

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

CO 034-01

DATE RECEIVED: FEBRUARY 12, 1992

NAME OF CORRESPONDENT: MR. ALAN C. DAVIS

SUBJECT: EXPRESSES CONCERN REGARDING REPORTS THAT THE
USTR IS FORCING THE TAIWANESE GOVERNMENT TO
WEAKEN THEIR HEALTH LAW DESIGNED TO REDUCE
TOBACCO-CAUSED DISEASE AND DEATH IN TAIWAN

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
KATHY JEAUVONS ✓ 92 USTR	ORG	92/02/12		C 92/02/12 RL
REFERRAL NOTE: _____	A	92/10/12	66NAN	92/10/12 RL
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				

COMMENTS: ENCLOSURE
MR. DAVIS IS ALSO VICE PRES. FOR PUBLIC
ISSUES FOR THE AMERICAN CANCER SOCIETY

ADDITIONAL CORRESPONDENTS: 3 MEDIA:L INDIVIDUAL CODES: 4690 4900 4670
PL MAIL USER CODES: (A) _____ (B) _____ (C) _____

```

*****
*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                      *                      *CORRESPONDENCE:  *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL *          OF SIGNER   *
*D-DRAFT RESPONSE     *C-COMPLETED        *          CODE = A   *
*F-FURNISH FACT SHEET *S-SUSPENDED        *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*          *          OUTGOING *
*R-DIRECT REPLY W/COPY *          *          *
*S-FOR-SIGNATURE      *          *          *
*X-INTERIM REPLY      *          *          *
*****


```

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOP) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

March 13, 1992

MEMORANDUM FOR: Sally Kelley
Director of Agency Liaison
Presidential Correspondence

FROM:  Beverly Posey
Deputy Assistant U.S. Trade Representative
for Administration

SUBJECT: White House Referrals

We are returning the following correspondence referred to us
on February 26, 1992:

ID: 307563

MEDIA: LETTER DATED FEBRUARY 10, 1992

TO: PRESIDENT BUSH

FROM: MR. ALAN C. DAVIS
CHAIRPERSON
COALITION ON SMOKING OR HEALTH

SUBJECT: TAIWANESE GOVERNMENT SMOKING LAW

Mr. Davis wrote directly to Ambassador Hills on this subject. A
copy of that letter and her response is attached. We believe no
further action is necessary.

Attachments

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

MAR 12 1992

Mr. Alan C. Davis
Chairperson
Coalition on Smoking or Health
1150 Connecticut Avenue, N.W.
Suite 820
Washington, D.C. 20036

Dear Mr. Davis:

I am writing in response to your letter regarding Taiwan's proposed smoking law. I regret that your letter is based on incorrect information.

The Administration has no objections to most of the provisions of Taiwan's draft law. We fully recognize the right of each country to impose restrictions on the sale and use of all cigarettes to meet legitimate health-policy goals.

We are concerned, however, that certain provisions of the proposed law may discriminate against imported U.S. cigarettes in favor of domestic cigarettes. In a situation in which the local market for cigarettes is dominated by a state-owned monopoly, regulations that appear non-discriminatory on the surface can easily be implemented in a manner that disadvantages U.S. producers. We are obligated under U.S. trade laws and entitled by the GATT to ensure that American businesses can compete on an equal basis with foreign producers. This position is consistent with the long-standing Administration policy on cigarette exports.

You should also know that the Administration has drawn no link whatsoever between this issue and the question of Taiwan's application for GATT membership. Our position on Taiwan's GATT application was enunciated clearly by the President in a July 19 letter to Senator Baucus, in which he stated that "the U.S. has a firm position of supporting the accession of Taiwan on terms acceptable to GATT contracting parties."

Thank you for writing.

Sincerely,



Carla A. Hills



Coalition on Smoking OR Health

January 21, 1992

98343015
SK

The Honorable Carla A. Hills
United States Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Ambassador Hills:

We write on behalf of the American Cancer Society, the American Heart Association and the American Lung Association (united as the Coalition on Smoking OR Health), and the American Public Health Association, to request your urgent review of the positions being taken by your office in consultations between Taiwan and the United States scheduled to begin today.

Information we have obtained raises a serious concern by our organizations, and by the American Medical Association and many other organizations with which we have been in contact, that your office may be violating its publicly proclaimed commitment to carefully consider human health in matters relating to trade in tobacco products, and to refrain from taking actions which threaten to increase smoking rates. Specifically, we understand that your office is raising objections to several crucial provisions of Taiwan's landmark tobacco control law, which is now in draft form awaiting final action by Taiwan's legislature.

