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보건학 석사학위논문

Collusive Alliance of  
Transnational Tobacco Companies to  
“Fight against Regulatory Threats”  
in South Korea:

A qualitative analysis of tobacco industry documents

한국의 “규제 위협에 맞서 싸우기” 위한  
다국적 담배회사들의 결탁과 연대

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## ABSTRACT

# **Collusive Alliance of Transnational Tobacco Companies to “Fight against Regulatory Threats” in South Korea:**

**A qualitative analysis of tobacco industry  
documents**

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**Background** Since the opening of the Asian tobacco market, Transnational Tobacco Company(TTC)s had to compete fiercely against the market dominance of national monopolies, while at the same time they needed cooperation from monopolies to cope with issues common to the tobacco

industry, such as tobacco control attempts and anti-smoking movements in individual countries.. The Objectives of this study is to examine the strategies adopted by TTCs to make alliance with Asian monopolies, especially KT&G in South Korea, the tobacco industry interference and its effects under the alliance, and to suggest the appropriate directions for setting and implementing regulative policies on tobacco products.

**Methods** The internal documents of tobacco companies from the Truth Tobacco Documents Library (formerly Legacy Tobacco Documents Library) were analyzed and triangulated by data from other sources, including government documents from National Archives of Korea, materials from online search engines and official online websites of state agencies.

**Result** From the very beginning of their entry into the Korean market, TTC pursued the establishment and reinforcement of relationship with KT&G, which had been Korean National Monopoly, as a “top priority”. In 1989, TTCs strategically established National Manufacturer Association (NMA), including KT&G to create a link to the monopoly and to build a foundation for the industry to develop “an industry voice”. Also, for this purpose, TTCs did not hesitate to support the monopoly with the technical and human resources they had built in developed markets such as the United States. This is not only a way to make a good relationship with monopolies, but it is also a very efficient way of spreading TTC’s false and deceptive claims and data, which had already been rejected in developed countries, to the Korean market by encouraging monopolies to "carry the torch”. Comprehensive tobacco control efforts, such

as the legislation of the National Health Promotion Act in 1994, and the first tobacco lawsuit in Korea in 1999 were used as a good opportunity for TTCs to form a collusive alliance and to strengthen ties with TTCs. As a result, several tobacco control attempts in Korea had been frustrated or delayed.

**Conclusion** Providing assistance and expertise, TTC formed strategic and collusive alliance with local tobacco company, KT&G to fight against regulatory authorities and anti-tobacco activities in South Korea. This type of alliance involving local monopoly was proven to be effective by combining extensive resource of TTC and the network of local company to interfere with tobacco control measures.

**Keyword** : tobacco industry interference, tobacco industry alliance, transnational tobacco company, tobacco endgame, tobacco control legislation, tobacco lawsuit

**Student Number** : 2016-24015

# CONTENTS

## CHAPTER 1 INTRODUCTION

1.1 Background

1.2 Literature Review

1.3 Objectives

## CHAPTER 2 METHODS

2.1. Systematic review of Tobacco Industry Documents

2.2. Supplementary Analysis of Documents from outside the Tobacco Industry

## CHAPTER 3 RESULTS

3.1 ‘Key to Our Success in Asia: Enhancing relationship with monopolies’

3.1.1 KT&G Relationship is Top Priority

3.1.2 Provide Assistance and Expertise to KT&G

3.1.3 “Educate the Monopoly...the Monopoly Must Carry the Torch”

3.2 Making Industry Group : Korea Tobacco Association(KTA)

3.2.1 Establish and Strengthen Local Tobacco Association

3.2.2 Make KTA Serve as “an Industry Voice” to Anti-Smoking Issues

3.2.3 KTA as a Vehicle to Link TTC with Monopoly

### 3.3 “We Have Mobilized Allies to Fight against Regulatory Threat”

3.3.1 Attempt to Introduce an Add-Valorem System to Tobacco Excise Tax  
(1991-1992)

3.3.2 Legislation of National Health Promotion Law (1994)

3.3.3 Legislative Proposal for the Amendment of National Health  
Promotion Law by MOHSA (1996)

3.3.4 Amendment of Tobacco Business Law : Abolishment of  
manufacturing monopoly

### 3.4 “Working Together to Fight this Litigation Threat”

3.4.1 Litigation Prevention strategy (PM)

3.4.2 Assist KT&G, Assess the Plaintiff’s Strategy, and Develop Counter  
Argument

3.4.3 Drivers to keep TTC from the "Worst Case": Use KT&G and their  
Influences

## **CHAPTER 4 DISCUSSION AND CONCLUSION**

## **REFERENCES**

## **ABSTRACT(KOREAN)**



## TABLES

- Table 1. Studies reported tobacco industry's attempt and strategy to thwart or delay tobacco control
- Table 2. TTC's strategies and tactics to form a pan-industry alliance in Korea
- Table 3. The Comparison of major regulations in the Legislation Proposal of NHP Act (Draft) and those in the NHP Act (Final enactment)
- Table 4. The History of National Health Promotion Law and Enforcement Rules of the National Health Promotion Law related to Tobacco Control
- Table 5. Tobacco control policies proposed in Korea and the response of Tobacco industry alliance
- Table 6. Unrevealed cooperation between TTC & Korean monopoly against "litigation threat"

## FIGURES

- Figure 1. Tobacco Industry Documents Acquisition Process in this Study
- Figure 2. Methodology of this Study
- Figure 3. *“There is no evidence that cigarette smoke is harmful”*, Maeil Business Newspaper Article (November 24, 1993)
- Figure 4. ‘Korea Tobacco Association Voluntary Code for the Marketing of Cigarettes Republic of Korea’ (Philip Morris Records, January 12, 1991)
- Figure 5. The facsimile transmission sent by John K. Rupp of Covington & Burling, who represented TTCs in the Asia consultant program, to Kim Kyu Tae, the chairman of KTA, to persuade KT&G to join the Asia consultant program as a program supporter (Philip Morris Records, January 3, 1994).
- Figure 6. *“69.7% of voters oppose the amendment bill in the National Health Promotion Act”*, Newspaper Advertisement (Don-A Ilbo, August 29, 1996)
- Figure 7. Letter from US House of Representatives to US Trade Representative and Korean Ambassador Yang Sung-chul (October 26, 2000)
- Figure 8. Letter from British Ambassador Charles Humfrey to Korean Minister of Finance and Economy Jin Nyum (December 4, 2000)
- Figure 9. Facsimile transmission Dr. Roger Walk of PM ASIA sent requesting approval to PMC's Senior Vice President, Worldwide

Regulatory Affairs and general counsel, Marc S. Firestone, for providing data on “addiction” to KTGRI (Philip Morris Records, 1996)

## **LIST OF ABBREVIATION**

1. BAT – British American Tobacco
2. BATK - British American Tobacco Korea
3. B&W – Brown & Williamson
4. C&B – Covington & Burling
5. CTMC – Canadian Tobacco Manufacturers Council
6. INBIFO – Institut für Biologische Forschung
7. JTI – Japan Tobacco International
8. KASH – Korean Association of Smoking and Health
9. KFDA – Korea Food and Drug Administration
10. KTGC – Korea Tobacco and Ginseng Corporation (the Predecessor of KT&G)
11. KTA – Korean Tobacco Association
12. KT&G – Korea Tomorrow & Global
13. KTGRI – Korea Ginseng & Tobacco Research Institute
14. NHP Law – National Health Promotion Law
15. NMA – National Manufacturer Association

16. MSA – Master Settlement Agreement
17. MOHSA – Ministry of Health and Social Affairs
18. MOF – Ministry of Finance and Economy
19. PM – Philip Morris
20. PMI – Philip Morris International
21. PMK – Philip Morris Korea
22. RJR – R.J. Reynolds
23. Korea-US ROU - Record of Understanding Between the Government of the Republic of Korea and the government of the United State of America Concerning Market Access for Cigarette
24. TB Law – Tobacco Business Law
25. TII – Tobacco Industry Interference
26. TTC – Transnational Tobacco Company
27. TTID – Truth Tobacco Industry Documents
28. USCEA – US Cigarette Export Association
29. USTR – US Trade Representative’s office
30. UK DTI - UK Department of Trade and Industry
31. WHO – World Health Organization

# CHAPTER 1 INTRODUCTION

## *1.1 Background*

Despite the efforts of global and national health authorities, experts, public health advocacy organizations, and anti-smoking activists since the last century, WHO estimates that even to 2018, tobacco kills 7 million people each year globally(1). This never-ending tobacco epidemic and the tremendous damages that smoking has caused are not only due to the fatal risks of tobacco products or aggressive marketing and promotion by the tobacco industry, which itself is a 'disease vector'(2, 3), but also due to the tobacco industry's sophisticated interference with effective tobacco control(4).

In addition, as efforts by health authorities and health advocates have resulted in a growing awareness of the health risk incurred by smoking, the tobacco industry has offered smokers so-called 'rational alternative products', which have achieved the desired purpose of frustrating smokers' attempts to quit as a result of the strategic and deceptive promotion of those tobacco products as "safer" and "less harmful" compared to the conventional "harmful" tobacco products(5).

Typical examples of the "health reassurance" proposed by the tobacco industry are "filtered cigarettes" which appeared in the United States in the 1950s and "light cigarettes" or "mild cigarettes" which appeared in the early 1970's and

were added to the common product lineup of the industry(6), and “heat not burn tobacco” products released recently. The market share of the third type products, which was first introduced to Korean market at the end of May 2017 by PMK's 'IQOS' and BATK's 'GLO' and KT&G's 'LIL' subsequently, reached 10.4% in October 2018 and is growing at an alarming rate(7).

The KFDA has launched a regulatory attempt on "heat not burn" tobacco product line in June 2018, announcing its findings that kind of tobacco products are also harmful and that the level of tar yield is higher than that of conventional cigarettes. PMK and BATK have strongly opposed to the announcement of the KFDA on the basis of their own research results and studies published abroad in Germany, Japan, and etc. In particular, PMK is pressing the Korean government by filing a lawsuit against KFDA to disclose all the relevant materials in the Korean court(8).

Thus, the tobacco industry has resisted with one voice to frustrate the efforts of individual countries for tobacco control, and this is not a problem specific to a particular time or particular country(4, 9-20). In Korea, the first tobacco lawsuit was filed by smokers in September 1999 against KT&G, a Korean tobacco company, and about 15 years later, in April 2014, the Korean Supreme Court of the Korea denied the legal liability of the tobacco company. The defendant KT&G's successful litigation strategies, which led to this ruling, were not novel ones that first employed in Korea, but old tricks of tobacco industry which had been tried and found wanting in many other jurisdictions(21, 22).

Therefore, it is very important to study the cases, their strategies, and the

mechanism in which tobacco industry, not individual tobacco company unit, interfere with tobacco control attempts in each region and each country, especially in the form of alliance among tobacco companies under a common interest. It is not just to identify the causes of regulatory delays in that region, but to understand the mechanisms and effects of the tobacco industry interference more thoroughly, which can lead to providing appropriate directions for setting and implementing regulative policies on tobacco products including products have been newly introduced or will be introduced in the future. Also, it is necessary for each Member State of FCTC to implement the FCTC Article 5.3. and its guideline which expounds the fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests(23, 24).



