

Worldwide news and comment

USA/ASIA: US-BASED THINK-TANK TRIES TO INTIMIDATE REGIONAL TOBACCO CONTROL GROUP

Tobacco control advocates are familiar with the “scream test” – the litmus test for an effective measure that hurts the tobacco industry and causes it to protest. Recently, a regional tobacco control group, the Southeast Asia Tobacco Control Alliance (SEATCA) received a 36-page letter from Dr Gary Johns on behalf of the International Tax and Investment Center (ITIC) which shows the industry screaming.

The ITIC is a think tank based in Washington DC that claims to be an independent, non-profit research and educational organisation supported by 100 corporations including four transnational tobacco companies (BAT, PMI, JTI and Imperial Brands), each of which are represented on its board of directors (http://www.iticnet.org/Sponsors_BoardOfDirectors). Dr Gary Johns is an Australian consultant “engaged by ITIC to engage with its critics”.

The letter sent to SEATCA is riddled with false accusations against SEATCA, mischaracterizations of fact and law, disparaging comments about the World Health Organization (WHO), the WHO Framework Convention on Tobacco Control Secretariat (FCS) and the Parties to the FCTC.

What had SEATCA done to bring about this tirade? In 2012, the ITIC and Oxford Economics (OE) released a report on illicit tobacco trade, *Asia-11 Illicit Tobacco Indicator 2012* to provide evidence of illicit trade of tobacco products of 11 countries in Asia. The ITIC later launched an updated version, *Asia-14 Illicit Tobacco Indicator 2013*, expanding the review to 14 countries in Asia. Both reports were funded by Philip Morris International (PMI).

SEATCA published critiques of both reports. The first, *More Myth than Fact* provided an expert review of the methodology of the Asia-11 report, questioning the reliability and accuracy of the estimates of illicit consumption. The second, *A Critique of the ITIC/OE Asia-14 Illicit Tobacco Indicator 2013*, pointed out that the report failed to provide scientifically

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An image used by Vital Strategies Bangladesh for a Thunderclap campaign to support graphic health warnings in the lead up to World No Tobacco Day 2016. Credit: Vital Strategies – Bangladesh country program.

sound and unbiased information. The figures and statistics used in the report were products of either incorrect or unverified/unverifiable estimation methods, applied to often questionable data from multiple, disparate sources.

It appears that PMI wants to steer governments away from WHO FCTC Article 5.3, which aims to protect public health policies from tobacco industry interference, and would rather governments participate in industry sponsored programs and adopt its recommendations on tobacco taxation.

In November 2014, the ITIC organized a briefing for governments attending the sixth session of the FCTC Conference of the Parties (COP6) in Moscow hoping to dissuade them from their decision to adopt Article 6 guidelines on tobacco tax. However, the Framework Convention Secretariat (FCS) was able to caution governments in a timely manner about this ITIC meeting by issuing a Note Verbale in September 2014.

In February this year, SEATCA's Executive Director received a letter from ITIC's President inviting her to a 'round-table discussion', particularly “an experts' meeting of professional economists” which SEATCA declined.

In March, the FCS issued a second Note Verbale on tobacco industry interference on the tracking and tracing systems, again making reference to the ITIC.

Dr Johns wrote to an internationally renowned Thai tobacco control leader requesting them to urge SEATCA to meet with him about the critiques of ITIC reports. However, SEATCA has a policy of not engaging with the tobacco industry or its representatives. Dr Johns made

another effort by phone and email, and failing to secure a meeting hand-delivered the letter in April. Because SEATCA does not engage with the tobacco industry or individuals or organisations representing it, it decided to publish an open letter in response to Dr Gary John and the ITIC.

Among the many accusations the ITIC makes is that SEATCA “sees itself as an instrument of the World Health Organization and its Framework Convention Secretariat”. This statement undermines the credibility of the many international and regional non-governmental groups that work closely with



A drawing from a World No Tobacco Day event organised by Unfairtobacco in Germany with sixth grade students (11–12 years old). The students participated in workshop about the problems caused by tobacco growing. Students designed postcards to spread information about the problems and then released them tied to balloons. Credit: Harry Thomass, Unfairtobacco.



