, a few months after the Health Secretary Alan Johnson announced his plan to consult on a new national Tobacco Control strategy, Michael Prideaux, BAT's Director of Corporate and Regulatory Affairs found himself speaking to the back bench All Party Parliamentary Group on Corporate Responsibility. The opportunity was timely for Britain's biggest tobacco company, providing the opportunity to build support in advance of the consultation. In an extended communication with researchers at the University of Bath, the charity Business In the Community, which provides the secretariat for the group, was unable to disclose who had suggested that BAT be invited to speak at such a sensitive time. No mention was made of BAT's involvement in BiTC. However, it later transpired that BAT is a "*premier member*" of BiTC, one of a handful of companies "*invited to take a significant leadership role*".¹¹⁹ A year later BAT was the first company to achieve "*platinum*" status on BiTC's Corporate Responsibility Index.¹²⁰

Tobacco industry lobbying in 1990s

It is no surprise that the tobacco industry was so heavily engaged in attempting to influence public health policy during the passage of the Health Act when it has had so much practice over the years.

Throughout the 1990s there was a concerted effort by those parliamentarians who were concerned about the impact of tobacco advertising to change the law on tobacco marketing.

Tobacco industry lobbying in 1990s: The Barron Bill

In December 1993 Kevin Barron MP tabled a Private Members Bill to ban tobacco advertising. The tobacco industry knew that this Bill had genuine cross party support and it had the potential to become law. The industry had plans in place to ensure that the Bill would be talked out but were concerned that this would not be enough. Then Health Secretary, Virginia Bottomley MP, wanted to change the voluntary agreement on advertising the industry had signed up to and was using the Barron Bill as a bargaining chip.¹²¹

In February 1994 the Bill was talked out by the tobacco industry's supporters, notably John Carlisle, and in May of that year a new voluntary code was agreed with the Government ready to be signed off. This was delayed and by the end of the year Ministers were already keen to renegotiate the content following public concern over the marketing of new tobacco products.

Tobacco industry lobbying in the 1990s: The Lewis Bill

After the defeat of the Barron Bill its supporters regrouped and decided to launch another bill in the next session. In November 1994 back bench MP Terry Lewis came fourth in the Private Members ballot and announced that he would be tabling a bill to increase the size of health warnings on cigarette packs. The Lewis Bill was announced in a press conference alongside Tessa Jowell's Private Members Bill to introduce smokefree legislation which was further down the ballot and therefore less likely to be debated.¹²²

This time the tobacco industry was taking no chances. In a meeting with Department of Health officials, the TMA was assured that the Minister would 'kill off' the Lewis Bill. However, they responded that: *"It was useful to know this but TMA would not be taking any chances in view of the problems we had noted that the Government had in delivering!"*¹²³

The Lewis-Jowell Working Group was convened, with all the major tobacco companies taking their part in setting out a plan of action.¹²⁴ It was decided that the TMA would write to all potential supporters, while the companies would contact those MPs with whom they already had a relationship.¹²⁵ They listed MPs they planned to target for support and advice from both sides of the house but notably John Carlisle, who later became the TMA's Public Affairs Director, and Iain Mills who offered them advice around the time of the Barron Bill. At the end of his letter of January 1994 he added: *"if you wanted a more detailed study... perhaps we could discuss the basis of this."*¹²⁶ This letter was then circulated to the Plain Pack Group.¹²⁷

The working group identified front groups that could be approached including those from the pharmaceutical industry and The Food and Drink Federation. Specific reference was made to The Brand Owners Association, where the working group's contact was John Murphy who contributed to their work on plain packs through his role at Interbrand. The working group discussed taking up the offer of help from the Confederation of European Community Cigarette Manufacturers to get European lawyers involved in the issue and to get them to write to the Union of Industrial and Employers Confederation in Europe.¹²⁸

A specific discussion took place on how to reach Labour MPs. It was decided that an approach through the MSF (Manufacturers, Science and Finance Union) might work. Today the MSF has become part of the union Unite which was one of the organisations that briefed MPs against the tobacco control provisions in the Health Act.

Members of the TMA working group retained tight control over the campaign. For example, they did not want all their front groups to lobby on the Lewis Bill. For the 'smokers rights' group FOREST they decided that: *"FOREST to be advised to stay away from Lewis Bill and concentrate instead on Jowell Bill."*¹²⁹

The TMA working group also developed an extensive briefing document which included arguments similar to those raised against plain packaging. In fact it is in this document that we see just why the tobacco industry was so concerned about the Lewis Bill: *"The anti-smoking lobby, who have proposed this Bill, regard its provisions as the first step towards their ultimate goal of plain or generic packaging. This would be utterly unacceptable and would have profound effects throughout the world of commerce."*¹³⁰

While the tobacco industry was working hard to throw 'sand in the gears' of the parliamentary process through its spurious arguments, cultivation of parliamentary contacts and the use of front groups, it was also pursuing the matter through civil servants in various Government departments, including the Department of Health and the Department of Trade and Industry. From industry documents it seems that the issue of the voluntary agreement on tobacco advertising was reopened as MPs were concerned about the public debate over a new

promotion for Camel cigarettes called 'Camel Art' and: *"Terry Lewis's Private Members Bill makes matters only worse."*¹³¹

However, the industry's good relationship with Department of Health officials seemed to limit its need to comply with the political environment this time:

*"GP [DoH official] made clear that Health Ministers including the Secretary of State, the Permanent Secretary and other senior officials in the Department were deeply concerned... Something had to be done, and they would not sign off the voluntary agreement until action had been taken... It was clear that both Lynda [DoH official] and Geoffrey had been under considerable personal pressure from their own bosses and also Ministers to make revisions to the voluntary agreement... He was prepared to recommend the letter of understanding approach to Ministers as opposed to amending the voluntary agreement."*¹³²

This meeting with Department of Health officials and others are minuted by the tobacco industry as 'off the record' and 'confidential' and enabled it to exert even further covert influence over health policy.