The objections your office is raising cannot be reconciled with the policy first articulated by your predecessor, Clayton Yeutter, in a November 21, 1988 letter to then-Surgeon General C. Everett Koop. Yeutter declared that:

We have no intention of challenging their health regulations [i.e., those of Japan, South Korea and Taiwan], or the health regulations of any other country, on tobacco products or any other products, if those regulations demonstrate a plausible concern for human health. In other words, if they are not simply a nontariff trade barrier, we'll not challenge them.

The Hon. Carla A. Hills
January 21, 1992
Page 2

The position your office is taking with respect to Taiwan today compels us to ask whether your office officially has renounced its policy of respecting the health laws of our trading partners.

Our concern in this case arises from the strongly held belief of our organizations, and of many millions of American citizens, that health concerns should take precedence over trade concerns where addictive and uniquely harmful products such as cigarettes are involved. Cigarettes are the only commercial product that, when used exactly as intended by the manufacturer, kills approximately one-third of its users.

Background Regarding Taiwan's Proposed Tobacco Control Law

Taiwan's proposed "Law Governing the Prevention and Control of Damage from Tobacco Use" is the centerpiece of an impressive five-year plan for tobacco control by Taiwan's Department of Health. The law is based on extensive consultations with international experts in the smoking and health field. Provisions include a ban on spitting tobacco, a ban on cigarette sales through vending machines, extensive restrictions on smoking in public, an aggressive public education effort, required disclosure of tar and nicotine content, and a complete ban on direct and indirect advertising and promotion.

We have carefully reviewed an English translation of the text of the law and find that it consists entirely of basic public health measures advocated by virtually all major health organizations, including the World Health Organization. Importantly, we also note that every provision of the proposed law would apply equally to domestic and foreign brands.

It appears that the advertising and promotion ban, in particular, will be a focus of the upcoming trade consultations. There is no serious doubt among independent researchers that cigarette advertising and promotions encourage smoking initiation among children and reinforce smoking behavior among existing smokers. One advertising campaign by RJ Reynolds Tobacco Co. in the U.S., to cite a recent example, has been spectacularly effective in reaching children. Through its "Old Joe Camel" ads, the company has boosted its sales in the illegal "children's market" from \$6 million in 1987 to \$476 million per year last year, according to studies recently released by the American Medical Association. Even Advertising Age, the advertising industry's own trade magazine, acknowledged in an editorial this week entitled "Old Joe Must Go" that "Old Joe subtly encourages youngsters to smoke."

The Hon. Carla A. Hills
January 21, 1992
Page 3

Given the overwhelming evidence of the impact that tobacco advertising and promotions have on consumption, many prominent U.S. trading partners have implemented advertising bans, including Canada, New Zealand, Singapore, Thailand, Norway, Finland, France, Italy and Spain. A majority of European Community nations favor a cigarette advertising ban.

The U.S. Should Not Interfere With Taiwan's Domestic Health Law

Despite the clear health basis for Taiwan's proposed law, your office appears to have adopted an inflexible approach toward the advertising and promotion ban and any other provision that could be argued to be inconsistent with the original beer, wine and cigarette market opening agreement signed on December 12, 1986. Further, it is our understanding that your office, along with U.S. Senators Helms and McConnell, has argued that Taiwan's desire to pass this nondiscriminatory health legislation could jeopardize Taiwan's pending application for GATT membership.

We believe the United States has an obligation to be reasonable in its negotiations with Taiwan on this issue, and to be sensitive to Taiwan's legitimate health concerns. Moreover, we wish to point out that Taiwan's proposed law is completely consistent with the GATT ruling obtained by the United States in November, 1990 to resolve similar issues involving U.S. cigarette exports to Thailand.

In that case, a neutral GATT panel came to the significant conclusion that health issues must be considered along with trade issues. The panel also determined that questions regarding the import and export of tobacco cannot be artificially separated from those concerning the health and well-being of those, particularly children and young women, targeted for addiction by the tobacco industry. The panel "accepted that smoking constituted a serious risk to human health and that consequently measures designed to reduce the consumption of cigarettes fell within the scope of Article XX(b) [providing for exceptions to GATT articles to protect human health]." The panel concluded that Article XX(b) "clearly allowed contracting parties to give priority to human health over trade liberalization." The GATT panel's conclusions and recommendations subsequently were adopted, without amendment, by the member nations of GATT.

Against this backdrop, it would be unconscionable for the United States to attempt to block Taiwan's effort to protect the health of its citizens from tobacco advertising and promotions. Such an attempt would be damaging to the standing of the United States in the world community. We believe such an attempt ultimately would fail in light of the GATT ruling, in light of

The Hon. Carla A. Hills
January 21, 1992
Page 4

Taiwan's strong commitment to enacting this law, and in light of the overwhelming support for Taiwan's position from the international health community.

