



The Office of the Ombudsman

Hong Kong

22<sup>nd</sup> August 2011

[complaints@omb.gov.hk](mailto:complaints@omb.gov.hk)

Dear Sir,

I refer to the following reply from the Customs and Excise Department of Hong Kong Government regarding the '**Tobacco Industry Reward Scheme**'.

I attach herewith self explanatory information regarding Hong Kong Government's obligations as a ratified party to the FCTC Treaty and specifically under Section 5.3 of the said Treaty.

The only reason that the tobacco companies want to provide information on counterfeit products is so that they can, by inhibiting the amount of copies, sell more of their own products to those persons and children whom they have addicted to nicotine.

The Customs and Excise Department as gatekeeper forms a major part of the HK Government's tobacco control strategy; by keeping tobacco duty high and public's access to contraband low, the Government controls demand and helps people to quit smoking.

For a Government Department to co-operate in this tobacco industry funded 'Reward Scheme' with the evil Satan tobacco companies is contrary to many of the requirements of the FCTC Treaty.

**From:** [leterly\\_sw\\_wong@customs.gov.hk](mailto:leterly_sw_wong@customs.gov.hk) [[mailto:leterly\\_sw\\_wong@customs.gov.hk](mailto:leterly_sw_wong@customs.gov.hk)]

**Sent:** Friday, August 19, 2011 11:15

**To:** [dynamco@netvigator.com](mailto:dynamco@netvigator.com)

**Subject:** Re: British American Tobacco Hong Kong - Working with customs in Hong Kong

Dear Mr Middleton,

Thank you for your email on 17 Aug 2011.

The "**Tobacco Industry Reward Scheme**" (the "**Scheme**") is an initiative aims at encouraging the public to provide information on illicit cigarette activities to Customs for investigation. Informer would receive reward from the "**Scheme**" for information leading to illicit cigarettes case effected. The "**Scheme**" was first launched in 1994 and is contributed by 3 members of the Tobacco Association Hong Kong, including the British-American Tobacco Co. (HK) Ltd., the Japan Tobacco (HK) Ltd. and the Philip Morris Asia Ltd. These companies would share on equal terms the sum of reward payments under the "**Scheme**" on yearly basis. In 2010, a total amount of **HK\$146,000** was paid as rewards under the "**Scheme**". Customs would take the administration role to manage the "**Scheme**", and would not receive any remuneration from the "**Scheme**".

Regarding the identification of suspicious counterfeit cigarettes seized, Customs would invite respective brand owner/agent to conduct examination on the seized cigarettes so as to adduce evidence for Court proceeding against relevant offences under the Trade Descriptions Ordinance (Cap 362, Laws of Hong Kong). It is a normal practice for Customs to invite a trademark owner/agent to examine suspected counterfeit items as they are experts capable to give evidence in Court to prove such item being counterfeit. In 2010, representatives from various tobacco companies, including the above companies, have been invited by Customs to conduct examinations on seized illicit cigarettes.

Should you have any further enquires, please contact the undersigned.

Regards

Miss Leterly Wong

Revenue and General Investigation Bureau

Hong Kong Customs and Excise Department

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In Hong Kong the amount of **genuine cigarette contraband** seized is more than three times the world norm (in Europe 80% of seizures are counterfeit items from Russia and China) yet the HK Customs Department merely asks the local manufacturers' representatives of the genuine contraband (who are at the base of the smuggling) to identify their products and does not take action against them for collaborating with their middle men agents / distributors who fail to control the supply chain and ship the goods back into Hong Kong 'duty – not –paid'. This defrauds the HK Government of Excise Income and defeats tobacco control measures by Customs Department and the Department of Health.