Tobacco industry lobbying in the 1990s: Tobacco Advertising and Promotion Act

By the end of the 1990s the tide was turning against the tobacco industry both in the media and parliament. One of the Labour Government's manifesto pledges when it came to power in 1997 was to ban the advertising of tobacco.

The tobacco industry successfully delayed the introduction of UK legislation by arguing that the Government should wait for an EU directive on tobacco advertising which was under consideration in Brussels. At the same time the industry was working in Europe to disrupt the EU Directive. The tobacco industry also encouraged a range of other organisations including the British Brands Group, Association of Convenience Stores and the Advertising Association to lobby the Government on the economic impact of an advertising ban.¹³³ This strategy was successful until 2000 when the Tobacco Advertising Bill was announced in the Queen's Speech.

This was a Bill with Government backing and a serious threat to the tobacco manufacturers. They undertook their usual activities, in particular utilising their networks in the trade union movement. They placed great emphasis on the newly created Tobacco Workers Alliance. This union was, as the notes from the TMA campaign group meeting put it: *"originally set up to oppose the New Labour Government's proposal to ban tobacco advertising and sponsorship"*.

While they targeted the Labour Party through their union connections, a more direct approach was taken with the Conservative Party. While in power the Conservatives had been more supportive of the tobacco industry, although there were also prominent opponents within the party. In 1999 these opponents had started to gain more support. Gary Streeter, then Shadow International Development Secretary, publicly wrote to BAT condemning the company's advertising abroad. His comments received the backing of party leader William Hague.¹³⁴

Some months later an article appeared in the Sunday People claiming that: *"Tobacco firms are to starve the Tory Party of cash until leader William Hague reverses his anti-smoking policies"*.¹³⁵

Following the article the TMA wrote to Hague requesting a meeting: *"As you know senior executives of the industry have asked for an early meeting to clarify these matters and other areas of concern and I trust that you will grant them with an early opportunity to discuss these policies with you"*.¹³⁶

The meeting duly took place. In a note to tobacco companies inviting their executives to attend, John Carlisle, Public Affairs Director at the TMA, clarified the context of the meeting saying that it was: *"In light of recent policy statements from the Conservatives and the need to establish clarification of the Opposition position on various matters."*¹³⁷

From the letter which Hague sent to the TMA following the meeting it seems that it was a success. When he circulated the letter to the tobacco companies Carlisle added: *"we continue to travel in hope!"*. The letter read:

"Thank you for setting up my recent meeting with some of the leading members of the Tobacco Manufacturers Association."

"It was very useful to be able to hear the views of the industry and I hope that I was able to reassure them about our policy position. I too am keen that we should maintain the dialogue on both the health and economic issues and I agree that our objectives in each of these areas need not conflict. I have asked both Francis Maude and Liam Fox to keep in touch with you."

The Conservative leader continued to correspond positively with the TMA throughout the campaign replying to its letter of March 2001 regarding the failure of Conservative amendments to the Bill:

"I can assure you that our Front Bench spokesmen worked very closely with John Carlisle and virtually all the amendments prepared by your Association were presented at the Committee stage."

The tobacco industry continued to campaign against the Tobacco Advertising Bill, including when it returned to Parliament after the 2001 election as the Tobacco Advertising and Promotion Bill, but in 2002 the industry finally lost the battle. Seeing the writing on the wall in 2001, the TMA advised its members to make a last ditch attempt to reinstate the voluntary agreement:

*"Member companies would again have an opportunity to be seen to act responsibly by making a series of individual declarations or one joint declaration that they will withdraw, with early effect, from the range of marketing activities which we have contemplated on several previous occasions. An invitation would be made simultaneously to the Government to jointly amend the voluntary agreements to reflect these changes."*¹³⁸

BIG TOBACCO AGAINST THE WORLD HEALTH ORGANISATION

Framework Convention on Tobacco Control (FCTC)

The World Health Organisation Framework Convention on Tobacco Control is a global tobacco treaty that has been ratified by more than 150 countries and protects 85 per cent of the world's people.

It is the first international treaty negotiated by the World Health Organisation (WHO) and a key development for global public health, providing a unique opportunity to stem the tide of tobacco related death and disease.

The WHO estimates that broad implementation of the treaty could save up to 200 million lives by 2050.¹⁴⁰

Article 5.3

Article 5.3 of the FCTC was drawn up to protect the treaty from tobacco industry attempts to undermine it. This is important because of the long established and well documented tobacco industry efforts to weaken, delay and defeat legislation designed to combat the tobacco epidemic and improve public health.^{141,142,143,144,145}

For this reason Article 5.3 requires that:

*"In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."*¹⁴⁶

Strong guidelines on Article 5.3 are essential to prevent such influence and to ensure the success of the FCTC in helping reduce the fatal impact of tobacco use. Article 5.3 seeks to ensure that any government consultation with the tobacco companies about policy should be limited to that which is strictly necessary and should be transparent and accountable. Although the guidelines for Article 5.3 of the FCTC were agreed internationally by the WHO, countries must implement Article 5.3 individually if it is to be effective in protecting the policies of the Framework Convention from tobacco companies' interests.¹⁴⁷

Big Tobacco against Article 5.3

When Article 5.3 guidelines were being designed by the WHO tobacco companies lobbied strongly against them.¹⁴⁸ Now the same companies are attempting to undermine the implementation of the guidelines at European and national level by claiming the guidelines contravene other European and national policy commitments. BAT and Imperial Tobacco have both challenged the UK government over Article 5.3 arguing that the tobacco industry should be consulted on issues regarding tobacco control.¹⁴⁹

“Portray the debate as one between the anti-smoking lobby and the smoker, instead of ‘pro-health and public citizens’ versus the tobacco industry”¹³⁹

Philip Morris 1992

However, when the tobacco companies lobbied against Article 5.3, claiming it contravened the European Commission’s commitment to a full and proper consultation with the tobacco industry, they did not reveal that BAT had also previously lobbied via front groups to embed routine consultation with the tobacco industry into European policymaking and decision making processes. Throughout this lobbying process, BAT’s conduct has been far from transparent, keeping its involvement hidden behind the cover of lobbying organisations.