## *1.2 Literature Review*

I searched published studies regarding Tobacco Industry Interference using SCOPUS. Search key words, including “Tobacco Industry Interference”, “tobacco industry” or “tobacco company”, and “tobacco control” or “legislation” or “litigation” were used. Besides, the reference lists of other review articles were searched for potentially relevant articles.

I reviewed identified studies by their titles and abstracts, and included studies which were (a) written in English language, (b) original papers, and (c) studies on TII executed in form of an alliance of tobacco companies or (d) studies on the strategies of making alliance of tobacco industry to fight against tobacco control policy. I excluded studies irrelevant on the TII and studies on the strategies of health advocate group against tobacco industry.

Many studies reported tobacco industry’s attempts to thwart or to delay tobacco control measures and the results of these interferences in some region or some countries and some studies documented strategies and tactics that tobacco industry utilized for those interference (Table 1). However, there are few studies on the strategies that tobacco companies, especially TTC used to create the tobacco industry alliance or the mechanisms by which such alliances actually worked.

Table 1. Studies reported tobacco industry's attempt and strategy to thwart or delay tobacco control

N	Publis o h year	auth ors	Count ry	Study method	Alliance	Main Result
1	2013	Hiila mo, Heik ki et al.	Nordic countr ies	Analysis of tobacco control policies in the Nordic countrie s and tobacco industry docume nts.	Cooperati on between multinatio nal companie s, Nordic national manufactu rer associatio ns and local companie s	Cooperation between multinational companies, Nordic national manufacturer associations and local companies ensured a united front on smoking and health issues in the Nordic area that was consistent with the positions that the multinational companies were taking. This cooperation delayed smoke-free laws and undermined other tobacco control measures.(10)
2	2004	M Assu nta et al.	Malay sia	Systematic review of relevant tobacco industry docume nts	The Malaysian Tobacco Company (MTC), BAT's local subsidiary, Rothmans of Pall Mall Malaysia, RJ Reynolds (RJR) Malaysia, and Philip Morris Internatio nal	Commencing in the 1970s, the industry began to systematically thwart government tobacco control. Guidelines were successfully promoted in the place of legislation for over two decades. Even when the government succeeded in implementing regulations such as health warnings and advertising bans they were compromised and acted effectively to retard further progress for years to come.(25)
3	2016	Łuka	Polan	Analysis	Tobacco	three means that the tobacco

No	Publish year	authors	Country	Study method	Alliance	Main Result
		sz Balwicki et al.	d	of 257 documents obtained through freedom of information request.	companies (including TTC) and business associations	industry used to interfere with tobacco control policies: creating a positive attitude, expressing a will to be a part of the policymaking process, and exerting pressure. The companies lobbied together directly and through third parties, with the cigarette excise tax structure being the only area of disagreement among the companies.(12)
4	2004	J Knight et al.	Hong Kong	Systematic review of relevant tobacco industry documents	Asian Tobacco Council (ATC), Tobacco Institute of Hong Kong (TIHK)	The tobacco industry in Hong Kong has sought to manipulate the policymaking process and delay the introduction of tobacco control legislation in Hong Kong from at least 1973. The industry ensured that each of the government's initial meagre steps toward tobacco control were delayed and thwarted by drawn out "cooperation" followed by voluntary concessions on issues the industry regarded as minor.(26)
5	2003	H Hiilamo	Finland	Tobacco industry document analysis	global tobacco companies	The international tobacco companies utilized similar strategies in Finland as in other industrial markets to fight tobacco control and legislation, the health advocacy movement, and litigation: Lobbying, Consultancy program, Paid research, Intelligence gathering, Public relations, Smokers' rights groups, Creating alliances, Intimidation and Litigation. These activities slowed down the development and implementation of the Tobacco Act

No	Publication year	Authors	Country	Study method	Alliance	Main Result
						in Finland. However, despite the extensive pressure, the industry was not able to prevent the most progressive tobacco legislation in Europe from being passed and coming into force in Finland in 1977 and in 1995.(14)
6	2005	E M Sebrie et al.	Argentina	Analysis of internal tobacco industry documents	TTCs, Chamber of Tobacco Industry (CTI) = the Argentinean national tobacco manufacturers' association	To avoid strong legislated restrictions on advertising in Argentina, TTC created a weak voluntary self-regulating code and directly lobbied involved use of third party allies, public relations campaigns, and scientific and medical consultants. During the 1980s and 1990s efforts to pass comprehensive tobacco control legislation intensified, but the organized tobacco industry prevented its enactment. There has been no national activity to decrease exposure to secondhand smoke(16)
7	2003	S Chapman et al.	Australia	Systematic keyword and opportunistic website searches of tobacco industry internal documents.	Tobacco Institute of Australia (TIA)	Four industry strategies(submissions to government, privately influencing politicians and the media, using third parties, commissioning research.) and six recurrent arguments used by the industry are described, which were used to thwart the passage of three generations of health warnings (implemented in 1973, 1987, and 1995).(9)

No	Publish year	authors	Country	Study method	Alliance	Main Result
8	2002	J Barnoya et al.	Latin America	Systematic search of tobacco industry documents available through the internet	PMI & BAT	Philip Morris International and British American Tobacco, working through the law firm Covington & Burling, developed a network of well placed physicians and scientists through their "Latin Project" to generate scientific arguments minimizing secondhand smoke as a health hazard, produce low estimates of exposure, and to lobby against smoke-free workplaces and public places.(15)
9	2004	Lida K. & Proctor R. N.	Japan	search of tobacco industry documents	Japan Tobacco & American tobacco companies(notably PM)	Cigarette manufacturer Philip Morris in particular assisted with and sometimes also supervised Japan Tobacco's actions and statements on smoking and health. In one instance, data gathered for an article published by the Japan Public Monopoly Corporation (Japan Tobacco's predecessor) were deliberately altered to lower the reported value of a hazard indicator (nicotine concentration in the air). International collaboration has made it easier for companies such as Japan Tobacco to develop effective anti-antismoking strategies.(27)
10	2002	Mark Neuman et al.	European Community	Tobacco industry document analysis supplemented with		The tobacco industry lobbied against Directive 98/43/EC at the level of EC member state governments as well as on a pan-European level. The industry sought to prevent passage of the directive within the EC legislature, to substitute industry-authored

No	Publish year	authors	Country	Study method	Alliance	Main Result
				information in the published literature and consultation with European Tobacco Expert.		proposals in place of the original directive, and if necessary to use litigation to prevent implementation of the directive after its passage. The tobacco industry sought to delay, and eventually defeat, the EC directive on tobacco advertising and sponsorship by seeking to enlist the aid of figures at the highest levels of European politics while at times attempting to conceal the industry's role.(13)

In terms of Asia, a few studies demonstrated that the tobacco industry has thwarted regulatory legislations in some Asian countries and TTC has sought to integrate their scientific and regulatory agendas into the local Asian tobacco industry. To this end, it was also found that under the leadership of TTC, Asia Tobacco Council (ATC) and Asian Regional Tobacco Industry Scientific Team (ARTIST), the 'organizations' of Asian tobacco companies, were formed(28, 29). Nevertheless, there is lack of empirical research on how the allied bodies of these TTCs worked against the tobacco control movements of individual countries in Asia and the consequences of these "organized" interference and, in particular, there is little research on the specific interferences and alliance strategies of tobacco companies in South Korea(hereafter “Korea”).

### *1.3 Objectives*

Based on these backgrounds, this study will examine,

- 1) how TTC and local monopoly, which were intensely competitive and hostile to each other as a market player in the market, formed an alliance, and
- 2) the specific tactics that TTC employed for this purpose.

In addition, this study will examine,

- 3) the effect of the establishment of alliance between TTC and monopoly on the setting and implementation of tobacco control policies in Asia, especially in South Korea.

## CHAPTER 2 METHOD

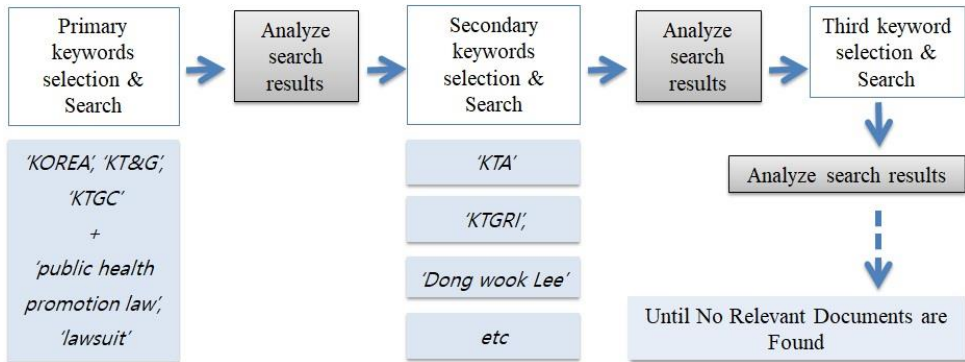
### *2.1. Systematic review of Tobacco Industry Documents*

Between March and October 2018, I searched tobacco industry documents available in the Legacy Tobacco Documents Library (LTDL: <http://legacy.library.ucsf.edu>) using a standard snowball method beginning with the keywords ‘KOREA’, ‘KT&G’, ‘KTGC’ and ‘Korean Monopoly’ combined with ‘public health promotion law’ or ‘lawsuit’. The titles and contents of the documents derived from the first search were reviewed to exclude those not directly related to the Korean market, and selected documents on cooperation of tobacco companies to respond to tobacco regulations or lawsuits. Then, the next keywords such as ‘KTGRI’, ‘KTA’, and ‘Dong Wook Lee’ were derived based on the remaining documents.

In this way, I repeated several times the work of selecting additional keywords based on the data from the previous search and continued the search afterward. Also, at each retrieval step, in the case of a document with a high relevance to the research topic or a restricted document where the content cannot be identified, the search range was extended to a document written by the same author at a similar time and an adjacent Bates number. As a result of reviewing thousands of internal documents of tobacco industry in the above process, more than 120 documents were finally selected for the analysis.

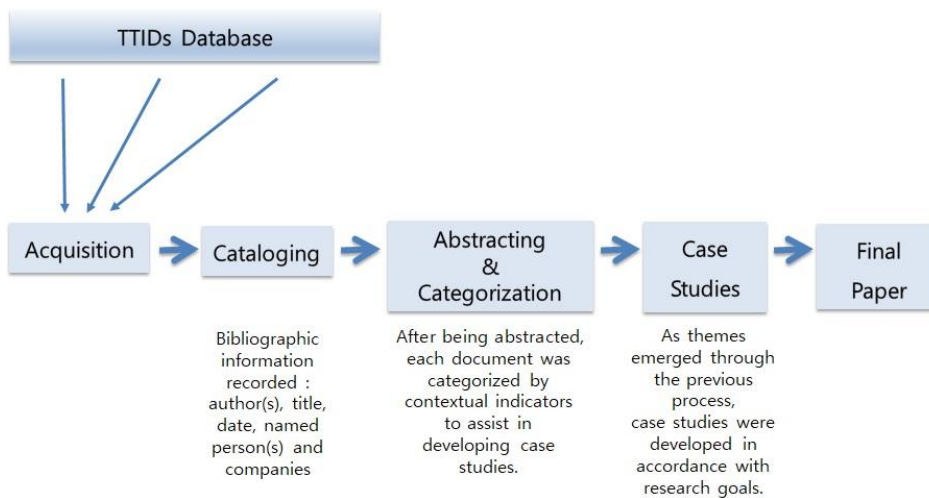


Figure 1 shows the process of collecting tobacco company internal documents in this study.