Simple web searches reveal the depth of the tobacco companies in smuggling their own products. Yet they continue unabated with seeming impunity in Hong Kong whilst contributing a paltry sum to this 'Scheme ' that they then use to show that as merchants of death they are Corporate Socially Responsible companies. The Government has more than enough funds in hand to pay for the informer Reward scheme themselves without openly operating this scheme on behalf of the tobacco companies whose genuine contraband products are the ones most found in the local illicit tobacco seizures. **HK Customs and Excise Department must cancel this tobacco company funded reward scheme forthwith and use Government money to fund information sources. They are tarnished by association with Big Tobacco.**

Here is the Big Tobacco PR speak that this ludicrous sanctioned 'reward scheme' allows them to generate:

[http://www.bathongkong.com/group/sites/BAT\\_5JNF6E.nsf/vwPagesWebLive/DO5FEAFB?opendocument&SKN=1](http://www.bathongkong.com/group/sites/BAT_5JNF6E.nsf/vwPagesWebLive/DO5FEAFB?opendocument&SKN=1)

[http://www.bathongkong.com/group/sites/BAT\\_5JNF6E.nsf/vwPagesWebLive/DO5FEAF9?opendocument&SKN=1](http://www.bathongkong.com/group/sites/BAT_5JNF6E.nsf/vwPagesWebLive/DO5FEAF9?opendocument&SKN=1)

Whilst here is the actual truth as admitted by their hierarchy:

<http://www.guardian.co.uk/uk/2000/feb/03/kevinmaguire>

*'Kenneth Clarke, the former Tory chancellor who is now deputy chairman of British American Tobacco, today admits that the multinational company supplies cigarettes knowing they are likely to end up on the black market.*

*Mr Clarke publicly defends the world's second largest tobacco company for the first time after the Guardian disclosed how it profits from smuggling.*

*Writing in today's paper, Mr Clarke says it is "faced with a dilemma" because smokers switch to other brands or counterfeiters cash in if it restricts supplies.*

*"Where any government is unwilling to act or their efforts are unsuccessful, we act, completely within the law, on the basis that our brands will be available alongside those of our competitors in the smuggled as well as the legitimate market," says Mr Clarke.*

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*Internal BAT documents analysed by the Guardian were dated up to 1995 but the non-executive director makes no attempt to deny that the exploitation of smuggling is continuing. ‘*

<http://www.corpwatch.org/article.php?id=898>

<http://projects.publicintegrity.org/Content.aspx?context=article&id=351>

<http://cgch.lshtm.ac.uk/Behind%20the%20Curtain%20of%20Smoke.pdf>

“The most important point is that if smuggled cigarettes are found in markets—**no matter their source**—Philip Morris will pay huge tariffs,” Joossens said. “Knowing this can effectively prevent Philip Morris from smuggling. ”

<http://www.publicintegrity.org/investigations/tobacco/pages/archives/>

[http://tobaccofreecenter.org/files/pdfs/en/ILL\\_facts\\_en.pdf](http://tobaccofreecenter.org/files/pdfs/en/ILL_facts_en.pdf)

<http://www.publicintegrity.org/investigations/tobacco/pages/introduction/>

<http://www.publicintegrity.org/investigations/tobacco/articles/>

[http://treesaver.publicintegrity.org/smoke\\_screen#](http://treesaver.publicintegrity.org/smoke_screen#)

<http://tobaccocontrol.bmj.com/content/early/2011/02/03/tc.2010.041574.abstract>

<http://www.tobaccofreekids.org/research/factsheets/pdf/0044.pdf>

[http://inside.theage.com.au/view\\_bestofarticle.php?straction=update&inttype=1&intid=94](http://inside.theage.com.au/view_bestofarticle.php?straction=update&inttype=1&intid=94)

[http://www.legco.gov.hk/yr10-11/english/hc/sub\\_leg/sc10/papers/sc100402cb1-1759-4-e.pdf](http://www.legco.gov.hk/yr10-11/english/hc/sub_leg/sc10/papers/sc100402cb1-1759-4-e.pdf)

The HK Government funded Council on Smoking and Health states:

<http://www.smokefree.hk/en/content/web.do?page=TobaccoSmuggling>

**“Tobacco Institute’s move to be identified as a collaborator with Customs and Excise in Hong Kong is, in fact, a deception.** There is a lot of evidence on the tobacco industry’s deep involvement and complicity with smuggling activities around the world.”

<http://www.smokefree.hk/en/content/web.do?page=FCTC>

**HK Customs does not co-operate with drug kingpins neither should they co-operate with tobacco companies whose product addicts and kills more people than illicit drugs of all kinds.**

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### The Treaty Binding Hong Kong Government

[http://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](http://www.who.int/fctc/guidelines/article_5_3.pdf)

**Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry**

***Principle 1: There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.***

13. The tobacco industry produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

17. The following important activities are recommended for addressing tobacco industry interference in public health policies:

- (2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
- (3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.