Amal Pramanik - General Manager, Imperial Tobacco UK



Turning to the illegal trade in the smuggling and counterfeiting of tobacco products, Amal Pramanik comments: "It is difficult to see what above-inflation tobacco tax increases will achieve for the Government. Imperial Tobacco understands their need to generate revenue in the current economic climate, and we are obviously aware of their health agenda, but the Chancellor’s decision to increase excise duty by over 4% in March this year won’t generate revenue or reduce smoking incidence levels. It will simply benefit the criminals who bring smuggled and counterfeit tobacco products into the UK to sell cheaply to smokers."

Industry Insight: Advertorial

Imperial Tobacco’s UK General Manager, Amal Pramanik, gives his views on the denormalisation of smoking and smokers and the illicit tobacco trade.

The attack on free adult choice

"Using the pretext of 'public health policy' the current Government has attacked many adult lifestyle freedoms and choices. They seem to think that, left to ourselves, UK adults will inevitably make bad choices and that informing consumers is less effective than controlling behaviours through regulation. The Nanny State is becoming the Bully State."

"Imperial Tobacco supports policy and legislation that is reasonable and based on rigorous and sound evidence. Over recent years, our adult consumers, and our trade partners have felt the impacts of legislation that is often illogical and unjustified. Much of it has failed to meet the principles of good regulation and has been based on little evidence – or no evidence at all."

"The Nanny State is becoming the Bully State"

"Since tobacco regulation often sets the pattern for a wider policy agenda, we call for an alternative approach to public health policy based on freedom of adult choice combined with the right encouragement, information and incentives. I am aware that support for an alternative way forward is growing as it becomes clearer that the current approach to public health policy formulation has failed to meet its objectives."

"above-inflation tobacco tax increases will simply benefit the criminals"

"Since the 1st January this year tobacco taxes have risen by over 6.5% which is more than double the current rate of inflation. This is represented by the 2.5% VAT increase at the start of 2010 followed by the excise duty increase of 4.13% at the Chancellor’s Budget in March."

"Between 75% and 90% of the recommended retail prices of tobacco products goes straight to the Treasury in the form of taxation. Annually this is a £10 billion contribution from those adults who choose to smoke. However, the Treasury loses around £3 billion per year to the illicit trade as smokers looking for cheaper brands turn to illegal sources of tobacco. The latest tax increases will further accelerate the criminals’ activity and take much needed revenue away from the Government." ■



RESHAPING EUROPEAN POLICY MAKING

Perhaps the most audacious example of tobacco industry influence on health policy occurred at the EU. The industry's objective at the end of the 1970's may have been *"to inhibit totally or partially the activities of the Brussels' bureaucracy in all matters concerning tobacco advertising, tobacco distribution and smoking and health questions"*, but by the late 1990's the focus had moved from obstructing individual policies to reshaping the entire structure of Europe's policy making process by making the use of *"impact assessments"* and other cost-benefit tools compulsory. Impact assessments are supposed to make for more effective regulations by considering the consequences of new policies and taking account of the available evidence of costs and benefits. However, as well as ensuring that their voice would be heard whenever a policy was proposed, the tobacco companies were advised that impact assessment would also give them a way to challenge and delay decisions with which they disagreed.

Documents suggest that British American Tobacco, drawing on a Philip Morris campaign in the US, has been working with consultancy firms and Think Tanks such as the Public Policy Unit and the EPC (formerly the Belmont Group) and also initiated and led a broad coalition of companies to push for policy changes at European and UK level which would:

- Ensure greater focus on potential economic costs of regulation on businesses
- Secure consultation with industry very early in the policy development process.
- Ensure that much of the data required to calculate the relative costs and benefits of new policies would be controlled and owned by the businesses concerned. (This would mean the tobacco industry could be potentially strategically selective in its disclosure of information).^{151,152,153,154,155,156,157,158,159,160}

"The lack of official statistics will mean that greater attention and credibility will be [given] to the industry developed statistical series. This can be used to advantage in discussions and negotiations with government agencies as it means that the industry has access to information (potentially including economic impact assessment studies) that are unavailable to government officials. Officials will often be more willing to talk to the industry in these circumstances." Ernst & Young, BAT Economic Impact Assessment Template and Routemap¹⁶¹

Developing a corporate network

"The opportunity..." BAT and B.A.T Industries recognised that a broad coalition of like-minded companies might be able to persuade member states into amending the Treaty, imposing a binding requirement for cost benefit analysis and risk assessment." British American Tobacco. (anonymous) Shaping the Regulatory Environment: Advertising and Public Smoking.¹⁶²

BAT worked to gather together a *"broad coalition of like minded companies"*. These included: Baxter, Bayer, Bouygues, Coca Cola, Dow, Du Pont de Nemours, Eelman, Elf Aquitaine, GCPF (crop protection society) HSBC, Imperial Chemicals Company, ICI, Johnson & Johnson, Marks & Spencer, Mars, NatWest, Pirelli, Siemens, SmithKline Beecham, Solvay, Shell, Tesco, Zeneca and UNICE (Union of Industrial and Employers' Confederations of Europe). This group went on to lobby to ensure that Business Impact Assessments, including a

“Budget and plan, 1998 – £350,000, primarily consultancy, to ensure that a new EU treaty language is enacted to provide a significant hurdle to the introduction of advertising bans and public smoking bans.”

BAT Document, Anonymous (1998) S&R - Budget and Plan, 1998.¹⁵⁰

requirement for wide industry consultation, were embedded within EU legislation.^{163,164,165,166,167,168,169,170}

The following extracts are from an internal tobacco industry document outlining British American Tobacco's opinion of the coalition's influence on the 1997 European Treaty of Amsterdam.

"The strategy... Germany, the UK, Ireland and the Netherlands (who held the EU Presidency) were identified as the key players and lobbying focused on the interest in those states."

"The outcome..." So, the Commission must now take into account the financial and administrative burden (cost), which has to be minimised and proportionate to the objective (benefit)."

