

athletic accomplishments, Aaron is an active member in the student council where he served as his Class President and the drama club.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Aaron M. Wurst. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Aaron will do very well during his career at the United States Military Academy and I wish him the very best in all of his future endeavors.

## SMOKELESS TOBACCO

**HON. HENRY A. WAXMAN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 4, 2003*

Mr. WAXMAN. Mr. Speaker, the United States Tobacco Company has requested that it be allowed to market certain dangerous and addictive products as less harmful than cigarettes. UST would like to market these products immediately without regulation by a health agency.

I recently obtained UST documents that speak to the clear need for effective and comprehensive regulation prior to any health claims for smokeless tobacco. Because it is in the public's interest to review the content of these documents, I am inserting them into the public record, along with a "dear colleague" letter I recently circulated, the UST response, and a letter I sent yesterday to House Committee on Energy and Commerce Chairman BILLY TAUZIN on this matter.

APRIL 28, 2003.

SHOULD SMOKELESS TOBACCO BE MARKETED AS "REDUCED RISK"?

DEAR COLLEAGUE: In recent weeks, the United States Smokeless Tobacco Company, Incorporated (UST), the country's largest manufacturer of smokeless tobacco products, has begun to lobby Congress for permission to tell potential customers that using smokeless tobacco is safer than smoking cigarettes. The request follows a prior petition to the Federal Trade Commission (FTC), which UST has now withdrawn, in which UST proposed telling consumers: "Many researchers in the public health community have expressed the opinion that the use of smokeless tobacco involves significantly less risk of adverse health effects than smoking cigarettes."

It would be a serious mistake for Congress to endorse "reduced risk" claims proposed by UST outside of effective regulation of tobacco products. Attached are two documents from the Campaign for Tobacco Free Kids on (1) smokeless tobacco and (2) UST's request to Congress. I would draw your attention to several key points:

"Reduced risk" claims need to be scrutinized carefully. If new claims that smokeless tobacco is safer than cigarettes cause fewer smokers to quit tobacco altogether, or if these claims encourage non-tobacco users—especially young people—to begin using smokeless tobacco products, any theoretical benefit to those switching from cigarettes to smokeless tobacco products may be undermined. That's why the Institute of Medicine and other experts who favor risk reduction strategies, including several tobacco control advocates cited by UST, actually believe that such claims should be made only with regulatory oversight. A regulatory system would allow close monitoring of health

claims and assessment of the true impact on death and disease rates.

The Swedish model does necessarily not apply to the United States. UST points to Sweden as a country with relatively high levels of smokeless tobacco use and relatively low levels of cigarette smoking. Yet Sweden's situation is considerably different. First, Swedish smokeless tobacco is a different product from the one that UST makes. Second, Sweden also has tight restrictions on tobacco products, including high taxes and a marketing ban. Third, Sweden does not allow health claims to be made for smokeless tobacco products.

UST does not have a responsible track record. The U.S. Surgeon General, the National Cancer Institute, and other major scientific and public health agencies have concluded that smokeless tobacco poses significant health risks, causes oral cancer and other noncancerous oral conditions, and can lead to nicotine addiction. UST, however, has recently asserted that "smokeless tobacco has not been shown to be a cause of any human disease." The company also has a long history of marketing to children, including flouting restrictions on marketing to minors and the addition of cherry, mint, and other flavorings that increase their products' appeal to youth. This record indicates the need for close regulatory oversight of any health claims made by the company.

With cigarette smoking responsible for more than 400,000 deaths in the United States each year, there is reason to consider non-conventional strategies to save lives. However, these strategies should be based upon science and carefully monitored in a regulatory scheme to assure that they do not cause more harm than good.

If you would like more information, please do not hesitate to contact Josh Sharfstein on the minority staff of the Government Reform Committee (202) 225-5420.

Sincerely,

HENRY A. WAXMAN,  
*Ranking Minority Member.*

SMOKELESS ("SPIT") TOBACCO IN THE UNITED STATES: AN OVERVIEW OF THE HEALTH RISKS AND INDUSTRY MARKETING AIMED AT CHILDREN

What do the experts say about smokeless tobacco?

Smokeless tobacco in the United States causes cancer.

Smokeless tobacco in the United States is not a safe alternative to cigarettes.

Smokeless tobacco in the United States is not regulated and any health claims about the product have not been verified by an independent, objective government authority.

Smokeless tobacco manufacturers in the United States have systematically marketed their products to children and adolescents.

Smokeless tobacco, and the manner in which it is manufactured, marketed and sold, in the United States is substantially different from what is occurring in Sweden.

*U.S. Surgeon General:*

"After a careful examination of the relevant epidemiologic, experimental, and clinical data, the committee concludes that the oral use of smokeless tobacco represents a significant health risk. It is not a safe substitute for smoking cigarettes. It can cause cancer and a number of non-cancerous oral conditions and can lead to nicotine addiction and dependence."

"The scientific evidence is strong that the use of snuff can cause cancer in humans. The evidence for causality is strongest for cancer of the oral cavity, wherein cancer may occur several times more frequently in snuff dippers compared to non-tobacco users. The ex-

cess risk of cancer of the cheek and gum may reach nearly fifty-fold among long-term snuff users."

*U.S. National Cancer Institute:*

"The bioassay data strongly support the epidemiological observation that ST is carcinogenic to humans. Twenty-eight carcinogens have been identified in chewing tobacco and snuff. The high concentrations of N-nitrosamines in ST, and especially the high levels of TSNA, are of great concern."

"The evidence that NNK and NNN play a role in human oral cancer induced by snuff is strong. Both compounds are present in significant amounts in snuff and in the saliva of snuff dippers. They are metabolically activated in snuff dippers to intermediates that bind to hemoglobin. They cause oral tumors in rats and are metabolically activated by rat and human oral tissue. Although there are many questions about the mechanisms by which snuff causes oral tumors in rats and humans, there is no doubt that the presence of NNK and NNN in snuff is an unacceptable risk to people who choose to use these products."

*U.S. National Toxicology Program:*

"The oral use of smokeless tobacco is known to be a human carcinogen based on sufficient evidence of carcinogenicity from studies in humans which indicate a causal relationship between exposure to smokeless tobacco and human cancer."

