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COVER ESSAY

Thailand: winning battles, but the war's far from over

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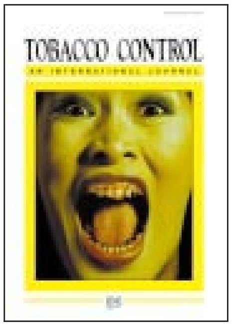

Despite the financial constraints put on anti-smoking activities, and the considerable government revenue generated by the state owned Thailand Tobacco Monopoly (TTM) and from tobacco import duties tobacco, Thailand has been able to restrain the tobacco industry's activities and maintain falling smoking prevalence (table 1). Restrictive legislation enacted in 1992 banned tobacco advertising in all media and smoking in a large number of public places. Taxation is high at 71.5% of retail price, and both public knowledge of tobacco issues and support for tobacco control efforts are high. The Thai government has an office on smoking and there is an active non-government sector that has successfully broadened the anti-smoking movement to many different groups in the community.

Looking back

NATIONALISATION OF THE TTM AND BANNING FOREIGN IMPORTS

Shortly before the second world war, British American Tobacco (BAT) began operating in Thailand, competing against small local tobacco companies. This period saw an increase in cigarette production throughout the region as new manufacturing techniques made cigarette production cheaper and faster. BAT was forced to sell its factory to the Thai government during the war, following the Japanese occupation. After the acquisition, the Thai government created the TTM and placed it under the supervision of the Ministry of Finance. In 1943, the Tobacco Monopoly Act was enacted making cigarette production a state monopoly, and thus the TTM became the sole legal manufacturer and importer of commercial cigarettes in Thailand. This situation continued until 1991.

During more than 30 years of operation, the TTM was not much more than a small inefficient government department which produced low quality cigarettes but did nothing to try and raise demand. Despite no identifiable anti-tobacco movement, Thailand experienced declining smoking prevalence throughout the 1970s and 1980s.

Table 1 Smoking prevalence in Thailand, 1986 to 1999 (age 11+ years)

	1986	*1988*	*1991*	*1993*	*1996*	*1999*
Female	4.1	3.8	3.8	2.5	2.5	2.4
Male	48.8	48.9	46.6	43.2	44.5	38.4

Source: The three yearly *Report of the Health and Welfare Survey*, National Statistics Office

RISE OF TRANSNATIONAL TOBACCO COMPANIES

The 1980s altered what may have seen a gradual disappearance of smoking in Thailand. US and UK tobacco companies had become large, wealthy, and politically influential. Their overseas markets were a growing concern and Asia, with its high smoking rates and burgeoning "tiger" economies, was seen as a prime target for market expansion. But at the time several countries, including Thailand, excluded foreign tobacco companies from local markets. The US tobacco multinationals united to form the United States Cigarette Exporting Association (USCEA) to force these markets open.

In 1985, the transnational tobacco companies (TTCs), in preparation for the anticipated opening of the Thai cigarette market, flooded Thailand with advertisements for their products. The TTM, who previously had not advertised, started to try and compete with the TTCs. Alarmed at this development, in 1986 a committee of non-governmental organisations formed the Thai Anti-Smoking Campaign Project (TASCP), to coordinate the country's smoking control activities. The TASCP's primary function was to pressure the Thai government to introduce smoking control measures, particularly to put a stop to the ongoing advertising war between the TTCs and the TTM. The Thai government responded to pressure by TASCP and others by including tobacco in the dangerous products category under the Consumer Protection Act, effectively banning all forms of cigarette advertising in February 1989, but problems continued with TTCs constantly breaching the ban.

The TTCs initially tried to negotiate directly with the Thai government, but strong opposition from TTM saw the negotiations fail repeatedly. The USCEA finally approached the US trade representative to take up their petition. The announcement in May 1989 that the US trade representative would use section 301 of the US Trade Act to pressure Thailand to open its cigarette market united the Thai health groups, galvanised the media, and garnered support from anti-smoking advocates worldwide, including the American Cancer Society, the Coalition on Smoking and Health, the Asia Pacific Association for the Control of

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Figure 1 Examples of Thai health promotion posters (also cover picture)

Tobacco (APACT), the Union International Contre le Cancer (UICC), the World Health Organization, and others. Their activities built public support in both Thailand and the US against the US trade representative using section 301 to coerce the Thai government to open its market.