"Next steps (in Europe)..." it is vital that pressure is kept up to ensure that the EU does not get off the hook and that the new Protocol is translated into a meaningful system of regulation."

"Next steps at British American Tobacco: BAT has achieved an important victory in a key trade bloc. A priority should now be to encourage and empower other parts of the world to embark on similar exercises... The achievements that have been realised in the EU provide an important stepping stone."¹⁷¹

Campaigning via reputable front groups

"I would be absolutely astonished and would find it very difficult to believe if there was any information available which tended to indicate that that EPC was advocating on behalf of the tobacco industry – that would be shocking."

David Byrne, Commissioner for Health and Consumer Protection from 1999-2004, 27 August 2008.

The European Policy Centre (EPC) is a well respected Brussels based think tank that BAT has used as the key consultancy group, sometimes alongside the Weinberg Group to help with lobbying to ensure policymakers are legally obliged to include tobacco companies' opinions in European policymaking development and decision making processes. The EPC had the particular advantage that it had developed a broad profile and received funding from the European Commission allowing it to acquire insider status in policymaking circles.^{172,173}

EPC Risk Forum

In 2003 the European Commission introduced a collection of principles for consulting stakeholders known as the "General principles and minimum standards for consultation of interested parties by the Commission".¹⁷⁴ These standards are now being used to justify consultation with the tobacco industry and may result in weakened guidelines on Article 5.3. They have apparently been interpreted by European Commission staff as requiring personal consultation with tobacco industry representatives.¹⁷⁵

In fact these principles and standards appear to have been heavily based on the opinions of a EPC Risk Forum which was chaired by Chris Proctor, British American Tobacco's head of science and regulation. The EPC Risk Forum argued that when the EU Commission was developing policy it should increase business consultations and involve business stakeholders in the earliest stages of the decision making process.

For over a year and a half BAT's Stuart Chalfen worked to increase membership of the Forum so as to be able to create the impression that there was a groundswell of support for the proposals.^{176,177}

Ultimately the following companies Baxter, Bayer, Bouygues, Coca Cola, Dow, Du Pont de Nemours, Eelman, Elf Aquitaine, GCPF (crop protection society) HSBC, Imperial Chemicals Company, ICI, Johnson & Johnson, Marks & Spencer, Mars, NatWest, Pirelli, Shell, Siemens, SmithKline Beecham, Solvay, Tesco and Zeneca also joined the Forum alongside BAT and/or participated in its events.^{178,179,180,181,182,183,184}

The only two think tanks to contribute to the “*General principles and minimum standards for consultation of interested parties by the Commission*” were the European Policy Forum and the Risk Forum of the EPC, both of which were used as key consultancy groups in British American Tobacco’s attempts to influence EU policymaking.¹⁸⁵

Germany and the UK were also two of only three Member States to contribute, both of which were identified by BAT as “*key players*” in the push for regulatory reform.¹⁸⁶

Constructing a broad coalition and working with a reputable front group were important for BAT for two crucial reasons:

- It enabled BAT to represent its proposals as non-partisan to policymakers and journalists. BAT thought public knowledge of its involvement could undermine the credibility of the campaign.¹⁸⁷
- The broad membership of the Forum and the “*insider status*” of the EPC meant the company could be alert to developments in EU policymaking.

Meanwhile another tranche of lobbying was undertaken by **The Fair Regulation Campaign** which was formed by BAT and a number of other companies in order to influence European officials’ opinions.¹⁸⁸ The Fair Regulation Campaign won the support of a number of European Commissioners including Erkki Liikanen, then Commissioner for Enterprise and Information.

Twisting the evidence against “fire safer cigarettes”

In the UK and Europe tobacco companies have used a front group in an attempt to sabotage plans that would require tobacco firms to sell reduced ignition propensity or ‘fire safer’ cigarettes that are less likely to start fires. The TMA twisted evidence in the course of its campaign to convince EU and UK ministers to delay introducing the standards.

An estimated 1,300 lives could be saved in Europe each year if reduced ignition propensity (RIP) cigarettes replaced the current standard cigarettes.¹⁸⁹ An established standard for RIP cigarettes was set by the American Society of Testing and Materials and introduced in New York in June 2004. Since the standard was introduced the average number of people who have died in smoking-related fires has fallen from 43 a year to 32. The same standard is now in place in Finland, the USA and Canada.^{190,191}

In the UK, groups such as the Chief Fire Officers Association and the British Burn Association support the introduction of RIP cigarettes as a means of reducing deaths and injuries due to cigarette fires.

However, although it has been twenty years since the tobacco industry developed the technology to produce the RIP cigarettes which simply require a few design changes, for decades, the tobacco industry has opposed legislation requiring cigarette fire safety standards.

The industry has argued that RIP cigarettes would be technically unfeasible to develop, would increase product toxicity, and would prove unacceptable to consumers. The tobacco industry has also denied the efficacy of the proposed standards to reduce fires, and the overall morbidity, mortality, and costs associated with cigarette induced fires.¹⁹² In Europe and the UK the industry has fought and continues to fight against the introduction of the RIP cigarette standards.¹⁹³

In 2006 The TMA mounted a campaign to undermine proposed European Union regulations that would make it compulsory for British tobacco companies to produce the RIP cigarettes.¹⁹⁴ The TMA disputed the scientific claims made for the cigarettes and delivered a briefing to UK government ministers and EU officials that refuted the arguments made for the RIP cigarettes. This briefing was full of inaccuracies.

The Association said ‘fire safer cigarettes’ hadn’t reduced fires in New York but they were not using up to date data. Additionally the Association quoted selectively from the UK Government’s own research in support of their case that RIP cigarettes may not reduce the risk of or number of fires in real world situations.^{195,196} However this was not what the research had concluded. The tobacco industry failed to quote the conclusions of the Fire Research report which estimated that had cigarettes in the UK conformed to the highest standard on sale in New York, the number of smoking-related fires in 2003 would have been reduced by nearly two thirds, giving rise to 2,544 fewer fires, 168 fewer fatalities, and 886 fewer non-fatal casualties.