"Smokeless tobacco has been determined to cause cancers of the oral cavity. Cancers of the oral cavity have been associated with the use of chewing tobacco as well as snuff which are the two main forms of smokeless tobacco used in the United States."

*World Health Organization:*

"There is conclusive evidence that certain smokeless tobacco products increase risk of oral cancer, specifically . . . smokeless tobacco in the United States."

MARKETING SMOKELESS ("SPIT") TOBACCO TO KIDS

The smokeless tobacco companies have a long history of creating new products that appeal to kids and marketing them aggressively to children. Their efforts have created a whole new market for spit tobacco—in kids.

A SHIFT FROM OLDER TO YOUNGER SMOKELESS TOBACCO USERS

Since 1970, smokeless tobacco has gone from a product used primarily by older men to one used predominantly by young men and boys. In 1970, males 65 and older were almost six times, as likely as those ages 18-24 to use smokeless tobacco regularly (12.7 percent vs. 2.2 percent. By 1991, however, young males were 50 percent more likely than the oldest ones to be regular users. (8.4 percent vs. 5.6 percent. This pattern holds especially true for moist snuff, the most popular type of smokeless tobacco. From 1970 to 1991 the regular use of moist snuff by 18-24 year old males increased almost ten-fold, from less than one percent to 6.2 percent. Conversely, use among males 65 and older decreased by almost half, from 4 to 2.2 percent. Among all high school seniors who have ever used smokeless tobacco, almost three-fourths began by the ninth grades.

Despite some recent declines in youth smokeless tobacco use, 14.8 percent of all boys in U.S. high schools—and 1.9 percent of high-school girls—currently use smokeless tobacco products. In some states, smokeless tobacco use among high school males is particularly high, including Montana (25.2 percent), Wyoming (28.6 percent), West Virginia (33.0 percent), and Arkansas (24.9 percent).

UST (the parent company of the U.S. Smokeless Tobacco Company) is the biggest smokeless tobacco company in the United States. It controls about 40 percent of the total U.S. smokeless tobacco market, including 75 percent of the moist snuff tobacco

market, which is both the largest segment of the smokeless tobacco market and the only segment that has recently grown.

#### STRATEGIES TO HOOK KIDS

According to internal company documents, UST developed a strategy some time ago for hooking new smokeless tobacco users, which means kids. As one document states: "New users of smokeless tobacco—attracted to the product for a variety of reasons—are most likely to begin with products that are milder tasting, more flavored, and/or easier to control in the mouth. After a period of time there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated 'tobacco taste' than the entry brand."

Following this strategy, in 1983-84, UST introduced Skoal Bandits and Skoal Long Cut, designed to "graduate" new users from beginner strength, to stronger, more potent products. A 1985 internal UST newsletter indicates the company's desire to appeal to youth: "Skoal Bandits is the introductory product, and then we look towards establishing a normal graduation process." In 1993, cherry flavoring was added to UST's Skoal Long Cut, another starter product. A former UST sales representative revealed that "Cherry Skoal is for somebody who likes the taste of candy, if you know what I'm saying."

Smokeless tobacco products have been marketed to youth through a number of channels, including sports events like auto racing and rodeos that are widely attended by kids. Although the state tobacco settlement agreements have limited UST's ability to continue to do brand-name sponsorships of events and teams, UST continues to be a promotional sponsor of both professional motorsports and rodeo and bull riding. In motorsports, UST sponsors are Skoal Racing funny car team on the National Hot Rod Association circuit. In rodeo and bull riding, UST supports the Rodeo Cowboys Association, the Professional Bull Riders, Inc., and the National Intercollegiate Rodeo Association. As the general manager of the College Finals said, "U.S. Tobacco is the oldest and best friend college rodeo ever had."

Continuing its efforts to lure and maintain young users, in February 1999, UST ran a full-color advertising insert for its Rooster brand smokeless tobacco in the Daily Aztec, the college paper at San Diego State University. The ad offered a sweepstakes for an all expenses paid trip to the Playboy mansion and, in direct violation of California law, included a \$1.00 coupon. State enforcement efforts related to the ad forced UST to pay a fine of \$150,000 and also pay for a parallel ad insert opposing smokeless tobacco use.

From 1985 to 1999 (the most recent year with available data), the total marketing expenditures of the top-five smokeless tobacco companies in the United States (Conwood Company, National Tobacco Company, Swedish Match North America, Inc., Swisher International, and United States Tobacco Company) have more than doubled, as have their sales revenues. In 1999, these smokeless tobacco companies spent more than \$170 million to advertise and market their deadly products. Some of these funds pay for smokeless tobacco ads in magazines with high youth readership, such as Sports Illustrated and Rolling Stone. In fact, despite the restrictions placed on youth advertising by the Smokeless Tobacco Master Settlement Agreement (STMSA), UST has continued to heavily advertise in youth-oriented magazines. For the period 1997-2001, UST's expenditures in youth magazines increased from \$3.6 million to \$9.4 million, a 161% increase.

In August 2001, UST announced plans to market a brand new smokeless tobacco prod-

uct called Revel. UST is marketing the new product as a way to consume tobacco in places or situations when smoking is not allowed or is not socially acceptable. Public health organizations and others are concerned that this new product may lure even more kids into smokeless tobacco use and addiction—both because of its novelty and the misconception that it is a safe form of tobacco use, and because it can be consumed much less conspicuously than either cigarettes or existing smokeless tobacco products at home, in school, and in other locations. There is also a concern that some current cigarette smokers who might ultimately quit because of the social stigma associated with smoking, the inconvenience caused by smoking restrictions at work and elsewhere, or a desire to protect their family and friends from secondhand smoke will switch to Revel or other smokeless products, instead.

These public health risks are significant, especially since the Star tobacco company has also begun selling a smokeless product, known as Ariva, and has sold Brown & Williamson (the third largest U.S. cigarette company) the right to market Star's new product under B&W's own brand name.