DISPUTE REFERRED TO GATT

Bilateral negotiations between Thailand and the US failed to resolve the dispute because the US based TTCs requested that Thailand repeal its law banning tobacco advertising, and wanted Thailand to exempt tobacco from import duty, similar to deals struck in other Asian markets also opened using section 301. Owing to public pressure on the US trade representative, the case was referred to the General Agreement on Tariffs and Trade (GATT)—now the World Trade Organisation—for dispute settlement. This case was the first cigarette trade dispute which went before the GATT panel, and its outcome would set an important precedent for future tobacco trade.

During the case Thailand stressed the unique nature of tobacco products and used the GATT preamble as the basis of its argument. Thailand claimed that the production and consumption of tobacco undermined the very objectives of GATT, which aimed to: “raise the standard of living; ensure full employment and a large and steadily growing volume of real income and effective demand; develop the full use of the resources of the world; and expand the production and exchange of goods.”

Thailand stressed that increased competition in cigarette trade would result in increased consumption, more sickness, and premature deaths. The WHO made submissions and sent representatives to appear before the GATT panel in support of Thailand’s position.

In adjudicating the case, the GATT panel accepted that smoking constituted a serious risk to human health, but ruled that Thailand’s import ban was not justified. However, it also said that Thailand could maintain the law banning advertising and promotion and could introduce other tobacco control measures as long as they were applied to domestic and imported products equally. In line with this decision the Thai government lifted the import ban in 1990 and legal exports of cigarettes to Thailand commenced in 1991.

TOBACCO CONTROL LEGISLATION INTRODUCED

Immediately after the Thai market was pried open the TTCs began efforts to block the incoming legislation. However, people were still angry about the section 301 case and powerful public sentiment against the TTCs enabled the passing of two key pieces of legislation: the 1992 Tobacco Products Control Act and the 1992 Non-Smokers’ Health Protection Act, with no concessions given to the industry. While the industry had won the right to sell their products in Thailand, Thailand had proved in the GATT courts that they had a right to severely restrict the environment in which those sales could occur.

In subsequent years, health activists succeeded in further strengthening these laws via ministerial regulations. Warnings were strengthened in size and prominence, and smoke free areas were expanded. In 1995 tax on tobacco was raised from 55% to 60% of retail price, and has been increased annually ever since. In October 1999 the tax was raised again to 71.5%.

Looking forward: present dilemmas and future challenges

In the five years following the 1992 Acts the industry kept a comparatively low profile in Thailand. New situations called for new tactics and while the section 301 case succeeded in opening the Thai market, clearly further strong arm tactics so soon after the case would have received extremely negative press. During the mid to late 1990s the foreign tobacco industry introduced policy stealth to defeat Thai legislation. They continued backroom efforts to try and “delete, delay or diminish” the regulations emanating from the 1992 laws, and began efforts to gently undermine others.

This approach did not bring the increases in market share the foreign companies had anticipated. The ban on advertising, a weak distribution system, and high taxes had successfully kept their market share down. The 1997 "Asian crisis" offered a good opportunity for the industry to move more quickly to increase their activities and push the government to see what it could get away with.

From 1997, Thailand saw a significant escalation in product promotion, specifically shop-front and point-of-sale advertising. Tobacco companies started retailer incentive schemes and have been massively price discounting. They have continued their political manoeuvring and have been strategically placing themselves in the region to take advantage of the Association for South-East Asian Nations (ASEAN) free trade area. In many ways the year 2000 is seeing Thailand re-emerge as a battleground for the right to control tobacco and protect people's health from tobacco.

Despite claims to the contrary, foreign governments, particularly the US and Japan, have been aiding the tobacco industry in pushing their agenda in Thailand. A recent example of industry pressure being placed on Thailand with the help of their governments is the ingredient disclosure dispute.

The US government's role in supporting the tobacco industry is long and significant so health advocates where happily surprised when, in 1997, the US Congress passed the Doggett amendment which states in part "None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products at the same type."[1] And when, in early 1998, President Clinton issued a directive to US embassies to implement the law many began to feel that the US had finally come round. But in Thailand at least, it fell flat on its face at the first hurdle. Throughout 1998 and 1999 the US trade representative, along with other embassies, acted on the behalf of tobacco companies to lobby the Thai government to drop its cigarette ingredients disclosure regulation. This regulation had been approved in principle by the Thai Cabinet in May 1995, but its implementation had been constantly delayed owing to strong opposition from the TTCs aided by their respective governments.