BAT’s hidden spending in Brussels

According to the Commission’s voluntary register of interest representatives, BAT declared it had spent €150,000-200,000 on EU lobbying in 2008. This amount included “a percentage of the cost of running the Brussels office plus an estimate of the cost of the specific activities from other offices with regard to direct lobbying of the EU institutions on specific legislative initiatives.” Competitors Imperial Tobacco and JTI declared twice as much.

BAT states in its register profile that it “does not generally approach institutions individually” but rather “lobbies as a member of specific associations.” As the declared range in the register “excludes fees to associations” it is clear that the company’s budget for EU lobbying is underestimated. BAT has declared membership of 36 associations without counting the national tobacco manufacturers associations in most of the markets where it operates.

The Confederation of European Community Cigarette Manufacturers (CECCM) and The European Smoking Tobacco Association (ESTA) declared an EU lobbying budget of €300,000-350,000 in 2007. The European Smokeless Tobacco Council (ESTOC) has not yet registered. BAT’s contribution to these lobbying budgets is not available in the register.

When researchers asked BAT, it admitted to contributing €292,000 to CECCM, €84,000 to ESTA and €60,000 to ESTOC in 2008.

Taking into account the CECCM, ESTA, ESTOC, the European Business and Parliament Scheme (EBPS) and FOREST, a further €527,000 was spent by BAT on lobbying purposes, increasing its budget fourfold to €677,000-€727,000, rather than the €150,000-€200,000 declared.

APPENDIX 1 - THE FRONT MEN, MOLES & ADVOCATES

“Front man”: “A man whose job is to represent an organisation by talking to journalists or other people; especially in order to improve the organisation’s reputation.” Macmillan Dictionary.

“Moles”: “People with apparently undisclosed ties to the industry who are accepted with little scrutiny by the media as independent observers.” (Tobacco Control journal)

“Advocate”: “One who pleads for another; one who speaks in favour of (a proposal etc).” Oxford English Dictionary.

Patrick Basham was founding director of the Social Affairs Centre at the Canadian Fraser Institute, set up in 1999 and funded by Philip Morris, BAT and Rothmans International. In June 2000 Basham personally visited BAT offices in London to talk over how the work at the Fraser Institute Social Affairs Unit would proceed. The Institute then asked BAT for an annual contribution of £100,000 to be divided between the Fraser Institute’s Social Affairs Unit and The Centre on Risk and Regulation.¹⁹⁷

The Fraser Institute assured BAT its funds would help them move forward with their extensive research agenda and “*jump in full throttle*” to persuade people, including journalists who don’t “*have the knowledge necessary to conduct rational assessments of such matters*” that “*Agitators for a ‘zero-risk’ society have become increasingly successful in advancing their cause, often basing their case on exaggerated junk science scares.*”¹⁹⁸

The Fraser Institute Social Affairs Unit, under the directorship of Basham went on to produce publications such as *The History of Tobacco Regulation*.¹⁹⁹ This purportedly objective publication suggests government regulation of tobacco is “*a mix of good intentions, confusion and the naked self-interest of regulators and their supporters*”.²⁰⁰ It was written by Filip Palda, with a preface by Patrick Basham.

Basham’s articles have appeared in many US publications including *The New York Times*, *the Washington Post*, *USA Today* and *the New York Post*. Basham has also appeared on US and UK television for the BBC, ABC, CBS, NBC, CNN among others.²⁰¹

Basham has also contributed to a number of publications on tobacco control.

- In 2009 Basham published “*Butt out! How Philip Morris Burned Ted Kennedy, the FDA & the Anti-Tobacco Movement.*”
- In 2006 Basham published “*Diet Nation: Exposing the Obesity Crusade*” with John Luik and Gio Batta Gori.

Jeffries Briginshaw was Head of Political and Regulatory Affairs at BAT from 2004-2007 and during this time he served on the Trans Atlantic Business Dialogue policy committee. The **Trans Atlantic Business Dialogue (TABD)** is an interest group promoting free trade. Subsequently Briginshaw became the group’s EU Director and today BAT is listed as one of five UK members of this group. Briginshaw has also worked at the **Lovells** defence law firm. In 2008 Briginshaw signed the TABD group’s response to the UK tobacco consultation,

reciting the well established tobacco industry position “*We would be concerned that regulating for plain packaging of cigarettes could significantly undermine the effectiveness of valid trade marks, encourage counterfeiting and weaken consumer confidence in brands as a badge of identity*”.²⁰²

Stanley Crossick is a British corporate lawyer and the director of the EPC who promotes himself as a think tank leader, political analyst, writer, speaker and media commentator. Crossick has built up a career in Brussels, providing services to corporations and trade umbrella groups wanting inside information on the European Union and Parliament, or wanting to run special events to influence members of the bureaucracy.²⁰³ Crossick has been described in the Economist as the ‘*grandfather*’ of lobbying in Brussels.²⁰⁴ BAT has been commissioning Crossick to undertake consultancy work for the company since the 1980s. Crossick was originally the founder of the Belmont EPC which later became the EPC. During the period Crossick was working as consultant for BAT in Europe he was also Senior Vice-Chairman of the American Chamber of Commerce EC Committee (of which BAT is also a member).^{205,206,207}

John Luik is one of the world’s most widely utilised tobacco consultants who refers to himself as a government/professional/corporation consultant with interests in public policy, particularly the use of science in policy. Luik has written numerous articles claiming the exaggeration of the health effects of second hand smoke, has spoken at tobacco company conferences and workshops, has been employed as an anti-smoke free spokesperson.^{208,209,210,211}

In 1993, the tobacco industry umbrella trade and lobbying association, the Confederation of European Community Cigarette Manufacturers (CECCM), hired Luik to write a paper accusing the US Environmental Protection Agency of using “*corrupted science*” to reach its conclusions about secondhand smoke.²¹² Luik gave several tobacco companies editorial capacity over the content of the paper entitled, *Pandora’s Box: The Dangers of Politically Corrupted Science for Democratic Public Policy*.^{213,214}