#### HEALTH RISKS ASSOCIATED WITH SMOKELESS TOBACCO USE

Smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and it increases the risk of cardiovascular disease, including heart attack. More specifically:

Smokeless tobacco causes leukoplakia, a disease of the mouth characterized by white patches and oral lesions on the cheeks, gums, and/or tongue. Leukoplakia, which can lead to oral cancer, occurs in more than half of all users in the first three years of use. Studies have found that 60 to 78 percent of smokeless tobacco users have oral lesions.

Constant exposure to tobacco juice causes cancer of the esophagus, pharynx, larynx, stomach and pancreas. Smokeless tobacco users are up to 50 times more likely to get oral cancer than non-users. These cancers can form within five years of regular use.

Smokeless tobacco contains nitrosamines, proven carcinogens, as well as 30 metals and a radioactive compound called polonium-210. A study by the American Health Foundation for the State of Massachusetts found that the level of cancer causing tobacco specific nitrosamines (TSNAs) in U.S. oral snuff brands were significantly higher than comparable Swedish Match brands. These data suggest that it is possible for smokeless tobacco companies to produce oral snuff with significantly lower TSNA levels.

This same study found that the two leading U.S. snuff brands, Copenhagen and Skoal, had large increases in TSNA levels when placed on a shelf at room temperature over a six-month time period. The TSNA levels increased 20 percent in Skoal and by 137 percent in Copenhagen, while no significant changes were observed in Swedish match brands.

Chewing tobacco has been linked to dental caries. A study by the National Institutes of Health and the Centers for Disease Control and Prevention found chewing tobacco users were four times more likely than non-users to have decayed dental root surfaces. Smokeless tobacco also causes gum disease (gingivitis), which can lead to bone and tooth loss.

A number of researchers and at least one U.S. smokeless tobacco company (UST) who point to the experience of Sweden and their use of a smokeless product called "snus", as a prime example of why smokeless tobacco is not harmful and should be promoted as a harm reduction and/or smoking cessation

aid. However, upon closer examination the snus experience in Sweden is completely irrelevant in the context of the United States for a number of reasons. First, snus is a different product from American smokeless products (even the products sold by the North American division of Swedish Match) in that Swedish snus is highly regulated and manufactured according to strict standards. The makers of Swedish snus (Swedish Match) are not allowed to make health claims, and they are forbidden from even marketing the product at all. In the United States, we have a situation where all tobacco products (including smokeless products) are exempt from product regulation and that have been marketed irresponsibly to kids for decades. In addition, there is also disagreement among the researchers as to whether snus has, in fact, played a role in reducing smoking in Sweden.

#### INDUSTRY DENIALS OF HARMS OF SMOKELESS TOBACCO

Despite all the evidence of the harms of smokeless tobacco, in April 1999, a spokesperson for UST, quoted in the Providence Journal, claimed that it has not been "scientifically established" that smokeless tobacco is "a cause of oral cancer." The Rhode Island Attorney General subsequently filed a legal action against U.S. Tobacco for violating the multistate settlement agreement's provisions prohibiting false statements about the health effects of tobacco products. As a result, UST was required to formally acknowledge that the Surgeon General and other public health authorities have concluded that smokeless tobacco is addictive and can cause oral cancer and to pay \$15,000 to the Attorney General's office for efforts to prevent Rhode Island youths from using tobacco.

On February 5, 2002, in a letter to the U.S. Federal Trade Commission seeking an advisory opinion to make statements in its advertising that smokeless tobacco products are safe alternatives to cigarettes, UST concluded that, "... it is USSTC's position that smokeless tobacco has not been shown to be a cause of any human disease [emphasis added]."

#### SMOKELESS TOBACCO A "GATEWAY" TO OTHER DRUGS?

High school students who use smokeless tobacco 20 to 30 days per month are nearly four times more likely to currently use marijuana than nonusers, almost three times more likely to ever use cocaine, and nearly three times more likely to ever use inhalants to get high. In addition, heavy users of smokeless tobacco are almost 16 times more likely than nonusers are to currently consume alcohol, as well.

A recent study in the American Journal of Preventive Medicine found that "snuff use may be a gateway form of nicotine dosing among males in the United States that may lead to subsequent cigarette smoking." Further, the study found that "the prevalence of smoking was substantially higher among men who had quit using snuff than among those who had never used snuff, suggesting that more than 40 percent of men who had been snuff users continued or initiated smoking."

#### TYPES OF SPIT TOBACCO

Oral (moist) snuff is a finely cut, processed tobacco, which the user places between the cheek and gum, that releases nicotine which, in turn, is absorbed by the membranes of the mouth.

Looseleaf chewing tobacco is stripped and processed cigar-type tobacco leaves that are loosely packed to form small strips. It is often sold in a foil-lined pouch and usually treated with sugar or licorice.

Plug chewing tobacco consists of small, oblong blocks of semi-soft chewing tobacco

that often contain sweeteners and other flavoring agents.

Nasal snuff is a fine tobacco powder that is sniffed into the nostrils. Flavorings may be added during fermentation, and perfumes may be added after grinding.

#### USSTC SPIT TOBACCO PRODUCTS

*Split Tobacco Is Harmful:* The Surgeon General, the National Cancer Institute and numerous other scientific bodies have determined that there is conclusive evidence that the use of the spit tobacco products sold in the United States, also known as smokeless tobacco, increases the risk of serious disease, including oral cancer. This conclusion is as true today as when Congress mandated health warnings on all spit tobacco products in 1986. This is not surprising because 28 cancer-causing chemicals have been found in these products. Spit tobacco is not a safe alternative to smoking. Despite this and a 1999 agreement with the Rhode Island Attorney General by U.S. Tobacco Company (the parent company of U.S. Smokeless Tobacco Company or USSTC) not to make statements "to any news media . . . to the effect that any of its tobacco products do not cause or have not been proven to cause adverse health consequences . . ." USSTC claimed in a 2002 letter to the Federal Trade Commission (FTC) "smokeless tobacco has not been shown to be a cause of any human disease."