Figure 2 Thailand was the first nation to introduce a pack warning about male sexual impotence

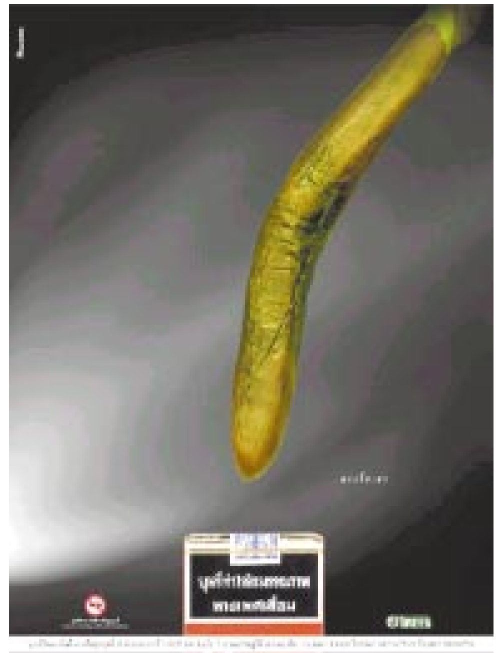

Figure 3 Efforts were made to publicise the new health warnings by distributing press ads and posters such as this one.

The ingredients disclosure dispute illustrated both the companies' unwillingness to accept tobacco control regulations, even if equally applicable to all producers, and their disrespect for Thai laws that regulate their behaviour. The companies petitioned cabinet ministers directly and through diplomatic attaches to have the regulation dropped or weakened, and when it became clear that the government would not bend, Philip Morris and BAT blatantly refused to comply with the ministerial regulation. They justified their objections by saying that the regulation would jeopardise the confidentiality of their trade secrets and breach the World Trade Organisation's agreement on trade related aspects of intellectual property rights.[2]

In February 1998, after years of wrangling, the Thai government finally succeeded in getting all producers to comply with the regulation and reveal the ingredients of their cigarettes to the Ministry of Health, but not before public statements by the ministry that it would keep the information confidential.

Despite the Health Ministry's promises not to release this information publicly, they remain fully within their legal rights to do so. The ministry may have finally gained the information, but without publicly revealing the contents the regulation is of no use to health activists or consumers.

ADVERTISING

The 1992 Tobacco Products Control Act outlawed most types of promotion and has been reasonably well enforced, with none of the billboards, free samples or TV and radio advertising seen in neighbouring countries. But since 1997 point-of-sale advertising has become bigger, glossier, and more prevalent than ever before. Large cabinets emblazoned with distinctive brand colours and sometimes graphics are provided free to retailers. Newer models incorporate shelves where retailers can place other goods for sale. Interviews with shopkeepers have revealed that suggestions on how to paste cartons in glass walled shops to create outdoor advertising are also offered. Lack of knowledge about restrictions on point of sale advertising, together with a lack of enforcement by public health officers and a rapid expansion in the number of distributors of foreign tobacco brands, has led to this rapid increase in prominence.

Also of concern is the amount of indirect marketing, particularly brand stretching, which has increased notably since the mid-1990s, most prominent being Camel Trophy clothing. Camel Trophy clothes are sold in up-market department stores and in special Camel Trophy shops. Camel Trophy stickers are fixed to most four wheel drive vehicles in Thailand and the company has close connections with off road activities, including the promotion of Camel Trophy clothes in off road magazines and a high profile at 4×4 events. In this the TTCs are not only taking advantage of lax enforcement but also of legislative loopholes that do not forbid the use of minimally altered tobacco brand names and images.

PRICE CUTTING

While new advertising methods are a threat to the integrity of Thai tobacco control laws, it is the TTCs' pricing policy which is mostly responsible for the spectacular rise in their market share in the past few years. Foreign cigarette producers have slashed prices to build up market shares. Subsequently there has been a convergence of retail prices for foreign and domestic cigarettes. While foreign cigarettes are still more expensive, the difference today is only marginal.

One way they have done this is by introducing cheaper brands. For example, Philip Morris has introduced L&M as a cheaper version of Marlboro. They have also cut their profits in the hope that short term losses will be made up in long term increases in market share. Brands L&M, London, More, and John Player Special have a declared value of 31 Baht (US$0.81) (Excise Department), but they retail for as low as 27 Baht ($0.71).