John Luik was then commissioned by six tobacco companies to produce a book on plain packaging that was published in 1998. The majority of the content of the book, *Plain Packaging and the Marketing of Cigarettes* was written and either signed off by, or under the review of the industry law firm, Shook, Hardy and Bacon.^{215,216}

Today Basham and Luik both declare that they work for the Democracy Institute, Basham as founding director and Luik as a Senior Fellow. Basham also promotes himself as an adjunct scholar with the Cato Institute’s Centre for Representative Government. In October 2009 Luik and Basham published an article campaigning against the tobacco display ban on the UK’s leading politics news website, politics.co.uk, entitled “*Can the UK avert a smoking Irish failure*”. and Basham and Luik have also recently published articles on health issues on the British Medical Journal website, bmj.com and Telegraph newspaper website, telegraph.co.uk, as well as libertarian websites such as The Cato Institute and Spiked online.^{217,218,219,220}

According to the Cato institute’s website Basham and Luik have recently authored, *Hidden in Plain Sight: Why Tobacco Display Bans Fail*, published by the Democracy Institute in 2009.

This publication is hailed as a comprehensive empirical refutation of the government's display ban proposal; however, oddly, there is no mention of the book on the Democracy Institute's website.

Iain Mills (1940-1997) was a Conservative Party politician in the United Kingdom, a non-executive director of the **Interbrand group** and chairman of the **European Trademark Committee**. He was considered a valuable potential ally by the Plain Pack Group and was willing to write a chapter in Luik's plain packs book. In 1994 he advised Rothmans on how to influence parliamentarians against packaging reform as Terry Lewis, MP was poised to introduce a bill to increase the size of health warnings.^{221,222,223}

John Murphy is the founding director of the **Interbrand group**. The Plain Pack Group consulted him for advice and considered commissioning him to write a paper on brands and branding for them in 1994. The same year Interbrand offered to contribute a chapter to John Luik's book on *"Plain Packaging and the Marketing of Cigarettes"* arguing that the substitution of branded packs for plain packs deprives brand owners of economic assets. Interbrand also suggested it might contribute to the Canadian hearings on behalf of the tobacco companies.²²⁴

Chris Proctor was a senior research scientist at BAT during the 1980s. Proctor began working for Covington & Burling, a major legal and lobbying firm focused on *"industry and regulatory"* and *"corporate, tax and benefits"* issues, and litigation with offices in Washington D.C., New York City and San Francisco, and European offices in London and Brussels. Covington & Burling has often been used by large tobacco companies and was involved in a Philip Morris campaign on regulatory issues in the US.²²⁵ Proctor returned to BAT in 1994 when he was asked to produce an overview of Philip Morris' approach to regulatory issues.²²⁶ He then went on to chair the EPC Risk Forum which argued that when the EU Commission was developing policy it should increase business consultations and involve business stakeholders in the earliest stages of the decision making process.

Pavel Telicka is a former EU commissioner for health and consumer protection, Pavel Telicka, now works for BAT conducting high level meetings in the EU.²²⁷ Telicka was previously an ambassador and head of the Czech mission to the EU with 20 years experience in Brussels. After leaving the EU Commission in 2004 Telicka co-founded BXL Consulting to provide consultancy in EU affairs, primarily to large companies such as British American Tobacco, from BXL's offices in Prague and Brussels. Telicka has worked on behalf of BAT in the EU arranging meetings with staff from European institutions, businesses and NGOs and *"conducting policy dialogue sessions and high level individual, political meetings"*. In 2008 The Corporate Europe Observatory complained to the European Commission that Telicka and BXL Consulting were involved in lobbying for BAT in 2006-2007 but did not declare that money in 2007. The Corporate Europe Observatory says: *"The job Mr Telicka accomplished undoubtedly facilitated BAT's lobbying. His involvement was clearly part of 'activities carried out with the objective of influencing the policy formulation and decision-making processes of European institutions'...organizing events, meetings or promotional activities (in the offices or in other venues) in support of an objective of interest representation."*²²⁸

APPENDIX 2 - THE FRONT GROUPS

An **industry-funded organisation** receives funding from a company or industry and often acts as a mouthpiece for views that serve the industry's economic interests. (SourceWatch)

Front organisations that appear to be independent voluntary associations or charitable organisations are called **front groups**. (Wikipedia)

The **Confederation of European Community Cigarette Manufacturers (CECCM)** represents British American Tobacco, Imperial Tobacco and JTI, plus 13 other European manufacturers' associations. The group was created by BAT in 1988 in order to be "*The primary source of tobacco expertise in the EU*" The Confederation has two lobbyists accredited to the European Parliament and declared €300,000-350,000 in EU lobby spending in 2007.^{229,230,231}

The **European Cigar Manufacturers Association (ECMA)** BAT is a member of this association.²³²

The **European Smoking Tobacco Association (ESTA)** represents the interests of the European manufacturers, distributors and importers of many types of tobacco. Founded in 1990, BAT is a prominent member and the association is chaired by Michael Kraushaar of British American Tobacco's Netherlands branch. This lobby group employs at least three people in its Brussels office and has three lobbyists accredited to the European Parliament. The Association allegedly spent €300,000-350,000 on EU lobbying in 2007.^{233,234,235}

The **European Smokeless Tobacco Council's (ESTOC)** objective is "*the worldwide legalization of Swedish snus and other smokeless tobacco products, based on a regulatory framework*". The Council's board of directors is chaired by British American Tobacco's Tomas Hammargren and its scientific and communication and policy committees are led by other BAT employees. The Council appears to have a team of 14 people but has no lobbyist accredited to the European Parliament and is absent from the European Community Register of Interest Representatives.²³⁶

The **Freedom Organisation for the Right to Enjoy Smoking (FOREST)**. This smokers' rights group is funded by UK based tobacco companies and has lobbied the EU Commission and UK Government. While FOREST portrays itself as the independent voice of smokers, Phillip Morris described the organisation as the tobacco industry's "*investment... into smoker mobilisation*".²³⁷

The **Tobacco Manufacturers' Association, (TMA)** an industry body representing its members, BAT UK Ltd, JTI (through its Gallaher subsidiary) and Imperial Tobacco Ltd.