*Spit Tobacco and Its Marketing Should Be Regulated by a Science-Based, Health Agency:* USSTC wants government approval for it to market its products as less hazardous than cigarettes without any additional control over its marketing or its products. Unless the U.S. Food and Drug Administration (FDA) is first given meaningful authority over spit tobacco products, including the authority to oversee the content, manufacture, sale, and marketing of spit tobacco, this request will only increase the harm caused by tobacco. Why is this so? Absent such regulation, marketing by USSTC of its products as less hazardous is likely to result in the following:

It will attract new young users to use spit tobacco by communicating that it does not pose a serious risk. This is precisely what happened twenty years ago when USSTC used similar messages as part of a marketing campaign that led to an explosive growth in youth spit tobacco use; and

It may discourage some smokers from quitting by misleading them to believe that smokeless tobacco products offer a safe alternative to quitting.

In addition, in the absence of FDA regulation there are no manufacturing standards governing these products or their relative safety. This is especially important because tests have shown extremely wide variations in levels of toxins in spit tobacco products across brands in the United States as well as across the same brands over their shelf life.

*USSTC Markets Its Products To Youth:* USSTC has a long history of marketing its products to youth through the development of starter products (pouches, long cut, etc.), the addition of flavorings (cherry, mint), and the strategy of graduating users from entry products to stronger ones. In fact, it is the company most responsible for turning spit tobacco from a product used primarily by old men and women to one used by young people. Despite the restrictions placed on youth advertising by the Smokeless Tobacco Master Settlement Agreement, the U.S. Tobacco Company (UST) has continued to heavily advertise in youth-oriented magazines. For the period 1997-2001, UST's expenditures in youth magazines increased from \$3.6 million to \$9.4 million, a 161% increase. Without regulation of the way its harm reduction claims are

marketed, there is absolutely no reason to believe that their marketing will lead to anything other than an overall greater use of tobacco products, with the attendant harm on public health.

*Comparing USSTC Products to Swedish Snus Is Like Comparing Apples To Ants:* USSTC likes to compare its efforts to those of Snus in Sweden and to claim that its products can be an effective harm reduction strategy. The differences in the Swedish and U.S. products and the differences in the Swedish and U.S. regulatory environments render this comparison ludicrous. Any gains that might have been achieved by Snus in Sweden have been accomplished with a product that is many times lower in cancer-causing nitrosamines and other toxic substances than the USSTC products sold in the US. Sweden also carefully regulates spit tobacco products and their marketing. To prevent marketing claims from making these products more attractive to non-users, Sweden prohibits ANY advertising of the product and prohibits the kinds of claims USSTC wants to make here. There is every reason to believe that operating in an unregulated environment, a company such as USSTC, with its long history of employing every possible marketing avenue to attract youth, would only use health claims to further expand its market, especially among youth.

*USSTC Should Support FDA Regulation of Tobacco As The Solution:* If USSTC is serious about reducing the harm caused by tobacco, and about assuring that the marketing of its products as less hazardous contributes to improvement in public health, it would support the effective regulation of tobacco products by the FDA as outlined by the major public health groups. Less hazardous, nicotine-replacement therapies are regulated by the FDA. Why should the manufacturers of spit tobacco products, attempting to make similar health claims, be treated any differently? Only regulation of spit tobacco products by a qualified, science-based agency like the FDA can assure that health claims for spit tobacco are accurate, appropriate and protect public health.

U.S. SMOKELESS TOBACCO CO.,  
Greenwich, CT, May 23, 2003.

Hon. HENRY A. WAXMAN,  
Ranking Minority Member, Committee on Government Reform, House of Representatives,  
Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: I read with interest your "Dear Colleague" letter dated April 28, 2003, regarding smokeless tobacco in the context of tobacco harm reduction and the attached documents from the Campaign for Tobacco-Free Kids, portions of which are referenced in your letter. There appears to be widespread agreement in the public health community regarding your observation that "with cigarette smoking responsible for more than 400,000 deaths in the United States each year, there is reason to consider nonconventional strategies to save lives." As you are aware, one such "non-conventional strategy" increasingly discussed in the public health community is that cigarette smokers who do not quit and do not use medicinal nicotine products should switch completely to smokeless tobacco products.

The debate regarding tobacco harm reduction and the role of smokeless tobacco products as part of that effort is at a crossroads. U.S. Smokeless Tobacco Company ("USSTC") has been actively and constructively engaged in discussing the merits of that issue. Unfortunately, the Campaign of Tobacco-Free Kids does not seem interested in discussing the merits of communicating to adult cigarette smokers that smokeless

tobacco is a significantly reduced risk alternative to cigarette smoking. Rather, the Campaign for Tobacco-Free Kids disseminates documents of the type attached to your letter that have little relevance to the issue at hand, but contain numerous statements that are inaccurate or misleading. Several of those statements relating directly to USSTC require a response.

The Campaign for Tobacco-Free Kids' central allegation is that USSTC has engaged in "strategies to hook kids" on smokeless tobacco products. In particular, the Campaign for Tobacco-Free Kids alleges that USSTC (i) employed a "graduation strategy" for hooking new smokeless tobacco users, which means kids," (ii) added cherry flavoring to Skoal Long Cut in 1993 in order to appeal to underage youth (iii) "marketed to youth through a number of channels including sports events like auto racing and rodeos that are widely attended by kids," and (iv) places "smokeless tobacco ads in magazines with high youth readership, such as Sports Illustrated and Rolling Stone.

The allegation that USSTC engages in "strategies to hook kids" could not be further from the truth. USSTC has made clear its commitment to market its smokeless tobacco products only to adults. For example, USSTC is the only smokeless tobacco company to enter into the Smokeless Tobacco Master Settlement Agreement ("STMSA") with the Attorneys General of 45 states and various territories. As a result, USSTC is supporting programs to reduce youth usage of tobacco, and has agreed to limitations on its advertising and marketing efforts that might be attractive, in the view of the Attorneys General, to underage potential consumers of smokeless tobacco, even though USSTC's competitors have agreed to no such restrictions.