<Figure 1. Tobacco Industry Documents acquisition process in this study>

The review of the collected documents developed into a case study following acquisition, cataloging, abstracting and categorization according to the general method of internal document research of tobacco companies. Figure 2 illustrates the methodology of this study, which refer to the methodology of the Report of the Committee of Experts on Tobacco Industry Documents(30).



<Figure 2 Methodology of this Study>

The tobacco industry documents include not only reports but also letters, fax transmission documents, handwritten notes, and memorandum written by tobacco companies executives and employees in the course of their work, which often lack the completeness of research papers subject to general systematic review. This made it difficult to have the same level of systemicity as the general systematic review of literature in the tobacco industry.

In addition, the number of documents to be screened only by the title, author, and partial information of the document list presented in the keyword search result screen in the TTID online archive exceeded several thousand, and there are a number of documents actually overlapping partly or wholly, although they are classified as completely different documents based on the Bates number or the like. Furthermore, not only all search keywords but also Bates number, authors and document holders for individual documents can be extended in the

search process.

Because of all of these points, it was virtually impossible to record and quantify all the documents that were simply screened in this study. This can be a methodological limit of this study.

## *2.2. Supplementary Analysis of Documents from outside the Tobacco Industry*

Thus, to supplement these methodological limitations of internal document analysis studies and to increase their validity, we further utilized information from government official documents, materials from online search engines, official online sites of state agencies, and Korean major newspapers. Through the data outside these tobacco companies, we have tried to verify how the strategies and internal plans of the tobacco companies actually worked and produced the results. The official documents of the Korean government, which were written by the government authorities or submitted to the government authorities, were obtained through freedom of information request to National Archives of Korea<sup>1</sup>.

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<sup>1</sup> The National Archives of Korea is an agency under the Ministry of Government Administration and Home Affairs, which collects and holds the documents of Korean government or the public agencies. These records can be obtained by visiting the National Archives or by submitting through its website(<http://www.archives.go.kr/next/viewMain.do>).

## CHAPTER 3 RESULTS

### 3.1. “Key to our success in Asia: Enhancing relationship with monopolies”

From the late 1980s to the 1990s, Asia was a “market of great promise” for Transnational Tobacco Company(TTC)(31) because of their relatively high smoking rate and the large population. Korea, which was the world’s 7<sup>th</sup> (1994(32)) or 6<sup>th</sup>(1995(33)) largest cigarette market with 66.3% of the adult male smoking rate in 1998, could be a representative example.

In addition, in a situation that TTC’s fatal products were already being rejected by Americans in record numbers, for TTCs, Asia could be a new promising market to “*dump over*” their product(34, 35).

John Dollisson, who was the vice president of PMI Corporate Affairs directly recognized in June 1989 that(PM, 1989)(36):

- “WE SHOULD REMEMBER THAT U.S. CIGARETTE EXPORTS TO ASIA ACCOUNT FOR CLOSE TO 70% OF OUR VOLUME AND 97% OF OUR PROFITS.”
- “FUTURE GROWTH IS LIKELY TO COME FROM EXPORT MARKETS SUCH AS JAPAN, TAIWAN, KOREA AND THAILAND”

However, Asia at that time was “the primary target for the world anti-tobacco movement”(28, 31), and Korea was no exception, so the anti-smoking campaign was organized and expanded, including the establishment of KASH on March 4, 1998(37).

In the case of Korea, especially since the domestic tobacco market was operated solely by the state as a monopoly business until the opening of the market in 1988, following the continuing trade pressure of the US, represented by “*the threat of Super 301*” (38, 39)<sup>2</sup>, this anti-tobacco movement was combined with patriotism. Thus the extreme antagonism to imported cigarettes was a big headache for the TTCs(32, 38, 40-43). They believed that KT&G and the Korean government were behind this anti-import “*harassment*” (44, 45) .

- “the hostile market environment, characterized by nationalism coupled with anti-import harassment by KT&G and local governments” (PM, 1992(44))
- “Cooperation between Korean Tobacco and Ginseng Corporation (KTGC) and the government, extreme nationalistic attitude by Korean population, and relatively low short-term profitability will constitute significant obstacle for import

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<sup>2</sup> The Korea-US ROU signed in 1998 also concludes that, pursuant to the successful proceeding of this Record of Understanding, “*the United States government shall terminate the investigation into Korea's policies and practices relating to market access for cigarette conducted under section 301 of the U.S. Trade Act of 1974, as amended*”(Article 7, C)

manufacturers” (BAT, unknown(45))

- “Korea / Market Background : Anti-smoking groups target imports” (RJR, 1991(41)).

### *3. 1. 1 KT&G Relationship is Top Priority*

In this "hostile" business environment, establishing a friendly relationship with national monopolies that had links with government authorities in Asian countries, including Korea, was not just a matter of improving business relations for TTCs, also was a great channel to strengthen the influence on National Policies (PM, 1989(36)).

In particular, the fact that KT&G's influence on the Korean market, experienced by the TTCs after entering the Korean market, was “formidable” made TTC unable to let KT&G become just an enemy(41, 46).

- “KT&G have proved highly effective in slowing the growth of imports, and will continue to be a formidable obstacle to future growth” (PM, 1992(46))
- “KTGC CAN MANIPULATE THE MARKET” (RJR, 1991(41))

In addition, KT&G 's strong nationwide distribution network was a very

attractive asset for latecomers to the Korean market, and due to all these market background, the relationship with KT&G was “*top priority*” of TTCs to address issues of concern in Korea(47)(Table 2)

- “(KEY TO OUR SUCCESS IN ASIA IS)... ENHANCING RELATIONS WITH MONOPOLIES WILL NOT ONLY IMPROVE OUR BUSINESS RELATIONSHIP, BUT ALSO THE EFFECTIVENESS OF TRADE ASSOCIATIONS AND THE INDUSTRY’S ABILITY TO INFLUENCE NATIONAL POLICIES” (PM, 1989(36))
- “How are we addressing issues”... Korea Tobacco Association / Monopoly” (RJR, 1991(41))
- “Forming a mutually beneficial business relationship with KT&G is critical” (PM, 1992(44))
- “Our plan objectives are to work together with KT&G in addressing industry issues” (PM, 1992(46))
- “KTGC RELATIONSHIP IS TOP PRIORITY” (RJR, 1994(47))

### *3. 1. 2 Provide Assistance and Expertise to KT&G*

TTCs defined key tactics to build a friendly relationship with them as providing the benefits KT&G needed, which was the technical and cooperate affairs expertise in concealing and denying the risk of their own products cleverly(46)(Table 2). For Asian monopolies, which were not immune to



tobacco controls or lawsuits until the opening of the market, it was a very effective and timely helping hand(48, 49).

In order to meet the needs of KT&G, technical assistance was one of the most important aspects of the benefits that TTC wanted to provide. In addition, the partnership in the business, such as joint brand development and joint vending programs, licensed manufacture of PM trademark for sale and distribution by KT& , was also included(44, 46).

In this respect, the common threats of tobacco companies such as ETS issue had been accepted as a great opportunity for TTCs to attract monopoly like KT&G on their side to make “*a united industry front*”(46), while at the same time ‘a very real threat’.

- “The ETS issue gives us the opportunity to work closely on an industry basis, and with other international companies and the monopolies, where developing areas of common ground are vital to continued success” (PM, 1992(44))
- “Contribute to a consistent, on-going alliance with other tobacco company by providing expertise on ETS and the science of “addiction” to KT&G” (PM, 1996(50))

*3.1.3 “Educate the monopoly....The Monopoly must carry the torch”*(RJR, 1991(41))

The Asia Pacific Association for the Control of Tobacco (APACT) held their 2nd annual conference in Seoul, Korea from August 28-30, 1991, on the theme of ‘Tobacco or Health’ with the participation of well-known researchers who had provided key evidences for tobacco control such as Dr. Hirayama, TTCs welcomed “*Monopolies are being targeted for the first time providing us hopefully with more sympathetic allies*” (BAT, 1991(51)).

TTC did not miss this golden opportunity and invited Dr. Philip Witorsch, one of the PM consultants in the US, to conduct media briefings to refute the APACT presentation, as well as privately to visit KT&G and give “an extensive briefing” on ETS and indoor air quality(51, 52). This was not only a good way to provide technical assistance to KT&G to build relationships with them, but it also matched the TTC's strategy of educating KT&G and letting them “*carry the torch*”(41).

After his successful debut in Korea, Dr. Witorsch was invited once again in November 1993 to a symposium hosted by the National Tobacco Culture Association, the forerunner of the Korea Smoker’s Association, and argued to Korean people that “*the papers emphasizing the toxicity of cigarette smoke are unscientific*”, and “*there is no evidence that ETS damages the health of nonsmokers*”(Fig. 3)(53). Of course, the above symposium was held by a third party of smokers superficially, but actually behind it, there were tobacco industry alliances, KTA, and TTC, which contacted Dr. Witorsch, coordinated the schedule, and negotiated the consulting fee (US\$2000 per day, first class

fare not included)(54). John P. Rupp of Covington & Burling, who represented TTCs in the Asia consultant program, presented this ‘very successful’ Korea ETS symposium as ‘as a model of what can be achieved in working together’ encouraging KT&G’s participation in the program in an email sent to KTA president(55).