Conclusion

USTR is on record as taking the following positions in congressional testimony, correspondence and media appearances:

- 1) that it is extremely sensitive to health concerns, and will not oppose legitimate measures by another country to protect the health of its citizens;
- 2) that it seeks only nondiscriminatory "national treatment" for American products;
- 3) that the controversial effort to require Asian nations such as Taiwan to allow advertising and promotion of U.S. cigarette brands is defensible as a temporary measure to speed market penetration only during the first several years of access by U.S. brands.

It appears from our information that your office is on the verge of violating each of these basic understandings in the upcoming trade consultations with Taiwan. We urge you to review the positions your staff is taking in this case and to provide us with reassurances that the understandings we have outlined above remain in force.

We also would be interested in learning about the extent to which the Department of Health and Human Services participated in the apparent decision to challenge Taiwan's tobacco control law, and the extent to which your office has solicited and considered independent data on smoking trends and brand preferences in Taiwan, particularly among children and traditionally nonsmoking women, in the course of its deliberations.

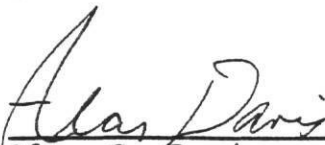
Evidence that your office is acting on the basis of information on health issues supplied by the cigarette industry without soliciting input from the health community is one of the most disturbing aspects of this case. The cigarette industry is a singularly inappropriate source for information on the relationships between smoking, cigarette marketing practices, and human health.

The Hon. Carla A. Hills
January 21, 1992
Page 5

We are hopeful that, upon review, your office will consider the serious health issues involved and acknowledge the fundamental right of Taiwan under international law to enact and enforce its domestic health laws on a national treatment basis. We urge you to raise no objections to Taiwan's proposed tobacco control law and to allow its speedy passage and implementation.

We look forward to hearing from you soon.

Sincerely,



Alan C. Davis
Chairperson
Coalition on Smoking OR Health
Vice President for Public Issues
American Cancer Society



Scott D. Ballin
Legislative Counsel and
Vice President for
Public Affairs
American Heart Association



Fran Du Melle
Deputy Managing Director
American Lung Association



William H. McBeath, MD, MPH
Executive Director
American Public Health
Association



Kathy Seavone

Coalition on Smoking OR Health
1150 Connecticut Avenue, N.W.
Suite 820
Washington, D.C. 20036
202-452-1184

February 10, 1992

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the American Cancer Society, the American Heart Association and the American Lung Association (united as the Coalition on Smoking OR Health), and the American Public Health Association, we wish to bring to your attention disclosures made in media reports this week concerning attempts by the Office of the U.S. Trade Representative (USTR) to force the government of Taiwan to weaken an ambitious health law designed to reduce tobacco-caused disease and death in that nation. We believe this matter merits your urgent attention.

Because of the unique health hazards of tobacco, we call on you to ensure that no trade action involving the export of cigarettes be taken without review and approval by the Secretary of the Department of Health and Human Services (HHS). We strongly believe that this is the only responsible position for your Administration to take in dealing with a product that the World Health Organization estimates will kill 500 million men, women and children by the middle of the next century.

Disclosures this week in the Legal Times include the following:

- * USTR officials admitted to the media that their position in negotiating with Taiwan is based on information on crucial health issues supplied to them by the U.S. Cigarette Export Association.
- * Dr. Louis Sullivan, Secretary of Health and Human Services, disclosed through a spokesperson that he has not been consulted on the health issues involved in this case.
- * A leading GATT law expert and former General Counsel to USTR under President Nixon has reviewed documents related to this case and stated for the record his sense that Taiwan probably would prevail if this case were brought before GATT.

Together, these disclosures confirm our fears that reliable data from U.S. health experts has been excluded in this case and that cigarette industry information is being relied upon in its place. The result is that USTR has adopted a one-sided, legally untenable position and is using tobacco industry arguments long discredited by the health community, including our own government's Department of Health and

President George Bush
February 10, 1992
Page 2

Human Services. Accepting information about smoking and health from an industry that still refuses to admit that cigarette smoking causes cancer, heart disease, and emphysema makes a mockery of any pretense that health issues are being considered.

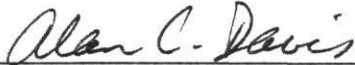
We wish to emphasize that cigarettes are not, as the industry argues, just another legal product for export. They are a lethal and addictive drug which is one of the leading causes of preventable death in the world. Strong action must be taken soon to curb the smoking epidemic.