*"Graduation Strategy" Allegations:* USSTC does not employ any marketing strategy based upon a theory that consumers can be enticed to begin using "beginner strength" smokeless tobacco products, and subsequently be caused to "graduate" to smokeless tobacco products that are "stronger" or "more potent." Any suggestion that USSTC's line of products is developed based upon "graduating" levels of "strength" or "potency" is not true. Smokeless tobacco consumers remain loyal to a single brand or switch among a variety of brands according to their preference for flavor, cut of tobacco, form and packaging. Moreover, there is no set pattern of brand switching among smokeless tobacco consumers. They do not conform to any so-called "graduation strategy."

Company documents from the early 1980s reflect that there were discussions among some at the Company about a "graduation process," "hypothesis" or "theory." While the term "graduation process" apparently meant different things to different people, the theory seems to have been an attempt by some to provide a shorthand explanation for consumer behavior in switching between brands of smokeless tobacco, including between the Company's own brands. The term "graduation process" as used in the early 1980s: (i) did not relate to marketing to youth, (ii) did not drive the Company's marketing strategies, and (iii) is contradicted by consumer behavior in the marketplace.

*Cherry Flavoring:* The suggestion that cherry flavored Skoal Long Cut was designed to appeal to underage youth is baseless. Cherry flavored tobacco products have been on the market since 1910. Since then, there have been dozens of brands of cigars, chewing tobacco, pipe and other smoking tobacco products with cherry flavor marketed to adults. The use of cherry flavor tobacco products is not surprising. Many products marketed for adults, such as Maalox, Alka-Seltzer and

Tums, are available in cherry flavor because of its appeal to those adults.

*Sponsorship of Professional Motorsports and Rodeos:* As noted above, an underlying purpose of the STMSA contains a comprehensive array of restrictions that substantially limit the Company's activities with respect to marketing its smokeless tobacco products. Among other restrictions USSTC has agreed that it will not engage in brand name sponsorships of concerts, events in which youth comprise a significant portion of the audience, events in which youth are paid participants or contestants, football, soccer, basketball and hockey. USSTC's sponsorship of professional motorsports and rodeos is part of the Company's efforts to promote its products to adult consumers and is wholly appropriate under the terms of the STMSA.

*Magazine Ads:* As the Campaign for Tobacco-Free Kids is fully aware, USSTC does not currently advertise in *Sports Illustrated* or *Rolling Stone*. On June 7, 2002, USSTC announced that in order to leave no doubt that its marketing program is oriented to adults and adults only, it would suspend advertising in a small number of magazines while it reviewed concerns regarding possible youth readership, even though the overwhelming majority of readers of those magazines were adults. The magazines involved were *Sports Illustrated*, *Hot Rod*, *Motor Trend* and *sporting News*. USSTC stopped advertising in *Rolling Stone* in 2001.

USSTC appreciates your interest in this important public health issue, and looks forward to continuing its participation in the debate regarding tobacco harm reduction and the potential role of smokeless tobacco.

Sincerely,

RICHARD H. VERHEIJ.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,

Washington, DC, June 3, 2003.

Hon. W.J. (BILLY) TAUZIN,  
Chairman, Committee on Energy and Commerce,  
House of Representatives, Rayburn House  
Office Building, Washington, DC.

DEAR MR. CHAIRMAN: You may have recently received a copy of a May 23, 2003, letter from U.S. Smokeless Tobacco Company (UST) in connection with today's hearings on "reduced risk" tobacco products. As you consider this letter, you should know that it is deceptive on important issues.

The UST letter was written in response to a "Dear Colleague" letter that I wrote on April 28, 2003. My Dear Colleague made two major points: (1) that public health authorities have concluded that "reduced risk" claims for tobacco products should be made only in the context of strict regulatory oversight and (2) that the need for regulatory oversight of such claims is underscored by UST's history of untrustworthy marketing. The Dear Colleague attached two fact sheets from the Campaign for Tobacco Free Kids. The fact sheets detailed UST's use of a "graduation strategy" to hook young users on low-nicotine products and then "graduate" them to higher-nicotine products. They also described the company's strategy of appealing to children through the use of cherry flavoring in its "starter" products.

In its May 23 response, UST dismisses the allegation that the company "has engaged in strategies to hook kids" as "inaccurate or misleading." UST claims that it does not and has never used a "graduation strategy," certainly not one related to marketing to youth. UST also rejects as "baseless" the suggestion that its cherry-flavored products were designed to appeal to children.

Since receiving UST's May 23 letter, I have obtained copies of internal company documents that validate the points made in my Dear Colleague and conflict with the asser-

tions in UST's letter. These documents show that the company planned a "graduation strategy" starting with "young" consumers, that the company has long known that flavoring in smokeless tobacco products appeals to young smokeless tobacco users, and that UST deliberately adds flavoring to "starter products." The documents also indicate that UST marketed its products to children as young as 13 or 14. Copies of these previously undisclosed documents are enclosed with this letter.

These documents and UST's response are relevant to the Committee's consideration of UST's request for permission to market smokeless tobacco as safer than cigarettes. While UST may say that it would never abuse authority to make "reduced risk" claims, the company's past practices—and its recent correspondence denying these practices—call the company's veracity seriously into question.

#### UST'S GRADUATION STRATEGY

UST states that it never employed a "graduation strategy" in marketing its tobacco products and that any documents from officials at the company discussing the strategy merely reflected a "hypothesis," "did not relate to marketing to youth," and "did not drive the Company's marketing strategies."

This claim is difficult to believe in light of the documents that I have obtained. The documents show definitively that a graduation strategy aimed at youth was in fact the company's goal and that implementing this strategy was the objective of the highest-ranking officials in the company. In particular, a 1980 memo from the Senior Vice President for Marketing and Sales to the Chairman of the Board and President of UST sets forth two of the company's marketing "objectives" as follows:

Introduce an easy-to-use, "starter" product; and

Provide new users with an easy graduation process.

That this graduation process is aimed at young customers is expressly stated later in the document. A chart labeled "Marketing Action/Staging," which includes specific dates for implementation of each action as early as two months from the date of the memo, reads as follows:

Brand/segment	Objective
Ball'n Chew Wintergreen Plastic Can	Introduce easy to use, "starter" product to increase consumer base, especially among the young.
Skoal Straight Plastic Can .....	Introduce line extension to support "natural vertical" graduation process.