***(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.***

20. In setting and implementing public health policies with respect to tobacco control, any necessary interaction with the tobacco industry should be carried out by Parties in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such a perception, Parties should act to prevent or correct this perception.

2.1 Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.

***(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.***

21. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.

### Recommendations

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**3.1 Parties should not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry** or any entity or person working to further its interests.

**3.4 Parties should not accept, support or endorse any offer for assistance** or proposed tobacco control legislation or policy drafted by **or in collaboration with the tobacco industry.**

23. Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations.

4.11 Taking into account national law and constitutional principles, **Parties should have effective measures to prohibit contributions from the tobacco industry** or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.

**Tobacco Companies admit they are behind the genuine product smuggling and this is confirmed in online tobacco documents' repositories.**

The World Bank and World Health Organisation clearly state that large scale smuggling of tobacco is mainly caused by criminality and corruption rather than differences in tobacco duty between different jurisdictions. The recent seizures by Customs in Hong Kong where genuine products comprise 60-65% of all seizures and of which 6.9% are marked HK Duty Not Paid, intended for sale in local Duty Free outlets, show conclusively that the tobacco companies themselves are deliberately failing to control their supply chains and thereby are conspiring and depriving the HK Government of Excise income as well as undermining tobacco control efforts and taking profits away from vendors of genuine products. HK Government needs to take affirmative preventive action against these tobacco companies rather than have Customs Department chasing illegal duty-not-paid products that emanate from the multi-national tobacco companies and that Government should follow the example of the European Union with punitive sanctions against Philip Morris International and Japan Tobacco International and others for failing to control their supply chains. **HK Customs Department should not be seen as collaborating with this heinous industry by way of administering the Reward Scheme.**

In Europe 80% of seizures are counterfeit whereas in Hong Kong only 30-35% of seizures are counterfeit and the remainder are genuine contraband products. This mal-thought-out and Customs administered Reward Scheme receives a paltry \$12,000 a month 'reward' sum from the tobacco companies instead of being financed by Government coffers, thus giving the tobacco companies what they believe is credence and 'Corporate Social Responsibility' they do not deserve. Instead the HK Government should where possible be prosecuting the International Tobacco companies and their intermediary agents whose products are found

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'duty not paid' in contraband seizures. **HK Customs Anti illicit tobacco Operation is a direct public health policy measure by restricting duty not paid products entering the market place and thus being available to youth and smokers alike.**

6.2 Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.

6.3 Parties should not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.<sup>5</sup>

6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements

### WHO document

[http://apps.who.int/gb/fctc/PDF/it1/FCTC\\_COP\\_INB\\_IT1\\_ID1-en.pdf](http://apps.who.int/gb/fctc/PDF/it1/FCTC_COP_INB_IT1_ID1-en.pdf)

#### TRACKING AND TRACING

12. Article 15.2(b) of the WHO Framework Convention specifically requires each Party to consider, as appropriate, developing a practical tracking and tracing regime which would further secure the distribution system of tobacco products, including cigarettes and assist in the investigation of illicit trade. The 12-year-old agreement between the European Commission, together with, currently, 26 of the Member States of the European Union, and Philip Morris International, which is administered by the European Anti-Fraud Office, contains specific tracking and tracing provisions.<sup>1</sup> Namely, Philip Morris International is required to mark certain "master cases" of cigarettes (a master case contains 10 000 cigarettes); mark cigarette cartons and packs; establish a master-case database and schedules for the implementation of programmes to scan information into that database; and provide instant access for designated European Commission and Member State officials to information in the master case database concerning seized master cases. The Agreement also requires Philip Morris International to conduct additional research on the enhancement of existing tracking and tracing technologies and the development of new ones and to apply new scanning and coding technologies as they become feasible. **The ultimate aim is to identify customers in the supply chain who are responsible for diverting cigarettes to the illicit market, so that appropriate action can be taken by enforcement agencies. The Agreement has mechanisms to exclude such customers from the distribution chain.**

30. Agreements and arrangements designed to combat smuggling and counterfeiting are some of the most useful tools for eliminating illicit trade in tobacco products. A key example is the Agreement between the European Commission, together with 26 of the Member States of the European Union, and Philip Morris International. The Agreement recognizes the significant problem that contraband and counterfeit tobacco products present to the collection of tax and customs revenues as well as to general tobacco regulation in the European Union, and seeks to implement a comprehensive and efficient system to fight against cigarette smuggling and counterfeiting.