The **Tobacco Retailers Alliance** claims to represent the interests of 25,000 independent retailers but is in fact funded by The TMA.

Other organisations funded by the Tobacco Industry*

Tobacco companies also fund many other lobby groups and think tanks which support their commercial interests at national, EU and international level, for example, in promoting free trade, lax regulation and low-tax policies. These include:

American Chamber of Commerce to the European Union (AMCHAM EU).

Represents American Business in the European Union. BAT and Philip Morris International are members.²³⁸

American-European Community Association (AECA). Today this association aims to provide a forum for discussion of key global business, economic and political affairs. Philip Morris International is listed as one of five benefactors and both JTI and Philip Morris are members.²³⁹

The Anti-Counterfeiting Group. All the major tobacco manufacturers in the UK are members of this group which made a submission to the 2008 UK Department of Health consultation on tobacco control jointly with the British Brands Group. The group's submission fails to mention tobacco industry involvement but does mention household goods, clothing, car parts and pharmaceutical industries.²⁴⁰

British Brands Group is a membership organisation dedicated to championing brands in the UK. The British Brands Group is part of a global network of similar brand associations, and is the UK representative of AIM, the European Brands Association, based in Brussels. This group made a submission to the 2008 UK Department of Health consultation on tobacco control, opposing the introduction of plain packs. The British Brands Group was set up in 1994 by British American Tobacco, Rothmans, Kraft Jacobs Suchard (then owned by Phillip Morris), Coca Cola, Unilever, Bass, Guinness, Allied Lyons (then owners of Calsberg) and **Interbrand** and others. In 1999 the British Brands Group attended White Paper and Regulatory Impact Assessment Meetings hosted by the TMA to discuss Government plans to prohibit tobacco advertising. The meeting was attended by all the major tobacco companies in the UK.²⁴¹

British Chamber of Commerce in Belgium (BCCB) provides a platform for its members to profile their companies in Europe. BAT and JTI are members.²⁴²

Business in the Community. The Gallaher Group and Imperial Tobacco are members of Business in the Community, while BAT is a Premier member, invited by Business in the Community to take a significant leadership role.²⁴³

BXL Consulting was co-founded in 2004 by the former EU commissioner for health and consumer protection, Pavel Telicka. BXL Consulting provide consultancy in EU affairs, primarily to large companies such as British American Tobacco.

The Cato Institute is a libertarian think tank based in Washington D.C that appears on several Philip Morris lists of "*national allies*" including a 1999 "*Federal Government Affairs Tobacco Allies Notebook*". According to The Cato Institute's 2008 Annual Report, the institute received sponsorship from both Altria (parent company to Philip Morris USA) and R.J. Reynolds.²⁴⁴

*this list is not exhaustive

The European Communities Trade Mark Association (ECTA) Intellectual property solicitor, David Latham, is the group's legal advisor.²⁴⁵ Latham has worked extensively as a legal advisor for BAT and has been a prominent and integral member of the **Plain Pack Group**.²⁴⁶ The group made a submission to the 2008 UK Department of Health consultation on tobacco control.

European Policy Centre (EPC) is a well respected Brussels based think tank, owned and run by Stanley Crossick.²⁴⁷ The Policy Centre promotes itself as proactively driven by business and other economic and social actors and previously operated as the Belmont Firms (Belmont European Community Office and Belmont EPC).²⁴⁸ BAT is a member and has worked with EPC and previously Belmont since the 1980s.

The European Policy Forum was formed of a merger of the Fair Regulation Campaign and the Public Policy Unit and was involved in British American Tobacco's attempts to influence regulatory reforms in Europe.²⁴⁹

European Round Table of Industrialists brings together around 45 chief executives and chairmen of major multinational companies of European parentage, covering a wide range of industrial sectors. Drawing on the experience of its members, the Round Table identifies and analyses issues related to European competitiveness and examines how public policies could facilitate improvements for its members. The Round Table makes its views known to the political decision-makers at national and European level by means of reports, position papers and face-to-face discussions. Paul Adams, Chief Executive of BAT is a member.²⁵⁰

The **Fair Regulation Campaign**, set up within the Public Policy Unit, a pan-European industry-wide group sponsored by British American Tobacco, was formed in 1999 to campaign on EU regulation.²⁵¹

The Fraser Institute. This is a libertarian think tank based in Canada that has sought and received funds from several tobacco companies. In 2003 the Fraser Institute income was \$6,620,038 of which 52 per cent was from unspecified foundations and 38 per cent was from unspecified "organisations".(SourceWatch)

The **Global Intellectual Property Centre** BAT and Philip Morris are members of the Centre's Counterfeit Coalition Programme but the group do not disclose any tobacco industry links.²⁵² This group made a submission to the 2008 UK Department of Health consultation on tobacco control.

IMPACT was an arm of the Public Policy Unit that promoted and advised on how businesses could influence and challenge legislation via Business Impact Assessments.

Interbrand, a division of Omnicom, is a branding consultancy. Interbrand was founded in 1974 by **John Murphy**. Interbrand has an extensive list of clients, with large corporations spanning many industries.²⁵³ BAT and Philip Morris have used the services of the company and in 1994 Rothmans confirmed that Interbrand would be prepared to contribute to the "*Plain Packaging and the Marketing of Cigarettes*" book.²⁵⁴ Today Interbrand spokespeople are still arguing against the introduction of plain packaging.²⁵⁵

Markenverband is a German brands group. Manfred A Häussler, now retired, was previously an Executive Director at Markenverband and Imperial Tobacco's Sales and Marketing Director.²⁵⁶ Markenverband have disclosed that they have tobacco industry members. This group made a submission to the 2008 UK Department of Health consultation on tobacco control.