This document also contains a chart, entitled "Product Development and Positioning," that depicts "young, newer" "light" users at the bottom of a continuum that ends in "older, confirmed" "heavy" users. Marching up this continuum are the company's smokeless products, with the lightest products at the bottom and the strongest products at the top.

#### USE OF FLAVORED PRODUCTS TO APPEAL TO YOUTH

UST claims that cherry flavoring is common in adult products like Maalox and Tums and therefore that there is no basis to believe that the company used sweet flavors to appeal to children. But the company had clear understanding that favors appeal to young users and not to adults. In the document quoted above, the Senior Vice President for Marketing and Sales states the following "assumptions":

#### ASSUMPTIONS:

Younger and lighter users prefer a favor, not a natural.

Older and heavier users prefer real tobacco taste and strength.

Happy Days [a lighter product] can be a better brand and better "graduato[r]" with a change in favor.

#### UST'S MARKETING TO CHILDREN

Another document indicates that the UST's sales force marketed to children as young as 13 or 14. A memo from a regional sales manager to UST's National Sales Manager describes the effect of a competing product on sales of UST products. The memo states that retailers report that Hawken, a product from a UST competitor: "is being used by young kids and young adults. The age of the kids is from 9 years old and up. I believe this to be true because outlets located close to schools (all grades) are definitely the heavier Hawken outlets we visited. . . . Also, the people who knew about mouth tobaccos felt the sweet taste was a definite factor with the kids."

This memo goes on to say that Hawken "has reached kids four or five years earlier than we have contacted them in the past." Because the memo is describing a product being used by 9-year-olds, the clear indication is that UST was marketing to kids of 13 or 14 years.

#### CONCLUSION

As we consider UST's desire to market its products as safer than cigarettes, we must keep in mind both the company's marketing history and its continuing deceptions. Essentially, UST is asking Congress to trust that the company will make responsible claims about its products. But it is hard to see how such trust is warranted given the company's track record. Certainly, the company should not be permitted to make "reduced risk" claims about its products without strict regulatory oversight.

Sincerely,

HENRY A. WAXMAN,  
Ranking Minority Member.

Enclosures (2).

U.S. TOBACCO INTRA-COMPANY  
CORRESPONDENCE

JANUARY 4, 1980.

From: Barry J. Nova, Sr., Vice President  
Marketing and Sales.

To: Louis P. Bantle, Chairman of the Board  
and President.

Subject: "Moist" Development.

U.S. Tobacco has "made" the market in moist smokeless tobacco; a segment that remains in the early stages of growth on a product life cycle graph. We must continue to "lead" the category in order to:

Enlarge our consumer base;

Preempt probable competition; and

Maintain corporate growth and profit.

A recent document from Peter directed itself to "product leadership"; to the methods of ascertaining the right products in the right positions to meet potential user needs. While some of the choices and recommendations might be questioned, it is not the intent of the writer to mark down a good beginning. Rather, in conjunction with those carbonated above it is the purpose of this memorandum to further define marketing action needed to meet the following objectives:

Introduce an easy-to-use, "starter" product;

Provide new users with an easy graduation process;

Develop better packaging; and

Maintain a simplicity in the product line.

#### Easy graduation process

There are two "leaders" extant in today's marketplace: Skoal, with a wintergreen flavor; and Copenhagen, with a more natural tobacco taste. While Skoal is the biggest

seller, reasonable percentage growth is still apparent in the Copenhagen brand; and both continue to outpace Happy Days (mint)—where about 20% of current poundage is samples—on a poundage growth basis.

In addition, two other “natural” brands continue to show strength with very limited promotional support—W B Cut and Key.

Simply, then, we should concentrate on the two proven areas of acceptability—Wintergreen and Natural; and build vertically in these two flavors, permitting the consumer to “move-up” or strengthen his pleasure in a taste that he is used to and comfortable with. Even our new loose leaf chew would fit comfortably in the pattern.

And while we do feel that mint/spearmint is an acceptable American flavoring in food and gums, it has not yet been completely proven as a tobacco additive; and a triple flavor track rather than a vertical duality would be too complex now.

*Simplified product line*

We cannot, and should not, attempt to be “all things to all people” now. After all, it must be remembered that we are just beginning to tap the market’s potential, and that the brands we sell, in most cases, seem to meet a need or a want. To proliferate many new products/line extensions might very well cause:

Confusion among potential new users as to where to begin and with what.

Confusion among current users regarding what to move to; possibly creating no new business, just a transfer of business intra-line.

Problems in media promotion: difficulty in creating strong, separate positioning statements; lack of frequency to explain all various elements.

Trade dismay and lack of support. Moist has been “welcomed” by the trade, but for the next four to five years we will not be at the point where we can demand two to three times the warehouse or retail shelf space that we now enjoy. To try to put out a myriad of products is to run the severe risk of alienating a carefully built trade rapport based on good sales from consumer demand, as well as inviting an ever-increasing damaged goods problem.

*“Easy-to-use” starter product development and intro*

This must be our priority niche at present, for obvious reasons:

Expansion demands a continually enlarging new user base.

“Floating” and saliva build-up are still negatives to the “beginner”.

Most readily available entry segment for competition on both a product development basis and ratio of pay-back to investment. (And who is to say that a so-called “starter” product cannot carve-out, in part, its own on-going user base.)

Happy Days, because of some difficulty in use and apparent ill-defined flavor, may not be the best effort we can make for “starters”. It can be improved, and then perhaps, could be positioned as part of the “regular” line.

Good Luck, a technological advance in packaging rather than a break through in taste, is selling reasonably well in most test areas; but requires better flavor and a final, true evaluation before capital is expended on additional machinery.

Our new, shag cut, “balling” smokeless brand (whether it is truly “balled” or just flattened between the fingers) is the one that “gut” feelings tell us can be the most successful entry. It is easy to use. Saliva build-up is minimal. It takes flavoring well. Raw materials are available. Production methods have been proven. A machine to pack both it and W B Cut could be ready by the fourth quarter of ‘80. However, only thorough testing of the concept will prove its validity.