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31. The Agreement includes terms under which Philip Morris International agrees to implement sales and distribution practices to ensure that its cigarettes are sold, distributed, stored and shipped in accordance with all legal requirements, including strong measures to ensure a complete understanding of the identity of tobacco customers, anti-money laundering initiatives and strict record-keeping requirements. The Agreement obliges Philip Morris International to sell its cigarettes in brands and amounts consistent with legitimate demand in the intended market. Additionally, in the event of future seizures of its products in the European Union, Philip Morris International agrees to cooperate by examining seized products to determine whether they are counterfeit, by providing documentation and examination results, and by providing relevant information relating to seized contraband products.

**Significantly, Philip Morris International will also be required to make supplementary payments equivalent to at least 100% of the duties and taxes due on the smuggled cigarettes that are seized. If the number of cigarettes seized in a year exceeds a predefined baseline amount, the supplementary payments will include an additional amount equal to 400% of the duties and taxes due on the seized cigarettes.** Between the implementation of the Agreement and end-June 2007, more than 1000 individual seizures were reported, totalling over 900 million cigarettes, with about **80% of these cigarettes found to be counterfeit.** (These steps are in addition to those mentioned above in relation to tracking and tracing its products.)

33. In another approach against smuggling and counterfeiting, the Government of the United Kingdom of Great Britain and Northern Ireland launched the Tackling Tobacco Smuggling Strategy in 2000. One of the key elements of the strategy is to work with tobacco manufacturers to restrict the supply of domestically manufactured cigarettes that are available to smugglers. To achieve this, in 2001, Her Majesty's Customs and Excise Department (now HM Revenue and Customs) signed memorandums of understanding with the main tobacco manufacturers supplying the domestic market. Enhanced memorandums containing stronger commitments were signed in 2006, in which the tobacco manufacturers agreed to sell their tobacco products in brands and amounts consistent with legitimate demand in the export market; respond to requests following significant seizures of their product to identify the production and movement history of the consignment; and cease supplying customers where they fail to demonstrate effective product control. In relation to counterfeiting, the memorandums of understanding require manufacturers to, among other things, take steps against trademark infringements by taking action against suspected trademark infringements where there is a reasonable prospect of success. The new memorandums were complemented by legislation imposing obligations on manufacturers and penalizing them for failure to comply with them. **For example, tobacco manufacturers are liable for penalties of up to £5 million if, after a formal warning, they do not take the steps necessary to control their supply chain.**

[http://www.mallenbaker.net/csr/page.php?Story\\_ID=1303](http://www.mallenbaker.net/csr/page.php?Story_ID=1303)

### Philip Morris settles smuggling claims for \$1.25 bn

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**A News item from Business Respect, Issue Number 76, dated 9 Jul 2004**

Philip Morris International has agreed a \$1.25bn settlement with the European Union over accusations of collusion with cigarette smuggling.

The EU had said the company had evaded taxes and custom duties through its activities - a claim which the company continues to deny. The money to be paid will go towards the fight against smuggled tobacco over the coming decade.

The company, in common with other major tobacco firms, was said to have sent large quantities of cigarettes to countries with low excise duties in the knowledge that significant quantities would then be smuggled into higher duty areas of the EU. The EU has estimated that the illegal trade gives rise to an annual loss of more than 1bn Euros per year.

<http://www.bloomberg.com/news/2010-04-13/r-j-reynolds-agrees-to-pay-canada-324-million-to-settle-smuggling-suit.html>

## **Japan Tobacco, RJ Reynolds Agree to Settle Canada Cigarette Smuggling Suit**

R.J. Reynolds Tobacco Co., a unit of tobacco manufacturer Reynolds American Inc., agreed to pay Canada C\$325 million (\$324 million) to settle government claims it aided cigarette smuggling in the 1990s. R.J. Reynolds, which sold its Canadian tobacco business to Japan Tobacco Inc. in 1999, agreed to help efforts by the federal and provincial governments to fight the sale of unlicensed tobacco if it resumes sales in Canada, the company said today in a statement. Those measures would affect packaging and marking, according to the statement.