**담배연기 有害論 근거없다.**

<p>『담배연기가 건강에 나쁘다는 이론은 선입견에 불과하다』</p> <p>애연가들의 입지를 약화시킨 「담배연기와 건강의 인과관계」에 대한 이색적인 주장이 제기됐다.</p> <p>23일 「예절바른 담배문화운동 중앙회」가 주최한 심포지엄에서 주제발표를 한 필</p>	<p>폐암과의 인과관계를 다룬 연구 기초자료들이 병리학적 검증은 거치지 않고 설문이나 사망진단서로 얻어진 경우가 대부분이어서 결론의 신뢰도를 떨어뜨린다고 강조했다.</p> <p>담배연기 노출과 어린이 건강을 다룬 논문의 결론자료도 부모들의 설문을 통한</p>
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**美조지워싱턴大 필립위토시 박사  
담배文化중앙회 심포지엄서 주장**

<p>필 위토시 박사는 「공기중에 노출된 담배연기가 비흡연자의 건강을 해친다는 이론에는 아무런 근거가 없다」며 기존의 이론을 정식으로 반박해 애연가들로부터 박수를 받았다.</p> <p>조지워싱턴大 의료센터소장이며 미국환경보호국 국무부 노동부 등의 보건자문위원으로 활동한바 있는 필립 박사는 이날 담배연기의 해독을 강조한 대부분의 논문들이 「담배연기는 해롭다」는 전제를 과학화하여 애초 비과학적인 결론에 불과하다고 주장했다.</p> <p>필립박사는 또 담배연기와</p>	<p>경우가 대부분이고 폐기종 만성폐렴 심장혈관병 등의 직접적인 원인이 된다는 일관성있는 자료는 없다는 것이다.</p> <p>그는 특히 다른 오염인자에 대한 대책은 수립하지 않고 취하는 「흡연 금지정책」으로 인해 담배연기가 실내 오염의 주범 또는 질병증가의 속죄양 취급을 받고 있는 것은 불행한 일이라고 주장했다. 필립박사는 담배연기 문제는 담배연기가 실내공기오염의 다양한 인자중 하나라는 시각에서 과학적으로 분석돼야 한다고 결론지었다.</p> <p style="text-align: right;">〈柳漢吉기자〉</p>
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<Figure 3. "There is no evidence that cigarette smoke is harmful", Mael Business Newspaper Article(November 24, 1993(53))>

Table 2. TTC's strategies and tactics to form a pan-industry alliance in Korea

TTC	Date	Goals & strategies	Tactics
PM	1989. 6.	<i>"Key to our Success in Asia is Enhancing relations with monopolies"</i>	<ul style="list-style-type: none"> <li>◆ Encouraging meetings of trade association</li> <li>◆ Inviting senior monopoly executives to corporate functions</li> <li>◆ Offering corporate affairs assistance and expertise</li> </ul>
	1992.	<i>"Cooperation with KT&amp;G is important for the long term success of our business"</i> <i>"Our plan objectives are to work together with KT&amp;G in addressing industry issues"</i>	<ul style="list-style-type: none"> <li>◆ Utilizing the KTA as a forum to meet regularly with KT&amp;G</li> <li>◆ providing technical assistance</li> <li>◆ licensing a PM trademark successful in Japan to KT&amp;G, to jointly combat JT</li> </ul>
	1992. 12.	<i>"Forming a mutually beneficial business relationship with KT&amp;G is critical"</i>	<p><i>"offer them(KT&amp;G) a significant benefit"</i></p> <ul style="list-style-type: none"> <li>◆ technical assistance</li> <li>◆ joint vending programs</li> <li>◆ development of a joint brand</li> <li>◆ licensed manufacture of a PM trademark for sale and distribution by KT&amp;G</li> </ul>
RJR	1991.	PA/PR Key players : - HK/WS PA/PR Resources - US Embassy Korea - USTR - KTA, Monopoly <i>"the Monopoly must carry</i>	<ul style="list-style-type: none"> <li>◆ Educate the Monopoly, be prepared when the issue(ETS) emerge.</li> <li>◆ RJR/KTGC cooperating on ETS from a technical standpoint</li> <li>◆ Monopoly must lead PA/PR efforts on</li> </ul>

*the torch"*

industry issues.

1994. *"KTGC Relationship is Top priority"* ♦ Provide Technical Assistance in the Development of the license brand and in other Areas of Interest to KTGC
- KTGC can manipulate the market
  - They want us for technology
-

### *3.2 Making Industry Group : Korea Tobacco Association(KTA)*

#### *3.2.1 Establish and Strengthen Local Tobacco Association*

Creating a ‘National Manufacturer Association (NMA)’ including monopoly as a way to address issues against the interests of the tobacco industry and as a vehicle to link TTC with monopoly was a classic strategy used by TTCs in the Asian market. Also, an effective tobacco association with local spokespeople were generally more credible than US companies, in the sight of TTC(PM, 1989(36)). Therefore, creating NMA in the east Asia region was the first purpose of ATC(56).

The purposes of the Asian Tobacco Council ("the Council") shall be as follows

- To assist in the creation, training and support of NMA’s within the East Asia Region...

Asian Tobacco Council Basic Charter(PM, 1989(56))

Korea was no exception, and “a united industry” including KT&G (Until then, 'Korean monopoly cooperation') was founded in 1988, led by the US based tobacco companies, PM, B&W, and RJR.

The objectives of KTA expressed in ‘the Articles of KTA’ are as follows(57):

- (a) To collect, exchange and disseminate information relating to the tobacco industry, such as scientific materials on tobacco and information on the tobacco business.
- (b) To cooperate with governmental agencies and public institutions relating to the tobacco industry,
- (c) To establish the guidelines for cigarette advertising and sales promotion and to promote compromise and cooperation of the Association members for the purpose of compliance with the guidelines.
- (d) To conduct activities deemed necessary to realize the purposes listed in (a) through (c) or such similar activities approved by the Executive Committee.

The Articles of KTA(Sep. 1, 1988(57))

However, more practically, the purpose that TTCs actually pursued through KTA was to use KTA as a forum to meet regularly with KT&G, continuing dialogue to lessen the potential for harassment to importers, and to form the basis for “*a united industry front*” to deal with anti-smoking issues(46).

The format of KTA, which only Korean monopoly and US-based TTCs were members of, and which excluded EC-based TTCs such as BAT and Rothman, continued until April 1990, because of KTGC's objection(38).

### *3.2.2 Make KTA Serve as “an Industry Voice” to Anti-Smoking Issues*

However, the more accurate and specific role of KTA that TTC really wanted was to make it as a public affairs organization which would act as “*an industry voice*” to anti-smoking issues by monitoring legislative proposals, responding the media report, and so on(58).

Unfortunately, TTC did not achieve the desired effect through KTA until early 1991(41), KTA took its first step as an ‘effective Industry group’ after signing the ‘Voluntary Code for the Marketing of Cigarettes Republic of Korea’ between the members in January 12, 1991(59, 60) (fig. 4). Song of PMK reported PM played the leading role in the five consecutive days of negotiation in the facsimile transmitting the final determined Code(61). Creating such a voluntary code was a common and historical strategy of TTC to prevent the enactment of stronger anti-tobacco legislations in many countries(16).

After then, ahead of the release of IARC's multi-centre study on ETS results in 1996, TTCs prepared response logics, evidence, and media contact points and procedures for reporting the refusal of them in advance. It can be seen that KTA acted as the actual executive and disseminator of the plan and became a medium of “*local industry coordination*” in Korea to spread the agenda of TTCs in the Asian market(50, 62, 63).

In addition, KTA acted as a mediator for TTC's anti-Tobago issue strategies, such as supporting the operating costs behind interest groups such as the tobacco consumer association, which is a member of ally against tobacco regulation(64, 65).



KOREA TOBACCO ASSOCIATION  
VOLUNTARY CODE FOR THE MARKETING OF CIGARETTES  
REPUBLIC OF KOREA

PREAMBLE

This Voluntary Code ("Code") has been formulated in consonance with the provisions of the Tobacco Business Act and its Enforcement Decree and the provisions of the Record of Understanding ("ROU") governing import into Korea of foreign cigarettes which was signed on May 27, 1988 by the Government of the Republic of Korea and the Government of the United States of America.

This Code reflects the spirit of these documents as well as the need to agree upon the scope of cigarette advertising, promotional and sponsorship activities and cooperation among the signatories and defines more precisely how the signatories, including the Korea Tobacco and Ginseng Corporation ("KT&G") and the importers of foreign cigarettes, shall conduct sanctioned cigarette advertising and promotional activities in a responsible manner within their general context.

1.0 PURPOSES AND SCOPE

- 1.1 The purposes of this Code are to establish uniform standards for self-regulation and cooperation among the members of the Korea Tobacco Association ("KTA") with respect to the advertising and promotion of cigarettes and cigarette brand sponsorships within the domestic cigarette market of the Republic of Korea ("Korea") and to provide a means whereby compliance with this Code may be ascertained promptly, fairly and on a consistent basis.
- 1.2 This Code shall be the basis for the cigarette advertising, promotional and sponsorship activities in Korea and the signatories hereto shall comply with the provisions of this Code and other relevant laws and regulations of Korea.

CHAPTER 1. CIGARETTE ADVERTISING

2.0 OBJECTIVES OF CIGARETTE ADVERTISING

- 2.1 Advertising shall be directed at existing adult smokers and be intended solely to effect a change of brand and/or maintain brand loyalty and shall not have the purpose of increasing the number of adult smokers or increasing the consumption rates of existing adult smokers.
- 2.2 Cigarette advertising shall not be specifically directed at women or youth.

<Figure 4. 'Korea Tobacco Association Voluntary Code for the Marketing of Cigarettes Republic of Korea', (Philip Morris Records, January 12, 1991)(59)>

### *3.2.3 KTA AS A VEHICLE TO LINK TTC WITH MONOPOLY*

KTA had become a great vehicle for TTC to incorporate KT&G into their Alliance and become an 'accomplice'.

TTCs have used independent third-party consultants to represent themselves, knowing that putting forward a position by themselves in issues such as ETS did not give sufficient credibility to politicians and other decision-maker as well as to the general public and the media(66).

It has been apparent to the industry for some time that we do not have sufficient credibility to put forward a position on ETS (or any other issue for that matter) unless we can identify independent scientists who are saying the same thing. If independent scientists back up our position, it becomes more credible, not only to the general public and the media, but to politicians and other decision-makers.

(BAT, 1991(66))

In addition, considering the need for regional data and contacts with local decision makers, TTCs launched the Asia Consultant Program in 1989, which sponsored Asian researchers as consultants to create research that can be used for tobacco industry in the Asian market(66).

Despite having already had Korean consultants, Yoon Shin Kim and Sung-Ok Baek for that program in 1994(67-69), TTCs longed for KT&G to join the 'Korean indoor air quality monitoring study(70)'. Covington & Burling(C&B), who represented TTCs for this program(70) and had been the outside counsel

for PM, the Tobacco Institute, and other joint defense as well, persuaded KT&G to join as a program supporter through KTA channel(55) (fig 5). It is interesting to note C&B says that *'the decision-making structure of the program is our supporting companies, as a group, what requests we make to make our consultants'*. More importantly, TTCs emphasized to KT & G that *'we do not intend to publicize them in any other way without any approval from our supporting companies'*, so TTCs themselves intended to create a publication bias in the program's outcome(55).

In 1997, KTGRI participated in the Korean ETS study, which was administered by TTC and designated as the Korean consultant, Sung-Ok Baek, the research director, and it could be confirmed that the above TTC desires were finally realized(50, 71). This ETS consultancy program, a product of the tobacco industry alliance, had created TTC's grounds for *"ETS appears to be a minor contributor to VOC levels, based on research conducted in Korea"*(72).

JAN 3 1994 MON 11 12 28 C&B

P. 02

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January 3, 1994

Mr. Kim Kyu Tae  
Chairman  
Korea Tobacco Association  
100, Pyungchon-dong, Daeduk-gu  
Taejon City, Korea 306-130

Dear Mr. Kim:

I appreciated the opportunity to see you when I was in Seoul. To facilitate our continuing discussions, I thought that I might take this opportunity to describe the ETS Consultant Program that I mentioned when we were together and to give you some additional details concerning the Korean indoor air quality monitoring study.