Australia's Queensland University of Technology announced on World No Tobacco Day that all its campuses and research facilities would become smoke free from July 1, 2016. Credit: Anthony Weate, QUT.

inter-governmental organisations. SEATCA is a civil society alliance that works independently of the WHO and FCS. Like many other tobacco control NGOs, SEATCA has observer status with the FCTC COP. Observer status with the COP does not make SEATCA an instrument of the COP.

SEACTA is an NGO in a developing country which carries out its activities in countries in the Southeast Asian region. ITIC's letter, with its intimidating tone, appears aimed at bullying SEATCA in its efforts to expose the tactics of PMI and its representatives. This type of intimidation has a larger impact in a developing country setting as it aims to discredit a tobacco control NGO that works closely with governments.

The ITIC's attack on a tobacco control NGO is another example of an old tried and tested tactic of the tobacco industry. Attempts at intimidation or silencing NGOs in any form must be exposed and stopped.

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UK: BIG TOBACCO INVOKES SLAVERY ABOLITION PRECEDENT FOR COMPENSATION

British American Tobacco, Philip Morris, JT International and Gallaher Limited failed in a last ditch legal challenge to strike down the plain packaging regulations which came into force in the United Kingdom from 20 May. In a 386 page judgement handed down on 19 May,

Mr Justice Green found that there was no basis to void the regulations or prevent their implementation.

One of the more striking arguments put forward by the industry's lawyers was a request for compensation for deprivation of its property. The precedent invoked was

(ii) *Lord Mansfield and the Slavery Abolition Act 1833*

854. The first difficulty is that the proposition set out in Blackstone is too extreme and uncompromising. In the course of oral argument some reliance was placed upon the fact that Parliament had legislated for the payment of compensation to colonial slave owners upon the abolition of slavery in 1833 as an exercise in what was just and expedient in a case where property rights had been curtailed. It was contended that this reflected the trenchant common law approach to the legislative suppression of otherwise or erstwhile legal and/or commercial property rights. I do not agree. The abolition of slavery as a category of property had been abolished at common law in a series of earlier judgments by Lord Mansfield and there had never arisen the remotest

855. The 1833 Act cannot therefore be taken to support the proposition that curtailments or abolition of a right to property inevitably triggers a common law right to compensation. On the contrary the more apt interpretation is that Parliament stepped in because the common law refused to acknowledge a species of property, upon strong (moral) policy grounds. The judgment of Lord Mansfield pre-dated the

and what was "just and expedient" in the eyes of MPs in 1833 is not an indication of what would be so in 2016. It is inconceivable that anyone would be compensated for the manumission of a slave in a modern Western state. In 1833 slavery was integral to the economy and had compensation not been paid the economic consequences for the colonies would have been calamitous. The same cannot be said of the curtailment of the advertising of tobacco which on the basis of the 2014 Impact Assessment will result in a vast long term saving to the State in financial terms and a commensurate improvement in public health and welfare and to the extent that good health promotes happiness, then an increase in overall societal welfare. An Act of Parliament was thus required to sanction the payment of compensation since the earlier judicial decisions hostile to slavery had not contemplated the possibility of compensation as part of the

An extract from the ruling which found there was no basis to strike down the UK's plain packaging legislation, and dismissed the claim for compensation to the tobacco industry based on compensation paid to slave owners when slavery was abolished. Credit: Pascal Diethelm, OxyRomandie.

the compensation provided to slave owners of the British colonies when slavery was abolished in 1833. Given big tobacco's comprehensive image problem, the precarious livelihood of many tobacco farmers in low income countries, and the ongoing problem of child labour in the tobacco supply chain, aligning the industry's claim to compensation with the slave owners of the 1800's is a tactic that should make even its most ardent defenders blush.

GERMANY: DELAY & RESISTANCE IN TOBACCO CONTROL POLICY MAKING

When the Tobacco Products Directive (TPD) was adopted by the European Union in April 2014, it was widely hoped that member states would use the opportunity to undertake a comprehensive review of their tobacco control regulations and then to go further than the minimum required when implementing the directive into national law.