*Better packaging*

The general view is that the plastic can would be a positive packaging step:

- Lower manufacturing costs;
- Decreases freight costs;
- Easier to open;
- Stands-up better in the wearing;
- Adaptable to holding lesser amounts of tobacco; and
- May keep product fresher, longer.

A small amount of research done in our overseas market, coupled with some results from Hawken testing in Jonesboro indicate good consumer acceptance for the plastic container. And it is understood that both Happy Days and Skoal can be packed this way now, without any loss in product quality.

However, we can visualize the possibility of some problems that might occur:

Consumer perception that change in package means a change in formula and flavor. Panel testing can prove or disprove this.

Keeping the product fresher, longer could negate the “built-in obsolescence” in the present container, thereby lessening poundage. Still, good users might just use more because it is fresher. The answer might be gotten through focus groups.

Finally, one important facet of plastic packaging—its adaptability—needs further

commentary regarding how important it could become in creating new users and meeting competitive pressure.

*Supposition and strategy*

New users “pinch” less often and will use less tobacco per “dip”: Build up bottom of plastic can—without changing height and circumference—in order to pack a “full” lower weight in a “starter” product; i.e. .6 ounces.

Pricing can be a determinant to trial; and may well be used as a competitive advantage: Lower price on “starter” brands to increase trial, lower sampling costs, and preempt competitive, “low ball” pricing, for example:

Present can price: UST, 42¢; Jobber, 52¢; Retail, 65¢ (packing half as much tobacco may save 20% or more while maintaining margins).

“Reduced” can price: UST, 33¢; Jobber, 41¢; Retail, 50¢.

Possible result: More new users, happy with a “fair” entry price, unconcerned with lesser amounts of product, who can be graduated to one of our “regular” products at a “regular” price (and may want to “move” there faster since 1.2 ounces at 65¢ is a better “deal”) . . . and competitors who probably will have to cut their own margins to find a price point entry meaningfully below ours.

The foregoing discussions point the way to the recommendations included on the Product Development and Positioning Chart that follows; after which a Marketing Action Staging form indicates the H&D, research and market testing required to prove their viability.

*Product development and positioning vertical duality*

*Assumptions:*

Younger and lighter users prefer a flavor, not a “natural”.

Older and heavier users prefer real tobacco taste and strength.

Skoal is our largest selling and fastest growing product (and best known); all “starter” products should acquaint people with its taste.

Copenhagen is our second largest selling product and its growth could improve with a lead-in from a “natural” line extension, whose name and blend have proven themselves.

Happy Days can be a better brand and a better “graduator” with a change in flavor.

The “top of the line”—W B—may yet be our fastest growing product and deserves a place in both “verticals”.

MARKETING ACTION

[Staging]

Brand/Segment	Objective	Manufacture/develop period	Reserch period	Test market/period	Roll-out/period
Ball'n Chew Wintergreen/Plastic Can ..	Introduce easy-to-use, “starter” product, to increase consumer base especially among the young.	Blend and flavor—2/80. Hand pack for research—3/80; Hand pack for test markets—8-12/80; Develop machine packing by 1/81; Name and label development—3/80.	Taste test with new Happy Days user panel, vs. Good Luck and Hawken. In addition, test in potential user focus groups vs. Good Luck, Hawken and Happy Days 4/80 thru 8/80.	4 Markets: 2 control w/media; 2 reduced price and weight w/media 9/80 thru 12/80.	By region, with promotional support, during 1981.
Good Luck Wintermint/Plastic Can .....	Change to a new taste. Evaluate “bag” concept in terms of future sales potential and machine needs.	Blend and flavor—3/80. Full production—6/80. Prototype machinery—9/80.	Taste test with user panel—new vs. present product, also gather user profile and concept acceptance data—3/80-6/80. Audit selected outlets in current areas to determine future national volume.	Current areas utilizing present production capacity fully.	By region as machinery becomes available.
Skoal Straight Plastic Can .....	Introduce line extension to support “natural vertical” graduation process.	Utilize existing Key blend, and change label—3/80.	Audit in test markets at retail and wholesale to ascertain new sales growth vs. “pull down” from existing brands. 4/80 thru 9/80.	4 Markets: 2 Copenhagen areas, one with local adv.; 2 Skoal Areas, one with local adv. 4/80 thru 9/80.	National, supported by “. . . Skoal, and new Skoal Straight” network TV spot
Happy Days Wintermint/Plastic Can ....	Change to a new taste and evaluate with current users.	Blend and flavor—3/80. Full production—7/80.	Taste test—existing vs. new—with large Happy Days user panel. 5/80-7/80.	None .....	National distribution—8/80.
W B Cut Wintergreen/Pouch .....	Introduce line extension to create a “top-of-the-line” duality.	Blend and flavor—5/80. Packing machinery developed and full production by 1/81.	Taste test in panel of W B Cut users. 6/80-10/80.	None .....	Region by region distribution only after further acceptance of natural brand is accomplished. 1/81 thru 12/81.

## MARKETING ACTION—Continued

[Staging]

Brand/Segment	Objective	Manufacture/develop period	Reserch period	Test market/period	Roll-out/period
Plastic Packaging .....	Evaluate consumer acceptance of plastic can concept.	Label development—4/80. Possible new can colorations—4/80.	Full, large panel test for Happy Days with Happy Days users—5/80–9/80. Full, large panel test for Skoal with Skoal users—5/80–9/80. Results should be at least 95 percent positive.	None .....	National distribution beginning—1/81.
Stetson Natural/Wintergreen Pouch .....	Introduce a loose leaf chewing entry point toward capture of 10 percent of market in three years.	Per T. Cornell: Blend and flavor—2/80. Samples production—3/80. Production for test markets—7/80–1/81. Full production 2/81.	Full, loose leaf user panel tests—Stetson vs. Levi Garrett, Red Man, Beechnut 4/80–7/80: Name and package design perception testing in 2 focus groups, 4/80–7/80; Audit at wholesale and retail to determine movement and growth vs. competition.	8 test markets conducted in strong loose leaf areas: 2 Stetson natural—lower media; 2 Stetson natural—higher media; 2 Stetson wintergreen—lower media; 2 Stetson wintergreen—higher media 8/20–2/81.	National distribution 3/81–6/81: supported by national—media effort.