As you know, ETS has become an issue in most countries in the world. While one might expect independent scientists to proceed on their own to point out that the claims that have been made about ETS cannot be justified from a scientific perspective, our experience is that that seldom occurs without encouragement from the tobacco industry.

The reticence of scientists to provide, without industry encouragement, an objective assessment of the claims that have been made by antismokers about ETS appears to stem from a variety of related factors. First and foremost, there is, of course, a worldwide network of antismoking activists whose practice is to attack any scientist who disagrees with the extreme claims they have been making about ETS. Second, in the absence of support, scientists cannot be expected to delve into issues in the depth that is required to reach their own conclusions. Operating together, the two factors that I have mentioned (along with several others) tend to discourage independent scientific comment on ETS related health claims.

Because of the importance of the ETS issue, and in view of the circumstances just described, a number of tobacco companies have asked us to assist them in identifying independent scientists who would be willing to act as industry con-

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Source: <http://industrydocuments.library.ucsf.edu/tobacco/docs/rfbb0091>

<Figure 5. 'The facsimile transmission sent by John K. Rupp of Covington & Burling, who represented TTCs in the Asia consultant program, to Kim Kyu Tae, the chairman of KTA on January 3, 1994, to persuade KT & G to join the Asia consultant program as a program supporter.>

### 3.3 *“We Have Mobilized Allies to Fight against Regulatory Threat”*

Until KT&G was brought to ‘their side’, TTCs solved the Korean government's attempt to regulate tobacco as well as restrictions on imported cigarettes, by diplomatic and trade issues. At the base of this approach was the Record of Understanding Between the Government of the Republic of Korea and the government of the United State of America Concerning Market Access for Cigarette (hereafter ‘Korea-US ROU’) signed by the Korean government and the US government at the opening of the Korean tobacco market in 1988(39). As a result, responses to the tobacco control attempt by the Korean government during this period were initiated by US - based tobacco companies. Meanwhile, EC-based TTCs such as BAT, which had been denied accession to KTA until early 1990s, cooperated with US-based TTCs through the USTR on issues such as tax revenue distribution issues(38, 40)

#### 3.3.1 *Attempt to Introduce an Add-Valorem System to Tobacco Excise Tax(1991-1992)*

In 1991, the Korean government had begun to consider changing the tobacco excise tax from a flat rate to a fixed rate system(73, 74), resulting in excise tax increase. TTCs, which had relatively high-prices products, recognized it as a serious obstacle to their business and tried to solve the problem as a

“discrimination against importers” issue(75).

The US-based PM and RJR directly lobbied US Embassy and USTR to maintain the existing systems, using Record of Understanding as a strong weapon(44), which stipulated tobacco excise tax shall be 23,000 won per thousand cigarettes(39, 44). Meanwhile, BAT shared this strategy of US companies through B&W, asked the UK DTI (Department of Trade and Industry) to raise the issue of discrimination of the importer against the Korean government(75-77), and BAT finally received the “*very sympathetic hearing*” that the UK Government's position is to support that of the USTR and to follow the Record of Understanding(78).

Even after that, it was confirmed that the Korean government attempted to introduce an add-valorem system to tobacco excise taxes(79), but such attempts have not been realized until now in 2018.

### *3.3.2 Legislation of National Health Promotion Law(1994)*

On August 18, 1994, Korea's Ministry of Health and Social Affairs issued the Legislation Proposal of the Public Health Promotion Law(draft) that included 'wide' regulations on tobacco advertising and promotion for the tobacco industry(80, 81).

The main contents related to tobacco regulation in the Legislation Proposal were as follows

- 1) Ban on the sale of cigarettes to people under the age of 19 (article 12.4).

- 2) Ban on cigarette vending machine (article 12.3)
- 3) Prohibit offer free cigarette and sales premium (article 12.1)
- 4) Expansion of the size of health warning label on cigarette pack (article 11.3).

In response to these regulatory threats against the interests of all these tobacco companies, the tobacco industry finally made a unified voice, including KT & G for the first time(82).

The industry took the following actions (PM, 1994(83))

- presented a unified industry view opposing aspects of the Bill at the public hearing;
- mobilized other interest groups including the Retailers Association, the Tobacco Growers Association, Smoker Rights Group, Korea Vending Machine Association, etc. to submit position papers to the Ministry of Health and Social Affairs
- submitted the industry's position paper on the Bill to the Ministry

The opinions of the tobacco industry on legislation were written under the names of KTA and its members, KT&G, B&W KOREA, PM KOREA, RJR KOREA and JTI. In these opinions, tobacco companies all expressed 'disapproval' opinions on the main regulations of the legislation for “*unconstitutional*”, “*violate the Korea-US ROU*”, “*realistically impossible to enforce*”, and so on(84).

What is surprising is that in the process of writing the above statements to MOHSA, though PM had consulted with several internal experts, including RA Walk, a director of the CRC which is a subsidiary of its secret laboratory INBIFO(85-87), tobacco companies offered key arguments against the regulation in the opinion statement as "*There is no objective and scientific proof that smoking is harmful to one's health.*" It is also remarkable that tobacco companies also gave 'disapproval' comments to the provision on 'Prohibition of cigarette sales to minors under 19'.

- There is no such precedent because there is no objective and scientific proof that smoking is harmful to one's health and because such restrictions would infringe upon the personal right to smoke.
- Provision : Article 12 Paragraph 4 : Prohibition of cigarette sales to minors under 19 'disapproval' Reason: inappropriate as a legislative measure since it is realistically ineffective.

(KTA, 1994(84))

Chun, a managing director of PMK acknowledged that there is "*some of the arguments presented might seem unusual*" in his fax to Goodheart, a director of Worldwide Regulatory Affairs at Philip Morris Management Corp(88). KTA's opinions, including 'seemingly unusual argument, were shared by Mr. Tony Andre, an Attorney of Shook, Hardy & Bacon L.L.P., which was Outside Counsel for Philip Morris(89).



- “Because of the uniqueness of the Korea market situation ... some of the arguments presented might seem unusual”(88). After such consensus ‘disapproval’ comments of tobacco companies had been submitted, on the end, MOHSA presented the legislation proposal to the National Assembly, which largely retreated from the original version(90) (Table 3).

Placement of a health warning on the front and back of the pack and a ban on cigarette sampling and premium offering, parts of the original "Public Health Promotion Law" proposed earlier by the Ministry of Health and Social Affairs, *will be deleted from the bill* to be introduced to the National Assembly.(PM, 1994(91))

RJR evaluated the tobacco regulations under the National Health Promotion Act, which was finally implemented on September 1, 2015, as '*relatively moderate in scope*'(92).

Table 3. The Comparison of major regulations in the Legislation Proposal of NHP Act(Draft) and those in the NHP Act(Final enactment)

Theme	Legislation Proposal of the NHP Law(draft) of MPHSA(Aug. 1994)	Final promulgated NHP law(Jan. 1995)
Smoking cessation & temperance (article11→article 8)	② States and municipalities may support <i>individuals</i> , corporations, or organizations who <i>campaign for no smoking</i> or temperance	② The state and local governments may support corporations or organizations that <i>investigate and study</i> no-smoking and abstinence.
Action for quitting smoking(article 12→article 9)	① No one shall distribute or give as a prize free cigarettes to other persons for profit.	deleted
	② Tobacco manufacturers, etc. shall not provide money for the purpose of promoting tobacco sales	deleted
	③ No one should install a vending machine to sell cigarettes.	② Tobacco dealer shall not sell cigarettes by installing a vending machine <i>other than the place prescribed by the Presidential Decree.</i>

### *3.3.3 Legislative Proposal for the Amendment of National Health Promotion Law by MOHSA(1996)*

In the mid-August of 1996, less than a year after the National Health Promotion Act was enacted, the Ministry of Health and Welfare proposed an amendment of the law that would include elimination of smoking areas in public places and an imposition a charge for national health promotion of 6 won per a pack of cigarettes. The tobacco industry recognized this attempt as a “*regulatory threat*” that could be a major blow to them and launched a’ tough battle up against government’(PM, 1996(93))

To win this big battle, TTC formed the first-ever, ‘large united front’, which encompassed both industry alliances, including KT&G, as well as tobacco-related interest groups, such as Tobacco Farmers Federation, Cigarette Retailer Association, Korea Smokers Association and KTA(94).

This big and united tobacco coalition carried out the following joint actions under two strategies, ‘Demonstrate massive opposition during public hearing’ and ‘Block/delay National Assembly’s legislation’(94, 95) (fig. 6).

- Phone survey of public opinion
- Public signature collection
- Press conference and public rally
- Newspaper advertisements of open letters to government(65)
- Position paper submission



ANTIS BUT HELP US GREATLY IN THE LONG RUN IN TEARING DOWN  
THE IMPORT BARRIER. (PM, 1996(93))

Table 4. The History of National Health Promotion Law and Enforcement Rules of the National Health Promotion Law related to Tobacco Control<sup>3</sup>

Enactment/Amendment Date	National Health Promotion Law		Enforcement decree	enforcement Rules
	Act No.	Major amendments	Major amendments	Major amendments
Jan. 5, 1995	4914	<ul style="list-style-type: none"> <li>• Restriction on the location of cig. vending machines</li> <li>• Ban selling tobacco for people under 19</li> <li>• Ban on the sale of tobacco to person under 19</li> <li>• Separation of non-smoking and smoking areas for public facilities</li> </ul>	<ul style="list-style-type: none"> <li>• Limit the number of magazine ads(60 times/1brand family/1year)</li> <li>• Ban on the product ads during sponsorship such as sports events</li> <li>• Cig. vending machine only in place prohibited areas under 19 years and so on</li> </ul>	
Oct. 28, 1999(Ordinance amendment)				Add bathhouse to the public utilities to separate non-smoking and smoking areas
Jan. 19, 2002	6619	<ul style="list-style-type: none"> <li>• Reinforce warning labels on cigarette packs <i>"Smoking is harmful"</i></li> </ul>		

<sup>3</sup> Source: the website of National Law Information Center, Ministry of Government Legislation. Available from: <http://www.law.go.kr/LSW/eng/engMain.do>

		<p><i>to health" →</i>  <i>"Smoking can cause lung cancer and other diseases"</i></p> <ul style="list-style-type: none"> <li>• Provide a basis for designating the entire public facility as a non-smoking area as well as separating into smoking and non-smoking areas.</li> </ul>		
Jul. 29, 2003	6952	Attach adult authentication device to cigarette vending machine	Requirements for adult authentication devices	
Dec. 30, 2004	7250	<ul style="list-style-type: none"> <li>• Increase the charge for National Health Promotion :KRW150/1pack → KRW354/1pack</li> </ul>		
Apr. 25, 2006(Ordinance amendment)				<p>To reflect FCTC ratification,</p> <ul style="list-style-type: none"> <li>◆ Expansion of non-smoking areas</li> <li>◆ The size of the cigarette wrapping paper's smoking warning text</li> </ul>