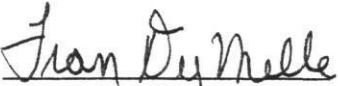
For these reasons, we call on you to allow Taiwan to exercise self-determination regarding health protection from tobacco-related disease and to allow its government to pass tobacco control legislation without interference from USTR. In the case of this uniquely deadly product, health and trade considerations must be weighed in concert with honest, comprehensive input from our country's preventive medicine experts.

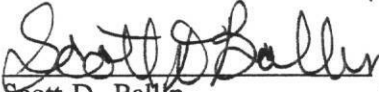
We urge you to direct USTR to defer to HHS on the health issues involved in this case and others like it, and to let our organizations and the American public know what specific steps you are taking to address this situation.


encl
Thank you for your attention to this matter. We respectfully request that your office respond to us directly, as we have written a separate and more detailed letter to Ambassador Hills (copy attached). We are prepared to discuss the issues we have raised in greater detail with you or your staff at any time. We look forward to your reply.

Sincerely,


Alan C. Davis
Chairperson
Coalition on Smoking OR Health
Vice President for Public Issues
American Cancer Society


Fran Du Melle
Deputy Managing Director
American Lung Association


Scott D. Ballin
Legislative Counsel and
Vice President for
Public Affairs
American Heart Association


William H. McBeath, MD, MPH
Executive Director
American Public Health Association



Coalition on Smoking OR Health

January 21, 1992

The Honorable Carla A. Hills
United States Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Ambassador Hills:

We write on behalf of the American Cancer Society, the American Heart Association and the American Lung Association (united as the Coalition on Smoking OR Health), and the American Public Health Association, to request your urgent review of the positions being taken by your office in consultations between Taiwan and the United States scheduled to begin today.

Information we have obtained raises a serious concern by our organizations, and by the American Medical Association and many other organizations with which we have been in contact, that your office may be violating its publicly proclaimed commitment to carefully consider human health in matters relating to trade in tobacco products, and to refrain from taking actions which threaten to increase smoking rates. Specifically, we understand that your office is raising objections to several crucial provisions of Taiwan's landmark tobacco control law, which is now in draft form awaiting final action by Taiwan's legislature.

The objections your office is raising cannot be reconciled with the policy first articulated by your predecessor, Clayton Yeutter, in a November 21, 1988 letter to then-Surgeon General C. Everett Koop. Yeutter declared that:

We have no intention of challenging their health regulations [i.e., those of Japan, South Korea and Taiwan], or the health regulations of any other country, on tobacco products or any other products, if those regulations demonstrate a plausible concern for human health. In other words, if they are not simply a nontariff trade barrier, we'll not challenge them.

1150 Connecticut Avenue, NW, Suite 820
Washington, DC 20036
(202) 452-1184

The Hon. Carla A. Hills
January 21, 1992
Page 2

The position your office is taking with respect to Taiwan today compels us to ask whether your office officially has renounced its policy of respecting the health laws of our trading partners.

Our concern in this case arises from the strongly held belief of our organizations, and of many millions of American citizens, that health concerns should take precedence over trade concerns where addictive and uniquely harmful products such as cigarettes are involved. Cigarettes are the only commercial product that, when used exactly as intended by the manufacturer, kills approximately one-third of its users.

Background Regarding Taiwan's Proposed Tobacco Control Law

Taiwan's proposed "Law Governing the Prevention and Control of Damage from Tobacco Use" is the centerpiece of an impressive five-year plan for tobacco control by Taiwan's Department of Health. The law is based on extensive consultations with international experts in the smoking and health field. Provisions include a ban on spitting tobacco, a ban on cigarette sales through vending machines, extensive restrictions on smoking in public, an aggressive public education effort, required disclosure of tar and nicotine content, and a complete ban on direct and indirect advertising and promotion.

We have carefully reviewed an English translation of the text of the law and find that it consists entirely of basic public health measures advocated by virtually all major health organizations, including the World Health Organization. Importantly, we also note that every provision of the proposed law would apply equally to domestic and foreign brands.

It appears that the advertising and promotion ban, in particular, will be a focus of the upcoming trade consultations. There is no serious doubt among independent researchers that cigarette advertising and promotions encourage smoking initiation among children and reinforce smoking behavior among existing smokers. One advertising campaign by RJ Reynolds Tobacco Co. in the U.S., to cite a recent example, has been spectacularly effective in reaching children. Through its "Old Joe Camel" ads, the company has boosted its sales in the illegal "children's market" from \$6 million in 1987 to \$476 million per year last year, according to studies recently released by the American Medical Association. Even Advertising Age, the advertising industry's own trade magazine, acknowledged in an editorial this week entitled "Old Joe Must Go" that "Old Joe subtly encourages youngsters to smoke."