In the case of Germany, that is turning out to have been a fleeting hope. Although Germany's initial draft legislation had indeed included wider ranging, long overdue restrictions, particularly for outdoor advertising, these proposals proved to be controversial. The legislation was then separated into two parts. In the first part, the minimum TPD requirements were



On World No Tobacco Day, the president of Palau signed a proclamation for the observance of WNTD with the theme about getting ready for plain packaging. Credit: Office of the President, Republic of Palau

implemented on 20 May, complying with the deadline set by the EU.

Christian Schmidt, the government minister for food and agriculture from the minority Bavarian coalition partner Christian Social Union (CSU), then introduced additional wider ranging reforms in a separate bill approved by cabinet on 20 April 2016. Although the cabinet initially approved the measure, by early June its fate was still uncertain. The other two, larger coalition partners, the Christian Democratic Union (CDU) and the Social Democratic Party, both have expressed their opposition to the advertising restrictions, the CDU having done so formally through a resolution at its national party convention in December 2016. A date for the first reading in parliament has yet to be set.

The proposed legislation is striking in acknowledging the need for an outdoor advertising ban on the one hand, while at the same time refusing to implement it within the current legislative session. The proposed partial ban, which would not take effect until June 2020, would be effectively left to the discretion of the next federal government, to be elected before September 2017.

Germany recognised the need to ban outdoor advertising and had already committed itself to doing so within five years when it ratified the FCTC in 2005. However, implementation of legislation has consistently been set for subsequent parliamentary terms. The latest legislation would again require implementation by the next government, four to five years from being passed by parliament. Even if

the proposed legislation is adopted by the current legislature, the next parliament could follow the precedent and postpone the implementation for another five years, and so on.

Pushing for long-term postponements of legislation is a potent tactic of tobacco lobbyists. In a similar manner, the Austrian government postponed implementation of smoke-free bars and restaurants for four years, also putting the decision at the disposal of the next government. Long-term postponement provides the tobacco industry with an empty playing field when lobbying for yet a further postponement or dilution of regulations.

In a positive development, the smoking ban in bars and restaurants in the German state of North Rhine-Westphalia has been successfully in place since 1 May 2013. The change was adopted almost immediately after the state election and was implemented within just 12 months, meaning it will have been in place for four years by the next state election due in May 2017. The speedy implementation has meant that the restrictions are no longer a political issue. Unfortunately, however, the good example out of the state capital in Düsseldorf (which followed earlier bans in Bavaria in 2010 and Saarland in 2011) has not been followed by other German states.

Again at the federal level, most distressing has been the recent changes to the child protection provisions. Euphemistically referred to by the government as a 'strict' prohibition, Germany has essentially the weakest imaginable statutory regulation in

this area. The federal restrictions on the supply of cigarettes to minors only apply to transactions made in public and by businesses. Anyone else, however, is allowed to buy cigarettes and pass them on at cost to minors, regardless of parental consent or disapproval. Regardless of age, minors are allowed to acquire and possess cigarettes. Outside the school-yard, a child is also allowed to consume tobacco, so long as it is not openly done in public.

Such lax regulations around distribution and sales of tobacco mean that cigarettes are easier to obtain for minors than media such as DVDs, CDs and other digital media. Distribution of media products to minors is prohibited both in public and in private, unless the distributing person is either a parent or is acting with the parents' consent.

The failure to prohibit the non-commercial supply of tobacco to minors places German legislation well behind the United Kingdom, many US states, and even behind neighbouring Austria which has the worst tobacco control record of 34 European states.

The relevant federal statute was revised effective 1 April to include a prohibition on distribution of all inhalation products to minors in public, regardless of nicotine content. Protecting children against inhalation products in general is certainly warranted. However, children are now being told that the nicotine content is irrelevant. De facto, the addictive and harmful nature of nicotine as a drug has been trivialised while the restrictions for tobacco products have remained superficial.