				(30/100 for each of the front and back sides) is to be displayed. Reflecting FCTC ratification
Sep. 27, 2006	8004	<ul style="list-style-type: none"> <li>• Withdraw the charge exemption for low-priced cig.(≤ KRW200)</li> <li>• Strengthen the penalties for the violation of advertising restriction and warning label : KRW 5million →KRW 10million</li> </ul>		
Sep. 14, 2007	8690	<ul style="list-style-type: none"> <li>• Mandatory marking of human carcinogenic tobacco components recognized by IARC in addition to existing warning</li> </ul>		
May 27, 2010	10327	<ul style="list-style-type: none"> <li>• Provide legal basis for local governments to designate non-smoking area by ordinance</li> </ul>		



		<ul style="list-style-type: none"> <li>• Impose a fine of up to KRW 100,000 for smoking in non-smoking area</li> </ul>		
June 7, 2011	10781	<ul style="list-style-type: none"> <li>• Expand the scope of public utilities that require the entire facility to be designated as a non-smoking area.</li> <li>• Notification of danger of smoking due to the smoking habits and phone number of smoking cessation counseling <i>"the intake of tar varies depending upon a smoker's habit"</i></li> <li>• Restriction in marking of flavouring substance</li> </ul>	Penalties for breach of labeling restrictions	<ul style="list-style-type: none"> <li>• Step-by-step expansion of designation of smoking cessation areas for general restaurants, etc.</li> <li>• Establishing standards for installing smoking room</li> <li>• Mark warning label on side of cig. case</li> </ul>
May 20, 2014	12616	<ul style="list-style-type: none"> <li>• Introduced warning phrases that match the characteristics of new tobacco product</li> <li>• Levy charges for NHP ton new cigarettes other</li> </ul>	Establishment of verification method and procedure for the fact of the contents of tobacco ads	

		than cigarettes		
Dec. 23, 2014	1285 9	<ul style="list-style-type: none"> <li>Increase the charges for NHP on the Tobacco : KRW 354 → KRW841/1cig.</li> </ul>		
June 22, 2015	1336 3	<ul style="list-style-type: none"> <li>Picture Warning on cig. packs to show the harmful effects of smoking</li> <li>Add a warning that smoking can threaten the health of others besides yourself</li> </ul>	Warnings Pictures and warnings should clearly state the hazard of smoking and the fact that smoking is harmful to health and may threaten the health of others.	

### *3.3.4 Amendment of Tobacco Business Law : Abolishment of manufacturing monopoly*

After the privatization process of KT&G started in 1999, on September 9, 2000, the Ministry of Finance and Economy of Korea pushed ahead the amendment of the Tobacco Business Act to abolish the monopoly in the cigarette manufacturing and to introduce a manufacturing license system(96, 97).

According to the Korea-US ROU, the manufacturing monopoly had been the justification for not imposing custom tariff on imported cigarettes until then(39), its abolishment was a 'significant threat' to TTC's business(98).

“the zero percent import tariff to be established by the new legislation shall be maintained at zero percent until such time as the Korean government permits foreign investment in the manufacture of cigarette in Korea without restriction on the form of such investment”

(The Korea-US ROU Article V.B, 1989(39))

In addition, the bill prohibited tobacco companies from offering premiums to retailers to promote sales(99), which were included in the first draft of the National Health Promotion Act 1994 but failed to enact.. The tariff plan, of course, applied only to importers, which would “cause big price gap between domestic and imported”, weakening TTC's market competitiveness(98, 100). While the ban on the provision of promotional gifts was a means to apply to all companies, including KT&G, it was seen as a more unfavorable regulation for importers whose relationship with retailers had not been relatively strong(101).

These two issues were conflicts of interest with KT&G, so, PM, JTI, and BAT sought to solve this problem in the primitive form at the time of market opening, in which they submitted their opinions in their names, not in the name of KTA(102-105), and pressured Korean government through diplomatic channels from the US, HK and Japan(Fig. 7, 8(104-109)).

- We are planning to submit the position paper attached together PM, BAT(RJR/JTIK, 2000 (98))
- The British Embassy to Korea and BAT Korea have expressed concerns regarding the Korean government's decision, which is going to reimpose a 40% tariff on Imported tobacco, and sent a letter of appeal, regarding the postponement of new tax regulation, to the Korean government and

congress. The Japanese Embassy took some actions with the Ministry of Foreign Affairs & Trade, against the high tariff reinstallment.(JTI, 2001(105))

- We urge you to closely review this proposed legislation and consider initiating an investigation, including under section 301 of the Trade Act of 1974, into any proposal by Korea to raise the duty on American tobacco product.( US House of Representatives, 2000(110))

PAGE

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

October 26, 2000

Ambassador Charlene Barshefsky  
U.S. Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20506

Dear Ambassador Barshefsky:

It has come to our attention that the Korean Ministry of Finance and Economy is considering a move to impose a 40% import duty on American tobacco products. It is our understanding that this proposal would also place significant restrictions on foreign investment in the tobacco sector by requiring a capital investment minimum and production quotas. The ministry's proposals go far beyond the legislation that is currently pending in the National Assembly that would privatize the Korean tobacco monopoly.

We are extremely concerned about the imposition of protectionist measures that restrict the sale of American products overseas and violate international trade and investment rules under the World Trade Organization as well as bilateral U.S.-Korean trade agreements. It is clear that such a proposal would discriminate against U.S. and foreign companies doing business in Korea.

We urge you to closely review this proposed legislation and consider initiating an investigation, including under section 301 of the Trade Act of 1974, into any proposals by Korea to raise the duty on American tobacco products.

Thank you for your consideration.

Sincerely,

Judy Cullin  
Rick Warren  
Bill Jayson  
Jack Kautter

Walter B. Jones  
John Boehner  
Sonny Ballaher  
Tommy Taylor

CC: Ambassador Yang Sung Chul, Republic of Korea

67347

0053

UFS

<Figure 7. Letter from US House of Representatives to US Trade Representative and Korean Ambassador Yang Sung-chul(October 26, 2000(110))>

From the Ambassador  
Charles Humfrey CMG

4 December 2000

By Fax :- 502 9990 - 2 pages

HE Dr Jin Nyum  
Minister of Finance and Economy  
Second Unified Government Building  
Jongang-dong 1-1  
**GWACHEON 427-760**



**British Embassy**

4 Chung-dong  
Chung-ku  
Seoul 100-120  
Republic of Korea

Telephone: (82 2) 735-7341/3  
Facsimile: (82 2) 725-1738  
Internet: www.britain.or.kr

*Dear Minister,*

I realise that you have been spending a good deal of time recently at the National Assembly guiding several key pieces of legislation through. But I would welcome your help on the Tobacco Business Act, which is also subject to current National Assembly legislation, and which the Embassy has been following with interest.

British American Tobacco (BAT) Korea, the foreign-owned subsidiary of BAT plc, currently imports and distributes branded cigarettes from the UK and USA, employing around 300 staff. With Korea planning to abolish Korea Tobacco and Ginseng Corporation's monopoly through a revision to the Tobacco Business Act, BAT are considering a major investment in Korea. This would involve building a manufacturing plant, an investment worth up to Won 1.4 trillion over ten years, and employing up to 1000 people.

However, I understand that the Korean government plans to impose a 40% tariff on imported cigarettes simultaneously with the introduction of competition expected on 1 January 2001. BAT have said it would be impossible for them to pass on the cost of this tariff to customers as it could result in the loss of 80% of their Korean business in the period, before being able to establish their own manufacturing base in Korea.

BAT faces further constraints from capacity and paid-in capital requirements in the Act. I appreciate there are justifiable social reasons in setting minimum standards, to deter the entry of irresponsible producers. But setting minimum production capacity by law, which I understand is greater than total domestic cigarette sales, seems to contradict Korea's moves towards a more market-oriented economy, stimulating competition and removing unnecessary regulation.

0120  
0154

<Figure 8. Letter from British Ambassador Charles Humfrey to Korean Minister of Finance and Economy Jin Nyum(December 4, 2000(107))>

Although the Ministry of Finance and Economy concluded that there is no reason to allow a grace period according to the Korea-US ROU on the basis of consultation with external lawyers received at the stage of drafting the bill in September 2000(101), and also the government promised to impose 40% of the basic tariff rate on imported cigarettes at the time the amendment bill was passed at the National Assembly March 8, 2001(111, 112), finally, a grace period was allowed as commonly requested by PM and JTI in a statement submitted to the Ministry of Finance and Economy. The legislation was made to apply the tariff rate of 40 percent from July 2004 by increasing the tariff rate by 10 percent per year(113). During the grace period, PM and BAT succeeded in avoiding the tariff threat by establishing a manufacturing plant in Korea in 2002.

Table 5. Tobacco control policies proposed in Korea and responses of Tobacco industry alliance

Year	Major Regulatory attempts	TI alliance response	outcome
1991 ~1992	Introduction of ad-valorem system on tobacco excise tax or Increasing the excise tax	<ul style="list-style-type: none"> <li>◆ Raising trade and diplomatic issues respectively and cooperatively</li> <li>- PM, RJR, B&amp;W → USCEA → USTR</li> <li>- BAT → UK DTI → support the position of USTR</li> </ul>	Fail to change the tobacco tax system
1994	Legislation of NHP Law(Draft) <ol style="list-style-type: none"> <li>1) Ban on the sale of tobacco to person under 19</li> <li>2) Ban on cig. vending machine</li> <li>3) Prohibit offer free cig. and sales premium</li> <li>4) Expansion of the size of health warning label on cig. pack</li> </ol>	<ul style="list-style-type: none"> <li>◆ Drawing diplomatic pressure according to Korea-US ROU</li> <li>◆ Submit TI(including KTGA)'s joint and unified opposition opinion to MOHSA</li> <li><i>"there is no objective and scientific proof that smoking is harmful to one's health"</i></li> <li>◆ Mobilize business allies(Retailer association, etc.) to submit position paper to MOHSA</li> </ul>	<ul style="list-style-type: none"> <li>• Withdraw ban on free cig. &amp; premium(3)</li> <li>• Partial permission of vending machine(2)</li> <li><i>"relatively moderate regulation" (RJR)</i></li> </ul>
1996	Legislative Proposal of NHP Law <ol style="list-style-type: none"> <li>1) Increase charge on cig.</li> <li>2) Elimination of smoking areas in public places</li> </ol>	<i>"major blow to industry", "tough battle against government"(PM)</i> <ul style="list-style-type: none"> <li>◆ Mobilize all the industry members including KT&amp;G</li> <li>◆ Form a 'first-ever coalition'</li> </ul>	Fail in amendment /delay the regulation



with allies(Tobacco Farmers Federation, cig. retailer association, Korea Smoker Association and KTA)

- ◆ Demonstrate massive opposition during public hearing, Public signature collection, Press conference and public rally, Newspaper advertisements of open letters to government

2000. ~2001	Amendment of TB Law(MOF)	"significant threat to our business"(JT-RJR)	Permit grace period & impose phased tariff
1)	Monopoly product ban→Tobacco Manufacturing Business License	◆ (JT) planned to submit the position paper together with PM, BAT.	
2)	Prohibit promotional items	◆ PM & JTI respectively Submit opinion on Draft Bill to MOF : request grace period	
3)	Imposition of customs duty(40%)	◆ Diplomatic pressure	

---

### 3.4. “Working Together to Fight this Litigation Threat”

#### 3.4.1 Litigation Prevention strategy(PM)

Since 1997, the Korean press started to report that the tobacco companies were succumbing to lawsuits by the U.S. state governments through the MSA and paid USD 368.5 billion for damages they had caused in the US(114). At that time, the Korean government announced plans to implement the Product Liability Law(115), and there was a move to claim the possibility and necessity of a tobacco lawsuit(116).