Nude Brand Creation This group was appointed for a major design deal on JTI packaging in 2005. This group made a submission to the 2008 UK Department of Health consultation on tobacco control.²⁵⁷

The Public Policy Unit (PPU) is a consultancy firm used extensively by British American Tobacco. Smith KE et al "British American Tobacco's Influence on the European Union Treaty and Its Implications for Policy: An Analysis of Internal Tobacco Industry Documents". PLoS Med. 2010; 7(1): e1000202.

The Risk Assessment Forum was an invitation only subgroup within the EPC and was set up by BAT and Stanley Crossick. The Forum's founding members agreed to work to promote "*improved regulation of risk-related issues throughout the EU decision making process*".²⁵⁸ NGOs that were members of the Centre were specifically excluded from this forum and for this reason the Forum was eventually asked to leave the Policy Centre. It then reformed as the **European Risk Forum**.²⁵⁹

The **Trans Atlantic Business Dialogue (TABD)** is an interest group promoting free trade. This group made a submission to the 2008 UK Department of Health consultation on tobacco control opposing the introduction of plain packs. BAT is listed as one of five UK members of the TABD group. **Jeffries Briginshaw**, the Trans Atlantic Business Dialogue's EU Director signed the group's response. Briginshaw joined the Trans Atlantic Business Dialogue from BAT where he had been Head of Political and Regulatory Affairs between 2004 and 2007. During this time he served on the Trans Atlantic Business Dialogue policy committee. Briginshaw has also worked at the legal firm **Lovells** in the practice area of Intellectual Property alongside Intellectual Property Solicitor and BAT legal advisor, **David Latham**.²⁶⁰

The Weinberg Group has the motto "*science minds over business matters*", and describes itself as helping clients improve manufacturing processes, clear regulatory hurdles, and defend products in the courts and the media.²⁶¹ The Weinberg Group has worked with Philip Morris and British American Tobacco.^{262,263}

Other groups with links to the tobacco industry

European Communities Trade Mark Association (ECTA) claims that it "*brings together all those persons practising professionally in the Member States of the European Community in the field of trade marks, designs and related IP matters.*"²⁶⁴ In 2008 the group responded to the Department of Health consultation claiming that plain packaging "*would involve various violations of treaty obligations... [and] is contrary to the harmonised EU and international systems of trade mark protection...*"²⁶⁵ Intellectual property solicitor, David Latham, is the group's legal advisor.^{266,267} Latham has both worked as a legal advisor for BAT and has been a prominent member of the Plain Pack Group.²⁶⁸

The **International Trademark Association (INTA)** Intellectual property solicitor, David Latham, has both worked as a legal advisor for BAT and has been a prominent member of the Plain Pack Group.²⁶⁹ He has attended meetings with this group on behalf of the Plain Pack Group and BAT and it is clear that the Plain Pack Group wanted to influence the Association which in turn invited members of the Plain Pack Group to speak at conferences.^{270,271} In 2010, the group's treasurer is listed as BAT employee, Toe Su Aung.²⁷² In 1994 the INTA was asked by Rothmans to participate in Canadian hearings on plain packaging.

Tobacco Control Accountability Initiative does not disclose tobacco industry funding or involvement and maintains it is independent. However, the founder is **Luc Martial**, former lobbyist for the Non-Smokers Rights Association and Canadian Council on Smoking and Health who switched sides in June 2001.²⁷³

Defunct front groups

The **European Business and Parliament Scheme (EBPS)** was an umbrella group for 28 multinational companies and MEPs. When it was exposed that the group was benefiting from rent free accommodation at the European Parliament, the scheme was dissolved in November 2008. The annual membership fee for companies such as BAT was €15,000.²⁷⁴

Tobacco House was a highly secretive EU umbrella organisation in operation until 2005. Tobacco House federated the different branches of the tobacco industry; growers, transformers, manufacturers, retailers. The only record of the organisation can be found in formerly secret documents of the cigarette companies.²⁷⁵

APPENDIX 3 - THE LEGAL FIRMS

Covington & Burling is a major legal and lobbying firm focused on “*industry and regulatory*” and “*corporate, tax and benefits*” issues, and litigation with offices in Washington D.C., New York City and San Francisco, and European offices in London and Brussels. Covington & Burling has often been used by large tobacco companies and was involved in a Philip Morris’ campaign on regulatory issues in the US.

Lovells law firm (previously Lovell, White, Durant) is a defence law firm used by British American Tobacco. Intellectual property solicitor, **David Latham**, is a partner at Lovells. He has worked as a legal advisor for BAT and has been an integral member of the Plain Pack Group.^{276,277} **Jeffries Briginshaw** has also worked at Lovells. Briginshaw was Head of Political and Regulatory Affairs at BAT from 2004-2007. Today Briginshaw is EU Director of the **Trans Atlantic Business Dialogue (TABD)** which is an interest group promoting free trade.

Shook, Hardy and Bacon (SHB) is a law firm in Kansas City, Missouri. Philip Morris is one of the firm’s long-time clients and Shook, Hardy procured expert witnesses for Philip Morris legal cases. The firm has represented five of the six major U.S. tobacco companies: American Brands, Brown & Williamson, RJR Nabisco, Philip Morris Inc and Loews Inc.²⁷⁸

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Graphic design: design@weecreative.co.uk

LETTER TO THE GUARDIAN JANUARY 2010

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The desire for conscientious, explicit and judicious use of current best evidence in policymaking is commonly shared by both regulators and affected stakeholders, including industry. Like any legitimate business, tobacco companies are key stakeholders in the development of regulation and policy that affects them and their business environment, and they should be permitted to engage with regulators through transparent consultation processes. British American Tobacco supports evidence-based regulation that measurably reduces the public health impacts of tobacco products while respecting the choices and rights of adults who choose to use those products.

The report by Gilmore et al published in PLoS (Corporations lobby to hamper passing of EU health laws - academics, 12 January) seems to be suggesting that only people who agree with their own point of view should be allowed to voice an opinion to policymakers.

Dr Chris Proctor

Chief scientific officer, British American Tobacco