The Thai government has taken action on what is seen as virtually dumping, by raising the cost insurance freight price by 20–50% for foreign cigarettes; the impact of this move has yet to be seen. So serious is the problem that the Customs Department has set up a unit to investigate any underpricing that may be occurring.[3]

The TTCs have been absorbing tax increases rather than passing them on to consumers for a number of years now, and this practice is now also being used by the TTM (table 2). These price cutting tactics are undermining the use of taxation on reduce tobacco consumption.

RETAILER INCENTIVE PROGRAMMES

Retailer incentive programmes are often ignored by tobacco control activists but the effect of these programmes in getting retailers to display point of sale advertising and to promote tobacco is considerable. These programmes have also been very influential in gaining a greater market share for foreign tobacco companies. TTCs are offering significantly higher margins to retailers than is the TTM. With a margin of 3 Baht ($0.08) and other promotional campaigns introduced by foreign producers, retailers can earn about 5 Baht ($0.13) per pack from foreign cigarettes compared to a paltry 2.30 Baht ($0.06) from sales of TTM brands. These "promotional campaigns" include offering retailers 11 cartons for the price of 10.[3] These incentives have greatly expanded the distribution network of foreign producers.

ASEAN FREE TRADE AGREEMENT AND TOBACCO

The 1999 World Bank report on tobacco noted that: "the removal of trade barriers tends to introduce greater competition that results in lower prices, greater advertising and promotion, and other activities that stimulate

Table 2 TTM and foreign cigarette sales and tax revenue in Thailand

Years	*Sales of TTM brands (in millions of packs)*	*Sales of foreign brands (in millions of packs)*	*Taxes a % of retail price*	*Tax revenue (million $US)*	*Market share of TTM (%)*	*Market share of TTCs (%)*
1990	1941	*	55	369	100	–
1991	1942	12	55	430	99.4	0.6
1992	1983	51	55	418	97.5	2.5
1993	2065	60	55	415	97.9	2.9
1994	2258	71	60	541	96.9	3.1
1995	2100	71	62	561	96.7	3.3
1996	2373	77	68	652	96.9	3.2
1997	2316	100	68	805	95.7	4.3
1998	1786	165	70	776	90.8	9.2
1999	1569	241	71.5	722	84.6	15.4

Source: Excise Department of Thailand US$1 = 37 Baht.

Figure 4 "Smoking gun"—Thai health promotion poster warning of the dangers to children from second hand smoke

demand."[4] The implementation of the ASEAN Free Trade Agreement (AFTA) was a core decision of the 1992 ASEAN declaration. AFTA aimed to encourage more trade between member states by committing members to the removal of obstacles to free trade among member states, including the abolition of high tariffs or taxes on traded goods and the scrapping of quantitative restrictions and other non-tariff barriers that limit the entry of imports. While allowing for countries to exclude some products from the agreement, Thailand has not presently moved to exclude tobacco. The agreement is set to produce an extremely advantageous trading environment for the tobacco industry, with fewer restrictions for those companies operating in the ASEAN region. Some research has predicted that tobacco will in fact be one of the chief beneficiaries of the AFTA scheme. There is an urgent need to investigate this issue further and to push for tobacco to be completely excluded from the agreement.

All of the major tobacco companies have carefully positioned themselves in the region to ensure that they benefit from the agreement. Foreign cigarette makers now operate in most of the member states manufacturing cigarettes via joint ventures and direct investment.

In addition to manufacturing there is movement by some companies, particularly Philip Morris, to work with tobacco farmers as well. Philip Morris is currently working with Thai and Malaysian tobacco growers to improve tobacco leaf quality. If the industry is able to secure a local (ASEAN) source of tobacco benefits from AFTA for the tobacco industry will be even greater.

If AFTA goes ahead as planned, Thailand may see significant drops in the price of regionally produced cigarettes and higher profits for the tobacco industry. The agreement will undermine the pricing measures (taxation) taken by the Thai government to control tobacco use, and since the impact of taxation is most effective for young people the agreement is likely to produce an increase in the number of young smokers.[5]

The Thai market, with a large population, high male smoking rates, and a burgeoning middle class, is of particular interest to tobacco multinationals. It has the potential to be a leading consumer of foreign cigarettes. To date successful tobacco control measures have limited the industry's success, but AFTA is set to challenge this control.