U.S. TOBACCO INTRA-COMPANY  
CORRESPONDENCE

JANUARY 21, 1980.

FROM: A. E. Cameron, Regional Sales Manager.

TO: Mr. R. R. Marconi, National Sales Manager.

Re: Hawken review.

Tuesday and Wednesday was spent in the tri-city area (Briston, Tennessee; Bristol, Virginia; and Johnson City, Tennessee) in an attempt to further evaluate Conwood's new item "Hawken". I spent this time working with Mr. C. E. Jordan, division manager. *Factual* information was hard to come by in some of the areas; however, I will attempt to cover what we found from consumers, retailers, and distributors.

*Consumers*

We were only able to actually discuss Hawken with two consumers who have used the brand for any length of time. One of these was a convenience store manager (male about 55 years old). This man was supplied with samples on a regular basis for at least four to five weeks. By this time he had developed a taste for Hawken and now believes the flavor and taste last longer than SKOAL, the brand he used before Hawken. The second consumer was a 12 year old male and his mother. He stated, and it was confirmed by his mother, that all other brands of mouth tobacco he had tried to use would make him sick. This included SKOAL, HAPPY DAYS MINT, and several brands of scrap. He felt the cause with SKOAL and HAPPY DAYS MINT was the brands were too hard to use, he could never keep them together. Scrap produced too much juice and he swallowed too much. He also felt Hawken's flavor lasted longer. A very interesting observation—his mother was delighted he had finally found a mouth tobacco he could use. During my questioning of this lady, it was clearly evident that she believes mouth tobacco is the least harmful of many habits her son could develop; therefore, she openly encourages him to chew. The price made no difference to these two consumers.

*Retailers*

While contacting most of the retailers we have had on the "Tracking Program", we could only find two who definitely believe Hawken is still increasing in sales. All others state the brand has peaked and most report a decline in sales. Every retailer stated that SKOAL definitely was hurt the worst; however, they all state that SKOAL is coming back and is either at, or close to its previous sales level. They all report consumers of all ages are buying Hawken. Also, all type of consumers are using Hawken. These retailers all agree that the majority of Hawken is being used by young kids and young adults. The age of the kids is from 9 years old and up. I believe this to be true because outlets located close to schools (all grades) are definitely the heavier Hawken outlets we visited. Several retailers indicated that price

was a factor with the young kids. Also, the people who knew about mouth tobaccos felt the sweet tests was a definite factor with the kids. No retailer expressed any problem with the lower price of Hawken. They all state their mark-up is the same percentage as on SKOAL and other tobaccos.

*Distributors*

Distributors all state that they did no more on Hawken than any other new item. They all report that the brand has peaked and they are seeing declines. No distributor indicated any promotional activity was planned for Hawken.

As you can see, all levels are pointing the same way on Hawken. I believe the brand has hurt SKOAL and HAPPY DAYS MINT as much as it is going to. Figures prove Hawken killed our increase on SKOAL (30 percent); and at this point, we are showing about 9 percent decrease in sales where Hawken is available. At one point, our loss was well over 20 percent. This has turned around and I believe SKOAL will be back to a break-even point within the next few weeks. I feel by the end of the next three-month tracking period, our increase will be back to normal. I am not at all sure our increase won't be greater than ever. It definitely is a fact that Hawken has brought a lot of new consumers into the mouth tobacco market. I think this brand has reached kids four or five years earlier than we have contacted them in the past. Indications are that some of these new users are moving up to a stronger brand. Also, indications are that some older consumers are moving from Hawken back to the brands they were using before, and some consumers have begun mixing Hawken with SKOAL and Levi Scrap. If these trends continue, Hawken may prove to be a very good starter product for SKOAL.

I am convinced we must continue our tracking of Hawken for at least another three months before our questions can be answered. However, all figures indicate Hawken, when introduced in a new market, will kill our increase on SKOAL and, in fact, cause a 10 to 20 percent loss for the first three months.

Our field personnel will continue to supply all information possible on Hawken.

IN SPECIAL RECOGNITION OF ALEXANDER M. HUBER ON HIS APPOINTMENT TO ATTEND THE UNITED STATES MERCHANT MARINE ACADEMY

**HON. PAUL E. GILLMOR**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 4, 2003*

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young man from Ohio's Fifth Congressional District. I

am happy to announce that Alexander M. Huber of Milan, Ohio, has been offered an appointment to attend the United States Merchant Marine Academy.

Mr. Speaker, Alexander's offer of appointment poises him to attend the United States Merchant Marine Academy this fall with the incoming cadet class of 2007. Attending one of our Nation's military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Alexander brings a special mix of leadership, service, dedication to the incoming class of Merchant Marine Academy cadets. While attending Edison High School, Milan, Ohio, Alexander has attained a grade point average of 3.942 which places him 7th in his class of 129 students. During his time at Edison High School, Alexander has received several commendations for his superior scholastic efforts. Alexander's accomplishments include being on the honor roll for all four years, being awarded the Student of the Quarter for Business, recipient of the Mathematics Award, student of the quarter award for Science, and recipient of the Scholarship Pin. Aside from his accomplishments Alexander also participated in the National Honor Society, the Math Club, and the Spanish Club.

Outside the classroom, Alexander has distinguished himself as an excellent student-athlete and dedicated citizen of Milan. On the fields of friendly strife, Alexander has participated in Soccer, Tennis, and Weight Lifting. In addition to his athletic accomplishments, Alexander is an active member in his community participating in National Youth Leadership Conference and Boys State.

Mr. Speaker, I would ask my colleagues to stand and join me in paying special tribute to Alexander M. Huber. Our service academies offer the finest education and military training available anywhere in the world. I am sure that Alexander will do very well during his career at United States Merchant Marine Academy and I wish him the very best in all of his future endeavors.

IN SPECIAL RECOGNITION OF NATHAN A. STEIN ON HIS APPOINTMENT TO ATTEND THE UNITED STATES NAVAL ACADEMY

**HON. PAUL E. GILLMOR**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 4, 2003*

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young