Tobacco

Memorandum: Conclusion of the Tobacco Investigation in the 103rd Congress
December 20, 1994

To: Members of the Subcommittee on Health and the Environment
From: Henry A. Waxman, Chairman

This Congress, the Subcommittee on Health and the Environment has conducted an investigation into the practices of the tobacco industry. This memorandum summarizes these activities and makes recommendations for completing the investigation begun by the Subcommittee.

Two final staff reports are enclosed with this memorandum. These reports describe the results of the Subcommittee's investigation into (1) the tobacco industry's response to growing public concerns over environmental tobacco smoke and (2) nicotine manipulation by the American Tobacco Company.

Summary of the Subcommittee's Tobacco Investigation

This Congress, the Subcommittee held 11 hearings and released several majority staff reports on tobacco issues. In addition, the Subcommittee also reported major legislation to protect the public from involuntary exposure to environmental tobacco smoke. The Subcommittee's investigatory activities brought to light new information about the tobacco industry´s manipulation of nicotine and research into the health and pharmacological effects of smoking.

The following chronology summarizes the major activities of the Subcommittee:

July 21, 1993
Hearing on the health effects of environmental tobacco smoke (Ser. no. 103-51). EPA Administrator Carol Browner describes EPA's new risk assessment on environmental tobacco smoke and recommends that all businesses prevent involuntary exposure to environmental tobacco smoke by either banning smoking or restricting smoking to separately exhausted smoking lounges.

November 3, 1993
Chairman Waxman and Rep. James V. Hansen (R-UT) introduce the Smoke-Free Environment Act (H.R. 3434), legislation that implements Administrator Browner's July 21 recommendations by requiring smoke-free policies in all nonresidential buildings.

February 7, 1994
First hearing on H.R. 3434 (Ser. No. 103-127). The current and five former Surgeons General testify in favor of H.R. 3434, calling it "the most important legislation in disease prevention in years."

March 17, 1994
Second hearing on H.R. 3434 (Ser. No. 103-127). Dr. Roy P. Vagelos, the Chairman and CEO of Merck & Co., and other CEOs and business executives endorse H.R. 3434. Representatives of the Tobacco Institute oppose H.R. 3434.

March 25, 1994
Hearing on tobacco products (Ser. No. 103-149). FDA Commissioner David A. Kessler presents preliminary evidence of nicotine manipulation by tobacco manufacturers and describes FDA's investigation into whether cigarettes should be classified as a drug under the Federal Food, Drug, and Cosmetic Act.

April 13, 1994
Chairman Waxman releases Subcommittee staff report analyzing a 1981 article by A.W. Spears of the Lorillard Tobacco Co. entitled "Chemical and Physical Criteria for Tobacco Leaf of Modern Day Cigarettes." This article describes how the tobacco industry uses blending practices to increase the nicotine content of the lowest tar cigarettes.

April 14, 1994
Hearing on tobacco products (Ser. No. 103-149). The CEOs of the nation's seven largest tobacco companies appear before the Subcommittee to respond to questions about nicotine addiction and manipulation.

April 21, 1994
Chairman Waxman and EPA Administrator Browner release an EPA assessment of the social costs and benefits of H.R. 3434. The EPA assessment shows that the health and economic benefits of enactment of H.R. 3434 are fifty times greater than its costs.

April 28, 1994
Hearing on tobacco products (Ser. No. 103-153). Two former Philip Morris scientists, Victor J. DeNoble and Paul C. Mele, describe Philip Morris's secret research on the addictive qualities of nicotine in the early 1980s.

May 12, 1994
Subcommittee consideration of H.R. 3434. H.R. 3434 is reported by the Subcommittee by a vote of 14 to 11, with amendments.

May 17, 1994
Hearing on tobacco products (Ser. No. 103-153). Former Secretary of Health, Education, and Welfare, Joseph A. Califano, describes the health care costs attributable to tobacco products.

May 26, 1994
Hearing on tobacco products (Ser. No. 103-153). The President and CEO of the Council for Tobacco Research (CTR), James F. Glenn, appears before the Subcommittee. Chairman Waxman releases a majority staff report entitled "The Hill and Knowlton Documents: How the Tobacco Industry Launched its Disinformation Campaign," which describes the origins of CTR.