<http://www2.journalnow.com/business/2007/dec/15/japan-tobacco-eu-settle-cigarette-dispute-ar-105761/>

Japan Tobacco Inc., the nation's biggest cigarette company, will pay \$400 million to the European Union over 15 years as part of an agreement to fight smuggling and counterfeiting, and avoid lawsuits about illicit trade. "Any future lawsuits against JTI for civil claims arising out of alleged past conduct related to illicit trade activity are excluded by the agreement," the company said yesterday.

In 2004 Altria Group Inc. agreed to pay about \$1.25 billion over 12 years to settle EU charges that the company aided cigarette smuggling. At the time, EU Budget Commissioner Michaele Schreyer said that the Altria agreement was a "template" for other tobacco companies with which the EU had similar disputes, including Japan Tobacco.

About 320 billion cigarettes, or 6 percent of the total market, are sold illegally each year, according to British American Tobacco PLC, Europe's largest publicly traded cigarette-maker. That's more than the combined output of BAT rivals Imperial Tobacco Group PLC and Altadis SA. Smuggled and counterfeit cigarettes cost the tobacco industry more than 2 billion pounds (\$4 billion) a year, the maker of Lucky Strike cigarettes said in April.

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<http://www.independent.co.uk/news/business/news/eu-cracks-down-on-illegal-cigarette-smuggling-after-125bn-settlement-with-philip-morris-552676.html>

<b>From:</b> mark_ym_lee@customs.gov.hk [mailto:mark_ym_lee@customs.gov.hk]				
<b>Sent:</b> Monday, February 14, 2011 14:59				
<b>To:</b> James Middleton				
<b>Cc:</b> customs enquiry@customs.gov.hk; catherine_py_lam@customs.gov.hk				
<b>Subject:</b> Re: query needs reply				
Dear James,				
Your requested figures are as follows:				
HK Customs and Excise Data	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Illicit Cigarettes				
Total Number of cases#	<b>40 390</b>	<b>21 103</b>	<b>18 230</b>	<b>17 011</b>
Exportation / Transhipment cases	<b>81</b>	<b>162</b>	<b>91</b>	<b>101</b>
Persons arrested (importation/ distribution/ storage /peddling)	<b>1 427</b>	<b>1 161</b>	<b>2 262</b>	<b>1 852</b>
Persons arrested (exportation /transhipment)	<b>10</b>	<b>8</b>	<b>3</b>	<b>2</b>
Total Value of all seizures (\$m)	<b>177.9</b>	<b>123.1</b>	<b>119.4</b>	<b>152.1</b>
Value of exportation / transhipment cases (\$m)	<b>3.9</b>	<b>8.4</b>	<b>5</b>	<b>54.3</b>
Value importation/ distribution/ storage /peddling cases (\$m)	<b>158.1</b>	<b>102.3</b>	<b>103.5</b>	<b>86.8</b>
Total illicit cigarette seizures (million sticks)	<b>119</b>	<b>81.2</b>	<b>64.7</b>	<b>80.4</b>
Export / Transhipment Cigarettes seizures (million sticks)	<b>2.6</b>	<b>5.6</b>	<b>2.9</b>	<b>28.6</b>
% of contraband seizures - Counterfeit cigarettes			<b>35-40%</b>	<b>35-40%</b>
% of contraband seizures - Genuine product cigarettes			<b>60-65%</b>	<b>60-65%</b>
% of Genuine Duty Free contraband marked 'HK Duty Not Paid'			<b>6.90%</b>	<b>6.90%</b>
<a href="http://www.customs.gov.hk/en/statistics/index.html">http://www.customs.gov.hk/en/statistics/index.html</a>				
Regards.				
Mark LEE				
Divisional Commander				
Anti-Illicit-Cigarette Investigation Division				
Revenue and General Investigation Bureau				

Yours faithfully,

*James Middleton*

Chairman  
Clear the Air  
Charity and NGO

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