The implementation of the TPD in Germany on 20 May has led to a mélange of contradictory philosophies on tobacco control legislation. Graphic pictorial warnings on cigarette packaging will soon be on display at check-out counters, next to bubble gum and within children's reach. For advertising on outdoor billboards and at the point of sale, where the EU has no jurisdiction, there will be no comparable requirement to show pictures of the deadly reality of smoking. This dichotomy may undermine the potency of graphic health warnings, and lead further to minimising acceptance of the dangers of smoking.

Despite the inadequate protections within the revised German tobacco control legislation, the changes have been widely criticized in the German press and in internet forums as an example of EU over-regulation incongruent with German liberalism.

The German government continues to be a bulwark of resistance to tobacco control measures. Imperial Tobacco cited Germany in 2014 as a model 22 times in its

arguments against plain-packaging in the UK. After manufacturing operations in Spain were closed in June 2015 (as reported in the March 2016 edition of News Analysis), Imperial Tobacco announced that manufacturing will be moving as well from Nantes, France and from Nottingham, England to Langenhagen, Germany and to Poland. Additional cigarette manufacturing in Germany can be expected to further secure the political influence of the tobacco industry.

The prevalence of smoking among 15-year-olds in Germany is above the average among European countries. Every day an estimated 423 minors take up smoking on a regular basis in Germany. Roughly a quarter of German youth reach age 18 addicted to nicotine. Measures to protect children and adolescents from smoking initiation continue to be desperately needed.

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OBITUARY: YUL FRANCISCO DORADO

Latin America, and the global tobacco control community, lost a champion of public health on 1 May 2016. Yul Francisco Dorado was born in Popayán, in southwest Colombia, where he completed his studies in Law and Political Science. At a young age he became interested in the right to health and environment. He became a key leader in the fight against tobacco in Latin America.

With a postgraduate degree in Public Law, he moved to Chile and worked for Consumers International. In 2003, he returned to his native Columbia, where he later established the Latin America regional office of Corporate Accountability International.

Over the last 13 years, he devoted himself to contributing to the creation of national and international networks for tobacco control, as well as the protection of the right to water and healthy environment. His dedicated work as an advocate led him to find a way not only among international organisations, but also among health authorities, the media and general public opinion, for Latin America



Yul Francisco Dorado, on the left holding the camera, was a tireless advocate for health and tobacco control in Latin America

to trigger alarms on the epidemic of tobacco-related disease and death.

He was a key figure in the movement within Latin America to implement the standards and laws provided by the WHO Framework Convention on Tobacco Control. He worked energetically on high impact campaigns to prevent tobacco consumption, especially among minors. Every year, on May 31, Yul Francisco addressed the media to promote a message during the celebration of World No Tobacco Day.

Governmental entities understood Yul Francisco's fight, not only in Colombia, but at an international level. Before he joined Corporate Accountability International in 2005 as Director for Latin America, he worked for Consumers International, supervising and supporting the ratification and implementation processes of the FCTC in Chile, Colombia, Ecuador, Guatemala and Costa Rica.

He travelled all around the world, bringing a message of solidarity and friendship to all meetings, winning the affection and recognition of several international organizations.

Yul Francisco Dorado was a determined leader, teacher and relentless health advocate. His work will live on through his many friends and colleagues who have learned from, and been inspired by him.

Dr Vera Luiza da Costa e Silva, Head of the FCTC Convention Secretariat, perhaps put it best when she paid tribute to his legacy:

"Yul's impact on the tobacco control movement has, and will undoubtedly continue to save millions of lives. His work has ensured that people are valued above the profits of the tobacco industry and that this industry will no longer be allowed to have a voice in public health policy. Yul will be sorely missed and our COP meetings will never be the same as they will miss his kind and strong presence. Nevertheless, his legacy will live on for its support to the WHO Framework Convention on Tobacco Control".

Yul Francisco Dorado is survived by his wife and three sons.

This obituary and additional tributes are published online at <http://blogs.bmj.com/tc/2016/06/06/obituary-yul-francisco-dorado-a-visionary-tobacco-control-leader-in-latin-america/>.



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