Among TTCs, RJR, BAT, and etc. have also been interested in analyzing strategies for Korean lawsuits(117-120), but they concluded that the litigation risk was not as large as in the case of the United States because class action and punitive damages were not allowed in Korea(120).

“Limited litigation risks in Korea - concerns about tobacco litigation developments in the US, have severely affected valuations for the sector globally. However, in our opinion, the litigation environment in Asia, and specifically Korea, is fundamentally different and hence, we believe that the litigation risks for KT&G are infinitely lower than in the US. Similarly, management takes the view that this is not an area of concern in Korea given that class action lawsuits are currently not permitted under Korean Law and the latter does not acknowledge

punitive damages.”

(RJR, 2000.(120))

On the other hand, it is confirmed that PM more actively prepared the case lawsuits that could be raised and actually intervened in lawsuits filed in Korea.

PM identified Korea as one of the “five market as a primary threat” and established “*Litigation Prevention*” strategy whose specific goal was “*to create an environment in Asia that discourages governments from filing lawsuits without considering the risks*” (121-125). In addition, it is also confirmed that a training workshop was planned to be conducted in Korea, in which local counsel, consultants, and other key players regarding the litigation threat participated to spread and execute these strategies(PM, 1999(121)).

At the same time, PM prepared hypothetical scenario and legal analysis of PM’s General Counsel Friedman and Berlind, in preparation for the possibility of being sued by smokers in Korea and the scope of that preparation included not only cases in which PM sued, but also cases in which KT sued(126, 127). As such, PM was preparing a counter argument for KT & G to take into consideration the possibility of litigation against competitor KT&G (PM, 1998(127)).

### *3.4.2 Assist KT&G, Assess the Plaintiff’s Strategy and Develop Counter Argument*

On September 6, 1999, a smoker filed a lawsuit against a tobacco company to seek the responsibility for smoking damage in Korea(128, 129) , which was an opportunity to utilize the litigation response strategy prepared by PM for KT & G.

On September 9, 1999, just three days after the lawsuit was filed, KT&GRI 's Lee Dong-Wook informed PM Asia' s Mingda that he was considering the assistance from PM or JT, expressing the lawsuit as a “*big headache*” as well as appealed that it was the first time for KT&G to experience such litigation(130). In response to Dr. Lee 's request, PM responded positively and it is confirmed to have attempted to connect with people at the higher level of KT&G, in the name of “*fighting this litigation threat*”(131)

- I informed Dr. Lee that if KT&G decides to seek PM's assistance in this matter they can contact PM Korea; or if he prefers, I would be happy to put him into contact with the appropriate individuals in PM (PM, 1999(130))
- If you hear from Dr. Lee again, encourage him to spread the word at the higher level of KT&G that he is interested in our companies working together to fight this litigation (PM, 1999(131))

Since then, KIM & CHANG, the outside council of PMK, made a report analyzing the legal issues of the lawsuit, in order to assist KT&G in preparation for the first lawsuit and questioning by the Korean Parliamentary

Inspection(132, 133), and it was also confirmed that PM's in-house counsel, KTGRI, and KT&G's litigation counsel, Shin & Kim discussed litigation defense strategies together on September 17, 1999(PM, 1999(134)).

On December 13 of that year, when smokers filed a lawsuit against KT&G for the first time as a group(135, 136), PM recognized it as a large-scale litigation similar to the class action, and the internal council and external council of PM repeatedly analyzed the contents and strategies of the litigation and developed counter arguments KT&G could use(137-147). Also PM's in house counsel John Mulderig made a presentation to Korean regarding the group actions with help of PM USA's outside legal counsel on May 2000(147).

As the disclosure of the ingredients of KT&G's products became a critical issue in Korean lawsuits, it was also confirmed that PM and BAT did not spare advice on the form of material disclosure(148).

Table 6. Unrevealed cooperation between TTC & Korean monopoly against "litigation threat"

Stages	TTC's Strategies	Goal &	Actions
Before the first tobacco litigation in Korea	Litigation prevention <i>"create an environment in Asia that discourages governments from filing lawsuits"</i> : identify and utilize allies among industry, government, business community, media, and consumers;		<ul style="list-style-type: none"> <li>◆ PM reviewed hypothetical scenario for tobacco damage suit : KT&amp;G's counter argument(98. 10.)</li> <li>◆ PM prepared memorandum providing legal analysis of a threatened compensation lawsuit by Korean smokers against US tobacco companies(98. 10.)</li> <li>◆ PM conducted litigation prevention workshop for market management &amp; outside counsel in Korea(99. 8.)</li> <li>◆ PM Assisted KT&amp;G in preparation for questioning by the Korean parliament with report analyzing legal issues in litigation(99. 9.)</li> </ul>
After KT&G sued by smokers for the 1 <sup>st</sup> time on Sep. 6, 1999	<i>"working together to fight this litigation threat"</i>		<ul style="list-style-type: none"> <li>◆ Dr. lee of KT&amp;GRI called PM Asia to check the possibility of PM's assistance regarding the lawsuit(99. 9. 9.)</li> <li>◆ PM's in-house counsel met with KT&amp;GRI &amp; KT&amp;G's litigation counsel(Shin&amp;KIM) to discuss litigation defense strategies(99. 9. 17.)</li> </ul>
After the 2 <sup>nd</sup> lawsuit(1 <sup>st</sup> group lawsuit) filed against			<ul style="list-style-type: none"> <li>◆ PM's outside litigation counsel analyzed the complaint and strategies of the 2<sup>nd</sup> KT&amp;G lawsuit(99. 12. 13. &amp; 00. 1. 3.)</li> <li>◆ PM tried to analyze Korean 2<sup>nd</sup> lawsuit plaintiffs' strategy and develop counter argument after 1<sup>st</sup> hearing(00. 3.)</li> <li>◆ PM's in house counsel John Mulderig made</li> </ul>

KT&G on  
Dec. 13,  
1999

presentation to Korean regarding the group  
action(Korean 2<sup>nd</sup> suit) with help of PM USA's  
outside legal counsel(2000. 5.)

- ♦ scientist from KT&G, PM, JT and RJR discussed  
Korean 2 lawsuits at ARTIST Meeting(00. 4.)
  - ♦ PM and BAT presented Cig. ingredient  
disclosure format they have used in accordance  
with the request of Dr. Lee of KT&G explaining  
that ingredient disclosure was pending issue in  
the Korean litigation(00. 5.)
- 

### *3.4.3 Drivers to keep TTC from the "Worst Case" : Use KT&G and their Influences*

Furthermore, as a more fundamental approach, PM had a strategy to provide KT&G with advice on monitoring litigation threats and to provide litigation prevention training and seminars “*as a form of outreach*”(149). Total ad ban, indoor smoking ban, and litigation activity all could be a "worst case" for PM, and using KT & G and their influence in solving such threatening problems to tobacco industry, instead of PM taking directly in front of those problems, was a very clever and efficient tactic.

In this regard, PM took the approach of providing KT&G with data that could compete with Korean media reports and regulators that threatened the tobacco industry(149), instead of coming forward and solving the problem.

For example, when the Korea Food and Drug Administration (KFDA) was launched in 1996 and the regulatory action based on tobacco addiction was in place, PM provided KTGRI with the “*message point on addiction*” which “*represented a summary of relevant segments of PM submission to the US FDA and of issue module put together and approved by PMI*”, for dealing with addiction issue in Korea(150-152)(Fig. 9). In addition, when a paper on heavy metals in tobacco was published in Korea, PM shared data that could refute the paper with KTGRI researchers and gave active advice on the research that KTGRI will carry out(151).

Dr. Rhee plans to determine heavy metals in Korean tobaccos. We proposed to include food materials in the analysis to be able to put the tobacco data into perspective. (PM, 1996(151))





26. Sep. 1996 18:16

PHILIP MORRIS ASIA INC 25246394

No. 8019 P. 1/3



**PHILIP MORRIS INCORPORATED**  
Incorporated in the U.S.A. with limited liability

Scientific Affairs Asia / Japan / Australia

File:  
Corner  
Modular

### Facsimile

To: **Marc S. Firestone**  
**Senior VP, WRA & Associate**  
**General Counsel**

Fax: **002-1-212-907-5473**

From: **Dr. Roger Walk**  
Address: **c/o Philip Morris Asia Inc.**  
Phone: **852-2825-1459**  
Fax: **852-2524-6394**

Date: **September 26, 1996**

Pages: **3 (including cover page)**

Distribution: **-**

**Subject: Addiction**

Dear Marc,

Attached you find 2 pages with draft message points on "addiction". This document is based on previous Philip Morris statements put together by Eric Windholz and myself with some minor re-arrangements. The purpose of this document is to be handed over to a scientist at the Korean Tobacco and Ginseng Research Institute, who requested supporting materials for dealing with the addiction issue in Korea. It represents a "summary" of relevant segments of PM submissions to the US FDA and of an issue modul put together and approved by PMI.

Please let me have your approval to hand it over to KTGRI.

Best regards,

Roger Walk

Attachments

C:\ROGER\AS\960926.DOC

**IMPORTANT:** The information contained in this document is intended only for the named addressee(s). This document may also contain information which is confidential and/or subject to privilege. Its copying and/or disclosure of its contents by anyone other than the named addressee(s) is strictly prohibited. If you are not the named addressee, please notify us immediately by telephone or facsimile

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Source: <http://industrydocuments.library.ucsf.edu/tobacco/docs/pmlw0019>

<Figure 9. Facsimile transmission Dr. Roger Walk of PM ASIA sent requesting approval to PMC's Senior Vice President, Worldwide Regulatory Affairs and general counsel, Marc S. Firestone, for providing data on "addiction" to KTGRI(PM, 1996(150))>

KTGRI researcher, Dong Wook Lee also acknowledged that 'scientific knowledge' from TTC was a great help when he interviewed Korean media about the risk of tobacco use(48).