TTM: PRIVATISATION AND TRANSFORMATION

The TTM has been an important factor in Thailand's success in keeping tobacco consumption down. The state owned corporation epitomises the style of management which Judith Mackay described thus: " . . . in general, traditional monopolies in the developing countries don't deny health evidence against smoking, don't advertise, market or promote their cigarettes, and don't obstruct government action. In these three ways, they are diametrically different to the transnational tobacco companies."[6] But Thai tobacco control activists fear that the days of a benign TTM may be numbered as a significant decline in TTM sales and the threat of further TTC competition caused by AFTA push the TTM to be increasingly competitive.

Foreign tobacco companies have been looking for a chance to enter into a joint venture with the TTM for many years, and AFTA makes such a prospect an even greater prize. In 1999 the IMF seemed to be about to hand this prize over to the tobacco industry when they placed privatisation as one of the conditions attached to their "economic bailout" package for Thailand.[7] The TTM was one of the state enterprises being considered for partial or full privatisation. Philip Morris, RJ Reynolds International (now owned by Japan Tobacco), and BAT all held talks with the TTM as they vied for the coveted prize of a special agreement with the TTM.

An upturn in the economy and strong public opposition to privatisation has seen the threat of privatisation diminish considerably, with the Finance Ministry publicly stating that they had no plans to privatise the TTM because of health considerations. However, the TTM is

Figure 5 Thai health promotion poster targeting the female smoker

Key events in tobacco control in Thailand

- 1985 TTCs begin advertising on billboards despite a ban on cigarette importation in anticipation of the success of US actions to open the market
- 1986 Action on Smoking and Health (Thailand) established
- 1987 Nationwide petition to raise public awareness on tobacco signed by six million people
- 1989 Tobacco advertising banned by using the Consumer Protection Act
- 1989 US begins its campaign to allow the importation of US cigarettes into Thailand
- 1990 Trade dispute referred to GATT for adjudication
- 1991 Thailand allows US cigarettes to enter Thailand in line with the GATT decision
- 1992 Tobacco Products Control Act and Protection of Non-Smokers Health Act passed
- 1993 Sports Commission rejected a tobacco industry proposal to sponsor sport event
- 1994 First significant increase in the tobacco tax introduced raising it from 55% to 60%
- 1998 New health warnings on 30% of upper area of the packs introduced
- 1999 Tobacco tax increased to 71.5% of the retail price of cigarettes

already undergoing massive changes. In fact even in the midst of the privatisation debate TTM executives were already saying that, "regardless of the outcome, changes in [our] business model [are] required to survive increased competition from overseas".[8] They have stated that greater incentives would be offered to retailers to encourage stronger promotion of local products, and that if the monopoly's distribution network fails to expand sales in line with targets, a separate company may be set up to handle marketing directly.

In the past the TTM has been influenced by the Ministry of Health. For example, in 1993 a TTM official was quoted as saying that the TTM was sensitive to anti-smoking activists criticisms, noting that the TTM, " . . .have been scolded enough times by the Public Health Ministry".[9] In 1994 the TTM came under fire from members of the House Budget Scrutiny Committee who charged that the TTM's growing profits counteracted the Public Health Ministry's anti-smoking campaign.[10] At that time the TTM held 97% of the total Thai cigarette market; today they have dipped below 87%.

The concern is that a more market driven TTM will be less responsive to public health concerns and begin to emulate TTC trade practices. The TTM is already exporting to neighbouring countries and this export orientation could become more pronounced. They may also try and flex their financial muscle in government to counter health concerns. In the past the government has refused requests to improve or expand the TTM's factories but the market share losses, and the subsequent revenue losses, may convince the government to be more amicable in the future.

Conclusion

Today sees Thailand struggling with new issues such as the inadequate enforcement of existing laws, proposed AFTA tariff reductions, a more aggressive TTM, and decreasing public attention to tobacco. But the Thai tobacco control movement is a strong one. There are many active and committed people in both the government and non-government sectors working on tobacco control, strong supportive legislation, and importantly there is a high level of support for tobacco control in both the public and the media. To keep the movement progressing Thailand will have to utilise these strengths fully and avoid the trap of falling into complacency brought on by past successes. Just as the industry constantly strategises, so too must the tobacco control movement.

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