The Hon. Carla A. Hills
January 21, 1992
Page 3

Given the overwhelming evidence of the impact that tobacco advertising and promotions have on consumption, many prominent U.S. trading partners have implemented advertising bans, including Canada, New Zealand, Singapore, Thailand, Norway, Finland, France, Italy and Spain. A majority of European Community nations favor a cigarette advertising ban.

The U.S. Should Not Interfere With Taiwan's Domestic Health Law

Despite the clear health basis for Taiwan's proposed law, your office appears to have adopted an inflexible approach toward the advertising and promotion ban and any other provision that could be argued to be inconsistent with the original beer, wine and cigarette market opening agreement signed on December 12, 1986. Further, it is our understanding that your office, along with U.S. Senators Helms and McConnell, has argued that Taiwan's desire to pass this nondiscriminatory health legislation could jeopardize Taiwan's pending application for GATT membership.

We believe the United States has an obligation to be reasonable in its negotiations with Taiwan on this issue, and to be sensitive to Taiwan's legitimate health concerns. Moreover, we wish to point out that Taiwan's proposed law is completely consistent with the GATT ruling obtained by the United States in November, 1990 to resolve similar issues involving U.S. cigarette exports to Thailand.

In that case, a neutral GATT panel came to the significant conclusion that health issues must be considered along with trade issues. The panel also determined that questions regarding the import and export of tobacco cannot be artificially separated from those concerning the health and well-being of those, particularly children and young women, targeted for addiction by the tobacco industry. The panel "accepted that smoking constituted a serious risk to human health and that consequently measures designed to reduce the consumption of cigarettes fell within the scope of Article XX(b) [providing for exceptions to GATT articles to protect human health]." The panel concluded that Article XX(b) "clearly allowed contracting parties to give priority to human health over trade liberalization." The GATT panel's conclusions and recommendations subsequently were adopted, without amendment, by the member nations of GATT.

Against this backdrop, it would be unconscionable for the United States to attempt to block Taiwan's effort to protect the health of its citizens from tobacco advertising and promotions. Such an attempt would be damaging to the standing of the United States in the world community. We believe such an attempt ultimately would fail in light of the GATT ruling, in light of

The Hon. Carla A. Hills
January 21, 1992
Page 4

Taiwan's strong commitment to enacting this law, and in light of the overwhelming support for Taiwan's position from the international health community.

Conclusion

USTR is on record as taking the following positions in congressional testimony, correspondence and media appearances:

- 1) that it is extremely sensitive to health concerns, and will not oppose legitimate measures by another country to protect the health of its citizens;
- 2) that it seeks only nondiscriminatory "national treatment" for American products;
- 3) that the controversial effort to require Asian nations such as Taiwan to allow advertising and promotion of U.S. cigarette brands is defensible as a temporary measure to speed market penetration only during the first several years of access by U.S. brands.

It appears from our information that your office is on the verge of violating each of these basic understandings in the upcoming trade consultations with Taiwan. We urge you to review the positions your staff is taking in this case and to provide us with reassurances that the understandings we have outlined above remain in force.

We also would be interested in learning about the extent to which the Department of Health and Human Services participated in the apparent decision to challenge Taiwan's tobacco control law, and the extent to which your office has solicited and considered independent data on smoking trends and brand preferences in Taiwan, particularly among children and traditionally nonsmoking women, in the course of its deliberations.

Evidence that your office is acting on the basis of information on health issues supplied by the cigarette industry without soliciting input from the health community is one of the most disturbing aspects of this case. The cigarette industry is a singularly inappropriate source for information on the relationships between smoking, cigarette marketing practices, and human health.

The Hon. Carla A. Hills
January 21, 1992
Page 5

We are hopeful that, upon review, your office will consider the serious health issues involved and acknowledge the fundamental right of Taiwan under international law to enact and enforce its domestic health laws on a national treatment basis. We urge you to raise no objections to Taiwan's proposed tobacco control law and to allow its speedy passage and implementation.

We look forward to hearing from you soon.

Sincerely,



Alan C. Davis
Chairperson
Coalition on Smoking OR Health
Vice President for Public Issues
American Cancer Society



Scott D. Ballin
Legislative Counsel and
Vice President for
Public Affairs
American Heart Association



Fran Du Melle
Deputy Managing Director
American Lung Association



William H. McBeath, MD, MPH
Executive Director
American Public Health
Association