The Korean KBS TV station aired three 45-minute programs on tobacco in January 1999 . In one of the program Dr. Dong Wook Lee of KGTRI was interviewed as a key expert on smoking and related issues in the domestic Korean tobacco industry ... . Dr. Lee said that having access to the scientific information through his participation in ARTIST activities had proven valuable for him for such an occasion. Such information allowed him to make statements that are consistent with the currently available scientific data and he would appreciate to continue receiving additional scientific information in the future. (Pm, 1999(48))

## CHAPTER 4 DISCUSSIONS AND CONCLUSION

### *4.1 Discussion*

The evidence outlined in this study indicates that TTCs adopted the Tobacco industry alliance strategy in Korea as a means of overcoming inferiority as a latecomer in the Korean market and the strong antagonism to imported cigarettes. In particular, TTC have placed top priority on attracting Korean monopoly KT&G to their "collusion" to take advantage of KT & G's influence on Korea's regulatory authorities and markets in order to block anti-tobacco initiative, it has been confirmed that these efforts of TTCs have had a considerable effect. It is a clear example that the total ban on cigarette vending machines which failed to be legislated at the time of legislation of National Health Promotion Act 1995 was still not realized until 2018.

Under this strategy, it was also confirmed that the ETS issue, tobacco control initiatives, and tobacco lawsuits were common crisis to the tobacco industry, but at the same time it was a great opportunity for TTCs to provide their sophisticated and skilled resources and logics to incorporate KT&G into their alliance. In a similar fashion, in Japan, it was reported that Philip Morris in particular assisted and sometimes supervised Japan Tobacco's actions and statements on smoking and health(27), and this kind of alliance in Japan appears to coincide with the alliance between KT&G and TTCs unveiled in this study, as it is associated with the opening of the Japanese tobacco market and the

privatization of JT, which was formerly a monopoly.

After successfully creating the tobacco industry alliance in Korea, the tactics used by TTCs to resist regulations were similar to those employed in the US and elsewhere around the world. These include the preemptive enactment of the industry's self-regulation to avoid stronger regulations(16), lobbying(13, 14), utilizing third party allies and seemingly independent front groups(4, 9, 14, 16), submissions to government(9), operating ETS consultancy programme and conducting paid research(14, 15, 153), and the reusing of data and counter logics from the U.S. in Korea. In addition, KTA, an externally represented organization of the tobacco industry alliance, has been a formal dialogue channel between TTCs and KT&G, acted as a mediator to transform the biased and distorted claims of the tobacco industry into a legitimate voice of market participants, in line with the NMA's role in other countries(9, 16, 26).

The entry of TTCs in developing countries had led to a collapse of national tobacco monopolies or to their change from unsophisticated government departments that may still cooperate with health initiatives on tobacco to copying the aggressive marketing and promotional behavior of the transnationals(154). This study revealed that the active supports and alliance strategies of TTCs worked behind the scenes.

This study has the following policy implications.

First, basically, the regulatory authorities in each country that establish and enforce tobacco control policies should be aware of these collusive alliance strategies of the tobacco industry and take into account the planning and enforcing Tobacco control policies. The same is true when public health advocates fight against the tobacco industry. Even when dealing with only one tobacco company, it should be kept in mind that there can be physical, human, and all-rounded supports of TTCs behind it. To this end, as set out in Article 20.4 (c) of the FCTC, the global system should be established and maintained to collect and disseminate information on the activities of the tobacco industry, which has an tremendous impact on the national tobacco control activities(155).

Second, in establishing and implementing tobacco control policies, the research funded by tobacco industry should not be treated as an independent scientific evidence. Regarding the studies funded by Tobacco Industry, such as “ETS consultancy program”, even the publication of the research results was determined by the approval of the sponsored tobacco companies, there are various bias risks. It was also found that the TTC-led tobacco industry alliance was behind the process in which the results of those studies were turned into an objective "third party study" and the result, such as "ETS has a little effect on the indoor air quality”, were spread.

Third, tobacco companies should not be recognized as legitimate counterparts in the establishment and implementation of tobacco control policies. As we have seen in this study the alliance of tobacco industry is likely to make an “unusual” claim even from their own point of view, such as “*there is no*

*scientific evidence that smoking is harmful to the individual's health*” and as a result, tobacco regulations were delayed and the legal responsibility of the tobacco company was denied. This is also a natural conclusion of the FTCT article 5.3(155).

Fourth, it is necessary to regulate formation of Tobacco Industry alliance and organizations made for alliance. Of course, the current law does not ban for cross-industry collaboration or formation of cross-industry organizations. However, such a collusive alliance strategy should not be viewed as legal if it has been used as a means of covering up the risks of their deadly products and preventing legitimate regulation by exploiting a relatively loose regulatory environment and less research on tobacco hazards compared to advanced countries such as the US. This study supports the need and justification for regulating the alliance of the tobacco industry itself. From a similar perspective, in North American jurisdiction, the court confirmed that individual tobacco companies, which are legally independent and competing in the market, have cooperated through industry organizations, such as the Tobacco Institute(US), CTMC(Canada) to deny and conceal the risk of smoking to the public and to interfere with legitimate regulations, which were the salient grounds for the court to adjudicate against tobacco companies. In particular, the US federal courts saw not only tobacco companies, but also their affiliated organization, the Tobacco Institute, as violating the Racketeer Influenced and Corrupt

Organizations Act in United States V. Philip Morris case<sup>4</sup>, and the Tobacco Institute, Center for Indoor Air Research, and other interest groups and affiliated research institutes in the US were forced to be dissolved through the Master Settlement Agreement(MSA), which was concluded as a result of lawsuits filed by the state governments.

Finally, it is necessary to establish a surveillance system for the behavior of tobacco companies and disclose information on their behavior. This study also confirmed that the establishment and operation of the tobacco industry alliance in individual countries was based on the resource and intention of TTC itself, not individual country base subsidiary. As a result of this study, it was confirmed that TTCs were applying the sales or promotion strategies, which were judged illegitimate in the United States and other jurisdictions, in Korea and other countries. So, legislation of the disclosure of tobacco company internal documents, such as that was made in the US lawsuit, should be considered. At the very least, institutional arrangements should be made to disclose all information relating to the meeting between tobacco companies and regulators, and in particular all documents submitted by tobacco industry.

### *Limitations*

---

4

This study adopts a method of document analysis of tobacco companies' internal documents that were previously confidential, official government documents, press release materials as the main material. However, the internal documents of the tobacco company are limited to the documents generated by the TTCs. It does not include documents created by Korean tobacco companies, or documents that TTCs did not intentionally create. In particular, in cases where the tobacco companies were allowed to refuse disclosure for two reasons, privileged or confidential documents, contents of the actual document could not be identified other than the index record, which include the author and title of the document, mentioned words etc. Also, some of the state's official documents were rejected to disclose for some reasons such as protection of trade secrets of third parties. These restricted documents are likely to be very important in identifying the strategies of the tobacco company. Thus, this study has limitations in that it only identifies strategies and activities of tobacco companies based on documented data based on data that have already been made public or disclosed through disclosure requests.

## *4.2 Conclusion*

As TTCs entered the Korean market, the most important strategy to overcome the hostile business environment and to respond to anti-smoking issues was to promote 'relationship with KG&G' and to form an alliance. To this end, TTCs



provided KT&G, a strong competitor in the market, with various business benefits and expertise in responding to scientific issues.

As the regulatory action of the authorities began in earnest with the introduction of the legislation procedures of the National Health Promotion Act in 1994, the strategy of forming alliance among TTCs began to materialize.

Under this alliance, the tobacco industry fought against regulations and lawsuits, a common industry crisis, and, in effect, various regulation attempts were delayed and the tobacco company's responsibility was denied in the Korean court.

### *Conflict of Interests*

I am currently working as one of the plaintiffs' attorneys for the civil lawsuit filed on April 14, 2014 by the National Health Insurance Service of Korea against KT&G, PMK and BATK. However, no additional financial support was received from anyone involved in the above case in connection with this study.

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## SUMMARY IN KOREAN

국문초록

# 한국의 “규제 위협에 맞서 싸우기” 위한 다국적 담배회사들의 결탁과 연대:

담배회사 내부분건 분석

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**연구배경** : 아시아 담배 시장 개방 이후, 다국적 담배 회사들은 국가별 독점 회사들의 시장지배력에 맞서 그들과 치열하게 경쟁하여야 했지만, 동시에 개별 국가의 담배 규제 시도 및 담배 반대 운동과 같은 담배 업계 공통의 문제 상황에 대응하기 위해

독점 회사들의 협력이 필요하였다. 본 연구의 목적은 다국적 담배회사들이 아시아의 독점 회사, 특히 한국의 KT&G와 연대를 형성하기 위해 사용한 전략, 연대하에 이루어진 담배 업계의 금연정책 저해 활동과 그 효과를 밝히고, 이를 통해 담배 규제 정책 수립 및 집행에 필요한 적절한 방향을 제시하고자 하는 것이다.

**연구방법** : 본 연구를 위해 Truth Tobacco Industry Documents Library (TTID, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>)의 담배 회사 내부문건을 수집 및 분석하였고, 그 외에 국가기록원의 정부 문서와 온라인 검색포털 사이트, 정부 기관의 공식 온라인 웹사이트에서 수집된 자료 등으로 분석 대상을 다각화하였다.

**연구결과** : 연구 결과, 다국적 담배회사들은 한국 시장 진입 초기부터 한국의 국영 담배회사였던 KT&G와의 우호적 관계 형성을 “최우선 순위”에 두고 이를 위해 노력하였다. 이러한 전략 하에 다국적 담배회사들은 1989년에 한국담배협회를 설립하여 KT&G와의 연결고리를 구축하는 한편 담배 업계가 하나의 목소리를 낼 수 있는 기반을 만드는데 성공하였다. 또한, 다국적 담배회사들은 그들이 미국 등 선진국에서 구축한 기술과 인적 자원을 경쟁사인 KT&G에 적극 지원하였는데, 이는 개별 국가

기반 회사와의 관계를 공고히 하는 수단일 뿐만 아니라 국내 기업을 전면에 내세워 이미 선진국에서 정당성이 부인된 자신들의 기만적인 주장과 자료들을 한국 시장에 확산시키는 매우 효과적인 방법이였다. 다국적 담배회사들은 1994년의 국민건강증진법 입법 등 한국의 여러 담배 규제 시도와 1999년에 제기된 한국 최초의 흡연 피해자 소송과 같은 담배 업계 공통의 위기를 한국시장에서 영업하는 담배 제조사 전체의 결탁 및 연대관계를 형성하고 강화하는 절호의 기회로 활용하였고, 그 결과 한국의 여러 담배 규제 노력은 실패하거나 지연되었다.

**결론** : 다국적 담배회사들은 한국의 규제 당국과 금연운동 움직임에 맞서 싸우기 위해 KT&G를 지원하면서 전략적 연대를 형성하였고, 이러한 형태의 담배 업계의 연대는 다국적 담배회사들의 광범위한 자원과 개별 국가 기반 회사의 네트워크를 결합하여 담배 규제를 방해하는 효과적인 수단으로 작용하였다.

**주요어** : 담배 업계의 금연정책 저해활동(Tobacco Industry Interference), 담배업계 연대, 다국적 담배회사, 담배종결전, 담배 규제 입법, 담배소송

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