June 21, 1994
Hearing on tobacco products (Ser. No. 103-171). FDA Commissioner David A. Kessler presents additional evidence of nicotine manipulation, including evidence that the Brown & Williamson Tobacco Co. developed a nicotine-enriched tobacco plant, called "Y-1," through genetic engineering.

June 23, 1994
Hearing on tobacco products (Ser. No. 103-171). The CEO of Brown & Williamson Tobacco Co., Thomas E. Sandefur, appears before the Subcommittee to answer charges that Brown & Williamson manipulates nicotine and suppressed scientific studies and conferences acknowledging the addictiveness of nicotine and the dangers of cigarette smoking.

July 22, 1994
Chairman Waxman releases the results of a survey of the science advisory board of the tobacco industry's Center for Indoor Air Research. The survey shows that seven of the nine members of the science advisory board agree that tobacco smoke is a human lung carcinogen.

November 29, 1994
Hearing on tobacco products (Ser. No. 103-163). Federal and state witnesses describe evidence of nicotine manipulation by manufacturers of smokeless spit tobacco.

Dec. 20, 1994
Chairman Waxman releases two final Subcommittee majority staff reports. The reports describe (1) evidence of improper and possibly fradulent research and misleading testimony by the tobacco industry on environmental tobacco smoke and (2) evidence of nicotine manipulation by the American Tobacco Company.

The Subcommittee´s Investigation Is Incomplete

Despite the significant new information uncovered by the Subcommittee's activities in this Congress, the investigation of the tobacco industry is still in its early stages.

A comprehensive investigation of the tobacco industry requires a systematic review of tobacco industry documents related to health and safety, nicotine manipulation, and marketing to children. The documents that should be reviewed in such an investigation include tobacco industry studies of the health effects of smoking, the pharmacological effects of nicotine, and the health effects of environmental tobacco smoke, as well as documents related to the nicotine content of cigarettes and advertising and promotion strategies.

The Subcommittee had begun this investiagtive effort. On September 30, 1994, the Subcommittee released its "Uniform Procedures for Tobacco Documents." These procedures, which were developed in consultation with the tobacco industry, established ground rules for the Subcommittee's investigation. These procedures appropriately balanced the tobacco industry´s legitimate interests in keeping trade secrets confidential against the Subcommittee's legitimate interest in obtaining and, where appropriate, releasing tobacco industry documents.

Although the tobacco industry was not entirely satisfied with the Uniform Procedures, the seven major tobacco companies agreed in writing to provide documents to the Subcommittee under the procedures. A framework was thus in place for the orderly receipt and evaluation of key tobacco industry documents.

In October and early November, some tobacco companies provided some documents to the Subcommittee under the Uniform Procedures. The Subcommittee's investigation was effectively cut short, however, by the November elections. Only a very small fraction of the millions of pages of documents that the Subcommittee expected to review were ever provided to the Subcommittee and reviewed by its staff.

The result is that the Subcommittee has been unable to complete its goal of a comprehensive investigation of the tobacco industry.

Recommendations

Oversight responsibility over the tobacco industry is widely dispersed within the federal executive branch. Often, it is also hampered by inadequate legal authorities.

The Food and Drug Administration is aggressively investigating nicotine manipulation by the tobacco industry, but its efforts have been hindered by the lack of subpoena power to compel industry cooperation. The Occupational Safety and Health Administration and the Environmental Protection Agency are both actively examining the health effects of environmental tobacco smoke, but their efforts do not currently include investigating the tobacco industry's knowledge of these hazards.

This situation needs to change. Agencies such as FDA that are actively pursuing tobacco investigations need to be given new legal authorities by Congress. More important, the President, working with the agencies and Congress, should develop an overall strategy for insuring that the tobacco industry is subject to a fair but comprehensive investigation.

Ultimately, it is essential that the tobacco investigation begun by the Subcommittee be continued. No industry has a greater impact on the health of the American people than the tobacco industry.